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**Master's Thesis of Yeawon Choi**

**Localization of Accountability for Civil  
and Political Rights Protection in the  
Early Stage of State Integration  
- Case Studies on Yemen (1988-1994) and Germany  
(1989-1995) -**

**국가통합 초기단계에서의 시민적 정치적  
권리보호를 위한 책무성의 지역화: 예멘 (1988-  
1994)과 독일 (1989-1995) 사례연구**

**August 2020**

**Graduate School of International Studies  
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International Cooperation Major**

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# Abstract

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This research is designed to explore localization of accountability and its meaning and effect on civil and political rights during the early stage of state integration through the experience of Yemen and Germany. Accountability is often associated with human rights, but its quality and implementation diverge by contexts. Thus, a study on the network of governance that would make accountable governance more resilient for the rights protection seems necessary.

By dissecting and analyzing the accountability network developed through the reflexive interactions between structure and actors at three levels of governance (central, central-local, and local), this study explores the course of transformation in accountability network observed in structure and actor relationships. The process of transformation appears to correspond to the level of civil and political rights protection. Comparative analysis on Yemen and Germany projects a conclusion that horizontal accountability network at local level should complement the indispensable ‘downward-verticalization’ of the governance network in general.

The level of justification process involved in the network and the level of transparency and external and internal control of institutions realized through the network shaped institutional decisions and actions in the two countries. Collectively, these appear to have led to different but predicted development of civil and political rights between Yemen and Germany.

**Keyword:** State Integration, Accountability, Civil and Political Rights, Localization, State-building, Conflict-resolution

**Student Number:** 2018-27998

# 국문초록

본 연구는 책무성의 지역화와 이것이 국가통합초기단계에서의 시민적 정치적권리 보호에 있어 갖게 되는 의미와 영향을 예멘과 독일의 경험을 통해 탐구하도록 설계되었다. 책무성은 인권과 결부되어 왔지만 책무성의 성격과 이행은 당시의 정치 및 사회적 맥락에 따라 다르게 나타난다. 따라서, 시민적 정치적 권리의 보호에 있어 책임있는 통치(accountable governance)가 탄력적으로 운영될 수 있는 통치 조직(governance network)에 대한 연구가 필요해 보인다.

중앙, 중앙-지방, 그리고 지방 총 세 단계의 통치에서 일어나는 (정치)구조와 행위자 간의 상호작용을 통해 형성된 책무성 조직(accountability network)를 분해 및 분석함으로써 본 연구는 구조와 행위자의 관계성에서 보여지는 책무성 조직의 변형을 탐구한다. 그리고 이 변형의 과정과 시민적 정치적 권리 보호의 정도가 대응적 관계를 형성하고 있는 것으로 보인다. 예멘과 독일을 비교 분석해본 결과, 통치 조직의 하향적 수직화(downward-verticalization)가 불가피하게 일어날 경우 지방 단계에서의 수평적 책무성 조직으로 위의 현상이 보완되어야 한다는 결론을 제시한다.



책무성 조직 속에서 일어나는 정당성 입증의 과정(설명할 의무)의  
실행 수준과 이 조직을 통해 실현되는 투명성과 기관들에게 가해지는 외부적  
내부적 규제들이 기관의 결정과 행위를 결정하는 것으로 보인다. 그리고 이  
집합체가 결국 예멘과 독일 간 상이하지만 예상 가능한 정도의 시민적  
정치적권리 보호를 전개한 것으로 보인다.

**키워드:** 국가통합, 책무성, 시민적 정치적 권리, 지역화, 국가형성, 분쟁해결

**학번:** 2018-27998

## Abbreviations & Definitions

<b>Bundesrat</b>	The Upper House of Germany
<b>Bundestag</b>	The Lower House of Germany
<b>CDU</b>	Christian Democratic Union
<b>DA</b>	Democratically Awakening
<b>DSU</b>	German Social Union
<b>FRG</b>	Federal Republic of Germany
<b>GDR</b>	German Democratic Republic (former East Germany)
<b>GPC</b>	General People's Congress
<b>Land</b>	State of Germany (plural form: Länder)
<b>PDRY</b>	People's Democratic Republic of Yemen (former South Yemen)
<b>PDS</b>	Party of Democratic Socialism
<b>SED</b>	Socialist Unity Party of Germany
<b>Shura Council</b>	Legislature of North Yemen
<b>Supreme People's Council</b>	Legislature of South Yemen
<b>Volkskammer</b>	East German Parliament
<b>YAR</b>	Yemeni Arab Republic (former North Yemen)
<b>YSP</b>	Yemeni Socialist Party

