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Federalism and Federation in Europe: A Comparative Study of The Germanic Tradition

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FEDERALISM AND FEDERATION IN EUROPE:

A COMPARATIVE STUDY OF THE GERMANIC TRADITION

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A B S T R A C T

FEDERALISM AND FEDERATION IN EUROPE: A COMPARATIVE STUDY OF THE GERMANIC TRADITION

Kurt Richard Luther

This thesis defines "federation" as a set of structures and techniques, by means of which the constituent members of a union are given guaranteed access to and are accommodated within the decision-procedure of the centre. Meanwhile, "federalism" is taken to signify the philosophical, or ideological prescription, or promotion, of such a union.

The thesis commences by identifying the major shortcomings of the Anglo-Saxon academic literature on federation for a comparative analysis of federalism and federation in Austria, Switzerland and Germany. The two main aims of the thesis are then outlined. These are first, to identify the nature of the tradition of federalism in Austria, Switzerland and Germany. The second is to illustrate, by reference to the period immediately preceding the crystallisation of the party systems of those countries, the use of federalism as a political ideology.

These aims are fulfilled in Parts 2 & 3 of the thesis. By means of its systematic, comparative analysis of federalism in Austria, Switzerland and Germany from the early sixteenth century until 1850, the thesis develops a typology of federalism, which permits it to identify the six "dimensions" of a distinctive, "Germanic", tradition of federalism. Second, the detailed analysis in the thesis of the use of federalism during the first half of the nineteenth century shows how, within existing federations, a wide range of political groupings constituting the antecedents of modern political parties availed themselves of federalism for the promotion of their political aims.

Amongst the conclusions of Part 4 of the thesis is that more attention should be devoted to the study of the interaction of federalism and federation and in particular, to how federalism is utilised by political parties, both to legitimate and to reform federations.

Polytechnic South West
August 1989

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PART 1: INTRODUCTION

CHAPTER 1: INTRODUCTION

1.1 WHY STUDY FEDERALISM AND FEDERATION IN AUSTRIA, SWITZERLAND AND GERMANY ?

The first justification for embarking upon a study of federalism and federation in Austria, Switzerland and Germany is the current topicality of things federal. The "patriation" of the Canadian constitution in 1982 and the current controversy surrounding the Meech Lake constitutional accord are one example [1]. In Western Europe, varying "federal" solutions have been proposed for systems as different as the European Community (Greilsammer, 1979; Heraud, 1979; or Burgess, 1989) and the United Kingdom (Kilbrandon Commission, 1973; Birch, 1977; Burgess 1986a & 1988, or Kendle, 1989), while developments in Belgium have led to questions being raised as to whether that state is still unitary, or has become federal (Rompaey, 1980; Delmartino, 1986 & 1988; or Sennelle, 1989). Furthermore, the Swiss Government has for many years been engaged in a total revision of its Federal Constitution (Germann, 1975 & 1977) and in Austria, the existing division of power between the Laender and the Bund has recently come under attack (Morscher, 1980; Pernthaler, 1980; Luther, 1986; or Berchtold, 1988).

The current relevance of federal matters makes all the more surprising the paucity of political science literature on the three extant federations of Western Europe and their

political antecedents. The dominant Anglo-Saxon debate gives them only scant attention. Nor is the amount of German literature all that greater, something due in no small measure to the fact that Political Science is still a relatively young discipline in these countries. A second reason for welcoming this thesis is therefore clearly its contribution to filling the gap just identified. However, its merit lies not merely in the fact that its empirical focus is upon three federal systems, of which at least two (Austria and Switzerland) have in the past been very much neglected. Its value also derives from being a comparative study. For the author has found very few truly comparative studies of the three countries, despite their eminent suitability for comparative analysis. Although there are factors prima facie relevant to such a study that differ between the three countries (e.g. size, the pattern of social cleavages and external relations) there are many more that they have in common. These include a shared language (with reservations for Switzerland), a comparable level of economic and political development, a shared cultural heritage and, above all, a shared and distinctive philosophical / ideological tradition of federalism.

The third reason for undertaking the study at hand is the dissatisfaction the author felt when reading the Anglo-Saxon literature on federal political systems. The causes of this dissatisfaction were twofold. First, its interpretation of the experiences of the federal political systems of Western Europe has been at least debatable and at worst frankly erroneous. Accordingly, this thesis will examine and in some

cases challenge the assertions made about the origins, nature and function of the three countries' federal systems. A second and more fundamental shortcoming of the Anglo-Saxon literature is that many of the concepts used by the various approaches it contains are of limited value. Some of the problems they raise attend upon the study of any federal political system, while others arise because of the empirical focus of this thesis.

This thesis will primarily be concerned to demonstrate the inadequacy of the Anglo-Saxon debate for an accurate appreciation of the federal systems of Western Europe and to advance a preliminary, alternative framework for the examination of West European federations, namely, by reference to the interplay of federalism and federation. However, we believe that our analysis will not only offer insights into the West European experience, but will also provide a useful analytical perspective for the examination of federal political systems in general.

It will be argued that a better understanding of them would be facilitated by distinguishing between "federation" and "federalism" [2]. This has recently been done by King (1982,9-23) and although his understanding of the nature of federalism differs from that advanced in this thesis, the distinction between the two phenomena is helpful nonetheless. Thus while "federation" denotes a form of government - understood to include inter alia institutions, structures, processes and techniques - "federalism" signifies an organizational principle, usually expressed by way of an ideological or philosophical statement. It is the contention of this thesis that the inadequacy of the Anglo-Saxon

literature is in large measure the consequence of the fact that it fails to devote sufficient attention to the distinctive philosophic/ideological tradition within which the West European federations are set. Instead, it has assumed West European understanding of the nature and function of federation to be the same as that of the United States. This analysis will show those assumptions to be misplaced and will also consider the extent to which it is appropriate to conclude that a specifically Germanic federalism can be identified.

1.2. SHORTCOMINGS OF THE ANGLO-SAXON DEBATE ON FEDERATION

The aim of the following appraisal of the Anglo-Saxon debate on federation is not to give a detailed, blow-by-blow account of every twist and turn in the academic debate since Dicey or Wheare. Nor is it to provide an in depth analysis of the arguments of the major protagonists or schools of thought. Its purpose is both more modest and more practical. What concerns this thesis are the shortcomings of the received Anglo-Saxon literature as they affect a study of modern federalism and federation in Western Europe. Consequently, what we shall seek to do is to summarise the limitations and flaws of the Anglo-Saxon debate and to analyse critically some of its underlying assumptions. Our prism will be the West European experience and understanding of the nature and function of federation. What will emerge will be an assessment of the appropriateness or otherwise of aspects of the debate for this study.

In attempting to extrapolate a limited number of general

criticisms of an enormous body of literature, the author is forced to be selective. This may result in simplifying the hypotheses of many scholars in a fashion which might not do justice to the intricacy of those hypotheses. Moreover, since compartmentalization of criticisms is primarily undertaken for heuristic reasons, one should not be surprised if one point overlaps with another, nor if a given author or approach is criticised for one statement or exposition and extolled for another.

It is in cognizance of these difficulties that we shall now proceed to synthesise into the following seven basic points the shortcomings for a study of the federal political systems of Austria, Switzerland and the Federal Republic of Germany, of the Anglo-Saxon debate: 1) The empirical focus has only incidentally been West European; 2) The literature has made errors of interpretation and fact regarding the West European experience; 3) The juridical approach has proved to be of limited value; 4) The operationalization of the "political" approach's notion of "bargain" is problematical; 5) "Sociological" approaches are marred by deductive reasoning and imprecision; 6) To equate federalism and federation as pertaining solely to the territorial distribution of power is tantamount to reductionism and finally, 7) The importance of the role of ideology has been underemphasised and misunderstood.

- 1) A very simple point, but one nonetheless worth making, is that the empirical focus of the debate has primarily been directed towards the United States, Canada and Australia [3], with some attention accorded the experiences of the Third

World [4], but very little paid to those of Western Europe [5]. This is in part an expression of the understandable predominance of domestic concerns. It is also a consequence of the scarcity of political science publications (in German or English) on the countries with which we are concerned in this thesis. This paucity, especially acute regarding Austria and Switzerland, is largely self-evident on a survey of the political science literature. In the relatively few cases where these countries are considered in the Anglo-Saxon debate on federation, the treatment they receive is usually superficial and at times derisory. Greaves (1940) devotes ten sides to Switzerland, of which only three deal with the years after 1848. He does not even mention Austria. Since his work and that of Brecht (1945) preceded the founding of the Federal Republic of Germany, it is obvious why neither examine the Bonn republic. The same applies to the first (1946) edition of Wheare's Federal Government, but even the 1963 edition's coverage of the Federal Republic is minimal [6] and Austria referred to merely in order to be dismissed (1963,23). Riker (1964 & 1975) allocates more space to West European examples, though the content of his comments will be taken issue with in points 2 and 4 below. Friedrich (1968) devotes a chapter of six sides to Switzerland and one consisting of five to Germany, but Austria is excluded. Sawyer's (1969) contribution constitutes an exception by virtue of the large portion concerned with Western Europe. Conversely, in what she terms the "climax" (1978,156) of her comparative study, Hicks deals with Switzerland in a mere twelve sides, of which eight antedate the 1848 establishment of the Eidgenossenschaft.

A concomitant of this predominantly non-West European

empirical focus has been the assumption of the primacy of the United States model. One need only cite Greaves' statement that "The United States is the outstanding example of federal union" (1940,14), or Wheare's famous dictum that "Any definition of federal government which failed to include the United States would ... be unreal" (1963,1). Nor is it the case that only the older literature makes these assumptions. If one reads Duchacek, one finds that his "ten yardsticks" are based upon United States experience (1970,201-8). His admission of this bias does of course not improve upon the limited value of a comparative study based on propositions drawn exclusively from the experience of one federation. The three authors here mentioned were explicit in their emphasis upon the exemplary value of the United States model. Others were less forthright, their bias being expressed tacitly instead [7].

- 2) In addition to - and perhaps partly as a consequence of - the problems posed by the adoption of above all American criteria for the interpretation of West European phenomena, the received Anglo-Saxon literature has also made errors regarding the origins and nature of federalism and federation in these countries. Since one of the prime tasks of the following chapters will be to demonstrate some of these errors, it will suffice at this stage to indicate the kind of hypothesis that will be challenged.

Riker's claims (1964 & 1975) regarding the primacy of military factors as determinants of the establishment of federal governments have received much praise [8]. Yet a closer study of the founding of federations in the three

countries with which we are here concerned demonstrates that Riker's "expansion condition" and "military condition" (Riker, 1964, 121f & 1975, 113f) have little or no explanatory value. Inasmuch as a federal government is the institutional/organisational form which emerges from and responds to a specific set of problems at a given point in time in the history of a state, it must logically reflect this genetic imprint and will thus differ from all other federations. The same applies for the future development of the federation. To assume the primacy at the time of the origin of any and every federation of one (military or other) factor must be simplistic. Moreover, as Davis (1978, 132-8) and King (1982, 33-6 & 82-6) argue, the existence of military threats does not mark the origin of a federal government off as distinct from that of any other type. Furthermore, since "to be revealing ... we should require to know exactly how serious these threats are" and "Riker, unfortunately, does not help us on this point, ..." his "threat condition remains ... trivial..." (King, 1982, 34).

The analysis, in the subsequent chapters of this thesis, of the history of federalism in Austria, Switzerland and Germany will demonstrate beyond any doubt that the types of federation envisaged in these three countries have been very varied, as have the purposes ascribed to them. In view of that rich tradition, it would be over-simplified to allege that in 1848 the Swiss slavishly followed the United States example, that the Austrians adopted a federal form in 1920 in order to facilitate their future merger with the German Reich [9], or that federation was imposed upon West Germany after World War Two. In each of these cases, there was a

significant native tradition of federalism. Moreover, this thesis will demonstrate that military considerations were only one consideration at times when the structure of federations was being discussed in Austria, Switzerland and Germany, and were indeed often of less significance than considerations of a political or economic nature.

- 3) Variouslly termed "juridical", "legal", or "institutional", the distinctive feature of the approach to which we now turn our attention lies in an almost exclusive emphasis on the constitutional and legal structures and relationships within a federation. Its chief exponent is generally taken to be K.C. Wheare, who defines federal government as that in which there predominates the "federal principle" - i.e. "the method of dividing powers so that the general and regional governments are each are each, within a sphere, co-ordinate and independent" (Wheare,1963,10). Such analyses are not unique to the Anglo-Saxon debate. Weber estimates 80-90% of the Germanic literature to be of a constitutional nature (1980,1015, f.n.11). That there is value in the analysis of the constitutional structures and practices of a federation is not in doubt. However, the exclusive concern with only this variable does give rise to problems for the study of any federation. These problems have been widely discussed in the more recent Anglo-Saxon literature [10] and are essentially fourfold.

The first criticism to be made is that its definition of what constitutes a truly federal government is so narrow as to make the category a very exclusive one indeed. Of the three states with which we are concerned, only Switzerland

qualifies, while Austria is deemed non-federal and the Federal Republic of Germany merely merits the title of "quasi-federal" (Wheare, 1963, 23 & 26). This conclusion is not really surprising, given Wheare's above mentioned bias towards the United States model, as exemplified in his statement that "... the federal principle has come to mean what it does because the United States has come to be what it is" (1963, 11). What is paradoxical, is the conclusion that a reading of Elazar (1962 & 1966) and Grodzins (1966) leads to, namely, that the category is so narrow as to exclude even Wheare's archetypal federation: the United States (Riker, 1975, 104f) !

The second problem inherent in the juridical approach is that its overemphasis on structure offers only a very static view of federation. As Elazar points out "... federalism [sic federation] is as much a matter of process as of structure" (1979, 30). C.J. Friedrich (1964, 1965 & 1968) is the author most readily associated with the so-called "process approach" and he puts the case for a less static analysis thus: "federalism [sic federation] is more fully understood if it is seen as a process, an evolving pattern of changing relationships rather than a static design regulated by firm and unalterable rules" (1968, 173). And yet to emphasise process without reference to structure is equally untenable. Friedrich's proposal has itself been criticised, among other things for being "mystical" (Riker, 1975, 104) [11].

The implication underlying the last-mentioned critique constitutes our third criticism of the juridical approach, namely, its assumption of the exclusive significance of the constitutional and institutional form of a federal

government. We shall examine this "sociological approach" in point 5 below and thus will content ourselves at his stage with noting that the main thrust of this critique is that "The essence of federalism [sic federation] lies not in the institutional or constitutional structure, but in the society itself" (Livingston 1952,84).

The final and related criticism addresses itself to the problems of operationalizing the juridical approach's key concepts of co-ordinacy and independence. Davis sums up the problems of the latter concept thus: "There are no degrees in the dichotomy of legal independence and dependence to take significant account of political and social nuance" (1955, 243) and his harsh conclusion is that we are dealing with "a language and a set of premises which are suited, if at all, only to the esoteric purposes of their enquiry" (Davis 1955, 59). The transparent lack of plasticity of the concept of independence generated by the juridical approach caused Vile to state that:

... federation ... is a system of government in which neither level of government is wholly dependent on the other, nor wholly independent of the other. There is, in fact, a mutual interdependence which allows each of them to act independently in some circumstances, but which means that where the vital interests of one level are involved in actions of the other, the former will be able to affect the decisions taken, even though they concern matters formally outside its competence (1961,197) [12].

The concept of co-ordinacy is no less problematic. It implies the idea of dual or shared sovereignty and can be viewed as a legacy of eighteenth and nineteenth century debates about whether or not sovereignty is divisible. King suggests one way of resolving this apparent impasse: In the case of federations, the 'centre' has to be understood as a

coherent decision-procedure which incorporates into itself in various ways the constitutional territorial units for purposes of ultimate decision-making. Once this is established, it becomes perfectly feasible to hold the federal centre to be sovereign, without construing this to mean that this coherent power of the centre absolutely excludes the participation of the 'periphery' (1982, 115).

Whether one elects this or any of a host of other ways of resolving the dilemma of dividing the purportedly indivisible, the fact remains that we are to some extent dealing with an academic red herring. In practice, the point is that:

no political system can be an instance of Wheare's definition [of co-ordinancy]. If a system displayed the exact balancing between the center and the states in which he insists, it would - in constant stalemate - be unable to act. Real federations are always constructed so that in a crisis one kind of government can and does prevail. (Riker 1975, 105).

- 4) It was this dissatisfaction with the unrealistic picture of federation emanating from the juridical approach that led to a turning away from constitutional and legal considerations. While some sought refuge in "sociological" approaches, others emphasised the importance for the understanding of federation of an analysis of political factors. The former approach will be considered in point 5 below. It is the relevance for this thesis of the writings of the latter school of thought with which we now intend to deal.

For reasons that are self-evident on a reading of the above discussion of the concepts of co-ordinacy and independence, emphasis was placed on the need for a political evaluation of the processes of decision-making and implementation. Scholars such as Grodzins (1960; 1960a & 1966) and Elazar (1962 & 1966) undertook this task with detailed studies that mapped out the interdependent and co-operative nature of policy-making and implementation in a federation.

Such investigations proved very instructive and were later emulated by writers whose empirical focus was West European [13]. A second concern of the political approach was to attempt to establish the causes of the failure of federations. Since Austria, Switzerland, and West Germany are extant federations, the writings of such authors are not directly relevant for this thesis [14].

However, the other two questions to which the political approach has addressed itself are very much of relevance to the task in hand. The issues are the origins of federations and their maintenance. We shall examine the last concern first. In this context, the term "maintenance" is not to be understood as signifying the opposite of failure, where the latter denotes abolition or collapse of a federal system of government. Maintenance is thus not the expression of the longevity of a federation. Instead, it relates to the manner in which a federal political system develops in respect of the distribution of powers and functions between its constituent units and the centre. Different authors use varying phrases to ask this question. Riker (1964,51) asks what maintains the "federal bargain", while Sawyer asks whether the constituent units retain an area of autonomy "sufficient to be worth considering" (1969,127). Perhaps one of the most useful ways of answering the question is that adopted by Sawyer when he attempts to assess the extent of change by reference to the constituent units' "bargaining capacity vis-a-vis the Centre" (127). Regardless of nomenclature, the literature concerned with the maintenance or otherwise of the relations between the constituent units and the centre has

typically involved the study of the party system. Such analyses are legion [15] though their underlying premise is often not overtly expressed. The assumption runs as follows: modern government is essentially party government. Since federation is one form of modern government, it is important to examine the role of parties as agents of centralization or decentralization of decision-making. Where there exists a shared political and ideological allegiance between centre and regional politicians, centripetal tendencies will be fostered. Conversely, the greater the disparity in the allegiances of those governing the centre and those governing the regions, the greater the likelihood of centrifugal pressures. Measures of the degree of centralization of the party system would include, among other things, a tally of the number of legislative and executive posts held by the parties at both levels, as well as an examination of the parties' internal decision-making structures and ideologies. The issue of the nature of the relationship between party systems and the structure of federal government is both important and complex. One problem revolves around the difficulty of establishing which of these two factors (if any) constitutes the independent variable. This thesis does not claim to offer any final statement on the matter, but will devote considerable attention to the role of the parties and the party system in the origin and development of federalism in Switzerland, Austria, and West Germany. Such investigation should permit the formulation of general conclusions as to the validity of Anglo-Saxon hypotheses when applied to the West European cases.

The origin of a federation is the fourth aspect to which

the political approach applies itself. We have already criticised the value of Riker's assertion of the primacy of military considerations in determining the establishment of a federation. What we now propose to do is illustrate the considerable problems that attend upon the operationalization of the concept fundamental to much of the debate on the origins of federation, namely, the concept of "bargain". While we are largely in agreement with Sawyer's use of the term, we believe that there are at least three problems that militate against the validity of the notion when used to explain the setting up of a federation.

The first problem is one of numbers. The concept of bargain is useful when applied to the process of conflict-resolution between a limited number of actors. Presumably the ideal number is two. However, when one attempts to use it in a situation such as that which pertained in Switzerland in 1815 or 1848, where twenty-five separate states severally and concurrently agreed to form a common government, the explanatory and analytical value of the concept is diminished. The second problem can best be illustrated by reference to the hypotheses of Riker (1964 and 1975). For him, federation is essentially "a constitutional bargain among politicians" (1975,113). To be more precise, it is "between prospective national leaders and officials of constituent governments" (1964,11). If one reads on, one finds that the former group desires to expand its territorial control and sees federation as "the only feasible means to accomplish a desired expansion without the use of force" (1964,12). The other party to the bargain are the officials of the constituent governments and

they accept the constraints upon their independence either because of a desire for protection from military threat, or in view of their wish to "participate in the potential aggression of the federation".

This summary of Riker's propositions highlights at least four problems in his analysis. First, Riker implicitly assumes that one can adequately distinguish between those who offer the bargain and those who accept it. In practice, this is often extremely difficult, if not impossible. Second, it is taken for granted that it is always the "prospective national leaders" that offer the bargain and the officials of the constituent governments that accept it. As, for example, the case of Austria shows, the centre does not always exhibit the dominant influence that such a supposition implies (Pernthaler, 1979). Third, Riker's elucidation of the factors motivating the parties to the proposed new federation fails to recognise the significance of their political convictions. As this thesis will show, a consideration of political motivations is indispensable to a full appreciation of the "federal bargain".

The last problem with the notion of bargain that we shall mention is that it appears to assume a clear delineation in role between centre and regional actors. Yet prospective national leaders are frequently officials of the constituent governments and vice-versa. Moreover, there are further links, such as membership of the same party, or of the same ethnic or religious community. In short, there are a number of cleavages that may well (and often do) cut across the neat demarcation between regional officials and (prospective) national leaders. In addition, there is the difficulty pre-

sented by the practice of role accumulation. This phenomenon, especially prevalent in Switzerland and Austria, makes it almost impossible to assess in which capacity the delegate of a particular Swiss canton or Austrian Land was acting. Was it as a member of the local government, as a party man, as a communal representative, or was it as the agent of a specific economic or functional interest, just to name a few possibilities?

5) The last point we made in our critique of the application of the notion of bargain to the process resulting in the establishment of a federal government could well be stated differently. The most obvious alternative would be to phrase it in terms of an assertion of the necessity of greater attention being accorded the underlying societal dimension of a federation. The primacy of societal factors has been affirmed by a considerable proportion of the Anglo-Saxon literature on federation. We have already had cause to mention the scholar most frequently identified as the pioneer of the sociological approach, namely, W.S. Livingston. He wrote that: "The essential nature of federalism [sic federation] is ... in the forces - economic, social, political, cultural - that have made the outward form of federalism [sic federation] necessary" (1952,83). A listing of the writers whose basic premises accord with such a viewpoint would include Deutsch (1957), Merkl (1959 and 1964), Tarlton (1965), Watts (1966), Stein (1968), Duchacek (1970) and Dikshit (1975). What we propose to do now is not examine the differences in emphasis as between these several authors. Instead, we shall adumbrate the main hypotheses of the sociological approach, before

proceeding to assess the extent to which it can be employed in a study of modern federalism and federation in Western Europe.

The sociological approach has two main components. The first is the contention that federal political systems, like all others, manifest social diversity, but a federal polity can be identified by the extent to which the location of a society's "significant diversity" (Livingston 1952,86) correlates with the geographical boundaries of the constituent states of the federal system. The degree of correspondence is taken as a measure of the "federal qualities" (84) of a society. The second component of the sociological approach relates to the translation of the federal quality of society into federal government. This is accomplished, it is claimed, by "the whole pattern of instrumentalities ... employed" in response to the federal quality of society (90). The term instrumentalities is said to denote "not only the constitutional forms, but also the manner in which the forms are employed; ... habits, attitudes, acceptances, concepts and even theories" (91).

The initial point to be made is that "to those wearied of the elaborate classificatory sophistries of the 'constitutionalists', Livingston's essay first came as a breath of fresh air" (Davis,1978,171). The broadening of the focus for students of federation was both necessary and overdue. We believe that this thesis amply demonstrates that a consideration of the societal dimension is not only desirable for a more complete understanding of federal political systems, but is in fact indispensable to it. Nonetheless, certain aspects of the sociological approach are problematical, and are at

Least four important objections to be raised against it.

The first of these is that its two key concepts - namely, "significant diversity" and "instrumentalities" - are of questionable value. The best critique of the former notion is contained in Davis's excellent evaluation of the sociological approach (1978, 168-72). Rather than attempting to paraphrase him, we shall take the liberty of quoting him at length:

... if diversity is the quality of any society, is it at all likely that there can be any territory within it where there are no 'significant' social, economic, or cultural elements? Livingston takes the point by arguing that if the diversity is significant, then the 'society is likely to provide' some instrumentality to satisfy it. But what is the test of significance? ... If, as it appears from his examples, it is success, then we are presented with an ergo hoc propter hoc argument. Thus: 'the fact that Scotland has its own legal system, its own courts, and a Scottish Committee in the House of Commons, is evidence that the territorially organised social diversity is significant. For were it not ... it is unlikely that 'instrumentalities' would exist'. (171f, his emphasis)

Davis then quotes Livingston's contention that, should Scotland actively pursue independence it is unlikely that its right would be challenged (1952, 92). Of this Davis asks:

But how could one prove him wrong? Would the Scottish failure to secede ... signify the insignificance of the Scottish diversity in Great Britain, the insignificance of the Scottish arguments, or the insignificance of Scottish arms? ... Or are the federal qualities of a society sufficiently attested by the continued agitation of a territorial movement for some recognition, even if resisted by the rest of society? We are free, it seems, but we are also put out to sea without a map, a compass or a sextant ... (172)".

The drawback of the concept of "instrumentalities" lies in its nebulous nature. The wide variety of factors included in the list of instrumentalities means that while "Propositions based upon this use of language ... may not be invalid ...

they are unlikely to be specific enough to be helpful" (Birch, 1966, 17). Davis's conclusion is that what we have is "a theory without a tool-kit" (1978, 171).

The next shortcoming of the sociological analysis with which we shall deal is its assumption of a direct and causal relationship between a territorially based societal cleavage system and a federal governmental system. As Vile correctly points out, "That there is a relationship between the nature of a society and its system of government is certain, but it is by no means a simple relationship" (1977, 2). Wildavsky's contribution to the nature of this relationship is interesting. He believes that it is by no means always the case that the societal dimension is the determining variable. He distinguishes between "social" and "structural" federations (1967, 178). In the first type, the federation was established because of the variations between the social profiles of the constituent units. However, there are other federations - which Wildavsky terms "structural" - whose federal governmental institutions preceded and in fact gave rise to the territorially based interests which thereafter supported the retention of the structure; the example he cites is Australia. Respectively, Wildavsky's structural and social federations correspond closely to the two ideal-type "symmetrical" and "asymmetrical" models proposed by Tarlton (1965, 867). He writes that to which of the two types any given federal system most closely approximates is a product of "the level of conformity and communality in the relation of each separate political unit of the system to both the system as a whole and to the other component units" (867). The absence of a convincing marrying of the societal and

governmental aspects undermines Tarlton's contribution. For it is not clear whether the symmetrical and asymmetrical ideal-types are intended to refer to the pattern of societal cleavages, or to the behaviour of the governing political elite.

In an article published in World Politics in 1968, Stein attempted to link up the societal and governmental dimensions. At the same time, he sought to synthesise the sociological and political approaches to the study of federation. However laudable the undertaking, Stein's major proposal (1968,729) - that the study of federal political systems be limited to those in which multiethnicity and multilinguality both pertain - appears to have been motivated exclusively by considerations of academic convenience. Such a reductionist proposal is out of the question for a study of federation in Western Europe, since the only case-study left would be Switzerland.

Our third criticism is that to speak of a "federal society" serves only to confuse. To juxtapose the adjective "federal" with the noun "society" is to infer federality as an attribute of society. The point is not one of mere sophistry. As has been discussed already, societal diversity is not unique to federal political systems. Thus the term "federal society" logically cannot be used solely to denote diversity per se. Moreover, the spatial correlation between societal diversities and the geographical boundaries of the constituent units of a federation does not necessarily have any significance for the organisation or functioning of the governmental system. The corollary of this is that the

distributive pattern of cleavages is at best only a precondition for the establishment or maintenance of a federal relationship. What we are suggesting is that the term "federal" could be most usefully restricted to qualifying the political relationship which the constituent units of a federation enjoy in respect of the "coherent decision-procedure of the centre" (King,1982,115). Exactly what the Germanic philosophical and ideological tradition of federalism understands a federal relationship to be will be elucidated in this thesis. At this point we wish only to propose the substitution of "federal society" or the "federal qualities" of a society by terminology akin to that used by Tarlton. In a word, it would be less confusing and more accurate if, when discussing the spatial pattern of societal cleavages, we spoke instead of symmetry or of congruence (Luther,1985 & 1986).

The fourth problem of the approach under discussion is that it has led to an excessive and often uncritical emphasis upon territoriality. The two students of federation who have taken this reliance furthest are Duchacek (1970) and Dikshit (1975). Territoriality is the linchpin of both authors' hypotheses. Dikshit proclaims the focus of his investigation to be:

"the spatial pattern of the total complex of social, political, economic and other relevant diversities which have imparted to the regional political units of the overall national society some sense of individual identity". (1975,19).

Duchacek states his concern in slightly different terms:

"The central concept of the book is that of the territorial community or territorial interest group - an aggregate of individuals and groups who share not only common experiences, values, fears and purposes, but also an awareness of the

territorial dimensions of their collective interests and actions". (1970,ix).

As for the causes of "the birth and growth of any degree of territorial awareness", Duchacek believes that "All of them perhaps could be called political and cultural socialization" (1970,22, his emphasis).

It is clear that of the two, Duchacek casts his conceptual net much wider. He includes individuals and groups, while Dikshit is concerned with the individual's identification with the "regional political units". Regardless of which analysis is the more catholic, both share the same inbuilt faults. In absence of the empirical evidence to substantiate their hypotheses about territorial identification, both appear to be primarily deductive in this respect. The political scientist looking for data of this kind on Austria, Switzerland and West Germany finds himself in a position similar to that which Merkl bemoaned twenty five years ago (1964,1); the systematic collection of the empirical data necessary for a study of these countries' societal systems (in the widest sense of the term) is still in its infancy. What few data do exist are hardly suitable for comparative analysis.

A further problem of the uncritical reliance upon territoriality lies in the actual content of the territorial community to which they refer. Both seem to envisage this "aggregate" as being very uncomplicated and quiescent. Yet the constituent unit of a federation - in our case the Canton, Land or even the Bund - is an abstraction [16]. The nebulous and shifting nature of territory can perhaps be illuminated by adapting Trager's dictum (in Franck,1968,x)

thus: territoriality is not a fixed point on a map. What is meant by this is that territoriality is considerably more complex than Duchacek appears to suggest. An examination of the social, economic and political forces involved in the processes of decision-making would show that the composition of the territorial aggregate - and thereby its concern - varies from issue to issue.

Territoriality should therefore not be given such prominence, nor spoken of in such absolute terms. Unless what one is attempting to define is the interests of the administrative machinery of the states (Luther, 1986), one may well find that territoriality is at best an intervening variable that can be extrapolated only in abstract terms.

6) The fifth of our general criticisms of the Anglo-Saxon debate on federation illustrated how the sociological approach has inter alia contributed to an excessive and frequently uncritical reliance upon territoriality. However - and this is our sixth criticism - almost the entire body of Anglo-Saxon literature on federation is predicated upon an understanding of federation in which territory is the sine qua non. Thus Livingston affirms that "federalism [sic federation] becomes nothing if it is held to embrace diversities that are not territorially grouped ...' (1952, 86). Notwithstanding the niceties of the innumerable definitions of federation they offer, the writings of the Anglo-Saxon tradition all share one characteristic; they regard the essence of a federation as consisting in the structures and / or techniques whereby territorial units are accommodated into the decision procedure on the Centre. However, the logical imperative which demands that constituent units of a federa-

tion be territorial in nature rather than say ethnic or religious is not immediately apparent. On the contrary, to rule out the possibility of non-territorial federations is tantamount to reductionism, since it impoverishes the concept.

Before proceeding to analyse the kinds of arguments offered in defence of the traditional and narrow understanding of federation it is necessary to state briefly the hypotheses of Friedrich and Elazar, the two Anglo-Saxon scholars who do see federation as an (almost) universally applicable organisational form. (Their approaches of course differ in many other respects). Friedrich writes that,

a federation is a union of groups, united by one or more common objectives, but retaining their distinctive group character for other purposes. Seen thus, federation appears to be on the group level what association is on the interpersonal level. It unites without destroying the selves that are uniting, and is intended to strengthen them in their mutual relations and in the picture of common objectives or ends. It is organised cooperation of groups as groups. (1965,2)

For Friedrich, a federation exists whenever any union of groups is formed for limited purposes, on the condition that the groups thus uniting do not lose their individual identity. This could apply to an inter-state union, a federal state in the traditional sense, or even a federation of parent-teacher associations.

Elazar's perception is even wider, albeit presented more clearly. He differentiates between "political and social-cultural" federations (1979, esp.32-9). The former type is essentially limited to relations among governments or polities. The kinds of federations Elazar appears to have in mind here are either the traditional federal state (or "Bundesstaat") or any federation of nation-states. Presumably

this would include, for example, treaties between states as well as confederations (understood in the conventional meaning of the term criticised by Hughes in 1963 and 1964). Elazar identifies two types of social-cultural federation, of which the narrower is based upon,

essentially permanent religious, ethnic, cultural or social groups around which a particular life must be organised ... Whether or not the polity is formally structured around those groups, they serve as its pillars ... Consociational arrangements ... becoming constitutionalized ... brings them into the realm of federalism [sic federation] (1979,32f)

The third and broadest of Elazar's types of federation

has to do with the proper relationships among people as individuals, or in families and groups, as well as in their capacity as citizens, whereby they relate to each other federally, that is to say, as partners respectfully of each other's integrity while cooperating for the common good in every aspect of life, not just in the political realm. (ibid,32)

This last extract makes the distinction between Friedrich and Elazar's notions of what constitutes a federation abundantly clear. While Friedrich insists that the contracting parties must be groups, Elazar believes that federation can also apply to "relations among people as individuals". However, they both consider that what makes the relationship distinctive are its limited purposes and the non-infringement of the parties' integrity [17].

As has been stated previously, the conceptualisations of federation just illustrated are not shared by the overwhelming majority of Anglo-Saxon scholars of federation. Only a few bother actually to challenge the view that federation and federalism can legitimately be applied to unions other than those of a territorial nature. Examples of such writers include Livingston (1952), Vile (1961 and 1977), Duchacek

(1970), Dikshit (1975) and King (1973 and 1982) and their responses in defence of retaining what might be called the traditional notion of federation are of three types.

The first is a practical consideration. Forsyth notes that,

Precisely because of its all-pervasive character, ... federalism [sic and federation] in this sense makes a dangerous object of study. With sufficient effort it can be detected almost anywhere, and endless pursuit can take the place of hard analysis. To become significant it would seem to be almost essential to differentiate it by relating it to the other basic concepts of political life... (1981, 6-7)

The point is well taken; it would be extremely difficult to conduct a meaningful analysis of federalism and federation if one were to deal in the same breath with, for example, a world federation and a local federation of boy scouts. In view of this kind of problem, this thesis will also limit its empirical focus. It will concentrate on the federation of groups (territorial, functional, religious and ethnic) into the process of making decisions vested with the authority of the society for which they are made. Phrased differently, this means that we will analyse federalism and federation as they pertain to the government of Austria, Switzerland and West Germany. This is not, however, an argument in principle against a wider use of the concepts of federalism and federation.

A second kind of reply is directed at the idea of federations being functional rather than territorial. Typical arguments are of the "Perhaps territorial units are really functional anyhow" or "Perhaps federations start off as territorially based and then become functional" variety.

Examples of these two are Duchacek and Vile respectively. The former reasons thus:

In all political systems there has always been a problem ... as to which is the best principle or organising authority ... territorial ... or ... functional? So far the practice seems to indicate a trend toward a combination of both; the formula is to base parties and governments primarily on territorial divisions with functional specialization within, allowing or encouraging functional interests to exercise their pressures on the territorial units of authority. (1970,11)

Though more novel, Vile's hypothesis is no more instructive regarding the question of why the traditional, territorial federation is the only legitimate form. He states:

Federalism [sic federation] is territorial in its origins, but it can change ... The growth of a sense of national identity diminishes the importance within the political system of territorial loyalties, and therefore begins to erode those aspects of the political culture upon which the federal system was originally based ... the political structures ... [may be] gradually adapted to the resolution of group conflict, and ... become the means by which an institutionalized pluralism operates to maintain a decentralized system of government. (1977,4-6)

Regardless of the validity of what they say, neither author's contribution is directly relevant. Though they do discuss whether federations are functional, the discussion remains predicated upon the territorial federation. The question is merely the extent to which territories are, or become, structures through which functional interests are articulated.

The third type of response does in fact deal with the validity of the claim that non-territorial unions can be legitimate applications of federalism and federation. Livingston's contribution to the question of whether the federation can be non-territorially based is that:

federalism [sic federation] becomes nothing if

it is held to embrace diversities that are not territorially grouped, for there are then no territorial units that can serve as components of the federal system. (1952,86)

However, this form of reasoning appears to be an example of what Hughes termed "federalism is what I say it is" (1964, 2). Thus a federation cannot be composed of territorially dispersed religious, ethnic or other social groupings, because, in the absence of territorially concentrated diversities, no territorial units would crystallise. If these territorial units did not emerge, there could be no federation, since a federation is defined as being composed of units with a territorial character and of none other. This argument is clearly circular.

Similar reasoning is used by Livingston and King. When defending the view that federation is a territorial concept, Livingston says:

If they [i.e. societal diversities] are grouped territorially, that is geographically, then the result may be a society, that is federal. If they are not grouped territorially, then the society cannot be federal. In either case coherence in the society may depend on the devolution upon these groups of the exercise of functions appropriate to the diversities that they represent. But in the first case only can this take the form of federalism [sic federation] ... In the latter case it becomes functionalism, pluralism or some form of corporativism. ... writers who profess to see federal elements in the various forms of pluralism, such as feudalism or corporativism ... have added a meaning that was not there before. (1952,85)

King is more concerned to show that federalism is a territorial ideology:

There is ... a strict affiliation between the ideal of political federalism and that of economic federalism; and between both of these and philosophical pluralism. If we were arbitrarily to divide the latter into political, economic, and legal aspects, the most convenient terms we could apply to them would probably be federalism, syndicalism and 'pluralism' (in that order). Thus, federalist

ideology need not be seen as being different from pluralism, but as merely relating to a distinct aspect of pluralism. (1973,152, his emphasis)

There is reason to question the validity of the argument advanced by Livingston and King. Firstly, the submissions seem to be primarily nominalistic. Even if they were not, there is a further reason to doubt their value for a study of federalism and federation in Western Europe. This lies in the fact that what King and Livingston offer are hypotheses as to the interrelationship they consider to exist between Anglo-Saxon philosophies and ideologies. Even assuming them to be correct, such conclusions are of little relevance for the study of three political systems with a much more variegated philosophical and ideological tradition of federalism.

- 7) This brings us to our seventh and final criticism of the Anglo-Saxon debate on federation. A major shortcoming of the literature is that its focus has been almost entirely upon federation, to the exclusion of federalism. Consequently, the important role of ideology has been persistently neglected, or even misunderstood.

Before proceeding to amplify this point, it is necessary to restate briefly the distinction between federation and federalism [18]. "Federation" is to be understood as referring to an organizational form. It betokens a set of structures and techniques by means of which the constituent units of a union are given guaranteed access to and are accommodated within, the decision-procedure of the centre. Conversely, "federalism" signifies the philosophical or ideological prescription and or promotion of such a union. It is therefore the animating principle of federation.

To discriminate between an organizational principle and its institutional expression is pertinent not only to federalism and federation. Nor is it the case that the Anglo-Saxon debate has never made this distinction. One need merely cite Wheare, who differentiated between what he termed the "federal principle" and "federal government" (1963, 10 & 33). However, the purpose of such distinctions between federal principle and practice has almost always been to use the former to adjudicate upon the federality or otherwise of the latter. Elsewhere, the terms federalism and federation have been used interchangeably, as though they were synonymous. At best, the conceptual distinction has been made parenthetically. Yet the use of two distinct terms to denote the ideological or prescriptive aspect on the one hand and the institutions and techniques on the other can be both instructive and insightful.

One advantage of such a distinction would be the conceptual clarity it would promote. A second merit lies in the attention it would focus upon the relationship between federalism and federation. As a rule, Anglo-Saxon authors have not addressed themselves to this question. The one exception that springs to mind is Franck. Though he was concerned with the relationship only insofar as it helped explain the failure of four Third World federations [19], his conclusion is of interest nonetheless. He claimed that:

the absence of a positive political or ideological commitment to the primary goal of federation as an end in itself among the leaders and people of each of the federating units ... was the one consistent factor The inverse inference ... is that, for a federation to be able to resist failure, the leaders, and their followers ... must ... have ... an ideological commitment not only to federation as

a means ... but ... as an end, as a good for its own sake. (1968, 173-4, his emphasis)

A study of the relationship between federalism and federation can be expected to offer insights not only into the demise of federations. It would also make more intelligible the origin, establishment and subsequent development of a federation. For federal political systems, like any other, are an amalgam of political institutions and processes. All institutions and processes are purposive. To understand them, one needs to be aware of the ends they were originally created to serve. As King puts it,

Federation might be best understood in terms of the problems to which it has been constituted a set of historically varying answers. (1973,153)

But problems change. So too do value systems and with them changes the perception of the problems and of the most appropriate means for their resolution. It thus follows that an evaluation of the development of a federation necessitates an analysis of the changing nature of federalism. Such change could be monitored by reference to a variety of factors, of which the following are but a few. Firstly, it would be indispensable to establish the degree of commitment to the general principle of federation, namely, the entrenched accommodation of the constituent units into the decision-procedure of the centre. Second, one would have to consider the more specific social, economic and political objectives which the federation facilitates and examine the extent, nature and awareness of any disparity between the demands or claims of federalism and the performance of the federation. Finally, a full appreciation of the nature of federalism would also require one to ascertain the impact upon

perceptions of the appropriateness of federation of changes in the relevant society's social, economic and political objectives, or in its national identity [20].

This is not to suggest that federalism determines federation. The relationship is clearly symbiotic. The point is merely that the failure of much of the received Anglo-Saxon literature to see in federalism anything more than metaphysics has led to the neglect of the function of philosophy and ideology in the establishment and maintenance of federation. Instead, federalism has frequently been subjected to vilification. Riker, for example, attacked those he termed "the ideologists of federalism" (1975, 156; see also 1964, 137-155 & 1969). Similar invective was employed by Neumann (in MacMahon, 1955) and Sawyer (1969, chapter IX). Yet the value of such vituperation is not immediately apparent. It would be far more instructive to differentiate federalism from federation, to recognise ideological claims regarding the supposed benefits of federation as examples of federalism and to treat them accordingly. This would not involve the acceptance at face value of the claims made. What it would require is that the statements be given serious consideration. In this way, one could ascertain what their authors understand - or allege to understand - the nature and purpose of federation to be.

Our third reason for distinguishing between federalism and federation is that the language of the countries with which this thesis is concerned demands it. The German terms "Foederalismus" and "Foederation" translate directly into federalism and federation respectively. Moreover, the German academic literature also makes the conceptual distinction;

the various types of union (or "Bund") are indicated by means of varying compound nouns. Thus a "Bundesstaat" is a federal state, a "Staatenbund" an interstate federation and a "Bauernbund" a federation of farmers. Alternatively, "Foederalismus" signifies the overarching organizational principle.

Finally, the distinction between federalism and federation is especially valuable for any study, the empirical focus of which is not Anglo-Saxon. This is because its application in such studies will highlight the relationship not only between federalism and federation, but also between federalisms. Our investigation of federalism in Austria, Switzerland and West Germany. for example, will demonstrate how different this philosophical and ideological tradition is from Anglo-Saxon federalism. The extent and nature of this difference will become clear later. For now, we will content ourselves with noting that, for example, while Anglo-Saxon federations were "the product of liberal thinking and ... clearly associated with mechanistic attitudes toward government" (Aiyar, 1961, 59), West European federalism is more variegated. It includes the advocacy of federation by groups as distinct as catholic corporatists, liberal constitutionalists and anarchists (see Weber, 1980a, 25-8).

1.3. CONCLUSIONS AND STRATEGY

The aim of this section is threefold. First, we shall summarise some of the conclusions of the preceding analysis of the Anglo-Saxon debate on federation that are most significant for this thesis. Second, we shall proceed to identify the contribution which this thesis aims to make to

the Anglo-Saxon analysis of West European federation. Third, we shall outline how the thesis will be structured in order to achieve those objectives.

The stated purpose of section two of this chapter was to arrive, by means of a critical analysis of the Anglo-Saxon debate on federation, at an "assessment of the appropriateness or otherwise of aspects of the debate" for the study of federalism and federation in Western Europe (see p4 above). It may be helpful to recapitulate the conclusions reached. The first of these is that the empirical focus of the Anglo-Saxon debate has been mainly non-West European, and the second is that it has contained errors of interpretation and fact regarding the West European experience of federation. Both conclusions make a thesis concerned with federalism and federation in Austria, Switzerland and Germany a useful undertaking. Third, the perspective on federation offered by the juridical approach is over-reliant upon the United States example, which it at least implicitly regards as a prescriptive model. Moreover, the juridical approach is also static and its concepts demonstrably lack plasticity.

Fourth, it was argued that the Anglo-Saxon debate's political approach has overemphasised the importance, for the establishment of federations, of military considerations, while the operationalization of some of its exponents' notions of "bargain" remain problematical. On the other hand, the preceding section concluded that the political approach offers some welcome analytical advances. Of these, two were highlighted. The first is the emphasis placed by some upon the origin of federations. It appears that this constitutes a

sensible attempt to assess federations by reference not to an abstract, ideal-type federation, but to the purposes for which the specific federation was established. The second and related aspect of the political approach which the preceding section identified as potentially instructive is its recognition of the important role played within extant federations by their party systems.

The latter are one of the major agents affecting the "maintenance" of the federation. (It may be recalled that it was stated above that in this context, "maintenance" is not to be confused with the longevity of a federation, but relates to the manner in which the federation develops in respect to the distribution of powers and functions as between the constituent units and the centre.) We have already argued elsewhere (Luther, 1985 & 1986) with reference to contemporary Austria that there appears to be a prima facie case that the centrifugal or centripetal pressures in a federation are in no small measure a product of the degree of symmetry or asymmetry in its party system. To this aspect of the federation's maintenance may be added its development as regards the fulfillment of the purposes for which it was established. Both aspects suggest that an understanding of the dynamics of federation necessitates the consideration of their normative dimension. In other words, an analysis of federalism is essential.

The fifth conclusion of our analysis of the Anglo-Saxon debate on federation was that "sociological" approaches are marred by deductive reasoning and imprecision. Sixth, despite no obvious logical imperative, the Anglo-Saxon debate is predicated upon the reductionist assumption that the

constituent units of federations must be territorial rather than say ethnic or religious. Indeed, Livingston insists that all federations must be territorial and asserts that

those who profess to see federal elements in the various forms of pluralism such as feudalism or corporatism ... have added a meaning that was not there before. (1952,85).

Finally, though the preceding section has demonstrated that federalism and federation are distinct phenomena, and that neither can be understood without an appreciation of the other, the Anglo-Saxon literature has failed to distinguish adequately between federalism and federation [21]. This is primarily because the Anglo-Saxon literature has been too quick to dismiss federal ideologies as irrelevant. It has therefore not even addressed itself to extant federalism, let alone to the historical origins and development of federalism in Austria, Switzerland and Germany. As a consequence, it has failed to recognise the variety of federalisms, as well as to give due weight to the significance of federalism in the origin and maintenance of federations.

Having summarised our conclusions as to the usefulness of aspects of the Anglo-Saxon debate on federation, it is now time to outline what contribution this thesis intends to make to the Anglo-Saxon analysis of federal political systems. The thesis has two main aims. First, it will attempt to fill a gap in the Anglo-Saxon literature by identifying the nature of the tradition of federalism in Austria, Switzerland and Germany. Our purpose is to provide a broad outline of the evolution of federalism in the German-speaking countries of Western Europe. Such an outline is indispensable, since modern federalism in Austria, Switzerland and West Germany

cannot be understood without an appreciation of the longer tradition of which it constitutes but the most recent expression. Of necessity, a history of federalism is not merely the history of an abstract idea, but of its relationship to practical politics. In other words, federalism is best understood by reference to the specific problems to which it has constituted a proposed remedy.

Contemporary federalism in Austria, Switzerland and West Germany owes a great debt not only to Germanic federal ideas of the eighteenth and nineteenth centuries, but also to earlier and more general aspects of Continental European political thought. Both the nature of the problems to which it has addressed itself and the wider philosophical milieu of which it has been a part, have made the Germanic tradition of federalism distinct from its Anglo-Saxon counterpart. However, the tradition of political thought from which Germanic federalism emerged and upon the assumptions of which it frequently relied, will itself only be outlined in brief. This is not a thesis primarily in political thought. Instead, the thesis intends to identify the various different types of federation that have been envisaged in the Germanic tradition.

To do this, we will need to ask three questions. The first is the nature of the constituent units proposed. The second is the proposed location in the federation of sovereignty and the third is the formal purpose of the federation. We shall seek to classify the different federalisms, rather than to adjudicate upon the feasibility of distinguishing conceptually or empirically between the proposed federations. In short,

this is not an exercise in nominalism. It is not a case of "federalism [sic federation] is what I say it is" (Hughes, 1964,2), but an investigation into what Germanic federalism has claimed federation to be. No shopping-list of famous names of Germanic federalism is intended. Instead, the aim is to illustrate the origins of Germanic federalism in - as well as its relationship to - the major political issues of its time. This will be done by means of a broad brush approach to German, Austrian and Swiss history, in which the links between political history and the history of ideas will be emphasised. Throughout, the focus will be upon establishing the various writers' views about the nature of the component units of the federations they envisaged, as well as their claims as to the purpose of those federations.

The second and related aim of this thesis is to illustrate the analytical utility of our distinction between federalism and federation. We hope to show that an acceptance of this distinction, accompanied by a willingness to analyse the interaction of these two elements, rather than dismissing federal ideology, provides useful insights into the dynamics of federal political systems. We will do this by illustrating how federalism and hence federation have from the very outset been ideological and inextricably linked to political interests. Moreover, we shall then seek to demonstrate how Germanic federalism developed alongside and thus into the political parties that came to be formed in the nineteenth century.

In the process of fulfilling the two major aims of this thesis, we shall seek also to assess the accuracy of two claims of the Anglo-Saxon literature. One is Livingston's

above mentioned claim to the effect that to propose federations not based upon territorial units is to add a new dimension to federalism (1952,85). The second is the claim made by Riker (1964 & 1975) that the prime consideration of those proposing federations has always been of a military nature. These claims will be addressed in the process of identifying the content of the Germanic tradition of federalism and when illustrating its ideological nature.

Though it would be desirable for this thesis to cover the whole period from the beginnings of federalism in the seventeenth century right up to the present day, that is an impossibly ambitious task. Accordingly, we shall restrict our focus to the period up to 1850. The reasons for this include the following. First, the period prior to the establishment in the second half of the nineteenth century of the party systems of Austria, Switzerland and Germany is less well covered than the period thereafter [22]. Second, by analysing the development of federalism up to 1850, we shall be providing insights into the antecedents of subsequent Germanic federalisms. Third, this thesis will trace the link between federalism and the loose political groupings that constitute the ancestors of the modern political parties. In this way, we hope to show how, by the time of the advent in the second half of the nineteenth century of the Austrian, Swiss and German party party systems, federalism could - in its various dimensions and for various political ends - legitimately be claimed to be an intrinsic part of the political ideology of a number of of political parties, if not of all parties.

In sum, this thesis intends to provide a preliminary framework for the analysis of West European federal systems in a new context, namely, by reference to the interaction within them of federalism and federation. In doing so, it will also furnish insights not only into how and why federalism is a significant element in explaining the dynamics of federations, but also into how and why parties are such important agents in their maintenance.

Prior to launching into that endeavour, it is necessary to clarify two matters. The first concerns the use in this thesis of the term "Germanic". The second relates to the structure which this thesis will adopt to realise the aims outlined above.

When speaking of "Germanic" federalism, we mean federalism in Austria, Switzerland and Germany. This usage requires some explanation and qualification, however. First, our use of the term should not be taken to signify any commitment to a pan-Germanic nation or state. Indeed, the use of the label should not even be taken to imply that all federalisms under that rubric were articulated in the German language. Given the linguistic diversity of Switzerland, it should come as no surprise that Germanic federalism includes a number of French-speaking exponents of federalism. These have in part been of considerable significance within the Germanic tradition, as will be illustrated below [23].

Second, just as Anglo-Saxon federalism is not impervious to "foreign" influence (eg. Friedrich, 1968 & Elazar, 1973 & 1979), neither is Germanic federalism a closed milieu. Writers other than Austrians, Germans and Swiss have been instrumental in shaping it. De Tocqueville is one example

[24]. Third, the use of the term "Germanic" is not meant to imply that federalism in Austria, Switzerland and West Germany is monistic. On the contrary, it has already been argued above that it is extremely variegated. This diversity is apparent not only in the philosophical and analytical writings, but also - and more markedly - in the ideological/prescriptive or promotive literature.

Accordingly, this thesis will consider a range of types of federalism, selected by reference to a threefold criterion of relevance. First, we shall not restrict ourselves to an exclusive consideration of either highly elaborate federal philosophies or theories, or of Germanic federalism in the guise of political polemics, but will seek to include a wide range of intellectual levels. Thus we shall include treatises such as those of Althusius (Carney, 1964) and Haller (1820-5), as well as pamphlets such as those of Troxler (eg 1833, a-e) and Gagern (1856). Second, we shall seek to include examples from as wide a range of political groupings as possible, including reactionary and reformist conservatives, as well as "moderate" and radical liberals. Finally, we shall attempt to include examples of each of the "dimensions" of Germanic federalism which this thesis will identify (see 2.4 below).

For a major task of the thesis is to demonstrate not only the political, but also the substantive variety of Germanic federalism. As will become apparent, the differences in federalism are primarily not between the three relevant countries, but within a distinctive tradition. Put another way, Germanic federalism consists of a corpus of literature and a philosophical or ideological tradition that is

variegated in its statements and - to a lesser extent - also in its origins. This tradition is significantly different from the dominant Anglo-Saxon paradigm discussed in the preceding section and is a genre in its own right: a Germanic federalism.

Having explained both the aims of this thesis and what is meant by "Germanic", the final task of this section is to outline the structure of the thesis. It has been decided to divide the substantive material in this thesis into two sections (Parts 2 & 3). This division denotes a broad distinction in emphasis.

Part Two is primarily concerned with identifying the dimensions of the Germanic tradition of federalism, though it will also illustrate the political uses to which it was put. Accordingly, Chapter 2 will deal with early Germanic federalism, that is to say, with federalism from the early seventeenth century writings of Althusius until the late eighteenth century federalism of Kant. This will allow the identification of five "dimensions" of Germanic federalism. Chapter 3 will examine the application of those dimensions of Germanic federalism during the revolutionary Napoleonic period, though it will also include federalisms published immediately prior to the Congress of Vienna.

The main contribution of Part 3 of the thesis, ie of Chapters 4 to 6, is the analysis of the use by the earliest antecedents of modern political parties of federalism as a political ideology to rationalise and to promote their existing political interests within extant federations. Chapter 4 is devoted to an elucidation of the relevant background factors to Germanic federalism from 1815, when the

Congress of Vienna imposed on all three relevant countries conservative federations which substantially altered the context in which federal speculation took place, until the outcome of the revolutions of the late 1840s was decided. In Switzerland, it was settled by the short civil war of 1847 and the subsequent introduction in 1848 of a liberal constitution. In Germany, by contrast, the failure of the federal proposals of both the liberal Frankfurt National Assembly and of the conservative Erfurt Union spelt a return to the federation of 1815. The aim of Chapters 5 & 6 is to illustrate the various ways in which federalism was used by the two major political groupings of the time: the conservatives and the liberals, as means to their different ends. To enhance the comparative nature of the thesis, Chapters 5 & 6 will not be structured chronologically, but will concentrate upon conservative and liberal Germanic federalism respectively.

In the fourth and final part of the thesis, Chapter 7 will first offer a summary of the major findings of this thesis. Section 7.2. will be concerned with its conclusions regarding the nature of the Germanic tradition of federalism, while 7.3. will focus upon those relating to the use of federalism as a political ideology. Finally, section 7.4 will consider the contributions which we believe that this thesis has made to the academic study of federalism and federation.

NOTES FOR CHAPTER 1

1. On developments up to the early 1980s; see for example McWhinney (1982). On the issue of Meech Lake, see for example Leslie/Watts (1988), or "The Meech Lake Accord", which constitutes a recent Special Supplement of the journal

Canadian Public Policy, (Vol. 14, September 1988).
Alternatively, see Burgess (1990).

2. For a further discussion of this distinction, see point seven of 1.2. below. The author of this thesis first advanced this argument in a paper at the Joint Sessions of the European Consortium for Political Research (Luther, 1984), of which section 1.2 of this thesis constitutes an amended version. In the book that emerged from that conference, he provided an empirical illustration (Luther, 1986) of some of the points suggested in that paper. See also the introduction to that book by Burgess (Burgess, 1986, 15-33).

3. This claim hardly requires corroboration. It will suffice to direct the reader's attention to the extensive bibliographies in Riker, (1975, 161-72), Davis (1978, 224-232), as well as to that of this thesis.

4. See especially Birch (1966), Watts (1966), Franck (1968) and Hicks (1978).

5. A notable exception in Sawyer (1969).

6. One paragraph on page 26 and four incidental references on pp 55, 63, 77 & 19.

7. It would be invidious to pick out individual authors. A review of the literature will corroborate this claim.

8. e.g. Birch (1966, 20f and 33), Wildavsky (1967, viif), as well as Riker himself (1969 and 1975).

9. Riker (1964, 41) refers to Austria as a case of "prospectively imperial federation", presumably as a result of the Anschluss option.

10. See, for example, Livingston (1952), Birch (1955 & 1966), Davis (1955, 1972 & 1978), Vile (1961 & 1977), Friedrich (1968), Elazar (1979) and King (1982).

11. For a detailed critique of the process approach see Davis (1978, esp. 173-82).

12. This point has been made in different ways by other authors. See, for example, Grodzins (1960a, esp. 265), Birch (1955) and Davis (1972 & 1978).

13. Notably Mayntz/Scharpf (1975), Scharpf/Schnabel/Reissert (1976), but also much of the research conducted in and on Switzerland by writers such as Germann (1975 & 1975a) and Nuessli (1985).

14. Franck (1968) is one such author. One of his major conclusions is worthy of note and will be referred to later, namely, that "for a federation to be able to resist failure, the leaders, and their followers, must ... have ... an ideological commitment not to federation only as a means ..., but as and end, as a good for its own sake." (173, his emphasis.)

15. e.g. Truman, D.B. (1955), Riker and Schaps, (1957), Pennock (1959), Riker (1964 & 1975), Mayer (1970) and even Wheare (1963), to name but a few.

16. Vile also makes this point (1961,196).

17. The aim of this elucidation of Friedrich and Elazar's concepts of federation is merely to contrast the range of possible applications they envisage with the narrowness of equating federation and federalism as pertaining solely to the territorial distribution of power in a federal nation state. We shall therefore not proceed to criticise their approaches in detail, despite obviously being aware of, for example, the problems attendant upon Friedrich's notion of a "federalising process". For a good critique of Friedrich, see Davis (1978, 173-82).

18. See p3 above, where we have already indicated the nature of the distinction and also mentioned that in this respect our analysis coincides with that of King (1982,19-23&74-6).

19. East Africa,Rhodesia,Nyasaland,the West Indies & Malaysia.

20. For a related consideration, namely, the way in which the development of a sense of a common (national) identity throughout the union can militate against the importance of retaining the special status of the constituent units, see Vile (1977,esp.4-6).

21. The nub of the argument we are advancing is of course not that the Anglo-Saxon literature has failed to distinguish adequately between the words federalism and federation, but that it has not distinguished between the phenomena these terms denote and has thus failed to consider the diversity of federalism and the dynamics of its interaction with federations.

22. See for example Berchtold (1967), Bergstraesser (1960), Charmatz (1907), Gruner (1977) and Wedl (1969).

23. For example see Monneron(1800), Rossi(1832) and Fazy (n.d.), covered below in chapters 3,5, & 6 respectively.

24. De Tocqueville (1835). See section 6.2. below also.

PART 2: EARLY GERMANIC FEDERALISM

CHAPTER 2: GERMANIC FEDERALISM IN THE 17TH AND 18TH CENTURIES

2.1. INTRODUCTION

The aim of this chapter is to provide an overview of Germanic federalism from its 17th century origins, up to and including the federalism of Kant at the end of the 18th century. The purpose of that undertaking is to help fulfil the two main objectives of this thesis, namely, to identify the nature of the Germanic tradition of federalism and to illustrate the advantages of examining the ideological nature of federalism. We shall also seek to assess the accuracy of the Livingston and Riker hypotheses on federalism.

As argued in 1.3. above, the nature of the federalism that emerges in any one country is in many respects a product of its political and philosophical environment. A broad understanding of this environment is thus necessary for a rounded appreciation of that federalism. The provision of such an overview of the background to early Germanic federalism is the task of this introductory section [1].

When examining the political and philosophical history of Switzerland and Germany [2] during the sixteenth to eighteenth centuries - i.e. the century preceding the advent of Germanic federalism and the first two centuries of its development - one encounters innumerable factors which were significant in influencing the form which that federalism

took. These factors range from isolated events to long-term developments. To facilitate an understanding of the nature and impact of these factors, this at times bewildering kaleidoscope of events will be synthesised into four major political and philosophical themes.

The four themes are: 1) the conflict between secular and ecclesiastical authority; 2) the relationship between central and regional authority; 3) foreign power relationships, and 4) socio-political changes in intrastate relations (i.e. the rise and consolidation of {petty} absolutism). In short, the four themes relate respectively to religious, territorial, interstate and socio-economic aspects.

Clearly, these themes are not completely discrete - nor could they be. However, they do enable us to identify those aspects of the political and philosophical background to early Germanic federalism which led to different perceptions of the nature and function of federation. In other words, these themes help explain why, even from its earliest days, Germanic federalism had conflicting views about the nature of the constituent units of which it held federations to be composed and about the purpose of federation.

The religious cleavage - manifested originally in the conflict between secular and ecclesiastical authority - had by the beginning of the seventeenth century largely been resolved in favour of the secular power, which henceforth increasingly wielded both "Gelasian swords". This development was furthered by the conflicts arising from the Reformation.

In terms of political philosophy, this exacerbated the long standing conflict between those who argued that even in religious matters, subjects owed unmitigated passive

obedience to their ruler, and those who defended the right to resist in certain circumstances. This right was most commonly advocated by those who saw the purpose of the state to lie in the maintenance and furtherance of "true" worship. Thus resistance was justified in cases where the state failed to fulfil its prime function vis-a-vis the faith. However, it was the case of those advocating passive obedience that was to be the more influential.

This was also true as regards early Germanic federalism, where the Calvinist precepts of Althusius - who will be discussed in detail in the next section of this chapter - were the exception rather than the rule. Althusius was also distinct from most other seventeenth century proponents of Germanic federalism (with the notable exception of Grotius), by virtue of the fact that his political philosophy was not theological. Almost all other seventeenth century political philosophy remained theological - both in terms of the assumptions upon which it was predicated and in respect of the arguments it employed. By the end of the eighteenth century, rational theories came to dominate.

The second theme alluded to above was that concerning territorial or central-regional conflict. In the period preceding the Reformation, central-regional relations in Switzerland and Germany were moving in opposite directions. The weakness of successive German Emperors in the fourteenth and fifteenth centuries facilitated a corresponding increase in the power of the German cities and princes. Indeed, the very existence of Switzerland bears testimony to the Empire's disintegration. Meanwhile, the trend in Switzerland had been

towards greater centralization, albeit from a very different starting point.

Yet the steady advance of central authority in Switzerland during the fourteenth and fifteenth centuries came to an abrupt halt with the outbreak of the Reformation in the early sixteenth century. Though from now onwards, Swiss central authority declined, it did not do so either as swiftly or as irretrievably as was the case in Germany, where the experience from the sixteenth century onwards was of a substantial decline in the authority of the centre.

In view of the pervasiveness of the Bodinian view of state sovereignty, the growing political impotence of the centre and the fact that the interaction of the regions came increasingly to resemble that of independent states, it is not surprising that Germanic federalism focused almost exclusively upon the idea of a federation of sovereign states. However, there were a few writers who still viewed Germany in central-regional terms (e.g. Hugo and Leibniz) and the component units of the federation which they espoused were thus not sovereign states. Nonetheless, the dominant political paradigm was the relationship of sovereign states and in turn, the dominant philosophical theme was interstate relations.

The third of our four broad themes concerns interstate relations or - to be more precise - the relationship to foreign powers of the Swiss cantons and of the states of the German Empire. The first mentioned relationship went through two stages; one lasted until 1515 and the second from 1516 to 1798. Swiss foreign relations during the fourteenth century were largely defined in term of successful conflict against

the Habsburgs, while the fifteenth century saw the height of Switzerland's "imperialist" phase, which lasted until its defeat by France at Marignano in 1515. The perpetual peace treaty signed with France in 1516 marks the start of a new stage in Swiss foreign relations, namely, one of an overwhelming influence of France, which grew in direct proportion to the increased power of the French monarchy.

From the Reformation onwards, another important aspect was the fact that Switzerland's internal religious cleavage continued to threaten to entangle the country in foreign wars. Foreign relations partly fomented two civil wars, though military involvement abroad was miraculously avoided.

For her part, Germany was not so lucky. The history of her foreign relations during the sixteenth, seventeenth and eighteenth centuries is one of a succession of bloody military conflicts, the majority of which were fought on German soil. As Barraclough says, "Germany sank more and more into the condition of a subordinate factor, a field for annexations and compensations fought over by other states" (1972,362). This unremitting belligerency was very costly. It contributed to the collapse of the ancien regime in France and the cumulative cost of unrelenting military activity was largely responsible for the bankruptcy of Austria in 1811. However, it is the human cost that was the greatest. The enormous toll in lives and human misery and suffering is incalculable. In addition, there were the effects of social and economic dislocation, to say nothing of the political upheavals.

The foreign power relationships of the Swiss and Germans had at least two consequences for Germanic federalism. The

continued threat of Swiss entanglement in foreign wars meant that Swiss deliberations came increasingly to stress the importance for the survival of the federation of a policy of armed neutrality. However, it was not the persistent threat, but the costly reality of continual war which was to prove the more significant influence upon Germanic federalism.

In an age which increasingly claimed to be that of reason and enlightenment, it is no wonder that this ceaseless carnage provided food for philosophical thought. As we shall see in 2.3., some of those concerned to find a lasting peace - including the Abbe de Saint Pierre, Rousseau and Kant - were convinced of the value of federation as a means to this end. Such considerations were to constitute a new, important and recurrent dimension of Germanic federalism.

The previous two of our four broad themes have really concerned interstate relations. However, our fourth and final theme concerns the changes in intrastate relations that occurred in Germany and Switzerland during the sixteenth to eighteenth centuries. The political trends within the Swiss cantons and German states were broadly similar; with the emergence of absolutism, there was a concomitant decline in the power of institutions - such as the cities, guilds and other mediaeval corporations - that had previously shared in the exercise of political authority.

Barracough states of late fifteenth century Germany that

a new stability and balance had been struck within the territorial state ...; we saw, in particular, the beginnings of fruitful co-operation between princes and estates which boded well for a healthy development of political life and institutions, on a basis of progressive "constitutionalism". (1972,374) [3]

In Switzerland, the so-called "democratic movement" of the previous century had led to the early abandonment of serfdom and a thoroughgoing democratisation of cantonal politics. The "constitutionalism" of the Swiss cantons was therefore much further advanced by the beginning of the sixteenth century than that of the German states. Generally speaking, Germany differed both in terms of a greater prevalence of monarchical, ecclesiastical or other non-republican states, as well as in the more rudimentary nature of those popular or corporate forms of participation which did exist.

For Swiss cantons and German states alike, earlier interstate conflict was from the seventeenth century onwards to be overlaid by and subordinated to, the religious cleavage. So large did this new animosity loom, that the states' perception of being threatened by external attack led them to consolidate internal political authority. Power was progressively concentrated in the hands of an ever smaller coterie. In ecclesiastical states, it was united into the hands of the bishop; in monarchical states it was the head of the incumbent dynasty, who came to exercise absolute authority. In patrician dominated states (e.g. the Swiss cantons of Freiburg and Bern), the power of the nobility was enhanced. Even in the pastoral cantons ruled by the Landsgemeinde [4], popular sovereignty was undermined in favour of government emanating from an urban oligarchy.

Among the factors which militated in favour of a strengthening of absolutism, the following were some of the most important. First was the principle cuius regio eius religio, as enshrined in the 1555 Peace of Augsburg, which meant that ecclesiastical and secular authority were no

longer counteractive. Instead the union of the two served to reinforce the dominant - and usually secular - partner. Second, the modernization and professionalisation of the bureaucracy reduced dependence upon the estates for policy implementation. In Austria, the development of a modern administrative machinery had started in the reign of Maximilian I (1493-1519). Especially in the sixteenth century, the new bureaucracy was successfully used by the Catholic Habsburgs as a weapon in their struggle to impose absolutist government upon the mainly Protestant estates. It was only during the "enlightened absolutism" of the reigns of Maria-Theresa (1740-80) and Joseph II (1780-90) that the Austrian civil service finally came to be an institution whose duty was to serve not dynastic interests, but solely those of the state. In Prussia, such principles had long governed the activity not only of the administrative apparatus, but also of the government - including the Hohenzollern dynasty itself. The Swiss cantons never had the large bureaucracies which German states boasted. However, even in the cantons - and especially in the urban ones - the principle of territorial administration came to replace that of involving the estates of the realm in a corporate administration of government.

A third factor which militated in favour of absolute government was the more effective assertion of its coercive power. The function of the Prussian army as a pillar of the state is well known. In other German states, the perception and reality of eternal military threats resulted in the maintenance of a state of virtually permanent mobilization.

Accordingly, the armed forces were usually readily available to suppress any domestic disorder. In Switzerland, the articles of the 1481 Covenant of Stans, in which the cantons pledged each other support in the event of internal disorder were applied in a new and harsh manner. In the 1653 Peasants War, the various cantonal governments rallied to suppress the spreading peasant protest ruthlessly. Bluntschli says of 1653 that it marked the breakthrough in Switzerland of the principle of absolute government (1875,429). Thereafter, confederal intervention in support of cantonal governments under popular attack became more frequent and more bloody [5].

A fourth and related agent of absolutism - and one which applied especially in the German states - was the marginalisation of the cities and estates as a result of the economic and social upheavals wrought by the frequent wars. The nadir of the cities came during the Thirty Years War, when trade and commerce - their very life-blood - collapsed. The exigencies of war were an important factor in assisting the princes to arrogate to themselves powers of taxation which had previously been the preserve of the States General. In addition, the wars also disrupted and fatally undermined the guilds and other corporations. This meant that there were no longer any institutions capable of acting as counters to princely absolutism.

Finally, absolutism was also strengthened by the beginnings in the seventeenth and eighteenth centuries of industrialization. While the creation of ever larger landholdings was accompanied by the decline of the peasantry, industrialization sealed the fate of the artisans and increased the wealth and standing of the urban bourgeoisie.

In most of Switzerland, the impact of early industrialisation was, however, not as great upon the social structure. The nature and scale of much of the industry - weaving, watch making and textiles - allowed it to be conducted as a cottage industry. Thus the development of a large urban proletariat was avoided. In contrast, the specially Austrian brand of mercantilism resulted in large-scale state involvement in industry. Here as in other German states, the eighteenth century was the time when urban proletariats came into being and practices such as child labour made their first appearance.

In summary, therefore, at the beginning of the sixteenth century absolutism was not yet fully established and there were a number of voices raised against the progressive marginalization of the traditional political authority of institutions such as the guilds and other estates of the realm. Indeed, the federalism of Althusius constitutes precisely such a defence of mediaeval corporations.

From the early sixteenth century, however, absolutism was successfully established. This was done by the following process: the erosion and subsequent demise of all independent sources of political authority; the harnessing of the support of the church, the coercive power and a modernized bureaucracy; the creation and accentuation of a gulf between rulers and ruled, and the increasing ossification of the social structure.

The issues to which political philosophy was to address itself as a result of these developments are well known. They concerned in the main the question of the relative

validity of the mutually hostile beliefs that power should be absolute and the belief that authority should be shared by other groups, such as corporate actors, other classes, or even by the populous at large.

As absolutism was consolidated, the territorial principle of rule replaced the notion of participation in government decision-making by corporate actors. Federalism was concerned primarily with interstate relations. As Riley explains (1976, 7-41), this was largely a consequence of the fact that the only possible component units of federations were held to be sovereign states, since the notion of intrastate accommodation was antithetical to the conventional (Bodinian) wisdom that the essence of statehood lay in the indivisibility and supremacy of the sovereign's will. It was only in the latter part of the eighteenth century, with the Enlightenment and events such as the French Revolution, that the dominance of this rigid view of the state was shattered. Eighteenth century Germanic federalism really only questioned absolutism incidentally. An example of this is the assertion of Montesquieu and Rousseau that federations composed of republican and democratic states were more likely to survive than those whose internal structures were absolutist. It was not until the nineteenth century that federalism again concerned itself primarily with intrastate authority relations. In the seventeenth and eighteenth centuries, federalism took as its main focus interstate relations.

The completion of this summary of the political and philosophical developments which were linked closely to early Germanic federalism up to the end of the eighteenth century enables us to shift the focus of our attention. We shall now

now examine the major proponents of early Germanic federalism.

2.2. GERMANIC FEDERALISM FROM ALTHUSIUS TO PUFENDORF

It is only right to start a genealogy of Germanic federalism with Johannes Althusius, whom the Encyclopaedia Britannica claims to have been "the intellectual father of modern federalism" (Mircopaedia, I, 277). This reputation is based upon his Politica methodice digesta (or Politics), first published in 1603 and revised in 1610 and 1614 [6]. Its significance lies not in its very brief discussion of "partial confederation" - ie federation between fully sovereign states - since in this respect it fully agrees with the conventional wisdom of its day. The novelty of the treatise lies in the manner, but above all in the fact, of its application of federalism to intrastate relations.

To have done so while retaining a Bodinian view of sovereignty would have been logically impossible, but it is precisely Althusius's aim to refute Bodin. While his Politics too holds that sovereign power "recognises no ally, nor any superior or equal to itself" (69), sovereign rights are not ascribed to the ruler. He is merely "the steward, administrator and overseer of these rights". Instead, their "ownership and usufruct properly belong to the total realm or people"(5). The members or constituent units of the realm are not individuals, but corporations such as estates, cities and provinces. So for Althusius, federation at the level of the state amounts to the accommodation of the corporate constituent units in the decision procedure of the "universal administrators". Moreover, inasmuch as they

existed before the state and contracted to create it, these "lesser" associations in fact take precedence over the state (see esp 201f). In true Aristotelian fashion, Althusius regards such "universal" associations as distinctive solely by virtue of their size and the greater range of functions which this enables them to fulfil. They are most definitely not repositories of absolute authority. The Aristotelian principles of the Politics are clearly evident in its opening sentences:

Politics is art of associating (consociandi) men for the purpose of establishing, cultivating, and conserving social life among them. Whence it is called 'symbiotics'. The subject matter of politics is therefore association (consociatio), in which the symbiotes pledge themselves each to the other by explicit or tacit agreement, to mutual communication of whatever is useful and necessary for the harmonious exercise of social life. (12)

Having defined politics as the art of associating, Althusius proceeds to divide associations into two main types: simple and private on the one hand and mixed and public on the other. He then further divides the former type into associations that are either private and natural, or private and civil. The first of these is the family and embraces both conjugal and wider "kinship" consociatia. Althusius holds citizens to be heads of families interacting with other family heads outside the private and natural association in which each is individually sovereign [7]. In this extra-familiar environment, they unite to form voluntary and transitory associations. These are the private and civil associations, in which:

three or more men of the same trade, training or profession are united for the purpose of holding in common such things they jointly profess as duty, way of life or craft. Such an

association is called a collegium ...(28f)

What Althusius has in mind are primarily professional or vocational associations (32f). The constituent elements of these collegia are the family heads, while the voluntary associations in turn unite with related collegia to form the "larger general collegia" or estates (33).

The simple and private associations "are the seedbeds of the public association" (27). The latter "exists when many private associations are linked together for the purpose of establishing an inclusive political order" (34) and is one of three types. In ascending order of generality, there are the city (or commune), the province and the universal association or realm. The association immediately larger than a collegia is the city, or commune

formed by fixed laws and composed of many families and collegia living in the same place ... The members of a community are private and diverse associations of families and collegia, not the individual members of private associations. These persons, by their coming together, now become not spouses, kinsmen and colleagues, but citizens of the same community.(35)

The community entrusts its government to a prefect whom it remains entitled to remove. Cities also have senates of "wise and honest men", in which the city's constituent units are represented. City government consists of the communication and administration of public "things", services and rights. Two aspects of Althusius's city government deserve particular mention. The first of these is the emphasis placed upon the co-operative ownership, use and maintenance of items such as pastures, schools and roads. The second aspect relates to how the administration of public functions is divided. Those pertaining to the first table of the Decalogue are deemed

ecclesiastical and thus rightly subject to clerical administration. Those relating to the second are considered to be political and therefore the responsibility of the secular power (42f).

The second of Althusius's particular public associations is the province, the constituent units of which are again not individuals, but corporations: all the villages, towns, cities and estates located inside the boundaries within which the laws of the province are exercised. The "head" or "prefect" of the province is appointed by the supreme magistrate and accountable to him [8]. His duties are:

to exercise diligent watch and care over sacred and secular provincial affairs and to provide that they be lifted up and directed to the glory of God and to the welfare of the entire province and the members thereof secondly, rightly to administer justice to individual persons ... thirdly, to inquire concerning those things that need correction or support ... (58).

For all important decisions, he requires the assent of a majority of the members of the "provincial collegium". This assembly of all the provincial estates is convoked by the prefect. These estates also share with the prefect in the governing of the province. Althusius divides them into ecclesiastical and secular estates, allocating to them the supervision respectively of matters relating to the spiritual life and those pertaining to temporal existence. Thus the ecclesiastical estate is charged with the following:

1) the defence and promotion of ... heavenly doctrine; 2) the calling of ministers of the Word; 3) the censorship of morals; 4) schools for children and youth;..." and so on (51).

The secular estate comprises the nobility, the burghers (including merchants and businessmen, craftsmen and

mechanics) and the agrarians. While the role of the nobility is military, that of the commons is to:

strive to produce and bring forth for the fatherland merchants, farmers and workmen ... skilled, industrious and distinguished. By ...(their endeavours) self sufficiency can be obtained ..." (56).

The principles governing secular conduct are those contained in precepts five to ten of the Decalogue (47) and secular communication encompasses:

1) executive functions ... , 2) ... discipline ... , 3) the provision for provincial security, 4) the mutual defence ... against force and violence ... , 5) the collection and distribution of monies for public needs and uses..., 6) the support of commercial activity, 7) (uniform) language and money, and 8) the care of public goods (48).

The majority of Althusius's Politics is concerned with the largest, or "universal" public association [9], composed

not of individual men, families or collegia ... Instead, members are many cities, provinces and regions agreeing among themselves on a single body constituted by mutual union and communication ... The bond of this body ... is consensus ... a tacit or expressed promise to communicate things, mutual services ...and the same common laws to the extent that ... universal social life ... shall require (62)

The universal association's right of sovereignty remain with the sum of its constituent associations, which Althusius often confusingly refers to as "the people" (eg 61). The administration of these rights of sovereignty is delegated to the "ephors" and the supreme magistrate. Since sovereignty is inalienable, their authority cannot legitimately be absolute, but is subject to law (64f & 92f). Althusius makes a point of the fact that these administrators should not act in a manner contrary to either the first table of the Decalogue, or to holy charity. Nor might they use their

office for purposes of personal aggrandisement (92).

As is apparent from his frequent empirical references (eg 111f), Althusius's ephors are modelled upon the seven Imperial Electors. The ephors' duties are fivefold, namely to constitute the supreme magistrate; to ensure that he does not overstep the bounds of his office; to act as trustees in times of interregnum; to remove a tyrannical supreme magistrate and, finally, to support him in the legitimate exercise of his office (98ff). These rights accrue to the ephors only as a collegiate body; individually they remain inferior to the supreme magistrate (100). Althusius claims that this state of affairs amounts to a "mutual watchfulness ... (which) keeps the condition of the realm sound" (103). The reality would more than likely be very different, however.

Though ephors are to be elected by the "entire people", the possibility of royal appointment is conceded (94). Moreover, even if the ephors are popularly elected, the fact that they will wear a second hat as provincial prefects makes them dependent, at least in that capacity, upon royal patronage. Althusius probably recognised that the ephors might well be dependent upon the supreme magistrate, rather than independent arbiters of his actions. This might well explain the following caveat:

... by the negligence, perfidy, deceit, fraud, or betrayal of ephors ... or by their conspiracy or collusion with a prince, nothing is taken away from the right of a people, and nothing is added to the licence of a tyrant. (114).

The appointment of the supreme magistrate is to be performed by the ephors in the name of the universal association. It takes the form of a "reciprocal contract ... (in which) the obligation of the supreme magistrate comes

first" (116). He agrees to administer the rights of sovereignty in accordance with the Decalogue, positive law and his electoral capitulations (117). Should he break this covenant, it is up to the ephors - not to the individual corporations [10] and still less to individual persons - to get him to mend his ways. In extreme circumstances, or if all other measures had been tried and failed, the ephors might depose him (129 & 185ff). The second party to the electoral covenant is the "people", who promise to obey the supreme magistrate in all things but "impious commands ... for obedience to God is more important than obedience to man" (128). If the people renege on their duty, the supreme magistrate is entitled to resort to force of arms.

Having dealt with the constituting of the supreme magistrate, Althusius proceeds to examine the communication and administration of the rights of sovereignty of the universal association. In respect of both of these, he advocates the by now familiar division between secular and ecclesiastical authority. What makes Althusius' consideration of these matters at the level of the universal association different is the insight which his more detailed exposition offers into the kind of secular-ecclesiastical relationship which he really envisages.

