# Cultural Federalism on the Defensive (April 20–21, 1978)

## Abstract

After efforts to introduce the comprehensive school [*Gesamtschule*] proved unsuccessful, the West German government issued a "Report on Structural Problems" that criticized the incoherence of the country's federal education system and called for greater uniformity among West Germany's individual federal states. The education ministers of the federal states conceded that cultural federalism posed certain challenges, and they agreed that problems needed to be solved. Nonetheless, they continued to oppose federal authority in the area of schools and education.

## Source

### Statement of the Standing Conference of the Ministers of Education and Cultural Affairs of the Federal States (Kultusministerkonferenz) on the Federal Government's Report on the Structural Problems of the Federal Education System ("Report on Structural Problems")

I. General Remarks

1. In its report on structural problems, the federal government demands uniform decisions in certain areas of the education system in order to:
– guarantee at least a certain minimum level of freedom of movement
– guarantee equal educational and occupational opportunities for all citizens

The federal government demands uniform decisions on the following points:
(1) the length of compulsory schooling
(2) the transition from primary school to lower-level secondary school; this also includes the mutual recognition of examination and selection procedures
(3) transitions and graduation certificates for lower-level secondary schools; this also includes the mutual recognition of graduation certificates
(4) diplomas for upper-level secondary schools for all professional degree programs and for programs that qualify students for admission to institutions of higher education; this also includes the general university entrance certification
(5) for continuing education: the standardization of continuing education diplomas [from various institutions] and the general recognition thereof
(6) the standardization of curricula in vocational education
(7) teacher training

The federal government concludes that this must not affect either the diversity of individual educational options or competition among the federal states to devise new models and to improve the education system.

[…]

3. The Standing Conference of the Ministers of Education and Cultural Affairs of the Federal States concedes that a host of problems have arisen in the Federal Republic of Germany's federal education system and that these problems need to be solved. Furthermore, the proviso of legality, as derived from the Basic Law, has lately been tightened by the judiciary. This raises the question more urgently of the

parliamentary legitimization of supra-regional regulations.

The Conference of Ministers realizes that greater standardization must be an objective in the Federal Republic of Germany, especially in the [problem] areas identified by the federal government.

The Conference of Ministers regards the federal government's report as an occasion to take up basic questions in the spirit of cooperative federalism, with the aim of better coordinating and acknowledging equal qualifications, so that even greater standardization is achieved in the education system.

It goes without question that the federal government possesses the authority to publish such a report on its own and without the participation of the federal states; nevertheless, the Conference of Ministers regrets that the federal government did not give the states a chance to issue a statement before the report was presented.

[…]

4. The Conference of Ministers concludes that multi-faceted competition among the federal states for the best quality education system—competition based on the federal system—has created a high degree of differentiation within the education system and has simultaneously preserved and encouraged cultural diversity. A host of difficulties faced by citizens in the education system cannot be resolved through legislation. It has now become apparent, however, that—irrespective of the diversity of organizational forms [both] within and among the individual federal states—certain basic parameters need to be guaranteed in all states.

5. According to rulings of the Constitutional Court, autonomy in educational and cultural affairs is the core element of the sovereignty of the federal states. Consequently, when examining the distribution of authority in the educational and cultural sphere, special attention must be paid to whether the guarantee of state sovereignty stipulated in art. 79, sec. 3, of the Basic Law is affected. The Basic Law has been amended thirty-four times since its adoption. Twenty-nine of those amendments resulted in a shifting of authority to the direct or indirect detriment of the federal states. As a result of the Enquête Commission on constitutional reform, the federal states' substantive area of jurisdiction was basically reduced to the core area already guaranteed by art. 79, sec. 3, of the Basic Law.[1]

Thus, every major measure involving a constitutional amendment to the detriment of state authority is of fundamental importance and must be judged against the backdrop of the federal system as a whole.
[…]

6. The problems and difficulties to which the federal government refers [in its report] vary in importance. Not all of them are as significant as the report claims; rather, a differentiated analysis is called for. What is indisputable, however, is that, in view of the federal government's basic requirements for freedom of movement and equal opportunity in the context of uniform living standards and the transition from the education system to the employment system—all of which the Conference of Ministers supports without reservation—changes and improvements in the identified areas are necessary and should be implemented by the states as a matter of priority. The states are determined to resolve the existing difficulties, particularly within the framework of the Conference of Ministers and the Federal-State Commission for Educational Planning and the Promotion of Research.

[…]

From the sovereignty of the federal states and from their responsibility, as members of the federation, to the nation as a whole, comes the right, but also the duty, to cooperate with each other and with the federal government in the fulfillment of tasks.

The Institute for Joint Tasks, which was established in 1969 after an amendment to the Basic Law, led to two new forms of cooperation between the federal and state governments in the area of goal and framework planning: the planning committee for the establishment of universities, whose organization and tasks are described in the University Construction Act [HBFG], and an optional institution for joint educational planning. With the administrative agreement on the establishment of the Federal-State Commission for Educational Planning and the Promotion of Research, the states and the federal governments created such an instrument of cooperative federalism in 1970.

[…]

Goal and framework planning in the education system establishes the jointly approved framework within which the development of the education system should take place. Therefore, to realize common goals, the coordination of the implementation and realization process is exceedingly important.

In the interest of creating more equitable living standards in the Federal Republic, this ongoing coordination is being carried out by the Conference of Ministers. The form of the states' joint work can vary from loose collaboration (exchange of opinions, mutual briefings) to intensive cooperation (this includes, especially, the broad category of joint efforts in various areas, especially state cooperation in foreign cultural policy), to circumscribed cooperation by way of arrangements or agreements, whether between administrations, governments, or even the conclusion of inter-state treaties. As for government cooperation, this involves the cooperation of ministers who are appointed by the [state] parliament and who answer to that parliament. All of the individual states have the same sovereignty, and this gives rise to the principle of unanimity. Regardless of the difficulties associated with unanimous decision-making, which excludes majority decisions, this principle has one important advantage: that significant changes, especially in the education system, can be carried out in an ongoing fashion and on the basis of a broad consensus among all participants. In terms of implementation, the results of this joint cooperation are political declarations of intent, which, regardless of how politically binding they are on the cooperation, are generally meant as recommendations directed at the states, whose constitutional authority is not affected. This means that these sorts of recommendations and agreements only become binding state law after they are transformed by the responsible state organs in accordance with the form prescribed by state law.

Note: At a meeting of the minister-presidents of the federal states on May 11–12, 1978, the states governed by the CDU or the CSU (Baden-Württemberg, Bavaria, Rhineland-Palatinate, Saarland, and Schleswig-Holstein) declared "that they do not agree with any of the conclusions in the federal government report that call for the centralization of responsibilities in the area of education by way of an amendment to the Basic Law."

**NOTES**

[1] Report by the Enquête Commission on constitutional reform, Bundestag Publication 7/5924 of December 9, 1976, pp. 126–27.

Source: "Stellungnahme der Kultusministerkonferenz zum Bericht der Bundesregierung über die strukturellen Probleme des föderativen Bildungssystems (Strukturbericht) vom 20./21. April 1978"; reprinted in Oskar Anweiler et al., ed., *Bildungspolitik in Deutschland 1945–1990. Ein historisch-vergleichender Quellenband*. Opladen, 1992, pp. 86–89.

Translation: Allison Brown

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