## List of Figures

- Figure 1.** Analytical Framework
- Figure 2.** Structural Configuration of Yemeni Government in May 1991 through the Lens of Accountability
- Figure 3.** Structural Configuration of Yemeni Government through the Lens of Accountability in the Interim
- Figure 4.** Structural Configuration of Yemeni Government through the Lens of Accountability with the legislation of the *Law on Judicial Power (1991)*
- Figure 5.** The North-South Divide
- Figure 6.** Principalization of an Agent
- Figure 7.** The More Influential Implementing Agent (I), the Tribal Groups
- Figure 8.** Structural Configuration of German Government through the Lens of Accountability
- Figure 9.** Appointment of the Executive Bodies
- Figure 10.** Appointment of the Judges
- Figure 11.** Dismissal of the Executive Bodies
- Figure 12.** Dissolution/Dismissal of the Legislative and the Judicial Bodies
- Figure 13.** Federal Legislative Process
- Figure 14.** Accountability to the Legislature
- Figure 15.** Federal Financial Management
- Figure 16.** Federal Administration of Laws
- Figure 17.** Western Political Parties' Monopolization of Politics
- Figure 18.** Coexistence of the Executive Heads

## List of Tables

<b>Table 1.</b>	Transformation of Accountability Networks
<b>Table 2.</b>	Difference Observed from Transformation of Accountability Networks

# Table of Contents

Abbreviations & Explanations .....	v
List of Figures .....	vi
List of Tables .....	vii
1. Introduction	
1.1 Purpose of Research .....	2
1.2 Research Question .....	3
1.3 Significance of Research .....	4
2. Literature Review	
2.1 Accountability .....	6
2.2 Going Negative: Accountability and Governance Structure .....	8
2.3 Going Negative or Positive: Governance Structure and Human Rights .....	12
2.4 Discourse on Direction: Horizontal vs. Vertical .....	14
3. Research Design	
3.1 Analytical Framework .....	19
3.2 Case Selection .....	21
4. Case 1: Unification of Yemen	
4.1 Pre-unification (1988-1990) .....	24
4.2 Game Players Playing on the New Game Board .....	29
4.3 Return to Pre-unification (1994) .....	47
5. Case 2: Reunification of Germany	
5.1 Pre-unification (1989-1990) .....	48

5.2 Game Players Playing on the New Game Board -----	53
5.3 Consolidation of the Old -----	79
6. Discussions and Conclusion	
6.1 The Unification Scenario -----	80
6.2 Transformation of Accountability Network -----	83
6.3 Conclusion -----	91
Bibliography -----	94
Appendix: Diagramming Accountability Network -----	102

# 1. Introduction

In 20<sup>th</sup> centuries, three out of four divided nations successfully unified into a single nation-state: Socialist Republic of Vietnam (April 30, 1975), Republic of Yemen (May 22, 1990), and the Federal Republic of Germany (October 3, 1990). Although the three nation-states were put into different historical, social, political, and economic contexts, they shared identical concerns that are imperative to any state that is about to integrate into a new system of governance: stable and fair redistribution of state power, reestablishment of economic security, and ultimately, protection of civilians. The three concerns are simultaneously the prerequisites for each state's successful transition to a reunified state.

The united Vietnam, Yemen, and Germany each took different approach and thus have received different evaluation report on its performance in settling the three concerns/prerequisites in unification. In the agreements and constitutions that were ratified to officialize its unification, each state stresses that sovereignty comes from the people of the reunified state and that human rights are inviolable.

To not speak of the values in vain, separation of power is implanted to be the foundation of governance structure. Institutional application of the values is observed from all three countries, but the level of protection that civilians were capacitated to enjoy diverge greatly among them from the early phase of state integration.

Scholarly reflection to explore possible factors that caused different outcome in human rights of integrated states has been limited in number. Instead, existing research has set the level of state integration as the dependent variable. Disparities in dependent variable between two states were attributed to dissimilar contextual factors (or could possibly be called, independent variables): power imbalance in military, economy, and alliance with the United States (US) and the

Union of Soviet Socialist Republic (USSR) (정지웅, 2006).<sup>1</sup> The structural framework of new governments and its relation to a network of governance and consequently to civil and political rights, however, has received insufficient attention as a potential candidate. I propose that different forms of network of governance set by legally binding agreements between integrating states at the earliest stage of state integration could be the candidate for each reunified state's diverging level of vulnerability to human rights violation. It seems worthwhile to study a network of governance that is likely to be effective in strengthening protection of human rights.

## 1.1 Purpose of Research

Combining two distinct system of orders and norms into one that wins the support of majority of stakeholders has been proved difficult. Chancellor Angela Merkel of Germany, the most successful case in reunification, made during her congratulatory speech on the 29<sup>th</sup> anniversary of German reunification that German unity is not yet completed and rather a “continual process – a constant mission that affects all Germans”. Accordingly, long-term outcome and quality of reunification in the lives of civilians has been the mainstream of discourse in the field.

But it is during transitional period that human rights are at special risk. During transitional period, state institutions are immature and therefore may not be able to provide systematic protection nor mediation for civil and political rights that each civilian must enjoy for self-determination. Thus, institutional arrangement designed specifically for protection of civil and political rights of civilians during the designated period appears necessary.