The clergy is to be responsible for the introduction and the conversation of orthodox religious doctrine and practice (155-60). Apart from involving them in school and church matters, this responsibility gives them rights in respect of the persecution of heretics, atheists and all "impious and profane men" (165f). The means by which this is to be done

included the Inquisition (173ff). Throughout, the exercise of ecclesiastical authority is presented by Althusius as though it consisted in the mere application of a set of rules divinely predetermined. In reality, however, the clergy is to elect from its midst "faithful and pious ministers" (163) who are to decide upon the meaning to be attached to the vague first table of the Decalogue. Moreover, ecclesiastical and secular authority are not really to be coordinate in Althusius's federation. On the contrary, the former is to be prior, as the following quotation demonstrates:

The administration of the supreme magistrate directs the clergy as long as he enjoins them to perform the parts of their office according to the Word of God (which the clergy is to interpret) ... On the other hand, the supreme magistrate is subject to the administration and power of the clergy with respect to censures, admonitions, and whatever concerns eternal life and salvation. In the administration of ecclesiastical matters the magistrate does nothing without the counsel and consent of the clergy based on the Word of God.
(155, parenthesis added)

The authority of the supreme magistrate is checked by not only the ephors and clergy, but by the universal councils of the realm. This comprises "a meeting of each and all members and estates of the realm for the purpose of deliberating and making decisions about (its) condition and welfare ..."
(178). The supreme magistrate is empowered to summon such a council, set its agenda, preside over the meeting, promulgate the decisions made and to prorogue the council. The assembly is nonetheless his superior and "the opinion of the combined orders and estates prevails over the opinion of the presiding officer or the supreme magistrate" (180).

In view of the several and real limitations upon the authority of the supreme magistrate, it is difficult to subscribe

to Davis's claim that "Althusius" theory of the state is essentially monistic" (1978, 47). If anything, the opposite is true. The core aim of the Politics is to provide a philosophical counter to the monistic view of the state presented by Bodin. Althusius is opposed to absolute government, as his approach to sovereignty amply demonstrates. For if sovereignty is an inalienable attribute of the corporations of the realm and the ruler merely its administrator, it is clearly indefensible for him to exercise absolute government. Althusius goes so far as to deem the exercise of such "plenitude of power" to be tyrannical (186). He defends the right to resist - and in extreme cases to depose - a supreme magistrate in three circumstances. These are if he breaks the law of the realm by violating the rights of the association of which it is composed, if he betrays his electoral vows, contravenes natural law, or if his administration is not in accordance with the precepts of the Decalogue.

This brings us to a second feature of the Politics: the important role ascribed to religion. That this should be the case is not at all surprising, of one recalls that Althusius was a committed Calvinist. Religion plays a vital role firstly in respect of the principles in accordance with which the federation is to be governed - ie those of the Decalogue. Thus Althusius states that "The end of political 'symbiotic' man is holy, just comfortable, and happy symbiosis, a life lacking nothing either necessary or useful." (12). Second, religious considerations impact upon the nature of the political structures, with the clergy allocated a pivotal function as, in effect, the sole adjudicator of whether

those principles are being observed. The power of the ecclesiastical authority at the highest level of the state is such that one might be inclined to conclude that Althusius is either advocating theocratic government, or at least a reassertion of the coordinacy of ecclesiastical and secular authority.

However, it would be mistaken to conclude from this that the Politics is a theological treatise. It is not. Like earlier theological doctrines such as Thomism, it does see society in terms of a series of organic communities in which there is a mutual exchange of goods and services in the interests of the good life, but that is where the similarity ends. Althusius's system is predicated upon a rational natural law theory grounded much more exclusively in Aristotelianism and not dependent upon revelation. While Thomism views society as a hierarchy with God as its apex, Althusius sees it as created from the bottom up. In the sense that their formation is dependent not upon external factors, but upon personal volition, the associations of the Althusian federation are natural. They are also self-sufficient, with the larger associations merely the product of the lesser and subsidiary to them.

Contract and consent are thus the linchpins of the Althusian system. The internal workings of all consociatia except the family are based upon them, as are the unions of both individual associations and hence of associations of associations. Contractualism even governs the highest level, for the state is itself constituted by means of a free contract imposing reciprocal obligations upon the constituent units and the person whom they appointed as steward of their

inalienable rights of sovereignty.

In summary, Althusian federalism is concerned to present intrastate relations as a system of reciprocal contractual obligation within and between progressively more complex associations. The smallest are of a familial or "civil" (ie. usually vocational) nature. Thereafter, associations are of mixed composition and are primarily either municipal or provincial. The contracting parties soon change from being individual citizens to being corporations. The largest, or "universal" association is the state. This is a federation [11], the individual constituent units of which are functional, municipal or territorial corporations. They jointly enter into a contractual agreement, whereby the exercise of their collective sovereign rights is conditionally entrusted to a "supreme magistrate". The rights of the constituent units are protected by the actions of the optimates, by the councils of the realm and, ultimately, by the right to depose a contumacious supreme magistrate.

Riley, asserts that since

the "federalism" of Althusius has little to do with the modern notion of the federal state, in which central and regional governments, both of them states, exercise ordinary legal power directly over individuals ... Althusius must be considered a late expositor of medieval politics, rather than an early anticipator of the federal state ... (1976, 36 & 38)

Mogi (1931, 1, 329) goes further, claiming that until well after the founding of the United States "Feudal-coloured federalism continued to shed its dim light upon the continental federal idea ...". As was mentioned in 1.3. above, it is not the intention of this thesis to make what could well be an arbitrary judgements upon whether or not a

given exponent of federalism was really writing about federation as opposed, for example, to corporativism. The assessments of Riley and especially of Mogi are, however, informative. They tell us more about the absence of a feudal tradition in American federalism, than they do about the significance of Althusius in and for Germanic federalism.

For although Althusian federalism was consigned to obscurity for almost two centuries, it did reappear at the very beginning of the nineteenth century, influencing the federalism of Swiss conservatives such as Monneron (1800, see Chapter 3.3 below). Its major revival was of course through Gierke (1880) in the late nineteenth century. Many aspects of Althusian federalism were to be echoed in nineteenth and twentieth century Germanic federalism. For example, federation was variously perceived to have either a religious or a constitutionalizing purpose. Moreover, the cooperative nature of relations within and between consociatia and the notion of the subsidiary rights of more exclusive associations, were both to be in evidence, as were more general aspects of mediaeval corporatist ideas. These later developments will be considered in chapters 3, 5 and 6 below.

It is now time to look briefly at Ludolph Hugo and Georg Leibniz, two other exponents of Germanic federalism who share with Althusius the distinction of seeking to demonstrate that the German Empire is more than a set of independent, sovereign states [12]. Both refute the Bodinian and more recent Hobbesian claims that anarchy can be avoided only by the establishment of centralised and unitary government by an omnipotent ruler. Leibniz seeks the

resurrection in Europe of the two Swords of imperium and sacerdotium (see 2.1. above). Only the Emperor is to be sovereign, in the sense of having "the right to command without being subject to commands". Leibniz terms this "majesty". All other rulers are to exercise "sovereignty", but by this he only means territorial supremacy ("Gebietshoheit"), that is to say, the ability effectively to assert authority within a given territory (Riley, 1976, 26). In the same way that Duchacek (1970) denies the validity of the unitary-federal-confederal typology by attacking the concept of a unitary state, Leibniz attacks the Bodinian-Hobbesian concept of a unitary and absolute state by demonstrating that no state could be governed in such a fashion. Instead, all governments are characterized to a greater or lesser degree by negotiation and compromise. In this respect, Leibniz has much in common with the cooperative, anti-hierarchical theory of Althusius.

Another seventeenth century exponent of Germanic federalism who not only refutes the notion that the governing power of a state has to be centralized, unitary and absolute, but also welcomes limitations upon central authority is Ludolph Hugo. Hugo's, main contribution to Germanic federalism is the concept of "double rule", which he uses to characterise the German Empire of his day. Double rule characterises a type of union mid-way between confederal leagues and unitary, albeit deconcentrated, states. As an example of the first type, Hugo cites the United Provinces and Switzerland, maintaining that one should not be deceived by the apparent closeness of the union into believing that the constituent units sacrificed their independence. They did

not and remained above the treaty, not subordinate to it. Hugo's example of the second type of union is the Roman Empire, where the exigencies of governing a large area led to administrative deconcentration, but not to any diminution or division of the central authority.

The German Empire is an example of the third type of union: double rule. This involves a division of powers between higher and lower governments, "... so that the higher manages those matters pertaining to the common welfare, the lower those things pertaining to the welfare of the individual regions". The crucial factor is Hugo's contention that the lesser governments, though not in possession of completely independent power, are nonetheless at least analogous to states, since the powers they exercise are "universal and wide enough to seem to take something from the highest power" (cited in Riley, 1976, 23). The significance of this view is, as Riley correctly notes, that "... for the first time in federal theory a local member was considered a state (or a quasi-state) without thereby reducing the central government to a mere alliance, to a non-state" (24).

Although Hugo wrote with different aims in mind and reached different conclusions about the German Empire, he shared with Leibniz and Althusius a refusal to accept the zero-sum approach to sovereignty which was so typical of the conventional Bodinian-Hobbesian wisdom. Hugo feels that central sovereignty and regional sovereignty were by no means necessarily mutually exclusive and that a system of double rule (a "Staatenstaat") combines the civic advantages of small states with the security advantages of large states.

As has been stated a number of times already, this was a minority viewpoint in the seventeenth century. The more widespread and for a long time more influential viewpoint held the sine qua non of statehood to be the existence of a single and indivisible will. This is the assumption upon which the writings of the two perhaps most celebrated seventeenth century exponents of Germanic federalism: Hugo Grotius and Samuel Pufendorf [13] are based. Consequently, they cannot accept the notion of intrastate federation, as expounded for example by Althusius. For in their opinion, if a state is worthy of the name, the "right to command without being subject to commands" - ie sovereignty - logically cannot be divided. Similar logic leads them to reject Hugo's concept of a state composed of states. Their writings were not influenced solely by logic, however, but also by their subjective evaluation of the German Empire. Pufendorf, for example, regarded the Empire as a monstrous aberration, a hybrid destined to fall apart. No doubt that perception was due in no small measure to the fact that he was writing immediately after the Peace of Westphalia, when the weakness of the Emperor was only too apparent. Davis sums up Pufendorf's approach very succinctly when he says that it:

rests on two simple normative equations:
the regular state = undivided sovereignty
= strength/perfection/moral polity
the irregular state = divided or compromised
sovereignty = weakness/imperfection/shameful
polity (1978, 58)

In light of so firm a belief in the superior virtue of undivided sovereignty, it is not surprising that for Pufendorf, the constituent units of federations have to be sovereign states. Interstate federation - or confederation as

it came to be known - is the closest of three possible forms of interstate relations envisaged by Pufendorf. The others are the simple treaty or alliance and a "personal" union resulting from the dynastic rights of one monarch over two or more states. The confederation - or "states system" as Pufendorf terms it - is distinguished from a loose treaty or alliance because it is a perpetual agreement in which the contracting parties agree not to exercise a part of their sovereign rights unless the others consent. However, a states system differs from a simple state by virtue of the very important fact that the constituent states retain their sovereignty. This is ensured by the stipulation that the members of the Diet are to be ambassadors, the validity of whose joint decisions depends upon them being reached unanimously [14].

Pufendorf's interstate (con)federation continued to be the dominant theme of Germanic federalism for the next century and came to be the classic formulation of the principle of confederation. The reasons why the interstate dimension came to be overwhelmingly dominant when compared to intrastate federalism have already been mentioned in the preceding section of this chapter. Foremost among them was the fact that the federal theorists' prime focus of attention, namely, the German Empire, came increasingly to resemble a set of independent states rather than a single state, as Althusius and Leibniz had argued.

2.3 GERMANIC FEDERALISM FROM SAINT PIERRE TO KANT [15]

The four best known eighteenth century exponents of

European federalism - the Abbe de Saint-Pierre, Montesquieu, Rousseau and Kant - were all interested primarily in interstate federation. With the exception of Montesquieu, they all saw federation as a means of bringing about universal peace. Before proceeding to discuss their ideas, it might be useful to say a brief word about why it is that Montesquieu and Rousseau are so frequently cited in the context of discussions about intrastate federation.

That this should be so is initially surprising, for neither had very much to say about federation within a state. An examination of Montesquieu's The Spirit of the Laws (1748, 126-8) reveals his total contribution to federalism per se to be limited to three remarks on the first three sides of Book IX ! His first assertion, that confederations combine the civic virtues of small states with the military advantages of large states, was in those days almost axiomatic and certainly adds nothing to Hugo's above mentioned comments. Montesquieu's second contribution is to recommend that confederations be composed of states with the same type of government, which should preferably be republican, since "peace and moderation are the spirit of a republic". Finally, he advocates the weighted representation of the constituent units, rather than their equal representation.

Most of what Rousseau had to say about federation within a state is to be found in his The Government of Poland and Project for Corsica [16]. As Riley (1973) has pointed out in a stimulating article, Rousseau's prescription of a federal state fits very uneasily into his overall philosophical scheme [17]. This is due mainly to the seeming incongruity between intrastate federation and Rousseau's insistence upon

the indivisible sovereignty of the "general will". Even if it were possible to overcome this apparent contradiction, we believe that Rousseau's reputation as a theorist of intrastate federation derives less from what he wrote about federation qua federation, but from other aspects of his political philosophy. The same is true for Montesquieu.

In order to explain this paradox, it is necessary to recall that one of the most important factors motivating the two men was the malaise they perceived in the eighteenth century absolutist state of the Bourbons. Montesquieu bemoaned the fact that the powers of estates and "parlements" had been so undermined that they were no longer able to counter monarchical absolutism. In his view, this situation threatened the permanent extinction of liberty. This was his main concern and federation merely a form of interstate union of peripheral relevance. His rather imprecise ideas on the separation of legislative, executive and judicial powers and on legal and social checks and balances - ideas that were in themselves not new - were intended to provide a remedy to monarchical absolutism. However, as will be illustrated in the next chapter of this thesis, these notions were to be conflated by later admirers with that of interstate federation and legal-constitutional balance. This is a connection which Montesquieu himself did not make.

A similar fate was to befall Rousseau's very limited discussion of interstate federation. As is well known, Rousseau was obsessed by what he perceived as the decadance, exploitation and immorality of the large states of his day. Though he shared with Montesquieu a sociological approach,

he eschewed the latter's faith in reason in favour of a more irrational and emotive style. Rousseau's ideal was a romanticised notion of a small, pastoral republic. Here the problems of alienation brought on by the large, absolutist state would not exist, because the smallness of the state would allow the community to exert its moralising influence. The community was conceived in organic terms, its members being at once master and subject of its general will. The difficulties of accommodating a federation within such a system have already been alluded to. However, since smallness was so crucial to Rousseau's republics, the existential importance of alliances to safeguard their security from external attack had not escaped him. His predictable solution was to argue that a federation between such states would be the best way of combining their community-based virtue with the military security of large states.

Paradoxically, much of the subsequent literature that made reference to Rousseau inverted what he had actually said. Thus Rousseau's federation has been presented not as a mechanism by which small states associate in order to preserve their virtues from external attack. Instead the insinuation of many commentators has been that Rousseau saw the civic virtues as a function or consequence of federation. Chapter 3 will demonstrate how this adaptation found its expression in conservative Swiss federalism, where Rousseau's ideal of a federation of small, mainly agrarian and moral communities was claimed by many Swiss writers to have been realised.

In summary, the significance of Montesquieu and Rousseau for Germanic federalism of the intrastate variety lies less

in what they actually wrote, than in the manner in which they were subsequently presented. Montesquieu's concept of the separation of powers as a means of ensuring political liberty was frequently quoted by nineteenth century liberal constitutionalists, who presented his advocacy of federation between small republics as though it had been advanced by Montesquieu as an additional mechanism for achieving or maintaining constitutional balance within a state. Conversely, conservatives were to use Montesquieu's emphasis upon the necessity for laws to be in agreement with the social, cultural and other peculiarities of the country to which they were to be applied as indicative of support for the autonomy of the constituent units of federations. (See 3.3. below)

For his part, Rousseau was to be interpreted as having claimed a moralising function for federation, and was also to be cited approvingly by many of those who were later to reassert more organic, community-based or romanticised brands of federalism. That this should occur was rather ironic, if one accepts Riley's conclusion that:

an inquiry into Rousseau's well-established but unexamined reputation as an "advocate" of national and international federalism (*sic* federation) reveals, or at least tends to suggest, that he was really an advocate of neither (1973, 17).

Just to compound this irony, it is worth noting that Rousseau's emphasis upon political equality endeared him to nineteenth century liberal radicals, so that he was to be cited approvingly not only by conservatives, but also by those championing a centralised, liberal intrastate federation. (See Chapters 3 & 6 below).

Regardless of whether or not Rousseau really was himself a

champion of intrastate federation, there is no doubting the fact that he did contribute to a new and important dimension of Germanic federalism: the discussion about federation as a means to achieve universal peace. The two other main contributors to this eighteenth century debate were the Abbe de Saint Pierre and Immanuel Kant [18]. It would exceed the scope of this chapter to give detailed individual accounts of the federalism of all three writers. Accordingly, we shall focus our attention upon answering the two questions posed in at the beginning of this thesis (see 1.3 above): namely, what the writers understood the purpose of federation to be and what their views were regarding the nature of the component units of that federation.

As noted in the opening section of this chapter, the seventeenth and eighteenth centuries were marred by a seemingly unending series of wars. Saint Pierre, Rousseau and Kant were all three interested in federation as a means of ending this belligerency and of introducing universal peace. However, they differed as to why the latter was preferable to the former. At the root of Kant's argument was a belief in the moral superiority of peace over war. This belief is based upon two premises, which Beck outlines thus:

The first is the categorical imperative which enjoins us always to act on a maxim of respect for human beings as ends in themselves. Kant says that in warring the ruler does not obey this principle, and treats them as things to be used - and used up. The second premise is the juridical principle which underlies the dynamics of government, that men ought to, and as rational beings do, seek to extend the rule of law (1957,xii)

That is not to suggest that Kant is oblivious to the more pragmatic arguments favouring the establishment of universal

peace. Thus he says at the end of his "First Supplement" entitled "Of the Guarantee for Perpetual Peace" that

The spirit of commerce, which is incompatible with war, sooner or later gains the upper hand in every state. As the power of money is perhaps the most dependable of all the powers (means) included under the state power, states see themselves forced, without any moral urge, to promote honorable peace and by mediation to prevent war when it threatens to break out. (32).

It is material considerations such as these which most impress both Saint-Pierre and Rousseau. This is borne out by an examination of the latter's eight point summary of the advantages which could be expected as a consequence of the establishment of perpetual peace. Rousseau mentions security from the threat of external attack and from the danger of internal rebellion. This would, he asserts, mean considerable financial benefits in the form of reduced military spending and the restoration of free trade and commerce (cited in Riley, 1973, 14).

While Saint-Pierre and Rousseau are in broad agreement about the likely benefits of universal peace, they differ profoundly in their assessment as to what will be required to make the prospective partners federate. Saint-Pierre believes that the impetus will arise from the self-evident material advantages of peace over war. All states are suffering the disadvantages of continuous war and all would derive not inconsiderable benefits from its cessation. The incentive to federation therefore lies in its universal utility. For his part, Rousseau is much more sceptical. Though he too believes that it is in the rulers' objective interests to federate, Rousseau feels that they are unlikely to assent to

such a scheme. The reasons for this include their desire for relative wealth and power - as distinct from a universal increase in prosperity - and the absence of the kind of common external enemy which the Swiss cantons had faced and united against in the thirteenth and fourteenth centuries (see 2.1. above). In the absence of voluntary agreement, Rousseau sees violence as the only means of establishing the proposed federation and concludes:

That being so, which of us would dare to say whether the League of Europe is a thing to be desired or feared? It would perhaps do more harm in a moment than it could guard against for ages (cited in Riley, 1973, 16).

By contrast, Kant neither believed in the immediate likelihood of a universal federation, nor was he quite as pessimistic as Rousseau. Instead, he forecasts a very incremental development, with piecemeal but progressive change leading in the long term to an approximation of his idealized notion of perpetual peace. The way forward is not to be achieved by sudden changes in the moral convictions of rulers or in political organisation. As Forsyth says,

the main theme of Perpetual Peace is ... about the three parallel paths, civil, international and cosmopolitical, by which the human species as a whole ... moves from a state of nature or war to a state of right or peace. Perpetual Peace was the simultaneous perfection of all three forms of right. (1981,98).

That Kant envisages this change as gradual is evident from his acknowledgement that self-interest such as was outlined in the preceding quote from Perpetual Peace is the the kind of consideration upon which the initial moves in this slow process will be based. Similarly, Kant does not imagine that even his "Preliminary Articles" will be implemented simultaneously and unreservedly. Instead, he sees

them as being realised gradually (8). This is all the more true of his three "Definitive Articles" [19], since they are based upon moral principles to a much greater extent than the more pragmatic "Preliminary Articles".

Having examined the views of Rousseau, the Abbe se Saint Pierre and Kant on the purpose of federation and how the parties were to be motivated to federate, it is time to look in more detail at how their federations are to be structured. In this respect, Rousseau concurred with Saint-Pierre's scheme of a treaty of five articles to be agreed by all European sovereigns [20]. The first article establishes a perpetual alliance (reminiscent of the Swiss Oath Fellowship of 1291) and sets up a Diet for the negotiated resolution of all conflicts outstanding between the contracting parties. The second article is to enumerate the contracting states, as well as their allocation of Diet seats. It also regulates the size and nature of their contributions to the common expenses of the federation. Finally, it foresees a rotating presidency similar to the Swiss "Vorort" system. The third article takes the form of a guarantee by the "Confederation" of the territorial integrity and internal authority [21] of the constituent states as they exist at the time of the agreement. Moreover, this article also contains the crucial requirement that constituent units all irrevocably renounce the use of force as a means of settling differences amongst themselves. The fourth article concerns the circumstances under which the Confederation as a whole be empowered to use force to compel a recalcitrant member state to mend its ways. States are to be deemed in breach of the treaty if they

prepare for war, conclude a treaty hostile to the ends of the Confederation, or if they use force against any member or all of the Confederation. The fifth and final article stipulates that, while the Diet can provisionally pass measures to the advantage of the Confederation and its members by bare majority, such decisions will have to be ratified within five years by a three quarters majority. Furthermore, it is set down in this same article that any alteration of these five basic articles of the treaty can only be undertaken with the unanimous consent of the confederates. In this way, the sovereignty of the constituent states is to be retained, since they are deemed to be subject merely to those articles to which they have already consented.

These five articles give a good idea of how Saint-Pierre and Rousseau think a federation directed towards universal peace should be organised. By contrast, Kant's Perpetual Peace tells us very little about the nuts and bolts of his proposed federation, despite the fact that the text is presented in the form of a treaty [22]. His six "Preliminary Articles" are as follows:

1. No Treaties of Peace Shall be Held Valid in Which There is Tacitly Reserved Matter for a Future War ...
2. No Independent States, Large or Small, Shall Come under the Dominion of Another State by Inheritance, Exchange, Purchase or Donation ...
3. Standing Armies Shall in Time Be Totally Abolished ...
4. National Debts Shall Not Be Contracted with a view to the External Friction of States ...
5. No State Shall by Force Interfere with the constitution or Government of Another State ...
6. No State Shall, during War, Permit Such Acts of Hostility Which Would Make Mutual Confidence in the Subsequent Peace Impossible: Such Are the Employment of Assassins, Poisoners,

Breach of Capitulation and Incitement to
Treason in the Opposing State. (3-7).

Clearly, these articles are not comparable to those framed by Rousseau and Saint-Pierre. Instead of outlining the form of the federation, they merely exhort the rulers to conduct themselves in a morally correct fashion. Similarly, the three "Definitive Articles" [23] tell us nothing about matters such as the voting rights of the constituent states, the powers of the Diet, how its presidency is to be determined, nor about a host of other factors relating to form and organisation.

That the contours of Kant's federation are not to be found in a constitutional document becomes even more apparent when one reads the "First Supplement", the opening sentence of which asserts that "The guarantee of perpetual peace is nothing less than that great artist, nature" (24). What Kant is suggesting is not that men are naturally peace-loving, but rather, that their very conflicts will provide, by means of a dialectical process, the impetus towards the establishment of perpetual peace. The timescale envisaged by Kant is obviously enormous when compared to the Abbe's. The fact that perpetual peace is seen by Kant as the eventual outcome of a process of human evolution provides one reason why the mechanics of such a federation do not figure prominently in his work. A second reason is to be found in the fact that Kant's priorities are ethical or moral rather than pragmatic/political. This is clearly evidenced by an examination of the "Second Supplement" and the First and Second Appendices of Perpetual Peace.

In comparison to the federation outlined by Saint-Pierre

and Rousseau, that of Kant is perhaps best characterised as metaphysical. Its contours are determined by reference to moral rather than legal-constitutional criteria. However, all three writers have in common millenarian expectations of federation.

So far, this section's discussion of eighteenth century Germanic federalism has been restricted to interstate chiliastic federalism. However, the eighteenth century also witnessed the renaissance of intrastate-territorial federalism. It was Puetter (1725-1807) who was to assert (1777-79, 1, 20-30) that the German Empire was a "state composed of states", that is to say, it contained both sovereign territorial states and a common, superordinate authority. His views were so influential, that by the beginning of the nineteenth century they had come to constitute the orthodox approach to the classification of the German Reich (Schlie, 1961, 1f). It is therefore indispensable to a proper appreciation of early nineteenth century federalism in Germany that the theory of Puetter be outlined. That outline will be provided by reference to Puetter's two volume Beytraege zum Teutschen Staats- und Fuerstenrechte (1777-79) (Contributions to German Constitutional and Princely Law).

As it had been in the seventeenth century of Hugo, the dominant view of sovereignty was still that the co-existence of sovereign powers within one state was a logical impossibility. The idea of states composed of states still flew in the face of that view. What enables Puetter to maintain his assertion is his methodology. Unlike Althusius, however, Puetter does not replace the theory of sovereignty with an alternative, natural law theory. He eschews natural

law and other a priori theories in favour of seeking to explain the constitutional law of the Reich as it is, namely, as the product of historical development. He is perhaps the most outstanding exponent, during the last decades of the Empire, of positivist jurisprudence and is thus concerned not with generating an abstract theory of the state, but with what in essence amounts to a description of the historical practice of constitutional law in the German Empire, from which he deduces principles a posteriori. In other words, Puetter is an empiricist. His considerations are not so much predicated upon, as rationalised in, his theory about the possible types of state.

Puetter's "theory" starts with the assertion that the Aristotelian classification of states is of only limited value and that it would be more insightful to base one's classification upon the nature of the composition of states, that is to say, upon whether states are simple or compound ("einfache oder zusammengesetzte Staatskoerper") (1777-79,1, 20f). He then distinguishes two types of union. The first is the "personal union", such as that between Great Britain and Hannover, based upon the coincidence between two or more states of a common ruler, but where those units remain completely independent states. The second type of union he describes as "real unions", of which simple states are one subtype (ibid,22f). Thus far, Puetter's comments contain nothing remarkable.

They become more interesting when he considers the second subtype of real union, namely, federations ("zusammengesetzte Staatskorper") (1777-79,1,25). Puetter first mentions

interstate federations ("systemata foederatum eiutatum"), citing the United Provinces and the Swiss Confederation as examples. Such federations are, he says, united in perpetuity, but, despite that union, have no common superior and thus do not constitute a state (ibid,24-6). Distinct from such interstate federations are the second type of federation: "states composed of states". The latter are made up of internally completely sovereign territorial states which are nonetheless subject to a common higher authority. As examples of such federations he names the German Empire and various medieval states (ibid,26- 8). Every German state is, Puetter claims, subject to higher positive law (ibid,42). Puetter's classification of states thus identifies two kinds of federation. The first corresponds to the traditional notion of confederation, as articulated by Pufendorf (see 2.2 above). The second type of federation of which Puetter conceives is very similar to Hugo's idea of intrastate federation characterised by double rule (see 2.2 above).

However, one must recall that Puetter's very method means that his theory is little more than a rationalisation, or legitimation, of the centripetal developments in the recent history of the German Empire. This becomes clear when one examines Puetter's explanation of the division of authority between the territorial states and the imperial power. He does not employ the kind of theoretical considerations typical of Hugo (see 2.2. above), but relies on an argument based upon practice and convention (1777-79,1,186-209). Thus his assertion that composite federal states can be formed by either centripetal or centrifugal processes, is underpinned by no theoretical considerations, but is merely the product

of his observations of the history of Switzerland and the Netherlands on the one hand and the Reich - whose historical development was of course his main concern - on the other (ibid,28-30).

For Puetter, there are two significant periods to be discerned in the constitutional history of the German Empire (ibid,186-201). The first started with a sovereign Emperor, who was the sole source of legal authority. There was then a gradual accumulation by the territorial rulers of legal powers, the effect of which was to transform these previous vassals of the Emperor into territorial sovereigns. The second phase started when the powers of the territorial rulers amounted to territorial sovereignty ("Landeshoheit") (ibid,192-4). The principle Puetter perceives in this de facto development is the assumption by the territorial rulers of responsibility for the general welfare of their state and its subjects (ibid,317-50). The substantive political role of the Emperor is now limited to one of indirect rule over all but his own hereditary lands and a few imperial cities, from which he still receives direct taxation (ibid,44-7).

Puetter justifies this by again generating principles out of his understanding of legal practice. Thus he argues that after this establishment of Landeshoheit (which Schlie assumes to have taken place at about the end of the 15th or the beginning of the 16th century) (1961,34), all new powers which relate to the establishment or maintenance of the general welfare of territorial states automatically had to accrue to the territorial rulers. Similarly, all previously existing powers relating to the territorial states' welfare

were, regardless of whether they were then exercised by the territorial rulers or the Emperor, now devolved upon the former. Conversely, imperial powers all antedate Landeshoheit. Moreover, only those relating to all the territories, or to a number of them, remain the preserve of the Empire (1777-79,1,186-201).

Even these very limited imperial reserved rights (Reservatrechte) are undermined and largely nullified by two further principles which Puetter derives from his examination of legal practice. These principles are (ibid,210-23) that Landeshoheit is exclusive and that territorial rulers have the right to avert what they deem potentially harmful to their state. In effect, this means that the Empire, lacking its own military or administrative structures, is left with merely the right of exclusive initiation in certain limited and insignificant areas, while the territorial rulers act as mediators of imperial authority. Schlie's apposite conclusion is that "Puetter has thus applied the legal seal to the politically already completed emasculation of the Empire." (1961,40).

For obvious reasons, the limited range of powers of the Empire mirrors the situation of the Reich at the time Puetter wrote. Similarly, his theory of the relationship between the Reich and its constituent territorial states also reflects the contemporary situation. Puetter presents the imperial authority (Reichsgewalt) as comprising not only the personal majesty of the Emperor and his reserved rights, but also the activities of, for example, the Reichstag and the Imperial Electors (1777-79,1,58-106). However, since these other institutions formally act not as representatives of the

component territorial units of the federation, but as an intrinsic parts of the self-regulating imperial authority, there is, according to Schlie (1961,54)

no institutional relationship between the territorial rulers and the imperial authority ... there is merely a concurrence rather than a correspondence of imperial and territorial authority visible, with no collaboration of head and member in an organism thereby fused into one ... The territories do not in fact appear as member states which, by dint of common participation in the creation of the Reichstag's will, are united into the Reich as a Gesamtstaat created by them. Instead, they are mere subordinate states ("Unterstaaten") under a superior state ("Oberstaat"), which they have to recognise above them and which functions independently of them.

Schlie also believes that the imperial authority Puetter outlines is essentially monistic rather than corporate in its structure and thus, as Schlie observes, unlike the modern notion of what the central authority of a federal state (Bundesstaat) should be.(1961,54)

However, it is the express intention of this thesis to avoid adjudication upon whether the federalisms examined conform to some notional, "pure" type (see 1.3. above). Instead, a major aim is to identify what different authors within the Germanic tradition of federalism have considered the constituent units and the purpose of a federation to be. On the former issue, we have shown that Puetter envisages both interstate and intrastate federations. The first is composed of independent states without a common superior, while the latter is a union of independent states that are, despite their statehood, nonetheless subject to a common higher state authority.

It is now necessary to address the issue of what Puetter sees the purpose of these two federations to be. The first,

interstate type, has limited purposes. The only specific purpose Puetter mentions is defence, though he does state that they can also decide to unite in other respects, such as regarding coinage (1777-79,1,24f). The purposes Puetter ascribes to the intrastate federation are wider. In a general sense, one could say that the purpose of the federation is the furtherance of general welfare. However, that is not a purpose he considers unique to the federation of "states composed of states", but one which he applies to all states (1777-79,1,319). He stipulates no purposes specific to intrastate federations.

This is not surprising. Inasmuch as Puetter is essentially concerned only to describe and characterise the German Reich as an historical phenomenon, he is only prescriptive in the sense of assuming a continuation of the Reich and the rightfulness of the extant authorities' creation of law. This is borne out in the final chapter of the first volume of Puetter's Beytraege, the principal conclusion of which is that "each is to be left his properly acquired rights" (ibid,351). This should not, however, blind us to the implicit values of Puetter's federalism.

It will be recalled that in addition to identifying the content of the tradition of Germanic federalism, this thesis is also concerned to illustrate federalism's function as ideology. The federalism of Puetter offers no prescriptive blueprint of an ideal federation, because for Puetter, the ideal is what exists. What Puetter's federalism amounts to is an unquestioning presentation of the status quo, which he

idealises. This is precisely one of the key characteristics of what Epstein (1966,7f) defines as a "status quo Conservative". It is therefore appropriate to categorise Puetter's federalism as fundamentally an example of status quo conservatism. This is of course a position that was bound, given the very nature of revolutionary Europe, to become untenable. As will be shown in Chapter 3 below, those in Germany and Switzerland who opposed the new structures imposed by the Napoleonic revolution could not content themselves with an uncritical defence of positive law, but had to develop alternative prescriptions.

Puetter is significant in a number of respects. First, he was by common consent very influential within the circle of those studying the constitution of the Reich, although there is some dispute as to how far beyond that circle his influence extended (Brie,1874,29ff & Schlie,1961,1f). Second, he is significant for being precisely what the preceding account has already identified, namely, one of a breed of legal positivists who antedated, and were bound to be replaced by, the revolutionary events of the early nineteenth century. Third, the fact that Puetter's theory has no eternal or universally binding principles allows him to argue that law can be made by extant authorities, albeit with due reference back to custom and convention. This approach was to be developed by later conservative thinkers on the one hand as an argument for unconditional obedience to the state and, on the other hand, by those asserting that German law was prior to external, rational, a priori law.

Fourth, Puetter's historical refutation of the legal claims of the primacy in the Reich of Roman over German law

(Puetter, 1777/78, 2, 30-179) was to be significant in a similar way, helping to pave the way (albeit only via later normative modification) for theories of some German nationalists. For example, Puetter's concomitant claim that the territories of the Reich are the repositories of native German law, and especially of the autochthonous principle of autonomy, (cited in Schlie, 1961, 27f) was later to figure strongly in the defence by Romantics and other conservatives such as Jarcke (see Chapter 5 below) of the rights of the constituent units of a federation.

2.4. SUMMARY AND CONCLUSIONS: THE FIVE DIMENSIONS OF EARLY GERMANIC FEDERALISM

In 1.3, the specific aim of this chapter was stated as being to identify the various types of federation envisaged by early Germanic federalism. Two further tasks for this thesis were also spelt out. The first is to assess the applicability to the West European experience of the hypotheses advanced by Livingston and Riker. The second is to illustrate the analytical advantages of our distinction between federalism and federation. This conclusion will deal with each of the above aspects in turn.

The first task of this concluding section is to draw the many threads of our elucidation of early Germanic federalism together and provide an overview of the types or "dimensions" of Germanic federalism up to the end of the eighteenth century. To this end, the federalisms discussed in the preceding pages have been synthesised into the synopsis provided in Figure 1. As that tabular overview illustrates,

FIGURE 1: The Dimensions Of Germanic Federalism Articulated
By The End Of The Eighteenth Century

SAMPLE AUTHORS	CONSTITUENT UNITS	LOCATION OF SOVEREIGNTY	PURPOSE OF FEDERATION	TYPE OF FEDERATION
1 Althusius	Corporations & Estates of The Realm	In The Body Politic	Entrenchment Of Corporate Rights And True Worship	Intrastate-corporate
2 Leibniz	Cities & Principalities With Effective Territorial Supremacy	Imperial "Majesty"	Resurrection Of "Imperium" And "Sacerdotium"	Intrastate-imperial
3 Hugo & Puetter	Territorial Units "Analogous To States"	Divided Between Constituent Units And The Centre	Combination Of Civic & Security Benefits	Intrastate-territorial
4 Pufendorf & Grotius	Sovereign States	Constituent Units	Constituent Units' Internal And External Security	Interstate-confederal ("System of States")
5 Saint-Pierre Rousseau Kant	Sovereign States	Constituent Units	Universal And Perpetual Peace	Interstate-universal/ Interstate-chiliastic

Germanic federalisms of the seventeenth and eighteenth centuries were essentially one of five basic types, or "dimensions". Three of these dimensions related to intrastate federation, while the remaining two concerned federations of an interstate variety.

The first dimension of Germanic federalism, which we have labelled "intrastate-corporate", is represented by Althusius, whose federalism posits a federation consisting of the corporations and estates of the realm. Sovereignty is an inalienable attribute of the body politic and the purpose of the federation is twofold. The first is the constitutional entrenchment of the rights of the corporation. In keeping with Althusius' Calvinist precepts, the other purpose is the maintenance of true worship. When considering the significance of the latter purpose for an overall evaluation of Althusius' federalism, it must be remembered that although the role of ecclesiastical authority appears excessive from a secular, twentieth century viewpoint, this should not deceive one into dismissing Althusius's treatise as theological. In the context of its own day, the Politics was distinguished by virtue of its limitation of sacerdotal authority and its insistence upon the independence of a secular political realm. Other important features of the Politics include its attempt to constitutionalise the corporate mediaeval relations. Finally, it is worth reiterating that Althusius intended his Politics to be a refutation of the tendency towards absolute government, of which Bodin is perhaps the best example. Instead, Althusius stressed the co-operative tradition of European thought. It was on the basis of its

associational principle ("Genossenschaftsprinzip"), rather than upon absolutism, that he wished the German Empire to be based.

The second dimension of Germanic federalism is described in Figure 1 as "intrastate-imperial" and Leibniz is the author identified with it. Leibniz shared with Althusius a belief in the co-operative and accommodative nature of politics. However, there are substantial differences between the federalism of the two men. These relate to the constituent units of the federations they envisage, to the purpose of their respective federations and to the location within them of sovereignty - or "majesty" as Leibniz termed it. The constituent units of Leibniz's federation are not corporate, but essentially territorial in nature. The federation's purpose is thus not the constitutional entrenchment of the rights of corporate units, nor is it the promotion of Calvinist "true" worship. Instead, it is the resurrection of the Holy Roman Empire. Finally, sovereignty in Leibniz's federation is to reside with the Emperor, rather than be retained in the body politic, as is the case in the federation proposed by Althusius.

The third dimension of early Germanic federalism also concerned intrastate federations based upon territorial units and we have termed it "intrastate-territorial" federalism. This is the dimension of Germanic federalism represented in the seventeenth century by Hugo's system of "double-rule" and in the eighteenth by Puetter. The distinctiveness of this dimension of Germanic federalism lies in the fact that it rests upon the idea of sovereignty being shared between the centre and the constituent units, which Hugo considers to be

"analogous to states". Hugo's federalism, like that of all the other seventeenth century writers we have examined, was informed by his perception of the German Empire. Though he was out on a limb in his notion of divided sovereignty, the dimension of early Germanic federalism which he represents is also that which is closest to the subsequent nineteenth and twentieth century conceptions of a federal state with sovereignty shared between territorial units and the centre. As was demonstrated by the presentation of the federalism of Puetter, intrastate-territorial federalism had by the end of the eighteenth century come to be the dominant paradigm for the analysis of the German Empire.

The fourth dimension of Germanic federalism we have identified is not of an intrastate, but of an interstate variety. Here we have the classical notion of confederation, with the federation being composed of states which unite primarily for reasons of security, but retain their sovereignty. Although Pufendorf and Grotius have been cited as the chief exponents of this dimension, others could be included, for this was the dominant paradigm until the nineteenth century. As was illustrated above, Montesquieu and Rousseau also made references to this dimension. However, Rousseau is perhaps best remembered for his contribution to the fifth and final dimension of Germanic federalism: the interstate-chiliastic, or interstate-universal type. The major difference between this type and the preceding one lies not in the nature of the constituent units, nor in the location of sovereignty, but in the millenarian purpose of the federation: namely, universal and perpetual peace.

Having identified the five dimensions of early Germanic federalism, we can now turn to consider the implications of this chapter for the three questions raised in this thesis. The first and perhaps the most obvious point is that Germanic federalism has always been multidimensional. This disproves Livingston's assertion that those who use the term federal to refer to unions other than those of a territorial nature "have added a meaning that was not there before" (1952,85). Second, though Riker's hypothesis about the significance of the military dimension as a motivation for those proposing federations appears borne out in most of the federalisms identified, the religious motivation of Althusius seems to constitute an aberrant case. However, we shall return to this issue in subsequent chapters.

Our third overall conclusion relates to the issue of the normative nature of federalism and the value of an analysis which addresses this aspect. There are four points to be made. First, the foregoing survey of early Germanic federalism confirms our conviction that it is shortsighted to denounce the "ideologists of federalism" and to fail to see federalism as a useful object of study (see 1.2 above). Federalism is inescapably value-laden. The seventeenth century exponents of Germanic federalism, for example, were concerned not only to analyse the existing German Empire, but also resorted to federalism as a means of prescribing or promoting what they perceived as improvements. Moreover, the chiliastic federalisms of Saint-Pierre, Rousseau and Kant, would be totally incomprehensible if one were to disregard their normative content. The normative element therefore provides an important means of distinguishing between the

various types of federation, as demonstrated by a consideration of dimensions four and five in Figure 1. It also helps us understand the purposes for which reform of extant federations is proposed. This will be illustrated further in Chapters 3 to 6.

Second, a consideration of the benefits which exponents of federalism hope will accrue from the federations they envisage can be instructive in another way. Thus it was possible to distinguish between what Montesquieu and Rousseau themselves claimed to be the advantages of federation and the claims which subsequent authors ascribed to them.

Third, our focus upon federalism has permitted this chapter to identify co-operative, accommodative decision-making as an important and recurring theme in both Germanic federalism and federation [24]. These elements have been shown to be almost inextricably linked to the corporate, anti-hierarchical tradition of European thought, which is itself traceable to feudal notions of an organic community with reciprocal obligations between its parts. This feudal tradition should not be dismissed in the manner of Mogi (1931, I,329), for it constitutes one of the features which distinguishes Germanic federalism from the American variety. Furthermore, these ideas were to enjoy a revival in the nineteenth century conservative Germanic federalism (see Chapters 3 and 5 below).

The fourth and related point is that although the period so far examined has been shown to have witnessed some five "dimensions" of federalism, these also contained in rudimentary form the seeds of dimensions that were to be

developed more fully in later years. One example of such an embryonic federalism can be found in the writings of Rousseau and of Kant, namely, the idea of a federation of national communities. It flows quite naturally in Rousseau's writings from his community-based philosophy, where the function of federation is the promotion of the interests of the community or nation (Riley 1973). And although he recognised the importance of the state, Kant also toyed with the concept of a "Voelkerbund" or federation of nations or peoples. Indeed, one of the major tasks of the next chapters of this thesis will be to demonstrate the great debt owed to the five dimensions already outlined by those dimensions of Germanic federalism that were to crystallise in the nineteenth century.

The discussion of early Germanic federalism is now complete. The next task of this thesis is to examine the development of Germanic federalism in the early nineteenth century. As in this chapter, the development of federalism will be elucidated by reference to the practical political problems it was designed to resolve. Since one of the most pressing problems of the seventeenth and eighteenth centuries stemmed from interstate conflict, it was only to be expected that interstate federalism should receive wider currency than the intrastate dimensions. All this was to change, however, in the nineteenth century, when the focus of attention switched to intrastate reorganisation.

NOTES FOR CHAPTER 2

1. The wide range of literature used for this introductory overview of political and philosophical developments during the sixteenth to eighteenth centuries includes the following: Barraclough (1972); Bluntschli (1867 & 1875); Bonjour/Offler (1952); Bruckmueller (1985); Dyson (1980); Evans (1979); Gilliard (1955); Goerlich/Romanik (1977); Holborn (1965); Im Hof (1981); Institut fuer Oesterreichkunde (1963 & 1969); Kann (1974); Kleindel (n.d.); Koller (1970); Krieger (1957); Martin/Beguine (1971); Mogi (1931); Nabholz (1916 & 1918); Poggi (1978); Puttkamer (1955); Sabine/Thorson (1973); Schilfert (1962); Scupin (1965); Schwarber (1935); Steinberg (1980); Strauss (1971); Sturmberger (1969); Tenbrock (1969); Weinzierl (1963 & 1969) and Winter (1969).

2. Throughout this chapter, the terms "Germany" or "German" will be used to refer to the Holy Roman Empire and not just to those states within it which constitute latterday Germany. Thus "Germany" should also be understood to encompass modern Austria.

3. For a detailed appreciation of this emerging "constitutionalism" see Barraclough (1972,320-53).

4. The "Landsgemeinde" is an annual open-air meeting of all cantonal citizens, at which all cantonal laws have to be passed and where members of the cantonal political executive are elected. The tradition dates back centuries, but still persists in a few Swiss cantons (Luther,1981).

5. Examples include Basel in 1691, Glarus 1720 and 1722, Schaffhausen 1790 and 1971, Appenzell Ausserrhoden 1732, Zug 1732 and 1733, and Freiburg 1781. For details, see Bluntschli (1875,416-47). Bluntschli also describes how, before the 1691 intervention, the cantonal hierarchies were widely of the opinion that the Confederation constituted a relationship between governments and that this logically meant that citizens had no rights under the federal constitution (437). See 6.3.2. below for a discussion of how this was treated in the federalism of radical Swiss liberals such as Troxler.

6. Subsequent quotations are from Carney's 1964 translation. Both Carney's translation and Friedrich's (1932) latin reprint are based upon the 1614 edition. For secondary literature, see their respective introductions, as well as Riley's excellent articles (1973 & 1976), Sabine (1973,387-90), Davis (1978,47-54), Huegelin (1979) and Forsyth (1981, 74-9). Mogi (1931,I,27-30) also mentions Althusius, albeit dismissively.

7. In this he concurred with Bodin, whom he cited (28).

8. This aspect of provincial association fits uneasily into Althusius's overall structure, since other associations are characterised by the accountability of administrators to the association whose government they oversee. Perhaps this

inconsistency is due to the fact that the province was (cf Carney, 1964, 46, f.n.1) in previous editions merely an administrative unit of the commonwealth and only appeared as an association in its own right in the 1614 edition.

9. The family, collegium, city and province are dealt with in six chapters. The following thirty one chapters focus upon the commonwealth.

10. However, "One of the estates, or one part of the realm can ... (secede) when the public and manifest welfare of this entire part altogether requires it or when fundamental laws ... are not observed by the magistrate, but are obstinately and outrageously violated or when the true worship and disclosed command of God clearly require that this be done". (Carney, 1964, 191)

11. As Friedrich points out, (1932, lxxxvii & f.n.3) Althusius does not describe associations other than the universal association as a "confederatio". The view that the relationship between Althusius's lesser and greater associations constitutes a federation dates from Gierke (1880).

12. See Deuerlein (1972, 39-41), Mogi (1931, I, 340-42), Riley (1976) and Davis (1978, 62-8) for secondary literature on Hugo's 1661 treatise entitled Dissertatio de statu regionum Germaniae. The author was unable to obtain more secondary literature on the federalism of Leibniz than that contained in Riley's articles (1973b & 1976). For an extract of Leibniz's 1670 Bedenken welchergestalt Securitas publica und Status praesens im Reich auf festen Fuss zu stellen, see Puttkamer (1955, 43-9).

13. Hugo Grotius, 1583-1645, esp. De jure belli pacis, 1625. Samuel Pufendorf, 1632-1694, esp. De statu imperii Germanici, 1667. For secondary literature on the former see Sabine (1973, 390-98) and on the latter see Forsyth (1981, 79-85), Riley (1976), Davis (1978, 54-62).

14. cf Forsyth (1981, 82-4) on the functions subject to the consent of the other parties and regarding the reconciliation of the apparently contradictory notions of retention of sovereignty and of its use being conditional upon external consent.

15. Much of the material which will be dealt with in this section was excellently covered by Forsyth (1981), whose analysis we share and do not presume to be able to improve upon. However, while his focus was federalism and interstate realtions, the remit of this thesis is wider.

16. Rousseau (1765 & 1772). It is alleged that Rousseau wrote more extensively, but that the manuscript was destroyed. Rather than speculate upon what might have been said, we shall examine what it is known that Rousseau did say.

17. This is a matter of dispute. See Forsyth (1981, 91-4) and Windenberger (1900) for the view that federation is congruent with Rousseau's overall scheme, and Riley (1973) and Davis

(1978, 71f, fn 36) for the alternative assertion.

18. On Rousseau see Watkins (1953); on Saint-Pierre see Perkins, (1959) The Moral and Political Philosophy of the Abbe de Saint-Pierre. Subsequent quotations from Kant's Perpetual Peace are taken from the edition introduced and edited by Beck, (1957) New York. See also the excellent assessment of Rousseau, Saint-Pierre and Kant in Forsyth (1981).

19. These are that "The Civil Constitution of Every State Should be Republican" (11-15), "The Law of Nations Shall be Founded on a Federation of Free States" (16-20), and "The Law of World Citizenship Shall be Limited to Conditions of Universal Hospitality" (20-23).

20. For the text of Rousseau's summary of the Abbe's scheme see Forsyth (1981, 87f).

21. In this respect, parallels can be drawn with the 1481 Covenant of Stans, (see 2.1. above).

22. Our discussion of Kant's federalism has been limited to what he outlined in Perpetual Peace. For a summary of how his ideas changed before and after this text, see Forsyth (1981, 95-104), who shows Kant discussed "a cosmopolitical body politic under a single ruler", a "Voelkerstaat", a "Voelkerbund" and even a loose "Genossenschaft", whose Congress would have been dissoluble at any time.

23. See footnote 19.

24. This was especially true as regards the Swiss federation.

CHAPTER 3: GERMANIC FEDERALISM IN REVOLUTIONARY EUROPE

(1790s-1815)

3.1 INTRODUCTION

The preceding chapter identified the five dimensions [1] of Germanic federalism during the seventeenth and eighteenth centuries. The aim of this chapter is to extend our discussion of the Germanic tradition of federalism by an examination of its development during the revolutionary period from the end of the eighteenth century until the re-establishment of the old order through the decisions of the Congress of Vienna [2]. As was argued in Chapter 1.3. above and demonstrated in Chapter 2, federalism is best understood in terms of the specific problems to which it has proposed federal remedies. Accordingly, the aim of this section is analogous to that of 2.1, namely, to preface the subsequent detailed consideration of the content and purpose of Germanic federalism by an overview of the material and ideational context of that federalism.

The experience of Switzerland and the states of the German Empire [3] during the period under discussion in this chapter were analogous in at least three important ways. First, the foreign relations of Switzerland and especially of the states of the German Empire, were dominated for much of the period by belligerency with France. Second, a major consequence of these wars was in both cases the collapse of the ancient federations of both Switzerland and of Germany and their replacement by externally imposed constitutional

structures. Third, behind both of the aforementioned factors was the contemporary conflict over the Weltanschauung of the liberal Enlightenment. The remainder of this introductory section will be devoted to briefly illustrating each of these three background factors in turn.

The first concerns the ongoing military conflict with France. Despite its overwhelming support for the Allies, on whom France had declared war in 1792, Switzerland initially managed to maintain a semblance of neutrality, which helps account for why it was for six years spared direct involvement in the wars. In February 1798, however, during a temporary lull in its conflict with the German states as a result of the Franco-Austrian Treaty of Campoformido (October 1797), France found a pretext to invade the Swiss Confederation, which collapsed under that onslaught within a few weeks.

In February 1799, France again declared war on Austria and its army crossed the Rhine in March 1799. However, the French were beaten in a number of battles and driven back into Switzerland, on whose soil further battles were fought. Shortly after the fall of the French Directorate in November 1799 and Napoleon's assumption of power, France's fortunes started to improve again. The Peace of Luneville (February 1801) between France and the states of the German Empire was very much to the advantage of the former and brought about another temporary peace. Yet in September 1805, France again declared war on Austria. France's defeat of Austria at Austerlitz on December 2nd 1805 and of Prussia at Jena in October 1806 signalled the end of the wars until the

so-called "Wars of Liberation" of 1812/14.

A second feature shared by Switzerland and the states of the German Empire was the consequential collapse and replacement of their former federal political systems. There were some differences of detail in how this occurred in Germany and Switzerland. First, the demise of the old German Empire was rather long and drawn out, while the Swiss Confederation collapsed very quickly. Second, while Germany as a whole only experienced one new constitution in this period, the Swiss were to have seven draft constitutions, of which three were implemented (see below). Third, while the new German system was a federation, Switzerland experienced both federal and unitary constitutions. However, both countries were united in the fact that the new constitutions were largely imposed by the French. The first case we shall outline is that of Germany.

In March 1792, Emperor Francis II was installed as the new Holy Roman Emperor of the German Nation, but this formal renewal of the imperial dignity was even then almost exclusively a ceremonial statement with little political reality. This became even more obvious during the course of the wars with France, when numerous states engaged in separate and at times secret agreements with Napoleon. Many of these were directed against the interests of the German Empire, of which those states were nominally still a part. For example, as early as August 1796, Prussia decided, after a series of defeats of the Imperial armies by the French, to ally with France and promised to relinquish control over the left bank of the Rhine. Similar separate peace agreements with France were signed in 1796 by Wuerttemberg, Baden and

Bavaria. In 1797, Austria agreed in the Peace of Leoben of April and of Campoformido of October that year to relinquish control of the Austrian Low Countries, Milan, Lombardy and the whole of northern Italy. In a secret article, Emperor Francis II also agreed to assist France in acquiring the left bank of the Rhine.

The undermining of the German Empire by these partial agreements was compounded by the general agreements of 1801 and 1803 [4], which concerned the compensation the German states were to receive for territories which they had lost as a result of French annexation of the left bank of the Rhine. In a nutshell, this amounted to permitting them to swallow up a large number of ecclesiastical and city states, as well as minor territories. This substantially changed the number and size of the states constituting the German Empire and thus contributed to the latter's further disintegration.

The Empire was visibly crumbling and any semblance of Imperial authority had clearly become a fiction. Indicative of the declining significance of that Empire as a political entity was the decision on 11 August 1803 by its nominal head to supplement his existing titles by that of Emperor of Austria. The final blow to the Empire came in Paris on 12 July 1806, when sixteen princes of western and southern Germany signed the "Rhine Act" (Puttkamer, 1955, 59-62; Behr, 1808 & 1808a, & Berg 1808) setting up the "Rheinbund" (Confederation of the Rhine), of which Napoleon was declared Protector. On 1 August, in accordance with Article 3 of the treaty (Puttkamer, 1955, 60), these princes announced their secession from the Reich. Thereupon, on 6 August 1806,

Emperor Francis II formally recognised the end of the long since moribund German Reich by renouncing the imperial dignity. The Holy Roman Empire of the German Nation was now legally at an end.

The Rhine Act was a vague and in many respects incomplete document (Berg,1808), though it is possible to glean from it some of the basic features of the federation it established. Article IV of the Rhine Act declared that the states composing the federation were completely sovereign. The meaning of this was amplified by a subsequent note from Napoleon (Berg,1808,4), which stated that their internal affairs were a matter neither for the Protector, nor for the federation's central legislature. Article IV also provided for a Prince (Fuerst-Primas) of the Rheinbund, though in view of the fact that the states were sovereign, he was to have no power over the members. He was to be appointed by the Protector and his prime role was to preside over the Rheinbund's Federal Assembly. The latter was established under Article VI of the Act for the regulation of the common affairs of the Rheinbund. It was located in Frankfurt and divided into a monarchical and a princely curia. In the absence of stipulations to the contrary, it was assumed (Berg,1808,23f) that decisions of the Federal Assembly were to be based on majority decisions. All disputes between the Rheinbund states were to be decided by the Federal Assembly.

Though Article VII stipulated that the states of the new federation were to be independent of every foreign power, the Rheinbund in reality signalled the start of a period during which much of Germany was to be governed by a foreign

imposed constitution. For the real purpose of the Rheinbund was of course to provide Napoleon with control over the states of western Germany. Under the terms of the Act, the rulers of those states were, for example, obliged to provide military contingents to the French army and to allow France the use of their military fortifications. The defeat of Prussia at Jena in October 1806 and the consequent Peace of Tilsit resulted in the extension of the Rheinbund. By 1808, all German states except Austria, Prussia, Danish Holstein and Swedish Pomerania had joined it. By 1811, it included four kingdoms, five grand duchies, eleven duchies and sixteen principalities. The head of the Confederation was Baron Dalberg, whom Napoleon elevated to the title of Grand Duke of Frankfurt in 1810 and appointed First Prince of the Rheinbund. The Rheinbund lasted de facto until 1813, the eve of the Wars of Liberation, though it was not formally replaced until after Napoleon's defeat. The Rheinbund was eventually superseded by the new "Deutscher Bund" (German Confederation) of 39 sovereign German states, which came into being via the decisions of the Congress of Vienna on 8 June 1815, and 15 May 1820.

In Switzerland, the collapse of the pre-revolutionary order had been much swifter. Moreover, between 1798, when it was routed by the French invasion, and its reconstitution in 1815, Switzerland experienced numerous different constitutions, all of which were, to a greater or lesser extent, imposed by France [5]. The 1798 constitution prescribed by France established Switzerland as a unitary and indivisible republic headed by a Directorate of five. It had

a "Senate" composed of four indirectly elected representatives from each canton and a "Great Council" that was initially made up of eight members per canton (again indirectly elected), but was later to be based on proportional representation. The cantons were mere administrative districts, with no legislative or executive institutions and no constitutions of their own. Moreover, their boundaries could be altered by simple legislation (Ludwig, 1911; Duersteler, 1911). The revised 1802 constitution created a slightly less centralised state of 18 cantons. It had a Diet elected indirectly by the population on a proportionate basis and empowered to accept or reject the proposals of the Senate, the members of which it appointed. There were between one and three Senators per canton, depending on its size. Executive authority resided in a three-man Executive Council elected from and by the Senate and joined by five State Secretaries, who headed the administrative branch. Each canton was empowered to organise its own judicial, administrative and educational system, as well as its militia. The centre guaranteed these structures.

Since neither constitution proved appropriate for Switzerland, Napoleon was in 1803 forced to issue the so-called "Mediation Constitution". Elevating the previous dependencies to the status of full cantons and adding new cantons, it made Switzerland a nineteen-canton multilingual state [6], which had many similarities with the pre-1798 system. Article 18 defined Switzerland as a "federation". Though not sovereign, the cantons were declared free and independent and received a large share of their powers back. All rights not explicitly granted to the central authority

were retained by the cantons, including post, customs and coinage. There were many more restrictions on the central authority. Thus the Diet of cantonal representatives was bound by instructions, but popular civic rights were limited to the cantonal level. The new office of Landammann (Swiss Head of State and of Government) rotated annually between the heads of government of six named cantons. Some aspects of the Mediation constitution were more centralised than in the old Confederation. For example, freedom of movement and settlement were guaranteed, as were freedoms of profession, trade and traffic. There was a uniform currency and wide-ranging reform of the military.

Between Napoleon's fall in 1813 and the 1815 Pact, a considerable struggle over the future structure of Switzerland took place between conservative and liberal forces (Rappard, 1948, 31ff). Many of the original thirteen cantons wanted the old Confederation re-established, including their rights over the previous dependencies. The latter were naturally vehemently opposed. After protracted negotiations and under the threat of Great Power intervention, the nineteen cantons provisionally approved an interstate federation, which the Congress of Vienna accepted.

Given the substantial constitutional change taking place in both Germany and Switzerland, it is hardly surprising that the structure of the respective states was a major topic of debate. Germany's constitutional debate up to 1815 was clearly predicated upon trying to understand the nature of the Empire and the Rheinbund and seeking to prescribe the most appropriate structure for Germany. This largely revolved

around clarifying the nature and relative merits of the Staatenbund and the Bundesstaat. By contrast, the Swiss discussion of this period was faced with the much more radical alternatives of a unitary and indivisible republic, or a confederation. Another difference is of course the fact that while the Swiss debate was always republican, that in Germany was overwhelmingly monarchical.

Despite these differences in the details of the constitutions which Switzerland and Germany experienced during the Napoleonic period and the concomitant differences of emphasis of Germanic federalism within the two countries, there is a third and highly significant factor that these debates had in common. This is that the philosophical context in which these discussions of the most appropriate structure for Switzerland and Germany occurred was essentially the same. In order fully to appreciate the nature of the contemporary international and domestic political unrest and of the various federal prescriptions advanced, it is essential to be aware of this ideational context, which constituted a conflict between the ideals of the liberal Enlightenment on the one hand and the defence of tradition on the other.

The liberal Enlightenment encompassed a range of beliefs, of which the following were some of the most important. First, it had a strong belief in the inevitability of progress. An example of this idealism is Kant's belief in international cosmopolitanism, the gradual and inevitable development of society towards greater sociability (see 2.3. above). Second, the liberal Enlightenment asserted the equality of man. This took two forms: a belief in the moral equality of man and a faith in his innate capacity for

reason. As a consequence, a third feature of the liberal Enlightenment was its demand for political equality. Fourth, the Enlightenment was distrustful of traditional structures and institutions. This distrust was directed at aristocratic political structures and institutions such as religion, as well as the veneration for their own sake of custom and convention.

For its part, opposition to the Enlightenment's rational natural law theories was initially not very clearly articulated and lacked confidence, though it gradually became more sophisticated and assertive. Indeed, one of the major ideational features of the early nineteenth century is the conscious and deliberate development of the ideas of conservatism. Its basic principles included first, scepticism about the power of human reason and thus about the value of universal principles and prescriptive political formulae. Second, in their place, it stressed the value of tradition, as the embodiment of immemorial custom and thus of a greater wisdom that had proved itself by experience. Examples are Goerres and Monneron, both of whom were influenced by the ideas of Burke. Third, the opponents of the Enlightenment asserted the natural temporal inequality of man and stressed the inevitability and social utility of hierarchy. Finally, they were firmly convinced of the value of religion and considered the Enlightenment a blasphemous denial of Divine omnipotence.

However, it must be stressed that the general principles of both the Enlightenment and of its opponents resulted in very different kinds of political prescriptions. On the part

of the supporters of the liberal Enlightenment, these ranged from the advocacy by some of various forms of Enlightened despotism, to the eschewal by others of any central political authority. Within this spectrum, the types of political system proposed ranged from unitary states to those based upon direct popular sovereignty (eg. Rousseau). In the "middle" of the spectrum were various proposals based upon the principles of parliamentary constitutionalism, tailored to both republican and monarchical systems.

The prescriptions of opponents to the Enlightenment also varied considerably. At the level of political theory, there were a number of different attempts to counter the Enlightenment idea of an eternal and universally applicable set of rational postulates that constitute natural law. One such response came from legal positivists such as Puetter (see Chapter 2 above), who asserted the legitimacy of extant structures. This was a tenable conservative position while the old political structures were still intact, but was obviously of no help once they had been forcibly replaced by a Napoleonic system. A second response was the development of rival natural law theories. One example is the Divine Right theory advanced by Haller (1820-25) (see Chapter 5 below). A third development was the emergence of the theories of the historical school, of whom Savigny is perhaps the best known exponent. This school asserted the unique nature of national history, its cumulative and irreversible character and the inability of rational thought to comprehend it.

The period under discussion also saw the development of Romanticism (eg Goerres and Schleiermacher), as an assertion of the value of spontaneity, diversity and the unity of all

this in a metaphysical whole, the comprehension of which was possible not by reason, but only by intuition and empathy. One of the features of this Romanticism is that it saw the state in terms of an ethical union of persons of the same cultural or national background. In this way, it developed a number of conservative and somewhat mystical notions of a nation state. Romanticism was also often permeated by historicism, with certain of its exponents (eg Goerres, see 3.2 and 5.2.2. below) advancing theories amounting to national historical determinism. Some (e.g. Schleiermacher, 1814) were based on an ethical teleology and thus akin in some respects to Kantian ideas, while others were to be articulated in the form of a conservative nationalism. Examples of the latter are Savigny (see Reiss, 1955) and Goerres (see 3.2 below). However, nationalism was not the sole preserve of conservatives. Those supportive of Enlightenment ideas also used nationalism (e.g. Fichte) and many of them envisaged the nation state in terms of a unitary, rational and bureaucratic structure, whilst others such as Kant used Enlightenment ideas to advance a cosmopolitan internationalism.

It is worth summarising our basic conclusions about the third background factor which this introductory section has discussed. First, there were in the period under discussion clearly two broad Weltanschauungen, namely, those of supporters and of opponents of the liberal Enlightenment. Each was characterised by a commitment to certain common themes. Second, this common commitment did not prevent either group from articulating a variety of political programmes.

Third, neither these common Weltanschauungen, nor their more specific political programmes resulted in the establishment of any firm and lasting political organisations akin to a modern political party. Finally, the ideas of the liberal Enlightenment and of the opposing conservatives were nonetheless crucially important, in the revolutionary European period up to 1815, in determining the nature of the political debate in Germany and Switzerland and thus also the nature of Germanic federalism.

The veracity of this claim will be demonstrated in the following discussion of Germanic federalism in revolutionary Napoleonic Europe. There will be an examination of various manifestations of Germanic federalism in both Germany (3.2.) and in Switzerland (3.3.). The concluding section of this chapter (3.4.) will summarise the main developments in Germanic federalism during this period and will assess their significance for this thesis.

Finally, it is worth noting that there is greater variety in the manner in which the federalisms referred to from this point on in the thesis were articulated, than was the case in those examples chosen to represent Germanic federalism up to and including the 18th century. Many contributors were not political theorists of the calibre of say, Althusius, but were "practitioners". Given the approach of this thesis, such examples of federalism are not excluded a priori. Indeed, there is a case for saying that they better demonstrate the political salience of federalism than do the more contemplative works.

3.2. FEDERALISM IN GERMANY UP TO 1815

This section will outline the discussion of federation which took place in Germany during the revolutionary, Napoleonic period from the 1790s up to the establishment of the 1815 Bund. Among the most important protagonists in this debate were: Leist (1803); Zachariae (1804 & 1807); Behr (1808 & 1808a); Berg (1808); Fichte (1796, 1800, 1806, 1808 & 1813); Schleiermacher (1814) and Goerres (1814/16), all of whom will be considered in the following pages [7]. One important aspect over which many of these writers' disagree concerns whether the German Empire and the Rheinbund are to be classified as composite states of the Puetter variety, or as interstate federations.

A striking feature of this early nineteenth century discussion is the diverse and at times confusing terminology employed to denote federations. Among the terms used are: Voelkerbund, Staatenbund, Voelkerstaat, Bundesstaat and Staatenstaat [8]. The following outline of the development of Germanic federalism in Germany will illustrate this usage, but does not propose to get too involved in the niceties of the terminology. Instead, it will focus upon the two main aims outlined for this thesis: to identify the types of federation proposed, as well as the political purposes of those proposals.

As demonstrated in the preceding chapter, Germanic federalism had by the end of the eighteenth century witnessed the expression of five "dimensions", of which that relating to interstate federations had been dominant. However, it was also noted (see 2.3. above) that in the last quarter of the

eighteenth century, Hugo's view that between the unitary, sovereign state and the interstate confederation there was an alternative type of state: an intrastate federation of territorial units "analogous to states", experienced a revival through the writings of Puetter (1777-79).

The abiding influence of Puetter's federalism upon conceptions of the nature of the German Empire is visible in the federalism of Leist (1803), one of his chief disciples. Nearly twenty-five years after Puetter's Beytraege and a mere three years before the formal end of the Reich, Leist presented an analysis of the latter which in all important respects corresponds with that of Puetter, whose influence is evident not only from Leist's reference to him as "my great and unforgettable teacher" (1803,xi), but above all from Leist's positivist methodology and the characterisation of the Empire he offers. For example, Leist (1803,41f) says that:

The German state consists of numerous individual Laender, of greater or lesser size, which also constitute individual states. For this reason, state authority is in Germany divided, into the state authority over the German Reich as a whole (... imperial sovereignty) and that in the individual ... German states and territories (... Landeshoheit ...) ... the latter is merely a subordinate, the former, however, a completely independent power.

He then (1803,42f & 175-226) goes on to argue in a manner very similar to that of his "great teacher" that the imperial authority is exercised not merely by the Emperor's "personal majesty", but in conjunction with the Imperial Estates assembled in the Imperial Diet. These Estates are of course one and the same as the most powerful German states (1803, 168-70). Moreover, while Leist (1803,54-6) argues that the component states of the Empire are subject to the higher

positive law of the Empire and reserved imperial rights, the latter are very limited (1803,44).

Like Puetter, whose theory has been shown to be no more than a rationalisation of current practice, Leist's account of the nature of the imperial constitution is passive. For example, he merely accepts (1803,150-54 & vi-x) the various changes in the Empire brought about by the Reichsdeputations-hauptausschuss and the Peace of Luneville [9] as an expression of the positive law of the Empire. He is, by virtue of the proximity of his writings to the final collapse of the Reich, one of the last exponents of legal positivism to have the opportunity of defending the Reich by using status quo conservative federalism.

Writing the year after Leist, when the effects of the Peace of Luneville (see 3.1 above) were perhaps more apparent, Zachariae also addresses himself to the question of whether the German Empire should be regarded as a composite state, or as an interstate federation. He states (1804,43) his concern to be to answer the question by reference to political practice, rather than legal theory. According to Brie (1874,33), Zachariae was the first directly to contrast the terms Voelkerstaat and Staatenstaat. For Zachariae (1804, 44), a Voelkerstaat (ie. an intrastate-territorial federation) must contain a human being with coercive power to enforce common decisions against any internal resistance. On the other hand, in an interstate federation (for which he uses the terms Voelkerbund or Staatenbund interchangeably) each member of the union (Gesellschaftsgenosse) retains the power to decide over right and wrong and the application and

interpretation of the agreement made. Zachariae argues (1804, 63-6) that the Reich has undergone a transformation which started with the Reformation. He concludes (1804,45f), in direct opposition to the dominant view of Puetter, Leist and others, that the Reich is not an intrastate, but an interstate federation.

He comes to this conclusion about the "federal state system" (1804,56) of the Reich because its constituent states retain their sovereignty (1804,48-54). He also notes (1804, 47f), however, that this German federation is of an unequal nature, ie. there is considerable imbalance in the legal and political power of the constituent states. This Staatenbund has three purposes: the "political" purpose of internal and external security of the German states, the "cosmopolitan" purpose of facilitating commerce of Germans amongst themselves and with other nations and, third, allowing the individual German states to unite in order to pursue matters of common interest and benefit that exceed the narrower purposes for which the interstate federation was originally established (1804,59-62).

Zachariae was apparently (Brie,1874,35f) [10] also the first, in an 1807 essay entitled Public Civil Law Applied to the Rhine Federation to contrast directly the terms Bundesstaat and Staatenbund, arguing that the distinguishing features of the latter include the possibility of its dissolution via the dissent of its members and that its right of association (Gesellschaftsrecht) is considerably narrower in scope than that of a state authority. Without going into detail, he cites the United States and Switzerland as true examples of states composed of states. It is worth recalling

that by the time of this later publication, Germany was largely united into the Napoleonic Rheinbund. This helps explain Zachariae's reference to the right of members of interstate federations to secede, since that is precisely what the Rheinbund state had done in 1806 (see 3.1 above). To understand his characterisation of Switzerland as an intrastate federation, one must also recall that the extant Swiss constitution was that of the Mediation (see 3.1 above and 3.3 below).

To summarise: Zachariae's reflections on the political situation of Germany lead him to conceive of two types of federation. The first is an intrastate-territorial federation (a state composed of states), of which he considers the United States and the Swiss Mediation constitution to be examples. On the other hand, he claims that neither the old Reich, nor the Rheinbund fit that label. Zachariae also envisages an interstate confederation for the three purposes outlined above, and in which the states all retain their sovereignty. The feature distinguishing between intrastate and interstate federations is for Zachariae (1804, 43f) that the former contain a physical supreme sovereign authority possessed of coercive power to enforce its rule, while in interstate federations, sovereignty remains with the constituent states, which cannot be coerced. Zachariae was by political persuasion a moderate liberal, as hinted at by his statement about the purposes of interstate federation, where his reference to the "cosmopolitan" purpose of the state is reminiscent of Kant's terminology (see 2.3 above), though his 1804 essay is devoid of political partisanship. In his

later writings, Zachariae was to be less circumspect in the articulation of his political beliefs (1833; see also Bluntschli, 1867, 596-605 & 6.2 below).

The next exponent of federalism we shall examine is Behr (1808 & 1808a), whose focus is the by then extant Rheinbund. The basic question he is addressing is what the nature of this new structure is and how it compares to the defunct Empire. Behr shares Puetter's view that the old Reich was a single, albeit composite state. However, he is in almost every other respect radically opposed to Puetter and other conservatives. This is evident not only from Behr's partisan comments (see below), but also from his very methodology. For Behr (1808, 46) approves of rational natural law and contract theories of the state, and by implication opposes the legal positivism of the likes of Puetter. Moreover, he explicitly (1808, 46) rejects conservatives' theories of the state as an organism, based as they are upon the assertion of the value of tradition and of only gradual change.

Behr (1808a, 26) identifies two broad reasons why states might decide to unite. The first is the realisation that it is a condition of their persistence as free and independent states that they make their rights as states more secure. A second reason is to bring about and maintain peace and order amongst themselves and a common defence externally. Behr then (1808, 57-9 & 1808a, 26) says that there are two forms which their union for these purposes might take. The first is that of a composite state, (Voelkerstaat), where numerous states [11] enter into a relationship with a superior, placing themselves under its common supreme authority. This supreme authority constitutes a state power and must thus comprise

legislative, executive and judicial authorities. What Behr has in mind here is an intrastate federation. Like Zachariae and other writers, Behr (1808,60) agrees that for a polity to have an overarching state authority, that union has to be headed by a single human being.

The second type of union of states Behr (1808,57-9) envisages is an interstate federation for which, like Zachariae, he uses the terms Voelkerbund and Staatenbund synonymously [12]. In this latter type of federation, states contract mutually to guarantee their freedoms and rights, but remain completely independent as regards their internal constitutions and administration. Important for Behr's theory of interstate federation was therefore the absence, at the centre of such a federation, of a human being endowed with sovereign power.

In a second publication (1808a), Behr develops some of his ideas about federations further. He says (1808a,45) that though intrastate and interstate federations (Voelkerstaat and Voelkerbund) have common aims, they differ substantially in the manner in which they implement those aims.

The Voelkerstaat unites all the peoples it encompasses by subordinating them into a common supreme state authority; the Voelkerbund ... encompasses its members by the bond of a free association: - The Voelkerstaat abolishes the independence of all states united in it, and makes them dependent upon a supreme authority; the Voelkerbund allows all peoples belonging to it to remain numerous single, separate, independent and autonomous states: The Voelkerstaat intervenes in the life of its members; the Voelkerbund leaves the inner aspect of the peoples constituting it completely untouched, ... (1808a,45f cf also 26-32)

In his attempt to discriminate between interstate and intrastate federation, Behr (1808a,27f) goes so far to

suggest that the constituent states of the latter (ie. of the Voelkerstaat) are mere administrators of the central authority's will and have no independent authority.

On the other hand, Behr makes a number of observations which counter the impression he at times gives of the two types of federation being so distinct. For example, he tones down his earlier (1808,60) insistence on the existence in a state (and hence in intrastate federations also) of a human being as the central authority (1808a,51-3). Moreover, Behr (1808a,72-92) also stresses that the central legislatures of both intrastate and interstate federations should in key respects be structured identically. First, the constituent units of both types of federations have to be involved, through their ruler or through deputies, in the making by the legislature of decisions affecting the general interest for which the state was originally set up (1806a,72-4). This is defended in the following manner:

The sole condition for participation in the deliberations of the legislative body of a Voelkerstaat and of a Staatenbund ... is being an active and constituent member of the former or the latter, ... (1808a,74)

Furthermore, Behr (1808a,75) states that there must be equal representation of the units, regardless of their differences of size and strength. Third, majority votes are to be binding (1808a,85-9). Finally, he recommends (1808a,89-92) that members of the legislatures should be entitled to exercise a free vote, not bound to the instruction of their state.

Behr (1808,59-62 & 1808a,27f) comes to the conclusion that the Rheinbund is a Staatenbund, a perfect example of interstate federation based on a treaty that regulates the

constituent states' external relations, in the interests of promoting their freedom and independence, but which leaves them sovereign in their internal affairs (1808,42 & 50f). He repeatedly stresses (eg.1808,50f;82-87 & 1808a,58-72) that Napoleon's role as "Protector" of the Rheinbund does not make him superior to the princes, for by implication, the latter would then not have been sovereign and the Rheinbund would have been an intrastate federation. Conversely, Behr (1808, 59-62 & 1808a,27f) considers the German Reich to have been an intrastate federation, or Voelkerstaat and states that its history illustrates the main weakness of the intrastate federation, namely, that it is often difficult for its central authority to have sufficient strength to maintain the union (1808,57-9). Paradoxically, Behr argues not merely that national unity is impossible in an intrastate federation, but also that it is only possible in an interstate federation (1808,30) such as the Rheinbund. In addition to internal and external legal security, the latter fosters national unity by promoting the German national spirit.

The argument behind this assertion is most clearly articulated in Behr's later work (1808a,29-32), which advances his theory that an intrastate federation is destined to disunity, weakness and eventual collapse. The reason for this is its structural predisposition to channel in a destructive direction an allegedly basic human drive for (unlimited) power. Behr's contention is as follows: if a new intrastate federation is composed of existing states, the power of the new central authority will be resisted by those existing states, the administrators of which have grown accustomed to the exercise of power. The upshot will be

centrifugal dissent (1808a29f). If the intrastate federation is composed of a people that was previously neither organised in separate states, nor united in any other way, the precondition for the central administrators to exercise excessive power is already given (1808a,30f). Either way, intrastate federation is doomed to failure. By contrast, interstate federation alone will work, because it leaves each state independent and able to work to maximise its internal state power, without fearing attempted external subversion (1808a,31f).

It is now clear why Behr often seeks to exaggerate the differences between intrastate and interstate federations. He supports the Rheinbund and is concerned to undermine the attractiveness of the alternative type of federation. To understand why, it is necessary to devote some attention to the purposes Behr believes the Rheinbund will fulfil. We have already noted that Behr ascribes two formal purposes to such interstate federations. These relate to legal and military security and, to that extent, Behr's federalism appears to bear out Riker's hypothesis (1964 & 1975, see Chapter 1 above) of the the importance of military factors (see Behr, 1808a,157f also). However, to limit one's consideration to these formal purposes of federation is to miss the main point of Behr's federalism.

A number of often emotive passages (e.g.1808,25-30) attest to the fact that Behr's analysis of the Rheinbund is not a dispassionate account. Behr's dominant motivation is not concerned with military security, nor is it to advance an academic theory of federation, but is political. His support

for the interstate Rheinbund federation and his dismissal of the intrastate Reich is based upon his commitment to two intimately related ideals. The first we shall mention is that of German national unity. This is apparent in the following statement:

It was not the old imperial constitution itself, but the German national character that had become old and brittle; ... the spirit of the German nation had remained far behind the spirit of its constitution; ... the original elements of the German national character: supreme love of liberty, unconditional sacrifice for German security, supreme pride in the honour, power and fame of the German name ... gradually atrophied; ... Just as regrettable as that death of the national character was, so one must be happy that the powerful Emperor of France undertook the great task, of which only he was capable, of reuniting the divided Germans and thus calling their nationality back to a rejuvenated life, ... (1808,15f)

Behr (1808,30) asserts that both the structure of the Rheinbund and the interest of its Protector (i.e. Napoleon) in its maintenance, guarantee

that the present, merely federal union will provide its princes of the German nation with that which they strived for in vain when they were previously united into a single state, under a single head; for history proves that the German peoples are not destined for absolute governmental unity,

A second ideal, or set of ideals, to which Behr is committed are those of the liberal Enlightenment, which he hopes will be favoured by the Rheinbund over those of the old, conservative order. Integral to Behr's ideal of a united German nation is thus the realisation throughout Germany of constitutions based upon principles of the rational liberal Enlightenment (1808a,40). These are to be expressed in a variety of political and economic reforms, including constitutionalism and separation of powers (1808a,51-5),

political equality, civil liberties an enlightened bureaucracy (1808a,157f) and free trade (1808a,155). Behr's commitments to these ideals are behind his praises of recent developments within constituent states of the Rheinbund:

within most of the states of the federation is manifested an effective and brave reformist spirit, which is transforming their constitutions and their type of administration, pushing over what is old and useless, banishing political and religious prejudices, killing routine, bringing into being systems previously only known in theory, and everywhere erecting new buildings; all this in the visible attempt to simplify procedures, to develop the strength of the state as much as possible and provide the former the necessary latitude, ... (1808,26)

Before moving on to the next example of Germanic federalism in the period up to 1815, we shall summarise our conclusions about the federalism of Behr. It will be recalled that Behr's federations are both composed of states and both pursue the same purposes, which are defined in terms of internal and external security and the exercise of the rights of states. The main difference between the federations relates to the location of sovereignty. In interstate federations, sovereignty is predictably located in the constituent units.

One significant innovation in Behr's federalism concerns the location of sovereignty in intrastate federations. Unlike Hugo and Puetter, Behr's intrastate federation is not characterised by dual sovereignty. Behr explicitly (1808a,58) rejects the notion of divided sovereignty as a contradiction in terms. We therefore have in Behr's federalism the idea of an intrastate federation with single, central sovereignty. Though the constituent units are still referred to as states and are directly represented in the decision-procedure of the

centre in the same manner as in interstate federations, they are not fully sovereign states, but subordinate territories.

However, the de facto distinction between this type of federation and the interstate federation Behr prefers is not as great as it might initially appear. Though Behr (1808a,59) insists that if it is to remain an interstate federation, a Voelkerbund cannot subject its constituent units to a common sovereign power, he says that they can still subordinate themselves to a popular will (Volkswille) based upon reason, since obligation to self-imposed laws designed to ensure independence is compatible with the sovereignty of confederated states. What such a popular will would require the constituent units of an interstate federation to commit themselves to is very wide-ranging and would amount to a very centralised federation. It includes the abolition of all political inequality, uniform laws, the prescription of "dangerous" "fanatical" religion, free trade and the uniformity of postage, guilds and of weights and measures (1808a,155-8).

