Inclusive Education Policy Discourses in Germany and the United States
A Comparative Approach to Schools and Society

Curie Little Lee

This timely volume argues for the necessity of inclusive educational policies to not only engender change within the school environment, but also in leading to inclusive societies more broadly. Challenging the notion that a paradigm shift has taken place in implementing inclusive policies in two democratic, federalist countries (Germany and the United States), this book offers an international comparative approach to assessing the strengths, weaknesses, and legitimations of current national practices. Offering a new perspective on a topic often studied using a single-nation, or intra-state, research design, the book combines theoretical and methodological approaches from the fields of sociology (Michel Foucault) and political science (Vivien Schmidt). In doing so, this book looks to the formations and coordination of policy discourse to explain why and toward what end changes are enacted. Offering a comparative contribution to the discourse around the fundamental inclusion of children with disabilities in schools and societies, this book will be of interest to researchers and students of political science, education policy, international and comparative educational research. It will also be relevant to scholars of special and inclusive education.

“This book makes a definitive contribution to the debate on inclusive education in the international discourse. It offers a creative use of theoretical approaches, and provides valuable insights into a neglected field in political science research. I highly recommend this comparative analysis to political science and education policy scholars and students.”
—**Anne Waldschmidt**, Professor of Sociology and Politics of Rehabilitation, Disability Studies, University of Cologne

“This multidisciplinary, comparative, multilevel analysis explores inclusive education policy discourses in two federal countries. Reconstructing discourses in Germany and the US (1949–2009), this book compares the politics and policies surrounding the challenge of inclusive education to existing education systems that segregate and separate.”
—**Justin J.W. Powell**, Professor of Sociology of Education, University of Luxembourg

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Over a hundred policy documents in the form of congressional reports, presidential papers and other policies were collected during a research visit to the Library of Congress (DC) and the Northwestern Library (Evanston). This productive visit, which included a poster presentation at the University of Illinois at Urbana-Champaign University, was sponsored by the Graduate School of the Faculty of Human Sciences "Managing Diversity and transition: Vielfalt und Wandel gestalten" at the University of Cologne.

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Note on Translation:

All translations from the German into the English language were conducted by the author. Certain German terms (such as "Bildung") are difficult to translate. In this case, the context was referred to in order to determine which words (education/pedagogy) would be applied.

Chapter One – Introduction

> "States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning [...]" (UN, 2006).

The history of universal declarations on educating children with disabilities[1] suggests progress.There are a few universal declarations throughout history relevant to children with disabilities that bear mentioning: In 1948, Article 26 of the Universal Declaration of Human Rights asserted the right of all people to an education. This right was reaffirmed, and the vision qualified, to include basic education in the World Declaration on Education for All in 1990. In 1993, the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities emphasized the education of persons with disabilities within the education system. A year later (1994), the World Conference on Special Needs Education affirmed all previous declarations, adding a principle of inclusion regarding the education of children with 'special educational needs':

> "We believe and proclaim that (…) those with special education needs must have access to regular schools which should accommodate them within a childcentred pedagogy capable of meeting these needs, regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system" (UNESCO, 1994).

The principle of an 'inclusive orientation' guided expectations that a child with disabilities might receive and the kind of society that signatories hoped to achieve. In 2006, the United Nations Convention on the Rights of Persons with Disabilities

[1] [1] This book uses the term 'children with disabilities,' while acknowledging the extensive historical discourse on the naming or categorization of children with disabilities. The choice to use the term 'child(ren) with disability' follows a person-first approach that places the child first, and his/her impairment second. Critics, however, note that by making this separation, one minimizes the responsibility and role of the environment in disabling a person. Advocates of this view prefer the term 'disabled child(ren)' to emphasize the role of a world that disables.

(CRPD) was adopted, calling upon signatories to, "(…) ensure an inclusive education system at all levels and lifelong learning" (UN, 2006).

The CRPD marks two new departures: It is the first comprehensive human rights treaty of the 21st century and the first document to hold all signatories responsible for the implementation of inclusive education systems. The expediency with which the document was signed and ratified by States Parties was "record-breaking" (Degener, 2015). Researchers of disability law and studies called this human rights treaty the mark of a paradigm shift, as school systems that otherwise separated and segregated children with disabilities were now moving towards inclusion (Degener, 2015; Klein, 2016; Winzer, 2009). This move – buttressed by beliefs in principles of anti-discrimination and equal opportunity – supported a holistic approach that would encompass lifelong learning. For all signatories, the CRPD replaced the medical model that focused on identifying impairment(s) with a rights-based model of disability.

A counterpart system was hereby introduced into an education landscape that had institutionally excluded, segregated or separated children with disabilities into special schools and classrooms. Placement decisions were often made using a medical model of disability that focused on identifying impairment(s). The UN CRPD replaced the medical model with a rights-based model of disability in their human rights treaty.

In spite of the record-breaking acceptance of the UN CRPD, national and international assessments report the difficulties of implementing inclusive policies, complicating the notion that a paradigm shift had taken place (Hussar et al., 2020; Maaz et al., 2020; UN, 2006; UNESCO, 2020). The complexity of implementation is also, or perhaps especially, reflected in democratic countries such as Germany and the United States due to their federalist and institutional structures, making a comparative study of these two countries a challenging endeavor.

For example, after the ratification of the UN CRPD in 2009, German policy makers faced the challenge of legally implementing inclusion in light of existing, elaborate special school systems. Inclusive schooling efforts were thus met with ambivalence; Germany experienced a simultaneous growth of inclusive standards on one hand, and growing societal exclusion on the other (Geldner, 2020, p. 239). Several federal states took advantage of the federalist allocation of educational matters and reacted inconsequentially, to the inclusive call: An empirical study conducted by Steinmetz et

al. (2021) demonstrated that, with the exception of Bremen and Hamburg, federal states failed to implement inclusive education at the structural level, in its school laws, or to provide resources (Steinmetz, Wrase, Helbig, & Döttinger, 2021).

Thus, despite decreasing the percentages of school segregation in special schools from 4.9% to 4.3% between the years 2008 and 2016, these rates increased at the federal state level in places such as Baden-Württemberg, Bavaria and Rheinland/Palatinate, complicating the picture of progress. The (historical) political landscape of each federal states, and the political parties that were in power, greatly affected the implementation of inclusive education, as a comparative study of Schleswig-Holstein and Bavaria demonstrated (Blanck, Edelstein, & Powell, 2013).

Also a federalist country, the United States grappled with the implementation of inclusive education, albeit differently due to earlier introduction of inclusion in its legal history. In 2009, the United States signed the UN CRPD but has not ratified the convention, thus leaving the treaty legally inconsequential. However, the legal mandate can be traced back to a national law, the Education for All Handicapped Children Act (EAHCA) of 1975, reauthorized as the Individuals with Disabilities Education Act (IDEA) in 1990 and 2004. IDEA had promised all children with disability a free and appropriate education (FAPE), in the least restrictive environment (LRE), and whose needs and supports would be determined by an individualized education plan (IEP).

The implementation of IDEA in each state is regularly assessed using a State Performance Plan and Annual Performance Report. Beginning in 2014, this data has been provided to the state secretary who categorizes the state as: 1) meeting the requirements and purposes of IDEA, 2) needing assistance in implementing the requirements of IDEA, 3) needing intervention in implementing the requirements of IDEA or 4) needing substantial intervention in implementing the requirements of IDEA (*2021 Determination Letters on State Implementation on IDEA*, 2021, pp. 1-2). Depending on the category a state falls into, the government can take enforcement actions, grant technical or financial assistance, require a corrective plan or compliance agreement, or, in the worst case (category four), take immediate actions by withholding funds or referring the state to the Department of Justice. For the fiscal year 2019, American state assessments revealed that more than half of the states needed at least two or more consecutive years of federal assistance, and less than half of the

states met the requirements perscribed by IDEA (*2021 Determination Letters on State Implementation on IDEA*, 2021).

While the plight of children with disabilities in schools is being documented in the US, the role of racism in the inclusion of and exclusion rates of children with disabilities is often neglected:

> "It is paradoxical that, as the inclusive education movement represents the emergence of empowered voices about disability rights and better educational services for this population, it has been painfully silent about the plight of minority students" (Artiles, 2003, p. 177).

The evident role of (minority) race(s) complicates the validity of assessments. Thus, even though the number of interventions available through IDEA increased since 1990, the work of educators has been assessed as more complex and challenging due to increasing numbers of students with disabilities and the large proportion of minority students within this population (Artiles, 2003, p. 164).

In addition to nation-specific structural, cultural and political challenges, the term 'inclusion' is defined differently within and beyond national borders. In the German discourse, there is growing awareness between narrow or broad definitions of 'inclusion'; the broader definition of inclusion incorporates more diversity dimensions (Grosche, 2015). Likewise, in the American discourse, inclusion may be defined as the physical placement in classrooms or schools, or a process by which children are educated to become active citizens (Artiles, 2003, p. 195). The breath of conceptual definitions can impact the implementation process of inclusive education. Furthermore, definitions may also get 'lost in translation', as was the case when the German translation of the word 'inclusion' in Article 24 was mistranslated as 'integration'. This translation became highly problematic because 'integration' places the imperative on the child to fit into an existing school system, whereas the concept 'inclusion' calls upon school systems to adjust to meet individual childrens' needs.

As Heyer (2021) notes, the CRPD dictated a progressive, and not an immediate, realization of inclusive education that gave states parties the freedom to decide how they would achieve an inclusive system: "The notion of progressive realization is key to understanding the varied response to the inclusive education mandate" (Heyer, 2021, p. 52). This explains and make the comparison between Germany and the US

interesting, as there is variation in the implementation efforts between German and American states, despite national and international goals. This variation is largely attributed to politics; thus, by making inclusive education a social-political goal on the political agenda, structural changes in all areas of society may be possible (Aichele, 2019).

This book is a comparative study of inclusive education in Germany and the US, written out of a desire to understand catalyzers of present and future change towards inclusive education by looking at past education policies, specifically at the patterns of discourses surrounding them. This is a different approach to explaining change. Political scientists, historians and sociologists have turned to various models to explain change, or the lack thereof. For example, rational, historical, and sociological institutionalisms explain the lack of change in light of fixed rationalist preferences, self-reinforcing historical paths, or all-defining cultural norms, respectively. These models are necessary, but not sufficient for understanding the challenges and catalysers of inclusion; an alternative perspective can offer new knowledge regarding why change occurs or does not occur. Political scientist Vivien Schmidt, whose concepts are applied in this research, added an additional insitutionalism '*discursive* institutionalism', and argued that a greater focus on policies and discourses would strengthen existing understandings of why institutional change occurs (Schmidt, 2008).

In addition to a discursive analytical approach, greater insights into implementing inclusive education policies are gained by extending research beyond, and below, national borders. Federalist practices in Germany and the United States make education policies a state issue, producing a diverse educational landscape and intensifying educational discourses at the lower levels of government. However, the international scope of Article 24 of the UN CRPD legitimates, indeed demands, a crossnational comparative approach (Köpfer, Powell, & Zahnd, 2021; Pateisky, 2021).

Germany and the US were chosen due to convergences and divergences in their educational histories: German and American political structures and educational histories *converged* after World War II and during the formation of the Federal Republic of Germany in 1949, and again with the signing of the UN CRPD in 2009. Yet between these years, their educational institutional trajectories *diverged*, making a comparison of their educational discursive histories possible, interesting, and fruitful

(Powell, 2016). A comparative approach enables a more accurate assessment of the strengths, weaknesses, and legitimations of current national practices, and offers a new perspective on a topic often studied using a single-nation, or intra-state, research design. Finally, findings on education policy discourses enrich existing international and comparative research through ethnographic or cultural comparative approaches (Köpfer et al., 2021).

This book purviews 60 years of education policies for children with disabilities from the vantage point of ‘discourse' using Michel Foucault’s (2010) concepts of archaeology and genealogy. The first goal of this book is to describe the conceptual formations of inclusive education policy discourses in both countries. Second, applying and expanding upon Vivien Schmidt’s (2008) concepts in discursive institutionalism, this book compares the ideational and interactional dimensions of discourse in both countries. Finally, the book assesses the discursive shifts and discontinuities, chronologically.

1.1. Scientific Context: Interdisciplinary, International, and Comparative Discourse Research

This qualitative research intersects the fields of education and political science, offering a uniquely discursive, historical, and comparative lens to the study of inclusive education policies concerning children with disabilities. While existing international and comparative inquiries in the field of inclusive education have strengthened critics of the status quo, it has also served to question matters taken for granted within national borders. Typical comparative and institutional analyses have looked at case studies on the social and political constructions of: competencies, abilities, special needs, impairment, disability, or disadvantages. Research questions have focused on stems or on individual educational trajectories. The difficulties with these kinds of analyses is the central role that the local context plays, since “being disabled” is imposed upon by the environment. Thus, in spite of global acceptance and acknowledgement of the inclusion mandate, there have been very little systematic works done with elaborate research designs (Köpfer et al., 2021).

A review of existing literature on German and American inclusive education provides the context for, and demonstrates the significance of, a study of inclusive education policy discourses in Germany and the United States between the years 1949–2009. A

broad-strokes history of American special education and inclusion policies is provided by educational historians such as Robert Osgood (2007) and Margaret Winzer (2009). Similar extensive overviews in Germany are provided by Andreas Möckel (1988), Wilfried Rudloff (2003), Sieglind Ellger-Rüttgardt (2008), and Vera Moser (2013); more critical views of special schools by Dagmar Hänsel (2003; 2005) and Ulf Preuss-Lausitz (2000; 2001).

There are a few studies that have compared German to American education policies. One of the earliest comparative studies on Germany and the United States was conducted in 1993 by Günther Opp who compared German and American education contexts, policies, and perspectives. He successfully presented the mainstreaming policies of the United States in light of the Education for All Handicapped Children Act (EAHCA) as well as various court rulings. However, in his book, American and German policies were presented in separate subsections, with little dialog between the findings concerning the two countries. It was also not clear what the indicators of comparison between Germany and the United States were. Three years later, Martina Jülich (1996) published her research on Public Law 94–142 as well the associated Annual Reports to Congress released by the US Department of Education (Jülich, 1996, p. 16). Jülich's (1996) conclusion problematized the use of policies as simple panaceas.

Katharina C. Heyer (2015) looked at legal ideas, such as the UN's International Year of Disabled Persons, the International Decade of Disabled Persons, and the Americans with Disabilities Act. Her study sought to identify a global shift from models built on stigma and charity to those concerned with rights and empowerment. Her study traced this evolution in three countries: the United States, Germany, and Japan. Heyer found that the US Civil Rights movement provided a "civil rights analogy" that, though powerful in demanding political changes, risked returning the country to welfare and charity models of disability, instead of a rights-based model. Heyer's (2015) work focused on the disability rights movement and activism during the 1970s and 1980s. While this focus enabled a study of the rights-based model, it does not study how models evolve in the long term.

Justin Powell's (2016) extensive sociological, comparative-historical analyses on special education in Germany and the United States revealed national path-dependencies and persistence in special education institutions as explanations for resistance to inclusion (Powell, 2016). His study identified barriers such as educational

ideals, categories of special educational needs, and school structures (Biermann & Powell, 2014; Powell, 2016). Powell's definition of the problem, as well as explanation for the barriers faced by the implementation of inclusive policies, hinged on institutions, ideas, and interests.

Powell identified a divergence in German and American educational institutions after World War II. Whereas, in Germany, segregated schools were expanded and maintained and few children with disabilities were integrated into the existing classroom conditions, the United States initially encouraged separate classroom practices but moved toward more inclusive policies, adjusting the classroom settings to fit the needs of each child. His book concludes with the claim that "[t]o realize democratic participation in schools and support the rights of all students to fully develop their potential, these societies must continue to overcome the remaining institutionalized barriers to inclusion" (Powell, 2016, p. 265). Legitimated processes of separation (US) and segregation (Germany) were attributed to institutional path dependencies, as well as "social values, educational ideologies and dis/ability paradigms" (Powell, 2016, p. 242). Powell proposed that the institutional problem could only be solved with transformative institutional change. His conclusion was supported by other special-education researchers in Germany. Those researchers described efforts to strengthen institution-based school research that supported disintegrating the divided school systems of special and general education (Nikolai, 2016)

This brief review of past educational research on (special) educational institutions reveals a gap that Powell (2014) identifies, and thus calls upon, "*discourse analyses*, combined with examination of educational and social policies at international, national and local levels and with enquiries into institutions and organizations are needed to reveal the forces of persistence and change" (Powell, 2014, p. 10). An analysis of the discourse surrounding inclusive education policies would complement existing institution-, interest- and idea-based knowledge on special and inclusive education policies.

This study fills this gap by unpacking the problems identified in educational policy documents, identifying the proposed solutions, and the narratives used to justify them. It then goes a step further by determining the strength of these narratives in combination with other discursive mechanisms. Instead of looking at special education

institutions as the problem and/or solution for democratizing education, this research studies the discourse mechanisms shaping the institutions which enabled or prohibited inclusive educational practices.

There is a growing appreciation for the study of discourse among political scientists in the Anglo-American and Central European academic spheres. Areas of renewed interest in discursive institutionalist-based studies include, but are not limited to, studies on labor market policies, crises and legitimation strategies, or school curricula. While many studies acknowledge the role of discourse in policy formation and implementation, until recently, few have explicitly studied special education policy discourse. Those who have attended to discourse research have viewed education policies through the lens of sociology, rather than political science such as the studies of Lisa Pfahl (2011), Julia Gasterstädt (2019; 2021), and Julia Biermann (2019; 2021).

Single-nation discourse-based analyses of education policy have been conducted in other parts of the world. One study of education policy documents used a critical discourse analytical methodology (Mulderrig, 2012). After studying education policy documents using political economic theory, Mulderrig discovered how semantics were used to create consensus over otherwise debatable claims. The following year, Bullock (2013) conducted an archaeological/genealogical historical analysis of American mathematics standards. The analysis produced a historical narrative about mathematics education, and concluded that the formation of discourse about standards-based mathematics education required increased activism (Bullock, 2013).

Bourke and Lidstone (2015) used Foucault's archaeological methodology to look at professional standards for teachers in Australia. In order to understand the relationship between the government and the governed, they created "polyhedrons of intelligibility" as a mediator between policy-giver and policy-receiver (Bourke & Lidstone, 2015). In another study about education policy, Sam (2019) applied a Foucauldian Discourse Analysis (FDA) to the narratives influencing educational policy, particularly the US Common Core standards. Sam (2019) found that the Common Core discourse was enveloped by a broader societal concept, namely "fears of government intrusion and of autonomy lost" (Sam, 2019). While policy discourse analyses are being conducted, they have tended to focus on contemporary policy documents following the signing and ratification of the UN CRPD.

In addition to single-nation discourse analyses, existing research has focused on individual institutions. Zahnd (2021), for example, researched different strands of discourse and their contribution to the gradual change of the World Bank's disability paradigm. He identified three main discourse strands: disability in the context of medical interventions, disability in the context of social security, and disability as its own topic of developmental politics. Based on his analysis of the World Bank, Zahnd (2021) concluded that it is important that people with disabilities hold central positions in decision-making processes. The structure and logic of the World Bank, Zahnd argued, poses a major barrier to implementing inclusion; the discourse analysis remained at the level of medical intervention and social security (Zahnd, 2021).

The growing studies comparing disability policy internationally typically focus on national or education policies at the state-level. To this end, this research project contributes to this field by addressing the hotly debated question of implementation from an equally growing discursive, comparative, and historical perspective.

1.2. Research Goals: Comparing Formations, Conditions and Dimensions

This book covers the period between 1949 and 2009. The temporal distance from the subject-matter offers objectivity to the analysis. The period was chosen as points in time bookending when American and German education policies converged. Specifically, 1949 marked the end of the Allied occupation of Germany, and 2009 was the year Germany ratified, and the United States signed, the UN CRPD. By sectioning off a sixty-year period of education history, at least 10 years in the past, this study aligns with Foucault's discourse theory and his understanding of discourse analysis as an inherently historical study.

This book presents policy discourses that produced and affected institutions, rather than those institutions themselves. A study of discourses, through analysis and comparison, was possible using Foucault's methodology and methods outlined by other theories. By connecting Foucault's discourse theory of genealogical studies with the field of education, this study contributes to studies that apply Foucault's discourse concept freely to fit the subject matter and research subject.

By offering a discursive perspective on inclusive education policies, this book identifies mechanisms that strengthen or weaken inclusive education implementation. It also identifies these mechanisms not just on a local, regional, or national level, but on an

international one. This study contributes an international comparative perspective of discursive mechanisms. In doing so, it fights reductionism in international knowledge societies, and encourages collaboration while acknowledging increased competition between these knowledge societies.

The analysis focuses on how inclusive education policies were formulated and legitimated during the years 1949–2009 in Germany and the United States. This study also reveals the mechanisms that make discourses dominant. The main research questions, and the archaeological and genealogical findings they prompted, corresponds to questions asked by political scientists: “Under what conditions are policy regimes likely to remain stable, and under what conditions are they altered in fundamental ways?” (McDonnell, 2009, p. 57)

Applying Foucault’s theory of archaeological and genealogical inquiry, the first research question was archaeological. It describes the formulation of inclusive education policies according to the four rules of formation as outlined in his book The Archaeology of Knowledge (Foucault, 2002). The second research question is genealogical, moving the study’s focus from pure descriptions (archaeology) to power relations. The mechanisms used to legitimize inclusive education policies respond to the following questions: How has inclusive education policy been justified and legitimized?[2] How have discursive mechanisms made an inclusive discourse dominant or recessive? Here, the question “how” refers to Foucault’s analysis of power relations (Foucault, 2002, p. 337 & 339)

Using concepts described by Schmidt (2000, 2006, 2007), the discursive mechanisms were analyzed in light of the coherence of the ideational functions and interactional dimensions of discourse. This analysis determines whether a discourse was dominant during a given period (1949–1969, 1970–1989, and 1990–2009).

The final research question was comparative. The discursive mechanisms concerning German and American education are compared to answer two questions: First, what similarities and differences were exhibited by the inclusive education discursive

2 Kozleski, Artiles, and Waitoller (2011) grouped discourse on inclusive education into two camps: justification and implementation research of inclusion (Kozleski, Artiles, & Waitoller, 2011).

mechanisms in Germany and the United States? Second, what can a comparative study of discourses tell us about global patterns of discourse?

In this chapter, I briefly positioned this book within existing research. Chapter one begins with the current challenges to global implementation of inclusive education since the ratification of the UN Convention on the Rights of Persons with Disabilities, and positions this book within an **interdisciplinary** scientific context. The chapter then proceeds with a purview of existing research that reveal a research gap this book promises to fill with its **discursive comparative approach** to studying institutional change. The chapter discusses the questions used to guide this research and its goal to identify conceptual formations in education policy documents, and to compare German and American discourses.

Chapter two defines the research object **inclusive education policy discourses** beginning with the theoretical concept, discourse, followed by policies, education and inclusion. The definition and use of these concepts in Germany and the United States are compared and then followed by a presentation of the data corpus – over 200 **policy documents** collected across the executive or coordinative, judicial and legislative branches of government.

Chapter three presents the conceptual formations of a selection of policy documents spanning the years 1949-2009 in Germany and the United States. This chapter differentiates conceptual formations into **cognitive justifications** (problem, solution) as well as the **normative legitimations** (responsibility, rights, recovery and resources), which are labeled the four R's and identified for the policy documents in both countries. Findings demonstrate variation in appearances of, and references to, these four R's.

Chapter four builds on findings in Chapter three by comparing the cognitive justifications and normative legitimations, also known as the **ideational dimension** (problem, solution and the four R's), in both countries. Next, using a **matrix of dominance**, a theory of **dominance** and **recessiveness** is constructed and applied to select German and the American policy documents further compare the **interactive dimension** (coordination and communication). Altogether, this chapter compares both the ideational and interactive dimensions of discourses in both countries to assess the overall strength of their discourses at a given time.

Chapter five assesses the **shifts** as well as **(dis)continuities** in German and American discourses. The chapter closes with a discussion on the scope as well as the potential for **further research** and thinking about the conditions for change post-UN CRPD. Generalized conclusions are drawn that expand the findings of this study for an international research field.

The inclusive education policy discourses in Germany and the United States contain formations that consists of cognitive justifications and normative legitimations, which I name the Four R concepts: responsibility, resources, recovery, and rights. The dominance of an inclusive education policy discourse depends on the expression and coherence of both the ideational and the interactional dimensions of discourse. Finally, the consistent alignment of both dimensions leads to the dominance of inclusive education discourse in the United States. In contrast, the misalignment of these dimensions in Germany produces a weakened or a recessive discourse.

Resources

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Chapter Two – Defining Inclusive Education Policy Discourses

This chapter defines the research concepts “discourse,” “policies,” “education,” and “inclusion”. The uses of these concepts in Germany and the United States are briefly compared, followed by a presentation of the data corpus spanning over 200 documents originating from legislative, judicial, or executive branches of government, or coordinative bodies.

First, “discourse” is defined as regulated practices that create systematically form the objects from which they speak (Foucault, 2010). The next concept, “polity” is defined in the context of democratic, federal structures, “policies” as measures proposed by government, and “politics” as legitimization processes. The next aspect of the research object, “education,” builds on the previous definition by applying the political frame to the definition of education. The section is divided into three parts: educational sovereignty, federal involvement in education policymaking, and the kind of politics or power-play relevant for this research. Finally, the concept of “inclusion” is explored using a historical and country-specific lens. That lens affords 1) an understanding of the fluidity of the concept and rigidity of the systems that it confronts and 2) the ability to study the research object without falling into the traps of finalism or presentism.

2.1. Michel Foucault’s Discourse Concept: Discourse as Regulated Practices

> *What is so perilous, then, in the fact that people speak, and that their speech proliferates? Where is the danger in that? (Foucault, 2010, p. 216)*

The word “discourse” originates from the Latin *discursus*, meaning “a running to and from” (Landwehr et al., 2014). The concept of discourse is interpreted differently depending on geographical region and school of thought. For example, in the Anglo-American sphere, academics typically define discourse as the oral communication taking place within a dialogue. Continental European researchers, on the other hand, tend to understand discourse as text-based communication that locates themes, institutions and speakers within power structures (Landwehr et al., 2014). The concept of discourse also differs across historical-cultural, linguistic, and social scientific schools. At its core, discourse is defined as either a social, speech, and cultural-scientific phenomenon or systematic intention, which can be studied using object-bound, theory-epistemological, or methodological-analytical perspectives (Landwehr et al., 2014).

In the political sciences, discourse is typically studied in three ways. These are normative-critical, analytical-pragmatic, or genealogical-critical approaches (Kerchner & Schneider, 2006) summarized in the table below (Table 2.1).

Table 2.1

Political Scientific Approaches to Studying Discourse

Approach	Normative-Critical	Analytic-Pragmatic	Genealogical-Critical
Label	Discourse Ethics (J. Habermas)	Discourse Analysis	Discourse Analysis (M. Foucault)
Theory (Empirical form)	Critical-Social Theory	Analytical-Pragmatic Empiricism	(Post-)structuralism
Definition of Discourse	Regulated procedures through which equal participants ask controversial questions in order to rationally test arguments and reach a consensus	a) Statements in a conversation (H.P. Grice) b) Field of complex speech and symbolic interaction where (political actors) generate their understanding of reality and the logic of their activity	A group of statements that belong to a regulated (scientific) formation whose (historically changing) structures order what is spoken and speak-able today
Application	Argumentation analysis	Analysis of speech and behavioral situations	Historical statement analysis
Smallest Unit of analysis	Arguments in open political debates	Statements and activity logic in the interactive process of political opinion building, deals, and decisions	Statements in the conditions of their emergence and existence

Note. Translated and adapted from Kerchner (2006). *Diskursanalyse in der Politikwissenschaft*. Wiesbaden: VS Verlag für Sozialwissenschaften.

Each approach is characterized by a definition of discourse, an empirical form, an application, and a smallest unit of analysis. Whereas the normative-critical and genealogical-critical approaches view discourse as either critical-social theory or post-structuralist theory, the analytic-pragmatic approach views discourse as a method of

analyzing empirical data. Different schools and centers of discourse analysis have developed as products of these approaches: argumentation analysis, content analysis of political discourse, frame-analysis, critical discourse analysis, and the genealogical perspective are just a few (Kerchner, 2006).

This research project adopted Michel Foucault's (2010) "genealogical-critical" analytical approach. This approach fit the historical nature of a research that studied policies between the years 1949– 2009. A genealogical-critical approach opens up spaces and possibilities for understanding the discontinuities in the history of inclusive education. By studying discourse, rules that enable statements on educating children with disabilities, and the question whether talk of inclusion represents a paradigm shift becomes analyzable. In other words, the genealogical-critical approach is a research perspective focused on the discourse about inclusive education policies over a longer period and considers discourse as groups of statements within a discursive formation, and as practices within a situated context.

This section proceeds to describe "discourse" and the "statements" that compose discourse, according to Foucault (2010). This is followed by a methodological explanation of Foucault's four rules of formation in archaeology, as well as a definition of genealogy, in order to clarify the framework under which the data was analyzed. Finally, Foucault's methodology is reconciled with the inter-disciplinary nature of this research.

2.1.1. Discourse as Regulated Practices

In this research project, discourse is defined, following Foucault (2010), as practices composed of analyzable statements that have been subjected to rules and conditions of existence. Education policies are associated with statements in which referential, subject positions play a role, and whose materiality is evidenced by archived documents. This allows for the identification and study of a policy discourse.

It is important to note, however, that the exact definition of the discourse concept throughout Foucault's work is highly variable, as he himself confessed. In *The Order of Things* (1966), *The Birth of the Clinic* (1963), or *Madness and Civilization* (1961), Foucault focused on different aspects of discourse: as a network of concepts, as the formation of speaker modalities, or the description of objects. However, in his book *The Archaeology of Knowledge*, Foucault described discourse as a series of relations

between objects, statements, concepts, and strategies (Foucault, 2010). The Foucauldian discourse concept in this research is drawn from *The Archaeology of Knowledge*. The table below represents the various descriptions of the discourse concept Foucault mentions in this book (Table 2.2).

Table 2.2

Michel Foucault's Definitions of "Discourse" in The Archaeology of Knowledge (2010)

Discourse(s) is a/are…	Key words
1.) …"practices that systematically form the objects of which they speak" (Foucault, 2010, p. 49).	Systematic Practices
2.) … "space of exteriority in which a network of distinct sites is deployed" (Foucault, 2010, p. 55).	Space of Exteriority
3.) … "general domain of all statements" or an "individualized group of statements" (Foucault, 2010, p. 80).	Domain; Statements; Group of Statements
4.) …"regulated practice that accounts for a certain number of statements" (Foucault, 2010, p. 80).	Regulated Practice; Statements
5.) …"group of statements in so far as they belong to the same discursive formation (…) made up of a limited number of statements for which a group of conditions of existence can be defined (…) it is, from beginning to end, historical" (Foucault, 2010, p. 117).	Group of Statements; Statements; Historical

In these excerpts, key words generate a general understanding of the discourse concept as: systematic practices, space of exteriority, domain, group of statements, and fundamentally historical. To analyze discourse, the "statement" needs to be defined and relationships between statements and between groups of statements identified.

Foucault (2010) defines a single statement as "the atom of discourse" and a "function of existence that properly belongs to signs" (Foucault, 2010, p. 80 & 86). Foucault lists four characteristics of a statement, which are described in the table below, alongside further explanations (Table 2.3).

Table 2.3

Characteristics of a Discursive Statement in The Archaeology of Knowledge (2010)

Characteristics of Statements	Explanation
1.) It is linked to a "referential" (Foucault, 2010, p. 91).	A referential can be understood as rules of existence or principles of differentiation.
2.) It "possesses a particular relation with a subject" (Foucault, 2010, p. 92).	Foucault defines a subject as "(…) a particular, vacant place that may in fact be filled by different individuals" (Foucault, 2010, p. 95)
3.) " (…) it must be related to a whole adjacent field" playing a specific "role" (Foucault, 2010, pp. 97-99).	The whole adjacent field can be also understood as a verbal network or a complex web (Foucault, 2010, pp. 97-98)
4.) " (…) it must have a material existence" (Foucault, 2010, p. 100).	Materiality can be composed of modifiable substance, support, place, and date (Foucault, 2010, p. 101). In spite of its modifiability, it carries a status and heaviness (Foucault, 2010, p. 102 & 105)

Foucault defines practices as "discursive practices," thereby differentiating his concept of practice from the common understanding. Discursive practices are not, for example, an individual's expressive operation, a system's rational activity, or the constructions of a competent speaking subject (Foucault, 2010). Rather, discursive practices are defined as:

> (…) a body of anonymous, historical rules, always determined in the time and space that have defined a given period, and for a given social, economic, geographical, or linguistic area, the conditions of operation of the enunciative function. (Foucault, 2010, p. 117).

In other words, discourse may be understood as a group of rules with conditions of existence defined and specified within a specific timeframe. Statements, or atoms of discourse, linked to the aforementioned rules, contain a vacant place that may be filled with various speakers, and related to a network or web. A statement is also material: it has substance, place, date, status, and weight (Foucault, 2010, pp. 91, 95, 97 - 99, 102, 105).

A genealogical-critical analysis of policy discourses focuses on discontinuities. Existing literature comparing American and German education policies has identified

a continuous history of segregation or separation and tried to explain the persistent barriers to inclusion. By focusing on discourses, this research is not a book of what Foucault calls “total history,” which shies away from ruptures. Instead, it focuses on what he articulates in “The Discourse on Language” as rules that govern the production, selection, organization, and redistribution of discourse (Foucault, 2010). Since education is the means by which access to a discourse is gained, studying the access and inclusion to education is really studying a research object which is fluid, not stagnant. It is, as mentioned, the study of practices. Foucault himself describes the educational system in instrumental terms: “a political means of maintaining or of modifying the appropriation of discourse, with the knowledge and the powers it carries within it” (Foucault, 2010, p. 227).

Analyzing discursive practices produces a “pure description of discursive events” (Foucault, 2010, p. 27). According to Foucault, a historian may also study discontinuities, rather than continuities, by asking questions about thresholds, fractures, cuts, transitions, and transformations (Foucault, 2010). Instead of asking “what was being said in what was said?” (implying a hidden meaning that needs excavation), the historian asks “what is this specific existence that emerges from what is said and nowhere else?” This results in a project that begins and ends at an exterior level (Foucault, 2010, p. 28).

The latter question is descriptive. It illuminates relationships between statements. These relationships, especially when featuring regularities, are what Foucault (2010) calls “discursive formations.” These formations are subjected to “rules of formation” that determine the “conditions, coexistence, maintenance, modification, and disappearance, in a discursive division” (Foucault, 2010, p. 38). The following section describes these rules of formation.

By studying discursive practices in the context of inclusive education policies, this research expands the scope of Foucault’s (2010) research. Foucault’s examples originate from philology, biology, and economics. He mentions, but never explores, education as a context where discursive mechanisms actively determine what gets said or not. This research analyzes that discourse.

2.1.2. Four Rules of Discourse Formations

Foucault's *The Archaeology of Knowledge* outlines four rules of discourse formation. Each can be related to a specific question. The first rule of formation, the formation of objects, corresponds the question: what is being talked about? The study of inclusive education policy takes as its object more than a collection of words or things. Instead, the research objects are defined as "practices that systematically form the objects of which they speak" (Foucault, 2010, p. 49). Thus, in this study, discourses on inclusive education policies are the practices that form the inclusive education policies under scrutiny.

The second formation rule deals with enunciative modalities, or speakers, that can be studied by asking the question: who is speaking? Utilizing enunciative modalities surfaces an inclusive education discourse that does not originate from a single all-knowing speaker. Instead, that discourse is seen to originate from a "space of exteriority in which a network of distinct sites is deployed" (Foucault, 2010, p. 55). Rather than concentrating on particular actors—political parties, teachers' unions, parents, the Supreme Court, Congress, the President, or children—as the source of speaking authority on inclusive education policy, each speaker inhabits a position that could easily be filled by another speaker at another time. The focus is not on sovereign actors but on speaker positions.

The third rule of formation deals with concepts and asks how discourses are organized. This rule engages various relational elements to create a system of conceptual formation. The elements are rules of formal construction, rhetorical practices, the internal configuration of a text, modes of relation and interference between texts characteristic of a particular period, and more (Foucault, 2010, p. 59). The goal of analyzing these elements is not to harken back to a continuous idea in history, whose persistence is traced through time to the present. Rather, the goal is to "make a systematic comparison, from one region to another, of the rules for the formation of concepts" (Foucault, 2010, p. 63). By dealing with a conceptual[3] field, this study sought to uncover the mechanisms that enable conceptual reproduction,

[3] Foucault also discusses a pre-conceptual field, which will not be addressed in this project. That field, he writes, "allows the emergence of the discursive regularities and constraints that have made possible the heterogenous multiplicity of concepts, and, beyond these the profusion of the themes, beliefs, and representations with which one usually deals when one is writing the history of ideas" (Foucault, 2010, p. 63).

mechanisms which often back a total history or a history of a single idea. The goal, in this study, is to determine how an idea like inclusion relates to other concepts. Since this research systematically compared the conceptual formation of inclusive education policy discourses in two regions, it was guided by Foucault's theory of conceptual organization, particularly systematic comparison.

The fourth and final formation rule deals with strategies or theoretical choices. This formation rule is tied to the question: what is the scope of this data? A few useful directions involve theoretical choices made when faced with two incompatible options, as in an either/or dilemma. A theoretical decision opens up an incomplete discursive formation, which "is a modification in the principle of exclusion and the principle of the possibility of choices; a modification that is due to an insertion in a new discursive constellation" (Foucault, 2010, p. 67). By applying the formation of strategies in this project, inclusion was understood neither as "a fundamental *project*" nor "the secondary play of *opinions*" (Foucault, 2010, p. 70).

Foucault applies these four rules of formation to his own studies. In *Madness and Civilization* (1961), he easily locates the theoretical choices, concepts, and speakers, but encounters difficulty in describing the formation of highly complex objects in psychiatric discourse. In *The Birth of the Clinic* (1963), the analytical challenge lies in identifying the discoursing subject's status, situational positioning, situation, and modes of insertion. Finally, in *The Order of Things* (1966), Foucault locates the network of concepts in General Grammar, Natural History, and the Analysis of Wealth (Foucault, 2010, p. 65). Thus, each study faces different analytical challenges in its application of the four rules of formation. For one study, describing objects proved challenging. For others, it was identifying speakers or mapping a network of concepts and its formation.

This research focused on the third rule of formation, that asks how discourse is organized, as well as the fourth rule of formation, that deals with the strategies or theoretical choices in the discourse. The first two rules of formation, while significant, are material for another research project. Due to the wealth of speaker positions in the sixty-year data corpus, the second rule of formation, that identifies and explicates the speaker positions over time, merits its own study. By focusing on the third (concepts) and fourth (strategies) rules of formation, this research accounted for different speaker

positions in the analysis at the surface level, and included a meta-analysis at the systemic level.

2.2. Polities, Politics, and Policies

The goal of this section is to define the research concept labeled "policies." Unlike the German word *Politik*, the English language separates the political into three dimensions: polities, politics, and policies. The three dimensions form a kind of trinity: they belong to the same concept and share a common identity yet differ in significant ways. This means, for example, that policy both derives its meaning *from,* and gives meaning *to,* polity and politics (Schubert & Bandelow, 2014). Thus, a study of inclusive policies proffers research findings for German and American polities and politics.

