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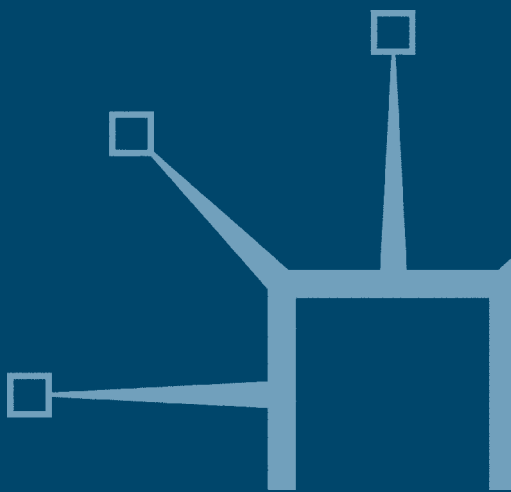
Bavaria and German Federalism

Reich to Republic, 1918–33, 1945–49

D. R. Dorondo



BAVARIA AND GERMAN FEDERALISM

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Reich to Republic, 1918–33, 1945–49

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To C.S.D.

'But if the while I think on thee, dear friend,
All losses are restor'd and sorrows end.'

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Preface

Among the troubling aspects of the 'German question', the most disruptive has been the Germans' historic failure to construct a nation-state integrating national unity and accepted western standards of political culture. In the post-1945 period, the Federal Republic of Germany has successfully resolved this dilemma for the majority of Germans, considerations of superpower influence aside. Born in the travail of dictatorship and war, the Federal Republic from the 1940s transformed herself from ruined enemy and submissive friend of the West to economic powerhouse and self-assertive ally. While occasionally turbulent, this metamorphosis did not alter one vitally important aspect of the Republic. As at her inception, the Federal Republic remains a liberal, pluralistic democracy constituted in federalist fashion. Consequently, she enjoys certain characteristics familiar to Americans, Canadians, and the Swiss, for example. Primary among these characteristics is a division of sovereign power among national, state (provincial, cantonal), and local governments, each operating independently of the others in its own constitutionally designated sphere. At least as much as stable democratic processes, this effective resolution of competences between central and subsidiary governments remains one of the Federal Republic's lasting contributions to German history.

Beyond the dry paragraphs of the Republic's constitution, however, lies the fact that – to date – she is the only genuine example of federalist democracy among Europe's larger states. At a time of growing speculation concerning the Continent's future, this is of no little import. The Federal Republic's constitutional structure allows for the optimum solution to the age-old German problem of reconciling national and local interests. Indeed, so successful has Germany's federal model been that many observers now view it as a possible solution to the yet-intractable problem of rival national sovereignties in an increasingly united western Europe. Still others see a looser federal form – the confederation – as a possible answer to the question of a future political unification of the whole of Europe, both East and West.

Historically, Bavaria has been among the most vociferous advocates of federalism as a solution to Germany's and Europe's organizational difficulties. The ruling party in Bavaria, the Christian Social Union (CSU), has consistently voiced this view since 1945; and it is that party's federalist efforts between 1945 and 1949 which form the core of the present narrative.

In the immediate postwar period, however, Germany's existential problems demanded resolution before any larger trans-European schemes could be contemplated. Thus the CSU's efforts aimed first and foremost at effecting a constitutional renaissance for the Germans themselves.

The traumatic, post-1918 circumstances prevailing in the earlier Weimar Republic had thwarted the establishment of a federalist (in the European, that is decentralized, sense of the word) polity in Germany. The Bavarian People's Party (BVP), authoritarian and profoundly Roman Catholic, had never succeeded in building a federalist consensus in Bavaria, much less the rest of Germany, before 1933 although the party remain federalism's most steadfast advocate throughout the interwar period. In the wake of the Second World War, radically altered domestic conditions demanded the formation of a new political party to replace the BVP as federalism's spokesman.

Once again Bavaria was home to federalism's principal champion after 1945. Unlike the BVP's efforts after 1918, however, Munich under CSU leadership largely succeeded in imparting her views on the constitutional arrangement of the new German state. Ironically, Bavaria formally rejected that state in 1949 because it was not *sufficiently* federalist. Still, Bavaria and her dominant political party remained federalism's staunchest supporters in the postwar era.

In 1989, the Federal Republic of Germany marked her fortieth anniversary. Those four decades had been a period of peace and prosperity. The system so stridently advanced by Bavaria had contributed enormously to that condition. In October 1990, the two German states came together in an act of unification, and it was noteworthy that the federal principle was accepted as a non-negotiable condition of this unification. There are now five new federal states in the Republic, and the reconstruction of East Germany will largely depend on their effectiveness. It is federalism's success in the post-1945 era and its promise for the future of Germany and Europe which is perhaps the enduring legacy of Bavaria and the federalist cause.

Acknowledgements

If I may follow the example of a friend and teacher formerly of The Old Palace in Oxford, Roderick Strange, I would quote the Preface of Collin Wells's *The Roman Empire* (London, 1984) and say that this author is painfully aware of 'his colleagues looking over his shoulder, and is obsessed with the need to justify himself, to reassure them that he realizes when he is over-simplifying, or when he has passed over in silence a topic generally deemed to be fascinatingly controversial. . . .' Limitations of time and space have perforce made such silences and simplifications necessary. Nevertheless, it is my hope that these limitations will not have proven themselves to be too great a hindrance.

As is perhaps inevitable with a work of this nature, the time and efforts of more than one individual have contributed to the completion of the finished product. While I, as all authors, bear sole responsibility for the work as it stands, a word of thanks is nonetheless in order. I must, first and foremost, acknowledge my debt to my supervisor at St Antony's College, Mr A. J. Nicholls. His unfailing encouragement, patience, and authoritative criticism have been invaluable to me both personally and professionally.

To the Commission for Educational Exchange between the Federal Republic of Germany and the United States of America (The Fulbright Commission) and the German Historical Institute, London, I express my appreciation for the financial and logistical support which made possible my research in the Federal Republic of Germany. Other institutions which must also be mentioned in this regard are the Bundesarchiv, the Bayerisches Hauptstaatsarchiv, the Institut für Zeitgeschichte, and the Hans-Seidel-Stiftung. To Frau Dr Sieglinde Ehard and Frau Dr med. Gerda Bracker I offer my thanks for their generosity in providing me access to the papers of Hans Ehard and Fritz Schäffer, respectively. I also say a very special word of thanks to Baron Axel von dem Bussche, Frau Anna Oster, Baron Hans von Herwarth, Herr and Frau Ministerialrat i. R. Dr Franz Baumgärtner, and to Herr and Frau Dr Theo Klotz. I deeply regret that Baron Levin von Gumppenberg, who assisted me on several occasions in his charming rooms *am Hofgarten* in Munich during my research, died before the publication of this book. His graciousness to me and my wife will be long remembered.

To Mr and Mrs W. W. Speir of Richmond Hill, Georgia, I express my deepest gratitude for the generosity without which my studies at Oxford would have been impossible.

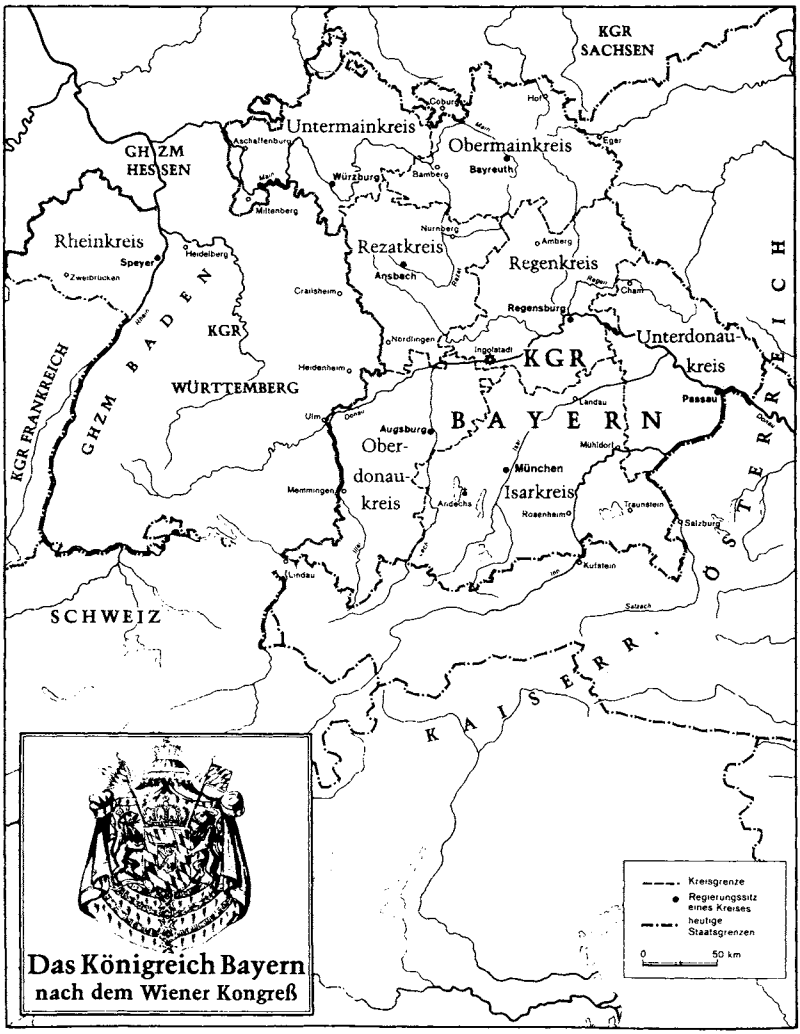
I am most grateful to Herr Hans Dollinger, Herr Paul Ernst Rattelmüller and Prisma Verlag for permission to use two maps from *Bayern 2000 Jahre in Bildern und Dokumenten.*

Finally, to my wife, Cheri, I owe a debt of affection and understanding beyond reckoning.

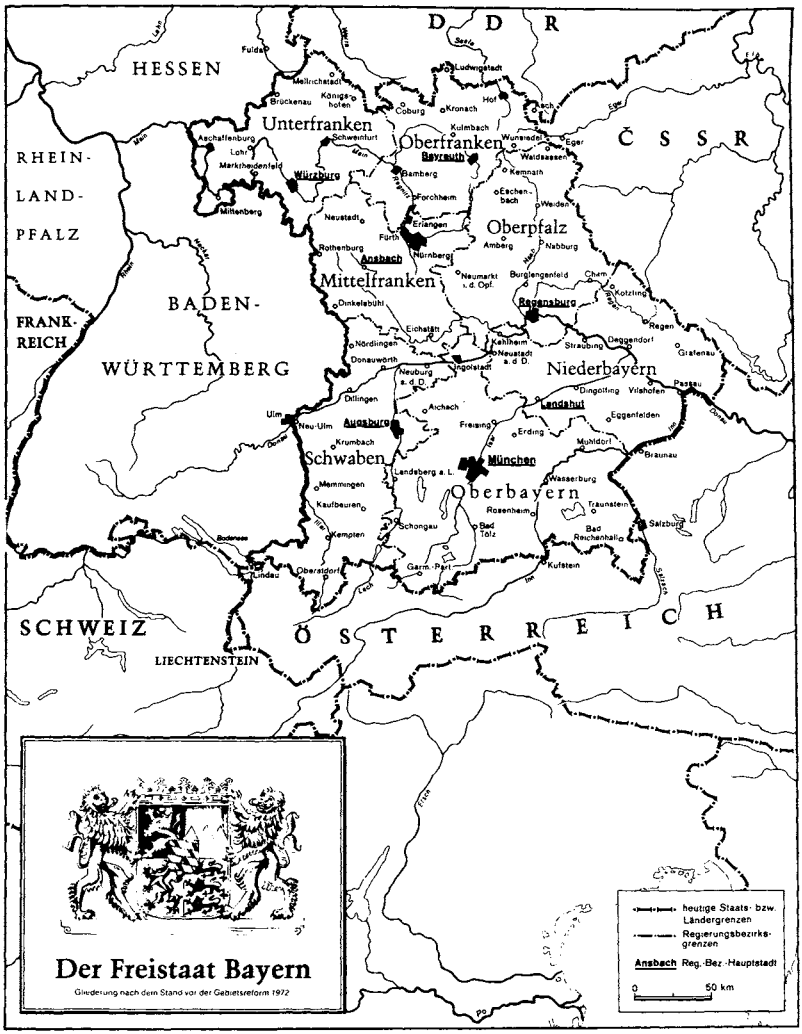
D. R. Dorondo

List of Abbreviations

a. D.	ausser Dienst
BA	Bundesarchiv
BayHStA	Bayerisches Hauptstaatsarchiv
BBB	Bayerischer Bauernbund
BBV	Bayerischer Bauernverband
BHE	Bund der Heimatvertriebenen und Entrechteten
BP	Bayernpartei
BVP	Bayerische Volkspartei
CDU	Christlich Demokratische Partei
CSU	Christlich Soziale Union
DDP	Deutsche Demokratische Partei
DNVP	Deutschnationale Volkspartei
DP	Deutsche Partei
DVP	Deutsche Volkspartei
FDP	Freie Demokratische Partei
Gestapo	Geheime Staatspolizei
HSS	Hans-Seidel-Stiftung
ICD	Information Control Division
IfZ	Institut für Zeitgeschichte
KPD	Kommunistische Partei Deutschlands
MInn	Ministerium des Innern
NL	Nachlass
NSDAP	Nationalsozialistische Deutsche Arbeiterpartei
OMGBY	Office of the Military Government – Bavaria
SPD	Sozialdemokratische Partei Deutschlands
SA	Sturmabteilung
SED	Sozialistische Einheitspartei Deutschlands
SS	Schutzstaffeln
USPD	Unabhängige Sozialdemokratische Partei Deutschlands
WAV	Wirtschaftliche Aufbau-Vereinigung
WRV	Weimarer Reichsverfassung



The Kingdom of Bavaria after the Vienna Congress



The State of Bavaria

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Introduction

In the English-language historiography of modern Germany, the question of federalism in the constitutional development of the country is often treated as an aside or simply accepted as a given historical fact. Apparently ignored is that the debate in Germany as to the necessary degree of national centralization and, consequently, the proper role of the historically-developed states, has been one of the principal causes of political dissension. Similarly, the role of Bavaria as a prime mover in the cause of German federalism has more often than not received relatively little attention. This state of affairs is regrettable, particularly in view of the fact that this question has been of critical importance to the government of Bavaria at least since 1815.

Bavarian attitudes toward the modalities of German unification in the modern era have had an impact far beyond the borders of the Bavarian state, and the importance of federalism to Bavaria has not diminished with the establishment of the Federal Republic of Germany. On the contrary, the party which has controlled Bavaria in virtually undisputed fashion for nearly half a century continues to espouse federalism not only as the most suitable governmental system for Germany but also as the most promising one for the future of Western Europe.

That party, the Christian Social Union, arose in the aftermath of the Second World War as a result of the same processes which produced the Christian Democratic Union elsewhere in Western Germany. The Bavarian party was unique, however, in drawing strength from its inception as a specifically Bavarian phenomenon. It aspired early on to fill the gap on the non-socialist side of the political spectrum left by the Weimar-era disintegration of German liberalism and, more importantly, by the forced dissolution in 1933 of the Bavarian People's Party. That earlier organization had broken with its parent, the Catholic Centre Party, after the First World War and had dominated Bavarian politics between 1918 and 1933. Its most strident and consistent programmatic argument was federalist reform of the Weimar constitution. In this context it must always be kept in mind that 'federalism' in Germany has traditionally been equated with *decentralized* government. Elsewhere, principally in the United States, the term has most often implied *centralized* government. Catholic–conservative and sometimes semi-authoritarian, the Bavarian People's Party never lost sight of its goal of a decentralized, federated German state despite

flirtation with insurrection and National Socialism in 1923. The Christian Social Union adopted this federalist stance as part of its own programme in 1945. Further, it attempted to recruit not only the former supporters of the Bavarian People's Party but also Protestant liberals and working-class elements. It is this study's object to contribute to a more thorough understanding of the evolution of the Bavarian federalist idea in the two periods 1918–33 and 1945–49, particularly as that idea has been espoused by these two political parties.

A comparative examination of the federalist case put by both parties serves as the basis for this work. The fact that they are Bavarian in origin and that they both have advocated as great a degree of federalism as possible does not necessarily equate the two organizations. On the contrary, it is shown that certain significant differences exist. Nonetheless, personal and ideological links between the two parties span the void created by dictatorship and war. The birth of the Christian Social Union, however, occurred in radically altered geopolitical circumstances which made possible a broader West German consensus on federalism's acceptability. This, in turn, facilitated the Christian Social Union's efforts to help impart a federalist stamp to the new West German republic in 1949.

Several standard works have been valuable in the presentation of the general conditions in Bavaria between 1918 and 1945. Two treatments of the revolution which are quite useful are Allan Mitchell's *Revolution in Bavaria 1918–1919* (Princeton, 1965) and Karl Bosl's *Bayern im Umbruch* (Munich, 1969). Wolfgang Benz's *Süddeutschland in der Weimarer Republik* (Berlin, 1970) and Falk Wiesemann's *Die Vorgeschichte der nationalsozialistischen Machtübernahme in Bayern 1932/1933* (Berlin, 1975) provide interesting and thorough examinations of Bavaria during the Weimar period, particularly regarding–in Wiesemann's case–the reaction of Catholic–conservative forces to the rising tide of National Socialism. The specific reaction of the Bavarian People's Party is ably addressed by Klaus Schönhoven's *Die Bayerische Volkspartei 1924–1932*. All of these works offer a welcome counterbalance to Karl Schwend's now dated, and somewhat partisan, *Bayern Zwischen Monarchie und Diktatur* (Munich, 1954).

By far the best treatment of Bavaria between 1933–1945 is Martin Broszat's and Hartmut Mehringer's *Bayern in der NS-Zeit*. This multivolume work covers all significant aspects of Bavarian life during the Nazi dictatorship and includes another fine contribution by Schönhoven, 'Der politische Katholizismus in Bayern unter der NS-Herrschaft'. Two studies worthy of mention concerning the immediate postwar period are Alf Mintzel's *Die Geschichte der CSU* (Opladen, 1977) and Konstanze Wolf's *CSU und Bayernpartei* (Köln, 1982).

In order to put federalism's evolution in a comparative perspective, however, extensive use has had to be made of primary sources. Of the greatest value in this respect were the holdings of the Bayerisches Hauptstaatsarchiv. Included here would be the files of the Bayerisches Staatsministerium des Äussern (Geheimes Staatsarchiv des Bayerischen Hauptstaatsarchiv). These comprise a wide-ranging collection of position papers, official correspondence, and press reports on the issues surrounding the question of *Reichsreform*. Equally indispensable, but for the postwar period, are the records of the Bayerische Staatskanzlei and the Ministerium des Innern, particularly regarding re-establishment of political parties, zonal affairs, and constitutional questions. Finally, the *Nachlässe* of Hans Ehard, Anton Pfeiffer, Fritz Schäffer, and Josef Baumgartner – the latter two to be found in the Bundesarchiv and the Institut für Zeitgeschichte, respectively – provide a particularly rich source of primary documentation. Unfortunately, access could not be gained to the relevant portions of the *Nachlass* of Josef Müller. Statements of fact regarding him, however, have been corroborated as thoroughly as possible through a cautious use of his memoirs in combination with other primary and secondary sources.

The maps, 'Das Königreich Bayern nach dem Wiener Kongress' and 'Der Freistaat Bayern' appear with the kind permission of Herr Hans Dollinger from his book, *Bayern 2000 Jahre in Bildern und Dokumenten* (Bertelsmann Verlag München, Lizenzausgabe Prisma Gütersloh; 1983).

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1 Struggle for Identity: The Bavarian People's Party and Federalist *Reichsreform*, 1919–33

The problem of Bavaria's relationship to the German *Reich* in the twentieth century is one whose roots may be found in the establishment of the German Empire in 1871. In that year Bavaria already possessed a tradition reaching back to the eighth century, a tradition from which, for all its vagaries, she consciously drew self-identity and a sense of purpose in German affairs. Historically the strongest and most influential south German state, excepting only Austria, Bavaria had grown from an early medieval geographic core bounded roughly by the rivers Lech, Danube, Inn, Salzach, and the spine of the Alps. On to this core were grafted, over time, substantial areas of Swabia and Franconia, these acquisitions being primarily the results of Bavaria's involvement in the great-power politics of France, Prussia and Austria. Becoming in the nineteenth century a monarchy in her own right, Bavaria was linked to the North German Confederation in an offensive/defensive alliance following the Austro-Prussian War. When, in 1871, Bavaria joined the German Empire, it was only on the condition that the member states be granted special rights and privileges under the terms of the federal constitution of the *Reich*.

Under the terms of the constitutions of the confederation and the empire (the latter document being an amended version of the former) the individual states were rather well represented in the *Bundesrat*, the designated organ of imperial collective sovereignty. Indeed, its members were more ambassadors of the states rather than legislators. The members voted, for example, not according to conscience but according to their governments' directions. The *Bundesrat* had the right of initiative in the legislative process along with the popularly-elected *Reichstag*, and the upper house's approval was required for legislation to become law. It could also amend the legislation of the lower house. Concerning constitutional amendments, the upper house could block them with a 14-count negative vote out of a total of 58 in the *Bundesrat*. Of these fourteen votes, Bavaria possessed six. *Länder* could not be made to accept imperial changes in their territorial arrangements or form of government without their consent. Their *Vor-* and *Reservatrechte* remained similarly inviolable.[1] In Bavaria's case, these rights included the permanent chairmanship of the *Bundesrat* Committee

for Foreign Affairs, and a permanent seat on the Committee for the Army (*Landsheer*) and Fortifications. Further, Bavaria controlled her own taxes on beer and spirits which contributed significantly to her financial independence. She also possessed her own post, telegraph, railway and military administrations. Regarding the latter, she could not be compelled to accept as binding on her an imperial decree of a state of emergency or a declaration of war. She controlled her own residency, colonization and emigration affairs. Finally, Munich maintained separate representation in imperial peace-treaty negotiations; in other states of the empire; and supplied numerous imperial ministers.[2]

Other federal prerogatives of the imperial period included the right of the *Bundesrat* members to appear at any time before the *Reichstag* to put their states' cases in a given issue, and the right of the *Bundesrat* to issue executive ordinances for the execution of imperial statutes. The upper house's approval was also necessary for the appointment of certain imperial officials such as the Imperial Attorney-General. No 'execution', the disciplining of *Länder* which were in violation of imperial law, had been possible without *Bundesrat* concurrence. The upper house served, further, as a court of last instance under certain circumstances. Finally, on a purely procedural level, the *Bundesrat* had to be summoned at least once per year or at any other time following such a request by one-third of its membership; it required no specific quorum to conduct business; and business broken off at the end of one sitting might be taken up again at the next.[3]

Following the terrible bloodletting of the First World War and the turmoil of the revolution of 1918, Bavaria attempted to reassert these federal rights in the shaping and maintenance of the constitution of the Weimar Republic. The vehicle for, and simultaneously the first step in, this campaign of reassertion was the establishment of the Bavarian People's Party (BVP). Formed from the Bavarian wing of the Roman Catholic Centre Party, the BVP rested upon the bases of religious homogeneity and pronounced Bavarian conservatism, despite its claim to represent all classes and denominations.

In the initial confusion of November 1918, however, the BVP was unable to press its demands, of which more will be said presently. Formed on 12 November in Regensburg in the confused days following the departure (on 7 November) of the Bavarian king, Ludwing III, the BVP was forced to allow the then more influential Bavarian section of the Independent Social Democratic Party (USPD), under the leadership of Kurt Eisner, and the Social Democratic Party (SPD) to form the government in Munich and put the Bavarian case in Berlin.

Munich's position was badly affected from the outset by the turmoil on the Bavarian political scene. Eisner's government remained intent upon a transformation of German society, but found itself caught between this apparent desire for social revolution and the desire for democracy.[4] The government in Munich also found little resonance in the conservative countryside. Adding to these problems, the new version of the national constitution (*Weimarer Reichsverfassung* – WRV) was laid before the plenum of the *Nationalversammlung*, the constituent assembly of the *Reich*, in Weimar only three days after Eisner's murder in Munich in the spring of 1919, that is at the height of confusion in the Bavarian capital. The Bavarian government, fleeing to Bamberg during the subsequent *Räterepublik* thus saw itself not only in control of the capital but also, in terms of affecting any changes in the WRV in Berlin, virtually powerless.[5] Exacerbating this powerlessness was the fact that the binding preconditions of the WRV limited Bavaria's freedom in the formation of its own government. The WRV declared republican, parliamentary democracy based upon proportional representation as the only acceptable form of government for the *Länder*. No deviation would be permitted.

Bavarian voices nevertheless attempted to speak up in the formative stages of the new republican Germany. At the *Reichskonferenz* in Berlin on 25 December 1918 and the Stuttgart conference of the south German states on 27–8 December, Eisner, hardly a conservative Bavarian Catholic, had spoken out strongly in favor of a federally-oriented *Reich* constitution. At the former meeting he had called openly for a 'United States of Germany', while in Stuttgart he advocated the formation of a *Süddeutscher Bund* which would rebuild the *Reich* independently of Berlin.[6]

In certain respects, Eisner's attitude recalled that of Georg Heim, the populist *Bauerndoktor* and founder of the BVP. Rough-hewn and enthusiastically anti-Prussian, Heim had been instrumental since the turn of the century in organizing Bavaria's peasantry politically and economically to resist what he saw as increasing north German enroachment. His open disaffection with the national centralization of the war years and the Centre Party's inability to stop the revolution led him to direct the already-mentioned party-split of 12 November. His efforts also attracted the attention of other peasant leaders such as Michael Horlacher, from 1920 to 1933 head of the *Bayerische Landesbauernkammer*, and Alois Schlögl. The uncertainty and political confusion of the collapse also presented themselves as the opportunity for Heim openly to toy with the idea of a separate Bavarian state, or at least a German state in which Bavaria would play the predominant role. In Heim's scheme Bavaria would be removed

from the remainder of the *Reich* and joined with the German provinces of the former Austro-Hungarian monarchy. To this agglomeration would be added the Rhineland and western Germany as far as the Elbe. The new state thus created would thereby not only secure ready access to the sea, but would also possess sufficient raw materials and agricultural hinterland for an independent economic existence. Heim also envisioned a vague economic patronage of the new state by France,[7] and awakened memories of the Napoleonic alliance between Munich and Paris.

The idea that France may have been amenable to such sentiment receives support from the apparent French readiness to sign separate peace treaties with at least the south German states in the event that Berlin had refused to accept the 1918 armistice. This plan had found an advocate in Marshall Foch who had envisioned an advance to the line of the Weser and the Main in the event of German recalcitrance.[8]

Such sentiment not withstanding, one must recognize from the outset that actual separatist feeling in Bavaria remained the exception rather than the rule. On the contrary, the enthusiasm with which the federalist cause was espoused in Munich indicated, instead, a proclivity toward particularism, that is a belief that Bavaria and Bavarians should retain their historically-developed national characteristics in the face of an ever-increasing tendency toward political and economic centralization.[9]

This latter sentiment remained much more widespread than the former throughout the Weimar period. The fact that it was shared by men of such diverse political orientation as Eisner and the later Bavarian Minister President and *Generalstaatskommissar*, Gustav von Kahr, is only one example of its wide appeal. To be sure, this particularist sentiment found expression in the 1920s in a desire to 'save the rest of Germany from herself'[10] (a desire of which Adolf Hitler took full advantage), but it was a crusade from within the *Reich*, not from without.

Despite these particularist attitudes, the Stuttgart conferees of December 1918 (with the exception of Eisner) declared that they considered the constitution of Wilhelmine Germany as still valid. Furthermore, they considered themselves a rump *Bundesrat*.[11] Eisner's outspoken attitudes, not to mention his membership in the USPD – he was one of the few prominent Bavarian Social Democrats to go over to the new party–soon drove him into political isolation, but his federalist inclinations would not be forgotten. Some regarded him as the champion of Bavaria's rights. Many others saw in him only the dangerous Bavarian radical socialist.

EARLY ATTEMPTS AT FEDERAL REFORM, 1918–24

While at the *Reichskonferenz* of 1918, Eisner and the heads of the other German states had debated a draft *Reich* constitution which had been prepared by the State Secretary in the *Reich* Ministry of the Interior, Hugo Preuss. The draft constitution aimed at the creation of a strongly centralized *Reich* government. This centralization would naturally be at the expense of the prerogatives of the *Länder*, a tendency which would have flown directly in the face of one of the basic developments of the revolutionary period – the desire of the *Länder* to maintain a federal constitutional structure.[12] The draft's provisions included the proposal to eliminate the traditional hegemonic position of Prussia within the Reich by dividing that *Land* into several self-administered units. (*Selbstverwaltungskörper*). Each of these units would, in turn, be more heavily dependent upon the *Reich* government due to the concomitant diminution of the powers of the Prussian *Land* government.[13]

While one would have thought that a proposal to dismantle the Prussian state would please Munich, it nevertheless raised serious reservations in the Bavarian capital. From a strategic point of view, Munich feared for the safety of the *Reich's* frontiers if the unified Prussian military structure between the Rhine and a newly-created Poland were eliminated. Further, Bavaria feared that any future division of Prussia would not necessarily endure since traditional economic, historical and cultural ties would tend to reunite any successor states to Prussia which might be created.[14] Such a dissolution would not only set a bad precedent for the other *Länder*, but would also remove one of Bavaria's principal allies in the struggle of the *Länder* to maintain their historic identities and rights. Prussia had, not unnaturally, shown herself to be reluctant to relinquish control over her traditional provinces. Such an attitude reassured Bavaria in her resolve to retain her own Rhenish Palatinate in the face of separatist rumblings in the Rhineland. Bavaria's resolution was further increased by Preuss's proposal that *Länder* boundaries could, in effect, be redrawn at will by the *Reich* and that the Palatinate was due to be included in the restructured version of Prussia.[15] Finally, the Preuss proposals fell foul of the political parties' desires to maintain their own regional administrative structures.[16]

In keeping with these inclinations, Erhard Auer, the Social Democratic Bavarian Minister of the Interior, formulated, in cooperation with the representatives of Baden and Württemberg, a proposal of his own which was to be presented at a conference of *Länder* representatives due to debate the form of the new *Reich* constitution in Berlin on 25 January 1919.[17] This

south German draft did not seek the restructuring of Germany into a *Staatenbund*, as might have been expected in reply to the Preuss version. Rather, it sought a fixing of the *status quo ante* the November revolution.[18] Auer's primary concern was the preservation of *Länder* representation in national government. Preuss's original proposal had indeed made provision for representation based upon the *Staatenhaus* concept of the 1848 constitution, under which half of the delegates would be elected by the several *Landtage* and half appointed by the central government. The *Land* governments, however, rejected this proposal on the grounds that, while half of the *Länder* delegates might well be elected by the *Landtage*, these same delegates would not be bound by *Land* government directives. The *Länder* would also not be permitted any participation in the administration of *Reich* affairs. Instead, Auer and his supporters insisted upon the reinstitution of a house of *Länder* representatives who would be more directly responsible to their respective governments, indeed appointed by them.

The principle of *Land* representation was subsequently accepted by the *Nationalversammlung*, at least partly in an effort to preserve the unity of the *Reich*. The advocates of federalism had apparently won an early victory. The implementation of this principle was nevertheless hotly debated, the assembly eventually settling on the *Reichsrat* as the forum of *Länder* interests. The upper house's most significant prerogative would be the imposition of a veto upon legislation coming to it from the *Reichstag* or lower house. This veto, however, could be revoked through a two-thirds vote of the *Reichstag* or through the affirmative decision of a referendum ordered by the *Reichspräsident*.[19] Throughout the constitutional debates of the spring and summer, Bavaria's representatives continued to fight for the retention of the old *Reservatrechte* of the imperial period, albeit unsuccessfully. They also called for the supreme authority of the *Länder* in all internal *Land* affairs, and an increase of the participation of the *Länder* in the national legislative process. The tenor of these demands remained the same throughout the short life of the Weimar Republic.

Interestingly, the BVP delegation in the *Nationalversammlung* did not wholeheartedly support these demands of the Social Democratic Bavarian government of Johannes Hoffmann any more than they had supported those of the murdered Eisner.[20] Certainly, much of this reserve can be attributed primarily to the inherent reluctance of the BVP to support any proposal made by the Social Democrats. There is, however, another reason. While the Social Democratic representatives of the Hoffmann government were determined to take their stand on the *Reservatrechte* of the imperial constitution, the BVP was choosing a somewhat different course. Georg Heim indicated to the Bavarian envoy to the *Reich* government, Konrad Ritter

von Preger, that the BVP did not view the loss of the *Reservatrechte*, specifically the loss of military or transport services sovereignty, as the greatest threat to Bavaria's position in the *Reich*. Rather, the threatened extension of the competency of the *Reich* to control more generally internal *Land* affairs offered the most dangerous encroachment upon Bavaria's *Eigenstaatlichkeit*. Excepting the soon-to-be famous Article 48 of the *Reich* constitution, this threat was most particularly acute in Articles 6–18. These Articles determined the financial relations of the *Reich* to the states and the ultimate supremacy of *Reich* legislation over that of the *Länder* under almost any circumstances.[21] Only in so far as Hoffmann's demands touched upon the defence of internal Bavarian prerogatives in the face of these threats would BVP support be forthcoming.

Some appreciation of the confused state of affairs – and perhaps of Heim's lack of legitimacy as a spokesman for the entire party – may be gained by noting the fact that, when the final vote on ratification of the constitution was taken in the *Nationalversammlung* on 31 July 1919, Heim was the only member of the BVP delegation to vote 'nay'.[22] Although the rest of the delegation presumably shared Heim's objections to the new constitution, they nevertheless voted affirmatively for what were called 'patriotic reasons'. These included a desire to be supportive of Germany in the face of the Treaty of Versailles, which had been signed on 28 June, and a feeling of denominational solidarity with the pro-constitution Centre Party. This stance would help to explain the BVP's delegation's attitude in the *Nationalvesammlung*, an attitude which presupposed being on the same side of the ratification vote as the SPD. It would also help to explain a disinclination to be found in the opposition camp along with the German National People's Party (DNVP), the German People's Party (DVP), and the USPD.[23] The BVP also feared a repetition of the communist risings of the winter and spring if its rejection of the constitution contributed to instability in the national government.[24] This latter view became particularly important as it was only with the help of the national government that the Munich *Räterepublik* had been destroyed. The BVP thus found itself in the difficult position of supporting a government which it suspected of complicity in the upheavals emanating from 'red' Berlin. Fuelling these suspicions were fears of a 'takeover' of Bavaria by this selfsame government, a government which not only mustered considerable Protestant support but which also had been the agent of big business in the latter's 'exploitation' of Bavaria during the World War.[25]

In the long term, however, the marriage of convenience in the *Reichstag* among the Centre, the BVP, the SPD, and the German Democratic Party (DDP) in supporting the constitutional *status quo* could not last. The

passage of new nationwide tax laws in October 1919 removed the last vestiges of *Land* economic sovereignty, this loss striking most deeply at Bavarian sensibilities. The fact that the tax laws' author, Matthias Erzberger, belonged to the Centre only further incensed the BVP. Compounding the severity of the BVP's reaction was the passage in December of a motion in the Prussian *Landtag* calling for the creation of the *Einheitsstaat*. The heretofore strained cooperation of the BVP with the parties of the Weimar Coalition was thus brought to the breaking-point, this rupture affecting most seriously the BVP's relations with the Centre.

The Centre could afford to support a federalist viewpoint only in those *Länder* where Catholics already constituted a majority of the population, Bavaria being one of these. Elsewhere, the Centre was forced to advocate a strong central authority in order to secure a rallying point for Catholics outside the south. This policy rooted itself in the nineteenth-century *Kulturkampf* and conditioned the Centre to seek a concentration of power to protect Catholic interests nationally, even if predominantly Catholic Bavaria suffered in the process. To be sure, political Catholicism had emerged from the revolutionary period with a greater degree of inner cohesion. This had been accomplished in part through the forced removal of Polish and Alsatian Catholics in the wake of the Versailles settlement. The Centre also matured quickly through its governmental responsibility in Berlin and in the *Länder*, a maturation process enhanced by Protestantism's factionalism and loss, after 1918, of imperial support.[26] Nevertheless, Catholics outside Bavaria remained in an overall minority. The differing environments in which the Centre and the BVP operated thus encouraged divergent views about the *Reich's* federal structure.

On 9 January 1920 the BVP Landesparteitag in Munich withdrew the party from the parliamentary working group with the Centre which had heretofore been maintained, and began in earnest the party's campaign for constitutional revision.[27] Six months after the break with the Centre, there appeared the first concrete measure in this campaign. The individuals responsible were a circle of party members schooled in constitutional law and politics. Known as the *Mittwoch-Vereinigung der Geistesarbeiter der Bayerischen Volkspartei*, the group published on 9 June 1920 a 'Memorandum on a Revision of the *Reich* Constitution in a Federalist Spirit'.[28] Whereas the loss of the treaty-based federalism of the 1871 constitution was recognized, the memorandum nevertheless demanded that the new constitution be modified to reinstate some of the earlier rights of the *Länder*. The more important of these rights would include constitutional autonomy to an extent which would allow the *Länder* to maintain their own foreign representatives and determine their own *Staatsform*. For Bavaria, the latter

left open at least the possibility of a strong state president when not an outright restoration of the monarchy, a measure which would have been difficult indeed.[29] The memorandum further called for *Land* administration of direct taxes, postal and railway services, as well as the local disposition of armed forces to maintain internal order. The transfer of legislative authority in these affairs to the *Reich* was accepted as accomplished fact. Finally, if one may be allowed to take the first part of the memorandum last, the party called for the institution of a federal organ to safeguard the rights of the *Länder* through full participation in the legislative functions of the *Reich*.[30] The latter demand was clearly the most important reform provision from the BVP's point of view. From the institution of a federal organ, co-equal with the *Reichstag* in the legislative process, would flow as a matter of course all the other desired changes. The federal organ which the BVP had in mind as its ideal was the *Bundesrat* of the imperial period. The provisions of the constitution of 1871 for the establishment of the *Bundesrat* had rested, in turn, upon the constitutional arrangements of the North German Confederation of 1867.

In retrospect, the idealism of the BVP's hopes of turning back the clock after the catastrophe of the World War and the upheaval of the revolution seems striking. The reinstitution of the federal organ of government as it had existed before 1918 was hardly a practical possibility. At the time, however, matters appeared differently, particularly in view of the unsettled conditions in Germany in the early 1920s. To the BVP it seemed that the chances for the accomplishment of its proposals for federal reform had improved considerably with the resignation of the SPD-led Hoffmann government in Munich in the wake of the disturbances caused by the Kapp *Putsch* in the spring of 1920. Being the strongest party in the Bavarian *Landtag*, the BVP formed a new government, now hoping to put its case for reform more effectively. A coalition with the Bavarian Peasants' League (BBB) and the DDP's Bavarian section would be necessary, however, for the BVP to form a majority government against the opposition of the Social Democrats. Once in power, the BVP moved quickly to prepare for its annual congress at which the question of constitutional revision would take a prominent place on the agenda.

At the *Landesparteitag* in Bamberg on 18 September 1920, the BVP drew up its first official reform programme, the so-called 'Bamberger Programme.' This document constituted an expansion of the memorandum of the preceding June. The particularist attitude inherent in so much of the Bavarian federalism of the day comes through clearly upon examination of either the original draft programme or the final form as adopted by the party just over two years later in October 1922.[31] While nowhere calling for a

dissolution of the *Reich* or Bavaria's separation from it, both versions stress the need for an increased federal emphasis in the *Reich* constitution. The evolutionary development from the memorandum through the draft 'Bamberger Programme' to the final version of 1922 shows itself in the increasing specificity of the demands made upon the *Reich* government. This specificity played a dual role. One function was to provide clear guidelines to the BVP *Reichstag* delegation so as to ensure support only for that legislation which might further Bavaria's interests. The other purpose was to calm the fears of the party's DNVP allies in the *Landtag* who had been brought into the government in 1922 to replace the DDP as a coalition partner. The DNVP feared the consequences for the *Reich* from Munich's calls for a weaker central government.[32] For example, the memorandum and the first draft of 1920 called simply for greater *Länder* participation in government based upon the reinstitution of a federal organ such as the *Bundesrat*. In the programme as finally adopted in 1922, this demand is divided into two separate sections. The first lays out, in quite general terms, those points which would promote increased, long-term participation by the *Länder* but which would have to await constitutional amendment. The second section concerns those demands which the BVP felt would have to be granted immediately: once again, *Land* administration of post, rail, and tax systems through local offices staffed by *Land* natives; the delegation to the *Länder* of all powers not specifically granted to the *Reich*; and the discretionary use of the armed forces by the *Länder* to maintain order.

The evolutionary development of the BVP's federalist demands in these early days also reflects a change on the Bavarian political scene. In the *Reich* as a whole, the forces of the revolution had succeeded in November–December 1918 and January 1919 in cowing, if not permanently replacing, the old elites of church, army, and bureaucracy. In so far as these elites remained intact following the upheaval of 1918, the revolution thus assumed what has been termed a *realtypisch* nature. That is, the ruling societal elements were not truly eliminated through execution or emigration as, for example, in the *idealtypisch* Russian Revolution. Nevertheless, change occurred (namely the removal of the monarchy) which sustained itself over time. Thus the problem-complex of German federalism found itself transferred from the framework of dynastic federalism and into the framework of governmental federalism.[33] Such a change could not, however, disguise the fact that the national elections of January 1919 were influenced by demands for law and order in the face of perceived communist anarchy. This was true in the election to the *Nationalversammlung* in Berlin, and it was true in Munich. 'The election [of 1919] sealed the fate of plans for

socialization, the consolidation of the [revolutionary] councils system and the fundamental reorganization of Germany's state authorities.'[34] Despite the SPD's presence in the government, the parties of the middle class were once again in the ascendant. Similarly, in Bavaria only the BVP's and the DDP's policies of toleration permitted the existence of an SPD government. Finally, as noted above, the BVP assumed control of the government in March 1920. The SPD, however, remained a force to be reckoned with even after that date.

The consequent need of the BVP to ally itself with the Peasants' League, the DDP, and the DNVP in order to overcome SPD resistance to its plans led to several difficulties. Already mentioned was the effort in 1920–1922 to calm the fears of the party's coalition partners over the fate of the *Reich* through the refinement of the 'Bamberger Programme'. When this programme bore no fruit, the BVP began to attach greater importance in 1923–24 to plans already afoot to redraw the Bavarian constitution of 1919 in order to approach the idea of *Reichsreform* through the 'back door'. Here the party encountered another major difficulty when it ran into the opposition of the Bavarian Social Democrats.

The platform of the BVP in this issue rested upon four principal demands: the modification of Article 92 of Bavaria's constitution which required a two-thirds majority *Landtag* vote to effect constitutional changes; the easing of the rules for the holding of plebiscites; the creation of the office of an adequately (*hinreichend*) powerful state chief executive; and the establishment of second, upper house to offset what the BVP considered the over-powerful legislative position of the *Landtag*.[35] Just as the earlier proposals of the 'Bamberger Programme' had failed in the *Reichstag*, however, so now the BVP's demands of 1924 failed in Munich, receiving less than the two-thirds vote necessary for passage in the *Landtag*. In reaction to this defeat, the party attempted to have the proposals resurrected in the form of a referendum held during the April *Land* elections. This, too, failed to gain the necessary number of popular votes.[36]

THE FAILED EFFORT, 1924–33

All the while that the early attempts at federal reform were under way, the BVP found itself in a struggle to maintain its self-identity. The Munich *Putsch* of the previous year forced the party, during the 1924 elections, to distance itself from the 'foreign elements' responsible for the attempted coup.[37] This stance involved disclaiming any participatory or supportive

role in the events of November 1923 so as not to suffer guilt by association, despite Munich's evident desire to have done with the entire Weimar 'system'.[38]

Simultaneously, the BVP stressed its conservative nature so as not to appear weak in its resolve not to cooperate with the SPD. Such a middling position in the heated atmosphere of the post-*Putsch* months remained a difficult one to maintain. This difficulty manifested itself with the results of the elections. The party lost nearly one-quarter of a million votes from the total amassed during the 1920 electoral campaign. As the leadership had feared, the chief beneficiaries were the radical right-wing *Völkischer Block* and the Social Democrats.[39] Although the BVP remained the largest party in the *Landtag*, its plurality was narrower than at any time hitherto.