Interestingly, all this is to occur without a supreme authority, or even an institutional expression of the popular will other than the Diet. Behr (1808a,135f) appears to rely upon a faith that the very strength and independence which the interstate federation gives to its units will be used by them in an enlightened and fraternal manner to ensure that the states work for the common good. Free trade, for example, is stated by Behr (1808a,155) to be not a matter of state sovereignty, but a matter of freedom and thus subject to the international law of reason. Accordingly, the constituent states must be obliged to create a law binding upon them all

to ensure free trade and commerce. In short, it appears that Behr proposes what would be quite a centralised interstate federation. His federalism relies heavily for the functioning of the interstate federation upon a faith in the development of human sociability as a consequence of the replacement of traditional structures and the liberation of human reason. The parallels between the principles underlying Behr's interstate federalism and those of Kant are too obvious to miss.

Where Behr stands in the contemporary ideational conflict (see 3.1. above) is clear for all to see. He is for "reason before tradition" (1808,27), for "true German national unity", which he considers "can only be the fruit of the federal bond; the German national character can only be recreated through the latter" (1808,28). While the political circumstances of 1808 made it easy for Behr to affirm his commitment to the Rheinbund federation as a vehicle for the implementation of Enlightenment ideals, the predominance of those principles made it more difficult for conservative orientated writers to oppose it. One such conservative is Berg, whose views are the next subject of this section.

Berg (1808,1-7) considers states (federal or otherwise) and interstate federations to have the purpose of both internal and external security, but argues (1808,60-115 & 189-204) that states are different from interstate unions, in that they have the further purpose of mutually guaranteeing the rights not only of the subordinate rulers (the princes), but also of their subjects. This the Rheinbund fails to do. As evidence of this, Berg (1808,4) refers to the terms of the

Rhine Act and also cites Napoleon's statement that neither the Federal Assembly, nor he as the Rheinbund's Protector are entitled to intervene in the internal affairs of the constituent states of the Rheinbund.

The purpose of the central authority of the Rheinbund is, like that of all interstate federations, therefore restricted to keeping the peace among the federated states and warding off external threats (1808,283). In such a federation, the constituent states remain sovereign, while in intrastate federations, sovereignty resides with a central authority. Berg (1808,7) concludes that the Rheinbund is certainly not an intraste, but an interstate federation (not a Bundesstaat, but a Staatenbund) and cites Zachariae's 1807 essay (see above) to support that classification.

Berg agrees with Behr and Puetter that the Reich was a composite state. The erroneous notion of the sovereignty of the central authority itself is, he says, merely a notion stemming from the old imperial constitution (1808,283). However, Berg is very different from Behr in that he clearly looks forward to a restoration of the old Reich, albeit in a newer, stronger form. Thus he agrees (1808,iv) that the old Reich constitution was "only appropriate for times of peace", but hopes for "the rebirth of the German nation soon". Although he explicitly (1800,ivf) aims to keep his political views out of the book, they are visible in his preface, where he indirectly rejects natural law theories and asserts instead the value of tradition, stating that no laws, however bad, should be amended at the cost of injuring traditional rights. By implication, parts of the text also argue that traditional law will assert itself contrary to the newly

imposed positive law.

In short, we see in Berg the articulation of a federalism primarily based upon a descriptive assessment of legal codes and practice, but which is very much ill at ease with the new federal structure. However, he is either unwilling, perhaps because of the political climate in which he is writing, or unable, to develop an alternative federalism, which would provide a basis for the return of a strengthened old federation comprising the members of the former Reich and defending tradition against the principles of the liberal Enlightenment.

So far, this discussion of Germanic federalism in revolutionary Germany has identified federalisms of the intrastate-territorial and the interstate-confederal varieties. However, this period also witnessed the expression of interstate-chiliastic federalism. An example of such federalism is that of Johann Gottlieb Fichte (1762-1814).

Fichte is not only one of the greatest champions of the liberal Enlightenment, but, despite his humble background [13], undoubtedly also constitutes one of Germany's greatest idealist philosophers. When his first philosophical tract appeared anonymously in 1792, it was initially attributed to Kant, an event that greatly helped establish Fichte's academic reputation. In 1794, Fichte received a chair at Jena, where he published numerous works, one of the most significant being his Science of Rights (1796a & b), in which he advances a rational, natural law philosophy and theory of the state. Accusations of atheism forced Fichte to leave Jena in 1799. He went to Berlin, where he began to associate with Romantics such as Schleiermacher (see below) and was

also influenced by Schelling. In 1805, Fichte became a lecturer at Erlangen and five years later was appointed the first Rector of the new University of Berlin, where he worked until his death in 1814.

Fichte's philosophy underwent numerous substantial revisions, each being accompanied by the publication of a new political treatise [14]. Vaughan (1939,2,95) asserts that each such political treatises "corresponds, more or less closely, to one of the turning points in the great European struggle of his day" and concludes that they are "thus a faithful record of the mental struggles of his generation". As will be shown below, his federalism also reflects that struggle.

Though it is possible to divide Fichte's intellectual development up in various ways [15], there is general agreement regarding the broad direction in which his ideas were moving. Amongst the most significant features of that development are first, Fichte's transformation from an extreme individualist advocating a minimal state, to a collectivist favouring strong state intervention. Second, though Fichte retains a rationalist terminology, he gradually becomes an in part mystical German Romantic (Reiss,1955,11-22). Finally, Fichte moves some way from his initial cosmopolitan universalism, towards an emphasis upon German nationalism [16].

Indeed, his philosophy apart, Fichte is probably most readily associated with German nationalism. This reputation is largely due to his Addresses to the German Nation (Fichte, 1808 & 1808a), a compilation of a series of lectures delivered at the Berlin Academy of Sciences in the winter of

1807 to 1808. Though it has often been claimed (eg. Turnbull's introduction to Fichte, 1808a, xix) that they were instrumental in raising German national consciousness and thus in preparing the ground for the German Wars of Liberation, both their dry academic content and the restricted circle of those who had access to them suggest that claim to be rather far fetched (Aris, 1936, 347f). Much more influential were the nationalist writings of Goerres (1814/16), as will be discussed later in this section.

Fichte is an extremely complex philosophical and political puzzle, verdicts upon whom differ dramatically. While some such as Russell (1961, 690) accuse him of having "worked out a whole philosophy of nationalistic totalitarianism, which had great influence in Germany" [17] others (eg. Hertz, 1975, 48) reject the contention that Fichte is a forerunner of later German worshipers of state power and see his main interest as having been political education. Fichte is cited by some (eg. Waentig in xiv-xvi of his introduction to Fichte, 1800), as Germany's first socialist, while others (eg. Reiss, 1955) attach great significance in the Romantic hue of his later writings. Two factors in particular help account for such disputes regarding Fichte's political legacy. First, Fichte is a prolific writer (Fichte, 1845/6), whose opinions undergo substantial change over time, as has already been noted. Second, his writings are often extremely abstract. They are not only in the tradition of Kantian metaphysical idealism, but are also some of the most abstract of that tradition. It has for example, been alleged (Cairns, 1949, 502) that Fichte's transcendental idealism is so abstract that it makes Kant look like an "gross empiricist". In short, the volume,

changes within and abstraction of Fichte's writings all conspire to provide material of sufficient diversity to substantiate a host of different interpretations of his views.

Though we shall return to this point at the end of our exposition of Fichte, it would be both inadvisable and inappropriate for this thesis to get involved in such disputes. This discussion of Fichte will avoid Fichte's philosophy and restrict its attention to establishing the nature of Fichte's contribution to the Germanic tradition on federalism by means of a discussion of two issues. First, it will identify what type(s) of federation Fichte advocates and for what purposes. Second, it will consider the significance of Fichte's federalism for the Germanic tradition.

The first type of federation which Fichte proposes is first outlined by him in his Science of Rights (1796a & 1796b) [18], the aim of which is to identify the steps necessary for the rule of reason to be established in the world. Having done this in respect of the state, Fichte turns, in his "Second Appendix" entitled "International and Cosmopolitan Law" (1796a,473-505 & 1796a,366-79) to consider how a just peace between states can be created and sustained. The opening sentence (1796a,366) reasserts the findings of the earlier sections of the Science of Rights that: "each individual has the right to compel any other individual he meets to enter into a state with him, or to remove himself from his sphere of activity". While Fichte (1796a,366-9) concedes that the logical corollary of this proposition is the creation of a single world state, he also recognises that as a result of geographical factors, several separate states

have in fact developed. In order that the citizens of one state may interact in peace with those of another, it is necessary that their respective governments recognise each other, so that they can then enter into an agreement whereby they mutually guarantee the security of each others citizens.

Though Fichte welcomes such agreements, he is concerned (1796a,371-6) that they do not provide a guarantee that peace will be maintained. Moreover, if it is not, there is no reliable way of ensuring that the just cause will triumph in an ensuing war. The purpose of the "Second Appendix" is to outline the steps that reason dictates in order that the victory of right can always be guaranteed. What Fichte proposes (1796a,376-8) is that the states enter into a "Bund" (federation), based upon a mutual undertaking to "destroy with untited force any state, be it in the federation or not, which does not recognise the independence of any one of us, or violates the contract between itself and any of us".

Fichte proceeds:

I say the formula of this federation (Bund); for what we have described would be an interstate federation (Voelkerbund) and not a state (Voelkerstaat). This distinction is this: the individual can be compelled to enter the state, since otherwise a legal relationship with him is not possible. But no state can be compelled to join this federation (Bund), since it can be in a legal relationship even outside of it. Hence it is a voluntary union and not at all to be founded by force and such a union is called a federation (Bund). (1796a,377, emphasis in original) [19].

The jurisdiction of this interstate federation extends to relations with all states that are either formally members of it, or have recognised the independence of one or more of its constituent states (1796a,337f). The federation must be armed, so that it can enforce its decisions by means of a "war of

extermination" (Vernichtungskrieg) against any state condemned by the federal court (1796a,378f). Fichte (1796a,379) acknowledges that until reason appears in person on earth, it is not possible to be absolutely sure that unjust decisions will not be reached. However, he believes that the next best means of securing the rule of reason between states is the federation he has outlined. Fichte concludes that

As this federation extends itself and gradually embraces the whole earth, perpetual peace will come about; the only rightful relationship of states. For war can, if conducted by states, which are judges in their own cases, just as easily give victory to injustice as justice. Even when under the direction of a just federation, war still only constitutes a means to an end of maintaining peace and not the end itself. (1796a,379, emphasis in original).

Though in the "Second Appendix" to his Science of Rights, Fichte's federalism understandably addresses only the impact on interstate relations which his proposed federation is to have, there are a number of other purposes which Fichte wishes that federation to promote. These purposes can be established from both the earlier parts of the Science of Rights, as well as from his Closed Commercial State (1800), which has been described (Vaughan,1939,118-24) as being itself little more than an appendix to the Science of Rights. What these two sources demonstrate beyond any doubt is that Fichte wishes the internal government of the constituent states of his federation to be in accordance with the principles of the liberal Enlightenment. For example, his Science of Rights (1796b,237-85) demands representative government, liberal constitutionalism, popular sovereignty and civil liberties. It also sees the individual very much in a social context and ascribes to the state a duty to ensure

the welfare of its citizens, above all by means of education and social justice. Fichte (1796b,293f) argues, for example, that though there must be no idler in a rational state, "the poor citizen has an absolute claim to support". This requires the state to take an active role in regulating labour and prices, as well as in controlling external trade (1790b,311-17).

This theme of the positive, interventionist state as a means to the rule of reason is developed most fully in Fichte's Closed Commercial State, which maintains (1800,3-30) that the principle of equality of man means that all men have an equal claim to welfare and material security and comfort. Accordingly, the people has a right to demand both measures which contribute to greater productivity and hence greater social utility, as well as measures designed to ensure equal enjoyment of the wealth generated. The state therefore has a duty to regulate the economy so as to maximise welfare and to distribute it equally. To this end, and in the interests of preventing the wars that results from unequal economic relations between states, the state must first close itself off from all foreign commerce and form an autarchic economic unit. Second (1800,8-27) it must regulate the access to and conduct of all professions, so as to ensure the most efficient use of labour. Third, it must prevent exploitation by the control of prices (1800,43). Fourth, it must regulate incomes (1800,25) so as to ensure equality. Finally, the closed commercial state will abolish internationally exchangeable currency. Those elements of foreign trade that are completely indispensable will be conducted solely by the

government and on the basis of barter (1800,27).

So far, our discussion of Fichte's federalism has shown that he envisages a federation composed of sovereign states, united for the formal purpose of realising the rule of reason in international relations, that is to say, for the establishment and maintenance of perpetual world peace. As is patently obvious, Fichte's federalism is virtually identical with that of Kant (see 2.3 above), as Fichte (1796) himself acknowledges in his glowing review of Kant's Perpetual Peace. Fichte's federalism thus constitutes an example of what this thesis defines as interstate-chiliastic federalism.

Interestingly, his writings (esp.1796a & 1800) indicate the main motivations of his federalism in the period up to 1800 to be twofold. On the one hand, Fichte is driven by his interest in cosmopolitanism, that is to say, in how the rule of reason is to be established between states. On the other hand, Fichte's federalism also demonstrates a close relationship to the political disputes of his day. Where he stands in those disputes is evident from the fact that the constituent states of his proposed federation are to be characterised by social and political equality and liberal constitutionalism.

In particular from Prussia's defeat in 1806 and 1807, Fichte's attention is directed less at the world stage and increasingly at the regional and national stage. In his subsequent lectures and writings, nationalism figures prominently. This changed concern is also reflected in his federalism. However, while his earlier interstate-chiliastic federalism is reasonably clear, the ideas he now articulates on the subject of federation are neither clear, nor

consistent. They none the less provide some clues as to the type of federation Fichte is now considering and the purposes he hopes it might facilitate.

Though there is a possibility that the federation with which Fichte is toying might be of an intrastate variety (eg. 1808a,153f & 1813,569f), the general impression conveyed by his later writings (1806,1807,1808 & 1813) is that Fichte is considering the merits of interstate confederation (eg.1808a, 54 & 152-4). However, his writings are unclear on at least the following crucial issues. First, the extent of the federation is not established unequivocally. Some passages appear to suggest that the federation would comprise solely the German states, while others suggest that the federation might in fact embrace the whole of Europe (1808a,223-47 & 1813,549). Second, the structures of that federation are not spelled out, as is perhaps only to be expected from a transcendental idealist such as Fichte, whose main concern is not the structure of a state, but that it manifests the correct spirit (eg.1808a,146-8).

Third, there is ambiguity not only over the format, but also concerning the purposes of the federation Fichte is now considering. Fichte's German nationalism and, for example, his reference (eg.1813561-5) to the need for a strong man to bring about German unity (Zwingherr zur Deutschheit), clearly provide ammunition for those who contend that Fichte proposes an aggressive, expansionist Germany. We do not share this view, however, and concur with the opinion of those (eg. Meinecke,1928,93-127) who argue that Fichte remains committed to the ultimate goal of a world federation ruled by reason

and that his German nationalism and his cosmopolitanism are reconcilable. As Meinecke (1928,93-127) shows, Fichte (eg. 1808a,117) sees his German nationalism as the promotion of the nation in which reason is most advanced and thus as not opposed to the cosmopolitical goal of promoting the rule of reason in the world, but as a means to that end. Moreover, Fichte explicitly rejects both the unitary Machtstaat (eg. 1813,552) and aggressive, expansionist nationalism (eg.1806, & 1808a,231).

To conclude, Fichte is significant for this thesis for a number of reasons. First, the very language in which he expresses his federalism is interesting. It constitutes another example of both the idealist medium employed by a not inconsiderable part of the Germanic tradition of federalism [20] and of its corollary: the view (eg.Fichte,1813,563) that the constitutional structure of federation is secondary to the ideals it promotes. Second, however, Fichte's transition from his early rationalism and individualism to his later Romanticism and nationalism are a reflection of both the political and philosophical changes occurring in Germany at that time (eg.Aris,1939 & Meinecke,1928) and therefore demonstrate that despite its idealist terminology, Fichte's federalism must be seen as at least in part politically contingent. Third, Fichte's writings show that Kant was not the only contributor to the Germanic tradition of federalism who proposed interstate-chiliastic federation. Fourth, Fichte appears also to have considered an interstate confederation, for Germany, though his views on both its extent and structure are ambiguous [21].

This brings us to the fifth and final significant feature

of Fichte's federalism which will be mentioned here, namely, that the very ambiguity of Fichte's federalism allows many subsequent exponents of Germanic federalism to avail themselves, for often vary different ends, of parts of Fichte's federalism. We shall give five examples. First, Fichte's ultimate goal of a world federation governed by reason and thereby guaranteeing perpetual peace remains an attractive ideal for radical German liberals such as Behr (see above and 6.2.3. below). Second, inasmuch as Fichte's interstate-chiliastic federalism also contains commitments to, for example, social justice and popular sovereignty (eg. esp.1800) and to legal and political equality (eg.1813,550), Fichte offers a point of reference for the federalism of later radicals such as Struve (see 6.2.3. below). Third, idealist radical liberals such as Troxler (see 6.3.3. below) are at least as attracted by the strong emphasis in Fichte's federalism (eg.1808a, esp.158-204 & 1813,555 & 563) upon the primacy of education.

Fourth, the tension in Fichte's federalism between German nationalism and liberalism is to be reflected in the writings of numerous liberal exponents of Germanic federalism. One example is Fries, whose federalism proposes a German federation in which individual liberty is sacrificed to German national unity (see 6.2.2. below). Fifth, other subsequent exponents of Germanic federalism take Fichte's nationalism much further and articulate an expansionist, racist nationalism, devoid of any cosmopolitanism. An example is the federalism of Goerres (see below and also 5.3.2.). Conversely, Heeren's 1817 federalism (see 5.2.3. below) not

only articulates Fichte's vague idea of a German interstate confederation much more clearly, but his proposals for German self-sacrifice in the interests of peace (see 5.2.3. below) take Fichte's cosmopolitanism much further than the latter (eg.1808a,226) himself considers acceptable.

The manner in which these ambiguities, contradictions and tensions of Fichte's federalism are reflected in the subsequent Germanic tradition of federalism will be demonstrated later in this thesis. Our exposition of Fichte's federalism being complete, we will now look at the final two exponents of Germanic federalism to be considered in this section, namely, Schleiermacher and Goerres. Like that of Fichte, their federalisms both also contain a mixture of rationalism and Romanticism.

Friedrich Schleiermacher (1768-1834) was a Protestant theologian and philosopher. He became a preacher in the late 1790s and after a period as Professor and university chaplain at Halle, received a chair at Berlin in 1810, where his circle of acquaintances included Fichte (Hertz,1975,43f). Schleiermacher was not merely an exponent of German Romanticism, with some of the key figures of which he had been in contact from the late 1790s, but has in fact been described (Reiss,1955,33) as "one of the most profound, but also most obscure thinkers of the German Romantic movement".

Romanticism was then primarily still an ethical and philosophical movement. Moreover, as the above discussion of Fichte has shown, its ethics shared various aspects of idealism with the Enlightenment. It was primarily with the start, in the first decade of the nineteenth century, of political Romanticism, that many Romantics such as Mueller

(1808 & 1819) and Schlegel (Meinecke, 1928, 62-93) were to reject the Enlightenment altogether and to advocate for Germany a return to medieval structures. Schleiermacher's writings, however, were predominantly theological and ethical and remained influenced by moderate Enlightenment idealism, with which they attempted to synthesise Romanticism.

Most of the contemporary interest in Schleiermacher (eg. Gadamer, 1960, esp. 162-72) relates to his hermeneutics, rather than to his political theory, but the concern of this thesis is limited to the federalism contained in the latter. Though Schleiermacher's federalism is intimately linked to his philosophy, it would exceed the scope of this thesis to deal with the latter in detail. It will become sufficiently apparent from the following account of his views on the nature and purpose of federation. That account will be based on the views he expressed in a paper read at the Royal Prussian Academy of Sciences on 24 March 1814, ie. on the eve of the new German Bund (Schleiermacher, 1814 & Reiss, 1955, 173-202).

That essay offers an approach to identifying the nature of the state and thence to classifying it. Schleiermacher (1814, 183) starts with the origin of a state, arguing that "The form which a thing shows in its origin is ... also the form in which it continues its existence". However, he does not go on to offer a contract theory, or a Divine right theory. Instead, he considers (1814, 84) the origin of a state to lie in the translation of things previously done on instinct into matters done "with a view to the needs of the

whole".

In brief, the already existing sentiment and activity have been brought together and laid down in the law through the arising of the state. What existed before is now expressed, the unconscious unity and equality of the mass transformed into a conscious unity and equality, and arising out of this consciousness is the essence of the state.

What this means is that within every individual there is a latent consciousness of "the relationship between each individual to a definite whole of nature" (*ibid*). (This formulation is typical of Romanticism's belief in man as part of a living universe (Reiss, 1955, 1-43 & Meinecke, 1966, 62-161). What Schleiermacher has in mind here is an awareness of the distinction between private and public actions. The formation of a state is a product of this consciousness. These initial states are referred to as states of the lower order. Since the development of political consciousness is unlikely to take place at the same time throughout a whole territory, such states will be small, connecting "hordes", or tribes. Such states may well start out as monarchies, since consciousness could initially develop in just one person, but they could then well alternate between aristocratic and democratic structures.

But in states "which connect a whole people consisting of many hordes and nationalities into a whole, all that belongs to the state will perhaps have to be formed in a different way" (1814, 188). That different way is federation. Schleiermacher (1814, 190f) believes federations arise in a manner analogous to how political consciousness initiates the formation of a state. That is to say, the politically conscious unit extends its rule over others, either

peacefully or by violence (ibid,190f).

Unlike in small states of the lower order, in states of a higher order, the appropriate political structure is either aristocracy or monarchy, but not democracy (1814,189f & 193). These states of a higher order are federations (foederativer Staat, 1814,276), which Schleiermacher sees as a necessary stage into which states of the lower order will pass. But he considers states of the higher order also to be limited in their capacity to allow political consciousness to dominate over private interest. As an example, he cites the representative assembly of a federation, which he says will still tend to act in the private interests of its members, rather than in the supreme interest of the national whole (ibid,195). Moreover, the state of the higher order will sway between being a

state composed of unequally created and to a certain extent still independent states, or instead of such a Bundesstaat, only Staatenbund, merely a vague union of numerous states for so long as their opinions do not diverge too much; (Schleiermacher,1814,276f).

In other words, Schleiermacher considers both interstate and intrastate federations to be states of the higher order and both to be marred by structures that foster private interests as opposed to the public interest characteristic of political consciousness. Both types of federations are but transitory stages on the evolution of states to the state of the "highest order". The state of the highest order is the unitary, monarchical state, uniting the whole of a nation (1814,193f). In such a state, there is to be completely unfettered rule by a hereditary monarch who will not have any private property, for that might prevent him from making

decisions in accordance with the interest of the whole (Reiss, 1955, 196-200).

To sum up, Schleiermacher posits an idealist teleology moving the state, understood as an entity defined in terms of an ethical consciousness, from the "lower" to the "highest" order. In this context, federation constitutes an intermediary form: the "state of the higher order". Federation can be either interstate or intrastate. The purpose of the federation is to help foster the ethical ideal of political consciousness, ie. the subordination of private interests over the good of the whole and thus to move man's public association on towards the ultimate ideal state. The place of federation in this is to be an inevitable, intermediary stage through which all states will pass on their way towards a unitary nation state, with a monarch who assumes a role very akin to that of Plato's philosopher king [22]. There are of course also parallels with Hegel's ideas of the state as the embodiment of the ethical idea. Though Schleiermacher was (Bluntschli, 1867, 610-14) attempting to develop an ethical theory of the state and not to get involved in partisan political issues, the political effect of this kind of federalism was to rationalise a conservative Machtstaat. Schleiermacher's theory of the state and his consequent view of federation also influenced other contributors to Germanic federalism, including the conservatives Stahl and Bluntschli (see 5.2.3. and 5.3.3. below).

The final exponent of Germanic federalism who will be considered here is Johann Joseph von Goerres (1776-1848). He has in common with Fichte and Schleiermacher the fact that he

is a Romantic, but differs from both in at least three fundamental respects. First, Goerres is not a philosopher of their calibre, but primarily a political activist. Though this makes his federalism less intellectually stimulating, that is compensated by its close relationship to the politics of its day. Second, while Schleiermacher is a staunch Protestant, Goerres is a devout Catholic. Third, Goerres' federalism during the period covered by this chapter is characterised by a much greater commitment to German nationalism than Schleiermacher and a much more politically effective commitment than Fichte.

Though he was a Catholic supporter of a revival of an idealised version of the mediaeval German Reich and later came to be regarded by many liberals as the personification of reactionary, clerical conservatism, Goerres was not unequivocally conservative. Indeed, in his youth he was as ardent an opponent of absolutism and clericalism as he was a supporter of the French Revolution, of Kant and Fichte's cosmopolitanism, of rational theories of the state and of republicanism (Goerres, 1854-74; Aris, 1936, 320-40 & Uhlmann, 1912, esp. 1-16). Goerres' political conversion starts in 1799/1800, when he goes to Paris as a member of a deputation demanding the incorporation of the left bank of the Rhine. His experiences in Paris lead him to be disenchanted with the Revolution and in 1801 result in his withdrawal from public life (Uhlmann, 1912, 10-16).

From then until the Wars of Liberation, Goerres comes under the influence first of Schelling [23] and then of the Heidelberg Romantics (Aris, 1936, 332-6 & Uhlmann, 16-61).

Though he always retains his belief in popular political participation and in a range of political liberties, Goerres' previous view of history as the march of reason on the earth is replaced by a theory of history which is in some ways akin to, albeit much less refined, than that of Schleiermacher and the later Fichte (eg. 1806 & 1808a). Goerres (1814-16 & Uhlmann, 1912, esp. 61-80) now regards world history as the manifestation of the power of a mystical eternal Law of Nature, which human reason can at best partially intuit, but is powerless to resist. Above that mystical force is God, who will ensure final retribution. He can of course also ensure justice by direct intervention in history; Germany's liberation from the French is cited by Goerres (1814-16, 125) as an example.

One consequence of Goerres' mystical Romantic historicism is his view that institutions are legitimate by virtue of the very fact of their longevity. If they were contrary to the mystical spirit of history, or to Divine will, they would not have survived. As Goerres (1814-16, 175) puts it in his typically abstract style:

All Right (Recht) is in God and willed by Him and since His willing and will are the same, so the Divine will is Right itself and all that is rightful in the phenomenal world (Erscheinungen) is an image of this Divine will and He wants nothing in history and the state but Right.

This necessarily impacts upon Goerres' previous view that the state is capable of being moulded by means of man's reason. Goerres now regards the state as an organic product of historical development, whose traditions are to be revered. This not only rules out radical reconstruction of states according to rational principles, but also requires reverence

vis-a-vis ancient institutions such as those charged with the dissemination of the Christian (i.e. Catholic) faith. One of Goerres' proposals is thus the reassertion of ecclesiastical power in the form of a revived Papacy [24].

Goerres' earlier political commitment to rational cosmopolitanism is now also largely abandoned [25]. Instead, Goerres becomes one of the most fervent and influential spokesmen of German nationalism. His medium is the Rheinischer Merkur, a newspaper which he edits from 1814 until its closure by the Prussian authorities in 1816 (Goerres, 1814-16). Described by another great German nationalist of the period as "the most celebrated German newspaper of the nineteenth century" (Arndt, cited in Krieger, 1972, 211), it is one of the forces most instrumental in raising German national consciousness. Goerres uses it not only to conduct a passionate campaign against Napoleon and everything French, but also to argue for the federal unification of the whole German nation.

Goerres' contributions to the Rheinischer Merkur thus constitute the core of his federalism in the period with which this chapter is concerned. Since they furnish a direct commentary upon the eventful years of 1814 to 1816, it is not surprising that their detailed proposals for the shape of the future German federation vary. That these variations are usually a direct response to changes in the political situation is excellently documented in by Uhlmann (1912, eg. 99-104) and provides more valuable support for this thesis' assertion of the politically contingent nature of (Germanic) federalism.

However, an examination of the Rheinischer Merkur [26]

reveals that, notwithstanding the changes mentioned, the main lines of Goerres' federalism are quite consistent. The following elucidation of that federalism will first outline Goerres' argument as to how Germany's history must itself determine Germany's future federal structure. Second, it will consider the constituent units of Goerres' proposed federation. Third, it will discuss the location and organisation of sovereignty within that federation. Fourth, it will address the purposes Goerres intends his proposed federation to promote. Finally, there will be a summary of Goerres federalism and an assessment of its significance.

The main principle underlying Goerres' federalism is that the only legitimate and sustainable constitution for Germany is one that works with the forces of history, rather than against them. Accordingly, he argues (1814-16, eg. 107 & 142) [27] that only those with a sound understanding of history and the mystical forces governing it should be permitted to participate in the Congress of Vienna. The extent of Goerres' commitment to the notion that the correct solution to the question of German reconstruction must be intuited from history is evident in his proud boast, at the end of a very lengthy article in which he has made detailed suggestions for Germany's future federal constitution (1814-16, 142), that his own proposals are all merely cribbed from the pages of history.

To understand Goerres' federal proposals, it is therefore necessary to establish first what he regards the mystical message of history to be. Goerres (1814-16, eg. 124f, 129, 175 & 181) states that all Germany's problems over the past three

centuries derive from the Reformation. As churches freed themselves from Papal authority, so temporal rulers freed themselves from that of the Emperor. The resulting cleavage between Protestant northern and Catholic southern Germany was never to be bridged. Goerres (1814-16, 82, 132, 177 & 179) ascribes the fact that Germany was never reunited to the lack of vision of those who drafted the Peace of Westphalia (1648), but above all to the selfish actions of the German princes who, in pursuit of their particular interests, often involved foreign powers in German affairs in a manner that resulted in the national interest being compromised. The eventual disastrous outcome (1814-16, 125) was the Emperor's abdication in 1806.

Goerres' interpretation of the message of these events for the reconstruction of Germany is very interesting (1814-16, 124f, 128-30 & 141). Although his natural predisposition is understandably in favour of Catholics, he does not condemn the Reformation out of hand in the manner of other Catholic conservatives such as Haller or Geiger (see 5.3.2. below). The reason for this is that though he too regards the Reformation and the divisions which it brought about as in many respects undesirable, their very duration means that they have to be accepted as a legitimate manifestation of the mystical, world-governing spirit. Goerres concludes that though the task of the Congress of Vienna is to promote German national unity by bridging the division between Protestant and Catholic Germany, this must be done not against history, but in collaboration with it. Accordingly, the basis of the new German constitution can be none other than the very division which has for so long shaped German

history: the antithesis between Protestant and Catholic Germany, as personified in Prussia and Austria respectively. In other words, out of the Austro-Prussian polarity, the new and higher synthesis of German national unity will be born. How Goerres hopes his federation will fulfil this abstract goal will now be shown.

He notes (1814-16,132) that other European countries, sensing the need for a strong central authority to ensure internal and external security, have established unitary states. While recent events clearly demonstrate that Germany desperately also needs to be united, Goerres rejects the unitary state model, arguing that that such states exhibit an unorganic, artificial structure. They are, in his metaphysical language, "constructed in the image of dead nature". By contrast, he regards Germany's old federation, with its great social, political and cultural diversity, to have been imbued with "the real living force" which marks it out as superior to other states. Accordingly, Goerres (1814-16,76) proposes that Germany become not a unitary state, but a "federal system" (Foederativsystem). However, it is not to be merely a loose "confederation" of states (1814-16,82,104 & 180f) such as that of North America, but a single German state, with a single sovereign power at its centre. In short, Germany is to become not an interstate, but an intrastate federation: a Bundesstaat (1814-16,179) or Staatenstaat (cited in Uhlmann, 1912,87).

Despite the fact that one of the most persistent features of Goerres' federalism is his criticism of the German princes' inclination to place their particular interests

above the general interest, they are to remain the rulers of the constituent units of Goerres' federation. However, he insists time and time again (1814-16, eg 82f, 104, 106 & 138) that they are not to be sovereign rulers. They must "recognise that they owe to the fatherland the same love, loyalty, submission and obedience which they demand from their subjects" (1814-16, 104). In other words, the princes have to subordinate themselves to the central authority. They are to relinquish to the centre the conduct of all diplomatic relations and support the establishment throughout the federation of uniform taxation and judicial systems. They must also abolish all internal tolls and tariffs (1814-16, eg. 76, 82f,) and introduce into their domestic constitutions systems of popular representation based upon the estates (1814-16, eg. 104) [28].

It is now time to consider the nature of the central federal authority Goerres envisages (1814-16, 130, 132, 138, 175f & 181). He is adamant that the German federation must once again be presided over by a sovereign Emperor and that that title must be conferred on the Habsburg dynasty. He defends this demand primarily by reference to Austria's history of self-sacrifice for Germany, but it is of course not unrelated to its religious affiliation. Though one of the recurrent themes of his federalism (1814-16, eg. 140f & 181) is the need for the German federation to be constructed in such a manner that it helps heal the rift between Austria and Prussia, Goerres is unyielding in the matter of Prussia assuming the role of the second power in the federation (1814-16, eg. 105 & 139f). Apart from making limited concessions to it [29], his attempt to placate Prussia's predictable

opposition is restricted to repeatedly expressing the hope that Prussia will feel honoured to serve at the right hand of the new Emperor.

Alongside the Emperor is also to be a bicameral Imperial Diet (1814-16, 138-40) [30]. Its lower chamber, like the legislatures of all the constituent units of the federation, will be elected from and by the estates. This "Imperial Council" (Reichsrat) is to be a purely deliberative assembly. It receives legislative proposals from the Emperor, who has the sole right of initiative, and prepares them for the final decision of the upper chamber: the "Imperial Diet" or "Princely Diet (Reichstag, or Fuerstentag). In the latter, all the rulers of the constituent territorial units are to be personally represented. They will divide into two colleges, one representing the northern (i.e. Protestant) rulers and the other the southern (i.e. Catholic) rulers. The former is to be chaired by the King of Prussia, and the latter by the Archduke of Austria. Between the sittings of the Diet, these two persons will combine with the Emperor to constitute the executive committee of the Imperial Diet. Unfortunately, Goerres fails to explain the voting system of either the colleges of the Diet, or the executive committee of the Empire. Given his insistence in an earlier section of the same article (1814-16, 138) that executive authority is to be the preserve of the sovereign Emperor, as well as the fact that two of the three members of the executive committee are to be from the Habsburg dynasty, there is little doubt that Goerres intends his federation to favour Austria.

This brings us to the issue of the purposes which Goerres

desires his federation to promote. These include economic harmonisation and judicial integration, as well as ensuring Germany's territorial integrity and internal and external security (1814-16, eg. 76 & 82). Another at least as important consideration, albeit less material, is fostering German nationalism. It is in this light that one has to understand Goerres' rather wide view (1814-16, eg. 82 & 179) as to the territorial extent of the proposed German federation. He believes that German-speaking Switzerland will definitely be included and would also like to see Denmark, Belgium and the Netherlands as members of the federation.

The main purpose of that federation is to re-establish the Holy Roman Empire (1814-16, eg. 181), and with it, a European "Christianity". Since Goerres' proposals clearly imply an extension of German territory, his federalism fits Riker's category (1964 & 1974, see 1.2 above) of those proposals designed for the purposes of "expansion", even though his expansionism is mitigated by remnants of Goerres' erstwhile cosmopolitanism. The latter is to some extent reflected in the following statement:

the German Kaiser can and will again become for people of this part of the world what the Middle Ages expected him to be ... a Protector (Schirmherr) of Christianity, ruling not through violence, but through justice, not subordinating peoples by means of power, but winning them over through a harmony deriving from higher Right (Recht) and from legality, like the old clerical states ...

On the other hand, this also demonstrates Goerres' desire for the re-establishment of Papal authority (1814-16, 176 & 180f) and thus presumably ultimately of catholicity. Thus Goerres continues

The Emperor will then also reassert the rights he

used to exercise as Protector of the Church and, together with the Pope, will convene the general Church Assembly and chair it As the temporal part receives its share, so the spiritual part will also re-acquire its rights and the destroyed structure of the European constitution will again unite and compliment itself.

To summarise, the constituent units of Goerres' federation are to be the German princes, who will exercise territorial supremacy, but not be sovereign. Sovereignty is reserved to the "majesty" (eg.cited in Uhlmann,1912,105) of the Emperor. Goerres proposes popular representation both in the constituent units of the federation and at the federal level. The main function of that representation is not to establish popular sovereignty, but first, to put pressure upon the princes to eschew selfish particularism in favour of the promotion of German national unity (see also Goerres,1819, 116f & Krieger,1975,215). Second, it is to help maintain the national spirit among the population. The purposes of the proposed federation are clear. It is to ensure the defence of Germany, the fostering of the German national spirit and the promotion throughout Europe of Christianity. All this is to occur under Austrian leadership. In short, Goerres' federalism amounts to a prescription of what this thesis has classified as an intrastate-imperial federation (see 2.4 above).

Goerres' federalism is of interest to this thesis for at least four reasons. The first relates to the manner of its articulation. It's elaborate historicism and metaphysical idealism is typical of the federalism of a substantial number of exponents of Germanic federalism, which was also predicated upon an idealist or ethical theory of the state. Examples include not only Kant (see 2.3 above) and Fichte

(see above) but also Fries (see 6.2.2. below) and Troxler (see 6.3.3. below). Typical of this approach is the fact that, despite his concern to prescribe the structures of the future German federation, Goerres insists upon relativising their importance, repeatedly stressing (1814-16, eg. 107 & 142) that unless the spiritual conditions are right even the best political structures will be of no avail. The success of a society will be determined not by its political structures, but by the extent to which the spirit of that society conforms to the mystical, world-governing spirit.

However, it is not merely the idealist manner in which Goerres' federalism is expressed that makes it interesting for this thesis, but also nature of those ideals themselves. A central ideal is that of German nationalism. In true Romantic tradition, he sees the nation as an almost biological product of the Volk. The latter is itself a reflection of, for example, the soil and the climate and finds its expression in a common language, culture and destiny (see eg. Schorn, 1934, 109f). The purpose of the German nation being united into a federation with a strong central power is to help it fulfil that destiny. Only by being a strong state can it exercise its legitimate role as the defender and promoter of national peculiarities. This requires that the German federation have defensible boundaries, which in part explains the proposed inclusion of Denmark, Holland and Switzerland. Goerres' ideal of German nationalism is, of course, qualified by the second major ideal which his federation is to help realise: the defence of Christianity. For Goerres, promoting the Christian religion and Christian love

necessarily requires a revival of the Papacy, whose role in the Middle Ages was, as Goerres (1814-16,180) reminds us, that of an "Prince of Eternal Peace", arbitrating between conflicting states.

Putting these rather abstract and lofty ideals into a more practical political context, a third reason why Goerres' federalism is significant for this thesis is the fact that it is another good example of the use of Germanic federalism as a political ideology. That is not to deny that it is, as has been mentioned above, expansionist. On the contrary, it is necessary to go behind the mere fact of expansionism and seek to ascertain what purposes that expansionism itself promote. When one does that with Goerres, one finds that his federalism offers a curious mix of reactionary conservatism and liberal ideas. On the one hand, Goerres is now a believer not in republicanism, but in the intrinsic superiority of monarchy. He also desires a return to an idealised Middle Ages, in which there is not only to be a reincarnation of what amounts to the pre-Reformation Holy Roman Empire, but also a renewal of Papal authority and a system of estates-based representation.

On the other hand, Goerres' federalism contains a number of liberal elements. These include his consistent defence of constitutionalism by means of popular representation at all levels of the state. Indeed, at one stage (1814-16,76), he argues for the assembled estates to act as the constituent assembly of the new German federation. Furthermore, Goerres' (1814-16,105) vision of how his estates system would function is characterised by mobility based upon merit and is thus unlike that of decidedly reactionary conservatives such as

Mueller (1819,44). Finally, Goerres is also a staunch supporter of the principle of a militia, which was at that time usually associated with liberals opposed to state absolutism.

A fourth reason why Goerres' federalism is significant for our exposition of the development of Germanic federalism is that it foreshadows a conflict that was to dominate German political debate for much of the nineteenth century: the conflict between the "grossdeutsch" (Greater Germany) and "kleindeutsch" (Lesser Germany) solutions to the problem of how Germany was to be united (see 4.2 below). The former solution usually implied Austrian and therefore also Catholic-conservative dominance of Germany, while the kleindeutsch prescription ascribed the leadership of Germany to Protestant Prussia. Writing as a Catholic subject of the Protestant state of Prussia, one of the major considerations motivating Goerres to prescribe a centralised German federation under Austrian leadership is without doubt the advancement of his political, but above all his religious interests. Goerres is thus clearly a forerunner of those who were to argue that only a German federation including the whole of Germany, and preferably under Austrian control, was appropriate. His proposals in the Merkur were by no means the last word on this subject, as is demonstrated below, in Part 3 of this thesis (see esp.5.2 & 6.2 below).

Before moving on to consider that debate, to which Goerres was himself again to contribute (eg.1819,1821 & 1845), it is necessary to examine the nature of Swiss federalism in the period between the collapse of the old Confederation in 1798

and the establishment in 1815 of the Swiss "Federal Pact".

3.3. FEDERALISM IN SWITZERLAND FROM 1798 TO 1815

In this period, Swiss federalism was most evident at the times of greatest constitutional change, that is to say, throughout the unpopular Helvetic Republic of 1798 to 1803, and from 1813 to 1815. During the first period, federalism was almost exclusively the preserve of the conservative "Federalists", who opposed the liberal "Unitarians". Unlike Germany, whose discussion largely revolved around clarifying the nature and relative merits of the Staatenbund and the Bundesstaat, the Swiss debate faced the radical alternatives of a unitary and indivisible republic, or an interstate confederation. Some Federalists desired a return to a pre-1798 type federation, with aristocratic governments, but the majority were reformist in their outlook. By 1815, however, even erstwhile Unitarians had come to advocate a federation and agreed with the conservatives to set up the Federal Pact. This volte face might seem surprising, but is understandable from a strategic point of view, as will be explained below.

The conflict between Swiss Unitarists and Federalists was both one of practical politics and of Weltanschauung: the pure ideals of the Enlightenment versus tradition. The dogmatic faith of both in the validity of their respective viewpoints was absolute. As Wild (1966,22) notes:

The coupling of political thinking with the highest ideals of contemporary philosophy is so strong, that decisions for or against the Helvetic regime are considered not so much a matter of political opinion, but are transferred more into a matter of personal ethics - indeed

into the question of one's very perceptive faculty.

On one side of this political chasm were those arguing for the maintenance within Switzerland of the unitary and indivisible republic imposed by the French. Though these champions of the new order knew they lacked popular support (eg. Kuhn, 1800, 15), they were convinced that the old confederal structure was demonstrably flawed. In particular, they stressed three aspects [31]. First, they argued that it had proved itself to lack the necessary military strength to maintain Switzerland's external security. Second, they advanced an economic argument, pointing to the existence in the pre-revolutionary system of a range of restrictions to internal trade and commerce. The final and most decisive consideration was their political opposition to the former system, since it contained various categories of second class citizens and of subject territories. Unitarians' political objections to federation are epitomised by Kuhn (1800, 11), who describes the fight of unitarism versus federalism as the most important issue of his day. He says (1800, 12f) that there are two groups advocating federation. The first is headed by

all those, who quite openly enter the lists on behalf of the old order of things, and hope to use their lance to win back their lost privileges. Fighting alongside them are numerous secret fighters for the same cause, but who do not parade their intentions in front of them like the former group. More skilled in their art and their politics, they seek to achieve their goal via the detour of an apparently wiser willingness to compromise. They speak only of a limited federation; ... To these two subdivisions of the one and the same political side, the whole heap of animal-like creatures of habit attaches itself. They consider only that which has always been the same to be just ... and their intellectual indolence prevents them from conceiving of even the

possibility of a better social system than existed under the old order of things.

Kuhn (1800,13) categorises the arguments of this whole group as "the federalism of privilege" and says that its leaders depend upon their mass following among the uneducated for the prospect of a return their previous privileges.

Kuhn (ibid) identifies a second group of federalists, which he describes as "the monster of the federalism of demagogy" and which is, he maintains led by anarchists who want to topple to topple all order, by "modern barbarians ... wild fanatics ... who bow before their idol, the masses, in the hope of thus acquiring for themselves public office." He accuses these "opportunitsts" of a hypocritical use of patriotism for their own ends and (1814,14) of "sacrificing the purpose of social union, namely, civil liberty, to its means: political freedom". In short, federation was for Unitarians a mechanism created by the formerly privileged aristocratic class for the maintenance of its political ascendancy and federalism the rationalisation of those hierarchical and unequal relations, based upon the manipulation of ignorance. Federation was thus something which the forces of reason and light were committed to eradicate. This was to be achieved by the unitary state, which would ensure that the principle of equality was everywhere applied [32].

On the other side of the Swiss political divide were the Federalists, whose federalism was articulated primarily in the form of political pamphlets, rather than abstract theory. This is understandable for two reasons. First, federalism was originally advanced in the context of a lively political

dispute. Even less than in Germany was it intended to inform a philosophical debate on the nature of the best state. During the first few revolutionary years, no integrated theory of federalism existed. (An exception is perhaps Monneron, who will be examined below.) Only when it proved necessary to defend what had previously been taken for granted, did such a theory begin to develop. Second, many conservative Federalists were motivated by their very objection in principle to what they regarded as the excessively abstract argumentation of the Unitarians. The former were attempting to assert the importance of criteria other than pure reason for the organisation of the state [33]. However, though most of these writings were not developed as fully-fledged theories of federation, they nevertheless contain aspects later to be amongst the most important constituent parts of such theories. This process of a posteriori rationalisation of pre-existing views into a theoretical whole (already demonstrated in 2.3. above in our account of the federalism of Puetter) underlines one of the main assertions of this thesis: that federalism is best seen as a set of partisan responses to different political situations and thus as a set of prescriptions intended to further specific interests or values.

The Federalists were concerned that the unitary Helvetic state, based upon the principle of majoritarian democracy, constituted an arbitrary and potentially absolutist form of rule that threatened minority rights. Moreover, Federalists were not slow to point out that although Unitarians claimed to base their system upon popular sovereignty, the majority of the population in fact opposed it [34]. At its simplest,

the core argument of the Federalists was therefore the defence of intermediate structures between the individual and the state [35].

Behind these practical political considerations lay substantial differences between Federalists' and Unitarians' philosophies, which reflect the dominant debate of the time (see 3.1 above) and an awareness of which is required for a full appreciation of the nature and purpose of federalism in Switzerland at this time. First, Federalists considered the Unitarians' view of human nature to be over-optimistic, failing to recognise man as he really is, warts and all. Thus Hoepfner (1801,159) is full of praise for the healthy simplicity of a people not led astray by too much abstract reasoning:

The people in general and especially our people, has its own logic. It rarely if ever reasons a priori, that is to say, according to abstract principles, but draws all its conclusions a posteriori, in accordance with its own experience. It says very simply: previously things were like this, and now they're like this. Previously the situation was good or bearable, now it's bad or unbearable ... without going into detail as to why it is now like this and not otherwise.

Second, there was disagreement over the value of political diversity. Unitarians argued that rational man's equality overrode the superficial peculiarities of local custom, while Federalists saw social and political diversities as an expression of the uniqueness of man and thus to be valued and preserved. Accordingly, the only constitution they considered appropriate was one which guaranteed the persistence of the structures which enshrined those diversities, namely, the cantons.

A third important element in the Federalists' position, which was again diametrically opposed to the Unitarians' beliefs, concerned the former's assertion of the inherent value of structures passed down through history. These were held not only truly to reflect local conditions and customs, but also to be the embodiment of a wisdom that exceeded the abstract reasoning of any given group of men [36]. Mallet du Pan (1798, cited in Wild, 1966, 35) gave the following definition of what constituted a legitimate institution:

Every political institution that does not owe its origin to violence, nor to fraud, that has in no way usurped native national rights, against which neither the people, nor a group of the people have objected and which ... is not imposed either by military force or illegal tribunals, which lasts from century to century, this institution rests on the most legal of foundations and deserves public respect.

Such faith in historical experience over abstract principles demanded a return to traditional structures. Since Swiss and German tradition could be held to consist in the primacy of territorial units of rule, exponents of traditionalism in both countries naturally felt fully justified in arguing that federation was the only constitutional system that agreed with tradition and was thus legitimate for the country.

Given their emphasis upon local factors in determining the most appropriate constitution, it is not surprising that Swiss Federalists were to turn to the theories of Montesquieu. That they were less concerned by his rather threadbare federal theory and more by other aspects of his writings has already been stated above (Chapter 2). It is now clear what these other aspects were and why they were so attractive for the conservatives, whose opposition to the

dogmatic rationalism of the Unitarians meant that what they required was not a rival theory based on rationalism, but an assertion of the intrinsic pre-eminence of local variety and the importance of intermediate structures. Thus the Swiss federalists contended, in language that could have been Montesquieu's own, that every law, regardless of how rational it might appear, "will always remain unfeasible, if one does not take account in its particular application of the localities, through which Nature has imprinted its irradicable stamp on mankind" (Hoepfner, 1801, 157).

That the localities happened in the Swiss case to be the cantons and that this led to the advocacy of a federation, was merely the product of the accidents of Swiss history. The principles which the writings of Montesquieu (and especially his 1748 Spirit of the Laws) enshrined, were not necessarily restricted to protecting only extant territorial structures and the corollary of that, namely, territorial federation, but could also be used in the defence of guilds, estates and other intermediary structures. [37].

Fourth, contrary to the Unitarians, Federalists asserted a form of patriotism which disputed the liberal nationalists' claim to be the sole guardians of the national spirit. Federalists conceived of patriotism as predicated upon local and cantonal loyalties and felt pride in localism.

A fifth important feature of Swiss federalism in this early nineteenth century period was that it was organic, positing society as a series of natural communities. The cornerstone of society was the family. Thus Monneron (1800, 26) defines the people as "the nation at the hearth". Larger

structures were to be built upon, and in accordance with, the image of the family. They were to remain small enough to enable one to retain an overview and maintain personal relationships. Like individuals, they were also to enjoy full sovereignty in their own areas of competence and the whole was to be built from the bottom up. Not unexpectedly, Rousseau was often used in this context for the general principles he articulated about the primacy of local communities and their unique civilising function [38].

Having outlined the major features common to early nineteenth century Swiss federalism, there now follows a more detailed consideration of the writings of one of the Federalists already cited, namely Monneron, a French-speaking Protestant pastor from Waadt. Monneron's federalism (1800) contains the elements just identified as characteristic of conservative federalism. His scepticism about the existence of a wholly rational man is manifested in his assertion (1800,75) that, while in theory man should make rational political decisions,

he who looks at experience and who takes into account human passions, is not very content with this logic; and moreover, he [i.e. the allegedly rational citizen] is full of the principle, the need for good laws, but refuses the consequences this demands. [39]

Monneron's faith in tradition is also evident. Thus he asks rhetorically (1800,18) "Why does one not want to recognise that history is an infinitely surer guide than theories, and experience a better source of instruction than constitutional principles?". He also shares with fellow Federalists a rejection of the Unitarians' approach to patriotism. For Monneron, proper and natural patriotism is to

be found in everyone recognising his own place and the place of his neighbour in the social and political whole, and in being committed with love and sacrifice to one's own canton. "Local structures, individual relations, the conveniences of the individual are surely ... the surest guarantors of patriotism" (1800,132). On the other hand, one should not confuse this support for local loyalties with an irrational traditionalism. Monneron proposes that cantonal boundaries should be redrawn so that they have the same number of inhabitants and that this balance should be recreated every fifty years (1800,96 & 117f) [40].

Monneron is one of the most profound exponents of Swiss federalism in the 1798 to 1803 period, though there has been some disagreement about his intentions and significance. Some believe him to have been writing in support of an interstate federation, while others see the prime significance of his work to lie in his advocacy of the application of an American-style federal state to Switzerland. A third view is that Monneron is advancing nothing less than a new theory of the state, aspects of which have much in common with contemporary Christian social theory and, in particular, with its principle of "subsidiarity" [41].

He is singled out here for a number of reasons. First, his writings constitute one of the most articulate and well developed examples of conservative federalism. While this makes him less than typical of the body of conservative federalism of his day, that atypicality is more than compensated for by the the second reason for his inclusion in this thesis. Monneron's writings were very influential; many of his arguments were to be articulated and developed further

in later conservative federalism. It has also been suggested (His, 1920, 88f) that Napoleon's decision to replace the unitary Helvetic Republic by the Mediation was influenced by his reading of Monneron .

Though Monneron's federalism is conservative, the political situation of Swiss conservatives during the Helvetic Republic means that it cannot be based upon the kind of positivism Puetter employed, for that would necessitate an acceptance of the extant unitary state. Instead, Monneron's federalism is a good example of conservative federalism predicated upon an alternative natural law theory to that of the liberal unitarians. For Monneron, all states ought to be organised in accordance with the higher values of law, morality and religion and he sees this as possible only in a state created from the bottom up with the building-blocks of citizen, communes, cantons and the republic. The principle he seeks to have established regarding the division of authority between these levels is (1800, 41) that which says that higher associations are only entitled to fulfil those duties for which the lesser have proved themselves inadequate. Indeed, he describes the process by which individual families and the individual communes came to unite as a federalising process (1800, 42). This sounds very familiar to some of the ideas of Althusius, a correspondence which might be related to the fact that Monneron is aware of the former's work, as a reference to it indicates (1800, 27).

Thus Monneron's federalism is advanced not only as an instrumental expedient, but as a basic principle of political and social organisation, "one of the pillars ..." on which

the state rests (1800,41f). He says

Some families live dispersed, within separate territories, their mutual needs unite them in a common interest, this federal process makes them into a commune. Certain communes place some of their interests together and the federal process makes of these a canton.

He then (1800,42) asks rhetorically:

Why stop its beneficent march here? Could [sic federation] not bring to the higher levels of the social order the advantages that the primary associations derive from it? May familial liberty have no limits other than those specified by the commune; may the liberty of the commune only be constrained by the interest of the canton; finally, may the canton only give up that part of its independence which the general well-being of the country requires it to sacrifice: This, it appears to me, provides the greatest amount of liberty which a wise people can desire to possess.

Monneron is adamant that federation ought not to be associated with political reaction, arguing (1800,40) by reference to a range of examples, that it is a proven "bastion of liberty" and a scourge of tyranny. He (1800,49) quotes Montesquieu's assertion that federation provides a means of combining individual and local freedom with national security. He is full of his admiration of the United States experience, though his knowledge thereof appears to be dated [42].

Monneron's proposed Swiss federation is to have a "Council of State" with two deputies per canton. The Chamber is to be presided over in turn by one of two chairmen ("Landamann"), elected by the cantons and. Federal executive authority is to be exercised by senates, though it is not clear whether these are to be additional to those that already exist in in the cantons (1800,110-13). He says the following (1800,85) of the division of powers between the

centre and the cantons ("provinces");

What part ought to be left to the provinces in the division of sovereign authority? Everything they need in order to successfully take care of the details of internal administration. And the part that ought to be accorded to the state? That measure of power appropriate for it to fulfill the task entrusted to it: the security and the preservation of the whole. The latter seeks to ... avert external dangers; the former [ie the powers left to the provinces] seek to ensure that the individual does not get lost in the multitude, and establishes good internal order. Their power, determined clearly enough by the nature of their functions, ought thus to be proportionate to their importance and their goal ... (1800,109) The freedom of a canton is limited only by the interest of other cantons, that of a commune not by the interest of other communes, that of the individual only by the welfare of the whole.

In short, both the cantons and the centre are to remain sovereign. As Monneron (1800:113-19) puts it, "I envisage a single republic, which is nonetheless federal". What this means is considerably more military, political and economic centralisation than existed before 1798. Apart from the usual powers over peace and war and the monopoly over foreign treaties, the central power is to supervise military matters via a "chef du departement" and a "Commissaire Inspecteur" located in each canton. Redrawing cantonal boundaries every fifty years is also to be undertaken by the Council of State. Monneron also invests the central authority with powers in a range of economic matters, including regulating a common monetary system, tolls and common weights and measures. Finally, he talks about two commissioners being appointed by each canton to regulate political rights and duties, albeit in an unspecified manner.

On balance, it appears Monneron is advocating for Switzerland an intrastate-territorial federation

characterised by what Hugo termed "double rule" (see 2.2. above). But Monneron's federalism does more. Federation is prescribed not only for the Swiss state, but also (1800,41) as a general principle of social and political organisation, which he is keen to see adopted in all states. In other words, Monneron's federalism envisages not only an intrastate-territorial federation, but also sub-state federations of families, and of communes. Finally, Monneron's federalism, though conservative, is definitely not reactionary. Instead, it is imbued with a moderate form of rationalism and Monneron can thus perhaps best be classified as what Epstein (1966,7f) refers to as a "reform conservative".

The last conservative exponent of federalism to be examined here is Karl Ludwig Haller, who was a member of a previous ruling family of Bernese patricians and has a reputation as one of the most strident of reactionaries. His later views do indeed deserve this label, but since they were articulated most forcefully only after 1815, they will be considered in Chapter 5. This section will focus on the federalism in Haller's earlier political writings. These do not merit the description "reactionary". We shall look at three of his works in particular. The first is a draft constitution for Berne, published in March 1798 (Hilty, 1896a), but never implemented, because of the French invasion. The second is Haller's 1799 draft Swiss federal constitution (Haller, 1801, 553-84 & Amtliche Sammlung, 1892, 4, 1268-81) and the third his 1801 ideas on what - in view of the Austrian army's retreat from Switzerland and the concomitant consolidation of French rule - was then the most appropriate Swiss constitution (Haller, 1801, esp. 520-43).

The significance of the 1798 draft constitution for Berne has been claimed to be twofold (Hilty, 1896a, 190f). First, it has been described as one of the earliest complete liberal draft cantonal constitutions. Second, it has been labelled the first ever such draft predicated upon the assumption of a Swiss federal state. Its liberality is very qualified. Haller's preamble (Hilty, 1896a, 271) states that the draft is to be subjected to a popular referendum, and speaks about "the abolition of all previous privileges of birth, inequality of rights and titles denoting these". There are some liberal provisions, such as the freedoms of speech and the press (Hilty, 1896a, 273). However, examination of all 259 articles leaves no doubt that the structures proposed restrict political rights to a small and closed group [43]. One might conclude that at this stage in the development of his political views, Haller is neither a liberal, nor the reactionary he is later to become. Since the draft constitution amounts to an extension of the political rights that currently existed in Berne, one could conclude that Haller's proposals are an example of reformist conservatism, albeit with a more pronounced conservative flavour than Monneron.

This is interesting in view of Hilty's second assertion, namely that this was the first ever draft cantonal constitution predicated upon the assumption of a Swiss federal state. Whether it really was the first is beyond our ability to judge and ultimately not significant for this thesis. However, whether it was based upon the idea of Berne being a constituent unit of a Swiss federal state is

relevant, for if so, that would mean that a conservative federalist was advocating intrastate federation. Article 216 of the draft (Hilty, 1896a, 336) states the following:

Conditional upon the will of the majority [sic of cantonal plenipotentiaries at a National Congress] the previous union will be reformed more closely and tightly, the previous dependencies - in accordance with their own wishes - will either be raised to independent states, or joined to adjacent independent republics, ... or else the whole of Switzerland will be united into a single republic under its own legislative and administrative structures.

The significance of this article is clear. Haller's draft is written on the assumption that Berne is to be a member of a Swiss federation. Moreover, he is clearly prepared to countenance both an interstate federation and an intrastate federation.

However, the French invasion put paid to both options. By 1799, the situation has changed again, with French forces seemingly facing defeat by conservative Austria. Haller thereupon unites with other conservatives to compile a rough first draft of a Swiss federal constitution [44]. In the introduction, Haller says the draft is based upon a widespread desire for the recreation of separate cantons with their own constitutions. On the other hand, the old Confederation's lack of an effective central authority, means that its external unity had been nominal rather than real. The majority could not force decisions and even unanimous decisions, were not implementable. Haller (1799, 1269) concludes that all insightful Swiss statesmen recognise it to be necessary

that in the likely event of its reconstruction, this old confederation (Staatenbund) would have to be bound together somewhat more firmly ... and thus a more-or-less permanent confederal Federal

Council be set up to represent the whole of Switzerland externally, to guarantee every part of Switzerland the advantages of the common union, to maintain justice between all internally, to defend the right of all against outsiders, to conduct the forces of the whole federation at times of internal danger or external attack, and even in normal times to execute the common will, and pursue common advantages.

Haller's 1799 draft therefore relates in the main to the composition, organisation and functioning of the proposed central authority (the Federal Council or "Bundes-Rath"). It is to comprise 17 cantonal deputies elected by and from cantonal governments, with one each for all 13 former cantons and for St. Gallen, Wallis and Graubunden - which are to be invited to join the confederation as full members - and one shared between Biel, Geneva, and Neuchatel and elected by them in rotation. The co-dominions are not to be raised to cantonal status, but become subject territories of the whole federation. Federal Council deputies' term of office is normally for life, but they may, at cantonal discretion, be appointed for a fixed term, or recalled.

The Federal Council appoints four standing committees, one each for the foreign, military, domestic and economic affairs. It also elects from its midst a President for life. He appoints a Secretary of State, who then proposes for the President's ratification four Under-Secretaries of State, who will each administer a standing committee. Reports are required from the latter prior to any important decisions.

"Since the creation of the Federal Council is in no way meant to impinge upon the separate existence, constitution and government of the cantons, ... its powers are to be limited ..." (1799,1271). They include first, the conduct of only those aspects of foreign affairs that are common to all

cantons, such as the negotiation of treaties and alliances and declaration and conduct of war; second, protecting the constitution and government of each canton and intervening militarily in their support only when so requested by them; third, arbitration between cantons; fourth, administration of the co-dominions and of common confederal property, and fifth, the creation, supervision and supply of a confederal army. Haller (1799,1271f) says that in the promotion of the general welfare of the federation, the Federal Council may legislate on other matters such as ending barriers to the transport of foodstuffs, promoting intercantonal co-operation in police and judicial affairs, introducing common coinage, weights and measures, but stresses that all such legislation requires the consent of the relevant cantons (1799,1271f).

The cantons are thus to remain sovereign and may only be coerced to fulfil their federal constitutional obligations in times of external threat to the federation. Otherwise, the final sanction available to the Federal Council is limited to expulsion (1799,1275f). The centre's fiscal powers remain limited; cantons determine the size of their own financial contributions (1799,1276ff). Constitutional revision may be debated only every 25 years and required a 2/3 majority (1799,1281).

What Haller's proposals amount to is an interstate federation of sovereign territorial units for the limited common purposes of external and internal protection. Overall, the plan is clearly designed to resurrect, in modified form, the conservative cantonal political structures of the pre-1798 system though it does contain a few proposals for

modest liberalisation. In this 1799 draft, Haller is one of the first writers of the Helvetic Republic to criticise the shortcomings of the old Confederation and to argue for a closer union of the cantons to enable the federation to fulfil its purpose. However, there is no evidence that Haller is still prepared to countenance what a year earlier his draft constitution for Berne had considered possible, namely, a Swiss intrastate federation.

Yet two years later, with Austria defeated by France, Haller recognises the need to come to terms with the likely persistence of a united Switzerland, arguing that one has to "accept that conditions are no longer the same ... and proceed on the basis of the possible and what exists" (1801 523f). What this means is another radical shift in Haller's federalism. He now (1801,523) speaks not of a constitution, but of a "Peace Treaty". This covers three broad areas, dealt with in three "articles": the structure and function of central and cantonal government; the internal cantonal political structures; and policy areas. We shall take these in turn.

While in 1799 he argued for Swiss political reconstruction via the cantonal governments, the first "article" of Haller's Peace Treaty (1801,538f) now allocates this task to the central power. Nor is this purely a procedural nicety, for

There is to be or remain in Switzerland only one supreme government and none other that is completely independent; it will exclusively administer all common matters, and even more matters are to be entrusted to it than is appropriate in the spirit of the old Confederation, or in the nature of a strict union of free states; In the interests of peace, ... that is essential (1801,524)

The supreme government ... , as it were the sovereign for the whole of Switzerland, could

... proceed from the current government; when it is at last better composed, has expanded to include more members, drafted its own constitution and reserved to itself certain taxes or incomes, it would, under a President, constitute the first Swiss Council of State. (1801,527)

In other words, Switzerland is no longer to be an interstate federation. Central government powers are no longer to be limited to foreign relations and internal security and arbitration.

It can, without misgivings, be given other powers such as, for example, coinage, exclusive powers over conscription, public monopolies, the setting up of institutions for general welfare, ... and more powers of coercion over the cantons ... (1801,541f)

Of the the cantons themselves, Haller (1801,526) now says:

each canton receives back, even if not sovereignty, at least its own existence and a constitution appropriate to its own needs and commensurate with its customs, as well as its own property, incomes and rights. Thereby it constitutes a part of the whole, but also a whole in itself and can pursue its own welfare on the basis of its own judgement.

Largely under the rubric of the second "article" of the Peace Treaty, Haller (1801,530-5, but cf 526f also) makes a number of suggestions about the internal political structure and operation of the cantons. What these amount to (Haller, 1801,530f) is an appeal to the central government for a

just and tolerable accommodation between the very numerous old ruling class and those who have now achieved power ... [sic The latter] have retained their claims - if not for sovereignty - at least for existence and private property. Without a just settlement, they are bound to remain sworn enemies of the new system

There follows (1801,532f) a rationalisation of why the previous ruling class be entrusted with ruling the cantons under the new system and an offer to co-opt into the ruling class all those previously excluded, but who have demonstrated

their abilities. He also (1801,534) calls for restoration to the cities of their "rightful property, lands and incomes, even where these lie beyond the city walls", or at worst compensation. In "article three" Haller (1801,535-8) makes further suggestions, which amount to an appeal to defend or restore the rights of the propertied classes. Despite this wealth of suggestions and tough sounding statements, it is clear that Haller realises that conservatives are in no position to determine even the internal political structures of the cantons. Lest anyone should be left in any doubt, he makes plain that the status he is proposing for the canton is very different from that which he advocated in 1799. Their constitutions, "which would now be merely a type of provincial constitution" would have to be submitted to central government for ratification (1801,539).

So in 1801, under the pressure of circumstances, Haller's federalism advocates the construction of a much more tightly united Switzerland than in 1799. The codominions are given independent cantonal status, though cantons are no longer sovereign states. The central authority is entitled to use coercion to force cantons to fulfil their obligations, and also has much wider fiscal powers. There are a number of aspects that remain uncertain. For example, Haller (1801,541) leaves open the question of how and indeed of whether cantons are formally represented in the centre.

He tentatively proposes (1801,527-30) that the new state be called "Switzerland" or the "Republic of Switzerland", but finds it difficult to come to any conclusion about the nature of the governmental system he has outlined. He says (1801, 529) that it would be neither a federal system - since it is

not composed of independent states - nor a unitary system. He concludes that Switzerland would merely become "that which under present circumstances is possible and desirable, namely, endowed with a simple, natural order, which unites all parts for communal purposes under a single head". Yet in a footnote (1801,529f) he goes on to say:

Inasmuch as one understands a federal system to mean simply diversity and appropriate differences, this exists in all states and is for all that compatible with reasonable unity, whether it goes under the title federation (Bund) or supreme authority (Oberherrschaft). ... the essential difference between supporters of the so-called unitary system and the so-called federal system (Verbuendungssystem) lies merely in the fact that the former proceed from the assumption of ... the existing unity and thereafter permit the cantons certain rights, while the latter group proceed from the pre-existence of the separate parts and then concede certain rights to the general government in order to enable an appropriate unity of the whole. Since we are talking here just about a matter of degree and preambles are in the final analysis irrelevant, one can see that freedom ... would be accomplishable if one engaged in realities more and argued with words less.

Though Haller (1801,529,) is obviously reluctant to conceive of unions other than the interstate variety as federations and thus hesitates to term the system he has outlined a federation, his proposals would have created an intrastate, territorial federation such as emerged in 1803 with the Mediation. Perhaps the extant conflict between Federalists and Unitarians was yet too severe for him fully to accept the concept of a possible mid-way solution between a federation of sovereign states and the unitary state. However, in practice that is precisely what he had advocated. Paradoxically, the later arch reactionary was in 1801 articulating a federalism that was very similar to the

compromise formula of the Mediation.

The sharp political cleavage during the Helvetic Republic between Federalists and outright Unitarians was considerably attenuated during the Mediation, which both sides regarded as an advance, only to flare up again in 1813. Interestingly, both groups now availed themselves of federalism. While this was to be expected from the conservatives, it is worth noting that the tenor of that federalism had altered. It was now increasingly less rational and more outspokenly conservative, or even reactionary. This change was to become more pronounced in the 1815 to 1848 period - and especially after 1830 - as conservatism came to be politically on the defensive (see Chapter 5 below).

The final task of this section will be to examine the paradoxical conversion of erstwhile Unitarians to federalism. Foremost amongst the reasons for this were the political exigencies the liberal Unitarians faced. The Mediation had re-established cantonal autonomy and elevated to the status of full cantons previous dependencies such as Aargau and Waadt, which had come to be in the vanguard of Swiss liberalism. Some Unitarians therefore came to value cantonal independence, since this provided them with a political base from which to realise their liberal aspirations [45].

The downfall of Napoleon brought about two threats to the liberals. First, they increasingly saw themselves dependent upon the good will of the victorious allies, whose opposition to the rationalist principles of the liberal Enlightenment was beyond doubt. A second but similar threat came from the more self-confident Swiss conservatives, many of whom began to call for a return to the pre-1798 conditions. The demand

by Berne for the re-establishment not only of its old aristocratic constitution, but also of its rights over its previous dependencies of Aargau and Waadt, was the catalyst for a new constitutional struggle. Aargau and Waadt liberals were naturally vehemently opposed to losing their newfound cantonal status and with it the liberal political and social rights they had managed to establish.

Accordingly, the real issue underlying the constitutional debates of 1813-15 was, as Nabholz (1918,22f) states, primarily whether aristocratic and unequal structures of the pre-revolutionary system should be restored, or the liberal advances retained. The various constitutional prescriptions have to be seen as means to these rival ends. That liberal nationalists changed from being outright opponents of even intrastate federation, to advocates of the establishment of the interstate federation of 1815, is therefore not the contradiction it seems, but is the direct consequence of their radically altered political situation and thus also their political strategy.

As Wild (1966,62f) concludes, though the Federal Pact has often been presented as a bulwark of conservatism, it was at the time seen as a compromise; the goals of both the liberals and the conservatives appeared to be best achieved by means of such a federation. Thus for their part, the conservatives achieved the restoration of old cantonal and aristocratic rights, albeit at the cost of recognising the principle of the equality of the territorial units of the federation. The advantage of the Federal Pact for the previous subject territories was that it gave them the status of full members

of the Confederation, which meant that their internal political independence was now just as much guaranteed as that of the conservative cantons. Despite being primarily liberal cantons, these ex-dependencies were from 1815 therefore just as entitled as the conservative cantons to maintain their political principles and practices. Though the cost of these new-found rights was that the liberals had to give up their demands for immediate liberalisation of the whole country, they were in due course able to use their cantonal strongholds as bases from which to launch the liberal "Regeneration" (see Chapters 4.2 and 6 below). It can thus be argued that in the long run, the post-1815 Swiss federation proved to be strategically less advantageous for the philosophically perhaps more committed conservatives, than for the liberals, whose commitment to federation was, at least initially, opportunist.

Since the liberals' conversion to federalism was principally based on tactical considerations and many retained their faith in the desirability of the unitary state as an ideal, it is hardly surprising that they were even less inclined than the conservatives to develop integrated theories in support of federation. Nor, since the Helvetic Republic was associated in the public mind with invasion, defeat and occupation by foreign armies, was there open advocacy of a return to a unitary system. Most liberals now limited their demands to a call for a return to the Mediation and greater centralisation was now proposed mainly in terms of its advantages for warding off external threats [46]. Though liberalism was undeniably on the defensive, a small proportion of the liberal federalism of this period

was still quite outspokenly liberal. One of the best examples is an 1814 essay by Escher and Usteri [47].

The pamphlet is directed at the victorious Allied governments, and particularly at the German states and constitutes an attempt to influence their deliberations about the future shape of the Swiss federation. Escher and Usteri argue that it is in the long-term interests of the Allies to ensure that the Swiss federation not be composed, as Swiss conservative federalists wish, of aristocratically governed units. They contend that the majority of the people is for democratic structures and would, if Austria were to force the re-establishment of the pre-1798 aristocratic order, in due course mobilise against it. The Swiss would then naturally be driven into the arms of the French. In short, their argument (1814,11) is that only by ensuring that Switzerland receives a constitution corresponding to the liberal wishes of the Swiss people can stability be guaranteed .

Escher and Usteri (1814,12) propose a federation largely similar to the "Bundesstaat" set up by the Act of Mediation. They wish to return to its political equality and democratic structures, but advocate certain constitutional amendments. At the federal level, the government is to be equipped with sufficient military and diplomatic powers to enable it effectively to implement a policy of armed neutrality. There is also to be an extension of fiscal powers, in view of the need to finance the (unspecified) greater range of policies required of the federation as a whole. The pamphlet (1814,12-14) asserts that it is in the national interest for

cantonal constitutions to be obliged to conform to certain common constitutional principles such as political equality and popular government, though there is recognition of the utility of differences in the detailed provisions of each constitution, in order to permit the reflection of cantonal peculiarities.

Escher and Usteri (1814,7f & 14f) also address the issue of the place which Switzerland should assume in the new European states system to be established. They stress the importance of Switzerland's pursuit of a policy of armed neutrality, but interestingly also introduce the idea of Switzerland joining a federation with Germany. The nature of that federation is not fully developed. There is a proposal that Switzerland unite its military strength with the German Staatenbund, which might amount to not much more than a military alliance. However, there is then (1814,15) talk of a "free ... union of the strong ... Swiss Confederation with the German Bundesstaat". The reasons advanced for the federal union include that it would allow Switzerland to return to its "original fatherland" (1814,14). However, it is difficult to judge from the pamphlet whether the proposal was meant seriously, or is an example of a deferential attitude to the German members of the Allied powers, with a view to enhancing the prospects of the decision regarding the future Swiss constitution being favourable to the ideas of the authors.

To sum up, Escher and Usteri's federalism envisages Switzerland as an intrastate federation of the existing cantonal units, possibly as part of a greater German interstate federation. The proposers are clearly motivated by nationalism, as well as by a commitment to liberalism. Thus

the appeal starts with a quote accusing counterrevolution of constituting a narrow, base approach which puts family or guild prerogatives before municipal interests, places city interests prior to those of the canton and neglects to take into account the honour and well-being of the fatherland and the essential sense of patriotic community (1814, title page). The pamphlet's commitments to political equality, popular and constitutional government (1814, 14) and its affirmation of the principle of no taxation without representation (1814, 10) all indicate that its federalism is motivated by a desire to promote political liberalism.

Escher and Usteri's willingness to be candid about their liberal aspirations makes their federalism different from that of most of their liberal contemporaries. Most liberal federalism was much more disingenuous. A good example is that of Rengger, previously one of the most radical of Unitarians and the holder of high public office in the Helvetic Republic. His pamphlet was motivated by his opposition to Berne's demands for the restoration of its rule over Aargau and Thurgau, and most of it is devoted to this dispute (1814, 15-55). Not surprisingly, Rengger concludes that these cantons should not resume the status of Bernese dependencies.

Rengger's federalism is arguably at least as significant for what it does not say about the purpose of the Swiss federation - namely the preservation of liberal cantons - as for the arguments it actually advances (1814, 3-15). He states (1814, 4) that though the impending Great Powers' guarantee of Switzerland might appear to make a stronger central government unnecessary, it is shortsighted to base a constitution on

external guarantees. He considers it to be in both Swiss and Allied interest that the new constitution provide for greater Swiss unity and strength. Rengger (1814,6) says that the essential purpose of federation is external defence and the prime arguments he advances for more centralisation are thus of a military nature. He calls for greater central powers in military and foreign affairs and argues the logical corollary of this to be greater financial resources for the centre. To achieve this, he proposes (1814,7-9) that coinage and postage become federal matters.

Rengger (1814,5 & 12) advocates the construction of a federation broadly similar to that of the Mediation and in any event no more centralised than the United States. The Diet is to remain the federation's legislative body and the executive is to be located in a Federal Council elected in rotation by the cantons. One of the few occasions on which Rengger allows his liberal political convictions to become visible is when he opposes Diet instruction voting (1814,9f) on the grounds that this prevents free debate and hence militates against the most rational decision being reached.

Aware that any centralisation will be resisted by the small, conservative cantons, he argues that they will not suffer from greater centralisation, but will in fact benefit disproportionately. Accordingly, he asserts (1814,9) that

Whatever the boundaries of the federal authority might be, it must be independent regarding all matters within that boundary and what it decides must be binding for the cantons and not require their assent. The cantons must relinquish a part of their sovereignty in order to exercise the rest more securely.

It is clear from the pamphlet that Rengger is not too optimistic about the conservative cantons accepting his

proposals for a more centralised federation. Accordingly, he argues (1814,15) that the worst solution would be a mixed constitution (i.e. one which tried to accommodate both interstate and intrastate structures) and so if there is no agreement on establishing what he considers an adequate federal power, Rengger prefers the Swiss to revert to "pure federalism" [sic federation], where "... every canton remains in full possession of its autonomy. Then at least some ... will be able to conduct a wise ... administration; ...". The weaker central authority would be located in the hands of a single directoral canton (1814,16), and in times of danger, the common fatherland would have to rely upon the "benevolent protection" of a "higher destiny" (1814,15).

In short, Rengger would prefer to see Switzerland as an intrastate federation of territorial units with liberal constitutions and pursuing liberal policies. However, recognising that this is an unrealistic aspiration in the existing political climate, he restricts himself to calling for greater centralisation for military reasons and does not make any stipulations about liberal constitutionalism and popular political rights, though his commitment to these is implicit in his attack upon conservative and aristocratic Berne. Indeed, Rengger argues that if it proves impossible to have the kind of minimal intrastate federation he has outlined, it would be best to revert to an interstate federation. The reasons for this are clear, for he is keen that the few liberal cantons not be faced with a strong conservative federal authority which can intervene to stop cantonal liberalisation.

Like Rengger, most liberals were less concerned with the structures of the new Bund, than with the preservation of the new cantons and political and social rights. They would have preferred the latter to have been guaranteed for all Swiss in the context of a nation-state. However, this never looked likely to be forthcoming. Moreover, had a single Swiss state based upon popular sovereignty been established at that time, the likelihood is that it would have returned a conservative central government. This explains why liberals not only advocated federation, but why the federation they sought was to guarantee the most extensive cantonal rights of self-determination regarding internal matters.

Since the Federal Pact provided for precisely such cantonal sovereignty over internal matters, whilst extending military centralisation, it is obvious why some conservatives could regard the Pact as a capitulation in favour of the liberals. Nonetheless, this provides an interesting paradox, since at the very beginning of the century, it was liberal Unitarians such as Kuhn (1800) who had held federation to be a betrayal of their cause to the advantage of conservative forces. However, to pursue this further at this point would be to venture into the material of Chapter 5, before which this thesis must still summarise the developments in Germanic federalism up to the Congress of Vienna.

3.4. SUMMARY AND CONCLUSIONS

In Chapter 1, it was stated that the prime aim of this chapter was to identify the dimensions of Germanic federalism articulated during the revolutionary Napoleonic period, but

that it would also be concerned to illustrate the political uses made of that federalism. Having completed our analysis of Germanic federalism from the 1790s until 1815, the intention in these concluding remarks is twofold. First, we shall summarise our findings regarding the nature of Germanic federalism in the period under discussion. Second, we shall emphasise its political usage.

When considering the findings of this chapter regarding the nature of Germanic federalism from the 1790s until 1815, three aspects will be mentioned. These are first, the types, or "dimensions" of federalism it contained, second, the manner in which they were articulated and third, how the various contributors to Germanic federalism distinguished between federations.

As regards the first of these factors, the preceding account has shown that from the 1790s to 1815, four of the five dimensions previously identified in this thesis as constituting the tradition of early Germanic federalism (see Figure 1 above) were articulated. Of these, the intrastate-confederal type was discussed most frequently. Given the nature of the pre-1798 Swiss federation and the Mediation constitution, as well as of the Reich and the Rheinbund, it is hardly surprising that all the federalisms covered included references to confederation. Despite the at times confusing variety of terminology used in the literature, this chapter has been able to show that intrastate-territorial federation was also widely mentioned. With the exception of Swiss Unitarists such as Kuhn and possibly Fichte, all the federalisms we have examined conceived of intrastate-territorial federation. On the other hand, though they too

continued to be articulated, the remaining two types of federation were not widely referred to. The federalism we have termed intrastate-imperial was predictably not advanced in republican Switzerland, but in only in Germany (eg. Goerres). Finally interstate-chiliastic federalism was also present, as the writings of Fichte and Behr indicate.

The second aspect of Germanic federalism during the revolutionary Napoleonic period which these concluding comments will address concerns the manner in which it was expressed. As has been shown in considerable detail, Germanic federalism was articulated in a wide range of different registers and at different intellectual levels. Amongst the liberals who referred to federation, the language employed ranges from the legalistic pragmatism of Zachariae, through the guarded, almost disingenuous, federalism of Rengger, to to the polemic opposition to federation by Swiss Unitarians such as Kuhn and the transcendental idealism of Fichte. For their part, conservatives also varied considerably in the manner in which they expressed their federalism. The positivism of Leist defends the status quo in a federalism characterised by a dry, measured legalism. Meanwhile, reactionary conservatives such as Goerres put forward their federalism in an emotive and mystical Romantic historicism which frequently defies comprehension. On the other hand, Monneron articulates his federalism in the moderately rational language of a reformist conservative.

Federalism was utilised in both countries for the classification of previous and extant federations, as well as for the prescription of new federations. Before looking at

the latter aspect, this summary of the findings of this chapter concerning Germanic federalism will conclude by recalling the manner in which the exponents of Germanic federalism distinguished between the different types of federation they considered [48].

In Germany and as in Switzerland, the main focus of the empirical debate was of course the political structures of their respective federations, which changed considerably during the relevant period. With the notable exception of Zachariae, who held the Reich to have been merely an interstate confederation, most students of German imperial law (Brie, 1874, 28ff) adopted Puetter's classification (as repeated by Leist), to the effect that the Reich was an intrastate federation. Almost all serious students of the Rheinbund quickly concluded that the latter was unquestionably an interstate confederation. In Switzerland, there was little doubt about the nature of either the pre-1798 confederation, or the unitary Helvetic Republic, though there were debates over the nature of the intrastate federation established by the Mediation constitution.

In view of this shared background of rapid change between interstate and intrastate federation, it is not surprising that both the attempts by Germanic federalism to classify federations, and the disputes as to the nature of the most appropriate federation centred on the distinction between interstate confederations and intrastate-territorial federations. Though there are some differences in how this was done by German and Swiss federalisms [49], the criteria employed were analagous. They related in the main to three issues.