It is worthwhile to unpack the theoretical differences between each political dimension to clarify what a study of policies would not entail. The first dimension, polity, represents both the form and foundation of the political. Examples of polities are governments, states, the constitutions supporting them, and the institutions maintaining and acting within them (Meyer, 2010).

In the following section, analysis of the US government and federalist structures over time serve to explain the US polity. This leads into a description of the German polity, and a comparison between it and its American counterpart. To facilitate a comparison of American and German polities, Vivien Schmidt's (2008) concept of "complex" polity is integrated in the descriptions of both. That concept demonstrates the extent to which two federal democracies can possess different kinds of federalist structures and disparate discourses. A brief explanation of politics is illustrated by an examination of the political parties in Germany and the United States, and how political parties affect the ways in which a discourse is legitimated. To close, policies are concisely defined, and the policy-making process is illustrated. This section sets the stage for specifying the inclusive education policies of interest.

2.2.1. Democratic, Federal Polities

Meyer (2010) defines polities as "the foundations of the political community with its written and unwritten[4] constitution, established in the given period."[5] The written constitution divides the powers between branches of government, and between central and state governments.

The Federal Republic of Germany, composed of 16 states (*Länder*), is a democratic and social federal state deriving its authority from the people. The Basic Law (*Grundgesetz*) of Germany, drafted in 1948 in Herrenchiemsee and adopted in 1949, divides power between legislative, executive, and judicial bodies (Bundestag, 2012). There are several differences between the US Constitution and the Basic Law of Germany. First, the Basic Law is much younger, and more specific. It contains 146 articles that have been amended 50 times since 1949. This contrasts with the 17 amendments made to the US Constitution since 1791 (Gunlicks, 2003, pp. 53 - 54). Disputes regarding the interpretation of the US Constitution are settled through litigation and Supreme Court decisions (Gunlicks, 2003, p. 72).

The Basic Law begins with 19 articles on basic rights. These include the inviolability of human dignity, the right to personal freedoms, equality before the law, freedom of faith and conscience, and freedoms of expression, arts, and sciences, among others. These basic rights echo the basic sentiments expressed by the American Bill of Rights.

Like the Tenth Amendment in the United States, the Basic Law includes details separating power between the Federal Government and States. The Articles 20–37 describe the Federation and the States (*Länder*). Article 30 of the Basic Law states: "[e]xcept as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the *Länder*" (Bundestag, 2012, p. 34). The division of power is made explicit in Article 70, which grants the

4 The second foundation of the political community, the unwritten constitution or political culture, intersects with the definition of policy or ideas. He understands the unwritten constitution as a land's "political culture," which contributes to the definition of policies as it "decides how political claims to legitimacy, the political process as a whole, the actions of the actors, the interests they represent are perceived and how those concerned use the formal institutional framework provided by the written constitution. Therefore, the political culture, as the most important part of the unwritten constitution, is as important for actual political action as the system of institutions itself" (Meyer, 2010, p. 82).

5 In German: "*Polity kennzeichnet die im jeweils gegebenen Zeitraum feststehenden Grundlagen des politischen Gemeinwesens mit seiner geschriebenen und ungeschriebenen Verfassung*" (Meyer, 2010, p. 81).

States authority in all legislative matters not under the jurisdiction of the Federal Government (Bundestag, 2012, p. 57). These powers concern only a few areas, including culture, education, public safety, and some aspects of civil service and health care (Gunlicks, 2003, p. 56). Unlike their American counterparts, German federal states have neither contested their role as states, nor demanded more sovereignty, though they have maintained their authority in educational matters. Rather, "in Germany, there has been overall acceptance for a two-tiered model" where "the federal president and the Federal Constitutional Court would be organs of the federation, while the Federal Government (*Bundesregierung*) and the *Bundestag* would be organs of the central state and the federation" (Gunlicks, 2003, p. 55).

The German legislative branch is divided into the *Bundestag* and *Bundesrat*, whose responsibilities are described, respectively, in Articles 38–49 and 50–53. The people directly elect representatives to the *Bundestag,* who then elect the Federal Chancellor in turn. The people also elect representatives to state parliaments, who then elect state delegates to the *Bundesrat*. The executive branch is comprised of the Federal President and a Cabinet composed of the Chancellor and Ministers. The Chancellor is responsible for forming a cabinet and formulating government policy guidelines in cooperation with the Ministers.[6] The President is the "head of state" who represents the Federal Republic of Germany both within Germany and internationally. Since 1949, Germany has had eight Chancellors: Konrad Adenauer (1949–1963), Ludwig Erhard (1963–1966), Kurt Georg Kiesinger (1966–1969), Willy Brandt (1969–1974), Helmut Schmidt (1974–1982), Helmut Kohl (1982–1998), Gerhard Schröder (1998–2005), Angela Merkel (2005–2021), and Olaf Scholz (2022–present). Finally, the judiciary is described in Articles 92–104. The Federal Constitutional Court is responsible for interpreting the Basic Law and settling legal disputes (Bundestag, 2012).

Together, the judiciary branch, two executive branches, and two legislative branches of German government make up five governing bodies. The system is checked through measures such as the *Bundesrat*. This legislative body "is not dominated by any single state or a combination of a few large states, and it serves both as an important check on the Federal Government and *Bundestag* as well as joint decision

6 Source: *https://www.bundesregierung.de/breg-en/federal-government/structure-and-tasks-470508*

maker on a majority of laws […] next to the United States Senate, [the *Bundesrat*] is arguably the most important second chamber in any other democracy, let alone any other federation" (Gunlicks, 2003, p. 356). The *Bundesrat* is in turn checked by state (*Länder*) governments and opposition parties which retain the power to veto important bills proposed by the *Bundesrat*. German federalism has undergone different phases, though these have not been as many and varied as those of its American counterpart (Dye, 2017).

Unitary federalism represented a centralization of legislation and required a high degree of coordination and participation in policy-making. This uniformity was possible because the federal government was responsible for passing legislation, while the federal states were responsible for the administration of the laws pertaining to most public policies. The layer cake is a metaphor that illustrates the clear distribution and separation of power between the federal government and the states.

Cooperative federalism, known as *Politikverflechtung*, refers to increased tax sharing and administration in joint tasks between the Federal Government and states. This sharing of responsibilities intensified with the CDU/CSU and SPD reforms of 1969 and with the increased authorization of federal grants—a reform of federalism guided by a Keynesian economic philosophy, promoting a globally-oriented market economy led by the Federal Government.[7] Such interweaving of power between the state and central governments may be represented using a metaphor of a marble cake.

Competitive federalism refers to the competition between states. Especially because of fiscal equalization efforts in the 1990s, states began to protest a cooperative model of federalism in favor of competitive federalism. There was a return to layered, separated state and federal powers, though, in contrast to the earlier unitary federalism, with decidedly visible attempts by federal powers to unify both forms of government.

German states, far more so than the American states, practice a dual federalism characterized by state administration, rather than legislation. With very few exceptions, policies are legislated on the federal branch. These policies are rarely contested or changed by the German judiciary.

7 Source: *https://www.bpb.de/izpb/159332/demokratie-als-leitgedanke-des-deutschen-foederalismus?p=all*

Schmidt (2006) calls Germany a “compound” or complex polity. Typically, in a compound polity, the coordinative discourses (the cognitive discourse among political elites) are more elaborate than the communicative discourses (or the normative discourse among policy actors; see (Schmidt, 2006, 2007). Schmidt supports this statement with findings on Germany’s struggle with economic reform and innovation during the Hartz IV reforms, as well as discourses from countries belonging to the European Union (Schmidt, 2000). However, her findings can also be applied to the field of education. Even though education is one of the few policies under state jurisdiction, the German federal system operates a “cooperative state”[8] of multi-level governance. This cooperation allows the nation state to regulate the competencies of Federal States through institutions that forge agreements in education and cultural policies, and assist in their coordination and implementation, while being self-administered (Gunlicks, 2003; Powell, 2016, p. 161).

German and American polities produce different kinds of discourses. Although both countries distribute and disperse power through multiple authorities, the kinds of interactions between policy actors in United States and German politics differ. According to Schmidt (2006), whereas Germany has a high coordinative and low communicative discourse, the United States, in contrast, has both high coordinative and high communicative discourses. This claim accords with the kinds of federalism practiced in the two countries. For example, in German federalism, state and central governments are seen to play complementary roles, with the Federal Government legislating and the states administering policies. The German discourse was very heated in the years 1949 and 1990, which, respectively, witnessed the reformation of the polity after World War II and the reunification of West and East Germany. These events evoked questions of political identity and renewed attempts to establish that identity as a democratic one. Schmidt’s analysis of the German polity was tested and confirmed by this research (see section 6.2).

The United States of America, composed of fifty states, is a constitutional republic, a democracy, and a federalist nation. It declared its independence from Great Britain in 1776 with the following words:

8 This kind of governance is also labeled an “executive federalism,” in which state executives or third-level stakeholders coordinate and draft policies (Gunlicks, 2003, p. 388).

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.[9]

Having asserted their independence, the American founding fathers delineated the powers of government in the Constitution in 1779. The Constitution separated governmental power among legislative, executive, and judicial branches.

Article 1 articulates legislative powers, “vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” Among other responsibilities, that Congress is tasked to “make all laws which shall be necessary and proper for carrying into Execution the foregoing powers.”[10] The bicameral Congress features representation based on population in the House and equal representation of each state in the Senate. They are the only branch with the power to make new laws or change existing ones.

The office of the President epitomizes the executive powers, described in Article II as “vested in a President of the United States of America.” The President is elected by the Electoral College. In addition to the President, the executive branch also comprises the Cabinet, made up of the heads of executive departments, which advises the president. The Vice President is head of the Senate.

The judiciary comprises the third branch of government. Article III establishes that judicial power “shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Supreme Court judges are appointed by the President and confirmed by the Senate. They interpret the law, determine its constitutionality, and apply it to specific cases.

By dividing the government into three branches, a system of checks and balances was thought to have been put in place to prevent any one of the three powers from becoming dominant.[11] The Government Accountability Office (GAO), founded in 1921, is an example of such checks: it generates reports and audits for every aspect of the government. In the executive branch, 64 Inspectors General regularly audit and report

9 Source: *https://www.archives.gov/founding-docs/declaration-transcript*

10 Source: *https://www.archives.gov/founding-docs/constitution-transcript*

11 Source: *https://www.archives.gov/founding-docs/constitution/what-does-it-say*

on the agencies they are affiliated with.[12] In order to guarantee that the government maintains citizens' basic rights, the Bill of Rights added ten Amendments to the Constitution. These, as well as Amendments 11-27 which followed, describe the rights of Americans in relation to their government. Among other things, the Amendments guaranteed civil rights and liberties and set the rules for due process. The Bill of Rights spoke to the fear of a detached or overbearing central government. That fear was only slightly assuaged by the Tenth Amendment, that placed all powers not otherwise ascribed to the Federal Government in the hands of the state governments.[13]

The Tenth Amendment speaks to one of the greatest tensions found in the American polity, namely federalism. Federalism divides sovereignty between the central and state governments. Over time, the United States experienced several variants of federalism. Kettl (2020) divided the evolution of federalism, as efforts to define laws and boundaries by bargaining and balancing interests, into four generations. The first generation (1787–1865) was resolved with the Tenth Amendment which placed all powers not otherwise mentioned into the hands of states. The second generation (1865–1954) culminated with *Brown v. Board of Education*, which placed legislative power back into the hands of central government. The third generation (1954–1968) was characterized by the civil rights movements and a strengthening of federal power to secure equality. The fourth generation (1968–present) experienced a renewed shift in the direction of states (Kettl, 2020, p. 17).

Since the nation's birth, the American polity has undergone several shifts in federalism. The fluidity of American federalism has been described in different ways. For example, federalism could be interpreted as a set of rules of combat:

> American federalism, in fact, has always been much less a fixed structure than a set of rules of combat. In the centuries since, the underlying tension between national unity and state power has never gone away. Neither have the great political battles that federalism precipitates. (Kettl, 2020, p. 3)

12 Source: *https://www.whitehouse.gov/about-the-white-house/the-legislative-branch/*

13 The boundaries between federal and state governments was later contested in the "necessary and proper" clause, given by Chief Justice John Marshall in his ruling of *McCulloch v. Maryland* (Kettl, 2020, pp. 42 - 43).

The period 1949–1964 represents cooperative federalism, in which the “merging of policy responsibilities was compared to a marble cake. For the centralized form of federalism, where the Tenth Amendment lost its significance and state matters were decided by the Federal Government, Dye offers another cake metaphor by describing how “[t]he frosting had moved to the top, something like a pineapple upside-down cake” (Dye, 2017, p. 76).

Another form of federalism was new federalism, which occurred during the years 1980–1985. The term was coined by Presidents Nixon and Reagan to describe how federal and state governments would share, and eventually stop general revenue sharing, in order to give the states more independence. The federal government was trying to limit its own powers so that states could take more responsibility for their policies.

The years 1985–1995 witnessed more coercive federalism. This form of federalism was epitomized by a 1985 Supreme Court ruling in *Garcia v. San Antonio Metropolitan Transit Authority*, which allowed Congress to legislate in all matters that had been otherwise reserved for states (Dye, 2017, p. 76). Legislative power was granted to the Federal Government. Justice Lewis Powell dissented from the *Garcia* ruling, arguing that it rejected “almost 200 years of the understanding of the constitutional status of federalism” (Dye, 2017, p. 77). According to Dye (2017), the most recent variant of federalism seems to be a return to the original division of power. State interests regained power, though tempered by the Federal Government. However, Kettl (2020) argues that federalism today needs a more Hamiltonian solution to maintain the balancing act of powers: a stronger federal role, less transference of state best practices to national policies, and more local government involvement (Kettl, 2020).

This overview of the distribution of power between branches and federal and state governments helps clarify the effect polity has on policies. Schmidt (2006) described the United States as a “compound” or “complex” polity, rather than a “simple” one. Whereas simple polities place the primary governing responsibility on the shoulders of a single authority, compound polities disperse this responsibility across many shoulders (Schmidt, 2006). Importantly, the policymaking process is pluralist due to fragmented societal and state structures (Schmidt, 2006, p. 223). This fragmentation, Schmidt argues, impacts the resulting discourse. Normally, compound polities have more elaborate coordinative discourses and less elaborate communicative

discourses. This means that, in compound polities, political actors and elites typically lead stronger discourses focused on cognitive justifications, while policy actors maintain weaker discourses using normative arguments. However, the United States represents an anomaly among compound polities in this regard. Schmidt (2007) calls America “arguably the only compound polity where the communicative discourse is as important as the coordinative, especially with regard to reframing the coordinative discourse in order to promote agreement in a country where the political institutions almost militate against it” (Schmidt, 2007, p. 21).

2.2.2. Politics

Politics is the process by which political stakeholders determine which policies get enacted. Interests form the basis of politics. These interests may be social, cultural, regional, or moral, and they are represented by public, private, and collective stakeholders. At the highest level of political administration, public stakeholders include governmental institutions such as the parliament or Congress, Federal Constitutional Court or Supreme Court, and president. For federalist countries such as Germany, they also include coordinating bodies such as the German Standing Conference of the Ministers of Education and Cultural Affairs. Other stakeholders include associations, federations, the media, researchers, and churches.

Political parties are particularly important mitigating stakeholders. Political parties play a key role in communicating societal interests to government, making sure that societal interests, values, and projects are represented in the political arena during parliamentary debates. Between the years 1949–2009, the (Waitoller & Randle) German party system underwent several phases (Massing, 2015), swinging back and forth between party expansion and consolidation.

The first phase, also known as a formational period for German politics, was characterized by a fragmented party system. In the first *Bundestag* election of 1949, there were 13 parties, ten of which entered the *Bundestag*, along with three independent candidates (Niedermayer, 2018). The interests of the Soviet-occupied territories were represented by the dominating Socialist Unity Party (SED), while the foremost of the western parties was the Social Democratic Party of Germany (SPD). The SPD is the oldest party in Germany, founded in 1875 as an “anti-capitalist, socialist, but non-revolutionary Marxist working-class party” (Gunlicks, 2003, p. 267).

As a left-wing party, the SPD advocates social services, social justice, strong social infrastructure, employers, and de-prioritizing the military (Merz & Regel, 2013).

During the post-1949 party system, liberal interests were represented by the Free Democratic Party (FDP). The FDP was founded in 1948 and emphasizes government productivity, free markets, freedom, human rights, civil rights, a focus on the education system, and Europe-centered policies (Merz & Regel, 2013). The moderately conservative Christian Democratic Union (CDU), formed in 1950, represents middle-class voters, with broad support from Catholics, Protestants, and workers. It is, along with the SPD, known as a "people's party" (*Volkspartei*) (Gunlicks, 2003). Since its formation, the CDU has operated together with its sister party, the Christian Social Union (CSU). The CSU is mostly composed of members from the Federal State of Bavaria, and forms a parliamentary group together with the CDU. The CDU and CSU advocate traditional morality, more Europe-centered policies, more infrastructure, more military, and a focus on agriculture (Merz & Regel, 2013).

The 1950s ushered in a brief period of consolidation towards a two-party dominance by the CDU/CSU and SPD from the years 1953–1961. The rise of the FDP brought that party into a three-party system in the 1960s and 1970s. This three-party system persisted until 1983 (Alemann, 2018). The 1980s were a phase of pluralization, in which the political landscape expanded further. The *Bündnis 90* (Alliance 90)/Greens are two parties that joined together in the 1980s. They advocate for environmental protection, interactionalism, less military spending, more political authority, and the growth of non-commercially defined groups (Merz & Regel, 2013).

Starting 1983, the party system began to incorporate more variety, leading to a "pluralization" of political parties.[14] Following German reunification in 1990, another party was added: The Party of Democratic Socialism (PDS) was founded in East Germany and fused with the West Germany party, *die Linke,* in 2007. The PDS originated from the SED party in East Germany and advocated for increased social services, the rights of employees, social justice, and a focus on the education system (Merz & Regel, 2013). They rejected foreign military missions and embraced stronger

14 Pluralization meant a diversification of party interests and not a systemic change. Niedermayer (2018) points out that a systemic change first happened in the year 2009.

market regulation.[15] Smaller, right-wing national parties include the Republicans (Reps), the German People's Union (DVU), and the National Democratic Party of Germany (NPD). Starting in 2005, a "fluid five-party system" emerged (Niedermayer, 2013). Overall, the German party system has been marked by stability and minimal fractures (Alemann, 2018).

The United States has two major parties, the Democratic and the Republican, one of which has won every presidential election since 1852. The Democratic Party was founded in 1824. It has become a left-leaning, progressive party based on community and social responsibility. Democrats generally support decreased military spending, increased government regulations to protect consumers, universal healthcare, gay marriage, and abortion. The Republican Party, founded in 1854, is a right-leaning conservative party. Republicans generally advocate individual rights, equality before the law, increased military spending, minimize government regulations which interfere with free market capitalism, support private healthcare services, and oppose gay marriage and abortion. The Democratic Party's social liberal and Republican Party's economic liberal values are both represented by Germany's FDP (Gunlicks, 2003). The two major American parties perform at least five functions: the selection of official personnel for nonpartisan and administrative positions, the formulation of public policies with other special interest groups, conduct or criticism of government, acting as educational and nationalizing agencies, and the intermediation between individual and government[16] (Merriam, 1949, p. 470 & 473).

When comparing German and American politics, the most obvious differences lie in the political party system: Germany operates a multiple-party system while the United States has a two-party system. In Germany's parliamentary system, government is conducted by coalitions. In the United States, most of the negotiations and bargaining happen before elections, and interest groups rally behind either the Democratic or Republican parties. Furthermore, American parties are more prone to be financed by private donors. The German party system has not been influenced by private interest

15 Source: *https://www.dw.com/en/germanys-political-parties-cdu-csu-spd-afd-fdp-left-party-greens-what-you-need-to-know/a-38085900*

16 German political scientist Meyer (2010) also notes the last of these as a key function of parties.

donors or experts to the same extent as its American counterpart. In Germany, as in the United States, there is a concept of the major people's parties: the CDU/CSU on the middle right and the SPD on the middle left (Alemann, 2018). Gunlicks (2003) summarizes these other national political differences as follows:

> The American party system stands in sharp contrast to the German parties, which, in spite of regional party organizations of varying strength, are hierarchically organized and member-based, programmatic, disciplined, and led by leaders, usually the Chancellor, certain prime ministers of the *Länder,* or other well-known office holders, who are elected by party organs for that purpose. (Gunlicks, 2003, p. 265)

In 1949, Charles E. Merriam wrote that "[i]n one sense all democratic party systems are two-party systems" (Merriam, 1949, p. 3). Merriam (1949) was referring to the fact that, in all democratic party systems, parties and interest groups will try to win over a majority of votes. Still, he noted the difference between a multi-party country like Germany and the two-party system of the United States: "[u]nder the two-party system, the bargains between diverse elements are made before the election, and under the multiple-party system they are made after the election" (Merriam, 1949, p. 3).

The German and American political systems also share similarities. Of these, the greatest is the general adherence to the democratic principles of rule by majority. Even with the multiple changes in political party arrangement in Germany, political scientists did not claim to have observed *systemic* change prior to 2009. Although the two major American political parties have changed their positions on economic and social issues over time, the two-party system has remained in place. In fact, the parties have begun to polarize in recent years, harkening back to the early years of federalism.

Given the history of the political parties in Germany and the United States, the interests they have represented in government, as well as the similarities and differences between the two countries, it becomes clearer that policy discourse is both product and influencer of politics. Considering parliamentary and congressional debates in Germany and the United States, it becomes especially clear that the discourse exchanged between politicians reflects, but more importantly, shapes policy interests. In other words, discourse has both ideational and interactional properties, and those

properties justify and legitimize the discourse. This becomes clear considering the position from which a politician speaks.

In addition to political parties, civil society is an important stakeholder in polities. Civil society is a relevant collective actor that plays a key role for democracy through the voluntary social, political, cultural, or ecological engagement of citizens in their respective associations and initiatives. Decentralized activities like social initiatives, movements, and demonstrations draw attention to overlooked issues (Meyer, 2010). Civil society contributes to political culture by means of civic engagement.

When multiple stakeholders convene, a conflict of interests may emerge. Such conflicts can be characterized as either partial-sum or zero-sum conflicts. Based on the process of rational legitimation, the justifications offered, the legitimacy of the citizens affected, and the legality of the interest in relation to current norms and procedures, conflicts may result in compromise or consensus (Meyer, 2010, p. 121).

The process by which a compromise or consensus is reached is accompanied and mitigated by many different types of resources. These include laws, personnel, force, money, information, trust, time, infrastructure, and political support via democratic majorities (Knoepfel, Larrue, Varone, & Veit, 2011, p. 88). Stakeholders in possession of large amounts of resources as well as the political savviness to strategically trade these resources, gain power to advance their interests. As a result of the political conflict-resolution process, action programs are selected and enforced by the power-wielding stakeholders. There are several stages in the policymaking cycle.

Sometimes, the political process can be strategically bypassed. For example, in the 20th century, national socialist and communist totalitarian government systems *prima facie* circumvented the political process. In these systems, the political process was controlled by a dictator who determined which stakeholders and interests would be considered and implemented. Closer study reveals, however, that communist systems engaged in political processes behind closed doors. Thus, there is a scale on which political processes take place and a discrepancy between projected and actual activity of political negotiation taking place (Meyer, 2010).

2.2.3. Policies

This study focuses on the policy dimension of politics. If polities may be likened to form, and politics to process, then policies are the substance, or content, of politics

(Meyer, 2010, p. 80; Schubert & Bandelow, 2014). Policies indicate that a government has acknowledged a social problem and is responding to that problem through laws, regulations, decisions, programs, and recommendations. In so doing, the government becomes a problem solver whose policies reflect “whatever governments choose to do or not to do” (Dye, 2017, p. 5). Thus, policies can be understood as a governmental care-package: an assortment of measures enacted by local, state, or federal governments to acknowledge a problem and offer a solution given the availability of resources such as money, information, rights, people, organizations, consensus, time, infrastructure, political support, and force (Knoepfel et al., 2011; Schetsche, 2008).

The policy-making process is a coordinated effort between polities and politics which includes problem identification, agenda setting, as well as the formulation, legitimation, implementation, and evaluation of policies (Dye, 2017, p. 11). In Germany, a bill can be proposed by the *Bundestag*, the *Bundesrat*, or the Federal Government. If the bill is introduced by the Federal Government, it is transferred to the *Bundesrat*. If the *Bundesrat* wants to propose a bill, that bill must gain the support of members by vote before it goes to the Federal Government. If the bill is proposed by the *Bundestag*, it must be supported by either one of the parliamentary groups, having the support of at least five percent of *Bundestag* members.[17] There are three readings of the bill. The first reading designates the bill to one or more of the committees to be prepared for the second reading. The committee prepares its recommendations and distributes these before the second reading, when the bill is debated and voted on by the members of the *Bundestag*. Finally, the bill is read a third time if requested to be so by a parliamentary group or five percent of the *Bundestag* members. If a third reading takes place and the bill receives the majority vote, it becomes an act and is transferred to the *Bundesrat*. The *Bundesrat* can either consent or not consent to an act. If the act is consented to, it goes to the Federal Chancellor and relevant federal minister, who, in turn, sign and send it to the Federal President. The Federal President then checks and signs the act if it is consistent with the Basic Law.

17 Source: *https://www.bundestag.de/en/parliament/function/legislation/passage-245704*

American policy-making also involves several steps of discussion and revision.[18] In the United States, a bill is introduced either by a Senator or Representative and placed in a wooden box called the hopper. Next, the bill goes to a committee, a small group of Representatives or Senators who discuss and make changes to the bill. The committee votes to accept or reject it. If accepted, the bill goes back to the Chamber of Congress—the House or the Senate—in which it was introduced for debate, or to a subcommittee for more research. The bill is again discussed by members of the House or Senate. Changes or amendments are proposed and then voted upon. A majority vote is needed in order to move the bill to the other Chamber. Before the bill goes to the President, its final version must gain the approval of a majority of both the House and Senate. If approved by the President, the bill becomes a law.

Although policies intend to solve problems, attempted solutions might create new problems. At any rate, the efficacy and effects of the measures are often difficult to measure. According to Dye (2017), limits on government power, disagreements over the problem, the subjectivity of interpretations, the difficulty of scientifically measuring results for people, and complexity of human behavior pose barriers to policy analysis as "the question for solutions to America's problems" (Dye, 2017, p. 7).

Policies embody the interests and values of a society at a given time (Meyer, 2010). Dye (2017) references political scientist David Easton's definition of public policy as "the authoritative allocation of values for the whole society," a view shared by political scientist Harold Lasswell and philosopher Abraham Kaplan (Dye, 2017, p. 333). Both Meyer (2010) and Dye (2017) define policy as the response to a defined problem through specific programs, whose solutions are based on specific interests and political, social, economic, and cultural values (Dye, 2017, p. 5; Meyer, 2010, p. 82). The interaction between these values in policies fuels discussions, disagreements, and policy discourses that determine the scope and power of a given policy.

The nature of policies may be complicated not only by a density of conflicting values, but also by the absence of them. Some politics is issueless: often, symbolic policies are issued without any concrete action (Meyer, 2010, pp. 86-87). The existence of symbolic policies, according to Meyer (2010), confirms policy's integral role in lending

18 Source: *https://www.usa.gov/how-laws-are-made*

legitimacy to a political system: it is better to proclaim empty, placebo policies than no policies at all. This thought suggests that it is fruitful to study policies at the level of discourse: regardless of a policy's real impact, it serves to legitimize and institutionalize the government's response to a social problem as a "specific societal form of discourse" (Schetsche, 2008, p. 158).

2.2.4. Summary and Timeline

This overview of German and American polities, politics, and policies lays the contemporary and historical groundwork for understanding the research object: inclusive education policies. By identifying themselves as federal democracies, Germany and the United States subscribe to a separation of powers between the federal, executive, and judicial branches of government, as well as between state and the federal governments. However, a significant difference between these two countries is the role played by the executive branch in educational matters. This will become apparent in the following section on education polities, politics, and policies.

A historical overview of the federalism practiced between 1949–2009 demonstrates political dynamism and a pendulum of competing interests. The lively process of interest representation, otherwise known as politics, manifests itself in both Germany and America in political parties, although the dual-party or multi-party systems have produced different numbers of majority parties. Finally, the policies that result from the political process demonstrate not only negotiation and legitimization between parties, but also successful justification, legitimization, coordination, and communication of *discourse*. The following figures illustrate the faces of federalism, together with the policies which directly or indirectly affected children with disabilities (Figure 2.1, 2.2). These figures are followed by a final section that hones in on the next conceptual aspect of the research object: education.

Figure 2.1

Major Political Events and Education Policies in Germany (1949–2009)

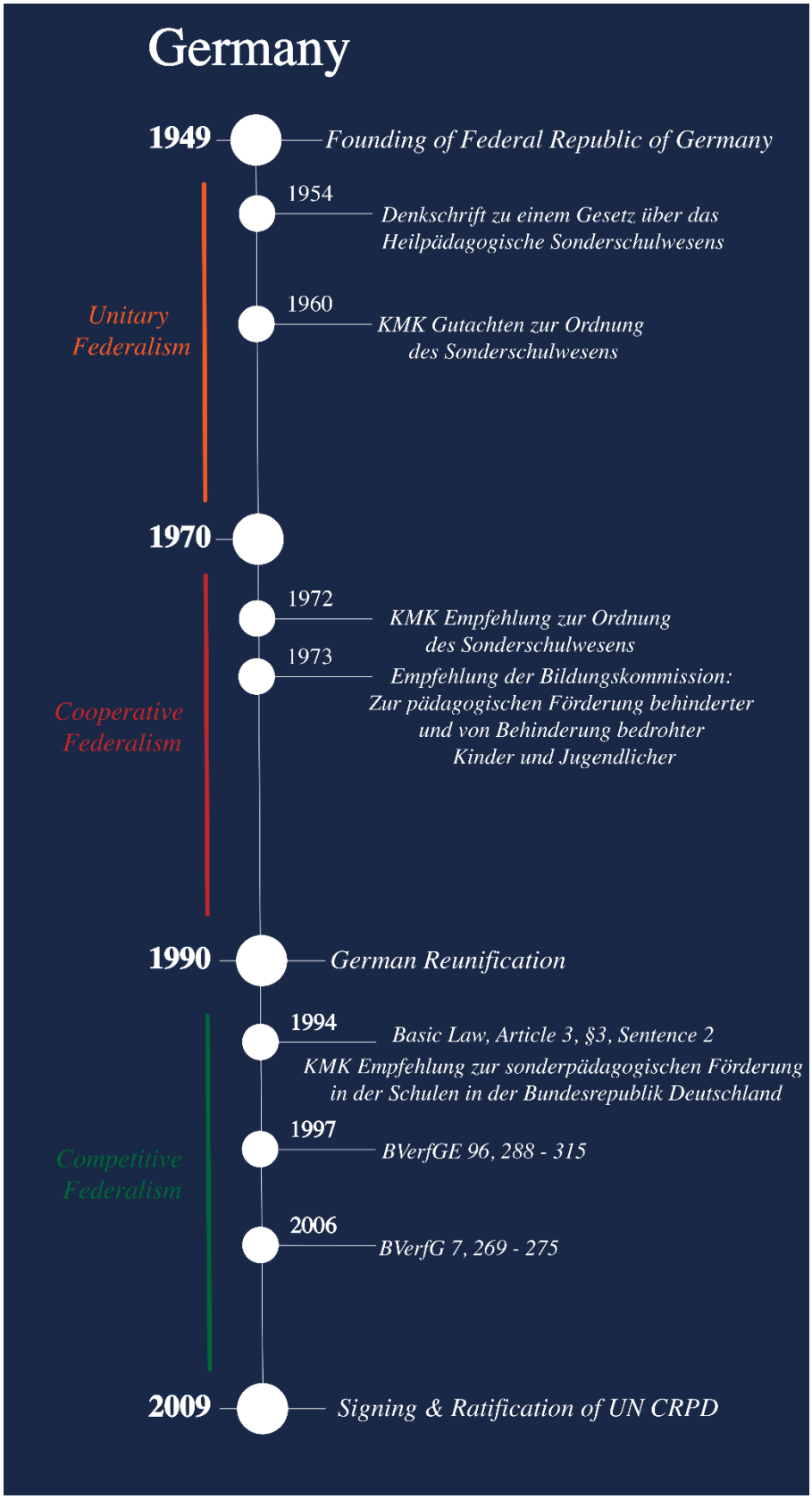
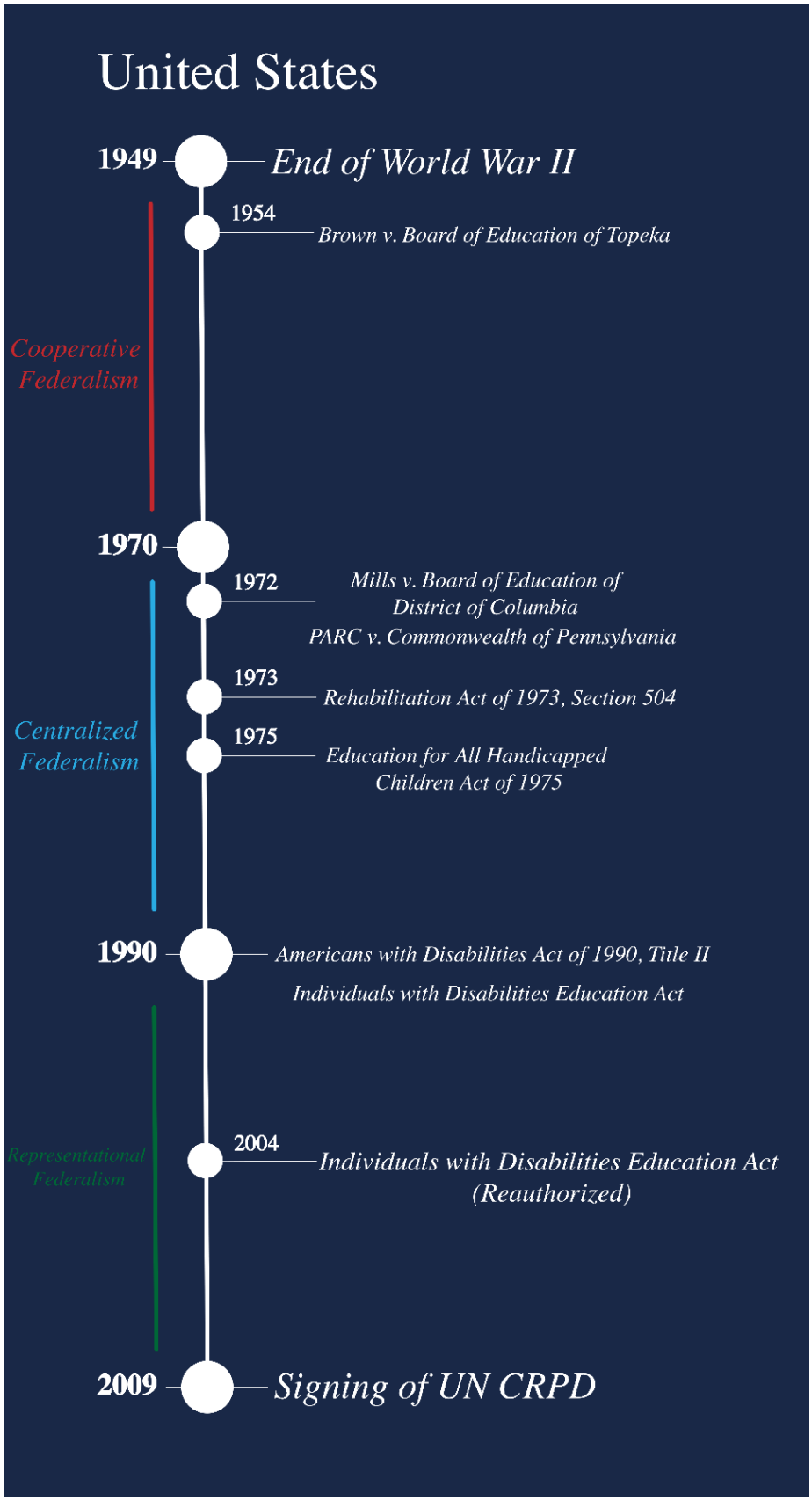


Figure 2.2

Major Political Events and Education Policies in the United States (1949–2009)



2.3. German and American Education Systems and Stakeholders

Education is political. According to education historian Joel Spring, "[w]hen students enter the public school, they are submitting to the will of the public as determined by local, state, and federal governments. The goals of American schools are politically determined" (Spring, 2020, p. 4). However, the classroom is more than a reflection of, and breeding ground for, politically determined goals. Studying education policies resonates on national, historical, and contemporary levels. There are historical reasons for a study of education policies. Due to Germany's experience of the abuse of a politicized educational polity during the time of National Socialism, politicians recognized[19] the role of politics in education. They sought to base education on democratic principles and to develop goals that analyze and critically assess social political processes (Lösch, 2012). A historical education policy study in the United States is necessary, since modern day policymakers benefit from a rich interaction with "historically minded scholars" (Vinovskis, 2009, p. 24). Special education could be studied from an economic, social, or cultural point of view. This section focuses on the political aspect of education. Taking education and democracy together illuminates social processes and ideals in a study of educational policy[20] (Dewey, 2005; Spring, 2020). In this section, the political parameters outlined in the previous section are applied to the field of education, especially the education of children with disabilities. The section concludes by comparing these dimensions in Germany and the United States.

2.3.1. Education Polities

The main German polities include the Basic Law, the Federal President, the *Bundestag*, *Bundesrat*, Federal Government ministries, the Federal Constitutional Court, and the States. Specifically, education policies are dictated by states and

19 These "recognitions" in the parliamentary debates were always very indirect references to the recent past (*jüngste Vergangenheit*) without clearly naming the policy or the people responsible for the euthanizing of children with disabilities.

20 In his book *Democracy and Education*, American philosopher of education John Dewey (2005) defined education as a social process and function whose meaning was variable based on society. By way of example, Dewey (2005) drew upon three historical societal ideals: Platonic philosophy, the 18th century enlightenment, and the nation-state in Germany. First, Dewey describes Plato's democratic ideal as making the basic social unit the class, rather than the individual. Second, the 18th century enlightenment promoted an individualism that drew its ideal from Nature. In the early 19th century, the social aim was to belong to the same political party and submit the individual to an institution (Dewey, 2005).

localities due to the cultural sovereignty of the states (*Kulturhoheit*). This means that education, along with science and culture, is a primary responsibility of states, exercised by and demonstrated through state legislation and administration.

However, there are coordinating bodies that seek to harmonize the German education systems. The Federal Ministry of Education and Research (*Bundesministerium für Bildung und Forschung*) seeks to promote education, science, and research at the national level. The Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* in the Federal Republic of Germany (*Kultusministerkonferenz* or KMK) was founded in 1948 as an intergovernmental or coordinating body formed by the executive branch at the state level consisting of the state ministries responsible for education policy. The KMK has no sovereign authority, and its decisions are not binding for individual states. The KMK articulated the goal of delegating education as the

> (…) principle that each state bears responsibility for its educational and cultural policy, with the proviso that, in accordance with the federalist principle, they lend expression to the historical, geographical, cultural, and socio-political aspects specific to their state and thus to diversity and competition in the education system and in the field of culture. On the other hand, the constituent states of the federal state bear joint responsibility for the entire state. (Kultusministerkonferenz, 2019, p. 15).