Despite a repetition of the 'back-door' approach to constitutional modification in July 1924, and once again in June 1926 – during which latter attempt the motion to amend the state constitution failed by only one vote – the high-water-mark of the BVP in this regard seems by this time to have passed. After 1926 the party alignments within the Bavarian *Landtag* were such that no real possibilities existed to make the attempt again.[40] The party could not, of course, renounce its desire for change without risking the loss of its base of conservative support. Hence the refusal to change basic party guidelines. One nevertheless suspects that the retention of the superficially revisionist programme for the *Land* constitution was a holding action to preserve party unity and prestige, the leadership recognizing the impossibility of revision for the foreseeable future. This supposition becomes clearer in light of the caesura of the *Putsch* and the temporary jailing of Hitler in 1924. The return to more or less normal political life during the middle years of Weimar forced the BVP to maintain a modicum of political respectability. Whether such a minimum could be maintained while causing constant irritation in the *Land* body politic is questionable. Given this realization and the fact that the sufficient parliamentary support was lacking, the BVP's efforts to reform the Bavarian constitution, as well as those to reform the constitution of the *Reich*, remained only a programme.[41]

This grudging acceptance of the *Land* constitution, the 'child of the revolution',[42] indicated the recognition of sufficient opposition to the BVP's proposals to make them difficult, if not impossible, to accomplish. In an effort to offset this disadvantage and perhaps increase its chances of achieving its goal of federal reform, the BVP took the curious step of deciding to support Field-Marshal von Hindenburg in the presidential election of 1925. In 1918–19, the BVP had objected to the Centre's cooperation with the SPD at the national level. So pronounced was this opposition that the BVP

established itself as an independent party. Now, in April 1925, the party once again found itself at loggerheads with the Centre's political alliance with the SPD; both the Centre and the Social Democrats were supporting the candidacy of Wilhelm Marx following the inconclusive seven-candidate first ballot of the previous month. In that earlier ballot the BVP had fielded its own candidate, the party leader, Heinrich Held. In effect a regional candidate, Held failed to attract the hoped-for anti-centralist support in the Rhineland, Hannover, and Schleswig-Holstein. Consequently, he was soundly defeated at the national level. This defeat could not, however, move the BVP to cooperate with the Centre as long as the latter cooperated with the SPD. Indeed, it was this anti-SPD attitude, rooted in the experience of the revolution and the *Räterepublik*, which drove the BVP to support the Prussian Protestant, Hindenburg. He was, in the eyes of the party leadership, the personification of the 'best' of the old Germany, a man above party discord and political infighting.[43]

Such attachment appears curious. Hindenburg could not be regarded as anything but the *Generalfeldmarschall*, the 'hero of Tannenberg'. Indeed, these sobriquets remained his popular strength to the end. How could it be that the BVP, a party devoted above all else to protecting Bavaria's interests, could decide to support a presidential candidate who, aside from being one of the most famous Prussians since Bismarck, had never freed himself from his loyalty to the exiled Wilhelm II? A possible answer lies in the view that the Centre drove the BVP into the Hindenburg camp by too willingly cooperating with the SPD. To this explanation could be added the suggestion that Hindenburg's nimbus overpowered the doubts which the BVP leadership may have had concerning the general's attitudes.[44]

Somewhat more realistic appears the supposition that this wing of the party, represented by the likes of Georg Heim and *Landtag* member Fritz Schäffer (after 1929 party chairman) saw the party's future resting only in the support of any major candidate who would oppose the Left. Such support, they felt, would be rewarded later by the recognition of the BVP's federalist interests. Hence the party leadership, minus Held and prelate Georg Wohlmuth, leader of the *Landtag* delegation (both of whom were absent when the vote to support Hindenburg was taken) came full circle on the issue of Bavaria's objectives.[45] That not all of the leadership's members shared this view, however, is indicated by the fact that, despite Held's and Wohlmuth's absence, forty members of the party's *Landesausschuss* voted against Hindenburg's candidacy. In any event, Hindenburg's election as *Reichspräsident* marks a turning point in the history of the BVP's efforts to reform the *Reich* constitution. Between 1922 and 1924, the party had called for *Reichsreform* while either holding the

state at arm's length or misguidedly acting in collusion with rebels intent on overthrowing it. After 1925 the party hoped to gain national favour for federalist reform by actively supporting the very governments least predisposed to sanction it.

The next opportunity for the BVP to put the case for *Reichsreform* came during the *Länderkonferenz* of January 1928. The conference had been preceded by an informal meeting the previous December of the minister–presidents of the *Länder*. At the earlier meeting the issue of the federal reform of the *Reich* had, not surprisingly, once again hung fire. As a result, the Prussian minister–president, Otto Braun, and the mayor of Hamburg, Karl Petersen, suggested to the *Reich* government that a full-fledged plenary conference of the states be called to discuss the problem. With the Bavarian and Prussian governments wishing to retain as much of their identity as possible, yet being opposed not only by each other in certain respects but also by the centralizing tendencies within several of the major political parties, the prospects for success could not have been more favourable than at any other time since 1918. Nevertheless, the conferees duly assembled. As was the case with *Reichskonferenz* of 1918 and the conference of the *Länder* of 1919, Bavaria advocated as great a degree of autonomy for the individual states as was consonant with a federal constitutional structure. Based upon a memorandum of 1926 which, in turn, rested upon the foundations of the 'Bamberger Programme' of 1922, the demands put forward by the Bavarian minister–president, Held, called for a general review of financial authority between the *Reich* and *Länder* administrations. Such a step, so the Bavarians hoped, would not only provide for a more or less general peace between the two, but would also strengthen the 'weak foundations' of the constitution in the process.[46]

The convocation of the minister–presidents raised hope in the federally-inclined BVP and apprehension among those inclined toward a more strongly centralized *Reich*. As events developed, neither side need have become agitated. The Social Democrat, Braun, was as dedicated to furthering Prussia's interests, of which more will be said shortly, as Held was to furthering Bavaria's. Given this opposition, the BVP's demands received no effective support. As a compromise, and a possible way out of the impasse – not to mention a face-saving measure – the work of the conference was relegated to a constitutional committee composed of nine representatives of the *Länder* and of the *Reich*, respectively. This committee was intended to produce a plan for the reordering of the *Reich*, a plan which would be submitted to a future general session of the *Länderkonferenz*.

While the conference was fated never to meet again, the committee's work went on rapidly. Meeting in the third week of October 1928, it once

again took up the problem of relations between the *Reich* and the *Länder*. As had been the case for a decade, the Bavarians laid the blame for the problems within the *Reich* at the feet of the centralizing tendencies within the constitution, tendencies supported by the SPD and, to a lesser extent, the Centre. Added to this complaint was the much older and considerably more justifiable south German reservation about the preponderance of Prussia. So often in the past the Bavarians had been ambiguous about what should be Prussia's fate. Specifically, in 1918–19 and at the *Länderkonferenz* of 1928, the Bavarians had equivocated as to the best solution to the 'Prussian question'. Dismembering her would remove one of the strongest bulwarks against the provincialization of those states which made up the rest of the *Reich*. Leaving her as she was raised the spectre of a repetition of the 'Prussianization' of Germany in the latter half of the nineteenth century. This dilemma arose at the *Länderkonferenz*, and Held's inclusion of it in Bavaria's proposals to the committee constituted the only substantive addition to a negotiating position which even the staunchest defenders of Bavaria and the BVP characterized as having become universally known by 1928. Perhaps recognizing the delicacy of the situation and the effect of Prussia's reaction to the possibility of the acceptance of Bavaria's demands, Held neatly – and vaguely – sidestepped the issue by saying simply that the elimination of the old Prussia–*Reich* dualism should not be paid for with the removal of the federal rights of *all* the states. He warned against pushing the question too far.[47]

In private, however, Held went much further. On 31 January 1929 he held a press conference along with the state ministers of finance (Schmelzle) and justice (Gürtner). The proceedings were apparently supposed to be issued indirectly so as to put pressure on the *Länderkonferenz* regarding acceptance of Munich's position. Held spoke strongly against the 'enemy' Prussia, a state interested in the establishment of economic supremacy over the other states, even at the cost of the latter's destruction. He accused Berlin of defrauding Munich out of tens of millions of marks in connection with the transfer of Bavarian post and rail services to the *Reich* in 1920, and called the Prussian minister–president the dictator and 'front man' of the *Reich*.[48] Unfortunately, Held's and Schmelzle's comments found their way verbatim to the public *via* the *Münchener Telegrammzeitung* from where they were reported as far away as Berlin and Stuttgart. The *Staatspräsident* of Hesse, Dr Adelung, expressed his 'astonishment' at the utterances, characterizing Bavaria's tone as 'unbearable and impossible'. *Reichsminister* Dr Curtius referred to the affair as 'grotesque'. One paper even feared that Held's comments would adversely affect the reparations negotiations which were then reconvening in Paris.[49]

Apparently oblivious to the furore the BVP went on to convene its *Landesparteitag* in November 1929 with delegations from the Centre and the Austrian Christian-Social Party in attendance. Kurt Schüschnigg, the Austrian party's chairman, told the congress that Austria's 'German mission' in south-eastern Europe had failed only because the case for federalism within the Austrian Empire had not been put strongly enough before 1918. Such a statement, reflecting current thought in the BVP, could only have reinforced Bavarian convictions.[50] The BVP would not willingly allow Bavaria, the last protector of a distinct south German identity, to be swallowed up by the drift toward ever more monolithic government. This very idea of a 'German mission' for Bavaria, however, was one which had often barred successful cooperation between Munich and other state capitals. Eisner's *Süddeutscher Bund* ideas fanned suspicions elsewhere that Munich aspired to a predominant role in her own right, and the ambitions ascribed to Gustav von Kahr during the period of the Bavarian *Staatskommissariat* to establish a Bayern-*Deutschland* (as opposed to a *Preussen-Deutschland*)[51] could only have made other states even more reluctant to cooperate with Bavaria, Held's comments aside.

Following a number of postponements, the final meeting of the constitutional committee of the *Länderkonferenz* took place on 20–21 June 1930. It constituted one of the last significant public calls by the BVP for a reform of the *Reich*. The proposals in the party's report were rather vague, as had been the case earlier. On the surface, however, the party maintained the old demands for the preservation of the *Eigenstaatlichkeit* of the *Länder*. The Bavarians and the delegations from almost all the other states adamantly refused to accept the proposals of the conference's subcommittees. Under these proposals, the so-called *differenzierte Gesamtlösung*, the governments of Prussia and the *Reich*, would be amalgamated in a single central government. This government would subsequently be given the prerogative of determining the constitutional arrangement of all northern Germany. This region would become a directly-administered territory (*ein reichsunmittelbares Gebiet*). The former non-Prussian north German states would thus be relegated to a wholly subsidiary status to the *Reich* along, of course, with the former Prussian provinces. These proposals were in keeping with ones which Otto Braun had considered as early as 1927. He felt that a personal union of the Prussian minister–president and the *Reich* Chancellor would be the best guarantee of the success of Prussia's task in the *Reich* – the preservation of the 'democratic order'.

It was just such a union, however, which Bavaria had opposed since the earliest days of the republic. As early as January 1920, the Bavarian envoy to Berlin, von Preger, had reported reservations to the Prussian government

which described the dangers inherent in a personal union: a union posed the threat of creating Prussian hegemony in the *Reich* and could be opposed only through the creation of an *Einheitsstaat* (if such a state was desirable at all) based on 'organic growth and the agreement of the *Länder*'.[52] Bavaria still shared these reservations in 1930. Knowing this, the committee suggested that she, Baden, Württemberg and Saxony be exempt from the new arrangement. These *Länder* would retain all of their hitherto existing sovereign rights, the only reservation in this regard being limitations favourable to the *Länder* in the realm of general legislation and administrative organization. The 'farming-out' of administrative responsibilities to the *Länder* and the coordination of *Reich* administration at *Land* level would be considered. Finally, of course, all of the *Länder*, whether the directly-administered ones of the north or the so-called *Freistaaten* of the south would be represented in the *Reichsrat*.[53]

The most significant portion of the programme, the remaining sovereign rights of the south German states, remained obscure. There was no definition as to the time period intended in the phrase 'hitherto existing sovereign rights' (*seitherige Hoheitsrechte*). One assumes that the reference applies to the rights granted to the states under the terms of the *Reich* constitution of 1919. It was hoped that the granting of concessions to the southern governments would make the centralists' wishes for the north more palatable south of the Main. Munich refused to rise to the bait, however, and voted against this '*grosspreussische Zwischenlösung*' along with Stuttgart, Karlsruhe, and other southern capitals.[54]

Interestingly, the Prussian attitude toward the proposed changes was not as enthusiastic as might have been expected. As early as the end of November 1929, the *Reich* Minister of Post, Schätzel (a BVP member), had written held to report that Braun agreed with the Bavarian minister–president that the time was not right for a solution to the problem of Prussia–*Reich* dualism. Similar views were expressed by the Bavarian envoy to Berlin that Braun considered the committee's recommendations merely as 'material for consideration' to which he (Braun) did not expect to give practical effect in any fashion. Von Preger also wrote that even members of the *Reich* government were dissatisfied. The *Reich* Minister of the Interior, Severing, felt, in von Preger's opinion, that the goal of the *Einheitsstaat* could not be achieved in the foreseeable future. Consequently, Severing attached 'no importance' to the committee's proposals. On the contrary, Severing felt that not committee resolutions but the force of circumstances would resolve the problem over time. In particular, Severing felt that the financial relationships among the states would eventually work to the disadvantage of the states *vis-à-vis* the *Reich*.[55]

It is not unreasonable to assume that Braun objected to the committee's recommendations if they violated what he would have considered to be a prime directive – the maintenance of the Prussian state. A personal union of the Prussian and *Reich* governments was a feature to which Braun could hardly have objected, particularly since, as noted above, this was a thought which he had himself earlier maintained. On the other hand, the disappearance of the old Prussia and its replacement with anonymous units would have been exactly the reverse of a policy which had attracted Prussian statesmen since the middle of the nineteenth century. Braun's viewpoint would, of course, have played directly into the BVP's hands as it was interested, above all, in removing the threat to Bavaria inherent in an overawing, unitary *Reich*. Thus, Schätzel's and von Preger's news from Berlin should have raised spirits in Munich.

The BVP's attitude toward pressing its demands, however, now began to undergo a degree of modification corresponding to the worsening economic and political situation. In April 1931 prelate Johann Leicht, the leader of the BVP *Reichstag* delegation, gave a speech in Regensburg in which he stated quite plainly that there were other, more pressing tasks for the party to fulfil than once again to broach the subject of *Reichsreform*. Fritz Schäffer, now party chairman, agreed in somewhat less direct fashion. He now called for a general review of the limitations of states' revenues which had been imposed by the growing administrative costs of the *Reich* in connection with the depression.[56] Gone were his strivings of 1925 to move the BVP into a position of influence in the *Reich* solely in order to improve Bavaria's negotiating position. While the apparent change of heart would seem to be mere expediency, such an about-turn seems not out of keeping with the party's traditional outlook. The BVP may very well have been willing to cause unending irritation in Berlin with its demands, but the party leadership had always tried not to allow events too much to dictate their course of action. So it had been the case in 1923 when *Staatskommissar* von Kahr, whatever other very questionable ends he may have intended, nevertheless refused to allow the Nazis to force his hand, despite the numerous contacts he had had with them prior to the *Putsch*. Similar circumstances seemed now, in 1931–32, to have raised their heads. As one sees in connection with the fall of Chancellor Brüning's government, the louder the call for dictatorship became, the more the BVP was inclined to defend the *status quo*. It was recognized that a dictatorship would make the question of federalism in the *Reich* a dead letter.[57] Unfortunately, the course of events outran the party's ability to trim sails. Near civil war erupted in 1932 among the various party

paramilitary organizations. In response the BVP formed its own self-defence organization, the *Bayernwacht*, when it became clear that Brüning's successor, Franz von Papen, would not permit the individual states to impose bans upon the activities of party armies within their own borders.

Chancellor von Papen's dissolution of the Social Democratic government of Prussia in July 1932 pushed the BVP further still into a defence of the existing order, a defence which included supporting Hindenburg's re-election. As noted above, the BVP's federalist stance had long been conditioned at least partially by its anti-SPD attitude. Indeed it is perhaps more proper to say that that attitude was one of the Bavarian's prime motivations. Certainly the BVP's break with the Centre because of the latter's cooperation with the SPD gives credence to this assumption, as does the controversy over the attempted reform of the Bavarian constitution of 1919. Now, with von Papen's *Staatsstreich* against the Prussian government, Munich began rightly to fear similar action against any other *Land* which came into conflict with von Papen's 'Government of Barons'.[58] Von Papen cited Article 48 of the *Reich* constitution, an article which allowed the *Reich* government to intervene in *Land* affairs in time of public disorder, as the justification for an action which he saw as a move to consolidate the power of the central government in a new authoritarian system which would be untrammelled by the rights of the states.[59] While this fitted in with what passed for political theory in the cabinet, it was exactly the step which BVP had feared would occur under the terms of the 1919 constitution. Invoking Article 48 to remove a legitimately elected and functioning, albeit minority, government also set a psychological and 'legal' precedent for similar action by Hitler after January 1933.[60] The BVP had no reason to celebrate the destruction of the Prussian government, even though the party had often been at odds with it over the role Prussia was to play in the *Reich*. On the contrary, Held protested personally to von Papen, and Munich served as one of several plaintiffs in the resulting suit against the *Reich* in Leipzig.

So desperate had the situation become as a consequence that the BVP began rather seriously to consider, for the first time since the death of Ludwig III in 1921, a restoration of the monarchy as a means of providing a rallying point for the people. These hopes rested upon a strong sentimental attachment to the monarchy for many in the party and an equally strong historical tradition. In few other places in the republic, indeed perhaps in no other place, did the nostalgia for the old ruling house exist among the population as in Bavaria. Yet whether the party could

ever really have hoped to effect a restoration without causing severe turmoil seems questionable at best. The BVP considered itself, when not enthusiastically republican, then at least a constitutional party and a party of the law (again despite von Kahr's activities in 1923). Held, who retained the minister–presidency from the end of 1924 to the *Machtergreifung* was, moreover, not inclined to engage in activities which smacked of rebellion. Under the terms of the 1919 constitution, an attempted restoration would have been exactly that.[61] With every passing year, the actual connection between the monarchy and daily life grew ever more tenuous. The rapidity of events since 1918 played a very important role in this regard, particularly as those who had had actual experience of the monarchy passed from the scene. These individuals were replaced by newcomers who shared the nostalgic feelings for the monarchy yet had no desire to replace the present system, the more so as such action would almost certainly involve civil unrest. Held's reticence was reinforced by the fact that there remained a considerable divergence of opinion regarding a favourable public reaction to an attempted restoration. While Georg Heim reckoned with a 75 per cent approval rating if the monarchy were declared, the staunchly conservative and royalist Archbishop of Munich, Michael von Faulhaber, was 'nicht überzeugt, dass die monarchische Stimmung so allgemein sei und ob es ohne Anstoss von aussen (weg [sic] Chaos in Berlin) möglich sei'.[62]

Recognizing that a restoration in a former monarchy is seldom a complete impossibility, one sees that in Bavaria in 1932 such an action was improbable indeed. This state of affairs was aggravated by a factor which the BVP seems to have overlooked in its monarchist plans. In 1918 the principal force behind the move to remove the Wittelsbachs consisted not so much of a democratic groundswell as of a popular dissatisfaction with the leadership provided by the king.[63] Whether this dissatisfaction had been overcome by 1932 is open to question. The possibility existed, of course, that Crown Prince Rupprecht would provide the qualities of a leader in Bavaria's time of trial. As events developed in Berlin, however, *Realpolitik* made the question of a restoration irrelevant.

The beginning of Hitler's chancellorship on 30 January 1933 definitively settled the monarchist case. The new chancellor made it perfectly clear to Held that a move toward restoration would be the most dangerous of steps. Hitler backed up this ominous warning by replacing the head of the Bavarian contingent of the *Reichswehr* with a more pliable officer and uttering thinly-veiled threats about the military suppression of any attempted restoration on Munich's part. The only possible outcome of such a confrontation would be a total catastrophe for Bavaria. The BVP leader assured Hitler that Munich would carefully consider the situation but that

her cooperation would last only so long as no imposition was made on Bavaria's *Eigenstaatlichkeit*. Such a threat, however, was not the stuff of which Hitler was afraid.[64] The deposition of the Held ministry in the wake of the March 1933 elections marked the end of the BVP's campaign to achieve a federalist reform of the *Reich*.

Following the BVP's affirmative vote on the Enabling Act in the *Reichstag*, the BVP delegation in the *Landtag* in Munich followed suit on 29 April 1933, hoping that a consolidation of conditions in the wake of the confused events of March would allow for some sort of cooperation between the BVP and the new regime.[65] Voting for Hitler's legislation would certainly eliminate the 'threat' from the Left. Munich also presumed that such support would make the BVP tolerable to the new order. This hope, however, was based on the false assumption that since the BVP had substantially maintained its voting strength in the March elections, the Nazis would be forced at least to allow the party to continue in existence. From the BVP leadership's standpoint, the party posed no ideological threat to the new regime, and it was assumed that this non-threatening position would spare the party from prosecution. Such considerations helped produce the votes for the Enabling Act and generated an *Anpassungspolitik* which manifested itself occasionally at the municipal level in Bavaria's larger cities. It remained, in turn, not without effect at the level of the rural towns and villages. This policy of accommodation was based on various motives ranging from a desire to curb the worst of the Nazi excesses through cooperation, to a desire to preserve one's political career, to a genuine pro-Nazi sympathy. It accounted for increasing numbers of resignations from the BVP, and, disturbingly, defections to the National Socialist German Workers party (NSDAP). In so doing, *Anpassungspolitik* acted as an omen for the fate of the *Volkspartei* in general.[66]

The ability of the BVP to maintain a solid base of support, particularly in some rural areas, nevertheless caused concern within the leadership of the NSDAP and, not unnaturally, confidence among the leaders of the BVP. This constellation remained so even after the March elections. As late as June 1933, the BVP chairman felt confident enough to write publicly that 'der Name der Bayerischen Volkspartei noch stolzen Klang hat'. He spoke of 'viele zehntausend Männer' who had publicly stood by the party and who:

> wollen ihre Arbeit auch weiterhin als Vertreter der Weltanschauung und der politischen Gedankenrichtung leisten, die wir in den schwierigsten Jahren nach dem verlorenen Krieg and nach der Revolution in der Bayerischen Volkspartei mit Stolz vertreten haben.[67]

Such statements clearly aimed to reawaken the anti-Left sentiment of the period ten years previously when Bavaria had been the *Ordnungszelle* of the nation in the face of revolution, a time when right-wing radicalism had been no stranger to Munich's streets. By attempting to cultivate this image (as in voting for the Enabling Act), the party leadership not only hoped to make the BVP's continued existence palatable to the NSDAP but also to hearten the BVP's membership.

Such attempts at encouragement unfortunately took place in the face of the resolution of the Nazi leadership to eliminate all centres of political activity outside their own. Already on 15 May the new Bavarian Minister of the Interior (and NSDAP *Gauleiter*), Adolf Wagner, had declared in Regensburg that in future he would tolerate no more political parties. All public and private BVP meetings were forbidden by Wagner's ministry that same month, and SA and SS violence against the BVP's subsidiary organizations, such as the journeymen's association, the *Kolpingverein*, increased.[68]

On 21 June there began a wave of searches of BVP members' homes, the party's offices, and the BVP's rooms in the *Landtag*. This action, based upon the trumped-up charges that the BVP was acting in collusion with the Austrian Christian-Social Party against the Reich, presaged the beginning – four days later – of mass arrests of BVP *Landtag* and Reichstag delegates. On 28 June, the Bavarian Political Police extended the scope of the arrest order to include BVP city councillors and delegates to *Kreis-* and *Bezirkstage*. At the high point of the action, some 2000 BVP members and/or office-holders found themselves under arrest. The principal purpose of the arrest action, the self-dissolution of the BVP, followed rather quickly. Schäffer, who had been incarcerated in Stadelheim prison, and Eugen Graf Quadt zu Wykradt who had resigned as the last BVP cabinet minister on 26 June, realized that only a dissolution of the party would gain release for those who had been arrested. This suppression through arrest also served the welcome function – from the Nazi point of view – of so humiliating and intimidating the rank and file of the party, whether arrested or not, that they withdrew virtually completely from public life. This dismantling of the party's organizational structure removed the system of coordination which could otherwise have served to facilitate a supraregional consolidation of anti-Nazi sentiment still latent among former members of the *Volkspartei*. Consequently, that resistance which did occur often remained sporadic, isolated, and, ultimately, condemned to failure. In so far as this resistance assumed concrete form, it remained anonymous and disorganized; and although it gave the lie to the Nazi propaganda of the *Volksgemeinschaft*, it seldom crossed over into open 'illegality' against

the regime. The description of the resistance by BVP members as having fallen 'in der breiten Zone zwischen Heldentum und Nichtanpassung' seems most appropriate. Inner emigration remained no guarantee, however, that BVP members would not be persecuted by the authorities. On the contrary, many continued to be the object of Nazi terror long after the NSDAP had established its grip on the country. Representatives of the Catholic–conservative camp were always considered by the regime to number among the *unsichtbare Feinde* of National Socialism.[69] As a consequence, they suffered repeated arrests, interrogation, surveillance, and, not infrequently, terms of imprisonment in the concentration camps. The BVP, facing the dismal option of suicide or murder, chose the former; the party dissolved itself on 4 July 1933.

Although Bavaria's champion had been eliminated from the field, the Nazi dictatorship kept up – for propaganda purposes – the fiction of *Länder* rights through the promise of continued *Länder* responsibilities in the new *Reich*. These protestations of historical continuity failed to outlive 1934. The law reconstituting the *Reich*, passed by an emasculated *Reichstag* on 30 January of that year, officially removed all remaining vestiges of legislative, judicial, and executive sovereignty from the *Länder*. These areas of responsibility were then transferred in their entirety to Berlin. Bavaria became nothing more than an administrative region in a totalitarian state. Her only function in terms of government was the carrying-out of orders sent from the central authorities through the byzantine proliferation of Nazi party and *Reich* apparata.[70]

The efforts of a Bavarian political party to effect any type of reform of the *Reich* constitution would now have to await the destruction of the National Socialist dictatorship. The conditions obtaining in 1945, however, were quite different from those of the Weimar period. Indeed, so different were they that the BVP no longer even existed. Rather, the Bavarian federalist cause was taken up in the postwar years by a new political party, the Christian Social Union.

In the consideration of the ultimate failure of the BVP to accomplish federal changes in the *Reich* constitution of 1919, several factors assume significance. The first is one of the most important and one from which so many of the BVP's complaints subsequently flowed. This factor was the omission on the part of the actual constitutional document of Weimar to provide a mechanism for future federal change or even truly effective federal participation by the *Länder*. The failure of the *Reichskonferenz* of 1918 to secure such a mechanism was not really the main reason for the BVP's failure. The real source of that problem lay in Weimar itself, for it

was not the *Reichskonferenz* which decided the form of the constitution, but the *Nationalversammlung*. Here the parties embodying the most pronounced centralist tendencies – the Centre, the DDP, and the SPD – predominated. They allowed, in the final analysis (and not unnaturally so), only so much federalist appearance as was consonant with their political philosophy. As one observer has noted, 'Man ging einfach von Fall zu Fall in der Unitarisierung so weit, als es machtpolitisch möglich schien.' In failing to foster the federalist shoot which had been planted in the constitution, these parties permitted the form but not the substance of federal participation.[71]

Another factor in the BVP's ultimate failure was the party's peculiarly Bavarian, Catholic self-identity. During the short life of Weimar, the BVP attempted several times to make common cause with likeminded groups in other states, particularly Baden and Württemberg. Nevertheless, virtually all of these efforts came to nought. These setbacks may, on the one hand, be ascribed to the other states' suspicions of Bavaria's ultimate intentions. Such suspicions often went back to Munich's annexationist ambitions in Alsace–Lorraine and Belgium during the First World War and the Wittelsbachs' designs to put a member of their house on a Baltic throne. Bavaria is thus seen from Karlsruhe and Stuttgart as a sort of south German Prussia forever seeking territorial aggrandizement and longing for its position of importance in the Bismarck *Reich*.[72] Kurt Eisner's plans in 1918–19 for a reconstruction of the *Reich* from the south can only have exacerbated these concerns.

On the other hand, the BVP's failure may also be ascribed to a combination of a general inability of the south German governments to work together; to consistent opposition to the party's plans by the SPD and even the Centre; and to the predominant position of Prussia within the *Reich*. This last factor was complicated by Bavaria's dilemma regarding the Prussian state. Munich feared it as a state with hegemonic ambitions, yet saw in it a co-champion of *Länder* rights in the face of the *Reich*. To all of these problems must be added the rather curious German conception of *Stammesföderalismus*, or, crudely put, 'tribal federalism'. There can be no question but that the strong self-identification of the Bavarians as Bavarians affected their BVP leaders' abilities to work with others toward common goals. Within Bavaria, too, this 'tribal' identity played (and still plays) a role in the division of political and other prerogatives. To be sure, inside Bavaria's borders one might more properly speak of *Teilstammesföderalismus*.[73] Nevertheless, regional self-identity in Bavaria was by no means erased by the Nazi *Volksgemeinschaft* and the Second

World War. On the contrary, conflicting group identities helped contour the shape of the BVP's successor party after 1945.

It remains to mention the inability of the BVP to compromise. Such a limitation was not, of course, a BVP monopoly. Throughout the life of the republic there had taken place, particularly among Protestant voters, a flight of support from the political centre to the extremes of Right and Left.[74] This flight, spurred on by the longing for order and security in the face of military defeat, revolution, and *Räteherrschaft*, also affected Bavarian Catholics and cannot be ignored as a causal factor in foundation of the BVP. Reinforcing this trend was the nationalist influence of the younger generation of BVP leaders embodied in personalities such as Schäffer and his friend and ally, Anton Pfeiffer. Having risen through the ranks of the party, these men were not, in principle, opposed to more authoritarian government, a failure which led them grossly to misapprehend the nature of the rising tide of National Socialism. The resulting inability of any of the political parties to provide effective solutions to Germany's problems, however, not only hardened each party's attitudes toward its rivals, but also benefited any grouping willing to espouse the radical cause, ultimately doing much to precipitate the fatal crisis in German parliamentary democracy.

Hence the loss of support by the BVP in the *Land* elections of 1924 to the *Völkischer Block* and to the NSDAP in 1930–32. This radicalization of the voting population and the concomitant demands which it placed upon party leadership made inter-party cooperation inherently more difficult, particularly for two parties such as the BVP and the SPD. The mutual suspicion between the two parties was a direct inheritance of party politics during the Bismarck *Reich*. The BVP's mother party – the Centre – and the SPD had traditionally regarded each other as purveyors of a false *Weltanschauung* between whose standpoints cooperation was difficult at best. There had indeed been a Centre/SPD alliance in Bavaria prior to the 1906 suffrage reform. This alliance was purely tactical, however, and was dropped as soon as the reform was achieved. The basic irreconcilability remained and carried over into the Weimar Republic. It aggravated the effects of popular radicalization, a trend seen most clearly in the disintegration of the mainly Protestant liberal parties between 1920 and 1932. Georg Heim had tried to win these Protestant elements for a genuinely multi-confessional BVP in 1918, but he had been unable to break down both Catholic–conservative resistance and Protestant reticence. This failure came back to haunt Bavaria in the rise of the DNVP, the NSDAP, and the KPD between 1920 and 1932, and helped make possible actions such as von Papen's in 1932 and Hitler's in 1933.[75]

Throughout the life of the BVP, with the exception of the March 1933 election, it and the SPD remained two of the three strongest parties in the Bavarian *Landtag*. Nonetheless, from 1918 to 1933 the two parties co-operated only once in the formation of a government: in the second cabinet of Johannes Hoffmann, in which the BVP held the finance and agriculture portfolios. Otherwise the BVP always relied upon the DDP, the Peasants' League, and the DNVP (a party of dubious worth at best) for support in the *Landtag* in return for ministerial posts. Not even in the face of impending disaster in 1932–33 could the two largest parties find the political will to save what could still be saved. It can, of course, be argued that by this late stage nothing remained to be gained in any event. In view of what followed January 1933, however, it seems doubly tragic that the attempt was not made.

An example of such cooperation, the so-called 'red–black coalition', existed on the national level in the sometime working arrangement of the SPD and the Catholic parties of the Centre and the BVP. It was just such cooperation, however, which played so important a role in the break between the Centre and the BVP in 1918. While a quasi-reconciliation took place between the latter two in 1927–28, the split may be regarded as indicative of the wide-ranging differences of opinion within German political Catholicism.[76]

All the while, the relations between the BVP and the SPD were strained, and they deteriorated further still under the impact of intra-Catholic squabbling and the BVP campaign to rewrite the SPD-engineered *Land* constitution of 1919. Subsequent actions of the BVP, such as those of the von Kahr years, could only have made the BVP even more distasteful to the SPD. Thus by 1932–33 it may have been impossible for either party to change its political spots and cooperate with the other. The consequent fragmentation of effort led to ever-increasing bitterness, a mood clearly palpable in the intra- and intergovernmental correspondence and contemporary press reports. One is tempted to think at this juncture almost in terms of a self-fulfilling desire for national destruction. Obviously, such a view is exaggerated. What remains evident, however, is that the resultant political paralysis in Bavaria and the *Reich* made the task of the National Socialists – that of destroying what remained of Weimar – all the easier.

2 The Rise of the Christian Social Union, 1945–46

Destruction such as that visited upon Germany during the course of the Second World War has rarely, if ever, been seen in the history of Europe. Such was the chaos when the 'government' of Admiral Doenitz surrendered in May 1945, that the former chief historian of the United States High Commission for Germany could write, 'there seems to be no record in modern history of the complete destruction of a governmental structure from the top to the bottom in a major country aside from Germany'.[1] Indeed, the question was to arise among German lawmakers themselves during the constitutional deliberations of 1948 whether Germany had ceased to exist as a sovereign state in May 1945. The fact that it came up at all must give some indication of the intensity of devastation brought down upon the Germans by National Socialism. That the process of reconstructing Germany after the havoc of the war would prove no easy task was recognized clearly by the later military governor of the American occupation zone, General Lucius D. Clay, who wrote that 'the progress of the war in Germany has accomplished, at least on the surface, very much more destruction than most people at home realize'.[2]

Once more Germany lay at the feet of a victorious coalition of foreign powers. Her military strength was broken, her government brought to ruin. The country itself was occupied and the German nation was branded criminal by the rest of the world. One could make no comparison, however, with the situation of 1918. In 1945 there existed no doubt as to the cause of the war. There existed no possibility of a 'stab-in-the-back' legend of betrayal of German arms by the home front. No spurious arguments held that the war had been forced upon the *Reich*. The war had had its origins on German soil and it was there that the war in Europe came to an end.

CRYSTALLIZATION – PERSONALITIES AND POLICIES

Faced with the realization of their country's fate, the democratic forces within the Western occupation zones of Great Britain, the United States, and France had before them the task of cooperating with erstwhile enemies in the re-establishment of a free political system, the remnants of which had been destroyed in 1933. Given the degree of destruction inflicted on the

country by the war, it came as no surprise to one observer who wrote that the mass of the population was totally 'unpolitical'.[3] The tyranny of National Socialism and the war it had caused had apparently destroyed any interest in political activity, made the populace apathetic, and focused their concern upon 'the everyday problems of food, clothing and shelter'.[4] Indeed, it seems rather remarkable that political activity in general, and the formation of new parties in particular, made such rapid progress in the summer and autumn of 1945.

The process of the reconstitution of political life in the American zone upon the basis of competing political parties did not lag behind that in the British and French zones of occupation. President Roosevelt had at Yalta made known his intention – unfulfilled as it turned out – to remove all US forces within two years' time. In fact, the short-term duration of the American presence was repeatedly stressed in Washington, despite the conflicting views between the Departments of State and Defense as to the appropriate nature of the occupation.[5]

To effect such an early withdrawal, however, presupposed the fairly rapid reconstruction of responsible German government, a task which, it was assumed, would be shouldered jointly by the British, American, French and Russian authorities. While it is not this work's object specifically to examine the effects of postwar occupation upon the relations of the war-time allies, it must of necessity be noted here that the preconceptions of the Western powers and the Soviet Union remained incompatible in so far as these preconceptions applied to the formation of a new German political order. All three Western occupation powers were determined from the outset to give Germany decentralized, indeed, federal characteristics. Such characteristics were totally inconsistent with Soviet experience. This fundamental East – West problem was compounded by differences among the Western allies as well. They could not agree on an acceptable *degree* of decentralisation. Consequently, each of the occupying powers moved to establish a governmental structure within its own zone of occupation.[6]

In the case of Bavaria – and elsewhere in the US zone – this process involved the by-now famous 'lists' which the American authorities brought with them. The 'black list' contained the names of those Germans who, because of their Nazi past, would be unacceptable to the new system. The 'grey list' contained the names of those individuals whose past made their participation doubtful. The 'white lists' contained the names of those whose resistance to, or at least non-cooperation with, the National Socialists made them acceptable. Suffice it to say at the outset that such a system of selection, just as the attempted denazification which followed, proved to be less than wholly effective. In the vast confusion of the days following

the surrender, many former party members and sympathizers who should have been apprehended remained free; and many individuals who had had nothing to do with the Nazi regime were at least prevented from holding positions of authority.

Clay stressed this problem in a memorandum to his superior, General Eisenhower, in which the former covered the occupation period to July 1945. Clay stated *inter alia*:

> His [the denazification officer's] mission is to find capable public officials . . . at the same time, he must seek out and remove the Nazis. All too often it seems that the only men with the qualifications . . . are the career civil servants . . . a great proportion of whom were more than nominal participants (by our definition) in the activities of the Nazi Party.[7]

While the subsequent decision (in 1946) to transfer denazification to German hands was controversial, the military government remained convinced that the decision was correct. On the one hand, it removed the contentious issue, so far as was consistent with daily security concerns, from the hands of the US authorities. On the other hand, Clay regarded it as of 'major import' that the Germans themselves, as part of the most rapid devolution of authority possible, attained the responsibility of judging who had benefited from the Nazi system.[8] Nevertheless, the very nature of the occupation left open the possibility – soon complicated by increasing superpower differences – of arbitrary intervention by the military government in domestic German affairs, thus making Clay's intentions difficult to achieve.

With the American authorities intent upon the re-establishment of effective government in their zone as quickly as possible, they presented an opportunity to those Bavarians interested in the same goal to fill the vacuum left by the collapse of the Nazi regime. To be sure, official American policy until 1947 rested upon the now famous directive of the US Joint Chiefs of Staff, JCS 1067, which stated plainly that Germany was not to be occupied 'for the purpose of liberation but as a defeated enemy nation'.[9] Given the chaotic economic condition in Germany, however, the directive of the Joint Chiefs soon became something less than directly applicable. The opportunities generated by the need for local assistance in the restoration of the most basic services – utilities, public transport, food distribution, communication – were quickly seized by, or as will be seen, were thrust upon individuals willing to assume the burdens of government.

These individuals were assisted by the rapid application of the lists which the American personnel had in hand. Another factor which facilitated

this development was the American desire to reconstruct the governmental apparatus 'from the ground up'. A precondition of this bottom-to-top reconstruction was, of course, the establishment of political parties. Here, as elsewhere, the differences on the American side manifested themselves. The military government, constrained by JCS 1067, felt compelled to implement a definitive approval process to ensure new parties' democratic credentials. This process included the collection by aspiring parties of the signatures of 25 certified non-Nazis on a petition; 'clean' denazification questionnaires of members; and regular reports of party activity to the military government. The State Department advocated a somewhat less cumbersome procedure. Washington nevertheless bowed to the view of the military men on the scene.[10]

Rapid or not, however, the establishment of political parties – in the Western, non-totalitarian sense of the word – was consistent with the Potsdam decisions to effect a decentralization of political and economic power in Germany. In the American view, such decentralization was in keeping with the federal experience in the United States and coincidentally complied with the wishes of many Bavarians themselves. This perspective saw federalism resting upon the *Selbstverständnis* of the citizen and tended toward the republic as the organizational norm.[11] These considerations, while not allowing the formation of political parties on anything but the local level, led to the direct participation in many localities of likeminded men and women whose cooperation provided the impetus for the later building of national political groupings.

Such preconditions, then, favoured the more or less spontaneous development of Bavarian political parties following the beginning of the American occupation. After establishing a military government for the territory within its zone, the US command was to issue in September a decree re-establishing Bavaria as a geo-political entity, to which for the sake of simplicity, the appellation *Land* will be attached[12] (although Eisenhower's proclamation of 19 September 1945 referred to *Staaten*, the actual legal status of the constituent units of the American zone was in some doubt). As has been noted elsewhere:

> Bayern hatte zwar im Vergleich mit den beiden anderen Länder der amerikanischen Zone [Grosshessen and Württemberg-Baden] keinen Sonderstatus erhalten, leitete aber de facto aus der Kombination von [Eisenhower's] Staatsproklamation, territorialer Integritat, intakten Traditionen und historischem Kontinuitätsbewusstsein einen solchen ab.[13]

It seems reasonable to assume that the US authorities intended to use the term *Staat* in the American sense, thus conferring no independence in terms

of international law. The choice of words, however, was not to be got rid of, particularly, as will be seen, since it fitted into the political theory of several influential Bavarian politicians. The one significant territorial exception in the newly re-established Bavaria was the loss of the Rhenish Palatinate which had belonged to Bavaria in one fashion or another since 1214. Much to the Bavarians' discomfiture, this region was administratively incorporated in the French zone of occupation, as was the city and district of Lindau, the latter thus forming a bridge between the French occupation areas in Austria and Germany. Otherwise, the Bavaria of September 1945 encompassed the same area as that of the kingdom of Bavaria following the Congress of Vienna. It was an important, if fortuitous, development.

Within this resurrected Bavaria, old political tendencies redeveloped along lines reminiscent of the period of the Weimar Republic. In that earlier period, the two parties which retained the greatest long-term cohesion and voter-appeal were the SPD and the BVP. The latter, as has been seen, had stood foursquare on a platform of Bavarian Catholic uniqueness and had campaigned tirelessly (if unsuccessfully) for a conservative, federated *Reich*.[14]

Taking into account the prolonged existence of this federalist-inclined, conservative, peculiarly Bavarian political tradition, one is inclined to agree with the judgement that it was perhaps inevitable that a similar organization would arise in the aftermath of the Second World War.[15] The catastrophe of National Socialism and total war, however, had convinced many former BVP members that a much more determined effort would have to be made by any new Bavarian party to bridge the traditional denominational and socio-economic divides which prevented the expression of a unified political voice. Any post-1945 federalist party would necessarily have to attempt to overcome the hindrances which had prevented the earlier BVP from becoming the people's party which it had claimed to be. This consideration became crucial in the shaping of the BVP's successor. Coinciding with this change of attitude, however, was the reappearance of the old controversy about the nature of Bavaria's relationship to the new Germany, assuming that a new Germany would eventually exist.

As the BVP survivors rediscovered their political opportunities, there developed among them two rather distinct tendencies which attempted to address this problem. One current of thought centred on the 'European federalists' who saw Bavaria as an integral part of a future *Staats- und Kulturgemeinschaft*. In this future community which would be very loosely federated indeed, Bavaria would, if for no other reason than her historical tradition, assume a prominent role. The other principal view looked to a much more tightly organized and reconstituted – albeit truly democratic –

Reich in which Bavaria would participate as one of a number of federal units.[16] As will be seen shortly, each of these viewpoints marshalled a strong following in the ranks of the later Christian Social Union.

This process of consolidation began fairly quickly in Bavaria in May 1945 as the American authorities undertook their procedure of appointing acceptable Germans to governmental posts within their occupation zone. On 28 May Fritz Schäffer, the former chairman of the BVP and the last elected Bavarian finance minister, was appointed minister–president in Bavaria by the military government. Active in the prewar BVP campaign to reform the Weimar constitution in a federalist spirit, Schäffer had been one of the last prominent BVP members to speak out publicly against the Nazi – Nationalist government in March 1933.[17] After losing his office following the Nazi assumption of power, Schäffer had been arrested and held for several weeks during the summer. Working as a lawyer in Munich following his release, he had been arrested a second time in the wake of the failed bomb plot of 1944. This wave of arrests, known as *Aktion Gitter*, landed Schäffer in the concentration camp at Dachau until 8 October 1944.[18] Schäffer was by no means a 'closet liberal'; his support of Hindenburg's presidential campaign in 1925 shows this clearly. In 1933 he even advocated the entry of the BVP into the Nazi government of Bavaria following the former's expulsion in March of that year. Motivated as much by a desire to preserve the identity of the BVP as a distaste for Weimar, Schäffer's effort ultimately failed.

Despite his appointment in 1945, Schäffer had reservations about serving Germany's erstwhile enemies. He later recalled, 'Ich habe mich sehr schwer damit abgefunden, dass ich der amerikanischen Besatzungsbehörden dienen sollte.' Nevertheless, he eventually agreed, 'weil ich nicht wusste, was geschiet, wenn ich absagte'.[19] Indeed, his reticence and outspoken conservative views in the matter of denazification caused his removal by the Americans in September 1945. He did, nevertheless, perform what can be considered a signal service for Bavarian politics by stating publicly that Bavaria belonged to, and would remain part of, Germany.[20] He thereby answered affirmatively the question of whether Munich intended to play a role in German affairs, even if he left unanswered the important question of exactly how this role would be perceived.

Other former BVP members and likeminded individuals who shared Schäffer's views quickly joined forces with the newly-appointed minister–president. Alois Hundhammer, formerly assistant general secretary of the Bavarian Christian Peasants Association (*Bayerischer Christlicher Bauernverein*) and BVP *Landtag* deputy found his way into the Schäffer camp. Hundhammer, too, had been arrested in 1933, and spent a month in

the camp at Dachau. Following his release on 22 July 1933, he returned to Munich and opened a shoe-repair shop. Called up in 1939, he served as an administrative officer in Bavaria and Belgium until being captured by US forces in 1945. He returned to Munich in September of that year.[21] As a one-time lieutenant of Georg Heim, the *Bauerndoktor* and BVP founder, Hundhammer shared Schäffer's Catholic, conservative opinions and contributed to the latter's anti-socialist world view.[22]

Two other prominent former BVP members allied themselves with Schäffer and Hundhammer. Anton Pfeiffer, from 1927 to 1933 honorary general secretary of the BVP, had, unlike Schäffer had Hundhammer, not suffered arrest under the Nazis. It may be assumed that his honorary position was not considered sufficiently threatening to warrant incarceration. Instead, he was allowed to carry on as a teacher of modern languages in Munich, eventually attaining the rank of *Studienprofessor* in October 1939. Karl Scharnagl, the former mayor of Munich who had been reinstated by the Americans, joined Pfeiffer in allying himself with the group around Schäffer and Hundhammer. Like so many other BVP members, Scharnagl had been arrested in July 1944, being forced to spend four months in the concentration camp at Dachau.[23] These men only grudgingly accepted the notion of a larger, nationwide party of Christian democrats to which their own organization would be allied. They advocated a particularist, if not separatist, Bavarian point of view, and were adherents of the 'European federalist' school of thought.