One important issue was the extent of the central authority's power. The exercise by the central authority of coercion against the constituent units of the federation was widely considered characteristic of both simple states and intrastate federations, but incompatible with interstate federation. However, there was some disagreement as to whether intrastate federations could legitimately interfere in the internal affairs of their constituent territorial units of rule. A second issue was the nature of the central federal authority. Germany's *monarchical* tradition caused some German exponents of federalism to argue that where central authority was embodied in a human being, the union was a state, federal or otherwise. By contrast, interstate federations were deemed to be distinguished by the absence of such a person. In republican Switzerland, this second issue was reflected in, for example, the discussion on whether the central authority was permanent, or (as in the case of the Vorort), rotated.

The third major criterion used by Germanic federalism to distinguish between interstate and intrastate federations related to their formal purposes. Most writers agreed that the formal purposes of interstate federations were limited to security from external threat. However, there was disagreement over the purposes of intrastate federations as compared to simple states. The latter were held to have the extensive purpose of guaranteeing all internal rights, including those of both individual subjects and of corporate actors. Attempts to apply this principle to intrastate federations naturally led to the above mentioned issue of the permissible extent of

central authority intervention in constituent states of such federations. This chapter has also shown that national unity increasingly came to be seen as an important purpose of federation. While Behr argues that this can only be achieved through an interstate federation, that was not a widely held opinion. Indeed, national unity was increasingly held to require at the very least an intrastate federation. This view, visible in the federalism of Schleiermacher and defended most vehemently by Goerres, was to become ever more important during 1815 to 1850, as will be demonstrated in Part 3 of this thesis.

This brings us to the second of the matters to be covered in this concluding section: the political use made of federalism. Chapter 1 outlined the hypothesis of Riker (1964 & 1975) regarding the allegedly universal applicability of "military" and "expansionist" considerations as the prime motivations for federation. As has just been conceded in these concluding remarks, during the period covered by this chapter, most German and Swiss writers on confederation argued that its formal purpose was indeed limited to external security. It therefore appears that the first part of Riker's hypotheses is valid, at least as regards the formal purposes of confederations. Moreover, this chapter has also identified federalisms (eg that of Goerres) which were motivated, at least in part, by expansionism.

On the other hand, however, one of the major findings of this chapter's detailed consideration of the substance and motivations of Germanic federalism up to 1815 has been that behind its various Swiss and German manifestations were objectives additional to the aims formally ascribed to the

relevant federations. Moreover, that examination demonstrates beyond any doubt that while military or security considerations were often a factor, they did not always apply and were certainly not the prime motivation of Germanic federalisms. Instead, this chapter has shown that the federalisms must be understood as contributions to political debates. They were used in those debates to advance political causes. At times, those political causes related to, for example, political institutions or political rights, at other times, they concerned religious, or socio-economic ends. The consistent factor, however, is that the form and substance of the various federalisms were designed to promote a political cause. Put another way, federalism was used as a political ideology. The political and instrumental nature of federalism is indicated not least by three factors: the language in which it was spelled out, the nature of the federations it proposed and the tactical shifts in those proposals.

Let us take these factors in turn. Sections 3.2 and 3.3 of this chapter showed that the very language employed by an early nineteenth century Germanic federalism usually clearly signalled where it stood in the contemporary philosophical and political dispute between revolutionary ideas of universal natural rights and the equality of man on the one hand and the conservative values of tradition and hierarchy on the other. In Switzerland, the prime role which federalism initially assumed was that of countering the notion that pure reason was the most appropriate principle for the organisation of political life. In place of the logical corollary of this viewpoint, namely, that there ought to be

uniform subordination to the will of the majority, Swiss conservatives used federalism as part of their assertion of the imperfection of man and the value of tradition, diversity and of intermediate structures between the individual and a potentially absolutist majoritarian will. By contrast, from the very start of the period under discussion, federalism was used in Germany by both the parties to the philosophical debate. For example, in his Science of Rights, Fichte advances an interstate-chiliastic federation as a means of achieving the rule of reason in the world, while Goerres uses a federalism laced with a mystical historicism to argue that man is incapable of recreating society by dint of his reason and should instead rely upon tradition and intuition. Even in cases such as those of Goerres and Fichte, however, where Germanic federalism was articulated in the most abstract terms, one should not be led to the conclusion that pure and politically disinterested philosophical considerations were the most important factor underlying federalism. Instead, the language of the federalisms is at best understood as an indicator of political interests.

The second factor of the federalisms covered that suggests their political use is the nature of the proposed federations themselves. Some of the federalisms we have covered are manifestly intended to promote one or other of the political visions of the time. For example, Fichte's interstate-chiliastic federalism is as undeniably designed to realise in its various component states the principles of the liberal Enlightenment, as the federalism of Goerres is intended to counter them. There are other federalisms, of course, which appear prima facie not to be politically

motivated, since the formal purposes they ascribe to their proposed federations appear to be apolitical. However, detailed investigation shows that those federations are also intended to realise the type of society that corresponds to the political preferences of the writer. Examples include the liberal federalism of Behr in Germany and the conservative federalism of Haller in Switzerland.

The third factor that demonstrates the political usage of federalism is the way in which some of its exponents change their prescriptions for reasons that can only be explained by reference to considerations of political strategy. This has been demonstrated by reference to both conservatives and liberals. Germanic federalism was used in Switzerland and in Germany by all three types of conservative identified by Epstein (1966,7-11): defenders of the status quo, reformist and reactionary. An example of the use of federalism by the first type would be the positivist approach of Leist. However, positivism was as inappropriate for German conservatives after 1806, as it was for Swiss conservatives during the Helvetic Republic, since in both cases, positive law did not accord with their interests. In view of the dominance in the Helvetic Republic of rationalism, it was reformist conservatism, which adopted at least some of the assumptions of the new order, that stood the best chance of political acceptance in Switzerland. The federalism of Monneron is perhaps the best example of this genre. The stridently reactionary conservatism evident in Haller's later federalism (see 5.3.2. below) was not pronounced in Switzerland during the 1798-1815 period. Even Haller himself was willing to make

concessions then.

In Germany also, there were some conservatives (eg. Schleiermacher) imbued with a rationalist streak, but others (eg. Berg) who were at a loss concerning what to prescribe for Germany. On the other hand, among reactionary conservative elements of German Romanticism there were those such as Goerres who repented by articulating an alternative political theory, which called for a return to mediaeval values through an intrastate-imperial federation modelled upon the pre-Reformation Holy Roman Empire.

Of the three conservative uses of federalism mentioned (ie reactionary, status quo and reformist), the reactionary conservatism evinced in the writings of Goerres and the later Haller was to become the most important during the next thirty years, and especially after 1830, when both in Germany and Switzerland conservatives gradually came to replace liberal nationalists on the political defensive. That is not to say that status quo and reformist conservatism were not also to be important. As will be shown in Chapter 5 below, they were important both in Switzerland and in the in the German Bund.

The clearest example provided by this chapter of the instrumental use of federalism in the period up to 1815 relates to the case of the Swiss liberals [50]. It will be recalled that though at the beginning of century, federation had been an anathema for them, by 1815 they had come to support it. As was shown in section 3.3. above, That volte face was intimately linked to their political situation. Though their change of heart was in part a product of reflection and inner conversion (Wild, 1966,55), it was

mainly due to the fact that during the ten year Mediation, they had, as rulers of the more liberal cantons, come to appreciate the political^a utility of federation. The strategic advantage for those liberal cantons of having cantonal rights of political self-determination enshrined in the 1815 Federal Pact did not escape them. During the life of the Federal Pact (1815-1848) Swiss liberal federalism was to change from the rudimentary, opportunist type of the early part of the century. It gradually developed in a way that has allowed subsequent analyses to present liberalism and federation as inherently related. That is of course ironic, if one recalls the commitment of both Swiss and German liberal nationalists to the ideal of a unitary state. Alternatively, if one keeps in mind the party-political dimension, and analyses federalism as political ideology, it is less surprising. It then becomes clear that federalism is used for strategic reasons. As will be shown in Part 3, when liberalism gained the upper hand in Germany Switzerland, it was to become one of the greatest champions of federation.

This concluding section has now fulfilled its two self-appointed tasks. It has first summarised the findings of this chapter regarding the nature of the Germanic tradition of federalism during the 1790s to 1815 and has shown that Germanic federalism was in part the product of its philosophical milieu. From the 1790s to 1815, Germany and Switzerland were the crucible of radically opposed philosophies and this was inevitably reflected in Germanic federalism. Despite the in part genuine philosophical commitments of its expositors, however, the prime significance

of this ideational context for Germanic federalism is that it provided useful languages in which to rationalise the political advantages being sought by federalism. This leads us to the second point this conclusion has emphasised, namely, that federalism has to be regarded as the product primarily of its material, political environment, in which it played the role of a political ideology. Moreover, It has also been shown that the operation of the extant federations - be it the Reich or the Rheinbund in Germany, or the Mediation or the Federal Pact in Switzerland - itself influenced attitudes to federation, and one can thus see that the relationship between federalism and federation is not one in which one determines the other, but is symbiotic.

Having established these points, this chapter allows the thesis to shift its focus to a detailed discussion of that relationship, by an examination, in Part 3 of this thesis, of the interaction of federalism and federation in Germany and Switzerland between 1815 and 1850.

NOTES FOR CHAPTER 3

1. These were: intrastate-corporate, intrastate-imperial and intrastate-territorial federalism, as well as interstate-confederal and interstate-chiliastic, or interstate-universal federalism.

2. While the end of this revolutionary period can be dated reasonably precisely as 1815, its beginning is less easily determined. This helps explain why there is some overlap between the period covered in this chapter and the last. For example, Chapter 2 has already covered the 1795 federalism of Kant. However, such overlaps merely aid our presentation and in no way undermine the arguments presented in this chapter. Among the texts found most useful for section 3.1 of this chapter were the following: Aris (1936); Barraclough (1972); Bluntschli (1867 & 1875); Bonjour (1939 & 1948); Bonjour/Offler/Potter (1952); Bruckmueller, (1985); Duersteler (1911); Epstein (1966); Fehr (1939); Fleiner (1898, 1916 & 1918); Frei (1964); Gasser (1947); Gassner (1926); Gilliard (1955); Goerlich/Romanik (1977); Hertz (1975); Hilty (1896 & 1896a); His (1920); Holborn (1965); Im Hof (1981); Jaggi

(1948); Huber (1965); Institut fuer Oesterreichkunde (1963 & 1969); Kann (1974) Kleindel (n.d.); Krieger (1957); Lauber (1910); Ludwig (1911); Macartney (1969 & 1978); Meinecke (1928); Nabholz (1918); Nawiasky (1937); Poggi (1978); Rappard (1941 & 1948); Reiss (1955); Schefold (1966); Stettler (1847); Streisand (1961); Tripp (1940); Troxler (1838); Weiss (1984); Wild (1966) and Wolf (1925).

3. As was the case in Chapter 2, we will again be using the terms "German" and "Germany" to refer to the German Empire and hence this should be taken to include the territories of latterday Austria.

4. These were the Peace of Luneville of 1801, initially between France and Austria, but later also signed by the states of the German Empire, and the decisions made by the 1803 Reichsdeputationshauptausschuss (Main Committee of the Imperial Deputies) about how the agreed restructuring of much of the territory of Western Germany was to occur.

5. These were: the "First Helvetic Constitution" of 1798 to 1800, the "Second Helvetic Constitution" of July to September 1802 and the "Mediation Constitution" of 1803. The latter lasted until Napoleon's fall in 1813 and was formally replaced in 1815 by the "Federal Pact", negotiated via the Congress of Vienna. It is worth noting that the constitutions between 1798 and 1803 were never fully effective, since Swiss territory saw a number of hostilities in this period. For the texts of the constitutions that were implemented, as well as the official proposals that remained in draft form, see Troxler (1838).

6. The new cantons were Aargau, Thurgau, Waadt, Ticino, Graubuenden and St.Gallen. For details of the 1803 constitution see Rappard (1948,23-32).

7. There were of course many other exponents of Germanic federalism during this period, including Adam Mueller (1809) and Gentz (Puttkamer,1955,68-70), but it is not our intention to even attempt to provide an exhaustive account. For brief overviews of the contributors of this period, see Brie (1874, esp.32-41), Deuerlein (1972,66-70), Puttkammer (1955,59-84) and Mogi (1931,I,343-52), though the latter largely repeats Brie.

8. See Brie(1874,32ff,) who says that the term "Voelkerbund" was first used by Kant, and "Voelkerstaat" and "Staatenbund" first used by Zachariae (1804), while "Bundesstaat" came into use after the Rheinbund was set up.

9. See 3.1 above and footnote 4 also.

10. As far as the author is aware, Zachariae's 1807 publication has not been translated. Not being conversent with Latin, the author has had to rely upon Brie's brief discussion of the text (1874,36).

11. He uses the term "Voelker". Many authors of this period used the terms "Staat" and "Volk" as though they were

synonymous.

12. It is worthy of note that Behr does use the term Bundesstaat, which was later to become the concept used nearly universally within the German-speaking world to denote an interstate-territorial federation. However, he uses it not to refer to a federation as such, but merely to betoken the constituent states of the Rheinbund (eg 75).

13. Fichte's father was a ribbon weaver and Fichte owed his education to the philanthropy of a local aristocrat. For biographical information on Fichte, see for example Adamson (1908,8-104). The following account of Fichte's federalism is based upon a reading of the following primary sources: Fichte, 1796a; 1796b; 1800; 1806; 1807; 1808; 1808a and 1813, as well as of the following secondary sources: Adamson (1908); Aris (1936,106-35 & 345-60) Bluntschli (1867,349-87); Cairns (1949,464-502); Hertz (1975,esp.43-9); Meinecke (1928,93-127); Reiss (1955,esp.11-22) Russell (1961) and Vaughan (1939,94-143).

14. These are listed and discussed by Vaughan (1939,94f) and include his Science of Rights (1796 & 1796a), a natural law theory of the state which marks the first triumph of Napoleon Napoleon in Italy. A second treatise is his Closed Commercial State (1800), which is a plea for an autarchic German state and was written prior to the Continental Blockade. A third is Fichte's Addresses to the German Nation (1808 & 1808a), which presaged Germany's national uprising. All three are referred to in the following discussion.

15. Aris (1965,108f) identifies four phases in the development of Fichte's views on the state. The first lasts from 1789 to 1896 and is characterised by his extreme individualism and his support of rational natural law theories. The period from 1796 to 1799 is held by Aris to be one of change, when Fichte publishes a major treatise on natural law (Fichte,1796 & 1796a), which is predicated upon Kantian natural law ideas, but also starts to move away from Kant. The third period (1799-1806) is dominated by his commitment to the idea of a planned, socialist society an an autarchic state. Fichte's liberalism and individualism decline in favour of greater emphasis upon collectivism. The final phase Aris identifies is that from 1806 to 1814, the focus of which is nationalism and state glorification. Nonetheless, Fichte still retains a commitment to individual freedom and to cosmopolitanism. For an alternative division, see Vaughan (1939,94f).

16. As will be argued below, Fichte's nationalism and cosmopolitanism are not necessarily as incompatible as might be assumed (Meinecke, 1928,93-127). See for example Fichte 1806 & 1808 for an illustration of the links between the two.

17. For another example of this view, see Vaughan (1939,141f).

18. There are numerous disparities between some of the English translations of the crucial sections on federation. In particular, there are differences regarding the terminology employed to describe the federation (compare

Reiss, 1955, 73-84 & Fichte, 1796b, 473-89). Accordingly, this thesis has referred back to a German edition (Fichte, 1796a).

19. As Fichte's English translator notes at this point (Fichte, 1796a, 486), it is inconsistent of Fichte to assert that states cannot be compelled to join. In reality, membership would be made compulsory.

20. Other examples include not only Kant (see 2.3 above), but also Schleiermacher and Goerres (see below), as well as Stahl (see 5.2.3. below) and Troxler (see 6.3.3. below).

21. Fichte's last written reflections upon Germany's constitutional future (1813) contain in embryonic form an argument for a Prussian-led solution to what was to become known as the "German problem" (1813, eg. 530 & 554). His arguments against Austrian leadership include its religion, dynastic interests and political conservatism (1813, 555 & 567).

22. It is perhaps no coincidence that one of Schleiermacher's contributions to German political thought was the translation of Plato's Republic.

23. Though the point of departure for the transcendental idealism of Schelling (1775-1854) was the rational idealism of Fichte and Kant, it developed into a mystical Romanticism. Among the main ideas of Schelling's extremely abstract philosophy are (Watson, 1892) first, the rejection of "theoretical reason" in favour of the value of "practical reason" and sensation. Second is the belief that the best way to understand the state is as an organism. Third, and linked to this, is adoption of a teleological approach to world development. Fourth, Schelling points to the principle of polarity as the force which ensures progression towards mankind's telos.

All these notions are to be found in Goerres' writings. Thus he too believes in the importance of sensation and intuition and regards the state as an organism moving in tune with the mystical plan of Nature. Finally, he sees Austro-Prussian polarity as a force moving Germany to a higher stage of development. Schelling's transcendental idealism influenced a number of exponents of German federalism, including both liberals such as Troxler (see 6.3.3. below) and conservatives like Stahl (see 5.2.3. below). On Schelling, see Bluntschli (1867, 540-44), Reiss (1955) and Watson (1892).

24. In the period covered by this chapter, Goerres is still for reconciliation between Catholics and Protestants, as is evident from the following discussion of the federalism he articulates in the Rheinischer Merkur. However, he later becomes a strident defender of the Catholic cause (see 5.2.2. below).

25. Goerres' earlier rational cosmopolitanism still (1814-16) finds expression in his commitment to a tolerant Europe, embracing both Christian confessions (see below), though it is eventually to be replaced by a commitment to Catholic ultramontaniam (see Goerres, 1854-74).

26. From the articles known to have been written by Goerres, the following have been selected to illustrate his federalism: Germany's Demands, Nr.76,23 June 1814,1f; To Germany's Princes and Peoples, Nr.82,5 July 1814,1-3, & Nr.83,7 July 1814,1-3; The Future German Constitution, (written together with Stein) Nr.104,18 Aug.1814,1-3, Nr.105,20 Aug.1814,1-3, Nr.106, 22 Aug.1814,1f & Nr.107,24 Aug.1814,1f; Austria, Prussia and Bavaria, Nr.124,27 Sep.1814,1-3, Nr.125,29 Sep. 1814,1f, Nr.128,5 Oct.1814,1f, Nr.129,7 Oct.1814,1-3, Nr.130, 9 Oct.1814,1f, Nr.132,13 Oct.1814,1-3, Nr.133,15 Oct.1814,1f, Nr.138,25 Oct.1814,1f, Nr.139,27 Oct.1814,1f, Nr.140,29 Oct. 1814,1f & Nr.142,2 Nov.1814,1f. See also The Kaiser and the Reich. A Dialogue, (written together with Jakob Grimm) pp1-4 in each of issues Nr.175-81 incl., i.e. of 8,10,12,14,16,18 & 20 Jan.1815.). Many of these articles are reprinted in Duch (1921,I). Not all the articles in the Rheinischer Merkur are attributed. For information on the (presumed) authorship of all the articles, see Goerres (1814-16,Vol.6,23-60).

27. Since we have utilised a reprint of all the issues of the Rheinischer Merkur (Goerres,1814-16) in which there is no pagination, this and subsequent annotations refer to issue, rather than page numbers.

28. Goerres (1814-16,105f) proposes a rather idiosyncratic tripartite estates structure which he erroneously claims to have constituted the basis of the mediaeval system. The first of his three estates is the "Teaching Estate" (Lehrstand), within which clerics have an especially important role to play, to which end they are to receive back the economic independence they lost during the Napoleonic period. The second estate is the "Defensive Estate" (Wehrstand), traditionally led by the aristocracy. The third estate is that of the common people: the "Provisioning Estate" (Naehrstand). It is to be subdivided into the agrarian, artisan and trading estate. Unlike Adam Mueller's estate theory (1819,44) that of Goerres allows for movement between the estates on the basis of merit (see Goerres,1819 also).

29. For example, in what is virtually a throw away remark, Goerres (1814-16,140) suggests that the King Prussia would assume the role of Commander in Chief (Feldherr) of the Imperial Army, while the Archduke of Austria would, as Imperial Treasurer, be in control of the Empire's finances.

30. Goerres' prescriptions as to the organisation of the federal authority changed somewhat as the political situation changed (Uhlmann, 1912). For details of other central institutions proposed by Goerres, see Uhlmann (1912,119-23).

31. This summarises the material in Hilty (1896), Wild (1966, esp.14ff) and Lauber (1910,esp.11-19).

32. However, not all supporters of a unitary state structure for Switzerland were opposed to federation in principle. For example, Glayre recognised that a federation could be useful in guaranteeing the persistence of small states, as well as the rights of the individual within it. However, he felt that

federation was inappropriate for a country as small as Switzerland. He proposed that it should instead be applied to large states (cited in Wild, 1966, 18). No doubt Kuhn (1800) would have dismissed Glayre as advocating either the "federalism of privilege" or the "federalism of demagogy".

33. However, the federalism of the Helvetic was, as we shall show below, overwhelmingly not reactionarily anti-rationalist. Instead, it was mostly concerned to moderate what it perceived as the excesses of the Unitarians, while remaining firmly committed to the use of reason. Wild (1966, 35f) argues that "the real strength and distinctiveness of Helvetic federalism lies in its rational construction and delineation of the different legal and functional areas (Rechts- und Machtbereiche) in the state. The commitment to tradition and custom is secondary; one is by nature a rationalist ... we thus want ... to distinguish between federalism and pure reaction, which did exist, but was barely published. Federal ideas lacking in substance were infrequent ...". He also contends (ibid, 39) that "The participation of the Federalists in the creation of a new constitution can be explained only by the primacy of the rational spirit."

34. Such appeals by the Federalists to popular sentiment were in turn of course one reason why Kuhn (1800, 13) referred to "the federalism of privilege and ... of demagogy".

35. For this reason, Wild (1966, 37) concludes that in this period, "the real liberal principles were preserved by the Federalists. For not only did the key Unitarians have no understanding for the ancient Swiss conception of freedom, but their political system lacked any institutional guarantee of a private sphere for the individual".

36. This traditionalism clearly had its parallels within the Anglo-Saxon world in the writings of people such as Hume and Burke. In the German tradition, part of this brand of conservatism was - through the influence of thinkers such as Mueller and Gentz - to develop into the Romantic / historical movement, key parts of which were to become irrational, or flavoured by the ideas of catholic social theory.

37. These ideas were also used after the establishment of the Swiss federal state of 1848 and the Second Empire as a justification for establishing federations to defend the corporate interests of the Church and other groupings within the relevant states. See, for example, Segesser (1862, 1865, 1872 & 1875) and Frantz (1879). Unfortunately, however, this period lies outside that covered by this thesis.

38. Cited in Wild, (1966, 27). Other Federalists (eg. Lerber, 1800) also used Rousseau. The extent to which Rousseau's works could be used by opposing groups as a source of legitimation of their viewpoints is evident from the fact that the liberal nationalists also used him. In particular, they emphasised Rousseau's principle of the inalienable rights of popular sovereignty. However, they went beyond Rousseau in developing this into a theory of representative democracy. On the role of the ideas of Montesquieu and

Rousseau, see Fleiner(1916) Schwarber(1935) and Wild(1966).

39. Interestingly, Monneron (1800,73f) quotes Hume in support of his belief that one should be sceptical of human reason.

40. Wild concludes that some Federalists were only slightly behind the Unitarians in their new division of the cantons.

41. These three views are expressed by Lauber (1910,17), Rappard (1941,61f) and Gasser (1948,9f) respectively. See Wild (1966,27ff) also.

42. Although writing in 1800, Monneron refers to the redundant Articles of Confederation, rather than to the Federal Constitution (1800,97,fn.b).

43. Thus Article 11 (Hilty,1896a,179f) specifies a number of franchise restrictions for the election of even the electoral college that will select the parliamentarians. Persons under 21, those without the citizenship of a relevant Bernese commune, the illiterate, those who have not successfully completed their schooling and - most important - those who have not made a one-off payment of £100 to state coffers, are all excluded from the vote. Moreover, (Hilty,1896a,284f, Art.40) only those members of the electoral college may be nominated for election to the legislature itself who possess property to the value of £10,000.

44. For details about the considerations behind this draft, see Haller (1801,350-419).

45. Indeed, the threat the regenerated cantons perceived from their conservative confederates led to the establishment in 1832 of the "Concordat of the Seven", in which the regenerated cantons of Zuerich, Berne, Luzern, Solothurn, St.Gallen, Aargau and Thurgau undertook to defend their common liberal gains. (See Chapters 4 & 6.3 below.)

46. Nabholz (1918,24f) states that "Even the most consistent Unitarian spoke only carefully and in general terms of a tightening of the bond uniting the cantons..." and the possibility of joint regulation of internal cantonal matters was not even hinted at.

47. The pamphlet was originally published anonymously, though its authorship has since (Guggenbuhl,1931,129-32) been established as having consisted of Escher and Usteri, a Zuerich liberal who had served as a member of the Helvetic Republic government. With the advent of the Mediation, Usteri withdrew to pursue his political ideals at the cantonal level. See Guggenbuhl (1931) for how Usteri came to accept and work within the Mediation system. He remained influential in Zuerich politics right up to his death in 1831. Through his editorship of national newspapers, he was a significant force in federal politics also. During the Restoration, he was noted for his opposition to federal intervention to limit cantonal regeneration, as well as to censorship and radicalism (Guggenbuhl,1931,261-8 & 203f resp.).

48. The following brief summary is limited to the differentiation between federations on the basis of arguments predicated upon the latter's constituent units, the location within them of sovereignty, or their formal purpose. It will be recalled that these are the criteria used by this thesis to differentiate between the dimensions of Germanic federalism. The polemical arguments of those such as Kuhn (1800) and the mysticism of Goerres are not included here. That should not be taken to imply that we are dismissing those arguments in the manner of those whom we have criticised for rejecting federalism as irrelevant ideology (see 1.2 above). Indeed, we believe that such federalisms are both interesting and important. However, what they tell us relates more to the motivations of their expositors and that is a topic which will be dealt with later in this conclusion.

49. One example is that Swiss federalisms were, on the whole, less abstract than those of their German counterparts. Second, Switzerland's republican history meant that, unlike in Germany, considerations of the role in federations of a monarchy did not arise. (The former distinction does of course not mean that Swiss manifestations of Germanic federalism are any less interesting for this thesis, or that they were any less politically salient. On the contrary, one could argue that they were more closely linked to the political process than the federalism of some of their metaphysical German counterparts.)

50. After completion of this chapter, the author has come across an essay written by Behr in 1814, which suggests he too changed his federalism out of considerations of political strategy. Though he had previously (Behr, 1808 & 1808a) insisted upon confederation as the only acceptable federation for Germany, he now (1814) appears to advocate what amounts to an intrastate federation. As is shown in Chapter 6 below, during the Restoration, Behr is again a supporter of confederation, since he hopes that a confederal Germany will afford his native and relatively liberal Bavaria some protection against the conservative-dominated centre.

PART 3: GERMANIC FEDERALISM FROM 1815-1850

CHAPTER 4: THE BACKGROUND TO GERMANIC FEDERALISM FROM 1815-1850

4.1. INTRODUCTION

In Chapter 2, this thesis identified the substance and motivating considerations of the five dimensions of early Germanic federalism. Chapter 3 then illustrated the use of federalism in the revolutionary period from the end of the eighteenth century until the restoration of Europe via the Congress of Vienna. Among the conclusions of that chapter were first, that the federalisms articulated did not add to the existing five dimensions, but offered a variety of considerations of the detailed structuring of those types of federation. Second, we saw that this was a period in which one can identify more or less distinct Weltanschauungen, and that federalism was not exclusive to any one of them. Third, however, it is clear from our analysis of the period up to 1815 that the ideational groupings we identified did not have corresponding political organisations. In short, there were as yet no structures which one could consider akin to modern political parties.

The focus of Part 3 of this thesis is Germanic federalism within the German [1] and Swiss federations of 1815 to 1848/50 [2]. Part 3 will attempt further to address the two

major aims of this thesis (see 1.3 above). It may be recalled that one of its objectives is to identify the types of federation proposed within the tradition of Germanic federalism. Accordingly, Part 3 of this thesis will attempt to establish whether these were, like in the period covered in Chapter 3, within the dimensions already outlined (see 2.4. above), or whether there were any new dimensions of Germanic federalism.

The second aim of this thesis is to illustrate the utility for an understanding of the dynamics of federations of the analytical approach advanced in this thesis, namely, the examination of the interaction of federalism and federation. In this latter endeavour, we will be considerably assisted by the fact that the period under consideration witnessed the emergence of groupings which, though not yet political parties in the modern sense of the term, nonetheless in part constituted loosely organised groupings for the promotion of political ends. This will facilitate our analysis of the role of federalism as a political ideology, that is to say, as a "... a belief system that explains and justifies a preferred political order for society, either existing or proposed, and offers a strategy ... for its attainment" (Christenson, et. al., 1972, 5).

Before embarking on this analysis of Germanic federalism as ideology - which Bell (1962, 400) describes as "the conversion of ideas into social levers" - it is necessary to provide a brief comparison of some of the most significant background factors to the nature and role of Germanic federalism between 1815 and 1850. This will be done in 4.2.. Thereafter, 4.3. will outline the manner in which Part 3 of

this thesis proposes to examine Germanic federalism.

4.2. THE BACKGROUND FACTORS

In many respects, the context in which federalism was to develop during 1815 to 1850 was broadly similar in Germany and Switzerland [3]. First, both countries were vulnerable to foreign interference, as the genesis of their constitutions itself testifies. The European Great Powers, which were the architects of the post-Napoleonic "Metternich system", were especially concerned to ensure that Germany did not become a centralised state, with the potential to destabilise the European balance of power. For its part, Switzerland's very independence and neutrality were largely a gift of the Congress of Vienna, the members of which wished to keep the strategically located Alpine country from becoming too dependent on any one Power. They kept a close watch on domestic political developments, a supervision to which many patriotic Swiss objected, considering it to be unwarranted external interference in the nation's right to determine its own destiny. It can be argued that in 1847/48 Switzerland was only able to reform its federal constitution without foreign interference because of its good fortune that at this time the Great Powers were otherwise occupied with their own domestic unrest arising out of the 1848 revolutions [4].

A further example of the extent of foreign influence upon Germany and Switzerland is that both federations contained territorial units subject to foreign rulers. In Germany, this included Hannover, ruled by the King of England until 1837 and Holstein, subject to the Danish Crown until as late as

1864. The existence in republican Switzerland of the Prussian principality of Neuchatel constituted a running sore until 1848, when a republican coup d'etat within that canton ended its link with the foreign monarch.

A second characteristic common to Germany and Switzerland during 1815 to 1850 is that they had federal constitutions providing for only very limited centralisation. The German Federal Act, largely the work of Austria and Prussia, was signed in June 1815 and set up the "Deutscher Bund" (German Confederation), which replaced the previous plethora of principalities with a mere thirty-nine states. (Strictly speaking, the Bund originally contained only thirty eight states, Hesse-Homburg not joining until 1817.) Soon after the Bund came into operation, suggestions that Germany was to take the form of a tight federation were proved false. The Bund was patently a loose, interstate union of states. The Act stated that defending the independence of the member units was one of the main aims of the federation. The powers of the constituent sovereign territorial units were therefore largely unrestricted by the centre. For example, the Act made no provision for individual rights at the national level, but stipulated in Clause 13 that constituent states were to grant such rights as part of a representation based upon estates. However, this clause was never enforced. It was left to the discretion of the local rulers, which of course meant that only in a few states were any representative constitutions introduced and many of those were primarily a facade.

Central authority resided in a "Bundestag" modelled on the Rheinbund and which was was, like the Swiss Diet, little more than a congress of ambassadors. The full Bundestag met very

infrequently (a mere sixteen times during the lifetime of the Bund), partly as a result of the fact that the Act required unanimity for any constitutional change and a two thirds majority for many other matters. Instead, decisions were made by an Inner Council, comprising one vote for the eleven largest states and a total of six for the remaining twenty seven states. Here, decisions were made by simple majorities, but because of their relative size, Austria and Prussia were able to exercise a degree of control far greater than might be inferred from the single Inner Council vote they each had. Attempts at strengthening the federal authority, for example by adding to it a Federal Court, all failed in the face of states' opposition.

The Swiss Federal Pact, which came into force on 7 August 1815, also established a loose, interstate confederation. Three new cantons having been added, the Confederation now comprised twenty full and four half cantons [5]. There was no central authority other than the Diet, which alternated its venue biennially between three directoral cantons, and in which cantons were represented equally, by members bound to cantonal instructions. For all important decisions, unanimity was required. Between sittings of the Diet, Confederation business was, like before 1798, conducted by the government of the canton hosting the Diet. This was by means of the "Staatsrat" (Council of State) manned by magistrates and officials solely from the directoral canton. The Diet was entitled to arbitrate between disputing cantons and to ratify their external treaties. Intercantonal treaties detrimental to other cantons' interests were forbidden. It

was in the area of military matters that the powers of the central Swiss authority were greatest. Only here had the centralization introduced under the Napoleonic constitutions of 1798 to 1803 been retained and even extended.

This brings us to a third similarity between Germany and Switzerland, namely, widespread and persistent concern about the federations' capacity to respond to external military threats. Despite the fact that both federations had introduced greater military powers for their respective central authorities, there remained constant disputes over the size, training, and finance of constituent units' military contingents, as well as over how the ultimate military command of the army was to be organised. In the absence of a resolution of these disputes and in view of the two countries' experiences during the preceding decades, concern about the ability to resist attack is understandable. These fears were compounded by a number of new crises, such as Switzerland and Germany's fear of foreign interference in the wake of the 1830 Paris revolution and the 1840 crisis on the German Rhine. However, there was in both countries a further dimension to the debate about the military role of the centre, namely, the issue of central military intervention in the affairs of the constituent members of the federation. Broadly speaking, the Swiss conclusion was that any such intervention must be severely restricted, though views about the right or duty of the centre to intervene were very much dependent upon the extent to which proposed intervention would lead to a strengthening of the commentator's political bedfellows in the relevant canton. Accordingly, when in 1831 the Swiss Diet decided to initiate central intervention to

stop the regeneration process in the cantons of Basel and Schwyz, the simmering conflict between liberals and conservatives was ignited and the issue of federal reform henceforth burned brightly.

In Germany, the 1819 Teplitz Punctuation between Austria and Prussia provided the basis for federal intervention to suppress liberal change in the constituent states of the Bund. The outcome were the notorious "Carlsbad Decrees", passed unanimously by the Federal Diet in September 1819 (Buessem, 1874). Their immediate cause were the activities of the so-called "Burschenschaften" (German students' association) [6]. However, their real purpose was to prevent the more general spread of liberal and nationalist ideas. This goal was to be obtained by granting the central authority of the Bund unprecedented powers of intervention in the domestic affairs of its constituent states. This included muzzling the liberal press and the right of the Bund to armed intervention in support of state governments faced with popular insurrection. Not surprisingly, the Carlsbad Decrees caused considerable resentment among nationalists and liberals and impacted upon their federalism, as will be demonstrated in section 6.2 below (by reference, for example, to the writings of Behr (1820)).

Fourth, not only were Germany and Switzerland both experiencing a process of gradual industrialisation, but this process was in both countries faced by similar structural impediments arising from the nature of their federal organisation. The growth of economic activity and the greater volume of traffic increasingly led to demands for a lessening

of restrictions to trade. However, in both the Bund and the Swiss Confederation, economic matters were even less well co-ordinated than military matters.

Nominally, both federal authorities were constitutionally obliged to promote free trade within their respective federations, although the extent of their formal duties varied. For example, Clause 19 of the Federal Act obliged the German Federal Diet to develop a common policy on intra-German trade and navigation, while Article 11 of the Swiss Federal Pact stipulated that there was to be free transit of goods throughout the Swiss Confederation and outlawed all tolls or restrictions other than those designed to prevent abuses of free trade. However in both countries, matters were left to the constituent units to implement. Neither federation made many concessions to economic harmonisation, let alone promoted single internal markets. In both, there were countless protectionist internal tariffs levied by member states, as well as restrictive guild privileges and other obstacles to free trade. Neither Germany nor Switzerland had a common monetary system, nor common weights and measures.

The restrictions to trade permitted by the constitutions' weak provisions and by the federal authorities' failure to implement the provisions that they did contain, were a widespread bone of contention, especially amongst the rising entrepreneurial class. In the absence of central action, Germany witnessed the formation of many local customs unions in the 1820s, notably those of Prussia and between Baden and Wurttemberg in 1828. There were numerous attempts at establishing a federation-wide customs union before the Zollverein (German Customs Union) was eventually set up in

1834. Its initial eighteen signatory states were gradually joined by most of the other constituent states of the German Bund. In Switzerland, however, there was no comparable breakthrough for the liberalisation of internal trade [71].

A fifth background feature common ^{to} German and Swiss federalism concerns the considerable salience in both countries of confessional matters. In Switzerland, the Regeneration had started as a non-denominational movement for political and constitutional reform. Yet since the overwhelming majority of regenerated cantons were urban and above all Protestant, while the conservative cantons tended to be rural and Catholic, the Regeneration quickly became a religious as well as a political movement, with theological argumentation becoming entangled in the debate over reform or maintenance of the Pact. This clearly impinged upon the nature of Germanic federalism in Switzerland, where Catholic principles later became interwoven with conservative federalism, as our discussion of Geiger (1823-39) in 5.5.2. below demonstrates. However, that is not to say that federalism was not used by Protestant Swiss conservatives; Bluntschli is one such example (see 5.3.3. below).

Religious considerations also impacted upon federalism in Germany. Like in Switzerland, this related on the one hand to the manner in which federalisms were articulated. As the writings of Stahl and Goerres demonstrate (see 5.2. below), in Germany, both Protestants and Catholics utilised religious argumentation in their federalisms. On the other hand, religion was relevant not only in terms of the manner in which Germanic federalism was expressed in Germany, but was

a significant motivating factor. This has already been illustrated by reference to Goerres (see 3.2 above), who will again figure in chapter 5 (see 5.2.3. below). However, it was not just German conservatives, but also, for example, Swiss liberals like Troxler whose federalism was motivated by considerations of the role of religion in the state. Like in Switzerland, religious and political considerations also overlapped in Germany; Austria was perceived as the bastion of both Catholicism and conservatism, whilst for many moderate liberals, Prussia constituted not only a Protestant state, but also one from which constitutional reform might reasonably be expected. This conflict became especially acute from 1849 onwards, when the two sides' differing views as to the resolution of the German problem were a major factor in nearly causing all-out war between Austria and Prussia.

So far, we have identified the following five features as common to the context of Germanic federalism during 1815 to 1850: vulnerability to foreign interference; extant federal constitutions characterised above all by very limited powers for the central authority; concern about the federations' military capabilities; structural constraints to the development of free trade; and finally, the importance of religion for the form and substance of Germanic federalism. These five factors helped shape the nature of the structures proposed by Germanic federalism during 1815 to 1850.

However, the concern of this thesis is not limited to establishing the structures of the federations proposed by Germanic federalism. A crucial consideration is the wider political purpose of those federations. Accordingly, it is

essential to a full understanding of the development of Germanic federalism to demonstrate its relationship to the the main political thinking of its day. Our sixth and final point of similarity in the background to Germanic federalism between 1815 and 1850 therefore concerns the existence and interaction, in both Germany and Switzerland, of the same three major political principles. These were conservatism, liberalism and nationalism. Important as these movements were in helping shape Germanic federalism, it would exceed the scope of this introductory section - and indeed of the thesis - to provide more than a brief overview of their role and complex interaction in Germany and Switzerland. The two following chapters will, however, illustrate the ways in which they influenced Germanic federalism.

There were two quite distinct phases in the political development of Germany and Switzerland between 1815 and 1850 and thus in the fortunes of conservatism, liberalism and nationalism. The first lasted until 1830 and has traditionally been designated the "Restoration". This label derives from the title of a reactionary six volume work by von Haller (1820-25), which will be discussed in Chapter 5 below, and indicates the predominance of the forces of the conservative "Metternich system". After the 1830 revolutions, when conservatism began to be openly challenged by liberalism and nationalism, there began a lively public debate about the relative merits of preserving the status quo on the one hand and liberal and nationalist change on the other. This second period lasted from 1830 to 1848 and is known in Switzerland as the "Regeneration" and in Germany as the "Vormaerz" (ie.

the period before the March 1848 revolutions). For the sake of clarity, the term used in this thesis to denote the 1830 to 1848 period in both countries will be "Regeneration".

Although conservatives dominated the Restoration, it would be wrong to assume that they were enthusiastic supporters, or the liberals unequivocal opponents, of the German and Swiss federations. Both systems were compromises and as such offered mixed blessings. Thus conservatives saw the new federations as the embodiment of the defeat of the Napoleonic system and of the forces of revolution which they associated with it, but were nonetheless concerned about other aspects. Above all, they felt that the new federations sanctioned the loss of some of their ancient privileges and were still dangerously vulnerable to ungodly revolutionary ideas.

In view of this qualified support for the existing federations, it is not surprising that many conservatives were not predisposed to offer a philosophical defence of the extant situation. Moreover, in the first fifteen years of the post-Napoleonic period, many felt it largely unnecessary to do so. In Switzerland and Germany, conservative predominance during the Restoration was due not so much to its universal political appeal, as to the fact that most manifestations of liberalism and nationalism were strictly suppressed by means such as censorship, secret police activity and the Carlsbad Decrees (1819).

Despite the dominance of conservatism during the Restoration, conservatives therefore often lacked a clear and cohesive political doctrine. Where conservative ideas were articulated, they often amounted to the mere rationalization

of existing authority relations by a variety of means. For example, in some quarters, this took the form of Romanticism such as Mueller's (1819) idealisation of medieval structures, whilst in others, positivism or historicism were used (eg. Savigny). Extant authority was sometimes also still justified by reference to Divine Right (eg. by Haller). It was only during the Regeneration, when conservatism came to be on the political defence, that a constitutional conservatism willing to accept representative structures started to emerge (eg the still rather conservative ideas of Stahl and the more liberal ideas of Bluntschli). However, conservatives generally remained the most outspoken defenders of the sovereignty of constituent territorial units of federations, for they feared that any diminution of that sovereignty would make them more vulnerable to the forces of revolution.

The position of liberals and liberalism between 1815 and 1850 can perhaps be best illustrated by reference to Switzerland, where they were stronger. Swiss liberals initially gave grudging support to the Federal Pact. On the one hand, they objected that the liberal advances of 1798 to 1815 - including political unity, universal political rights, freedoms of trade, profession and of settlement - had been rescinded and a loose confederation with many aristocratically ruled cantons resurrected. On the other hand, however, a loose federal structure amounted to a de facto concession to liberalism. It permitted liberal cantons to organise their internal politics in accordance with their own principles, free from any threat of intervention by a federal government that would, in view of the conservative majority in the

country, have been inclined to oppose such developments. In the Restoration, Swiss liberals were therefore overall supporters of interstate federation with a weak central authority.

The above mentioned active suppression of liberalism also helps explain why the arguments of those few liberals calling for a more centralised federation before 1830 were predominantly limited to the "safe" demand for greater federal powers in military matters. However, such military union as was achieved was felt by liberals to be no substitute for economic and political union [8]. Once the Regeneration began, there were many more calls not only for central government action to liberalise the terms of trade (see above), but also for political liberalisation. Indeed, after 1830, political and constitutional reform became the prime focus of liberal criticism in both countries. For an understanding of the development of Germanic federalism, the demands of this second, political strand of liberalism are very important. They included constitutionalism, enhancing individual political rights (albeit often only those of an educated or propertied elite), establishing the rule of law and equality under it, as well as free speech and freedom of the press.

Because of the relative autonomy of the constituent units of both federations and the overall strength of conservatism, liberal efforts were initially largely confined to the local level. In both countries, some progress was made here, though in Germany this was largely confined to Bavaria (initially) and to south-western states such as Baden and Wuerttemberg. In north German states and in Austria, political liberalism

was very weak. It was much more successful in Switzerland, where, prompted by the Paris revolution of July 1830, many cantons revised their constitutions to introduce popular sovereignty and the separation of powers. As these "regenerated" cantons became more numerous, their previous opposition to central interference in internal cantonal affairs - an opposition essential if they were to maintain their reforms against the more numerous conservative cantons - was replaced by a desire to convert the latter. Regenerated cantons therefore began to advocate more central interference, along the lines of guaranteeing all Swiss the popular rights now granted to their own citizens. Similarly, German liberals also came to advance more rights of central government intervention to ensure legal equality and popular political rights in the constituent units of the federation. In short, liberals increasingly came to advocate intrastate federation, or even a unitary state.

Throughout the 1830s and 1840s liberal demands for reform in economic, political and security matters increased in both Germany and Switzerland. Indeed, the 1830s and 1840s saw ever more voices raised in favour of constitutionalism and national unity. These pressures and the revolutions of 1848 led to further liberal concessions in a number of German states, though most were subsequently rescinded. They also led to the emergence of a significant new brand of liberalism, namely, a radical liberalism, distinguished from the previous variety above all by its unequivocal commitment to popular sovereignty. (The Radicals could be described as "Democrats" (Zachariae, 1833, 15f). However, this thesis will

adhere to their contemporaneous designation.) Moderate liberalism, otherwise known as "tradititonal", "historical", or "theoretical" liberalism, also espoused popular political rights, but was much more elitist in its de facto aspirations than the later radicals, who were much less prepared to compromise and were not constrained by the feeling that they had to act within the law. Leading Radicals include Troxler and Fazy in Switzerland (see 6.3.3. below) and Hecker and Struve in Germany (see 6.2.3. below)

This bifurcation of liberalism points to a difficulty in analysing political developments during 1815 to 1850, namely, that the lines of demarcation between the various political groupings are not as clear cut as they might appear in a summary as necessarily brief as that presented here. Moreover, there were divisions not only at the liberal end of the political spectrum, but also amongst conservatives. As mentioned above, some such as Haller could be described as reactionary, whilst others such as Bluntschli (see 5.2.2. and 5.2.3. below respectively) were willing to countenance reform. This factionalisation, and in particular the existence of "moderate" liberals and reformist conservatives, makes the boundary between liberalism and conservatism rather fluid. Indeed, Switzerland, saw the establishment of an identifiable political grouping that consciously sought to straddle the two main political camps. This was the so-called "juste-milieu", the federalism of which will be examined in Chapter 5.3.3. below.

The fluidity of political categories is even more pronounced in the case of the third of the political movements that we have argued to be highly significant for

the background to Germanic federalism, namely, nationalism. Within both Germany and Switzerland, the common dangers and sufferings of 1798 to 1815 had helped to foster a sense of national solidarity. Moreover, external threats continued throughout the Restoration and Regeneration (see point three above), thus further promoting nationalism.

In both countries, nationalism was initially something of an artificial creation, some of the prime articulators of which were the liberal intelligentsia and the student fraternities. In Switzerland a leading role was played by the middle class "Helvetic Society", in which some of the most important exponents of federalism played leading roles. Examples include Troxler, Pfyffer, Munziger and Zschokke [9]. In Germany, an analogous role was played by the nationalist Burschenschaften, whose leading activists included both liberals such as Gagern and Behr, as well as conservatives such as Stahl (see 6.2 and 5.2 below). It was, however, not until this theme was taken up by the host of primarily sporting and cultural associations which sprang up in both countries, that nationalism began to be very widely popularised. Relevant associations include the German "Turnverein" (Gymnastic Society) of Jahn, and the Swiss "Schuetenzverein" (Riflemens' Society) and "Saengerverein" (Choral Society).

However, neither German nor Swiss nationalism was ever the sole preserve of liberals. This has already been amply demonstrated in 3.3 above, where the nationalism of not only Fichte, but also of Goerres was discussed. From the very outset, therefore, there were a number of conservative

varieties of nationalism. In Germany, for example, parts of the Romantic movement espoused a cosmopolitan form of nationalism (Meinecke, 1928), while later conservative nationalism was to become more assertive and even xenophobic (eg Goerres, as discussed in 5.2.3. below). In addition, there was of course the persistent problem of how the various non-German nationalities were to be catered for. This was to become an even more acute problem in post-1866 Austria, where some proposed multinational federation as an appropriate remedy [10]. In Switzerland, nationalism was used by conservatives primarily in defence of cantonal sovereignty. In other words, nationalism had both conservative and liberal exponents, as well as local, pan-Germanic, European and cosmopolitan variants.

As far as the development of Germanic federalism is concerned, however, nationalism was significant in four main ways, as will be shown in Chapters 5 and 6. First, many liberal exponents of Germanic federalism used nationalism in support of a federal nation state. Examples include Gagern in Germany and Pfyffer in Switzerland. A second use was by those for whom nationalism betokened loyalty to the units of an intrastate federation of nation states. Though such exponents of federalism were primarily conservatives such as Rossi, there were liberal federalists who shared this view. One example is the Swiss Cherbuliez. A third use of nationalism was exemplified in the later writings of Goerres (1819 & 1821), who utilised it in his expansionist, racist xenophobia. A third and less common use of nationalism was by those exponents of Germanic federalism such as the reformist conservative Heeren, whose commitment to the

promotion of a specific national identity was articulated in the context of a universalism reminiscent of the early Fichte (see Chapter 3.2 above).

This introduction has up to now concerned itself only with similarities in the background to Germanic federalism in Germany and Switzerland. However, there were also significant differences, an awareness of which helps to explain why the role of federalism in Switzerland and Germany was to differ in the period under discussion. First, while the debate on reform of the German federation was predominantly predicated upon the assumption that Germany would remain a monarchy, the Swiss debate was always republican.

Second, while debate over reform of the German Bund was greatly influenced by a history characterised by the loosely constituted Reich and Rheinbund structures, the Swiss debate after 1815 was greatly influenced by the experience of the centralised Helvetic and Mediation constitutions, which gave the more radical reformers a direct example of what a centralised, liberal state might look like. Conversely, this hardened the resolve of conservatives to oppose any such development [11].

A final and critical difference between Switzerland and Germany concerns the outcome of their respective attempts to establish new federations based on liberal constitutionalism. In Germany, the accumulated social, economic and political pressures of the 1830s and 1840s resulted in the outbreak in March 1848 of a series of popular uprisings. These (Stadelmann, 1975) started in the relatively liberal southwestern states such as Baden and Wuerttemberg and spread

northwards and eastwards. So great did the threat to the established political structures appear, that numerous German rulers, including the King of Prussia and the Emperor of Austria, felt obliged to make numerous political concessions. The Carlsbad censorship laws were repealed and there were promises of reforms in the spirit of liberal constitutionalism, including universal suffrage and increased parliamentary powers.

Most significant for this thesis are the changes that were promised in the nature of the German federation. On 21 March 1848, no less a figure than Friedrich Wilhelm IV of Prussia promised that Prussia would take a lead in transforming the German "Staatenbund" into to a "Bundesstaat". Ten days later, the German "Vorparlament" (Pre-Parliament) met in Frankfurt under the chairmanship of Heinrich von Gagern. In the Frankfurt Paulskirche on 18 May 1848, it convened the the "Nationalversammlung" (National Assembly), which was charged with the task of drafting a new German federal constitution.

In the many months during which it debated, the situation gradually changed back in favour of the conservative forces, with both Austria and Prussia reasserting the power of their respective crowns. Moreover, the rivalry between these two German superpowers intensified, with the result that one of the main bones of contention within the Assembly was whether the proposed new federation was to include the whole of Germany (the so-called "grossdeutsch" solution, or whether it was to exclude Austria (the so-called "kleindeutsch" solution) [12]. The final decision was made easier by the fact that on 4 March 1849, Emperor Franz-Joseph of Austria

promulgated a new, centralised constitution for his Empire and ordered troops to disperse the Austrian Imperial Diet, which at its meeting in Krems had proposed a federal constitution for Austria. For the majority of the members of the National Assembly, the Austrian Emperor's actions effectively ruled Austria out of the German federation.

On 28 March 1849, the National Assembly debates resulted in the passing of a new federal constitution for Germany [13]. Its main provisions were as follows. First, Germany was to be a constitutional monarchy. Second, it was to have a bicameral parliament ("Reichstag"), the upper house of which was to be a House of States ("Staatenhaus"), in which the 39 constituent states of the German federation were to be represented in rough proportion to their population (Para.87). Thus Prussia was to have 40 representatives, while small city states such as Bremen were to have merely one representative [14]. Half the members of the Staatenhaus were to be appointed by the governments of the states and half were to be elected by state legislatures and all were to serve for six years (Paras.87-9). The lower chamber was a "Volkskammer" (People's Chamber), that was to have budgetary powers (Para. 103) and to which representatives were to be popularly elected for a three year period. The intention was that the elections be on the basis of universal suffrage, though the precise details were left for subsequent regulation (Paras.93 &94).

Third, the federation was to be headed by an elected, hereditary "Emperor of the Germans" (Paras.68-70). He was to be a constitutional ruler, whose powers were limited to a suspensive veto, which he could only exercise three times

on a given issue (Para.101). Fourth, the imperial ministers were to be responsible to the Reichstag (Para.121-122). Fifth, the federal state was quite prescriptive in a range of areas. For example, it established a lengthy catalogue of civic freedoms, including due process, religious tolerance, freedoms of speech, assembly, petition and the press (Paras 130-89). The federal authority also had powers of taxation and established a common currency, weights and measures, as well as provisions for a free internal market (Paras 20-67). For many, the crucial stipulation was that federal law breaks Land law (Para.193). Finally, the constitution passed by the National Assembly established a "Reichsgericht" (Imperial Court), the powers of which included deciding disputes between the imperial and state governments regarding their respective competences (Paras.125-9).

This elaborate constitution was to no avail, however. Friedrich Wilhelm IV refused the offer of the imperial crown and by early summer the National Assembly was in a state of disarray. On 18 June 1848 it came to an ignoble end, when troops expelled the remaining members.

Austro-Prussian rivalry, which had for some time been a major factor militating against German unity, was further exacerbated by Prussia's decision in May 1849 to revive Heinrich von Gagern's kleindeutsch plan, albeit in a conservative spirit. It did so by means of the "Three Kings' League" ("Dreikoenigsbuendniss") of 26 May 1849, which initially included just Saxony and Hannover, but whose membership was open to all other German states bar Austria. The League convened the Gotha Conference of 28 June 1849, from which the "Union Plan" emerged. The three major changes

which the latter proposed to the National Assembly's federal constitution were as follows (Stahl, 1849a). First, Friedrich Wilhelm IV was to exercise the executive power of the federation as the "Reichsvorstand" (Imperial Directorate), in which capacity he was to be armed against the decisions of the Reichstag with an absolute veto. Second, the lower chamber of the Reichstag was to be elected not by popular sovereignty, but by a system of three-class suffrage such as was eventually adopted in the Second Reich. Third, there was to be a seven-man Fuerstenkollegium, (Princely Collegium) led by Prussia, in which six other rulers of the constituent states of the federation were to share central legislative authority with the Reichsvorstand.

The Union Plan was approved in March 1850 by the largely conservative Erfurt Parliament and have thus come to be known as the "Erfurt Plan". Prussia clung to the latter until November 1850 when, in face of the threat of all-out war with Austria, it gave way and signed the Olmuetz Punctuation. This led to the Dresden Conference of December 1850 to March 1851, which removed reform of the German federation off the immediate governmental agenda, restored the pre-1848 German Bund and meant the end of German liberals' hopes of constitutional reform.

In Switzerland, the attempts from 1830 to 1848 at constitutional reform were, as indicated above, argued by Catholics to be an attack upon their religion. It is thus not surprising that they met with implacable opposition by the rural, conservative, Catholic cantons. For example, the 1832 "Rossi Pact", the proposals of which have many

similarities with the structure of the post-1848 federal state, was rejected out of hand by conservative cantons, not that that cooled the ardour of liberals, who kept the topic of reform of the Pact on the Diet agenda.

For their part, Catholic conservatives responded to the liberal cantons' establishment in 1832 of the "Concordat of the Seven" by forming their own defensive league (the League of Sarnen). Liberal Aargau's 1841 abolition of its monasteries and the raids in 1844 and 1845 by gangs of radicals of the territories of their Catholic confederate cantons (the so-called "Freischarenzuege") merely provoked the Catholics more. Luzern's invitation to the Jesuits to undertake an educative role in the canton and the 1845 establishment of the "Sonderbund" among the Catholics provided the legitimation for the liberals to issue an ultimatum and, eventually, for the outbreak of the short civil war of 1847, which finally resolved the issue of federal reform in favour of liberal and radical nationalists. In short, while liberalism failed in Germany, it succeeded in Switzerland. In that it determined the constitutional and political context of Germany and Switzerland, this distinction was to be of considerable significance for the subsequent development of federalism in those countries.

4.3. SUMMARY AND STRATEGY

The preceding section of this chapter has provided a comparison of the most important background factors of the German and Swiss federations between 1815 and 1850. The task of this final section is to outline how this thesis intends

to move from identifying the context of Germanic federalism to an examination of its content and development during this period.

As was mentioned above, the dominant political factor in both Germany and Switzerland was the conflict between liberal and conservative perspectives of man and society. Not surprisingly, this was reflected in views about how the respective federations should be organised and both groups thus utilised federalism. The third major political force of this period, namely, nationalism, was also utilised by both groups.

During 1815 to 1850, there were the beginnings of the political organisation of the Weltanschauungen identified in Chapter 3 above. This fact is reflected in the structure adopted for our presentation of Germanic federalism between 1815 and 1850. In order to provide the clearest overview of the development of Germanic federalism in these two countries between 1815 and 1850, it has been decided to organise that presentation on the basis of the political families that availed themselves of federalism. The advantage of such a presentation is its enhanced comparative structure, as well as the fact that it helps highlight the ideological nature of federalism.

Accordingly, Chapter 5 will illustrate the manner in which German and Swiss conservatives used Germanic federalism, while Chapter 6 will be devoted to an elucidation of the use of federalism by German and Swiss liberals. In view of the fact that Swiss federalism has received even poorer coverage in the Anglo-Saxon literature than German federalism, both chapters 5 and 6 will pay special attention to

illustrating the development of Germanic federalism in Switzerland, though this will not involve any neglect of similar developments in Germany.

After a short introduction, Chapter 5 will initially analyse how German conservatives used federalism. Section 5.2.2. will consider the federalism of reactionary German conservatives, while 5.2.3. will be devoted to that of status quo and reformist German conservatives. Thereafter, 5.3. will offer an examination of the federalism of conservatives in Switzerland. The utilisation of federalism by reactionary Swiss conservatives will be examined first. In 5.3.3., the focus of attention will be the Swiss reformist conservative "juste-milieu", the federalism of which was intended to provide what they considered to be a just compromise between the demands of conservative and liberal extremists.

Chapter 6 is devoted to illustrating the use between 1815 and 1850 of Germanic federalism by liberals. First, the case of the federalism of moderate and radical German liberals will be considered. The presentation in Chapter 6.3. of the federalism of the two main strands of Swiss liberalism in the pre-1848 period will also be undertaken under the rubrics of moderate and radical liberalism. At the end of both Chapter 5 and Chapter 6, there will be a summary of the material considered, in which the opportunity to compare and contrast the use of Germanic federalism within the two countries will be taken.

NOTES FOR CHAPTER 4

1. Since the separation of Austria from the German Bund did not take place until after the period covered by this chapter, "Germany" will again be taken to include latterday Austria.
2. A case could be made for ending the period to be covered in Part 3 of this thesis in 1848, since that year marks the year of revolutions throughout Germany and the introduction in Switzerland of a new federal constitution. However, it has been decided to include the period up to 1850, since this enables the thesis to address not only the federalism that preceded the 1848 revolutions in Germany, but also the use made of federalism in the two crucial years of 1848 to 1850, when the promise of 1848 was finally dashed by the return to the old German Bund.
3. An extensive range of sources was used for this section, including the following: Barraclough (1972); Baumgartner (1853/4); Blackburn/Eley (1984); Bluntschli (1875); Bonjour (1939 & 1948); Bonjour et.al (1952); Bruckmueller (1985); Buessem (1874); Carr (1972); Duerrenmatt (1948); Duersteler (1911); Fleiner (1898, 1901, 1916 & 1918); Frei (1964); Gass (1922); Gassner (1926); Gilliard (1977); Goerlich/Romanik (1977); Gruner (1956, 1956a, 1957 & 1977); Gruner/Haeberli (1955); Gutknecht (1917); Hertz (1975); His (1920 & 1920-38); Holborn (1965); Huber (1965); Hunziker (1970); Im Hof (1981); Institut fuer Oesterreichkunde (1963 & 1969); Jaggi (1948); Kann (1974); Kleindel (n.d.); Krieger (1957); Lauber (1910); Ludwig (1911); Macartney (1969 & 1978); Mann (1958); Mannheim (1986); Martin/Beguine (1971); Meinecke (1928); Nabholz (1918); Poggi (1978); Puttkamer (1955); Radvany (1971); Rappard (1948); Schefold (1966); Schuster (1980); Stadelmann (1975); Steinberg (1980); Streiff (1931); Tenbrock (1969); Thomson (1966); Tripp (1940); Troxler (1838); Voegelin (1952); Weinzierl (1963 & 1969); Wild (1966) and Winter (1969).
4. On foreign powers' interest and participation in Swiss political changes up to 1848, see especially Streiff (1931) and Voegelin (1952).
5. The new full members of the Swiss federation were the French-speaking cantons of Neuchatel and Wallis (which because of its mountain passes Napoleon had incorporated into France in 1810), and Geneva.
6. The Burschenschaften's Wartburg Festival of October 1817 was held to celebrate the tercentenary of the Lutheran Reformation and the fourth anniversary of the Battle of Leipzig. The Festival was designed to revitalise German nationalism and to promote German national unity. Though most of the Festival was a solemn occasion, it closed with the burning by radical students from Jena of anti-national and reactionary books. Despite the fact that the immediate significance of these events was not great, they contributed to conservative mistrust of German nationalism and to the

1819 Carlsbad Decrees.

7. For the importance and formative influence of economic interests in nineteenth century Switzerland, see Gruner (1956 & 1956a), or Masnata-Rubattel (1978). For similar considerations regarding Germany and Austria, see for example Blackbourn/Eley (1984) and Bruckmueller (1985) respectively.

8. As Chapters 5 & 6 will show, whilst military considerations were one factor motivating federalism, they were by no means the only consideration. Moreover, the examination of Germanic federalism between 1815 to 1850 will further underscore the conclusion of Part 2 that political motivations were more important, thus again disproving Riker's (1964 & 1975) hypothesis about the primacy of military considerations (see 1.2 above).

9. Re: Troxler, see Troxler, (1822,3), re: Pfyffer and Munzinger see Baumgartner (1853/4,1,168f). Munzinger was also a member of the 1832 Rossi Commission (Acte Federal,1832,61), for details of the federalism of which see Chapter 5.3.3. below. On the development of Swiss nationalism, see Flach (1916), Frei (1964) and Hunziker (1970).

10. Unfortunately, the time limits of this thesis mean that this very interesting example of federalism lies beyond our remit. It will only be alluded to briefly in Chapter 7. See for example Fischhof (1869), Thun (1875) and Renner (1899 & 1902).

11. The conflict in Switzerland between the hardening liberal and conservative blocks was in some respects analogous, albeit clearly not identical, to the Austro-Prussian rivalry in the German Bund. First, like the Austrians and Prussians, the liberals and conservatives had initially agreed on the new federation and had co-operated in its running. Second, the increasing conflict between the Swiss conservatives and liberals on the one hand and between Austria and Prussia on the other constituted one of the main obstacles to federal reform. The respective weak central authorities were in no position to counter the division of both federations into two opposing camps. This was so advanced in Switzerland, that both regenerated and conservative cantons found it necessary to create extra-constitutional alliances with like-minded confederate cantons in order to provide the common security which the Pact failed to give them.

12. The terms "kleindeutsch" and "grossdeutsch" may be translated as Lesser Germany and Greater Germany respectively. They denote the labels applied to two opposing proposals concerning the extent which the revised German federation should take. Broadly speaking, the former designation referred to proposals which excluded Austrian membership and were often predicated upon Prussian dominance. On the other hand, those advocating a "Grossdeutschland" solution were in favour of Austrian membership. Sometimes, this meant Austrian preponderance, as in the case of the March 1849 proposals of the Austrian Minister-President and Foreign Minister: Field Marshall Schwarzenberg. He proposed (Carr,1972,57) that the

newly centralised Austrian Empire of 38 million persons unite into a confederation with the German Imperial Confederation of some 32 million persons. This union between the kleindeutsch German confederation and the Austrian Empire was to be headed by a seven man directory, the leadership of which was to alternate between Prussia and Austria. There was also to be a Chamber of Estates, in which Austria would have 38 and Prussia only 32 seats. Predictably, Prussia was not impressed with the proposal.

13. We can only discuss its broad outline here. For the text of the constitution, see Schuster, (1980, 29-56).

14 There was provision for Austria to have 38 representatives, but in view of the fact that it was unlikely to participate, those seats were redistributed to the remaining states, pending Austria's participation.

CHAPTER 5: CONSERVATIVE GERMANIC FEDERALISM
FROM 1815-1850

5.1. INTRODUCTION

This chapter is concerned with the use of federalism by German and Swiss conservatives during the 1815 to 1850 period. As has already been stated in Chapter 4, though there were at this time as yet no political parties in the modern sense, the various political doctrines that together comprised conservatism were sufficiently distinct for their proponents to be an identifiable, albeit not necessarily organised, set of political groupings. Within that spectrum of conservative political thought, it is possible to identify, on the basis of their responses to the challenges to the established regimes, three categories of conservatives. These are (Epstein, 1966, 7-11) reactionary, status quo and reformist conservatives.

Since as has been argued above (see Chapter 1.3), federalism is also best understood as a response to a set of specific problems at a given point in time, Epstein's classification offers a useful strategy for the presentation of conservative federalisms. Accordingly, the structure of this chapter reflects Epstein's distinction. It will look first (5.2.2. and 5.3.2.) at the federalism of reactionary conservatives who responded to the challenge to established regimes by utilising federalism in their demand for the re-establishment of an idealised past. Thereafter (5.2.3.

& 5.3.3.), the chapter will examine the federalism of the two remaining types of conservatism. The first are those of status quo conservatives whose response to threats to the established order included the use of federalism to legitimate the existing political regimes. Finally, this chapter will look at examples of reform conservatives who used federalism in their attempt to accommodate as many of the demands for progressive reform as they thought compatible with their underlying conservative principles [1].

The Germanic federalism of German and Swiss conservatives will be discussed consecutively. The advantage of dealing with German and Swiss conservative federalisms in this way is that it facilitates the elucidation of the development of the specific domestic political debates of which their various federalisms constituted a part. That is not to deny that some conservative exponents of Germanic federalism (e.g. Haller, Jarcke and Bluntschli) made a sizeable impact in more than one German-speaking country. Indeed, that cross-border influence helps underscore the contention of this thesis that these countries share a common tradition of federalism. However, in order to avoid duplication, such federalisms will be considered only once and their impact elsewhere will be indicated by cross-references.

Chapter 4 further explained that since the Anglo-Saxon literature has neglected Swiss federalism even more than that of Germany, Part 3 of this thesis will pay special attention to the development of Germanic federalism in Switzerland. Combined with the fact that the federalisms of Haller and of Bluntschli will, in order to avoid the the kind of duplication just mentioned, be considered in the section on Switzerland,

this chapter will refer to more examples of Swiss, rather than German conservative federalism.

Nonetheless, coverage of the latter will still be more than adequate to fulfil the main aims of Chapter 5 of this thesis. It will be recalled (see Chapter 1.3 above) that these are firstly to demonstrate the multidimensionality of the Germanic tradition of federalism and thus to disprove Livingston's (1952) assertion about the nature of federalism. Second, it is intended that Chapter 5 illustrate, by reference to the earliest antecedents of modern conservative political parties, the use within existing federations of federalism as a political ideology. In this latter endeavour, the validity of the Riker hypotheses (1964 & 1975) regarding the allegedly universal relevance of his "military" and "expansionist" conditions (Chapter 1.2 above) will be tested.

5.2. CONSERVATIVE GERMANIC FEDERALISM IN GERMANY

5.2.1. INTRODUCTION

Chapter 3 amply demonstrated that during the revolutionary Napoleonic period, federalism was widely used, for the defence and or promotion of their political interests, by reactionary, status quo and reformist conservatives (Epstein, 1966,7-11). The aim of section 5.2. of this thesis is to illustrate how all three types of German conservative continued to use federalism as a political ideology during the period from 1815 to 1850. To this end, the types of federation proposed by a selection of exponents of conservative Germanic federalism will be identified, as will the purposes which they hoped that those federations would

realise.

The following subsection will consider the use of federalism by reactionary German conservatives by reference to the writings of Jarcke and Goerres. In section 5.2.3., the focus will switch to the federalism of status quo and reformist German conservatives. Stahl will be used as an example of the former, while Heeren will be used to illustrate the federalism of the latter.

5.2.2. THE FEDERALISM OF REACTIONARY GERMAN CONSERVATIVES

The most influential reactionary German conservative of the Restoration was undoubtedly (Fleiner, 1916, 12) Karl Ludwig Haller, after whose Restoration of Political Science (Haller, 1816/20) the whole 1815 to 1830 period was named. Haller's greatest political influence was exercised not in his native Switzerland, but in Germany (Meinecke, 1928, 223-77). Yet since Haller's earlier contributions to Germanic federalism took place in Switzerland and were discussed in that context in Chapter 3.3. above, it is proposed that the federalism which Haller articulated during the period with which this chapter is concerned will be covered not here, but in the section of this chapter which deals with the federalism of reactionary Swiss conservatives (see 5.3.2. below).

The first reactionary German conservative who will be covered in this subsection is the criminologist and publicist, Karl Ernst Jarcke (1801-1852), who was influential not only as a writer and academic, but also politically. The latter influence was exercised first within the Berlin conservative circle surrounding Crown Prince Friedrich Wilhelm of Prussia,

(where Haller too was a significant force) and then in Vienna, where in 1832 Jarcke was appointed to succeed Gentz at the head of the Austrian Imperial Chancellery. Jarcke has been described as "Haller's most devoted disciple" (Hertz, 1975, 206) and there is no doubt that Jarcke held him in high esteem. For example, he says of Haller that by defending private freedom against absolutism, "... of all the writers that have ever lived, it is perhaps above all he he who has understood the spirit and character of German freedom most profoundly and consistently" (1839, I, 133f).

One of the main vehicles used by Jarcke in his attempt to popularise the reactionary views of the Haller school was the catholic-conservative Berliner Politisches Wochenblatt, which he founded in 1831 for the express purpose of using it as an anti-revolutionary weapon (Jarcke, 1839, I, 1-3) [21]. Jarcke was the Wochenblatt's first editor and a regular contributor to it throughout the 1830s. Many of those contributions were subsequently published as a collection of essays and it is upon that collection (Jarcke, 1839) that the following discussion of Jarcke's views as to the nature and purpose of the German federation will be based.

A self-confessed counter-revolutionary (e.g. 1839, I, 1-30), Jarcke shares Haller's opposition to natural law and social contract theories of the state, which he considers incompatible with the sanctity and inviolability of legality (i.e. of established property rights) and thus as harbingers of revolution and absolutism [31]. Instead, Jarcke (1839, III, 37-55) identifies three basic types of state: patrimonial, theocratic and military, arguing that all three derive from

the original familial state. He further contends that they owe their development to and are characterised by, rule of the strongest and service by the weaker. Of the three basic types of rule, he considers the patrimonial type to be the most natural and durable.

Despite the obvious similarities which this theory exhibits with that of Haller (see 5.3.2. below), to which Jarcke frequently acknowledges his debt (e.g.1839,II,212f, & III,413), examination of Jarcke's contributions to the Wochenblatt (1839,I-III) shows that Jarcke differs from Haller in at least two important respects. First, Jarcke contends that revolution and absolutism are the ungodly fruit of Greco-Roman paganism, transmitted to the present day via Aristotle (1839, III,32f) and concludes that while the historical school and Haller's Divine right theory have brought welcome advances for the theory of the state, even greater emphasis must be placed upon religion, if revolution and absolutism are to be successfully countered (e.g.1839,I, 106f & III,20-31) [4]. Furthermore, he not only maintains that Divine will alone constitutes the basis of all positive rights and political obligation, but also appears to accept biblical teachings literally (e.g.1839,I,20f; & III,35-41) [5].

Second, Jarcke places less emphasis than Haller upon the unrestricted right of the strongest to impose his will and more emphasis upon the principle of the legal autonomy of self-governing corporations (e.g.1839,III,39f & I,138-43). Indeed, one of the most characteristic features of Jarcke's theory of the state is his vision of the state as consisting of the existing property rights of individuals and corporations and of self-government (e.g.1839,I,75;II,281-312

& III,382f). For Jarcke, autonomy constitutes the core element of the Christian-Germanic state tradition (e.g.1839, I,131 & III,382f). Thus he asserts that "for all Germanic peoples, freedom consists primarily of autonomy within a certain sphere" (1839,I,117).

Jarcke (e.g.1839,I,14-30; 63-81 & 114-31) considers this autonomy to be subject to a twofold threat. On the one hand, it is under attack from natural law theorists and liberal constitutionalists, who use appeals to nationalism, state interests, popular sovereignty, or social welfare to claim for the state a right to restrict, or even abolish, individual and corporate freedoms. On the other hand, Jarcke also argues that autonomy is threatened by rulers' personal desires for self-aggrandisement. Though Jarcke tries to defend him from the accusation of being absolutist (1839,I,133f), it is clear that Haller logically must come into the second category of persons whom Jarcke alleges threaten autonomy. This is evident from his explicit refutation of those such as Filmer who use patriarchy to argue for statist absolutism (e.g.1839, III,39).

Having summarised Jarcke's theory of the state and highlighted those aspects that are distinct from that of his fellow reactionary, Haller, it is time to consider in more detail Jarcke's use of federalism. In accordance with the declared aim of this thesis, we shall seek to establish what type(s) of federation Jarcke envisages, as well as the purposes he uses federalism to realise. As is the case with the post-1815 writings of Haller (see 5.3.2. below), Jarcke does not offer detailed reflections on the structure and

functioning of federations, but his writings do afford interesting insights into the political purposes which many reactionary conservatives wished the German Bund to promote.

Despite his emphasis upon a hierarchical and patrimonial theory of the state, Jarcke (1839, III, 56f) concedes that there can be what he refers to as "special circumstances", where there is an equality of power between two or more patrimonial rulers. Neither being able to overawe the other, they will contract to collaborate in ruling and to offer each other mutual assistance (1839, III, 56f). The resulting structure is a federation ("Bund"), a form of division of rule between numerous members with equal rights. In order to distinguish federations from what he considers the more natural and viable form of rule, namely, hierarchical monarchies, Jarcke (1839, 32-64) also refers to them as "associations" (Gesellschaft, or Gemeinschaft), or as "republics" and stresses that they are both an exceptional and, by virtue of their likely instability, inferior form of rule. In support of this argument, he quotes Haller's contention that association "is the source of all strife" (cited in Jarcke, 1939, III, 60).

Applying this approach to the German Bund, Jarcke argues that, after the interregnum of foreign domination, the several rulers of the German territorial states were in a situation of equality of power and none felt inclined either to sacrifice that power, or to take on the burden of a powerless crown. The German states therefore had no option but to unite into a federation of equal sovereign units. In short, Jarcke regards post-1815 Germany as an interstate confederation, created in the final analysis not by free

human contract (for that would be to accept a contractualist view of the state), but by necessity (1839, III, 56f). The federation is composed of autonomous territorial units, in most of which, rule is based upon land ownership sanctioned by Divine will (1839, III, 32-64 & *ibid*, 93-105).

Inasmuch as Jarcke emphasises a corporate structure to his state, there are superficial similarities between his theory and that of Althusius, and one might be tempted to conclude that Jarcke also conceives of an intrastate-corporate federation. However, closer inspection shows this not to be the case. First, Jarcke does not propose that the autonomous corporations unite as the component parts of a federation, with the central authority being subject to the collective sovereignty of the former. It is not the internally hierarchical corporations, but the territorial units in which they are located that Jarcke sees as the members of the federation. Second, though Jarcke at times uses the word "republic" to describe the federation, this is meant to denote merely the equality of the members and thus to differentiate it from a hierarchical system of rule. It should not be taken to imply any commitment by Jarcke to popular participation in the federation, let alone to popular sovereignty. This is evident from his statement that the units of federations are not be the peoples, but freely contracting territorial rulers (1839, III, 378-410). It will be recalled that by contrast, Althusian federalism is very much predicated upon the sovereignty of the body politic (see 2.2. above).

Having established that Jarcke regards the German Bund as

constituting what this thesis has defined as an interstate-confederal type of union, the next task is to consider the political purposes which he hopes that federation will promote. One could take as a starting point for answering that question, Jarcke's assertion (1839,III,62) that the German Bund owes its creation to a perceived need for common defence against external threat. It is necessary, however, to go further and to ask what it is that he wishes the German Bund to defend. The answer is simple: Jarcke thinks the prime purpose of the federation is the defence of what he terms "legitimacy", by which he means the protection of established individual and corporate rights of property.

Jarcke does consider the possibility that self-seeking rulers can threaten those rights and thus argues for the establishment, within each component unit of the federation, of constitutions based upon estate representation, so as to ensure that they have as little central legislation and as much decentralised autonomous administration as possible (1839,III,281-312). However, his paramount concern is defence against the threat which he feels is posed by liberals' appeals to popular sovereignty and equality.

As was explained above (see Chapter 4.2.), two of the most important constitutional commitments of the German Bund were to the institution in each member state of constitutions based upon representation by the estates, as well as its formal commitment (reinforced informally by the "Metternich system") to the defence of property and traditional rights. One might therefore presume that Jarcke's federalism is merely a rationalization of the existing federal structure and is thus an example not of reactionary, but of status quo

conservatism. Viewed in this light, the Divine authority which he alleges the patrimonial rulers of the territorial states of the German Bund possess amounts to little more than a legitimation of the principles of the existing federation.

However, Jarcke is not a status quo, but a reactionary conservative. Though his federalism supports it, his ideal is not the existing German Bund. He sees even Restoration Germany as dangerously vulnerable to liberal constitutionalism and thus as prone to statist absolutism. In an attempt to counter such perceived threats, Jarcke (1839, I, 61-3) advocates much stricter censorship than even he believes is likely to be introduced. However, the main strategy of his federalism is to defend the interstate-confederal German Bund. He does this not out of any real commitment to confederation for Germany. As will be recalled, Jarcke argues that such federations emerge as historical necessities, but, unlike hierarchical monarchies, are not even durable, let alone desirable. In other words, the German interstate confederation is for Jarcke purely a means to an end. He believes that while it lasts, it offers opportunities for the feudal social, economic and political structures he desires to be established within it.

The long-term ideal behind Jarcke's federalism is a return to the pre-Reformation Holy Roman Empire, which he considers (1839, III, 61f) to have been a state, under the ultimate authority of its imperial ruler. What Jarcke wishes to see "restored" in Germany is therefore a state comprising a sovereign central imperial authority and numerous primarily monarchical constituent units that enjoy territorial

supremacy, but are none the less subordinate to the sovereignty of the Emperor. Though Jarcke does not say so explicitly [6], it is probable that he wishes to see a restoration of the Habsburg dynasty to the imperial throne and of a strong role for the Catholic Church. This is hinted at in his assertion in an 1835 essay (Jarcke, 1839, I, 373f), that the old, theocratically-based German Reich destroyed by the Reformation was "the most noble rule in the whole of Christendom and the most sublime idea which history has ever produced". Moreover, as was mentioned above, Jarcke was a Catholic who in 1832 left Protestant Berlin for Vienna, where he was appointed to head the Austrian Imperial Chancellery.

Regretably, Jarcke's discussion in his Mixed Writings of the nature of his ideal German Empire is rather vague. Accordingly, though his ideal Reich sounds remarkably similar to that of Leibniz and Goerres (see 2.3 & 3.2 above resp.), it is not possible to be certain whether Jarcke regards that Reich as a simple state, or as what this thesis (see 2.4 above) has classified as an intrastate-imperial federation. What is certain, however, is that Jarcke provides a good illustration of how some reactionary German conservatives used federalism in an instrumental fashion, as a means of moving towards their reactionary ideal.

The next exponent of Germanic federalism to be considered in this section is the enigmatic Goerres, whose federalism during the Congress of Vienna (Goerres, 1814-16) was discussed in Chapter 3.2 above. There is some dispute about whether it is appropriate to designate him a reactionary conservative [7]. It will be recalled that although Goerres was a committed liberal revolutionary in his early life, by the end of the

Napoleonic period he has become a Romantic German nationalist. During the period with which this chapter is concerned, Goerres becomes what Aris (1936,320) describes as "perhaps the most outstanding representative of Catholic political thought in Germany". By 1827, when he takes a chair of history at Munich, Goerres' orientation has long since become markedly clerical-conservative. He is a contributor to a number of Catholic-conservative journals and the leading light in the Munich "Eos Circle", whose demand is the independence of the Catholic Church from the state (and above all from Protestant states), as well as the subordination of all temporal authority under that of the (Catholic) Church. In response to the 1837 "Cologne Conflict" regarding the status of the Catholic church in Protestant Prussia, Goerres publishes Athanasius, which is directed against Prussia's policies of state secularisation (Huber,1965,107-26). From this time on, Goerres is seen by all progressive elements as the leading German spokesman of an ultramontane and intolerant political Catholicism (Goerres,1854-74).

It is not Goerres' Catholicism per se that have inclined this thesis to include him under the rubric of reactionary German conservatism. Instead, it is the political uses he makes of that Catholicism, especially his desire to return Germany to an idealised past. That is not to deny that Goerres retains a few vaguely liberal sympathies. Example are his enduring commitment to popular representation and his opposition to unearned privilege (eg.1819,100). However, the overwhelming thrust of his writings (Goerres,1854-74; Schorn, 1934) is that of a reactionary conservative.

At the time of the Congress of Vienna, Goerres (1814-16, see 3.2 above) proposes a German intrastate-imperial federation. By means of an accommodation of Protestant Prussia and Catholic Austria under the leadership of the latter, the federation is to bring about a synthesis that will restore what Goerres holds to be the ancient powers of not only the German Kaiser, but also of the estates and the Papacy. The Federal Act of 1815 was of course to cruelly disappoint Goerres' hopes. In the last few months of 1815, Goerres uses the Rheinischer Merkur (Goerres, 1814-16) to express his deep disappointment at the loose nature of the German Bund and bitterly accuses the German princes and Prussia in particular, of a selfish refusal to make sacrifices for the German cause. On 3 January 1816, Prussia responds by prohibiting further publication of the Merkur.

Our concern here is Goerres' subsequent contribution to Germanic federalism. It started some three years later, in a book entitled Germany and the Revolution (Goerres, 1819), where he again attacks Prussian policies regarding German unity and spells out his view that German national unity cannot long be postponed by the puny resistance of the German princes. Friedrich Wilhelm III's response to this renewed attack on Prussia is to issue a warrant for Goerres' arrest, which he only avoids by fleeing to Strassbourg and to Switzerland. In 1821, Goerres publishes a similar book under the title Europe and the Revoultion, but thereafter devotes himself primarily to ecclesiastical matters, though there are some interesting comments on federation to be found in his 1845 essay on The Moral of the Events in Switzerland (Goerres, 1854-74, 9, 257-76). The following

exposition of Goerres' federalism in the period after 1815 will be based upon the three sources just identified.