According to a KMK publication (2019) on the education system of Germany, there were no laws or policies issued at the federal level of government, indicating an adherence to the separation of the Federal Government and the states. The same publication listed numerous state laws and regulations regarding all educational matters, beginning with laws mandating school attendance. Thus, education policies are regionally variable.

The German Education Council (*Deutsche Bildungsrat*) existed from 1966 to 1975. It was comprised of interest groups, academics, trade unions, employers, skilled tradespeople, church groups, and representatives of the ministries of education. Its function was only to advise and recommend policies, based upon assessments conducted on the German education system with the long-term goal of sustainable

education planning. During its existence, the German Education Council published around 60 expert reports.

The educational institution is one part of the education system. The German school system is highly selective and, as a result, is characterized by inequalities and competition, especially among the middle class (Ellger-Rüttgardt, 2016a). Due to the federalist political structure, education is also highly variable across federal states. However, a few characteristics of education systems are shared across all 16 German states.[21] Students attend elementary school (*Primarbereich*) between grades 1-4 or 1-6 (depending on the student's further education). Secondary schools are divided into two phases, depending on whether a child chooses to continue grades 11-13 in vocational and education training. The tertiary period covers schooling that a student may choose to continue at a university or other institution that culminates their education with an academic degree.

In Germany, children under the age of five may attend a combination of either a nursery, childcare center, or kindergarten. A parallel option allows a child to attend separate special-needs kindergarten. Starting from age six, children are mandated to attend school. Children begin elementary school at the age of six and are nine or ten years old when they complete the 4th grade. During this time, there is also the parallel, separate option of attending a special-needs primary school. After the 4th grade, the children are recommended to attend one of six kinds of educational institutions for the 5th to 10th grade. These are, in order of difficulty level: the *Gymnasium, Realschule, Hauptschule and Integrierte Gesamtschule, Schularten mit zwei oder drei Bildungsgängen,* or the *Förderschule*. Starting from grade 11, another divergence of school institution is possible.

The *Gymnasium* is the highest form of schooling, and it leads to *Gymnasium* upper school education for grades 11-13. The *Realschule* may also lead to the *Gymnasium* upper school education, but typically correlates with entry into the *Fachoberschule*, the *Berufsoberschule*, *Fachgymnasium*, or *Berufsfachschule,* which offer various kinds of technical or vocational education. Children who attend the *Realschule* also have the option of a more direct entry into a vocational education at the *Berufsschule*

21 For an interactive illustration of the education system, see: *https://www.bpb.de/gesellschaft/bildung/zukunft-bildung/163283/das-bildungssystem-in-deutschland*

& Betrieb or the *Berufsschule*, where the youth combine vocational school with training or attending vocational school full-time for grades 11-13. If a child attends the *Hauptschule* during grades 5 to 10, they only have the option of attending vocational education and training for grades 11-13. However, if the child attends an integrated school (*Integrierte Gesamtschule*) for grades 5 to 10, all schooling placement options—both the technical and vocationally-geared higher classes as well as the *Gymnasiale Oberstufe*—are open for them for grades 11-13. The same principle applies to schools with two or three educational courses (*Schularten mit zwei oder drei Bildungsgängen*).

Some transfers occur between the *Gymnasium*, *Realschule*, and *Hauptschule* during grades 5 through 10, as there is a half year testing period, or an entry exam, or an evaluative course attached to the recommended schooling placement at the 5th-grade level. Again, the special school (*Förderschule*) runs parallel to these institutions. It constitutes a separate, impermeable institution, leading to further special school education for grades 11-13 or work at a sheltered workshop (*Behindertenwerkstatt*). After grade 13, school attendance is no longer mandated by the government. The final level of schooling includes university-level classes, musical or technical institutes, theological seminaries, dual vocational and training institutions, health institutions, other vocational institutions, and evening schools.

The United States, while also claiming a federalist identity and placing education under state and local sovereignty, has blurred the line between state and federal jurisdictions over education, frequently legislating, adjudicated, and approving educational interventions at the federal level. In an analysis of legal activity concerning education, Mead (2009) observed how judicial intervention in education accelerated after *Brown v. Board of Education* (1954).[22] That decision called segregation "inherently unequal" (Mead, 2009). Given the states' inability to respond adequately to the provisions promised, the legislative branch began increasingly to intervene, either by withholding money or providing financial incentives to states. This capital power, also called

22 The formal intervention through *Brown v. Board of Education* in 1954 was also considered seminal in marking a new generation of federal-state relations. Political scientist Kettl (2020) considered the Supreme Court's ruling in 1954 the starting point of a third generation of federalism that moved power back into the Federal Government's hands.

“categorical aid,” evoked state and local compliance to nationally set regulations (Mead, 2009; Spring, 2020).

Following the Elementary and Secondary Education Act of 1965, Congress began to increase its involvement in education policymaking. Especially with the 2001 authorization of the No Child Left Behind Act, states were required to adopt centralized standards and test, and to report the results; they could be penalized for not meeting progress standards in reading, math, and science (Mead, 2009). The Individuals with Disabilities Education Act (IDEA) is a prime example of how the legislature and judiciary worked together to establish and specify education policy for children with disabilities, as “not all litigation or legislation affecting education occurs at the federal level—quite the contrary, in fact” (Mead, 2009, p. 292). Thus, in the United States, educational institutions and federal institutions are not as separated as their counterparts in Germany—a point that is relevant for understanding the policy discourses in both countries.

The American education system begins with children entering nursery schools, daycares, or pre-kindergarten from ages three to four.[23] Afterwards, a child may enter kindergarten until the age of six. Beginning at the age of six, a child enters the 1st grade of elementary school. Elementary school may go from the 1st to the 8th grade preceding a four-year high school covering grades 9 to 12. Otherwise, a child can enter a middle school between grades 4-8 before four years of high school. Or, students may attend a junior high school from the 6th grade to 9th grade and then a senior high school for grades 10 to 12. Finally, a child may attend an elementary school until the 6th grade and then enter a combined junior-senior high school for grades 7 to 12. Thus, secondary education can begin at either the 4th, 5th, 6th, or 8th grades. These options are arranged horizontally, next to each other, rather than vertically, as in the German education system. This is evidenced by the fact that a high school diploma is awarded to all those who graduate the 12th grade, regardless of whether they attended a four-year high school, senior high school, or combined junior-senior high school. Together, this system composes the kindergarten to 12 grade system.

After the 12th grade, a student may choose to continue their education at a vocational or technical institute for three years, a four-year post-secondary institution which

23 Source: *https://gpseducation.oecd.org/CountryProfile?primaryCountry=USA*

grants bachelor's degrees, or a two-year community college to obtain a vocational associate's or academic associate's degree. Only those who attend either a two-year community college or four-year post-secondary institution may continue to graduate or professional school to achieve a professional, master's or doctorate degree. In the next section, these policies are specifically listed and described for Germany and the United States.

2.3.2. Politics in Education

In addition to the political parties already described in Section 2.2.1, educational interests in Germany and the United States are represented by stakeholders. In both countries, stakeholders include parents, teachers, administrators, school boards, teachers' unions like the National Education Association and American Federation of Teachers in the US, voters, and taxpayers. Other important stakeholder groups include racial and religious groups, courts, lobbying groups, and influential professional associations like the *Verband Deutscher Sonderpädagogik* (VDS) in Germany or the Council for Exceptional Children in the US.

Identifying the stakeholders in Germany and the United States was crucial for understanding not only the history of inclusive education policy, but also the disability rights movement and the disability policies at large which that movement resulted in. For example, in Germany, teachers have had a strong voice in special education. Beginning with the *Reichsschulkonferenz* compromise in 1920, the Association for German Special Education (*Verband Deutscher Sonderpädagogik*) supported segregated schooling systems. After World War II, this association regrouped. The VDS association's 1954 white paper entitled *Denkschrift zu einem Gesetz über das heilpädagogische Sonderschulwesen* delineated school types and typified other documents in support of segregated systems.[24] Memorandums that proliferated through teachers' unions supported efforts to reconstruct and restore the special school system. The political leverage held by special education teachers, and their support of separate school systems, even dominated party politics after World War II.

24 Other memorandums include: *Denkschrift zu dem Ausbau des heilpädagogischen Sonderschulwesens, Richtlinien für den Unterricht und die Erziehung in den heilpädagogischen Sonderschulen, Denkschrift über Sonderschulen und Sonderkindergarten,* and *Denkschrift zum Ausbau des ländlichen Sonderschulwesens* (Lesemann, 1966, p. 101).

The support school (*Hilfsschule*) and the special school system alike experienced backlash from parents, teachers, and other interest groups in favor of democratizing education, but segregation persisted – and persists.

However, identifying and comparing these actors in Germany and the United States was not the focus of this research. Specifically, this was because a Foucauldian theory calls for a greater focus on speaker positions rather than the speakers themselves. This birds-eye view of political speakers can be justified in light of the historical scope of this research and the sheer multitude of speakers who have come and gone over time. Thus, this research adopts a different focus on the politics of education. Rather than studying the stakeholders and the various interest groups, the policy discourse analysis acknowledges political party affiliation, for example, as a position from which politicians debate policies. The legitimizing narratives told to support a particular policy for children with disabilities is key. This way of studying politics and power focuses on the power *in* and *over* a discourse, rather than the power that results *through* a discourse as told by a specific stakeholder, most often policy elites, and their ability to persuade other stakeholders to accept their ideas (Carstensen & Schmidt, 2016).

2.3.3. Education Policies

Public policy, a term introduced to European political and organizational sciences in the 1970s, describes the interaction between public and possibly private actors in order to solve a collective problem (Knoepfel et al., 2011). Germany and the United States each understood education policy as public policy to a different extent due to the engagement of both public and private actors as well as the role of the executive branch of government.

The different levels of interaction with the federal governments in Germany and the American educational polities affected the policy output. In Germany, the stringent allocation of educational matters to federal states was made evident by the lack of laws issued by parliament. Instead, most of the policies were created through coordinating bodies such as the KMK or the advisory Education Council (*Bildungsrat*) and acted as policy recommendations, rather than laws. The only exception was the anti-discrimination clause (*Diskriminierungsverbot*), added to Article Three of the Basic Law of Germany in 1994. In this section, a few main education policies for

children with disabilities are summarized. This introduction will contextualize the analyses to come in Chapters Four and Five.

In 1954, the Association of German Special Schools (*Verband Deutscher Sonderpädagogik*) released a white paper to educational ministers in all German federal states, fervently arguing for the independent establishment of special school systems. This paper, the *Denkschrift zu einem Gesetz über das Heilpädagogische Sonderschulwesen* ("Memorandum on a Law on Special Education in Special Schools"), delineated school types, clarified the legal basis of the special school system, and explicitly supported the separate schooling of children who had been deemed uneducable (Schnoor & Rohrmann, 2004, p. 18). The KMK released an expert report in 1960. The *Gutachten zur Ordnung des Sonderschulwesens*, was referenced often by educational historians as an important document in the history of special education. For example, Ellger-Rüttgardt (2008) called the KMK's 1960 recommendations a turning point in the history of how special schools were justified. Special schools no longer solely served utilitarian and economic purposes. Public duty and respect for human dignity were cited as reasons for educating children with disabilities (Ellger-Rüttgardt, 2008, p. 303).

Between 1970–1989, education policies for children with disabilities found a clear (if conflicting) expression in the KMK's 1972 policy recommendations, "*Empfehlung zur Ordnung des Sonderschulwesens*," as well as the Bildungsrat's 1973 policy recommendations entitled "German Education Council Recommendations of the Education Commission: On the pedagogical advancement of children and adolescents with disabilities and at risk of disability (1973) (*Deutscher Bildungsrat—Empfehlungen der Bildungskommission: Zur pädagogischen Förderung behinderter und von Behinderung bedrohter Kinder und Jugendlicher*). The Council's 1973 recommendations were described as pivotal to inclusive education discourse in the 1970s:

> The debate on the joint education of disabled and non-disabled children that has been going on since the 1970s is inconceivable without the Education Council's recommendation of 1973. This recommendation, which was conceived as a *supplemen*t to the structural plan of 1970 as a kind of "structural plan for the pedagogical promotion of disabled children and young people threatened by disability," heralded *a* turning point in West German special

> education: it broke with the tradition of a separate special education system and instead propagated as a new goal the joint education of disabled and non-disabled children.[25] (Ellger-Rüttgardt, 2008, p. 308) (emphasis added)

Describing the Council's 1973 recommendations as a "supplement" to the structural plan of 1970 is significant. The Education Council had excluded the topic of special education from their previous document, "Structure Plan for the Education System," written in 1970. The Commission resorted to prioritizing this area in a second publication, presenting these recommendations three years later, for two reasons: the perceived inadequacy of a structural plan in addressing a field "of increased importance" and the injustice that would be done by devising a short-term plan. The reasons for this deliberate exclusion, while plausible, demand explanation. It is ironic that, while deemed "supplementary" by Ellger-Rüttgardt (2008), the novel discussion of integration was presented in a *separate* document dedicated to recommendations in the field of special education, and not as sub-topic in the more general discussion of education reform, as was the case in the 1970 structural plan. Why issues related to special education "could not be adequately met even with a plan which was primarily concerned with structures" is never explained. Thus, it is not clear what document would be considered "adequate" for these purposes. Put another way, structural adjustments seem to suffice for general school reform but not for special education.

The Council's Recommendations of 1973 and the recommendations issued by the KMK in 1972 are a less jarring juxtaposition of documents. The Council wrote:

> The current effort to promote special education, which has been neglected for a long time, and at the same time to promote the disabled in the Federal Republic, is characterized by the fact that two recommendations have been drawn up at short intervals: the present recommendation of the Education Commission "On the pedagogical promotion of children and adolescents who are disabled and threatened by disability" and the "Recommendation on the

25 In German: "*Die seit den 70er Jahren in der Behindertenpädagogik geführte Debatte um eine gemeinsame Erziehung behinderter und nicht behinderter Kinder ist ohne die Bildungsratsempfehlung von 1973 nicht vorstellbar. Diese Empfehlung, die als Nachtrag zum Strukturplan von 1970 als eine Art ‚Strukturplan für die pädagogische Förderung behinderter und von Behinderung bedrohter Kinder und Jugendlicher' konzipiert wurde, läutete einen Wendepunkt in der westdeutschen Sonderpädagogik ein: Sie brach mit der Tradition eines separaten Sonderschulwesens und propagierte stattdessen als neues Ziel die gemeinsame Erziehung behinderter und nicht behinderter Kinder.*"

> order of special education", which was adopted by the Standing Conference of the Ministers of Education and Cultural Affairs of the States in the Federal Republic of Germany in 1972. Both recommendations do not represent contradictions but complement each other within the framework of educational planning, which on the one hand has to take short-term measures to expand and further develop existing forms and on the other hand has to draw up long-term target projections towards which short-term measures have to be oriented.[26] (Bildungsrat, 1973, p. 22)

The long neglect of the topic of special education was evidenced by the lack of discussion and recommendations issued pertaining to children with disabilities. Given this long period of neglect, the two documents issued by the Education Council and KMK represented turning points in the history of special education in Germany. The Council considered the two documents "complementary." The KMK document of 1972 provided short-term measures, while the Council's document of 1973 was a long-term plan for special education. Specifically, the Council took the KMK recommendations a step further by emphasizing the development of joint learning environments and the integration of special and joint education systems.

Special education policy pivoted in the following decades (1990–2009). Germany underwent a peaceful reunification in 1990, becoming an expanded Federal Republic of Germany. Reunification afforded new educational policy opportunities and challenges. National reunification moved the education discourse in favor of joint and general school systems. This sentiment was expressed in the KMK's 1994 document entitled "*Empfehlungen zur sonderpädagogischen Förderung in den Schulen in der Bundesrepublik Deutschland*." The same year, an Anti-discrimination Clause

26 In German: "*Das gegenwärtige Bemühen um das lange Zeit vernachlässigte Sonderschulwesen und damit zugleich um die Förderung der Behinderten in der Bundesrepublik ist unter anderem dadurch charakterisiert, daß in kurzem zeitlichen Abstand zwei Empfehlungen erarbeitet worden sind: Die vorliegende Empfehlung der Bildungskommission "Zur pädagogischen Förderung behinderter und von Behinderung bedrohter Kinder und Jugendlicher*" *und die* "*Empfehlung zur Ordnung des Sonderschulwesens,*" *die von der Ständigen Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland 1972 beschlossen wurde. Beide Empfehlungen stellen keine Gegensätze dar, sondern ergänzen sich im Rahmen einer Bildungsplanung, die einerseits kurzfristige Maßnahmen des Ausbaus und der Weiterentwicklung bestehender Formen zu treffen hat, andererseits langfristige Zielprojektionen entwerfen muß, auf die hin kurzfristige Maßnahmen orientiert sein müssen.*"

(*Diskriminierungsverbot*) was added to Article 3 of the Basic Law, forbidding discrimination based on disability.

These policy gains were sobered by the Federal Constitutional Court decision of BVerfG 96, 288 – 315 from October 8, 1997. In it, "Minor S" filed a complaint against the Higher Administrative Court of Lower Saxony on November 29, 1996. Vice president Seidl and judges Grimm, Kühling, Jaeger, Haas, Höming, and Steiner were serving on the federal court. The case questioned whether article 3, paragraph 3, sentence 2 (A3 §3 S2)[27] of the constitution called for joint schooling (so-called "integrative schooling") of school-aged children with and without disabilities in a general public school (§1).[28] Part A of the written decision (§1-42) describes the details of the case as it was presented to the Higher Administrative Court. Part B (§43-25) and Part C (§46-77) record the details of the case by the Federal Constitutional Court, their interpretation of the constitution, and their verdict. The Court decided to disregard the child's wishes to attend an integrative school because of the school's lack of resources to provide what is considered necessary to support an integrative decision.

In contrast to Germany, all three branches of the US government released policies two decades earlier, reauthorizing the polices in the 2000s. During the first two decades with which this study is concerned, the United States did not pass any federal legislation specifically concerned with educating children with disabilities. However, the *Brown v. Board of Education of Topeka* Supreme Court ruling of 1954 was considered seminal for paving the way for advocating the equal rights of African American children in the courts and schools. This ruling, along with the civil rights movement of the 1960s, spurred social changes which also had an impact on children with disabilities (Jülich, 1996, p. 45; Ravitch, 1983; Winzer, 2009, p. 105). Demands for public education materialized in Supreme Court rulings for children with disabilities in cases such as *Mills v. Board of Education of District of Columbia, 438 F. Supp. 866*

[27] "No person shall be disfavored because of disability" (A3 §3 S2, Constitution). This sentence was added as a constitutional revision on October 27, 1994. In this analysis, the terms "disfavor" and "disadvantage" were used interchangeably.

[28] In German: „Die Verfassungsbeschwerde betrifft die Frage, ob Art. 3 Abs. 3 Satz 2 GG eine gemeinsame Erziehung und Unterrichtung von schulpflichtigen behinderten und nichtbehinderten Kindern und Jugendlichen an allgemeinen öffentlichen Schulen (sogenannte integrative Beschulung) verlangt."

D.D.C. 1972 & *Pennsylvania Association of Retarded Children v. Commonwealth of Pennsylvania., 343 F. Supp. 279 E.D. Pa. 1972*.

In *Mills v. Board of Education of District of Columbia*, a civil case was brought against the District of Columbia Public Schools on behalf of seven children. The children were denied publicly supported education and excluded from regular public-school classes without due process by the District of Columbia. In *Pennsylvania Association of Retarded Children v. Commonwealth of Pennsylvania*, a class action case was brought by the Pennsylvania Association for Retarded Children against the Commonwealth of Pennsylvania for excluding children between the ages of 6-21 from education in public schools. The plaintiff argued that, by denying children an education if their mental age did not reach five years by the first grade, the state had violated the Due Process and Equal Protection clause of the 14th Amendment. The Court ruled that any child up to 21 should be allowed admission to a public-school program appropriate to their learning capacities and should be notified and given the opportunity for a due process hearing if their educational status changes.

In addition to Supreme Court cases, the legislative branch also released the Rehabilitation Act of 1973, Section 504, which protected the rights of children with disabilities to participate in and benefit from any federally financed program. The Americans with Disabilities Act of 1990 (ADA), a civil rights law, prohibited discrimination based on disability. Within the ADA, Congress identified persistent instances of discrimination toward persons with disabilities “in such critical areas as employment, housing, public accommodations, *education*, transportation, communication, recreation, institutionalization, health services, voting, and access to public services” ("Americans with Disabilities Act of 1990," 1990) (emphasis added).

Another crucial policy was the Education for All Handicapped Children Act (P.L. 94–142 , EAHCA), initially passed in 1975, and renewed and renamed in 2004 as the Individuals with Disabilities Education Act (IDEA). The EAHCA promised children with disabilities a “free and appropriate education.” While access to a free and appropriate education improved with the passage of the EAHCA, the law’s efficacy was impeded by “low expectations” and limited integration into regular classrooms ("Individuals with Disabilities Education Act," 1990).

Seminal as the EAHCA was for granting children with disabilities access into classrooms, primary and secondary literature evaluating the EAHCA critique its success. For example, President Gerald R. Ford, who signed the bill into law, wrote:

> I have approved S.6, the Education for All Handicapped Children Act of 1975. Unfortunately, this bill promises more than the Federal Government can deliver, and its good intentions can be thwarted by the many unwise provisions it contains. Everyone can agree with the objective stated in the title of this bill—educating all handicapped children in our nation. The key question is whether the bill will really accomplish that objective. Even the strongest supporters of this measure know as well as I that they are falsely raising the expectations of the groups affected by claiming authorization levels which are excessive and unrealistic. (*Book II Pub. Papers 1935*, 1975, p. 706)

President Ford problematized the funding situation as well as the federal government's ability to meet the financial requirements of "educating all handicapped children in our nation" (*Book II Pub. Papers 1935*, 1975, p. 706). Powell (2016) critiques the unintended effects of EAHCA, which included the categorization of students and over-compliant bureaucratic procedures that failed to meet the needs of the children for which they were made.

This brief overview of the various education policies in the United States proves the federal government's widespread involvement in the policymaking process. The judiciary, legislative, and executive branches of government responded to the need for all children with disabilities to receive a "free" and "appropriate" education in the "least restricted environment." Other policies related to education more generally were also released during the same time frame. These were the 1965 Elementary and Secondary Education Act, the 1974 Family Educational Rights and Privacy Act that promised to protect the privacy of student records, the 1990 Americans with Disabilities Act that was amended to the Rehabilitation Act of 1973, and the 2001 No Child Left Behind Act, among others.[29] These policies increased federal involvement in and control of the education system. For better or worse, they held states accountable to nationally determined standards that would ensure the inclusion of

29 For more information, see: *https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html*

children with disabilities in institutions with nondisabled children. Special classes or schooling would be the exception to the norm, and only practiced if inclusionary efforts did not produce satisfactory results. Efforts at inclusion in individual cases were determined by the Individualized Education Program (IEP) issued to the child.

Education policy output differed in both countries, which is significant when trying to understand the substantial differences in the discourse, beginning with the data corpus. In Germany, cooperation in education matters occurred only in cases of mutual agreement between the federal government and states. Educational sovereignty (*Kulturhoheit*) was otherwise preserved. On the policy level, education and social policies in Germany are considered separate. In contrast, the more fluid involvement of the federal government in the decision-making processes regarding American education was demonstrated by the education laws issued by the legislature and enforced by Supreme Court rulings.

2.3.4. Summary

> *What is an educational system, after all, if not a ritualization of the word; if not a qualification of some fixing of roles for speakers; if not the constitution of a (diffuse) doctrinal group; if not a distribution and an appropriation of discourse, with all its learning and its powers? (Foucault, 2010, p. 227)*

On the level of polity, education policy is dynamic: educational matters may create tensions between state and federal powers. While education belongs to the cultural sovereignty of the German people and falls under American state jurisdiction, it has managed to influence formal and federal-level discourse. Federal policymaking in the United States was more direct when compared to the recommendations issued in Germany. However, in both countries, the lines of federalism have become increasingly blurred, raising questions about accountability and responsibility for education.

Education dynamics are also played out on the level of politics. Stakeholders and interest groups have expanded education issues across all three branches of formal government, and translated these interests into policies and laws. The rationales used by both governments, but especially the United States, have legitimized a high level of judicial and congressional debate. Germany has witnessed an increasing pluralization of interests and the representation of these interests by political parties.

Notably, however, the KMK in Germany does not exercise any executive power, in contrast to the US President and the Department of Education.

Finally, there are differences between policy dynamics. Comparing the policymaking processes in the United States and Germany, the US federal government has litigated and legislated much more than its German counterpart, indicating differences in the policy discourse and practices. The policy dimension is the one in which Germany and the United States differ considerably.[30]

Discourse is a means by which the polity-politics-policy dynamism can be explored. A comparison of the similarities and differences between German and American education policy, together with Foucault's (2010) rhetorical question, "What is an educational system (…) if not a distribution and appropriation of discourse?" makes a *discursive* study on education policy particularly exciting as its analysis encompasses polities, politics, *and* policies in a way that previous studies have only acknowledged, but not deeply explored. To make the political dynamics surrounding education more concrete, further specificity is needed. The final aspect of the research object is the concept of inclusion.

2.4. Inclusion in Germany and the United States

> *States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States parties shall ensure an inclusive education system at all levels and lifelong learning… (UN CRPD, Article 24)*
>
> *Die Vertragsstaaten anerkennen das Recht von Menschen mit Behinderungen auf Bildung. Um dieses Recht ohne Diskriminierung und auf der Grundlage der Chancengleichheit zu verwirklichen, gewährleisten die Vertragsstaaten ein integratives Bildungssystem auf allen Ebenen und lebenslanges Lernen… (UN BRK, Artikel 24)*

30 Schmidt (2007) explains American exceptionalism, describing it as the only compound polity where "the communicative discourse is as important as the coordinative" (Schmidt, 2007). Though Schmidt (2007) offers this analysis in light of the market economy in the United States, her words can apply to education policy processes as well.

Inclusive education as a human right became internationally recognized through movements such as Education for All (UNESCO, 2015) and conventions such as the UN Convention on the Rights of Persons with Disabilities (2006). Through the passage of Article 24 in particular, the term “inclusion” found its way into the laws and regulations of member states. However, the wide acceptance of this term does not demonstrate a common understanding of what it entails. Inclusion is precisely what Peter and Waldschmidt (2017) describe as a “container term” whose meaning is constantly being filled with meanings anew.

While “inclusion” was not explicitly defined in Article 24, the concept is prominently associated with human rights, non-discrimination, and equal opportunity (UN, 2006). Similarly, in a think piece written for the 2020 Global Education Monitoring Report, inclusive education was associated to children with disabilities and their relationship to regular and special education. Inclusion was defined as the right of all children to “access, presence, participation and success in their local regular school” (Slee, 2020, p. 8). Furthermore, in contrast to its opposite “exclusion,” “inclusion” is often thought of positively as the solution to a social problem (Peter & Waldschmidt, 2017). Many European researchers agree that the inclusionary concept is prescriptive, normative, and value-laden in matters pertaining to human rights or areas of social responsibility and participation (Biermann & Pfahl, 2016; Burckhart & Jäger, 2016; Dederich, 2016; Felder, 2018; Peter & Waldschmidt, 2017).

Inclusive education policies benefit from, and are more often realized by, democracies. In a way, schools, as institutions, are seen as preparation for (political) society: “[i]nclusion is secured by principles and actions of fairness, justice and equity. It is a political aspiration and an educational methodology. We want an inclusive world, so we must teach inclusively” (Slee, 2020, p. 9). In other words, inclusive education is most likely to be realized in countries that aim to create inclusive societies, and which encourage the participation of all children in all aspects of life.

Of course, how different groups of stakeholders in each country understand and implement inclusion varies extensively. A study conducted by Krischler, Powell, and Pit-Ten Cate (2019) compared how teachers, teachers in training, and the general public conceptualized inclusive education in Luxembourg. That study suggested a culturally sensitive approach to understanding inclusion, due to the fact that “ [i]nclusive education is by no means a clearly defined or universally understood

concept, demanding more in-depth, culture-specific research on understandings of inclusion" (Krischler, Powell, & Cate, 2019, p. 2). Engaging with socio-political differences through policy necessitates strategies for promoting inclusive education. For example, inclusive education in Ethiopia could mean "[feeding] the kids, their families, and their teachers" (Slee, 2020, p. 14). In Australia, it might be ensuring that the education departments "censure school principals who routinely deny the enrolment of children with disabilities and recommend the school down the road" (Slee, 2020, p. 14).

What Artiles and Dyson (2005) describe as the "fuzziness" of inclusion presents a mixture of both theoretical understanding and implementation practices which depend on (cultural) context (Heyer, 2021). The following two sections briefly trace how scientists and practitioners in Germany and the United States talk about the inclusion. It concludes with a brief excursion on how to avoid the pitfalls of "presentism" and "finalism" that a historical study on inclusion may be prone to.

2.4.1. Inclusion in Germany

Awareness of inclusion in Germany was heightened through international documents such as the Salamanca Statement (1994) and the UN Convention on the Rights of Persons with Disabilities (2006) (Göransson & Nilholm, 2014; Sauter, 2016). Contextualizing and implementing these international documents into national educational frameworks, however, was not easy. Germany's translation of the word "inclusion" from Article 24 into "integration" catalyzed a heated discussion over this translation's implications for how German states would implement inclusion, especially since this placed the well-established special education schools in an uncertain position (Ellger-Rüttgardt, 2016b; Heyer, 2021). Fraught as the translation of inclusion into national documents has been, it would to the disservice of German education policies to think that they had not permitted aspects of inclusion to have already manifested themselves in other ways.

Some researchers describe inclusion in Germany as having undergone a historical development or evolution (Bürli, 2009b). Tanja Sturm (2016) identified three phases in the development of thought about disability, from a special pedagogical responsibility (special education), to a general pedagogical responsibility (integrative education), and finally to an understanding of disability as a barrier to participation

(inclusion pedagogy) (Sturm, 2016). According to Sturm (2016), the movement toward inclusive policies was precipitated by a dissatisfaction with integrative practices. The movement developed out of a critique of school and society, viewing integration as a more inferior form of inclusive practices. Based on German-language inclusive pedagogy publications and the UN Convention, Vera Moser (2017) described a similar, four-dimensional evolution of the integration/inclusion concept, consisting of recognition (*Anerkennung*), anti-discrimination (*Antidiskriminierung*), participation (*Teilhabe*), and educational justice (*Bildungsgerechtigkeit*) (Moser, 2017, p. 20). Others, however, consider it nearly impossible to view these terms in isolation from each other, in meaning "silos." Instead, the concepts "integration" and "inclusion" are seen as part of a continuum, in which it is difficult to establish when integration ends and inclusion begins. Grosche (2015), for example, identifies "levels" of human rights, locating integration on the fourth level and inclusion on the fifth, where higher levels represent approaching the actualization of human rights. Still, even after identifying these levels, Grosche (2015) hints at the triviality of the discussion of integration versus inclusion, likening it to the pouring of "old wine into new wineskins," (Grosche, 2015).

A brief digression on the term "integration" and its meaning for German policies is necessary. "Integration" has historically extended to more than just children with disabilities. Moser (2017) illustrates how "integration" referred to migrants and immigrants between the years 1980–2000. This is relevant to discussions of "integrative education": The term "integration" has historically been used to describe the integration of immigrant children into German societies. For pragmatic reasons, this book focuses on the integration/inclusion concept specifically in reference to children with disabilities. However, in recent years, the term "inclusion" has come to refer to a broader concept, covering multiple dimensions of diversity (Grosche, 2015).

Research shows how integration differs from inclusion, particularly in the way policies regarding children with disabilities were practiced in schools. Integration policies emerged as a reaction against segregated education policies, and understood integration as the joint education of children with and without disabilities (Powell, 2016, p. 54). Among German integrative efforts, same-goal (*zielgleiche*) and different-goal (*zieldifferente*) efforts may be distinguished, corresponding to different degrees of how "inclusive" the school practices would be. Same-goal integration required that the

same standards be set for all children, regardless of disability. Different-goal integration involved individualized education standards set for each child based on their special needs. So, same-goal integrative practices represent a more “integrative” approach, whereby children with disabilities share the same school space and are required to adopt the standards of the school. Different-goal integration represents a more “inclusive” approach, where, in an effort to include a child, the school and especially its curricula are molded to that child’s needs. Powell (2016) likens his analysis on the same-goal vs. different-goal integration concepts to the integration vs. inclusion conceptual debate.

Implementation practices currently risk creating a dual or parallel education structure, due to Germany’s highly institutionalized special schools. The educational policies, politics, and polities of German states remained relatively stable, though variable across states, while the conceptual discussion on the demands of inclusion changed. This stability may be ascribed to the stickiness of educational institutions and the path-dependent nature of education systems (Powell, 2016). Those who opposed inclusion, particularly teachers in Germany’s special schools, have tended to view inclusion as a threat to the well-established special education system, designed as a kind of safe haven (*Schonraum*) for children. Reforms encouraging inclusion are viewed cautiously, as they would require a fundamental re-thinking of both the special and general school system (Ellger-Rüttgardt, 2016b, pp. 78-79). These discussions continue to this day, complicating the implementation of an otherwise legally binding, inclusive education system, as was promised to be “ensured at all levels” and extending across a person’s lifetime by the UN CRPD (UN, 2006).

2.4.2. Inclusion in the United States

The United States has often been considered a role-model for inclusive education (Bürli, 2009b; Saalfrank & Zierer, 2017, p. 41). Like Germany, the American special education system has also evolved from separated to more integrated or “mainstream” classes. While there was no debate in American discourses as to the meaning of “inclusion” as prescribed by the UN CRPD, that term is neither mentioned nor defined in current US laws (Bürli, 2009a). However, the spirit of inclusion was introduced in the United States much earlier than in Germany, due to an altered view of disability arising out of the civil rights movement’s demands for equality and justice.

Researchers interested in the genesis of the disability studies movement or inclusive education typically point to the civil rights movement as the starting point of inclusionary thinking (Bürli, 2009b; Heyer, 2015; Peter & Waldschmidt, 2017). The civil rights movement focused on racial desegregation in schools and many other contexts. Parents litigated and Congress legislated. Aided by the Supreme Court rulings such as *Brown v. Board of Education* in 1954, the struggle for educational rights for children with disabilities also took off, and gained force after the deinstitutionalization movement of the 1970s. The Education for All Handicapped Children Act of 1975 provided for children a "free and appropriate education" (Congress, 1975). Additionally, children were to be placed in the "least restrictive environment" (Congress, 1975). The "Least Restrictive Environment" (LRE) principle represents the American understanding of inclusion as placement-based (Florian, 2014). However, the implementation of inclusion in the United States that ensued became less a matter of access or placement and more a question of quality and percentage of time spent in a general classroom (Bürli, 2009a).

Integration, known in the United States as "mainstreaming," reached its peak in the 1980s. Once integration efforts were questioned, inclusion was presented as an alternative form of schooling. The term "inclusion" first emerged in the 1980s as part of a movement to restructure education. Inclusion was considered the product of mainstreaming and integration efforts in the United States and Great Britain from the late 1980s into the mid-1990s (Biewer & Schütz, 2016). Like the German concepts of "same-goal" and "different-goal" education, "integration" and "inclusion" were also conceptually different. Integration implied changes to the physical classroom, whereas inclusion implied changes to the curriculum and classroom support materials for the sake of the children with recognized special educational needs (Powell, 2016). Inclusion was further differentiated. Supporters of "full inclusion" advocated for a complete merger of general and special schooling. Those in support of "selective inclusion" advocated a continuum of services according to the LRE principle (Winzer, 2009, p. 208). Inclusion advocacy invited a period of emotionally heightened, morally and ideologically charged rhetoric at the expense of scientific, empirical evidence and education research (Winzer, 2009). This fervor was supposedly quieted in the mid-1990s (Johnson, 2016; Winzer, 2009).

In the United States, “the inclusion of children with disabilities was not considered a catalyst for changing schools according to the principles of Universal Design for Learning. Rather, the challenge was to build support around the ‘exceptional learner’ and to minimize disruption to the other students” (Slee, 2020). In contrast to Germany, inclusion in the United States was thought of as education policy and *social* policy. By combining education and civil rights, “special education [became] a paradigmatic case for ‘legalization’ as Congress created a right for children with disabilities through a special categorical program with the mechanism of the individualized education program and imposed this right by court decree (…)” (Powell, 2016, p. 251). In other words, inclusion encompassed more than the physical restructuring of education systems. It was also a question regarding values protected by laws and defended in courts, including social justice, individual rights, rights to equal access, non-discrimination, and social opportunity (Winzer, 2009, p. 200).

In the United States today, the concept of inclusion is understood along a spectrum and quantitatively measured as the percentage of time a child with a disability spends in a general classroom. Statistics track the percentage of students aged 6-21 who are served under IDEA and enrolled in regular schools. In 2019, 95% of students were enrolled in regular schools, 3% in separate special education schools, and 1% in regular private schools (Statistics, 2021). Keeping in mind the differences across states, American statistics generally suggest an increased implementation of the inclusionary concept through coordinated practices within schools.

2.4.3. Summary and Further Thoughts

The brief overview of the conceptual and practical understanding of inclusion in Germany and the United States makes clear that inclusive education, perhaps like discourse, is a concept with a wide variety of interpretations. The ambiguity surrounding the exact meaning and implementation of inclusive education is complicated by federalist political systems and cultural differences. Still, the inclusionary concept greatly impacts all areas of life: an inclusionary policy embodies a social vision that affects culture, education, economics, governance, unions, and organizations (Ellger-Rüttgardt, 2016b). American philosopher of education John Dewey defined education as a social process and function, whose meaning was contingent on society. He concluded that “[s]ince education is a social process, and there are many kinds of societies, a criterion for educational criticism and construction

implies a *particular* social ideal" (Dewey, 2005, p. 60). In a similar vein, sociologist T. H. Marshall, describing the social aspect of citizenship, wrote, "[b]y the social element I mean the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in society. The institutions most closely connected with it are the educational system and the social services" (Marshall, 2009, p. 149). The consequence of this line of thinking is radical: "[s]ocial rights in their modern form imply an invasion of contract by status, the subordination of market price to social justice, the replacement of the free bargain by the declaration of rights" (Marshall, 2009, p. 154). Thus, inclusionary education policies carry social and political impact: citizens are created in schools.

Having reviewed how inclusive education is conceptualized in Germany and the United States, it is worth asking whether a historical study the concept of "inclusion" is possible. As Winzer (2009) points out, "[*i*]*nclusion* is a state-of-the art term; it is not mentioned in federal law or in state statutes" (Winzer, 2009, p. 210). In analyzing the inclusive policies discursively, it is important to avoid the pitfalls identified by Foucauldian scholars Dreyfus and Rabinow (1983) as the dangers of "presentism" and "finalism."

Researchers are in the grip of presentism when they look for a concept from the present in past decades. This search finds only "history of the past in terms of the present" (Dreyfus & Rabinow, 1983, p. 118). The researcher, thereby, imposes upon the past something of the present which was not there, or overlooks differences and variations of terms used to describe the schooling of children with disabilities. The other danger, "finalism," is what Foucault (2010) would have described as the writing of history as a long story of continuity. Finalism "finds the kernel of the present at some distant point in the past and then shows the finalized necessity of the development from that point to the present. Everything that happened in between is taken up by this march forward, or else left in the backwash as the world historical spirit differentiates and individuates what is central from what is peripheral" (Dreyfus & Rabinow, 1983, p. 118). Many educational histories of inclusive education up to this point have been finalist projects. By this, I mean that the inclusionary concept is often painted as the final product of an evolutionary process towards a more enlightened, humanitarian, educated concept of schooling. This approach disregards what Foucault calls

“ruptures” or “discontinuities” in the history of education—points that do not fit the narrative of improvement and progress (Foucault, 2010). In other words, finalism simplifies an otherwise complex historical discourse.