A second community of interest centred upon the persons of the Munich attorney, Josef Müller, and the *Regierungspräsident* of Lower Franconia, Adam Stegerwald who was also a former *Reichsarbeitsminister*, minister–president of Prussia, and head of the prewar Christian trade union movement.[24] Müller, a former BVP member and adviser to Heinrich Held, came from the Upper Franconian village of Steinwiesen, and belonged to a younger generation than Schäffer or Hundhammer. Though faithfully Roman Catholic, and despite the fact that he spent his prewar career as an attorney in the Catholic stronghold of Munich, Müller did not share the Bavarian Catholic's traditional sense of political exclusivity. For him, any new political organization should, unlike the BVP, not be a party of notables. He did not even consider the reconstitution of the earlier party, one which, in his opinion, had abdicated its democratic responsibilities prior to 1933. This it had done in supporting Hindenburg's 1925 presidential bid, and, more seriously, in supporting Hitler's Enabling Act of 1933. Having thus thrown away its credibility, the BVP was, according to Müller, no longer an option in 1945. Indeed, 'party' should be avoided altogether. Not only had the word been abused by the National Socialists, but it also

represented too limited a concept for the type of organization to which Müller aspired.[25]

Instead, the new grouping should possess a mass base of support (something which the BVP never had) which spanned all of Bavaria's – indeed Germany's – socio-economic segments. Müller also foresaw an organization which would be at least interdenominational, if not theologically neutral altogether. Supporting the views of Jakob Kaiser, the founder of the Christian Democratic Union in the Soviet zone, Müller advocated the non-Marxist socialization of society, free of 'ideokratischer Despotismus und kollektiver Zwang. . . .' Only an evolutionary development would simultaneously deprive revolutionary movements of their base of support and master the problems which Germany faced.[26] On an administrative level, Müller advocated an organization which would be a willing member of a national whole, but one which would stress Bavaria's special place within that whole.

This last view corresponded to Müller's attitudes toward the new German state. He saw in the centralized *Einheitsstaat* of Weimar one of the principal facilitators of the Nazis' success in the prewar period. During the war Müller had adopted in his talks with General Ludwig Beck, one of the leaders of the military resistance, the thesis that only a federally organized Germany could prevent a repetition of the earlier catastrophe. Müller had continued to develop these thoughts during his time in Rome where he had attempted to establish contacts between the anti-Nazi resistance and the Western Allies *via* his connections in the Vatican. Nevertheless, Müller aspired to a much more tightly-constructed federal framework than was desired by the *altbayerisch* group around Schäffer and Hundhammer. This position caused severe problems with the latter, particularly as Müller was willing to work closely with the nascent Christian Democratic Union, a willingness which later brought accusations of his having stood under Prussian influence.[27]

Stegerwald, reflecting his earlier trade union activity, put less emphasis on the theory of state-building, and more on the composition of the new organization. In his view, it was vital to collect all peasants and workers into one camp, regardless of their religious affiliation. Only such elements, those which had done service 'in the fronde' against the Nazis, could be the fundamental building blocks of Germany's reconstruction.[28] He shared Müller's opinion that the new organization could, in this fashion, avoid the narrow base of the BVP. They could thereby create, in Stegerwald's view, not only a vehicle for political activity, but also one facilitating the Germans' re-education in the ways of democracy.[29]

The Müller adherents represented a rising element within Bavarian politics. The men and women who shared these hopes expected to replace the leaders of the prewar generation ideologically as well as physically. These aspirants looked favourably upon the development of a union of all Christian-orientated political forces in Germany to replace the old Catholic and Protestant, middle-class, conservative splinter-groups from the days of Weimar. Although a member of the prewar generation, Stegerwald himself saw the need of the hour:

> Eine starke Brückenbaupartei (Name wahrscheinlich ›Christlich Soziale Union‹) zwischen Stadt und Land und zwischen Katholiken und Protestanten mit christlich-kultureller und starker sozialer Grundhaltung. Diese Partei darf keinen Interessenhaufen darstellen. . . .[30]

In this fashion the new party's supporters hoped to deprive any attempted fascist revival of its base of support. Simultaneously they hoped to prevent the Left from exploiting Germany's grinding postwar misery.

The very name eventually chosen for the Bavarian manifestation of this idea, 'Christian Social Union', attempted to represent the tripartite world-view of Christian universalism, social compassion, and the alliance between formerly disparate political currents.

Between the opposing poles of the Schäffer/Hundhammer group and that around Müller and Stegerwald, stood a much looser agglomeration looking to the leadership of the farmers' organizers, Michael Horlacher and Alois Schlögl, both of whom had suffered at the Nazis' hands. Horlacher had been arrested twice, in 1933 and 1944, spending on the latter occasion a month in the Dachau camp. Schlögl, rather than being arrested, was beaten senseless by a gang of SA thugs on the evening of 14 June 1933, and later had to suffer the humiliation of seeing his assailants either go uncharged or be amnestied.[31]

This group appeared considerably less cohesive than either of the two already mentioned. The principal goal sought here was the strongest possible influence of the agricultural sector upon Bavarian politics, a proposal which was not helped by the flood of refugees and expellees from the Sudetenland, Silesia, and Eastern Europe representing thousands of small industrialists and craftsmen. This factor combined with the (then unforeseen) effects of Germany's division to increase industry's share of the Bavarian economy, thereby preventing the consolidation of too strong an agricultural interest group within the new political organization. The Horlacher/Schlögl pressure group remained nevertheless deeply committed to the preservation of a Bavarian identity. Consequently, they supported

the old BVP veterans' particularist wish to emphasize Bavaria's *Eigenstaatlichkeit*, but took issue with the latter's desire to have a party controlled by clerical and bureaucratic elements.[32]

In an effort to reconcile the differences among the several groups, a series of meetings was held in the summer and autumn of 1945. In July Müller travelled to Rothenburg ob der Tauber to confer with Stegerwald. This meeting preceded others in August held in Würzburg and Munich. Attending the latter were, among others, Müller, Stegerwald, Schäffer, and Scharnagl. At this meeting Stegerwald pressed for a German, rather than an exclusively Bavarian, orientation for the new party. Although the BVP old guard rejected this view, the younger men persevered until they achieved a compromise. The new organization would see as one of its principal tasks the preservation of *Länder* interests within the new Germany. A federal system would be the vehicle. This system would protect Bavaria's interests as Schäffer and Hundhammer so ardently desired, and would harmonize with the strong American wish to rebuild Germany along lines which corresponded to America's own internal structure. Simultaneously, Müller and Stegerwald were satisfied with the recognition that the party would become part of the burgeoning Christian-democratic movement – as opposed to the new Christian Democratic Union (CDU) – by maintaining working contact with similarly orientated parties at the national level.[33] On 13 October 1945 the party was formally founded at a meeting in Würzburg and the name *Christlich-Soziale Union* (CSU) was officially adopted. For the time being, however, the party would be limited in organizational activity as American regulations prohibited political parties' being formed above the communal level. The permission to organize at *Land* level was forthcoming on 8 January 1946.[34]

THE ATTITUDE OF THE CHURCH AND CONFESSIONAL DIFFERENCES

It was not without difficulty that the party chose its name. The proposed inclusion of the word *bayerisch* had been vetoed by the Americans who were still sensitive lest anything affect prospects for German unity. The word 'Christian' on the other hand was very nearly eliminated by the party's founders themselves, the label having been adopted at the Munich meeting by only one vote.[35] The question, of course, was not whether the party should be Christian-orientated, but, as has been seen, to what extent. That is, would the CSU be a BVP-style, Catholics-only party as Schäffer

advocated, or would it include Protestants as called for by Müller? Such an inclusion was essential to the success of Müller's idea of union, as much of his support came from the Protestant areas of northern Bavaria.

A meeting of the party's *Aktionsausschuss*, probably held in the autumn of 1945 as members of both camps attended, came to the conclusion: 'Die Kirche wird nicht mehr hergeben, einer früheren Bayerischen Volkspartei den Segen der Kirche zu geben.'[36] It would appear the official Church shied away from the re-establishment of a party which had taken a less than definitive stance against the Nazis. The Vatican, too, apparently viewed with disfavour any organizationally-independent Bavarian Catholic party, particularly if that party came to espouse anything smacking of Bavarian separatism. Such separatism would endanger German Catholicism's political unity in the face of the threatening communist presence in the Soviet zones in Germany and Austria, Poland, Czechoslovakia, and Hungary. One may assume that the Church was more willing to have Protestants in the new party, as Müller proposed, rather than risk losing a factionalized Catholic camp to the communists.

On the later occasion of a visit of Alois Hundhammer to the Vatican in 1947, the Church made its stance clear. The Cardinal Secretary of State issued an authorized statement proclaiming the enduring psychological reality of German unity which neither war, defeat nor (significantly) particularism could or would be allowed to alter.[37] The more or less explicit approval of Müller's course (he possessed longstanding connections with the Vatican in his own right) thus effectively closed the book, from the Church's view, on a separate Bavarian Catholic party. The Church's support for the CSU increased even more after 1949 and the formation of the Catholic Adenauer's government in Bonn, thus working to the disadvantage of the CSU's rival on the right, the *Bayernpartei* (BP). Nevertheless, Müller's dismissal as party chairman that same year put greater pressure on Protestants within the CSU who had been supporting the idea of union with the semi-official blessing of the Protestant church's declaration of 1945, 'Wort zur Verantwortung der Kirche für das öffentliche Leben.' This declaration, published following the Treysa Conference of Protestant church-leaders, explicitly commended the efforts of Catholic and Protestant politicians to create an organization which would combine both religious viewpoints provided that 'die Zusammenarbeit beider Partner auf der Grundlage voller Gleichberechtigung erfolgt'. By the late 1940s, a number of Protestants within the party felt that this equality no longer existed, particularly following the 1947 failure of the Bavarian Protestant *Landeskirchenrat* to establish a *Volksverband* to represent Protestant inter-

ests within the party. This failure, and Müller's dismissal, led non-Catholics in the CSU to respond by forming in 1953 an *Evangelischer Arbeitskreis* to be their advocate in party affairs.[38]

THE CSU AND THE BAVARIAN CONSTITUTION OF 1946

Despite the initial structural handicaps, including differences within the leadership, the CSU's fortunes in the autumn of 1945 seemed as bright as could be expected. Even the American government was aware of the new party's potential. Reporting to the US Secretary of War, Patterson, the assistant American military governor wrote that, 'in Bavaria [the] Christian Socialist [*sic*] Union may succeed former Bavarian People's Party as strongest group'.[39] The CSU's story initially was not, of course, one of unbroken success. Schäffer's dismissal as minister–president in September 1945 constitutes a case in point.

Schäffer made no secret of his pronounced conservative views. By the autumn of 1945 these were generating considerable opposition on the Left. In Bavaria, as elsewhere in the American zone, the Social Democrats and the Communists exhibited a tendency toward tactical cooperation, even though no merger appeared in the offing. The SPD and the Communist Party of Germany (KPD) had been active in the formation of the *Antifaschistische Ausschüsse* which had arisen in the American zone, but whose rapid spread had been hindered by the US authorities' suspicion of Soviet influence and their overriding concern for order and security.

This stance well suited Schäffer who feared the Left's organizational and voting strength. Not unnaturally, he also hoped to create the greatest possible advantage for the yet amorphous *bürgerlich* camp. Reinforcing his apprehensions was his *Restaurationskonzept*, a supporting theoretical model based upon the traditional idea of a neutral officialdom (in terms of party-political activity, if not membership) exercising political power, that is a *gouvernementale Restauration*.[40]

Undoubtedly overestimating the strength of the Left, Schäffer used the red scare in support of his campaign to delay the coming of elections and retard the formation of political parties, as this was in keeping with his party-of-notables concept for the CSU. Taking umbrage at this stance, Müller found himself forced into vague discussions with the Left concerning the formation of a common front of anti-fascist parties. Such a consequence can only have alarmed the American authorities, already under pressure from the domestic press over Schäffer's lack of enthusiasm for

denazification, and General George Patton's less than totally aggressive search for former Nazi functionaries. Although Schäffer was recognized as having been useful in 'getting things started', the military government deemed it necessary 'to find an official of more liberal leanings to head up the Bavarian authorities'.[41]

The man chosen was Wilhelm Hoegner, a traditional *königlich-bayerisch* Social Democrat and former member of the prewar Bavarian *Landtag* who had spent the war years in Swiss exile. It was his all-party government, formed at the Americans' behest, which oversaw Bavaria's first elections and constitutional deliberations. In this government, the CSU was given the direction of the State Chancellery under Anton Pfeiffer and the ministries of agriculture and transport; these were headed by Josef Baumgartner and Michael Helmerich, respectively.[42]

One of the most important tasks assumed by the new government was the drafting of a new *Land* constitution. The Americans, as noted above, were generally interested in the quickest possible establishment of democratic organs within their occupation zone. This attitude necessarily presupposed the construction of constitutions for the US-administered *Länder* in order to provide a framework within which government might function. There were, however, risks involved. If too much pressure were exerted upon the Germans before sufficient political preparation had taken place, the result might be constitutions and elections unacceptable to the military government. Unacceptability would, in turn, necessitate intervention, thus tarring the finished product with the brush of an Allied *Diktat*. Understandably, the occupation authorities wanted to avoid this result. Assuming, nevertheless, that sufficient political preparation was in fact taking place, the military government commissioned Hoegner to begin the drafting process in February 1946. To assist him in this task, Hoegner enlisted the aid of the constitutional expert, Hans Nawiasky. Nawiasky had moved in BVP circles prior to 1933 and had been instrumental in the formulation of the Weimar-era Bavarian constitution, the so-called *Bamberger Verfassung*. During the period of the Nazi dictatorship, Nawiasky had gone, as Hoegner had done, into Swiss exile. There the two came together for intensive discussions concerning Germany's future; after 1944, their talks had centred primarily on the construction of a new Bavarian constitution.[43]

Coinciding with the start of this procedure were the preparations for communal elections. The elections would allow for a crystallization of the several parties in Bavaria, and would provide a rough indication of the composition of a future constituent assembly. Once this assembly had completed its deliberations and passed a proposed constitution, elections would be held for a Bavarian *Landtag*.

Between 20 January and 26 May 1946, elections took place in all Bavarian localities excepting the Rhenish Palatinate. At this local level the CSU showed itself to be the strongest party by far, winning slightly more than 60 per cent of the votes cast. The SPD garnered 28.1 per cent. The KPD and the liberal Free Democratic Party (FDP) took 4.9 per cent and 2.3 per cent respectively.[44] These results would indicate a very broad surface acceptance of the CSU. Even the SPD, in a backhanded compliment to the new party, attributed the CSU's success too great an emphasis on Christian orientation and *soziale Programmpunkte*. The often heated debates within the party leadership and a fractious March meeting of the party's *Landesausschuss* in Bamberg do not seem to have had any appreciable effect upon the CSU's popularity. Indeed, one of the most interesting developments of these early elections was the clear choice by voters for two parties, a phenomenon which one observer points out had not existed even in the days of Wilhelmine Germany.[45]

Such an overwhelming CSU majority at the local level seems, however, to have been artificially induced by a combination of postwar misery, fear of Soviet communism, and the fact that the CSU had not yet had to implement its vague policies, thus risking failure and the loss of popular support. Indeed, the rise of several small, radical conservative parties to the right of the CSU did, in fact, cut into the party's voting base in later elections. In the 1949 *Bundestag* vote, for example, competition from BP and the curiously named Economic Construction Association (WAV) forced the vote totals for the CSU below 30 per cent, a figure comparable to the March 1933 returns for the BVP. Nevertheless, the CSU did manage over time slowly and systematically to eliminate its rivals for the conservative vote.

Throughout the election campaign of the spring, the constitutional deliberations begun in February continued. Hoegner drew up a draft constitution which he submitted to a committee of government ministers and the heads of the Munich municipal administration. Hoegner's principal interest in the constitution was threefold: to prevent declared opponents of democracy being allowed to participate in a free society; to strengthen the powers of elected government against a possibly faction-ridden parliament; and to adapt basic rights to the demands of a modern, socially-orientated state. The advisory committee took Hoegner's proposals and, in turn, handed its work over to an Advisory State Committee (*Beratender Landesausschuss*) of 125 members. This latter body reworked the draft for presentation to a Constitutent State Assembly (*Verfassunggebende Landesversammlung*) to be elected in the summer.[46]

In these constitutional deliberations the CSU struck a chord quite strongly reminiscent of the BVP, despite the absence of a pre-existing normative influence upon the discussions as had existed in 1919 in the form of the government of the *Räterepublik* on the one hand, and the Weimar National Assembly on the other. In the 1920s the BVP had attempted, in a roundabout fashion, to rework the constitutional structure of the *Reich* from *Land* level. This attempt consisted of two principal efforts. One was the establishment of second chamber in the state legislature. Such a chamber would have acted as a sort of corporate counterweight to what many in the BVP had considered to be an over-powerful *Landtag*. The other attempted reformation had been the institution of a state chief executive officer, a *Staatspräsident*. While the proposed powers of such an officer were left vague indeed by the idea's proponents, those prerogatives of Gustav von Kahr when he was state commissioner during the crisis year of 1923 might be taken as the sort of regime it had been hoped to achieve. These included *inter alia* the personification of the government in the *Staatspräsident*; his authority to issue emergency decrees without *Landtag* approval; and executive command of all armed forces within the *Land*.

In 1946 the CSU awakened apprehensions on the Left by resurrecting the spectre of a BVP-style campaign of constitution-building. The CSU was nothing if not cognizant of American power, however. The party could not reasonably have expected the US authorities to allow the creation of an office endowed with potentially semi-dictatorial powers. Then, too, the party itself was divided on the issue, the split being more or less along the same lines as had emerged when the party was being founded. Consequently, to avoid aggravating such divisions, and to present a constitution which would find the greatest possible resonance, the CSU was prepared to accept the Hoegner version as a basis for discussion.

The constituent assembly over which Hoegner's ministry presided possessed an absolute majority of CSU delegates. In the 30 June 1946 election the party had managed to capture 58.3 per cent of the votes cast. As in the case of the spring communal elections, the SPD finished second with 28.8 per cent. The KPD and the FDP raised their shares marginally to 5.3 per cent and 2.5 per cent respectively. A potentially damaging showing was also made by the WAV, which gained 5.1 per cent of the vote. This total represented an increase of 3.6 per cent from a low of 1.5 per cent in the communal elections.[47]

As a result of these returns, Hoegner submitted his resignation to the occupation authorities who nevertheless requested that he remain in office. The draft constitution was taken up by a constitutional committee of the

assembly consisting of 21 members. After two months of debate, this committee settled upon a version acceptable to the assembly. The new constitution declared Bavaria a republic (*Freistaat*) based upon the rule of law and the majority. In Articles 13–33 a system of parliamentary democracy resting upon the *Landtag* was instituted, in keeping not only with the inclinations of Bavaria's major parties but also the wishes of the military government. This longest of all the *Land* constitutions, also contained an extensive list of basic rights of citizens, a characteristic shared in its outlines by the other *Land* constitutions drawn up before the passage of the Basic Law of the Federal Republic (Bremen, Hesse, Saarland and the Rhineland-Palatinate).[48]

Of particular interest to the CSU in this constitutional process were: the issue of Bavarian citizenship; the already-mentioned *Staatspräsident* and second legislative chamber; the question of confessional schools; and the safeguarding of private property. Of the four, the first is most easily considered. The question of whether the inhabitants of Bavaria possessed a citizenship unique to that *Land* was one of prestige more than anything else. Any such possibility became irrelevant, however, when the American authorities declared that such a provision would be acceptable only upon the condition that a Bavarian citizenship would automatically indicate simultaneous citizenship in a future German state.

The question of a second legislative chamber the CSU managed to settle to its satisfaction. Harkening back directly to the *Kammer der Reichsräte* of the 1819–1918 period, the second chamber concept was, as mentioned, to offset the weight of a lower house controlled exclusively by political parties; to help avoid over-hasty parliamentary decision-making; and to hinder the formation of parliamentary majorities of convenience. The old BVP fear of party absolutism still existed among CSU members, and they expressed this fear in their wishes for an upper house consisting of members of the professions, the religious confessions, the academic community, industry, and agriculture and forestry. Such a composition, it was assumed, would provide a sedate, non-partisan counterweight to the daily party-political conflicts of the lower house. Of course, the SPD and KPD opposed the proposal on the grounds that the interests of working people would be subsumed under the legislative power of a chamber dominated by such upper-class elements. Consequently, the SPD attempted to strip the upper house of all meaningful prerogatives. Hoegner, for example, advocated a second chamber with strictly advisory authority. The constituent assembly's conservative majority overrode such objections, however, and the institution of a 60-member senate was written into the final document. As

a concession to the Left, workers' interests would be represented in the senate by eleven members chosen from the trades-unions. The most important prerogative granted the senate (the only such *Land* organ in the Federal Republic) was the right of legislative initiative. It was also granted limited rights of participation in the passage of budgets and constitutional amendments. This participation would be in the form of advisory functions and rights of objection.[49]

In advocating confessional schools, the CSU represented a tradition which in its most recent phase went directly back to the 1925 concordat between the Roman Catholic Church and the BVP government of Heinrich Held. Corresponding to the party's Christian orientation, the CSU pressed not only for the unhindered right of parents to choose their children's schools, but also for the provision of sufficient religious instruction in the schools themselves. In 1946, however, the CSU had to consider not only the inter-denominational bases of its membership, but also the risk of a bitter floor-fight with the SPD over the issue of the senate if the matter of the schools was too aggressively pursued. Consequently, a compromise was adopted as Article 135 of the constitution. All publicly supported elementary schools (*öffentliche Volksschulen*) would be either exclusively Roman Catholic or Protestant as corresponded with the local population, or inter-denominational (*Geminschaftsschulen*) in localities of mixed population.

While the issues of denominational schools and a second chamber were accepted without great difficulty, the proposed office of *Staatspräsident* proved to be most hotly contested. Like the senate, the office of *Staatspräsident* was conceived as a counterweight to the party-political dominance of the *Landtag*. Such a chief-of-state would be empowered to issue emergency decrees during periods of internal crisis and to intervene in the event that a deadlocked *Landtag* was unable to provide a government. A *Staatspräsident* would also be free to free legislative bottlenecks through the initiation of referenda. Naturally, with so particular a personification, Bavaria would be better represented in national affairs, the *Staatspräsident* offering the best documentation of her *Eigenstaatlichkeit*.[50]

The divisions and tensions generated within the assembly by this proposal found a curious reflection within the CSU itself. The differences so evident in the earliest days of the party surfaced once again in the vote on this provision. The old BVP veterans around Hundhammer – Schäffer was prohibited from political activity under the terms of his dismissal as minister–president – voted for the proposal, carrying with them the other conservative votes. To the great consternation of the SPD central office in Hannover, Hoegner and a small group of supporters included themselves

in this affirmative vote. Hoegner had set his sights on the office, regarding it as the crowning of his personal career; hence he saw the motion's subsequent defeat all the more so as a 'fürchterlicher Schlag'.[51]

On the other side, the Müller wing of the CSU, minus Stegerwald who had died in December 1945, voted against the proposal. Müller and his Franconian supporters feared a possible restoration via the office of *Staatspräsident*, an idea with which Hundhammer apparently toyed. German unity would suffer a severe setback from any such attempt, so Müller felt. It has also been suggested that Müller's own ambition to become minister–president forced him to oppose the creation of the office of a strong *Staatspräsident*. Müller, for his part, maintained in a memorandum of 3 October 1946 that his opposition was based on a desire to avoid political division and the squandering of economic and bureaucratic resources in the creation of a wholly superfluous office.[52] In the end, the proposal was defeated by only one vote, the upshot being the creation of an enduring dissatisfaction in the CSU's *altbayerisch* wing for Müller's leadership. Such dissatisfaction helped generate support for the BP in 1948–49, and made more difficult a cohesive CSU position on the federal form of the later western German state.[53]

In the sections of the constitution dealing with the economy, the CSU also made its mark. Private property was secured against unlawful or inadequately compensated socialization. The constitution also encouraged small enterprise in agriculture, crafts, trades, the professions and industry. It also forbade the building of monopolies. At the same time the CSU recognized the state's duties and workers' rights by agreeing to public ownership of essential services and the formation of works councils.

Despite the divisive nature of the deliberations, the constitution enjoyed the support of a majority and was forwarded to the American authorities for review. Upon examining the document, the US military government insisted on only limited changes. Chambers of commerce, public corporations, and so on, were prohibited from performing state functions. Further, compulsory membership in such bodies was forbidden. The American authorities also required that the constitution be subjected to a referendum. The referendum's date, 1 December 1946, would coincide with the first *Landtag* election. In addition, the Americans insisted on a strengthened constitutional guarantee for individual rights, the cataloguing of which was a marked departure from the Bavarian constitution of 1919. Finally, the military government stipulated that the provisions of Article 178 of the constitution pledging Bavaria's joining a future federal German state had to be interpreted as:

> eine Anweisung an die Vertreter Bayerns . . . die später an den Beratungen über die zukünftige deutsche Regierung teilnehmen werden, aber nicht als ein Recht, die Teilnahme an irgendeiner Form der deutschen Regierung zu verweigern, ganz gleich ob sie als Zwischenlösung von den Allierten Behörden oder in form einer beständigen Regierung vom deutschen Volk in seiner Gesamtheit errichtet wurde.

Such an unmistakable statement of policy in effect put paid to whatever separatist tendencies may have been in evidence in the immediate postwar months. What this pronouncement could not prevent was the presence of a very traditional particularist streak raising its head in coming years. That development, however, was yet to come. When the final vote was taken in the constituent assembly, the document was approved with 136 votes of the CSU and the SPD against 14 of the FDP, KPD, and WAV, all of whom objected for various reasons to the constitution's supposed 'kleinstaatliche Engstirnigkeit' or its educational and economic provisions. For the WAV, the absence of more elements of direct democracy also influenced the party's attitude.[54]

With the events of that summer and autumn, then, the stage was set for the first postwar Bavarian *Landtag* election. As expected, the CSU and the SPD won the lion's share of the vote. The CSU took 52.3 per cent and 104 seats. The SPD obtained 28.6 per cent and 51 seats. Each party thus suffered a slight loss on their constituent assembly returns. Interestingly, the trend favouring the 'two-and-half-party' system, much in evidence in the 1960s and 1970s, showed early signs of emergence in the elimination of the KPD altogether and a marked strengthening of the FDP, which scored 5.6 per cent and 9 seats. Nevertheless, the unsettled economic and political conditions in Bavaria – the *Hungerwinter* was yet to come –benefited the WAV which took 7.4 per cent and 13 seats on the basis of an electoral campaign which was purely negative in its appeal. The WAV's gains indicated a large, unsatisfied element to the right of the CSU; this voting segment remained unsettled for several years to come.[55]

The founding and consolidation of the CSU between May 1945, the date of Fritz Schäffer's appointment as Bavarian minister–president; and June 1946, the date of the constituent assembly election, marked the rebirth in Munich of an old, conservative, Bavaria-orientated, federalist political tradition. In these aspects the CSU resembled to a considerable extent the BVP whence so many of the new party's members came. In contrast to the old party, however, the CSU made a determined effort to bridge the denominational gap to include Bavaria's Protestants. It also attempted to appeal to socio-economic groups outside the traditional peasant–middle-class–

Beamtentum triad of the BVP. This effort drew strength from the immediate, catastrophic effects of the war. The new party also rejected the BVP's flirtation with nationalist follies as in the latter's support for Hindenburg's presidential bid in 1925, and the perceived ambivalence toward National Socialism in the 1920s. Finally, it condemned the BVP's support of the Enabling Act of 1933.[56]

The CSU's initial success in breaking with the tradition of the BVP is noteworthy. A brief examination of voting patterns helps illustrate the magnitude of the changes which dominated *Land* politics in Bavaria until 1948. In January 1919, with a voting population of 3 977 614, the BVP had taken 35 per cent of the vote, the party's second highest total of the Weimar period. The SPD, then at the height of its revolutionary notoriety, obtained 33 per cent. In June 1946, by contrast, the CSU attracted 58.2 per cent and the SPD 28.8 per cent from a roughly equally-sized voting population of 3 868 203.

If the CSU constituted at its core the successor to the BVP, as Schäffer and Hundhammer would have had it, then it is clear that on to this core was grafted the majority of the voters of the earlier liberal parties such as the DVP, the DDP, and the DNVP. Ranging from the progressive liberals of the DDP to the national liberals of the DNVP, these voters represented large numbers of Protestants working in the trades, crafts, industry and, to a lesser extent, agriculture. Collectively, these liberal parties had polled rather well before July 1932, particularly in Upper and Middle Franconia. Eventually, however, they succumbed to economic catastrophe and Nazi propaganda, and were overtaken by an NSDAP which, it must be admitted, also periodically scored well in other parts of Bavaria. In 1945–46, Müller and Stegerwald, drawing their principal strength in northern Bavaria, led the majority of these liberal parties' adherents into the CSU, the rest finding a home in what became the FDP. Decisive for those liberals who went over to the CSU was the desire to overcome the party-splintering of the Weimar era. In taking this step, liberals such as those former DDP and DVP members in Munich around Edgar Hanfstaengl renounced their traditional demand for a separation of church and state. Instead, they now proclaimed a Christian *Weltanschauung* to be the basis of democracy. These gains for the CSU were further enhanced by the incorporation of those voters earlier represented in the self-styled *oppositionell* BBB (which nonetheless had worked in coalition with the BVP) and the BBB's non-agricultural affilitation, the *Mittelstandsbund*. This new support had been institutionalized in the founding, on 7 September 1945, of the Bavarian Farmers Association (BBV), an organization which supplanted the various pre-1933 Catholic and Protestant agricultural associations.

Although ostensibly above party affiliation, the BBV possessed, in Schlögl as its secretary-general and Horlacher as a vice-chairman, strong links to the CSU and worked actively in supporting the party.[57]

While the CSU's votes in areas containing traditional Protestant and/or working-class majorities remained below the party's Bavarian average in 1946, the new party nevertheless managed to establish permanent footholds among voters who had been beyond the reach of the BVP. Perhaps most interestingly, the CSU in 1946 laid the foundations for a subsequently successful effort to combine a Bavarian tradition which, in its excesses, tended toward the *Beamtenregierungen* and *Obrigkeitsstaat* of a Gustav von Kahr with the populist legitimation espoused by the *Bauerndoktor*, Georg Heim. To the right of the CSU, of course, existed the threat of the WAV. This party, however, possessed no genuine political conception, living primarily from the demagogic exertions of its leader, Alfred Loritz. Its offer of a new *Führer* clearly appealed to the adherents of the Nazi regime, and it represented, more than anything else, a rallying-point for the disaffected of whatever stripe. Loritz was particularly effective in appealing to refugees recently arrived in Bavaria. Nevertheless, this base of support was eventually lost to Loritz as these refugees became integrated. An indication of this change was the WAV's decimating loss at the polls in 1948.[58]

Thus by 1946, it was clear that the Christian Social Union had established itself as a force to be reckoned with on the Bavarian political scene. Growing pains were nevertheless in evidence. Whether these pains could be endured and whether the party would be successful in translating its authority into effective influence at the national level, particularly as regarded the cherished dream of German federalism which it shared with the BVP, remained to be seen.

3 Shifting Fronts: The CSU Government of Hans Ehard and the Federalist Campaign, December 1946 – June 1948

INTRA-PARTY CONFLICT AND THE FORMATION OF THE FIRST BAVARIAN GOVERNMENT

In the December 1946 elections, the CSU scored a major victory – almost three percentage points above that needed for an absolute majority. Differences nevertheless remained, holdovers from the disputes of the Bavarian constituent assembly of the preceding summer. Müller attributed much of this animosity to the fact that the CSU's *Landtagsfraktion* had 'einen zu hohen Altersdurchschnitt . . . und deswegen durch eine Reihe von Leuten vertreten wird, die staatspolitisch zum Separatismus neigen und wirtschaftlich für unsere Notverhältnisse zu konservativ denken'.[1] By contrast, Müller maintained that in the party organization, that is in the *Landesausschuss* and the *Landesversammlung*, his supporters were in the majority. At the Eichstätt *Landesversammlung* held on 14–15 December 1946, this support manifested itself. Müller felt that the CSU should assume sole governmental responsibility, while Hundhammer and Horlacher advocated a coalition with the SPD. With the SPD still led by the emphatically Bavarian Hoegner, such a coalition would secure a community of interest between the two parties' conservative wings. Moreover, a coalition would probably eliminate Müller's supporters from the government since ministers were elected from the parties' *Landtag* delegations. Although not all of the CSU's delegates supported Hundhammer, there existed among them a conservative majority due to the party leadership's relative inability to influence candidate selection for the *Landtag*. As persons with parliamentary experience possessed the best chances of election, many former BVP members had been chosen to stand. Such persons, in turn, more often than not favoured the Hundhammer wing of the party.[2]

Reflecting the dissent within the leadership, the CSU's *Landesversammlung* considered the problem at its December meeting. In debates described as stormy, the congress called in principle for a government without the SPD, nonetheless leaving the ultimate decision of a

coalition dependent on the condition that 'der entscheidende Einfluss der Union sichergestellt sei'.[3] It was reported that the congress viewed this decision as a 'Richtlinie' for the *Landtagsfraktion* which was also expected to take account of the 'reale Erwartungen' associated with the CSU's absolute victory at the polls. Clearly, substantial segments of the party were not in favour of a grand coalition with the SPD. Despite this growing rancour, Müller was confirmed as party chairman with 327 of 428 votes, a majority of 76 per cent. Regarding Germany's constitutional development, the congress paid tribute to both directions in the party by proclaiming that, while the CSU's 'politisches Denken über Bayerns Grenzen hinausgehen müsste . . . ,' Germany's problems could only be solved 'mit einem organischen, bundesstaatlichen Aufbau. . . .'[4]

The tension within the CSU leadership found its most dramatic early expression in the first postwar election of a Bavarian minister–president. With the *Landtag* meeting provisionally in the *Aula* of the University of Munich (the earlier home of the *Landtag* in Munich's Prannerstrasse had been destroyed in an air-raid), the CSU delegation decided on Anton Pfeiffer as its candidate, only to see him withdraw on the objection of the SPD. The Social Democrats, for their part, rejected him because of his alleged attempts to form a BVP–Nazi coalition in 1932.[5] Conferring once again, the CSU delegation chose Müller to stand in Pfeiffer's place. Müller, however, found himself confronted with the surprise call by Hundhammer for the candidacy of the then state secretary in the Justice ministry, Hans Ehard. Ehard, who had first made a name for himself as a prosecuting attorney in Hitler's treason trial in 1924, was viewed by many in both wings of the party as a man whom all could support. Fiercely devoted to the maintenance of Bavaria's rights within the framework of the law and willing to accept a coalition with the Left, Ehard also found support in the SPD which had opted at its *Landeskonferenz* on 15 December to enter a CSU-led government.[6]

Though angered and frustrated by Hundhammer's move, Müller and his supporters could not prevent Ehard's nomination. At this early stage of the CSU's development, there existed no way for the party's leadership to force the parliamentary group to vote in a specific fashion on any given issue (*Fraktionszwang*). Hundhammer's action took advantage of this situation and deprived Müller of an overall majority by splitting the CSU's vote in the ballot on the minister–president. Müller and his supporters subsequently left the *Landtag* and Ehard was elected on a second ballot. Perhaps having been repaid in kind for his earlier opposition to the idea of a Bavarian *Staatspräsident*, Müller found himself shut out of the government under

conditions which some viewed not only as scandalous but as threatening the unity of the party. The new *Junge Union*, an organization in which Müller found much support, spoke of its 'Erschütterung' while the *Bezirksverband Oberfranken*, representing Müller's home district, wrote simply: 'Die Wählerschaft fühlt sich verraten.'[7]

In a negative reflection of such sentiment, the south Bavarian CSU locals supported the new government. South of the Danube one spoke of backing the coalition without reservation; otherwise expulsions would be in order. There, in the former citadels of the BVP, ran the fear for Bavaria's identity in the coming Germany if Müller's 'centralist' stance were allowed to prevail. And even if the leadership disagreed, it was argued, it nevertheless had the obligation to support in public a government which the CSU controlled.[8]

The problems surrounding the coalition continued throughout the spring and summer of 1947 for both of Bavaria's major parties. Serving simultaneously as Ehard's justice minister and assistant minister–president, Hoegner found himself ever more isolated within his own party due to his readiness to cooperate with the CSU and his pronounced *bayerisch* politics. Increasingly, the SPD central office in Hannover under the leadership of Kurt Schumacher brought greater pressure to bear on Hoegner in an effort to force him and Josef Seifried, the SPD interior minister, to withdraw from the government. This pressure was heightened – in a manner curiously reminiscent of the north–south divide within the CSU – by the north Bavarian SPD locals which resented Hoegner's efforts to emphasize the *weiss–blau* nature of Bavarian social democracy. Such emphasis, they feared, could all too easily lead from the federalism which Hoegner espoused to a separatism which could destroy the unity of the party. The problem came to a head at the SPD's *Landeskonferenz* in Landshut on 10–11 May. There the delegates made clear their disenchantment with Hoegner's leadership and threatened to remove the SPD from the government.[9]

On the side of the CSU, pressure was also mounting to end the coalition. The aspiring leader of the CDU in the British and American zones, Konrad Adenauer, informed Munich of his dissatisfaction with the way in which Bavaria's government had been formed. The intra-party reverberations of such developments could, he feared, damage the standing of the *Union* parties everywhere in the two zones, not simply in Bavaria. Adding to the impact of Adenauer's admonitions was the continuing dissatisfaction of the Müller wing of the party. Responding to the increasing reluctance of the SPD to accept the coalition, and probably in an effort to mollify the restive elements of the CSU, Ehard delivered a speech to the CSU's Eichstätt

congress on 30 August 1947 strongly criticizing the Marxism which still featured prominently in the SPD's rhetoric. Whether Ehard intended to use the speech to cudgel the SPD out of the coalition is unclear, but this supposition appears highly unlikely. He and Hoegner, in the opinion of one contemporary who knew them both, understood one another personally and professionally. Both men were interested, above all, in easing Bavaria's postwar misery.[10] Rather , the anti-Marxist tone of Ehard's speech seems to have stemmed from a genuine conviction, as evidenced in many subsequent public statements, that only parties expressly espousing a Christian *Weltanschauung* would be able to prevent a repetition of the catastrophe which had befallen Germany. The SPD nevertheless perceived in the speech a 'sozialistenfeindliche Wendung', to quote Ehard, and used the challenge of the address as a 'Vorwand', to quote Hoegner, to withdraw from the government in September.[11] The CSU thereupon assumed sole governmental responsibility. In the reorganization, Müller was brought in as justice minister and *Stellvertretender Ministerpräsident*, a move evidently aimed at restoring a degree of harmony within the party.

BAVARIAN FEDERALIST POLICY IN LIGHT OF THE MUNICH *MINISTERPRÄSIDENTENKONFERENZ*

In the midst of the pressures accompanying the dissolution of the coalition, there occurred the one significant attempt by the minister–presidents of all the *Länder* of the several occupation zones to assume the dominant role in the shaping of a new Germany. Reinforcing a traditional German suspicion of the efficacy of political parties, the factionalism of Weimar and the tyranny of National Socialism had done much to discredit the concept of political parties as the normative factor in the public life of the nation. Functioning as the minister–presidents did in the initial stages of the occupation as the sole representatives of the German people, the *Länder* heads of government were reinforced in this opinion and used their positions to attempt an inter-zonal 'foreign policy'. While common to Hoegner and, more importantly, Ehard, this attitude was by no means limited to them. The minister–presidents of the British zone, for example, were initially heartened by their apparent influence in the face of the nascent political parties. Even Minister–President Rudolf Paul of Thuringia in the Soviet zone exercised a number of contacts with his opposite number in Hesse.[12]

As early as the first quarter of 1946, several minister–presidents of the British and American zones had attempted to seize the initiative in repres-

enting Germany's interests. Meeting in Bremen from 28 February to 1 March 1946, they had discussed such topics as the alleviation of food shortages and the easing of transportation difficulties. Hoegner, engaged in the important process of constitution-building, remained absent, contending himself with the sending of an emissary. The Bavarian minister–president did, however, attend the second such conference, again in Bremen, in October of that year. Intended as a convocation of the government heads of all of the *Länder* of the four occupation zones, the conference ultimately saw, once again, only the British and American zones represented. The Soviet authorities, wary of too much cooperation on a federalist level, had forbidden Soviet-zone minister–presidents attending and had dismissed the meeting as a 'Föderalisten-Konferenz' (*sic*) of 'aufgeblasene Bürokraten'.[13] The French, in turn, fearing that the meeting would too quickly reawaken a sense of German unity, had also refused their minister–presidents' attendance.

At this second conference the Bavarian attitude embodied in Hoegner had been one of careful attention without hasty commitment, cooperation without joining together. Following the election of the CSU-led coalition in December 1946, this emphasis shifted. Now the watchword was the stressing of Bavaria's special role within the framework of that cooperation. Such a stance corresponded to two principal policy goals which Ehard had set his government. One was the strengthening of Bavarian influence in the *Länderrat* and the bi-zonal administration, of which organizations more will be said presently. The other objective was Bavarian participation in the preliminary discussions concerning the possible amalgamation of the three western occupation zones given the increasingly questionable prospects for German unity.[14] As these discussions were being carried out at least as enthusiastically by the heads of the *Länder* governments as by the chairmen of the political parties, it was only natural that Ehard, as minister–president of Bavaria, would expect to play a significant role. This attitude was in keeping with the early self-confidence of the minister–presidents and, incidentally, recalled the BVP's view of political parties as governmental building-blocks rather than determinants of policy.[15]

This comparison notwithstanding, there existed a major difference between the efforts of the CSU and the earlier party to represent Bavaria's interests. This difference, of crucial importance to the relatively successful long-term stance of the CSU in its federalist campaign, was the smaller geopolitical area in which the Bavarian *Staatsregierung* was forced to operate. Ehard was openly and deeply concerned about the zonal division of Germany. So far had the zones drifted apart by summer 1947 that their inhabitants, in his opinion, had begun to regard them as foreign to one

another. The parties, riven internally by factions and externally between East and West, would be incapable of overcoming this division. 'Solange es keine Instanz für Gesamtdeutschland gibt . . . ,' so he concluded, 'müssen sich die Regierunschefs der deutschen Länder und Städte als vorläufige Treuhänder des deutschen Volkes betrachten.'[16] Although intended to apply to all the zones, this appeal found its resonance limited, in effect, to the western zones. The correspondingly narrower room for manoeuvre of the western minister–presidents concomitantly increased the effectiveness with which the Bavarian government head spoke; and through him, to a greater or lesser degree, spoke the CSU.

With these thoughts in mind, Ehard issued an invitation to the minister–presidents of all four occupation zones to assemble in June in Munich to continue the Bremen discussions. Although apparently not averse to discussing, in general terms, Germany's political future as well, Ehard realized that the country's fate did not depend on what the heads of the *Länder* governments decided. Hence, he determined that it would not be 'sinnvoll, in unserem Kreise in Erörterungen einzutreten, die nicht unmittelbar der Beseitigung der Not dienen und jetzt zu keinen Resultaten führen können'.[17] Given the Bavarian minister–president's dedication to the goal of a unified – if not unitary – Germany, it nevertheless seems clear that he intended to use the conference not only to, as Hoegner put it, 'gegen das ewige Gerede von der zweifelhaften Reichstreue Bayerns einen vernichtenden Schlag zu führen . . .', but also to lay claim, in the words of Minister–President Reinhold Maier of Württemberg-Baden, to 'die Führungsmacht innerhalb der in Bildung befindlichen bzw. (*sic*) schon gebildeten Länder . . .'.[18] In so doing, Ehard was certainly in keeping with the tradition of the BVP. Unlike Munich's earlier attempts, however, his own were not automatically constrained by a pre-existing constitutional structure. On the contrary, the existence already in 1947 of a Bavarian constitution, when seen in conjunction with the relatively free hand given the American-zone minister–presidents by the US authorities to order zonal affairs, seemed to confer upon Munich's efforts a much greater prospect for success than had been the case for the BVP following 1918. Even the admittedly vituperative differences within the CSU as to the appropriate degree of federalism did not detract from the fact that the party as a whole supported Ehard's efforts in this direction.

In these efforts, of course, Munich encountered opposition from several quarters. As has been seen, the SPD remained apprehensive about the long-term effects on Germany of too great a role for the *Länder*. This apprehension manifested itself in the pressure put upon Hoegner by the SPD central office in Hannover via the new favourite in the Bavarian organization,

Waldemar von Knoeringen. Ultimately reflecting itself in Hoegner's resignation from the government, this pressure had already been brought to bear at the time of the June conference. The SPD objected in principle to the *Länder* governments' right to speak for the German people. On the contrary, it was the political parties which should speak for the nation. Having said this, the SPD also objected to Ehard's invitation to Soviet-zone minister–presidents who belonged to the Socialist Unity Party (SED) on the justifiable grounds that, following the forced amalgamation of the Soviet-zone SPD into the SED, those eastern minister–presidents represented 'nur einen ganz kleinen Teil . . .' of the seventeen million Germans of that zone.[19] The SED leadership around Walter Ulbricht had, for its part, already made it clear to Ehard and the CSU that the *Länder* should play no role whatever in future German politics.[20] The French, as they had at the time of the Bremen conferences, feared too centralized a course of development, particularly in view of the ultimate Soviet decision to allow Soviet-zone minister–presidents to attend.

SPD objections and the fears of the French notwithstanding, the conference convened in Munich on 5 June 1947 only to see the Soviet-zone minister–presidents depart before the talks really began. Growing East–West tension had, in retrospect, made the collapse of the conference, at least from an all-German point of view, perhaps inevitable. Munich viewed the 'Politisierung der Aussprache' by SED minister–presidents at the opening session as an ultimatum which could not be tolerated, particularly given the SPD's stance on SED participation and the French threat to recall their minister–presidents if national issues were put on the agenda. The Soviet-zone representatives, in turn, accused their western colleagues of desiring to create accomplished facts in the question of the proper representation of the German people.[21] The end result of the differences was that the minister–presidents of the western zones continued the conference alone.