Goerres' Germany and the Revolution (1819) was written in direct response to the Carlsbad Decrees of that year (see 4.2. above), which had justified their clamp down on expressions of liberalism and nationalism by alleging that Germany was the target of a revolutionary conspiracy. Though Goerres (1819,89-97) rejects this allegation and claims the German princes are overreacting, he is (1819,47) scathing about the "pale colourless generality" of the Federal Act produced by the Congress of Vienna and says of the latter that

it was to summon a Diet in which it is not the majority of votes that count, but where decisions can only be made unanimously. A pure democracy, the Demos of which comprises the courts of the various opinions, interests and power relationships; a central authority which stands not above, but below the encompassed parts; an executive authority that is powerless and, because it cannot act against those who do not concur, is not in a position to bring about anything at all, since it will never be able to get a dissenting voice to agree; a legislative authority which may never define its own competence, and a judicial authority which nobody is constrained to obey, in which all of the policies of the authorities are eternally sought by means of an interminable diplomacy, but are never found ...

Goerres patently shares the nationalist frustration of the Burschenschaften (i.e. the immediate targets of the Carlsbad Decrees). He too sees the German interstate confederation as a betrayal on the part of the people in whom Germany had placed great hope for the creation of national unity. As he puts it himself (1819,40), if there is a conspiracy, then it is one which

the times of unrelenting arbitrariness, the mechanisms of dead structures and the senseless, despotic maxims of governments have caused to be hatched against them by incensed nationalism,

betrayed hopes, mistreated pride and a life of oppression.

Goerres responds to his disappointment in Germany's human masters by retreating into his mystical historicism. There are, he asserts (1819,97-99), mighty forces of nature inexorably propelling Germany towards rejuvenation through greater national unity. Goerres regards the German Bund as an attempt to stop these forces and insists that, try as they might, the governments will not succeed. He warns (1819,101) that if they persist in their opposition to these elemental forces, the German governments will not only inevitably lose the struggle, but will also cause the change to be a violent revolution. Its outcome will be to wipe away all Germany's dynasties, break all church institutions, eradicate the aristocracy, introduce a republican constitution and then overthrow the whole rotten European state structure. The revolution of the title of Goerres' book is therefore not a product of human conspiracy, but a revolution which the world governing spirit of history will bring about if the governments do not bow to it. This Romantic notion of an omnipotent world spirit determining mankind's destiny is of course already in evidence in Goerres' earlier federalism (1814-16, see 3.2. above).

The manner in which Goerres articulates his federalism in 1819 is also similar to that in the Rheinischer Merkur, though his Romantic mysticism is if anything even more pronounced (1819, eg. 39f & 98f). For example, he says (1819, 97) that the nation is pressing towards unity and that this pressure is like the growth of a tree and the blowing of the wind; no human efforts can stop its advance. Continuing with

the former image, Goerres (1819,98) says:

a heavenly bolt of lightning has struck the German oak; its crown has become a spindly nest, only the roots in the soil and the core of the trunk continue to green strongly and forcefully, and must throw out new shoots aloft ... This is why the whole of German history has for over three hundred years been about withering and aridness; that is why all our institutions extend only naked and withered branches into society; that is why all things formal are decayed, rotten, weather-beaten and decomposed; that is why a spirit of putrefaction stalks our state structure; as in all ruins, one can hear, on the walls and foundations, a quiet rustling, as though the teeth of Time were gnawing at the stucture.

Goerres (1819,98) describes the mystical world spirit in language that virtually defies comprehension, let alone translation, and concludes that it is the ideas emanating from this spirit which hold states together and inspire them (literally: "give them their souls"). How this happens is beyond even Goerres' ability to fathom. He merely notes (1819,99) that in times of of great transition such as that presently facing Germany,

shafts of lightning crack through society and inflame all heads like a contagion; one does not know how this inflammation is spread, whether through inhalation, through some medium that unites everyone, be it linguistic, pictoral, or some other secret empathy ? in short, all people suddenly become of one mind.

Goerres (1819,102-6) believes that Germany's mediaeval society had a commendable unity of structure and purpose and identifies (1819,106-31) three of its features as having been especially significant in fostering this unity and the great cultural and scientific life which he maintains distinguished that period. The first is the division of authority between the secular, imperial realm and the spiritual, ecclesiastical realm, with the latter being prior to the former. The second feature relates to the roles of, and relative importance

ascribed to, the monarchical and republican principles. Though Goerres defends the notion of a balance between them, he clearly regards the former as superior. This is evident from the fact that he perceives the institutions he values most, namely, the imperial dignity and the Catholic Church, as having been the purest repositories of the hierarchical monarchical principle. This leads to the third feature that Goerres deems to have been highly significant for the success of mediaeval society: the assumption by the Catholic Church of the leading role in the crucial spiritual realm.

Given these views, Goerres' prescription for contemporary Germany is predictable. It corresponds in all essentials with that he articulated during the deliberations of the Congress of Vienna (Goerres, 1814-16, see 3.2 above) and it is therefore not necessary to go into it in detail here. In brief, Goerres wishes to see Germany become an intrastate-imperial federation, in the form of a reconstituted Holy Roman Empire. There is to be a bicameral federal assembly, comprising an estates-based and a princely chamber. Since the Catholic Church has continued to exhibit the greatest spiritual purity, it will assume the leadership role in the spiritual dimension and Protestantism will, it appears, have to accommodate itself to this. Secular and ecclesiastical authority are to be exercised by the Emperor and the Pope respectively, but with the latter de facto superior.

Goerres is convinced that this intrastate-imperial federation will be brought about by the elemental forces described earlier, notwithstanding the possible resistance of the German princes. For example, he states (1819, 97) that one

consequence of the above mentioned mystical contagion will be that the local assemblies of estates will assert themselves nationally and establish a popular representation alongside the Bundestag. In due course, the need for the unity provided by a head will become evident and the imperial dignity will come back into its own (1819,97). Goerres would of course prefer the co-operation of the princes and his book constitutes a call for them to recognise this force and to respond by establishing the necessary national unity before it is imposed upon them, or they are all wiped away before it.

In his Europe and the Revolution (1821), which is also articulated in an emotive, mystical and often religious style, Goerres applies essentially the same argument to the European level. He again (1821, eg.279f) alleges that there are mystical and irresistible forces at work, to which European governments must accommodate themselves. If they do not, the consequences will be disastrous (1821, eg.273-80). He repeats his attack on the German interstate federation (1821, eg.258-61), which he considers wholly insufficient for Germany's needs and thus a betrayal of the national cause. It has, he maintains (1821,261), made Germany a "diplomatic fiction". He again (1821, eg.284) stresses the need for estates-based representation both locally and at the centre of the Holy Roman Empire, whose revival he seeks. Finally, Goerres (1821, eg.268) is even more insistent about the primacy of Catholicism over Protestantism.

To summarise, Goerres' 1819 and 1821 contributions to Germanic federalism both demonstrate first, his complete rejection of interstate confederation for Germany. Unlike

Jarcke, Goerres does not consider it to offer a basis upon which his reactionary ideal might gradually be built. Second, they confirm Goerres' commitment to an intrastate-imperial federation as the ideal German constitution. Third, Goerres' contributions to Germanic federalism illustrate not only the fact that some reactionary Romantic German conservatives used intrastate-imperial federalism to promote their political ends, but also the distinctive and often inscrutable language in which that federalism was articulated. Behind that language lies a fourth aspect of Goerres' federalism that deserves to be stressed: his idealism. Goerres is another example of that group of contributors to Germanic federalism whose federalism is couched in an idealist philosophy. Other examples include Kant and Fichte (see 3.2. above), as well as Stahl, Fries and Troxler (see 5.3.2., 6.2.2. & 6.3.3. below resp.). One consequence of such idealist philosophies is a belief that the essence of the federations being discussed lies not in structures and institutions, but in the ideals they embody. This explains why Goerres frequently (eg, 1819, 131f & 1821, 132-6, 270 & 284) expresses scepticism in the power of structures and prefers to place his faith instead in two related elements. The first is his mystical world spirit and the second is religion.

This brings us to a final and important point about Goerres' post-1815 federalism. In Chapter 3.2., it was shown how Goerres, who had started out as a supporter of the French Revolution, had by 1815 largely become a mystical Romantic conservative, whose federalism was informed by an expansionist German nationalism and a desire for the influence of the

Catholic Church to be extended. None the less, his articles in the Rheinischer Merkur still contain both traces of his earlier cosmopolitanism and a degree of tolerance vis-a-vis Protestantism. After the establishment of the German Bund, even these mitigating elements decline. Especially from the 1820s onwards, Goerres becomes increasingly intolerant. This is not only reflected in the books in which Goerres articulates his post-1815 federalism, but actually leads to changes in emphasis regarding the purposes for which Goerres uses federalism. This is most evident in how Goerres now approaches the two main goals of his earlier federalism: nationalism and catholicity.

The nationalism of Goerres' post-1815 federalism is much more xenophobic. In Europe and the Revolution (1821,256), for example, he speaks of the "animalistic" Russians as "Slavs and slaves". German external security will, he assures his readers (1821,251f), be guaranteed by

a cordon of colonisation, running from the Baltic to the Black Sea, and by locating a warrior caste exactly according to the principles of feudalism, just as was organised by the former settlements of the Cossacks in the Ukraine.

This would keep such lesser races at bay from the German nation, which in 1838 (Historisch-politische Blaetter, cited in Schorn,1934,115), Goerres refers to as being rooted in the soil tilled by its ancestors and having not only remained independent, but having also kept its blood pure. In sum ,it becomes increasingly obvious that a major motivation behind Goerres' later federalism is racist nationalism and crude expansionism. It is thus provides an excellent example of where both the military and the expansionist condition posited by Riker (1964 & 1975) apply. However, it is also

necessary to ask what the purposes of that expansionism include. As will now be shown, they relate in the main to his political Catholicism.

The second area in which Goerres' increasing intolerance impacts upon the federalism he articulates between 1815 and 1848 is that related to his ever more radical ultramontanism. Indeed, it is now no longer nationalism that constitutes the prime concern of Goerres' life, but catholicity. Consequently, his interest in federation is now also restricted solely to its significance for catholicity. Goerres' preoccupation with how federations impact upon the confessional dimension is very well documented in a little known essay from 1845. That essay sets itself the task of identifying the moral of recent events in Switzerland, where, under the leadership of Bernese radicals, bands composed largely of Protestant radical liberals (the so-called Freischaarenzuege, see 4.2 above), have invaded Catholic-conservative Luzern with the intention of overthrowing its government and forcing the expulsion of the Jesuit order.

Goerres' essay is not only replete with religious imagery (eg.1845,260f), but is also uncompromisingly hostile to Protestantism. Thus unlike in 1814 (Goerres,1814-16, eg.124f), when he argues that the Reformation was a necessary and legitimate stage in the historical development of Christianity, Goerres now (1845,258) unequivocally condemns the Reformation and the Protestantism which caused it as the very source of revolution, radicalism and absolutism. When he later (1845,273) calls for accommodation between Catholicism and Protestantism, that appeal is therefore not very

convincing. However, the best evidence for the fact that Goerres is now only interested in federation when it impinges upon religious matters is his enthusiastic endorsement of a speech by Schleuniger, a Swiss parliamentarian from the canton of Aarau opposed to the Freischaarenzuege, around whose comments the whole of Goerres' essay revolves.

In admonition of the radicals' activities, Schleuniger states (Goerres, 1845, 261) that "confessionality, cantonality and federation" are the ethical principles of Swiss history. Goerres approves of these sentiments, but contends (1845, 262) that the actual ethical law of contemporary Switzerland has recently been shown to be "no confessionality, no cantonality, no federation, other than through the majority in the hands of the strong!" The Freischaarenzuege's principles he describes (1845, 263) as

no federation, if it stands in our way, the majority of the sovereign people is to be the federal government (Bundesherr); no confessionality, down with the Church, it is to be torn down and its millions are to join the others we have already taken possession of; finally, no cantonality; the borders of Bern are in future to be the borders of Switzerland.

Moreover, Goerres (1845, 264) accuses the Swiss federal authorities of having washed their hands of the Catholic cantons, despite being aware of the latter's innocence. He attributes this to the desire of the Protestant-dominated Vorort (the directoral canton temporarily in charge of the federal government) to allow the Freischaarenzuege to bring about a Protestant hegemony in Switzerland.

Goerres sees this issue not only as the crucial issue of the Swiss Eidgenossenschaft, but also as highly relevant to the existing German confederation. That is in fact the major

"moral" which his review of Swiss events identifies. It is evident from Goerres' claim that the desire to use federation to attack catholicism is to be found in Germany also,

where it appears that similar calculations are quietly being made. Indeed, it appears as though the pressing conditions revealing themselves in Switzerland are a mere daguerreotype of ours. Confessionality, independence of the members of the federation, both recognised in complete parity, are the ethical law of contemporary Reich history; they agreed this between themselves in Vienna at the Congress, and Germany put up with it. There are now, it appears, those amongst us who, like Bern and its associates, would like get at our cantonality, and to this end use confessionality as a handy pretext; and there are again others who, like the Protestant radicals amongst the Freischaaren, throw up cantonality, in order to overthrow confessionality.

In short, Goerres' prime goal is no longer nationalism, but catholicity. His interest in and assessment of the workings of the extant Swiss and German federations are related exclusively to the extent to which those federations affect the position of catholicism. Though his ultimate goal remains a return Europe to the twin rule of imperium and sacerdotium (see Chapter 2 above) in a German intrastate-imperial federation, his order of priorities clearly places confessionality before cantonality and federation and regards the two latter primarily as vehicles for the former.

Our consideration of the federalism of German reactionary conservatives is now complete. Before proceeding to examine that of status quo and reformist German conservatives, there will be a brief summary of the findings of this section.

Though it is only to be expected that persons who reject the notion that man is intellectually capable of producing social and political blueprints for an ideal society would not map out in great detail the federations which they wish to see,

there are still a number of interesting points that emerge from the above discussion of the federalism of Jarcke and Goerres. First, it has been demonstrated that they both conceive of interstate-confederal federations. While neither Jarcke nor Goerres see a German confederation as their ideal, they differ considerably, however, as to whether it is to be condemned out of hand, or regarded as a means to their reactionary ideal. The former view is espoused by Goerres, the latter by Jarcke.

Second, the ideal of both reactionary German conservatives considered here is the creation of a German Empire, in the mould of the Holy Roman Empire. Yet while Goerres clearly perceives that Empire to be an intrastate-imperial federation, Jarcke's writings are not sufficiently precise to allow one to say for certain whether he regards his ideal Empire as a federation, or as a single state. Third, the federalism of both Jarcke and Goerres is clearly related to the promotion of their political (including social and religious) ends. Though there are differences of emphasis between them, there is no doubt that their federalism is designed to bring about a conservative, feudal social and political structure and to promote the position of Catholicism. In addition, Goerres' federalism is in part motivated by an expansionist German nationalism.

Finally, the federalisms of Jarcke and Goerres have in common the advocacy of what came to be known as the grossdeutsch solution to the German problem (see 4.2 above). That is to say, they used federalism as a means of moving towards their ideal German state, which was to include all the states of the German Bund. Moreover, conservative

Austria was to assume the leadership role within that federation. It is perhaps no coincidence that Jarcke and Goerres were devout Catholics and looked to the Habsburg Empire to guarantee the interests of Catholicism, as well as those of their reactionary political conservatism.

In both respects, the aims of their federalisms were often very different from those of status quo and reformist German conservatives, whose federalism is the topic of the next section of this chapter.

5.2.3. THE FEDERALISM OF STATUS QUO AND REFORMIST GERMAN CONSERVATIVES

This section will discuss the substance and motivations of the federalism of German status quo and reformist conservatives by reference to the contributions to the Germanic tradition of federalism made by Stahl (1845, 1849, 1849a, 1850 & 1856/6) and Heeren (1817) respectively.

Friedrich Julius Stahl (1802-1861) [8] was born in Catholic Bavaria of a Jewish family and initially received a rabbinical education. In 1819, however, as a result of the influence of a group of immigrant north German Protestants, Stahl became a devout convert to the Lutheran faith. As a student at Wuerzburg, Stahl was a prominent Burschenschaftler and developed into an ardent, conservative German nationalist, motivated by the ideal of a Germano-Christian state (Masur, 1930, 56) [9]. While studying at Heidelberg in 1821, Stahl first encountered Zachariae's defence of the monarchical principle [10], a principle that was to become an enduring core of Stahl's own political theory. Heidelberg

also brought Stahl into contact with the Romantics and Savigny's historical school, from whom Stahl was, however, later to distance himself, since he felt they lacked an emphasis upon religious matters (Masur, 1930, 99f).

In the 1830s, Stahl developed his own political theory, which he published in his Philosophy of Right, the two parts of the first edition of which appeared in 1830 and 1837 (Stahl, 1854/6). Described by Bluntschli (1867, 631) as being flawed and yet "epoch-making in Political Science", it posits the state as a "sittliches Reich" (ethical commonwealth), the authority of which derives not from rational natural law and popular sovereignty, or from the Law of Nature, but from the fact that it is a direct manifestation of God's grace (see below). On the strength of that treatise, Stahl entered an academic career, in the early stages of which he held chairs in jurisprudence at Wuerzburg and at Erlangen, which Masur (1930, 62) describes as the "spiritual home of Protestant Franconia". The Philosophy of Right also brought Stahl to the attention of Friedrich Wilhelm IV of Prussia, who in 1840 called him to a chair at Berlin.

The move to Berlin constitutes something of a watershed in Stahl's life. Previously, Stahl's significance lay primarily in the realm of political theory, rather than in that of political practice [11]. Stahl's career throughout the late 1840s and the 1850s, however, is characterised by his energetic and high level political involvement in the struggle against liberalism and radicalism, which experienced their high-water mark in 1848 (see Chapter 4.2 above). Stahl was active both in the Prussian First Chamber, to which Friedrich Wilhelm IV had appointed him for life 1849 and in

the 1850 Erfurt Parliament. He became the "intellectual head of the conservative party in Prussia during the 40s and 50s" and the "most outspoken fighter for the conservative idea" (H.Schmidt, 1914,2 & 5). Stahl gradually took over from Haller as the theoretician to whom conservative German monarchs looked for a legitimation of their rule [12]. His political views exercised considerable influence not only upon Friedreich Wilhelm IV and through him on Prussian politics (eg.Meinecke, 1928,263-86), but also (eg.H.Schmidt, 1914) upon the shape which the Bismarckian Second Reich subsequently took.

The Second Reich lies outside the scope of this thesis, however, the focus of which is limited to the development of Germanic federalism up to 1850. An understanding of the contribution which Stahl's participation in the debate on the future political structure of Germany made to Germanic federalism necessitates at least a broad understanding of both his political philosophy and his general theory of the state [13], a brief summary of which will now be given.

Stahl (1854/6,III,viii-x) contends that for a century and a half, authority has been widely held to derive from human will and contract and concludes (1854/6,III,viii) that "the core of the whole approach to which this modern rational-pantheistic philosophy belongs is the denial of the living God". He argues (1854/6,III,xviii) that modern philosophy "must recognise the simple fact that God created the world in accordance with His free will ... " and that "human reason is merely one valuable science among others and not the master science above all other sciences". Stahl (1854/6,III,xxxi)

perceives a fundamental struggle "between Christianity and the de-Christianisation of the civilised world" and calls for a reassertion of the importance of Divine revelation, order and providence as superior to human will and contract. He maintains (1854/6,IIii,229) that "The conservative principle rests upon the true ethical spirit, namely, upon submission to higher Divine Providence, ... while radicalism rests upon presumption".

Thus while Stahl has in common with status quo conservatives such as Puetter and Leist (see 2.3 and 3.2 above) a dislike of liberal theories of the state and a desire to provide a philosophy which legitimates the status quo, unlike them, Stahl's theory is not predicated upon a glorification of positive law as such. Indeed, his lengthy review of the history of political thought (1854/6,I) differentiates between empirical and ethical theories of the state [14] and concludes that the former are inferior. Stahl explicitly (eg.1854/6, III,x; IIii,1-203 & 143-51) rejects rational, or contract theories of the state, such as those of Kant and Fichte [15], as well as the patrimonial theories of reactionary conservatives such as Haller, whom he accuses (1854/6,IIii, 5-20; 119-28; 133; 141-3 & 1845,iv-x) of being blind to the ethical purpose of the state and falsely regarding it as an institution for rule by a prince in his personal interest. Instead, Stahl asserts the sole valid theory of the state to be an ethical theory based upon Christianity.

In short, while he believes in the value of positive law, Stahl (1854/6,eg.IIi,218) considers it to be binding not by virtue of the mere fact that it is law, but because it is largely the product of "the ideas and demands of the Divine

world order", that is to say, of Providence. Stahl insists that he is not arguing for the dependence of positive law upon Nature (as Haller appears to), or upon a higher rational law (as is the case with Kant and Fichte), but merely (1854/6, Iii,218) that Divine will provides the basis of positive law, and the yardstick in accordance with which it is to be judged. It is also important to note that while Stahl asserts that the state has a Divine foundation, he is careful (e.g.1854/6,IIii,176-9) to make it clear that he does not mean that the state is the direct product of God, nor that instructions issued by state authorities are themselves Divine. While a state instruction which is contrary to God's commandments does not cease to be legal, since the state remains the source of legality, it is not morally binding. Accordingly, Stahl's theory provides for freedom of the person - as when he states (1854/6,IIii,181-3) that God has given man complete freedom as to whether or not to follow His moral commandments. In practice, however, his commitment to the principles of the Lutheran faith means that in cases of conflict between the individual and the state, Stahl's prescription (eg.1854/6,IIii,Ch19) amounts to passive obedience.

Having given a brief outline of Stahl's philosophy, the two main ways in which it is reflected in his general theory of state will be highlighted. These relate on the one hand to the purposes which he argues that the state is to promote and on the other hand, to how it is to be structured.

Unlike Haller (see 3.3 above and 5.3.2. below), Stahl (eg. 1854/6,IIii,49-63 & 229) distinguishes clearly between the

private and the public domain (and thus between civil and political rights). The concerns of the private realm are temporal, or bodily needs, while the concern of the public realm relates to man's higher, spiritual, or ethical ends. For Stahl (1854/6, IIii, 131f), the state is therefore "a collection of persons united under a sovereign rule for the purpose of promoting a sittliches Reich (ethical commonwealth)" and has a threefold purpose: "human welfare, the realisation of the extent of creative and productive ideas and the rule of sanctity and justice" [16]. However, Stahl insists (1854/6, IIii, 151-61) that the state is entitled to interfere only in the communal, as opposed to the private, spheres of human life.

Stahl's notion of a sittliches Reich is central to an understanding of both the purpose and the structure which his general theory of the state prescribes. Thus he says (1854/6, IIii, 2f) that the sittliches Reich implies

the necessity of an authority completely superior to mankind, i.e. the appeal to obedience and respect, which is to be granted not merely to the law, but to a real power external to man: the authorities (state power) (The principle of legitimacy as opposed to that of popular sovereignty), and at the same time ... also constitutes the limit to this authority, i.e. the necessity of state law passed down through history and superior to the prince and the people and alterable only in accordance with its own terms (the true constitutional principle), and finally, the recognition of the nation (the obedient) as an ethical community, free by virtue of being subordinate to the law, as the expression and demand of their own ethical nature.

Stahl (eg. 1854/6, IIii, xxvii), believes a sittliches Reich requires the state to be organised in accordance with two central principles. The first is that of a monarchy based upon Divine grace. He refers to this as the "principle of

legitimacy". Stahl argues (1854/6,IIii,211-18) not only that monarchy is preferable to other types of political system, because they all require sovereignty to be exercised by an "artificial" structure (1854/6,IIii,211), but also (1854/6,IIii,243-52 & 332f) that the best form of monarchy is the hereditary variety in which the king is completely sovereign; that is to say, where he exercises both legislative and executive authority independently. Stahl (1854/6IIii,288-94; 320-33 & 1845) dismisses liberal constitutionalism on the grounds that by elevating the constitution above the crown, it undermines the principle of a Divine monarchy [17].

That brings us to the second organisational principle of the sittliches Reich. Stahl (e.g.1854/6,I,289) predictably rejects liberalism and its notion of popular sovereignty as revolutionary [18]. While he agrees with the principle of representation, what he proposes (eg.1845 & 1854/6,IIii, Chs. 8f) is an assembly which would de facto be structured on the basis of the estates. Among his justifications for this are his assertion (1854/6,IIIii,317-33; 1945,iv & 1850,viif) that such a system represents the people as it really is, namely, as organised around the estates and not as the atomised mass which he accuses the liberal constitutional principle of assuming. Though Stahl is not very specific about the details, it is clear that the estates are to have the right of consultation and of approval of only certain limited categories of legislation (1854/6,IIii,193), since the principle of a independent sovereignty of the monarch must be maintained [19].

So far, this discussion of Stahl has outlined his political philosophy and his general theory of the state, as

they were articulated in his writings up to the mid-1840s. It has been shown that Stahl's method of legitimising the German status quo is based upon refuting liberals' and radicals' demands for parliamentary constitutionalism, political equality and popular sovereignty by means of an assertion of the Divine foundation of the state and of the monarchical principle.

It is now time to move to a consideration of what Stahl's writings up to the mid-1840s reveal about his federalism. Stahl (eg.1845,1 & 43f) points out that the declared prime purpose of the German Bund is the preservation of the monarchical principle. He claims (eg.1845,34-41) that the latter is the foundation stone of German constitutional law and of German political wisdom and must (eg.1845,2-11) be defended against the parliamentary principle. He believes (e.g.1845,iiif & 1f) that the monarchical principle is incompatible with the principles of popular sovereignty and separation of powers, which inevitably lead to party rule and, ultimately, to the de facto abdication of the monarch and the establishment of a republic. Not surprisingly, Stahl advocates the maintenance of the existing rules of the German Bund, as a means of ensuring that such "revolutionary" principles are not realised. In short, Stahl regards the German Bund as an interstate-confederation, the contracting parties to which are not the peoples, but their sovereign territorial rulers. Moreover, its prime purpose is for him the defence of the existing monarchical systems of rule and the avoidance of moves towards liberal constitutionalism and popular sovereignty.

Up to the late 1840s, Stahl is thus a status quo conservative, whose main concern lies in the provision of an alternative philosophical legitimation of the monarchical structures existing within the states of the German Bund. His interest in that confederation is limited to passive support of it as the the best guarantor of the monarchical status quo.

The position of a status quo conservative is always precarious, however. As Epstein (1966,8) points out:

The main difficulty confronting the Status Quo Conservative is the fundamental hopelessness of his over-all goal - hopeless because of the ever-changing nature of the status quo he seeks to defend.

Stahl becomes acutely aware of this problem in March 1848, when widespread popular uprisings foreshadow radical changes in German politics. On the one hand, there is the almost universally expected transformation of the German federation from an interstate to an intrastate union. Since Stahl has retained his youthful commitment to German nationalism, he welcomes that prospective change, as well as Friedrich Wilhelm IV's public promise to play a leading role in it (H.Schmidt,1914,30f). But there is a second, and from Stahl's perspective highly undesirable, major change which the events of 1848 appear to portend. It is clear from the revolutionary nature of the 1848 uprisings and from the National Assembly which they spawned, that the demands for reform threaten also to replace the German monarchies with republics. The liberal constitutionalism and popular sovereignty which Stahl has argued against for two decades seems about to descend upon him.

Faced with this apparently irresistible radical threat to the status quo and thus to his elaborate theory of the

state, Stahl's initial response is to despair (H.Schmidt, 1914,20f). Yet by the summer of 1848, he starts to engage in the federal debate himself, in order to minimise change and defend his cherished twin principles of monarchical authority and largely symbolic, estates-based representation. Thus while federation received scant attention in Stahl's earlier writings, from 1848 to 1850 (Stahl,1849,1849a & 1850), it becomes their central concern. It cannot be the task of this thesis to chart every twist and turn in what was a detailed and ongoing debate. Instead, it is intended to illustrate Stahl's contribution to Germanic federalism by focussing first upon the federalism he articulated in the summer of 1848 (Stahl,1849 & H.Schmidt,1914,20-6) and then upon that which he set out in the summer of 1849 (Stahl,1849a).

The first occasion after the revolutions of March 1848 that Stahl puts pen to paper on the future structure of the German federation is in a series of five articles published in the conservative newspaper: Die neue Preussische Zeitung (or Kreuzzeitung) [20] during July to September 1848. While he approves of the intention to convert the German Bund into a Bundesstaat [21], Stahl opposes many of the proposals being discussed at the National Assembly. Among the points he makes (Stahl,1849 & H.Schmidt,1914,20-26) are first, that the new federal constitution must have the consent of the German princes. Second, he says that until such time as it is agreed to, Prussia must retain its sovereignty. Third, Stahl maintains that Prussia must insist first, on the abandonment of what Stahl regards as the excessive centralisation being mooted by the National Assembly in favour of the guaranteed

independence of the German states and second, upon Prussia receiving an appropriate share of the power of the proposed central authority. Stahl's fourth general point in response to the National Assembly's debates is his rejection of representation in the upper federal chamber being based upon the states as states, which he considers to be not in keeping with the monarchical nature of most of the constituent units of the German federation. Finally, Stahl concludes that by virtue of the relative size of its non-German population, Austria is unsuited to be a member of a German Bundesstaat.

In the Kruezzzeitung articles, which were published as a collection of essays in December 1848 (Stahl, 1849), Stahl is using federalism as a weapon of political defence. He is defending both the particular interests of Prussia and also the monarchical principle against the demands of liberal constitutionalists. H. Schmidt (1914, 19) implies that Stahl's lack of "preconceived ideas as to the future state structure" is a reflection of his willingness to consider change. That is to neglect the fact that Stahl's contributions in the summer of 1848 to the debate on Germany's future are taking place in the context of a grave threat to the political cause with which Stahl identifies and that it is this which induces his federalism to be primarily reactive, or defensive. In short, Stahl must be seen as a status quo conservative, whose status quo is rapidly sinking and who is therefore doing his best to salvage of it what he can. Though the federalism Stahl articulates in the summer of 1848 hints at some of the main features of his views on the best federation for Germany, it is primarily concerned with the demerits of the discussions in the National Assembly and does not amount to

a federal prescription or theory in its own right.

By the summer of 1849, the political situation is very different and as a consequence, so is Stahl's federalism. Towards the end of 1848, both the Austrian and Prussian crown had successfully reasserted their domestic authority and the liberal concessions made earlier that year were rescinded. The newfound strength of the German governments caused the position of the National Assembly to weaken. Stahl's personal situation had also changed; with his appointment in January 1849 by Friedrich Wilhelm IV to the new Prussian upper chamber, Stahl had acquired a political platform from which to air his federalism (see Stahl, 1850 & H. Schmidt, 1914, esp. 26-31). When the National Assembly collapses in the spring of 1849, Stahl supports Friedrich Wilhelm's decision to seize the initiative in the matter of German federal reform and in June, he publishes what has been described (H. Schmidt, 1914, 31) as a "brilliantly written essay" that forms "the pinnacle of Stahl's participation in the task of German unification". That essay (Stahl, 1849a) constitutes the second and final example of Stahl's federalism of 1848-50 that will be considered here.

Its main purpose is to offer a critical comparative analysis of the National Assembly's constitution and the Union Plan of the Three Kings' League. Their main features were outlined above and it is not our intention to recount Stahl's detailed discussion of them here [22]. It is not they and Stahl's predictable preference for the Union Plan (albeit with modifications) that make Stahl's Reichsverfassung (1849a) fascinating for this thesis. Instead, it is the fact that it

offers not only a clear picture of Stahl's general views as to the nature and function of federation, but also a good illustration of his use of federalism to promote his political goals. The following discussion the federalism contained in Stahl's Reichsverfassung will address three issues. The first is the types of federation Stahl envisages; the second relates to the contours of the federation he proposes for Germany. Finally, the ways in which that federalism relates to promoting Stahl's political goals will be considered, that is to say, how Stahl uses federalism as a political ideology.

Stahl (1849a, 77-9) accepts the distinction between simple and composite states and applies the label "Staatenstaat" to the latter category, which he says comprises two types of federation: the "Staatenbund" and the "Bundesstaat". Stahl then proceeds to distinguish between them in a routine manner. In a Staatenbund, sovereignty is located in the constituent members of the federation, and the rulings of the central authority are therefore binding only insofar as they are promulgated by those constituent units themselves. The reason for this is that the Staatenbund is an interstate confederation; it is based purely upon a contract, or alliance, between separate states. Failure of the latter to conform with the rulings of its central authority and even secession are thus merely breaches of contract.

In a Bundesstaat, by contrast, sovereignty is located in the centre, which directly applies its binding rulings upon the peoples of the individual constituent states of the federation. Though the constituent governments of the Bundesstaat have a considerable sphere of independence, it is

the centre that is the supreme power in the federation. The Bundesstaat is an intrastate federation that provides a real "union" or "unity" of states. Accordingly, disobedience of its commands and secession both constitute rebellion.

So far, Stahl's general classification of federations is quite conventional. The Bundesstaat and Staatenbund which he identifies correspond to the federations which this thesis has termed interstate-confederal and intrastate-territorial. It is with the next step of its argument that Stahl's federalism begins to become distinctive. Tucked away in a footnote (1849a,79), Stahl makes the crucial statement that

It is not of the essence of a Bundesstaat that the sovereign people of the whole territory act as its constituent body and are institutionalised within it. That certainly happened in North America, yet not in consequence of it being a Bundesstaat, but in consequence of its democratic constitution ... and it can therefore have no relevance for a Bundesstaat without a democratic constitution. ... Equally unrelated to the essence a Bundesstaat is its governmental structure; in republics as well as in monarchies, government can be with or without popular representation.

This aside is the key to a full understanding of Stahl's Reichsverfassung, which might otherwise appear to be a rather disjointed essay. It amounts to a subdivision of the category of Bundesstaat into its republican and monarchical variants and is a direct response to German liberals such as those in the National Assembly, who contend that popular representation and constitutionalism are intrinsic to the Bundesstaat and thus interpret the undertakings by the King of Prussia and others to make Germany into a Bundesstaat as commitments to establishing a German federation characterised by liberal constitutionalism and popular representation [23]. Stahl's insistence that the monarchical and republican types

of Bundesstaat are distinct and irreconcilable constitutes one of the main themes of his essay, which may be summarised as an attack upon the National Assembly's deliberate mixing of the two principles, as well as upon the failure of the Three Kings' League to disentangle them adequately [24].

Having established how Stahl classifies federations, it is time to consider what type of federation he wishes Germany to adopt. He states (1849a,11) that "The abandoned Bundestag must be replaced; the undertaking to move from a Staatenbund to a Bundesstaat must be honoured". A major factor inclining him to this view is his long held commitment to the "noble and well founded desire of the German peoples for national unity" (1849a,3). However, Stahl also maintains (1849a,12) that "It would be a disservice to German unity if one were to wish to bring it about through the sacrifice of Germany's monarchical foundations". Of the two types of Bundesstaat he has identified, Stahl therefore predictably wishes to see Germany opt for the monarchical type.

Stahl is a political realist and his essay therefore frequently limits its proposals regarding the structure of a German monarchical Bundesstaat to what Stahl believes to be politically feasible. None the less, it is possible to glean from Stahl's Reichsverfassung the main contours of the Bundesstaat he would wish to see established. It is to comprise all the member states of the German Bund (1849a,29), with the exception of Austria, which is at best to have a confederal relationship with the Bundesstaat as a whole (1849a,85-93). (The reasons Stahl offers are Austria's centralised internal constitution of March 1849 and its

non-German interests.) Prussia is to exercise a dominant role (1849a, eg. 30f), with the King of Prussia assuming the title of "Kaiser" and Prussia also having a large representation in the Reichstag (federal parliament).

In the latter, the constituent states of the Bundesstaat are to be represented in proportion to their size (1849a, 29f), though Stahl (1849a, 25) agrees that many of them are too small to be viable and proposes voluntary fusion between their ruling dynasties. Moreover (1849a, 28f), their rulers are to be members of the Reichstag in their capacity as princes, which he defends by stating that "though the prince represents the state, the state in no way represents the prince". When the latter are not present, their votes will therefore be cast by ambassadors bound to their prince's instructions. This "Fuerstentag" (Princely Chamber) will share legislative authority with the Kaiser, who will retain a right of absolute veto, as well as exclusive executive authority (1849a, 32-41). Though Stahl's preference (1849a, 25) is for a unicameral Reichstag, with popular representation at the federal level limited to meetings of ad hoc committees of the various constituent units' chambers of estates, he concedes (1849a, 26) that political pressure might require a second, popular chamber. If it does, he would prefer a system of representation based upon the estates, but should there have to be direct popular elections to it, he would accept (1849a, 30) the Union Plan's proposal for a three-class franchise based on property as a necessary evil.

In sum, Stahl's federalism of 1849 proposes a Bundesstaat, in which all republican and liberal constitutional elements envisaged by the National Assembly constitution and the Union

Plan are deleted. The monarchical principle dominates in both the constituent units of the federation and in the central authority. Though the federation contains a Kaiser, he does not exercise sovereignty alone, but in conjunction with the German princes. Accordingly, Stahl's monarchical Bundesstaat does not correspond to what this thesis has termed an intrastate-imperial federation. Instead, it is a variation on the theme of intrastate-territorial federation. The eminently political motives of Stahl's proposed Bundesstaat are made abundantly clear in the following assertion (1849a,41): "The task of the present day is not democracy, but the protection of monarchy, order and civilisation, of the true national power against democracy"

Though Stahl's 1849 federalism proposes unification of the German nation into a single state by means of a monarchical Bundesstaat, it is not federation itself, nor even German national unity which Stahl is primarily seeking to bring about. It is instead what he refers to as a "Reich", that is to say, a state characterised by the pursuit of an "ethical commonwealth" (sittliches Reich) [25]. This is evident in Stahl's defense of his monarchical Bundesstaat by alleging (1849a,9) that a republican type would deprive the German state of its ethical basis (which, it will be recalled from the above discussion of Stahl's general theory of the state, Stahl argues can only be provided by a Divine monarchy). He says (1849a,20) of the republican federation of the United States that it is based primarily

upon material interests ... Americans lack nationality and the prime purpose of their federation is to provide 'welfare assurance'. Germany ... has a profound need to be a nation and

therefore also to have institutions in which the ethical spirit ... of the nation are manifested.

Stahl rejects the notion that Bundesstaat and Reich are the same (1849a,79) and distinguishes them as follows (1849a,81):

... the 'Reich' is the form of original and complete unity (to be distinguished from uniformity), according to which the states were from the outset one and in no respect able to be have a reserved absolute independence outside the unity. By contrast, the Bundesstaat is the form of union (to be distinguished from mere alliance), which none the less still only derives solely from originally separate states, which then still maintain a sphere of separateness and absolute independence. The former is therefore the more appropriate form for numerous states of a single nation, the latter is more natural for states of different nationalities and with originally separate histories, or which were initially subjected to a foreign power, on tearing themselves free found themselves isolated and only then came together to a whole (in America, Switzerland, Netherlands). (1849a,81; see 1849a,24 also)

Put simply, though Stahl proposes federation as a means to national unification, he does not wish the result of that unification to be federation, whether interstate or intrastate, but a sittliches Reich. Philosophical justifications aside, what this amounts to is extending to the whole German state the Prussian monarchical status quo of a Divine monarchical authority unhindered by "artificial" mechanisms such as a parliament. That will eventually make Germany into a unitary state, presided over by the Hohenzollern dynasty.

To conclude, our discussion of the federalism of Friedrich Stahl has shown that in the period up to the late 1840s, Stahl's focus is directed primarily at the internal political structures of the constituent member states of the German Bund, for the legitimation of the monarchical

principle of which he develops an elaborate political theory (1845 & 1854/6). At this time, Stahl's interest in federation is limited to an uncritical acceptance of the interstate-confederal status quo, as a buffer against the threats posed to monarchy by liberal constitutionalism and political radicalism.

In 1848, however, when these latter forces appear to have assumed the upper hand and are poised to impose on the German states a federal structure that would fatally undermine Stahl's cherished monarchical principle, he becomes much more interested in federation. Initially, Stahl's federalism (1849) is primarily orientated to mitigating the republican threat. By the summer of 1849, however, with the forces of conservatism reviving, Stahl's federalism becomes more assertive. He now (1849a) proposes an intrastate-territorial federation for Germany. But even this monarchical Bundesstaat has to be seen as a means to the end of promoting monarchical rule. Stahl is using federalism as a means of not only reasserting the power of a unitary and conservative Prussian monarchical state, but of extending that principle to the whole of "Kleindeutschland", which is in the end also to become a unitary monarchy under Prussian hegemony.

There are at least five reasons why Stahl's federalism is significant for this thesis. First, though it is predicated upon an often rather abstract, idealist philosophy akin to that used to articulate the federalism of, for example, Kant, Fichte, Goerres, Fries and Troxler (see 2.4., 3.2. and 5.2.2. above & 6.2.2. and 6.3.3. below resp.), it is also characterised in its later phase by considerable political pragmatism. It thus produces federal proposals that are not,

like those of some other idealist theorists mentioned, largely impractical. The second and related point is that Stahl's federalism is demonstrably contingent upon the political situation in which Stahl finds himself. The manner in which his federalism adapts continuously to legitimate a changing status quo is a good illustration of the use by a status quo German conservative of federalism as a political ideology. Third, the distinction which Stahl introduces between the monarchical and republican subtypes of intrastate-territorial federation constitutes an interesting and influential contribution to Germanic federalism. Though Stahl was initially regarded by many reactionary conservatives such as those of the Haller school as dangerously liberal (Jarcke, 1839, III, 177-95; Meinecke, 1928, 244f & Masur, 1930, 247), both his general theory of the state and his federalism provided a modernised legitimation of the conservative cause in Germany. Of the significance of the former, H. Schmidt (1914, 2) writes that Stahl's

main contribution to his party consists in his having overcome its absolutist and ... feudal tendencies and led it to the legal foundation of constitutional monarchy ... and thus having made resilient for the struggle against revolution and democratic forces.

Similarly, one of Stahl's main contributions to Germanic federalism was to provide a non-feudal rationalisation of monarchical intrastate federation, which later proved to be very useful in the legitimation of the monarchical federation which Germany adopted in the constitution of the Second Reich. Indeed, and this is the final point, Stahl was not only a political thinker, but a political activist. His federalism is interesting not merely in its own right, but

also for the political impact which its author had. His ideas on federation were influential not least in the Erfurt Parliament, the federal proposals of which show a remarkable similarity to the structure of the federation of the Second Reich [26].

So far, this chapter has considered the use of federalism by reactionary and status quo German conservatives. The remainder of this section will be devoted to an elucidation of that of the reformist conservative: Arnold Heeren (1760-1842) [27].

Unlike younger conservatives such as Mueller (1779-1829) [28] and Jarcke (1801-1852), Heeren's formative experience was not Germany's national humiliation at the hands of Napoleon and the subsequent German Wars of Liberation, but the French Revolution and the late nineteenth century Enlightenment. It is from these latter sources that he acquired his universalist perspective on history and it is they that help account for what marks Heeren out as a reform conservative: his willingness to countenance the idea of progress by means of gradual political and economic reform [29]. That moderately enlightened attitude informed his academic work at Goettingen, where, after his appointment in 1801 to a chair of history, Heeren's research on the impact of economic forces upon historical development was influenced by the ideas of Adam Smith and Montesquieu. Heeren's reformist predisposition is also visible in the text which will be used to illustrate his federalism, namely, an essay written to coincide with the inaugural meeting of the new German Bundestag: The German Bund in its relationship to the European states system (Heeren, 1817).

The first issue to be addressed in this evaluation of Heeren's federalism is the type of federation he prescribes for Germany. He says (1817,437f) that although the internal structures of post-1815 Germany are not yet clear, it must unite to constitute a single external actor, while preserving the independence and inviolability of its units and a federal ("foederativer") character. Despite the fact that when speaking both of the German Bund and of the old Reich, Heeren uses the terms Staatensystem, Staatenbund, Bundesstaat and Bund interchangeably [30], it is clear that the type of federation he envisages for Germany is what this thesis has classified as an interstate confederation. This is suggested in his description (1817,454f) of the German Bund as comprising

sovereign states constituting a collective power ("Gesamtmacht") in their external relations, but appearing independent in respect of their internal administration, except as regards self-imposed limitations.

Any uncertainty which the terminological imprecision of his original essay might have left regarding the nature of the federation he proposes for Germany is clarified in an 1821 postscript (1817,452-7), where Heeren states that the underlying reason for popular discontent with the German Bund

lies ... in the general public's false impression of the nature of the Bund and of the Bundestag which represents it. Instead of regarding the Bund as what it is, as what at the opening of the Bundestag it immediately declared itself to be, namely, as a union of states (Staatenverein), one wished to see in it that which it was not and which, because of the nature of the given circumstances, it could neither be nor become: a state. This misconception was facilitated by the comparisons which were implicitly made between the Bund and North America, between the Congress, which operates with its own sovereignty (Vollmacht) and the Bundestag, which acts in accordance with the instructions of its members. The Bund and the Bundestag should instead have been compared with Switzerland and the Swiss

Having clarified the nature of the federation which Heeren prescribes for Germany, it remains for us to establish the purposes he wishes it to fulfil. The goal which Heeren sets himself in his essay (1817,428) is to spell out the nature and purpose of the German Bund by reference to its role within the European states system and it is thus Heeren's geo-political arguments that will be considered first.

In Heeren's opinion (1817,430f), there are only two possible future configurations to the European states system. The first is characterised by a predominant state, as existed in the Napoleonic "universal monarchy". Heeren argues (1817, 433f) that this is of proven undesirability and that the only alternative is to predicate the European states system upon the freedom and independence of its constituent states. This requires the the assertion of the principles of legality, lawful dynasties and rightful ownership and it alone will ensure European peace, order and stability.

Heeren contends (1817,430f) that in view of its position at the geographical centre of Europe, the structure of Germany is of vital importance not only for Germany, but also for Europe as a whole. He asks rhetorically whether Germany would,

if it were a large monarchy with strict political unity, ... long be able to resist the temptation of acquiring for itself the European pre-eminence which its position and its powers would appear to entitle it to ?

He maintains (1817,431f) that after the 1648 Peace of Westphalia, the old Reich was an interstate confederation which, despite all its acknowledged defects, ensured not only the freedom of the German states, but was the crucial element

ensuring European stability. Accordingly, he argues (1817, 428) that the external function which the German federation should perform is clear and undeniable. It must provide the stabilising core of the European states system. To do so, the the new German Bund must retain the interstate-confederal structure of the old Reich, albeit without an Emperor. It is this perception of the crucial geo-political role of a German interstate federation which motivates Heeren (1817,429) to assert that the German Bund

is intimately in agreement with the general and particular interests of Europe and is a necessary constituent part of its system of states.

In sum, only the maintenance of the freedom and independence of the German states can guarantee Germany's peace and security and with it, that of Europe as a whole.

A second element motivating Heeren's federalism is his German nationalism. This is expressed, for example (1817,447-9) in his wish for the German Bund to be expanded to embrace other states of "German descent", including the Netherlands and Switzerland [31], as well as in his suggestion that because of its purely German character, Prussia is due to play a leading role in the Bund. Yet it must be stressed that Heeren's nationalism is not xenophobic, but is based upon an enlightened, cosmopolitan perspective. For example (1817, 433f), his desired expansion of the federation is to be conditional upon the consent of the prospective new members and he also makes a point of rejecting national chauvenism. Related to the geo-political and nationalist considerations underpinning his federalism and further evidence of his universalism, are Heeren's views on the security, or military

aspects of the German federation.

On the one hand, Heeren (1817,441f & 449-51) is very concerned that the constitution of the German Bund does not provide for the degree of military centralisation which he believes to be necessary. He therefore calls (1817,450f) for greater symbolic unity by means such as a common German flag and German uniform, as well (1817,439-44) as for military decision-making to be more centralised and for greater restrictions to be placed upon the rights of member states of the federation to conduct their own foreign policies. On the other hand, however, central to Heeren's federalism is his insistence (1817,432f) that an interstate confederation can by its very nature neither wish, nor be in a position to be able, to launch an offensive war. Instead, it is structurally predisposed to a defensive military posture. Accordingly, the military role of the interstate confederation which Heeren prescribes for Germany is limited to that of defence.

This aspect of Heeren's federalism is doubly significant. First, it demonstrates the cosmopolitan nature of his nationalism; though he regards Germany as having an important important civilising mission to play in the world, the federation he prescribes for it requires Germany voluntarily to renounce its potential strength as a unitary state in order to avoid wars of territorial aggrandisement [32]. Second, Heeren's emphasis upon the non-expansionist and purely defensive nature of interstate confederation is of course also highly significant in terms of this thesis' aim of evaluating Riker's (1964 & 1975) hypothesis that the prime purpose of all federations is military expansion. Our

examination of Heeren's federalism again demonstrates Riker's argument to be flawed.

Though Heeren concludes that he is "justified in referring to the German Bund as the freedom state (Friedensstaat) of Europe." (1817,433), that should not, however, lead one to conclude that Heeren is advocating an interstate-chiliastic federation. He explicitly states (1817,435) that he is not thinking of federation as a means to perpetual peace. His federation is not to be pacifist, or even neutral, but is to have the aim of opposing "all provokers of unrest and overthrowers of states" (1817,435).

This brings us to a fourth important aspect of Heeren's federalism: its political aspirations for the German federation. In common with reactionary and status quo conservatives, Heeren's federalism contains a denunciation of all revolution, which he describes (1817,434) as "an abomination", as well as the hope that the German Bund be the champion of "the sanctity of property recognised as rightful" (1817,427). However, his federalism differs from theirs' by virtue of its more favourable orientation to political reform. This is evident, for example, in his assertion (1817, 438-440) of the merits of political diversity. He states that although there is a predominance within the German Bund of the monarchical principle, the existence of other types of political structure is both legitimate and economically and politically desirable. Indeed, he refers (1817,439) to the free cities as "glowing jewels in the German federal necklace" and praises them for preserving the spirit of republicanism which, unlike Stahl, he believes does not

threaten monarchical institutions in the slightest. Heeren also accepts (1817,455) that much has yet to be done to implement Article 13 of the Federal Pact, which envisages estates based constitutions in all the member states of the federation and expresses the hope that this will be facilitated by the retention of the principle of the freedom of the press, which is also enshrined in the Federal Act (1817,440)

Heeren's desire that the German federation accept gradual reform is also to be seen in his comments on economic matters. For example, in his 1821 postscript (1817,455f), he concedes that least progress has been made in respect of the the harmonisation of trade proposd in Article 19 of the Federal Pact. Though he takes the opportunity to take a swipe at the proposals of List and others for a protectionist German customs union, it is significant that Heeren describes greater economic harmonisation as desirable.

To summarise, Heeren's federalism proposes for Germany an interstate confederation of sovereign territorial states. Like most of the federalisms considered in this thesis, that of Heeren also asserts that one of the most important functions of the proposed federation is the maintenance of security. Thus in the aforementioned postscript, Heeren states (1817,457) that the two main purposes of the German Bund are the maintenance of strict legality ("eines festen Rechtszustandes") internally and of external security. Taking such assertions at face value might lead one to concur with Riker (1964 & 1975) not only that security considerations are common and indeed paramount for all federalisms, but perhaps also even with his assertion that the desire to participate

in territorial aggrandisement is a second common factor. However, as this thesis has shown time and time again, in order to gain a full understanding of the political aspirations motivating federal prescriptions, it is necessary to probe more deeply.

In the case of Heeren, this strategy has again been shown to be fruitful. Unlike Haller and Jarcke, who believe the equality of power implicit in an interstate confederation to be "the source of all strife" (Haller cited in Jarcke, 1839, III, 60, see 5.2.2. above), Heeren contends that it is the very guarantor of peace and stability in Europe. Again contrary to reactionary conservatives such as Jarcke and even status quo conservatives such as Stahl, Heeren does not insist upon the necessity of either an overarching monarch, or even of monarchy as the basis of rule within each member state of the federation. Instead, he envisages the federation as a healthy mixture of monarchical and republican states. Furthermore, Heeren's federalism rejects offensive wars. Finally, while Heeren's federation is to be "a new pillar of the restored order" and "a member of the Holy Alliance" (1817, 435), Heeren is neither a reactionary, nor a status quo conservative; his federalism contains the commitment to gradual political and economic reform so typical (Epstein, 1966, 8-10) of a reform conservative.

Our review of the utilisation of Germanic federalism by German conservatives is now complete. Before moving on to consider the contribution to Germanic federalism of Swiss conservatives, there will be a brief summary of the main findings of section 5.2. of this thesis by reference to four

issues. These are first, the dimensions of Germanic federalism envisaged by German conservatives during 1815 to 1850; second, the manner in which that federalism was articulated; third, the types of federation actually prescribed for Germany; and finally, the purposes behind those prescriptions.

This section has shown that German conservatives utilised three of the five dimensions of Germanic federalism identified in this thesis (see 1.4 above): the intrastate-imperial, intrastate-territorial and interstate-confederal types. Confederation was recognised by all the exponents of conservative Germanic federalism discussed, though they differed over its desirability, as will be explained shortly. The intrastate-imperial type was referred to solely by reactionary conservatives (Goerres and possibly Jarcke). Meanwhile, Stahl was an expositor of intrastate-territorial federation (Bundesstat), to the debate on which his insistence on distinguishing between republican and monarchical subtypes added an interesting new development.

The manner in which German conservatives articulated their federalism differs substantially. At the one extreme there is the mystical Romanticism of Goerres, while at the other there is the measured, pragmatic approach of Heeren. Stahl constitutes an interesting mixture. Though he subscribes to a very abstract, idealist philosophy, his later federalism also demonstrates an ability to be very realistic and practical in his demands. A feature of many, though not all, of the conservative Germanic federalisms considered here is their use of religious argumentation.

Third, German conservatives differed regarding the type of

federation they prescribed for Germany. While Goerres called for the establishment of an intrastate-imperial federation and condemned confederation utterly, Jarcke accepted the German confederation, as did the early Stahl. Of all the conservative federalisms considered in this section, that of Heeren is the only one that perceived confederation as not only acceptable, but as highly desirable. By contrast, a German confederation was for both Jarcke and Stahl a temporary means to an end. When it no longer served that end, Stahl abandoned it in favour of his Bundesstaat.

This brings us to the fourth and final of our concluding remarks on this section, namely, to the purposes for which the German conservatives utilised federalism. Many of their arguments for federation include references to the need to ensure Germany's external security. Moreover, there were also also some German conservatives who hoped that federation would facilitate territorial expansion. This was the certainly the case in the racial nationalism of Goerres' later federalism. It is also to be found in Stahl's desire for an expansion of Prussian power. There is thus no doubt that in the case of some German conservative federalisms, not only Riker's (1964 & 1975) military, but also his expansion condition apply. It would have been surprising had there not been such cases. However, Riker it is wrong to assert that his military and expansionist conditions are universally applicable.

This is demonstrated most clearly in the federalism of Arnold Heeren, who proposes a German confederation as an act of voluntary renunciation by Germany of its potential for

expansionism in the interests of European peace. Moreover, as our above discussion has also shown, even where the other federalisms covered referred to defence, or even to expansion, one needs to go further and ask what it is that is to be defended, or expanded. When one asks this question, one invariably establishes that the prime motivation of all the federalisms covered here is the promotion of their political ends. In other words, German conservatives used federalism to propose federal structures which they hoped would defend them against the threats, as they saw them, of liberalism. Those threats included irreligiosity, attacks on social and political hierarchy, liberal constitutionalism, and demands for popular sovereignty.

Differences in their federal proposals were in the main a consequence of their perception of the gravity of the threat to the established order, as well as of the best means to respond to it. As has been shown especially clearly in the case of Stahl, the type of federation which German conservatives proposed was vulnerable to change, as the relevant exponent of conservative Germanic federalism's evaluation of the strategy most appropriate to the given political situation changed. In short, federalism was demonstrably used as a political ideology.

5.3. CONSERVATIVE GERMANIC FEDERALISM IN SWITZERLAND

5.3.1. INTRODUCTION

There were two broad types of conservative federalism in Switzerland during 1815 to 1848. One was motivated by a reactionary conservatism, while the other was more reformist

in its orientation. Unlike in the 1798 to 1815 period, Swiss conservative federalism of the Restoration and Regeneration produced very few federal blueprints. The reasons for this are obvious. Under Napoleonic rule, conservatives had had to outline the contours of what were proposals for an alternative political system, while for most of the lifetime of the Federal Pact, they were concerned to preserve the main features of the existing interstate federation, especially cantonal sovereignty, which allowed them to retain their conservative social, economic and political structures.

Though from 1815 to 1848, Swiss conservative federalisms therefore offer few if any new ideas about the structures of federations' central authorities, they are nonetheless interesting to this thesis for two reasons. The first relates to the manner in which they articulated their support of federation. When one compares Swiss conservative federalisms of 1815 to 1848 to those of the 1798 to 1815 period, one notices a marked difference in the types of argumentation they entertained. In the earlier period, Swiss conservative federalism had been primarily based upon reason and had been largely reformist (see 3.3. above). During 1815 to 1848, it contained more reactionary brands, at times coloured by romantic-historicism, or by theological considerations (or a combination of both), and exhibiting a clear predisposition for a type of hierarchical patrimonialism framed in a conscious desire to return to the "traditional" values of the Middle Ages. The reasons for this change include the fact that whereas during the 1798 to 1815 period, the ideas of the Enlightenment were dominant, after 1815, the "Metternich system" allowed conservatism to reassert itself politically

and philosophically.

A second reason why Swiss conservative federalisms of the Restoration and Regeneration period are interesting for this thesis relates to how and why they were employed. It is, for example, interesting to note that though both reactionary and reformist Swiss conservative federalisms predominantly supported confederation for Switzerland, there was at least one notable exception (Bontemps, Maillardoz, 1830). That exception, which will be considered below, supports the view that the type of federation which Swiss conservatives proposed for Switzerland was largely a consequence of considerations of political strategy. That is to say, Swiss conservative federalism of 1815 to 1848 was again used as a political ideology.

Our examination of Swiss conservative federalism between 1815 and 1848 will first give some examples of reactionary conservative federalism, before moving on to reformist federalism. Though there were notable exceptions, reactionary conservatism was by its very nature disinclined to advance sophisticated theories and this characteristic was behind the decision to include in our illustration of reactionary conservative federalism the ideas of one such polemicist, namely, Franz Geiger. A second reactionary conservative federalism we shall include is that contained in the later ideas of von Haller. The justification for this includes the greater insights his more theoretical writings offer into the purposes for which many of the staunchest conservatives wished the extant Swiss interstate federation to be preserved, as well as his great influence throughout Europe, and

especially in the other German states. Finally, our survey of reactionary conservative federalism will look at the 1830 plan of a group of young conservative Swiss army officers, which was almost unique among conservative Swiss federalism during the Federal Pact, in that it advocated a centralised federal state.

Conservative Swiss federalism during the 1815 to 1848 period was of course not solely reactionary. There was also the reformist conservatism of the "juste-milieu", which attempted to find a type of federation between the interstate-confederal variety defended by most conservatives, and the centralised intrastate-territorial federation advanced by many of the liberals. The federalism of the juste-milieu was articulated in two ways. On the one hand it was expressed "officially" in the 1832 report of the Diet's commission into federal reform, and on the other hand there were "unofficial" manifestations. The consideration of both these types of reformist conservative federalism will be held over until 5.3.3., where they will be examined by reference to the federalism of the the Rossi Commission and of leading reformist conservative, Zuerich-born Johann Caspar Bluntschli, respectively.

5.3.2. THE FEDERALISM OF REACTIONARY SWISS CONSERVATIVES

The immediate task is to discuss, in the following order, the reactionary conservative federalisms of Haller, the Swiss army officers and Geiger. Haller's earlier writings were examined in Chapter 3 above. As was demonstrated there, Haller had in 1798 been prepared to accept intrastate federation

for Switzerland, but was in 1799 one of the first to make detailed proposals for the re-establishment of a Swiss interstate federation. By 1801, he came, albeit somewhat grudgingly, again to advocate an intrastate-territorial federation.

By the end of the Napoleonic period, and especially once the Restoration proper had set in, Haller felt free to assert a much more reactionary political philosophy. He had in part been moulded by six years (1800-6) spent in Austrian state service, in the deeply conservative environment of Vienna, where many Romantics such as Adam Mueller (1809 & 1819) also obtained their political inspiration. Haller was himself later to exert his greatest influence in Prussia, where he had the ear of some of the most influential people, including Crown Prince Friedrich Wilhelm (later Friedrich Wilhelm IV), Hardenberg and the young Bismarck. Indeed, Haller has been described as the most influential of all counter-revolutionary writers of the German-speaking world (Fleiner, 1916, 12) [33].

The importance of his later federalism is to be found less in what he has to say about the structures of the Swiss federation, than the purposes which he believes it should serve. In this, he had much in common with other Catholic conservative federalists in Germany (Meinecke, 1928, 223-77). His views about the Swiss federation were inextricably linked to his patrimonial theory of the state, elements of which were already visible in his earlier writings (eg 1801, 164ff & 350-419). However, they were most exhaustively articulated in his six volume Restoration of Political Science (Haller, 1820-25), the first edition of which appeared from 1816 to 1820 .

The first, introductory, volume of that work contains an attack upon rational natural law theories, his most scathing remarks being reserved for social contract theorists such as Rousseau, arguing that their notion of the pre-state contract is both fallacious (1,278-94) and responsible for all the revolutionary ills of modern times (1,23-36 & 223-78).

In the place of these theories, Haller offers an alternative, conservative natural law theory based upon Divinely ordained human inequality (1,337ff). Natural superiority is the basis of all rule and need is the basis of all dependence. The strongest's superior skills make him the best able to provide what subordinates lack, and the latter are psychologically predisposed to rally around a strong man. Moreover, a strong man is more content and less likely to misuse his superiority when he is in his natural condition of ruling. Accordingly, rule by the strongest is mutually advantageous (1,355-87). The only right that is, or has ever been, natural and legitimate is thus the right of the stronger to realise his superior skills.

Like Rousseau, Haller too argues for a return to nature, but his natural condition inevitably means unequal relations of property (understood in the widest sense). These form the basis for a natural and hence intrinsically legitimate series of hierarchical relationships of power and dependence. If society is to be based upon this natural law, as he argues it must for it to be both just and lasting, it has to comprise a series of such relationships of subordination, such as those between fathers and children, masters and their apprentices, and lords and their vassals. Indeed, Haller considers the

short life span of the revolutionary system and its replacement by the Restoration to be evidence that unlike the latter, the former was not in accordance with nature (295-336).

Haller's state of nature has therefore never completely ceased to exist (1,340f). Modern society continues to be no more than the culmination of centuries of private contracts between the strong and their subordinates, expanding the rule of the latter from small scale land ownership (2,33-60 & 3, 156-77) to rule over the modern state. The state is no more than a closed, self-sufficient human association of independent relationships of service and sociability. It is different from the associations formed by those private contracts merely by virtue of the independence of the ruler and has no purpose beyond those of the associations it embraces (463-72). That is not to say that those associations are sovereign. Sovereignty is reserved for the ruler, who has the Divine good fortune ("fortuna") of being the only person responsible to nobody but God (1,482-93 & 2,64-9)

Haller rejects the classification of states into monarchies, aristocracies and democracies (1,495-503), arguing that there are but two main types: patrimonial principalities - which includes princely, monarchical, military and clerical rule - and republics (1,494). He considers the latter inferior, but otherwise little different from the principalities. In particular, rule in Haller's republics is not predicated upon popular sovereignty (6,215-45), but upon reserving decision-making powers to a relatively small and closed group of the wealthiest burghers (6,328-44). It follows that neither here nor in principalities are there any universal, inalienable natural political rights. What

political rights there are accrued solely through might, or through participation in socio-economic corporations.

Superficially, it might appear that relatively little of the 3,000 or so sides of Haller's wide-ranging magnum opus was written with the Swiss federation in mind, but if one looks at his pamphlets on Swiss politics, there is no doubt that its principles were intended to be applied to his native federation. We shall illustrate this with two publications. The first is an 1814 pamphlet entitled What are relationships of subordination? (Unterthanenverhaeltnisse), which articulates most of the core ideas of his Restoration in a mere 30 sides. Thus Haller states that the notion of political rights is an eighteenth century product, purposely designed to "make servants into masters ... and masters into servants ...". In reality,

a political right is nothing more than a municipal or communal right ... not a right which belongs to every man, but an acquired right, which only accrues to those who are from the relevant city or commune, or are taken up into it ... Nobody is excluded from the possibility of acquiring political rights, but they are not naturally possessed.(1814,9)

Haller uses these ideas to argue for cantonal sovereignty and for the previous dependencies to be returned to their "rightful" cantonal owners (1814,10f).

In another pamphlet, Haller applies his general theory to the current debate on proposed reform of the Federal Pact (1833). It opposes all proposed centralisation of the federation and is particularly scathing about the concept of a Bundesstaat, which it regards as a hypocritical smokescreen masking the "revolutionaries'" attempts to establish a strong central government in order to subjugate the cantons and to

expropriate their rights (1833,6&14). He defends cantonal sovereign rights and argues for their expansion to include many previously held property rights.

But he goes even further. The pamphlet's main purpose is to argue for the establishment among Catholic, conservative cantons of a separate alliance ("Bund"). He makes a number of proposals for its name: The Just, The Creators of Justice, The Swiss Goodfellows, The Friends of Justice or The Protectors of all Property (1833,9). The main aim of the alliance is

resisting all evil [sic ie the reform proposals of the Liberals] and ... honouring and observing all religion, defending against all encroachments the rights, freedoms, goods and property of the Catholic Church, of ecclesiastical and temporal corporations, of city, rural and mountain communities, as well as the freedom of private property (1833,9).

This means, in addition to the abovementioned rejection of the proposed federal state, opposing any further diminution of city rights and privileges, any new taxes or military expenditure, as well as a range of economic, legal, land reform, religious, and education policies (1833,14ff). But

Above all, one has to start with religion, ie the recognition of a supreme power and a supreme law binding on all men ... But since religion cannot be spread without the ministry of the ... Catholic Church ... (1833,20)

defence of the latter must be a priority.

When undertaking an appraisal of Haller's federalism during the lifetime of the Federal Pact, one cannot fail to note how different it is from that which he espoused previously. It is clearly far removed from the reformist conservatism evident in his 1798 draft constitution for Berne [34]. It is equally distinct from the federalism articulated by Haller in 1801, when he was prepared to accept for Switzerland a centralised,

intrastate-territorial federation of non-sovereign cantons.

Instead, Haller's later federalism posits an interstate confederation of sovereign territorial units of rule. The central authority's powers, rights and privileges are very much second to those of the cantons. The central authority is restricted to external defence and internal security, and in the exercise of those functions may not coerce the constituent units, which retain the right to secede. The federation's real purpose is to maintain or re-establish the social, economic and political structures upon which cantonal rule is based. Those structures relate to what Haller refers to as the cantons' legitimate property rights. Since he is here using the term "property" in a very wide sense, to include rights over the fruits of God-given superiority over others, the structures he is defending are any resulting from rule by the strongest. In short, Haller's is a reactionary form of conservatism, whose prime concern is protecting and promoting hierarchical, aristocratically ruled territories, where popular political rights and privileges derive solely from membership of mediaeval type corporations. Although he was himself not a Romantic, some of the organic and staendische (estates) elements of Romanticism are clearly visible in Haller's later federalism. Inasmuch as he also refers to the rights and privileges of mediaveal type corporations, one can also detect echoes of Althusius and a foreshadowing of later Catholic social theory [35].

Moving from an assessment of the content of Haller's federalism to a consideration of its political significance, there are at least three points to be made. First, though

Haller was more reactionary than many of his conservative contemporaries, many of the ideas he articulated were common currency in Swiss and German conservative federalism, as our later discussion of Geiger illustrates [36]. Second, Haller's 1833 proposal for Catholics to unite in an anti-liberal, defensive league was representative not only of the thinking of other conservatives, but mirrored in political practice. Precisely such a union (the "League of Sarnen") had been secretly set up by conservative Catholic cantons the previous October. Moreover, though that alliance was soon dissolved, another conservative defensive union, namely, the Sonderbund was founded in 1845. The Liberals' and Radicals' opposition to this later alliance was to be a significant factor in bringing about the 1847 civil war, which resulted in the Liberals' victory and the founding in 1848 of an intrastate Swiss federation.

Third, Haller's attempts to justify his theory by reference to matters Divine is interesting. Though he uses both the notion of Divinely ordained human inequality, and the idea that, in the final analysis, the rights of subjects against despotic rulers are limited to exile or prayer, (1820, 1,410-43) it would be wrong to regard Haller's work as motivated by fundamentally religious considerations.

Meinecke was right when he wrote that:

Haller ... praised the fortune of the old rulers' possession of personal power and wealth in plain and simple language. A materialist and egotistical thread runs throughout his theory, and even where it calls upon the support of God and matters Divine, this occurs without any mysticism and even without any inner religiosity, but merely in that self-righteous tone that sees private property and the world order that contains it as a revelation of Divine providence and blessing.... He was merely opening the floodgates for a cult of power, for a

pure idolisation of success and the road from him to the theory of the fight for survival and the ... selection of the fittest is not long. ... his practical goals were to fight the power of the revolutionary forces and justify and restore the power of the old patrimonial state. That is why he also used ... God not only to sanction power as such, but also to provide the necessary restraints to its activity ... (1928,224f)

Nonetheless, Haller's use of religious rationalisations is significant for two reasons. First, it is symptomatic of a problem faced by many conservatives of the period. They opposed what they regarded as the liberals' unfounded claims that human beings naturally had certain minimal political rights. However, merely to assert the alleged benefits of the existing forms of aristocratic rule in the conservative cantons was patently inadequate to ensure that the lower classes remained immune from the revolutionary ideas of popular sovereignty and the equality of man. Haller's federalism is an example of how some conservatives fought the claims of one natural law theory with those of another. Regeneration conservatives' alternative supreme law was of course their hierarchical interpretation of Christian teachings.

Second, prior to Haller, the struggle in Regeneration Switzerland between conservative interstate and liberal intrastate federalism was largely devoid of religious argumentation. Such argumentation had been used during the Restoration, as our accounts of Haller and of Geiger (see below) show. However, Haller was one of the first to use such argumentation during the Regeneration. His federalism is thus one of the earliest examples of the religiously flavoured federalism that was to become dominant from the late 1830s onwards, as conservatives feeling increasingly under threat

were instrumental in helping it to assume a dominant role in the dispute over the future of the Swiss federation. By the 1840s, it had become inextricably bound up in that debate.

The next example of conservative Swiss federalism which we shall examine in this section is that published anonymously in November 1830 by a group of French-speaking Swiss army officers, foremost amongst whom were the two aristocrats: Phillip von Maillardoz of Freiburg and August von Bontemps of Geneva. They had been employed in Paris by Charles X, after whose fall they and all other Swiss soldiers were summarily dismissed. Rappard explains the reason for their decision to submit a petition and draft constitution as follows:

They felt that ... [sic their summary dismissal] was a personal and a national insult and their motivation for writing ... was therefore to propose a radical strengthening of the federal power and thus an increase in Switzerland's status. (Rappard, 1941,72)

Their federalism was articulated in two documents. The first was a petition addressed to all cantonal governments and the second a detailed draft constitution. The former was reprinted in full in the Journal de Geneve (Bontemps/Maillardoz, 1830), but the draft constitution is no longer obtainable [37], a possible reason for which will be revealed shortly. The unavailability of the draft constitution makes it necessary to rely upon references in three secondary sources. Two of these are contemporaneous, namely a pamphlet entitled: "Observations on the changes demanded to the Swiss Federal Pact", (Fazy-Pasteur, 1831, 15ff) and the contemporary history of Baumgartner, a leading Liberal, who was one of the main architects of the 1848 constitution. (Baumgartner, 1853/4, 1, 162ff). The third and most fascinating

source is Rappard (1941,71ff).

Together, these sources give a fairly clear picture of the main features of the proposal. The purpose of the federation is visible from the petition, where the officers argue that

the real motive of [sic the Regeneration's] ... burning desire to overturn what went before can be found in the horror inspired in all good Swiss citizens by the idea of a constitution imposed from abroad.

But in the middle of this effervescence a still more noble cry must make itself heard. ... the call to all cantons to not merely revise their internal organisation, but also to found ... a Swiss government, ... strong enough ... for our independence to be no longer a problem; for our neutrality not to be the plaything of several ambitions ... (Bontemps/Maillardoz,1830,214)

The draft constitution which the officers went on to publish envisages the Swiss cantons united in an intrastate-territorial federation of the Swiss, with a Diet elected by the cantons in rough proportion to their population. Each full canton is to have at least two representatives. Luzern, St.Gallen and the Tessin are to have three, Zurich, Waadt and Aargua four and the most populous (Berne) are to have seven representatives (Fazy-Pasteur,1831,15)

The cantons are to submit to the Diet a list of candidates for the office of Swiss President, who will then be elected by the Diet. Voting in four geographical blocks, (north, south, west and centre) the cantons are to elect four "Landammans", who are presumably to act as members of the federal executive. Henceforth, Diet members are to be freed from binding cantonal instructions when voting on any matter concerning the general welfare of Switzerland. (ibid,15f)

Baumgartner (1853/4,I,163) says that the proposals were badly received in western and eastern Switzerland and offers

three reasons for this. The first is that they were drafted by Swiss who were in foreign service and were unfamiliar with the political situation in Switzerland. Second, even those favourably disposed to the idea of greater centralisation suspected that what the officers really had in mind was at best to establish in Switzerland a degree of central military control similar to that experienced in the United States under Washington and Franklyn, or at worst a centralised military dictatorship. These fears were nourished by the petition's emphasis upon the value of the American example:

A government similar to that of the United States of America suits our ancient Confederation as well as the young and wise republic; modify, delete, add whatever lines you will to that federal constitution, but give us that strength which can be borne only of the most intimate union ...
(Bontemps/Maillardoz, 1830, 214)

The third reason Baumgartner gives for the failure of the proposal to meet with popular support is that there was in any event considerable objection to simply copying foreign examples.

To summarise, the petition and draft constitution of Bontemps and Maillardoz advocates an intrastate-territorial federation. Sovereignty is to be located not in the territorial units (the cantons), but in the centre. The purpose of the federation is above all to strengthen Switzerland internally and thereby in its external dealings. The significance of the conservative army officers' proposal is first, that while most Swiss conservatives proposed interstate confederation, theirs is a rare example of conservative advocacy of intrastate-territorial federation. Second, it shows that reference to the American example was

not the preserve of liberals, though as Rappard notes, "the conservative Swiss officers were attracted to the American constitution by the very feature (ie a strong President) which most displeased ... " the radicals (1941,78) Third, it forcefully underlines the contingent, instrumental nature of federalism. This is well illustrated in Rappard's fascinating account of the background to the proposal and to the subsequent loss of all traces to it. Based upon detailed academic detective work in a number of archives, Rappard's hypothesis is that:

the adaptation to Swiss conditions of American constitutional principles shortly became one of the main planks of the Swiss radical extremists, ... [therefore] the officers deliberately destroyed all traces of their previous pamphlet. (1941,76f)

The final exponent of reactionary conservatism we shall consider is Franz Geiger, who was a Catholic priest from Luzern, where he also worked as a professor of Dogmatics and Ecclesiastical History. Geiger's willingness to articulate his decidedly conservative views in the form of clerically flavoured polemics made him the epitome of all that liberals loved to hate. For his part, Geiger appears to take great pleasure in venting his spleen on all who supported what he describes as "the new paganism" (1823-39,1,423) of the Enlightenment.

His eschwal of rationalism, combined with the often unstructured and emotive style of his writings, makes it difficult to present a systematic summary of Geiger's views. The following attempt to do so is based upon his above mentioned eight volume collected works (1823-39). Much of the material they contain is of an exclusively theological nature

and irrelevant for the purposes of this thesis. Moreover, the more political material does not contain Geiger's views on the Swiss federation in the form of a concise, single text. To ascertain those views, it is necessary to piece his ideas together from a number of his political essays [38].

An examination of the latter shows that Geiger's political convictions and hence his view of the purpose of the Swiss federation, rest upon two propositions. The first amounts to a defence of social hierarchy by reference to patriarchy. The arguments Geiger uses in this respect are similar in many ways to those advanced by Haller (see above) and it will therefore suffice to cite a few examples. Thus Geiger argues (1823-39,1,427f) that the state of nature is characterised by isolated, familial units, each governed by their pater familias. Only with the emergence of strong men (Kraftmaenner) are these united into a people under one rule. Moreover, patriarchal rule is a permanent feature of human existence. All societies are inevitably characterised by relationships of patriarchal superiority and subordination. Patriarchalism persists into the present day, by virtue of both rightful inheritance and the ubiquity of natural inequality. Geiger (1823-39,1,431f & 6,247f) considers the success of "agitators" calling for popular sovereignty in arousing an essentially passive mass into political action to be a demonstration of their superior skills, but equally concludes that claims of popular sovereignty have no legitimate basis and do not correspond with human nature.

Furthermore, Geiger argues that hierarchical relations are mutually beneficial. Geiger also alleges that the denial of such natural and mutually beneficial hierarchy is one of

the prime factors that contribute to the generation of revolution (1823-39, 1-32).

So far, our summary of Geiger's social and political views suggests that they were virtually identical with those of Haller and it is not surprising that like Haller, Geiger should be a staunch opponent of liberal political structures. However, there are at least two important differences between Haller and Geiger. The first relates to the manner of their writings. While Haller articulates his position within an analytical structure, the consistency of which compares favourably with that of the most rigid rationalist, Geiger opts for a populist, polemical style. However, the second, and more important difference between Haller and Geiger lies in the nature of the second and more fundamental principle which determines Geiger's views on politics, namely, his uncritical acceptance of biblical teachings, and above all, of the theory that all authority derives from God.

While Haller also utilises the principle of Divine Right, we have seen above that the theological component of Haller's writings are neither essential to his theory, nor necessarily even to be taken seriously. By contrast, there is no doubt that considerations of a theological nature constitute a far more crucial and sincere element of Geiger's theory. Geiger's approach to social and political affairs is not primarily rooted, as is the case with Haller, in a theory of the rule of the strongest, but in a theory based upon the biblical assertion of the Divine legitimation of authority. This can be illustrated in Geiger's defence of patriarchy. First, Geiger traces the source of paternal authority back to the

authority given to Adam by God (1823-39,1,437). Second, he argues that superior power is everywhere to be understood not only in terms of physical superiority but, more importantly, in terms of a moral authority that originates from God. Thus he states that "... all superiority is ordained by God and superiors are ministers of God." (1823-39,1, 424). It is this argument that underlies his rejection of the theory of popular sovereignty.

I cannot comprehend how Christians, who recognise the Bible as a Divine book and its statements as the statements of the Holy Spirit, can advance the statement [sic that all power emanates from the people], or subscribe to it, since the Bible ... asserts the opposite so clearly. (1823-39,1,423).

It is also used to advocate obedience to existing authorities. For example, Geiger states that

If the rulers are true Christians, they will regard themselves as ministers of God and rule only in the spirit of their Master. If the people is truly Christian, it will regard its rulers as representatives of God, as God's ambassadors and obey them lovingly, that is to say freely, for it will then really be obeying God and no longer a human being. (1823-39,6,251).

Third, Geiger not only frequently uses biblical scripture to defend his arguments, but also appears to interpret the Bible literally. This is evident for example in his reference to the Genesis stories about Adam and Eve, Nimrod and others as though they were literal truths (1823-39,1,427-29). Fourth, Geiger supports the rights and privileges of the Catholic Church, which he defends among other things by reference to the traditional idea of the Pope being the direct descendant of Saint Peter. The corollary of all this is the need to defend, in the face of the pressures of the blasphemous Enlightenment and dissident Protestantism, political structures that will promote not only Christianity, but

catholicity.

This leads to Geiger's vigorous support of cantonal sovereignty and thus of interstate federation, on the assumption that a more centralised system (federal or otherwise) would threaten political and thereby above all moral interference in the activities of the more righteous Catholic conservative cantons by Protestantism and or the Godless liberals. Only in an interstate federation with cantonal sovereignty will the small, Catholic cantons and their religious and moral values be defended. In short, Geiger sees in interstate federation a mechanism for the defence of the small, conservative cantons, and thereby of a social hierarchy in which the Catholic Church plays a significant role. Though he also justifies his advocacy of an interstate Swiss federation by reference to patriarchy, his more fundamental considerations are of a religious and confessional nature.

Though the eight volumes of Geiger's collected works attest to the fact that he was a more prolific writer than most of his fellow reactionary conservatives, Geiger remains quite representative of them. First, the broad thrust of his argument is typical in most respects of much of the reactionary conservative argumentation that appeared during this period in, for example, the Swiss print media. This is borne out in the analysis of contemporary conservative newspapers by Wild, (1966, esp. 57-66, 82-90 & 142-185) who identifies a number of their recurrent themes. These include the assertion, in opposition to the Enlightenment's principles of the equality of man, of natural sin and human

inequality. They also include a defence of moral values and religion in general and the rights of the Catholic Church in particular. The principle of interstate federation is supported as a means of ensuring cantonal sovereignty and thus the defence of the small conservative cantons against the threat of the immoral liberals (Wild, 1966 & Gassner, 1926, esp. 46-66).

Second, despite their sheer volume, Geiger's writings remain a typically unsophisticated example of what Wild (1966, 57) refers to as an "emotional reaction" based upon "alarm at the rising Zeitgeist ideology". That Geiger's writings do not produce a closely-argued, theoretical defence of the principles of interstate federation is hardly surprising. First, they are not intended as part of a scholarly debate, but are part of an often religiously, if not confessionally based, vehemently anti-rationalist polemic. Second, and perhaps more important, one of the main motivations of radical conservatives such as Geiger was opposition to the very notion of social and political blueprints, which were regarded as typical of the despised rationalism of the Enlightenment.

Our above discussion has shown that reactionary Swiss federalism was predominantly concerned to defend the existing interstate federation. In particular, the concern was to ensure that its constituent units' sovereign rights in religious and political matters were not undermined by what was regarded as the immorality of the principles of the pagan Enlightenment. As we have seen, this position was in the main defended by reference to patriarchal arguments justifying the rule of the strongest and to Divine right theories. (The

exception to this was the federalism of Bontemps and Maillardoz in 1830.) While the more intellectual defence offered by Haller contained both these notions, the latter idea was merely a means of legitimating the former, which was not conditional upon it. However, the more populist ideas of Geiger, which were particularly widespread amongst the generally more conservative Catholic Swiss, were very much rooted in a genuinely religious conviction.

From the late 1830s, and especially after the Catholic Church came under direct attack from the liberals [39], Geiger's theological and clerical brand of reactionary conservatism became even more widespread. Not surprisingly, such views about the nature and purpose of the Swiss federation were completely irreconcilable with the views of even "moderate" liberal rationalists.