To avoid presentism and finalism is to write a “history of the present” (Dreyfus & Rabinow, 1983). History of the present seeks to understand a modern term like “inclusion” in context of the times in which it is being studied. History of the present is also attentive to changes in how this concept appeared in political discourses. It is also a more critical approach which makes it possible to identify narratives and mechanisms which surround the concept of inclusive education. These narratives and mechanisms may go beyond the simple dichotomy between inclusion as either a solution for society’s problem of exclusion, on the one hand, or as an impossible and unrealistic goal held by democracies, on the other. A Foucauldian analysis focuses on how inclusive education was talked about in political discourses and identifies the rules which permitted that talk.

The result is a genealogy of inclusive education policies and conditions of dominance. Education policy discourses in Germany and the United States are viewed as practices regulated by rules of formation and rules that control, distribute, and organize the discourse (Foucault, 2010). Inclusive education is viewed as a fluid concept, rather than a static one. The next section explains the methodological considerations and method that were considered when studying inclusive education policy discourses.

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Chapter Three – Conceptual Formations: Responsibilities, Rights, Recovery and Resources (The Four R's)

Following a detailed explanation on the research object, this chapter continues by providing a brief overview of the methodology and the indicators used to determine dominance. To begin, I discuss two methodological choices. The first concerns the time frame and the body of literature which studied similar time frames. The second methodological choice was to use the discourse concept described in Foucault's *The Archaeology of Knowledge* (1969) and his lecture "The Discourse on Language" (1970). This choice is explained and justified as the best approach to answering the research questions. The methodological and methodical choices for the research design are followed by a presentation of the data corpus.

The formation and organization of concepts was analyzed applying Foucault's third rule of formation (Foucault, 2010, p. 59). This analysis revealed two patterns: cognitive justifications and normative legitimations. Cognitive justifications refer to how a problem is defined and how a solution is proposed in the policy document. Normative legitimations are the reasons in favor of undertaking a particular solution (Schmidt, 2008). The legitimations were labeled the "Four Rs": rights, responsibilities, recovery, and resources. Together, the cognitive justifications (the problem-solution pair) and normative legitimations (the Four Rs) constitute the ideational dimension of discourse.

Whereas policy discourses in both countries exhibited the ideational dimension, the policies issued by German policy-makers were markedly different from their US counterparts. In Germany, responsibility, rights, recovery, and resources were used to legitimate policies of segregation as well as policies of inclusion. In the American discourse, the same Four Rs were used to legitimate policies of inclusion or "mainstreaming." This chapter reviews the policy discourses chronologically using sample documents from both countries. In so doing, it illustrates the role of the Four Rs and the appearance of those concepts in German and American discourses over time.

3.1. Sample size and Methodological Choices

Data was collected on the executive, legislative, and judicial branches of German and US governments. Thus, the data cover discourse on the national, rather than

regional, levels of government. A very different, but nonetheless worthwhile study may have been conducted on the discourses in individual (federal) states. But this book focuses on the macro-level, supra-regional discourses in Germany and the United States as the first step towards uncovering the rules and mechanisms of discourse in both countries. This section describes the document collection process and the sources used. It also provides tables with the final counts of documents used for the analysis.

In Germany, the Basic Law clearly divides power and responsibility between states and the federal government. Thus, instead of an executive body, a coordinating body, the Standing Conference of the Ministers of Education and Cultural Affairs of the States in the Federal Republic of Germany (*Kultusministerkonferenz*, or KMK), founded in 1948, was chosen as the source of documents related to integrative and inclusive education policies. In Germany, there is a division of powers over cultural sovereignty. There are no policies on the executive level of government. The policy documents were collected from the KMK through on-site visits to their office in Bonn, postal deliveries from the KMK office in Berlin, and the KMK online archives.

At the legislative level, parliamentary debates and laws passed by the *Bundestag* were collected using the federal parliamentary archive (*Das Parlamentsarchiv des Deutschen Bundestages*). Finally, cases heard by the Federal Constitutional Court were collected through the online archive of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgericht*). By collecting all the documents from the coordinating, legislative, and judicial levels of government, the data corpus was narrowed to include public policies, that is, policies issued by the government.

The documents were selected based on the frequency of the key search terms: *schul*; *behind*;[31] *sonde*;[32] *pädagog*;[33] *integ*[34]; and *inklu.*[35] For the German data corpus, there were two Federal Constitutional Court cases, 86 parliamentary

[31] This term includes the first letters of variations on the German word “disability” or *Behinderung.*

[32] This term includes the first letters of variations on the German word “special” or *Sonderpädagogik.*

[33] See above comment.

[34] This term includes the first letters of variations on the German word “integration” or *Integration.*

[35] This term includes the first letters of variations on the German word “inclusion” or *Inklusion.*

debates, and 72 sets of meeting minutes, protocols, and recommendations from the KMK. This amounted to 160 policy texts in the initial data collection phase. The documents were then sifted to remove documents that, for example, described the integration of migrants into society instead of the integration of children with disabilities into general schools. After this step, the final count of sources analyzed included two Federal Constitutional Court cases, eight parliamentary debates, 10 sets of meeting minutes, protocols, and recommendations from the KMK. There were 20 documents in total.

Table 3.1

Initial and Final Data Corpus for Germany

Formal Level	Sources	Initial Count	Final Count
Judicial	Federal Constitutional Cases	2	2
Legislative	Parliamentary Debates	86	8
Executive*	Minutes, Protocols, and Recommendations	72	10
	Total	160	20

* Refers to the coordinating KMK body and the Education Council.

The US data corpus consisted of documents from three levels of government. Documents were selected based on the frequency of the key search terms: *school*; *disab*; *handicap*; *impair*; *educat*; *mainstream*; *retard*; *integ*; and *inclu.* Certain among these search terms were discovered through one term leading to another. Terms such as “retarded” or “handicapped” and “impairment” reflect a change in labels and views of disability over time. Those changes are demonstrated, for example, by the change from “Education for all Handicapped Children Act” to the “Individuals with Disabilities Education Act.” These labels for disability merit their own study and have been discussed in previous studies such as Powell (2016). This study identified the various terms used to describe children with disabilities in order to find relevant policy documents. All policy documents were found using the HeinOnline databank. Given the more fluid and interpretive role of the federal

government in educational matters, 34 presidential public papers were chosen as the data corpus for the executive branch of government.

On the legislative level, there were 139 congressional debates and five Supreme Court cases. Altogether, 178 documents were initially collected. Discussing the education of children with disabilities, most politicians mentioned *vocational* education, referred to as “education and training” (Congress, 1949, 1951, 1954). This nuance, present also in the German discourse, acted as a filter to narrow down the number of documents for close analysis. Other associated codes that appeared when searching for policies concerning children with disabilities were veterans and the elderly. Thus, while acknowledging that these other codes represent categories related to the topic of disability, each document had to be sifted through to make sure that the reference to education of the disabled was not a reference to the education of war veterans, the elderly, and vocational education. In doing so, this study was able to maintain its focus on the general education of children with disabilities. However, narrowing the focus of this study does not rule out interplay and cross-over with other discourses. Rather, this decision was made intentionally, to stay within the research parameters defined in Chapter Two. The final count included three Supreme Court cases, 23 congressional debates, and five public papers. There were 31 documents in total.

Table 3.2

Initial and Final Data Corpus for the United States

Formal Level	Sources	Initial Count	Final Count
Judicial	Supreme Court Cases	5	3
Legislative	Congressional Debates	139	23
Executive	Presidential Papers	34	5
	Total	178	31

The choice of timeframe was a significant methodological decision for the analysis. 1949–2009 was chosen as the time frame for at least three reasons. First, discourse analytical theory calls for a decidedly historical nature of discourse analysis. Thus,

this study stops, rather than begins, with the year 2009, when the UN CRPD was ratified by Germany and signed by the United States.

Second, the period 1949–2009 allows for an effective comparison of Germany and the United States because it begins and ends with moments of political convergence. In 1949, Germany became the Federal Republic of Germany. The country was in a weakened political position, having lost the Second World War. In contrast, the United States was among the Allied forces which had won the war and supported the "re-education" of Germany. Thus, the Second World War and its aftermath produced a political convergence between the two countries. The year 2009 was the year Germany ratified, and the United States signed, the UN Convention on the Rights of Persons with Disabilities. Engagement with the UC CRPD represented a shared endorsement of inclusive education policies by both countries.

Finally, the years 1949–2009 encompass several turning points in the history of German and US polity, politics, and policies. This allows for an analysis of discursive patterns instead of focusing on one particular decade, as other researchers interested in this topic have (Bösl, 2016; Klein, 2016). Determining the turning points in history is itself a meaning-making act (Lingelbach & Waldschmidt, 2016). Turning points determine the resulting historical narrative. Sabrow (2013) cites the example of how popular historians typically divide history into periods based on similarities of lived experiences, whereas academic historians do so on the basis of similarities of meanings. Even established periodization is hardly static. Rather, Jessen (2016) calls period-markers "moving walls." In addition to the turning points already mentioned, 1945 marks the end of the Second World War, a turning point in German and US political history. But it is less clear when the "war period" ended (Jessen, 2016, p. 42). Some historians view the reunification of Germany in 1989 as an unclosed event (Jessen, 2016, p. 46). Thus, the act of periodization creates tension among meaning-making possibilities.

Previous studies in the field of special education identify turning points in German educational history. Pfahl (2011) described the following three periods: the founding phase of learning disability pedagogy up to the beginning of the 20th century, the time of educational reform in the mid-1970s, and the professionalization and differentiation of special education in the 1990s to the beginning of the 21st century.

She justified these choices as being “decisive phases in the integration and segregation debate”[36] (Pfahl, 2011, p. 79).

In another study, Klein (2016) explored the development of inclusion into an education policy paradigm, focusing on the policies following the 1990s (Klein, 2016, p. 116). Using Sabrow’s (2013) definition of a caesura[37] in order to identify ruptures in the history of inclusive education policy, Klein (2016) considered studies between the years 1964–1994 which contributed to the construction of inclusion as an educational political paradigm.[38] These documents include Picht’s *Bildungskatastrophe* (1964)[39], Dahrendorf’s *Arbeiter an deutschen Universitäten* (1964) and *Bildung als Bürgerrecht* (1965), and the *Salamanca Erklärung über Prinzipien, Politik und Praxis der Pädagogik für besondere Bedürfnisse* (1994) (Klein, 2016, p. 117).

Klein (2016) identified three time periods. Considering the first group of policies, Klein (2016) discussed the relationship between equal opportunity and institutional discrimination by contrasting the justification and legitimization patterns which differentiated special and general schools (Klein, 2016, p. 119). In 1960, the supra-regional coordinating educational body, The Standing Conference of the Ministers of Education and Cultural Affairs of the States in the Federal Republic of Germany (KMK), released a document that recommended children with disabilities be differentiated into 12 special needs categories. A document released by the Education Council (Bildungsrat) in 1973 entitled *Empfehlung zur pädagogischen Förderung behinderter und von Behinderung bedrohter Kinder und Jugendlicher* was

[36] In German: “*Die hier gewählten historischen Zeiträume wurden bereits früher als distinkte Phasen in der Formierung der sonderpädagogischen Professionalität identifiziert* (vgl. Ellger-Rüttgardt 1982; Möckel 1990; Hänsel/Schwager 2003; Powell 2007) *und können auch als entscheidende Phasen in der Debatte um Integration und Segregation gelten*” (Pfahl, 2011, p. 79).

[37] Sabrow (2013) defined caesuras (in German) as “*Orientierungsbedürfnis der Gesellschaft*,”*...subjektiv, ektoral*, *perspektivgebunden*,” and, almost with an ironic touch, “*Epochenillusionen*” (Sabrow, 2013, p. 11).

[38] In German: “(…) *welche historischen Dynamiken im Vorfeld dazu beigetragen haben, dass sich das Konzept der Inklusion seit den 1990er Jahren zu einem bildungspolitischen Paradigma entwickeln konnte*” (116).

[39] Klein attributed the chronological jump in the policy documents from the 1970s to the 1990s to the policy stagnation in the 1980s.

the first education policy document recommending integrative schooling for children with and without disabilities (Klein, 2016, p. 121).

The next period that Klein discusses are the years 1978–1989. She describes the educational culture of the 1980s on three levels of discourse: the scientific, institutional, and civil-societal (Klein, 2016, p. 127). The scientific level witnessed the expansion of special and rehabilitative education, whereas integrative changes occurred on the institutional level (Klein, 2016, p. 129). The civil-societal level of discourse included the emancipative character taken on by education, the focus on mechanisms of injustice, and the view promulgated by the *Bonner Erklärung* of 1984, which described integration in schools as a civil right (Klein, 2016, p. 131). Klein ends her article by describing "inclusion as an education policy paradigm" in the 1990s. She considers the 1994 Salamanca Framework to be particularly instrumental toward this end. The climax of the article is the identification of the three education policy caesuras, namely 1973, 1994, and 2009. These dates are important for the study of inclusive education discourses in Germany.

In the United States, studies in the history of education for children with disabilities, often labeled the "history of special education," have identified numerous turning points in that history. In contrast to Germany, periodization in the United States breaks down along decades. For example, in Spring's (2020) outline of the historic goals of American education, the focus of education is described as having shifted from "expansion of high schools to control youth problems and keep youth 'out of' the labor market, life-adjustment education" in the 1940s to one that demanded "racial and cultural harmony, war on poverty, educating more scientists and engineers, equality of educational opportunity, (and) career education" in the 1950s (Spring, 2020, p. 6). The shift toward equality and opportunity taking place in the United States strongly colored education discourse. That shift makes the year 1949 a good starting point of analysis. Political turning points such as the end of World War II, the reunification of East and West Germany, or the US Civil Rights Movement were critical points for analyzing how political changes prompted "new," "renewed," or "recast" discourses (Schmidt, 2000).

The 1960s were a turning point. That decade has been described as "a beacon of change, an optimistic period of American history, a time when both the desire and the finances existed to promote social and educational changes" (Winzer, 2009, p.

105). The civil rights movement was the most prominent of the many social, economic, and political changes taking place during the 1960s. Other notable turning points in the history of education correspond to Supreme Court decisions or the passage of legislation. For example, the decision in *Brown v. Board of Education of Topeka* in 1954 marked the end of the second generation of federalism and the start of a third generation, characterized by increased federal government involvement. Particularly, the passage of Public Law 94-142 (EAHCA) signaled a movement toward integration and mainstreaming (Jülich, 1996; Opp, 1993).

Other turning points corresponded to litigation and legislation. Among these, Spring (2020) included the 1964 Civil Rights Act, the 1990 amendments to P.L. 94–142 and the 1997 amendment to the Individuals with Disabilities Education Act, as important indicators of increased educational opportunities in the history of educational equality. Powell's (2016) table of "Special Education Development in the United States and German" from 1945–2006 included documents, court cases, as well as disability rights policies such as the Americans with Disabilities Act (ADA) (Powell, 2016).

Importantly, many turning points in both countries are correlated to paradigm shifts. For example, the use of "paradigm" in Klein's (2016) analysis suggests that inclusion was a new and transformative notion, a break with the traditional methods and patterns of thought in the Kuhnian sense. However, this study brackets considerations related to paradigm shifts, and shifts the focus instead towards Foucauldian rules of formation. Throughout their book on Foucault, Dreyfus and Rabinow (1983) contrast the Kuhnian paradigm concept and the Foucauldian discourse concept. The paradigm concept, they claim, encompasses beliefs in addition to rules: although paradigms can be shared rules, assumptions, and points of view, they may also, in Kuhn's words, "guide research even in the absence of rules" (Kuhn, 2012, p. 42). Evidence that the culture of inclusion has not permeated school structures undermines the claim that historical turning points (towards inclusion) have marked a paradigm shift. Schmidt (2000) poignantly problematizes the use of the term paradigm as a description of discursive shifts:

> the change in discourse, then, reflects something of a revolution in worldview for a polity, since it demands a shift not only in policy paradigm but also in the underlying values of the polity as a whole. Such a shift is not, however, the

> same as a Kuhnian ‘revolution’ in scientific ‘paradigm,’ and to talk of a revolutionary change in discourse and its policy ‘paradigm’ is admittedly rather problematic in epistemological terms (Schmidt, 2000, p. 281).

Rather than subscribing to the notion of paradigm, the concept of moving walls is adopted. This choice is consistent with history repeating itself, and with intermittent episodes of discontinuity within discourse.

To summarize, few studies to date have focused on understanding the historical nature of inclusive education policies. This is due to a lack of willingness to fund historical education policy studies, and to the fact that most policy researchers are not trained to conduct historical analyses (Vinovskis, 2009). Thus, in periodizing the history of education policy discourse for children with disabilities from 1949–2009, this study fills a gap left by policy researchers and educational historians alike.

The second methodological choice was to apply Foucault’s discourse concept. In the previous chapter, the rules of formation for objects, enunciative modalities, concepts, and strategies were presented as the ways in which discourse is selected, controlled, produced, and distributed. These rules stem from Foucault’s archaeological concept. This methodology, however, has garnered criticism.

First, an archaeology can only be taken seriously on a non-fundamental level. Dreyfus and Rabinow (1983) question whether Foucault’s project to provide a systematic description of a discourse-object is possible without reintroducing truth. Their critique targets the fundamental nature of seriousness and meaning in the methodology Foucault presents. While Dreyfus and Rabinow (1983) do not define what they mean by the “fundamental nature of seriousness,” they do identify the one kind of seriousness in Foucault’s work: “the seriousness gained by subservience to the rules governing some specific set of discursive practices” (Dreyfus & Rabinow, 1983, p. 89).

Second, archaeological research adopts a “zoomed out,” analytical approach rather than a “zoomed in,” interpretive one. The question of inclusive education had historically been heated and emotional (Winzer, 2009). However, an archaeology of these discourses is conducted with neutrality. Here is how Dreyfus and Rabinow (1983) describe archaeological neutrality:

> Archaeology as the disinterested study of mute monuments can never enter the debates which rage about the monuments it studies. In fact, from the archaeological perspective the monuments were mute all along. The conflicts that produced them and were in turn produced by them are the result of a mysterious, inevitable illusion- an illusion which the archaeologist shares only to dispel- that there could ever be issues about which it would be worth arguing. (Dreyfus & Rabinow, 1983, p. 95)

Foucault posited that archaeology was neither advocacy nor interpretation. It was, instead, a “differential analysis of the modalities of discourse” that defined the types of rules for discursive practices, and, in so doing, placed practices (and not the sovereign subject) at the forefront of analysis. Archaeology was to be a rewriting of what has already been written in the form of a “systematic description of a discourse-object” (Foucault, 2010, p. 140). Seeking to contribute to the theory of education discourse,“ archaeology, as the analysis of the rules proper to the different discursive practices, will find what might be called its *enveloping theory*” (Foucault, 2010, p. 207). The goal of subjecting inclusive education policy discourses to archaeological techniques was to discover an enveloping theory. This was the reconstructive aspect of a post-structuralist project.

Dreyfus and Rabinow (1983) describe the surface-level, overarching nature of archaeological analyses as “interpretive analytics” (Dreyfus & Rabinow, 1983, p. 122). Their definition of “analytics” is based on Foucault’s reaction to Kant and Heidegger’s attempts to provide a universal theory. Rather than providing a universal theory that looks to past solutions, Dreyfus and Rabinow (1983) posited an analytical method which took the problems and conceptual tools of the past seriously but replaced the ontology of Kant and Heidegger with a focus on cultural practices—practices Foucault preferred to focus on. Dreyfus and Rabinow’s (1983) definition of “interpretive” can be understood as “commentary,” or the explication of the text and the practices being interpreted. This resembles the “pure description” of texts supported by Foucault, in which cultural practices are described in a way which does not correspond to the everyday or intrinsic meaning of these practices. Even Foucault himself recognized the conditions of his archaeological project to be precarious. Thus, the analysis needed to be expanded to include genealogy.

Foucault's (2010) archaeological concept was thought to have later evolved into a genealogical concept.[40] Genealogy, like archaeology, focuses on history's discontinuities, rather than its continuities. The main characteristics of an archaeological concept were retained in a genealogical one. They differ insofar as archaeology takes cultural practices seriously while genealogy takes all findings lightly. They deserve to be so taken as they contain no universal truth or generalizable meaning. This allows genealogies to cover a longer historical time span.

Particularly, the elements of power and process, not plainly evident in the archeological concept, were included in the genealogical concept. As Dreyfus and Rabinow (1983) describe, the fact that archaeology bracketed the idea of truth and focused on discursive formations, only those researchers conducting genealogy were able to identify the functions of discourse. Dreyfus and Rabinow (1983) claim that Foucault advocated "writing the history of the present." This means writing about a specific discourse—its genesis, development, peak, and ultimate importance—*within the practices of its time* (Dreyfus & Rabinow, 1983, p. 119). A genealogical analysis looks at the process of discourse formation in relation to systems of constraint, the discourse norms, and the conditions for its appearance, growth, and variation. This work asks questions that identify "specific norms for each [system of constraint], and […] their conditions of appearance, growth and variation" (Foucault, 2010, p. 232).

The four rules of formation and Foucault's archaeological methodology were useful for analyzing and mapping the terrain of inclusive education policy discourse. A genealogical attitude was adopted to maintain that the findings did not derive meaning from the mysterious depths of truth, but, rather, that those findings fulfilled a function and provided an understanding of cultural practices and interpretations which, although not a universal truth, still "has its own specific coherence" (Dreyfus & Rabinow, 1983, p. 125). This was necessary since the study covered 60 years and three time periods, each with unique discourses and discursive mechanisms. Using a genealogy, the critical analysis of formations focused on the systems enveloping

[40] It was not clear exactly when the switch took place. rather, Foucault's genealogical concept began to dominate his studies and writings, and could be understood as complementary to his archaeological concept.

discourse, and how that discourse is controlled, selected, organized, and redistributed to produce dominant and recessive discourse practices over time. A genealogy enabled the study to move beyond considering formations and patterns to consider power and how certain discourses dominate others. In the following section, the theoretical understanding of dominance and marginality is explained based on Schmidt's (2000, 2006, 2007) presentation of dominance.

3.2. Determining Dominance: Matrix and Indicators (Vivien Schmidt)

> *I suppose, though I am not altogether sure, there is barely a society without its major narratives, told, retold and varied; formulae, texts, ritualized texts to be spoken in well-defined circumstances; things said once, and conserved because people suspect some hidden secret or wealth lies buried within. In short, I suspect one could find a kind of gradation between different types of discourse within most societies (…) (Foucault, 2010, p. 220).*

A policy-based analysis of discourse in Germany and the United States during 1949–2009 seems to correspond most to a study of legitimacy based on rationality. Norms and rules were identifiable using Foucault's (2010) rules of formation. The normative narratives used to justify the policies were tracked using Schmidt's (2000) discursive indictors of dominance.

The following section on dominant and recessive discourse theory contributes to answering this project's second research question: under what conditions did certain inclusive education policy discourses become dominant? The concept of a dominant discourse is not new. It tests Foucault's suppositions, quoted above, that there are "*major* narratives," and that there is a gradation to be found between different types of discourse. To understand "major" or dominant discourse, the following steps will be taken in this section. First, method for distinguishing "dominant" and "recessive" discourses is introduced. Second, a comparison of German and American dominant discourses is carried out, employing Schmidt's (2000, 2006, 2007) discursive institutionalism concepts.

Policy analysis is different from classical or political inquiries because it is not interested in which political actors, parties, or the like were successful in each situation. Rather,

> policy analysis wants to explain concrete political results […] it asks why in a given political system (polity) at a given time, a reduction of taxes was possible and not possible at another time. As an explanation, the individual political processes (politics) are drawn upon. Policy analysis can also ask comparatively, why a tax reduction was possible in a country like Germany and not possible in another system like Great Britain (Schubert & Bandelow, 2014, p. 6).

Policy is the dependent variable, while polity and politics are the independent variable.

Political scientist Maarten Hajer (2006) analyzed the discourse about environmental policy. The following section describes his two-step criteria for determining dominance, suggests how his definition may be expanded, and offers reasons why that definition leaves room for improvement. Hajer (2006) defines dominant discourses in the context of discourse and power (Hajer, 2006, p. 70). He equates the assessment of dominance to assessing a discourse's influence. The terms offered to facilitate this assessment were as follows:

> discourse structuration occurs when a discourse starts to dominate the way a given social unit (a policy domain, a firm, a society—all depending on the research question) conceptualizes the world. If a discourse solidifies in particular institutional arrangements, say a measuring system for air pollution, then we speak of discourse institutionalization (…) if both criteria are fulfilled we argue that a particular discourse is dominant (Hajer, 2006, p. 70).

As this quote suggests, Hajer's procedure for measuring the influence of a dominant discourse has two steps. The first step is to determine whether a discourse structures a social unit, such as a policy domain—what Hajer calls "discourse structuration." The second step, "discourse institutionalization," is to determine whether the discourse has been institutionalized (Hajer, 2006, p. 70). A discourse that satisfies both conditions (one that structures a social unit and has been institutionalized) is considered dominant.

Useful as Hajer's definition is, his criteria of determining dominance feature several ambiguities. For example, when both criteria are met, he proposed that the discourse may be considered dominant. However, it is left unexplained what a discourse that

structures a social unit looks like, and what it means for a discourse to structure a social unit. According to Hajer's definition, discourse structuration occurs when a discourse begins to "dominate" the way a society is conceptualized. A definition on which dominance is determined by finding a discourse that dominates is tautological.[41] Hajer's second condition for discourse dominance is discourse institutionalization. Dominance through institutionalization is much clearer and supported by Powell's (2016) comparative work on special education institutions.

While Hajer provides a two-step procedure for identifying dominant discourses, he does not provide any such procedure for identifying and assessing unobserved or unintended discourses, which Merton (1968) calls latent functions. Specifically, Hajer (2006) neither introduces nor explains the opposite of a dominant discourse. This leaves unanswered questions. What kind of power is held by a discourse that structures society but has not yet been institutionalized, or vice versa? What would a discourse which is neither structuring nor institutionalized be called? How would these categories relate to Merton's (1968) proposed manifest and latent functions? These questions show the conceptual and theoretical foundation for the study of legitimization and justification of inclusive education policies to be unsatisfactory. They pave the way for alternative theoretical concepts: dominant and recessive discourses.

This section introduces a parameter for determining dominant discourses and introduces the underexplored theoretical concept of recessive discourses. Hajer (2006) failed to define discourse structuration and one of the two conditions of discourse dominance, and provided dissatisfying explanations of dominant, manifest, and latent concepts. Therefore, a third way of methodically determining which discourse was dominant was needed. This new method would be used to compare dominant discourses globally in response second research question: What can a comparative study of discourses tell us about global patterns of discourse?

Although Foucault's methodology offers a diverse discourse analytical toolbox, researchers have found it to lack a concrete method for analyzing texts. In order to

[41] Hajer (2006) writes that "discourse structuration occurs when a discourse starts to dominate the way a given social unit (a policy domain, a firm, a society—all depending on the research question) conceptualizes the world" (Hajer, 2006, p. 70).

analyze data, Foucault's methodology must be coupled with "complementary tools" ("*einem ergänzenden Instrumentarium"*) (Waldschmidt, 2010, p. 157).

Combining Foucault's methodology with methods from other discourse analytical schools of thought may raise questions of methodological purity or compatibility. These questions are especially pressing for comparative research since Foucault's methodology did not account for international comparisons.[42] Answering these questions bears significant consequences for the research method and results. In the previous section on discourse and discourse analysis, a (dotted) line was drawn between political scientists working in a discourse-theory tradition and those working in a discourse-method tradition. This difference is embodied by contemporary discussions between post-structuralists and analytical-pragmatists.[43]

Vivien Schmidt is a political scientist who conducts discourse analysis. Her work is closer to the analytic-pragmatic research tradition, which uses discursive frameworks, than to the discourse theory of (post) structuralism as defined by Foucault (Kerchner, 2006). Despite this difference in theory, Schmidt's theoretical leanings[44] do not contradict the claims of (post) structuralists. The major difference between her approach to discourse analysis and Foucault's genealogical approach has to do with the theorized relationship between power and ideas. Whereas post-structuralists look at the structural power *in* ideas or coercive power *over* ideas, discursive institutionalists look at the persuasive power *through* ideas (Schmidt, 2017). Thus, Schmidt's conceptualization of discourse can be applied as a fruitful method *after* one has conducted a genealogy of education discourse using Foucault's methodology.

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[42] The closest Foucault (2010) got to talking about comparison was how archaeology was a diversifying comparative analysis (Foucault, 2010, p. 160). This is, of course, fine when analyzing one country's results. However, this becomes very problematic when thinking about comparing two archaeologies and genealogies together, as this project seeks to do.

[43] For example, see Larsson (2015), Schmidt (2017), and Larsson (2018), an exchange about the "sin of subjectivism" committed by discursive institutionalism, and the place of power in discursive institutionalism vs. post-structural institutionalism.

[44] Schmidt (2000) defines discourse more narrowly than March and Olsen (1995). She focuses on policy elites within a given issues/policy arena and states that discourse is similar to the "policy narratives" described by Michel Foucault, Roland Barthes, and others, "although (Tremain) make(s) no claim to this literature's philosophical presuppositions" (Schmidt, 2000, p. 279). She also loosely views discourse as something that 'frames' a complex reality—a view held by Rein and Schön (1991). Her understanding of discourse leans on Jobert (1992) and Muller (1995) who talked about 'ideas in action.'

Schmidt's (2000) discursive institutionalism approach offers a set of methodological and comparative tools for studying discursive politics on the international and transnational levels (Kerchner, 2006). A few of Schmidt's concepts were applied to determine dominant discourses. First, I will use Schmidt's (2000) definition of discourse and its functions. Second, I will describe her definition of, and test for, a successful discourse and relate both to this study's concepts of *dominant* and *recessive* discourses. Third, I will explore the implications of applying Schmidt's test for dominance and recession among discourses to Germany and the United States—examples of what she labeled "compound polities" (Schmidt, 2008)

Schmidt (2000) defines discursive institutionalism as the fourth institutionalism. Discursive institutionalism is distinct from rational-choice, historical, and sociological institutionalisms because it asks "who says what to whom, when, how, and where," allowing political scientists to understand why change occurs (Schmidt, 2006). According to Schmidt (2000), discourse is ideational (cognitive and normative) and interactional (coordinative and communicative). The ideational dimension of discourse consists of cognitive and normative functions. Cognitive and normative functions are understood as, respectively, the justification and legitimation for a given policy. Schmidt defines these two functions as follows:

> In my definition, discourse performs a cognitive function by providing convincing argument in favour of a given policy programme, demonstrating why it is better than past policy programmes in providing effective solutions to current problems and to anticipate, and thereby avoid, future problems. And it serves a normative function by legitimating the policy programme through appeal to national values, generally by showing how the policies build on long-standing values and on deep-seated structures of national identity while creating something new, better suited to the new politico-economic realities. Although these two functions are analytically distinguishable, they are not easily separable empirically. (Schmidt, 2000, p. 280).

In other words, the cognitive and normative functions of discourse express how a policy discourse is expected to propose solutions to a given problem, and to align those solutions with the values and norms endorsed by the people. Ideational

discourses can change over time. Schmidt points to the role of (polity) changes[45] in creating new, renewed, or recast discourses. Schmidt explains what she means by "new," "renewed," and "recast" discourses in relation to change in the following way:

Table 3.3

Types of Discursive Transformations

Type of Change	Type of Policy	Degree of Shift	Description
Revolutionary	New	A major shift	New programs, new[a] values
Evolutionary	Renewed	A minor alteration	Minor policy policies and structural changes
Recast	Recast	A reformed paradigm	New practices, old values

Note. Adapted from Schmidt, V.A. (2000). Democracy and discourse in an integrating Europe and a globalizing world. *European Law Journal*, 6, 277-300.

[a]New could also mean "renewed."

Sometimes, however, discourse ideations do not change but, rather, adapt and persist despite external change. Schmidt calls this discourse successful, because "it is able to maintain its 'coherence' in spite of the discrepancies between cognitive and normative aspects of discourse and how well the 'sectoral' discourses fit with the 'master' discourse" (Schmidt, 2000, p. 283). To determine the ideational success of a discourse, one must ask questions like: does it provide a coherent policy program?[46] Does it correctly identify the problems and provide adequate solutions? Are the solutions legitimated by economic, social, and political values?

The interactional dimension of discourse is related to the ideational dimension. The interactional dimension of discourse consists of coordinative and communicative functions. Schmidt (2000) argues that the success of a discourse also depends on its ability to coordinate and communicate discourse to the public, in addition to

[45] Nordin (2013) describes crisis as a discursive legitimation strategy in education reforms in the EU and Sweden.

46 Coherence is defined as the correct identification of current and future problems and viable solutions to these problems (Schmidt, 2000).

presenting cognitive and normative justifications and legitimations. The coordinative function of discourse is how epistemic communities frame or coordinate that discourse. The coordinative function is typically characterized by cognitive arguments (Schmidt, 2000, p. 286; 2006). The communicative function of discourse, on the other hand, tends to be more normative, and describes the discourse that takes place between policy actors (Schmidt, 2006). In other words, a discourse should capture political processes and reflect the values of its constituents. In sum, the success or dominance of a discourse can be determined by that discourse's ability to provide cognitive and normative justification and legitimation for a policy solution, and the extent to which the discourse is coordinated and communicated.

The nature of a polity can affect the strength of the discourse output. Changes to polity open a space for discourse to change. However, static polities, too, can impact discourse. Schmidt's comparative research on European institutions demonstrates how the complexity of a polity affects discourse. Simple polities, like Britain, Ireland, or France, in which the governing activity takes place under a single authority, were found to have simple coordinative discourses and elaborate communicative discourses. On the other hand, compound polities, or polities that disperse power through multiple authorities, like Germany, Italy, Belgium, Austria, Denmark, or the Netherlands, were found to have elaborate coordinative discourses and less elaborate communicative discourses (Schmidt, 2006). Germany and the United States are "compound" or "complex" polities. This means that the discourse in Germany has a high degree of coordinative complexity, but a low degree of communicative complexity. However, the United States is considered the only compound polity in which the communicative dimension is as important as the coordinative dimension (Schmidt, 2007). Further, as a result of the economic structures of Germany and the United States, Germany has a "weaker corporatist" policymaking process, whereas the United States has a "pluralist" one (Schmidt, 2006, p. 221).

Cognitive justifications and normative legitimations frame the study of policy narratives. These concepts can be tested to observe the balance of justifications and legitimations in relation to the tenacity of a discourse over time. The following table summarizes the functions and dimensions of discourse according to Schmidt (2000).

The table clearly displays Schmidt's main claims about discursive institutionalism and visualizes how dominant discourses for each period were determined.

Table 3.4

Indicators for Determining Dominant Discourses

Discursive Dimension	Discursive Indicator	Description
Ideational	Cognitive Justification	Problem defined and solution offered
Ideational	Normative Legitimation	Tied to values and norms
Interactional	Coordinated Interaction	Coupled or framed by stakeholders
Interactional	Communicated Interaction	Taken up by the public, tied to values

Source: Adapted from Schmidt, V. A. (2000). "Democracy and discourse in an integrating Europe and a globalizing world." *European Law Journal*, 6, 277-300 and Schmidt, V. A. (2006). *Democracy in Europe: The EU and National Polities*. Oxford: Oxford University Press.

The dominance of a discourse is suggested by the extent to which that discourse exhibits all the discursive indicators. However, it remains unclear how discourses that do not bridge the cognitive and normative rationales, or exhibit low coordination or communication, are to be understood. Schmidt calls these "sectoral discourses." Merton calls them "latent functions." Hajer (2006) does not describe the conceptual opposite to dominant discourse.

These controversial discourses are labeled "recessive discourses" in this book. Recessive discourses are always present, but not (yet) dominant. The term recessive is drawn from the biological definition of recessive genes. Just as, in human genetics, dominant and recessive alleles which combine display the dominant trait, recessive discourses engage in a recombination process in which they are present, but not necessarily expressed. They are not expressed when they fail to combine with other discursive mechanisms. Recessive discourses are *not* hidden discourses. In the terms of Foucault's discourse theory, this definition of recessive discourse does not describe them as the unrecognized that takes place

below the threshold of superficial observations. Rather, it understands the power in surface-level discourse in light of the mechanisms that exercise power over that discourse in order to become dominant. It corresponds to what Foucault identified as "subordination or complementarity" (Foucault, 2010, p. 161). Importantly, recessiveness in discourses can be accounted for by the historical scope and breadth of this project. Thus, both the rules that enabled inclusive education policy discourses at any given time as well as the rules that did *not* allow for inclusive education policy discourses to emerge across time and across countries are interesting.

The theories underlying Foucault's discourse concept differ fundamentally from Schmidt's more open, empirically verifiable, discourse concept. However, Schmidt's pragmatic approach offers tools for analyzing indicators found in German and American discourses, which are integral to a comparative genealogical study like this one. Her pragmatic approach, though falling into the empirical-pragmatic approach of discourse research, does not aim to exclude Foucauldian researchers. Rather, it seeks to fill some of the methodological gaps encountered when trying to compare discourse histories. Furthermore, Schmidt's definition of discourse contains elements of Foucault's theoretical concepts, such as his rules of formation. "Discourse," Schmidt writes, "is not just ideas or 'text' (what is said) but also context (where, when, how, and why it was said). The term refers not only to structure (what is said, or where and how) but also agency (who said what to whom)" (2008, p. 305). This characterization corresponds to the questions one may ask when studying the objects, concepts, speakers, and strategies of discursive formations. Her theoretical leanings are undeniably compromised. For example, Schmidt cites Habermas' idea of "public spheres" as she uses the discourse concept, evoking the normative-critical school of discourse, despite belonging to the analytical-pragmatic school of discourse concepts in the political sciences. However, the tools Schmidt offers for her "discursive institutionalism" are useful for picking up where Foucauldian genealogy leaves off. Schmidt's (2008) argument that "only with a clearer view of the approaches that take ideas and discourse seriously can political scientists begin to explain the fullness of political reality" (Schmidt, 2008, p. 322) emphasizes the role of discourses. Discourses play a similar role in this study, and enable a fusion of Foucault's discourse theory.

3.3. Examples of the Four Rs in German Education Policies (1949–2009)[47]

Between 1949–2009, German education policy discourse was punctuated by changing problem definitions, various solutions, and legitimations for policies of segregation, integration, and inclusion. These shifts reflected changes in the German polity as well as the strict separation of responsibility between federal and state governments.

Examples of German policy discourse include the 1960 KMK Recommendations, the 1973 Education Council Recommendations, and the 1997 Federal Constitutional Court Ruling. These documents were chosen as representatives of the policy discourse, particularly due to their relation to the topic of educating children with disabilities. In the 1960 KMK Recommendations, segregation policies were legitimated by all Four Rs. In the 1973 Education Council Recommendations, integration policies were legitimated by three of the Four R concepts: responsibilities, rights, and recovery. Finally, the 1997 Federal Constitutional Court Ruling legitimated policies of conditional integration. Insufficient resources became the limiting factor in the Federal Constitutional Court ruling. According to that ruling, placing children in segregated schools was not unconstitutional.