In terms of the development of the federalist policy of the CSU and the Bavarian *Staatsregierung*, the Munich conference had important implications. To many in both wings of the party, it was clear that the meeting's object, 'Deutschland an einem Tisch zu bringen', had clearly failed. While this development helped clarify the situation, one nevertheless feared that the coming division of Germany between East and West would take on permanent, European dimensions. Fritz Schäffer, voicing similar concerns, agreed. Germany's division was now 'endgültig'. 'Wir müssen', so the ex-minister–president continued, 'das östliche Deutschland vorläufig abschreiben, und sehen, dass wir die westliche Hälfte am Leben erhalten'. While Schäffer's conclusion would have been biased by his avowed dis-

inclination to work with SED minister–presidents in any case, his opinion that the rump conference was not a total failure was reflected in numerous press reports.[22] Such sentiment intensified the rivalry between the minister–presidents and the political parties concerning the question of who could best represent Germany's interests. This rivalry was, in turn, exacerbated by the dispute between centralists in a party such as the SPD and federalists such as those in the CSU. If, in fact, this dispute was to be fought out in a Germany shorn of her eastern territories and most of prewar Prussia, then the federalist cause stood a considerably better chance of achieving a victory in keeping with that sought in Bavaria since 1918.

LÄNDERRAT VERSUS *WIRTSCHAFTSRAT* IN THE FEDERALIST CALCULATION, 1946–47

In view of the claims made by the minister–presidents that they were, in fact, the proper representatives of the German people, it now becomes necessary briefly to examine an intra-zonal institution of the American zone which may have approached the ideal of what a federal government should, in the eyes of many CSU members, have become. This institution was the *Länderrat*, designed primarily to coordinate the efforts of the governments of Bavaria, Hesse, Württemberg-Baden, and Bremen in their attempts to reconstruct the economic and social systems of their *Länder*.

Moving quickly in the wake of the actual occupation of Germany, the American authorities had set about trying to eliminate duplication of effort on the part of the governments in Munich, Wiesbaden, Stuttgart, and Bremen. This goal could best be achieved through the establishment of a common organization regulating the relations between the capitals and the US military government. This body would simultaneously serve as a practical expression of America's desire to provide for a federalist reconstruction of Germany. This latter point attained significance given the establishment of more highly-centralized administrations in other zones.[23] The Americans also hoped to use the *Länderrat* as a personnel pool in the event that the Allied Control Council, the four-power agency theoretically controlling matters affecting the whole of Germany, did manage to come to a consensus on the creation of an all-German administration pending the signing of a peace treaty. Such personnel considerations were a common feature in the administration of the British zone,[24] and it is reasonable to assume that the US authorities did not want to be taken unawares. Like the rapid, if somewhat confused establishment of political parties, the building of an intra-zonal council would also reinforce the

salutary effects of relieving the US authorities themselves of the day-to-day burdens of zonal administration.

These considerations in mind, the US military governor, Clay, met on 17 October 1945 in Stuttgart with the minister–presidents of the American-zone *Länder* at the constitutent meeting of the new body. The meeting would have reassured Munich in its assumption that a substantial role was to be played by the *Länder* in Germany's reconstruction. Already the US had declared in the decree reestablishing Bavaria that, subject to restrictions concerning the whole of Germany, the *Länder* would exercise 'full legislative, judicial and executive powers' in the affairs of the American zone. Now Clay was stating openly that the minister–presidents 'vertreten die deutsche Regierung'.[25] Such a position would certainly have been welcomed by the *Staatsregierung*, particularly when reinforced by other members of the military government. James K. Pollock, director of the American Regional Government Coordinating Office and adviser to Clay, expressed similar views. Referring to meetings of the American-zone minister–presidents, he stated:

> Bei dieser Gelegenheit könnte gezeigt werden, welche Fortschritte in unserer Zone gemacht worden sind, und wir kämen einen Schritt weiter auf dem Wege zur Einsetzung einer Regierung für ganz Deutschland.

From these meetings might come an all-German council of minister–presidents which

> würde die Entwicklung eines föderalistischen und dezentralisierten Deutschland begünstigen und entspräche den erklärten Zielen der amerikanischen Politik.[26]

Such statements constituted apparently powerful backing for the Bavarian federalists; it was backing of a sort which the BVP had never enjoyed.

Munich's assumptions about the role of the *Länder* drew strength from the structure of the *Länderrat*. The most important feature of the *Länderrat*'s organization from the Bavarian point of view was the weak position of the council's head, the General Secretary. Officially residing in Stuttgart, the venue for the 1918 conference of the south German states, the general secretary acted as a co-ordinator of proposals affecting the entire American zone. He presided over a staff comprising one representative of each of the zone's *Länder*. These representatives, in turn, possessed in the persons of assistants, or *Sachverständige*, rough equivalents of parliamentary state secretaries. This analogy is, of course, only approximate as the *Länderrat* initially enjoyed no direct parliamentary legitimation. In directing this staff's work and its contacts with the liaison offices attached to the *Länder*

governments, the general secretary had no power of decision; he had, rather, only the authority to 'propose and submit to the *Länderrat* the details of plans and orders which affect the entire German Administration (*sic*) of the US Zone'.[27] Decision-making authority rested, instead, with the minister–presidents or their plenipotentiaries. Significantly, the latter could enact measures only by unanimous vote. In addition, the presidency of the *Länderrat* rotated among the minister–presidents every three months, thereby working to prevent too great an accumulation of power in any one capital.

The historical symbolism of the seat of the *Länderrat* aside, its functioning served to allay a fear which had plagued the BVP and the Bavarian government through most of the Weimar period – the fear of being *majorisiert* in national affairs. With the *Länder* forced to act collectively, indeed unanimously, in the council to enact ordinances, Munich was relieved of the threat of being coerced into accepting disagreeable measures. The organization of the *Länderrat* also provided a continuation, whether intended or not, of the collegiality inherent in the *Bundesrat* of the imperial period. To be sure, the *Länderrat* was responsible for the admittedly limited affairs of only a fraction of pre-1933 Germany, not to mention the empire. Nevertheless, the council contributed to the creation of a set of expectations within the CSU and the Bavarian *Staatsregierung*, and these expectations surfaced again in subsequent constitutional deliberations.

Despite – or perhaps because of – the relatively strong positions of the *Länder* governments within the council, difficulties soon developed with the expanding prerogatives of the *Länderrat*. Clay had originally informed the body that the Allies would control – on a national basis – finances, the post, industry, transport, foreign trade, and food and agriculture. The council would simply execute, on a zonal basis, Allied directives according to US occupation law. The Allied Control Council's inability to administer the whole of Germany nonetheless led to a ballooning of the *Länderrat*'s competences. By May 1946, the council possessed offices for coordination, law, finance and monetary systems, trade and industry, food and agriculture, social policy, welfare work and refugees, and culture and education.[28] Munich viewed this expansion suspiciously, and the *Staatsregierung*'s resistance to possible encroachment upon *Land* prerogatives earned it the veiled criticism of the US authorities. As early as 4 December 1945, Clay voiced to the council his apprehension that 'excessive state pride' was 'beginning to arise' in the US zone. If the minister–president failed to cooperate in the *Länderrat*, they had 'absolutely no hope for success' in reconstruction. Clay hoped they would 'bear this in mind'.[29]

These differences were not resolved in 1946. On the contrary, they remained chronic, particularly in view of the increasingly evident trend

toward Anglo-American bi-zonal cooperation. Hoegner, already having to deal with the problem of constitution-building, also encountered difficulties in Stuttgart. In April 1946, a meeting of minister–presidents of the British and American zones passed there a resolution relegating the *Länder* to the status of being 'nur die Bausteine' of a higher economic and political unity. This resolution, written by Schumacher, was agreed to in Hoegner's absence by Bavaria's *Bevollmächtigter* to the *Länderrat*, Gebhard Seelos, on the grounds of wanting to protect Bavaria from accusations of separatism. This move angered Hoegner, who indirectly accused Seelos of disloyalty, although Seelos himself had originally supported the idea of the meeting so as to 'rein äusserlich den Führungsanspruch des *Südens* (*sic*) bei künftigen deutschen regelungen darzutun'.[30] Faced with this situation, the *Staatsregierung* eventually issued a statement supported by the CSU cabinet ministers condemning what it already perceived to be the trend back toward pre-1933 centralist government. Munich took notice

> mit grösster Bestürzung . . . dass sich auf den Gebieten der Wirtschaft [und] des Verkehrs, eine Entwicklung anbahnt, die durch Zentralisierung und Bürokratisierung staatlicher Einrichtungen eine schwere Beeinträchtigung des bereits entstandenen demokratischen Gefüges zur Folgen haben muss. . . .

Giving control of the states' economies to a 'länderfeindlich[e] Bürokratie' would only impinge upon 'das demokratische Empfinden' of the German people.[31] While presumably aimed at the Anglo-American discussions which had begun shortly before concerning the creation of a bi-zonal economic administration, the cabinet resolution could also be seen as a reluctance on Munich's part to accept the ever more important role of the *Länderrat*. This reluctance notwithstanding, the *Staatsregierung*, whether under Hoegner or Ehard, always remained more willing to work within the context of the *Länderrat*, where Bavaria's influence carried more weight, than in the eventual bi-zonal authorities where the *Länder* exerted considerably less direct influence.

Although the imminent creation of an inter-zonal authority generated apprehension that the Stuttgart council would become superfluous, the *Länderrat*'s general secretary, Erich Rossmann, evinced no immediate concern. Informed on 4 November 1946 of the Anglo-American decision, he told the *Länderrat* the following day that the new bi-zonal offices would be 'keine Magnetberge, die dem Länderrats-Schiff automatisch die Nägel ausziehen und es so zum sinken bringen'. The council, he went on, was not sinking; rather, it was merely shifting its cargo, a process in which south

German democrats could play an important part. He further expressed the hope that the *Länderrat*'s procedural and organizational example would modify the centralizing tendencies of the British-sponsored *Zonenbeirat*, a hope adopted by Ehard's government following the December 1946 elections.[32]

Advocating such a hope became important to the CSU and the *Staatsregierung* as the US began earnestly to look beyond its own zone. Referring to the inter-zonal control of economics, transport, finances, food and agriculture, and post and telecommunications, Clay plainly told the council on 1 January 1947 that 'der Länderrat auf diesen Gebieten keine unmittelbaren Aufgaben mehr zu erfüllen braucht'. The council's principal task was now 'die Verantwortung für die Durchführung der Abmachung . . .' in those areas where the bi-zonal offices assumed responsibility. He nevertheless maintained that the US authorities desired the continued existence of the *Länderrat*, a position reinforced by the US Secretary of State, James Byrnes, who stated in his Stuttgart speech of 6 September 1946 that the minister–presidents would be the possible members of a 'Deutscher Nationalrat' forming the basis of a future German government. Clay apparently confirmed this view by enumerating those competences still to be enjoyed by the Stuttgart body; namely justice, social policy, refugee care, culture and statistics. However, only in those instances where legislation deemed necessary by the US for its zone remained unattainable via the bi-zonal offices or four-power agreement would the *Länderrat* retain its authority to legislate for the entire zone.[33]

Despite Clay's partial reassurances, Ehard apparently remained unconvinced of the efficacy of too rapid a bi-zonal economic amalgamation. He gave vent to suspicion of a new, threatening centralism within the bi-zonal authorities and opened what one observer has called the Bavarian 'offensive' for a federalist construction of (western) Germany. Ehard spoke of the 'tief innerer Zusammenhang' between federalism and democracy, something he felt the Bizone, as it came to be called, could not provide. Without this federal structure, however, it would be impossible to bring 'Freiheit und Herrschaft, Kultur und Staatsmacht, lokale Verantwortlichkeit und Regierung eines Grossstaates auf *einen* (*sic*) Nenner . . .'.[34] This statement gives some indication of the south German (particularly Bavarian) idealization of federalism and federalism's equation with democratic development.[35] Nonetheless, such idealization not only remained an unbroken thread in the opposition of the Bavarian *Staatsregierung* and the CSU to over-hasty bi-zonal integration. It also constituted rather a break between the ideological positions of the CSU and the earlier BVP, the latter

having equated federalism not so much with the democratic development of German life as with a means of successfully resisting the control of the central government.

Reinforcing Ehard's reticence was the responsibility he felt toward the role to be played by the Bavarian *Landtag*. The minister–president held that the existence of *Land* legislatures in the US zone bestowed upon the *Länder* a degree of policymaking autonomy which, in reality, never existed. In this reckoning, the popular legitimation of the *Landtag*, in turn, endowed the minister–president with authority which Ehard was at pains to hold up to the military government and the bi-zonal administration. He remained throughout the period the most outspoken advocate of the incorporation of the *Landtag* in zonal and interzonal decision making, and he left his colleagues in no doubt as to his opinion. Speaking in the *Länderrat* on 4 February 1947 he stated:

> Man müsse eindeutig den Standpunkt einnehmen, der Landtag ist das einzige Gesetzgebungsorgan. Der Landtag müsste immer eingeschaltet werden, auch dort wo die Militärregierung Gesetze gibt.[36]

Although Clay made it clear to the minister–presidents that the US would not allow the *Landtag* to cripple occupation policy, a compromise of sorts was reached. In May 1947 a parliamentary council was established to provide the *Länderrat* advisory opinion on behalf of the *Landtage* of Bavaria, Württemberg-Baden, Hesse and Bremen. Thus the CSU acquired a voice not only in zonal executive matters but also in zonal parliamentary consultation.

Bavaria's self-assured position in the *Länderrat* had implications for the CSU's stance on western Germany's future. As has been seen, segments of the party began to consider seriously the creation of a western German state following the Munich conference of June 1947. For Ehard, the course was clear. If a western German state were to arise, then the *Länder* as such would have to be co-determinants of that state's formation. Bavaria could not allow a dictation of terms on the constitutional question such as had occurred in 1919. 'Nicht noch einmal', said the minister–president to the CSU congress in Eichstätt on 23 August 1947, 'darf einer allgemein gewählten Nationalversammlung die ausschliessliche Macht zur Herstellung einer Verfassung in die Hand gegeben werden!'[37] Of course, the Bizone of August 1947 was by no means comparable to the *Nationalversammlung* of January 1919. The former had, however, been reorganized in May 1947 to include a quasi-parliament in the form of an economic council, or *Wirtschaftsrat*, of 52 members. Munich feared the growth and possible

prerogatives of this body all the same and made it clear that the *Staatsregierung* would allow this council no usurpation of constitutional authority, despite the fact that the council's members were elected indirectly, that is by the *Landtage*, rather than popularly. On the contrary, a repetition of what the *Länderrat*'s secretary-general had termed 'eine selbstmörderische Zerfleischung der Parteien untereinander' in the Weimar period had to be avoided at all costs; this could be accomplished only by recognising, as Ehard did, that:

> die Konstituierung deutscher Staaten [ist] erfolgt, ohne dass irgendeine übergeordnete souveräne deutsche Gewalt vorhanden ist. . . . Nicht mehr lautet das Problem so, welchen Unterbau sich das Reich geben solle, sondern umgekehrt, wie eines Tages der überbau ausschauen soll, den sich die deutschen Staaten geben wollen.[38]

Ehard's stance – and that of his more vociferous supporters in the CSU – was determined at least as much by this fear of an inter-party 'Zerfleischung' as by a natural inclination to view the *Länder* as the genuine building-blocks of a new Germany. The minister–president had made this inclination clear at his election, and it remained a central feature of 'gouvernamentaler Föderalismus' that 'übertriebene Parteipolitik führe zu neuer Unfreiheit aufgrund ihres alleinigen Lenkungsanspruchs, während die Länderregierungen die eigentlichen Interessenvertreter des Volkes seien'.[39] This attitude harkened back to the semi-authoritarian views of the BVP's *Beamtenregierungen* but now possessed a much broader popular acceptance than had been enjoyed by the earlier party. A second, crucial difference between the two parties' positions was the CSU's unavoidable decision to opt for a 'Teilföderation' in the face of Germany's ever-deepening division. Here, Ehard put bluntly the views of many in the CSU:

> Ist es zu rechtfertigen, auf eine Einheit, die möglich ist, zu verzichten, und zwar um einer vollen und ganzen Einheit willen, die nicht zu realisieren ist . . . ? Sollen, dürfen und können wir die deutsche Einheit damit zurückkaufen, dass sich ganz Deutschland dem Osten geistig, politisch, seelisch und wirtschaftlich ausliefert . . . ? Heisst die mögliche lösung für Europa europäische Teilföderation, so heisst sie für Deutschland deutsche Teilföderation![40]

Certainly, not everyone in the party shared Ehard's vision. The *Bayerische Rundschau*, a journal leaning toward the Müller wing of the CSU, feared 'der völlige Bruch' if a 'Teilföderation' became reality and blamed the 'schuldenhafte Leichfertigkeit, Entschlusslosigkeit und Unkenntnis' of Germany's leading figures for the coming disaster.[41]

Such resistance was simply a manifestation of the intra-party problems which have been examined in the context of the 1946–47 CSU–SPD coalition. The Bavarian minister–president thus found himself confronted not only with the difficulties of putting a convincing federalist case to the military governments and political parties outside Bavaria but also with the problem of helping maintain a united front within his own organization. In this regard, the CSU's broad appeal relative to that of the BVP could occasionally act as a hindrance to the formulation of coherent policy. As the principal focus in German affairs shifted away from purely zonal concerns, as in the establishment in the US zone of *Land* governments and the *Länderrat*, to more interzonal concerns such as the bi-zonal economic administration, the CSU was to find that its internal squabbles affected the strength of the larger, Bavarian cause. The *Länderrat* itself was to exist for some two years to come; the Bavarian *Staatsregierung*, however, discovered that its self-perception as being the first among the *Länderregierungen* counted for less than the fact that the government itself was the product of a dynamic, if factious, political party.

THE FEDERALIST CASE AND THE ANGLO-AMERICAN REORGANIZATION OF THE *WIRTSCHAFTSRAT*, 1947–1948

In attempting to come to terms with bi-zonal economic integration and Bavaria's place in it, the CSU, as the state's governing party, possessed an advantage over its predecessor, the BVP; the CSU was not forced to placate – at least after the SPD's withdrawal from the government in September 1947 – any coalition partner. The federalist programmes of the BVP, for example the *'Bamberger Programme'* of 1922, had had to be formulated with an eye toward the possible repercussions which such a programme might have upon the BBB and/or the DNVP. The CSU, struggling at the end of 1947 to prevent too rapid a concentration of power in the bi-zonal authorities, had no such concern. On the other hand, the Bavarian *Staatsregierung* was forced constantly to take account of internecine rivalries within the CSU, rivalries which, as noted, had plagued the party since its inception. Consequently, the party leadership – and hence the *Staatsregierung* – tried to take the middle road between too much and too little federalism in order to keep all factions in the party satisfied.

The bi-zonal authorities confronting the federalist aspirations of Munich and the CSU in 1947 were the outgrowth of discussions which had had their beginnings as early as the winter of 1945–46. In keeping with the Potsdam

resolution on the unified economic treatment of occupied Germany, talks took place at the Bremen conference of minister–presidents concerning the creation of what James K. Pollock of the US military government termed an 'überzonenrat'. These talks remained ineffectual, however, due to fears of what results such western discussions could have in the Soviet zone; disagreements over whether the entire *Reich* or just its western half would be represented on such a council; and an inability of British and American representatives to agree on the council's modalities. In the end, the entire discussion was postponed pending the outcome of the second session of the four-power foreign ministers' conference in Paris in June and July of that year.[42]

In the wake of the Allies' failure to agree on an economic policy for the whole of Germany, General Clay had informed the *Länderrat* on 6 August 1946 to prepare for discussions with representatives of the British zone with an aim to effect the establishment of common economic authorities for the two zones. The actual agreements, made between the British and the Americans themselves, were formulated in the period from 10 September to 1 October 1946. The agreements were subsequently discussed in, and given token approval by, the *Länderrat*, a step not granted to the German authorities in the British zone.[43] Under the terms of these agreements, offices in differing localities were established to coordinate interzonal activity in five areas: economics in Minden; food and agriculture in Stuttgart; transport in Bielefield; finance in Bad Homburg; and post and telecommunications in Frankfurt. No central office was established for these authorities' regulation, a fact attributable not only to the south German voices already raised in opposition, but also to reluctance in London and Washington unnecessarily to antagonize the Soviet Union.[44]

Not surprisingly, the lack of a central coordination of the administrations' activities reduced their effectiveness. This shortcoming, aggravated by south German suspicion and a lack of genuine commonality of interest between the zones, compounded the effects of a very severe winter in 1946–47. Using 1936 as a benchmark, it was determined that industrial production in all four occupation zones had risen before the onset of the cold weather to 35–40 per cent of normal. With winter's arrival, including an extreme cold wave which succeeded in bringing road, rail, and riverine transport to a virtual standstill (Clay reported that the Rhine and Danube had frozen solid by December), production figures fell rapidly to 28 per cent of the norm.[45] As to the dangers inherent in an atmosphere of decline and despair, the US authorities were in no doubt. In a telephone conference with Washington on 23 February 1947, Clay informed his superiors in the presence of the minister–presidents:

> The result is that the German people are almost without hope, and people without hope respond easily to false promises and implanted ideologies. . . . We cannot have a stable Europe without a stable Germany. We are better off out of Germany than in Germany without the means to accomplish our objectives, because in either event, we will witness the fall of western democracy in central Europe.[46]

Recalling the effects of the popular radicalization of the 1920s, Ehard was equally concerned about democracy's prognosis in western Germany. He had already stressed the need for interzonal cooperation during a trip through the Ruhr basin with the other minister–presidents of the American zone exactly a month before. This cooperation could only really become effective, in his opinion, if there occurred an 'Angleichung der britischen an die US Zone', a possibility which, he concluded, was non-existent since the British-zone minister–presidents stood 'mehr oder minder unter dem Einfluss Schumachers'.[47] This influence manifested itself, in Ehard's and the CSU's view, in an overriding desire on the Social Democrats' part to deprive the *Länder* and the *bürgerlich* parties of influence in the formation of the new bi-zonal order. The Bavarian minister–president and his party, however, were no more willing to accede to this scheme than the BVP had ever been. He made this point again at a bi-zonal meeting of minister–presidents at Wiesbaden in February when he stated that successful cooperation could only occur via the heads of the *Länder* governments.[48]

Ehard's dissatisfaction with this state of affairs and the recognition of the dangers it posed received a sympathetic hearing elsewhere in the American zone besides the military governor's office. In January the justice ministers of the US-zone *Länder* had issued a joint statement denying the bi-zonal offices the right to issue directives to the governments of the zone. Neither the Bizone in and of itself nor either of the two zones separately constituted a *Staatswesen*. Hence they could not possess what amounted to legislative authority. On the contrary, this legislative prerogative lay exclusively with the *Länder*. Furthermore:

> Die durch die vorläufigen Abkommen geschaffenen interzonalen Verwaltungsstellen entsprechen nicht den Anforderungen, die von den Verfassungen [of the US-zone *Länder*] für die übertragung einer Gesetzgebung beeinflussenden Zuständigkeit aufgestellt sind.

Significantly, in view of subsequent developments, the justice ministers added:

> Diese Entwicklung begründet daher die Notwendigkeit, die in den vorläufigen Abkommen getroffene Regelung alsbald zu prüfen und dem veränderten Zustande anzupassen.[49]

The reorganization to which the justice ministers alluded – the creation of some body whose legislative functions would be determined in legal accordance with the constitutions of the *Länder* – posed, in itself, a significant step away from the public protestations of four-power unity concerning Germany's future. Here, however, Clay urged some degree of caution. At the time of his telephone conference with Washington, he informed the minister–presidents that the British and US authorities were withholding any political amalgamation of the Bizone until it could be determined whether the impending foreign ministers' conference in Moscow would succeed in reaching a common position on the formation of a German state. Pending a decision at that level, the Bizone's economic consolidation would continue 'ganz unabhängig' from any political considerations.[50]

While such a position tended to ignore the normative power of the facts of bi-zonal economic integration, Clay did write to George Marshall in the second half of March that integration could not be carried out in isolation. With this question hung those of Germany's borders; the problems associated with the proposed internationalization of the Ruhr; German demilitarization; and the formation of democratic government in Germany.[51] The latter point, needless to say, remained of particular importance to the CSU and the Bavarian *Staatskanzlei*. As events developed, the Moscow conference did not produce an agreement on Germany's political future, a development which acted to accelerate plans for the Bizone's reorganization. This reorganization, when it did come in May 1947, constituted one of the numerous stages in Germany's division into two geopolitical camps. Whether more a product of, or a contributor to, this ideological conflict, the fact remains that the division of Germany after the bi-zonal reorganization was potentially more permanent than before. In a fashion certainly not anticipated by even the most fevered south German patriot of the nineteenth or early twentieth centuries, 'los von Berlin' now stood the possibility of becoming reality.

Of central importance to the Bavarian opinion of the *Frankfurter Wirtschaftsrat*, as the entire centrally-located bi-zonal administration came to be called, was the issue of *Länder* representation. Coordinating the work of the five earlier, separately-located authorities now grouped together as *Hauptverwaltungen* were two bodies. These were the *Wirtschaftsrat* (from which the full organization drew its name) and the *Executivrat*. The economic council comprised 52 members elected by the *Landtage* of the two

zones, a provision setting the stage for the first party-political disputes over the fate of a future western German state.[52] The executive council, on the other hand, was made up of one representative each of the eight *Länder* of the two zones.

The economic council had legislative competency in the areas of economics, food and agriculture, post and telecommunications, and transport and finance. However, it also possessed vague executive powers. It could, for example, issue implementing statutes, or *Ausführungsbestimmungen*, in its own right or delegate their issuance. Alternatively, the council attempted to regulate relations in the parallelogram of competences between itself, the executive council, the *Länder*, and the *Direktoren*, the heads of the *Hauptverwaltungen*. The latter could not be bound, however, by the council's instructions.

The *Executivrat*, for its part, was unique in that it was 'halb Länderkammer, halb Reichskabinett'. It was intended to represent the interests of the *Länder* in the Bizone's affairs. Simultaneously, the body was to supervise the *Hauptverwaltungen* and the activities of the *Direktoren* whose nomination, but not whose confirmation, lay in its hands. Although technically exercising no legislative function, the executive council could propose legislation to the *Wirtschaftsrat* and issue non-binding opinions on the latter's own proposals. The *Länder* governments appointed the executive council's representatives and could recall them at any time. It remained a matter of dispute, however, whether the council's members were bound by their governments' instructions. The council had a rotating chairmanship whose first occupant was the mayor of Darmstadt, Ludwig Metzger. He was eventually followed by *Ministerialdirektor* Karl Speicher from North Rhine-Westfalia and Gebhard Seelos, the Bavarian representative. Seelos's chairmanship was the last, as the Bizone was overtaken by events.

Adding to the operational uncertainties of the bi-zonal administration was the perception of it by the government in Munich. It was a function of *gouvernamentaler Föderalismus* that the outward, national (or in this case super-regional) expression of government would be a constitution having as its head a collegial body exercising sovereign authority; in other words, a *Bundesratsverfassung*.[53] It is not unnatural that the Bavarian *Staatsregierung* would regard the *Executivrat* as just such a body in nascent form. This assumption was all the more reasonable, from Hoegner's and Ehard's point of view, given the existence and standing rules of the Stuttgart *Länderrat* and the perception that the British-zone minister–presidents had been rendered ineffectual by the political parties.

This apprehension assumed particular importance in view of the parties' greater influence in the economic council. At the same time, one must recognize that the CSU as a party had to have an interest in building as strong an influence in its own right as parties elsewhere in the Bizone. Dominance at home would allow a dual strategy: the party could use its domestic base as a springboard to influence western zonal developments generally; at the same time, the CSU would be able to retreat, if necessary, into a 'fortress Bavaria' if, for example, the forces of Social Democracy triumphed elsewhere in a German federation.[54] In this equation, a comparison with the BVP's *Ordnungszelle Bayern* of the 1920s is unavoidable. Such a comparison must note, however, that any CSU tendency in this direction has never carried anti-democratic overtones, as cannot be said of the earlier party. The tactical deviation between Ehard and the party leadership did not, of course, damp the former's (admittedly frustrated) hopes for the potential of the *Executivrat*. Indeed, he chose occasionally to emphasize the Allies' sovereignty in the matter of bi-zonal arrangements in order, apparently, not only to defuse *Landtag* opposition but also to steal a march on the parties' claim to speak for the nation.[55] Such sentiment may be viewed as indicative of the efforts of the *Staatsregierung* to steer a course between its desire to act independently as Bavaria's representative while being simultaneously the executive expression of the CSU's party-political ambitions. While other governments in the American zone shared this dilemma,[56] it took on more pronounced dimensions in a *Land* possessing a tradition of adamant insistence upon its constitutional rights.

The hopes doubtless awakened in Munich and elsewhere by Clay's statement of 2 June 1947 that he expected the *Executivrat* to develop 'allmählich zu einer Art Oberhaus',[57] failed to allay Bavarian dissatisfaction. Ehard continued to fear privately that the coming inter- and intra-party struggles would revive the fatal factionalism of Weimar, an apprehension which, as seen above, he shared with Erich Rossmann. Ehard saw clearly how the parties of the 1920s had 'sich . . . in dauernden taktischen Kämpfen völlig nutzlos aufgerieben. . . .' It was evident where this had led, and he hoped that the Germans were not simply beginning 'dieses Spiel' all over again.[58] Exacerbating these fears was the already-mentioned uncertainty over where the principal authority on the German side in bi-zonal affairs now lay. Not least because of this confusion, Bavaria could not expect, as the director of economics Johannes Semler wrote to Ehard, to fulfil 'alle berechtigten Wünsche' in its federalist plan.[59]

The Bizone's rapid administrative growth only made matters more difficult. Ehard had already discovered during his Ruhr trip in January that the

economic administration possessed 1700 staff, nine hundred more than originally planned. By the autumn of 1947, the reorganized authorities threatened to swamp Munich, Stuttgart, and Wiesbaden with what Minister–President Maier of Württemberg-Baden called a 'Hochflut von Verwaltungsordnungen'. Ehard concurred. He criticized the *Wirtschaftsrat* as being neither a purely regulatory body nor a pre-parliament and as a body created without contribution or advice from the German side.[60]

Exactly this state of affairs, however, threatened to revive *Landtag* opposition among the CSU's pronounced federalists in its *altbayerisch* wing. Alois Schlögl had already written to Ehard to express his dissatisfaction with what he (Schlögl) saw as the *Wirtschaftsrat*'s uncooperative attitude toward the *Landtage*. This attitude – and the feared SPD dominance of the council – could only be overcome, in Schlögl's view, if the CSU worked with other likeminded parties; one could count, for example, on the 'niedersachsische Landespartei [the German Party – DP] da diese den Standpunkt der Länder verteidig[t]'. The CDU, on the other hand, was unsuitable since it had 'überhaupt kein Gefühl für die Belange der Länder . . .' and 'eben keine Ländertradition'.[61] Echoing the views of the farming interests in the party which were already supporting Hundhammer, this sentiment boded ill for peace within the CSU. The leadership under Müller aimed at a wider cooperation with exactly the party rejected by Schlögl, and Ehard reluctantly sought the most effective Bavarian role possible in a bi-zonal organization which satisfied few.

No resolution for these difficulties arose from the second reorganization of the Bizone during the winter of 1947–48. General Walter Muller, Clay's deputy as head of the American military government in Bavaria, was replaced in November by the civilian former governor of Michigan, Murray D. van Wagoner. Although the latter attempted to shift from an occupation policy of 'control' to one of 'reorientation',[62] he found that competing competencies, sluggish economic growth, and general dissatisfaction generated by the dismantling lists which had been presented by the Allies in October all worked to prevent the hoped-for reinvigoration of the interzonal apparatus. American suspicions that the British aspired to too highly-centralized a zonal administration and one lacking parliamentary control were fuelled by the apprehension that the British, in cooperation with the SPD, planned a widespread socialization of heavy industry.[63] Such thoughts ran counter not only to US political–economic conceptions but also to the by-now established role of parliamentary activity in the American zone. The collapse of the CSU–SPD coalition in September may be viewed as at least a partial reflection, on the German side, of these inter-allied problems.

The suspected centralization also posed problems for the prospect of French cooperation in the economic integration and reconstruction of western Germany. It was generally assumed that Paris would reject any such overt centralization of the German economy, much less a future German government.[64] Despite the immediate postwar hopes of seeing the resurrection of a permanently weakened Germany, hopes based in part on an overestimation of French strength and a miscalculation of the benevolence of Soviet intentions, Paris had been forced to adopt not long after the Munich conference of June 1947 a policy aimed more at Germany's reintegration into European affairs than at her subjugation.[65] This revision, spurred on by the troublesome economic and administrative isolation of the French zone, had surfaced in certain circles of the French government as early as 1945 but had heretofore found little popular resonance.[66] Paris was now becoming aware, however, that a real possibility existed for the creation of a Western, anti-communist bloc, a bloc which, of necessity, would include western Germany. Realizing the impossibility of reconciling the earlier idea of a dismembered Germany with such a bloc's creation, Paris approached the impending second bi-zonal reorganization with the ultimate aim of joining the French zone to as loosely-federated a West German entity as possible.[67] This position would certainly have been interpreted in Munich as welcome support in the CSU's campaign.

The London conference of the Allied foreign ministers marked a watershed in so far as it drew the French irrevocably closer to the British and Americans in the three-power discussions following the conference's end. Paris now signalled a willingness to relinquish its demands for an internationalization of the Ruhr and agreed to consider joining its zone to the Bizone at some future date. Clay now also discarded his earlier reluctance about the implications of the Bizone's development. The question was now not simply one of providing the Bizone with more effective administration. Rather, a representative government, however provisional, had to be established as quickly as possible. The Germans evinced increasing displeasure with what Clay termed a 'colonial regime'. Although none of the German politicians working with the western powers were willing to admit it, Clay concluded, he remained convinced that they knew that the creation of a West German state (Ehard's *Teilföderation*) was the optimum solution now that the London conference had produced no results.[68]

Following the final reorganization's promulgation on 9 February 1948, the Bizone carried several nascent features of the later West German republic. The *Wirtschaftsrat* as such was retained but expanded to 154 members. It now controlled bi-zonal customs duties, indirect taxes, and a partial

income tax. It also elected the *Direktoren* of the various administrations, the latter growing to six in number with separate establishments for transport and labour. The directors were, in turn, under the leadership of an *Oberdirektor*. Assuming the position of the earlier *Executivrat* was a new body, the *Länderrat*, comprising two representatives of each of the *Länder*. The *Länderrat* was now given the right not only to discuss proposed legislation submitted to it, that is before such legislation went to the *Wirtschaftsrat*, but also to add amendments or impose vetoes. Amendments, however, could be overturned in the *Wirtschaftsrat* by a simple majority, vetos by an absolute majority.[69]

Not surprisingly, the Bavarian minister–president objected to this arrangement. In view of the 'unbestreitbare' fact that the Bizone was merely a 'Zusammenfassung der Länderinteressen', Ehard felt logic demanded that the *Länderrat* be given the ability to contribute effectively to the administration of the interzonal organization. This could only be accomplished if unanimous decisions, or 'übereinstimmende Beschlusse', of both chambers were required for the passage of legislation. This proposal represented a more or less exact repetition of suggestions made by Ehard to the British and American military governors in January. The call for unanimous decision-making undoubtedly reflected Ehard's positive experience with similar procedures in the Stuttgart *Länderrat*. Clearly, he felt these procedures were applicable to the bi-zonal authorities as well.[70]

This assumption, of course, overlooked the fact that there remained a considerable difference between achieving unanimity among minister–presidents in the US zone and reaching that same goal between two quasi-parliamentary chambers. On the other hand, it may be argued that this was precisely Ehard's intention. Knowing that the two bodies would rarely agree, Bavaria could avoid the long-dreaded *Majorisierung* by *Länder* controlled by centralist parties such as the SPD or the liberals. Thus, a fear which had provided a prime motivation for the BVP in its desire to rewrite the Weimar constitution, and one which had, indeed, deeply concerned the Bavarian Centre during the imperial period,[71] had not ceased to influence the CSU's stance after 1945.

The federalists' apprehensions concerning the new Bizone assumed greater significance given the perceived economic disadvantage of the US-zone *Länder* relative to those of the British zone. In the American zone, the *Länder*, particularly Bavaria, were still predominantly agricultural. The British-zone *Länder*, by contrast, possessed a massive industrial base. In the long term, this difference would tend to give the latter a predominant voice in West German affairs, since areas such as the Ruhr would provide the engine of economic recovery. Export-orientated industrial production

would raise revenue to pay Germany's reparations[72] (and thereby provide the north employment) while the American-zone *Länder* would be drained of their produce to feed the north's workers, raising once again the spectre of the first World War era exploitation of the south. Ehard's fears in this regard had already become acute before the May 1947 bi-zonal reorganization when the Social Democratic strongholds of Bremen and Hamburg had been granted separate votes in the economics administration.[73] Now, with the Social Democrats' strength in the *Wirtschaftsrat* equalling that of the CDU and CSU combined, Bavaria seemed once more at risk.

THE REORGANIZATION AND INTRA-PARTY REVOLT IN THE CSU 1948

Although Ehard felt that the *Länderrat* of 1948 was 'weit davon entfernt, die Qualität eines gleichberechtigten Gesetzgebungs-Organs (*sic*) neben dem Wirtschaftsrat aufzuweisen', he nevertheless hoped it would become 'ein brauchbares Instrument'. The *Wirtschaftsrat* would fail regardless of its intentions if the 'innere Bereitschaft' of the *Länder* to cooperate was destroyed by 'Kompetenz-Mischung' and 'Kompetenz-Überschneidung' of the economic council *vis-à-vis* the *Länderrat*. Above all, the *Wirtschaftsrat* would have to avoid becoming a 'zentrale Befehlsstelle'.[74] He recognized the voices in Bavaria which called for Bavarian abstention from the new arrangement. Nevertheless, he termed such a stance 'verfehlt' and 'sachlich nicht für möglich'.[75] As he had attempted to do in 1947, he dismissed abstention by pointing out that the bi-zonal authorities were a product of occupation law which was at all times binding. Consequently, the only viable option for the *Staatsregierung* and the CSU was to influence the Bizone's development from within in order to prevent its centralization.[76]

Despite Ehard's being attacked by increasingly vociferous, conservative Bavarian opposition for agreeing to the 1947–48 reorganization, he stood fast. 'Wenn wir uns beiseite stellen,' he declared to the CSU *Landeskonferenz* in Marktredwitz on 25 January, 'dann haben wir nicht nur keine Möglichkeit, ja zu sagen, sondern auch keine Möglichkeit, nein zu sagen!' The accusation that the *Staatsregierung* had crawled 'vor den Frankfurter Zentralismus auf dem Bauche' he rejected as a dangerous 'neue Art von Radikalismus'; these accusations' principal advocate, the BP, Ehard characterized as 'ein Element der Spaltung'. He also made a plea for unity within the factionalized CSU in order to prevent defections to the BP as the latter headed for imminent foundation as a statewide party.[77]

The minister–president's concern was warranted. The year 1947 had already seen the flaring of the *Kartoffelkrieg* between the Bizone and Bavaria, a dispute whose seriousness was greater than the name suggests. Following a severe summer drought, the *Wirtschaftsrat* had issued in October a directive empowering the director of agriculture, Hans Schlange-Schöningen of the CDU, to send inspectors to the *Länder* to supervise the potato harvest to ensure that the amounts delivered were in keeping with amounts harvested. Hoarders would be punished and their surpluses confiscated. In Bavaria, this order led to direct conflict with the agriculture minister, Josef Baumgartner, who had earlier been badly upset by his own failed candidacy for Schlange-Schöningen's post as well as by the latter's perceived violation of Bavaria's independence in supervising her own agriculture.

Baumgartner, an impassioned advocate of Bavaria's *Eigenstaatlichkeit*, threatened forcibly to expel the Bizone's inspectors if they did not first receive his permission to execute their inspections. Even threatened sanctions by the military government of a cut-off of food deliveries to Bavaria could not move Baumgartner to relent. Others in the government, however, including Ehard and the chief of the *Staatskanzlei*, Pfeiffer, did not relish the idea either of sanctions or of disputes with the military government in general. Mounting pressure from these circles eventually forced Baumgartner to climb down, even though his tough stand earned him praise from the right wing of the Bavarian political spectrum. Finally, a compromise was reached whereby the inspectors would 'legitimize' themselves at the agriculture ministry before conducting their investigations.

For Baumgartner, however, the dispute only embittered him further toward the Bizone and the CSU leadership.[78] The latter, he felt, had done Bavaria a disservice in the first place by supporting the 1947 election of Johannes Semler, a Müller candidate, as *Direktor* of economics. This support, in turn, had moved the CDU to claim the agriculture directorship for itself, thus denying Baumgartner the office. Now, Baumgartner's stand for Bavaria, and, one assumes, for himself, had come to nothing, the upshot being his resignation from the CSU in January 1948 and his joining the *Bayernpartei*.[79] That January also saw Fritz Schäffer re-enter the political arena. His presence only exacerbated the tense situation. Initially, however, it was unclear whether Schäffer would rejoin the CSU or follow Baumgartner to the BP. Schäffer's being again in the CSU would certainly embitter the intra-party differences still remaining from 1946–47. If, conversely, he went over to the BP, he threatened to envigorate the Right. A former cabinet member in the BP was serious enough; a former minister–president and co-founder of the CSU might prove intolerable. In February Schäffer replaced

Alois Hundhammer, at the latter's request, as head of the CSU's *Bezirksverband Oberbayern* and declared that the *Verband* would no longer follow instructions from the party leadership – i.e. Müller – until internal party reform – i.e. Müller's dismissal – occurred. Schäffer also hinted broadly that the entire Upper Bavarian organization might go over to the BP if matters were not resolved satisfactorily.

This rebellion, the deepest crisis in the CSU since the party's founding, rested in no small measure on an *altbayerisch* conception of the CSU as a movement – as opposed to merely a political party – which would be, above all, Bavarian and Roman Catholic. Although the leadership around Müller also professed to aspire to a goal above parties, it nevertheless accepted the risk that, in reaching across socio-confessional boundaries, some of the south Bavarian Catholic vote might be lost. For Schäffer, Hundhammer, and others, this risk could not be accepted. On the contrary, they placed a homogeneous, Bavarian Catholic bloc above the goal of a union as Müller envisioned it. They were prepared to challenge the Franconian Protestant presence in the CSU and that segment's possible loss to the party in order to prevent a splintering of their own constituency and the rise of the BP. The Schäffer–Hundhammer vision of a Bavarian 'Staats-und-Ordnungspartei' reinforced the already existing extra-Bavarian suspicion that the CSU sought a 1920s style *Abkapselung* from the rest of Germany, suspicions fuelled by a possible defection *en masse* to the BP.[80]

At the Regensburg meeting of the party's *Landesausschuss* on 28 February 1948, the expected support for Schäffer as the saviour of the party from Müller's ambitions and the threat of the BP failed to materialize. Despite rank-and-file support outside Schäffer's own *Verband*, particularly in Lower Bavaria, the meeting carried a motion accusing him of damaging the image of the party and Bavaria. The *Landesausschuss*, further, threatened to empower the party's executive board to reorganize the Upper Bavarian section, a decision clearly representing a tactical victory for Müller. In reaction Schäffer intensified his contacts with the BP, only to find that Baumgartner had meanwhile secured his hold on the BP's leadership. The Müller wing of the party, in turn, moved Schäffer's expulsion. To forestall this possibility, Schäffer eventually resigned.[81]

In deciding to resign, Schäffer found himself urged on by Ehard. The latter informed Schäffer that, considering the damage being done to the party by the fratricidal struggle, he (Schäffer) could not remain. The minister–president cannot but have feared for Bavaria's image within the framework of a new Germany if Munich's influence continued to be lacerated by internecine fighting, a fate which Ehard had always feared. Ehard's moderating influence now began to generate serious calls for his replacing

Müller as party chairman. These demands echoed sentiment first heard at the CSU's Eichstätt conference on 30–31 August 1947. It would be a year, however, before these demands became reality. Although Ehard stood close emotionally and intellectually to the Catholic-conservative wing of the party, he had never had to overcome too conservative a past. In addition, he had always remained aloof from party infighting.[82] At the same time, however, he stood solidly in the tradition of the Bavarian ministers of the Weimar era in so far as he saw the state as an integrating factor which allowed, indeed fostered, the presentation of a closed Bavarian political front to the outside world.

This integrating factor acquired special significance in light of the BP's early successes. The new party possessed in Josef Baumgartner a figure who, because of his activity as a farmers organizer, BVP man, and one-time government minister, not only enjoyed widespread recognition but also had considerable tactical ability and the courage of his convictions. His frustrated ambitions in the CSU notwithstanding, Baumgartner, as many others, may also have seen the BP rather than the CSU as that party possessing the 'true faith' in the advocacy of Bavaria's interests. Just what these interests implied in terms of the BP's federalist platform is clear – the dissolution of Germany as a unified political entity. The BP repeatedly demanded Bavaria's *Eigenstaatlichkeit* as a member of a German confederation and a united Europe. Only those rights would be given to the confederation, however, which were simultaneously given to the European union. The party attempted to circumvent the need for a German national state by speaking of 'regions' instead. The confederation would possess no constitution, merely a statute or rule (*Satzung*), and all decisions would require unanimous consent of the confederation's members. The BP may not generally have preached Bavaria's separation from Germany, but the party's conception of the latter was of a 'deutsche Völkerfamilie' or 'deutscher Raum' rather than a political unit.[83] The existence of the BP under Baumgartner's leadership was such that it exerted considerable influence on the CSU's position and image during later constitutional deliberations.