Some conservatives consciously attempted to find a compromise formula between the uncompromising reactionary conservatives on the one hand and the radical liberals on the other. The fact that they were to be unsuccessful in this endeavour and in the political conflict over the form the Swiss federation should take (which was eventually to be resolved by civil) war does not detract from the inherent interest of their ideas. It is the federalism of this group of reformist Swiss conservatives which constitutes the focus of the next section of this thesis.

5.3.3. THE FEDERALISM OF THE SWISS JUSTE-MILIEU

The label "juste-milieu" denotes a loose grouping of Swiss of similar political persuasion, which emerged in various

cantons at the beginning of the 1830s in opposition to what it regarded as the increasingly uncompromising nature of the debate about political reform. Although it was never numerous, or politically very influential, there are at least three reasons why the juste-milieu is interesting for this thesis. First, it was attempting to find a federal formula that offered a mid-way solution between the competing claims of (radical) liberalism and (reactionary) conservatism. Second, though the juste-milieu was not very successful in the unofficial political debate, it did exert a dominant influence in the 1832 official attempt at federal reform, namely, in the Diet commission which produced an ill-fated draft constitution bearing the name of its rapportuer: the "Rossi Pact". Rossi and many of the core group of the Commission, were firm believers in the juste-milieu's approach (Baumgartner, 1853/4, I, 350-67). Finally, the juste-milieu is a precursor of a significant post-1848 brand of conservative [40] Germanic federalism, namely, that which accepts the basic features of liberal constitutionalism and seeks to defend conservative values within, rather than against, that system. The following presentation of the federalism of the juste-milieu will concentrate upon two examples. The first is the official contribution of the Rossi Commission and the second is that of Bluntschli [41], the juste-milieu's political leader.

In July 1832, the Swiss Diet set up a commission to draft proposals for the reform of the Federal Pact. Its fifteen members were divided equally between those favouring wide-ranging reform, those largely for the extant system and

those in favour of a juste-milieu (Baumgartner, 1853/4, I, 351f). The latter group was to be the most influential and included the Commission's rapporteur: Pellegrino Rossi. It is therefore with some justification that the proposals of the Commission came to be regarded as an example of the federalism of the juste-milieu. The Commission itself has since been identified as the "Rossi Commission", in acknowledgement of the decisive role which Rossi played within it and the masterly way in which his accompanying report articulated the ideas and motivation of the Commission's dominant group.

An examination of the federalism articulated in the Commission's draft constitution (Acte Federal, 1832) and in the accompanying report (Rossi, 1832) is indispensable to an understanding of Swiss federalism from 1832 to 1848. First, despite the fact that the Rossi Pact was not accepted, it constitutes the only example of official Swiss federalism during the 1815 to 1848 period. Second, it is, as we have argued above, a good example of the federalism of the juste-milieu. Third, without an awareness of the provisions and rationale of the Rossi Pact, it is difficult to understand the subsequent Swiss debate on federation, much of which was, at least initially, addressed to those proposals.

Rossi considers "federation" to denote both interstate and intrastate unions. At times, he uses the term "confederation" to denote the general category of federation, at others to denote the interstate variety. He is using the term in the latter, general sense, when he offers the following definition of federation:

... an intermediary type of state between absolute independence of several political units and their complete fusion into one and the same sovereignty. Confederation starts as soon as some part of the sovereignty of each is placed in common; it finishes when this common part includes everything without exception and the individual sovereigns are absorbed by a new and greater political unit. In this latter case, it is possible to still have distinct and particular administrative units; there is [sic however] no sovereignty other than the general sovereignty. (1832,7f)

He proceeds (1832,8) to argue that between "these two extremes of isolation and fusion", there is a spectrum of federal systems. In other words, federation denotes those forms of state association that lie between a unitary state on the one hand and the complete separateness of the states on the other. He acknowledges that, since this suggests that federations differ from one another purely in the detail of their division of rights between the central and local power, it would appear rather difficult to find any guidelines to establish at what point on the spectrum the new Swiss federation should be located. However, he argues that the problem is not as difficult as it first appears, since the spectrum is itself divided into two categories.

In the middle of the spectrum there is a state of affairs characterised by a rough balance between the powers of the central and local authorities. What Rossi has in mind here appears to be a notional state of co-ordinacy. He proceeds to argue that on the one side of this notional mid-point are federations governed by the principle of local sovereignty, while on the other, that of central authority pertains. In the former category, the centre is derivative of the localities, its rights being delegated by the latter. As Rossi (1832,9f) says:

the distinctive idea, the dominant principle ... is that of local sovereignty. By virtue of its limited rights, restricted competences, and the influence which every individual state still retains even over general affairs, the central power constitutes a power deriving its origin and its strength only from the individual sovereignties. The idea of its rights is associated with the delegation to it of the rights of others. In the hypothetical situation of a total dissolution of the Confederation, those parts of local sovereignty entrusted to the hands of the central power would, as it were, each return to its own country and the latter would revert to being politically as independent as they started.

In the second category, the dominant principle is that of a general, national sovereignty and the localities derive their rights as a concession from the whole to the parts.

if the sovereignty of each state, reduced to small dimensions, retains scarcely any direct influence over general affairs, the principle strongly associated with this state of affairs is ... different ... The dominant principle is then that of a general, national sovereignty; the idea of delegation disappears; another is substituted: that of a concession made by the whole to the individual states. ... in this case, it is the latter who appear to derive all their power and rights from the central sovereignty. In conceiving the hypothesis of a rupture of the system, it would be easier to imagine the idea of a complete absorption by the centre of all that which is dispersed in the individual sovereignties, rather than the return to the periphery of the rights of the centre. In the first case, the principle of the rupture of the system recalls the idea of fusion; in the second, that of isolation. (1832,10f, emphasis in original)

While Rossi (1832,12) respects those who sincerely believe that the unitary ("fusion") system is preferable to the federal, he gives two reasons why a unitary form is impossible for Switzerland. First, he argues that it is not in accordance with "the facts of Switzerland". What he means are its diversity and its history. The sole unitary period in Swiss history was the Helvetic Republic, the excessive centralisation, weak popular origin, misfortunes and short

duration of which prevented it from acquiring a hold on popular imagination sufficient to overcome cantonal sentiment. Popular Swiss feeling is thus against a unitary structure. Second, Rossi states that to propose a unitary structure would contravene the Commission's terms of reference, namely, not to abolish, but to revise the federal system.

The question which the Commission has addressed is therefore which of the two types of federation within the federal spectrum the proposed Swiss federation is to be; whether it ought to be an interstate federation governed by the principle of cantonal sovereignty, or an intrastate federation, where the principle of central sovereignty pertains. Rossi (1832,22) is unequivocal:

In a word, we think that the Swiss Confederation ought to remain in the first of the two categories of confederations that we have indicated, by approaching the second only as far as is possible without changing its nature.

The arguments he advances in favour of this proposition (1832,12-22), are of three types. His first argument is based upon the need for a constitution to reflect the nature and history of the country to which it is to be applied. He sees two dominant principles in Swiss history. The first is cantonal loyalty, the second is Swiss nationalism. The latter has for centuries held Switzerland together, despite its political, religious and material interests.

It is thus in effect a secret strength, a moral cement which nothing is able to destroy, neither the misfortunes of the day, nor the folly of man. This then is the national principle. ... The feeling of Swiss nationality is so to say our poetry, our ideal. It can lift up the imagination, enflame the heart: at grand occasions, at crises of the fatherland, ... But in the realities of ordinary life, in day to day application, why hide

it? cantonal sentiments retain their preponderance.
(1832,19f)

Though he acknowledges that there have recently been advances for the principle of Swiss nationalism and greater concern for the fate of the common fatherland, the dominant principle remains that of cantonal sovereignty. Put another way, cantonal nationalism remains stronger than Swiss nationalism. Accordingly,

We have respected the principle of cantonal sovereignty, we have assigned it to the position that it is assigned by the majority of Swiss, but we have at the same time not been afraid to demand of it more than one concession. We do not speak of sacrifices, for we have not asked for more than which appears to us indispensable for the good of all, for the security and progress of that common fatherland, without which our cantonal sovereignties would be no more than misery and illusion. (1832,22)

Rossi's second argument is an assertion of the political necessity of compromise. This is typical of the juste-milieu and is set out clearly in the opening pages of the report (1832,4-7) where he states that the Commission's work was directed at producing a compromise, rather than a federal structure based upon abstract principles. Even if some cantons are willing to give up local sovereignty in favour of greater centralisation, others are not. He hopes that the first group will content itself with a little less centralisation than it wants and the second with a little more than it would like. "The only means of success consists in not fully satisfying anyone" (1832,12). He considers it illusory to expect a constitution not based predominantly upon cantonal sovereignty to be accepted. However, he also argues (1832,15) that constitutional structures should not slavishly conform to particular interests, for

if customs greatly influence the law, the law for

its part is not without influence on customs. It would be just as irrational to violently drive the law against the current of opinions, as it would be cowardly and imprudent to let it drift after that current.

He says that he does not doubt that the cantons want to retain their sovereignty as the basis of the system, but at the same time they do not intend to refuse all subsequent concessions to central authority. This is clear from the fact that they set up the Commission, the aim of which is not to remain with the status quo, "nor to weaken further the federal authority, but to strengthen it. Revising the Pact means nothing less than that the federal law ought to be strengthened. And from where could that increased strength come, but from cantonal sovereignty?" (1832,16) [42]. Though the Diet vote was not unanimous, the Diet recognised the need for more centralisation in setting up the Commission.

One therefore recognised that the cantons would, sooner or later, be called upon to make some sacrifice to the common fatherland, to put some more besides in the common core, to be recompensed later by interest and prosperity, by national strength and dignity" ... [sic this] is also the expression of a rather general feeling, a national need. (1832,16f)

How the ideas motivating the federalism of the Rossi Commission found expression in the actual framing of the draft constitution is clear from Rossi's detailed commentary upon the draft constitution (1832,23-115), as well as from a reading of the draft itself (Acte Federal,1832). We shall not provide a detailed account of the 120 articles, but will identify a number of the main features of the proposal, selected both for their intrinsic significance for reformist conservative federalism, as well as for their novelty, and their influence upon subsequent Swiss federalism. They were,

for example, to become the subject of heated polemics from those such as Troxler (1833,a-e) who had very different conceptions of how the federation should be constructed (see 6.3.3. below).

The Rossi Pact was endeavouring to offer a compromise between the demands of cantonal and national sentiment. However, in view of its above mentioned opinion about their relative strength, the "compromise" was always intended to favour the cantonal over the national principle. This becomes very clear when one examines the military, economic and political reforms proposed. The greatest concessions to the centre were made in military matters, where the federal authority was to assume a much greater role in the training, organisation, and equipment of the army (Rossi,1832,62-77). In the area of the economy (ibid,32-42), there was to be some economic harmonisation, with a single internal market, a single monetary system and uniform weights and measures. The concessions made to the central authority included federal control of postage, customs, and the gunpowder monopoly. On the other hand, the cantons were to retain three quarters of the profit of the postal system and the right to levy their own tolls and consumption tax, subject to the proviso that they would not be used in a protectionist manner. Moreover, the federation was not to be permitted to raise loans.

The limited nature of the concessions to the federal authority - and by implication to the national as opposed to the cantonal principle - are most obvious in their political provisions. A first example concerns popular political rights, where the Rossi Pact proposed that all Swiss be allowed free residence throughout the Confederation (Article

36). However, this did not include the freedom of exercising political rights in a canton other than that in which the individual had been naturalised, and naturalisation was left entirely to cantonal discretion. Popular political rights at the federal level were limited to a right of petition (Article 37), the institution of a federal popular chamber having been dismissed, largely on grounds of cost (Rossi, 1832,84). Meaningful political rights were therefore confined to the cantonal level. Yet even here, Rossi's proposals were very limited. In order not to be perceived as interfering in cantonal sovereignty, Rossi did not insist upon cantonal provisions of freedoms of the press, speech, assembly or of association. The federation was to ratify cantonal constitutions and to set conditions for the granting of a guarantee (Article 6), but they were very limited conditions. These were that they not contain any provisions contrary to the Pact, that they provide mechanisms for legal reform of cantonal constitutions and finally, "that they guarantee the exercise of political rights according to representative or direct democratic structures" (Acte Federal,1832,7).

A second example of how the political proposals of the Rossi Pact defended the cantonal principle against that of liberal nationalism concerns how he dealt with the thorny and highly topical issues raised by the very existence of a federal guarantee of cantonal constitutions. Article 1 declared cantons sovereign and Article 5 guaranteed their territory, sovereignty, independence, public order, constitutions and governmental and popular rights (Acte Federal,1832,5f). However, if these guarantees were to be

meaningful, it was necessary to establish when and how the federation was to be entitled to engage in armed intervention in their support. This was of crucial political significance, since those liberals calling for federal reform in the direction of greater centralisation largely did so because they wished to see federal intervention against cantonal governments refusing demands for popular sovereignty, whilst those conservatives against greater centralisation were equally vehemently of the opinion that the federation was not entitled to intervene in the relations between cantonal governments and their people, except where called upon by such governments for assistance.

Rossi outlines two ways in which such federal intervention could be initiated. First, it can be initiated by a formal request by the relevant cantonal government. However, there is also provision for uninvited intervention in cases where it is deemed that the cantonal government is hindered from making a formal request. While Rossi argues that the terms of Article 5 mean that intervention will be to protect the rights of both the cantonal governments and their peoples (1832,57f), and thus presents his proposals as offering a compromise, it is clear that they could satisfy neither party. For the conservatives, they constituted unwarranted interference in their cantonal sovereignty, while liberals feared that together they amounted to a charter for federal governmental intervention in support of despotic, possibly even already popularly deposed, cantonal governments. This was one of the major objections of radical liberals such as Troxler (1833a-e, see 6.3.3. below).

The third area of political provisions where Rossi's bias

to the cantonal rather than the liberal national principle concerns his proposed institutional reforms at the federal level. First, he proposes changes in the composition of the federal executive, with the State Council of the old Vorort system giving way to a five-man Federal Council, comprising four Federal Counsellors, each responsible for an area of policy (foreign, military, economic and home affairs) and a "Landamann of Switzerland", who will chair both the Federal Council and the Diet. However, these changes do not really amount to much of a concession by the cantons, since the election of the former is reserved to the Diet, while the cantonal legislatures themselves elect the Landamann.

Second, Rossi proposes reforms in the Diet's voting procedures. Articles 56-64 (Acte Federal, 1832, 36-40) spell out three categories of legislation, to which a variety of voting procedures apply. The significant novelties are that deputies are no longer to be always bound to cantonal instructions, and the extension of majority voting at the expense of the requirement for unanimity. This latter innovation is especially true as regards constitutional amendments, which are henceforth to be passed by a two-thirds majority (Article 117, Acte Federal, 1832, 59). On the other hand, these changes should not blind one to the retention of a number of provisions that ensure that cantonal interests are not adversely affected. First, he retains the principle of equal representation of unequal units and rejects a second, popular chamber. Second, in all important matters, either Diet deputies continue to be bound by cantonal instructions, or their decisions are to be subject

to cantonal ratification.

The third example of institutional reform that does not greatly interfere with cantonal sovereignty is Rossi's proposal for the introduction a judicial body at the federal level: the Federal Court. It is to adjudicate upon civil disputes between the Federal Council and the cantons, as well as hear cases of high treason and mutiny against the federation and of impeachment of federal officials. However, the judges are to be elected by the cantons and the Court will only be entitled to hear cases of dispute between the Federal Council and one or more cantons if those cases have been referred to it by the Diet.

To summarise, Rossi's federalism is predicated upon two of the core ideas of reformist conservatism. First, accommodation with modern ideas is not rejected out of hand, as it is by reactionary conservatives. Instead, reform is seen as a necessary compromise. To refuse to entertain reform is to store up greater troubles for the future. Accordingly, political structures should contain channels for the gradual realisation of legitimate demands for change. A second core idea is the notion that reform must be based not upon abstract and allegedly universal principles, but upon the peculiar circumstances of the relevant country. These include its historical tradition, as well as the current balance of social, economic and political forces. For the Commission's deliberations, this meant in particular the need to reflect the extant balance of the two dominant rival political loyalties: the cantonal and the national. It also meant taking into account the economic pressures for change. The implications of these two core reformist conservative ideas

for the federalism of the Rossi Commission are clear. The appropriateness of a particular federal structure is wholly contingent upon the circumstances in which it is proposed that it be applied. Federation is a means to the end of accommodating "legitimate" demands for change, not an end in itself. The Commission conceives the genus "federation" to include both interstate and intrastate varieties. In its considered opinion, the former is more in keeping with the accommodation of the demands for legitimate change on the one hand and the interests of those concerned to preserve the status quo on the other.

Moving from the official articulation of the federalism of the juste-milieu to its no less interesting unofficial manifestations, we shall outline the ideas of Johann Caspar Bluntschli. Born in Zuerich in 1808, Bluntschli was on the one hand a distinguished academic, successively holding chairs of constitutional law at Zuerich, Munich and Heidelberg. He was in the tradition of the historical school and corresponded with its most distinguished exponent: Savigny (Bluntschli, 1884, I). Bluntschli published well over 100 books and articles and was also a contributor to newspapers, being a regular correspondent to the German Augsburger Allgemeine Zeitung from 1834 and a "decisive influence" on the "Beobachter der oestlichen Schweiz" from the early 1840s (ibid, 193 & 275f).

Bluntschli was on the other hand also an active politician. He was the founder and for many years also the leader, of the Zuerich "Moderates", a political manifestation of the juste-milieu (Bluntschli, 1832). He served first as a

member of the Zuerich legislature and then, after the conservative coup of 1839, as a member of its government from 1839 to 1845, where he chaired the Home Affairs Committee.

Zuerich was one of Switzerland's three "directorial cantons", which took turns in staffing the Swiss "State Council", the executive committee which conducted the Confederation's business between sittings of the Diet. As a member of the State Council, Bluntschli was also involved in confederal politics at the highest level (*ibid*,240ff). In December 1844, he stood as his party's candidate for the post of Mayor of Zuerich. Had he not lost by a mere two votes, he would automatically have also become chairman of the State Council. Instead, he was elected to serve as President of Zuerich's legislature. However, that did not correspond with his ambitions to promote at the federal level the juste-milieu's politics of moderation and he therefore retired from his offices a few months later, eventually leaving to start a new life in Germany in 1848 (*ibid*,363-76).

Until 1848, Bluntschli's contribution to Germanic federalism took place in and with reference to, his native Switzerland. Thereafter, he was active politically and academically in his adopted Germany. The following summary of Bluntschli's federalism during his Swiss phase will mainly be based upon a review of the relevant volume of his memoirs (1884,1) and on two of his publications: his 1831 essay "The Volk and sovereignty regarded in general and with particular reference to Swiss conditions. For educated persons.", and his 1847 pamphlet "Voice of a Swiss concerning and supporting the federal reform".

The 1831 essay provides valuable insights into

Bluntschli's general political views and how these affected his perception of the nature of federation and its function in Switzerland. The essay was written with the prime purpose of refuting Liberals' and Radicals' claims that sovereignty resides with the people and that the Swiss state should be amended accordingly. It also opposes hierarchical conservatism such as that espoused by Haller. It sees radicalism and reactionary conservatism as linked to democracy and aristocracy respectively. Bluntschli (1831,viii) states: "I consider both forms of state to be no longer appropriate for the spirit of our time (Zeitgeist), and declare myself to be decisively for a third form, different from them both".

Since federation is for Bluntschli an interstate union, it is necessary first to comprehend his view as to the origins and nature of states, for it is upon this that his conception of the nature and role of federation is based, as we shall demonstrate. For Bluntschli, the Volk is the core element for an understanding of the nature of the state. However, he explicitly rejects (1831,iv) the notion of popular sovereignty, which he describes as a foreign (ie.French) input that has been repudiated by "sounder German science". The first part of the pamphlet (1831,2-33) is devoted to demonstrating that there is a distinction between the Volk and sovereignty. It is only after this has been done, that Bluntschli moves on to apply these principles to his analysis of the Swiss cantons (1831,33-110) and then to the nature of the Swiss federation and the issue of its reform (1831, 111-26).

For Bluntschli (1831,2f), the concept of Volk refers to

a socio-cultural phenomenon comprising more than just a group of individuals united for instrumental purposes. Instead (1831,5), it denotes "a mass of people which naturally belongs together" by virtue of its "Volkscharacter", i.e. its common customs mores, and so on. The Volk includes men, women and children. "When the Volk becomes conscious of belonging together, when it realises that it is a whole, then it will also express this consciousness and ... form a state." (1831,8). In doing so, the Volk is expressing its identity as more than just a group of individuals, but as a higher level of being ("eine Person hoeherer Art") (1831,3). Since this self-conscious Volk is now an organic person, it has to have a body (1831,11). Bluntschli's idea of an organic Volk, whose common identity and consequent institution of a state demonstrates its higher level of development, has similarities with Schleiermacher's notions, (see 3.2. above) a debt indicated by his approving reference (1831,28) to the latter's 1814 text.

The state itself has a living organism comprising its different constituent parts. In what is a rather circular argument, Bluntschli contends that the very interrelatedness of the various parts of the state machine demonstrate an inner essence. This is the Volk (1831,10). As states are but reflections of the Volk and the latter is always different, states will also all be different. The corollary of this is that there is "no constitution that solves all problems" (1831,12). Constitutions should not be constructed according to universal principles, but should be judged on the extent to which they conform to the nature of the Volk. Here we see a form of argumentation typical of a conservative, historical

approach, which sees the development of states as an organic process, in which past traditions are and should always be, reflected in extant constitutional practice. Bluntschli's position is thus not that different from many of the rational Swiss conservative federalists examined in 3.3. above.

Being an organic entity deciding to form a state, the Volk has a state will (Staatswille), which must be articulated and implemented. Bluntschli (1831,14) defines the body that does this as the sovereign. However, it is clear that since it embraces all men, women and children exhibiting the Volkscharacter, the Volk as such can never be assembled as a whole in anything other than the smallest and most primitive of states. Accordingly, it can never be sovereign itself. The Staatswille is expressed by an organ of the Volk, namely, the state. It is therefore the state that is sovereign. However, the members of the state do not cease to be members of the Volk. The latter term covers both the rulers and the ruled (1831,20). For not only does the whole Volk not rule, but it does not even elect the rulers, since women and children, for example, are excluded from this process and yet are patently part of the Volk (1831,72f). Bluntschli (1831, 74f) does not object to the assertion that sovereignty proceeds from, or rests upon, the Volk, as all law and power is an expression of the Volk, but finds it a confusion to speak of popular sovereignty.

However, Bluntschli (1831,21-4) rejects contract theory's assertion that sovereignty is transferred from rulers to ruled.

Neither state nor sovereignty rest upon contract, but upon natural necessity (Naturnotwendigkeit).

The sovereign is whosoever is recognised by the Volk as such and possesses and uses the highest state power, regardless of how he came to it. (1831,24).

Bluntschli goes on (1831,25) to argue that the German tradition has been for the strongest to rule and for those rulers to be most respected who had least need of election. The similarities with Haller's position (see 5.3.2. above) are self-evident. However, Bluntschli is not a reactionary, but a reformist conservative. This is illustrated by his acceptance that there are a variety of ways for a sovereign to be recognised and by his argument that revolution brings about undesirable events, though it is in principle but an expression of the pathology of the relevant body politic. In short, Bluntschli is not advocating rule by the strongest per se, but is adopting a fatalistic approach to the nature of a regime and its change, while at the same time arguing that gradual change, in keeping with the naturally slow evolution of an organism, is best.

Indeed, this rejection of radical change is one of the hallmarks of the juste-milieu. On the other hand, the juste-milieu contends that it is also wrong to hold up natural change. The responsibility for revolutionary change is also attributed to those who resist change for too long, thereby ensuring that when it eventually does come, it will be unhealthily radical (Bluntschli,1831,93-5).

Having outlined his theory of the state, Bluntschli (1831, 33-110) devotes quite a large portion of his 1831 essay to a critical evaluation of the cantonal political systems in the light of that theory. He distinguishes two types: democratic and representative. Under the former rubric he includes the

six cantons in which the approval of legislation is reserved to an open-air assembly of all citizens (the so-called "Landsgemeinde"). In a nutshell, his contention is that this system is appropriate only for states at a low level of development, where lack of differentiation and of education means that there is a fair amount of de facto equality within the population. However, such a system would be wholly inadequate for a state at a higher level of cultural existence, where greater education means greater disparities of wealth, education and so on.

He also criticises the political structures of democratic cantons as having a tendency to concentrate power in the hands of the government, since it alone deliberates and frames legislation, as well as for its vulnerability to the tyranny of the masses. Also very significant for Bluntschli's disapproval of the democratic form of government is his contention that the masses are in general unaware of the nature of the conflict between the roles of subject and of sovereign lawmaker. They are even less likely to be able to deal with this conflict than the educated classes, being less inclined to subordinate their personal interests to those of the whole, as the role of a sovereign requires.

By contrast, Bluntschli (1831,59) is full of praise for representative government, which he describes as "one of the greatest phenomena of the modern world", attributing it to the Germanic spirit, Germanic freedom and Germanic Reason. His discussion of representative cantons (1831,59-110) is both lengthy and detailed. For our purposes, it will suffice to note the general points being made, since of interest for this thesis are only those aspects that assist an

understanding of how Bluntschli justifies his proposed federation.

First, Bluntschli (1831,60) argues that the representative form of state can be either monarchical or republican. What makes representative systems distinct is that in them it is not individuals, nor the masses, that rule, but one or more bodies or assemblies. The latter either legislate themselves, if they are the sovereign, or advise the actual sovereign. (1831,60f). The advantages of this form of state include the fact that they provide for reasoned discussion and for the representation of all interests (1831,61f).

Of crucial importance is the composition of such bodies, since their task is to make reasoned decisions, corresponding not with the members' private interests, but with those of the organic whole (1831,62-6). What is required is for the selection criterion to emphasise education, since educated people offer three characteristics vital for the correct functioning of the representative state system. These are their substantive understanding, their awareness of the nature of the role required of a person making decisions as a member of the sovereign body, rather than as a private individual, and the moral strength to subordinate their personal interests in the required manner (1831,62). The nature of the system for the selection of representatives should be determined by such considerations. There are basically two systems of selection: birth or election, which represent the principles of stability and change respectively.

Among the possible electoral criteria is the principle of population size. He argues that although this aspect must be

considered, only the rawest of state forms would employ it as the sole or even the dominant principle. First, the principle of education ought to be included. Bluntschli acknowledges that it is difficult to assess the extent of a person's education or culture (Bildung), but argues that one way of ensuring greater representation of the educated is to give disproportionately heavy weighting to the votes of city-dwellers, since it is universally acknowledged that it is in cities that the level of culture is highest. Moreover, he advocates (1831,79f) that the sovereign authority have the right to elect a limited number of its members itself.

An additional criterion is wealth, which can be measured either on the basis of land ownership or property in general. The former promotes the element of stability, the latter is a dynamic element. Another principle is that of representation on the basis of estates, although it is not employed in Switzerland. In short, Bluntschli's opinion on the best form of selection is governed by the typical *juste-milieu* desire to find what is considered an appropriate balance between change and continuity.

There are two more points which Bluntschli (1831,83-92) makes about representative systems that deserve to be mentioned, as they also impact upon his federalism. The first is his view as to how the state will (Staatswille) comes about. He argues that this is a product both of the direct electoral system outlined above and of certain other factors. The latter include personal reflection by the representatives, free speech both within and without the assembly by both representatives and the general population, a popular right of petition and finally, the frank and unhindered exchange

of ideas in the debates of the sovereign body. In short, Bluntschli is placing his faith in the ability of the liberal principle of free speech to result in decisions by the sovereign that are not solely in the interest of its individual members, but in that of the organic whole.

The final principle we shall mention is the requirement of mechanisms for constitutional change (1831,92-111). This derives logically from his earlier comments about the need for measured change, as opposed to precipitous change on the one hand, and the ultimately equally destructive repression of change on the other. While he accepts (1831,102) that popular ratification of constitutional change has a useful legitimising function, Bluntschli (1831,104) insists that since such ratification could only be conducted by the enfranchised citizens, it is better to stick to the principle that decisions are made by the sovereign. To do anything else would, he asserts (1831,104), be a regression of the culture of the state.

Bluntschli's federalism follows on logically from his theory of the state. First, he argues (1831,35) that at the federal level, there exists a new and greater state, a "Gesamtstaat". As a state, it has a sovereign, namely, the Diet. However, he insists that the cantons alone are true states. The Diet's sovereignty is restricted to a few matters over which it is sovereign merely because they have been transferred to it from and by the cantons.

Interestingly, Bluntschli is here departing from his earlier contention that sovereignty cannot be transferred by a contractual process. Though he fails to make this explicit,

his argument appears to rest upon the view that the cantonal states are derivations of their individual Volkscharacter and thus legitimate expressions of the several state wills. By contrast, the sense of national Swiss identity has certainly grown in recent years, but is as yet not such as to warrant the creation of a state will that overrules that of the individual cantons. "If Voelker are organic by nature ... they will retain their particular personality in their external manifestations as states." The federal authority is thus not really sovereign, though it does exercise sovereignty in individual areas of policy (above all foreign policy), in respect of which the cantons have to subordinate themselves to its will.

Surprisingly, Bluntschli (1831,112) claims that the Swiss federation is not a Staatenbund, but a Bundesstaat. He concedes that this cannot be sustained by reference to positive law. Instead, he supports his argument by pointing (1831,113) to the increase in the sense of a common Swiss identity:

The feeling of a common national association (Nationalverband) embracing all Swiss, the consciousness of a common fatherland, has long been much livelier and more developed than the federal constitution's structure shows.

and arguing that it is for the federal structure to make up this deficit between the popular sentiment and positive law. This gap is the result at least in part of the 1798 invasion and subsequent repressive measures stopping the realisation of national aspirations. These demands have now been frustrated for so long that the pent-up pressures have resulted in calls for unconstitutional and illegal change. It is therefore necessary to undertake reform forthwith, so that

such excessive change is avoided.

We see here a further interesting aspect of Bluntschli's federalism, namely, the use of the principle of nationalism at two levels: both the Volkscharacter upon which he sets so much store and the national identity which he identifies as a growing force, are expressions of nationalism. It is obvious that as yet, (1831) Bluntschli considers cantonal nationalism to be prior to an overarching Swiss nationalism. However, inasmuch as he gives qualified recognition to the existence and legitimate demands of a federation-wide nationalism, and argues that the structure of the federation should be amended in response to Swiss nationalism, he is clearly attributing to nationalism an important role in determining the nature of federal relationships.

Bluntschli goes on to argue that as the Swiss federation is based upon the representative and not the democratic principle, reform should be predicated upon the latter. He therefore applies to the federal level the principles of representative states which he has already outlined. First, the composition of the sovereign - in this case the Diet - must be governed by the principle of enabling it to act in the interests of the whole, rather than in the interests of its constituent members. Accordingly, he argues that since the whole is not the canton but a growing sense of Volk, the Diet must give greater weight to the principle of population size. That is to say, cantonal representation in the Diet must reflect relative cantonal size more (1831, 116f). Second, the deliberations of the sovereign must be organised so as to permit the will of the organic whole ("the national will") to

take precedence over those local wills of the cantons. He concludes (1831,118) from this that at least in matters of common interest, deputies must be free of binding cantonal instructions.

However, these centralising proposals are limited by Bluntschli's view (1831,121) of the state as a dependent variable, a natural necessity which ought not to be organised around abstract and allegedly universal principles:

Although I concede that states of a higher order require a single organism ... Switzerland must never become such a state, because its inner peculiarity, which is essentially predicated upon the diversity of its parts, resists such unity. The Unnatural is never desirable. Only that which is appropriate to nature and its structures may be the goal of a reasonable will.

What this amounts to is a rejection of the logical corollary of Schleiermacher's views (1814, see 3.2 above) about the natural progression of states from those of the lowest order, through those of a higher order, to that of the highest order, namely, the unitary state. Bluntschli is, after all, a reformist conservative. He believes that the structure of a state should not be governed by universal principles, but should be a reflection of that organism's unique character and history. This historicism also means that there is no pure federal form to which Switzerland need conform. Accordingly, if there is a principle to be discerned behind the specific proposals he proceeds to make about which matters cantons should transfer to the central authority - the organisation of military command, military provisioning, internal trade and commerce, a federal university, a federal supreme criminal court and so on - it is the principle of self-defined moderation. Thus, for reasons which derive not

from any clear principles, but from his subjective judgement, it appears to Bluntschli (1831,125) that those advocating any Diet powers concerning cantonal constitutions "go too far". Finally, in order to ensure that after these changes have been implemented, the federation continues to be in tune with the Volk, there must be a more flexible mechanism for constitutional reform.

The contingent nature of Bluntschli's federalism is clear when one considers the development of his ideas during the period up to 1848, as is shown in his memoirs (1884,I,437ff) and his 1847 pamphlet suggesting how the federation might be restructured in the light of the defeat of the conservatives in the civil war of that year. In the hope that there might yet be a role for the *juste-milieu* as an arbitrator or conciliator in the dispute between liberals and conservatives (Bluntschli,1884,I,437f) Bluntschli set to work in 1847 on further proposals for a restructuring of the Swiss federation.

He now (Bluntschli,1884,437) describes the extant federation as a Staatenbund and describes this as consistent with the nature of the federation as a union of independent republics. His prime criticism of its structure relates not to the equal representation of unequal units, but to the composition of the Diet's executive committee: the State Council. He argues that it should not be composed solely of the chief magistrates and officials of the directoral canton. Instead, he proposes the revival of the Mediation office of a Swiss Landamann, elected annually by the Diet. He would chair the State Council, membership of which would be extended to include two representatives of the directoral canton, two of each of the other two directoral cantons and a

total of six from the remaining cantons. This idea is of course consistent with Bluntschli's argument that a sovereign body should be composed in such a way as to militate against it deciding in favour of sectional interests.

However, shortly after the 1847 civil war he writes in his diary (Bluntschli, 1884, I, 443):

Old Switzerland is now definitely behind us. "Let the dead bury their dead." The only path left for me now is to surrender to the new times and, through creative work, rescue what can be rescued. ... Until now I have tried to delay the revolution, always hoping to be able to intervene in a reformist ... manner when radicalism had been rejected. The absolutism of the so-called conservatives made this impossible. Now liberalism will have to emerge from radicalism.

What is now called for is a revision of his most recent proposals for federal reform. The reason he gives for this shows how far Bluntschli considers constitutions to have no special status, being merely laws like any others (1831, 97) and thus subject to the requirement that they reflect the state will of the Volk. For Bluntschli argues that the civil war that has just taken place has shown cantonal nationalism to have become much weaker than Swiss nationalism (1847, 6 & 1884, I, 442-444). Accordingly, he argues (1847, 8) that the constitution should be amended to reflect this. He now (1847, 11-16) adopts the proposal for separate and independent chambers to reflect the state wills of both the several cantonal nationalisms and of the overarching Swiss nation.

Cantonal nationalism is to be represented in the Diet, which is to retain equal cantonal representation, with deputies bound to cantonal instructions. The popular chamber (the "Great Council of Switzerland") is to have the right to initiate bills and to deliberate them first, but the

definitive vote on them is left to the Diet. It seems that Bluntschli is advocating a negative veto for the Great Council, in that the Diet will not be able to pass legislation defeated by the former. However his comments (1847,13 & 15f) are rather unclear and it is possible that he conceives the Great Council's role as being limited to the application of moral pressure on the Diet. He is rather hesitant about the value of a rigid stipulation of federal and cantonal competences, for he feels that this will not successfully accommodate change. Instead, he proposes (1847,15) that any matters deemed federal by a three-quarters majority in the popular chamber, followed by a simple majority in the Diet, will automatically become federal. He (1847,15) considers this a flexible principle, which can also be used to restore to the cantons increased powers in the (unlikely) event of cantonal nationalism again becoming relatively stronger than Swiss nationalism. Though Bluntschli (1847,16) argues that his proposals amount not to "a patchwork job, but a new construction", it is clear that they are permeated by his guiding principle of as much reform as is necessary and which is in agreement with the underlying principle of reflecting the state will of the organic Volk.

So what Bluntschli is advocating is a form of interstate federation, with very circumscribed areas of sovereignty for the federal authority. The constituent units of the federation are the sovereign cantons, which constitute tribes (parts) of an overarching Volk, which he does not define more closely. The structures of the federation are to be such as to ensure the dominance of the intellect and science ("des

Gedankens und der Wissenschaft") (1832,417). An important means to this end are electoral laws that restrict political power to the educated and propertied classes. His proposed federation is thus to be seen as a counter to the extant pressures for popular sovereignty from Liberals and Radicals, while at the same time attempting to make sufficient concessions to their demands so as to prevent revolution. However, it is clearly predicated upon an elitist and in parts corporate form of political representation. Thus he argues (1831,vii) that political equality a nonsense, for he cannot accept that all, even the least educated, are equally able to understand right and wrong and issues such as the separation of powers. Similarly, he supports greater representation of the educated and wealthy classes.

This is of course but one of a number of concessions to conservatives. These include (Bluntschli,1884,I,210ff) the insistence upon cantonal sovereignty, particularly as regards confessional matters, and the defence of religious faith and religious authority. However, it must be recalled that in this aspect Bluntschli is, as an active Protestant, far removed from the position of radical Catholic conservatives, whom he regards (Bluntschli,1884,I,383) as ultramontanists lacking loyalty to Switzerland. He feels (1884,I,380) that if their aspirations were successful, they would "lead society back to the barbarism of the Middle Ages". Typical of the *juste-milieu* is his assertion (1884,I,384) that the two extremes of radicalism and reactionary conservatism have much in common. Thus he states that:

While the omnipotence of an idolised state is the ultimate goal of radicalism, the omnipotence of hierarchy is the ultimate goal of ultramontanism

... The one is essentially revolutionary, the other essentially reactionary.

In short, Bluntschli's federalism is a clear example of reformist conservatism and has many similarities with that advanced by Rossi. Neither offers a blueprint for a federation based upon one or more universal principles. Both reject the notion that states ought to be constructed in such a rationalist, ahistorical manner. They see the constituent units of federations as organisms, whose diverse structures derive from the natural diversity of their respective nationalisms (Volkscharakter). The purpose of the Swiss federation is to protect and promote these national spirits, while providing structures that accommodate legitimate demands for gradual reform. However, a rival nationalism based upon the common identity of all the units of the federation has emerged. This is a natural development and as such deserves to find expression in the constitutional structures of the federation. The purpose of the federation has now changed to that of maintaining a balance between the aspirations of the local and federal nationalisms. The nature of this balance is to be determined not by abstract principles, but by the development of the popular sentiments themselves.

Though both Bluntschli and Rossi insist that Switzerland must never become a unitary state it is clear that neither are able to offer much comfort to those who feared that this was but a slippery slope that would lead to an ever decreasing cantonal role. For both their federalisms are, in the final analysis, predicated upon an almost passive reflection of changes in popular identity. Since that changed identity is not only of a cultural nature, but includes changed political

aspirations, it is clear that the federalism of Swiss reformist conservatism offers little resistance to the increasingly popular liberal ideas.

Swiss reformist conservatism has little to offer by way of a realistic alternative philosophy, or an alternative vision for the Swiss federation, its prime message being an exhortation to moderation and compromise. Despite some local exceptions, (notably the Zuerich "Putsch" of 1839 and its domination of that canton's government under Bluntschli for the next five years), the *juste-milieu* also lacks political success. It ultimately proves unable to hold up the rising tide of conflict between the liberal and conservative camps.

5.4. SUMMARY AND CONCLUSIONS

In Chapter 1, the main aim of Part 3 of this thesis was stated to be "the analysis of the use by the earliest antecedents of modern political parties of federalism as a political ideology to rationalise and to promote their existing political interests within extant federations" (p43 above). Accordingly, the main focus of these concluding remarks will be the findings of this chapter regarding the use by German and Swiss conservatives of federalism as a political ideology. Before launching into that exercise, however, there will be a brief recapitulation of the dimensions of federalism discussed by German and Swiss conservatives during the period covered by this chapter, as well as of the manner in which that federalism was articulated.

During 1815 to 1850, German and Swiss conservatives advanced no new dimensions of Germanic federalism. Instead, their federalism centred around three of the five dimensions of Germanic federalism previously identified in this thesis (see Figure 1 above). All the conservative federalisms to which this chapter has referred spoke about confederation and most of them also discussed intrastate-territorial federation. Though Stahl made an interesting distinction between the monarchical and the republican Bundesstaat, this did not amount to a new dimension of federalism, but merely a subdivision of intrastate-territorial federation. The political motivations behind Stahl's distinction will be referred to below. Finally, conservative Germanic federalism contained intrastate-imperial federalism, which was used most persistently by Goerres and possibly also envisaged by Jarcke.

As in the revolutionary Napoleonic period (see Chapter 3 above), conservative federalism was again articulated in a wide range of registers and in the context of differing conceptual frameworks. It included, for example, Geiger's polemicism and the often impenetrable, mystical Romanticism of Goerres on the one hand, as well as Stahl's at times abstract, idealist teleology. At both these extremes, the details of the precise workings of federations were usually submerged under either emotivism, or metaphysics. Between those extremes, however, were the legalistic federalism of Rossi in Switzerland and the pragmatic, but none the less cosmopolitan federalism of Heeren in Germany, both of which were concerned to describe the mechanics of federation in

greater details than many other of their conservative counterparts. Moreover, while the federalisms of both Stahl and Bluntschli were sometimes expressed in an academic register and contained fascinating insights into how the two men thought federations should be structured, at other times, their federalism was articulated in a manner that reflected the fact that they were both also political activists.

Notwithstanding this great variety in the language it used, conservative Germanic federalisms contained at least three recurrent themes. The first and from an Anglo-Saxon perspective one of the most distinctive, is theological argumentation, though as has been noted, the extent to which such language should be taken to indicate sincere religious commitment varies. In the case of Haller, for example, it has been suggested that his appeals to theological justifications for patriarchy lacked sincerity. Whilst some of the theological language came from Protestants (eg. the Lutheran views of Stahl), the majority of those who availed themselves of such language were from the Catholic camp. Examples include Jarcke, Geiger, Haller and Goerres. A second theme, albeit not universal, was nationalism. This appeared in various manifestations in the federalism of, for example, Goerres, Stahl, Bluntschli and Rossi. Unlike the federalisms of most liberals of the period (see Chapter 6 below), conservatives did not always use nationalism to argue for greater centralisation (eg. Rossi). A third and universal theme of conservative Germanic federalism was opposition to revolution, as well as to radical social, economic and political change.

This brings us to the major topic of these concluding

remarks, namely, the role of conservative Germanic federalism as political ideology. This issue will be considered by reference to two aspects. The first is the nature of the federations proposed (to be distinguished from those merely identified). Second, we shall then review the evidence this chapter has presented in support of the contention that those federalisms are best understood in terms of their role in their respective domestic political debates.

Not only were three dimensions of Germanic federalism articulated, but all three types of federation were prescribed by at least one of the exponents of Germanic federalism considered in this chapter. Interstate confederation was prescribed for Switzerland by Rossi and by the early Bluntschli, while Jarcke, Heeren and the early Stahl all supported the idea of a German confederation. On the other hand, both in Switzerland (eg. Bluntschli) and in Germany (eg. Stahl), some conservatives came to support intrastate-territorial federation. Finally, Goerres retained his commitment to the notion that Germany should revert to an intrastate-imperial federation.

The aim of this chapter was not limited, however, to identifying merely the types of federation envisaged and prescribed. It was also our intention to investigate the motivations that led to those prescriptions and to establish the accuracy of Riker's assertion (1964 & 1975) that the factors motivating all federations were considerations of a military and an expansionist nature. There is clear evidence that this applies to some reactionary conservatives. For example, one of the main motivations of Goerres' federalism

was shown to be his concern for military security, especially vis-a-vis Russia. To this end, his proposed federation was to adopt what amounts to an expansionist policy, with a cordon sanitaire of colonised states between it and Russia.

Similarly, it can be argued that Stahl's advocacy in his later federalism of a kleindeutsch, monarchical Bundesstaat under Prussian leadership is tantamount to a legitimation of Prussian expansionism. This chapter has also shown that behind the conservative federalism of the Swiss army officers Bontemps and Maillardoz there were also considerations of external military security, albeit no intention to engage in expansionism. It must therefore be conceded that Riker's first, "military" condition does apply to a number of the conservative Germanic federalisms considered in this chapter. Moreover, in the case of two of the federalisms that have been discussed, his expansion condition can also be said to have applied.

On the other hand, however, the very detailed examination in this chapter of the content and motivations of conservative Germanic federalisms disproves Riker's assertion that both his conditions apply universally. This chapter's evidence demonstrates conclusively that considerations of external security and expansion were at best only one of a number of factors motivating federalisms and not necessarily the most weighty. Indeed, in the one case where external military security did constitute the central concern, namely, in the federalism of Heeren, federation was proposed as a gesture of German renunciation of potential expansionism in the interests of European peace.

One of the major findings of this chapter is that the

federalisms discussed cannot be fully understood unless one recognises that they were advanced as part of a domestic political debate, in which their purpose was to defend or promote the conservative political causes. In short, federalism has to be seen as a political ideology. In Chapter 3, it was argued by reference to Germanic federalism between the 1790s and 1815 (see 3.4 above) that amongst the factors that illustrated the ideological nature of Germanic federalism particularly well were its language, the federations it proposed and the tactical shifts in those proposals. All three factors apply to conservative Germanic federalism between 1815 and 1850.

The first of these has already been mentioned above. It is clear that polemical, or emotive conservative federalisms such as those advanced by the likes of Geiger or Goerres allow no room for doubt as to the political goals being pursued. On the other hand, the Lutheran quietism evident in Stahl's theological argumentation in support of monarchy by Divine grace, as well as Bluntschli's academic refutation of the principle of popular sovereignty are both certain indicators of their authors' desire to resist the demands of liberal constitutionalism and popular sovereignty.

Such political motivations are evident not only in the language and conceptual approaches of the conservative federalisms discussed, but also in their proposed federations. In some cases (eg. Goerres), such motivations are spelled out by the protagonists themselves. In other cases, it is necessary to undertake a more detailed investigation into the social, economic and political structures which are to

pertain in the relevant federation. That is an investigation which this chapter has painstakingly undertaken in almost all the federalisms discussed. The inescapable conclusion of that examination is that federations were proposed as a means to the realisation of the, albeit differently understood, political causes of conservatism. Variations between the exponents of conservative Germanic federalism as to the type of federation that should be implemented are to be explained by two factors. The first is their perception of the threat to conservative values and the second relates to their evaluation of the most appropriate strategy to counter such threats.

This is clearly visible if one reads the, as it were, small print of the various federalisms. It reveals that in Germany, for example, the proposed federations were in some cases (eg. Stahl) intended to advance a Prussian-dominated, Kleindeutschland, and in others (e.g. Goerres), it was a Grossdeutschland that was to emerge. The small print of the federalism used by some (eg. Jarcke) points to a desire to promote a mediaeval type social and economic system, while that of others (e.g. Heeren) was to permit a moderate degree of political pluralism. Similarly, some of the federations proposed by Swiss conservative federalism (e.g. Haller) were designed to provide the framework for a patriarchal society, while that of others (eg. Bluntschli) was meant to take the sting out of demands for radical change by conceding limited reform.

However, there is a second type of variation between federal prescriptions which provides even better evidence of the politically contingent nature of federalism: changes over time in the type of federation proposed by a single exponent

of Germanic federalism. The prime examples cited in this chapter are the federalisms of Stahl and of Bluntschli. It will be recalled that Stahl initially gave uncritical support to the confederal German Bund, since he perceived it to be the best guarantor of unchecked monarchical rule. Yet during the revolutions of 1848-50, he became a supporter of intrastate-territorial federation. As was shown in 3.2.3. above, Stahl's insistence upon both the generic distinction between the republican and monarchical types of Bundesstaat and upon Germany adopting the latter can only be understood if one recognises his federalism as a means to the end of preserving and promoting the monarchical political system. The fact that he first supported confederation, but by 1849 had come to be an advocate of intrastate-territorial federation is a reflection of his altered assessment of the type of federation most conducive to achieving his political ends. Although Bluntschli's political goal was not unchecked monarchy, the shifts in his federalism are also indicative of tactical considerations.

To conclude, this chapter has shown that federalism was used by reactionary, status quo and reformist conservatives in both Switzerland and Germany. Moreover, it demonstrated that though in some cases the motivations of those federalisms included military and even expansionist considerations, federalism was undeniably primarily utilised by Swiss and German conservatives in their respective domestic political debates and as a vehicle for the rationalisation and promotion of their political goals. In short, it was used as a political ideology.

The factors influencing the nature of that federalism were in part a shared ideational background. Thus it has been shown that individual thinkers or political philosophies exercised an influence on exponents of conservative Germanic federalism in both countries. Examples include Schelling and Schleiermacher, to whom both Stahl and Bluntschli refer, as well as the values of political Catholicism (eg. Goerres and Geiger). On the other hand, however, there was also a considerable interpenetration of conservative Germanic federalism. This chapter has demonstrated that, for example, Haller was influential in Switzerland, Prussia and Austria; that his disciple, Jarcke, was also influential in Prussia and Austria; that Bluntschli was politically and academically active both in Switzerland and, after 1848, in southern Germany; and finally, that Goerres' federalism was informed not only by German, but also by Swiss experience.

As significant as these factors are in demonstrating the existence of a common tradition of Germanic federalism (see Chapter 7 below), the main emphasis of this chapter has been upon the relationship between federalism and the political process. It has shown many of the federalisms covered to have been very relevant politically. Examples include the federalism of Rossi, which despite its failure to get accepted in 1832, none the less exercised a powerful influence upon the shape of the Swiss federation of 1848. Another example is Stahl, whose proposed monarchical Bundesstaat bears many resemblances to the federation of the Second Reich (1871).

However, the relevance of this chapter's discussion of federalism as a political ideology is not limited to its

subsequent impact, however great that might have been. Since the political debates to which those federalisms contributed took place within extant federations, the preceding analysis has also provided an illustration of the interaction of federalism and federation. The goal of the second chapter of Part 3 of this thesis is to examine that process with reference to the federalisms of German and Swiss liberals.

NOTES FOR CHAPTER 5

1. As Epstein himself concedes (1966,7), the three classes of conservatives he identifies are ideal types and "real conservatives ... are frequently mixed breeds that do not conform to these stereotypes". The same clearly applies to the conservatives covered in this thesis. However, the role of Epstein's classification in this thesis is merely that of a heuristic tool. Uncertainties over the precise political classification of some of the conservative exponents of Germanic federalism covered in this thesis do not detract from the latter's main concern, which is to identify not the different political groupings, but the different types of federalism proposed within the Germanic tradition and to demonstrate their use as political ideology.
2. The Wochenblatt appeared from 1831 to 1841. For an interesting discussion of its content and relationship to Haller's theory, see Meinecke (1928,239-61). From 1838, Jarcke co-edited the equally conservative Historisch-politische Blaetter. Of the numerous other reactionary contributors to the Wochenblatt, one of the most colourful was the historian Heinrich Leo (1799-1878), who wrote in it that "It is better that a hundred of the common rabble should perish than one man who is noble by birth or intellect." (cited in Hertz, 1975,211). See also Leo's "physiology" of the state, (Leo, 1833) and Bluntschli's comments on his theory (1867,625-30).
3. See for example his 1834 essays Natural law and history (Jarcke,1839,III,1-19) and The natural law theory of the state (ibid, 20-31), as well as his 1836 essay entitled The origin of the state in Nature (ibid,32-64), and his Political Equality of 1832 (ibid,126-40).
4. For a discussion on the limited religious commitment behind Haller's appeal to Divine right, see Meinecke (1928, 224f) as referred to in 5.3.2. below.
5. This he has in common with one of the Swiss reactionary conservatives discussed in 5.3.2. below, namely, Geiger

(1823-39), as well as with the later Goerres (eg.1821) (see below).

6. Jarcke certainly does not make this clear in his Mixed Writings (1839,I-II), though it may well be that he is more explicit elsewhere. However, this thesis does not claim to provide an exhaustive account of the federalism of the authors it has elected to cover and has therefore not attempted to examine all his writings.

7. The thrust of Aris' (1936,320-40) conclusion on Goerres' political writings up to the 1820s is that he constitutes a very much compromised liberal. By contrast, Bluntschli's history of political thought (1867,506-14), which provides a very brief assessment of the whole of Goerres writings, deals with Goerres in a chapter entitled "The Catholicising Politics of Reaction and Restoration", in which Bonald, De Maistre, Haller and Adam Mueller also figure. Though bearing in mind the caveat in footnote 1 of this chapter, this thesis takes the view, for reasons that will now be outlined, that Goerres is best regarded as a reactionary conservative. See the selection of Goerres' writings in Schorn (1934).

8. The following discussion of Stahl is based upon five primary and six secondary sources. The former are the third edition of Stahl's philosophical magnun opus: The Philosophy of Right, which first appeared in 1830 and 1837 (Stahl,1854./6); his The Monarchical Principle (Stahl,1845) and three collections of speeches whose subject matter is the 1848-50 proposals for the reform of the German state (Stahl,1849, 1849a & 1850). The secondary sources are Bluntschli (1867,630-50), Hertz (1975, 208f), Masur (1930), Meinecke (1928,263-70 & 514-20), H. Schmidt (1914) and W.Schmidt (1910). The following biographical material is taken largely from Masur (1930).

9. See Masur,(1930, eg.29f & 47-50), who speaks of a "glowing speech on Germany's unity and freedom" which Stahl made in 1820 and notes that enthusiasm for German nationalism was shown by students of all political persuasions. In addition to liberal nationalists like Gagern (see 6.2.2. below), there were those such as Heinrich Leo, whose youthful liberalism was later to be transformed into reactionary conservatism (see Leo,1833). Masur also argues that although Stahl was influenced by radical liberals such as Behr (see 3.2. above and 6.2.3. below), he never had a liberal phase. For an excellent account of the later development of Stahl's ideas regarding the German nation state, see H.Schmidt (1914).

10. Masur (1930,54) states that Zachariae "must be seen not merely as the precursor of the monarchical-constitutional principle that Stahl was later to develop, but without doubt as his teacher and educator" On Zachariae's moderate liberalism, see 3.2. above and 6.2.2. below.

11. Two caveats have to be mentioned here. First, Stahl's theories had in the 1830s already begun to be utilised politically by conservative German monarchs for the legitimisation of their rule. For example, after the 1830

revolution, Stahl's ideas were used by King Ludwig of Bavaria against the claims of Bavarian liberals such as Behr (Masur, 1930, 168f). Second, this royal approval of Stahl's work was not unconnected to his election in 1837 by the city of Erlangen to serve in the Bavarian Diet.

12. For a fascinating account of how this transpired, see W. Schmidt (1910). Also relevant are the comments in Meinecke (1928, 263-86).

13. Stahl's theological and metaphysical political philosophy is articulated most fully in his Philosophy of Right (Stahl, 1854/6, esp I). His general theory of the state is also to be found in that text (1854/6, esp. III & IIIi), but also in his The Monarchical Principle (Stahl, 1845). It is from these two sources that the following summary derives.

14. When asserting his views as to the ethical nature of the state (1854/6, IIIi, 131-61) Stahl cites Schelling approvingly. On Schelling, see Watson (1892) & footnote 23 of Chapter 3 above. Interestingly, Schelling was to influence both conservative thinkers such as Stahl and radicals like the Troxler. On the latter, see Chapter 6.3.3 below, including footnote 22.

15. Thus Stahl at one point (1854/6, IIIi, 170f) approvingly refers to Schleiermacher's assertion that the state develops naturally, i.e. not as a result of human deliberation or volition. On Schleiermacher, see 3.2. above.

16. Like Althusius (see 2.2 above) Stahl (1854/6, IIIi, 146) also explains the purposes of the state by reference to the two tables of the Decalogue, which the state is to "preserve and avenge".

17. On the other hand, Stahl (1854/6, IIIi, 243-252) concedes that although he is king by the "Christian principle of Divine grace", the monarch has to act within the positive law. He is not an absolute monarch, but by God's grace a servant of the ethical commonwealth. The latter remains above him. As mentioned above, however, this should not be taken to imply that Stahl advocates the right of popular resistance. Instead, his argument (eg. 1854/6, IIIi, Ch. 19) amounts to the need to suffer bad kings.

18. See also Stahl, 1850, v-xvi. On the other hand, Stahl also rejects the ideas of the Haller school regarding estate structures as outmoded and inappropriate for modern needs (eg. 1845, iv-xvi & 1850, v-xvi).

19. The fullest exposition of Stahl's views concerning the relationship that ought to exist between the monarch and the representative assembly is to be found in his The Monarchical Principle (1845) and in his "Revolution and the constitutional monarchy ..." (1849). In the former, Stahl (1845, 25) summarises the requirements of the monarchical principle as being that the monarch alone have the right of initiating legislation, while the legislative rights of the estates are limited to approval and petition; that he alone exercise

administrative power; that he have his own independent royal income, as well as control of the civic purse, except in specific matters of expenditure and the raising of taxes, for which the assent of the estates is required; and finally, that all these rights are real, rather than theoretical. For a further discussion of these matters, see Stahl,(1849).

20. His contributions to this newspaper are covered in H.Schmidt, (1914,20-6) and in part reprinted in Stahl(1849).

21. In his article of 15 July 1848, for example, Stahl states that "Germany should not become a simple state, but a Bundesstaat and not a republic, but a constitutional monarchy" (cited in H.Schmidt,1914,24). It must be recalled, however, that when Stahl uses the term "constitutional monarchy" he does not mean the same as liberal constitutionalists. In particular, he does not mean to imply parliamentary sovereignty. On the contrary, Stahl uses the term to denote a monarchy that exercises executive and legislative authority independently of parliament (see 5.2.3 above). For an exposition of his views on this matter, see Stahl,(1845 or 1849).

22. The main features of the constitution approved by the National Assembly are of the Union plan are outlined in 4.2 above. For the text of the former, see Schuster (1980,29-56).

23. Examples of such liberals are the German liberal radicals Struve and Troxler, whose federalism is covered in the next chapter of this thesis (see 6.2.3. and 6.3.3. below respectively.)

24. Stahl (1849a, eg.23-8) justifies his contention that a Bundesstaat must not comprise both republican and monarchical elements with two basic arguments. The first is that in a Bundesstaat such as that proposed by the National Assembly, in which the principles of rule is both monarchical and republican, monarchs would be very likely to be excluded from rule at the centre. What is more, they would therefore be likely to be ruled over by their subjects. Both scenarios are incompatible with maintaining monarchical dignity. The second basic argument is that the inevitable outcome of such a mixture of republican and monarchical structures (especially in federations such as proposed by the National Assembly, where the former have an inbuilt dominance), would be the abolition of the latter (see 1849a,34-7 also). Later, Stahl (1854/6,IIii,xif) says, in language reminiscent of Pufendorf (see 2.2. above), that a Bundesstaat uniting both monarchical and republican elements would be a "political monstrosity".

25. This thesis has translated this term as "ethical commonwealth". While we still believe this to be a useful translation, the English concept of commonwealth fails to capture an important component element of the German concept of Reich, namely the association which that word has in the German language with notions of monarchy, or empire. It is this etymological association which is used by Stahl to claim that monarchy and ethical commonwealth (sittliches Reich) are

intrinsically and inseparably linked.

26. The latter was a kleindeutsch, primarily monarchical federation. It had a Reichstag elected by a three-class franchise and a Bundestag, in which the governments of the constituent states of the federation were represented according to their relative size. Not least because of the size of Prussian Bundestag representation (17 of 58 seats) and the fact that its King exercised the office of Kaiser, Prussia was the hegemonic power in the federation. For the constitution of the Second Reich, see Schuster (1980,70-93).

27. Of the many additional reform conservatives whom it was impossible to include here because of lack of space, one of most fascinating is Constantin Frantz (1817-1891). (Frantz' full name was Gustav Adolph Constantin, but he is almost always referred to as Constantin {or Konstatin} Frantz {or Franz}.) Most of his writings on federalism appeared in the second half of the nineteenth century, though there are some interesting ideas as to the federal structure which Germany should adopt in his 1850 Von der deutschen Foederation (Of the German Federation). For his later ideas, see for example Frantz (1879). Secondary literature on Frantz's federalism includes Deuerlein (1972,106-110); Hartmann (1948) and Schaper (1940).

28. While a student at Goettingen, Mueller attended Heeren's lectures on history (Meinecke,1928,129) and later dedicated his Elemente (Mueller,1809, see 3.2. above) to Heeren. However, there is no evidence of Heeren's lectures having deeply influenced Mueller's political views.

29. This distinction was also significant in determining the relative emphasis that German liberals put upon liberalism (political, social or economic) as opposed to nationalism. Though there were exceptions such as Fries (1773-1843) and Struve (1805-1870), it is generally the case that the generation moulded by the experience of Germany's national humiliation and rebirth were much more likely to be prepared to sacrifice political liberalism to the interests of German nationalism, than were those liberals whose formative influence had been the French Revolution. Gagern (1794-1848) and Welcker (1790-1869) are examples of the first group, while Zachariae (1769-1843) and especially Behr (1775-1851) are examples of the second. (See Chapter 6.2 below.)

30. For examples of this usage, see Heeren,(1817,427); ibid, 428 & 430; ibid,431 & 434 and ibid,432 & 434 respectively.

31. This desire was of course not unique to Heeren, but was widely held. It was even articulated by Swiss liberals such as Escher and Usteri (see Escher & Usteri,1814,14f as discussed in 3.3. above).

32. On the cosmopolitan nationalism of Heeren and others of this period, see Meinecke (1928,esp.206-222)

33. Haller converted to Catholicism in 1820. On Haller and his influence in the circle around the later Friedrich

Wilhelm IV, see Meinecke, (1928, esp.223-277). For other Catholic conservative writers of this period, some of whom also advocated federation, see Ritter (1934), or Wild (1966). As was discussed in 5.2.2. above, Haller's influence on Germanic federalism in Prussia and in Austria was in part mediated through the writings of Jarcke (1839). See W.Schmidt (1910) for how the political influence of Haller's theories came to be replaced by that of Stahl's theories. For the latter's federalism, see 5.2.3. above.

34. Hilty (1896a,228 & 244f) makes the interesting observation that Haller not only omitted ever again to refer to the 1798 reformist draft (which by 1831, when Berne eventually adopted a liberal constitution, had been completely forgotten), but also consistently presented the events of 1798 in a light that suggested that the old Bernese constitution had been replaced as a result of French invasion. In reality, the Bernese government had formally mandated Haller to write a more liberal constitution before the invasion.

35. The comparison with Althusius will be discussed in 5.4. below

36. Also see Wild(1966,esp.57-67,82-90 & 142-85)and Gassner, (1926, esp 46-66)

37. Despite considerable efforts at tracing the officers' draft constitution in numerous Swiss libraries, the author had no more success than Rappard (1941) in unearthing a copy.

38. Among the most useful essays for this purpose are the following: Evaluation of the assertion that the supreme authority of the state derives from the people, (1823-39,1, 412-32); Historical presentation of the spirit of the age, (1823-39,1,387-400); Rationalism, (1823-39,2,1-18); Of the source of revolution, (1823-39,5,1-32) and Of popular sovereignty (1823-39,6,241- 52). Also of significance as an indication of the views Geiger values is the fact that a large part of volume eight is devoted to his translation into German of some of the writings of the French conservative, Bonald (Geiger,1823-39,8,1-193).

39. Two of the most significant examples are first, the liberal canton of Aargau' 1841 dissolution of its monasteries and second, the series of invasions of the territory of the neighbouring Catholic conservative canton of Luzern by gangs of radical volunteers attempting to topple the latter's conservative government, which had recently resumed power as a result of a successful internal coup and had decided to invite Jesuits to run part of its educational system.

Catholics' natural indignation at these events was hardened by two considerations. First, the dissolution of the monasteries contravened Article 12 of the Federal Pact, which guaranteed the existence of monasteries and their property. Second, in deciding to invite the Jesuits to run part of its educational system, Luzern was acting completely within its sovereign cantonal rights. These infringements of the existing constitutional principles made conservatives even more determined to defend the Federal Pact and merely

escalated matters. See for example Bonjour, (1948,36-121). On the response in the federalism of reactionary German conservatives, see Goerres (1845), as discussed in 5.2.2. above.

40. Wild (1966,131-41) argues that the juste-milieu was fundamentally a liberal grouping, but this thesis takes the view that the juste-milieu is an example of reformist conservatism. Given the lack of a clearly organised movement and the predominance within the grouping of a number of notables with predictably different political emphases, any characterisation of the movement must proceed cautiously. However, we believe that there are at least two factors supporting the view that the juste-milieu was a reformist conservative, rather than a liberal grouping. First, it stood for reform of the federation, but only on a piecemeal basis that retained the most significant existing structures which, it may be recalled, effectively gave a veto power to the small, conservative cantons. Second, the underlying philosophy of the juste-milieu's federalism was based not upon abstract principles, but upon the political necessity of compromise. These and other points will become clear in the following discussion.

41. Bluntschli has been variously described as a conservative, or as a liberal. His (1920,94) refers to him as "The intellectual head of the Zuerich conservatives ...", while Bluntschli at times describes himself as a liberal. However, we believe that he was a conservative at heart. This is confirmed by a reading of his autobiography, at one point in which (Bluntschli,1884,1,290) he asserts that his role model includes Peel, as well as by an analysis of his writings. See the discussion of his federalism below, as well as Bluntschli (1850).

42. Precisely the same point is made by Monnard (1833), a fellow member of the Rossi Commission and also an exponent of Swiss reformist conservatism, who assumes that the federal authority exercises no sovereignty. See Stettler (1847) also.

CHAPTER 6: LIBERAL GERMANIC FEDERALISM

FROM 1815-1850

6.1. INTRODUCTION

The main task of Part 3 of this thesis is to illustrate the use of Germanic federalism as political ideology in the period from 1815 to 1850. The preceding chapter examined the role of Germanic federalism as conservative ideology. The focus of this chapter is the manner in which Germanic federalism was utilised by Swiss and German liberals. Broadly speaking, liberals used federalism in two ways. On the one hand, liberal Germanic federalism sought to establish the nature of the existing Swiss and German federations. The second focus of liberal Germanic federalism was the issue of how the federations could or should be reformed. In other words, it concerned the prescription of federations that would permit the realisation of the liberals' political goals.

Since there is little value in merely rehearsing the esoteric debates about the precise delineation of the various types of federation contained in the Germanic tradition of federalism, this chapter will concentrate upon what has been identified as the second focus of liberal Germanic federalism. That is to say, it will stress the use of federalism as liberal political ideology. However, proposals for the reform of an extant federation are necessarily predicated upon the perceptions of that federation. Accordingly, this chapter will also consider how

liberals characterised the existing German and Swiss federations, but will do so only insofar as those characterisations facilitate an understanding of the ideological nature of the relevant federalism.

There were of course considerable differences in emphasis within the broad category of political views that might be labelled "liberal". As was argued in Chapter 4 above, one of the major distinctions to be made is between "moderate" and "radical" liberals. It will be recalled that these two liberal groupings differed both in terms of their underlying political principles and in terms of their political tactics. In particular, the distinction revolves around the greater commitment of the "radical" liberals to the principle of popular sovereignty and their willingness to break existing laws to achieve their ends. On the other hand, "moderate" liberals were more circumspect, limiting their demands in the main to constitutionalism and economic reform and believing that all change should proceed only through due legal process.

This distinction is reflected in the structure of this chapter. Thus after a brief introduction (6.2.1.), the substantive analysis of liberal federalism in Germany will commence in 6.2.2. with a consideration of how federalism was used by moderate German liberals. Thereafter, 6.2.3. will examine the federalism of radical German liberals. Similarly, the coverage in 6.3 of liberal Germanic federalism in Switzerland will first look at the federalism of a number of moderate Swiss liberals, before moving on to the manner in which radical Swiss liberals utilised federalism. Finally,

6.4. will summarise the material covered in 6.2 and 6.3. and offer some conclusions as to its significance for the central concerns of this thesis.

6.2. LIBERAL GERMANIC FEDERALISM IN GERMANY

6.2.1. INTRODUCTION

As was shown in Chapter 5 and will be further illustrated below, the 1815 to 1850 period saw significant change in the manner in which Germanic federalism was articulated, as well as in the purposes to which it was put. It became ever less the preserve of theorists of international relations and constitutional law and was instead increasingly used by political groupings for the purposes of political mobilization and rationalization. In short, it acquired a more openly ideological role, being harnessed to the wagon of nineteenth century efforts to realise the emerging civic vision. In particular, the concern of this section is to illustrate how the federal idea came into the service of those seeking to promote German liberal nationalism and or liberal constitutionalism.

There were a large number of contributions to German federalism in this period [1], but it cannot be the task of this thesis to consider them all. Instead, the discussion will be limited to six writers. The following section will illustrate, by reference to the federalism of Fries, Gagern, Zachariae and Welcker, some of the different ways in which moderate German liberals used federalism as a political ideology. In 6.2.3., the federalism of Behr and Struve will be used to demonstrate the ways in which radical German

liberals thought that federations could assist in the realisation of their political goals. The immediate task is to consider the federalism of moderate German liberals.

6.2.2. THE FEDERALISM OF MODERATE GERMAN LIBERALS

The first example of liberal Germanic federalism in Germany which will be outlined in this section is that of Jakob Fries (1773-1843). Educated by a Bohemian Protestant sect, Fries retained a lifelong faith in the civilising mission of Protestantism, as well as a distrust of clericalism in general and of the Catholic Church in particular. He identifies the latter with despotism and opposition to free thinking and liberal progress (eg. 1816, 29 & 37). From 1805, Fries was a professor at Jena and then at Heidelberg. He was influential not only as a philosopher, but also politically. This influence was partly through his students, one of whom was Gagern (see below), but also in direct political action. He was, for example, one of the earliest and most active supporters of the Burschenschaften, the German-nationalist student societies which Jahn founded at Jena in 1815. Indeed, his participation in their famous Wartburg Festival of 1817 (see 4.2 above) resulted in his dismissal from his professorship.

Since Fries' federal prescription is based upon his historical liberalism, this presentation of his federalism will commence with a brief outline of his perception of Germany's place in world history. Fries (1816, 14-27) identifies three high points in the history of mankind's cultural progress. The first is "antiquity", which he locates

at about three millennia before Christ and which he says was characterised by considerable economic, scientific and building activity, all of which took place within the context of a hereditary caste system and theocratic rule. Given the absence of writing, there was a lack of free reflection and Fries therefore considers this to have been an age of "dead technical habituation" (1816,19). The second stage is that of ancient Greece and Rome, in which the development of the written word allows the start of the search for truth via science and reason, but where there is still greater emphasis upon aesthetics than truth. This stage is also distinguished by the liberation of economic activity from the caste system and the replacement of theocracy by a developing republicanism. However, in the absence of Christianity, Greeks and Romans failed to see the inherent contradiction of republicanism and slavery (1816,38).

The third stage is the Christian era, in the development of which the German peoples have played a significant role and which Fries considers to exhibit two distinguishing features. The first is the replacement of the primacy of aesthetic art and iconalry by the religion of the eternal Christian truth. This spirit of truth teaches man contemporary science and allows him to distinguish between knowledge of the finite and faith in the eternal. The second feature of the Christian age is that the strength of this "living spirit" is reserved to European peoples (including Americans), who alone manifest the "lively, forward striving, self-generating spirit in the life of nations, which is, however, orientated solely to scientific development of

reason." (1816,17). Fries considers that the final outcome of the development of reason and science will inevitably be the fourth and final stage of the history of mankind, namely the era of "... national freedom and justice within the state and between states in an external federation of cultured peoples ..." (1816,26).

In short, Fries posits an idealist teleology, with mankind moving forward, by the development of scientific, religious and political ideas, towards a Kantian ideal state of reason and justice. As Fries (1816,24) puts it "A spiritual idea drives the human spirit forward towards a still half hidden goal, a glimpse of which leads to action and effort." Though Fries states (16f) that the goal of this spiritual idea is reason, he attributes to it a variety of forms and its precise nature thus remains unclear and often rather mystical. One of the most abstract definitions he offers is when he refers to it as the spirit of "truth, beauty and the good" (27). Elsewhere, he reduces this to "the spirit of truth" (14 & 47), or even "religious truth" (35).

Fries moves from metaphysics to a slightly more worldly realm when he asserts (1816,121) that there are in the state two competing spirits. The one is the public or communal spirit (Gemeingeist), which consists of the public opinion of the nation ("Volk"); the other is the spirit of the executive power of the government. Elsewhere, (1816,4 & 38) he says that the ideas which have dominated European development since the Reformation are those of political freedom (buergerliche Freyheit) and political equality, based upon the Christian idea of the personal equality of man. However, Fries often uses the term political freedom

interchangeably with that of the communal spirit and both in a manner which suggests that he sees them as largely identical with patriotism (1816, eg. 4-7, 38, 41f, 112 & 117). It therefore appears fair to conclude that in the context of early nineteenth century Europe, Fries' spiritual idea is virtually synonymous with nationalism.

Fries (1816, 17-27) attributes to Germany the leading role in the contemporary development of the spiritual idea. He presents a number of arguments to support his view that German culture and nationalism is destined to exercise a special civilising mission. These include the greater maturity of its reason and the bravery and spirit of its peoples, as evidenced by the Wars of Liberation. He argues that Germany has not yet reached a position where its spirit has been realised and thus still contains the full vitality and thus force of the striving spirit in religious, scientific and political matters.

Fries conceives of three types of federation and his interest in them relates to their role in the idealist teleology outlined above. One (1816, 26) is a Kantian, rational world federation which mankind will ultimately achieve. Yet this distant utopia does not occupy much of Fries' attention. The second type of federation he considers (1816, 165) is interstate confederation (Staatenbund), which he rejects as lacking sufficient unity for contemporary Germany. What he advocates instead (1816, 165-71) is a union of the whole German nation into a Bundesstaat.

The constituent units of this federation are to be the various German provinces, each of which will deputise

plenipotentiaries to the Bundestag (Federal Diet). Fries (1816,168) argues that the federation should not be limited to an offensive and defensive alliance. The Bundestag should "become a truly supreme government, for which we wish to see a legislative, judicial and military power" (ibid). The powers of the Bundestag are to include (1816,168-71) the sole right to determine and revise the boundaries of the constituent units; a uniform legal system, including a federal court to solve disputes between the princes and their subjects; a common financial system, with common income tax, postage and currency systems; the abolition of all internal tariffs and restrictions to trade in favour of a customs union; a militia and the federation-wide organisation of church and educational matters. In short, Fries is advocating a German intrastate-territorial federation.

In keeping with Fries' idealism, the long-term aim of this federation is the realisation of the rule of reason. In the more immediate term, its purpose is the promotion of the most progressive European spirit, namely that of the German nation. To this end, a strong German Bundesstaat will guarantee Germany the necessary external security (1816,165), while the persistence of the constituent states will ensure both that despotism is avoided (1816,163) and that the healthy rivalry between native German traits continues to enrich the German national spirit (1816,7,162f & 165f). Within this federation, the "original" German language and culture will therefore be maintained and their independence of foreign influence will be enhanced (1816,6f). In other words, it is clear that though Fries' federalism is motivated in part by military considerations, the prime purpose of the

federation he proposes is to foster German national purity and strength.

However, the nationalist idealism of Fries' federalism impacts upon and considerably qualifies the extent to which the federation he proposes conforms to pure notions of the liberal Enlightenment. First, Fries' idealism results in an emphasis upon the formative influence of ideas rather than structures. As he frequently asserts, (eg. 1816, 112-15, 118, 123-6 & 134f) political structures are of secondary importance to promoting the national spirit. This has at least two important effects upon his federalism. First, it results in his emphasis upon the primacy of the Gemeingeist over liberal constitutionalism. Second, Fries argues that the full realisation of this Gemeingeist requires education and thus that the educated classes and the class of state bureaucrats assume a prominent role in the political systems of the federation (1816, 6f, 42f, 110 & 119).

Second, Fries' nationalist motivation is at times expressed in a xenophobia that fits uneasily with liberal ideals. One example of this is Fries' violent anti-Semitism (1816, 6). His understandable bitterness at the country that recently humiliated Germany causes him also to be especially hostile to French ideas and customs (1816, eg. 48-50 & 163f). As a consequence, he attacks what he regards as the excessive optimism of the French Enlightenment and Revolution, eschewing foreign rationalisms (1816, 30-3). Instead, Fries expresses great faith in the long-term achievement of liberalism through the German Enlightenment (1816, 5, 11-313 & 112).

A third consequence of Fries' nationalist idealism is that he has great respect not only for his native Enlightenment, but also for native German traditions. He thus argues against creating constitutions according to abstract ideas (1816,146) and for the proposition that all reform should grow out of traditional structures and practices (1816,54). While repudiating stubborn and reactionary conservative historicism, which he accuses of contributing to revolution (1816,54f), his own prescriptions constitute a very gradualist, moderate liberalism, which lays great emphasis upon the primacy of reform over revolution (eg.1816,8-13 & 41-6).

The impact of these three factors is clearly visible in the nature of the federation Fries proposes. Though he states (1816,39) that "The destruction of despotism in church and state is ... the motto of our public life ..." and identifies the idea of political equality as one of the main formative principles of European history since the Reformation (1816, 38), the realisation of these goals is left very much for the future. For now, Fries accepts the monarchy and aristocracy of birth (1816,74-80 & 126-31) and insists that any changes in the extant system of rights and privileges must be undertaken only with appropriate compensation. For example, he states (1816,45) that reform of feudal dues is permissible only with full compensation for the current recipients of those services. On the economic front, Fries' nationalism makes him very wary of reliance upon foreign trade (1816,96-8), though he does not go so far as to propose for the German Bundesstaat the complete autarchy Fichte had advocated in 1800 (see 3.2 above). His nationalism is also

evident in the communal solidarity behind his insistence that it is necessary for the state to assume a more positive role towards alleviating poverty (1816,90-8).

An examination of the organisation of the constituent states of the federation Fries proposes shows clearly that his federalism is much more concerned with the furtherance of the German national spirit than with liberal constitutionalism. Thus though each Province is to have its own Diet (Landstand), the latter are not to be elected by popular suffrage. Instead, they are to be composed of representatives of the estates, with a patriarchal and property-based franchise. Indeed, Fries states (1816,180) that one of his prime reasons for proposing the specific structures of these provincial diets is that they will be very resistant to change.

To summarise, Fries is a liberal whose previous enthusiasm for pure Enlightenment ideals has been considerably defused by the Napoleonic experience and who at the start of the lifetime of the German Bund articulates a brand of liberalism which combines elements of the idealism and rationalism of Kant with an assertive, in part romanticised and xenophobic nationalism reminiscent of Fichte, whom he quotes approvingly (1816,117f). Fries has not abandoned Kant's ultimate goal of a universal interstate-chiliastic federation (see 2.3 above). However, he believes that like his ideal autarchic state (1816,149) governed by the principles of prosperity, spiritual development and justice (1816,62), universal federation lies far in the future.

Fries utilises federalism to prescribe solutions to the

more immediate issue of the post-Napoleonic political structure which Germany should adopt. His historical liberalism makes that federalism different from those later liberal Germanic federalisms concerned more with constitutionalism or political equality (see Welcker and Struve below, respectively). The principles of nationalist idealism which inform Fries' federalism contribute to making his proposed intrastate federation centralised and yet characterised by the primacy of traditional structures over constitutionalism and popular political rights. Though the German Bund was to prove a defender of German tradition over revolution, Fries was of course to be bitterly disappointed by the fact that it constituted merely an interstate federation by the consequent lack of German political and economic unity.

This frustration was one of the prime factors motivating subsequent liberal Germanic federalism in Germany. The next example that this section will consider is that of Friedrich Gagern (1794-1848), who was influenced while a young adult by the wave of German patriotism that accompanied Germany's struggle finally to rid itself of French occupation. Gagern's faith in the mission of a united German nation was enhanced while a student at Heidelberg in 1816, where he was (Gagern, 1856, 236f) especially influenced by Fries' lectures, and was further reinforced by speeches for national unity which his father made in the German Bundestag. Like Fries, Gagern was also committed to the principles of a constitutional state, whose civil servants and rulers had to serve the interests not of self-aggrandisement, but of public welfare. He was thus similarly disappointed by what he regarded as the

German Bund's failure to further German national unity and constitutionalism.

Gagern's essays on federalism and the German problem were written over a number of years and originally not intended for publication. They first appeared after his death, in a biography by his brother Heinrich (Gagern, 1856). The following account of Friedrich Gagern's views derives from five of his essays, four of which were written between 1823 and 1826. The date of the final and most complete exposition of Gagern's federalism is disputed, but is likely to have been 1833 [2]. Though Gagern's attitudes changed considerably during this period, it is still possible to present a coherent account of his views about the possible role of federation as a means of resolving the German problem.

The first of two essays written in 1823 ("The Present Situation" Gagern, 1856, 269-77) has to be seen as the outpourings of an angry young man, lashing out with his pen at those he blames for the parlous state of German unity. The prime villains are the German princes, whom he accuses of putting their selfish interest in maintaining personal power above the good of the nation (271). He is no less scathing about "the blind vanity of liberalism", which he accuses of "sacrificing freedom to equality" (273). Nor do "smugglers ... Jews ... and money-changers" (274) escape condemnation [3]. Gagern's hopes are pinned on the universities, which he says have "promoted the German spirit and kindled the flame of patriotism" (275) and upon their product: "a young generation full of warm patriotism and educated in the school of the Greeks and Romans" (277).

The second essay ("Of the necessity and the means of establishing the political unity of Germany", Gagern, 1856, 278-291) is more reflective. It argues that if Germany were united into one state, that would promote its respect and influence abroad and its internal trade (279). The princes' provincialism is still his main target and his faith in the educative national role of the universities is undimmed. This essay also spells out Gagern's belief in Austria's unfitness for the task of uniting the nation. This is demonstrated, he says, by Austria's abdication of the imperial crown, her opposition to bourgeois demands for constitutional reform and her multinational character (282-4). Instead, Gagern sees Prussia as destined to lead German unification, a role for which her German character and commitment to constitutional government are well suited (284-6).

Thus far, Gagern clearly prefers a unitary over a federal solution to what he perceives as the vital task of German national unification. His two 1825/6 essays (the short note "The Parties" and the dialogue "Unitarists and Federalists", Gagern, 1856, 356-61 & 361-71) confirm this bias, but also show Gagern giving a reasonably balanced account of the prescriptions of those arguing for a federation. Gagern says in "The Parties" that the crucial question facing Germany is: "whether we are a nation, or whether a few princely families have the right to divide Germany up amongst themselves as though it were their own property" (356). He argues that Germany has three parties on this issue. The "Serviles" have no opinion of their own, merely the interest of not losing out in the race for favours. The "Unitarists" "want Germany's unconditional political unity ...(and include) almost all

educated persons, the trading class, army and the whole youth" (357). The "Federalists" "believe the nation's political divisions have old and deep roots and thus want a strong ... federation, and the Bundestag as an institution in which the great concerns of the union are regulated, while the princes retain their rights of administration in their territories" (358). It is clear from other comments Gagern makes that he sees Federalists as well-intentioned, but too weak and thus ultimately unable to deliver the national unity Germany needs.