3.3.1. KMK 1960 Recommendations (*Gutachten zur Ordnung des Sonderschulwesens*)

The Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (*Kultusministerkonferenz*, or KMK). It is one of the oldest ministers' conferences in Germany. The body grew to include the sixteen federal states after German reunification in 1990. Ministers from each of the German federal states convene to discuss regional matters of education, research, and culture, and develop policy recommendations. The consortium has the goal of harmonizing views and developing joint objectives education and culture matters.

In February 1960, the KMK released a report (*Gutachten zur Ordnung des Sonderschulwesens*) that offered advice on how to organize the special education system. The document was addressed to teachers, parents, unions, institutions outside the cultural ministries, the general public, as well as anyone interested in learning about federal views of special schools and their tasks. According to the

[47] All English translations of quotes from primary sources are from the author.

report, the issue of special schools required a “fruitful and trust-based cooperation” (*fruchtbare und vertrauensvolle Zusammenarbeit*) with doctors, health practitioners, youth welfare offices, corporations, and welfare associations (Kultusministerkonferenz, 1960, p. 8).

The 1960 report differentiated special schools into twelve different categories: schools for the blind, the visually impaired, the deaf, the hearing impaired, those in need of speech therapy, the physically disabled, the hospital-bound or home-bound, as well as schools offering additional support or monitoring, schools for students with behavioral difficulties, youth in prison, and for special vocations (Kultusministerkonferenz, 1960, p. 9).[48]

In these independent institutions provided services for children and youth with physical, emotional, or intellectual disabilities who were unable to succeed in general schools, as well as by those children and youth who disrupted the development of their peers due to their poor performance and socially disturbing behavior (Kultusministerkonferenz, 1960, p. 8).

The KMK’s 1960 Recommendations defined a problem, as well as offered and legitimated a solution. For the first time, the suggested policy solution valued responsibilities and rights over resources and recovery. Education historian Ellger-Rüttgardt (2008) called this shift a turning point in the justification of special schools (Ellger-Rüttgardt, 2008, p. 303).[49] The document endorsed a clear principle:

[48] In German: “*Blindenschule, Sehbehindertenschule, Gehörlosenschule, Schwerhörigenschule, Sprachheilschule, Körperbehindertenschule, Krankenschule und Hausunterricht, Hilfsschule, Beobachtungsschule, Erziehungsschwierigenschule, Gefängnisschule* (*Schule im Jugendstrafvollzug*), *Sonderberufsschule* (*als eigene Schule oder in Verbindung mit anderen Sonderschulen*).”

[49] In German: “*Das Gutachten der Ständigen Konferenz der Kultusminister von 1960 repräsentierte auf der einen Seite das Streben der westdeutschen Sonderpädagogik der Nachkriegsära nach Eigenständigkeit und Ausbau, auf der anderen Seite markierte es aber zugleich eine Wende in der legitimatorischen Begründung der Arbeit von Sonderschulen. An erste Stelle wurden nicht mehr, wie in der Vergangenheit üblich, die utilitaristischen Ziele einer Entlastung der Regelschule oder ökonomische Erwägungen genannt, sondern das Recht der jeweiligen Kinder auf angemessene Bildung und Erziehung, indem an die ‘Pflicht der Allgemeinheit’ und ‘die Achtung vor der Menschenwürde’ auch behinderter Menschen erinnert wurde*.”

> that every child should come into his right and be promoted within the framework of his given powers.[50] Where the general facilities of the educational institutions insufficiently meet this requirement, special schools find their mission. (Kultusministerkonferenz, 1960, p. 6)[51]

This passage clearly articulates the rights of children. A principle that would be taken up decades later, in 2006, by the UN Convention on the Rights of Persons with Disabilities, makes a notable appearance in 1960 document. While the ministers' interpretation of the phrase "come into his right" is not explicitly explained, it is clear that public schools were unable to guarantee these educational rights to each child, or to deploy measures would be necessary to address this problem.

In the document, the ministers identified the "historical debt" (*eine geschichtliche Schuld*) that the entire German population owed to children with disabilities. This phrase is only briefly elaborated upon with the call for children with disabilities not to be treated as "less valuable" (*weniger wertvoll*). In a strong breaking from the past National Socialist regime's policies of forced labor and euthanasia, the ministers wanted to provide these children with a "meaningful life" (*ein sinnerfülltes Leben*). Contrary to the parliamentary discourse of the 1950s, the authors of the 1960 recommendations avoided referring to children with disabilities as victims of an unintelligent spirit (*Ungeist*). Rather, German educators took responsibility for educating children with disabilities.

The document also addressed federalism as a political arrangement which both drives and diffuses educational progress. Despite an overarching agreement concerning the methods, materials, and measures relevant to educating children with disabilities, the ministers also identified significant differences between the federal states. The states differed on matters like legal foundations, conditions for accepting students, relationships between special schools, relationships between special schools and general schools, and the allocation of responsibilities

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[50] The article for "a child" in German is gender neutral. In the translation, I chose to use the pronoun "him/his" in order to main the singular nature of the article. Today, however, modern translations might choose to replace this pronoun as "they" or "him/her; his/her."

[51] In German: "*Es gilt der Grundsatz, jedes Kind solle zu seinem Recht kommen und im Rahmen der ihm gegebenen Kräfte gefördert werden. Wo die allgemeinen Einrichtungen des Bildungswesens nicht ausreichen, diesen Anspruch zu erfüllen, finden die Sonderschulen ihren Auftrag*."

(Kultusministerkonferenz, 1960, p. 7).[52] The ministers considered such diversity to be a cause for wide-reaching insecurity (*eine weitgehende Unsicherheit)* among the public, teachers, and school administrators. Most importantly, the KMK believed that the heterogeneity of special schools across states diminished parents' trust in the special school system (Kultusministerkonferenz, 1960, p. 7).

The KMK's 1960 recommendations identified at least three problems: the disregard and mistreatment of people with disabilities, the insufficient preparation of children for a meaningful life, and the poor reputation of special schools (Kultusministerkonferenz, 1960, p. 7).[53] The ministers chose to focus on fixing the reputation of special schools in the eyes of the public, and general schools' inability to provide an education for all children. The ministers suggested rebuilding special schools as the ideal solution for providing education for all children who were not provided for by general schools.

The special school system was viewed as a temporary stop-gap, rather than a permanent solution for providing schooling for children with disabilities (Kultusministerkonferenz, 1960, p. 7). A permanent solution required extensive resources, including the vocational training of teachers. The ministers recommended that special schools and special education be supported with improvements to classrooms, teaching and learning materials, and professional development. They foresaw a degree of cooperation between special and general schools in order to avoid hindering the connection to public life which children with disabilities risked losing due to the imposition of an "unhealthy segregation" (*ungesunde Absonderung*) (Kultusministerkonferenz, 1960, p. 10).[54]

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[52] In German: " *(…) in den rechtlichen Grundlagen, in den Bestimmungen für die Aufnahme der Schüler, in dem Verhältnis der Sonderschulen zueinander und zu den allgemeinen Schulen und in den Zuständigkeiten weichen die Sonderschulen der Länder zum Teil erheblich voneinander ab*."

[53] In German: "*Das Ansehen der Sonderschulen in der Öffentlichkeit muß gehoben werden. Das deutsche Volk hat gegenüber den Menschen, die durch Leiden oder Gebrechen benachteiligt sind, eine geschichtliche Schuld abzutragen. Sie dürfen nicht als weniger wertvoll betrachtet und behandelt werden. Das deutsche Volk muß die Aufgabe wieder ernst nehmen, allen Kindern und Jugendlichen, die die allgemeinen Schulen nicht mit Erfolg besuchen können, den Weg zu einem sinnerfüllten Leben zu bereiten*."

[54] In German: "*Beständig ist darauf zu achten, daß die Kinder und Jugendlichen nicht zu einer ungesunden Absonderung kommen, die sie hindern oder unfähig machen würde, später den Anschluß an das Leben zu finden. Sofern es für die Erziehung zur Gemeinschaft als dienlich erscheint, ist daher die Gemeinsamkeit zwischen Schülern der Sonderschulen und der allgemeinen Schule zu pflegen*."

There were four ways in which the strengthening of special education was legitimated.[55] First, special schools were called a matter of public duty and responsibility:

> *The guidelines are based on the conviction that care for special schools is a public duty.* The serious will of a people to elevate respect for human dignity to the principle of its order of life, and its cultural level, are also demonstrated in the concern for those who need the help of their fellow human beings. (Kultusministerkonferenz, 1960, p. 8) (emphasis added)[56]

The entire public was called to action, as educational responsibilities were shared. These responsibilities were distributed across the level of local schools, between state and federal governments, doctors, school administrators, and legal guardians. The commitment to a sense of shared responsibility was demonstrated by the transparent information-sharing between all stakeholders in the process of educational decision-making. Teachers were to inform parents of all of a child's academic, mental, and physical developments. Parents, school authorities, teachers, and school health officials coordinated decisions about school placement (Kultusministerkonferenz, 1960, p. 15). The decision to transfer a child from a special school to a public school was made by the school authorities (Kultusministerkonferenz, 1960, p. 13), in consultation with the school doctor or public health officer (Kultusministerkonferenz, 1960, p. 40). Further, the pedagogical methods and curricula of special schools were expected to complement the structural and content goals general schools (Kultusministerkonferenz, 1960, p. 8).

Responsibility for the education of children with disabilities was also prescribed by the constitution. Legally, special education, together with all cultural matters, fell under state jurisdiction (Kultusministerkonferenz, 1951, p. 2).[57] By delegating

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[55] As demonstrated by the following explanations of these categories, responsibilities, rights, recovery, and resources (the Four Rs) act as overarching umbrella categories for the justifications given by each time period.

[56] In German: "*Die Richtlinien gehen von der Überzeugung aus, daß die Sorge um die Sonderschulen eine Pflicht der Allgemeinheit darstellt. Der ernste Wille eines Volkes, die Achtung vor der Menschenwürde zum Grundsatz seiner Lebensordnung zu erheben, und seine Kulturhöhe beweisen sich auch in der Sorge um diejenigen, die auf die Hilfe ihrer Mitmenschen angewiesen sind*."

[57] In German: "*Die kulturelle Zuständigkeit und besonders die Zuständigkeit im Schulwesen liegt nach dem Grundgesetz bei den Ländern. Die in der Reichsverfassung von 1919 enthaltene Zuständigkeit*

educational matters to the states, the constitution guaranteed that educational practices would be tailored to fit the needs of each federal state. Notably, states were tasked with caring for institutions, like special schools, but not the children attending those schools.

Second, special schools would acknowledge the human dignity and rights of children with disabilities. In the KMK's 1960 recommendations, the desire to support special schools was also justified by the people's "serious will" to "elevate respect for human dignity to the principle of its order of life" (Kultusministerkonferenz, 1960, p. 8). The words "respect for human dignity to the principle of its order of life" directly refers to the basic right afforded to all citizens of Germany by Article 1 of the Basic Law for the Federal Republic of Germany. That Article states:

> Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law. (Bundestag, 2012, p. 15)

Thus, the rights of persons with disabilities are connected to the Basic Law's protection of the respect for human dignity as an "inviolable and inalienable human right" (Bundestag, 2012). Notably, the KMK 1960 document on the education of persons with disabilities was legitimized by appeal to an inviolable human right, a concept which was picked up with increasing fervor following the ratification of the UN CRPD in 2009.

Third, special schools promised recovery. The KMK 1960 policy for special schools was legitimized by responsibilities and rights, two concepts that were heavily influenced by a desire to "care for" and "help" the helpless. In the broader national discourse of the time, recovery was an important issue. For example, in the KMK protocol from 1949, the function and duty of the KMK is described as "the guarantee

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des Reiches auf dem Schulgebiet (Abschn. II Nr. 2) ist nicht in das Grundgesetz übernommen worden. Daraus folgt, dass grundsätzlich jedes Land sein Schulwesen seinen besonderen Bedürfnissen anpassen kann."

of the inner recovery of the German people and the organic growth of a culture sustained by itself" (Kultusministerkonferenz, 1949, p. 2).[58]

The 1960 KMK recommendations demanded a fruitful collaboration between special schools and health practitioners, including doctors, health and youth welfare offices, corporations, and welfare associations. Doctors were tasked with checking the general health of children based on primary school records, to ascertain whether there was some connection between a child's physical and mental state and his or her struggles in primary school, and to see if the child could benefit from medical help (Kultusministerkonferenz, 1960, p. 29).[59] Special school placement decisions were informed by doctor-issued medical records.

Significantly, the recovery process heavily involved persons without disabilities. The KMK 1960 policies were thought to manifest a "concern for those who need[ed] the help of their fellow human beings" (Kultusministerkonferenz, 1960, p. 8). Children with disabilities were fellow human beings in need of help. By alluding to otherwise helpless children and youth with disabilities, the language evokes sentiments which would perpetuate policies of bodily and structural restoration.[60] The repeated use of the word "help" together with the expectation that special schools use resources, methods, and forms of curative pedagogy (*Heilpädagogische Gesichtspunkte*), suggests a view of the child with a disability as a recipient of charity, in need of help and healing, and whose recovery may be assisted by a special school system.

Fourth, special schools were argued to save resources. According to the ministers, "[t]he development of special schools is however also necessary for economic reasons. Capital that is given for special schools today saves a much larger amount of money for supports, jails and rehabilitative institutions" (Kultusministerkonferenz,

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[58] In German: "*die Gewähr für die innere Gesundung des deutschen Volkes und für das organische Wachstum einer von ihm selbst getragenen Kultur*."

[59] In German: "*Aufgabe des Schularztes ist, unter Zugrundelegung der gutachtlichen Stellungnahme der Volksschule den allgemeinen Gesundheitszustand festzustellen, zu untersuchen, welche Zusammenhänge zwischen dem physischen und psychischen Zustand des Kindes und seinem Versagen in der Volkschule bestehen, und zu prüfen, ob dem Kinde ärztlich geholfen werden kann*."

[60] Rosemarie Garland-Thomson (2002) describes in her article the different kinds of rhetoric when it comes to staring at the disabled person and body. Her rhetoric on "sentiment," though directed toward photos, can also be applied to the effect of this policy recommendation on its recipients when talking about the "help" needed toward their "fellow human beings."

1960, p. 8).[61] Educating children with disabilities was seen as a cost-efficient method for relieving society of later, pricier, financial burdens. There is a basic desire to save rather than to spend money for the benefit of children with disabilities: it was argued that it would make financial sense to support special schools, as they offered a cheaper developmental measure than the alternatives. Interestingly, in the document, the economic reason appears as a kind of afterthought. During a parliamentary debate nine years later, this sentiment was repeated in a similar, afterthought fashion:

> Ladies and Gentlemen, should it not be our responsibility, that this emancipation process be supported to the best of our ability in the interest of the disabled people and society, for human *as well as economic reasons*? (Bundestag, 1969, p. 61) (emphasis added)[62]

So, the utilitarian reasoning provided in the 1960s invoked resources as a legitimation, in conjunction with the medical and political legitimations.

The KMK 1960 recommendations problematized the inability of general schools to educate children with disabilities. As a solution, the ministers proposed that special schools be rebuilt and expanded into twelve different kinds of special schooling. The justification and legitimation of special schools in the 1960 KMK report first mentioned concern about special schools as a "public duty" (*eine Pflicht der Allgemeinheit*). This duty encompassed a respect for human dignity (*die Achtung vor der Menschenwürde*), a concern which was believed to prove a person's culture and express their concern for those dependent on the help of their community (*Sorge um diejenigen, die auf die Hilfe ihrer Mitmenschen angewiesen sind*). Finally, an economic legitimation also supported the development of special schools: the ministers reasoned that money spent on special school education would save future expenditures for rehabilitative supports, jails, and rehabilitation centers. So, the reasons for concern about special schools fell into four main categories:

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[61] In German: "Die Förderung des Sonderschulwesens ist aber auch aus wirtschaftlichen Gründen notwendig. Mittel, die heute für die Sonderschulen ausgegeben werden, werden später in vielfacher Höhe bei den Ausgaben für Unterstützungen, Gefängnisse und Heilanstalten eingespart."

[62] In German: "Meine Damen und Herren, sollte es da nicht unsere Pflicht sein, diesen Emanzipationsprozeß von uns aus nach besten Kräften zu fördern, und zwar im Interesse des Behinderten und der Gesellschaft, aus menschlichen wie auch aus volkswirtschaftlichen Gründen?"

responsibility, rights, recovery, and resources. Although the resource concept remained operative, this policy document marked a shift from purely utilitarian considerations towards an understanding of education policy based on rights and responsibility. The legitimation concepts also demonstrate a focus on institutions and institutional placement rather than a focus on the children affected by these decisions, as the decisions were not focused on the children themselves.

3.3.2. Education Council 1973 Recommendations (*Empfehlung der Bildungskommission: Zur pädagogischen Förderung behinderter und von Behinderung bedrohter Kinder und Jugendlicher*)

The discourse in Germany shifted in the 1970s. The years 1972 and 1973, in particular, are considered a "critical juncture for integration" (Powell, 2016). In 1973, the German Education Council released a set of policy recommendations entitled "*Empfehlung der Bildungskommission: Zur pädagogischen Förderung behinderter und von Behinderung bedrohter Kinder und Jugendlicher*." The following discussion introduces the problems, solutions, and normative legitimations for education policies concerning children with disabilities in the early 1970s.

The German Education Council (*der Deutsche Bildungsrat*) was a short-lived body of various practitioners and stakeholders which issued advisory reports about the German education system. Although the Council was dissolved in 1975, among the sixty reports they wrote, their 1973 report is identified as Germany's first official policy document supporting the integrative education of children with and without disabilities (Klein, 2016). Thus, it is significant for a study of education policies for children with disabilities.

Special schools were one decade's solution which became the following decade's problem. The Council's 1973 recommendations described the current structure of special education systems as including schools for the "blind, deaf, mentally handicapped, physically handicapped, learning handicapped, hearing-impaired, visually handicapped, speech handicapped and behaviorally handicapped according to their disability," along with "home and hospital classes" (Bildungsrat, 1973, p. 19).

Special schools were thought to cause, rather than alleviate, social isolation.[63] The authors of the KMK 1960 recommendations foreshadowed this problem, warning educators to avoid the "unhealthy separation" of children and youth with disabilities for fear that this would make their transition into life beyond school difficult (Kultusministerkonferenz, 1960, p. 10). As anticipated, persons with disabilities were isolated by the social help which intended to alleviate their isolation. At the core of this isolation was the unchanged "awareness and attitudes" which hindered contact between people with and without disabilities (Bildungsrat, 1973, p. 27). To combat social isolation and build communities, the KMK recommended joint efforts between special and general schools, and students enrolled in them (Kultusministerkonferenz, 1960, p. 10).

The Council's 1973 recommendations problematized three gaps. The first gap was the "striking" omission of special education from the 1970 structural plans (Bildungsrat, 1973, p. 11). The second gap was the knowledge deficit and lack of reflection on what was expected from general society toward persons with disabilities. The Council warned that thoughtlessness and a dearth of knowledge could lead to discrimination and perpetuate norms of utility-based thinking about people with disabilities (Bildungsrat, 1973, p. 27). The third gap identified by the Council were shortages of various resources and insufficient statistical data on the overall situation of special education. Whereas almost 90% of the blind and deaf found "sufficient" places for schooling, children with other disabilities faced "serious need[s]." Children in rural areas also experienced difficulties (Bildungsrat, 1973, p. 19). The contemporary statistics revealed a serious shortage of special education teachers (Bildungsrat, 1973, pp. 19-20). For children with multiple disabilities, access to education was contingent on the availability of resources (Bildungsrat, 1973, p. 19). The Council found that at least 230,000 children with special needs were not supported special schools.

In its 1973 recommendations, the Council distanced itself from the KMK recommendations of 1960 which called for special schools. The authors of the later recommendations claimed that they no longer "shared this view" that children were

[63] Historian Rudloff (2016) wrote that while the new special schools, like other new institutions for people with disabilities, intended to avoid individual isolation, they simultaneously created the danger of "collective ghettoization" (Rudloff, 2016, p. 67).

best served by special schools. Rather, the Education Council sought to support integrative policies with the "widest possible joint teaching" (Bildungsrat, 1973, pp. 15-16).[64] In response to the problem of social isolation, the Council recommended a break with traditional forms of schooling in favor of integrative schools. The 1973 recommendations were also distinguished from the KMK 1960 recommendations by including both short-term and long-term goals:

> The first task is to identify disabilities or impending disabilities at an early stage and to counter them effectively. The more far-reaching task, however, is to regard children and young people – even those from whom the threat cannot be averted – as equal members of society and to include them accordingly in social and state support measures. The aim should be to integrate the disabled as far as possible into society. (Bildungsrat, 1973, p. 12)[65]

The short-term goal, or "first task" was to implement early childhood intervention. According to the recommendations, disability was to be "countered effectively," reflecting an understanding of disability which made it akin to bodily illness. The longer-term goal, or "far-reaching task" was to integrate children with disabilities into the general school population. By supporting contact between children with and without disabilities, the Council hoped that the school would become a training ground for "real life situations" (*reale Lebenssituationen*) (Bildungsrat, 1973, p. 93).

Like the KMK in 1960, the Council in 1973 proposed a response to the inadequate system of education for children with disabilities. However, whereas the KMK's 1960 recommendations proposed special schools as the solution, the Council's 1973

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[64] In German: "*Für diese neue Empfehlung mußte die Bildungskommission davon ausgehen, daß behinderte Kinder und Jugendliche bisher in eigens für sie eingerichteten Schulen unterrichtet wurden, weil die Auffassung vorherrschte, daß ihnen mit besonderen Maßnahmen in abgeschirmten Einrichtungen am besten geholfen werden könne. Die Bildungskommission folgt dieser Auffassung nicht. Sie liegt in der vorliegenden Empfehlung eine neue Konzeption zur pädagogischen Förderung behinderter und von Behinderung bedrohter Kinder und Jugendlicher vor, die eine weitmögliche gemeinsame Unterrichtung* […] *vorsieht*."

[65] In German: "*Die erste Aufgabe besteht darin, Behinderungen oder drohende Behinderungen frühzeitig zu erkennen und ihnen wirksam zu begegnen. Die weitergehende Aufgabe aber besteht darin, die Kinder und Jugendlichen – auch jene, von denen die Bedrohung nicht abgewendet werden kann – , als gleichberechtigte Mitglieder der Gesellschaft anzusehen und sie dementsprechend in die gesellschaftlichen und staatlichen Förderungsmaßnahmen einzubeziehen. Als Ziel sollte gelten, die Behinderten soweit wie möglich in die Gesellschaft zu integrieren*."

recommendations suggested instead that the solution was joint education and the integration of children with disabilities into schools and classrooms with other children. This solution, while reminiscent of historical integrative efforts, also included additional elements of culture, attitudes, and communication techniques. Still, the call that integration was to be implemented “as far as possible” revealed how the solution was qualified by the existing available resources (Bildungsrat, 1973, p. 15).

In one sense, the solution to the social isolation of children with disabilities was structural. Integration was not a historically new idea. Integrative efforts since the early 19th century were described to have failed due to “unfavorable conditions” (Bildungsrat, 1973, p. 26). In the past, attempts at integration had failed due to the states’ failure to take responsibility for providing the necessary institutions, structures, financial means, resources, and teacher training to implement integrative practices. A second explanation for the failure of early integrative efforts was identified as “the lack of awareness of the necessity of social integration” (Bildungsrat, 1973, p. 26). Thus, to complement the structural solution, a cultural solution was proposed: the Council encouraged an integrative culture. The comprehensive reform which was taking place opened up “a real opportunity for the implementation of the new concept” (Bildungsrat, 1973, p. 16). This implementation involved changing perceptions and attitudes and expanding the general knowledge of techniques that allowed people without disabilities to communicate with people with disabilities. For the Council, such communication combated discrimination and encouraged coexistence. Their suggested changes ranged from increasing contact between people with and without disabilities to ultimately the “humane acceptance of the disabled by non-disabled people.”

As in previous decades, the normative legitimations for the recommended joint school policy may be categorized into responsibility, rights, recovery, and resources. Responsibility was understood as a democratic responsibility towards fellow citizens. Rights were relevant to a right to an appropriate education. Recovery was embodied by measures seeking to include the unrecoverable. Finally, resources were a topic of discussions on vocational integration. These Four Rs legitimized integrative education as a solution to growing educational and social isolation.

First, responsibility was called an urgent concern for democratic states, and the performance of responsibilities a socio-political task that requires a community-wide

response (Bildungsrat, 1973, p. 16).[66] An integrative policy was described as "one of the most urgent tasks of any democratic state," making an integrative policy a responsibility of democratic states. According to the Council, democratic principles guaranteed "equal opportunities for all children" and were inconsistent with "unnecessary isolation" (Bildungsrat, 1973, p. 26). School system practices of selection and isolation were the antithesis of integration as such practices contributed to adult disintegration from society. The Council correlated schooling practices with societal ones. Thus, integrative schooling practices mattered for the goal of creating an integrative society. School integration alone was insufficient preparation for societal integration. Rather, the Council deemed that, in preparation for life outside the school, it essential that children receive, hold, and practice responsibilities (Bildungsrat, 1973, pp. 28-29).

The Education Council's 1973 recommendations placed the educational responsibilities on the shoulders of the community of persons with and without disabilities alike. A human acceptance involved seeing the other not as an inferior, but as an equal partner. Ultimately, the Council aimed to create an environment in which people of various levels of ability come into contact. A deliberately created environment which supports contact facilitates social learning by children with and without disabilities. All members of society, including those without disabilities, were called to take initiative for integration (Bildungsrat, 1973, p. 83).

Second, rights played an increasingly important role in the education discourse. Despite agreement on the general importance of rights, opinions differed on how those rights should be realized. According to the KMK's 1972 recommendations, the "right of the handicapped person to an education and upbringing appropriate to his or her talent and individual character" ought to be realized in the context of special education, those contexts being "places of habilitation and rehabilitation in family, economy and society" (Kultusministerkonferenz, 1972, p. 2). In 1973, the Council

[66] In German: "*Die Begründung der neuen Konzeption ist für die Bildungskommission vor allem darin gegeben, daß die Integration Behinderter in die Gesellschaft eine der vordringlichen Aufgaben jedes demokratischen Staates ist. Diese Aufgabe, die sich für Behinderte und Nichtbehinderte in gleicher Weise stellt, kann nach der Auffassung der Bildungskommission einer Lösung besonders dann nahegebracht werden, wenn die Selektions- und Isolationstendenz im Schulwesen überwunden und die Gemeinsamkeit im Lehren und Lernen für Behinderte und Nichtbehinderte in den Vordergrund gebracht werden; denn eine schulische Aussonderung der Behinderten bringt die Gefahr ihrer Desintegration im Erwachsenenleben mit sich*."

thought that the same right to education was best actualized in joint, not separate, facilities (Bildungsrat, 1973, pp. 22-23). The Council's recommendations followed the approach laid out by KMK recommendation, but also expanded the scope of that approach by encouraging joint education in an integrated school system. This right to integrative education for children with disabilities was called a civil right (Bildungsrat, 1973). This marked a change from the previous language of "human" rights of the KMK 1960 recommendations.

Children with disabilities could legitimately claim a civil right to be prepared to become citizens. The Council's 1973 document described the purpose of their recommendations as granting children and youth with disabilities a place in society and meeting them as "full members of [their] society" (*vollberechtigte Mitglieder*) (Bildungsrat, 1973, p. 12).[67] Near to the end of the document, the Council wrote:

> Every child has a right to be supported according to his or her educational needs and learning opportunities. In order to fulfil this claim, didactic conditions are required which enable the learning requirements to be individualized to a large extent. In terms of teaching organization, the fulfilment of this requirement should be met by a differentiated system of support institutions in the school area, which have the aim of facilitating the integration of the disabled into society. (Bildungsrat, 1973, p. 66)[68]

Here, the Council identified two rationales for promoting the joint education of children with and without disabilities and, along with it, early intervention measures and differentiated and flexible teaching forms. The first rationale was based on rights: "[e]very child has a right to be supported according to his or her educational needs and learning opportunities." Acknowledging this right motivates individualized learning support. The second aim described by this passage was the institutional response to this first claim: a differentiated system of support institutions facilitating

[67] The German phrase from which "full members" is translated includes the word "right" and implies a fully entitled citizen who is able to actualize all of his/her rights.

[68] In German: "*Jedes Kind hat einen Anspruch darauf, seiner Erziehungsbedürftigkeit und seinen Lernmöglichkeiten entsprechend gefördert zu werden. Für die Erfüllung dieses Anspruches bedarf es didaktischer Bedingungen, die eine weitgehende Individualisierung der Lernanforderungen ermöglichen. Unterrichtsorganisatorisch sollte der Erfüllung dieses Anspruchs ein differenziertes System von Fördereinrichtungen im Raume der Schule entgegenkommen, die das Ziel haben, die Integrierung Behinderter in die Gesellschaft zu erleichtern*."

societal integration. The Council did not seek to break decisively with the existing special education system. Rather, it suggested that the special education system be thinned out, since it was the "wrong alternative." This would be accomplished by providing sufficient support from an early age, ideally, every day throughout the school day (Bildungsrat, 1973, p. 66).

Third, legitimations based on rehabilitation and recovery were interspersed throughout the document. In their 1973 recommendations, the Council described integration as a solution for persons with disabilities for whom "the threat" of disability could not be avoided (Bildungsrat, 1973, p. 12). Persons with disabilities were still viewed as people who needed to be "countered effectively." This view of disability evokes the medical model of disability. According to that model, the disabled body is thought of as sick and in need of healing, and institutional remedial efforts lead to isolating policies such as separate schooling.

The Council's 1973 recommendations distinguished the disability, the views of a disabled body, and the person behind that disability. The authors explicitly aimed to regard both children and youth as equal members of society, to include them accordingly in social and state institutions. They aimed, also, to integrate people with disabilities into society to the greatest possible extent. In contrast to a more complex and nuanced view of disability proposed in the Education Council's 1973 recommendations, the KMK 1972 recommendations focused on special schools. These schools were described as places where children with disabilities may realize their right to an education. They were also called "places of habilitation and rehabilitation in the family, economy, and society" (Kultusministerkonferenz, 1972, p. 2).[69] Here, the well-entrenched view of rehabilitation resurfaces as a way to legitimize educating children with disabilities in special schools.

Fourth, the Education Council's 1973 recommendations invoked a semi-economic legitimation to integrate schools. They argued that the recommendations "can inform the public that the financial expenditure on special education is justified and well spent" (Bildungsrat, 1973, p. 13). Significantly, economic considerations were not expanded upon or emphasized in the next time period. Instead, references to these

[69] In German: "*Sie sind Stätten der Habilitation und Rehabilitation in Familie, Wirtschaft und Gesellschaft*."

considerations were subtle: other matters concerning education for children with disabilities had come to the fore, which may explain the discourse's gradual abandonment of the resource concept. This contrasts with the KMK's 1960 recommendations, in which a clear utilitarian rationale for educating children with disabilities as a money-saving measure was provided.

The Education Council's 1973 Recommendations drew attention to problems facing education for children with disabilities: increased social isolation, the neglect of special education in official education policy reports, and insufficient knowledge and resources (Bildungsrat, 1973). The solution of the previous decades would become the problem for the future. During the years 1970–1989, the previous decades' policy support for special schools became known (though not abandoned, as evidenced by the KMK 1972 recommendations). Integrative policies in the form of joint schools were proposed as a solution to growing educational and societal isolation. The justifications for this solution were the democratic responsibilities held by both government and community, the belief in a every child's right to an appropriate education, the desire to include "unrecoverable" children with disabilities, and the belief that integrative education would have the downstream effect of increasing societal integration.

3.3.3. Federal Constitutional Court Ruling 1997 (*BVerfG, Beschluss des Ersten Senats vom 08. Oktober 1997 – 1 BvR 9/97*)

The 1990s were a significant decade for education policies, both nationally and globally. The Salamanca Statement and Framework for Action on Special Needs Education of 1994 reaffirmed that access to an inclusive education was the right of all children, especially children with disabilities. The delegates who developed the framework represented ninety-two governments and twenty-five international organizations, making it a significant milestone in the history of international inclusive education policy. Around the same time, significant legal changes occurred in Germany. In 1994, the German legislature passed an anti-discrimination clause in the Basic Law which prohibited discrimination on the basis of disability. Soon after, in 1997, the Federal Constitutional Court ruled that it was not unconstitutional for a child to be referred to a special school against her wishes. Here, this document is analyzed in light of its problem definition, solution, and use of the Four R concepts to legitimate the Court's ruling.

In *BVerfG, Beschluss des Ersten Senats vom 08. Oktober 1997 BVerfGE 96, 288–315* (hereafter referred to as the 1997 Federal Constitutional Court Ruling), the Federal Constitutional Court asked whether the integrative schooling of children and youth with and without disabilities in general public schools was called for by the Antidiscrimination Clause of Article Three, paragraph three, sentence two of the Basic Law.[70] The complainant claimed that the Higher Administrative Court had denied her right to an integrative education, protected by the anti-discrimination clause. The Federal Constitutional Court ruled that the decision to transfer the child to a special school was not unconstitutional.

The case was first heard by the Higher Administrative Court, which ruled that the Lower Saxony school law was compatible with the anti-discrimination clause. The constitution would only have been violated if the child had been forced to transfer despite being considered capable of succeeding in a general school. The interpretation and implementation of school rights were governed by the Antidiscrimination Clause of the Basic Law. The constitution guaranteed only that parents' preferences would be considered. However, the school council would make the final placement decisions, based on their reading of the school report.

First, the Federal Constitutional Court ruled that each federal state bore the responsibility to uphold the civil rights of children with disabilities: "for their upbringing and education in the area of schools the state has at least a *de facto* monopoly, the disabled as well as the non-disabled have the duty to attend a public school" (Bundesverfassungsgericht, 1997, p. §55). It was the responsibility of lower administrative courts to apply the law to cases at the level of school systems. The Federal Constitutional Court affirmed the states' freedom to decide which schools were appropriate for children with disabilities. Generally, it was not the Court's responsibility to "control if the lower courts have respected the protection of civil rights. […] The Constitutional Court, rather, only concerned itself with concurrent findings of the courts below when the appealed decision violates the general principle of equality of Art. 3 Sec. 1 GC in its meaning as a ban on despotism"

[70] The Antidiscrimination Clause states: "No person shall be dis-favored because of disability" (Bundestag, 2012, p. 15). In German: "(…) Niemand darf wegen seiner Behinderung benachteiligt werden."

(Bundesverfassungsgericht, 1997, p. §68).[71] The Court would check state power against matters falling under article one, section three (Bundesverfassungsgericht, 1997, p. §73). Any matter involving basic rights also involved the Federal Constitutional Court, since "the following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law" (Bundestag, 2012, p. 15). In this case, the Federal Constitutional Court agreed with the special school system in Lower Saxony and the school authority's decision to refer the student to a special school (Bundesverfassungsgericht, 1997).

Second, the rights of children and parents were deemed secondary to the availability of resources and described as a "will" which could be overruled (Bundesverfassungsgericht, 1997, p. §61). According to Art. 2 Sec. 1 of the Basic Law, every child has the right to the "unhindered development of his personality, abilities and talents" (Bundesverfassungsgericht, 1997). A parental right to education and upbringing was also recognized by Art. 6 Sec.2. Phrase 1 of the Basic Law (Bundesverfassungsgericht, 1997, p. §54). The Basic Law called on the school authority to educate children in a way which respected the "right of the disabled to be granted an education which provides for development of his talents and abilities to the greatest possible extent" (Art. 2 Sec 1 GC), and the parents' right to generally choose the kind of education their children received (Art. 6 Sec. 2 Phrase 1 GC, see BVerfGE 34, 165<184>) (Bundesverfassungsgericht, 1997, p. §60). At the same time, the school authority's legal duties could override children and parents' rights to an integrative education if special educational supports were unavailable. In other words, children and parents possessed merely conditional rights.

Third, the Court made extensive use of medical recovery terminology in describing the child and her needs. According to the decision, the special school referral would have been unconstitutional only if the child had been "suitable" (*geeignet*) for an ordinary school, or if the school could have provided special pedagogical support, if the personnel and financial "extravagances" (*Aufwand*) could be met, and the organizational "difficulties" cleared (Bundesverfassungsgericht, 1997, p. §71). This

[71] The English translation of this case was drawn from the website: Bundesverfassungsgericht - Decisions - The referral of a disabled pupil to a special needs school against the will of his parents does not constitute discrimination within the meaning of Art. 3 (3) sentence of the Basic Law – On the requirements for substantiation of an order of referral to a special needs school by school authorities under Art. 3 (3) sentence 2, Art. 2 (1) and Art. 6 (2) first sentence of the Basic Law.

rationale placed the child's disability or "suitability" at the center of the placement ruling. Disability was not viewed in terms of the social model, according to which society disables or enables a child. Rather, it was viewed according to the medical model, on which a child's impairment is attributed to the disability itself. At the same time, the Federal Constitutional Court's understanding of disability was not entirely clear: the Court claimed that "[w]hat is meant by disability cannot directly be gathered from the legal materials" (Bundesverfassungsgericht, 1997, p. §48). The Court could gather that disability involved "a more than temporary impairment of functions that is based on a disordered physical, mental or spiritual state," supporting a body-based view of disability (Bundesverfassungsgericht, 1997). The degree to which children with disabilities could be integrated into general education was contingent on the degree of the disability and the supports that a child with disability required (Bundesverfassungsgericht, 1997).

Fourth, sending a child to a special school was not considered discriminatory if the required resources were unavailable. It was constitutionally mandated that peers with and without disabilities receive equal treatment (Bundesverfassungsgericht, 1997, p. §51). Schools were organized in a way which afforded education possibilities so that all young people could meet societal demands according to their individual abilities (Bundesverfassungsgericht, 1997, p. §54). However, whether that goal was the same or different for children with different abilities depended on factors such as organizational, personnel, or financial resources. In the 1997 Federal Constitutional Court case, the Court decided that it would be impossible to accommodate the complainant in an integrative classroom due to the needs of children without disabilities. The school was unable to provide an additional integrative class with all the resources necessary to accommodate all learners. This proves that the goal of integrative education was secondary to the convenience of students without disabilities and constrained by the resources available to schools. The discourse indicated that the goal of integration was overridden by the interest or convenience of the majority. "When making these decisions," the Court wrote, "the state also has to take into account other public interests and needs to keep the ability to use the restricted existing funds for those other public needs when it deems this appropriate" (Bundesverfassungsgericht, 1997, p. §57). Thus, resources were weighed and distributed based on what the federal state considered to be an

“appropriate” allocation of funds in the public interest. The ruling focused on avoiding disadvantages rather than promoting integration, since the availability of resources constrained integrative schooling efforts.

The discourse in the 1990s articulated goals supporting integrative education because non-discriminatory education was a right. However, the discourse also revealed stakeholders’ inability to implement their professed commitment to integration. The 1997 Federal Constitutional Court ruling especially demonstrated a kind of passing-the-buck of responsibility between parents, school administrators, and the public interest. The result was a situational, arbitrary determination of a child’s educational future based on the availability of resources.

A child’s educational needs were described by a joint report composed by parents, school administrators, and medical professionals. The joint report aimed to provide objectivity in administrative decisions and consider the basic rights of parents and children. Although these reports effectively balanced the competing interests of many stakeholders, the child’s educational placement was ultimately determined by a combination of resource availability and public interest.