As it was, the short-term effect of Baumgartner's defection invigorated the BP. Licensed by the Americans on 29 March 1948 as a statewide party, the BP scored heavily in local elections in the spring, taking 8.9 per cent of the vote overall. This figure, though small when compared to the CSU's 37.8 per cent, was significant for it meant that the CSU now had another, specifically Bavarian opponent in the *bürgerlich* camp. Also, if the BP's results are viewed on a regional basis, one sees that the threat to the CSU was both real and immediate. In Lower Bavaria, for example, the new party

obtained 11.9 per cent while in Upper Bavaria its totals rose to an even more disquieting 19 per cent. Such gains were attributable in large part to the BP's resistance to the perceived blurring of Bavaria's cultural and political identity caused by intra-German population shifts. The sometime extreme federalist, sometime separatist inclination of the BP drew strength from an (anachronistic) desire to undo the *Reichsgründung* of 1871 and was enhanced by a populist, socialist-tinged anti-clericalism. In this tendency, the party evoked in its early phase memories of the pre-1933 *Bayerischer Bauernbund* with its anti-clericalist, particularist, and 'cooperative-socialist' orientation. Insofar as the BBB had earlier fulfilled the role of a counterpole in the countryside to the BVP, so now the BP assumed this position to the CSU. The defection of Baumgartner and others changed this opposition's complexion, however, by reducing the emphasis on liberal or socialist tendencies and adding a greater conservative appeal combined with monarchist elements. Enhancing this combination's appeal was the BP's consequent ability to portray itself as the genuine Bavarian *Landespartei*, organizationally and intellectually independent of other conservative parties.[84]

Reviewing the results of the spring elections, the *Mitteilungen der Christlichsozialen Union* of 12 June 1948 expressed the situation bluntly: 'Die CSU hat eine Niederlage erlitten.'[85] Not surprisingly, it attributed the party's defeat to internal squabbling and an insufficiently clear demarcation to the BP and feared the long-term damage being done. Konrad Adenauer, now the leading personality in the CDU, agreed. Having been informed by Schäffer of the latter's dissatisfaction with Müller, Adenauer intervened publicly. To the press in Cologne he stated on 31 May that all friends and supporters of the CSU in all zones had 'die dringende Bitte und das wärmste Verlangen . . .' that the CSU now put an end to the intra-mural fighting. Otherwise, the entire 'christliche Sache' would be 'empfindlich geschädigt'.[86] The ambitious Müller balked at such statements, and the difficulties within the CSU were to continue for a year before they were more or less definitively settled at the party conference in Straubing. Despite the protestations of good will and solidarity in the non-socialist elements of Bavarian society, it could not be ignored that the CSU was encountering considerable trouble in doing anything more than 'papering over the cracks'[87] which had contributed so much to the failure of German democracy before 1933.

Further weakening the party at this crucial moment was, ironically, the currency reform of 1948. Although Ludwig Erhard's social-market policies managed to effect, quite literally, an overnight change in the availability of goods and services and, at least initially, the money to pay for them, his neoliberalism annoyed the party leadership which had made its economic and

fiscal position clear in the party's Thirty Point Programme of 1946.[88] Müller may also very well have been displeased because Erhard's predecessor in the economics administration, Johannes Semler, had been one of Müller's own men. Having fought for Semler in 1947 in an election whose reperccussions contributed to Baumgartner's already-mentioned failure to become director of agriculture, Müller now had to watch as Semler's criticism of American economic policies led to the latter's dismissal. Compounding Müller's annoyance was Erhard's call for the harnessing of the skills of millions of refugees and expellees at the apparent expense of those already living in Bavaria. In response, Müller openly distanced himself from Erhard's policies and called for the latter's removal.[89]

At the party's organizational level, such an open dispute led to a 'massenhafter Mitgliederabgang' from the CSU to the BP.[90] This tendency, which was eventually to manifest itself most heavily in *Altbayern*, caused a concomitant collapse in member-generated party income for the CSU. The resulting side-effects sharply curtailed the CSU's ability to counter the BP's media propaganda. All of the CSU's broadsheets, for example, suffered during the summer of 1948 from a lack of funds and personnel to put them out.[91] These circumstances worked to make Bavaria's position much more difficult as the development of a West German state moved into a decisive stage.

4 Staking the Federalist Claim in Ellwangen, Frankfurt and Herrenchiemsee, March 1947–August 1948

THE *ELLWANGER KREIS* AND THE *ARBEITSGEMEINSCHAFT* CDU/CSU

The discussions in the CSU concerning the constitutional reformation of postwar Germany had, as has been noted, begun with the foundation of the party. To be sure, in the early days these discussions had been conducted on a rather informal basis, often in the form of exchanges of correspondence, as the physical difficulties involved in politicians' meeting one another could not easily be overcome.[1] This situation changed rapidly under the impact of the beginnings of reconstruction and the growing geopolitical alienation between East and West. Although it is historically inaccurate to classify that portion of Germany in the Soviet zone as ever having belonged to Eastern Europe, one may be allowed to say that, in the view of many responsible political leaders in the British and American zones, Eastern Europe had come to them in the van of the Soviet army in 1945. Minister-President Ehard's assertion that the whole of Germany would be intellectually, politically, spiritually, and economically delivered 'to the East' if a *Teilföderation* were not erected was not only a plea for a particular policy, but also the manifestation of a genuine apprehension.[2]

One body in which comparable sentiment played a role was the group of members of the CDU and CSU in the south German governments who began meeting in the Württemberg town of Ellwangen in March 1947. This group, known as the *Ellwanger Kreis*, had as its object the bringing together of leading *Union* politicians from the American zone in order to provide a programmatic counterpart to the growing influence of Konrad Adenauer in the British zone.[3] The *Kreis*'s first two meetings, on 1–2 March and 31 May–1 June 1947, were characterized by the Christian *Weltanschauung* which played so important a role in the conceptions of the *Union*'s early leaders. At the first meeting, Ehard, in a traditional Bavarian vein, attacked what he called north German militarism. If this militarism were allowed to combine with Bolshevism, the political expression of an Asiatic culture, it

would only lead to another war. Similarly, at the second meeting, which also saw participation by representatives of the French and British zones, the discussion topic was 'Abendländische Kultur und Anprall des Ostens'.[4] Interestingly, the CSU chairman, Müller, was not invited to the second meeting. He was certainly at odds with one of the *Kreis*'s prime movers, Anton Pfeiffer, who mistrusted Müller's close connections with Jakob Kaiser in Berlin and Müller's frequent trips there. Müller, for his part, appears later to have repaid the apparent slight in the directorial elections in the bi-zonal authorities that summer. More to the point here, however, is that the CSU's Christian orientation had survived a year-and-a-half of internal wrangling to emerge in 1947 still strong enough to affect leaders' decisions.[5]

The deliberations into which the CSU's leaders injected this religiously-tinted orientation had as their starting point a proposal put forward by Friedrich Glum, *Miniterialdirigent* in the Bavarian *Staatskanzlei*. Drawing upon experience gained before 1914 in the realm of economics and interior affairs and in the 1946 reorganization of the state chancellory,[6] Glum had originally prepared his draft – of which more will be said presently – for submission to the *Deutsches Büro für Friedensfragen*, or *Friedensbüro*. This office had been established at the time of the Moscow foreign ministers conference under the assumption that the 'leaders of approved democratic parties, trade union officials, and officials of the several state or provincial governments' would be allowed to put the German case concerning the future peace settlement.[7] Although it had been an American suggestion, the US authorities later dropped the idea so as not to jeopardize the hoped-for results in the Soviet capital.[8] Consequently, the *Friedensbüro*'s activities were redirected on to a zonal basis to coordinate the views of Munich, Stuttgart and Wiesbaden.

Attempting to use this coordination to advantage, the minister–presidents of the American zone in the Stuttgart *Länderrat* hoped to further their claim as spokesmen in foreign policy matters for part, if not all, for Germany. Speaking in this context, Erich Rossmann informed the *Länderrat* that there existed no persons with a greater legitimation to represent the Germans in matters affecting the peace settlement than the minister–presidents.[9] Anton Pfeiffer strongly supported this claim. 'Die Ministerpräsidentenkonferenz', he maintained, 'ist das zuständige Organ der aussenpolitischen Fragen zur Behandlung der Angelegenheiten für den künftign Frieden. . . .'[10] Following the shift of tentative American support away from this stance, however (and particularly in view of the not wholly successful Munich conference in June), the *Friedensbüro*'s activities tended

to reduce themselves discussions of Germany's future constitution rather than the question of a peace treaty.

In the draft which Glum had prepared for the latter body, he described his 'Constitution of the United States of Germany'[11] as a "Privatentwurf"[12] intended only as a basis for discussion. The fact that the draft's author, however, was an official of the Bavarian government made it perhaps inevitable that the document became the 'Ausgangspunkt der Verhandlungen in der Münchener Staatskanzlei . . . '.[13] Glum's Germany was, of course, to be a federal state. In a conscious harkening back to the nineteenth century, he proposed that in addition to a popularly-elected legislature, there would be a second, upper house – the *Bundesrat* – consisting of the 'ständig[e] Bevollmächtigt[e]' of the *Länderregierungen*. Simultaneously, these representatives would be in charge of the *Bundesämter*, or federal ministries, since the *Bundesrat* was to be the embodiment of the 'oberste leitende und vollziehende Behörde . . . '.[14] The office of the *Bundespräsident* would be filled by the chairman of the Bundesrat for one year. Further, the *Bundesrat*'s members would be elected indirectly, that is by the *Landtage*. Glum stressed the necessity of avoiding a 'zentrale Reichsleitung' which, if combined with too strong a 'Reichsparlament', could too easily pursue an imperialist foreign policy.[15]

Although Glum's draft bore strong resemblance in its particulars to the constitutional system of the imperial period, he himself stated that an even earlier form of German government, namely that of the pre-1866 German Confederation would be the appropriate structure of the state.[16] While this thought occasionally surfaced elsewhere in the CSU,[17] it was generally accepted in the *Staatsregierung*, and certainly by the party's chairman, that the clock could not now be turned back to a Germany of a league of wholly sovereign states as had existed from 1815 to 1866. Not only did political and economic considerations demand that the country now be tied more closely together, but it was also extremely doubtful that the US, given its position at the time of the acceptance of the Bavarian constitution regarding Munich's joining a future German state, would allow its Bavarian charges to pursue any such goal.

Coinciding roughly with the beginnings of the discussions of the *Union*'s government ministers in the *Ellwanger Kreis*, there began similar talks between the CDU and CSU themselves. In the wake of Anglo-American efforts to create a functioning bi-zonal economic structure, the political parties of the two zones came to enjoy ever-increasing prominence. Attributable primarily to the quasi-parliamentary features of the Bizone, this growing prominence spurred the leadership of the *Union* parties to

begin formal consultations on West Germany's constitutional prospects. In keeping with the parties' general claim to be the legitimate spokesmen of the nation, these CDU/CSU consultations eventually produced proposals somewhat at odds with those emanating from the *Ellwanger Kreis*, as will be seen.

The talks between the CDU and CSU began in earnest with the foundation in February 1947 of an *Arbeitsgemeinschaft* in Königstein im Taunus. In two aspects, this step was reminiscent of the Weimar-era cooperation between the BVP and the Centre. The *Arbeitsgemeinschaft* supplied the Bavarian party with a national, that is interzonal, forum in which it could put its case for a federalist structure of a new Germany. This forum, in turn, supplied political reinforcement to the CSU in Bavaria by providing the party with an extra-Bavarian community of interest. Such a community would help to offset the weight of the more tightly-knit and widespread organization of the SPD.

The working group had as its goal 'die ständige Zusammenarbeit der einzelnen Parteiorganizationen und ihre politische Übereinstimmung . . .'.[18] It recognized the 'grundsätzliche Einmutigkeit' for a federal German state and disavowed separatism '[i]m selbstverständlichen Bekenntnis zur organisch gegliederten Einheit Deutschlands . . .'.[19] This last point would have been much to the liking of Josef Müller who represented the CSU on the executive board which was established when certain 'programmatische Unterschiede'[20] prevented the election of a single chairman for the *Arbeitsgemeinschaft.*

These differences centred on disputes between Adenauer and Müller's mentor, Jakob Kaiser, as to who would speak for the *Arbeitsgemeinschaft* on foreign policy issues.[21] Kaiser, for his part, not only still aspired to the leadership of the CDU in his own right, but also sought to use the *Arbeitsgemeinschaft* to support his own Soviet-zone CDU organization as it came increasingly under pressure from the SED.[22] Complicating the matter further was Müller's apprehension that Adenauer would use the *Arbeitsgemeinschaft* and the conference of the heads of the *Union*'s various *Land* organizations (the CDU was not to have a single federal organization until 1950) to eliminate the CSU as a separate entity. Not unnaturally, Müller found this solution unacceptable.[23] The CSU chairman clearly aspired to what was termed a 'Reichsunion'[24] but not at the price of the existence of his own party.

As early as 10 March 1947, a constitutional committee of the *Arbeitsgemeinschaft* met in Heppenheim an der Bergstrasse under the leadership of a member of the Hessian *Landtag*, the lawyer Heinrich von

Brentano. The committee drew up a constitutional proposal which, beside a popularly elected *Volkskammer*, foresaw a *Länderkammer* which would participate 'gleichberechtigt' in the passage of legislation and the formation of the political 'Gesamtwille'.[25] No participation in the building of the government would be allowed, however. As to the composition of this second chamber, it would possess what subsequently came to be called a mixed form. Of the eight representatives assigned each *Land*, four would be elected by their respective *Landtage*. Unlike Glum's proposal, however, the other four would be appointed by the *Land* government. Of the four elected by the *Landtag*, none would be allowed to belong to the government of the *Land* from which he came.[26] Clearly an effort to strike a balance between the ideal of *gouvernamentaler Föderalismus* and party politics, this *Heppenheimer Entwurf* foreshadowed the difficult path ahead as a *Weststaatsgründung* became a possibility. Not least, it showed that marked differences still remained within the CDU and CSU as to the proper degree of decentralization to be sought.

Following further meetings of the *Ellwanger Kreis* on 20–21 September and 22–3 November 1947, a committee of that group was commissioned to finalize the circle's deliberations for presentation to the *Arbeitsgemeinschaft*; after gaining the views of the constitutional expert, Hans Nawiasky (who had advised Hoegner during the formulation of the postwar Bavarian constitution), this process was completed in March 1948.[27] The most important details – from the Bavarian viewpoint – were the proposed powers of the *Bundesrat*. Comprising two representatives of each *Landesregierung*, this body would elect the *Bundespräsident* and have confirmation rights over his nominees for the federal government. The government would have to have the confidence of the popularly elected *Bundestag*, but could effect no legislation without the approval of both houses. While these prerogatives were in keeping with Munich's wishes, the collegiality of the federal executive contained in Glum's original draft had been dropped. Thus was let fall a demand which, had it been implemented, would have been the historical completion in western Germany of the development of the *Bundesrat* of the imperial period, and, to a lesser extent, the standing *Gesandtenkongress* of the even earlier German Confederation.

This important modification notwithstanding, the suggested powers of the *Bundesrat* were such that Adenauer began to fear for the viability of a future German government. At a meeting of the *Kreis* in Bad Brückenau on 13 April 1948, Adenauer reacted to the March proposals 'mit verbissener Entschiedenheit'.[28] He felt that the position of a federal chancellor under the suggested provisions would be too weak to survive. However much the

parliamentary system had 'sinned' during the imperial and Weimar eras, the German people and, Adenauer openly hinted, the British-zone CDU would never accept what he called 'eine ganz unmögliche Konstruktion'. Glum replied by saying that a *Bundesrat* as envisioned in the March paper would provide a valuable element of stability in the event of political crisis. This argument, however, failed to convince Adenauer who believed that that very stability would only entrench the rule of the Social Democrats whom he feared would control the upper house. The two views could not be reconciled, and the meeting resulted merely in a communiqué which acknowledged the need for a second legislative chamber but left open the question of that chamber's composition and authority.[29] The members of the *Kreis*, however, refused to give up their ideas completely. Taking account of the CDU's objections, they circulated in June a form of compendium of the discussion to date. In view of the similarity between the *Kreis*'s constitutional conceptions and the subsequent efforts on Munich's part in this direction, it is appropriate that the letter's contents be viewed in some detail.[30]

The *Kreis* made it clear that (despite Glum's views) it did not aspire to a *Staatenbund* of the 1815 variety but rather to a genuine *Bundesstaat* which would eventually join a European confederation. Federalism would now naturally succeed since Prussian hegemony had been eliminated, provided no new 'Prussia' were erected in the British zone.

Legislatively, the federation would receive only those prerogatives expressly granted it in the constitution, thus eliminating any areas of creeping centralization. State law would be subordinate to federal law but the latter's administration would be the task of the *Länder*, the exception being the *Bund*'s right to ensure legal uniformity among them. Exclusive federal legislative competency would exist in foreign affairs, monetary regulation, weights and measures, customs, constitutionally-allocated taxes, the post, and telecommunications.

In the important area of *Bund–Länder* finances, the *Kreis* felt that the federation would have to meet its needs from profits generated by the federal monopolies, or *Bundesbetriebe*. These included, for example, the post, railways, customs and consumption taxes. In so far as normal federal expenses could not be met in this fashion, contributions or *Beiträge* of the *Länder* would cover the shortfall. The possibility to arrange extraordinary temporary contributions also existed. Income and property taxes would rest solely with the *Länder*, the *Bund* having the right to ensure that rates did not differ extraordinarily from one *Land* to the next.

Concerning a future German parliament, the *Kreis* suggested a popu-

larly-elected *Bundestag* possessing modified proportional representation so as to avoid the fractional splintering of the Weimar *Reichstag*. In the proposed *Bundesrat*, representation would be by members of the *Länderregierungen* bound by instructions and voting in blocks. Whether all the *Länder* would have the same number of votes was left undecided.

The federal president would be elected by the *Bundesrat*, or, if this proposal proved unattainable, by the *Bundestag* upon the suggestion of a nominee by the *Bundesrat*. Hearings of the *Bundesrat* would be required in the naming and dismissal of government ministers. Further, the upper house's approval would be needed for the passage of all legislation; executive regulations; organization of the federal authorities; instructions to the *Länder*; the appointment of the highest federal officials and judges; and the proclamation of a state of emergency. This approval would rise from a simple majority to a two-thirds majority in the case of constitutional amendments.

As regarded the make-up of the *Bundesrat*, the circular admitted to a difference of opinion with the SPD and elements of the CDU around Adenauer. While the circular suggested *Bundesrat* members' appointment by the *Länderregierungen*, the SPD and Adenauer wanted them elected by the *Landtage* in senatorial fashion. These approaches reflect, once again, the differing views on the efficacy of party control of the state, even through a democratically-elected parliament. As in the past, the circular held up the example of the Stuttgart *Länderrat* as a model of what could be accomplished under the aegis of the *Länderregierungen*, and closed with a warning of the dangers of both centralism and separatism.

Ehard reiterated many of these views in a meeting held in Munich from 24 to 26 June 1948 among members of the Bavarian government and *Landtag* and foreign experts called in by the military government to discuss Germany's reconstruction.[31] He added that a second chamber based upon corporate composition, as had been suggested in certain CDU circles, would also fail since, like a party-dominated one, it would soon disintegrate into interest groups. (Given the corporate nature of the Bavarian senate as it had been constructed under the 1946 constitution, this reservation seems curious.) The minister–president restated his opinion that the *Länder*, with their democratically-legitimated constitutions, had to be given the opportunity to prepare jointly a constitutional draft which, in turn, could be submitted to a 'Parlament'. Only in this fashion would it be possible for the *Länder* to declare 'ob und welcher Form sie sich zu diesem Werk bekennen wollten'. As events developed, the federalists in Munich were to be given exactly this opportunity only several months hence.

THE FEDERALIST CASE AND THE FRANKFURT DOCUMENTS

Given the increasingly bleak prospects in the period 1945–47 for an agreement among Great Britain, the US, France and the Soviet Union on a peace settlement for Germany, the three major Western powers took the step early in 1948 of reaching a consensus among themselves and with Belgium, the Netherlands and Luxembourg concerning the establishment of a provisional West German state. The resulting Six Power Conference of the Western Allies and the Low Countries which met in London on 23 February to 6 March and 20 April to 2 June 1948 expressed the hope that the decisions reached there would facilitate the search for a solution to the problem of a lack of four-power agreement on Germany rather than hinder it.[32] Of course, the London meeting had immediate implications for the Bavarian federalist cause.

To be sure, unmistakably heavy hints had already been dropped as to the conference's eventual outcome. Thus, the German side was already aware of what the meeting portended. As early as 14 May, the American and British military governors, Clay and Robertson, had met with Ehard, the minister–presidents Hinrich Kopf (Lower Saxony) and Hermann Lüdemann (Schleswig-Holstein), and *Bürgermeister* Max Brauer (Hamburg) in Frankfurt.[33] Although Clay stated that nothing concerning the London conference's results was to be allowed to 'durchsickern', he nevertheless informed the assembled heads of government that 'zu einem ziemlich naheliegenden Zeitpunkt' a 'begrenzt verfassungsmässige Regierung' would be established. To the heads of the *Länderregierungen*, said Clay, would fall the responsibility of determining the 'notwendige Prozedur . . . , nach der das Gremium [for the deliberation of a new constitution] gewählt wird'. Therefore, by the time the Six Power Conference issued its final statement, Munich was aware that it was planned to have the minister–presidents play an important role in the formation of a new western German state. If this role actually developed less effectively than the minister–presidents had originally hoped, this was not due solely to any lack of enthusiasm on their part. On the contrary, general party-political resistance to their ambitions and party dominance of the subsequently elected *Parlamentarischer Rat* also had a major influence.[34]

On 1 July 1948, the heads of government of the eleven *Länder* of the western zones were called to Frankfurt to receive the three now-famous Frankfurt Documents, guidelines to be observed in the formation of the new political order. Significantly, from the minister–presidents' point of view, it was they and not the political parties who were commissioned in Document

One with the task of calling a constituent assembly. This assembly would, in turn, prepare a constitution providing for

> a governmental structure of the federal type which is best adapted to the eventual establishment of German unity at present disrupted, and which will protect the rights of the participating states, provide adequate central authority, and contain guarantees of individual rights and freedoms.[35]

If the proposed constitution did not contradict the guidelines as set down in the Documents, then the military governors would submit it for ratification by the *Länder*. This ratification would be by referendum in each *Land*. If accepted in two-thirds of the *Länder*, the constitution would become binding on all.

Once again, as at the time of the ratification of the Bavarian constitution in 1946 and during the bi-zonal amalgamation, the occupying powers (particularly the US) made it quite clear that a revival of a nineteenth-century style confederation would not be tolerated in 1948. Much less would any fanciful ideas of Bavarian separatism be allowed to block the process of Western political consolidation. The French, recognizing the necessity of the hour, also agreed formally to join their zone to the Bizone once 'weitere Fortschritte in der Schaffung der notwendigen deutschen Einrichtungen, die für das ganze Gebiet zuständig sind, gemacht werden . . .', a decision which was merely reinforced by the Six Power Conference's agenda with its exclusive concentration on the various implications of the reintegration of western Germany into western Europe.[36] Nevertheless, the western powers committed themselves unequivocally to the creation of a federal system, thereby at least reducing, if not banning, the risk that the centralization against which the BVP had struggled in the interwar period would reawaken.

In Document Two, the minister–presidents were instructed to prepare suggestions for a territorial reorganization of the *Länder*. These suggestions were to take account of tradition and population, and were expected to create *Länder* of viable size.[37] While primarily intended to rectify the confused situation in the French zone, this document also directly affected Munich's still-extant claim to the Rhenish Palatinate and, of course, Lindau.

Finally, in Document Three, the Allied governments reserved to themselves a number of prerogatives. These reservations included supervision of German foreign policy and foreign trade; reparations; decartelization; disarmament; demilitarization; and certain areas of scientific research. Further, the military governors reserved the right to resume full control in the event of a threat to security or to ensure compliance with *Land* or federal constitutions and/or an occupation statute.[38]

In view of the momentous nature of the Documents' provisions, Ehard urged caution at the Frankfurt meeting. He clearly had uncertainties about moving too quickly:

> Unter keinen Umständen dürften sich die Ministerpräsidenten davon leiten lassen, dass sie unter Zeitdruck stünden und etwa auf den Termin des 1. September Rücksicht zu nehmen hätten [the date proposed in Document One for the convening of the constitutent assembly] . . . [E]s müsse überlegt werden, ob nicht von deutscher Seite Gegenvorschläge zu machen sind.[39]

After having repeatedly urged the need for a *Teilföderation*, Ehard's caution now earned him a degree of criticism for apparently beating a retreat.[40] It is, perhaps, fairer to say that he now simply wanted – and not unnaturally so – to secure the best deal possible for Bavaria and his party.

Despite his reservations, Ehard recognized what he called the 'historic fact' that, for the first time, all eleven heads of government of the three Western zones had met jointly with the military governors 'um von diesen grundlegende Beschlüsse der Besatzungsmächte entgegen zu nehmen, die der Herstellung eines gemeinsamen staatlichen Lebens . . . dienen sollen'.[41] The minister–president made note of procedural precedence in that he indicated that the political parties had not been entrusted with this task. That fact was of 'grundsätzlicher Bedeutung' since in the commission lay the recognition that 'die Länder den Ausgangspunkt und die Grundlage für jede höhere deutsche staatliche Gemeinschaft darstellen'.[42] As if to reinforce this position yet again, the *Staatsregierung*, in a paper on the Koblenz meeting of minister–presidents to discuss modifications to the Documents, stated that the conference of government heads was the 'berufene[r] Sprecher genenüber den Besatzungsmächte', and that even during the sitting of the party-dominated constituent assembly, the minister–presidents would be 'die einzigen Gesprächspartner' of the Allies, thus forming a sort of 'regency council' for the German nation.[43]

Meeting from 8 to 10 July, the minister–presidents and the heads of the major parties drew up a number of proposals to modify the Documents. One sees immediately, of course, that the minister–presidents' claim to be Germany's exclusive spokesmen was compromised by the parties' leaders' inclusion in the discussions. Nevertheless, a common response was formulated, one which annoyed the Allies by its detailed nature. The objections to Documents Two and Three were the most easily agreed and may be dealt with first.

The conferees agreed that territorial reform was necessary but would have to be postponed until orderly conditions had been established. The

conferees also objected to the numerous reservations, some participants seeing them as 'worse than the status quo'. Most importantly, the conferees, in an effort to limit the damage in the Soviet zone which a Western state might cause, stressed the Allies' total 'responsibility' for the initiative,[44] an attitude which, while understandable, seems in retrospect somewhat ingenuous.

In place of the 'verfassunggebende Versammlung' referred to in Document One, the conference chose 'Parlamentarischer Rat (verfassungberatende Versammlung)'. The designation, clumsy as it was, never gained general acceptance and was eventually halved. Similarly, the designation 'Verfassung' was replaced with 'Grundgesetz (vorläufige Verfassung)'. Again, economy eventually reduced this label to 'Grundgesetz'.[45] Vocabulary difficulties aside, the conference hoped to provide with these changes a provisional character to their work. Concerning the contents of the *Grundgesetz*, the conference decided that the Parliamentary Council would make the necessary determinations but that the *Länder* would 'selbstverständlich' have the right to put their case.

As for ratification of the Basic Law, the conferees proposed votes by the *Landtage* rather than by referendum as stipulated in Document one. Since the *Grundgesetz* could not be a constitution for the whole of Germany, it could not be made subject to ratification by the sovereign voice of the people. There were also fears of communist or nationalist agitation during a possible referendum campaign. Furthermore, ratification by the *Landtage*, in the conferees' reckoning, assured the document's approval 'mit überwältigender Mehrheit', while simultaneously satisfying the demand for popular approval since the *Landtage* were 'die demokratisch legitimierten Vertreter von 45 (*sic*) Millionen Einwohner'.[46] From Munich's point of view, *Landtag* ratification of the *Grundgesetz* would also allow the states to play a direct role in the setting in motion of the new system in a way which the BVP-led Bavaria of the interwar period never had. Reinforcing this difference was the fact that the CSU possessed, in the persons of Hans Ehard and Josef Müller to name but two, several very capable and influential figures who were intimately involved in the constitutional deliberations from the very beginning. Although the two men shared a 'heftige Gegnerschaft' in questions of the proper degree of federalism in the new state, they made certain that Bavarian counsels would be heard.[47]

Despite the fact that Ehard kept the Americans informed of the German objections to the Documents,[48] the Allies' irritation was not diminished. In a meeting on 14 July with American-zone minister–presidents in Frankfurt, Clay was, according to an oral report of Ehard and Pfeiffer, 'voll des Ausdrucks einer schweren Enttäuschung'.[49] Not only did Clay feel that the

minister–presidents had not used the chance given them; they had also played into the hands of the French, against whose opposition Clay had struggled to acquire for the Germans the authority to establish a Western state. Ehard countered by saying that all the participants had the same goal, namely creation of a 'Trizone' possessing appropriate executive and legislative powers. He reiterated his cautious position of 1 July, adding that the minister–presidents had to consider not only possible repercussions in the Soviet zone but also the strengths and wishes of the political parties without whose consent 'keine Lösung zu finden [sei]'.[50]

The US authorities, of course, were not unaware of this last concern of Ehard's. A report circulating in the American military government stated similar views:

> The position of the minister presidents (*sic*) whose individual good will need not be questioned, was admittedly not an enviable one. Unconfirmed reports regarding the circumstances surrounding the Koblenz meetings insist that CDU/CSU/SPD representatives – Dr. Adenauer – Cologne, Dr. Müller – Munich, and Erich Ollenhauer – Hannover – settled all party differences and agreed upon a common course which they proceeded to impose upon the minister presidents. The party leaders are among the strongest exponents of a central German government.

To this inner-German conflict the report ascribed opposition to the Documents, but, attempting to explain an apparently more general feeling of resistance, added:

> Natural resentment of the occupied against the occupier may account for some more but much remains unexplained. It almost appears as though many Germans concentrate their undoubted ingenuity upon the task of proving the impossibility of recommendations which they consider unpopular for reasons best known to them. If such recommendations are put in effect, Germans can disclaim responsibility and place the blame upon someone else, preferably upon the Occupying Powers which can conveniently be denounced for preaching democracy without practicing it.[51]

The 'reasons best known to them' could, of course, have been a function of exactly this inner-German conflict aggravated by fears for fellow Germans in the eastern zone. The SPD, in an effort to forestall permanent geopolitical division, had already called on 29 June merely for a *Verwaltungsstatut* instead of a *Grundgesetz*, the latter being 'überflüssig und abzulehnen'.[52] The CDU, for its part, approved in principle the proposed federal system and bicameral legislature but left open the modalities.[53] This stance did not

prevent the latter party, however, from taking a more critical position than sections of the CSU and the Bavarian *Staatsregierung* regarding the Allies' prerogatives. To these parties' views must be added, in Bavaria, those of the BP. Not surprisingly, the BP rejected not only the Allies' proposals but also the German response. For Baumgartner's party, the events since the beginning of July amounted to nothing more than 'eine seltsame Eintracht der Scheinföderalisten, der Zentralisten und ihrer Schattenfiguren'. The outcome of this combination could only be the 'Linie der Vernichtung' of 'selbständige' entities such as Bavaria.[54] Thus, in view of Ehard's comments at the meeting of 14 July; the military government's own intelligence; and the attitudes of the western zone's two major parties and the BP, an acceleration in the shift away from an attempted *gouvernamentaler Föderalismus* of the period 1945–47 to a federalism whose principal feature would be party-dominated *Länder* becomes apparent.

To be sure, there was considerable overlap in the developmental phases of this shift. Indeed, one might say that the process began as early as the 1920s with the undisputed dominance of the Bavarian government by the BVP. Nevertheless, the *Beamtenregierungen* of the earlier period, although technically controlled by the party, were characterized by a much stronger tendency to act independently of the party's will, thus looking backward in time to the governments of the imperial period. In a way, Ehard's first two governments could be seen as standing on the threshold of the two stages in so far as he promoted Bavaria's interests with a government which at times attempted to act more or less on its own; that is, not wholly in conjunction with the wishes of the leadership of what was simultaneously becoming a mass party.

Such was the fluidity of the situation at this time, however, that the minister–president could deliver a speech to the *Landtag* in which he remained convinced of the primary of the *Länderregierungen*. On 30 July, Ehard reported on the state of the constitutional development since the handing over of the Frankfurt Documents. He admitted that the 'Teillösung' in the western zones would hinder 'dem gesamten Deutschland angemessene Gesamtlösung'.[55] Nevertheless, the Germans of the western zones could not afford to allow the 'Schwebezustand' to continue when they had the chance to help rectify the situation. The vacuum which otherwise threatened Germany could only become inevitable if they did not take advantage of this opportunity. He announced the formation of an 'Experten-Ausschuss' which was to meet to formulate the minister–presidents' case to be presented to the *Parlamentarischer Rat*. He presumed agreement on the need for a 'gleichberechtigte gesetzgebende ... Körperschaft' to represent *Länder* interests and added, somewhat prematurely, 'Bayern und das bayerische

Volk könnten dann ohne das Gefühl eines Zwanges oder einer Majorisierung von aussen her . . . in die neue Bindung einer wieder erwachenden gesamtdeutschen Staatlichkeit eintreten.'

THE HERRENCHIEMSEE CONVENTION

In keeping with the instructions issued by the Allies in the first of the Frankfurt Documents, Minister–President Ehard invited the western zones' *Länder* to send representatives to a meeting on the Herreninsel in the Chiemsee in Upper Bavaria to prepare 'Richtlinien für ein Grundgesetz' prior to the convocation of the Parliamentary Council.[56] The sending of representatives by the *Länderregierungen* corresponded to the tradition in Germany whereby the executive branch of government at times of constitutional reorganization would propose a draft document for presentation to a constituent assembly. This method having been the case in 1870 and 1918, the heads of the *Länderregierungen* assumed that, in 1948, they would function as this executive.[57]

Reinforcing Ehard's stance in this issue was the fact that within Bavaria, too, there existed this tradition in the form of the *oktroyierte* constitutions of 1808, 1818, and to an admittedly lesser degree due to the revolutionary confusion then prevailing, the *Staatsgrundgesetz des Republik Bayern* and the *Vorläufiges Staatsgrundgesetz des Freistaates Bayern* of 1919. The 1946 constitution could be considered another example.[58] In none of these cases, of course, had the executive merely proposed and disposed in political isolation. Inevitably, other factors – be they social, economic, political or military – had influenced the course of events. Nevertheless, what is of interest here is that this tradition survived world war and revolution to reemerge after 1945. Seen in this light, the claim to leadership in the western zones by the minister–presidents in the immediate postwar period does not seem extraordinary, nor does the convention of their representatives at Herrenchiemsee.

Despite whatever tradition-based legitimacy a body such as the convention may have possessed, it acknowledged that 1948 was not 1870. The convention was purely an advisory body and set itself the limitation of taking 'keinerlei politische Entscheidungen'.[59] It is perhaps just as well that the convention recognized this limitation, for the SPD had announced that it would not be bound by what it called 'private agreements' reached at Herrenchiemsee. The *Arbeitsgemeinschaft CDU/CSU* agreed, merely saying subsequently that it would not submit any constitutional proposals of its own to the Parliamentary Council.[60]

Given the assumption of authority on the part of the minister–presidents, the chiefs of the *Länderregierungen* were being asked by Ehard as early as 16 July (that is, well before the Allies had accepted the German modifications to the Documents) to send their plenipotentiaries to Herrenchiemsee.[61] Certainly by 25 July agreement had been reached upon the convocation of the committee of experts which was given the name 'Verfassungsausschuss der Ministerpräsidenten-Konferenz der westlichen Besatzungszonen'.[62] Meeting from 10 to 24 August 1948, the convention may be seen as the last joint effort by the *Länder* to fill the self-appointed role of trustees for the future of Germany.

Ehard's choice of location for the convention was, if the point even need be made, no accident. As one observer has so trenchantly remarked, the Bavarians hoped to imbue the meeting with the *genius loci* of Bavarian statehood through the selection of King Ludwig II's extravagant palace of Herrenchiemsee as the convention's meeting place.[63] Joining the other delegations among the 'propitious symbols'[64] of the place, Bavaria was officially represented by the state secretary in the interior ministry, Josef Schwalber. Accompanying him were two assistants, *Ministerialrat* Clauss Leusser and *Staatsrat a.D.* Otto Kollmann. An official from the finance ministry, Richard Ringelmann, and the adviser at the time of the writing of the Bavarian constitution of 1946, Hans Nawiasky, were also present to provide expert opinion. As chairman the convention elected Anton Pfeiffer.[65]

As the convention began the consideration of Germany's constitutional future, the important question of the country's sovereignty had to be addressed. On the one hand, the extreme federalists, represented primarily by the Bavarians, maintained that Germany had *de jure* ceased to exist at the time of the capitulation in 1945. This being the case, so it was reasoned, the country had literally to be reconstituted by voluntary agreement among the now sovereign *Länder* as it had been in the nineteenth century. Such an argument had arisen in 1918–19 and its advocate had been, as at Herrenchiemsee, Bavarian. The earlier attempt, however, had been turned back by the Prussian Hugo Preuss on the grounds that the *Reich* had not needed to be created anew but merely 'entsprechend fortgebildet . . . '.[66] Preuss's view, in 1948 guise, also prevailed among the majority of the convention despite the immeasurably greater destruction and the total occupation of 1945. According to this interpretation, Germany had not ceased to exist. Rather, her sovereignty had been only temporarily assumed by the wartime Allies. The important consequence of this opinion, of course, was that the political parties, as the predominant spokesmen for the nation prior to 1933, remained in this role for the western occupation zones in 1948.[67] It was a role adopted by the parties as a result of the evolution

of mass politics in Germany in the late nineteenth and early twentieth centuries, one which could not now be renounced.

Other comparisons may also be drawn between Herrenchiemsee and the constitutional deliberations of 1919. In the wake of the First World War, the long-held tradition of the authoritarian state, or *Obrigkeitsstaat*, only partially gave way to the teaching of popular sovereignty. Some of the most powerful elements of German society – the army, the churches, and the bureaucracy – were cool, if not openly opposed, to any such change. By contrast, in the western zones in 1948, this opposition had been eliminated. In the case of the CSU, it did not even find a foothold outside sections of the arch-conservative Hundhammer wing of the party. This resistance to change in the earlier period had aggravated the difficulties facing those who wished to move away from the federalism of the empire to a more centralized political order. In the end, the centralists felt that the change had not gone far enough while the federalists felt that it had gone all too far. Thus, both sides were dissatisfied. Again, in 1948 a different starting-point led to a different result. With the experience of Weimar still fresh in their minds, all reasonable politicians agreed that a more or less decentralized system was required to prevent a repetition of dictatorship and collapse. (In addition all of the Western powers advocated, in varying degrees, such decentralization.) Further, there existed no question of a 1920s-style problem of a Prussian–*Reich* dualism or of a pre-existing national government with which the convention, or the Parliamentary Council for that matter, would have to compromise.[68] Indeed, the very fact that the Council would be elected from the *Landtage*, rather than directly, of necessity dictated a more decentralized beginning to the new state than was the case in 1919. This remains true even if the Council was to be dominated by party *Fraktionen* instead of any form of direct *Land* representation.

This generally-accepted need for a more decentralized government found its clearest expression in the popular desire at the convention for an effective second legislative chamber in the new state. Exactly this demand, with the emphasis on 'effective', had been a major demand of the BVP throughout the Weimar era and had been adopted by the CSU in 1945. The institution of such a chamber would go far to correct the defects of the Weimar constitution, a document regarded by the Bavarian representatives as 'mehr Gegenbeispiel als Beispiel für das Grundgesetz'.[69] The convention made the point that this second chamber would operate in conjunction with 'ein echtes Parlament' and would correspond to and be grounded upon the historical fact that the German nation itself had traditionally been 'in Ländern gegliedert'. The upper house would bring 'das Element Land zur Geltung'

and would, finally, comply with the wishes of the Allies as expressed in the Frankfurt Documents.[70]

Notwithstanding this general agreement, the convention could not, in the end, formulate a common position on the second chamber's composition. Therefore, two options were included in the final report: a *Bundesrat* of the type espoused by Munich and the CSU, that is a body comprising representatives of the *Länderregierungen*; and a senate composed of 'unabhängig[e] Einzelpersonen' elected by the *Landtage*, this second possibility being supported by the SPD and many in the CDU. There seemed, however, room for manoeuvre between the two fronts. On the one hand, the supporters of the senate idea appeared willing to allow for 'close' contact between senators and their governments, possibly extending this to the privilege of attendance at cabinet meetings. On the other hand, the advocates of a *Bundesrat* agreed in principle to restrict membership to officials of the *Länderregierungen* or their 'Vertrauenspersonen' and dropped the demand for binding instructions on *Bundesrat* representatives. While senate partisans did not share their colleagues' enthusiasm for the *Bundesrat*, the former did acknowledge that a *Bundesrat* solution corresponded to Germany's historical development since the acts of the Congress of Vienna. More specifically, they admitted: 'Immer war die Ländervertretung eine Vertretung der Regierungen'. They objected nonetheless that a senate would still be more democratic than a *Bundesrat* since the latter in their view, would allow too great a bureaucratic influence within the government.

In addition to attempting to rectify the problem of effective legislative authority, the convention also considered the sensitive issue of a federal executive. The CSU was keenly interested in avoiding the difficulties which the BVP-led Bavaria of the interwar period had encountered with too strong a *Reichspräsident*. The head of state as proposed at Herrenchiemsee would, unlike his Weimar counterpart, not be allowed to rule by decree, nor to influence the process by which a *Land* could be forced to comply with federal law during an emergency. The convention thus hoped to avoid another *Staatsstreich* as had occurred against Prussia in 1932 and the helplessness with which the other *Länder*, including Bavaria, had had to accept the *Reich*'s actions. Since the new federal president would have no influence over the composition of the government, he would not be elected by popular vote. An added benefit of this procedure would be the avoidance of the radicalization which had accompanied the national presidential campaigns of 1925 and 1932.

Although the convention was in fact concerned lest the office of *Bundespräsident* be reduced to that of a mere figurehead, the idea did arise during the deliberations of replacing the single federal executive with a

collegial leadership. This idea, already having surfaced in the ranks of the CSU and in the *Ellwanger Kreis*, had, as had been noted, found favour with Ehard. The Herrenchiemsee version would have been a triumvirate consisting of the president of the *Bundestag*, the president of the *Bundesrat*, and the *Bundeskanzler*. This system would, in the opinion of its supporters, safeguard against a single president's potential inability to remain aloof from party infighting and power struggles. In addition, it would give better expression not only to the dynamic of the new state but also to its provisional nature. Interesting though this idea may have been, however, it remained the position of a small minority.

A third problem which the convention attempted to resolve was that concerning the respective realms of legislative competency of *Bund* and *Länder*. The delegates hoped so to regulate their proposals as to avoid a confusion of competences and too great a degree of financial dependence of either side upon the other. Such delineations, 'klar und erschöpfend', as one CSU paper put the matter,[71] would forestall either the federation's or the states' possible efforts to undermine the constitutional independence of the other by attempting to regulate matters outside their purview. This prevention would, in turn, preclude the debilitating constitutional disputes of Weimar.

Exclusive prerogatives of the federation would include those fields which, by their very nature, could not be regulated by the *Länder*. This *ausschliessliche Gesetzgebung* would include foreign affairs (although this particular point was academic at the time); questions of nationality; coinage and customs; passport controls; post and telephone regulation; federal statistics; and matters of extradition. The convention also produced a long register of affairs in which it felt the presumption of control should go to the *Länder* so long as the *Bund* had not already made use of its legislative authority. In any event, however, this federal authority could only be used to regulate 'was einheitlich geregelt werden muss'. This *Vorranggesetzgebung*, a term which the delegates felt was a 'gleichbedeutendes besseres Wort . . . ' than the adversarial-sounding *konkurrierende Gesetzgebung* of Weimar, included such varied areas as civil and criminal law; regulation of the press; general transport; and social security. In these areas, *Land* law could not be proscribed under the condition that 'ein Stoff nur vom Bund geregelt werden *darf* (*sic*)' but only in so far as 'er geregelt *worden ist*'.[72]

This presumption of *Land* legislative competence was critical from the Bavarian point of view. It was exactly the reversal of this presumption, begun during the Weimar Republic, which in Munich's view led to the growing helplessness of the *Länder* in the face of the *Reich*'s abuses of its

power. The subsequent step to the 'völlige Aushölung' of the *Länder* during the Nazi dictatorship had been a small one.[73] This tendency 'das Mark aus den Knocken [den Ländern] zu ziehen' would reappear in the future German federation unless 'durch die Verfassung ein Riegel vorgeschoben wird'.[74] The demands made by the Bavarian delegation at Herrenchiemsee that there be a clear delineation of competences between the *Bund* and the *Länder* was to remain consistent throughout the deliberations of the Parliamentary Council in Bonn.

One of the fields in which an undermining of *Länder* interests was most energetically to be resisted was that of *Bund–Länder* finances. The Herrenchiemsee delegates maintained that in order to avoid the problems of Weimar, neither the *Bund* nor the *Länder* could be allowed to be placed 'auf die Gnaden' of the other. Although opinions differed as to the most effective way of implementing a fair distribution of financial resources, it was generally agreed that in so far as the federation's financial requirements could not be met through its own income, the *Länder* would have to cover the shortfall. This coverage would be provided either through unspecified *Beitragsleistungen* or through an annually-determined division of a common income between the *Bund* and the *Länder*. In any event, monies which the federation did not need or no longer needed would have to be made available to the *Länder*.[75] This latter distribution could not be allowed, however, to degenerate into a system of *Dotationen*, or allocations, to the *Länder*. Otherwise, the new state would go, in Munich's opinion, 'den Weg . . . den die Weimarer Republik und das Dritte Reich gegangen sind, der das Reich zum ausschliesslichen Steuersouverain (*sic*) und die Länder schliesslich zu Schattenfiguren des Reichs machte . . . '.[76]

Unanimity existed among the delegates concerning granting the *Bund* authority for customs, as had been the case during Weimar. In addition, a majority held that the federation should have the presumption of legislative competence in all areas of 'bundesrechtlich zu regelnden Steuern' where these might fall into the category of *Vorranggesetzgebung*. This rather vague provision, however, was not more exactly defined. Interestingly, even certain local taxes, such as the *Schlachtsteuer* or the *Getränkesteuer* were included here, one assumes to the discomfiture of the Bavarians. In this last instance, Munich made an unsuccessful effort to institute the levying of a special beer tax which would be subject solely to *Land* control "angesichts des hohen Anteils Bayerns an Bierverbrauch auf Grund altherkommlicher Verbrauchsgewohnheiten und angesichts der historischen Bedeutung der Biersteuer im bayerishen Haushalt . . . '.[77] Such a beer tax, of course, had been one of the most important historic Bavarian *Reservatrechte* of the imperial period.