The dialogue "Unitarists and Federalists" is a remarkably succinct account of the passionate contemporary debate in which ardent supporters of national unity present the Bund as woefully inadequate and want it completely replaced by a unitary state, while a more cautious federalist camp believes that it is, despite its imperfections, capable of reform in the direction of a federal state. Neither group is satisfied with the Bund as it stands.

Thus Gagern's Unitarist states "I see no salvation for us, other than the unification of all German states into a single state. It is the general wish." (362). The advantages this promises are

Above all honour, power and respect for the nation and the better development of the latter; a greater influence for it in the European states system; savings, uniformity of legislation and administration in all matters where such uniformity is desirable and advantageous; free trade. (362f)

The Federalist responds that "... all this can also be achieved by means of a federation". The Unitarist replies: "I do not believe that. But most importantly, which federation

do you mean? the one we have, or another one?" The Federalist argues that "The one we have is good enough if it is taken seriously and kept to faithfully ..." (363). After a debate on the structures and procedures of the Bundestag (363-9), there is a discussion on the problems posed for the Bund by the unequal size of its constituent units (369f). The concluding exchange contains the following:

U. But ... do you not see that nobody believes in your federation? The large powers see it only as their instrument; the medium-sized powers seek to belittle it, because they cannot be rulers in it and do not want to be ruled; the small states feel abused and undermined; - there is nobody in the whole nation whom it satisfies.

F. I gladly acknowledge that I never considered this federation perfect. Nor did I feel that it had the best constitution. However, I do think that it is the best that can be achieved in the given circumstances, without a civil war or a terrible bloodbath ... All of us in Germany want the same goal, but not the same road to that goal.

U. ... But this road has now proved to be the wrong one and we ought not to give up the goal... (371)

Gagern is patently of exactly the opposite opinion to Behr (see 3.2 above) regarding the utility of a confederation for promoting the unity of the German nation. Nor does he change that opinion. However, in his 1833 essay: "The Bundesstaat", he not only accepts, but argues the case for, the utility of a federal state in promoting national unity. The essay (Gagern, 1856, 372-87) is, for a non-academic, a surprisingly well crafted theory of the federal state. Gagern defines the federal state as:

the union of numerous states, which subordinate themselves to a common state authority in order to fully achieve the purposes of the state (Staatszweck), without the rulers of the individual states renouncing all internal sovereign rights (372)

He goes on to say that the individual states are not sovereign. Each renounces all external sovereign rights to

the federal authority, which also has jurisdiction over those matters internal to the component states, but which can either only, or more effectively, be achieved and administered by the central authority (372f). Accordingly, the latter has the military power, since the supreme state authority must have coercive power. It also legislates, albeit with the participation of representatives of the individual states, whose own legislative authority is restricted to matters that do not adversely affect the whole. There must be a supreme court to resolve legal disputes between the component states (373). The federal state must be indissoluble, with no right of secession, unlike in a confederation. (374)

Gagern refers to the debate about whether a state can have two sovereign authorities, saying that the idea of an indivisible sovereign is not given up in a federal state, as the exercise of internal and external sovereign powers (Hoheitsrechte) can be divided, with the latter subordinated to the imperial authority, while the internal authority of the territories persists, albeit subject to imperial authority (383f). The princes' powers must be clearly defined and they cannot be mere administrators of the Emperor, but will be allocated all internal sovereign powers whose exercise is not explicitly reserved for the imperial authority. All limitations of the internal sovereign rights of the princes must be specified in the federal constitution (373), which guarantees that such rights will only be limited where this is in the general interest (377).

The princes have to be guaranteed an adequate, independent and irrevocable income. They retain their privileges of

rank and certain minor rights. They can, in agreement with their parliaments, levy taxes, but customs duties and tolls are reserved for the Empire. They can be arraigned before the supreme imperial court for contravening imperial authority, as well as for crimes. Matters decided by the Reichstag cannot be discussed by provincial parliaments and responsibility for government actions lies not with the princes, but with state officials. The latter are subject to the state and law and are thus in the service of the highest state authority, regardless of who appointed them.

Gagern proceeds to outline what he regards as the essential distinction between a confederation and an intrastate federation. The former is a mere interstate union for pursuing goals that remain common to the participants in the union. Individual states have not renounced their sovereignty. Here, federal authority rests on the collegially organised administration of decisions unanimously reached after common discussion. The minority cannot be overruled by a majority vote and the federal executive authority and the union itself last only as long as every state considers them appropriate for realising these purposes (375).

In a federal state, (Bundesstaat) a supreme state authority exists, which constitutionally pursues the federation's own goals according to its own will, backed up by coercive authority over all individual wills (375). The territorial states' powers are an intermediate stage between the commune and the highest state authority (377). Gagern concludes that the Bundesstaat lies between the Staatenbund and the simple state, though acknowledging that this

distinction is an academic one and that in practice it is often difficult to tell them apart. This is especially the case with unitary states that are decentralised and confederations in which the central authority - exceptionally and contrary to the real nature of a confederation - decides by majority voting (375f).

Gagern (377) argues that the Bundesstaat is preferable to the Staatenbund, because it corresponds more closely to the purpose of the state, ie. establishing as complete and secure a system of law as possible. While the Staatenbund interferes less in the freedom and independence of the individual states, this is at the cost of greater danger for the whole. Gagern (368f) considers that the experiences of the Netherlands and Switzerland show the problems that can arise if federations are too weak at the centre, ie if they are too like confederations rather than federal states. The natural wish of a large nation to be a great power demands union and federation. The most appropriate and powerful form is the Bundesstaat.

He goes on to wonder why there are relatively few federal states, since he feels that they combine the virtues of large states - namely respect and power in external affairs, defence against external attack and the removal of internal obstacles of local interests to the general welfare - with those of small states. The latter include retaining sufficient independence for smaller states to regulate their own matters in accordance with local demands, promoting the participation of all citizens, and free development of individuality, diversity and competition (376). He suspects that federal states with representative constitutions will

become more frequent. In Europe they will tend to be monarchical, while in the western hemisphere republican types will dominate.

In a section on the conditions in which a federal state might be created, Gagern stresses the importance of common nationality, language, customs and interests, the absence of which would, he believes, mean recourse to autocratic rule to maintain the state. He also advocates that constituent states be not too diverse in size and power, arguing that it would be better if they were, relative to the whole, small and numerous. However, the whole should be large and powerful enough successfully to withstand attacks of neighbouring states. He argues that the nature and form of the governments of individual states should be in agreement with that of the supreme authority and not too varied amongst themselves either. Gagern maintains that monarchical states can only be united into a federal state under an overarching monarch. Finally, he says that an essential requirement of a strong federal state is the existence of a large and well positioned capital (378-81).

Gagern's prescription of the best constitution for the federal state is an hereditary, constitutional monarchy. The latter would, he asserts, provide the unity, prestige and stability absent in a republican federation. Only such an imperial authority will possess and be able to develop the power to represent the nation with honour externally and create internal structures which can, unlike that of confederation, effectively counter the egotism and jealousy of the individual governments (377). He wants an aristocratic

chamber representing the "half-sovereign" states and a popularly elected chamber. The electoral system he advocates for the latter has two thirds of the seats elected by the territorial parliaments and the remaining third elected by those with higher incomes. Individual states will have unicameral legislatures subordinate to the legislative authority of the "Gesamtstaat" (381f).

To summarise, Gagern was initially totally opposed to the German Bund and desired instead a representative, unitary, constitutional state in which German national unity could be guaranteed. He gradually came to accept and ultimately promote the idea of German national unification by means of a federal state. This is not as great a contradiction as it might appear. First, Gagern remained loyal throughout to the idea of a representative constitutional monarchy and to nationalism. However, he came to appreciate that a federation did not necessarily have to be of the confederal variety, of which the inadequate Bund was an example. Instead, he became convinced that an intrastate union of the various territorial states was possible and would fulfil what was for him the existential goal of national unification.

Gagern's essays are significant for this thesis for a number of reasons. First, they are a further example of how federalism came into the service of liberal nationalism. Though one could classify Gagern's federalism as intrastate territorial and thus similar to that of Hugo and Puetter, it was different in the sense that the federation's purpose is not perceived to reside solely in promoting internal and external security, but includes as perhaps the most essential element the promotion of constitutional nationalism. Second,

as is clear from the above account, Gagern's federalism varies considerably over time, depending upon his perception of what was currently the most appropriate means for the achievement of his political goal. The significance of this is that Gagern's federalism illustrates the use of federalism in a politically directly prescriptive and contingent manner; that is to say, as a political ideology. The third significance of Gagern's federalism is its use of federalism as a constitutional principle. (In this sense, he is at least superficially reminiscent of Althusius.) This includes curbing what he regarded as the arbitrary rule of the princes, as well as a popularly elected chamber. The latter has a very limited franchise, but its principle demonstrates that the idea of a federal state generating a second level of citizenship existed in the Germanic tradition before de Tocqueville's "Democracy in America". The constitutional idea was to be developed further in German and Swiss liberal federalism and become one of the major rationalizations for intrastate federation.

However, not all liberals advocating federation for Germany were supporters of intrastate federation. One example is Zachariae, whose earlier contributions to Germanic federalism (1804 & 1807) were discussed above (see 3.2). In an article entitled "On the contemporary condition of Switzerland" (Zachariae, 1833), he comments on various proposals for reform of the Swiss federation. Many of his remarks betray a rather superficial knowledge of the background and details of the Swiss federal reform proposals (1833, e.g. 12-16 & 36-45) and are often more speculative than

analytical. For example, he states (1833,49-53) that if Switzerland were to adopt a unitary constitution, that would make it more inclined to belligerency, would unleash a Swiss civil war and eventually result in the establishment of a monarchy! However, the essay does contain some interesting general remarks upon federation and the implications for Germany of the Swiss situation. Accordingly, this synopsis of Zachariae's later federalism will focus upon the general conclusions Zachariae reaches about the nature and relative advantages of interstate and intrastate federation.

As before, (1804,44) Zachariae again (1833,32-6) argues that between unitary states and mere alliances, there are basically two types of federation possible. One is an interstate federation ("Staatenbund" or "Voelkerbund") and the other an intrastate federation ("Voelkerstaat"). The distinguishing features of the Staatenbund are that its purpose is limited to a defensive and offensive alliance. Thus while the federation is entitled to intervene to impose solutions to disputes between conflicting constituent states, the latter remain completely independent as regards their internal affairs. Moreover, majority decision-making is reserved to a few limited and clearly specified matters. Zachariae goes on to argue (1833,37) that a Staatenbund requires five further features. These are first, that the constitutions of the constituent states of the federation be compatible with each other and with that of the federation as a whole. Second, there must be a federal power to maintain internal and external peace. Third there must be a federal authority to decide common affairs. Fourth there must be a federal court. Finally, he states that there must be only

sufficient limitation of the rights of the constituent states to undertake treaties amongst themselves and with foreign powers as is necessary for the federation to realise its purpose.

By contrast, Zachariae is rather sparing in his description of the features of intrastate federation. He says (1833,35f) that it has a much wider purpose and that the authority of the federation extends to the internal affairs of the constituent units, whose sovereignty it therefore necessarily limits. Moreover, the decisions of the federal authority, which can be monarchical or republican, are made by majority votes.

In 1804, Zachariae concluded that the Reich was an interstate federation, while the Swiss Mediation constitution had set up an intrastate federation (see 3.2 above). Surprisingly, he now (1833,54f) describes both the German Reich since 1648 and the German Bund as intrastate federations. He supports these characterisations by arguing (1833,54f) that in both the Reich and the Bund the central authority intervenes in the internal affairs of the constituent states. Zachariae also concludes that not only is the Swiss Federal Pact (1833,36) an interstate federation, but, again contrary to his 1804 remarks, so was the Swiss Mediation (1833,32). He is somewhat inconsistent in his characterisation of the Rossi proposals, which he at one stage (1833,32) says aim to make Switzerland into an intrastate federation, while elsewhere (1833,38-40) he is of the opinion that the majority of the Rossi proposals conform to the ideas of a Staatenbund.

There is, however, little doubt as to Zachariae's views as to the best form of federation in general and as regards Germany and Switzerland in particular. On the one hand, Zachariae agrees that the conduct of war is the weak side of all interstate federations (1833,42) and concedes that external pressures and internal economic and other changes mean that the Swiss federation is in need of reform (1833,36-45). On the other hand, he also insists (1833,45) that it does not follow that Switzerland should change the basic features of its constitution. He is critical both of the unitary state option, but especially of the idea of an intrastate federation.

Zachariae's argument against intrastate federation is similar to that of Behr (1808 & 1808a in 3.2 above). Thus he argues that a Voelkerstaat mitigates rather than resolves the military and economic weaknesses of a Staatenbund. But most important, he contends that a Voelkerstaat is intrinsically flawed:

A Voelkerstaat is by its nature an intermediary thing, an inconsistency. It both permits to and withdraws from the constituent states of the union the administration of their internal affairs. They are to remain as states; and yet there it is difficult to reconcile a limitation of sovereignty in these matters through an external power with the nature of a state. Insociability rules! (1833,53).

In other words, Zachariae contends that intrastate federation by its very nature causes destructive friction between the whole and the parts of the federation (1833,37) and supports this by reference to the Reich and the German Bund (1833, 54f). Moreover, he states that this "inherent seed of destruction" (1833,59) is compounded by the fact that in intrastate federation, executive authority is divided, making

each of the potentially dissenting constituent states an armed power that can at will permanently and successfully resist the power of the whole (1833,55f) [4]. Zachariae concludes that despite the fact that it is less forceful and decisive in its actions, interstate federation is preferable to intrastate federation.

Zachariae's article is at times somewhat confusing and even contradictory, but is interesting nonetheless. First, Zachariae is an example of a moderate liberal who uses federalism for purposes of liberal constitutionalism rather than for strident nationalism, as is the case with Fries (see above). Second, Zachariae's federalism rejects intrastate federation in favour of confederation. In that respect, Zachariae's federalism is different from that of most German liberals covered in this chapter. The sole other case of the advocacy of interstate federation which will be examined is that of Behr (1820, see 6.2.3. below). Third, it is clear from Zachariae's federalism that perceptions of the Swiss experience of federation informed Germanic federalism in Germany. Finally, Zachariae's essay motivated the next contribution to liberal Germanic federalism which will be examined in this section, namely that of Carl Welcker.

Welcker was not only a leading protagonist of liberalism in southern Germany, but also a lecturer in law. His writings show more academic refinement than those of Gagern and of Zachariae, but nonetheless contain many similarities. As the title of his 1834 article indicates [5], Welcker was motivated to write in response to the publications of both Zachariae and Troxler. Indeed, he felt obliged to rectify

what he considered Zachariae's rather superficial account of the Swiss debate on federal reform and flawed theory of federation (1834, eg. 5-10). However, since Welcker's 1834 article constitutes merely a preliminary version of a more refined later work on federation, the following account of his contribution to liberal Germanic federalism will concentrate upon his 1836 article, which is probably the fullest statement of his views on federation.

Welcker's aim is to classify unions of states (Staatsver-eine), which he says can be interstate or intrastate. The former can be of two types: the mere alliance (Staatsbuendniss), or the confederation (Staatenbund). Intrastate unions are federal states (Bundesstaat or Staatenstaat). All three types are constitutional unions (79). In intrastate federations "... the participants are united under a common sovereign will, to which they sacrifice a great part of their individual sovereignty", while in interstate unions "the states retain their sovereignty in all important respects". In such a confederation, "numerous states share the exercise of an essential aspect of their external sovereign rights", while in a mere alliance the states "merely contractually oblige themselves to perform specified tasks" (79ff). Welcker concentrates on interstate and intrastate federations, using the United States, Germany, ancient Greece and Switzerland as his examples.

His personal preference is for the federal state. Thus he asks: "Would ... anyone wish to deny that federal relations (Bundesverhaeltnisse), their functions and their variety are highly important? ... for a perfected federal system (Foederativsystem) is the highest and richest form of

political organisation." (78). He also states that "The federal state ... is the highest ideal for the political union of great nations" (108), that "might best succeed if by some happy coincidence citizens and governments are simultaneously filled ... with a feeling of national unity and the holy duty towards the common fatherland ... " (114).

Welcker attacks some previous theorists of federation, arguing that their classifications were based on irrelevant or random criteria (106-15). Classification should, he says, be based on unions' essential differences, which are: their underlying principle (despotic, theocratic or constitutional) whether they are interstate or intrastate and their Staatszweck (reason of state) (78f).

Accordingly, he maintains that the characteristics of the Bundesstaat are: (81-96) first, that the purpose of the union is the Staatszweck or Nationalzweck, ie:

the inclusive, permanent, human purpose of the nation, or the legal protection and promotion of the common purpose. The latter is only the purpose of the federation insofar as its promotion and protection cannot adequately be realised by the individual states. Only to the extent that this is not the case should the federal state be the same for the individual peoples ("Staemme") of a nation, divided as they are into individual states, as the state is for individual families ... To this extent, the purpose of the union concerns not only the internal and external security of the union and its constituent states, but also the general welfare of the nation.(84).

Elsewhere, he specifies the purposes as creating a union organised as a closely united state, maintaining and promoting the free interaction and interconnectedness of the general national Lebenselement of the people (Volk) and preserving and satisfying the peculiarities of the individual states and governments (91).

Second, there is therefore not only an external, but also a "... moral and internal (or national) ... purpose", for which the sovereign commonwealth has binding majority voting on all communal affairs, and a common sovereign and coercive authority with legislative, executive and judicial branches that can intervene in the internal affairs of the constituent states. The latter have a duty of obedience and allegiance and their sovereignty is thus fundamentally restricted (85). Third, as a state, the federation also entails rights and duties that cannot be fully specified at the outset. However, since it is a constitutional state, the federal state does not permit the federal authority to exercise unlimited power over the internal affairs of the constituent states, but merely to intervene where specified and where the latter is overstretched (86ff).

Fourth, federal states are national unions and establish a common fatherland, to which citizens and governments belong and are subordinate. Welcker sees this national unity as a useful binding force (88f). Fifth, the federal state is not only a union of governments, but also of citizens, who have territorial and national citizenship (89). Sixth, the federal state therefore requires not only a representation of the constituent governments, but of the people or nation, upon whom it also operates(90). Moreover, one of the basic purposes of the federal state is to promote the national interest and reconcile it with the particular interests of the peoples of the individual states. The main institutions for the purposes of external national unity, general national freedom and maintaining local peculiarities are a monarch

(or his equivalent), a representative, popular assembly and an aristocratic senate (91f).

Seventh, individual states give up their individual war power, their right of forming foreign treaties and taxation rights on federal matters (94). Eighth, they may not have internal or external subject territories (95). Ninth, their constitutions must be broadly similar and guaranteed by the federal authority (95). Finally, the federal state is completely indissoluble and secession not permissible (95f).

Welcker also applies this analysis to the confederation (96-105), which he says does not have a Staatszweck, but only the purpose of internal and external international security of each constituent state and of the whole confederation. It is thus but a general, permanent, international defensive union (Schutz-und-Trutz-Verein) (97). The Staatenbund is not a state, but a community of autonomous, mutually independent states, with reciprocal and equal contractual rights and duties. Any central organ of delegates is not a government, merely a diplomatic union of ambassadors. Majority voting is not allowed (98), there is no sovereign legislative, executive or judicial authority above the confederates (99). "Thus the sovereign governments ... experience no abolition or fundamental limitation of their sovereignty ... " (100). Moreover, there is no significant interference in the internal affairs of the constituent states, whose constitutions are their own matter. Any interferences are minimal, strictly circumscribed and exceptional (102). A Staatenbund is not a national union and does not establish a common fatherland (103). There is no real popular membership of, or participation in, the

confederation. Being no confederal citizenship, there is also no civic obligation to the confederation, the laws of which only obligate individual citizens if they become laws of the confederated states (103). There is no popular representative assembly. Confederated governments retain external sovereign rights, standing armies and the right of taxation. Confederates may have subject territories and external dominions. There is no common internal legal system nor, in view of the confederated states' sovereignty, could one be enforced (104). Finally, the Staatenbund is not indissoluble, but "lasting" and thus not as temporary as the alliance (105).

Welcker's enumeration of the characteristics of the alliance of states is undertaken with reference to the same ten aspects, but is much briefer. It merely states that the alliance's purpose is limited to the reciprocal performance of contractually specified acts, which can relate to internal or external matters. It creates merely completely free, diplomatic relations between allies. It is not a national union, nor does it establish a federal territory, or durable common relations. Lastly, it can be ended by any of the parties.

Welcker thus applies federalism to the German situation, whilst being aware of and using examples from federations of the United States and Switzerland. He talks about two kinds of federation: the interstate confederation and the intrastate federation of partly sovereign territorial states. He sees the purpose of intrastate federation to be about more than mere external defence; it also has the purpose of promoting

national (ie popular) welfare. He insists that in federal states the federal power acts not only on the governments of the units, but also directly upon the citizens too. He lays great emphasis on the Bundesstaat forming a national unit, with popular participation via a national representative assembly. His contribution includes the assertion that the central authority in an intrastate federation does not have to be a physical person.

Welcker's characterisation of a federal state contains many similar ingredients to that of Gagern, as well as elements not found in the latter's work. Of these, one of the most notable is Welcker's assertion that the federal state need not be ruled over by a monarch, but merely by "his equivalent". (Presumably he had in mind the American president.) The significance of his comment is that it was one of the earliest departures from the almost axiomatic assumption of the necessity for a federal state to be headed by a single human being, an assumption that had been predicated less on theoretical considerations, than on the historical fact that the Reich had since time immemorial been ruled (albeit often only nominally) by one man. A second novel aspect of Welcker's essay is that it provides a logical, theoretical argument for the popular second chamber which Gagern also wanted. Welcker's argument is based upon the constitutional principle of the right of participation in determining one's fate. Thus in a federal state which acts upon not only the several governments, but also their citizens, the latter have the right to participate in its decision-making processes. Third, his faith in the constitutional principle means that he allows his definition of the

federal state to permit of that federation's scope being subject to subsequent extension. Conversely, Gagern has the powers of the centre strictly circumscribed.

Our review of the utilisation of Germanic federalism by moderate German liberals is now complete. Before moving on, there will be a short summary of some of the main findings of this section. First, it has been shown that moderate liberals envisaged three of the dimensions of Germanic federalism identified in Part 2 of this thesis. All four of the writers considered conceived of both confederation and intrastate-territorial federation, while Fries also envisaged interstate-chiliastic federation. Second, though each of the moderate German liberals examined above recognised the possibility of at least two types of federation, they each supported the adoption by Germany of just one of those types. However, the nature of the federation they prescribed varied, with most wishing to see Germany adopt an intrastate-territorial federation.

Third, there were differences not only in the type of federation advocated, but also in both the manner in which that federalism was articulated and in the political priorities of its exponents. As has been amply demonstrated, these differences related in the main to the extent to which the liberalism of the various authors was tempered by their commitment to nationalism, as well as by tactical considerations. In short, 6.2.2. has shown how Germanic federalism came to be used in Germany as part of the ideological prescriptions of liberal nationalists and liberal constitutionalists.

The illustration of the different emphases of moderate liberals' federalism began with the federalism of Fries, which is predicated upon an idealist, historical liberalism. His emphasis upon German nationalism results in the advocacy of an intrastate-territorial federation with a rather elitist, gradualist, and at times xenophobic approach to achieving political liberalism. The second federalism examined was that of Gagern. Like Fries, Gagern's prime motivation was nationalism. though he was also concerned with political and economic liberalism. Initially, Gagern supported the idea of a unitary German state, though he eventually came to prescribe for Germany an intrastate-territorial federation with a greater emphasis upon liberal constitutionalism. The third and fourth exponents of liberal Germanic federalism discussed above were Zachariae and Welcker, who were both concerned with promoting economic liberalism and liberal constitutionalism, but whose prescriptions varied. Zachariae believed that goal was more likely to be achieved in a confederation, while Welcker was an advocate of intrastate-territorial federation. Of the two, Welcker's federalism was the more refined and he developed the constitutionalist aspect as far as it was to go prior to 1848.

Fourth, most of the writers covered in this section were to exercise a significant influence in German political life. Fries was a major force in the liberal-nationalist student associations, while the influence of Gagern was exercised largely through his brothers, who shared his views about the best constitution for Germany (Gagern, 1856). Perhaps one of the most significant examples is his brother Heinrich, whose achievements include being Minister-President of his native

Hesse-Darmstadt, the chairmanship of the Frankfurt National Assembly and the chairmanship of the Federal Ministry and the ministries of foreign and of domestic affairs. Zachariae was an influential member of the Baden parliament, where he represented the University of Heidelberg. Welcker was also a member of Baden's parliament. Together with Karl Rotteck, he was the leader of the southern German Liberals and published the 15 volume "Staatslexikon" (Political Encyclopaedia) (Rotteck/Welcker, 1834-43), which was the authoritative guide both for liberals generally and for the Frankfurt National Assembly. From March 1848, Welcker represented Baden at the Frankfurt National Assembly, of which he was one of the most influential figures. However, the willingness he demonstrated in that Assembly to compromise with the existing political system led to him being regarded by more radical liberals as a traitor to liberalism.

Despite their differences, the aforementioned federalisms are all examples of moderate liberal federalism. However, Germany also witnessed the use of federalism by radical liberals for the promotion of their political ends. It is that federalism which is the subject of the next section of this chapter.

6.2.3. THE FEDERALISM OF RADICAL GERMAN LIBERALS

In Switzerland, the contrast between moderate and radical liberalism was clearly manifested well before 1848 and the radicals constituted a sizeable political force. By contrast, German radical liberalism was neither as well developed, nor as significant politically. As has been stated above (see

4.2.), there are two main factors that distinguish radical liberals from their moderate counterparts. The most important is that the radicals advocate change that goes beyond the moderates' liberal constitutionalism. Radicals are not only more committed to popular sovereignty, but frequently also embrace fundamental economic and social reform. Second, many radical liberals are more willing to engage in illegal and in part violent means to realise their political aims. This section will illustrate the use of federalism by radical German liberals through a discussion of the contributions of Wilhelm Joseph Behr (1775-1851) and Gustav Struve (1805-1870).

Both Behr and Struve had a significant impact upon German political life. Behr was a one of the leading and most popular figures in the Bavarian liberal movement, a member of the Bavarian Diet and sometime Mayor of Wuerzburg. In the spring of 1832, at the time of the liberal-nationalist and in part radical Hambach Festival, Behr's enthusiasm for political reform caused him to make a speech, the result of which was his removal as Mayor and in 1836 a three year prison sentence for high treason. After release from prison he was for some years under strict police supervision, but was in 1848 still elected to the Frankfurt National Assembly (Hertz, 1975, 127-9 & 149f). For his part, Gustav Struve believed in the efficacy of revolution to achieve change and together with Friedrich Hecker, was one of the most active radical agitators of his day. After a time at the Vorparlament, where he presented the radical proposal for a republican federal German state (see below), Struve went on to lead three radical popular uprisings in Baden. The first was in April and the second in September

1848. The third Putsch took place between May and July 1849 and succeeded in setting up a Baden republic. Prussian military intervention eventually ended that new regime and obliged Struve to flee for America, where he fought for the Union in the American Civil War.

The first federalism that will be examined here is that of Behr, who in 1820 published a pamphlet entitled "On the legal limits to the interference of the German Bund in the constitutions, legislation and judicature of its member states". At first sight, this appears to be a dry, legal analysis, with little that one would normally associate with radicalism. Moreover, its classification of federations is in all significant respects identical to that which Behr advanced in his earlier federalism, written shortly after the establishment of the Rheinbund (1808 & 1808a, see 3.2 above). Thus he still conceives of interstate confederation, (Staatenbund or Voelkerbund) and intrastate-territorial federation (Voelkerstaat or Staatenstaat) and distinguishes between them in the same way (1820,20-24). Given this correspondence with his earlier views, it will suffice for now to note that Behr still considers the distinction between confederation and intrastate-territorial federation to lie not in their purpose but in the strict sovereignty of the constituent units of the former, as compared to the subordination of the member states of the latter under central authorities which can and do intervene in member states' internal affairs. Another important parallel with 1808 is that Behr remains totally opposed to intrastate-territorial federation, which like Zachariae (1833,53 see above) he regards as a logical contradiction (1820,43) and,

above all, as fatally flawed by its institutionalisation of centrifugal pressures (1820,3-5 & 40).

Notwithstanding all these points, Behr's federalism is significant for at least three reasons. The first is that though Behr is not an advocate of revolution, he qualifies as a radical liberal under the first criterion set out above [6], namely, by virtue of the radical nature of the reforms to which he aspires, and thus merits inclusion in this section. Unlike many of his liberal contemporaries, Behr's earlier commitment to the ideals of the liberal Enlightenment (see 3.1 & 3.2 above) remains unshaken. While some, such as Fries, sacrifice liberal constitutionalism and popular sovereignty to the realisation of German nationalism, Behr remains an ardent believer in popular sovereignty and social and economic liberalisation. Indeed, throughout much of the 1815 to 1850 period, he actively pursues these goals in Bavaria (Hertz,1975,127-9 & 149f), whose new 1818 constitution introduced a number of liberal reforms. Behr keeps striving for further reforms, including universal adult suffrage, (albeit with a small economic qualification and the stipulation that voters must be aware of their civic rights); abolition of the upper house and extension of the powers of the commons; municipal autonomy and transformation of the hereditary monarchy into a largely ceremonial, constitutional monarchy. It may be recalled that in 1808 his long term goals were the realisation of a Kantian type of universal federation composed of states all governed in accordance with the same principles of natural law and thus with popular sovereignty and uniform political rights, a free press, a

common legal system, common currency and free trade within and between the states. Behr retains this ideal, though it is not openly articulated in his 1820 publication.

Indeed, the nature of the argumentation which Behr employs in 1820 constitutes the second reason why that federalism is worthy of consideration here. In 1808, Behr underpinned his argument about the impracticality of intrastate federation and the desirability of interstate federation with a rational natural law theory. Though he still believes in the principles of universal natural rights, Behr's 1820 argument for confederation is couched not in terms of the promotion of such rights, but largely in terms of the requirement of the German Bund to conform to positive law (1820, eg 58). The employment of the language of positivist jurisprudence might well be academically inconsistent with Behr's real opinions and somewhat surprising for someone concerned with radical liberal reform. However, it is interesting for this thesis, since it illustrates how the language of federalism alters in the interests of promoting specific political goals. For it is clear that while Behr could in 1808 utilise his natural law theory without fear of jeopardising his political goals, it is equally obvious that the utilisation of the language of natural law was much less likely to receive a favourable response from the conservative forces controlling the Bund than was an argument based upon the respect for established law. What this demonstrates is the extent to which Behr's federalism, like that of many others, is the product of considerations of political strategy.

So far, it has been argued that Behr's federalism is significant by virtue of both the political aims Behr seeks

to realise and because of the manner of its articulation. The third point of interest in Behr's federalism relates to the nature and role of the federation he prescribes for the promotion of those aims. Unlike almost all the liberals considered so far (with the exception of Zachariae 1833, see above), Behr advocates confederation for Germany. This has to be understood not as derivative of Behr's commitment to the pure academic principle of the indivisibility of sovereignty (1820,43). On the contrary, the latter is a product of considerations of political tactics. The question Behr's 1820 publication addresses, namely the legal rights of the German Bund to intervene in the constitutional, legislative and judicial activities of its constituent states, can be understood only in the context of current political events.

The pamphlet was written in direct response to the 1819 Carlsbad Decrees. It will be recalled (see 4.2. above) that the latter provided the federal authorities with the legal basis for intervening in the constituent states of the German Bund in order to suppress national and liberal movements. The measures approved included not only the right of the Bund to intervene in order to put down popular uprisings, but also controls upon the liberal press, and the Burschenschaften's liberal-nationalist activities (Buessem, 1874). Though Behr only voices his belief in political equality and popular sovereignty in passing (1820,53), the vigorous defence which his federalism offers for interstate confederation and thus for the unrestricted sovereignty of constituent states over their internal affairs is inextricably linked with the promotion of Behr's radical aims.

Behr argues that the German Bund is required, by virtue both of its nature as an interstate federation and of its positive law, to protect and promote the sovereignty of its member states (1820,32-44). This limits its rights of intervention in the internal affairs of its member states to cases where it has been invited by the relevant state to do so (1820,64f). In other cases, the Bund may not sacrifice the independence of a state in the interests of its security, or even in the interests of the security of the federation (1820,61). An interstate federation's ultimate sanction against a state unwilling or unable to suppress internal disorder that threatens the security of that federation is restricted to the expulsion of that state (1820,65f). The logical corollary of this is that the German Bund does not have, and is not entitled to arrogate to itself, the legal authority to interfere in member states' constitutional matters.

The utility of this interpretation of the nature and function of the German federation for the defence of Behr's political goals is clear. In particular, it allows Behr to object to the conservative central authority's attempt to overrule representative constitutions established by more liberal states such as Bavaria, by arguing that their princes have the right to establish representative constitutions with obligatory approval by the estates of taxation, as well as the principle of ministerial accountability (1820,45-8 & 59). He contends that such structures do not, as the Carlsbad Decrees suggest, threaten the monarchical principle and that the Bund therefore has no basis in positive law for interfering with them (50f). Instead, they merely prevent

arbitrary rule, promote prosperity and thereby contentment and stability in the relevant political systems (1820,50-2). Behr asserts that, on the contrary, peace is threatened by the conflicts engendered by the intrinsically untenable intrastate federation (1820,3 & 20) into which he perceives some to be attempting surreptitiously to transform the Bund (1820,19f).

To summarise, Behr's federalism appears prima facie to be a dry, constitutional law argument about the principles of central intervention in the affairs of constituent states, which comes to the conclusion that in the interests of legality, central intervention is not permissible in the German Bund, the positive law of which makes it an interstate confederation. In reality, however, Behr's federalism is highly political in its motivation. The insistence upon the interstate nature of the German Bund constitutes a defence by Behr of Bavaria's liberal gains and of his hopes for the realisation of his much more radical aspirations against the influence of the conservative federal authorities under Metternich.

The second and final example of radical liberalism that will be considered here is that of perhaps the foremost German radical: Gustav Struve, a Baden lawyer and radical republican who was active during the 1830s and 1840s in popular democratic protest. Struve's political writings share Fichte's commitment to republicanism (see 3.2. above), but are far more wordly than the latter. The following summary of Struve's federalism is based upon his four volume "Fundamentals of Political Science" (Struve,1847) and the

proposals for federal reform he made at the Vorparlament a year later (reprinted in Mommsen, 1952, 38-41).

Throughout, Struve refers to federation with the term "Staatenbund", which is usually used to betoken an interstate confederation. However, it is clear from his application of that term to federations as varied as those of ancient Greece, the United Provinces, the German Bund and nineteenth century United States that he uses the term to denote both interstate and intrastate federations. For Struve, the issue of whether statehood is reserved to the central authority, to the constituent units of the federation, or shared by both centre and constituent units, is less important than that popular sovereignty is the governing principle at both levels. The overriding concern of Struve's federalism is the victory of democratic republicanism over monarchy and aristocracy.

Struve is predictably critical of the German Bund, which he describes as a "system of tyranny" characterised by "the oppression, stupefaction and bleeding of the people, arbitrary rule, wealth and honours for the rulers and their henchmen." (Mommsen, 1952, 38). He says that

there has in history never been a federation more at variance with the needs of a nation, with the undisputed principles of constitutional law and even with healthy human reason, than the German Bund. The latter is only worthy of note for uniting all the shortcomings, follies and crimes that could otherwise only be gleaned from numerous federations over centuries. It was of course created by a few diplomats, who took no notice of the needs of the German nation, but tried to secure the rights and demands of their princes. The result is ... that in its most important respects, the federation exists only on paper. The very diversity of the constitutions it encompasses suffices to make all real life and movement impossible for the German Bund (1847, 246f)

Struve rejects the inclusion of monarchical and

aristocratic states in a German federation. One argument he advances is that such states are inherently very costly to run and it is thus more appropriate for them to be large, so that their costs can be spread more widely. If federated states have monarchical constitutions, it is better for them to be united into one large state (1847,245). Among the advantages of federation which Struve enumerates are cost-effectiveness, the avoidance of excessive centralisation and the promotion of national strength. In other words, it provides an appropriate balance between unity and diversity. However, he goes further, claiming that a cardinal feature of federation is that it unites small units into a greater whole and thus uniquely provides republics with the smallness necessary for their democratic structures to be more than mere illusion, while simultaneously providing them with the strength necessary in the modern world.

Thus Struve concludes that a federation of democratic, republican states is "the natural federation" (1847,248) and contends that "... the only flourishing federation with which history furnishes us are those amongst democracies" (1847,246). He cites the United Provinces and Switzerland as examples. However, his greatest praise is reserved for the United States, whose constitution he describes as "... an ideal of legislative wisdom ..." (1847,243). Indeed, he is so convinced of its merit that his prescription of a federal constitution for Germany is limited in his 1847 book to a short description of the American constitution (1847,249-64), whose emulation he recommends in his 1848 programme (Mommsen, 1952,40).

What Struve advocates both for Germany and, by implication,

for all republics, is thus republican federation. He asserts that such federations should consist of at least twenty units of comparable size and prosperity, each comprising between one and two million residents (1847,244). Each must be governed in accordance with the principles of popular sovereignty (1847,245), have a popularly elected parliament and be headed by a popularly elected president (Mommsen,1952,40). Each constituent republic is to legislate and administer its domestic affairs independently (Struve,1847,244), and is to be united to the other republics by a strong federal constitution modelled on that of the United States (Mommsen, 1952,40 & Struve,1847,242). The central authority is to conduct external affairs and, "as needs demand", pass general legislation applicable to all states (Struve,1847,244).

The purposes which the new constitution should serve are socio-economic, and above all political, as is clear from the text of the 1848 programme (Mommsen,1952,38-41). The economic aims include harmonisation in matters such as coinage, weights and measures, postage and railways (Mommsen,1952,40), ending restrictions to internal trade, and levying customs tariffs at the frontiers of a united Germany for the purpose of protecting domestic trade, industry and agriculture (Mommsen,1952,38). There is also to be a system of progressive income and wealth tax which guarantees a minimum level of subsistence for all (Mommsen,1952,38). Struve calls for the elevation of the condition of the working and middle classes and the setting up of a Ministry of Labour to control usury, protect labour and to secure for the latter a share in profits (Mommsen, 1952,40).

The second and most important aim of Struve's proposed federation is the promotion of political ends. These include religious tolerance and the secularisation of state and educational affairs. His opposition to the influence of the Catholic church is evident from his call for the abolition of all monasteries (Mommsen, 1952,38), as well as his claim that a major source of Germany's ills is the fact that it has been under the influence of Rome (1847,247f). Most important, however, is that the federation is to ensure political equality, German nationalism and a common German citizenship, popular government, communal self-administration, press freedom, individual rights of assembly and association and the abolition of hereditary monarchy (Mommsen,1952,38-40).

To summarise, the constituent units of the federation Struve proposes are small republics based upon popular sovereignty. He argues, with reference to Montesquieu, that republican federation is the "natural" form. Such federations could be either interstate, or intrastate, though the above discussion suggests that what he has in mind for Germany would be a quite centralised federal state. While Struve's federalism does mention military considerations, the predominant purpose of his federation relates to "Security of income and person, welfare, education and freedom for all, regardless of birth, station and belief ...", and he uses federalism as a "means for its achievement" (Mommsen,1952, 38). Interestingly, Struve's federalism contains not only Fichte's republicanism, but also suggestions of the latter's concern for socio-political issues related to popular welfare, as well nationalism. In short, Struve's federalism is concerned not only with realising the civic vision, but

also with social matters.

As will be shown in 6.3.3. below, many of these characteristics were common to the federalism of radical Swiss liberals. Before proceeding to examine the use of Germanic federalism by Swiss liberals, it will be useful to summarise briefly the main conclusions of the above review of the federalism of radical German liberals.

First, this section has demonstrated that while Behr and Struve's federalism is also used to promote liberalism, the nature of their political priorities and Struve's willingness to use armed revolution to achieve those ends marks them out from the moderate liberals considered in the preceding section. Behr and Struve's political goals also include German nationalism and liberal constitutionalism, but they have a greater commitment to political equality and popular sovereignty than the moderate liberals. Consequently, their reform proposals also embrace fundamental political and socio-economic change. Their aims include not only republicanism, but also universal adult suffrage, freedoms of assembly, association, speech and the press, a redistributive taxation system, a minimum income and profit sharing for labour.

Second, despite these common political aims, the radical liberals examined above differed in the type of federation they prescribed for Germany. This was a product of tactical considerations. Behr's staunch defence in 1820 of interstate federation was designed to protect liberal advances within the constituent states of the German Bund against the conservative influence of the centre, as expressed in the

Carlsbad Decrees. Writing in the late 1840s, Struve believed that it was now possible to establish an intrastate federation with a progressive centre that would intervene to enforce radical liberal policies throughout the federation.

Third, the manner in which the federalism of radical liberals was articulated was again contingent upon political expediency. Thus the conservative environment of the 1820s explains why it was advisable for Behr's 1820 federalism to be articulated in the form of sober legal positivism and not openly to proclaim his political goals. However, those goals are more clearly spelt out in Struve's use of the language of natural rights in 1847 and especially in the polemical federalism he employed in 1848, when the control of the conservative forces appeared to be broken.

The final point worth stressing relates to the types of federation that the federalism of radical German liberals envisaged. Like the moderate liberals, the radicals conceived of the possibility of interstate confederation, intrastate-territorial federation and universal-chiliastic federation [7]. However, Struve's federalism also refers to a type of federation that is distinct from those previously identified in this thesis. The federation he proposes for Germany is clearly intrastate and yet it is neither composed of corporations and estates of the realm, nor is sovereignty shared between constituent states and the centre. The federation is therefore neither intrastate-territorial, nor intrastate-corporate. Instead, in Struve's proposed federation, sovereignty is located in the population and the constituent units of that federation are not sovereign or even quasi-sovereign territories, but subdivisions of the

sovereign people. It therefore appears appropriate to conclude that Struve's federalism contains a sixth dimension of Germanic federalism. In view of its constituent units and the location within the federation of sovereignty, it is proposed to label this dimension of Germanic federalism "intrastate-popular".

The next task of this chapter is to examine the federalism of Swiss liberals. It will be interesting to see whether this new dimension of Germanic federalism also appeared in the federalism of radical Swiss liberals.

6.3. LIBERAL GERMANIC FEDERALISM IN SWITZERLAND

6.3.1. INTRODUCTION

The following account of liberal Germanic federalism in Switzerland will be subdivided into two sections. In 6.3.2. the federalism of moderate Swiss liberals will be considered. The examples that will be used are the federalisms of Zschokke, Pfyffer, Roger, Cherbuliez and Fazy-Pasteur. The federalism of radical Swiss liberals will be the subject of 6.2.3., which will concentrate upon the manner in which Troxler and Fazy utilised federalism for the promotion of their political ends.

6.3.2. THE FEDERALISM OF MODERATE SWISS LIBERALS

The only Restoration author (Baumgartner, 1853/4, I, 160) to publish proposals for federal reform in the direction of greater centralisation was Heinrich Zschokke, a Prussian immigrant who became President of the liberal-nationalist

Helvetic Society [8]. Zschokke remained "a faithful adherent to German idealism" (Bonjour, et. al. 1952, 255f), though his short 1824 pamphlet lacks any reference to liberal ideals. It is concerned almost exclusively with demonstrating that the Federal Pact is too weak to guarantee Swiss independence at times of external military threat.

He says that the federation's supreme body (the Diet) is a legislative, rather than an effective executive organ (1824, 9). Executive authority is given to the Vorort cantons, but Zschokke doubts whether this is appropriate for times of military emergency, since the powers given to the Vorort are too weak, and a Vorort might be occupied by an invading power, leaving the Confederation in a state of confusion and lacking central authority (1824, 10f).

In particular, Zschokke attacks the federation's emergency provisions, as set out in Article 9 of the Federal Pact. He argues that the Diet must firm up the provisions for the exercise of central authority in times of emergency. As it stands, the Federal Pact is at odds with the military interests of the federation (Bundesstaat) and this is due to the federation's lack of a strong central authority which is independent of the constituent units (1824, 21-24). He concludes that "As the welfare of the Swiss people requires independence of foreign power, so the maintenance of that independence requires the creation of a strong federal authority" (23).

Zschokke does not offer a well-developed, theoretical consideration of the nature and purpose of federations. Indeed, at one stage he uses the word Bundesstaat to denote the Swiss federation during the period prior to 1798, (1824,

7), while elsewhere applying the same term to Switzerland under the Federal Pact (1824,21). Still less does Zschokke justify reform by reference to liberal principles, as Escher and Usteri (1814) had dared to do some ten years earlier (see 3.3. above). Nonetheless, his pamphlet is significant for at least two reasons. First, it is one of the earliest, if not the only publication of the highly censored Restoration to call for greater centralisation of the federation. Second, it is a good example of how Restoration liberals had to justify their calls for more centralisation in the federation by reference not to political and economic, but to security considerations. The fact that Zschokke does not directly advocate liberal principles is to be regarded as largely the result of a desire to avoid censorship.

This very guarded liberal federalism of the Restoration was replaced during the Regeneration by a much more self-confident liberalism. This greater confidence was a result of at least three factors. First, 1829 saw the lifting of the press censorship which the Diet had imposed in 1823 (Guggenbuhl, 1931, 229-32 & 261-8). This in part helps account for what appears to have been a spontaneous (Wild, 1966, 79) increase in political interest. Second, the number of cantons that had succumbed to liberal regeneration had grown substantially, increasing liberal optimism that the tide of change was moving their way. Third, the 1830 revolutions had undermined the power of the conservative forces in Europe, thereby providing liberals with a window of opportunity for federal reform without the previously feared external intervention (Wild, 1966, 91). Finally, an important trigger

for the vigorous debate on the structure of the federation were the Diet's 1831 decisions to intervene to stop the regeneration process in the cantons of Basel and Schwyz (Wild, 1966, 96-9).

In the early 1830s, there were thus countless liberal contributions to the debate about the best structure for the Swiss federation. The heyday of liberal federalism was relatively shortlived, however. Conservative opposition was not long in coming, for example by the setting up of the League of Sarnen to counter the liberal Concordat of the Seven (Wild, 1966, 100-105). By the time the Rossi Commission reported in December 1832, the initial popular enthusiasm for liberal political reform had died down. The two hostile camps that were eventually to fight the 1847 civil war were already emerging. Moreover, while confessional politics had been largely absent during the Restoration and early Regeneration, they started to appear after the 1834 Baden Conference. Opposition to the liberals from another quarter also grew, namely from the Radicals, whose federalism we shall examine in section 6.3.3. below.

The following elucidation of Swiss liberal federalism during the Regeneration will thus start with an examination of two assertive, liberal federalisms, articulated during the early 1830s peak of liberal influence and self-confidence, namely, those of Pfyffer and Roger, who both advocated intrastate-territorial federation. We shall then look at the more fatalistic liberal federalism of Cherbuliez before proceeding to the much more hesitant liberal federalism of Fazy-Pasteur, which supported confederation for Switzerland.

Kasimir Pfyffer was a prominent Luzern liberal from an old

aristocratic family (Rappard, 1941, 79). He was active in the Helvetic Society and from the 1820s held high political office in his native canton, by which he was for a while also deputed to the Diet (Baumgartner, 1853/4, I, 169f). Pfyffer was a leading figure in the process of internal liberal regeneration which Catholic Luzern completed in 1830. In January 1831, it was Luzern's turn to assume the role of Vorort canton. Pfyffer's 1831 "Appeal to the confederal Vorort Luzern on its assumption of the directorship of federal affairs" was designed to encourage Luzern to use the opportunity of directoral canton status to initiate a complete reform of the Swiss federation.

Pfyffer's federalism is very candid about the political principles which his proposed federal constitution seeks to implement (1831, 5-9). He describes the replacement of aristocratic constitutions by representative systems based upon the principles of popular sovereignty and political equality as the "greatest fruit of the whole of Europe's contemporary cultural history" (1831, 5f). He sees 1798 to 1813 as the period in which the application of these principles to Switzerland was first attempted and attributes at least part of the blame for the failure of that initial attempt to the fact that they were externally imposed. He then condemns the "outrageous Reaction" for having worked against regeneration since 1815 and identifies the completion of the political and intellectual regeneration of the Confederation in accordance with the principles of political equality and popular sovereignty as the duty of contemporary Switzerland.

Switzerland is, he says, about to enter the final and decisive period of development, namely, that in which the principles of political regeneration will be realised. Moreover, this will occur not as a product of external imposition, as was the case with the Helvetic Republic of 1798 to 1803, but as a result of the self-determination of the combined Swiss "national will" (1831,7f).

Pfyffer has two main targets for political reform. The immediate targets are the cantonal constitutions, which he wishes to be organised on the principle of liberal representation. To this end, Pfyffer's proposals insist that there is to be no armed federal intervention in cantonal affairs. Cantonal governments threatened with popular overthrow are to be left to their fate, since intervention would be counter to what Pfyffer regards as the prime principle of the state, namely, popular sovereignty. Where the federation engages in arbitration between a cantonal government and its people, it should do so on the basis of accepting legitimate popular demands and in accordance with the principle of liberal constitutionalism. Pfyffer proposes that in the longer term, all cantonal constitutions be based upon the principles of political equality, popular sovereignty, the separation of powers and parliamentarism (1831,9-13). He argues that the creation of cantonal constitutions based on liberal representative principles will promote "... higher intellectual, moral and industrial development..." (1831,8).

The second and main target of Pfyffer's reform proposals is the federation. He attacks the existing federation, arguing that

... all insightful and educated Swiss wish for a more complete federal constitution; they see that the present weak cantonal union makes any common creation or national undertaking impossible; that industry is locked into the narrowest of confines, trade is everywhere restricted and intellectual forces lack the greatest and most noble incentive: the consciousness of working for a nation; they see that ... given this inner strife, Switzerland must remain weak and powerless in the midst of other states. All Swiss ... therefore wish for a federal state [*sic* Bundesstaat] and not a confederation [*sic* Staatenbund]. (1831,14).

Pfyffer goes on to say that until now Switzerland has, like Germany, undeniably been more of an interstate, rather than an intrastate federation. He argues that it has as yet been impossible to create the latter because the constituent units have lacked the common constitutional principles and structures that would guarantee common interests. As might be expected of a rationalist, he has faith in the power of constitutions to mould human behaviour, arguing that "constitutions completely determine the direction of the domestic and foreign policies of states". In his opinion, the fact that Swiss aristocratic groupings conspire with foreign against the national interest and that foreign ambassadors interfere in internal Swiss divisions is a product of a lack of constitutional homogeneity (1831,16). The victory of popular cantonal constitutions would, he contends, get rid of the rule of the aristocratic factions and establish constitutions with the same principles and structures. This would give all cantons common interests to defend and thus would facilitate their union into a federal state, which would then speedily ensure the flowering of a true and strong national spirit and universal love of the fatherland (1831,17).

Pfyffer's proposals for the structure of the new federation

are presented in the form of a draft constitution. The first section comprises seven articles, the first of which establishes that the twenty-two Swiss cantons are to form a federal state (Bundesstaat). By virtue of the fact that the cantonal constitutions are to be based upon common principles, this federal state will elevate those cantons into a single nation. The remaining articles of this section state that popular sovereignty is to be the basis of all constitutions, that there is to be political and legal equality of all citizens and that all individual and class privileges are abolished. Only direct and representative political structures are to be permitted, and thus the Principality of Neuchatel will have to alter its constitution if it wishes to remain in Switzerland. Finally, free residence throughout Switzerland for all Swiss citizens and freedom of the press are guaranteed (1831,18f).

The second section concerns the structures of the central federal authorities (1831,19-29). The provisions relating to the central legislative authority (1831,19-26) propose some significant changes to the system pertaining under the Pact. First, the Diet is to be replaced by an indirectly elected "Federal Council" (Bundesrat), in which majority votes are to be binding. Second, Pfyffer considers that instruction voting does not lend itself to creating a true central power or national authority and would thus prefer representatives to vote in accordance with their conscience and for cantonal representation in the Federal Council to be based upon the size of their populations and unspecified "other factors".

Third, Pfyffer proposes the abolition of the Vorort system and its replacement by a Committee elected by the Federal

Council and responsible to it. The Committee is to be entrusted with federal affairs between sittings of the Federal Council. Majority decisions of the Committee are to be binding until confirmed or amended by the Federal Council.

Fourth, the competences Pfyffer assigns to the legislature are very wide-ranging. Predictably, the list includes military matters and foreign policy. However, it also encompasses numerous matters not within the power of the central authority of the Pact. These include both external and internal security, the approval or rejection not only of all treaties between cantons and foreign powers, but also of all intercantonal treaties. The extension of the federation's economic powers are very marked. Thus postage, coinage, weights and measures, intercantonal trade and industry, the supervision of highways, roads and waterways, the setting of road and bridge tolls and the abolition of all internal import and export tariffs are all to become federal prerogatives.

Pfyffer also grants considerable political powers to his proposed federal authority. For example, it is to guarantee all constitutions, as well as the application throughout the federation of the principles of political equality and popular sovereignty. In cases of their contravention, the federation may arbitrate or, failing that, refer the matter to the Federal Court. In a few cases, it is to be permitted to intervene militarily in cantonal disputes, but this is restricted to responses to armed cantonal aggression, civil war and the illegal suppression of cantonal popular and constitutional rights. However, even here, the aim of

intervention is to force the disputing parties to submit themselves to the arbitration of the Federal Court.

The third section of Pfyffer's draft constitution (1831, 26-8) specifies the role of the Federal Council. It is to constitute the Court of Appeal in serious criminal and civil law matters, but its prime role will be to adjudicate upon intercantonal disputes and claims of breaches of cantonal constitutions. Significantly, Pfyffer stipulates that the Federal Council may arbitrate in disputes between cantonal governments and their people not only at the request of the former, but also at the request of the latter.

Finally, Pfyffer's draft provides for a Federal Executive Authority to execute Federal Council resolutions during the latter's sittings. The Executive Federal Authority is elected by and from the Federal Council at each session, as is a President who chairs the Authority. Between Federal Council sittings, the function of the Executive Authority is transferred to the Federal Committee (1831,20&26).

To sum up, Pfyffer's federalism amounted to the advocacy of a new, intrastate federation for Switzerland. Baumgartner (1853/4,I,164) states that Pfyffer's Appeal was the first federalism which "unambiguously took up and proclaimed a plan for the reform of the whole Confederation and gave notice to the existing conditions" [9]. Second, it was highly influential in terms of both the formal [10] and informal debates on the Swiss federation. Third, Pfyffer is notable by the nature and extent of the powers he attributes to the central authority. They are so wide-ranging, that even Baumgartner, Pfyffer's liberal contemporary and ally, states that the powers Pfyffer gives to the central authority

include "all important material interests", and concludes that the consistent application of Pfyffer's proposals would have had the effect of making the cantons merely regional bodies. Switzerland would have been a Bundesstaat in form, a unitary state by its nature (1853/4,I,166-70) [11].

If that is the opinion of a committed liberal, it is not surprising that conservatives strongly opposed Pfyffer. He felt obliged to defend himself against their charge that his proposals amounted to a return to the unitary Helvetic Republic, arguing that in his federal state, the cantons were to continue an independent existence. He conceded that cantonal sovereignty would be reduced, but denied that it would be abolished, pointing out that cantons would retain control over civil and criminal law, taxation and the administrative system (cited in Baumgartner,1853/4,I,168).

Despite these assurances, it is easy to see why his opponents should be concerned. References to cantonal sovereignty are notable by their absence from Pfyffer's Appeal, whose only reference to sovereignty relates to popular sovereignty. Presumably motivated by a desire to meet some of his opponents concerns, Pfyffer chaired (Lauber,1910, 24f) the discussions of a group of liberals including Baumgartner (Rappard,1941,87), which drafted a revised federal proposal. This appeared anonymously in the summer of 1832 and was widely discussed in the press (Rappard,ibid).

This new proposal (Baumgartner/Pfyffer,1832) also prescribes a Swiss Bundesstaat (1832,3). The main differences between it and Pfyffer's original proposal relate to four matters; the first concerns the federal legislature, which resumes its

previous designation of Diet (Tagsatzung). Instead of being based strictly on population size, differences in the size of cantonal representation are to be limited. Accordingly, the five largest cantons receive four representatives, the next six largest three and the rest retain two representatives each (1832,4f). The Diet is to rotate its venue biennially between the Federal Pact's three directoral cantons (1832, 11). Second, there are changes in the federal executive authority. Though the restoration of the directoral system is not proposed, the changes do move in that direction. Thus the President elected by the Diet for a two year term chairs a "Federal Council" the four other members of which are elected by the Diet from the Swiss citizens of the canton in which the Diet is then located (1832,10-12). Third, the new draft constitution explicitly refers to the cantons as "sovereign states, which exercise all rights of sovereignty ... not explicitly transferred to the federal authority by this Federal Constitution." (ibid,4). This concession to cantonal sovereignty is accompanied by a reduction in the economic powers Pfyffer's Appeal had granted to the federal authority. There is no mention of common weights and measures and cantons are to be allowed to retain, at least temporarily, some rights to levy tolls and customs (1832,43f).

It is clear from a comparison of Pfyffer's first and second federal proposals that his initial enthusiasm for a centralised intrastate federation to promote political and economic liberalism had soon to be tempered. However, there were in the early Regeneration other liberal federalisms that had shared his enthusiasm for a centralised federal state. One example is that published in the spring of 1831 by Roger,

a French-speaking major in the Swiss Federal Engineers.

Roger's contribution is divided into two parts. The first (1831,5-18) sets out his motives for proposing a centralised federal state for Switzerland, while the second part (1831, 19-40) comprises a seventy-six article draft constitution. It is possible to summarise the concerns that motivated Roger's federalism under four headings, namely, considerations of a nationalist, security, economic and political nature.

He is clearly committed to the idea of a Swiss nation and welcomes the activities of the various private societies that are contributing to the development of a Swiss national spirit (1831,6f). Conversely, he is very critical of what he regards as a quarter of a century of cantonal unwillingness to forego any individual advantages in the interests of the whole. Roger's praise for General Washington and his commitment to his country, is reminiscent of that expressed in the conservative federalism of his fellow army officers, Bontemps and Maillardoz (1830, see 5.3.2. above).

The same applies to Roger's second motivation, namely, his concern about what he considers Switzerland's lack of prestige abroad and its military vulnerability. To counter this, he advocates a strengthening of its militia, a more assertive foreign policy, and the abandonment of its "pacifist role" (1831,15). He regards as intolerable the fact that a Swiss canton is subject to a foreign ruler and says that the first task of a Swiss President should be to negotiate to put an end to that canton's dependency [12].

Roger's third complaint about Switzerland's situation under the Federal Pact concerns economic matters. He attacks

the fact that the cantons can and do levy their own tolls and custom duties, which he regards as a cause of constant intercantonal conflict. Second, he says that tolls are a source of despair for travellers and are the death of commerce. Third, he argues that they are a contravention of the principle of "laissez passer, laissez-faire" (1831,8), which is itself bound up with the principle of individual liberty. He also objects to the lack of a common monetary system, and argues for federal control over postage.

Though the constitutional proposals which Roger makes in the second part of his essay demonstrate beyond doubt his commitment to political liberalism, this aspect is not emphasised in the introductory section of his publication, the liberalism of which is reserved to economic matters. The comments he does make on the political situation are limited to the following. First, he argues that federations have both advantages and disadvantages; the former include the fact that their small size militates against the neglect of parts of the country, as well as the simplicity and economy of their administrative systems. However, federations' disadvantages include concentrating interests into separate provinces and making these into distinct states. Given this tendency, it is necessary for a federation to have a central institution which rises above partial interests and has only the interests of the whole at heart. Roger thus dismisses the directoral canton system as an absurdity. He argues that the weakness of the central authority of the current federation is reflected in Switzerland's lack of power externally and therefore he advocates an end to this "fictive" federation (1831,6) by the introduction of a presidential system.

The details of Roger's proposed federation are outlined in the second part of his pamphlet (19-40). Though he uses the terms confederal and federal rather loosely, it is clear that he desires the creation of an intrastate federation. Article 1 of his draft constitution states:

Switzerland is a confederated state and composed of twenty-two cantons intimately united with each other by the bond of the federal authority. This institution reduces the individual independence of each of them, imposes on them the sacrifices necessary to obtain the precious advantage of a unity of sentiment and of action, the sole means to strength and being respected. (1831,19).

Sovereignty is not ascribed to the cantons, which enjoy merely residual powers, but to the federal legislature: the Diete. The other institutions at the federal level are the President, who exercises executive authority and three administrative bodies: the Senate, Military Council and Court of Appeal (1831,21).

The Diet is composed of three deputies for the most populous canton, one deputy for the eleven smallest cantons and two for the remaining ten cantons. Since Roger does not stipulate otherwise, it is to be assumed that the deputies are to remain indirectly elected and that they are to be bound to cantonal instructions. The most important functions of the Diet include the election of the "Senate", "Military Council" and "Court of Appeal", as well as the ratification of all treaties and the approval of legislation.

The Senate comprises six persons from at least four different cantons, who are elected by the Diet for a term of six years and are re-electable after an interval of four years. The prime duties of the Senate are the administration of federal finances and federal monopolies on postage, tolls,

and coinage, as well as the preparation, in conjunction with the President, of bills to be presented to the Diet.

Executive power is invested in a President, who is to be popularly elected for a six year term, probably through an electoral college. He is re-electable after a six year interval. He chairs the Diet, to which he makes an annual report, and drafts proposed legislation with the assistance of the Senate and the Military Council. He is also solely responsible for diplomatic relations and the negotiation of foreign treaties, which remain subject, however, to Diet ratification. Roger places great importance upon the President giving an example of simplicity of mores and of patriotism. He also frequently approvingly cites the examples of Washington and Franklyn (1831,25-27,37,&39f).

Roger's draft constitution is also notable for stipulating a number of liberal principles. As regards the economy, these include free residence and exercise of commerce for all citizens throughout Switzerland, as well as free trade in agricultural and industrial goods and the abolition of all internal transit duties (Articles 3,4 & 13). On the political front (1831,19-21), he stipulates that there is to be a free press, free religious worship no subject territories or privileges of birth and that all citizens are to enjoy full political rights in their canton of domicile. Unlike Pfyffer, however, Roger makes no further rulings about the nature of cantonal political institutions.

Though the presidential system Roger outlines is distinct from the parliamentary sovereignty contained in Pfyffer's Zuruf, the two draft constitutions have much else in common.

Both are examples of liberal federalism. Though Pfyffer and Roger place more stress on political and economic liberalism respectively, they both advocate an intrastate-territorial federation for the purposes of promoting Swiss national pride and security, as well as liberalism. It does not require much knowledge of the American constitution to agree with Rappard (1941,75f) that the presidential system Roger puts forward owes much to aspects of United States' experience. However, both Pfyffer and Roger retain the unicameral principle and leave sovereignty located at the centre. They are both examples of the assertive, self-confident, liberal federalism of the early Regeneration.

The next exponent of federalism we shall consider is A.E. Cherbuliez, a French-speaking Genevan, whose writings offer an interesting alternative liberal perspective on the nature and function of federation [13]. His 1833 essay ("Essay on the conditions of federal alliances in general and on the new draft federal constitution") recognises confederations and intrastate-territorial federations ("confederations" and "etats federatif") and regards the extant Swiss federation as an example of the former. He points to the apparent paradox that although federal systems of government allegedly combine the virtues of small and large states, few confederations other than the Swiss have survived for long (10) and seeks to explain this by "A careful examination of the elements that characterise this form of government ...". His argument is based upon what he sees as a generic structural weakness of confederations.

In simple states, decision-making in the central legislature is undertaken by individuals. Where a minority

opposes a decision reached, this does not pose insurmountable problems for the central executive authority. Since both within and without the legislature, minority opposition is made up of individuals, the executive power " ... acts only upon individuals, and as a result meets only the resistance of individuals ..." (11f). By contrast, confederal decision-makers are not individuals, but states. Consequently, dissenting minorities are well-defined, sovereign states, with constitutionally entrenched powers. Resistance to the implementation of majority decisions is thus likely to meet not the resistance of individuals, but

... organised national resistance, sustained by a sort of legality. If such resistance actually occurs, the government of the federation has no other recourse, no other means of implementation but the forces of those states constituting the majority, and that means ... making them respect the law via a civil war.(12f)

Cherbuliez considers utilisation of force to be morally unacceptable in civilised societies and also impractical in those such as Switzerland which have a civil militia (14), and concludes that confederal government is thus unfortunately characterised by an absence of "... all realistic means of implementation of a certain number of the resolutions that it might perhaps wish to take." (15)

The powers of the central authority being unable to counter such national (i.e. constituent state) opposition, the stability of confederations has to rely upon minimising intercantonal differences. Cherbuliez believes this can be achieved only by a "moral bond which I call accord" (20).

It is only in such an accord that one can find a real guarantee against the dissolution that would otherwise threaten it by the forced impotence of the central government. Inasmuch as this accord

exists, ... inasmuch as every confederated government consents to allow the general interests to prevail over its particular interest, the Confederation is happy internally, strong externally; it constitutes the best possible type of government. (16)

Such accords derive from a more or less complete community of views and interests between the confederated states. He identifies three factors conducive to such an accord (16-22). The first is homogeneity in social, economic, religious, political and other matters. The second is a common national identity, though he stresses that the latter does not exclude considerable diversity amongst the constituent states. What he considers significant is that the similarities between them continue to outweigh both their differences and any similarities they may have to neighbouring states. The third factor Cherbuliez considers conducive to an accord is shared geo-political interests.

Cherbuliez regards the uniformity of interests underlying the accords - and thus confederations in general - to lack durability.

... that uniformity of interests relies upon happy circumstances, some external, some internal, that the subsequent development of confederated states tends gradually to neutralise and which general progress of civilisation finally ends up destroying entirely. Once the accord is destroyed, the authority of the central government is sooner or later put to the test, it succumbs, the federal bond is broken, and the dissolution of the federal body would be inevitable, unless a new organisation reuniting the dispersed members of the body, arises to form a new whole. (27f)

He claims that the history of the Swiss Confederation shows that there was homogeneity between the three initial members of the union of 1291 as regards linguistic, cultural, political and defence matters. Though this weakened over the next two centuries with the addition of nine new cantons,

Switzerland retained a republican identity that kept it distinct from its neighbours. However, the Reformtaion led to serious schisms and subsequent developments enhanced cantonal identity to the detriment of the national identity. Finally, though increased communications have reduced national hostilities, the recent development of civilisation has resulted in (cantons') selfish materialism taking precedence over the general interest. This threatens to bring about the end of the Confederation and makes reform a matter of urgency.

In short, Cherbuliez is arguing that confederations are necessarily structurally unstable. "The more complete the sovereignty of each canton, the more the special interests of its population will have this national character"(29f). He argues that the only way for the Swiss Confederation to overcome this problem is by means of reform designed to reduce the capacity of cantons to offer national resistance.

If therefore the cantons consent, in abandoning part of their sovereignty, to denationalise their interests, they would make the existence of the Confederation possible, they would resolve the problem of its reorganisation. Denationalise their interests, centralise powers, that is, in two words the condition of life to which they must submit; that also must be the main idea, the ruling principle of the new alliance.(30)

He goes on to say (31f) that there is nobody who does not feel strongly about the values of cantonal sovereignty and that

The very word centralisation gives birth to notions of abuse and arbitrariness; whoever pronounces it brings himself into discredit; However, I do not see in all this any more than a matter of fact. I do not feel any preference for centralisation in theory; but I believe in its current necessity. I believe in the following maxim: centralise or perish; ..." (emphasis in original)

What Cherbuliez advocates is that the Swiss Confederaion be centralised into a federal state. He therefore approves of

the Rossi Pact, since it has not tried to develop a model federation (45), but has recognised the current necessities and has centralisation as its dominant principle (46). Moreover, Cherbuliez approves of its proposals for the partial abandonment of cantonal sovereignty, a permanent and distinct federal government

He responds to those who are concerned about where the centralisation will end by asserting that he too dislikes centralisation in theory, but considers it necessary in practice. But he goes further:

I am ... deeply convinced that the necessity for centralisation will sooner or later again become apparent; for the favourable circumstances that alone can maintain a confederation of independent states are tending to continually disappear. The times are mercilessly destroying them one after another. ... The Federal Act of 1832 is but a transitory work. The immense amount that it leaves to cantonal sovereignty is but a temporary concession, determined by another necessity, that of making the acceptance of the project possible. (43f)

However, there were other liberal federalisms in this period that remained very sceptical about the desirability of an intrastate federation and were decidedly opposed to a centralised federal state, which some also saw as the likely outcome of even the prima facie moderate proposals for greater centralisation. This more hesitant liberal federalism is well articulated in the writings of the French-speaking Genevan, Fazy-Pasteur (1831, 1833 & 1847).

In July 1831, he published his "Observations on the changes demanded to the Swiss Federal Pact", which constitutes a review of and response to recent proposals for federal reform. He divides the latter into those relating to intercantonal relations, and those concerning the nature of the federal authority. The first category includes proposals

to allow all Swiss to exercise political rights in their canton of residence, proposals for military reform, and for internal economic harmonisation and liberalisation (1831,3f). He examines all the proposals in turn and, with the exception of the suggestion that a military fund be established to arm and equip troops, he dismisses them all. His most frequently used justifications relate to implementation problems and to cost (1831,4-14).

Next, Fazy-Pasteur turns to the second category of proposals, namely, those concerned with not merely improving, but replacing the Federal Pact. He identifies four such publications, including those of Bontemps and Maillardoz, Roger and Pfyffer (1831,4) [14]. He says that they have four implicit criticisms of the extant Swiss federation. The first is that cantonal voting strengths in the Diet are not proportional to cantonal population size. The second is that the Diet operates on the basis of instruction voting, rather than permitting deputies to vote in accordance with their conscience. Third, the directoral canton represents a cantonal rather than the national interest. Finally, they consider the central power insufficiently united and too slow in reaching decisions (1831,23).

Fazy-Pasteur argues that their proposals to remedy these problems share five characteristics (1831,14-22) [15]. The first is the aim of replacing the directoral canton system by a president or a council comprising a Landamann and senators. The second is the intention of replacing the current Diet of equal cantonal representation by one where Swiss laws would de facto be made by the large cantons. Third, he argues that

this also amounts to substituting cantonal equality with the dominance of German-speaking over French-speaking Switzerland [16]. Fourth, he argues that by abolishing instruction voting in favour of free voting representatives, the proposals will all substitute cantonal sovereignty by the sovereignty of individuals. Finally, he contends that the effect of all this will be to change Switzerland more or less quickly to an aristocratic, if not despotic, system of government, and probably to move it towards the horrors of civil war.

Though Fazy-Pasteur states that "The question is not whether these errors are more or less real, but if one can, given the state in which we find ourselves, change them for the better." (1831,23, emphasis in the original), he proceeds (1831,23-7) to argue in turn against the each of reformers' above mentioned four implicit criticisms of the Pact. He concludes that the Federal Pact is not as bad as it is made out and that what is required is its gradual amendment, rather than its replacement. He raises a number of additional objections to the proposals advanced by those seeking complete reform of the federation. First, he argues that the cost of the proposed new systems would require a substantial increase in taxation and would thus adversely affect Swiss industry (1831,34). Second, he argues that paying members of the federal government would result in their being motivated by pecuniary considerations and (by implication) not by patriotism (1831,28f). Third, he feels that the external threat to Switzerland is currently too grave for the country to engage in such sweeping reform (1831,3 & 36). Fourth, he notes that "All the proposed changes are more or less based upon the United States..." (1831,34), but insists that the

latter is an inappropriate example. He ascribes its prosperity to its geographical position and its economic situation, rather than its constitution. Moreover, he points out that it still tolerates slavery, its presidential election fosters party interests above the general welfare of the fatherland and it is also rent by severe internal divisions (1831,34-6). Finally, he argues that the proposed reforms would not succeed in their aim of removing aristocratic government, but would instead

bring about internal disharmony and jealousy and make the small cantons think that the others are trying to arrogate to themselves a supremacy over them; that they are trying to bring about such a concentration of power that would impudently grasp at Swiss liberty and kill off cantonal sovereignty. (1831,36f)

Fazy-Pasteur's comments clearly amount to a defence of the existing confederation and of cantonal sovereignty. He concedes that confederations have disadvantages:

They are perhaps somewhat slow in decision-making, having a less compact central authority than does a unitary system, and are not as diplomatic and secretive in their decision-making and as a consequence are not able to fool others as easily, though I doubt whether the Swiss regret the latter. (1831,23f)

However, he insists that these disadvantages are outweighed by the advantages confederations offer. Among those he enumerates (1831,24) are that they permit the people to be ruled by native governments which correspond to their laws, customs and culture, that they are very economical, that they are better defenders of liberty and, finally, that they promote greater popular involvement in politics and enhance patriotism. It is clear from this last point that for Fazy-Pasteur, patriotism relates not only to commitment to an

overarching Swiss nation, though he does support the activities of those all-Swiss associations that enhance such federal patriotism (1831,43), but also to a commitment to the cantonal fatherland.

There is little in the above account of Fazy-Pasteur's views on the proposed federal reforms that would be out of place in a conservative critique. However, Fazy-Pasteur's motivation was not conservative. This is evident not only from the fact that he was (Rappard,1941,73) a liberal member of the Genevan parliament, but also from a closer examination of his text. For example, he sums up his objections to the proposals as follows:

these projects unite, in a more or less pronounced manner, the errors that others might call advantages; for I, who am without doubt for a republican-democratic Switzerland, because I, who believe that Switzerland is ... ripe for republican institutions ... and desire that every canton and every Swiss enjoy as much liberty as possible, I do not hesitate to call the direction in which these projects would lead us erroneous. (1831,19f)

His argument against Switzerland' total reconstruction into an intrastate federation and in favour of the retention of an interstate federation is based upon two fundamental considerations, both of which are compatible with liberalism. The first is a commitment to constitutionalism and due legal process. Fazy-Pasteur points out that the existing Swiss constitution requires that all proposed constitutional changes be approved unanimously. Since unanimous support for the proposals he has described is very unlikely to be forthcoming, he concludes that the only way to proceed is by persuasion and persistence, rather than by coercion (1831, 38). Earlier in his essay he writes that

it is by enlightening and persuading that we

must above all proceed and not by imposing our views on sovereign states, with whom we should never make any headway by this method; and whilst awaiting an unanimous agreement, it is by individual agreements that we must win the cantons over, one by one. This will form a past that is all the more solid for being based upon conviction. (1831,13).

He therefore advocates a three part strategy (1831,38-41). First, the provisions of the existing Pact must be more rigorously implemented. In particular, he mentions Article 11, which stipulates that there is to be free trade throughout the Confederation, though this has never been observed. Second, he proposes reforms that are not subject to unanimous cantonal support, such as in the area of enhancing the Confederation's military preparedness. Finally, he believes that there should be attempts at extending the scope of the federal authority (1831,41), but repeats that this can and should only be done by consent.

The second fundamental consideration of a liberal nature motivating Fazy-Pasteur to argue against reform of the existing Swiss confederation in the direction of greater centralisation is his fear of concentration of power. His concern is based upon considerations both of principle and of practical politics. It is the former that he has in mind when he writes that

Concentration of power should never be at the expense of liberty and the stifling of liberty and revolution are the only outcomes of the proposed centralisation. Such concentration of power would also undermine patriotism and ... weaken the country. (1831,27)

But Fazy-Pasteur is unenthusiastic about centralisation for practical reasons also. Thus he argues that while the existing Diet was unwise to have involved itself in the internal affairs of the cantons, and especially in their

recent revolutions, the situation would have been far worse had there been a more centralised, or despotic, government. He fears that the latter would have been likely to have put down cantonal change in favour of aristocratic government and thereby to have engendered a civil war (1831,34). In short, Fazy-Pasteur believes that a concentration of power could lead to majority despotism.

Finally, Fazy-Pasteur's liberal credentials are evident from the kind of political and economic reforms which he says he would like to see implemented in the Swiss confederation. These are indicated in a general sense when he asserts his commitment to "a republican-democratic Switzerland and ... the maximum possible liberty for every canton and every Swiss" (1831,19f). The meaning of this is firmed up at the end of his essay (1831,41), when he specifies the ways in which he would like to see the Pact extended. Interestingly, they are substantially the same as the proposals for the reform of intercantonal relations which he opposed at the start of his essay (see above). His economic proposals include ending all internal tolls in Switzerland, central control of postage, a uniform monetary system and common weights and measures. He also advocates that all Swiss be free to take up residence, and to practise their profession and religion in any part of Switzerland. Third, he envisages a supreme federal court to oversee not cantonal law, but the implementation of the Federal Pact and to adjudicate on charges of treason against the Confederation. Finally there should be provision, for times of extreme danger, of temporary executive federal power to be concentrated not in the hands of one person, but in the hands of a small number

of people. But as he says earlier, this "... beneficial extension of the Pact would occur as the times and cantonal conviction and financial means permit."(1831,41).

An examination of two of Fazy-Pasteur's later publications (1833 & 1847) shows that he remained loyal to the idea of a confederation for Switzerland, as well as to the liberal principles underlying that choice. The two relevant publications are his "Reflections" on the proposals of the Rossi Commission and his "Examination" of the draft constitution for Geneva published in 1847 by the Radicals who had taken over the canton following the successful revolution led by James Fazy in 1846. The full details of his comments are not relevant here. However, it is worth noting how the main thrust of his argument corresponds to the underlying liberal principles we have identified in his 1831 essay, namely, the support of liberal political and economic policies, the fear of concentration of power and the insistence upon due legal process and the rejection of coercion.

His commitment to liberal political structures is amply illustrated in his "Reflections", which supports the provisions that require cantonal constitutions to have liberal representative, or direct democratic structures [17]. Indeed, one of his two main objections to the Rossi proposals is that the regulations are not strict enough. He says they would permit foreign principalities such as the Prussian canton of Neuchatel to be members of the federation, which he considers a contravention of the spirit of the constitution. He therefore proposes additional prerequisites for a cantonal constitution to be accepted by - and hence for the canton to

be admitted into - the federation. These are that cantonal executives be popularly nominated and that every Swiss canton be its own sovereign, i.e. not subject to a foreign ruler (1833,7-9).

The Reflections also contain evidence of Fazy-Pasteur's commitment to liberal economic policies. He explicitly approves of the Commission's proposals for federal control of postage, for common coinage, weights and measures and a common currency, as well as the principle of free residence throughout Switzerland for all Swiss (1833,14f) [18]. In his response to the Genevan Radicals' draft cantonal constitution, Fazy-Pasteur's support of liberal policies takes the form of opposition to government intervention. This is articulated in his opposition to state interference in private associations and private property (1847,37-52), as well as his rejection of what he claims (not fully justifiably) to be intolerance vis-a-vis Geneva's Protestant community (1847,48-56 & 63).

The second liberal principle we have identified as underlying the moderate liberal federalism of Fazy-Pasteur is the fear of concentration of power. It underlies the vehement opposition of Fazy-Pasteur and other moderate liberals to the Radicals. Fazy-Pasteur's 1847 Examination of the Radicals' draft constitution for Geneva concludes that:

under the guise of liberalism and giving all to the people, it is in reality the most despotic constitution that has ever existed in Geneva and that has surely ever existed in the whole of Switzerland, in that it concentrates all powers, without exception ... (1847,57).

As we have noted previously, concern about the concentration of power and the its potential for majority tyranny was an important factor motivating Fazy-Pasteur to

support a Swiss interstate federation with cantonal sovereignty. The same consideration lies behind his second main objection to the Rossi Pact. Fazy-Pasteur takes exception to part of the provisions concerning how federal intervention to enforce a guaranteed cantonal constitution can be initiated. Amongst other possible ways in which assistance can be initiated, the relevant article [19] states that where a cantonal government has been overthrown and is therefore unable to make a formal request to the Diet for assistance, the latter may intervene without being formally requested. He believes that this provision would give cantonal governments deposed because of their unpopularity a legal right to be restored by federal military assistance. Indeed, he claims that the consequence of this provision would be that the national political majority would "... legally be ruler of the country and would be able to fashion it at its will and, sadly but legally, be able to maintain that position ... " (1833,12).

The third and final liberal principle determining Fazy-Pasteur's interstate federalism is his insistence upon constitutionalism and due legal process, rather than coercion. This is of course another reason why he is so opposed to the Radicals, whom he accuses of acting in total disregard for natural and legal rights (1847,47). The primacy of persuasion and consent over compulsion is also strongly asserted in his Reflections on the Rossi proposals. Thus he states categorically that the majority does not have the right to compel the minority, since "... that would be an oppressive and unjust act." (1833,19f). While he tries hard to persuade those cantons he thinks unlikely to want to

support the Rossi Pact to do so, he recognises that it will be necessary to accept the verdict of the sovereign cantons.

We ardently desire that the cantons enter the new Helvetic Pact, we believe that the Pact does not contain anything that is contrary to their own institutions; but if they still refuse at present to take part in the new Switzerland, ... Switzerland would still be able to survive without [sic their] help. (1833,24f)

In other words, Fazy-Pasteur takes the principles of cantonal sovereignty and non-compulsion so seriously that he is willing to countenance the possibility of a new interstate federation without dissenting cantons initially being members.

This section has demonstrated the considerable differences in the federalism of moderate Swiss liberals during the Restoration on the one hand and the Regeneration on the other. It has also demonstrated that some moderate liberals advocated intrastate-territorial federation, while others espoused interstate confederation. Moreover, this section has illustrated the way in which those prescriptions depended upon the relevant author's evaluation of the political situation and which type of federation was most likely to promote the desired political goals.

As was noted in Chapter 3.3. above, Swiss liberal federalism had already become rather disingenuous by the end of the Napoleonic period. Once the Restoration set in, the conservative political climate and the pressures of censorship combined to restrict political debate even more severely. There was almost no public discussion of a new federal constitution, except in organisations such as the liberal-nationalist Helvetic Society. The sole liberal

criticism of federal matters published was that of Zschokke, which was limited to the "safe" demand for greater centralisation to promote military security. During the Restoration, outspokenly liberal federalism was notable by its absence.

At the start of the Regeneration, Swiss liberals were hopeful of a political breakthrough for liberalism and one finds a much more assertively "liberal" federalism such as that of Pfyffer and Roger. Both not only advocated a Swiss intrastate-territorial federation, but also justified their calls by reference both to military arguments, and to economic and political liberalism. Pfyffer even prescribed federal intervention in support of cantonal political rights. We then looked at the federalism of Cherbuliez, whose support for intrastate-territorial federalism was characterised by a less pronounced commitment to liberalism and by a degree of fatalism. He argued that the remaining concessions to cantonal sovereignty were but temporary.