There was a discrepancy between what the courts ruled and what they encouraged. The special education system of the time was considered unhelpful to the societal integration of persons with disabilities. Instead, based on scientific and political advancements,[72] the Court encouraged the joint schooling of children with and without disabilities in general schools (Bundesverfassungsgericht, 1997). In other words, the goal of integrative schooling was to create an integrated society. However, the courts ruled that the complainant would be transferred to a special school, where she would be able to earn all the certificates that would otherwise be obtained at a general school (Bundesverfassungsgericht, 1997, p. §42).

The Federal Constitutional Court ruling legitimized both special and joint educational institutions. In recent decades, solutions aimed to retain what worked, while continuing to devise a parallel education policy for children with disabilities. The discussion of legislative and judicial responsibilities had the goal of developing anti-discriminatory and integrative policies for children with disabilities. Recently,

[72] The text does not explain what exactly is meant by “scientific and political advancements.”

responsibilities were diffused. Policies were no longer justified solely to encourage individual recovery, but societal recovery as well. Resources were seen as enablers of participation and a necessary condition of integrative schools. A lack of resources, however, constrained the universal availability of integrative or inclusive schooling.

3.4. Examples of the Four Rs in American Education Policies (1949–2009)

As with German discourse, education policy discourse in the United States featured identifiable problem definitions, solutions, and legitimations in the form of the same Four R concepts. Unlike the German discourse's vacillating policies of segregation and integration, American education policy discourse between the years 1949–2009 univocally legitimated policies of mainstreaming and inclusion. These policies were strengthened by federal government financing and supported by civil society. The following examples are drawn from congressional records, presidential papers, and laws. These documents were chosen to illustrate the American education policy discourse during the years 1949–2009 and to enable the comparison of discourses in Chapter Four.

3.4.1. Congressional Debates and Presidential Papers in the 1960s

The record of US discourse studied here includes congressional records and presidential papers on the topic of educating persons with disabilities. Unlike the German 1960 KMK Recommendations, no one document from the 1960s uniquely characterizes the period's discourse on inclusive education. Rather, the American discourse is characterized by diverse documents and speakers, including essays by members of civil society as well as the opinions of politicians.

In the 1960s, the problem relevant to educating children with disabilities was identified as the physical disability itself, as well as the financial hardships and emotional strains that providing equal opportunities for children with disabilities were seen to cause. Existing programs did not ensure the social development and integration of children with disabilities. In 1961, President John F. Kennedy identified these problems as a "threat" and "a national problem [that requires] a national solution" (*Pub. Papers 651*, 1961, p. 652).

Kennedy's proposed national solution had two objectives. The best solution was to allow a child to avoid a life characterized by her disability. The second-best solution was to provide more children with vocational education. Kennedy proposed to solve

the problem of “mental retardation,” with early interventions. If these were impossible, the alternative solution was to integrate children with disabilities into the labor market. These solutions would be realized by federal programs and policies, bills, laws, and acts which would create or expand diagnostic and clinical services, vocational education and rehabilitation, community centers, teacher training, welfare agencies, research, parent counseling, residential institutions and increasing enrollment in special education classes for the purpose of employment and societal integration (*Pub. Papers 651*, 1961). To inform these efforts, the President proposed a panel of physicians, scientists, educators, lawyers, psychologists, social workers, educators, and other experts (*Pub. Papers 651*, 1961). This panel was purposefully interdisciplinary: it was hoped that a coordinated effort would be best suited to assess programs and generate new knowledge.

These solutions were justified as a responsibility of both the community and the government, based on the belief that children with disabilities had a right to a full and useful life, a desire to rehabilitate the child for the sake of employment, and in order to maximize human resources and minimize societal burdens, thus reflecting the Four R concepts: responsibility, rights, recovery and resources.

First, rehabilitating and educating children with disabilities was recognized as a shared communal, state, and national responsibility. Since most barriers to education were thought to have been created by the community, the community was expected to remove them (Congress, 1961, p. A1515). Practically, this view of distributed responsibility was already present in discussions in 1949: educational responsibility was distributed between organizations, individuals, federal government officials, states, and community organizers (Congress, 1949, p. A6161). The recognition of joint responsibility resurfaced in the 1960s, with President Kennedy’s call to communities, families, researchers, rich, poor, urban, or rural to find a solution to what he called “mental retardation” (*Pub. Papers 651*, 1961).

Although the federal government always promised to support state education programs in times of crisis, this support went from being imperative in the 1950s to temporary in the early 1960s. Increasing federal involvement and financial support enabled states to provide the programs, research, development, and procedures required to educate children with disabilities. That support was initially considered

imperative due to states' inability to "provide enough money for the kind of education to which every American child is entitled" (Congress, 1949, p. 413).

In the mid-1960s, the federal government's role was understood as providing temporary assistance to cover the high costs of educating children with disabilities (Congress, 1964, p. 1964). President Lyndon B. Johnson described this temporary support as "fitting" in spite of the extreme costs (*Book II Pub. Papers 1088*, 1965, p. 592). In the event of disaster, federal government support for schools would be available to states. Johnson's words, uttered in context of the 1965 School Disaster Aid Act, reflect the federal government's generosity in times of crisis.

During the late 1960s, the federal government began to play a more prominent role in education. The relationship between federal and state governments was described as a "a new alliance with America's States and local communities," in which "the Federal Government continues to be a junior partner" (*Book I Pub. Papers 244*, 1967, p. 77). This alliance gave rise to funding for programs that were administered and controlled by the states, enabling the success of state-led education programs.

Second, the right to a full life was based on the American belief in the importance of equal opportunity, which was to be extended to all citizens. Equal opportunity resonates with the democratic values of the nation, that "otherwise advocates so strongly the equality of man" (Congress, 1961, p. A1515). The concept of equal opportunity applied to other racial, ethnic, and gender minority groups was already well established in the discourse. Policymakers wanted children with disabilities to enjoy a "full and useful life" (Congress, 1961, p. 18831). How that full and useful life was to be realized would differ based on each child's abilities.

One specification of a full life was that it included a "full social development," which society was responsible for enabling. This meant that society was called to offer adjustment, training, schooling, vocational training, diagnosis, evaluation, care, in addition to socially and culturally favorable conditions including family guidance, a sympathetic environment and "public understanding" (*Pub. Papers 651*, 1961). President Johnson repeated similar sentiments in 1967. He released several educational proposals with the goal of "fulfilling the individual" through acting in "definable and practical ways" that would "liberate each individual from conditions which stunt his growth, assault his dignity, diminish his spirit. Those enemies we

know: ignorance, illness, want, squalor, tyranny, injustice. To fulfill the individual—this is the purpose of this proposal" (*Book I Pub. Papers 244*, 1967, pp. 257 - 258).

Third, recovery, framed in the 1960s as rehabilitation, was often mentioned as a legitimation for vocational education policies that would prevent the waste of human resources. People with disabilities were called "handicapped persons" in need of help, people who were otherwise not able to help themselves (Congress, 1969, p. 8818). One congressional record described the intended outcomes of rehabilitation for a person with disabilities as follows: "[a]t last he is ready to *compete* with his fellow man once again and to prove that he can live a normal productive life" (Congress, 1961, p. A1515). The ability to "compete" suggests the desire for normalcy and productivity endemic to a capitalist society. Although the text does not define "normal," it clearly understands a "normal productive life" as something to be aspired to.

Throughout the 1960s, disability continued to be understood in the context of medicine and rehabilitation. Rehabilitation, in turn, was understood to involve "specialized education, training, or retraining. Great need exists for improving the relationship and understanding between the worker and the company doctor" (Congress, 1959, p. A4431). President Kennedy referred to "mental retardation" as a serious "health problem" that affected "at least one out of every twelve people" and which he considered to be among "the nation's most urgent needs in the area of health improvement." ((*Pub. Papers 126*, 1963, p. 126; *Pub. Papers 651*, 1961, pp. 126, 651) He elaborated:

> Mental retardation […] is a symptom of a disease, of an injury, of some obscure failure of development, even of inadequate opportunity to learn. Just as a fever is a symptom of an infection, mental retardation is a symptom of mongolism, birth injury or infection, or even inadequate stimulation in early childhood. (*Pub. Papers 651*, 1961, p. 413)

The recommended solution was to employ "outstanding physicians" to treat and detect disability using "special tests" (*Pub. Papers 651*, 1961, p. 413 & 655). President Kennedy described the need for a national program which would "combat" and "battle" the disease of "mental retardation":

> Both wisdom and humanity dictate a deep interest in the physically handicapped, the mentally ill, and the mentally retarded. Yet, although we have made considerable progress in the treatment of physical handicaps, although we have *attacked* on a broad *front* the problems of mental illness, although we have made great strides in the *battle* against disease, we as a nation have for too long postponed an intensive search for solutions to the problems of the mentally retarded. […] The future belongs to those who can carry forward these achievements. It is now possible to *attack* the causes and prevention, as well as the treatment, of mental retardation. (*Pub. Papers 651*, 1961, p. 651 & 654) (emphasis added)

The militaristic terminology legitimated an aggressive medical response towards disabilities. A recovery-based approach was effective at gaining federal funding and support: framing disability as a health issue and a "national threat" made more federal dollars available. Since education was a state and local matter, it was often more pragmatically effective to discuss the health of people with disabilities in order to pass legislation and receive federal support (Congress, 1964, p. A1759). However, legitimations based on recovery and rehabilitation reveal a paradox. Problematizing disability as an issue of public health and creating a sense of urgency and threat by using militaristic language drew societal attention to children with disabilities. However, the recognition which they received led to solutions which excluded them from schools and from society, again hiding them from mainstream visibility.

Fourth, children with disabilities were viewed and described as human resources. The rehabilitation discussed above was often qualified as vocational rehabilitation: preparation to contribute to the economy. That concept was mentioned as early as April 26, 1949, in a congressional record discussing how "To Aid in Rehabilitation" (Congress, 1949, p. 5022). A few years later, on August 2, 1951, in an appendix to the Congressional Record, a member of the House of Representatives remarked on the House's failure to provide remedial legislation and governmental programs enabling and promoting the employment of persons with disabilities.[73]

[73] Appendices and Extensions of Remarks were often the places for finding discourse on special and inclusive education in American congressional debates, positioning the education for children with disabilities as a literal afterthought.

On July 29, 1951, the *Washington Post* published an article by the President of the American Federation of the Physically Handicapped titled “Helping Disabled is Good Business.” The author argued that “thousands of these individuals who are worthy, industrious, and patriotic citizens who, under existing regimes, are unable to secure the employment which they are fully qualified to perform” (Congress, 1951, p. A4897).

In the 1960s, a cost-benefit analysis became part of an argument for investing in children with disabilities. Assisting the education of children with disabilities, some argued, would save $300 million annually, which was being spent to institutionalize only four percent of children, and tap into a largely “unused resource” (*Pub. Papers 651*, 1961, p. 652).

Vocational rehabilitation programs originated from public demands for a federally led program to offer workplace training for veterans who had been disabled during World War I. The Federal Board of Vocational Education began offering humble pilot programs. In 1945, the National Employ the Physically Handicapped Week was instituted to provide federal and state employment to over 350,000 persons with disabilities. The federal government regrouped the thirty-five federal agencies (Congress, 1951, p. A4898). Provisions included “medical services,” “vocational guidance and counseling,” “education and training or retraining,” and “opportunities to citizens.” Although vocational rehabilitation and vocational education were different, the two programs were often grouped together since both aimed to increase the employability of the citizens they served.

In the 1950s and 1960s, the federal intervention in education policies was given clear justifications and legitimations. First, the cognitive justifications and normative legitimations for educating children with disabilities was demonstrated clearly in the problem definition. The neglect of over five million children with disabilities was problematized. Early in the period studied, in 1949, the discourse located the problem in the disabled body, the unemployment of citizens with disabilities, the financial and emotional cost of educating children with disabilities, and the knowledge gap. Also relevant was the states’ inability to fund education for all children, including children with disabilities.

The justifications of policies found in the documents studied invoked normative political, economic, and social values. The solution offered was a range of federally funded policies and programs which would “do better” at educating children with disabilities for the purpose of vocational integration. These solutions were justified by the responsibilities of the community and government, by children’s right to a full and useful life, by a desire to rehabilitate children for the sake of employment, and by a desire to maximize human resources and minimize societal burdens. In the United States, the education of children with disabilities was more often referred to as vocational rather than special. These children’s rehabilitation was pursued to enable them to work and live a “normal, productive life.” During the first two decades studied, the resource concept permeated all others, prompting an active discussion of the individual and social benefits of vocational education. The federal government’s increased involvement in creating rehabilitative policies was justified and legitimated on the basis of clearly defined problems together with an implementable solution tied to social, economic, and political values.

3.4.2. The Education for All Handicapped Children Act of 1975

The early 1970s witnessed a significant extension of the educational rights of children with disabilities. At the judicial level, a few landmark Supreme Court decisions ensured that public education was a right for all children: *Pennsylvania Association of Retarded Children v. Commonwealth of Pennsylvania., 343 F. Supp. 279 E.D. Pa. 1972* and *Mills v. Board of Education of District of Columbia, 438 F. Supp. 866 D.D.C. 1972.* In *Pennsylvania Association of Retarded Children v. Commonwealth of Pennsylvania*, the Pennsylvania Association for Retarded Children brought a class action case against the state for excluding children between the ages of six and twenty-one from education in public schools. The plaintiff argued that, by denying children whose mental age had not reached five years by the fifth grade, the state had violated the Due Process and Equal Protection clause of the 14th Amendment. The Court ruled that any child up to twenty-one years old should be admitted to a public-school program appropriate to their learning capacities. Further, the Court ruled that if a child’s educational status changes, children and parents should be notified and given the opportunity for a due process hearing.

In *Mills v. Board of Education of District of Columbia*, a civil case was brought against the District of Columbia Public Schools on behalf of seven children. The

children had been denied publicly supported education and excluded from regular public-school classes without due process due to the lack of financial resources. The Supreme Court ruled that, if funds are insufficient, those funds must still be equally distributed. “The inadequacies of the District of Columbia Public School System,” the ruling read, “whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the ‘exceptional’ or handicapped child than on the normal child” ("Peter MILS et al., Plaintiffs, v. BOARD OF EDUCATION OF the DISTRCT OF COLUMBIA et al., Defendants," 1972, p. 876).

The legislature was put under pressure to guarantee every child’s right to an education following the passage of the Education for All Handicapped Children Act (EAHCA) in 1975. The following analysis includes three congressional records which trace the conception and passing of the EAHCA. The first relevant discussion took place in the Senate on June 18, 1975. The second took place one month later in the House of Representatives on July 21 and July 29. The third relevant document is the House of Representatives’ confirmation report from November 18, 1975. The EAHCA, otherwise known as P.L. 94-142, was passed on November 20, 1975. In the congressional debates about P.L.94-142, we can clearly observe a problem definition, a solution, and the four legitimation concepts: responsibilities, rights, recovery, and resources.

The problem of neglect in the 1950s and 1960s carried over to the 1970s and 1980s: children with disabilities were either excluded from public education altogether or received inadequate educational services. The stability of the same problem definition over time demonstrates the strength of the education discourse in the United States: the maintenance and continuation of a discourse demonstrates the dominance of the discursive structures already in place. Specifically, policymakers consistently identified the problem of children with disabilities being continually and systematically excluded from public school, or not receiving an education (Congress, 1975a, p. 23706).

The multifaceted problem was often traced back to the overall neglect of children with disabilities. A child with disabilities was “denied access to a public education or [was] virtually barred from private schools due to prohibitive tuition rates” (Congress, 1972a, p. 4341). The exclusion of children with disabilities was traced to a national

“neglect” of those children (Congress, 1972b, p. 4819). Statistics revealed the extent to which the education of children with disabilities had been neglected:

> Today, there are 7 million handicapped children in this Nation. Sixty percent of these children are denied the special educational assistance that they need to have full equality of opportunity. A full one million of these children are excluded entirely from public schools and do not go through the learning process with their peers. Only 40 percent of America’s handicapped children receive compensatory education, and these services vary widely within the 50 states. (Congress, 1972b, p. 4819)

Granting children with disabilities equal opportunities and educating them was described as a very slow process. This was reiterated at least twice in one congressional debate by advocates of the EAHCA. This act, it was argued, would help with progress that “has come too slowly” (Congress, 1975a, p. 19485). The lethargic rate of legislative change at the federal level contrasted with the court decisions and state laws which had come into force in the 1960s and 1970s (Congress, 1975a, p. 19492).

To address the large population of uneducated children with disabilities, local, state, and nation-wide policies were proposed as a solution. Some saw solutions at a local level. A potpourri of internal regulations and cultural changes were proposed. For example, the city of Boston addressed children’s access to education through local policies, including some addressing issues like “medical and rehabilitation services, transportation, architectural barriers, parental attitudes, and social attitudes” (Congress, 1972a, p. 4342).

Others suggested that solutions could be found in concrete anti-discriminatory and access-enabling legislative measures (Congress, 1972a, p. 4342). These policies were motivated by nation-wide initiatives and they necessitated an expansion of national programming and evaluations, and demanded that the federal government take on a leadership role in such efforts (Congress, 1972b, p. 4819). The Chairman of the Committee on Labor and Public Welfare called for the creation of a “Subcommittee on the Handicapped” and an “Office of the Handicapped” which would be tasked with “coordinating all programs for the handicapped within the Department” (Congress, 1972b, p. 4820). A White House “Conference on the

Handicapped" was also proposed. The conference intended to increase the visibility of citizens with disabilities, and the issues affecting them. President Jimmy Carter described the conference:

> There is a hope that there will never be any lack of memory for the struggle that has been effective in making this night and this conference possible. We want to be sure that we don't forget the handicapped among us who cannot hold a job, who cannot respond to a full education, but we want to make sure that even when they are dependent for constant help, that they have every chance to grow and to learn and to take advantage of whatever great or small talent or ability God might have given them. We can't forget them. (*Pub. Papers 988*, 1977, p. 991)

In the 1970s, as in previous decades, the solution to the problem of educating children with disabilities would be more policies and procedures that would identify children with disabilities, and using this heavily-protected data to guarantee "full educational opportunities" for these children (Congress, 1975a, p. 19482). This policy solution was legitimated using the Four R concepts: responsibilities, rights, recovery, and resources.

First, the concept of responsibility was used to justify the state's continued financial support for education for children with disabilities. During these decades, cooperation between federal and state governments as well as their respective roles were renegotiated. The 1975 EAHCA promised continued and increased federal government support for free and appropriate education for children with disabilities, signifying the federal government's expanding role in the education policy discourse.

At the state level, the situation varied. Each state had implemented policies and practices of educating children with disabilities to differing degrees. Across the country, there was a general discontent with the states' ability to meet the educational needs of children with disabilities. For example, a congressional debate from 1972 illustrates how the city of Boston handled its responsibility towards children with disabilities.

The failure of Boston's education system to carry out its duties was evidenced by the exclusion of children with disabilities from educational opportunities, the failure to meet the demand for special classes, and the passive method of gathering

information on the number of children with disabilities. These policies were described as the city's having "abdicated" its responsibility. This abdication, in turn, created an education vacuum which could only be filled by the involvement of medical and rehabilitation services, transport, architecture, parents, and society (Congress, 1972a, p. 4342). Taking responsibility for the exclusion of children from Boston's public school system would have significant consequences. The city's department of education would assume responsibility for the enforcement of regulations and school attendance, providing services including transportation, and removing architectural barriers and persistent skeptical attitudes toward special education. Boston's failure to meet the needs of educating children with disabilities illustrates the state of most jurisdictions at the time.

Documents reveal repeated requests for the federal government to break away from traditional and historical allocations of responsibility and to "assist the States when they are unable to provide necessary educational services" (Congress, 1975a, p. 19494).[74] In another document, this same sentiment was formulated as a "new departure" from historical responsibilities (Congress, 1975a, p. 19498). The federal government's control of significant fiscal support positioned it to determine the direction of education policies.

However, the EAHCA was also criticized by politicians as giving the federal government more responsibility than it could take on. Senators called the EAHCA overpromising and irresponsible, since it promised that the federal government would spend money it did not have. In the words of one Senator,

> Mr. Chairman, this Nation is facing the biggest Government deficit in its peacetime history, perhaps in the area of more than $80 billion. There has to be an end to this irresponsible spending of money we do not have. It is just such well-intentioned but unlimited bills as this that are pushing toward fiscal, and eventually, political collapse. Yes, we must help handicapped children,

[74] The same sentiment was repeated in another place in the document: "Traditionally, the responsibility for educating our young children has been left to the States to be carried out by whatever program and means are deemed most appropriate. However, most States – and here I would like to point out that California is a considered exception – have not provided a free appropriate public education for handicapped children. This has led to the enactment of Federal laws to provide financial assistance to the States for establishing programs and projects for the education and training of handicapped children" (Congress, 1975a, pp. 19502-19503).

> but in a manner and degree consistent with our available resources. What good will it do us to spend billions for such programs if the end result is to crush this great Nation on the fiscal rocks. If we fall, all people will suffer, including the handicapped children we seek to help. Indeed it is a handicap to be physically crippled. It is an even greater handicap to be moral cripples, unable to honestly meet our responsibilities and admit that our resources are but finite and not equal to the desire of those whose goal is to spend and elect. (Congress, 1975a, p. 25537)

In this passage, we see responsibility understood as the provision of resources within government means. The same line of thinking was shared by President Ford, who expressed worry upon signing the Act.

> Unfortunately, this bill promises more than the Federal Government can deliver, and its good intentions could be thwarted by the many unwise provisions it contains. Everyone can agree with the objective stated in the title of this bill — educating all handicapped children in our Nation. The key question is whether the bill will really accomplish that objective. Even the strongest supporters of this measure know as well as I that they are falsely raising the expectations of the groups affected by claiming authorization levels which are excessive and unrealistic. (*Book II Pub. Papers 1935*, 1975, p. 707)

Thus, the expectation that the federal government intervene in the issue of educating children with disabilities demonstrated a sense of national responsibility. However, the concept of responsibility as described by federal legislation such as P.L. 94-142 overlooked the complexity and sustainability of such assistance. Most importantly, it overestimated the efficacy of federal intervention.

Second, in the 1970s and 1980s, the concept of rights was associated with the struggle for the civil rights of racial minorities in legitimizing policies for the education of children with disabilities. The fight for constitutionally promised equality of opportunity was no longer the fight of racial minorities alone: the right was also to be the guaranteed to children with disabilities. These children were also recognized as a minority group in society whose rights had been denied (Congress, 1972a, p. 4342). By identifying with the concept of civil rights, the education policy discourse grew strong and became dominant in these decades.

The government implemented several anti-discriminatory practices. The first was to propose new legislation that would make discrimination illegal (Congress, 1972a, p. 4342), which culminated in the Americans with Disabilities Act (ADA) of 1990. The rights concept in the discourse also gained visibility through the White House Conference on the Handicapped, which sought to provide persons with disabilities "recognition and with a forum with sufficient visibility and national prominence so they are no longer a minority lost within this Nation" (Congress, 1972b, p. 4820). The most widely referenced piece of legislation from the 1970s–1980s, which also invoked the rights concept, was the Education for All Handicapped Children Act of 1975, which included the following legitimation.

> This nation has long embraced a philosophy that the right to a free appropriate public education is basic to equal opportunity and is vital to secure the future and the prosperity of our people. It is contradictory to that philosophy when that right is not assured equally to all groups of people within the Nation. Certainly, the failure to provide a right to education to handicapped children cannot be allowed to continue. (Congress, 1975b, p. 9)

The EAHCA (P.L. 94-142) guaranteed children with disabilities a free, appropriate public education. According to the United States Department of Education, P.L. 94-142 had four purposes:

1. to assure that all children with disabilities have available to them […] a free appropriate public education which emphasizes special education and related services designed to meet their unique needs
2. to assure that the rights of children with disabilities and their parents […] are protected
3. to assist States and localities to provide for the education of all children with disabilities
4. to assess and assure the effectiveness of efforts to educate all children with disabilities. (DoE, 2010)

By achieving these four purposes, the legislation would prevent the complete exclusion of children from the education system. It would also make the education system more available to those for whom access to that system had been limited. The act's main purpose was to make available a "free appropriate public education,"

to relieve the “fiscal burden” borne by state and local educational agencies, and to “assess and assure the effectiveness of efforts to educate handicapped children” (Congress, 1975a, p. 19478). Given the separation of powers between the federal government and the states, this federal bill was justified as supporting democratic principles such as equal opportunity and equal protection by the law (Congress, 1975a, p. 19483).

The EAHCA was the apex of a discourse which emphasized anti-discrimination, equal opportunities, and rights during the 1970s. That discourse was reflected in many of President Jimmy Carter’s speeches. For Carter, education and civil rights were inextricably bound together. For example, he asked that “the same strong civil rights compliance procedures that exist in the programs to be consolidated are included in this legislation” (Book 1 Pub Papers 500, 1976, p. 169). One year later, President Carter drew the connection between promised civil rights for people of color and similar promises for people with disabilities, invoking shared freedoms across society. “[W]hen the handicapped get benefits of education and a job and a purposeful life,” Carter argued, “we all share in the benefits of that education, that job, and a purposeful life” (*Pub. Papers 988*, 1977, p. 989).

Thus, in the 1970s and 1980s, the rights-based discourse demonstrated how the rights of children with disabilities were brought to the fore when the discourse about education was coupled with the race-based civil rights discourse. The bonding of concepts, which showed how an apparent issue for a minority was truly an issue for the majority, was a mechanism which increased the visibility of the education policy discourse.

Third, in these decades, the recovery concept was used to legitimate actions of care. By considering issues of education and medical care, policies concerning the education of children with disabilities were based on the social value of health. A congressional record from February 17, 1972, provides an example of the conceptual relationship between discourses of care and education. The insufficient attention to the medical care of children with disabilities was identified as precipitating their exclusion from public schools: medical neglect led to educational neglect (Congress, 1972a, p. 4341). As a result of poor medical care, children with disabilities were unable to succeed in school.

Inadequate treatment and insufficient care multiplied the problems associated with illness, and was understood to cause educational exclusion (Congress, 1972a, p. 4341). In congressional discussions, special education systems and services were associated with the word “care” (Congress, 1972a). The correct allocation of educational services depended crucially on better medical diagnoses. However, the extent or degree of disability determined the accessibility of proper services. An associate commissioner for the Health, Education and Welfare Department’s Bureau of Education for the Handicapped quipped that “[t]he more serious the handicap, the more difficult it is to get services. […] It’s kind of as if a doctor would treat you if you had a cold but not if you had pneumonia” (Congress, 1972c, p. 10459). Beginning in the 1980s, the application of the medical care concept to this context was problematized. Invoking that concept in discussions of education was seen to damage the view of children with disabilities:

> But the most damaging presumption made about children with disabilities is that they are chronically sick or diseased. […] Fickle as it is, the healthy world will not long put up with a bad patient. […] And here, too, is the trouble with children who have a disability…they will not get well. It would suit society fine if they would simply stay out of sight, somewhere, until they got better. Stigmatized as sick, helpless, and irremediable, children with disabilities are objects of pity but not of tolerance. By assigning a medical explanation to handicap, nonhandicapped society easily disavows responsibility for involvement. After all, if someone is sick he or she needs professional care and is not yet ready to participate in our world. (Congress, 1982, p. 25010)

Increasingly, policymakers began to think of medical care and education as inconsistent, either-or provisions. For a child whose disability was understood as a medical diagnosis, concerns about education were best put off until the child was “cured” or “suitable” to participate in society. This demonstrated a clear order of priorities in terms of importance: health came before education and care before rights. The discourse in the United States in the 1970s and 1980s exhibits the prominence of the recovery concept which described disability as a health problem. That concept supported practices of inclusion in schools only on the condition of the prevention or exclusion of disability (*Book I Pub. Paper 808*, 1980, p. 811).

Fourth, the resource concept legitimated education solutions in two different ways. Sometimes, a child with a disability was argued to be an economic burden, which had to be neglected in times of economic adversity. Other times, educating children with disabilities was described as an investment, and a more financially sound alternative to taking on the costs of institutionalization.

The 1970s witnessed an acknowledgement of the longstanding financial neglect of educating children with disabilities. These children had become “political expendables” in decisions related to funding (Congress, 1963, p. 11823). Services for citizens with disabilities were the first to be cut during times of financial hardship (Congress, 1972b, p. 4819). According to some members of Congress, the fact that social services for children with disabilities were described as “frills, to be reduced in times of economic adversity underlines a tragedy of our society” (Congress, 1972b, p. 4819). Due to the costs of educating children with disabilities, the resource concept was invoked to argue against bearing these costs in times of economic adversity.

However, others argued that educating children with disabilities was in the best financial interest of the country. Children were described as the country’s “most important investment” whose “returns [were] well worth it” (Congress, 1971, p. 754). To tap into the country’s “greatest resource” (Congress, 1975a, p. 23708) was considered pragmatically wise. “Appalling statistics” were taken to illustrate this point (Congress, 1975a, p. 23708). For example, in the congressional record of 1972, one politician described how investing in the education of children with disabilities would be much cheaper than institutionalizing them:

> The lifetime cost of educating an educable handicapped or retarded child is about $20,000. The lifetime cost of institutionalization is ten times that amount. This does not even take into consideration the potential earning power of these individuals, if they receive the special education and other services necessary for them to realize their personal and economic potential. (Congress, 1972b, p. 4819)

Further, politicians pointed out that tax laws discriminated against the parents of children with disabilities (Congress, 1972a, p. 4342). Since parents were unable to

send their children with disabilities to public schools, they did not benefit from services paid for by their taxes:

> They pay Federal taxes, but how much effort is made to educate the handicapped child through ESEA – the Elementary and Secondary Education Act – Impact aid, and other programs? Programs provided by the Federal Government almost never make provisions for the handicapped. (Congress, 1973, p. 5636)

Invoking discriminatory tax policies characterizes the distribution of resources in terms of injustice. It provides a good example of how the resource concept operated on a very practical level. Increased spending on federal governmental support was argued to be one way of solving the problem of costly education (Congress, 1977, p. 5069). However, the discussions also revealed that simply throwing more money at the education of children with disabilities had its limits. In the words of another congressional record “[m]oney will not provide the entire solution to the problem” (Congress, 1972c, p. 10459).

During the 1970s and 1980s, the American discourse discussed society, policies, programs, and finances. As in previous decades, the documents of that discourse problematized the paucity of educational services for children with disabilities. This problem was understood to be the product of apathy toward these children. The proposed solution was to create more policies and programs that would provide children with disabilities a free and appropriate public education. This approach, epitomized by the passing of the EAHCA in 1975, was legitimated by the concepts of responsibility, rights, recovery, and resources.

All Four R concepts were present in the documents from the period. Since state and local governments were unable to shoulder the costs of educating children with disabilities, the federal government took on an increasingly dominant role in funding that education. The government took up this responsibility out of a concern that children’s rights to a non-discriminatory, equal-opportunity education were being denied. This denial was due in part to the poor medical care children with disabilities were receiving, and improper diagnoses of their needs. Still, as the rights of children with disabilities became conceptually connected to civil rights, they took on a more important role in the American discourse. Finally, the long-standing view of children

with disabilities as burdens rather than investments, which resulted in discriminatory practices and underfunding education, was challenged by the view of children as (future) tax-paying citizens and investments.

3.4.3. Individuals with Disabilities Education Act of 1990

In the 1990s, the EAHCA (P.L. 94-142) was re-evaluated considering new concerns and reauthorized as the Individuals with Disabilities Act (IDEA). The IDEA responded to pressing problems of the 21st century: minority participation, personnel preparation, transition services, and authorization levels (Congress, 1990c, p. 29184). While P.L. 94-142 improved access to a free and appropriate education, its efficacy was impeded by “low expectations” and the limited integration of children with disabilities into regular classrooms ("Individuals with Disabilities Education Act," 1990). This section presents and analyzes how documents related to the IDEA define the problem, propose a solution, and give reasons supporting particular policies. Politicians at the time had become increasingly concerned that significant demographic changes were endangering equal education and opportunity to all citizens (Congress, 1990a). These changes included the overrepresentation of children belonging to racial and ethnic minorities in the public school system (Congress, 1990a, p. 14334). Specific to these decades was the association of the overrepresentation of minority children in special services with the discussion of Attention Deficit Disorder (ADD) (Congress, 1990c, p. 29186). Also, the number of minority teachers was not proportional to the number of minority students.

Another change was the replacement of the terms “handicap” and “handicapped children” used in EAHCA with the term “individuals with disabilities,” in order to use the currently accepted terminology instead of terminology now considered derogatory. Concerning this legislation, and in other contexts, Congress was apprised of the fact that, to many individuals with disabilities, the terminology applied to them is a very significant and sensitive issue (Congress, 1990b, p. 27031). Notably, Senator Harkin credited individuals with disabilities themselves with problematizing the term “handicapped,” as they were the ones to whom the term mattered. Thus, even though the title of the act was insignificant to some, the terminology was changed due to the “currently accepted” discourse. This change demonstrates the significant extent to which the terminology which is accepted in political, social, and disability discourses shapes the education discourse.

The reports of the Office of Special Education Programs (OSEP) spanning the years 1990–2009 also provided valuable insight into how the inclusive education policy discourse defined problems. In the early 1990s, the OSEP reports problematized service provisions in inclusive settings and the academic achievements of students with disabilities (OSEP, 1995, 1996). After the IDEA was reauthorized in 1997, the reports continued to problematize academic achievements, linking these to other factors affecting school performance such as race and social inequities (OSEP, 1997, 1999).

On the twenty-fifth anniversary of the IDEA in 2000, the OSEP's 22nd Annual Report to Congress recognized how the law's central tenets and purposes had remained consistent over time (OSEP, 2000). Still, unanswered questions about the success of the IDEA remained, which suggested a general problem with quality control. Unanswered questions concerned how best to resolve the shortage of teachers, how to effectively meet higher educational standards, how to efficiently reach infants and toddlers, how to meet the needs of children from racial and ethnic minority groups, and finally, how to improve the opportunities and implementation of educational opportunities under the IDEA (OSEP, 2000). One politician effectively summarized the issues:

> Mr. President, I have visited 30 or more schools in my state in the last 3 years. I have talked to teachers and principals on a regular basis, and they express their frustration to me on this subject. As Senator MIKULSKI indicated, she is hearing that and other Senators around the country have said the same thing to me. One experienced special education teacher told me: Jeff, the problem is, we are here working on rules and regulations, lawsuits, and that sort of thing, and we have completely forgotten what is in the best interest of the child. We need to reform this act. We need to get more money for it and improve what we are doing so that we help children more than based on the money we now have. (Congress, 2003, pp. 1413-1414)

This statement problematizes several topics. First, the perspective was said to have shifted from a focus on children to one fixated on rules, regulations, and lawsuits. Second, relatedly, to achieve the policy's original goals schools and service providers needed more money, instead of trying to work with the money at hand.

Thus, the years 1990–2009 in the United States witnessed a diversification of population and a diversification of their problems. The discourse focused on meeting the needs of individuals with disabilities, problematizing labels such as “handicap,” arguing for the inclusion of disability categories such as ADD, and advocating for more resources and quality controls. However, in the 2000s, many argued that the best interests of children had been forgotten. By diversifying the problem, the focus on the individual child had been lost. This problem was familiar from the previous decades of American discourse.

The American discourse proposed bills and house resolutions to change and reform the EAHCA to address the four core problem areas which the reauthorization discussion had identified. To address the problem that minorities were overrepresented in special education, together with the scarcity of minority teachers and low rates of minority participation in grant programs, the bill required a minority enrollment quota, implemented strategies to recruit more minority teachers, to make more grants and scholarships available to students from minority groups, and to increase minority representation in school boards and other administrative organizations (Congress, 1990c, p. 29184). The critical shortage of qualified special education and related services personnel was to be “remedied” by means of provisions (Congress, 1990c, p. 29184). Other provisions addressed the waste of human potential due to inadequate transitional services. These provisions defined transition services, encouraged implementing individual education plans for students at fourteen to sixteen years old, and created a system of cooperation with private industry councils and employment offices (Congress, 1990c, p. 29185).

Finally, authorized extent of federal intervention in education policy were increased (Congress, 1990c, p. 29185). The problematic label “handicap” was removed from the title of the reauthorized legislation, which became called the “Individuals with Disabilities Education Act.” The faltering quality of policy provisions in the 2000s was addressed by reauthorization (Congress, 2005). In its 19th Annual Report to Congress (1997), the OSEP wrote that educational results could be improved through new approaches to teaching and learning, combined with the full funding of the IDEA (OSEP, 1997). These same suggestions were repeated three years later in the 22nd Annual Report to Congress (2000).

Again, the IDEA was legitimized by strategies belonging to four categories: responsibilities, rights, recovery, and resources. It was deemed a federal responsibility to ensure the rights of children with disabilities to a free and public education. Over time, this right was increasingly characterized as a citizen's right to participate in the American dream. To improve integration and other special education service provisions, policymakers called for improvements to the process of referral, diagnosis, and placement for children with disabilities. Finally, government spending on services for children with disabilities was legitimized as a measure for saving resources.

Between 1990 and 2009, even more so than in the previous decades, responsibilities were shared between levels of government and between parties, as manifested through shared financial support practices. Such shared responsibilities recall Dye's "marble-cake" metaphor, which described the interwovenness of federal and state responsibilities (Dye, 2017). Federal intervention was welcomed as appropriate, ameliorative, and a matter of agreement across party lines and levels of government.

First, it was considered appropriate for the federal governmental to take responsibility for ensuring the education of every child. In a congressional debate regarding the reauthorization of IDEA in 1997, the unique importance of federal government intervention in this issue was articulated as follows:

> I rise in support of the current bill to reauthorize IDEA, the Individuals with Disabilities Education Act. The federal government, in my view, should and does play a rather limited role in elementary and secondary education. This is the responsibility generally of communities, those of us who live there. State and local control. I think it is the strength of our educational system, and yet I believe strongly that this is an appropriate Federal responsibility. This is dealing with that kind of a special problem which exists in all places to ensure that every child has the opportunity to be the best that he or she can be. (Congress, 1997, p. 7918)

In this quote, special education is characterized as a "special problem." This categorization justified an atypical intervention by the federal government. However, the category of "special problem" is left unexplained. One might wonder: what other

issues count as special problems, in which federal intervention is justified? With no clear answer, the scope of this justification criteria is left obscure.

The role and responsibilities of federal and state governments were described in a congressional record from March 6, 2001. It was agreed that government funds provided through the IDEA were to be allocated to the states to enable a maximum flexibility to educational improvements across jurisdictions. It was up to the states to decide whether their resources were best spent on teacher salaries, professional development, curriculum development, reduced class sizes, building renovations, or other needs. By funding the IDEA, the federal government passed the responsibility of educating children with disabilities to state governments. Finally, based on the common interest in future progress, it was argued that education was a responsibility held by all citizens to all citizens (Congress, 2005, pp. 27339-27340).

Second, reauthorizing the EAHCA was considered vital for reaffirming the right to an education which had been previously acknowledged:

> By reauthorizing existing programs that are serving needs well and by authorizing programs that focus on other vital needs. Congress reaffirms the right of all citizens to a free and appropriate public education. (Congress, 1989, p. 29448)

Significantly, in the above example, the word “citizens” replaces terms like “disabled” or “handicapped” which had been used in previous decades. By referring to children with disabilities as citizens, the discourse abandoned labels focused on a child’s physical condition. As citizens, children were unequivocally endowed with the right to participate in the “American dream,” of which education was an integral component. As one member of Congress argued,

> In America, education is viewed as a right. Across the country, our Governors, school boards, education professionals, and families of children with disabilities identify fully funding for special education as their number-one priority. […] Six million American students with disabilities have a right to a free and appropriate public education. They deserve to participate in the American dream. (Congress, 2001, p. 2876)

Governors, school boards, education professionals, and families were all called to support children’s right to an education and full participation in the American dream.