Finally, in order to protect the administrative structure of the *Länder* from creeping centralization, the convention proposed four types of administration. The first, *landeseigene Verwaltung*, would permit the *Länder* to carry out those tasks resting in their purview with their own officials free from federal regulation. The second type, *Landesverwaltung nach Weisung*, would allow the *Länder* to execute most federal laws but subject to instruction from the federal government. This instruction would, for example, ensure that legal uniformity existed throughout the federation. Under a third type of administration, the *Bund* would carry out with its own *bundeseigene Verwaltung* those functions specifically assigned to it by the *Grundgesetz*. In the fourth type, the convention proposed the creation of bodies which would regulate themselves entirely as public corporations. These *Selbstverwaltunskörper des öffentlichen Rechts* would be subject to federal laws in terms of their establishment, general functions, and responsibilities but would remain administratively independent of the federation.[78]

While the discussion at the Herrenchiemsee convention may have aroused memories of the *Reich–Länder* disputes of the 1920s, as indeed they were – after a fashion – intended to do, it should once again be noted that at the time there existed no national constitution into which the *Länder*, principally Bavaria, attempted to force amendments. Rather, there existed a constitutional vacuum which the representatives of the minister–presidents were aspiring to fill. The difference is notable. To be sure, unanimity of ideas did not by any means characterize all of the results of the convention's deliberations, nor were its decisions binding on the soon-to-be-convened Parliamentary Council.

The convention's results – majority and dissenting – nevertheless reached the Council as a set of recommendations which cannot be assumed to have had no impact upon the discussions in Bonn. Given the importance of the Council in its own right, it may well have been said after the fact that great use was not made of the convention's recommendations.[79] Even assuming this, however, it must be recognized that the Parliamentary Council was aware of the convention's desires, particularly as several of the convention's participants sat in the Council.[80] Certainly the members of the convention, at least on the Bavarian side, did not feel that their work had been for nought. Anton Pfeiffer stated unequivocally that the Herrenchiessee proposals acquired a 'beherrschende Stellung' among the delegates of the Council.[81] Ehard concurred, saying that '[e]s gibt heute niemanden mehr, der es bestreiten könnte oder es bestreiten wollte, dass diese Vorarbeit eine sehr wesentliche Grundlage für die Ingangsetzung der Beratungen des Parlamentarischen Rates gewesen ist'.[82] A CDU member of the Council from Hesse, Dr Walter Strauss, was even more definitive. He stated clearly

that '[i]n den Arbeiten aller Auschüsse [of the Council] ergab sich von anfang an, dass man der Systematik des Herrenchiemsee'er [*sic*] Entwurfs folgte und auch seinen Text den Beratungen zugrunde legte.'[83]

Whether these confident pronouncements were borne out in Bonn nevertheless remains open to question for the quite simple reason that the convention could not forward binding recommendations to the Parliamentary Council. While the Herrenchiemsee decisions may indeed have been instrumental as a 'wesentliche Grundlage' for the setting in train of the Bonn discussions, the Council, once convened, nonetheless took on a dynamic of its own and threatened to move totally beyond the influence of the minister–presidents. The liaison office established by Munich in Bonn represented an effort to counteract this threat by supplying a direct line of influence to the Council's deliberations.[84]

Ehard had already given vent to Munich's apprehensions in this regard on 12 September, only eleven days after the Parliamentary Council's opening. In a speech to the *Bayerischer Bauerntag* in the Swabian city of Memmingen, he acknowledged the Council's freedom of action in so far as it was not bound by previous constitutional deliberations, such as those of Herrenchiemsee. He could not understand the fact, however, that there existed in certain circles tendencies to dismiss the convention's efforts. He underscored once again the position that the *Länder* had to be acknowledged to be the final arbiters in the constitutional reckoning and closed with a foreshadowing of the difficulties which still lay ahead:

> Es darf . . . nicht übersehen werden, dass er [the Parliamentary Council] keine souveräne Körperschaft ist, deren Votum nach erfolgte Beschlussfassung ohne weiteres Gesetz wird. Das letzte Wort werden die Länder haben. . . .[85]

5 The Federalist Effort in Bonn, September 1948–August 1949

Convening on the banks of the Rhine at Bonn on 1 September 1948, the *Parlamentarischer Rat* brought the federalist demands of the CSU and the Bavarian government into a truly super-regional forum. The Council also represented the final opportunity to build into the new West German state from its inception those safeguards considered essential by the Bavarian side to prevent a repetition of the failures of the democratic system of Weimar. As has been seen, the party and the *Staatsregierung* attributed the earlier failure primarily to two causes: the insufficiently strong representation of *Länder* interests through the agency of an appropriate legislative body; and a less than perfectly clear delineation of competences between the central government and the governments of the *Länder*. Certainly, these problems were not completely separable from one another, and, given this connection, it is perhaps appropriate here to conduct a brief review.

The constitutional inability of the Weimar *Reichsrat* to put the case for *Länder* rights at the national level had encouraged the *Reichstag* to intrude into affairs heretofore controlled by the *Länder*. This problem was particularly acute in terms of the raising and distribution of tax revenues and in the maintenance of internal order. From these intrusions grew the assumption that what *could* no longer be controlled by the *Länder should* no longer be controlled by the *Länder*. This entire process, although it had its beginnings in the *Reichsgründung* of 1871, had gained much impetus at the time of the *Nationalversammlung* in the wake of the revolution of 1918. Aggravated by the economic calamity and concomitant political radicalization of the 1920s, this development degenerated into an ever-increasing tendency toward rule-by-decree. Even Article 48 of the Weimar constitution could not prevent further instability. Indeed, it may be argued that such high-handed actions as von Papen's dissolution of the Prussian government in 1932, based as that move was on the selfsame Article, only served to heighten this instability. If Prussia, the strongest *Land* of the *Reich*, could not forestall such an end, surely Bavaria could not hope to do so. The Bavarian People's Party, the principal south German advocate of the historic rights and identities of the *Länder vis-à-vis* the central government, was never overwhelmingly enthusiastic in its support of the first German republic, and it never succeeded – either through resistance or accommodation – in staving off the same fate. Although able, along with

the Social Democrats, to retain a remarkably high percentage of its voting base throughout the period, the BVP and the *Land* it led could not evade the tide of National Socialism and the war it carried with it.

Founded in 1945 in a conscious effort to overcome the narrow confessional and socio-economic bases of the *Bayerische Volkspartei*, the Christian Social Union nevertheless developed, as has been noted, two rather distinct tendencies in its postwar constitutional aims. Supported by rival factions within the party, these tendencies generated between them a tension which not only adversely affected the CSU's domestic fortunes to the benefit of rival parties such as the *Bayernpartei* but also impinged upon the party's effectiveness as a defender of Bavaria's rights in the process of constitution-building in the western occupation zones in the years 1948–49.

One current of thought, centred upon the CSU's chairman, Josef Müller, and finding its principal support among the young and among liberal Catholics and the Protestants of northern Bavaria, recognized the CSU's uniqueness as a Bavarian phenomenon and the place Bavaria should have in a future federal German state. Nonetheless, this wing of the party leaned generally in what in 1920s parlance was termed a *reichstreu* direction. In this orientation, the Müller wing evinced a greater readiness to cooperate with the Christian Democratic Union in the British and French zones, and initially in the Soviet zone. It also accepted, in 1948–49, the creation of a West German state which, while recognizing the right to existence of the *Länder*, would possess a rather strong central government.

The tenor of the other wing of the party, focused on the former chairman of the BVP and first postwar Bavarian minister–president, Fritz Schäffer, attempted to mould the CSU into the lineal and ideological successor of the BVP. This group, like Müller's adherents, saw in the CSU a uniquely Bavarian organization. Unlike Müller, however, Schäffer, Alois Hundhammer and their supporters viewed with disfavour any close organizational ties between their party and Konrad Adenauer's CDU. They also objected strenuously to a federal state which would deprive Bavaria of her *Eigenstaatlichkeit*. This sovereignty would extend in the political, economic and administrative spheres so far as to be comparable – in the more extreme proposals – almost with autonomy. Particularism of this sort found its most avid exponents in the Munich organization of the CSU and in southern Bavaria among a population which was still overwhelmingly Roman Catholic and predominantly agricultural. This particularism fed on a combination of memories of Bavaria's past and the effects of economic and demographic changes caused by the war and its immediate aftermath; it found its constitutional manifestation in the stubborn insistence that any

larger political entity possess only those prerogatives which Bavaria and the other *Länder* were willing to grant to it. In this instance, the Schäffer/Hundhammer wing reawakened memories of the BVP's suspicion of the wisdom of allowing any central government too closely to control Bavaria's affairs. Although threatening to burst into open rebellion against Müller's leadership in 1948, this sentiment was partially subdued with Schäffer's resignation from the party in January of that year. Another casualty, however, was Müller himself, whose defeat as chairman will be examined below.

The debilitating effects of this internecine conflict notwithstanding, Hans Ehard, Bavarian minister–president since December 1946, attempted to carry on the business of government and reconstruction and at the same time present Bavaria's case in various interzonal and inter-allied fora. Not to be ascribed specifically to either wing of the party but tending intellectually toward the conservative–particularist Schäffer/Hundhammer group, Ehard had consistently striven at every opportunity to maintain Bavaria's rights as he perceived them. From the *Länderrat* of the US zone to the bizonal economic administration; from the Munich conference of *Länder* government heads to the Herrenchiemsee Convention, Ehard's prime concern was always to strike the best deal to be had for Bavaria in any larger political arrangement. At the same time, he studiously attempted to avoid ideological rigidity. In the constitutional deliberations which began in Bonn in the autumn of 1948, this pragmatism was to stand the CSU and Bavaria in good stead even if the party ultimately failed to accept the results of the Bonn negotiations.

THE BAVARIAN DELEGATION AND *DIENSTSTELLE*

In accordance with the procedure set down in the Frankfurt Documents and the discussions which followed them, the Bavarian *Landtag* elected on 25 August 1948 thirteen representatives to be sent to the sixty-five member Parliamentary Council.[1] With proportions corresponding to the parties' strengths in the *Landtag*, the CSU was assigned eight delegates, the SPD four, and the FDP one.[2] As these numbers were based upon the *Landtag* as elected in 1946, Josef Baumgartner raised objection to the selection. He maintained that a fundamental shift had occurred in the political structure of Bavaria in the two intervening years and pointed to the spring 1948 election results as proof of his assertion. On this basis, Baumgartner who since his resignation from the CSU had sat *fraktionslos* in the *Landtag*,[3] demanded that Bavaria's delegates be apportioned to take

account of these local government election returns.[4] While such reckoning, had it been used, would have given the BP one seat in Bonn,[5] Baumgartner in fact demanded four places in the 'Körperschaft zur Vorbereitung eines trizonalen Verwaltungsstatuts'.[6] Ehard, prepared to compromise, was willing to grant one or two seats to the BP at the CSU's expense. Müller, however, stood fast and prevailed upon the minister–president to reject Baumgartner's demands.[7]

Although the BP came away empty-handed, the existence of that party's opposition to the right of the CSU certainly affected the latter's position in Bonn. It must be assumed that the CSU's leadership had to be cautious in accepting too readily decisions reached there so as not to drive more members into the BP's ranks. This argument, of course, applies more to the Müller wing of the party than to that around Hundhammer. The latter was already suspicious of what would come of the Council's deliberations. Even the pragmatic Ehard had to be careful, however, lest the BP feed upon Bavarian dissatisfaction with Bonn and, growing correspondingly, threaten the more general stability of the state. Hence, Ehard did everything in his power to effect success for his party on the Rhine.[8]

As events developed, Müller's success in the question of granting seats to the BP had an interesting result. With the retention of the delegates which otherwise would have gone to the *Bayernpartei*, the CDU and the CSU in their combined strength equalled exactly the strength of the SPD, namely 27. The FDP had five delegates; the *Deutsche Partei* (representing particularist interests in Lower Saxony), KPD, and the re-established Centre Party two each.[9] Pfeiffer, the *spiritus rector* of the *Ellwanger Kreis* and one of the principal strategists of the rights of the *Länder*, was elected chairman of the CDU/CSU group, or *Fraktion*.[10] In Konrad Adenauer, elected president of the Council, there nevertheless existed a possible brake on the Bavarian ambitions to establish a second legislative chamber in the form of a *Bundesrat*. Adenauer, it will be remembered, did not necessarily support a *Bundesrat* solution to the second-chamber problem. On the contrary, the CDU leader did not rule out a senate as it had been discussed at Herrenchiemsee.[11] Of course, there was also the SPD with whom the Bavarian side would have to contend.

In addition to the presence of the CSU members in the Council, the Bavarian *Staatsregierung* attempted to exert direct federalist pressure in Bonn. This attempt was coordinated by the Bavarian *Dienststelle*. Intended to serve as a conduit of information to and from Munich, the *Dienststelle* hoped to ensure that the *Länder* were heard in Bonn. Although all of the *Länder* were entitled to establish such offices, only Bavaria took advantage of the opportunity. That is not say, however, that the additional Bavarian –

or any other state's – presence was entirely welcome. The law establishing the *Dienststelle* was passed in the *Landtag* in August, yet the Parliamentary Council took two full months to settle upon a procedure regulating *Land* participation in the Council's affairs. Indeed, the Council had rejected outright the idea of allowing the *Länder* heads of government to sit in either its plenum or on its committees for fear of creating a prejudice in favour of a *Bundesrat*.[12] Munich's standing representatives at the *Dienststelle*, Claus Leusser and Richard Ringelmann (both of whom had been members of the Bavarian delegation at Herrenchiemsee), were, however, allowed to participate in an advisory capacity in the sittings of the CDU/CSU group.[13]

Ehard eventually attempted to add weight to this presence in Bonn by repeatedly travelling there himself. He made it clear early on that the heads of the *Länderregierungen* had to be given the opportunity to bring their 'Erfahrungen und Wünsche' to the Council's attention[14] but was no doubt frustrated by the Council's ultimate decision relegating him and his colleagues effectively to the status of onlookers. Nevertheless, Pfeiffer would be able to report in January 1949 the numerous observations in the CDU/CSU group and in Adenauer's office that only Bavaria had made her desires known through her *Dienststelle* representatives and her minister–President.[15] Ehard himself quantified this information by reporting to the CSU's *Landtag* delegation in March that he had already travelled to Bonn five times by that date.[16]

The principal object of all this attention was, as noted, the safeguarding of the interests of the *Länder* in the new western state through the creation of a second chamber. It was clear to all concerned that the idea of a so-called 'pure' *Bundesrat* solution, that is a *Bundesrat* which would name and dismiss, if not constitute in itself, the federal government, was dead.[17] The leaders of the parties, including Josef Müller, had shown in Koblenz and at Herrenchiemsee that they would oppose this proposal. Instead, the argument in Bonn was shifted to the question of whether this second chamber would be a senate or a *Bundesrat* now described as modified.[18] Unfortunately for the extreme federalists around Hundhammer, 'modified' meant, in practical terms, 'restricted prerogatives'.

THE STRUGGLE IN THE COUNCIL

Pfeiffer, as head of the CDU/CSU group, was aware that there was no clear advocate in his camp for the senate idea as such. He knew nevertheless that sentiment existed favouring a body of mixed composition.[19] Fearing a further shift in this direction, Ehard informed Pfeiffer via Karl Schwend,

editor of a pre-1933 BVP journal and official in the Bavarian chancellery, that the CSU group in Bonn should stand fast on the issue of a *Bundesrat*, this solution being the hinge of his (Ehard's) entire policy. He added that Müller, too, now saw the *Bundesrat* – albeit one with limited authority – as the only suitable answer to the federalist question.[20] This conversion was significant in so far as it allowed the CSU to speak with a more coherent voice. Müller, however, had apparently agreed to the idea only under the condition that only *Land* cabinet ministers, and not unelected officials, be allowed to sit in the body. In this fashion, Müller hoped to eliminate the threat of bureaucratization of the upper house,[21] a fear which he shared with many in the CDU. By siding with the minister–president, the CSU chairman also hoped to shield himself from attacks by the Hundhammer wing of the party. The latter supported Ehard in this matter and could not be critical of Müller's stance without being at least implicitly critical of the minister–president as well.[22]

Ehard continued to stress his viewpoint to Pfeiffer in a letter of 27 September 1948. He told Pfeiffer that it was, in effect, less important to secure individual prerogatives for the *Bundesrat* than it was to create 'stabile Verhältnisse auf dem Gebiete der Zuständigkeiten'[23] so as to avoid the threat of creeping centralization in the new state. So also would be avoided 'ein dauernder Verfassungskrieg' as had been waged between Bavaria and the *Reich* during the Weimar period. He held out the threat of the CSU and, therefore, Bavaria having to reject the *Grundgesetz* if that was necessary to preserve the federalist cause. With this threat, however, the Bavarian minister–president did not intend to go the way of separatism, a course which he categorically rejected.[24] Rather, he hoped to cast a warning to the Council not to recreate the problem of a discontented Bavaria within a larger German unity. He nevertheless made it clear to Pfeiffer that there remained one demand which could not be renounced under any circumstances; that was the appointment of *Bundesrat* members by the *Länderegierungen.*

As the Bonn deliberations progressed, however, it became clear to Ehard and the CSU that some sort of compromise might become necessary. An article in the *Süddeutsche Zeitung* of 25 September was representative of various reports reaching Munich that a mixed chamber incorporating features of both *Bundesrat* and senate might be adopted in the Council.[25] The idea of a mixed chamber was, of course, not new in *Union* circles. The conference of CDU/CSU *Land* chairmen had already decided in the spring, on the basis of the *Ellwanger* discussions, to consider a chamber in which 'die Hälfte der Mitglieder von den Regierungen ernannt, die anderen von den Landtagen gewählt werden sollte'.[26] To be sure, Josef Müller

had at least technically moved away from this position, but the CSU's constitutional expert in the Council, Laforet, still did not rule out the possible acceptance of such a body.[27]

In response to this report, Ehard wrote to Pfeiffer that, as before, no compromise could be accepted in the composition of what Ehard, unlike all others, often referred to as the 'Erste Kammer'.[28] To preserve this composition, however, Ehard now seemed willing to allow for a degree of latitude in that chamber's powers. Of course, the *Bundesrat* could not be so weakened 'dass man . . . auf das völlig unzulängliche Niveau des ehemaligen Reichsrats [of Weimar] abrutscht'. That earlier body could be overruled at any time by the *Reichstag* which was, in turn, controlled by centralist parties such as the SPD and Centre Party. Without doubt, Ehard wished to avoid a repetition of that situation. This he would accomplish by requiring *Bundesrat* approval of all amendments to the *Grundgesetz* and any laws having 'einen verfassungsändernden Charakter'. By all other laws it might suffice for the *Bundesrat* to possess a 'gut überlegt[es] Veto-System' whose vote requirements might be graduated according to the legislation under consideration. For example, the number of votes required to overturn a veto of finance legislation would be greater than that required to overturn a veto of a new divorce law. As in the matter of *Bundesrat* composition, however, Ehard drew a line beyond which he felt the CSU could not retreat. In no way should the veto system be so arranged as to acquire the reputation – 'in den Geruch kommen' – of being simply an unconstructive sign of disapproval. Thus, Ehard implied, the CSU could avoid the stigma of being labeled *reichsfeindlich*, as the BVP had been, by constantly attempting to block legislation which it could not effectively alter.

By this tactical withdrawal from the demand for a legislatively fully equal *Bundesrat* as Ehard had frequently conceived it heretofore, Munich appeared to hope to preserve as much direct *Land* influence in federal affairs as possible by giving way on non-essentials. The federalists, as represented in the Council by the CSU, were in a helpless minority being supported openly only by the two delegates of the *Deutsche Partei*. For the rest, the Council was dominated by the blocs of the SPD and the British-zone CDU, the latter of which by no means always supported the CSU. Also falling on the more centralist side of the scale was the FDP and certainly the KPD, while the two Centre delegates, in Pfeiffer's words, merely talked a good federalist game.[29]

Given the difficulties which the federalist cause, with its focus on the creation of a strong *Bundesrat*, was having in the Council, Pfeiffer requested that he be informed of the 'endgültige Haltung' of the minister–

president on this issue. In response, Ehard telephoned to Bonn on 4 November a position which did not differ in its essentials from that as finally adopted in the *Grundgesetz* seven months later.[30] Ehard stressed, as he had in October, that there could be no mixing of the *Bundesrat* and senate ideas as had been bandied about in September. Once again, however, he stated that there existed 'ein gewisser Spielraum für die Verhandlungen bezüglich der Befugnisse und Zuständigkeiten des Bundesrates'. In principle, the CSU was to continue to demand equality between *Bundestag* and *Bundesrat*. As it would nevertheless probably be impossible achieve this 'Maximalforderung . . . , könnte die Qualität der Mitwirkung des Bundesrates je nach der Materie der Gesetze differenziert werden.' Ehard thereby backed away from a Bavarian position which had been a fundamental demand of the CSU since 1945 and, indeed, had been a principal argument of the BVP since 1920.[31] He insisted nonetheless that *Bundesrat* approval be required for all laws affecting the federal or democratic structure of the new state. (Here, of course, the Council eventually surpassed his demands, making the federal and democratic order inviolable.) Further, for all other 'verfassungsändernd[e] und systemändernd[e] Gesetze' and for all financial legislation and the *Finanzausgleich* among the *Länder*, the *Bundesrat* was to possess the right of 'gleichberechtigte Mitwirkung'. In the passage of budgets and all other matters, a suspensive veto would suffice.

This clarification certainly seems justified in view of the multiplicity of suggestions surfacing in the Council. Between 13 and 21 October, a series of inter-group discussions was held to attempt to reach a compromise on the second-chamber problem. The relative merits of the *Bundesrat* and senate were, of course, examined yet again. There also arose the three-chamber hybrid of September. Proposed by, among others, Robert Lehr, the chairman of the *Zonenbeirat* of the British zone, this suggestion was adopted by the justice minister of the Rhineland-Palatinate and Adenauer supporter, Adolf Süsterhenn. In this parliament there would be a *Bundestag* and a *Hauptkörperschaft*, the latter consisting of a *Bundesrat and* a senate. The idea's proponents clearly recognized their proposal's clumsiness and hoped that incorporating the two upper houses in the *Hauptkörperschaft* would overcome the suspicion that, as Süsterhenn lamely wrote to Pfeiffer, 'es sich um ein Dreikammersystem handelt'.[32] The liberals, adhering to the formula that legislative counterweights were more important to the prevention of dictatorship than organizational aesthetics, supported this *Mischform*,[33] presumably due to the limiting effects which such a cumbersome arrangement would have on the larger parties.

The SPD, through its spokesman in the intergroup discussions and justice minister of Schleswig-Holstein, Rudolf Katz, rejected the *Mischform*

outright. If a decision had to be made, then the Social Democrats favoured either a *Bundesrat* or a senate. Anything else would be 'ein technisch-organisatorisches Unglück'.[34] The Centre and the DP concurred, their representatives coming out in favour of a *Bundesrat*.[35] The Centre continued to support the *Bundesrat* solution, one suspects, for reasons of tradition more than anything else. As for the DP, its roots as a *Landespartei* in Lower Saxony still influenced it in a federalist direction. These parties' delegates did not, of course, agree with the CSU on all of the latter's far-reaching demands concerning the *Bundesrat*'s prerogatives. Still, it remains ironic that, to a certain extent, the SPD was more willing to strike a bargain with the CSU than was the CDU. The frustration arising from this situation was echoed by Ehard when he wrote to Adenauer that 'das Vertrauen in die föderalistische Bundesgenossenschaft der CDU so stark absinkt, dass der ganze Unionsgedanke darunter Schaden leidet'.[36] Ehard also took pains periodically to remind the Council's president of the 'd[ie] sehr schwierigen politischen Verhältnisse'[37] in Bavaria both within the CSU and between the CSU and the BP. Adenauer, for his part, appeared to dismiss many of the Bavarians' concerns over the *Bundesrat* as such, although not necessarily the party-political effects which the dispute generated.[38]

Considering the opposition within the CDU to Bavarian federalist demands, it is not surprising that Ehard chose to find his alliances wherever he could, including the SPD. Sensing in the SPD's position the opportunity of gaining agreement on the *Bundesrat* even if Adenauer objected, Pfeiffer set up a meeting between Ehard and the SPD's constitutional expert, Walter Menzel.[39] Raising the spectre of a 'Bavarian question', Ehard and Pfeiffer felt that they convinced Menzel finally to accept the *Bundesrat* on the grounds that a basic law imposed upon a *Land* of over nine million inhabitants, if undesired by those inhabitants, could never function in a western state as a whole.[40] Menzel, in accepting the *Bundesrat*, did not wholly agree that his concern for Bavaria's place in the new state was his prime motivation. Rather, he felt he could preserve the legislative predominance of the *Bundestag* if he went ahead and accepted a *Bundesrat* as such but one with no claim to equality with the lower house. It also appears that he may have feared a possible anti-SPD majority in the *Bundestag* and thus hoped to secure his party's influence in federal government through the upper chamber, as well as to drive a convenient wedge between the CDU and the CSU.[41]

Although Ehard and Menzel concluded no concrete agreements concerning CSU concessions in return for SPD acceptance of the *Bundesrat*,[42] the meeting nevertheless constituted what Dehler called an historic hour.[43] Problems still remained in the realm of *Bundesrat* authority but from this

point forward the principle of the *Bundesrat* was never to be removed from the Parliamentary Council's agenda. For those in the CDU who felt duped by the secrecy of the Ehard–Menzel negotiations, there remained the feeling that '[d]ie Bayern haben sich von Anfang an als eine Fraktion innerhalb der Fraktion gefühlt und so auch uns gegenüber verhalten . . .'.[44] Adenauer, too, had 'kein Verständnis' for the CSU initiative.[45] He recognized nonetheless the importance of the CSU to his anti-SPD, west-orientated world-view and, as a consequence, made two not wholly successful trips to Munich on 8 and 11 November to attempt a reconciliation with the CSU.

The difficulties surrounding the Council's deliberations were not resolved by the Allied intervention which occurred close on the heels of Adenauer's visits to Munich. Delivered on 22 November, the Allied memorandum was intended more as advice to the Council than instruction. Munich had known for a week that some form of statement was forthcoming, Pfeiffer having informed Ehard to that effect in a letter.[46] The CSU can only have welcomed the Allied sentiment that the second chamber be 'eine *klare Vertretung der Länder* (*sic*) . . .'[47] with 'genügende Befugnisse' to protect their interests.[48] The memorandum also called for quite thoroughly decentralized financial, social, cultural, and police administrations. Though non-binding, these suggestions acted as reminders of the keen Allied interests, as expressed in the Frankfurt Documents, in the establishment of a decentralized West German government. Given the already-existing, if diffuse, consensus on the German side for a bi-cameral legislature, the memorandum served to influence the CDU/CSU group's decision on 29 November formally to adopt the *Bundesrat*. This decision was made all the more important from the standpoint of reaching the broadest base of acceptance possible for the *Grundgesetz* by the SPD's and FDP's announcement at this same time that they, too, would settle for a *Bundesrat*.[49] Thus was institutionalized the result of the Ehard–Menzel negotiations of 26 October.

Difficulties nevertheless continued to hinder the execution of this general agreement. The problem of a senatorial addition to the *Bundesrat* arose once again following the first reading of the *Grundgesetz* in the Main Committee of the Council on 10 December.[50] The *Dienststelle* reported to Munich that the idea of a 'senatoriale Schleppe' had once again reared its head in the CDU. Apparently, some of the CDU delegates, including Süsterhenn, were willing to accept an appendage to the *Bundesrat* if the chamber was once more made legislatively equal with the *Bundestag*. Such a position threatened to wreck the tentative agreement reached in the Council since the SPD made it clear that it would never accept the principle of equal houses regardless of the composition of the *Bundesrat*.[51] In addition,

even the CSU was reticent about accepting an equal *Bundesrat* if it had senatorial trappings.

The prospect of serious problems at this juncture caused Ehard to voice his and the CSU's displeasure to the *Länderratsausschuss* of the *Landtag* on 15 December.[52] He criticized the disunity of the parties on the issue of the *Bundesrat*. He also faulted severely the perceived erosion of the federalist idea in the Council, citing the proposed, and in his opinion, much too highly centralized *Bundesfinanzverwaltung* as contained in the draft *Grundgesetz*. He pointed out that the version presented on 10 December was only a draft and he expressed the CSU's hope that it would change for the better before being voted upon in its final form. If the draft had been the final product, he told the committee, it would have been rejected by the Bavarian government and, no doubt, by the *Landtag*. Such a decision, he cautioned, did not yet have to be made, however. Indeed, he characterized any calls for Bavaria to leave the Council as 'nicht nur verfrüht, sondern vom Standpunkt der bayerischen Interessen verfehlt'.

Fully cognizant of Adenauer's influence, Ehard followed up his comments to the *Länderratsausschuss* with a letter to the CDU leader.[53] The minister–president asked the president of the Council to use his influence so that 'der Grundstein für das neue deutsche Haus so gelegt wird, dass auch Bayern willigen Herzens mit darin einziehen kann'. He praised the *Reichsgründung* of 1871 in that Bismarck, 'der innerlich gewiss kein Föderalist war,' nevertheless allowed for adequate consideration of the 'Bavarian question'. Such consideration, Ehard wrote, was the mark of a statesman. He expressed confidence that Adenauer was this type of politician and felt encouraged to hope that Adenauer would do all he could to bring the work in Bonn to a good and positive end.[54] Were this not to occur, Ehard hinted, the CSU would be forced to assume the BVP's mantle of being the gadfly of constitutional reform with all the possibilities of mutual recrimination which this role carried with it. The only appreciable result would be, as he had told the *Länderratsausschuss*, an 'offene Wunde am deutschen Volkskörper'.

In an effort to prevent this eventuality and to reconcile the views of the groups in the Council, a committee comprising two representatives each of the CDU and the SPD and one of the FDP, the so-called *Fünfer-Ausschuss*, was established at the end of 1948. The CSU as such was not represented on the committee, although Ehard did try to make his party heard by presenting the Bavarian case to the committee in person as well as by 'going public'.[55] Despite Munich's suggested willingness in the autumn of 1948 to forgo *Bundesrat* equality with the *Bundestag*, Ehard's objections to the *Fünfer-*

Ausschuss remained essentially those which he had stated to the *Länderratsausschuss* in December. He felt that the *Bundesrat* was not sufficiently empowered to prevent increasing centralization in the new state. More specifically, he reiterated the CSU's Herrenchiemsee view that the federation would have too much control over taxes,[56] particularly through the system as agreed upon by the major parties in the Council. There the decision had been to establish a financial administration shared between the federation and the *Länder*. The majority of the CSU and the Bavarian *Staatsregierung*, however, advocated as far as possible a financial administration completely controlled by the *Länder*. Still another major complaint was the parties' more general reluctance to grant the *Länder* a sufficiently extensive (from the Bavarian viewpoint), written delineation of responsibilities. This apprehension reflected Ehard's concern of September about 'stabile Verhältnisse'. Further, it was yet another manifestation of his recognition that in the tradition of German federalism, the all-important realm of administration had customarily been the prerogative of the *Länder*.[57]

This mixed competence was precisely the sort of vagueness which, it was feared, would open the door to subsequent centralization. The CSU's man in the Bavarian finance ministry, Kraus, wrote to the military government that a repetition of the 'bittere Erfahrungen' of Weimar would be the result.[58] This threat would not only affect the relations between the federation and the *Länder* but in the case of Bavaria would serve to maintain the fortunes of the BP. If the CSU were forced to accept any more compromises on the financial administration, so Kraus added in a letter to Adenauer, 'dann wäre sie in Bayern erledigt'.[59] The only result of the decimation of the CSU would be that a 'radikaler[e] Richtung' would gain the upper hand in Bavaria, a development which would not be without effect in all of Germany. These admonitions notwithstanding, the *Fünfer-Ausschuss* agreed upon a regulation of *Bundesrat* participation and a financial administration which did not meet the CSU's wishes and recommended that the decision be accepted without alteration.[60] The Main Committee of the Council subsequently did just that on 10 February and forwarded the result to the military governors the next day.[61]

On 2 March the military governors returned the proposed *Grundgesetz* and their suggested revisions to a Council delegation. Based on the Frankfurt Documents and the November memorandum, the Allied reservations had changed from advice to what one commentator has called 'unerlässliche Vorbedingungen'.[62] The new note listed areas in which the allies expected changes to ensure greater legislative and financial autonomy for the *Länder*. Particularly, the Allies objected to what they perceived to be too-highly centralized financial and administrative apparata.

These objections were welcomed by many in the CSU. Allied reservations concerning the Council's work would help blunt the BP's attacks against Bonn by reinforcing the CSU's own position. Now, Ehard could use the Allied note as a justification for the party's heretofore tough stance; he did exactly that before the CSU's *Landtag* group on 11 March.[63] The Allied reservations nevertheless represented a serious crisis in the constitutional evolution of the western state, for it now appeared to many on the German side that a dictation of terms was in the offing. If the Allied objections could not be reconciled with German wishes, so Adenauer commented, then the entire course of events since the preceding summer would be 'erledigt'.[64]

To forestall failure at the last minute, the *Fünfer-Ausschuss* was reconstituted and expanded to include one member each of the DP and the Centre. This *Siebener-Ausschuss* once again lacked CSU representation. Ehard, however, presented the CSU's case in its entirety, an easy task as the CSU's demands 'deckten sich weitgehend mit der Beanstandungen des allierten Memorandums'.[65] He pleaded for acceptance of the Allied demands if a *Grundgesetz* were to be constructed at all. In the CSU's view, the Council had been unsuccessful in providing a guarantee to the *Länder* for their existence. Otherwise, so Ehard reasoned, why had the Allies intervened? If such guarantees were not provided, however, the Bavarian government would be forced to reject the document. Despite this threat, the committee replied to the Allies with suggestions not substantially different from those before the note, maintaining that completely separate legislation and administration of taxes would fatally weaken the federation. Further, the committee objected to the demand that equalization payments between the *Bund* and *Länder* be ruled out.

Adenauer, who always apprehended the possibility of an over-concentration of economic power in the hands of a future SPD government (and who was reluctant to annoy the Americans), considered siding with the CSU in accepting the Allied position.[66] The SPD's Schumacher, fearing for his party's future programmes, programmes which incidentally drove Clay to support French demands for extreme economic decentralization, stood fast on the committee's reply.[67] Seeing in the dispute a matter of prestige for the German side, Schumacher also gambled that the Allies would not allow the Council's work to collapse at that point, thus giving Moscow a propaganda victory. (His resolution was further strengthened by a British 'leak' to the effect that the Allies had decided to give way on the matter if the Germans stood firm.) The FDP supported Schumacher in this position. That party refused to accept any *Grundgesetz* rejected by the SPD. The *Union* would therefore be unable to pass the law without the SPD's acquiescence as Adenauer had considered doing.[68]

Not surprisingly, the SPD's position angered the CSU leadership. Ehard commented that the SPD should remember the Council's lack of sovereignty; 'dann braucht man nicht durch andere [the Allies] daran erinnert zu werden'.[69] He continued this criticism, somewhat at variance with earlier statements, at a conference of minister–presidents in Königstein im Taunus, although that meeting produced a much less emphatic view on the Council than he would have liked.[70] Karl Schwend, in a letter to Pfeiffer, warned that if the SPD's insistence on its position caused the Council to fail, then the CSU should make the Social Democrats' guilt known 'vor aller Welt'. As far as Schwend was concerned, the Allied objections constituted a line beyond which the CSU could not go.[71] A call by the CDU/CSU group for a new set of proposals to serve as a basis for discussions with the Allies nevertheless failed, as did renewed talks in the *Siebener-Ausschuss*, to move the SPD to accept the Allied note.[72] Meeting in Hannover on 19–20 April, the SPD's governing board, Council leaders, and minister–presidents thereupon rejected the *Grundgesetz* as it stood. As the meeting's communiqué declared, however, the SPD's decision was based not only on Allied intervention. Also cited were the old Social Democratic objections to too strong a *Bundesrat*, too decentralized a financial administration, and too comprehensive a *Grundgesetz*.[73]

As was to be expected, reaction in Bavaria to the SPD's decision split along party lines. The conservative wing of the Bavarian SPD around Hoegner was reserved; that around the chairman, von Knoeringen, in favour of the Hannover results. Thomas Dehler spoke of making the FDP the 'ehrliche Maklerin' between the CDU/CSU and the SPD. The only comment made by Josef Müller to the Bavarian press was that the appropriate party organ should put the CSU's views. Ehard, on the other hand, lambasted the SPD for effectively delivering an ultimatum which the Allies could in no way accept. He also accused the Social Democrats of attempting to strip the *Grundgesetz* of its most important provisions, among them the *Bundesrat*, a body which Ehard considered 'mein Verdienst'.[74] On the right wing of the Bavarian political spectrum, Josef Baumgartner savaged the demands of 'der nationalen Sozialisten' in Hannover,[75] while Alfred Loritz of the WAV attacked the 'beschämend[es] Kuhhandel' of the Council's 'Versagerparteien'.[76]

Much of the tension among the Council's parties was meanwhile being dissipated by an Allied reply delivered two days after the Hannover meeting. This reply pledged the Allies to give 'wohlwollende Würdigung' to every Council suggestion aimed at securing 'den Länderregierungen als auch der Bundesregierung finanzielle Unabhängigkeit und angemessene Finanzkraft bei der Ausübung ihrer Befugnisse innerhalb ihrer

Zuständigkeiten . . .'.[77] This statement amounted to the Allied retreat on which Schumacher had gambled. In turn, it occasioned the rejection of the *Grundgesetz* by the CSU members of the CDU/CSU group on 26 April.[78] Ehard evidently feared that the tension within the CSU generated by the events since February and the mounting anti-Bonn propaganda of the BP would drive a wedge between the Müller supporters in the CSU group (who still tended to favour the more centralist course of the northern CDU) and the rest of the delegates. He urged Pfeiffer to ensure that the CSU group present itself 'völlig aufgeschlossen' regarding acceptance of a strong federalist position; otherwise, he added, 'müsste ich für die weitere Entwicklung sehr schwarz sehen'.[79]

REJECTION OF THE *GRUNDGESETZ* AND MÜLLER'S DISMISSAL

The increasing agitation of the BP and the Allies' willingness to look favourably upon the Council's decisions made Ehard's admonitions to Pfeiffer of little consequence. The reaction of the political forces to the right of the CSU and on the right wing of the party itself following the SPD's Hannover meeting rose in intensity during the last days of April and the first days of May 1949. Given the shift in the Allied position and the dominance in the Council of a centralist tendency – at least compared with the thinking of the CSU – it seems unreasonable to assume that a Bavarian federalist viewpoint stood a realistic chance of unqualified acceptance. In so far as this plight could be expressed purely in terms of numbers of votes, the position of the CSU in Bonn in 1949 was little better than that of the BVP in the *Nationalversammlung* of 1919.

Several factors assume significance, however, in the relative long-term success of the CSU in reaching the goal which ultimately eluded the BVP – a federated German state. First and foremost was the tragedy of National Socialism and world war. These events generated a realization among all the significant political parties in the western zones, excepting the KPD, that only a government decentralized to a greater or lesser extent would succeed in preventing a recurrence of the developments of 1933–45. It could be argued that the SPD was still committed to a heavily centralist programme. Nevertheless, even Schumacher's party was eventually willing to accept a system which embodied real elements of federalist decentralization. The question thus became not whether the new state should be federalized but to what extent. A second major factor is that the western Allies, whether for reasons of *Realpolitik* or out of inner conviction, supported the federalist idea; indeed, they were not prepared to see it fail.

Finally, the CSU controlled the Bavarian government throughout the period of western constitutional consolidation, a period which may be extended back to the formation of the bi-zonal economic agencies from the end of 1946. Despite the intra-party controversy surrounding Hans Ehard's election to the minister–presidency[80] and the continual, if gradual, shift away from *gouvernamentaler Föderalismus*, between 1946 and 1949, the CSU enjoyed the privilege of speaking *ex cathedra*, if one will, on the question of western Germany's constitutional future through the head of the Bavarian government. The views of the Munich *Staatskanzlei* did not, of course, bind extra-Bavarian leaders. Nevertheless, Ehard brought the prestige of his office to bear as often as was possible in the Bavarian cause. This advantage was one which the BVP never possessed during the writing of the Weimar constitution; it was also one which Ehard applied to defuse the potentially disruptive effects of Bavarian resistance to the work of the Parliamentary Council.

A serious manifestation of this resistance had occurred on 1 May and had, in part, occasioned Ehard's letter to Pfeiffer three days later. At a Bavarian *Heimatfest* in the town of Dachau, Josef Baumgartner and Alois Hundhammer had made a number of statements arousing great public attention because of their anti-Bonn, quasi-separatist tone. To this was added a strong dose of monarchist sentiment, with Baumgartner soon actually declaring for a restoration.[81] Although Hundhammer reported to Pfeiffer that he (Hundhammer) had spoken extemporaneously, thereby implying that no significance need be attached to the event, the *Süddeutsche Zeitung* nevertheless reproduced the Dachau speeches on 3 May under the headline, 'Bundesrepublik ohne Bayern?'[82] This news only increased the resonance of the occurrence and, whether desired by Hundhammer to torpedo the perceived Bonn centralism or not, only made the CSU's federalist position in the Council even more untenable. Ehard certainly thought so and informed Pfeiffer to that effect in his letter.

Publicly, Ehard played down the incident, although his efforts to counter its effects bespoke their possible repercussions. In an interview with the mass-circulation *Abendzeitung* of 6 May, the minister–president declared that the agitation over monarchy and separatism was unjustified and 'ohne jede gesunde Basis'.[83] To this he added, in a radio interview, that the question of a restoration had absolutely nothing to do with the constitutional issues being decided in Bonn. Whoever nevertheless made such a connection only damaged the Bavarian cause 'auf das empfindlichste'.[84] Ehard made it clear, however, that his condemnation of such damage did not remove the CSU's and Bavaria's obligation to reject the *Grundgesetz* if that document was considered insufficient. On the contrary, he insisted in

virtually the same breath upon this right, one not to be equated with separatism and spoke 'für die Minister der Staatsregierung, für meine Partei und für alle vernünftig denkenden Menschen in Bayern'. If Bavaria invoked this right and rejected the Bonn decisions, she would follow nonetheless the democratic 'Handhabung' and accept the will of the majority. Removing Bavaria from the German 'Schicksalsgemeinschaft' was impossible.[85] This standpoint was in keeping with what Ehard considered the 'rein demokratischer Vorgang' of casting a no-vote in any representative body.[86] It would naturally be 'schöner' if all the *Länder* could agree; if not, '[e]s gehört eben auch zu einer umsichtigen deutschen Politik, mit gewissen bayerischen Tendenzen rechnen zu müssen'. He went on to stress once again, however, that a rejection of the *Grundgesetz*, if it occurred, had behind it 'keine separatistischen Hintergedanken'.[87]

Ehard's protestations of Bavarian loyalty notwithstanding, Adenauer considered the situation serious. His apprehension was not so much a function of a fear of a separatist Bavaria; indeed, he had never, by his own admission, gained a close understanding of the problem of Bavaria and the German southeast.[88] Rather, the CDU leader was motivated – as he had been at the time of the uproar over the Ehard–Menzel talks the previous autumn – by a desire to prevent a splintering of the CDU/CSU efforts. CSU rejection of the *Grundgesetz* would represent exactly the eventuality which the Rhinelander wished to avoid.

In a last-minute attempt to avert this possibility, Adenauer sent a telegram to Ehard and Hundhammer on 7 May. In it he 'urgently' requested that the *Grundgesetz* be approved south of the Main:

> Das Grundgesetz enthält nach meiner, nach ernster Prüfung gewonnenen Überzeugung durchaus die Möglichkeit eines lebendigen Eigenlebens der Länder. Die Sicherheit des föderalistischen Gedankens ist viel stärker eingebaut worden dank auch der Zähigkeit Bayerns, als sich das bei Beginn der Arbeiten des Parlamentarischen Rates erwarten liess. Auf Zustimmung Bayerns legen wir allergrössten Wert. . . .[89]

Adenauer's exertions were not completely successfully. On 8 May 1949, four years to the day after the capitulation of the *Reich*, the Council adopted the *Grundgesetz*. Of the eight CSU delegates, however, six voted against the Basic Law.

The two delegates to vote affirmatively, Karl-Sigmund Mayr (Fürth) and Kaspar Gottfried Schlör (Amberg), were both from Müller's stronghold of Franconia. In a statement explaining their stance,[90] Mayr declared that all the parties in the Council, excepting the KPD, had worked in good faith and

that the CDU had shown much consideration for the CSU's wishes. A final Bavarian rejection of the Basic Law's ratification would cost Munich friends in the new republic and isolate Bavaria among the *Länder*. The Franconian and Swabian elements of the population, already possessing 'keinen Sinn für eine überspitzte bayerische Eigenstaatlichkeit', would be alienated; and relations with the Rhenish Palatinate (still technically eligible for reunification with Bavaria-right-of-the-Rhine) would cool. Any hestitation on the CSU's part now would only succeed in endangering the unique chance given to the eleven western *Länder*.

Speaking for the CSU delegates who voted against the *Grundgesetz*, Josef Schwalber defended their decision.[91] He maintained that overall the document failed sufficiently to consider the interests of the *Länder*. Specifically, the financial structure of the new state would not allow the *Länder* to develop their own economies. Federal control over *Dotationen*, as Schwalber called the equalization payments to the *Länder*, would infringe too severely on those areas of sovereignty still left to the *Länder*, particularly cultural affairs. He criticized the *Grundgesetz* further for not adequately protecting the new republic against a trend toward party-splintering and, finally, faulted the document for lacking an openly Christian orientation.[92] Schwalber reflected Ehard's own position, however, in that he stated that the CSU felt duty-bound to the new state.