Finally, this section examined the more hesitant liberal federalism of Fazy-Pasteur. Though more outspokenly in favour of economic social and political change than Zschokke had been in 1824, Fazy-Pasteur's federalism advocated interstate confederation with only very moderate and gradual liberal reforms and was distrustful of proposals for greater centralisation. He wished to see cantonal sovereignty retained in order to preserve the liberal cantons against conservative intervention. In many ways, Fazy-Pasteur's federalism denotes a return to the strategic considerations of earlier liberal federalism. On the other hand, it is also indicative of the failure of the moderate liberals'

gradualism. In part, this is attributable to conservative intransigence. On the other hand, it both reflects and foreshadows the moderate liberals' loss of the political initiative to the Radicals.

6.3.3. THE FEDERALISM OF RADICAL SWISS LIBERALS

Federalism was used by a number of radical Swiss liberals to advance their political cause [20]. This section will illustrate that use by reference to the federalism of the two most prominent: the German-speaking radical, Ignaz Paul Vital Troxler and James Fazy, his French-speaking counterpart

Troxler (1780-1866) was born in Luzern of a devout, but open-minded Catholic family [21]. As a young adult, he warmly welcomed the new revolutionary principles and was in 1798 given a governmental post under Luzern's post-revolutionary regime. However, his concern at what he regarded as excessive French influence led in 1800 to his departure for Germany, where he studied medicine at Jena, Goettingen and Vienna. His original enthusiasm for the principles of the liberal enlightenment was developed in an idealist and metaphysical direction while at Jena, where he was greatly influenced by Schelling, whose favourite student he became [22]. Troxler finally returned to Luzern in 1809. Until 1830, he earned his living as a teacher and medical practitioner in Luzern and Aarau. From 1830 to 1831 he had a short and stormy spell as professor of philosophy and history at Basel [23]. In 1832, he was elected to Aarau's cantonal parliament, from which he resigned in 1834, to take up a chair of philosophy at Bern, where he worked until his retirement in 1853.

Troxler held public office twice and largely determined the shape of the constitution adopted by Luzern in 1831 after its regeneration. However, his greatest contribution to Swiss politics took the form of unofficial activity. He was widely regarded as the foremost of Swiss radicals and is notable above all for his role in nationalist associations such as the Helvetic Society, of which he was president in 1822/23, and for his polemical political writings, which appeared in various newspapers and in a host of political pamphlets [24]. Troxler described himself as a radical (e.g. 1833a, 10) and therefore attacked conservatives and moderate liberals alike. Throughout, he maintained his commitment to the principles of popular sovereignty and political equality [25] and though he did not himself engage directly in revolutionary activity, his polemics provided the inspiration for many young radicals who did [26]. Rappard (1941, 96) concludes that Troxler exercised a considerable indirect influence upon the drafting of the 1848 federal constitution, though his radical reputation meant that this was not acknowledged in the official parliamentary debates. Prior to 1848, however, Troxler's ideas on the manner in which the Swiss federation should be reformed were adopted and popularised by a number of his admirers, including James Fazy, whose federalism will be examined shortly.

In order to understand Troxler's federalism, it is necessary to be aware of the broad thrust of his political philosophy. Like that of Stahl (see 5.2.3. above), it is in part derivative of Schelling's thinking, but also developed into a political philosophy in its own right. Underlying that

philosophy [27] are three propositions. The first is his belief that man is the product of God's creation. This results in Troxler's dismissal of Haller's patrimonial theory of the rule of the strongest (see 5.3.2. above) in favour of the principle of the moral and hence legal and political equality of man. Troxler's second proposition is the idealist notion that man's ultimate purpose in life is the assertion of his higher, ethical nature over his lower desires, that is to say, the pursuit of wisdom, freedom, justice and patriotism. The state's prime purpose is thus promoting the ethical spirit of man's higher nature. Since virtue is only possible in situations where one rules oneself, popular sovereignty is the logical corollary of Troxler's second proposition.

His third proposition is that an important expression of man's nobler self is his innate sociability. This leads him to reject Rousseau and Kant's theories for overemphasising the individual. Instead, Troxler espouses an organic and collectivist theory. He argues that the state is to be seen not merely as the product of nature, nor exclusively of man's intellect, but as the embodiment of natural human sociability. Troxler sees the supreme manifestation of human sociability or fellowship to be nationalism and therefore contends that it is essential for theories of the state to proceed from the nation, since the state is not an association constructed for the promotion of individuals' material ends, but is the embodiment of the ethical spirit of the nation (eg 1822, 56-8). As he puts it, "Nation and state are the original and direct manifestations of the development and sociability (Geselligkeit) of mankind in time and space.

This is the Divine order of life." (cited in Goetz, 1915, 44).

Yet while Troxler places a heavy premium upon nationalism, he conceives of the nation not primarily in terms of a cultural entity and certainly not as a union for the purposes of territorial aggrandisement, but as an ethical fellowship. Since the state is about the promotion of the ethical spirit and nationalism is one of the highest expressions of man's ethical development, it follows for Troxler that the state has a duty to advance national unity. He attributes the leadership role in the fostering of this ethical or national spirit ("Volksgeist") to the German tribes (Goetz, 1915, 35) and, within the latter, to the middle classes (eg 1822, 11-16). Indeed, Troxler asserts that the most important distinction between states relates not to what he calls their "mechanical form" (1822, 66), but to whether they place promotion of the ethical spirit above satisfaction of material desires.

Nonetheless, Troxler does not sacrifice liberal constitutionalism to nationalism in the manner of liberal-nationalists such as Fries (see 6.2.2 above). Unlike Stahl, Troxler insists that promotion of the ethical spirit is incompatible with rule by princes, corporations or individuals, but only with the nation ruling itself by means of a popularly elected government. Troxler thus argues for a republic with representative structures, separation of powers, freedoms of speech, the press, association and petition, as well as the right to resist oppressive governments [28]. He uses his notion of the state being a living organism to argue against the utopian visions of both Rousseau and Kant, since they are equally predicated upon the assumption of the possibility of

a static state. Troxler holds the organic nature of the state to imply that the state is in a constant process of change and thus, unlike conservative exponents of organicism such as Mueller (eg.1809), Troxler's organicism legitimates political radicalism.

In short, Troxler's philosophical assumptions of the innate moral equality and sociability of man and his duty to promote ethical over material ends directly support his radical political demands for political equality, popular sovereignty and national unity. They also determine the language and substance of his federalism [29]. The two types of federation Troxler identifies (the "Staatenbund" and the "Bundesstaat") are thus distinguished primarily by reference not to legal or institutional criteria, but to their political ideals. For he is interested not in determining the structural anatomy of federations, but in how a Swiss federation might be utilised for the promotion of the ideals of radical liberalism. To paraphrase him (1822,55):
federation is in itself neither good nor bad. Its utility depends upon the use made of it.

What he advocates for Switzerland is a Bundesstaat, for which he uses the term "Eidgenossenschaft" interchangeably. When he asserts that the Swiss people

desire neither Staatenbund, nor Bundesstaat, for even their lordships themselves do not know what this is, but above all Eidgenossenschaft and no more and no less than Eidgenossenschaft (1833c,3),

this should not be understood as discriminating between Eidgenossenschaft and Bundesstaat. On the contrary, as he demonstrates elsewhere (eg.1833a,10), it means that Troxler considers Eidgenossenschaft to be the political value which a

true Bundesstaat must promote. To explain this point, an understanding of which is crucial to an appreciation of the nature and function of the federation Troxler prescribes for his native country, it is necessary to explain the term Eidgenossenschaft. The latter is the German word traditionally used to denote the Swiss federation; literally translated, it means "Oath Fellowship". Troxler's repeated emphasis upon it is intended to indicate that the core of true federation lies in fellowship. In other words, it requires a recognition of the equality of man and the promotion of his higher, social nature.

Troxler argues (eg.1833d,4-6) that the original Swiss federation of 1291 was just such an Eidgenossenschaft. It was a collectivity initiated and sustained by the principles of reason, communal freedom and virtue. Its members were not the governments of sovereign cantons, but free and equal peoples. It recognised the moral equality and innate fellowship or sociability of man, which was manifested in a common identity and found institutional expression in legal and political equality and popular sovereignty.

The history of Switzerland after 1291 is interpreted by Troxler as a digression from this original, ethical federation and is attributed by him to two related developments. The first is Switzerland's territorial aggrandisement and its subjugation of the lands acquired in this process by the establishment of co-dominions (see 2.1. above). The second departure from the ideals of 1291 concerns the establishment within the cantons of oligarchic and aristocratic structures. The abandonment of political equality and popular sovereignty which these two developments entailed was elevated into law

in 1481 by a formal agreement [30] in which the cantons undertook mutually to guarantee their internal and external security. Given that the parties to this agreement were no longer the people, but cantonal governments and that the structures being guaranteed were based upon political inequality, Troxler considers (1822,47) that the federation thereby established was not a Bundesstaat. Instead, it was a Staatenbund, a confederation between ruling elites, to the deliberate exclusion of popular rights and a collective Swiss identity. Popular life was extinguished and the history of the Swiss federation henceforth became the history merely of governments.

Troxler blames the weakness of Switzerland in the period up to its invasion and defeat in 1798 upon this Staatenbund and its emphasis upon cantonal sovereignty, which he regards as synonymous with the institutionalisation of political inequality and oligarchic rule. While he feels that the Mediation constitution was the nearest to returning to the original principles of the Swiss Bundesstaat, it was seriously flawed by its lack of popular representation at the federal level. Troxler argues (eg.1833a,5f & 17f) that the Federal Pact of 1815 is but the latest incarnation of the Staatenbund into which the original Eidgenossenschaft degenerated. It was imposed upon the Swiss by violence, fraud and foreign influence. As the first ever Swiss constitution explicitly to proclaim the principle of cantonal sovereignty (1833d,4), the Pact has elevated the maintenance of political inequality to a constitutional principle (1833a,21 & 1833b, 9f). This explains for Troxler why the Federal Pact and its

guarantee of cantonal sovereignty is defended most avidly wherever the privileged have taken over government (1833d,5).

Troxler's interpretation of the history of Switzerland as a perversion of the original principles of political equality and popular sovereignty allows him to assert (eg1833c,8) that the liberal revolutions of the 1830s are in reality the purest forms of restoration, while what the conservatives deem restoration is but an attempt to maintain a perverted form of federation that deprives the Swiss of political rights and national unity. He rejects the reform proposals of the Rossi Commission [31] as serving the same purpose.

His criticisms of them amount to the repeated emphasis, in often very emotive language, of five basic points [32]. First, Troxler rejects as a "cardinal sin" the Rossi Pact's retention of the principle of cantonal sovereignty (eg1833b, 3f). In its place, he wishes to see the principle of an independent sovereign nation (eg. ibid,13). Second, he opposes the proposal to restrict the representative structures at the federal level to the equal representation of the grossly unequally populated cantons, which he considers to amount to the entrenchment of political inequality. His preference is for the size of cantons' representation to be more in accordance with the respective size of their populations and for there to be a new body based upon popular representation (eg.1833a,13f & 21). Third, Troxler maintains that the Rossi Pact's proposed federal guarantee of cantonal constitutions is not sufficiently rigorous regarding the political rights which cantons have to provide [33]. What Troxler wishes to see (eg.1833b,7f & 14) is legal and political equality and popular sovereignty applied unconditionally and universally

throughout the federation. Fourth, he argues that the Federal Tribunal envisaged by the Rossi Commission "is but a committee for the welfare of federal and cantonal governments at the cost of the nation as a whole and of Swiss citizens in particular ... " (1833b,11f). In its place, he wishes to see individual citizens have the right of appeal to the Tribunal against infringements of their rights by federal or cantonal authorities. Finally, Troxler contends that the Rossi Pact is deficient by virtue of the fact that the centralisation it proposes is limited to military and economic affairs and neglects to centralise the most important aspects, namely, (1833b,8 & 14) those that will enhance the higher, spiritual strength of the nation. In particular, he suggests a national education system, press freedom and a common Swiss citizenship.

Troxler argues that the federation proposed by Rossi would formally still be a Staatenbund, which requires its constituent states to be sovereign. However, it would in fact permit much greater central interference in internal cantonal affairs than is compatible with the latter's sovereignty. Moreover, this confederation would also fail to promote political equality, popular sovereignty and the national spirit. He therefore concludes that it would amount to a "bastard" type of federation (1833c,5) that would if anything be even worse than the "federal betrayal" (1833a,7) of 1815, in that it would betray both popular and cantonal sovereignty. Troxler considers the source of all these sins to derive from the manner in which the reform process is being conducted (eg. 1833a,3-6 & 12), describing the

delegation of federal reform to the Diet, rather than to a popular constituent assembly, as an example of transforming poachers into gamekeepers (1833b,13). The main aim of those gamekeepers is to use such a centralised confederation to deprive the Swiss of the fruits of their liberal cantonal revolutions (eg.1833a,15-17 & 1833c,8) by means of what amounts to a strengthening of local tyranny and the institutionalisation of a federal oligarchy (1833d,7f). Such a confederation would be an even greater threat than the 1815 Pact to progress, the development of cosmopolitanism and all that is noble in the human spirit (1833d,7f & 1833c,12). It would constitute high treason against the Swiss people (1833a,8 & 10).

In short, Troxler refuses to see any liberal advances in the Rossi Pact. He describes it as the product of a shameful alliance between conservatives and those liberals willing to betray liberty and the Swiss people by accepting reform on a basis other than that of political equality and popular sovereignty (1833b,7f;1833a;1833b;1833d,12f & 1840,3). In defence of this contention, Troxler (1833c,11-13) employs Kuhn's terminology (see 3.2. above), arguing that the Rossi Commission constitutes an attempt to reconcile, by means of "Judas kisses", the aristocrats' "federalism of privilege" with the moderate liberals' "federalism of demagogy" (1833c, 11).

Stung into action by accusations that he was a critic incapable of constructive proposals (1833c,46), Troxler published a draft Swiss federal constitution in March 1833 (Troxler,1833c) [34]. The first of its 59 articles stipulates that Switzerland is to be a "Bundesstaat", founded upon

popular sovereignty and endowed with a representative constitution. The principle behind the federal representation is spelt out in Article 34, which states that

The only sovereign in the federation is the nation, but in accordance with the nature of a Bundesstaat, it has a twofold representation. The original and general is ... the population, and the derivative and particular are the cantons of the federation.

In other words, Troxler proposes bicameralism. In the popular chamber, there will be one representative for every 25,000 souls, with no minimal representation for each canton (Art. 39). The representatives will be directly or indirectly elected by the population and will vote in accordance with their conscience (Art.38). This popular chamber will be labelled the "Great Federal Council" or "First Federal Council" and will have the sole right to initiate federal legislation. The scrutinisation and decision upon those bills is to be reserved to the "Senate" or "Small Federal Council", in which each canton will have one representative, elected either by popular vote, or by the cantonal parliament and who will vote without cantonal instructions (Arts.36,37 & 43). Majority votes will be binding in both chambers (Art.48).

United as the Diet, the two chambers will elect the federation's executive and judicial bodies (Art.44). The former is the "Executive Council", which consists of a "Bundesamman" and two State Secretaries. Together, they will be responsible for the execution of the decisions of the federal legislature, as well as for the supervision of federal administration (Arts.44,49 & 54). The federation's Supreme Court will contain a President, six judges, four alternates and a public prosecutor. The Court will hear cases

of impeachment of federal officials and appeals against criminal convictions. It will be permitted for citizens to appeal to it not only in civil disputes, but also in defence of rights infringed by cantonal authorities (Arts.50 & 51).

Though Troxler's federalism continually stresses the value of the American model, his draft constitution is based primarily upon the various draft federal constitutions of the Helvetic period [35]. For example, the limitation of the powers of the popular chamber to the initiation of legislation and the exclusive right of its scrutiny and approval being accorded to the Senate is taken not from United States practice, but from that of the First Helvetic Constitution (Goetz, 1915, 175f). Similarly, Troxler's Bundesamman bears little resemblance to the United States' President. One can speculate that the fact that the Helvetic constitutions were associated in the Swiss mind with invasion and defeat inclined Troxler not to advocate their emulation openly and to opt instead for an emphasis upon the value of the United States model. He argues (eg. 1848, 9) that the seed of the federal republicanism enshrined in the American constitution was originally sown in Switzerland. In proposing the American model for Switzerland, he is thus not advocating the application of anything foreign. On the contrary, he is arguing for the return to Switzerland of something original and autochthonous to it.

In any event, Troxler's draft constitution remains vague, or even completely silent, on how many important issues would be regulated in his proposed federation. For example, he leaves open the mode of election and term of office of the

members of the Executive Council and Supreme Court. He also fails to address two of the most controversial aspects of all federal constitutions, namely, the division of legislative and of administrative competences between the federal and cantonal authorities.

Troxler's federalism (both in his draft constitution and elsewhere) is also remarkably silent on military matters. To be sure, there is the customary reference in his draft constitution (Art.5) to defence as one of the formal purposes of the federation and some mention of the war power (Art.6) and of security (Art.33), but it is obvious that military matters are of secondary importance to Troxler. The reference to them in the draft is little more than token. Though they figure more prominently, economic affairs are also not his prime concern. There are provisions relating, for example, to freedoms of trade and profession, the harmonisation of coinage and weights and measures (Arts.19 & 21), and even the radical proposal for a system of progressive taxation on wealth (Art. 24). Yet Troxler's does not deem it necessary to stipulate in his draft constitution critical economic issues such as the respective roles of the federal and cantonal authorities in the raising and utilisation of revenues.

There is no escaping the conclusion that the main motivation of Troxler's draft federal constitution is not military or economic, but is identical to that of the federalism contained in his various publications, namely, political idealism. Accordingly, the contours of Troxler's proposed federation are defined less in terms of constitutional structures, than by reference to the political ideals the federation is to promote, namely, legal and political

equality, popular sovereignty and an ethical national spirit. All three figure frequently and prominently in his draft constitution. The emphasis upon promotion of nationalism is of course in keeping with Troxler's longstanding commitments and his idealist philosophy (see above). Eleven years earlier (1822,53f), he argued that national strength is the sole source of life and needs to be reawakened, since salvation for Switzerland is to be found not in statutes, or structures, but in patriotism. This explains his annoyance (1833c,12 & 28) at Rossi's dismissal of Swiss nationalism as mere poetry. Article 16 of Troxler's draft constitution responds by asserting that:

The highest concern of the supreme authorities is to be national education and the most sacred duty the founding of a central point for national education through the centralisation of higher public education.

However, Troxler's nationalism is most definitely not at the expense of political liberalism. His draft constitution repeatedly emphasises that the principle of popular sovereignty is to apply throughout the federation (eg.Arts.8, 9,27,31,34,38 & 55) [36]. There are also frequent statements of the principle of legal and political equality (eg.Arts.7, 8,17,19,31 & 40). The wide range of political liberties to be enjoyed universally include freedom of the press, of assembly, of association and of petition. There is to be freedom to carry arms, freedom from arbitrary arrest, inviolability of the home, due legal process, freedom of profession and of residence. Unlike the Rossi Pact and the proposals of most other liberals, Troxler's federalism not only contains a commitment to religious toleration (Art.14),

but also stresses the importance of the Christian religion (Art. 13f) and proposes a state guarantee of church property, wherever the latter is used for ecclesiastical or educative purposes, or for the relief of poverty (Art.28).

To summarise, Troxler conceives of two types of federation. He uses the term Staatenbund to describe the first of these, the constituent units of which are sovereign states. In terms of its structures and formal purposes, Troxler's Staatenbund corresponds to the traditional notion of a confederation. For Troxler, the most important structural feature of a Staatenbund is its limitation to a union between governments, to the exclusion of the people. However, Troxler's classification of federations is based less upon their structural features, than upon the political ideals which he sees as underpinning them. Accordingly, the underlying principle which he deduces from this structural characteristic is that the Staatenbund is contrary to the principles of legal and political equality, popular sovereignty and the promotion of man's higher, social spirit.

The second federation Troxler identifies is the Bundesstaat. Unlike the Staatenbund, its constituent units are not sovereign states. Moreover, Troxler explicitly (1833c,20) rejects the notion that a Bundesstaat contains a double sovereignty, shared between the centre and the cantons, as well as the idea that central sovereignty is derivative of the cantons. Troxler's Bundesstaat is therefore not an intrastate-territorial federation akin, for example, to those of Hugo or Puetter (see 2.2 and 32. above). It is a federation in which sovereignty is not shared between the centre and constituent states, but, as he frequently

states (eg1833a,10), is located in the people, whom he considers to be the true constituent elements of the federation. Moreover, this is for Troxler merely an external manifestation of what really distinguishes a Bundesstaat from a Staatenbund, namely, that its purpose is the promotion of the development of the higher nature of social man. In other words, the type of federation which Troxler prescribes for Switzerland is defined more in terms of political ideals than of constitutional structures. In view of its purpose and the location within it of sovereignty, Troxler's Bundesstaat constitutes another example of the type of federation proposed by Struve, which we have classified (see 6.2.2. above) as intrastate-popular.

The second and final exponent of radical Swiss liberal federalism to be considered in this section is James Fazy, who was born in Geneva in 1794 of a wealthy Genevan family that used to provide members of the city's ruling "Council of Representatives". Like Fries (see 6.2.2. above), Fazy was educated by a Bohemian Protestant sect, which perhaps helps account for his strong opposition to Catholicism. Though he studied for a while in Germany, Fazy spent much of the Restoration period in Paris, where apart from getting into considerable debt as a result of share speculation, he got to know many revolutionaries and through La Fayette (Rappard, 1941,104f), acquired his interest in the American federation, the emulation of the bicameralism of which was to constitute one of his major contributions to the Swiss debate on federation. In 1830, Fazy's republican sympathies resulted in a short spell in prison, after which he returned to Geneva,

where he continued to use his journalistic skills to mobilise for radical political change.

Popular opposition to the liberalising conservative Genevan government led to the introduction in 1842 of a more liberal constitution. Though Fazy had participated in its drafting, he remained dissatisfied with the new system and in 1846 eventually managed to channel working-class, petit-bourgeois and Catholic [37] protest into the successful "Fazy Revolution". As Fazy was the prime mover in the 1846 Genevan constitution that resulted, it is worth mentioning some of its main innovations, which are indicative of the radical liberal goals behind Fazy's federalism. They included the abolition of the political and economic privileges of the aristocracy; the separation of church and state; considerable easing of the regulations for the acquisition of Genevan citizenship (in particular, Fazy's constitution allowed all resident Swiss and all resident foreigners born in Geneva to exercise full political rights); universal male suffrage and the direct popular election not only of the Genevan parliament, but also of its government. The extent to which these measures exceeded those desired by moderate liberals is evident from the strength of the latter's opposition to them (e.g. Fazy-Pasteur, 1847).

Fazy thus qualifies as a radical liberal by virtue both of his leadership of the Genevan revolution and his consistent application of the principles of popular sovereignty and political equality to the political realm and beyond (e.g. the secularisation of Geneva and the abolition of institutionalised economic privileges of the aristocracy) [38]. The following exposition of Fazy's views on the reform of the

Swiss federation derives from an undated pamphlet (Fazy, n.d.), probably written between 1831 and 1837 [39]. Its content may be divided into three broad aspects. The first concerns his interpretation of the origins and nature of the existing Swiss federation. The second relates to his proposals for federal reform and the third constitutes the advantages he alleges will accrue to Switzerland if it adopts his suggestions. The following account will deal with each of these three aspects in turn. That having been done, there will be a summary of Fazy's federalism and an assessment of the major differences between it and that of Troxler.

Like Troxler, Fazy (n.d., 18f) idealises the ancient Swiss federation, arguing that it originated as an alliance between individuals for the purpose of the defence of individual liberty against domestic oppression. However, as the cantons developed into states and then engaged in colonisation, these initial individualist and liberal purposes became perverted. The federation was transformed into a purely interstate alliance that now imposed on others servitude akin to that against which the founders of the Swiss federation had originally united.

Fazy's criticisms of the Swiss federation established by the 1815 Pact can be summarised under four headings. First, he contends (n.d., 1f, 8, 10 & 27) that the federation lacks external independence. Though it might appear he is making a military point, closer examination shows his underlying concern to be of a political nature. Thus the European conflict he feels certain will shortly break out, and for which Switzerland must prepare itself, will be between the

forces of reaction and progress (n.d.,2). Moreover, the foreign dependency to which he objects is that upon the conservative Holy Alliance (n.d.,1 & 27), which breached Swiss neutrality in 1815 and then intervened in its domestic affairs, not least through the Carlsbad Decrees. The latter impelled the Diet to violate cantonal rights by interfering to, for example, muzzle the press and abolish rights of asylum. For their part, cantonal governments have with impunity violated popular political rights guaranteed by the Pact (n.d.,27). Second, Fazy points to the economic shortcomings of the present federation (n.d.,8 & 27f). These relate both to the problems caused for the domestic Swiss economy by the lack of sufficient economic harmonisation and a single internal market, as well as to the adverse impact of this upon Switzerland's capacity to compete effectively internationally.

Fazy's third and most important objection to the existing federation relates to its political inadequacies (n.d.,eg.1f & 27f). He believes the Pact to be contrary to progress, the principles of human dignity, political equality and popular sovereignty. He therefore dismisses it as but a continuation of the perverted federation into which the original liberal alliance degenerated, since it has established cantonal self-interest over the interests of the whole of Switzerland (n.d.,3 & 28) and constitutes nothing more than "a kind of mutual assurance between reactionaries" (n.d.,19). Fourth, Fazy argues that all these faults are reflected in and exacerbated by the federation's central political structures (n.d.,1,3-5,20,24,26 & 38). He complains about the absence of a permanent federal government (n.d.,26), but is especially

critical about the Diet, which he claims (n.d.,3) to be too slow and too restricted in its scope. He attacks (n.d.,26) the principles of equal representation of unequal units and the system of imperative mandates, which he says results in the promotion of cantonal egotism, and "puerile opposition based upon obstinacy and ignorance" (n.d.,4). In short, it leads to "votes by state and not by brain" (n.d.,26).

Fazy concludes from all this that contemporary Switzerland

is not a true federation, but simply an alliance without real external strength, and which, as all alliances between states in which the people do not have a voice, too often results only in the founding of mutual assurance between all local injustices against the particular and general interests of the citizens. (n.d.,28).

Accordingly, the main theme of the Fazy's federalism can be described as the provision for the Swiss federation of that absent popular voice.

This is clear in the first article of his draft federal constitution, which reads: "The twenty two cantons that compose Switzerland and the citizens that live in it form a confederation ... " (n.d.,10, emphasis added). The structures of the proposed federation are modelled upon those of the United States. Thus Fazy envisages bicameralism, with coequal "Senate" and "House of Representatives". In the former, the cantons are each to have two representatives, nominated by cantonal legislatures, and in principle bound to cantonal instructions. Meanwhile, the latter chamber is to represent the Swiss people, with each canton having at least one representative and additional representation based upon the size of its population. Voting is to be in accordance with the conscience of individual representatives, though it is

not clear whether their popular election is to be mediated through cantonal electoral colleges (n.d.,13f,Arts.13 & 14). The right of initiation of legislation is held by individual cantons, both Chambers, as well as by the Swiss chief executive: the Landamann. Finally, the federation is to have a "Federal Tribunal" charged with maintaining cantonal and federal constitutional laws, and to which appeals can be directed not only from federal authorities, cantonal governments and constituted bodies, but also from private citizens (n.d.,16f). There are a number of differences between Fazy's proposals and the American federal constitution, not least of which is the fact that the Swiss Landamann is to be elected by the Chamber of Representatives and that he, the three Federal Ministers he nominates, the Senators and the Representatives are to be elected annually (n.d.,12-15).

The formal purposes of the federation are outlined in Article 1 as follows:

mutual protection against arbitrariness, maintaining the rights of all, the independence of the country, territorial integrity, sustaining the dignity of the cantons and of the federal union, making the cantonal and federal institutions respected against all attacks. (n.d.,10).

However, it is clear from other provisions of the constitution [40] and from Fazy's commentary upon it [41] that the main motivation behind Fazy's proposals relates to radical political liberalism. Thus Article 2 provides for the separation of powers and guarantees private property, popular sovereignty, political equality and freedoms of speech, of the press, of religion and movement (n.d.,11). Fazy's thinking is clearly visible in the following statement:

It can be seen from the outset that the

principle of the federation that we propose for Switzerland has as its aim an alliance between citizens, as much as between cantons. (n.d.,18)

He goes on to maintain that only federations that provide for the representation of both their constituent states and their constituent peoples are "the real expression of a true sense of all confederations" (*ibid*). Moreover, he is particularly enamoured of this idea of double representation not only because it corresponds to what he considers to have been the original principle of the Swiss alliance (n.d.,19), but because it

is also a social advance, in that it offers to institutions and to individual rights a guarantee outside the cantonal unit. (n.d.,18)

To summarise, Fazy's federalism is motivated not by a desire to develop an academic theory of federation, but to prescribe solutions for the specific case of the Swiss federation. Accordingly, he does not seek to distinguish conceptually between interstate and intrastate federations. Though what he proposes amounts to the latter type, he uses the terms federation and confederation interchangeably. His prime concern is that throughout the Swiss federation, the principles of popular sovereignty and political equality apply. His main objection to the existing Swiss federation is directed at the fact that it does not facilitate those principles. This is caused both by its vulnerability to foreign, reactionary pressures, as mediated through the federal authority and to the lack of structures to defend popular cantonal rights against illiberal cantonal governments. The federation he proposes thus establishes a strong federal authority able to isolate Switzerland from the

external pressures of the Holy Alliance, as well as a federal constitution that guarantees popular sovereignty and liberal political rights at both the federal and cantonal levels.

This section has examined the federalism two radical Swiss liberals. As has been shown, there are a number of respects in which those federalisms differ. First, while the idealist language and motivation of Troxler's federalism means that the structures of his proposed federation are often rather vague, Fazy's federalism is much more specific. Second, Troxler is more concerned than Fazy with promoting Swiss nationalism. Moreover, when Fazy does mention nationalism, he conceives of it more as a collectivity of individuals united by a common citizenship, rather than as an ethical bond. (As he is ^a member of a minority Swiss linguistic community, it is perhaps not surprising that Fazy does not posit Swiss nationalism as a cultural community.) Overall, Fazy's federalism is much more individualist than that of Troxler.

Third, Fazy is, on the other hand, more interested in economic matters than Troxler and prescribes various measures to promote economic liberalism. Fourth, there are a number of differences in the federal political structures proposed by Troxler and Fazy. For example, though they both advocate bicameralism, they differ considerably as to the division of powers between the two chambers [42]. Fifth, while both are for religious tolerance, they disagree about the relationship that should exist between church and state. Troxler elevates the defence of both the Christian religion and of church property to a constitutional principle, while Fazy is for a thoroughgoing secularisation of the state [43].

Notwithstanding these differences, the above discussion of

Fazy and Troxler has shown that federalism was used by radical Swiss liberals as a political ideology. Both Fazy and Troxler saw themselves as opposing the federalism not only of Swiss conservatives, but also of moderate Swiss liberals. The prime aim of the federalism of Troxler and Fazy was the realisation of the goals of radical political liberalism: legal and political equality and popular sovereignty.

6.4. SUMMARY AND CONCLUSIONS

Since each subsection of this chapter concluded with an overview of the material covered, the following summary of this chapter can be quite brief. It will address three aspects covered in this chapter. The first is the development of the debate within liberal Germanic federalism on how to distinguish between different types of federation. The second concerns the dimensions of federalism used by liberal Germanic federalism. The third relates to the reasons why German and Swiss liberals differed in the federations they prescribed. Thereafter, this section will conclude by highlighting the significance of some of the findings of this Chapter for the thesis.

In many respects, the arguments used by liberal Germanic federalism in the 1815 to 1850 period to characterise the various types of federation it identified were similar to those utilised previously (see Chapters 2,3 & 5 above). Thus the criteria considered relevant to distinguishing between interstate-confederal and intrastate-territorial federations included their formal purpose; the nature of their constituent units and central authority; the scope of the

latter's powers (in particular whether it was entitled to intervene in the internal affairs of the federation's constituent states); and whether the citizens of the several states were members of, had any rights of representation in, or duties of compliance with, the will of the central authorities of the respective federations.

There were also some interesting innovations in this debate, however. First, liberals' reflections upon intrastate federation led to a new twist in the old debate (see Chapter 2) on the (in)divisibility of sovereignty. Gagern and Welcker, for example, articulated the view that while the constituent states of intrastate-territorial federations were not fully sovereign, they were nonetheless partially sovereign, inasmuch as certain sovereign rights (Hoheitsrechte) were strictly reserved for them. The significance of this is that it constitutes an early development of the theory of the separation of powers. Moreover, its articulation by Gagern and Welcker preceded the publication of de Tocequille's famous Democracy in America, thus demonstrating that the latter's ideas were not merely repeated by, but had precedents in, the Germanic tradition of federalism [44].

Second, previous German federalism had been predicated upon the monarchical principle. Combined with the adherence by some to the principle that all states - federal or otherwise - required a human being at their head, this amounted to one of the most intractable problems for German federalism, since Austro-Prussian rivalry meant that there was no likelihood of a peaceful resolution to the issue of who would occupy this position. However, German liberal

federalism had by 1850 taken on board the possibility of a republican federal state. This development is not necessarily to be attributed to the influence of the United States, for German liberals (eg. Welcker and Zachariae) were also greatly influenced by Swiss practice.

A third innovation which liberal federalists brought to the Germanic tradition of federalism concerns the issue of the relationship within an intrastate-territorial federation between the citizens of its constituent states and the centre. The traditional perception had been that a federation was a union solely between the governments of the states, while individual citizens had no relationship to the decisions of the federation unless and until these were enacted by the parliaments of their individual states. In the first half of the nineteenth century, Germanic federalism changed to include the view that the central authority of an intrastate federation did act directly on the citizens, who were now deemed to have a double citizenship. This aspect was of course inextricably linked with a fourth innovation, namely, the gradual acceptance of majority voting by the central legislature and an intrastate federation's legitimate right to intervene in the internal affairs of its constituent states. That is not to say that the latter was universally accepted, nor that it amounted to an unrestricted entitlement. As just mentioned, the notion of co-ordinate and independent exercise of sovereign rights by both the centre and the constituent units was increasingly the norm, especially after Waitz's contribution (1853 & 1862).

Lastly, during 1815 to 1850, Germanic federalism witnessed important changes in respect of the proposed organisation of

intrastate federations. Of these, the most important was perhaps the view that such federations ought to be composed of two chambers, one representing the constituent states and the other representing the population of the federation. This idea of bicameralism of course made intrastate federation not only considerably more acceptable to German and Swiss conservatives (see Chapter 5), but also to German liberals, since the possibility of bicameralism permitted the much sought after extension of the franchise, while compromising with the extant monarchical/aristocratic principle. It also resulted in the development of a new dimension of Germanic federalism.

In Chapter 4, it was stated that one aim of Part 3 of this thesis was to establish which of the dimensions of Germanic federalism identified in Part 2 were articulated during 1815 to 1850 and whether any new dimensions appeared. The first point to be made is that during 1815 to 1850, liberal Germanic federalism included references to three of the dimensions of Germanic federalism already identified in this thesis. The first is interstate-chiliastic federalism, which remained the ideal for a number of liberal federalists, including Fries and Behr. However, as practical and philosophical considerations moved from the issue of absolutism - where sovereignty was seen mainly in terms of external defence and internal order - to concern with the "rights of man" and the internal, constitutional and socio-economic development of the state, so federalism came to concentrate predominantly upon intrastate federation. Almost all liberal Germanic federalists referred to those

dimensions of Germanic federalism which this thesis has characterised as intrastate-territorial and interstate-confederal.

This chapter has also shown that in addition to these three dimensions, there emerged among radical liberals in both Germany and Switzerland a new dimension of Germanic federalism, which posits an intrastate federation different from the two intrastate varieties encountered previously. It is different from the intrastate-corporate federalism of Althusius, in that the purpose of the federation is not true worship and the entrenchment of the corporate rights of its constituent units. It is also different from the intrastate-territorial federation identified with, for example, Hugo and Puetter, since it is not composed of sovereign states and nor is sovereignty divided between (the governments of) its constituent units and the centre. Instead, the exponents of what has in this chapter been termed "intrastate-popular" federalism expressly state that in the federation they prescribe for their countries, sovereignty is located in the people. One of those authors (Troxler) considers the constituent units to be the people, while others (Struve and Fazy) argue that the constituent units are both the people and the sub-state territorial divisions. All three agree that the main purpose of this intrastate-popular federation is the promotion of legal and political equality and of popular sovereignty.

This leads us to the third subject of these concluding remarks, namely, the motivation behind the federalisms examined. It will be recalled that this thesis set out to demonstrate the ideological nature of federalism and to test

the validity of the Riker hypothesis regarding the primacy of military factors for the desire to establish federations. There are examples of federalism considered above, in which Riker's "expansion condition" (1964 & 1975) does apply. A relevant case is that of Fries. However, this chapter has demonstrated beyond any doubt first, that military considerations were frequently not articulated and second, that even where they were expressed, they were often not the prime motivation of the relevant federalism. They were frequently used (eg. Zschokke) merely to rationalise what were primarily political concerns. In short, this chapter has proven that federalism was used as liberal political ideology and that the prime motivation for the various federal prescriptions of liberal Germanic federalism were political, rather than military.

The language used by liberal Germanic federalism varied. Some articulated their federalism in academic language (e.g. Welcker & Behr), while others resorted to polemics (eg. Gagern & Troxler). Moreover, there were also differences between those who utilised idealist terminology (eg. Fries & Troxler), and those who were more pragmatic (eg. Fazy-Pasteur & Welcker). Finally, there were considerable differences in the extent to which the exponents of liberal Germanic federalism examined above were committed to nationalism. In general, the greater the author's commitment to nationalism, the greater the likelihood that he would advocate intrastate federation rather than confederation. Significantly, while nationalism resulted in a reduced emphasis by some such as Fries upon liberal constitutionalism, there were others

such as Troxler for whom the two goals did not become mutually exclusive and who still retained cosmopolitan ideas. Moreover, there were some liberals (eg. Cherbuliez) who thought of nationalism not at the level of the state, but at the level of the constituent units of the federation.

The preceding sections of this chapter have also shown that the type of federation proposed by German and Swiss liberals was significantly influenced by considerations of political tactics. In particular, those proposing confederation did so primarily out of a desire to avoid central conservative interference which might undermine local liberal advances. Examples include moderate liberals such as Fazy-Pasteur, as well as radical liberals such as Behr. Others equally concerned by the threat to liberal structures by conservative interference in the internal affairs of the constituent units of the federation concluded that the best strategy was to guarantee those structures through the establishment of a strong federation, governed by liberal principles. This view was held by both moderate and radical liberals. Examples are Gagern and Pfyffer, and Struve and Fazy respectively.

The difference in the types of federation advocated was thus not a consequence of differences in political ends. Instead, it resulted from differences in the objective or subjective situation of the relevant federalist. In other words, the federalism advanced was contingent upon perceptions of what type of federation was most likely to facilitate the liberal ends sought. For example, though Behr, Struve and Fazy largely agree in their radical liberal goals, Behr advocates a confederation, the constituent states of which

would be completely independent in their internal affairs, while Fazy and Struve prescribe an intrastate federation, the political structures of the constituent units of which are to be prescribed by the federal constitution and enforced by the federation's central authority. These different prescriptions can be understood only as a consequence differences in the objective or subjective political context in which the men were writing. From the perspective of relatively liberal 1820 Bavaria, Behr regarded the conservative forces determining the central authority of the German Bund as a hostile threat to liberals and thus advocated a federation that would help isolate Bavaria from their influence. Fazy's federalism was written in the relatively conservative Geneva of the 1830s and, like Struve in 1848, Fazy regards the centre as a potentially liberalising force. The type of federation proposed is therefore demonstrably not the result of fundamental considerations of the need for their countries to conform to some abstract, ideal-type federation. Instead, it is a product of political tactics, of the relevant writer's perception of which type of federation is, in the given circumstances, best suited for the realisation of his political goal.

To conclude, this chapter has shown that federalism was used by liberals as a political ideology. The nature of the federation proposed and the manner of its advocacy were the product of considerations of political priorities and political strategy. All the exponents of federalism examined were influential in the political processes of their respective countries. Moreover, there was considerable

cross-border interpenetration between the federalisms of the various liberals discussed. For example, it is clear that Swiss liberalism was not distinct from that of Germany, but was closely allied to it. German liberalism was spread into Switzerland through key persons. For example, Escher, Usteri and Rengger (Flach, 1916, 57-73), were powerfully influenced by the Enlightenment ideas they acquired while at Goettingen, and helped spread them upon their return to Switzerland. Similarly, Zschokke and Snell, key figures in moderate and radical Swiss liberal federalism respectively, were in fact immigrants from Germany. Troxler was of course another Swiss liberal who was greatly influenced while a student in Germany by the same ideas that moulded German federalists such as Gagern. For their part, the contributions of Gagern and Welcker were to prove important for Germanic federalism not only in Germany, but also in Switzerland (Lauber, 1910, 22) [46], while Troxler himself exercised a significant influence upon the ideas of Welcker [47].

Finally, there is no escaping the paradox of the fact that while during the 1798 to 1815 period many liberals had been vehemently opposed to federation, during the Regeneration they came to be among its most avid champions. Indeed, by 1850, the most radical of liberals (eg. Struve and Troxler) could claim that federation and radical political liberalism were intrinsically and inextricably linked. Troxler, Fazy and Struve all saw radical liberalism as the staunchest defender of true federation.

NOTES FOR CHAPTER 6

1. For details of a wider selection, see for example Brie

(1874), Deuerlein (1972), Mogi (1931) and Wild (1966).

2. Gagern's brother claims (1856,387) that the essay was written "twenty years" before the events of 1848 and 1849. However, Brie (1874,54f) argues convincingly that it was written at the end of 1833.

3. Gagern was of course not the only German liberal to be anti-Semitic. As was noted above, that was also a feature of his erstwhile teacher, Fries.

4. This argument was also utilised by Behr and by Cherbuliez. See 3.2. above and 6.3.2. below respectively.

5. "Of federal constitutions and federal reform, of creation and limits of federal authority. With reference above all to the Swiss federation and to Troxler and Zachariae's writings on it" (Welcker,1834).

6. See Chapter 4 and Chapter 6.1. above.

7. Both Behr and Struve accepted the notions of interstate confederation and intrastate-territorial federation. Behr also conceived of a chiliastic-universal federation. See above.

8. The nature of the federation was of course the subject of some newspaper coverage and one can get a feel for some liberal concerns about the Pact by an evaluation of the press. See Wild (1966,46-56 & 67-82) for such an analysis.

9. In Rappard's opinion, (1941,90) Pfyffer was therefore justified to claim, on the morrow of the new federal constitution of 1848, that he had in 1831 been the first to propose thoroughgoing federal reform.

10. The Rossi Pact, though rejected by liberals as too conservative, came to be called the "Pfyffer Booklet" by some conservatives, because of its alleged similarity to Pfyffer's 1831 proposals (Baumgartner,1854,I,382),

11. Similarly, Wild (1966,116) argues that during the early 1830s, the liberals' proposals were "... built upon a clearly unitary foundation; it was only a question of time as to how long their concessions ... [sic to the cantons] would last. In principle, the independence of the cantons was given up ...".

12. The canton being referred to here is Neuchatel, which had become a full member of the Confederation in 1814 with the full approval, indeed the insistence, of its ruler. The fact that throughout the Regeneration it remained a principality of the Prussian crown was a source of much annoyance for Swiss liberals. (See Pfyffer's comments above and those of Fazy-Pasteur below.) It was only in 1848 that an internal republican revolution succeeded in removing it from Prussian rule, though this gave rise of a distinct possibility of armed Prussian intervention. 1856 saw an unsuccessful royalist counter-coup.

13. It is at times difficult to draw a precise distinction between exponents of moderate liberalism and of reformist conservatism. This is the case with Cherbuliez, whom some consider to have been a conservative (Lauber, 1910, 32). In support of such a conclusion, one could cite his statement of opposition to total reform (1833, 9) and to centralisation in theory (ibid, 31f). Moreover, like Bluntschli, Cherbuliez's willingness to support reform is motivated less by a desire to see the introduction of specific principles of social, economic, or political organisation, than by a feeling that in order to preserve Switzerland as an entity, it is necessary to accommodate extant pressures.

Alternatively, others regard Cherbuliez as more of a liberal (Wild, 1966, 132). In his 1833 essay, Cherbuliez expresses regret at the post-Napoleonic "duel to the death with liberal ideas" (29f) and speaks about the "yoke of the Reaction" (ibid, 34). In his federalism (see below), he is prepared to see far more centralisation than Bluntschli and is far more supportive of liberal ideas. In addition, it is legitimate to regard his statement about the inevitability of reform as indicative of a commitment to liberal ideas of progress: "The development of human societies has its laws and its phases, just as the development of individuals. Just as there are physical necessities, so too are there social and political necessities." (10) On balance, we therefore consider Cherbuliez a moderate liberal, rather than a reformist conservative.

14. All three proposals have been dealt with above. See 5.3.3. for Bontemps/Maillardoz, (1830) and immediately above for Pfyffer (1831) and Roger (1831).

15. To be precise, Fazy-Pasteur's evaluation excludes Pfyffer, for he concludes that it is impossible to come to a judgement on the latter's writings yet, since they are constantly being modified (1831, 16).

16. Fazy-Pasteur (1831, 21) is especially critical of the stipulation in Roger's draft constitution (1831, 39) that twelve years after the constitution has come into force, persons not versed in reading and writing in German will not be permitted to be Diet representatives, or members of the Federal Government, and that from then onwards, no Diet speeches other than those made in German will be minuted.

17. It may be recalled (see section on Rossi in 5.3.3. above) that Article 6 says that cantonal constitutions must be guaranteed by the Confederation, but that to receive such a guarantee, they must "... a) not contain provisions contrary to the federal constitution; b) provide for political rights to be exercised in accordance with representative or direct democratic principles...; c) declare the possibility and method of their revision by legal and constitutional means ..." (Acte, 1832, 7).

18. His support is not unqualified, however. Amongst other things, he proposes a certain dilution of some proposals, as well as that the economic and other specific policy changes formally be left out of the constitution, so as to facilitate

the acceptance of the proposal as a whole (1833,15-17).

19. Article 5 states that "The Confederation provides the cantons with a guarantee of their territory, their sovereignty and their independence ... the maintenance of public order within their interior, their constitutions, and ... the rights and liberties of the people, as well as the rights and the prerogatives of the authorities." (Acte,1832, 6). Article 52 m) spells out the circumstances in which the Confederation may engage in armed intervention in a canton in support of the constitutional rights and prerogatives enumerated in Article 5. The provisions to which Fazy-Pasteur objects are the following: " The Diet ... may intervene at the summons of the supreme executive power of the requesting canton. But it may also intervene without a cantonal summons ... In cases of the violent overthrow of a cantonal government, or when the latter is unable to invoke the assistance of the Diet; ..." (Acte,1832,33).

20. These include Bornhauser (1832), Kasthofer (1833) and Snell (1831 & 1839). See Wild (1966, esp.142-56).

21. The following biographical material derives from Goetz (1915).

22. Starting from an idealism akin to that of the early Fichte, Schelling had developed a "philosophy of nature", characterised above all by its organic and pantheistic vision of society (see footnote 23 in 3.2 above). Paradoxically, Schelling's organicism influenced not only the radicalism of Troxler, but also informed the thinking of conservatives such as Stahl (see 5.2.3. above) and of Romantics such as Goerres (see 3.2 and 5.2.2. above). See Meinecke, (1928,133f), Aris (1936,288-319) and Bluntschli (1867,540-44) also. There is very little in English on Schelling; see for example Watson (1892).

23. Troxler's tenure as a professor at Basel coincided with the outbreak of the conflict between the oligarchic, urban part and the democratic, rural part of the city canton of Basel. Troxler was an outspoken supporter of the latter half and of the young radicals' demonstrations against the urban elite. Not surprisingly, this eventually cost him his Basel chair (Goetz,1915,109-27).

24. See the 78 items listed by Goetz (1915,179-82). One of these (Troxler,1832) constitutes a compilation of Troxler's newspaper articles in one year and runs to about 50 articles.

25. An exception to this is to be found in an 1814 article directed at the Austrian representative in Zuerich with a view to seeking the latter's support for a post-Napoleonic constitution for Troxler's native Luzern which would have mitigated what Troxler considered the excessively centralised control of the canton. In the course of the pamphlet, he states that "no democracy is more repressive and disgusting than the demagogic variety, in that it makes the raw popular will sovereign ..." (1814,11). This deviation from Troxler's commitment to pure popular sovereignty may be

explained by the political needs of the moment.

26. For example, Troxler was the author in 1814 of an anonymous radical petition which called upon the restored aristocratic Luzern government to introduce direct popular elections. Troxler was imprisoned for 5 weeks, though he had then to be released for lack of evidence (Goetz, 1915, 24-8).

27. The following necessarily brief account of Troxler's philosophical views derives from a philosophical section of an essay written in 1814 (Troxler, 1814), as well as from summaries of four philosophical publications from the 1816 to 1820 period. The source for the latter is Goetz (1915, 34-8, 42-5 & 52-5). Incidentally, though there is no mention in his biography (Goetz, 1915) of any direct influence from Fries, it is interesting to note that upon his appointment as a teacher in Luzern, Troxler was (Goetz, 1915, 56) to introduce his students to the practice of physical education so typical of the German nationalist student associations with which Fries was heavily involved at Jena (see 6.2.2. above). More significant, perhaps, is the fact that like Fries, Troxler was committed to nationalism.

28. Thus in 1821, Troxler succeeded, despite the censorship that then existed, in publishing translations of the writings of Buchanan and Milton. His purpose was to counter Haller's patrimonial theory of the state and to assert the primacy of the people, the limitation of kings and the right of the people to rid itself of tyrants. Troxler was accused of defending regicide and thus threatening internal cantonal order, as well as compromising Switzerland vis-a-vis foreign powers. The outcome was Troxler's dismissal from his teaching post in Luzern (Goetz, 1915, 59-68).

29. The following account of Troxler's views on federation will be based upon his biography (Goetz, 1915) and some eleven of his political pamphlets, which span the whole of the period covered in this chapter. These are: Troxler 1814, 1822, 1832, 1833a, 1833b, 1833c, 1833d, 1833e, 1838, 1838 and 1848.

30. The relevant agreement was the "Covenant of Stans". See 2.1. above.

31. For details of its provisions, see the discussion of its proposals in 5.3.3. above, as well as Rossi (1832) and Acte (1832).

32. The following summary is based upon six of Troxler's pamphlets (Troxler, 1832 & 1833a-e), though the points are also to be found scattered throughout all the subsequent Troxler publications listed in footnote 29 above. One of the most succinct of the tide of polemical publications Troxler directed against the Rossi Commission's proposals is entitled "Of the Seven Cardinal Sins of the Federal Document" (Troxler, 1833b).

33. See footnotes 17 & 19 above and Chapter 5.3.3..

34. The following discussion of the contents of the draft will dispense with page references. Instead, reference will be made to the appropriate article number. For the text of the draft constitution, see Troxler (1833c,31-45). It is also reprinted in Goetz (1915,167-78). For commentary upon it, see Goetz (1915,136-8) as well as for example Lauber (1910,25-29), Rappard (1941,94-6) and Wild (1966,123-7).

35. See the very interesting indications which Goetz (1915, 167-78) gives of the sources of many of the articles of Troxler's draft constitution. For details of the Helvetic Republic constitutions, see Chapter 3.1 above and the references cited in footnote 5 of that chapter. Interestingly, Troxler later published the relevant seven Helvetic constitutions and wrote a short introduction to them (Troxler,1838).

36. Two months later (1833d,9), Troxler insists that his demand for a federal republic with popular representation at both the local and the federal level is no modern invention, but is the basis of the ancient Swiss federation. "Without national representation there is no nation, without popular representation no Volk in the federation and no federation for the Volk".

37. Given Fazy's Protestant background and vehement opposition to the Catholic Sonderbund, the support of the Catholics might seem paradoxical, but is understandable if one considers that the aristocratic classes whom the revolution replaced were the mainstays of Geneva's Calvinist state church.

38. Fazy's radicalism did have its limits, however. He was not a socialist, as is evident from his opposition to measures such as income tax, which he considered an illegitimate interference with private property.

39. The pamphlet's title states that it is a compilation of articles previously published in the Journal de Geneve. This is a publication over which Fazy exercised some influence. The first ten sides of the thirty two sides of the undated pamphlet are an almost ad verbatim copy of an article which appeared in the Journal de Geneve on September 15th 1831 (Fazy,1831). The remaining material comprises three sections. The first contains a draft federal constitution (Fazy,n.d., 10-17); the second is a commentary on that draft (ibid,18-23) and the third relates to Fazy's proposals for how the reform process ought to be undertaken (ibid,24-32). This later material has been dated as deriving from 1835 or 1837 (see Rappard,1941,105f).

40. In particular, Articles 2,3,7,13,15,18-20 & 22, (Fazy, n.d.,11-17).

41. See for example Fazy,n.d.,3-7 & 19-22.

42. Two points need to be made. First, the above exposition of Troxler's views is based upon his opinions in the early 1830s and upon the draft constitution of March 1833 (1833c)

in particular. He subsequently departed from the latter and on the eve of the new Swiss constitution published a translation of the United States constitution and recommended the adoption of its bicameralism (1848, esp. 3-12). The extent to which his views on bicameralism had changed is evident from the fact that he was wholly content with the new constitution adopted that year (Goetz, 1915, 161). Second, it must be stressed that not all radical Swiss liberals were supporters of bicameralism. Some such as Snell (1831) advocated unicameralism (see Fazy, n.d., 22f). There were of course also others who supported a unitary state, though they are irrelevant for this thesis. (see Wild, 1966).

43. As the dispute over Swiss federal reform increasingly became intertwined with the denominational conflict between Catholics and Protestants (see 4.2. above), Troxler became estranged from his erstwhile radical comrades, who conducted a bitter and often personal literary battle with him. This conflict was a consequence both of Troxler's Catholicism and of his belief that the religious issue was distracting the Swiss from the prime goal of political reform (Goetz, 1915, 141). At one stage (Goetz, 1915, 150-59), Troxler was accused of having lapsed into an incurable mysticism akin to that of Goerres (see 3.2 and 5.2.2. above for Goerres' mysticism). For Troxler's views on the confessional issue, see, for example, Troxler (1840), which constitutes a compilation of various newspaper articles he had published during 1838.

44. That is of course not to deny that his ideas were of significance and furthered the Germanic debate, as is demonstrated by the later contribution to Germanic federalism of Waitz (1853 & 1862).

45. These differences in emphasis upon nationalism are in part explainable by distinctions in age cohort. Thus those such as Zachariae, whose formative period coincided with the pre-Napoleonic period, were more influenced by Enlightenment ideas, while those such as Gagern, whose experience of national humiliation and the subsequent uprising against Napoleon were inclined to a greater emphasis upon nationalism.

46. Note also that the ideas of Gagern were known in Switzerland (see Monnard, 1849)

47. See Brie, (1874, 68), Welcker (1834, 4 & 59-64) and Troxler (1848, 31-7).

PART 4 CONCLUSION

CHAPTER 7 CONCLUSION

7.1. INTRODUCTION

Chapter 1 spelled out two main aims for this thesis (pp.37-44 above). The first was to fill a gap in the Anglo-Saxon academic literature on matters federal by identifying the nature of the tradition of federalism in Austria, Switzerland and Germany. As part of that endeavour, the thesis was to show both the multidimensionality of that tradition and the extent to which it is distinct from the Anglo-Saxon paradigm and constitutes a tradition in its own right: a Germanic tradition of federalism. Building upon the distinction it advances between federalism and federation, this thesis' second main aim was stated to be to examine, by reference to the period in Austrian, Swiss and German federal history preceding the advent of modern political parties, the use of federalism as a political ideology. That is to say, how federalism was employed in political disputes as a vehicle for the rationalisation and or promotion of its exponents' goals.

It was also asserted (p.41 above) that together, these two aims amounted to providing "a preliminary framework for the analysis of West European federal systems in a new context, namely, by reference to the interaction within them of federalism and federation" and that by doing so, the thesis hoped to "furnish insights into not only how and why federalism is a significant element in explaining the

dynamics of federations, but also into how and why parties are such important agents in their maintenance”.

The purpose of this concluding chapter is not to rehearse this thesis' detailed discussions of the various federalisms covered, but to outline the extent to which we believe that the thesis has fulfilled its self-appointed tasks. To do so, this chapter will be structured around three issues. First, section 7.2. will summarise the main findings of the thesis concerning the nature of the Germanic tradition. Thereafter, section 7.3. will highlight what we consider to be some of the main insights offered by the application in this thesis of our approach of treating federalism as a distinct and ideological phenomenon and analysing its role in federations. Finally, 7.4. will conclude by summarising the contributions which we believe that this thesis has made to the Anglo-Saxon academic debate on federation.

7.2. THE GERMANIC TRADITION OF FEDERALISM

In order to establish the type of federation which an exponent of Germanic federalism was discussing, this thesis asked three basic questions. These concerned the nature of the units constituting the federation, the location within the latter of sovereignty and the formal purpose of the federation. On the basis of the answers to these questions, the thesis identified various "dimensions" of federalism. The preceding analysis of Germanic federalism from its early seventeenth century origins until 1850 has found it to contain six such dimensions. They are depicted in Figure 2 overleaf. Two refer to interstate federations, namely, the interstate-confederal and interstate-chiliastic types. The

four remaining dimensions relate to intrastate federations and comprise: intrastate-corporate, intrastate-territorial, intrastate-imperial and intrastate-popular federalism.

FIGURE 2: The Dimensions of Germanic Federalism Articulated by 1850.

CONSTITUENT UNITS	LOCATION OF SOVEREIGNTY	PURPOSE OF FEDERATION	TYPE OF FEDERATION
Corporations & Estates of The Realm	In The Body Politic	Entrenchment Of Corporate Rights And True Worship	Intrastate-corporate
Cities & Principalities With Effective Territorial Supremacy	Imperial "Majesty"	Resurrection Of "Imperium" And "Sacerdotium"	Intrastate-imperial
Territorial Units "Analogous To States"	Divided Between Constituent Units And The Centre	Combination Of Civic & Security Benefits	Intrastate-territorial
Sovereign States	Constituent Units	Constituent Units' Internal And External Security	Interstate-confederal ("System of States")
Sovereign States	Constituent Units	Universal And Perpetual Peace	Interstate-universal/ Interstate-chiliastic
The Sovereign People Divided Into Territorial Units	In the Central Representation Of The People	General Popular Welfare	Intrastate-popular

The Germanic tradition of federalism is thus without doubt multidimensional. Moreover, the existence within it of the intrastate-corporate dimension demonstrates that Livingston (1952,85) is wrong to assert that "writers who profess to see federal elements in the various forms of pluralism, such as feudalism or corporativism ... have added a meaning that was not there before." (see pp28-30 above). In defence of Livingston, one might respond that this thesis has only identified one dimension of the Germanic tradition of federalism in which the constituent units of the federation being discussed were not territorial. That would be correct. However, not only is one example sufficient to disprove his allegation, but if this thesis had been able to consider the development of Germanic federalism in the second part of the nineteenth century, it would have been able to reinforce its argument in two ways.

First, it would have been able to direct attention to the revival of the intrastate-corporate federalism of Althusius. It was expressed in the academic writings of Gierke (1880), but was also to be found in the political realm. One exponent was Georg Winkelbach, the first edition of whose four volume Investigations into the Organisation of Labour (1886) was published in stages from 1849 [1]. Once political parties began to be established, intrastate-corporate federalism was also to be expressed in the party manifestos of, for example, Catholic-conservatives (Wedl,1969; see Weber,1980a,25-8 also).

Second, as the political spotlight was increasingly turned on the social dimension, the latter half of the nineteenth century witnessed the articulation of at least two new dimensions of Germanic federalism in which the proposed

federations include units that are not territorially-based. The first type of non-territorial federation to be advanced is that usually identified with Proudhon (1863). It takes the interest of those such as Winkelbach in the possible role of federation in the social and economic sphere a stage further and proposes a federation that is not to constitute a state, nor to be composed of states and would therefore fit into neither our intrastate, nor our interstate category. Its constituent units are to be not territories, but economic units. In view of this and the fact that it is not to have an overarching sovereign head, one might term this first new type of non-territorial federalism "acephalous-economic" [21].

Two authors associated with the second new, non-territorial federalism articulated in the latter half of the nineteenth century are Fischhof (1870) and Renner (1899 & 1902). Their proposals amount to a re-organisation of the Austro-Hungarian monarchy on the basis of a federation comprising not only territorial units of rule, but also the various component nationalities of that Dual Monarchy. The latter would, regardless of their territorial location, also be constituent elements of the federation (see Wierer, 1960 & Schlesinger, 1945 also). One might term this second additional dimension of Germanic federalism "intrastate-national".

To demonstrate beyond doubt the variegated nature of the Germanic tradition of federalism was only one part of the first main aim of this thesis. Chapter 1.3 said that this thesis would also show that the Germanic tradition of federalism is significantly different from the Anglo-Saxon and constitutes a genre in its own right: a Germanic federalism. The next task of this section is to summarise what the above analysis of the Germanic tradition suggests

its distinctive elements to be. These can be grouped under two headings.

The first relates to the manner of the Germanic tradition's articulation. As our numerous examples have shown, Germanic federalism has been articulated not only at a wide range of different intellectual levels, but also through the medium of in part very different political philosophies. The levels used vary from polemicism such as that of Geiger, Gagern, or Troxler, to philosophical treatises such as that of Althusius. At this higher intellectual level, there have been exponents of Germanic federalism whose views were put forward in a manner very similar to that of much of the Anglo-Saxon tradition [3]. That is to say, they used the mechanistic language of rational, liberal constitutionalism, emphasising aspects such as representation, separation of powers and parliamentarism. Examples include Welcker (1834 & 1836), Behr (1808 & 1820) and Struve (1847 & Mommsen, 1952).

On the other hand, the Germanic tradition includes contributions as varied as, for example, the transcendental idealism of Fichte and Kant, or the mystical Romanticism of Goerres (1814/16, 1819 & 1821). It also contains a large proportion of theological argumentation, of which authors from Althusius to Geiger, Goerres and Stahl are examples. That is not to suggest that religious, or theological argumentation does not exist in the Anglo-Saxon tradition. An example would be the emphasis by Elazar (eg. 1987) upon the biblical origins of the allegedly core notion of covenant. However, the Germanic tradition is different both by virtue of the extent to which such argumentation is advanced and because of the fact that much of it is of course closely

linked not to the Protestant tradition inherited by the Anglo-Saxon literature, but to Roman Catholicism.

The second set of factors that mark the Germanic tradition out as distinct from the Anglo-Saxon relate not to the manner of its expression, but to its substance. The structures of the federations proposed include a revived Holy Roman Empire, i.e. a federation with authority in the ecclesiastical and secular realm divided between the Pope and the Emperor respectively, as well as an intrastate-corporate federation with feudal elements. Neither type of structure is to be found in the Anglo-Saxon tradition.

This raises the interesting question of what caused the distinctiveness of the Germanic tradition. This thesis suggests that in any answer to that question, two basic factors must figure prominently. The first is the different philosophical milieu in which it developed. Especially from the eighteenth century, that milieu was characterised above all by the interplay of two broad elements. On the one hand, there was the extremely abstract philosophical rationalism of the likes of Kant and Fichte, as reflected in the at times metaphysical idealism of, for example, Fries, Stahl and Troxler. While parts of that philosophical rationalism also coloured the background to the Anglo-Saxon debate on federation (e.g. J.S. Mill), the latter was much less abstract. Moreover, though the ideational background to Anglo-Saxon federalism also contained a struggle between rationalism and conservatism (eg. Burke), the nature of the conservative element in the German speaking states was different. There was a much stronger presence of anti-rational conservative philosophy and, in the case of many Romantics such as Goerres, even irrationalism. Moreover, the

conservatism of German-speaking states also contained close links to feudal and religious (often Catholic) ideas of organicism and social hierarchy. In addition to the philosophical milieu of which it was in part a reflection, the second factor causing the Germanic tradition of federalism to be distinct from its Anglo-Saxon counterpart was its political context. This included the political weakness in most of Germany of liberalism; the strength of feudal and corporatist institutions, and the persistence of monarchical structures.

We will return to the significance of the political factors shortly (see 7.3 below). Prior to that, there is one last factor that points to the existence of a Germanic tradition that needs to be stressed: its interrelated nature. First, this thesis' detailed analysis of Germanic federalism has demonstrated that the "dimensions" of that tradition were articulated across the German-speaking states of Europe. The only exception is the intrastate-imperial dimension, which was articulated throughout the states of Germany, but, for obvious political reasons, not in Switzerland. Second, there have been frequent illustrations in this thesis of the fact that many of the individual contributors to the Germanic tradition were influential in more than one of the countries (examples include liberals such as Welcker and Zachariae, as well as conservatives such as Haller and Bluntschli).

For all the reasons set out here, we are confident that this thesis has both identified the Germanic tradition of federalism and demonstrated its distinctiveness. Having dealt with the ways in which this thesis has fulfilled the first main task it set itself, it is time to move on to a discussion

of what it has achieved as regards its second main aim.

7.3. FEDERALISM AS POLITICAL IDEOLOGY

Put simply, the second main aim of this thesis amounted to demonstrating that by distinguishing between federalism and federation (see pp30-34 above) and undertaking a detailed analysis of how the former operates within the latter, one can gain interesting insights into both the political nature of federalism and the interaction of federalism and federation. Though our detailed investigation of federalism as political ideology was undertaken primarily in Part 3 of this thesis, which focussed on the period from 1815 to 1848, the discussion in Part 2 of Germanic federalism prior to 1815 also referred to federalism's political role. We believe those chapters to have offered the following six main insights.

First, they have demonstrated the Riker hypothesis (1964 & 1975) regarding the allegedly universal relevance of his "military" and "expansion" conditions to be in need of modification. When prescribing federation, a few exponents of Germanic federalism (eg. Fries, Goerres and Stahl) undeniably did have expansionist aims. Moreover, the motivations of a significant number of federalisms did include external military security. However, this thesis has also shown first, that neither of Riker's two conditions were universally relevant. Second, federalism was proposed not only to instigate, but also to avoid expansionism. This thesis gave the example of the cosmopolitan federalism of Heeren, which advocated confederation not in order to facilitate German expansionism, but to prevent it^[4]. Third, in a number of

the federalisms where military security was cited as one of the goals of a proposed federation, our detailed investigation has shown that military considerations were often not as significant in motivating the federalism as might prima facie appear to have been the case. A good example is Zschokke, whose emphasis upon military matters was largely a product of the need to restrict his federalism to politically "safe" issues, though his real concern was to prescribe a federation which would promote liberalism.

In sum, while it may be correct to stress security and even expansionist considerations as the prime factors motivating confederations of the ancient and early modern periods, that approach is not very helpful for an understanding of modern federalism. As this thesis' detailed investigation of Germanic federalism from the late eighteenth century until 1850 has shown, those factors were not always as dominant as Riker suggests [5]. Though military considerations were still highly salient in the period (see Chapter 4.2 above), excessive emphasis upon the issue of security causes one to lose sight of what it is that was (to use Riker's language) to be defended, or expanded.

While the first conclusion which our investigation into the use of Germanic federalism offers is the "negative" conclusion that security issues were not as important a factor in determining federalisms as has been suggested, our second, positive finding is that a much fuller understanding of both the motivations and function of federalism can be achieved by taking into account that it is almost invariably advanced as part of a domestic political debate, where its purpose is to defend or promote particular political causes. Its utilisation for such political purposes makes federalism

a political ideology.

Not only have we shown federalism to be a political ideology, but we have also documented how, in the period immediately prior to the crystallisation of the party systems of Austria, Switzerland and Germany, federalism was used by individuals and groups right across the political spectrum for the promotion of their political aims. At the one end of that spectrum, it was harnessed by reactionary conservatives (eg. Jarcke and Haller), for the defence or re-establishment of, for example, a feudal social, economic and political hierarchy. At the other end of that spectrum, it was utilised by revolutionaries like Struve, whose desired federation would have brought about not only popular sovereignty, but also progressive income tax, a wealth tax, workers' profit sharing and a minimum wage. Nearer the "centre" of this spectrum there were liberal constitutionalists (eg. Welcker and Cherbuliez), who hoped that the federation they proposed would ensure, for example, the separation of powers, due legal process, parliamentary sovereignty and freedoms of speech and of the press.

Providing this illustration of the variety of political uses to which the political ideology of federalism was put is valuable both in its own right, as well as by virtue of the fact that it explains why almost all modern political parties in Austria, Switzerland and Germany can and do claim, with some justification, to be the heirs of the Germanic tradition of federalism [6]. In Switzerland, for example, the liberal victors of the 1847 civil war became keen defenders of the new federation and presented federation as an intrinsic and long-standing component of liberalism (eg. Rappard, 1948;

Nawiasky, 1918 & Fleiner, 1916). For their part, Swiss Catholic conservatives, confronted by a largely liberal and Protestant national majority, claimed that it was they who were the true defenders of the federal principle (see Segesser, eg. 1877 & Mueller, 1938). Especially during the Kulturkampf of the 1870s and 1880s, Catholic groupings in both Germany and Switzerland used federalism to defend Catholic values and the Roman Catholic Church against the secularising influence of the central authority of their respective federations (Frantz, eg. 1879). In the Austro-Hungarian Empire, on the other hand, federalism was used by various liberal and nationalist groupings as vehicle for their resistance against what was in that federation a Catholic and conservative central authority (Wierer, 1960; Schlesinger, 1945). While the manner in which some of these federalisms were articulated made the wider, political purposes of their authors obvious (eg. Frantz, 1879), that was not always the case.

This brings us to our third major finding about federalism as political ideology: the need to distinguish between what one might call the various "agendas" of federalism. All the federalisms considered in this thesis ascribed to their federations certain formal purposes, as summarised in Figures 1 & 2. At times, this formal, or manifest agenda does make at least some of its exponent's political aims reasonably clear. Examples include the interstate-chiliastic federalism of Kant and Fichte, as well as the intrastate-imperial federalism of Goerres. However, there are many more occasions when it is only by eliciting a federalism's latent agenda that one can establish the full motivations behind a proposed federation. Examples of the numerous occasions on which our investigation into what this thesis has earlier (p350) referred to as the

"small print" of federalism has provided a much better understanding of the real motivations of a federalism than would otherwise have been the case include the federalisms of Behr (1820), Bontemps and Maillardoz (eg.1830) and Bluntschli (1831).

Fourth, this thesis' assertion that federalism must be understood in its political context has been underscored by its illustration of two aspects. The first is the politically contingent nature of federalism. This was done in part by an analysis of its various "agendas", but also by establishing that the political situation of an exponent of federalism was perhaps the most important factors determining the type of federation prescribed. Since this has been a recurrent theme of this thesis, one example will suffice for now. Though Behr and Fazy were both radical liberals and shared many political goals, the former's federalism of 1820 was adamant that Germany must remain an confederation, while Fazy's federalism of the 1830s was equally convinced of the need for a Swiss Swiss intrastate federation. This disparity in their prescriptions is largely a product of their respective political situations. From the perspective of (relatively) liberal Bavaria, Behr was concerned to keep the more conservative central authority at bay. For his part, Fazy was located in conservative Geneva and hoped that the centre of the intrastate federation he advocated would be a liberalising influence (see 6.2.3. & 6.3.3. above).

Further evidence provided by this thesis of the politically contingent nature of federalism concerns cases where specific exponents of Germanic federalism, or specific political groupings have altered the type of federation they

proposed as a direct result of considerations of political strategy. For example, Haller's prescriptions regarding the most appropriate type of federation for Switzerland changed considerably (see 3.3 & 5.3. above). In 1798, he was willing to countenance either an intrastate, or an interstate federation, but in 1799, he became an advocate of the former, since that appeared the best way to secure a restoration of the conservative cantons. In 1801, however, he again supported intrastate federation, when it became obvious that an interstate federation was no longer a politically viable proposition. Finally, in the period after 1815, Haller was of course a defender of the confederal Swiss Federal Pact. Another exponent of Germanic federalism whose federal prescription changed as a direct result of tactical considerations is Stahl. Although he did not vacillate as much as Haller, it is clear that his decision to leave his earlier preference for a German confederation and to support a monarchical Bundesstaat was a consequence of the changed circumstances brought about by the 1848 revolutions. Indeed, it has even been shown how changes in the political situation between 1848 and 1849 impacted upon his federalism (see 5.2.3. above).

Such tactical reassessments were evident not merely in individual exponents of federalism, but also in the approach to federation of political groupings. The Swiss liberal Unitarians of the early nineteenth century are a good example. They were initially totally opposed to any kind of federation (eg. Kuhn), but by 1815 became supporters of a Swiss confederation (eg. Rengger), since they were in a political minority and were afraid that a more centralised federation would enable the conservative majority to threaten

their local liberal advances. By the late 1840s, however, when they themselves constituted the national majority, most liberals (eg. Pfyffer) became supporters of intrastate federation as a means of countering local conservatism [7].

On the other hand, it would be wrong to assume that federalism was a purely dependent variable. The second aspect of federalism's relationship to its political context that was highlighted is the fact that some of the federalisms discussed were themselves a significant political force. For example, the federalism of Stahl impacted upon the proceedings of the Erfurt Union, the federal proposals of which were similar in many respects similar to the federation adopted by Germany in 1871 (see 5.2.3.). The federalism of Gagern also exercised an influence upon the course of German politics, albeit through his brother Heinrich, who was to preside over the Frankfurt National Assembly. Another federalist who was a leading figure at Frankfurt is Welcker (on both Gagern & Welcker, see 6.2.2.). In Switzerland, examples of influential federalisms include that of Monneron, of whom it is alleged that his federalism was read by Napoleon, whose subsequent Mediation constitution it helped determine (see 3.3.). For their part, both Rossi and Troxler appear, each in their own way, to have contributed to shaping the Swiss federal constitution adopted in 1848 (see 5.2.3. & 6.3.3. resp.). In other words, it would be as erroneous to claim that federalism is a purely contingent variable, as it would to allege that federation is the mere product of federalism. The relationship between the two is clearly symbiotic.

The final point of this section is that when combined, the

various findings listed in this concluding chapter appear to suggest a preliminary framework for the analysis of West European federal systems in a new context: by reference to the interaction within them of federalism and federation.

First, even though the manner of its articulation, the nature of its prescriptions and the political goals motivating it will vary, it is clear, as we have argued elsewhere (Luther, 1985 & 1986), that federalism is an intrinsically legitimate ideology in all federations. In other words, federations by their very nature lend themselves to what Elazar (1979, 42) has described as "a continuing seminar in governance". Second, as a political ideology, federalism can be utilised for the legitimation of an existing system, or for its reform. Either use of federalism is potentially significant for what has earlier in this thesis been referred to as the "maintenance" of the "federal bargain" (Riker, 1964, 51, see point 4 in 1.2 above). That is to say, federalism can be used either to help secure an existing distribution of power and influence between the central authority and constituent units of a federation, or to change that distribution.

Third, it will be recalled that in Chapter 1.2 above, we expressed agreement with the view that one of the prime agencies that influence the "federal bargain" is the party system of a federation. This thesis has now shown how, in the period prior to the establishment of the modern party system, it was the political groupings constituting the antecedents of modern political parties that were the main exponents of federalism, as well as how, because federalism was utilised by groupings across the whole political spectrum, it is possible for modern political parties to

legitimately claim some part in the tradition of federalism. Together, these two facts help explain why it is political parties that are today the main vehicles of federalism.

What our thesis therefore suggests is that rather than examining merely the legal and institutional aspects of how the "federal bargain" is maintained, one ought perhaps to devote greater attention to the role which federalism plays, particularly through the medium of the party system, in sustaining, or changing that balance. The clear evidence of this thesis is that which of these two roles federalism exercises and how intensely it pursues that role will in large measure be related to the extent to which there is a conflict within that federation over political values and aspirations.

Put differently, federalism is related to the degree of symmetry in a federation. A good indicator of likely strain in a federation is the extent of political asymmetry between the governments of the constituent units of the federation and the centre. As we have demonstrated elsewhere by reference to recent developments in Austria (Luther, 1985 & 1986), federalism tends to be used against the centre when there is a marked or sustained asymmetry between local and central political elites and political values. We believe that a comparative study linking the concepts of asymmetry in federations (as measured, for example, in terms of the local and national party systems, but also by reference to economic factors) with an investigation of how those tensions impact upon and are utilised by federalism, would offer interesting new perspectives into the workings of federal political systems.

In short, it is the contention of this thesis that federalism should not be dismissed as irrelevant ideology, but that more attention should be devoted to the study of how it is used in federations for the protection, or promotion of particular political interests and, conversely, how the nature of the federation and the distribution of political power and influence within it impacts upon federalism. In other words, we are proposing that attention be directed to the interaction of federalism and federation as a significant element in the dynamics of federal political systems.

7.4. CONCLUSION

In conclusion, we believe that the contributions that this thesis has made to the Anglo-Saxon academic study of federation can be summarised under five headings. First, it has undertaken a systematic, comparative analysis of a large body of German, Austrian and Swiss federal thought that was previously covered in the Anglo-Saxon literature in at best a fragmented, or unsystematic manner. Second, it has demonstrated that body of thought to constitute a distinctive tradition. In the course of that exercise, it has developed a typology of the "Germanic tradition of federalism", which should be applicable to the examination of federalisms elsewhere.

Third, this thesis has carefully tested two hypotheses of the Anglo-Saxon literature against the experience of Germanic federalism and has subsequently revised those hypotheses. Fourth, by means of a very detailed analysis of the use of federalism as a political ideology in Germany, Austria and

Switzerland between 1815 and 1850, this thesis has illustrated some of the advantages of an analysis predicated upon distinguishing between federalism and federation. These include the insights it offers into the fascinating, symbiotic relationship between federalism and federation.

Finally, by virtue of its exposition both of the nature of the Germanic tradition of federalism and of the political uses made of federalism, this thesis believes that it has offered a preliminary framework for the study of West European federal systems in a new context: by examining how federalism is used within existing federations for the purposes both of their legitimation and of their reform.

NOTES FOR CHAPTER 7

1. For a discussion of Winkelbach's life and the development of his ideas, see the biography by Biermann, W.E. (1909) Karl Georg Winkelbach: sein Leben und sein Werk, 2.Vols., Leipzig. Interestingly, Winkelbach was initially influenced by Stahl and Haller, though his federalism tried to reconcile older, estates-based theories of society and ideas of democracy.

2. An alternative designation could be anarcho-federal, as used by Susser (1979) in his discussion of the federalism of Martin Buber.

Predictably, a considerable literature has arisen on Proudhon's federalism. See, for example, the introduction to Vernon's recent edition of The Federal Principle (Proudhon, 1863, xi-xlvii). While some commentators contend that it would be wrong to describe Proudhon's proposed economic associations as federations, others argue that his later work, in which he advocates confederation, is a more mature work that better represents Proudhon's views. Though it would be inappropriate for this thesis to get involved in such debates, it is worth responding with two brief points. First, the former objection is an example of the "federalism is what I say it is" approach that this thesis rejects. Second, even if it is the case that Proudhon's later writings on federation are more intellectually stimulating, that should not lead one to dismiss his earlier writings. They too served a purpose, as Vernon's above mentioned introduction to Proudhon's Federal Principle itself illustrates.

3. Perhaps surprisingly, one difficulty in establishing the distinctiveness of the Germanic tradition of federalism

vis-a-vis the Anglo-Saxon is the fact that there are few detailed and systematic accounts of the latter. Though it lacks a systematic approach, one of the best single sources for an overview of that tradition is still Mogi (1931, esp. I, 21-325), though Davis (1978) also offers some interesting insights. It appears that there might well be some utility in applying the systematic analysis offered in this thesis to the Anglo-Saxon tradition. In the meantime, we shall content ourselves with repeating (see Chapter 1 above, p34) Aiyar's assertion (1961, 59) that Anglo-Saxon federations are "the product of liberal thinking and ... clearly associated with mechanistic attitudes toward government".

4. An analogous point of course applies to Kant and Fichte's interstate-chiliastic federalism.

5. Dikshit (1971, 189) makes a similar point, though he appears to be arguing for the significance of economic aspects, rather than what he refers to as purposes that are "narrowly political or military". This thesis does not deny the importance of economic considerations, which it has in fact frequently referred to. Its emphasis upon the political nature of federalism is designed to stress the relevance of federalism in the political process. Economic issues can be and are of course also subjects of this process. For other criticisms of Riker's emphasis on security issues, which was discussed in 1.2 above, see Davis (1978) and King (1982).

6. To illustrate this point thoroughly would itself require a thesis and we cannot therefore go into detail here. See for example Wedl's (1969) fascinating account of the use since the 1860s of federalism in the manifestos of Austrian and German parties, as well as Schild's documentation (1971) of the political use of federalism in Swiss referendums. For an example of how federalism has been claimed by Catholics to be an intrinsic part of a Catholic world view, see for example, Soden (1931). For a wider approach, see Korff (1908), or Hylander (1946). Of the many contributions to the issue of the relationship between the principles of federalism and subsidiarity, see Stadler (1951). On the use of federalism in a wider, social context, see Roemheld's weighty tomes on so-called "integral federalism" (1977). For a much briefer exposition of a related perspective, see Kinsky (1979). Also of interest are Pernthaler (1981) and Weber's (1980a) summaries on the various ways in which the concept of "federalism" has been used.

7. We are of course not suggesting that all Swiss liberals were originally opposed to federation and that they all changed to become supporters of the Federal Pact and so on. However, there is clear evidence to show that there was a significant change in the orientation of a large number of liberals at the times and in the directions indicated (see 3.3. and 6.3. above, as well as Wild, 1966).

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ABBREVIATIONS

A.P.S.R.	American Political Science Review
B.S.	Behavioural Science
C.P.	Comparative Politics
E.J.P.R.	European Journal of Political Research
G. & O.	Government and Opposition
H.M.S.O.	Her Majesty's Stationary Office
Jb.d.o.R.	Jahrbuch des oeffentlichen Rechts, Neue Folge
J.P.	Journal of Politics
Oe.J.P.	Oesterreichisches Jahrbuch fuer Politik
Oe.Z.f.o.R	Oesterreichische Zeitschrift fuer oeffentliches Recht
Oe.Z.P	Oesterreichische Zeitschrift fuer Politikwissenschaft
P.Jb.d.s.E.	Politisches Jahrbuch der schweizerischen Eidgenossenschaft
P.S.	Political Studies
P.S.Q.	Political Science Quarterly
P.V.S.	Politische Vierteljahresschrift
Publius	Publius: The Journal of Federalism
W.P.Q.	Western Political Quarterly
Z.s.R.	Zeitschrift fuer schweizerisches Recht
Z.s.R.(n.F.)	Zeitschrift fuer schweizerisches Recht (Neue Folge)