In the latter part of the decade, the emphasis was placed on children as bearers of their own rights, hopes, and dreams:

> The act is about disabled children and their rights. It is about their hopes and dreams of living independent and productive lives. It is about parents who love their children and struggle for them every day against a world that is too often inflexible and unwilling to meet their needs. It is about teachers who see the potential inside a disabled child, but don't have the support or training they need to fulfill it. IDEA is our declaration as a nation that these children matter and that we will do all we can do to help their parents and teachers and communities achieve their education goals. (Congress, 2005, p. 27279)

Children and their rights are clearly at the forefront of this statement. This marks another shift away from a discourse emerging from a medical model of disability centered on the disability itself, and towards a rights-based model centered on children as people and citizens. This language recognizes children as a new source of participative agency.

Third, the IDEA included measures to improve how children with disabilities transitioned from medical care to special education programs, and to create educational opportunities for these children (Congress, 1989, p. 29448). The significant role played by medical diagnoses and labels when placing children in special facilities was problematized as well.

> We must ask ourselves, do students who do not qualify for services under the existing definitions belong in special education? Are we really helping a child when we give him/her a label and put him/her in special education when that child can and should be served by regular education? Clearly, a child must be adequately served, regardless of the disability – and I hope there is no question of that goal. However, does placing a child under a separate category actually help? […] Instead, we should concentrate our efforts on educating students, not labeling them. (Congress, 1990b, p. 27034)

The systems of labeling children's educational needs differed across states (Congress, 1990c, p. 29186). Misdiagnoses or mislabeling were common, and caused problems by resulting in improper placements or inefficient services. For example, misdiagnoses of dyslexia led to the misconception that the condition was

highly prevalent in boys. A discrepancy between research and conventional wisdom had a significant impact on special education programs, which came to the attention of Congress.

> Recent research has turned up troubling results that contradict decades of conventional wisdom. […] For the past century, educators and psychologists have assumed that dyslexia strikes mostly boys. Entire research programs have been set up to find the biological basis for the presumed gender differences in developing dyslexia. […] Most school systems rely on the recommendations of teachers, rather than testing all students for it. […] This suggests that even in an area as fundamental as learning to read there may be legitimate concerns that too many boys who don't need it are being labeled as dyslexic, and too many girls who need help are not getting it. […] Improving referral, diagnosis, and treatment is important. (Congress, 1990c, p. 29186)

Improvements in the processes of referral, diagnosis, and treatment were also called for based on the prevalent mislabeling of students with a limited proficiency in English. As one Senator argued:

> Information from many parts of our Nation suggests that too often students with no disability who are limited-English proficient are being placed in special education courses where they do not get the services they need. And many limited-English proficient students who have disabilities are not receiving the services that they need. These and other issues in referral, diagnosis, and placement are critical to the functioning and the future of this program. (Congress, 1990c, p. 29186)

Thus, improving referral, diagnosis, and placement, thereby enabling better transitions from medical to educational services invoked the recovery concept. While this transition allowed more children with disabilities to access the general school system, it also led to the frequent mis-assessment the needs of children with disabilities.

Fourth, during the 1990s and 2000s, politicians moved to prioritize federal spending for educating children with disabilities based on the familiar belief that such investments would save the government future dependency costs (Congress, 1990a,

p. 14334). In the discourse, providing a child with an education was described as a way of “saving.” In a 1999 congressional debate, educating children with disabilities was described as saving the government astronomical costs. “The bottom line,” one member of Congress argued, was that the provision of “appropriate special education and related services to children saves government hundreds of thousands of dollars in dependency costs”(Congress, 1999, p. 5810).

In the 1990s–2000s, a growing body of research allowed Congress to legitimize their policies supporting the education of children with disabilities with data. Considering the multiple calls to expand the knowledge base about disability and educating children with disabilities, the discourse’s increased reliance on research data was significant. The practical upshot was that the federal government would continue to financially support special education costs, as one member of Congress argued.

> In 1975, we made a commitment to fully fund the federal government’s share of special education costs. If, 25 years later, in this era of economic prosperity and unprecedented budgetary surpluses, we cannot meet this commitment, when will we keep this pledge? School districts are demanding financial relief. Children’s needs must be met. Parents expect accountability. There is no better way to touch a school, help a child, or support a family than to commit more Federal dollars for special education. Personally, I do not believe anyone can rationally argue this is not the time to fulfill our promise. (Congress, 2001, p. 2875)

According to expert witnesses and congressional supporters the IDEA, funding was the primary barrier to educating children with disabilities. In the 21st century, the discourse moved from invoking the utility of children with disabilities to the rest of society, to a broader understanding of how society is enriched by children with disabilities. In that respect, the IDEA was seen as a “win-win for everyone” (Congress, 2001, p. 2038). Financing the education of children with disabilities was still perceived as a “burden,” but a burden that was expected to be eased by federal support, since the matter affected “all children” (Congress, 2001, p. 5565).

The belief that the whole of society benefited economically from guaranteeing children with disabilities access to an education was a new one. In the past,

educating these children was thought to incur more costs than educating their peers without disabilities. Now, the burden was viewed as justifiable:

> IDEA is our declaration as a nation that these children matter and that we will do all we can do to help their parents and teachers and communities achieve their education goals. That is why the government should make a clear commitment to provide adequate funds for special education. What is needed is a solid education plan for each child, a way to chart the child's progress, and a way to hold schools accountable if they fall short. That is not placing an unfair burden on schools. It is *the correct expectation* of a decent school system in America. (Congress, 2005, p. 27279) (emphasis added)

The IDEA promised that the government would continue to support policies defending the education of children with disabilities. In these most recent decades, the discourse justified such support as a matter of overall savings, avoiding other, more expensive forms of institutionalization for people with disabilities.

So, the United States discourse of 1990–2009 was characterized by the four legitimation concepts: responsibilities, rights, recovery, and resources. The discourse dealt with issues of minority participation, preparing personnel, transition services, and the level of authorized government intervention, all of which stemmed from the EAHCA. In the reauthorized act, the government sought to solve these problems with new provisions, remedies, and other governmental actions.

The exceptional intervention by the federal government in educational matters was deemed appropriate in this case. By virtue of that intervention, children would be guaranteed access to a free and public education which would allow them to fully participate in society as citizens. Medical and educational professionals were expected to cooperate to a greater extent, to improve referrals, diagnoses, and placements for children. Spending money on educating children with disabilities would ultimately save the country much greater costs in the future. Responsibility, rights, recovery, and resource concepts together supported the reauthorization of legislation that would provide states with the federal funds to educate children with disabilities. This interwovenness of different levels of government represented an ideational coherence of discourse which strengthened the overall argument for educating children with disabilities.

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Chapter Four – Comparing Dimensions of Discourse

> In the United States politics are the end and aim of education; in Europe its principal object is to fit men for private life. The interference of the citizens in public affairs is too rare an occurrence to be provided for beforehand. Upon casing a glance over society in the two hemispheres, these differences are indicated even by their external aspect. (Tocqueville, 1994, p. 318)

In the previous chapter, key policy documents from Germany and the United States were reviewed to demonstrate a recurring conceptual formation that consisted of cognitive justifications and normative legitimations that focused on Four R concepts: responsibility, rights, recovery, and resources. Cognitive justifications and normative legitimations all belong to the ideational dimension of discourse. An additional interactional dimension consists of the coordination and communication of the Four R concepts between levels of government and the public. In this chapter, the ideational and interactional dimensions of discourse in Germany and the United States are compared. The systematic comparison uses a matrix devised to determine the strength of a discourse.

This chapter takes discourses, a growing object of comparison in the political sciences (Schmidt, 2008), and juxtaposes the cognitive justifications, normative legitimations, coordination and communication of discourses from two countries. This allows an assessment of overall patterns in discursive transformations and their mechanisms. In so doing, this comparison avoids the reductionism often found in comparative research, while facilitating a culture of competition and collaboration (Powell, 2020).

Chronologically, the education discourses in Germany and the United States held different shifting points (See Figure 2.1). In the 1950s–1960s, both Germany and the United States demonstrated strong cognitive justifications in addition to stable social, economic, and political concepts which created an ideationally coherent discourse. An ideationally coherent discourse has both cognitive and normative elements. There were clearly defined problems and solutions that were justified and legitimated based on shared political, social, or economic values, confirming the pattern of repeated Four R's found in the various policy documents.

German and American discourses majorly deviated from one another in the 1970s and 1980s. In both countries, the concepts of recovery, responsibilities, rights, and

resources intersected with political and social values. In the latter part of this period in Germany, economic benefits were no longer used to legitimate integrative educational policy for children with disabilities. Education conceptualized as a resource and economic consideration was excluded from German discourse, which weakened the concept of integrative educational policy. In the US, education policy was consistently backed by all three values and Four R concepts, thereby maintaining a strong inclusive policy discourse.

In the 1990s–2000s, Germany's differentiated policy received no clear political legitimation, whereas in the United States all three values persisted in the policy discourse. This further weakened integrative education discourse in Germany. However, determining the overall strength of integrative education discourse requires that the discourse's ideational or internal mechanisms be viewed together with its interactional or external mechanisms and how the discourse is distributed and communicated across the levels of government.

4.1. Ideational Dimension: Cognitive Justifications and Normative Legitimations

A comparison of the early (1949-1969) policy documents in both countries demonstrate a strong presence of cognitive justifications and variations of normative legitimations. As mentioned in chapter three, cognitive justifications refer to how a problem is defined and the policy response to this problem and normative legitimations are the reasons listed in favor of a particular solution (Schmidt, 2008). Taking the first twenty years (1949-1969), the KMK's 1960 Recommendations and the congressional records and presidential papers from the 1960s demonstrated how German and American education discursive formations identified a problem and offered solutions which were legitimated by Four R concepts: responsibility, rights, recovery, and resources. Both countries shared similar visions of the relevant problems and solutions: Germany and the United States were dissatisfied by the current state of educational policies and practices.

In the 1960s, the German discourse about resources legitimized the education of children with disabilities to avoid pricier expenditures elsewhere. It was believed that the amount of money spent on educating a child with a disability would be far less than the amount which would be needed to finance the institutionalization of that child. The

American discourse also acknowledged the economic benefits of educating children with disabilities. The difference lay in how the term “resource” was used. American politicians argued uniquely that human resources were wasted when children with disabilities were left uneducated. Policymakers in both countries agreed that educated children with disabilities had economic benefits but described those benefits in different terms. The German discourse emphasized savings whereas the American discourse emphasized investments. The German discourse described education as a means of relieving other financial burdens, since it relegated the child to a more cost-efficient institution. The American discourse was eager to invest in children but viewed them as a means to increase financial gains.

Normative legitimations between the two countries varied in nuance and application of the Four R’s. For example, in the German discourse, responsibility was repeatedly invoked to legitimate strengthening special schools primarily through state-led education policy actions. The American discourse used the language of responsibility to justify continued federal government intervention in education policy. The recovery concept in Germany was built around the general public’s care and concern for a child’s disability.

These differences were further highlighted in the legitimations offered in the policy documents. German politicians wanted to abandon centralized cultural policies and pay off the moral debt accrued by the National Socialist policies of euthanasia and forced labor. In the United States, the discourse demonstrated dissatisfaction with current rehabilitative practices. Both countries wanted to provide children with a meaningful life. However, the methods by which a meaningful life would be achieved differed significantly. In Germany, the ministers of culture recommended the rebuilding of special schools and improving their reputation in the public eye: a policy which sought to segregate, rather than to integrate or include. Further, these recommendations were non-binding: there were no consequences should individual *Bundesländer* choose not to implement them. In contrast, politicians in the United States proposed that better government-funded programs could address the vast number of uneducated children with disabilities to improve their future employability. The United States federal government was strongly involved in implementing programs that would educate children with disabilities using a community-minded approach.

This is just one example of a time period where cognitive justifications and normative legitimations could be compared. However, unlike the chronological purview of the documents, this chapter focuses on the ways in which each Four R concept was organized over a period of 60 years.

4.1.1. State vs. Federal Responsibilities

Responsibility was used as a tool of political and social legitimation for education policies in Germany and the United States throughout the years 1949–2009 but developed differently in both countries. The table below (Table 4.1) illustrates the concept's development. In Germany, the responsibilities lay primarily with the states, whereas, in the United States, responsibilities were shared between the federal and state governments. The American discourse displayed more continuity in how responsibility was understood over the years.

Table 4.1

The Responsibility Concept in Germany and the United States

Time Frames	Germany	United States
1949–1969	Public Duty	A New Alliance
1970–1989	Democratic Responsibilities	Shared Responsibilities
1990–2009	Distributed Responsibilities	Shared Responsibilities

The responsibility concept varied in each country over time. In the table above the German discourse in the 1950s and 1960s considered education policy for children with disabilities a public responsibility. Cultural Ministers took it to be their public duty to provide a meaningful life for children with disabilities (Kultusministerkonferenz, 1960, p. 8). In the 1970s and 1980s, both integrative and special education policies were justified as a matter of democratic responsibility shared by parents and teachers, as well as doctors. In the 1990s and 2000s, these responsibilities were increasingly diffused and shared by multiple stakeholders (see chapter three).

In the American discourse, education policy was a federal responsibility. In the 1950s and 1960s, the educational needs of children with disabilities were to be met by an alliance struck between state and federal governments. Through this alliance, educational responsibility was placed on the shoulders of the federal government and educational solutions were to be financed by federal dollars. The federal government financed and supported special education policies into the 1970s and 1980s. In the 1990s and 2000s, federally sponsored laws were deemed appropriate in guaranteeing the educational rights of children. Unlike the German cultural ministers, who made recommendations, the United States federal government actively intervened to protect and enable education for children with disabilities (Congress, 1964, p. 1964). Federal intervention was not a breach of power, but rather welcomed as an appropriate way to strengthen the education of children with disabilities.

Discourses in Germany and the US diverged concerning *who* was responsible for educating children with disabilities, *why* those institutions took up this responsibility, and ultimately *how* they chose to take up their educational responsibility. A closer look at the early post-World War II decades of German and American policies reveals how politicians from both countries held themselves accountable for educating children with disabilities. The German sense of duty to preserve human dignity was derived in response to dehumanizing policies under National Socialism. Federal states were responsible for implementing the specifics of policy for separate or differentiated schools. In the United States, responsibility shifted to the federal government due to the failure of local and state governments to carry out their educational responsibilities. The German discourse used the responsibility concept to justify a primarily state-led education policy, whereas the American discourse used the responsibility concept to justify federal government intervention in support of educating children with disabilities.

Between 1970–1989, German discourse began to characterize their responsibility for the educational integration of children with disabilities to be uniquely *democratic*. For example, the Education Council described integrative education as “one of the most urgent tasks of any democratic state” (Bildungsrat, 1973, p. 16).[75] By connecting integrative policies to a democratic agenda, the Education Council could justify an

[75] In German: “*Die Begründung der neuen Konzeption ist für die Bildungskommission vor allem darin gegeben, daß die Integration Behinderter in die Gesellschaft eine der vordringlichen Aufgaben jedes demokratischen Staates ist*.”

integrative policy as a democratic requirement. Similarly, the American discourse in the 1970s and 1980s reflected democratic values in providing education; parents, teachers and politicians vouched for a free and appropriate education. In order to meet this responsibility, the federal, state, and local governments were expected to cooperate with one another (Congress, 1975a, p. 19482).

The federal government's share of responsibility, considered "temporary" in previous decades, became a long-term commitment with the passing of P.L. 94-142, also known as the EAHCA. Again, both countries translated their responsibility into different kinds of policies with respect to *how* educational responsibilities would be met. In Germany, the responsibility concept drew on a democratic identity that suggested integrative education policies. In the United States, the same concept legitimated the passing of legislation that solidified funding for a free and appropriate public education for children with disabilities.

The German discourse on educational responsibility expanded to include new speakers in the years 1990–2009. In addition to school boards, teachers, parents, states, and coordinating bodies, the responsibility for adjudicating educational concerns was taken up by the Supreme Court and legislature. This was made possible, after much congressional discussion, through the passage of an anti-discrimination clause protecting persons with disabilities in the Basic Law. Although the responsibility concept appeared in the coordinative and legislative branches of government, the Federal Constitutional rulings in 1997 and 2006 placed primary responsibility for integrative education with state and local governments as well as individual schools. Due to the wider distribution of responsibility during the 1990s and 2000s, there was an overall diffusion and weakening of the national discourse on integrative education policy. In the United States, the combination of state efforts supported by the federal government was still widely considered an appropriate delineation of responsibility. As such, the American discourse focused on the reauthorization of P.L. 94-142, which reasserted federal responsibility for ensuring education for children with disabilities (Congress, 1997, p. 7918).

Over sixty years, the German responsibility concept reveals a tenacious separation of power between federal and state educational responsibilities as the country experimented with integrative policies that ran parallel to their policies of differentiated schooling. The expanded range of speakers, especially in most recent decades, did

little to practically displace states from their role as the primary providers of education. In contrast, the United States quickly recognized states' inability to guarantee the educational rights of children with disabilities. Federal intervention led to the authorization, and reauthorization, of policies supporting education for children with disabilities. This sharing of responsibility between American federal and state governments led to the implementation of inclusive policies as a federally mandated, rather than optional, measure. These factors uniquely strengthened the inclusive education discourse in the United States.

4.1.2. Education vs. Civil Rights

An overview of German and American rights policies over sixty years demonstrates points of convergences and divergences. Rights which were broadly defined in similar terms in both countries prior to the 1970s became specified in the following decades as either the right to an integrative education, or a free and appropriate one. While the German Federal Constitutional Court decided to limit the right to an inclusive education depending on the availability of resources, the US ensured the right to education by aligning this right with a constitutional one, ensuring its legal protection.

The concept of rights in Germany and the US (1949–2009) used to justify educational policies for children with disabilities adhered to the social and political values of the time which legitimized integrative and inclusive education policies.

Table 4.2

The Rights Concept in Germany and the United States

Time Frame	Germany	United States
1949–1969	Respect for Human Dignity	Right to a Full Life
1970–1989	Right to an Integrative Education	Civil Rights
1990–2009	Limits to Educational Rights	Right to Participation

In the 1950s and 1960s, German children with disabilities were granted the right to human dignity. Honoring this right meant educational provisions in special schools.

This understanding of educational rights shifted in the 1970s and 1980s to legitimate alternative, integrative, schooling placements. However, in the 1990s and 2000s, the guarantee of a "basic right" to an integrative education was dependent on existing resources found in general schools.

In the United States, a child in the 1950s and 1960s was guaranteed to a full life, one that would be brought about through vocational education. As in Germany, American children were offered other kinds of educational settings in the 1970s and 1980s, with the passing of P.L. 94-142. Educational rights for children with disabilities became associated with broader *civil* rights, motivated by the civil rights movement, which led to the gain of significant momentum towards free and appropriate education for children with disabilities. This right was renewed in the 1990s and 2000s.

Both German and American discourses used the rights concept to legitimate educational policies in the 1950s and 1960s. There are, however, slightly different nuances in why and how these policies were legitimated on the basis of rights, and what these rights practically meant for children with disabilities. German policies in the 1960s spoke of the respect for human dignity, language chosen to contrast the new policy from the violation of the human dignity of people with disabilities by National Socialist practices. In the same period, the American discourse also invoked a child's "right to a full life" (Congress, 1961, p. 18831). Like the German rights concept, the American rights concept in the early post-war decades was a response to the dissatisfaction with the policies of the time. However, unlike the German policies, American politicians articulated how the rights of children with disabilities were being hindered by factors like the limits of present knowledge, a lack of imagination and ingenuity on the part of older generations, and incompetent instructors. German and American rights concepts in the 1950s and 1960s also differed in their understanding of what a child with disabilities was entitled to. In Germany, a right to human dignity was understood as a right to an education in a special school. In the United States, the right to a full life was understood as the right to a vocational education that would develop the child into a productive citizen (*Book 1 Pub Papers 500*, 1976, p. 169).

The German discourse from 1970–1989 was focused on a right to an integrative education (Bildungsrat, 1973, pp. 22-23). Likewise, the United States was also interested in providing a "free appropriate public education," as stated in P.L. 94-142. While both national discourses began to identify children's right to education as a civil

right in the 1970s and 1980s, the possession of such rights was consistent with segregation or separation in classrooms.

The limits of educational rights became apparent in the German education discourse during the years 1990–2009. Children's rights to an integrative education were questioned in the Federal Constitutional Court ruling of 1997. "It appears doubtful," the Court argued, "to what extent Article 3.3 sentence 2 of the Basic Law even affects the school law obligation to attend a special school" (Bundesverfassungsgericht, 1997, p. §23).[76]In 1997, the Federal Constitutional Court ruled that it was constitutional to place children with disabilities in segregated schools. With this decision, a discrepancy emerged in the German integrative discourse, between the judiciary and the legislature which had passed an anti-discrimination clause for persons with disability in 1994. In contrast, numerous United States Supreme Court rulings were pivotal for asserting children's right to inclusive schooling:

> We recognized that the right of disabled children to a free appropriate public education is a constitutional right established in the early 1970s by two landmark Federal district court cases – Pennsylvania Association for Retarded Children versus Commonwealth in 1971 and Mills versus Board of Education of the District of Columbia in 1972. (Congress, 1997, p. 7858)

The American concept of educational rights was guaranteed by the constitution, and thus to be granted by any means necessary, even if resources were to be redistributed from other causes. Fulfilling the educational right of children with disabilities was imperative for developing a child's independence and participation in daily life (Congress, 2005, p. 27279).

4.1.3. Bodily vs. Societal Recovery

The recovery concept, as it was employed in Germany and the US from 1949-2009 also intersects with strong social, political, or economic values of the times, as illustrated in the following table (Table 4.3).

[76] In German: "*Es erscheine zweifelhaft, inwieweit Art. 3 Abs. 3 Satz 2 GG überhaupt auf die schulrechtliche Verpflichtung zum Besuch einer Sonderschule einwirke*."

Table 4.3

The Recovery concept in Germany and the United States

Time Frames	Germany	United States
1949–1969	Concern for the Helpless	Rehabilitation
1970–1989	Rehabilitation	Medical Care and Education
1990–2009	Individual and Societal Recovery	Referral, Diagnosis, and Placement

In the 1950s and 1960s, the German recovery concept was characterized by care and concern for the "helpless" (Kultusministerkonferenz, 1960, p. 8).[77] Caring for children with disabilities, following a caritas perspective, translated into special education provisions in special schools. In the United States, education was overshadowed by a rehabilitation concept that made employability the goal of special education (Congress, 1959, p. A4431).

Care merged into a concept of rehabilitation during the 1960s and into the 1970s. While the discourse remained focused on a medical dimension of rehabilitating children with disabilities, those "from whom the threat cannot be averted" were to be integrated into society as far as possible (Bildungsrat, 1973, p. 12).[78] The concept of recovery in the United States began to differentiate between rehabilitative interests and educational interests. This was motivated in part because a rehabilitative concept was "damaging" and "disavow[ed] responsibility for involvement." Critiques of the

[77] In German: "*Die Richtlinien gehen von der Überzeugung aus, daß die Sorge um die Sonderschulen eine Pflicht der Allgemeinheit darstellt. Der ernste Wille eines Volkes, die Achtung vor der Menschenwürde zum Grundsatz seiner Lebensordnung zu erheben, und seine Kulturhöhe beweisen sich auch in der Sorge um diejenigen, die auf die Hilfe ihrer Mitmenschen angewiesen sind*."

[78] In German: "*Der Titel sagt schon, daß behinderte Mitmenschen eine besondere Aufgabe für die Gesellschaft darstellen. Es geht nicht darum, sich mit einer befremdlichen Tatsache abzufinden und im übrigen lediglich für eine gute Unterbringung der Behinderten zu sorgen. Vielmehr werden den Familien, den gesellschaftlichen Gruppen und dem Staat weitreichende Aufgaben gestellt. Die erste Aufgabe besteht darin, Behinderungen oder drohende Behinderungen frühzeitig zu erkennen und ihnen wirksam zu begegnen. Die Weitergehende Aufgabe aber besteht darin, die Kinder und Jugendlichen – auch jene, von denen die Bedrohung nicht abgewendet werden kann –, als gleichberechtigte Mitglieder der Gesellschaft anzusehen und sie dementsprechend in die gesellschaftlichen und staatlichen Förderungsmaßnahmen einzubeziehen. Als Ziel sollte gelten, die Behinderten soweit wie möglich in die Gesellschaft zu integrieren*."

strictly medical approach identified the ways in which a rehabilitative view of children with disabilities was destructive:

> But the most damaging presumption made about children with disabilities is that they are chronically sick or diseased. […] Fickle as it is, the healthy world will not long put up with a bad patient. […] And here, too, is the trouble with children who have a disability. […] they will not get well. It would suit society fine if they would simply stay out of sight, somewhere, until they got better. Stigmatized as sick, helpless, and irremediable, children with disabilities are objects of pity but not of tolerance. By assigning a medical explanation to handicap, nonhandicapped society easily disavows responsibility for involvement. After all, if someone is sick he or she needs professional care and is not yet ready to participate in our world. (Congress, 1982, p. 25010)

During the years 1990–2009, the German recovery concept moved away from a disabled body toward a disabling society, signaling an important shift in the discourse [toward one examining structures of inequality (or something like that to close out this sentence)]. This change, and the motivations behind it, were succinctly expressed in the words of one member of parliament:

> There is one more point I would like to make. We should no longer – I am simply requesting this – talk about weak people, because a society is only weak if it cannot guarantee support to people who need it. (Bundestag, 2008, p. 19910)[79]

The American recovery concept in the years 1990–2009 focused on improving the referral, diagnosis, and placement of children with disabilities, as these translated into impermeable labels that hindered, rather than enabled, a child's education and inclusion into society (Congress, 1990b, p. 27034). Improvements to medical care were urged so that disabilities could be identified earlier in life, children would not be misdiagnosed, and other children would receive the services they needed.

The developments of the recovery concept in Germany and the United States over 60 years follow different trajectories. German policies shifted from a concept based on care in the 1950s and 1960s to a policy prioritizing rehabilitation in the 1970s and

[79] In German: "*Einen Punkt möchte ich noch ansprechen. Wir sollten nicht mehr – darum bitte ich einfach – über schwache Menschen reden; denn eine Gesellschaft ist nur dann schwach, wenn sie den Menschen, die einen Unterstützungsbedarf haben, diesen nicht gewährleisten kann*."

1980s. During the 1990s and 2000s, education policies redirected their focus to societal weaknesses, aligning with the growing disability rights movement. In the United States, practices of diagnosing and labeling children based on a recovery-based model persisted in American policies. Although these practices increased the efficacy of preventative measures and environmental adjustments, they also problematized the disabled body just as it had been problematized in earlier decades. Heyer (2015) noted how the recovery concept was well-entrenched in both discourses, especially when confronting and debating new categories of disability. This conceptual rigidity brought widespread implications for placement decisions and for the degree to which the education that children received was inclusive. Heyer (2015) credits the United States civil rights discourse with motivating the German discourse's shift away from a medical to a more social model, indicating the power and influence of social movements for children with disabilities. [Another closing sentence here that ties back to what a comparison between the two countries offers scholars]

4.1.4. Resource Liabilities vs. Investments

The resource concept was used as economic and financial legitimations for or against inclusive educational policies towards children with disabilities. The following table summarizes how resources was mentioned in German and American policies during the years 1949–2009 (Table 4.4).

Table 4.4

The Resource Concept in Germany and the United States

Time Frames	Germany	United States
1949–1969	Saving Resources	Human Resources
1970–1989	Vocational Integration	Investments or Expendables?
1990–2009	Enabling Participation?	Spending and Savings

From 1949–1969, German policies legitimized the education of children with disabilities as a means of saving financial resources. Politicians argued that the

amount of money spent on educating a child would be pale in comparison to money needed to finance the institutionalization of children with disabilities. The KMK 1960 recommendations invoked the resource concept to justify special education (Kultusministerkonferenz, 1960, p. 8).[80] American policies also acknowledged the economic benefits of educating children with disabilities. The difference was in the use of the term "resource." Often, the American discourse used resource concepts to refer to children themselves as human resources (Congress, 1951, p. A4897). American politicians argued that leaving children with disabilities uneducated was a waste of human resources.

Both countries agreed that educating children with disabilities had economic benefits, but each emphasized different economic aspects of those benefits. Whereas the German discourse emphasized savings, the American discourse emphasized investments. Both resource-oriented arguments cast the child in an unfavorable light. The German discourse supported education as a means of relieving society of other financial burdens a child might create. Children were thus relegated to more cost-efficient institutions. The American discourse encouraged investing in children, but saw children as a means by which to increase financial gain. Legitimations based on both resource concepts called for children to be brought out of, or into, society toward a monetary end. In this way, the discourse was moving towards inclusion but while upholding capitalist-oriented interests.

Over the next two decades, resource legitimations in Germany justified the vocational integration of children with disabilities. The KMK 1972 recommendations described the goal of an individualized education as the child's social and professional integration (Kultusministerkonferenz, 1972, p. 2). During the same period, less attention was paid to economic factors, as vocational integration for purposes of economic participation was coupled with social integration for purposes of individual fulfillment. American politicians of the 1970s also coupled professional integration with personal fulfillment (Congress, 1972b, p. 4819). During most recent decades, German politicians focused on investing in integrative schools in order to enable children's participation (Bundestag, 2002, p. 21866).

[80] In German: "*Die Förderung des Sonderschulwesens ist aber auch aus wirtschaftlichen Gründen notwendig. Mittel, die heute für die Sonderschulen ausgegeben werden, werden später in vielfacher Höhe bei den Ausgaben für Unterstützungen, Gefängnisse und Heilanstalten eingespart*."

Between 1990 and 2009, resources were needed to assist German schools with the education of children with disabilities. However, the resource investments were no longer justified by the produced savings or vocational integration. Instead, educating children with disabilities was justified economically as a means of enabling political participation. Though limited in practice, this development in German political discussions was novel: the goal of education was no longer economic development for its own sake, but a way to achieve political participation. In the US, the resource concept was invoked to guarantee that education for children with disabilities met the expectations of a "decent school system in America" (Congress, 2005, p. 27279). This, too, represented a shift away from viewing children with disabilities as an advancement of economic interests.

Thus, the resource discourse in Germany over sixty years remained in flux. In the 1950s and 1960s, educating a child with a disability was described to save money which would have otherwise been spent on institutionalizing the child. In the next two decades, resources were not talked about directly as part of a cost-benefit analysis. Rather, the resource concept was mentioned more subtly, in the context of social integration. The fact that, during this period, the economic benefits were not explicitly named had a significant effect on weakening of the overall inclusive education discourse in Germany. In the most recent decades, the economic or resource-based justification was connected to a political one: an educated child with a disability would be able to politically participate in the future.

In the United States, the discourse of the 1950s and 1960s was like its German counterpart, although it was more interested in using education to expand the national workforce than to save money by avoiding widespread institutionalization. In the 1970s and 1980s, legislation was passed that promised to increase resources for educating children with disabilities, since these resources were available. Finally, due to policies such as the IDEA, a funding pipeline from federal to state administrations was put in place, by which the availability of resources for the education of children with disabilities was relatively secure. Still, the generosity of resources invested in educating children with disabilities, especially in the years 1990–2009, was contingent on the economic state of the nation (Congress, 2001, p. 2875).

The recovery concepts for both countries fall under what Heyer (2015) called "rational discrimination." This kind of discrimination, she argued, was

> not based on active prejudice but rather on seemingly “rational” decisions regarding the costs of hiring members of protected classes. Employers make decisions based on economic efficiency and maximizing profits that disproportionately affect members of protected classes, but these decisions are not consciously motivated by animus or stereotypes. (Heyer, 2015, p. 54)

To an extent, both German and United States discourses employed the resource concept as part of a rational argument throughout all sixty years of education policy. Across times and countries, the economic description of children with disabilities, whether as a saving, an investment, or both, differed. Both countries also differed on how resources were made available to children with disabilities. For example, in the United States, P.L. 94-142 and its renewal, the IDEA, promised continued financial support from the federal government. In Germany, however, resources were to be provided by each state. Education placement and services depended on existing resources: if resources were unavailable, inclusive education was denied. For both countries, the greatest difficulty in the discussions about resources was keeping children and their education, regardless of costs, at the focus of policy efforts. For further international comparisons, both the great opportunities as well as immense challenges in legitimating educational policies for children with disabilities using a resource-laden concept must be considered together.

4.2. Interactive Dimension: Coordination and Communication

> I suppose, though I am not altogether sure, there is barely a society without its major narratives, told, retold and varied; formulae, texts, ritualized texts to be spoken in well-defined circumstances; things said once, and conserved because people suspect some hidden secret or wealth lies buried within. In short, I suspect one could find a kind of gradation between different types of discourse within most societies. (Foucault, 2010, p. 220)

Taking the four R concepts together, the German and American discourses during 1949–2009 featured recurring and identifiable legitimations for policy solutions. To determine why inclusive policies were implementable or not, Schmidt’s (2000) discursive indictors were combined with Foucault’s theory of conceptual formations to assess the dominance of a discourse. A matrix was constructed to assess the dominance of German and American inclusive education policies over time.

4.2.1. New Matrix and Discourse Indicators

This approach draws on Schmidt (2010) and Foucault (2010), and provides an overview of all discursive indicators and its overall strength. The key for determining the strength of the discourse is as follows:

Key

(+) indicator present

(-) indicator missing

The number of (+) corresponds to the number of elements:

For cognitive justifications, a (+) was accorded to the problem, and a (+) for the solution, yielding a maximum value of 2.

For normative legitimations, a (+) was accorded for each distinct mention of a unique category of values, from among social, economic, or political values, yielding a maximum value of 3.

For coordinated interaction, a (+) was accorded for each branch of government (executive or coordinative, judicial, or legislative) participating in a discourse, yielding a maximum value of 3.

For communicated interaction[81], one (+) was accorded if public opinion was cited in context of the policy.

Table 4.5 *German Discourse 1950s–1960s*

GERMAN DISCOURSE (1949–1969)		
Discursive indicator	Indicator Description	Period 1 – Recast Policies
Cognitive Justification (+)(+)	Problem defined and solution offered	The problem was the centralized cultural policies, an unintellectual spirit (*Ungeist*) of the recent past, and the historical debt incurred by that past. General schools were inadequate in educating

[81] The focus of the project was not determining the success of policy implementation. Therefore, this interaction was based only on a projection of what the speaker in policy documents understood the public opinion to be.

		children with disabilities. The solution was to rebuild special schools.
Normative Legitimation (+)(+)(+)	Tied to social, economic, and political values	Special schools would allow the German public to pay off their historical debt. The proposed policy was argued to save larger amounts of money being spent on jails and rehabilitative institutions (economic values). “Care” was mentioned as a justification for the special school policy, and children with disabilities were not to be disregarded or devalued (social values). These children were to be put on the path to a “meaningful life,” and guaranteed their “right” to a special education (political values).
Coordinated Interaction (+)(+)(-)	Coupled or framed by stakeholders	The KMK and legislative branch issued recommendations supporting separate schools. The judiciary was not present in the discourse.
Communicated Interaction (-)	Taken up by the public, tied to values	The KMK recommendations motivated by their impression of the “public eye,” since they recognized that the public did not look favorably on special schools. (-) Communication was low.

Strength[82] *of Discourse* = 7/9

These results reveal the education discourse for the first period being studied to be an ideationally coherent discourse; however, the coherent discourse in Germany between 1949–1969 supported segregated schooling policies and practices. The problem of educating children with disabilities was clearly defined as a locational or situational one: general schools were insufficiently preparing children with disabilities for a ‘meaningful life’ – a term that appears often in the policy documents but was never defined. Hence, the solution proposed by the KMK was to rebuild and refurbish special schools to achieve that goal. The education discourse for children with disabilities was a well negotiated discourse which included and navigated *both* cognitive justifications and normative legitimations. Support for special schools was described as society’s public duty, to respect human dignity, as a demonstration of concern for the helpless, and a better investment with cost-saving measures.

However, the interactional dimensions of discourse coordination and communication reveal weaker results. The problem, solution, and justification of these policy

[82] See key above for how the strength of the discourse was determined.

measures were all proposed by the KMK. That body was tasked with the coordination of education policy decisions between the Federal States based on discussions by the Bundestag, the legislative branch of government. The judicial branch was not involved in the policy discourse. Thus, in the first two decades relevant to this study, German policy discourse demonstrated the coordination of two out of three levels of government.

Table 4.6 *American Discourse 1950s–1960s*

AMERICAN DISCOURSES (*1949–1969)*		
Discursive indicator	Indicator Description	Period 1 – New
Cognitive Justification (+)(+)	Problem defined and solution offered	The salesmanship of rehabilitation experts led to a view focused on people's disabilities rather than abilities. Unemployment of persons with disabilities was a problem. State governments were unable to educate all children. The proposed solution was to improve programs and policies and to provide federal financial aid for education and vocational rehabilitation.
Normative Legitimation (+)(+)(+)	Tied to social, economic, and political values	The new federal role in education was justified as a matter of taking responsibility (political values), due to the states' inability to fund education for every child (economic values). Congress justified these measures by appealing to the values of equal opportunity and the right to a full life (social value). Rehabilitating disability was further argued to conserve national assets and strengthen the national labor market, saving the costs of institutionalization (economic values).
Coordinated Interaction (+)(+)(+)	Coupled or framed by stakeholders	All three branches of the federal government increased their involvement.
Communicated Interaction (+)	Taken up by the public, tied to values	Presidents and Congress alike called on members of the public to take up their social responsibility to provide the opportunity for full social development.

Strength of Discourse = 9/9

In contrast to Germany, American cognitive justifications and normative legitimations for policies were coordinated across the executive, legislative, and judicial branches of government, fully involving and addressing the public. From 1950–1960, a new alliance was forged between the federal government and the states. For example, in 1961, President Kennedy decried the inefficient solutions to the "battle against disease" otherwise known as "handicaps," making clear his intent to rectify this illness (*Pub. Papers 651*, 1961). The education of children with disabilities came to the attention of society through Supreme Court rulings like *Brown v. Board of Education of Topeka* (1954). Although such landmark rulings focused on racial desegregation, they empowered other minority groups and supported the cause of improving education policies and practices for children with disabilities. The American legislature was involved in providing programs and assessing these programs to rehabilitate or educate children with disabilities for the purpose of future employment. Thus, the discourse was fully developed in the coordinative and communicative dimensions.

Table 4.7 *German Discourse 1970s–1980s*

GERMAN DISCOURSES (1970–1989)		
Discursive indicator	Indicator Description	Period 2 – Renewed Policies
Cognitive Justification (+)(+)	Problem defined and solution offered	Problems identified included the increased social isolation of persons with disabilities, as well as the paucity special education teachers and resources. Since special schools were thought to increase social isolation, the solution was to promote joint teaching or integrative education in the widest possible capacity.
Normative Legitimation (+)(+)	Tied to social, economic, and political values	Integrative education was legitimized as the responsibility of any democratic state, and instrumental for heightening democratic awareness (political values). Integration was expected to curtail the risk of social disintegration (social values). Whereas vocational integration was discussed, cost-benefit analyses were not given as legitimations for integration.