Bavaria's second major political force, the SPD, approved the *Grundgesetz*. Speaking for the Bavarian SPD delegates in the Council, Jean Stock pointed out that Schwalber did not speak for Bavaria, her people or even, for that matter, for his entire *Fraktion*.[93] On the contrary, Stock held that the majority of Bavaria's people would, in fact, approve the *Grundgesetz* and that the CSU would discover at the next *Landtag* election that the composition of that body no longer corresponded to the political will of the *Land*.

This reference was, of course, entirely relevant as the focus now shifted to the *Landtag* for the ratification of the Bonn results. On 13 May Ehard delivered a statement to that house to inform the parliamentarians that the *Staatsregierung* would submit to them the Basic Law as approved in Bonn.[94] He indicated the government's 'ablehnende Haltung' to the document but simultaneously announced that a motion would be submitted on the question of the Basic Law's binding nature if two-thirds of the western *Länder* ratified it. This *Rechtsverbindlichkeit*, he informed the *Landtag*, was recommended by the cabinet. He denied that the *Grundgesetz* could be considered 'eine Ausgeburt zentralistischen Geistes'. As he had so many times in the past, Ehard proclaimed that a Bavarian rejection had nothing to do with

alleged separatist tendencies. The government's position, the minister–president concluded, 'ist unabhängig davon, ob das Grundgesetz wegen seines Inhalts bejaht oder abgelehnt wird!'

This position did not change by the time of the ratification vote in the *Landtag* on 19 May. In his speech charging the *Landtag* with the task of adopting or rejecting the *Grundgesetz*, Ehard maintained that it had never been the CSU's or the government's intent to demand special treatment for Bavaria.[95] On the contrary, one had desired merely a decisive application of federalist principles. The legislature would now have to decide whether this application had been achieved.

The minister–president denied that any responsible statesman wished to draw a 'Trennungsstrich' between Bavaria and the rest of Germany. Such separation had become impossible in light of the assimilation of Bavaria into the *Reich* in the nineteenth century. To propagate any similar thought now not only damaged Bavaria's internal cohesion but also opened her to attacks from outside detractors. Nevertheless, the government and the CSU considered the *Grundgesetz* unsatisfactory and, invoking the *königlich-bayerisch* memory of the Social Democrats, calling upon the SPD to share this view.

Directing attention to the *Grundgesetz* itself, Ehard listed his criticisms. They were the same, although somewhat more detailed, as Schwalber's in the Council. The overriding end result was '[e]s ist also sowohl die Kulturhoheit, die Verfassungshoheit, die Gebietshoheit, die Gesetzgebungshoheit, die Verwaltungshoheit und die Justizhoheit der Länder weitgehenden Einschränkungen unterworfen worden'. Of course, Ehard recognized the *Bundesrat*, that institution for which the CSU – and indeed the BVP – had so strenuously campaigned, as an 'Erfolg and Fortschritt'. He regarded as 'eine gewisse Sicherung' of the rights of the *Länder* the fact that the democratic and federal order had been made constitutionally inviolable. He found it nonetheless regrettable that decisions of the *Bundesrat* could be so easily and so often overturned. On these bases, the government had been forced to advocate rejection of the *Grundgesetz* while at the same pledging – subject to *Landtag* agreement – to respect the document's legally binding nature if accepted in two-thirds of the other *Länder*. Attempting to defuse the foreseeable reaction of the BP and WAV to this decision,[96] Ehard added that 'dem Entstehungs-Modus der neuen Bundesrepublik ein allierter Zwang vorliegt, der uns keine andere Wahl lässt.'

Echoing this sentiment but in support of the *Grundgesetz* was Wilhelm Hoegner. He felt that the Germans no longer had a choice whether or not to accept the Bonn decisions. 'Wir können deshalb nicht mehr das entscheidende

Gewicht darauf legen, wie dieses Notdach beschaffen ist. . . .' He recognized that the document was not perfect; there existed, however, no alternative.[97] Waldemar von Knoeringen, Hoegner's successor as head of the Bavarian SPD, agreed but had different grounds. Bavaria under the BVP had already brought one German constitution to ruin through collusion with right-wing extremists and a 'mangelnde Bereitschaft' to implement and defend 'die grossen Gedanken dieser Verfassug von Weimar . . . '. The government's 'Nein' to Bonn but 'Ja' to Germany was a dangerous one which the nation could ill afford.

Speaking for the FDP, Thomas Dehler insisted that a sufficient degree of federalism had been built into the *Grundgesetz* to lay the CSU's fears to rest. He accused the *Union* of having raised the stakes every time the SPD had been willing to compromise in the Council, particularly in questions of school policy and Church–state relations. The resulting tensions between the major parties had generated the monarchist and separatist outbursts as had occurred in Dachau earlier that month. While not inherently dangerous, such 'dumpf[e] Gefühl[e]' could deprive the nation of the necessary precondition for a successful start in the new republic, namely the 'Sinn für die Aufgabe der Stunde . . . '.[98]

Despite the admonitions of the SPD and FDP, the *Landtag* rejected the *Grundgesetz* on the basis of the overwhelming CSU majority. Within the CSU group, there were ninety negative votes, two affirmative votes, and seven abstentions. On the question of recognizing the validity in Bavaria of the *Grundgesetz*, the CSU majority again carried the house along with it. Here there were in the CSU group 96 affirmative votes, no negative votes, and three abstentions.[99]

Bavaria thus became, as is well known, the only *Land* in the Federal Republic to reject that republic's constitutional document. While this rejection created controversy at the time, much lends itself to the assumption that the CSU could reject the *Grundgesetz* in a fit of federalist protest only because the document's ratification was already assured in the other *Länder*. Ehard and Pfeiffer seem to have felt that rejection might not have been pursued had the Federal Republic's fate hung in the balance.[100] This assumption gains credence given the numerous definitive statements made by the minister–president and cited here that he would not allow Bavaria to be removed from the western state by means of repudiation of the Bonn results. It is also clear that Josef Müller, though relatively quiet on the issue, was nevertheless fully supportive of ratification of the *Grundgesetz*. Being a supporter of the all-German views of the CDU wing around Jakob Kaiser, it is doubtful that Müller would have advocated a protest gesture so strong as rejection of the *Grundgesetz* had he (Müller) been in a position

to prevent it. The document's rejection by the CSU groups in the Council and the *Landtag* must therefore be seen not merely as Bavarian defiance but as a political defeat for the CSU chairman.

This defeat, coming as it did in the wake of the CSU's difficulties of 1948,[101] increased the tension between the Müller and Hundhammer wings and constituted the spur which drove the party to a change of leadership. Subjected as it had been to the socio-economic and demographic changes accompanying bi-zonal organization, the CSU had experienced a severe shock at the polls in 1948. Exacerbating this development were the inevitable pressures generated by party-political differences surrounding the writing of the *Grundgesetz*. This situation continued to work to the advantage of the BP after the beginning of 1949, particularly in Upper and Lower Bavaria and in the Upper Palatinate. Representative of the complaints reaching Munich from outlying districts were those from the CSU organization in Sonthofen in the Allgäu. From there came the call for a rapid decision in the question of a reorganization of the party; the situation in the *Landkreise* was gradually becoming 'unerträglich'. It was feared that the trust of CSU members in their party was 'weitgehend verschwunden', and one saw the possibility of a 'völlige Abwanderung'.[102]

Bavaria's principal newspaper, the *Süddeutsche Zeitung*, was also reporting – on the basis of 'Informationen . . . die uns aus südbayerischen Kreisen dieser Partei [the CSU] zugeleitet wurden' – of the growing tension within the party leadership. In addition, Müller had been deprived of his strongest base of support, namely the *Bezirksverband Oberfranken*, through the election as chairman of Anton Hergenröder who was mayor of Bamberg and 'ein[ ] jung[er], sehr aktiv[er] Mann, der als ausgesprochener Müller–Gegner bekannt sei'.[103] The report went on to state that Hundhammer's adherents had made it their task to organize opposition to Müller, hardly a revelation, and that Hergenröder had joined their camp. One reckoned with Müller's defeat at the next *Landesversammlung* of the party and assumed that Ehard, despite his reluctance to hold party office, would accept the mantle of leadership if necessary.[104] Not long afterward, on 7 and 25 April respectively, the CSU district organizations in Munich and Upper Bavaria moved to ask Ehard to take over the leading position 'im Interesse des Bestands, der Festigung und Erneuerung der Partei'.[105]

Konrad Adenauer clearly shared such sentiment. He now reckoned with the removal of Müller in one fashion or another and obviously hoped to see Ehard at the helm. Only in such a manner could the internecine warfare within the party be ended. Indeed, Adenauer expressed this view in so many words to Ehard in a letter of 19 May: that is, the very day of Ehard's speech to the *Landtag* on ratification of the *Grundgesetz*. In the letter, marked

'Durch Eilboten! Streng persönlich!', Adenauer wrote 'dass nach meiner Meinung nur *Sie* (*sic*) dafür in Frage kommen. Ich bitte Sie sehr herzlich, doch diesen Schritt zu tun.'[106]

Keeping lines open to the CSU's extreme federalists as well, Adenauer wrote on the same day to Hundhammer to ask the latter to help 'unter allen Umständen' to keep the party together through the coming leadership change. This admonition Adenauer coupled with an implicit plea to Hundhammer not to defect to the *Bayernpartei*. Reiterating a point which he often made, Adenauer stated that such a defection would only benefit the Social Democrats in the coming federal elections. This development could not be allowed in a *Land* already considered by Adenauer to be one of the *Union*'s 'gefährdest[e] Punkte'.[107]

At the extraordinary *Landesversammlung* of the CSU in Straubing in Lower Bavaria from 27 to 29 May, the differences between the wings of the party finally came to a head. A motion expressly thanking those who had voted against the *Grundgesetz* was turned back with the energetic support of the minister–president. The more enthusiastic federalists of the party gained a victory, however, in the vote on the party leadership. As had been assumed, Ehard was elected to replace Müller.

Ehard, for his part, accepted the party's choice only because of what he called 'eine bayerische staatspolitische Frage ersten Ranges. . . .'[108] By this he meant, as Adenauer had, the coming federal elections and the threat of the BP. He denied that he was a 'Wunder-Doktor' who would be able 'mit einem Schlag alles in die beste Ordnung zu bringen'. He desired only one thing above all – to keep the CSU strong enough either to be the sole determinant of Bavaria's politics or to be at least the principal determinant. Any other result, particularly any result favouring the BP, would give ultimate victory to the SPD by default.[109] Only the course of the CSU as the government had heretofore attempted to steer it, one based on 'die realen bayerischen Möglichkeiten' and 'gesamtdeutsche Notwendigkeiten' could preserve the party as a union of all non-socialist elements. It was this union's task

> gegen alle politischen Bestrebungen in unserem Land aufzurichten, die geeignet sind, durch Radikalismen oder Illusionen den Sinn der bayerischen Absichten zu enstellen, mögen sie sich auch noch so bayerisch gebärden.[110]

However much Ehard's election may have represented a victory for a 'Mann der Mitte',[111] the decision was by no means readily accepted in all circles of the party. Many of Müller's adherents felt that Ehard's position as a force for stabilization in the party had been fatally compromised by

Hundhammer's support of Ehard's assumption of the chairmanship. This support was particularly galling since Hundhammer was acting in perceived collusion with the *Bayernpartei*. Such collusion represented nothing less than a fifth column inside the CSU and, as the self-styled 'left wing' of the party had been shut out by Müller's defeat, there remained no possibility of countering this influence. Müller's friends feared that his exclusion would drive north-Bavarian CSU supporters into the arms of the SPD and FDP. Further, they now expected a shift away from an inter-confessional, socially-orientated mass party as Adam Stegerwald and Müller had conceived it to one possessing a limited membership and a predominantly Roman Catholic, arch-conservative world-view.[112] Of course, the press passed on these concerns in its reports of the events of the Straubing meeting. There seemed now a genuine prospect that the party would break up over Müller's dismissal and the consequent speculation over his remaining in the government.[113] The question was now whether the CSU could ever succeed in maintaining the collective appeal of a *Sammelpartei*[114] or whether, in a reflection of Bavarian politics before 1933, the CSU would disintegrate into a neo-BVP and a splintering of Protestant and liberal factions.

In the aftermath of Straubing, however, such an unsettling evolution could not be predicted with any degree of certainty. The substitution of one Franconian, Ehard, for another, Müller, definitely preserved the possibility that north Bavarian interests would continue to be at least symbolically represented against the south. Ehard's political views may not have been as socially progressive as his predecessor's, but the new chairman was passionately devoted to the preservation of the CSU as the predominant political factor in Bavaria. In addition, Ehard possessed a much deeper dedication to the promotion of a federalist system in general and Bavaria's place in that system in particular. He had, for example, not been averse earlier to urging resignation on as prominent a CSU member as Fritz Schäffer in 1948. Given the adverse effects which the latter's actions were having on the CSU's relationship with the BP and on the CSU's (and Bavaria's) standing in the western zones, Ehard had been willing to sacrifice the former minister–president in the interest of party unity. It was unlikely that the party's new leader would now allow any other developments which would tend further to diminish or fragment the CSU's strength. The unification of the offices of minister–president and party chairman in the hands of one man would presumably be one of the surest restraints on any such developments.

Four years of internal wrangling over policies and personalities had nonetheless sapped the party's energies. To this drain must be added the inevitable attrition of over two years of governmental responsibility during

one of the most tumultuous periods in modern German history. The rise of the BP must be seen in the light of these factors. As a result, the CSU entered the electoral campaign for the first German *Bundestag* in the summer of 1949 at a level of popular appeal substantially lower than the heights commanded by the party in 1946. No one could have doubted that, as in the years 1919–33, Bavaria would be represented in the second German republic by a strong, independently-minded, *Land*-orientated political party. What one did not know was which of the two parties, Christian Social Union or *Bayernpartei*, would be that representative. Not until the end of the 1950s would it finally become clear that it was to be the CSU which would command that position.

For the moment, the party was to suffer yet another setback at the BP's hands. In the August 1949 federal elections, the CSU took only 29.2 per cent of the vote compared with the BP's 20.9 per cent.[115] Indeed, in the *altbayerisch* districts of Upper and Lower Bavaria, the CSU secured only three victories. One of these belonged to the veteran Schäffer, who had been recruited to stand for the CSU organization in the Lower Bavarian city of Passau. The other two were in the Upper Bavarian electoral districts of Fürstenfeldbruck, near Munich, and Weilheim-Schongau on the river Lech. These seats went to Richard Jaeger and Franz Josef Strauss, respectively. They were, as Strauss later commented, the 'Säulen der CSU in dieser weissblauen Flut mit rotem Zentrum'.[116]

Instead of establishing a separate *Fraktion* in the new *Bundestag*, however the CSU formed – reportedly at Schäffer's and Strauss's urgings – a subsidiary *Landesgruppe* within a common CDU/CSU parliamentary group.[117] The party thus chose not to follow the example set by the BVP in the Weimar *Reichstag* of a totally independent *Fraktion*. This decision doubtless reflected not only a commonality of interests between the CSU and CDU but also apprehension over the strength of the BP which sent seventeen representatives to Bonn.[118]

In terms of government posts, the CSU filled the important finance ministry in the person of Fritz Schäffer. Wilhelm Niklas received the agriculture portfolio and Hans Schuberth became head of the postal service.[119] The party did not, however, win the presidency of the body for which it had struggled so long, namely the *Bundesrat*. Hans Ehard was favoured by the new Federal Chancellor, Adenauer, in return for Ehard's help in constructing the republic's constitutional order. This open patronage angered representatives of the SPD-led *Länder*, however. As a result, they voted for the CDU minister–president of North-Rhine Westphalia, Karl Arnold.[120] Ehard's lukewarm support for a Grand Coalition with the SPD in Bonn also upset some members of the CDU who subsequently voted for

Arnold as well.[121] Consequently, Ehard was forced to wait until 1950 before assuming the post.

In that year the CSU's vote total dropped another 2 per cent in the first election to the Bavarian *Landtag* since 1946. From that point on, however, the party's fortunes reversed themselves, particularly as the post-1948 economic recovery took hold in the Federal Republic. Economic stabilization, in turn, worked to the long-term detriment of parties such as the BP, WAV, and the new expellees' party, the BHE. These parties drew strength from popular disaffection and, in the case of the BHE, the problems of the expellees' and evacuees' integration. Growing prosperity helped resolve these difficulties over the course of time. The CSU took advantage of this trend and succeeded in continuously expanding its share of the non-SPD vote throughout the middle and later 1950s. Not only were the parties on the Right more or less absorbed, but the centrist FDP also suffered losses to the CSU. In the wake of one brief period in the Bavarian opposition from 1954 to 1957, the party also managed to overcome many of its remaining internal confessional differences. From there the Christian Social Union would go on to establish a dominance at the *Land* level unparalleled in the Federal Republic of Germany. It is a dominance which remains to date unbroken.

Conclusion

Surviving the whirlwind of dictatorship, total war, and defeat, Bavarian federalism reemerged in 1945 as a prime motive force in the reconstruction of western Germany. This particularist-tinted political orientation rested upon the recent historical experience of the Bavarian People's Party of the interwar period and found its most successful manifestation in the Christian Social Union. A number of personalities who had been prominent in the BVP found their way into the upper echelons of the CSU. In addition, the new party drew intellectually upon its predecessor's dominant place in Bavarian politics and sought to replace it as the party-political embodiment of a unique Bavarian identity in the daily life of the nation.

This desire found expression in twofold fashion. At the *Land* level the CSU sought to unite all the elements of the Bavarian population outside the socialist camp in a single political party. In this desire the CSU reawakened the BVP's earlier aspirations to the same goal, although the pre-1933 party had never succeeded in breaking out of its Roman Catholic, middle-class, primarily *altbayerisch* redoubt. Conversely, under the leadership of the Franconian, Josef Müller, and his political mentor, Adam Stegerwald, the new party did in fact succeed to a degree in establishing footholds among Bavaria's Protestants north of the Danube and among working-class voters. While this success shone most clearly in the initial postwar Bavarian elections of the first quarter of 1946, the CSU's hold on its new constituencies was loosened somewhat in the communal elections of 1948, the *Bundestag* election of 1949 and, again, in the 1950 election to the *Landtag*. The party thus felt most directly the effects of internal wrangling between conservative, Roman Catholic elements on the one side and progressive, mainly Protestant factions on the other. It also suffered from the advent of another new, specifically Bavarian party – the *Bayernpartei*. Inspired by the charismatic leadership of the high-level defector from the CSU, Josef Baumgartner, and fearing a betrayal of Bavaria's interests, the *Bayernpartei* posed a particular threat to the CSU in the *altbayerisch* districts. The BP's presence and initial success also helped exacerbate already-existing tensions within the CSU's ranks and contributed in part to the dismissal of the CSU's controversial chairman, Müller, in 1949. To a lesser extent, the CSU was also put under greater pressure in the late 1940s and early 1950s by the increasingly unified forces of Bavarian liberalism in the form of the Free Democratic Party.

Nevertheless, the CSU succeeded in holding its own in Bavaria and eventually beat back the electoral challenge of the BP and the FDP. This it did by overcoming the problems of the party leadership through the selection of Hans Ehard as the new chairman in 1949 and by presenting itself as a reasonable Bavarian federalist alternative to the more radical BP. The fairly rapid postwar economic stabilization of West Germany must also be viewed as having worked to the CSU's advantage in its political struggle with the other non-socialist parties. This stabilization, fuelled in part by Marshall Plan credits, facilitated – and was a function of – the relatively smooth integration of millions of expellees and refugees who contributed mightily to Bavaria's subsequent prosperity. This integration process also worked to deprive the BP of a source of agitational propaganda. By the same token, the CSU was to find new supporters as the fortunes of the expellees' own party, the BHE, eventually waned. It would, for example, be a CSU-led government under Hans Ehard which in 1963 would formally 'adopt' the Sudeten Germans as Bavaria's fourth *Volksstamm*. While the universalism of the earliest days of the CSU (See Chapter 2) never became a reality, the party did manage to begin its life as the strongest force in the Bavarian political arena. It also eventually succeeded in maintaining that position.

Corresponding to the drive to become the principal political force in Bavaria, the CSU espoused from its inception the demand that a future Germany be constructed along federalist lines. Indeed, with the possible exception of smaller parties such as the *Deutsche Partei* in Lower Saxony, the CSU became the only significant adherent of a federal German state until the licensing of the BP in 1948. Even after that date, however, the BP's federalist position appeared tinged with a separatist radicalism which seemed to generate significant support only so long as conditions remained unsettled. The BP leadership's talk of an autonomous, monarchist Bavaria raised the spectre of the BVP's *Ordnungszelle Bayern* of the early 1920s with all of the constitutional problems which such an *Abkapselung* implied. The CSU leadership, in turn, took the threat of the BP seriously, an attitude justified by the election returns of 1948–50 (see Chapters 4 and 5). Throughout the constitutional deliberations of the Herrenchiemsee Convention of 1948 and the Parliamentary Council in Bonn, however, the CSU remained the most prominent legitimate advocate of a decentralized western German state.

In assuming the mantle of federalist standard-bearer prior to the establishment of the Federal Republic of Germany, the CSU took up the struggle for states' rights – to borrow from American historiography – where the BVP had been forced to leave it in 1933. In so far as a separate Bavarian

political identity or perception of historical uniqueness still existed in 1945, it was vibrant in the leadership and rank-and-file of the CSU. In this sense the CSU was the undisputed political heir of the BVP and attempted to translate this inheritance into reality in the form of a highly-decentralized federal German republic in 1949. In this endeavour the party was not entirely successful. It did, nevertheless, play a major role as a weighty counterbalance to tendencies toward centralization in the CDU and, more importantly, the SPD. Consequently, the BVP's major complaints about the Weimar 'system' – for example, too strong a federal president or the provincialization of the *Länder* – did not recur in 1949. The West German republic as it emerged in that year was federal in fact as well as in name.

For the majority of the CSU's members as represented by their party's delegates in the Bavarian *Landtag*, however, the new state was not federal enough. The result, of course, was the Bavarian rejection of the *Grundgesetz*. Objecting to features such as the relative weakness of the *Bundesrat vis-à-vis* the *Bundestag* or the absence of financial autonomy for the *Länder*, Munich took the middle way of refusing to ratify the document yet accepting its binding nature. Leading this effort, the CSU remained true to the heritage of Bavarian suspicion toward strong central government as that heritage had been embodied by the BVP. At the same time, the CSU accepted the new constitutional order as being fully applicable to Bavaria. In this fashion the greater political unity was preserved at a critical stage in its development. Simultaneously, the CSU could portray itself as having stood resolutely for Bavaria's interests and as having advocated the only honourable course left open to Bavaria–that is, rejection–when those interests were not recognized in Bonn. This latter position was of particular importance as a means to prevent a further defection of voters and/or CSU members to the BP which had also rejected the *Grundgesetz*.

It cannot be denied that federalism succeeded in the period 1945–49 to a degree never attained in the period 1918–33. Certainly, geopolitical factors played a significant role in this success: there existed no central German government; no hegemonic Prussia; no Prussia–*Reich* dualism. Further, Germany was divided ideologically into two camps whose political systems remained inimical. These circumstances, arising as they did in the wake of war and defeat, conditioned the leading politicians of the western occupation zones to be more amenable to a search for a political organization of the state which would avoid the centralization of the pre-1933 era. A federal state structure was not only intrinsic to the German tradition but was also supported to a greater or lesser extent by all of the western powers. Such a state structure thus had much to recommend it and coincided with an unbroken Bavarian attachment to exactly this form of government. It was

viewed by the CSU as the best guarantee on the domestic scene against a repetition of the events of 1933–45 and it promised the most effective means of harmonizing the requirements of central government with the continued existence of historically-unique *Länder*. It was a state form whose advocacy in Bavaria reached in the modern period at least as far back in 1815, and it was one which at various times had been supported by elements ranging right across Bavaria's political spectrum. The CSU's adoption of it in 1945 merely reawakened an inherent characteristic of Bavarian politics which had been repressed by the unheaval of National Socialism. That federalism triumphed in western Germany after 1945 is proof not only of greater political sensitivity among German leaders generally and the western powers' support of it as a means of preventing the rise of another dictatorship; it also reflected the revival of a dominant Bavarian political tradition and that tradition's undiminished vitality in spite of national catastrophe and international change.

The Catholic–conservative elements which had set the tone in Bavarian politics between 1918 and 1933 – with the exceptions of the tragi-comic episodes of Eisner's *Freistaat* and the *Räterepublik* – had earlier sought to use federalism to separate Bavaria from the rest of the *Reich* in order to preserve a Bavarian political, cultural and historical identity. This separation, it must be noted, is meant not in a physical sense but rather in a psychological one. The thought of a literally independent Bavaria had become at best anachronistic in an era dominated by the fact of the nation-state. Indeed, the entire course of German history as it had occurred since 1815 ran in exactly the opposite direction to one which would allow for the existence of such a Bavaria. The particularism inherent in the BVP's calls for a federalist reform of the *Reich* throughout the life of Weimar recognized these conditions but sought nevertheless to remove Bavaria as far as possible from a perceived subservience to the dictates of a 'red' Berlin.

This attitude surfaced again after 1945 on the right wing of the CSU and found its principal adherents in figures such as Schäffer and Hundhammer. As has been shown, however, there existed in the more reformist wing of the party around Stegerwald and Müller a counterbalance which prevented the Catholic–conservative forces from completely dominating the new party. Although Müller could not lead the CSU into the first *Bundestag* as party chairman, the cause of federalism in general and Bavarian federalism in particular assumed under his influence and opinions a universalist zeal which allowed federalism to be touted as a cure for all Germany's ills. The Weimar-era BVP desire to hold the *Reich* at arm's-length through the medium of conservative, sometimes authoritarian, government using federalism as its tool changed rather markedly after 1945. In the latter period the

CSU demanded the constant presence of a specifically Bavarian, federalist voice in all of the affairs of the nascent western German republic. The constitutional formation of the western zones into a new state afforded the party an opportunity to have a crucial impact on the structure of a new Germany. Such a clear-cut opportunity never existed for the BVP, nor, for that matter, for the earlier Bavarian Centre Party or the nineteenth-century Bavarian *Patriotenpartei.*

True, the constitutional document of the new republic was rejected by the CSU. An important qualitative difference nonetheless existed. Implicit in this rejection was no turning-away from the new German body politic, a point which may not necessarily be made quite so clearly for the BVP in the early 1920s. While the earlier party may indeed have been particularist rather than separatist (See Chapter 1), it was also clearly much more belligerent and willing to countenance armed insurrection. Such thoughts were anathema to the CSU's leadership and obviously impossible in any event.

It was not a possibility in 1948–49 for the CSU to 'opt out' of the new German state. Responsible voices in the CSU, Hans Ehard principal among them, made this point clear. Rather, the question was whether the CSU could willingly accept a new republican constitution or state which did not, in the party's view, measure up to a specific idea of what constituted a proper federal arrangement. Historical precedent; intense (if brief) experience in *Land*, zonal, and interzonal affairs between 1945 and 1949; and domestic Bavarian tactical requirements all pointed to a negative answer. The international position of a defeated, occupied Germany and the mutual dependence of Bavaria and the other *Länder* also pointed to the fact, however, that the arrangement of the Federal Republic was manifestly the best that could be got by the CSU. Added to these factors was the genuine uncertainty of what would occur not only in Bavaria but in the rest of Germany as well were the new state to be stillborn by a CSU-led rejection of the *Grundgesetz*; hence the party's decision to reject the document but to accept the republic.

The CSU continued to champion the cause of federalism after 1949 and, indeed, has done so to this day. The Federal Republic has, if anything, become more heavily centralized since 1949 as the central government slowly assumed most of the legislative responsibility from the several *Landtage*. The *Länder* nevertheless retain important prerogatives in the areas of cultural affairs, education, and control of local police forces. In addition, as the *Grundgesetz* makes the *Länder* the primary organ of federal administration, they continue to exert a marked influence on the affairs of state. The CSU seeks at every turn to maintain – and, if possible, extend –

this influence. It adamantly maintains itself as the autonomous 'Bavarian sister party' of the CDU and has become, in effect, a quasi-*Staatspartei.*

Though it claims to be the only true *Volkspartei* on the German political scene, the CSU has with time become increasingly conservative; indeed, some would say reactionary. While showing a sometimes remarkable ability to co-opt opponents' positions for tactical reasons (witness, for example, the CSU's adoption of 'green' policies since the 1970s), the party has never surrendered itself to what the leadership calls political expediency. Though such a stance has cost the party votes among workers and the liberally-inclined, it feels confident that it stands on genuine conservative principles. Although the party did not undergo a period of serious infighting upon the death of the long-serving chairman and Bavarian minister–president, Franz Josef Strauss, it does face the future of a united Germany without the presence of a personality at the top having Strauss's articulate ability to integrate populist and conservative arguments. What the party lost in Strauss, however, it appears to make up in the comparatively quiet, competent leadership of Minister–President Max Streibl and party chairman (Federal Minister of Finance) Theo Waigel. Whatever the reunification of Germany may bring, these men and their successors will certainly continue to regard the Christian Social Union and Bavaria as occupying a very special place in German and European affairs.

Notes

1 STRUGGLE FOR IDENTITY: THE BAVARIAN PEOPLE'S PARTY AND FEDERALIST *REICHSREFORM*, 1919–33

1. O. H. Fisk, *Germany's Constitutions of 1871 and 1919* (Cincinnanti, 1924), pp. 11, 15. B. Dennewitz, *Der Föderalismus. Sein Wesen und seine Geschichte* (Hamburg, 1947), p. 139. See Dennewitz for the problem of defining federalism in the abstract and in terms of its modern German manifestations. G. Anschütz, *Die Verfassung des Deutschen Reichs vom 11 August 1919* (Bad Homburg, 1960), p. 160. The constituent states of the German nation will be referred to throughout as *Länder*.
2. W. Benz, *Süddeutschland in der Weimarer Republik. Ein Beitrag zur deutschen Innenpolitik 1918–1923. Beiträge zu einer historischen Strukturanalyse Bayerns im Industriezeitalter* (Berlin, 1970), iv. 17–21. W. Zorn, *Bayerns Geschichte im 20 Jahrhundert* (München, 1986), p. 43.
3. Fisk, *Constitutions*, pp. 16–18, 29–59. Dennewitz, *Föderalismus*, pp. 34–5 shows that all of these organs did not work to the states' benefit as well as might have been expected from the letter of the constitution. Particularly important was the union of the offices of Prussian Minister President, *Reich* Chancellor, Chairman of the *Bundesrat* and Imperial Minister for Foreign Affairs in one person. See also W. Apelt, *Geschichte der Weimarer Verfassung* (München, 1946), p. 60.
4. A. Mitchell, *Revolution in Bavaria* (Princeton, 1965), pp. 34–74, 76–92. A. Kraus, *Geschichte Bayerns* (München, 1983), pp. 630–31. A. Dorpalen, *German History in Marxist Perspective* (London, 1985), pp. 313–14, points out that even pre-reunification East German historiography recognized the fundamentally non-revolutionary nature of the Eisner regime. See also R. M. Watt, *The Kings Depart, The German Revolution and the Treaty of Versailles 1918–1919* (London, 1973), p. 318.
5. M. Spindler, *Handbuch der Bayerischen Geschichte. Vierter Band: Das Neue Bayern 1800–1970* (München, 1974), p. 483.
6. Benz, *Süddeutschland*, 59, 67.
7. K. Schwend, *Bayern zwischen Monarchie und Diktatur* (München, 1954), pp. 65–6. Interestingly, this plan appears similar to one circulated in the British Foreign Office. See H. J. Nelson, *Land and Power. British and Allied Policy on Germany's Frontiers 1916–1919* (Newton Abbot, 1971), pp. 10–11. On Heim see B. Hubensteiner, *Bayerische Geschichte* (Munich, 1985), p. 442; Mitchell, *Revolution in Bavaria*, p. 24.
8. T. Eschenburg, 'Deutschland in der Politik der Allierten,' in J. Foschepoth (ed.), *Kalter Krieg und Deutsche Frage. Deutschland im Widerstreit der Mächte* (Göttingen, 1985), p. 37.
9. Nicholls, 'The Bavarian Background to National Socialism', in A. J. Nicholls and E. Matthias (eds.), *German Democracy and the Triumph of Hitler* (London, 1971), p. 113.
10. Ibid.

11. K. Bosl, 'Eine Revolution kommt nicht über Nacht, auch nicht in Bayern–Historisch-strukturelle Voraussetzungen der Parlamentarischen demokratie im Freistaat Bayern', in R. Roth (ed.), *Freistaat Bayern* (Donauwörth, 1975), p. 44.
12. Apelt, *Verfassung*, p. 46.
13. Benz, *Süddeutschland*, pp. 88, 93. K. D. Bracher, *Die Auflösung der Weimarer Republik* (Villingen/Schwarzwald, 1964), p. 559, indicates that Prussia possessed three-fifths of the population and territory of the *Reich* in 1919. Anschütz, *Verfassung des DR*, pp. 15–30, provides an excellent synopsis of the Preuss proposals.
14. BayHStA, *Geheimes Staatsarchiv*, MA 103253 *Gutachten* of 8 Feb. 1919, p. 4.
15. K. Schönhoven, *Die Bayerische Volkspartei 1924–1932* (Düsseldorf, 1972), p. 47. Apelt, *Verfassung*, pp. 57–8.
16. A. J. Nicholls, *Weimar and the Rise of Hitler* (London, 1968), p. 33.
17. Benz, *Süddeutschland*, p. 95.
18. Ibid., p. 96.
19. Fisk, *Constitutions*, pp. 138–9. Benz, *Süddeutschland*, p. 103. Anschütz, *Verfassung des DR*, p. 178.
20. Benz, *Süddeutschland*, p. 121.
21. Ibid.
22. Fisk, *Constitutions*, pp. 144. Benz, *Süddeutschland*, p. 167.
23. Schwend, *Monarchie*, pp. 103–104.
24. E. C. Helmreich, *The German Churches under Hitler* (Detroit, 1979), p. 25.
25. H. J. Gordon, *Hitler and the Beer Hall Putsch* (Princeton, 1972), p. 29.
26. Helmreich, Churches, pp. 98–9.
27. Schwend, *Monarchie*, pp. 130–1. Benz, *Süddeutschland*, pp. 189, 195. Bracher, *Auflösung*, p. 565.
28. Schwend, *Monarchie*, p. 132.
29. See H. Gollwitzer, 'Bayern 1918–1933', *Vierteljahrshefte für Zeitgeschichte*, iii (1955), 384–5.
30. Schwend, *Monarchie*, p. 134; Dennewitz, *Föderalismus*, pp. 13, 75.
31. Schwend, *Monarchie*, p. 135–41.
32. The DNVP replaced the DDP following the resignation of the DDP Minister for Trade and Industry, Eduard Hamm, in 1922.
33. Bosl, 'Eine Revolution', p. 26.
34. Nicholls, *Rise of Hitler*, p. 31.
35. Schönhoven, *Volkspartei*, p. 90. See also K. Bosl (ed.), *Dokumente zur Geschichte von Staat und Gesellschaft in Bayern* (München, 1976), ii, 178–93.
36. Schönhoven, *Volkspartei*, p. 90.
37. BVP campaign poster quoted in Schönhoven, *Volkspartei*, p. 90. For the attraction which the pre-1923 BVP talk of an *Ordnungszelle Bayern* had on right-wing extremists, see H. Fenske, *Konservatismus und Rechtsradikalismus in Bayern nach 1918* (Bad Homburg, 1969), pp. 62–3; E. Deuerlein, *Der Hitler-Putsch* (Stuttgart, 1962); and W. Benz, *Politik in Bayern 1919–1933* (Stuttgart, 1971), pp. 9–10.
38. Nicholls, *Rise of Hitler*, pp.107–11.
39. Fenske, *Konservatismus*, p. 242.

40. Schwend, *Monarchie*, pp. 276–7. Schönhoven, *Volkspartei*, p. 90.
41. Schwend, *Monarchie*, p. 277.
42. F. Schäffer, *Die Tätigkeit der Bayerischen Volkspartei im Bayerischen Landtag*, p. 3 as quoted in Schönhoven, *Volkspartei*, p. 90.
43. Schönhoven, *Volkspartei*, p. 126.
44. Schwend, *Monarchie*, pp. 311–12.
45. Schönhoven, *Volkspartei*, pp. 125–7, 132.
46. Schwend, *Monarchie*, p. 340.
47. Ibid., p. 383. BayHStA *Geheimes Staatsarchiv* MA 103340 *Stellungnahme und Forderungen Bayerns zur Verfassungs- und Reichsreform* 20 Aug. 1932, p. 5.
48. BayHStA *Geheimes Staatsarchiv* MA 103281 *Stuttgarter Neues Tagblatt* of 1 Feb. 1929.
49. BayHStA *Geheimes Staatsarchiv* MA 103298 Reports of the Bavarian *Gesandte* to Stuttgart, Dr. Emil Tischer, of 1–3, 5 Feb. 1929 and Curtius to the *Verband der Auswärtigen* Presse in Berlin of 7 Feb. 1929.
50. Schwend, *Monarchie*, p. 413.
51. BayHStA *Geheimes Staatsarchiv* MA 103281 *Badische Zeitung* of 29–30 Nov. 1923.
52. BayHStA *Geheimes Staatsarchiv* MA 103281 Reports of 22 Jan. and 17 Feb. 1920.
53. Schwend, *Monarchie*, p. 413.
54. BayHStA *Geheimes Staatsarchiv* MA 103300 *Badischer Beobachter* of 9 July 1930.
55. BayHStA *Geheimes Staatsarchiv* MA 103299 Letter of Schätzel to Held of 25 Nov. 1929 and report by von Preger of 12 Dec. 1929.
56. Schwend, *Monarchie*, p. 415.
57. Ibid.
58. Bracher, *Auflösung*, p. 576.
59. Nicholls, *Rise of Hitler*, p. 161.
60. Bracher, *Auflösung*, pp. 536–40, 582, 585.
61. Schwend, *Monarchie*, p. 515. Fisk, *Constitutions*, p. 150.
62. Spindler, *Handbuch der Bayerischen Geschichte*, p. 519. Letter of Faulhaber to Graf Soden of 20 Feb. 1933.
63. W. G. Zimmermann, *Bayern und das Reich. Der bayerischen Föderalismus zwischen Revolution und Reaktion* (München, 1953), p. 157.
64. Schwend, *Monarchie*, p. 525.
65. Schönhoven, 'Der politische Katholizismus in Bayern unter der NS-Herrschaft', in *Bayern in der NS-Zeit* (München, 1983), p. 551.
66. Ibid., pp. 552–67.
67. Ibid., p. 575. Circular of 1 June 1933.
68. Ibid., pp. 576–7.
69. Ibid., pp. 577–9, 584, 640.
70. F. Mayer, 'Bayerns Verfassungstradition–gewachsene Eigenstaatlichkeit oder Selbsttäuschung?' in *Freistaat Bayern* (Donauwörth, 1975), p. 73. As late as 1939 the *Jubiläumsausgabe* of *Mein Kampf* was still devoting whole sections to the evils of federalist organization of Germany. See A. Hitler, *Mein Kampf* (München, 1939), pp. 547–71.
71. Dennewitz, *Föderalismus*, pp. 76, 151. Fisk, *Constitutions*, pp. 159–63, 165–8, 187, 485. Kraus, *Geschichte Bayerns*, p. 651.

72. W. Benz, *Politik in Bayern 1919–1933* (Stuttgart, 1971), pp. 13–14. K. Bosl, 'Bayern im Kräftefeld europäischer Geschichte', in *Bayern, Deutschland und Europa* (Passau, 1975), p. 14. Zorn, *Bayerns Geschichte*, pp. 85, 91.
73. Dennewitz, *Föderalismus*, pp. 24–32, presents a short but very useful exposition of the concept of *Stammesföderalismus*. For *Teilstammesföderalismus* see Bosl, 'Eine Revolution', p. 47.
74. K. D. Bracher, W. Sauer, G. Schultz, *Die Nationalsozialistische Machtergreifung* (Köln und Opladen, 1962), p. 31.
75. Ibid., pp. 32–3. See also E. Matthias, 'The Influence of the Versailles Treaty', in Nicholls and Matthias, *German Democracy and the Triumph of Hitler* (London, 1971), p. 26. On Schäffer's and Pfeiffer's influence see BA *Repetorium Nachlass Schäffer*, p. x. and F. Wiesemann, *Die Vorgeschichte* der *nationalsozialistischen Machtübernahme in Bayern 1932/1933* (Berlin, 1975), pp. 45–7. For BVP losses in 1924 see p. 23.
76. R. Morsey, 'Die Deutsche Zentrumspartei', in Matthias and Morsey, *Das Ende per Parteien 1933* (Düsseldorf, 1960), p. 284.

2 THE RISE OF THE CHRISTIAN SOCIAL UNION, 1945–46

1. H. Zink, *The United States in Germany* (Princeton, 1957), p. 159.
2. J. E. Smith, *The Papers of General Lucius D. Clay* (Bloomington, 1974), i. 12. Hereafter cited as *Papers* with volume and page numbers. See also L. D. Clay, *Decision in Germany* (London, 1950), pp. 15–16.
3. *Papers*, i. 47.
4. Ibid.
5. D. Schoenbaum, 'Deutschland als Gegenstand der amerikanischen Nachkriegsplanung' in L. Herbst (ed.), *Westdeutschland 1945–1955* (München, 1986), p. 30. See also J. Gimble, 'Administrative Konflikte in der amerikanischen Deutschlandpolitik' in J. Foschepoth (ed.), *Kalter Krieg und Deutsche Frage* (Göttingen, 1985). Roosevelt's comments concerning an early withdrawal of US forces were made at the second plenary sitting of the Yalta conference on 5 February 1945 and are quoted in H. Graml, *Die Allierten und die Teilung Deutschlands. Konflikte und Entscheidungen 1941–1948* (Frankfurt am Main, 1985), p. 24.
6. Zink, *US in Germany*, p. 170.
7. Clay, *Decision*, p. 67.
8. Ibid., p. 70.
9. B. Fait, '"In einer Atmosphäre von Freiheit" Die Rolle der Amerikaner bei der Verfassunggebung in den Ländern der US-Zone 1946', *Vierteljahrshefte für Zeitgeschichte*, xxxiii (1985), 420.
10. M. Schröder, *Bayern 1945. Demokratischer Neubeginn* (München, 1985), p. 9.
11. K. Möckl, 'Die Geschichte der politischen Repräsentation des Volkes in Bayern', in R. L. Bocklet (ed.), *Das Regierungssystem des Freistaates Bayern* (München, 1977), i. 45–6.
12. T. Eschenburg, *Geschichte der Bundesrepublik Deutschland* (Stuttgart, 1983), i. 77. H. Dollinger, *Bayern* (Gütersloh, 1983), p. 240.
13. P. J. Kock, *Bayerns Weg in die Bundesrepublik* (Stuttgart, 1983), p. 105.

Rumours were nevertheless circulating at the time that the Americans intended to dismember Bavaria. See letter of Adam Stegerwald to Fritz Schäffer of 23 June 1945 in BA NL Schäffer Nr 19. As for Bavaria's designation, German federalists themselves were undecided. See *Programm des Bundes Deutscher Föderalisten* of 1947 in IfZ NL Baumgartner Nr 74.

14. For figures as to the religious affiliations of pre-1933 Bavarians, see the tables in I. Kershaw, *Popular Opinion and Political Dissent in the Third Reich: Bavaria 1933–1945* (Oxford, 1983), p. 22. See Chapter 1 above for the BVP's federalist efforts.
15. E. Deuerlein, *CDU/CSU 1945–1957. Beiträge zur Zeitgeschichte* (Köln, 1957), p. 53.
16. Ibid.
17. Speech of 10 Mar. 1933 on the *Finanzausgleich* and article in the periodical *Treu zur Fahne* of 23 Feb. 1933. NSDAP Hauptarchiv; Reel 44, Folder 823. St Antony's College, Oxford.
18. All details from Schöhoven, 'Der Politische Katholizismus', p. 641.
19. A. Wucher, *Wie kam es zur Bundesrepublik? Politische Gespräche mit Männern der ersten Stunde* (Freiburg i. B., 1968), pp. 22–3.
20. Deuerlein, *CDU/CSU*, p. 53. The US military papers, *Stars and Stripes*, of 4 July 1945 nevertheless reported Schäffer as hinting at an independent Bavaria. See BA NL Schäffer Nr 19. Schäffer's appointment as minister-president and suggestions for cabinet posts in BA NL Schäffer Nr 14.
21. All details from Schönhoven, 'Der politische Katholizismus', pp. 642–3.
22. Eschenburg, *Geschichte der BRD*, i. 199. H. Frederik, *Franz Josef Strauss* (München-Inning, 1968), p. 53.
23. All details on Pfeiffer and Scharnagl from Schönhoven, 'Der politische Katholizismus', pp. 555, 642.
24. Eschenburg, *Geschichte der BRD*, i. 199. Deuerlein, *CDU/CSU*, p. 28.
25. For Müller's biographical data see P. Gutjahr-Löser, *CSU Portrait einer Partei* (München, 1979), p. 73. For Müller on the BVP and new parties, see K. Köhler, 'Der Mittwochskreis beim "Ochsensepp": Die Union wird geboren', in Schröder, *Bayern 1945*, p. 75; J. Müller, *Bis zur letzten Konsequenz. Ein Leben fur Frieden und Freiheit* (München, 1975), p. 284.
26. Quotation from Müller, 'Unser Weg in die Zukunft' in *Bayerische Rundschau* on 21 Jan. 1946, p. 1. See also unsigned article, 'Verpflichtung und Aufgabe' in same of 6 Apr. 1946, p. 1. For Kaiser on socialization see 1947 new year's message of the Berlin CDU in IfZ NL Baumgartner Nr 3.
27. Müller, *Konsequenz*, pp. 320–1.
28. Eschenburg, *Geschichte der BRD*, i. 185, 199. Stegerwald's belief in the efficacy of inter-denominational worker cooperation had been a theme of his at least since his fiery programmatic speech on the subject to an Essen trades-unions congress in 1920.
29. M. G. Lange, *Parteien in der Bundesrepublik Deutschland* (Stuttgart, 1955), p. 67. Letter of Stegerwald to Schäffer of 23 June 1945 in BA NL Schäffer Nr 19.
30. A. R. L. Gurland, *Die CDU/CSU: Ursprünge und Entwicklung bis 1953* (Frankfurt, 1980), p. 49.
31. All details from Schönhoven, 'Der politische Katholizismus', p. 643. See also Chapter 1 above, p. 3.

32. Eschenburg, *Geschichte der BRD*, i. 199–200. See BA NL Schäffer Nr 17 for letter of Schäffer to Ludwig Woerner of 21 Dec. 1945 in which Schäffer wrote that Scharnagl and Horlacher were doing everything in their power to prevent Schäffer becoming head of the CSU. BA NL Schäffer Nr 18 contains Schäffer's complaints to Müller of 1 Mar. 1946 of 'ungeheuere Angriffe' by Horlacher and Schlögl and a furious exchange between Schäffer and Georg Pix, co-editor of the *Isar Post*, of 11 Feb–4 Mar. 1946.
33. Deuerlein, *CDU/CSU*, pp. 56–8. Eschenburg, *Geschichte der BRD*, i. 77. See BA NL Schäffer Nr 19 for article in the *Neue Rheinische Zeitung* of 2 Sept. 1945 reporting the founding of the CDU; *Kölner Leitsätze* of the CDU of June 1945; and other related material.
34. Dates from Deuerlein, *CDU/CSU*, p. 58.
35. *Bayernkurier* of 25 Jan. 1986, p. 19.
36. BayHStA NL Pfeiffer Nr 41. Undated transcription of notes of a meeting of the *Aktionsausschuss*.
37. Kock, *Bayerns Weg*, p. 211.
38. Gutjahr-Löser, *Portrait einer Partei*, p. 66. For Treysa declaration see D. Thränhardt, *Wahlen und politische Strukturen in Bayern 1848–1953* (Düsseldorf, 1973), pp. 246, 256–60.
39. *Papers*, i. 102.
40. For *Antifaschistische Ausschüsse* see Schröder, *Bayern 1945*, p. 9; circular calling for an SPD–KPD *Aktionsgemeimschaft* in BA NL Gessler Nr 64. See also in Schröder: A. Miller, 'Parteiarbeiter aus Verlegenheit', p. 116; K. Köhler, 'Der Mittwochkreis beim Ochsensepp', p. 71. For Schäffer's *Restaurationskonzept*, see Kock, *Bayerns Weg*, p. 102.
41. Eschenburg, *Geschichte der BRD*, i. 79–80. *Papers*, i. 81–90. The former head of the CSU's Munich organization, Adolf Miller, maintained, in an interview of 29 Jan. 1986 that subsequent suspicion about Müller's being a communist dupe because of his (Müller's) talks was less important [*nebenbei*] to the basic Müller–Schäffer personality clash. Graml, *Die Allierten und die Telung Deutschlands*, pp. 42–3, indicates that the prospects for direct Soviet support of communist elements in the western zones seemed very favourable at this juncture.
42. Albrecht Graf Montgelas and C. Nützel, *Wilhelm Hoegner* (München, 1957), p. 78.
43. *Papers*, i. 103, 260–1. Montgelas-Nützel, *Hoegner*, p. 88. B. Fait, 'Der Weg zur Bayerischen Verfassung' in S. Boenke and K. von Zwehl (eds.), '*Angesichts des Trummerfeldes...*' (München, 1986), p. 209.
44. Eschenburg, *Geschichte der BRD*, i. 548.
45. SPD comments in BayHStA NL Ehard Nr 727 Article in *Münchener Post* of 1 Feb. 194. Thränhardt, *Wahlen*, p. 196.
46. Montgelas-Nützel, *Hoegner*, p. 88. Fait, 'Der Weg zur Bayerischen Verfassung', in Boenke and von Zwehl, pp. 209–10.
47. Eschenburg, *Geschichte der BRD*, i. 548. Fait, 'Der Weg zur Bayerischen Verfassung' in Boenke and von Zwehl, pp. 212–13.
48. Constitution reproduced in K. Bosl (ed.), *Dokumente zur Geschichte von Staat und Gesellschaft in Bayern* (München, 1976), ii. 229–52. R. H. Wells, *The States in West German Federalism: A Study of Federal–State Relations* (New York, 1961), pp. 27–8.
49. Bayerischer Landtag (ed.), *Bayerischer Landtag. Bayerischer Senat* (München,

1984), pp. 102–3. The *Kammer der Reichsräte* comprised the princes in majority of the royal house; officers of the Crown; the two Roman Catholic archbishops in Bavaria; the heads of the major princely houses (*fürstlich[e] und gräflich[e] Familien*) still possessing estates in the kingdom; a Protestant bishop and the head of the Protestant Consistory-General; and life and/or hereditary peers named by the monarch; see 'Verfassungs-Urkunde des Königreichs Baiern [6 Juni 1818]' in Bocket, iii, 31. As the unanimity principle ruled between the *Kammer der Reichsräte* and the *Kammer der Abgeordneten* for legislation to pass, the upper house of the earlier period in theory far surpassed in authority the Senate as created in 1946. K. Müockl *Die Prinzregentenzeit* (München, 1972), pp. 23–5, 39–40, points out, however, that 'royal cabinet rule' through an increasingly isolated, self-perpetuating bureaucratic elite served often to circumvent the constitutional functions of the parliament and government in any case, thus making the powers of the upper house concomitantly illusory.

50. Eschenburg, *Geschichte der BRD*, i. 244–5. Information from Hoegner's personal departmental chief, Baron Levin von Gumppenberg of 3 Mar. 1986.
51. Ibid.
52. A. Haussleiter, 'Der Sturz des "Ochsensepp"', in Schröder, *Bayern 1945*, pp. 97–8; Hoegner, *Aussenseiter*, pp. 253–4; Müller *Konsequenz*, pp. 287, 333–7; Eschenburg, *Geschichte der BRD*, i. 246.
53. I. Unger, *Die Bayernpartei. Geschichte und Struktur 1945–1957* (Stuttgart, 1979), pp. 22–3.
54. Eschenburg, *Geschichte der BRD*, i. 264. Montgelas-Nützel, *Hoegner*, pp. 88, 95. Mayer, 'Bayerns Verfassungstradition', in Roth, p. 74. Fait, 'Der Weg zur Bayerischen Verfassung' in Boenke and von Zwehl, p. 118.
55. Eschenburg, *Geschichte der BRD*, i. 548.
56. W. Berberich, 'Die historische Entwicklung der Christlich-Sozialen Union in Bayern bis zum Eintritt in die Bundesrepublik' (Julius-Maximilians-Universität Würzburg. Ph.D. thesis 1965), p. 56; Bibliothek des Instituts für Zeitgeschichte München.
57. Thränhardt, *Wahlen*, pp. 130–3, 216–17, 235–40. Kershaw, *Popular Opinion*, pp. 14, 25. Berberich, *Entwicklung der CSU*, pp. 144–55. Bayerisches Statistisches Landesamt (ed.), *Die Landtagswahl von A bis Z* (München, 1982), pp. 140–41.
58. Thrändhardt, *Wahlen*, pp. 205, 281–4, 315. M. Schröder, 'Volkstribun auf dem rechten Flügel: Alfred Loritz und die WAV', in Schröder, *Bayern 1945*, pp. 143–53. On Heim see Chapter 1 above, p. 7. The popular legitimation of von Kahr's rule in the early 1920s had rested on the rather typical nineteenth-century German assumption that the authorities in the state "knew better" simply because they were the authorities.

3 SHIFTING FRONTS: THE CSU GOVERNMENT OF HANS EHARD AND THE FEDERALIST CAMPAIGN, DECEMBER 1946 – JUNE 1948

1. Letter to Father Robert Leiber of 10 Dec. 1946 in Müller, *Konzequenz*, p. 337.

2. Berberich, *Entwicklung der CSU*, p. 67.
3. Müller, *Konsequenz*, p. 337.
4. HSS *CSU Mitteilungen* of 21 Dec. 1946, pp. 1–2.
5. BayHStA OMGBY 10/103–3/3 Unsigned report of 22 Dec. 1946 to Political Affairs Section.
6. Müller, *Konsequenz*, p. 341. Berberich, *Entwicklung der CSU*, p. 75. W. Hoegner, *Der schwierige Aussenseiter* (München, 1959), p. 285 reproduces the SPD's decision.
7. Haussleiter, 'Der Sturz des Ochsensepp', in Schroeder, p. 100. BayHStA NL Pfeiffer Nr 42 Letters to Ehard from the *Bezirksverband Oberfranken* and the editor of the *Süddeutsche Zeitung* of 20–21 Jan. 1947, respectively. *Junge Union* resolution of 12 Jan. 1947.
8. BayHStA MA111 377 Letter to Müller from *Bezirksverein Siegestor* of 20 Jan. 1947. IfZ NL Baumgartner Nr 3 Letter to Josef Baumgartner from head of *Kreisverband Pfarrkirchen/Niederbayern* of 9 Jan. 1947.
9. Information from Baron Levin von Gumppenberg of 9 Apr. 1986. BayHStA OMGBY 10/110–2/3 Report of T/3 Morris Gadol of 15 Feb. 1946 to ICD Würzburg Detachment. For Landshut conference see IfZ NL Baumgartner Nr. 3.
10. Letter of Adenauer to Pfeiffer of 25 Jan. 1947 in K. Adenauer, *Briefe 1945–1947* (Berlin, 1983), p. 424–5. Information from Baron Levin von Gumppenberg of 9 Apr. 1986.
11. BayHStA MA111 377 *Redner Dienst der Christlich-Sozialen Union in Bayern* of Sept. 1947; Hoegner, *Aussenseiter*, p. 295.
12. Wucher, *Wie kam es zur Bundesrepublik?*, p. 79; Möckl, 'Die Geschichte der politischen Representation des Volkes in Bayern', in Bocklet, p. 46; M. E. Foelz-Schroeter, *Föderalistische Politik und nationale Representation 1945–1947* (Stuttgart, 1974), p. 82; M. Overesch, 'Gegen Deutschlands Teilung', *Deutschland Archiv*, xiv (1981), 148–61.
13. *Neues Deutschland* of 11 Nov. 1946 as quoted in M. Overesch, 'Einigkeit oder Teilung? Westdeutsche Entscheidungsträger vor der gesamtdeutschen Frage', in Foschepoth, p. 289.
14. Spindler, *Handbuch der Bayerischen Geschichte*, pp. 594, 601.
15. See note 12.
16. H. Ehard, *Bayerische Politik. Ansprachen und Reden des bayerischen Ministerpräsidenten* (München, 1952), p. 18.
17. Foelz-Schroeter, *Föderalistische Politik*, pp. 116–18. Ehard, *Bayerische Politik*, p. 20.
18. Spindler, *Handbuch der bayerischen Geschichte*, p. 594.
19. Kock, *Bayerns Weg*, p. 246. See also Foelz-Schroeter, *Föderalistische Politik*, pp. 114–15.
20. See, for example, in BayHStA MA110 049 Articles 49 and 75–9 of the 'Verfassung für die Deutsche Demokratische Republik' which was sent to the *Staatsregierung* early in 1947.
21. BayHStA NL Pfeiffer Nr 61 *Süddeutsche Zeitung* of 7 June 1947. Kock, *Bayerns Weg*, p. 244.
22. HSS Unsigned article, 'Vor neuen Entscheidungen', in *Bayerische Rundschau*, Anfang Juni 1947, p. 173. Also 'Die Teilung Deutschlands' in same, Mitte Juni 1947, pp. 179–80. BayHStA OMGBY 10/70–3/10 Schäffer's comments

in unsigned report of 11 June 1947. See also various press reports to OMGBY Media Analysis Section.

23. Bundesarchiv (ed.), *Akten zur Vorgeschichte der Bundesrepublik Deutschland* (Wien, 1976), i. 32, 60. Hereafter cited as *Akten* with volume and page numbers. Foelz-Schroeter, *Föderalistische Politik*, p. 37.
24. *Akten*, i. 45.
25. BayHStA MA110 911 Eisenhower's proclamation of 19 Sept. 1945. MA 130 008 Protocol of *Länderrat* meeting of 17 Oct. 1945.
26. Fait, "'In einer Atmosphäre von Freiheit"', 428.
27. BayHStA NL Pfeiffer Nr 78 Speech of General Adcock to *Länderrat* of 6 Nov. 1945. See BayHStA MA130 008 for *Länderrat* organization.
28. Clay's comments in BayHStA MA 130 008. List of *Referate* in *Akten*, i. 36.
29. BayHStA NL Pfeiffer Nr. 78.
30. BayHStA MA130 008 Resolution and Seelos's letter of 4 Apr. 1946. Hoegner to Seelos of 8 Apr. 1946. Seelos's report to Munich of 22 Jan. 1946.
31. BayHStA MA130 008 Resolution of 22 August 1946.
32. BayHStA NL Ehard Nr 698 OMGBY's letter to Rossmann of 4 Nov. 1946. NL Pfeiffer Nr 78 Rossmann's comments of 5 Nov. 1946. *Akten*, ii. 30.
33. BayHStA MA110 911 *Dokumente zum Aufbau des bayerischen Staates*, p. 106. *Akten*, ii. 21. Byrnes's speech excerpted in Boenke and von Zwehl, '*Angesichts des Trummerfeldes . . .*', p. 46.
34. R. Morsey, 'Zwischen Bayern und der Bundesrepublik. Die politische Rolle des bayerischen Ministerpräsidenten Hans Ehard 1946–1949', *Juristenzeitung*, 11/12 (1981), 361–70.
35. *Akten*, ii. 62.
36. Ibid., 178.
37. H. Ehard, *Freiheit und Föderalismus* (München, 1948), p. 23.
38. BayHStA NL Pfeiffer Nr 78 Rossmann's comments of 5 Nov. 1946. Ehard, *Freiheit und Föderalismus*, p. 23.
39. Kock, *Bayerns Weg*, p. 249.
40. H. Ehard, *Die europäische Lage und der deutsche Föderalismus* (München, 1948), pp. 19–20.
41. HSS *Bayerische Rundschau*, Mitte Nov. 1947, p. 333; Ende Nov. 1947, p. 338.
42. Eschenburg, *Geschichte der BRD*, i. 94.
43. Ibid., p. 377.
44. Foelz-Schroeter, *Föderalistische Politik*, pp. 94–5.
45. *Akten*, ii. 11. Clay, *Decision*, p. 189.
46. *Akten*, ii.219.
47. Ibid., 136–7.
48. Ibid., 207.
49. BayHStA MA110 814 Joint resolution of 14 January 1947.
50. *Akten*, ii. 226.
51. Ibid., iii. 13.
52. All following details on bi-zonal organization in Kock, *Bayerns Weg*, pp. 250–51; Eschenburg, *Geschichte der BRD* i. 389–90; Clay, *Decision*, p. 174.
53. Kock, *Bayerns Weg*, p. 249.
54. For support of this view see A. Mintzel, *Die Geschichte der CSU* (Opladen,

1977), p. 280; also text of Mintzel speech to have been delivered to the CSU *Landesgruppe* on 20 Sept. 1985. Whether the speech was delivered as written could not be determined. For the following reference to the *Ordnungszelle Bayern* see Chapter 1 above, p. 22.

55. See for example, his proposed position paper to the *Landtag* of 15 Mar. 1947 in BayHStA MA110 814.
56. See Foelz-Schroeter, *Föderalistische Politik*, p. 93.
57. Kock, *Bayerns Weg*, p. 251.
58. BayHStA NL Ehard Nr 1383 Undated copy of proposed letter to Adenauer of August 1947.
59. BayHStA MA110 814 Letter of 28 Aug. 1947.
60. BayHStA MA110 814 Maier's and Ehard's comments to the *Länderrat* of 7 Oct. 1947. This dissatisfaction was partially reciprocated. See diary entry of Heinrich Troeger, general secretary of the bi-zonal *Länderrat*, of 24 Aug. 1947 in Heinrich Troeger, *Interregnum* (München, 1985), p. 33.
61. BayHStA NL Ehard Nr 1383 Schlögl letter of 2 Oct. 1947.
62. Boenke and von Zwehl, '*Angesichts des Trummerfeldes . . .*', p. 37.
63. *Akten*, iii. 21–2. L. Kettenacker, 'Die anglo-amerikanischen Planungen für die Kontrolle Deutschlands', in Foschepoth, p. 69, holds that socialization never constituted part of Britain's wartime planning for postwar Germany.
64. *Akten*, iii. 23.
65. W. Loth, 'Die deutsche Frage in französischer Perspektive' in Herbst, pp. 38–9.
66. R. Hudemann, 'Wirkungen französischer Bestazungspolitik' in Herbst, pp. 168–71.
67. *Akten*, iii. 28 summarizes French views. See also K. Sontheimer, *The Government and Politics of West Germany* (London, 1972), pp. 16–17, 24.
68. Ibid., 41–3.
69. Kock, *Bayerns Weg*, pp. 254–5; Eschenburg, *Geschichte der BRD*, i. 408–16.
70. HSS *Bayerische Rundschau*. Ende Februar 1948., pp. 50–1. *Akten*, iv. 152.
71. K. Möckl, *Die Prinzregentenzeit*, p. 221 reproduces the relevant sections of the Centre's 1887 party programme.
72. *Akten*, ii. 27; iii. 21–2.
73. *Akten*, ii. 27.
74. Ehard, *Bayerische Politik*, pp. 33–4.
75. HSS *Bayerische Rundschau*. Ende Februar 1948, pp. 50–1.
76. Ibid., p. 52.
77. *HSS Rede des bayerichen Ministerpräsidenten Dr. Hans Ehard gehalten am 25. Januar auf der Landeskonferenz der CSU zu Marktredwitz*, pp. 6–8.
78. See Baumgartner–Müller correspondence in IfZ NL Baumgartner Nr 16. Troeger, *Interregnum*, p. 40 clearly points out that the *Kartoffelkrieg* aroused controversy not only in Bavaria.
79. Kock, *Bayerns Weg*, pp. 252–3. Eschenburg, *Geschichte der BRD*, i. 396–7. K-D. Henke and H. Woller (eds.), *Lehrjahre der CSU* (Stuttgart, 1984), p. 143. Unger, *Bayernpartei*, p. 23.
80. Mintzel, *Geschichte der CSU*, pp. 99–100.
81. Unger, *Bayernpartei*, pp. 24–5. IfZ NL Baumgartner Nr 10 Report of 2 Mar. 1948 to Schäffer from Hermann Walther. See BA NL Schäffer Nr 25 for numerous expressions of support for Schäffer and for Schäffer–BP correspondence.

82. Mintzel, *Geschichte der CSU*, pp. 106–8.
83. Unger, *Bayernpartei*, p. 30. K. Wolf, *CSU und Bayernpartei. Ein besonderes Konkurrenzverhältnis 1948–1960* (Köln, 1982), pp. 43–5, 47–8, 49, 118.
84. Mintzel, *Geschichte der CSU*, p. 65. Berberich, *Entwicklung der CSU*, p. 90. Wolf, *CSU und Bayernpartei*, pp. 10, 12, 40, 115.
85. BA NL Schäffer Nr 20.
86. Mintzel, *Geschichte der CSU*, p. 102. Berberich, *Entwicklung der CSU*, p. 216.
87. Mintzel, *Geschichte der CSU*, p. 94.
88. See Point 15 in Boenke and von Zwehl, '*Angesichts des Trummerfeldes . . .*', 98.
89. Eschenburg, *Geschichte der BRD*, i. 437.
90. Mintze, *Geschichte der CSU*, p. 65.
91. Thränhardt, *Wahlen*, p. 319. Mintzel, *Geschichte der CSU*, pp. 65–7.

4 STAKING THE FEDERALIST CLAIM IN ELLWANGEN, FRANKFURT AND HERRENCHIEMSEE, MARCH 1947–AUGUST 1948

1. See in general BayHStA MA110 049 *Schriftwechsel über Verfassungsentwürfe 1945–1948*; MA 110 804 *Das ehem. (sic) Reich, Länder und Provinzen*; and MA110 911 *Politische Staatsbildung nach 1945. Unitarismus-Föderalismus 1945–1958.*
2. See similar statements by Adenauer in H. J. Küsters and H. P. Mensing, 'Konrad Adenauer zur politischen Lage 1946–1949. Aus den Berichten des schweizerischen Generalkonsuls in Köln Franz Rudolf von Weiss', *Vierteljahrshefte für Zeitgeschichte*, xxxii (1984), 299.
3. Mintzel, *Geschichte der CSU*, p. 93.
4. Kock, *Bayerns Weg*, p. 264.
5. Ibid. For the Berlin CDU's suspicions of the *Kreis* see the copy of Bürgermeister Friendensburg's letter to Ehard of 16 Apr. 1948 in BayHStA MA110 049.
6. F. Glum, *Zwischen Wissenschaft, Wirtschaft und Politik. Erlebtes und Erdachtes in vier Reichen* (Bonn, 1964), p. 583–5. Morsey, 'Zwischen Bayern und der Bundresrepublik', p. 362.
7. *Akten*, ii. 7.
8. Foelz-Schroeter, *Föderalistische Politik*, p. 99.
9. *Akten*, ii. 78. Rossmann speech to the *Länderrat* of 8 Jan. 1947.
10. As quoted in Foelz-Schroeter, *Föderalistische Politik*, p. 206.
11. Eschenburg, *Geschichte der BRD*, i. 476.
12. BayHStA MA110 049 Glum letter of 16 June 1947 to the Freidensburo.
13. Kock, *Bayerns Weg*, p. 258.
14. Ibid.
15. Ibid.
16. BA NL Gessler Nr 64 Glum lecture 'Föderation und Demokratie' of 16 Jan. 1948, p. 21.
17. See HSS *Bayerische Rundschau* [date unavailable], 'Bayerische Politik im Zeichen der Paulskirche'.

18. HSS *CSU Mitteilungen* of 22 Feb. 1947.
19. Ibid.
20. *HSS Bayerische Rundschau* Ende Februar 1947, p. 53.
21. Adenauer, *Briefe 1945–1947*, pp. 437–40.
22. Foelz-Schroeter, *Föderalistische Politik*, p. 111. See IfZ NL Baumgartner Nr 3 *Mitteilungen der Christlich-Demokratischen Union* of March 1947 for eastern-zone CDU views of the Königstein meeting. H. G. Wieck, *Christliche und Freie Demokraten in Hessen, Rheinland-Pfalz, Baden und Württemberg 1945/46* (Düsseldorf, 1958), pp. 196–9, excerpts an article from the Berlin *Tagesspiegel* of 14 Oct. 1947 dealing at length with contemporary perceptions of the intra-CDU problems and their reflection at Königstein.
23. Müller, *Konsequenz*, p. 356. See also K. Gotto *et al.* (eds.), *Die CDU/CSU Fraktion im Parlamentarischen Rat* (Stuttgart, 1981), xxvi.
24. Henke, *Lehrjahre der CSU*, p. 115.
25. Kock, *Bayerns Weg*, p. 272. Gotto, *CDU/CSU Fraktion*, xxvi–vii.
26. Ibid.
27. Kock, *Bayerns Weg*, pp. 264–6. Same for following details.
28. Dr Paul Binder, State Secretary in Württemberg-Hohenzollern, as quoted in Wieck, *Christliche und Freie Demokraten*, p. 193.
29. Kock, *Bayerns Weg*, pp. 267–70.
30. All details from letter of Dr Werner Hilpert of 18 June 1948 in BayHStA NL Pfeiffer Nr 204.
31. All details from *Niederschrift der im Rahmen des von der Militärregierung veranstalteten Expertenprogramms 24–26 VI 48* in BayHStA NL Pfeiffer Nr 204.
32. BayHStA NL Pfeiffer Nr 33 *Communique of the Six Power Conference in London* as published in Germany on 7 June 1948, p. 6.
33. All details of meeting from *Akten*, iv. 515–16.
34. Based upon the transcript consulted and given the discussion's subject, Ehard remained uncharacteristically quiet during the meeting. Indeed, he apparently spoke only at the end when, in reply to Clay's suggestions that the *Länderrat* and *Zonenbeirat* be excluded from constitutional discussions in the future, he replied, 'Ich glaube, man sollte den alten Bahnhof nicht abbrechen, bevor der neue Bahnhof gebaut ist.'
35. Quoted in P. H. Merkl, *The Origin of the West German Republic* (New York, 1963), pp. 50–1. All documents in translation in H. Laufer, *Das föderative System der Bundesreblik Deutschland* (München, 1985), 253–5.
36. BayHStA NL Ehard Nr 611 *Empfehlungen der Londoner Sechs-Mächte-Konferenz* (Translation of *Times* article of 8 June 1948). See also *London Conference Paper TR I/1* of 23 Feb. 1948 in Clay, *Decision*, p. 395.
37. Merkl, *Origin*, p. 51.
38. Ibid.
39. BayHStA NL Ehard Nr 611 *Konferenz der 3 (sic) Militärgouverneure mit den Ministerpräsidenten der 3 Zonen am 1. Juli 1948, 11.30 Uhr, in Frankfurt (Main).*
40. BayHStA NL Ehard Nr 890 *Times* article of 5 July 1948.
41. BayHStA MA110 049 *Stellungnahme* to the Frankfurt Documents and the meeting of 1 July 1948.

42. Ibid.
43. BayHStA NL Ehard Nr 863 *Grundsätzliche Erwägungen des Ministerpräsidenten-Konferenz (sic) in Koblenz.* NL Pfeiffer Nr 34 *Denkschrift der Bay. (sic) Staatsregierung 4.7.1948.* W. Benz, 'Erzwungenes Ideal oder zweitbeste Lösung?' in Herbst, p. 141.
44. Merkl, *Origin*, pp. 52–3. Eschenburg, *Geschichte der BRD*, i. 465–6.
45. BayHStA NL Ehard Nr 993 Undated [22 July 1948?] *Stellungnahme* in file for meeting of 21 July 1948.
46. Ibid.
47. R. Maier, *Erinnerungen 1948–1953* (Tübingen, 1966), pp. 58–59. On Müller and Ehard, see Wolf, *CSU und Bayernpartei*, p. 12.
48. Eschenburg, *Geschichte der BRD*, i. 476.
49. BayHStA NL Ehard Nr 890 Copy of typed transcript.
50. Ibid.
51. BayHStA OMGBY 10/107–2/19 Acting Director Donald T. Shea, Intelligence Division, of 27 July 1948 to *Land* Director OMGB, 'Bavarian Reaction to Western German State'. The description of the party leaders' will-power was, in Müller's case, not unique to the American side. Troeger, *Interregnum*, p. 47 paints Müller as one who 'macht einen brutalen, beinahe sturen Eindruck und erinnert im Äusseren an die Simplicissimus-Typen für die urbayerische Bierbankpolitiker'.
52. BayHStA NL Ehard Nr 890 SPD *Vorschläge zu den Londoner Vereinbarungen* [fragment?]. OMGBY 10/65–2/12 Undated report of Alfred Kiss to OMGB.
53. BayHStA NL Ehard Nr 890 *Die CDU-CSU zu den Vorschlägen der Militärgouverneure.*
54. BayHStA NL Ehard Nr 890 Baumgartner interview in the *Süddeutsche Zeitung* of 17 July 1948.
55. All details from BayHStA NL Ehard Nr 677 *Zum Ergebnis der Konferenzen der Ministerpräsidenten und zur Pfalzfrage.*
56. K. Niclauss, *Demokratiegründung in Westdeutschland* (München, 1974), p. 131.
57. Merkl, *Origins*, pp. 55–6.
58. Möckl, 'Die Geschichte der politischen Representation des Volkes in Bayern' in Bocklet, i. 36–7. See also iii. 63–6.
59. Convention guidelines as quoted in Kock, *Bayerns Weg*, p. 282.
60. Eschenburg, *Geschichte der BRD*, i. 483.
61. Morsey, 'Zwischen Bayern und der Bundesrepublik', p. 366.
62. Niclauss, *Demokratiergründung*, p. 130. Kock, *Bayerns Weg*, p. 281.
63. Eschenburg, *Geschichte der BRD*, i. 479.
64. Merkl, *Origin*, p. 56.
65. Kock, *Bayerns Weg*, p. 282.
66. BayHStA NL Ehard Nr 863 Kollmann *Denkschrift* of 4 July 1948. On the Bavarian view in 1918–1919 see Chapter 1 above, p. 5 ff.
67. See Eschenburg, *Geschichte der BRD*, i. 482 for *debellatio* theory as convention topic.
68. Ibid.
69. All details, until further notice, in BayHStA MInn 79790 *1. Ergänzung zu den Bayerischen Bemerkungen zum Entwurf eines Grundgesetzes*, p. 7.

70. All following details from BayHStA MA130 029 *Bericht über den Verfassungskonvent auf Herrenchiemsee vom 10. bis 25. August 1948*, pp. 10, 19, 37. Hereafter cited as *Bericht*.
71. BayHStA NL Pfeiffer Nr 162 *Bayerische Leitgedanken für die Schaffung des Grundgesetzes*.
72. *Bericht*, pp. 28–9. Articles 34–5 *Entwurf eines Grundgesetzes* in same, p. 65.
73. BayHStA MInn79791 *2. Ergänzung zu den Bayerischen Bemerkungen zum Entwurf eines Grundgesetzes*, pp. 3–4. Hereafter cited as *2. Ergänzung*.
74. Ibid.
75. *Bericht*, p. 34.
76. BayHStA MInn79791 *2. Ergänzung*, pp. 4–5.
77. *Bericht*, p. 34.
78. Ibid., pp. 49–50.
79. Eschenburg, *Geschichte der BRD*, i. 490.
80. Ibid.
81. BayHStA NL Ehard NR 963 *Vom Werden einer Verfassung* [early?] Nov. 1948, p. 5.
82. BayHStA MA110 047 *Mitteilungen des Bayerischen Ministerpräsidenten Dr Hans Ehard and den Länderrats-Ausschuss des Bayerischen Landtages 15. XII. 48*, p. 5.
83. BayHStA NL Ehard Nr 1324 *Bericht über die Tätigkeit des Parlamentarischen Rats*, p. 9.
84. Kock, *Bayerns Weg*, p. 284.
85. BayHStA NL Ehard Nr 568 *Ansprache des bayerischen Ministerpräsidenten Dr Hans Ehard auf dem Bayerischen Bauerntag in Memmingen am 12. September 1948*, pp. 19–20.

5 THE FEDERALIST EFFORT IN BONN, SEPTEMBER 1948–AUGUST 1949

1. See BayHStA MA110 049 for copy of election list.
2. CSU: Anton Pfeiffer, Josef Schwalber, Gerhard Kroll, Wilhelm Laforet, Ferdinand Kleindienst, Karl Sigmund Mayr, Kaspar Gottfried Schlör and Kaspar Seibold.
   SPD: Josef Seifried, Jean Stock, Hansheinz Bauer and Willibald Mücke.
   FDP: Thomas Dehler.
   All as listed in Kock, *Bayerns Weg*, p. 285. For all delegates to the Council, see Eschenburg, *Geschichte der BRD*, i. 490.
3. Kock, *Bayerns Weg*, p. 286, note 6
4. See Chapter 3 above, p. 74–5.
5. Kock, *Bayerns Weg*, p. 286, note 6. The remaining division would have been: CSU 5; SPD 3; KPD, FDP, and BP 1 each.
6. BayHStA MA110 049 Copy of Baumgartner letter to Ehard of 2 July 1948.
7. Eschenburg, *Geschichte der BRD*, i. 486.
8. Kock, *Bayerns Weg*, p. 291.
9. Eschenburg, *Geschichte der BRD*, i. 490. Five non-voting delegates represented Berlin. SPD: Ernst Reuter, Otto Suhr, Paul Löbe; CDU: Jakob Kaiser; FDP: Hans Reif.

10. Ibid., p. 489.
11. See Chapter 4 above, p. 93 ff.
12. Kock, *Bayerns Weg*, p. 295 and note 54.
13. Morsey, 'Zwischen Bayern und der Bundesrepublik', p. 366 and note 65.
14. BayHStA NL Ehard Nr 1000 *Kurzprotokoll der Konferenz der Ministerpräsidenten der drei Westzonen am 1.10.1948, 10 Uhr, auf dem Jagdschloss Niederwald*, p. 6.
15. Ibid., Nr 1463 Pfeiffer report of 29 Jan. 1949.
16. Ibid., Nr 1015 *Bericht des Bayerischen Ministerpräsidenten über die Verhandlungen in Bonn in der Sitzung der Landtagsfraktion der CSU am 11.3.1949.*
17. See Chapter 4 above, p. 79. Kock, *Bayerns Weg*, p. 298.
18. See Chapter 4 above, pp. 83, 93 ff.
19. BayHStA NL Pfeiffer Nr 212 *Notizen über den Parlamentarischen Rat. Stand von 10. IX. 48*, p. 2.
20. Ibid., Nr 212 Schwend letter to Pfeiffer of 18 Sept. 1948.
21. BayHStA MA110 049 Glum letter to the justice minister of the Rhineland-Palatinate, Adolf Süsterhenn of 24 June 1948. See also Merkl, *Origin*, p. 70.
22. Kock, *Bayerns Weg*, p. 290.
23. BayHStA NL Pfeiffer Nr 212 Ehard letter to Pfeiffer of 27 September 1948.
24. Kock, *Bayerns Weg*, p. 296. See also, in BayHStA NL Pfeiffer Nr 212 Ehard's speech to the *Technische Hochschule* in Munich on 10 Nov. 1948.
25. BayHStA NL Pfeiffer Nr 212, typed transcript, 'Bundesrat oder Senat?'
26. BayHStA MA110 049 Glum letter to Hans Nawiasky of 9 June 1948. For *Ellwanger Kreis* see Chapter 4 above, pp. 77–80.
27. Kock, *Bayerns Weg*, p. 299, note 76.
28. All details from BayHStA NL Pfeiffer Nr 212 Ehard letter to Pfeiffer of 4 Oct. 1948.
29. Kock, *Bayerns Weg*, pp. 287–8. Merkl, *Origin*, p. 58 points out that within the CDU/CSU group itself, the federalist-inclined delegates from the French and American zones outnumbered their centralist colleagues from the British zone. To this internal majority Merkl attributes Pfeiffer's election as group leader while Kock, p. 287, maintains that a 'necessary proportion' dictated Pfeiffer's chairmanship since Adenauer had been elected president of the Council. Since, however, Adenauer had put up his own man, Adolf Süsterhenn, at the start of the Council's proceedings, it seems clear that, had the numbers been available to Adenauer, he would presumably not have hestitated to set his own candidate at the group's head.
30. All details from BayHStA NL Ehard Nr 963 transcript of Ehard call to Bonn of 4 Nov. 1948.
31. See Chapter 1 above, p. 9.
32. BayHStA NL Ehard Nr 963 *Telefonische Durchsage von Min. Dr. Pfeiffer am 16 Nov. 1948.*
33. Ibid. *Differenzpunkte zwischen CDU/CSU und SPD 25.X.48.* Niclauss, *Demokratiergründung*, pp. 141, 148.
34. BayHStA NL Ehard Nr 963 *Differenzpunkte zwischen CDU/CSU und SPD 25.X.48.*
35. Ibid.
36. Ibid., Ehard letter to Adenauer of 15 Nov. 1948.

37. BayHStA NL Pfeiffer Nr 212 Ehard letter to Adenauer of 11 Oct. 1948.
38. Kock, *Bayerns Weg*, p. 304. See also Chapter 3 above, p. 75. W. Benz, *Bewegt von der Hoffnung aller Deutschen* (München, 1979), p. 57 maintains that Adenauer countenanced the three-chamber suggestion only in order to shock the *Union* group into making a decision of some kind. Based on his twelve years in the *Preussischer Staatsrat*, Adenauer, himself, felt that a seccond chamber's veto power was of "praktisch keine Bedeutung'; see Adenauer, *Briefe 1947–1949*, p. 341; p. 614, note 2; p. 615, note 3.
39. Kock, *Bayerns Weg*, p. 301.
40. Pfeiffer to CSU *Landtagsfraktion* on 11 Mar. 1949 as quoted in Morsey, 'Zwischen Bayern und der Bundesrepublik', p. 367.
41. Kock, *Bayerns Weg*, p. 302.
42. Ibid., p. 301.
43. As quoted in Morsey, 'Zwischen Bayern und der Bundesrepublik', p. 368, note 95.
44. Lehr as quoted in Kock, *Bayerns Weg*, p. 287.
45. Ibid., p. 301. Ehard to CSU *Landtagsfraktion* on 2 Nov. 1948.
46. BayHStA NL Pfeiffer Nr 212 Pfeiffer letter to Ehard of 17 Nov. 1948.
47. BayHStA NL Ehard NR 963 Handwritten copy of report to Ehard.
48. Memorandum as quoted in Kock, *Bayerns Weg*, p. 371.
49. BayHStA NL Ehard Nr 963 SPD motion in the Council of 23 Nov. 1948; Leusser report to Ehard of 30 Nov. 1948. NL Pfeiffer Nr 212 Leusser letter to Ehard of 23 Nov. 1948.
50. BayHStA NL Pfeiffer Nr 212 Leusser letter to Ehard of 14 Dec. 1948.
51. Ibid. Niclauss, *Demokratiegründung*, p. 140.
52. All details, including the following reference to an 'offene Wunde', from BayHStA NL Pfeiffer Nr 212 *Fernmündliche Mitteilung* of Schwend of 15 Dec. 1948.
53. All details from ibid., Nr 213 Copy of Ehard letter to Adenauer 20 Jan. 1949.
54. In an effort to move the FDP in the same direction, Ehard expressed similar views to their leader, Dehler, in a letter of 4 Jan. 1949. The letter's occasion was an article written by Dehler for the *Fränkischer Tag* entitled 'Gefahren für Bonn'.
55. Eschenburg, *Geschichte der BRD*, i. 498. Kock, *Bayerns Weg*, p. 310, note 123. BA NL Schäffer Nr 26 *Süddeutsche Zeitung* of 13 Jan. 1949.
56. See Chapter 4 above, p. 95.
57. Merkl, *Origin*, pp. 67–9. BayHStA NL Ehard Nr 1050 Ehard speech to the *Bezirksverein Oberfranken* in Bamberg on 26 Feb. 1949. Kock, *Bayerns Weg*, pp. 309–310.
58. As quoted in Kock, *Bayerns Weg*, p. 309.
59. All details from BayHStA NL Ehard Nr 963 Kraus letter to Adenauer of 15 Mar. 1949.
60. Ibid., Nr 1463 *Vorlage des Fünferausschusses* (*sic*).
61. Niclauss, *Demokratiegründung*, p. 136.
62. Eschenburg, *Geschichte der BRD*, i. 498. Both Dorn, *Inspektionsreisen*, p. 126, note 7 and Clay, *Decision*, pp. 414–16 also attribute the note partially to last-ditch French efforts to achieve a highly-decentralized, if not confederated western German state.
63. See note 16 above.

64. Küsters and Mensing, 'Konrad Adenauer zur politischen Lage 1946–1949', p. 315.
65. BayHStA NL Ehard Nr 1463 *Erklärung des bayerischen Ministerpräsidenten Dr. Ehard vor Pressevertretern im Parlamentarischen Rat am 9 März 1949.* Eschenburg, *Geschichte der BRD*, i. 499.
66. Eschenburg, *Geschichte der BRD*, i. 499.
67. Dorn, *Innspektionsreisen*, p. 126, note 7. Kock, *Bayerns Weg*, p. 312.
68. BayHStA NL Ehard Nr 1463 *Tätigkeit des Parlamentarischen Rates* of 30 Mar. 1949.
69. Ibid., Nr 581 Speech in Munich of 20 Mar. 1949 to the *Christliche Arbeiterschaft.*
70. Ibid., Nr 873 Motion to and position of conference of 24 Mar. 1949. For a much more affirmative Ehard view of the Council's sovereignty, see *Akten*, v. 188–95.
71. BayHStA NL Ehard Nr 1463 Schwend letter to Pfeiffer of 28 Mar. 1949.
72. Ibid., CDU/CSU *Fraktionsbeschluss* of 30 Mar. 1949.
73. Ibid., *Süddeutsche Zeitung* special edition of 21 Apr. 1949. Many in the SPD still favoured merely a *Verwaltungsstatut* for the western zones.
74. Ibid. See also note 16 above.
75. See note 73 above and Baumgartner speech in Boenke and von Zwehl, '*Angesichts des Trummerfeldes . . .* ', pp. 194–6.
76. See note 73 above and Chapter 2 above, pp. 40–1, 47.
77. R. Ley, *Föderalismus-Diskussion innerhalb der CDU/CSU von der Partei gründung bis zur Verabscheidung des Grundgesetzes* (Mainz, 1978), p. 122 as quoted in Kock, *Bayerns Weg*, p. 315.
78. Ibid.
79. BayHStA NL Ehard Nr 1011 Ehard letter to Pfeiffer of 4 May 1949.
80. See Chapter 3 above, pp. 49–50.
81. Kock, *Bayerns Weg*, p. 319. See also BayHStA NL Ehard Nr 1011 The *Abendzeitung* of 5 May 1949, 'Baumgartner fordert Volksentscheid. Für die Monarchie entschieden'; and the BP's *Bayerische Landeszeitung* of 6 May 1949, 'Dr. Baumgartner für bayerische Monarchie'.
82. Kock, *Bayerns Weg*, p. 319. Kock, quoting a monthly report to the military government on p. 320, note 167, also illustrates US concern over Baumgartner's statements. See also BA NL Schäffer Nr 26 *Bayerische Landeszeitung* of 11 Feb. 1949, 'Unser Ja zum Weststaat–unser Nein zu Bonn', and 'Erkennt Dr. Ehard das Gebot der Stunde?'
83. BayHStA NL Ehard Nr 1011.
84. Ibid. Nr 581 Radio address of 6 May 1949.
85. Ibid. Military government release No 147 in German translation and unanimously approved cabinet resolution of 5 May 1949.
86. BayHStA MA110 047 Ehard press conference of 2 May 1949.
87. Ibid.
88. Kock, *Bayerns Weg*, p. 304.
89. BayHStA NL Ehard Nr 1997 Adenauer telegram of 7 May 1949.
90. Ibid. Nr 1011.
91. BayHStA NL Pfeiffer Nr 43 *CSU Mitteilungen* of 18 July 1949; Eschenburg, *Geschichte der BRD*, i. 509.
92. The Fulda Bishops' Conference shared this last view, particularly regarding

the Basic Law's failure to enshrine the Catholic Church's rights in the educational sphere. See *Erklärung der deutschen Bischöfe zum Grundgesetz der Bundesrepublik Detuschland* of 23 May 1949 in BayHStA NL Ehard Nr 1291.

93. Ibid. Nr 1373 Stenographic report of the tenth sitting of the Council of 8 May 1949.
94. Ibid. Nr 1420 All details from statement of 13 May 1949.
95. All details of Ehard's speech from transcript in BayHStA MA110 047.
96. This contention is supported by Baron Levin von Gumppemberg in a letter to the author of 17 Nov. 1986.
97. Hoegner's and von Knoeringen's remarks in Boenke and von Zwehl, '*Angesichts des Trummefeldes . . .* ', pp. 197–9.
98. Ibid., p. 201.
99. BayHStA NL Ehard Nr 1039 *Abstimmung über das Grundgesetz* am 20. Mai 1949.
100. See Kock, *Bayerns Weg*, pp. 316–17 and note 154.
101. See Chapter 3 above, pp. 71–6.
102. BayHStA NL Ehard 1832 Typewritten *Vormerkung* from Levin von Gumppenberg to Ehard of 9 Mar. 1949 as enclosure with *Süddeutsche Zeitung* clippings of 8 Mar. 1949.
103. Ibid. '. . . und findet die CSU eine Klärung?' To news of the election, Schäffer replied, 'Ich habe mich . . . sehr gefreut.' BA NL Schäffer Nr 26 Schäffer letter to Dr Gottfried Witzgall of 14 Feb. 1949.
104. Ibid.
105. Berberich, 'Die historische Entwicklung der CSU', p. 96.
106. Adenauer, *Briefe 1947–1949*, p. 461.
107. Ibid., p. 462. Müller, *Konsequenz*, pp. 356–7, attributes his defeat primarily to intervention on Adenauer's part, the latter having – in Müller's opinion – feared the CSU chairman as a rival within the *Union* as a whole. One of Müller's staunchest supporters, August Haussleiter, maintains in Schroeder, *Bayern nach 1945*, p. 103, that the CSU group in the *Landtag* simply rebelled against Müller at the same time that larger geopolitical developments in western Germany in the form of inter-zonal amalgamation were overshadowing Müller's once firm control of the party's *Landesversammlung* and governing board.
108. Ehard, *Bayerische Politik*, p. 50.
109. BayHStA NL Ehard Nr 1039 Unsigned manuscript.
110. Ibid., Nr 1373 Unsigned interview of 30 May 1949.
111. Ibid., Nr 1485 All details from letter of Haussleiter *et al.* to Ehard of 30 May 1949.
112. For Stegerwald, see Chapter 2 above, pp. 33–5.
113. BayHStA NL Pfeiffer Nr 43 *Main Echo* of 31 May 1949, 'Der Sieger von Straubing'.
114. Ibid., *Süddeutsche Zeitung* of [31?] May 1949, 'Sie wählten den Dritten'.
115. Bayerische Landeszentrale für politische Bildungsarbeit, *Die Bundestagswahl von A biz Z* (München, 1986), *Schaubild* 6. Hereafter cited as *Bundestagswahl*.
116. W. Schöll, ed., *Franz Josef Strauss. Der Mensch und der Staatsmann* (Percha am Starnberger See, 1984), p. 77.

117. Ibid.
118. *Bundestagswahl, Schaubild 6.* In addition, the still potent WAV sent twelve delegates.
119. Schöll, *Franz Josef Strauss*, p. 79.
120. Laufer, *Das föderative System*, p. 55.
121. Schöll, *Franz Josef Strauss*, p. 78.

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