Coordinated Interaction (+)(+)	Coupled or framed by stakeholders	In addition to the KMK, the Education Council (Bildungsrat) issued recommendations on education for children with disabilities.
Communicated Interaction (-)	Taken up by the public, tied to values	People without disabilities were identified as having an information deficit toward people with disabilities.

Strength of Discourse = 6/9

In the 1970s and 1980s, policy solutions were precipitated by the problem of school and social isolation in Germany, thus presenting a strong cognitive justification for those policies. The policy solutions remained mixed: the KMK's 1972 recommendations legitimated special schools as places that would guarantee children their right to an education, whereas the Education Council disagreed, recommending joint education instead. Both solutions were legitimated using socio-political rationales. Integration promised to curtail the risk of social disintegration. From a political point of view, an integrative policy adhered to democratic values, further heightening democratic awareness. However, the discourse of the 1970s and 1980s did not feature many cognitive justifications, or an economic rationale for supporting this policy. This point is significant for understanding why the inclusive discourse weakened in the following decades.

On the coordinative level of discourse, the KMK was joined by the Education Council (*Bildungsrat*), a body which explicitly supported integration. The Education Council was created due to popular dissatisfaction with the pre-existing coordinating body, the KMK, and a desire for increased coordination between the states and federal government facilitated by non-politician stakeholders. As in the previous period, the communicative interaction between policy-makers and the public was low. This was attributed to an "information deficit" among persons without disabilities toward persons with disabilities.

The stability of the same problem definition over time demonstrates the strength of the education discourse in the United States: the maintenance and continuation of a discourse demonstrates the dominance of the discursive structures already in place.

Table 4.8 *American Discourse 1970s–1980s*

AMERICAN DISCOURSES (1970–1989)		
Discursive indicator	Indicator Description	Period 2 – No Change
Cognitive Justification (+)(+)	Problem defined and solution offered	Over 60% of children were denied special education in schools. This problematic situation was diagnosed as having arisen from neglecting children with disabilities. The proposed solution was to change local and federal legislation so that "full educational opportunities" could be provided for all children with disabilities.
Normative Legitimation (+)(+)(+)	Tied to social, economic, and political values	Legislation was justified based on the federal government's responsibility and the states' inability to fund education (political values and economic values). Children with disabilities were believed to constitute "another minority group" entitled to "anti-discrimination" policies and not denied educational programs (social values).
Coordinated Interaction (+)(+)(+)	Coupled or framed by stakeholders	Federal, state, and local levels and all three branches of government were involved in the coordinating dimension of the discourse about educational opportunities.
Communicated Interaction (+)	Taken up by the public, tied to values	The communicated message of providing full educational opportunities was so strong as to produce a discrepancy between the ideal and reality. This was evident in the signing of the EAHCA, an act that the federal government could not adequately fund.

Strength of Discourse = 9/9

The American policy documents of the 1970s and 1980s clearly defined a problem and a solution, and backed that solution with both cognitive and normative reasons supporting the guarantee of full educational opportunities for seven million children. These documents revealed an even higher level of coordination between federal and state governments as well as branches of government than existed in previous decades. This coordination was largely the result of a cooperative federalism: a polity characterized by an interweaving of federal and state responsibilities and the harmonizing of executive, legislative, and judicial involvement. Congress duly

acknowledged the perils of “isolated efforts.” The efficacy of legislative coordination was well communicated in accordance with shifts in public attitude.

The strength of the ideational and interactional dimensions of the United States discourse in the 1970s–1980s was tested by two Supreme Court rulings in 1972. These rulings were described as ones which “guarantee the right to free publicly supported education for handicapped children and have resulted in similar court action in 27 states throughout the Nation” (Congress, 1975a, p. 19485). Thus, the discourse about educating children with disabilities was strong, being backed by a congruence between all levels and all branches of government.[83]

Table 4.9 *German Discourse 1990s–2000s*

GERMAN DISCOURSES (1990–2009)		
Discursive indicator	Indicator Description	Period 3 – New
Cognitive Justification (-)(+)	Problem defined and solution offered	In previous periods, the problem was not clearly defined due to an absence of a common educational orientation. The proposed solution was to open flexible placement options that focused on special educational needs. The problem was also framed as educational discrimination and violations of rights. Therefore, the solution included an anti-discrimination clause that was added to the Basic Law, opening the possibility for litigation.
Normative Legitimation (+)(+)(-)	Tied to social, economic, and political values	Diverse placement options were encouraged for the good of the general school population. (social) This policy would enable a high degree of integration between school and work. It was tested in the courts, which decided that a child could be denied integrative education due to a lack of resources (economic values). There was no clear political legitimation offered for this arbitrarily varied policy.

[83] “The priorities in the committee bill are congruent with a series of court cases that have been handed down during the past several years establishing in law the right to education for all handicapped children, based on the Constitution” (Congress, 1975a, p. 19503).

Coordinated Interaction (+)(+)(+)	Coupled or framed by stakeholders	The judiciary entered the discourse with BVerfG 96, 288-315 in 1997, joining the KMK policy recommendations and the parliamentary debate over the addition of a legal anti-discrimination clause.
Communicated Interaction (-)	Taken up by the public, tied to values	Communication between health-care professionals, school administration, and individual families in deciding placement increased. The communicated decision of the Federal Constitutional Court, however, was arguably not in line with the values of the child and her parents.

Strength of Discourse = 6/9

The resource concept took priority over the rights concept in the final decades of this study. In 1997, the Federal Constitutional Court ruled that, when a child was not admitted to a general public school, no discrimination had taken place because the resources were unavailable. Since providing an integrative education to a child with disability would have demanded resources which were unavailable, sending the child to a special school supposedly did not violate her rights. The Court's ruling demonstrated the dominance of the resource concept over the rights concept during a time of increasing rights conscientiousness.

During the 1990s and 2000s, the German education discourse began to lose its coherence due to a lack of consistency among the three branches of government regarding the meaning of integrative education for children with disabilities. Notably, no clear problem was identified. Specifically, the problem was a lack of common orientation. Thus, many diverse solutions were proposed. This Supreme Court decision was legitimated based on a social reason, the importance of developing the general school. If resources were unavailable, that unavailability served to justify the decision to place a child in a separate school. The solution to the problem, therefore, had become more reactionary and dependent on the surroundings. The lack of discursive ideational coherence was matched by a lack of coherence in how the education discourse was communicated. The Commission's success was considered to go beyond consensual policies of mere consensus. Rather, success was measured by the resulting constitutional discourse that involved the public (Bundestag, 1994).

As education was increasingly viewed as a right, an integrative or inclusive education formally and legally entered the discourse in a new place: the judicial branch.

Table 4.10 *American Discourse 1990s–2000s*

AMERICAN DISCOURSES (1990–2009)		
Discursive indicator	Indicator Description	Period 3 – Renewed
Cognitive Justification (+)(+)	Problem defined and solution offered	The EAHCA caused children from minority groups to be overrepresented among those classified as requiring special accommodations, in addition to a host of associated diagnostic, financial, and other problems. Government programs were considered insufficiently centered on children. The solution included changing the name of the EAHCA to the IDEA and improved services which could meet the child's needs.
Normative Legitimation (+)(+)(+)	Tied to social, economic, and political values	Reauthorization was justified as the means of ensuring rights (political values and social values). Research also showed that educating un-educated individuals would save the government "hundreds of thousands of dollars in dependency costs" (economic values).
Coordinated Interaction (+)(+)(+)	Coupled or framed by stakeholders	The federal government's support of increasing access to education was widely supported. The EAHCA especially received unprecedented inter- and intra-governmental and bipartisan coordination.
Communicated Interaction (-)	Taken up by the public, tied to values	The public was a little disillusioned about the efficacy of the programs: in practice, the act was becoming a civil rights liability. Better coordination of data was needed to adequately assess the impact of the IDEA.

Strength of Discourse = 8/9

The policy documents displayed a high level of coordination in the American discourse. This included intergovernmental coordination between the executive, legislative, and judicial branches, as well as between the House of Representatives and the Senate, across party lines and between other stakeholders who informed the

policy discourse suggestions and outcomes. The increased level of inter-branch coordination was evidenced by the references of members of Congress to Supreme Court case rulings and the Constitution. Supreme Court decisions of the 1970s affirmed the right to an education for children with disabilities. These cases were repeatedly quoted in congressional discussions.[84] Four years later, these same cases were referenced in a congressional debate as instrumental for the fulfillment of "constitutional obligations."[85] Finally, coordination was also evident between pieces of legislation.[86]

The IDEA was considered especially "tangible evidence"[87] of intra-governmental cooperation. Coordination between the House and the Senate was instrumental in problematizing four areas of P.L. 94-142. Finally, the reauthorization of the EAHCA was repeatedly described as a coordinated effort by Democratic and Republican parties, called "a bipartisan effort" by Senator Owens of New York (Congress, 1990c, p. 29184) and an "accomplishment [that was] met through true bipartisan negotiation and hard work" according to Senator Bartlett from Texas (Congress, 1990c, p. 29185). Ten years later, the IDEA remained an example of "bipartisan effort." In a congressional debate from 2001, the full funding of special education was called a responsibility that knew no party lines, concerning which party affiliations were moot. By identifying the cause of educating children with disabilities with the overarching cause of fairness, the justification was broadened, so that it could include all parties, all politicians, and all funding sources. Senator Harkin also emphasized the fact that

[84] "We recognized that the right of children with disabilities to a free appropriate public education is a constitutional right established in the early 1970s by two landmark Federal district court cases – Pennsylvania Association for Retarded Children versus Commonwealth in 1971 and Mills versus Board of Education of the District of Columbia in 1972" (Congress, 1997, p. 7858).

[85] "In the early seventies, two landmark federal district court cases, PARC v. Commonwealth of Pennsylvania and Mills v. Board of Education of the District Court of Columbia, established that children with disabilities have a constitutional right to a free appropriate public education. In 1975, in response to these cases, Congress enacted the Education of Handicapped Children Act, EHA, the precursor to IDEA, to help states meet their constitutional obligations" (Congress, 2001, p. 2876).

[86] "Congress enacted PL 94-142 for two reasons. First, to establish a consistent policy of what constitutes compliance with the equal protection clause of the 14th amendment with respect to education of kids with disabilities. And, second, to help States meet their Constitutional obligations through federal funding" (Congress, 2001, p. 2876).

[87] "S.1824 is the tangible evidence of the compromise reached between the House and Senate and the leadership provided by the chairman of the Subcommittee on Disability Policy, Senator HARKIN" (Congress, 1990b, p. 27034).

“our states” needed “help,” taking for granted the assumption that it was within the jurisdiction of the federal government to provide this help when needed.

Finally, inter-policy coordination was present through the repeated references to the Americans with Disabilities Act (ADA), and how the reauthorization of the EAHCA intended to mirror the principles of the ADA and the Civil Rights Act of 1964. For example, the IDEA aimed to continue ensuring the rights of children with disabilities (Congress, 1990b, p. 27034). Not only principles based on rights, but also the focus on the individual was credited to the ADA (Congress, 1990b, p. 27033). Further evidence of this change in focus was the change of the name from the Education for All Handicapped Children Act to the Individuals with Disabilities Act. The name was changed in “the spirit of the Americans With Disabilities Act,” signifying a level of coordination between policies (Congress, 1990c, p. 29185).

Although, during the 1990s and 2000s, coordination scored high as a discursive indicator, the communicated interaction during the same period fell behind, preventing improved coordination. While debating the reauthorization of P.L. 94-142 as the IDEA, suggestions for future reauthorizations of the law were made.[88] Clearer, better-coordinated data was needed. Thus, the two most recent decades demonstrated both an increase and decrease of coordination in the United States discourse, due to the lack of clarity in data collection and communication. The significance of the numerical scores described in this section can be best understood together with a holistic view of discursive development.

[88] “In future reauthorizations, Congress may wish to consider additional improvements. The data on students with disabilities is often collected as a separate data set, often with no way to link it up to other health, education, or employment data that would allow us to know what happens to these students, and that would allow us to address how they are faring in services and outcomes relative to other students. This lack of coordination not only undercuts the quality and usefulness of data on education of the handicapped and its outcomes, but it is also an inefficient use of research funds. Linking collection and analysis of data on education of the handicapped more clearly to education of all students, with better links to State and local data is needed so that data can be used to improve programs and educational outcomes, not merely to keep track of paperclips and body counts” (Congress, 1990c, p. 29187).

Chapter Five – Beyond the CRPD: Towards Inclusion?

The study asked three main questions. The first question was about who the speakers were (the speaker positions), what they talked about (the objects) and how they talked (the concepts). The second, genealogical question sought to identify the strategies and discursive mechanisms which allowed a discourse to become dominant. To determine whether a discourse was dominant during a given twenty-year period, discursive mechanisms were analyzed, using Schmidt's (2000, 2006, 2007) concepts, in terms of the coherence of their ideational functions and the interactional dimensions of discourse. Then, the German and American discourses were compared to determine the extent to which they were similar or different as well as the role of repeating concepts and the importance of their coordination and communication.

In both countries, the cognitive elements of discourse were often clearly defined. However, the policies issued were not always coordinated and communicated alike among different levels of government and to the people. Normative elements of discourse—concepts referencing political, social, and economic values—were not always present. Discourses without ideational or interactional elements resulted in discursive transformations which created new, renewed, or recast policies. When all the discursive indicators, ideational and interactional, were present, the discourse was transferred unchanged from one period to the next. The inclusivity of discursive mechanisms correlated with the overall coherence and acceptance of policy. Inclusive discursive mechanisms—both the concepts used to justify inclusive policies and the coordination and communication of the discourse—shaped inclusive policies.

The dominance of an integrative or inclusive discourse was determined based on coordinative and communicative mechanisms. The sheer number of voices participating in a political debate was not the deciding factor for an inclusive policy's success. More important was how the discourse remained the same across different political agents: whether one and the same discourse reached the courts, the Democratic and Republican parties, the Congress, or the President of the United States, for example. Dominant discourses were not passed along due to the strength of ideas, but rather due to the coordinating discursive mechanisms and political climate of the time that allowed an idea to become strong. The American discourse exemplified this phenomenon. The dominance of the inclusive education discourse in the United States was made possible by the coordination of governmental powers,

and effective communication with the public through coupling educational inclusionary interests with the concept of civil rights. Connecting other concepts to education functioned as an internal discursive mechanism that strengthened the education discourse.

Recessive discourses were not the products of weak ideas, but of the inability of a country to pull together all a discourse's ideational and interactional dimensions. This was exemplified in the German discourse. The absence of even one dimension, the economic concept in the second period, changed the entire discourse. As a result, the discourse became instead either a new discourse, a reset discourse, or a renewed discourse. Thus, discursive transformations indicated that discourses were recessive. The integrative-education discourse could not establish itself, even if it was present, due to the lack of communication of inclusive discursive mechanisms.[89]

The study of German policies revealed another source of justification or legitimation: the remorse for atrocities committed against human lives, especially following World War II and the euthanasia policy that led to the deaths of tens of thousands of persons with disabilities. Remorse or regret legitimated policies but it was neither a social, political, or economic value. However, its power in and over the discourse was undeniable. Remorse was also relevant in the United States, though for different reasons: Americans felt that they had neglected children with disabilities. What role then could remorse play in the normative and cognitive justification of discourses? Remorse seemed to place the focus on concrete individual persons, rather than on a social, economic, or political system. A fascinating opportunity for further study of policy discourse presents itself. A discourse analysis on "the child"—tricky because minors cannot formally enter public discourse—is promising.

5.1. Universal Comparative Dimensions

Since the end of World War II, German education policy briefly converged with American education polices. Especially during the 1960s and 1970s, Germany modeled the United States, adapting a rights-based approach to educational policies.

[89] The mechanisms were modeled after Foucault's definition of internal and external mechanisms. The internal mechanisms were defined by Foucault as the commentary or major narratives, the author function, and the disciplines. External mechanisms of control included prohibition, the division of madness and rejection of folly, and the "will to truth" expressed through the questions "what has been, what still is" (Foucault, 2010, pp. 218-223).

To an extent, this modeling was made possible by the similar political structures of both countries as democratic, federalist countries that grant states power to regulate educational policies. In both countries, rights and laws play a significant role in driving social change. This resulted in a positive push towards inclusion in Germany, as the United States has been particularly influential in the field of inclusive education.

By means of mobility and exchange, German disability activists brought many of the ideas from the disability studies movement in the United States back to Germany. Further, the United States established a “global model” for the world through legislation such as the landmark Americans with Disabilities Act (ADA in 1990, a republication measure that intended “to get people with disabilities off welfare and to turn them from consumers of tax dollars into productive, tax-paying citizens” (Heyer, 2015, p. 9). Germany signed in 2007 and ratified the United Nations Convention on the Rights of Persons (CRPD) with Disabilities in 2009, legally binding themselves to implementing inclusive education systems. The same year, the United States signed, but did not ratify the CRPD, a point that has been criticized, if the United States is to remain a global leader in the field of inclusive education (Heyer, 2015).

There are still considerable differences in the implementation of educational policies between the two countries. Germany maintained an extensive disability welfare system, whereas the United States chose rights (Heyer, 2015). Most German federal states politically committed to segregated schools systems, following an “institutional logic” of segregation whereas the United States opted for separate classrooms following an “institutional logic” of separation (Powell, 2016).

A comparative study of German and American policy discourses bears several potential methodical implications for international and comparative researchers. First, this comparison enables a better understanding of a country’s own education system and creates the possibility for international learning and growth: “Core questions relate to the potential of improving education systems by understanding them better through comparison – or even emulating elements of other education systems deemed successful” (Köpfer et al., 2021).

Second, this book models a methodology for comparative discourse analysis that merges Foucauldian perspective of discourse analysis with concepts of discursive institutionalism to assess conditions for change. By identifying mechanisms beyond

institutions or structures, the findings are helpful in understanding the importance of policy ideations and interactions in spite of different educational institutions and operations. This is true of countries other than Germany and the United States. Another analytical space is thus opened by studying policy discourses, because mechanisms of discourses may be found and compared across countries in spite of varying political, economic, social, and cultural backgrounds.

Third, by examining the discourses of these two countries, and studying the strategies that work to enable inclusive education policies, the findings help to relieve the preconceived notions of politics as otherwise untransparent workings of politicians behind closed doors (Meyer, 2010). This opens the possibility of applying and testing the discursive strategies of policy coordination and communication discovered in German and American discourses to other countries.

A comparison of German and American educational policies produced new insights and foresight for determining the overall strength of educational policies over time. First, conceptual formations enable a comparison of different educational inclusion policy histories by analyzing the repetitions in policy discourses. In both Germany and the United States, the educational policy documents revealed the repetition of four concepts that were labeled the “four R’s”: Responsibility, Rehabilitation, Rights, and Resources.

The analysis demonstrated the ways the four R’s could be combined to justify a segregated school system in Germany in the year 1960 and how these same concepts are rearranged to justify an inclusive school system in 1973 and what an impact the lack of a concept, for example Resources, in an argument had on the inclusive education policy discourse today. The policy documents demonstrated what an impact these recurring R’s had for the American discourse and which concept was emphasized: While the United States had already implemented a relatively inclusive policy with the Education for All Handicapped Children Act of 1975, these four R concepts were also found in American documents with a stronger focus on the economic benefit of educating children with disabilities and turning them into tax-paying citizens. *Thus, the first broader take-away is that comparisons can be conducted that intersect universal ideas between different countries by comparing the conceptual formations of each policy discourse marked by repetitions and omissions of one or more concepts.*

Second, observing conceptual formations over time revealed the dominant or recessive nature of a policy. Drawing from the idea of genetic alleles and how dominant and recessive genes manifest themselves, the research finding of dominant but especially *recessive* discourses provides a tool for future researchers of different disciplines to understand how certain policies become dominant and, more importantly, how policy discourses may operate 'recessively'. By comparing the American inclusive educational policy discourses to German educational discourses, it was possible to define what caused the lack of dominance in German discourses. The results support the claim that a certain alignment of conceptual formations is necessary for dominance to be achieved, and a certain misalignment causes a policy to become—not invisible, but rather—recessive. *The second broader take-away is that dominant and recessive policies are the products of the (re)combination of conceptual formations and can be achieved via (mis)alignments that result from the communication and coordination taking place (Schmidt, 2008) at all political levels.*

Third, an understanding of the discursive mechanisms found in inclusive educational policies in Germany and the United States allows policy makers to anticipate a future of inclusive education policies, or at least predict its possible course of action. Building upon the second point that the combination of conceptual formations leads to the dominance or recessiveness of certain education discourses, it would be possible to anticipate and prepare for the future of inclusive education policies. For example, one of the persistent barriers of German educational discourse was the lack of judicial support in the legislative measures towards inclusive education policies. Specifically, the Higher Administrative Court ruled in 1997 that the implementation of inclusive education would be contingent on the availability of resources at the given school. If these resources were not present, segregated schooling would not be considered illegal. This knowledge would empower to pre-emptively include stakeholder interests in all levels of government or fight for more civic societal engagement to build inclusive governments and societies. The findings demonstrate that only when society and government are inclusive can an inclusive school follow. This leads to the third and final broader implication that, *in addition to the presence or absence of certain discourse concepts, it is the coordination and communication between levels of government that equally determines the dominance or recessiveness of a given policy which can be politically anticipated or guided.*

5.2. Shifts and Discontinuities in the German Discourse

The policy documents in the German discourse clearly identify cognitive justifications, otherwise known as problems and solutions. In the 1960 recommendations issued by the KMK. the problem of indebtedness towards children with disabilities supported a special school policy. This solution of the 1950s and 1960s became problematized in the following two decades. In the 1970s and 1980s, the growing problem of social isolation caused by segregated schooling called for integrative school policies. These policies were devised, but not implemented everywhere. In the two most recent decades, ambiguity regarding the interpretation of the 1994 anti-discrimination clause of the Basic Law, and jurisdiction of educational matters set a precedent for a resource-dependent implementation of school placement.

The normative legitimations, otherwise known as the Four R concepts, legitimated policies and shifted over time. In the second document, the economic concept was overshadowed by other, more pressing concerns of social integration. Then, the legitimation of segregated schools based on the paucity of personnel and financial resources became the dominant rationale for the decision in the Federal Constitutional Court case of 1997. In that decision, the Court negated the movement towards integration which had occurred during the 1990s.

The weakening of the German inclusive discourse due to shifts in cognitive justifications and normative legitimations was compounded by diminishing communication, despite an expanding coordination of discourses. The low level of communicative interaction was reflected by diminishing public opinion. There was a repeated mention of the ‘public’ in the German policy documents stressing its importance for the creation and success of education policies. But, for over 60 years, public opinion was at odds with the coordinating body, viewing the special school policy with skepticism. Or the public was ill-informed about the situation of children with disabilities, and about what integration in schools meant. Finally, the opinions of children and parents were rejected or ignored, as evident in the 1997 Federal Constitutional ruling against integration. This reveals an altogether disparate image of communication between policymakers and the public, or civil society.

On the coordinative dimension, there was an expanding number of speaker positions. A group of speakers, which comprised the KMK, *Bundestag,* and *Bundesrat* in the first

period of this study, grew in the second period to include another coordinating body (*Bildungsrat*). This Education Council was designed for the purpose of increasing the diversity of voices in the federal-level policy discourse, whose voice proved instrumental through their contribution of the 1973 recommendations. Finally, the judiciary newly entered the discourse in the late 1990s. The Federal Constitutional Court was now faced with concepts, such as disability, that were introduced by the Basic Law and the recommendations of coordinating educational bodies.

Historically, the policy changes taken place in Germany and the US reflect differences in changes. A few conclusions may be drawn based on the mechanisms of the past sixty years of German education policy discourse, regardless of whether the policies supported segregation, integration, or non-inclusion. Germany's education policy discourse may be categorized according to the following three periods. Based on the discourses' responses to political changes, the following summaries address the question: To what extent was the discourse in each period transformative (new, renewed, or recast) or stagnant?

Recast Policies in Germany (1949–1969) In the first two decades, the discourse about education for children with disabilities was recast. This means that policy recommendations retained the same conceptualization. Though Germany had lost the war, pre-war education and special school policy were recast and normatively legitimized despite public disfavor.

Renewed Policies in Germany (1970–1989) The following two decades witnessed a shift: Integration was introduced into the discourse as a solution to the new problem of social isolation and disintegration experienced by children with disabilities. However, the special education system did not radically change despite moderate policy gains towards inclusion; special education policies were renewed, and not radically changed.

New Policies in Germany (1990–2009) The reunification of East and West Germany was a formative political event in German history which, although it was generally embraced, invited new challenges. Similarly, the integrative education policy that was recommended by the KMK, and even more emphatically by the Education Council, represented the point at which the discourse diversified. This diversification gave rise to policies based on categories of special needs, in place of school-based policies.

The signing of the CRPD and the wave of international policies that brought the concept of inclusion into the discourse pushed back against existing German educational structures and policies. However, these policies were implemented and justified with mixed results. The best example of this was the Federal Constitutional Court's ruling, which ultimately resorted to a resource-based justification for placing a child back into a special school. While certain policies were novel to this decade (e.g. the Antidiscrimination clause of 1994 in the Basic law), jurisdiction and implementation reflected a swing back to segregating practices.

A common misconception is that the history of inclusion is one of development and improvement, and that Germany was moving very slowly but consistently towards a more democratic, inclusive schooling. However, looking at what Foucault calls a history of "discontinuities" demonstrates that normative legitimations and cognitive justifications mechanisms of discourse that, while acting as a comparative measure across time, is employed differently to support both segregating and inclusive policies. Ultimately, the coordination, not the number, of voices matters in promoting inclusive policies. This coordinative dimension is relevant from home, to school, courtroom, and political debate.

Post 2009 In recent decades, solutions in Germany aim to retain what worked, upholding segregating policies in practice while having shifted towards including policies in theory, resulting in dual education systems running parallel to each other and evoking heated discussions of resource distributions. The discussion of legislative and judicial responsibilities and the application of anti-discriminatory discourses for the inclusionary discourse of children with disabilities carry the potential to elevate the potential for inclusionary practices. Educational policies today reflect the vision of society, and that both aspects exist interdependent from one other.

The German discourse of 60 years demonstrates how a lack of resources definitively affects availability of integrative or inclusive schooling. The resource legitimation will prove crucial to the strength of the inclusive education policy discourse. The important question is how resources are allocated in a dual system educational structure and, especially, in times of recent crises such as the COVID-19 pandemic and the war in the Ukraine. The answers and legitimations given for such policies, as well as the coordination and communication of these policies across executive, legislative, and

judicial branches of government determine the strength and likelihood of an inclusive policy.

5.3. (Early) Shifts and Continuities in the American Discourse

The American education discourse reflects the country's complex political structure (Schmidt, 2006). Typically, a complex and compound polity would generate a discourse whose coordinative dimension would feature high levels of cognitive justifications for policies, and whose communicative dimension would feature low or thin normative legitimations. However, as Schmidt (2000, 2006) notes, the United States is unique among compound polities due to highly developed coordinative *and* communicative dimensions of discourse. Policymaking in the United States is far more pluralistic and permeable than other compound polities resulting in stronger inclusive education policy discourses, as it was able to assert itself on all three levels of government.

A review of sixty years of policy history in the United States demonstrates a dominant discourse that carried over from one period to the next. The fact that discourses get passed from one generation to the next with only minor alterations demonstrates the strength and coherence of the ideational discourse in the United States. The problem was clearly stated and adequately addressed by the promised solution, and that solution was justified and legitimated based on social, political, and economic values. Furthermore, in the first two periods studied, the United States exhibited high levels of coordination and communication. Thus, having satisfied all four of the discursive indicators of a dominant discourse, the discourse of the first period was carried over to the second period.

However, by 2009, evidence suggested a change in discursive dominance. The United States began to show cracks in its ability to maintain high levels of communication. The problem, policymakers realized, gained a dimension of racial diversity; the minority population of persons with disabilities was disproportionately African American or Hispanic. The new diversification of problems in 1990s and 2000s is deceptive, as the discourse retained the previous periods' mechanisms of communication and coordination, as well as the same cognitive and normative justifications and legitimations. If the civil rights movement had led to a revolutionary

change in the discourse, renewing the democratic values and producing new policies, minority overrepresentation led to a push for policy persistence.

Unlike the discontinuities found in the German educational discourse, the United States' ideational and interactional dimensions reveal how the first period's new policies were the result of high levels of coordination, communication, cognitive and normative justifications for policies concerning education for children with disabilities.

New Policies in the United States (1949–1989). During the first period, policy underwent a major paradigm shift. Over time, the influence of the same normative values remained, but they came to motivate policies focused on a child's abilities and not "handicaps." Although no one polity or policy can be identified as a decisive turning point, the civil rights movement spurred on a coordinated and well-communicated fervor among politicians, to recognize minority rights. Following the introduction of new policies, the coherence and success of the discourse from the first period led to its persistence. According to Schmidt (2000), a successful discourse is one that is "able to maintain its 'coherence' in spite of the discrepancies between cognitive and normative aspects of discourse and how well the 'sectoral' discourses fit with the 'master' discourse" (Schmidt, 2000, p. 283). Hence, in contrast to its German counterpart, the discourse in the United States during the 1970s–1980s remained consistently strong and unchanged.

Renewed Policies in the United States (1990–2009). In the 1990s, the EAHCA was reauthorized as the IDEA. The availability of more research prompted an evolution or shift of policies. Findings revealed four major problems with the IDEA: minority participation, personnel preparation, transition services, and authorization levels. At the same time, a *lack* of data exposed a gap in a communicative dimension of the education policy discourse which had been strong in previous decades. Cracks began to show in a previously strong policy discourse.

Post 2009. In recent decades, American educational policy discourses question the sufficiency of factors such as IEP (individualized education plan) content in light of institutional pressures. Restribution efforts and the role of parents as 'consumers' are also critically analyzed, as school placement choices are highly complex and hardly solvable by a reauthorization or redistribution of federal dollars. Current recommendations look towards to emphasizing the voices of those most affected in

order to increase the likelihood of just and inclusive policies -- in other words, the communication and coordination must also include the voices of children who are affected by schooling decisions.These voices should be contextualized in their communities in order to gain a differentiated understanding of why inclusive education policies succeed or fail (Waitoller & Randle, 2022).

5.4. Discussion and Implications

Over sixty years, German discourse moved between being recessive and integrative. During the first period, special school policies segregated children into different schools based on the category of their disability. This “recast” policy, changed policy programs but not the structure of policy. In the second period, Germany experienced minor policy changes and modest structural changes by encouraging integrative education while maintaining special schools. In the last period, Germany passed amendments to the Basic Law and **ratified the CRPD, ushering in a new type of policy.** Over three periods and sixty years, Germany underwent several discursive transformations. On one hand, the transformations could have been expected given the major political changes the country experienced over the course of post-war reconstruction and the reunification of Eastern and Western Germany. On the other, this dynamism can be explained by the flux and flow of discursive mechanisms: the additions and, more importantly, absences of the key discursive indicators which form a strong discourse only when they work together.

The United States discourse changed less and was, according to the criteria set out by this study, more dominant. During the first two periods, the American discourse exhibited all the indicators of dominance, along both the ideational and interactional dimensions. Thus, in the second period, the policy direction remained unchanged. Only in the third period did the diversification of problems require greater levels of communication, which by 2009 was unsatisfactory. Thus, even though the discourse for educating children with disabilities was dominant in the first four decades following World War II, the weakening of the American discourse in the 1990s and 2000s suggests a movement towards increasingly differentiated policy.

Even though the United States experienced extensive legislation and litigation, these did not move or determine the discourse’s strength. Rather, they established the consistency of the discursive mechanisms that allow for the policies in the first place:

ideational coherence and high coordination and communication between all levels of government and with the public. Thus, the success of the American discourse on education for all children was not the success of superior ideas, or how ideas were articulated by policy. Rather, the dominance of the discourse in the United States can be attributed to the discursive mechanisms which were in place after 1949. Those mechanisms maintained high levels of coherence and involved the executive, legislative, and judicial branches of government, together with stories of children which served to support policies like the EAHCA, the IDEA, and the legal decisions which expanded the educational rights of children with disabilities. A coordinated discursive mechanism on a formal level begets more coordination at local levels. This became increasingly evident in the US discourse, which was consistently strong and coordinated between levels of government and, significantly, between the Democratic and Republican parties.

By expanding the time frame, scope, and field of inclusive education discourse research, this study fills a gap in the existing literature. There has not been extensive international comparative research done in the field of special and inclusive education, especially in the German-speaking realm (Köpfer, Powell, Zahnd, 2021). There is a growing interest in discourse in the field of special education, as it serves to understand the reconstruction of special education knowledge (Pfahl, 2011), the process of implementing the CRPD within German federal states (Gasterstädt, 2019), and the cross-cultural implementation of inclusion (Biermann, 2019, 2022). These more recent works demonstrate the importance and feasibility of binary comparisons of inclusive discourses, especially in intra- and international discourses following the signing and/or ratification of the CRPD (Biermann, 2019, 2022; Gasterstädt, 2021). However, few education researchers work with Foucault's (2010) genealogy. Those that have apply his theory to other fields such as bioethics (Waldschmidt, Klein, & Tamayo-Korte, 2009). Foucault himself only sporadically referenced education, and did not apply his methodology to it (Foucault, 2010).

Political scientists are also increasingly interested in studying discourse using "discursive institutionalism," introduced by Vivien Schmidt (Schmidt, 2006). This method, also known as the "fourth institutionalism" explains the mechanisms by which institutions change. However, these works have concerned the European Union or addressed topics related to the economy or welfare.

Finally, aside from Powell (2016/2011), Johnson (2013), Opp (1993), and Jülich (1996), few scholars have conducted comprehensive comparative works on German and American education policies. This is especially surprising given the growing need for comparative studies in a world of increasing levels of competition, collaboration, and comparative research cultures (Powell, 2020). Thus, by applying a genealogical method in the field of (special) education, researching and comparing the discursive mechanisms underlying institutional changes with discursive institutionalist concepts, and comparing German and United States discourses, this study contributes research, which is cross-cultural, cross-methodological, and inter-disciplinary. The methodological choice to combine Foucault's discourse theory, a post-structuralist constitutive-analytical understanding of discourse (see Herschinger & Nonhoff, 2014, p.198) with Schmidt's instrumental-analytical concepts of discursive institutionalism (coordinative and communicative dimensions of discourse) is unprecedented but supports the view that Foucault's methodology can be supplemented with methods in order to understand educational policies historically, internationally, discursively, and comparatively.

This study resulted in two major findings. The first finding was more archaeological in nature and produced contrasting results. Using Foucault's discourse analytical method, four recurring concepts that were used to justify policies for or against inclusion were identified. The second finding, and focus of the analysis, was genealogical. An inclusive discourse was dominant when the discursive mechanisms were inclusive. Studying the justifications and legitimations of policies, and how they were combined, coordinated, and communicated, revealed how the integrative and inclusive discourse grew or weakened in strength. German discourse was recessive and American discourse was dominant, demonstrating that inclusionary educational policies are also dependent on the historical coordination and communication of cognitive justifications and normative legitimations for its strength.

Further studies in this field would benefit from analyzing the relationship between education and race discourses. These discourses notably intersect in the United States, and to a growing extent in Germany. Based on the results, it was evident that many of the concepts were talked about in relation to each other, and that the concepts being deployed were attached to broader social, political, and economic concepts. While the civil rights movement focused on racial minority rights and allowed disability

rights to flourish, the end of the third period suggests that the process might be reversed: racial minorities may use the power of the disability rights discourse to defend their rights. Applying a broader definition of inclusion (Grosche, 2015) would enable a study of a range of diversity dimensions, as well as socio-economic statuses, and would benefit from the results of this study.

Further policies after 2009, especially on the local or district level, may prove fruitful as education policies deviate sharply on state and regional levels. It bears mentioning that discourse research differs from policy research largely due to its emphasis on theory and mechanisms of policy rather than the effect of the policy itself. Thus, while the results demonstrate the ways in which education policies shape social, political, economic and cultural aspects of society, it informs, rather than proves the efficacy or impact of inclusive policies on work or teacher education, parental involvement or data-based decision-making. The latter defines the goal of policy analyses. This has less to do with a lack of universal ideas and more to do with the scope and theoretical choices made. Still, these broader implications are valuable in providing another perspective as to why certain global norms and mandates go unchanged.

Crises like the COVID-19 pandemic are testing the strength and logic of the separation of powers. The federal government may make recommendations in an attempt to stem the rising cases, to avoid overwhelmed healthcare systems, and to prevent the loss of human life. But states decide how and when certain political, economic, and social measures are taken. What happens when states fall short of their responsibilities? At what point is federal involvement in policies of national interest justifiable, to the detriment of state sovereignty and regional differences? Can a system of separated power give way to an “inclusive” power relationship between states and the federal government? These delicate questions have grave implications, especially for at-risk populations. It would be interesting to compare the health policy discourse with the education policy discourse – two issues falling under state jurisdiction – and to see whether the inclusivity of power relations in health policies also corresponded to inclusive policies, as it did for the inclusive education discursive mechanisms.

While current problems are shared, educational policies have been historically nation-bound, following a principle of subsidiarity. Borders and barriers – mental and physical, political, social, cultural, and economic – are being rebuilt and restored, endangering international efforts towards establishing rights-based norms such as inclusive

education. Any existing ambivalence towards its systemic implementation in federalist countries such as Germany are being strengthened. Now, more than ever, there is a need for interdisciplinary, border-crossing, research that strengthens the view on the rights of marginalized persons worldwide.

It was the human-rights based universal idea articulated in Article 24 of the CRPD in 2009 that gave children with disabilities the right to an inclusive education. This was translated into national policies with historical, cultural, economic, social, and political implications, and provided a lens for viewing education globally. This study provides a model that analyzes the implication of policies as conceptual formations (as Foucault would call them) between German and American educational policies. Seeing as these conceptual formations exist, it would be possible to examine the education policy discourses of other countries.

The inclusive education policy discourses in Germany and the United States contained formations that consisted of cognitive justifications and normative legitimations, also called the Four R concepts: responsibility, resources, recovery, and rights. The dominance of an inclusive education policy discourse depended on the expression and coherence of both the ideational and the interactional dimensions of discourse. Finally, the consistent alignment of both dimensions led to the dominance of inclusive education discourse in the United States. In contrast, the misalignment of these dimensions in Germany produced a weakened or a recessive discourse. Particularly in Germany, the discursive misalignment contrasts to the spirit of Article 1 of the Basic Law of Germany that highlights both the international aspect of human rights (“peace and justice in the world”) as well as the coordination and of all branches of government (“the following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law”) (Bundestag, 2012, p. 15).

Inclusive political processes and polities create inclusive policies. It is not the ideational strength of inclusive education policies, such as its claim to a rights concept, which have made those the policies towards which history has worked. Rather, this historical reconstruction demonstrates the recessive nature of inclusive education policy discourse. Its existence, though continuous, was fragile, and susceptible to transformation whenever mechanisms of discourse misaligned. And it is the alignment of inclusive education policy discourses with polities and politics across all three

branches of government (legislative, judicial, and executive/coordinative) that strengthens the implementation of inclusion in schools and societies.

As Zola (2005) wrote: “The power of an institution is often reflected not in the possession of formal power but in the influence it holds in the minds of the population” (20). Education policy discourse analyses goes a step further to demonstrate that it is the power of discourse as practices that influences the dominant or recessive hold of inclusive policies in diverse societies. Rather than a story of continual progress, international education policy discourses demonstrate a history of discontinuities and the mechanisms of fragility and power at play in inclusive practices and the extent to which discourse shapes, determines, and effects educational and societal change.

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