Of the three generations of human rights, this research focuses on civil and political rights based on the belief that civil and political rights are prerequisites for

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<sup>1</sup> Different level of wealth, familiarity with the concept of rule of law, political culture, understanding of state-individual relationship could be potential independent variables for future research.



each civilian's exercise of self-determination, which is a prerequisite for every human being to own a capacity for continual human development.<sup>2</sup>

In short, the purpose of this research is to explore institutional mechanisms that would effectively deter situation in which civilians are incapacitated from fulfilling civil and political rights during the early stage of state integration.

## 1.2 Research Questions

Three joint research questions are established for inductive reasoning. Observations obtained from Yemeni and German reunification (Question 1) is designed to draw the structure of accountability network that has the potential to be effective for civil and political rights protection under state integration scenario (Question 2).

**Question 1.** How did Yemen and Germany's localization of accountability mechanisms within governance network affect protection of civil and political rights during the early stage of state integration?

**Question 2.** Has horizontal accountability, which has recently been argued as more effective than vertical accountability in producing friendly outcome in human rights protection and public administration, worked out better in the scenario of state integration during the early stage of merger?<sup>3</sup>

The term 'localization' referred to in **Question 1** is interchangeable with regionalization. The central idea is to decentralize public administration to allow

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<sup>2</sup> Octavio Errazuriz (Chile) said at the 34<sup>th</sup> and 35<sup>th</sup> meetings of the Third Committee (Social, Humanitarian and Cultural) of the sixty-seventh session of the General Assembly, "there are no first-class or second-class rights", for all human rights are highly interdependent and indivisible. With due acknowledgement of the statement, this research focuses on protection of civil and political rights based on the belief that the group of rights are necessary condition for capacitating civilians to create meaningful participation in the carry-out of other groups of rights (i.e. socio-economic and collective-developmental rights introduced by Karel Vasek in 1979).

<sup>3</sup> See *Literature Review* for a discourse on horizontal and vertical accountability.

each local (region) to enjoy more freedom in creating its own governance structure and system that is most apt for itself. From the perspective of power distribution, localization is an accountability apparatus that has the potential to monitor and contain the power of central government. Moreover, it has the potential to voluntarily incentivize government institutions of all levels to cooperate to be more responsive to public welfare and demand.

Keeping the basic concept embedded in the term ‘localization’, localization of accountability indicates institutionalization of accountability apparatus and network established at local (regional) level by the law, the central government, and the local governments themselves.

In exploring the process of localization of accountability observed in two countries that achieved permanent state integration, this research takes collective approach that reviews the accountability network formed by the law and political actors at the central/federal government level, the local government(s) level, and between the central/federal and local governments.

### 1.3 Significance of Research

Significance of this research can be found in three academic disciplines: the unification studies, international cooperation, and public accountability.

First, this research takes a novel approach in the studies on unification process. The unification strategies that is often referred to as a pivot of unification process in the existing literature are based on unification policies employed *before* state integration. In contrast, what happens *after* state integration is the focus of analysis in this research. While integration is set as the destination in existing studies, this research sets civil and political rights after integration as the ultimate destination of every state integration process.

Second, the scope of influence this research would play is not limited to the scenario of state integration. South Korea and North Korea would be the main beneficiaries. But this does not mean that they would be the first beneficiaries of this

research. The outcome of this study can offer a valuable implication for countries that experience state transition or need rearrangement of government structure after experiencing conflict (i.e. civil war and regional conflict), for their situation equally pose imminent threat against state stability and human rights. On a larger scope, this research can be useful for conceptualizing a stable network of governance for a 'world state' that may be about to come soon.<sup>4</sup>

Third, the study's concentration on exploring "preventive" functions of accountability have potential fill in a gap in accountability literature. As indicated by Argyris, the literature falls short of explaining "how to create the conditions and actions in the first place" (Argyris, 1996). Although this is a comparative case study research instead of the participatory action research as suggested by Argyris, it is designed to answer the same question and supplement applicability and practicability of accountability in the real world.

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<sup>4</sup> Alexander Wendt claims that establishment of a world state is not only necessary but also inevitable development in his presentation "Why a World State is Democratically Necessary" at Hiram College (<https://wgresearch.org/why-a-world-state-is-democratically-necessary/>).

## 2. Literature Review

Although constitutions do not make explicit reference to human rights in the chapters establishing government structure, the system of accountability embedded in governance structure corresponds to a range of civil and political rights. The purpose of this chapter is to affirm the invisible but inherent linkage between public accountability, governance structure, and human rights. In addition, a debate on comparing horizontal accountability and vertical accountability is covered to display the complementary functioning of the two types of accountability in governance and rights protection.

### 2.1 Accountability

Originated from accounting, the concept of accountability has become a buzzword in today's human rights literature. However, accountability is articulated differently across disciplines and even within social science.

The principle elements of accountability are yet to be fixed. The United Nations (UN) Center for Economic and Social Rights (2013) indicates responsibility, answerability, and enforceability as the three constituent elements of accountability. Koppell (2005) classifies transparency, liability, controllability, responsibility, and responsiveness as the five elements of accountability.

The flexibility in the conceptualization of accountability opens space for continuous development in definition. Mulgan (2000) defines accountability as the process of being "called to account to some authority for one's actions". In 2003, Mulgan develops accountability as "a relationship of social interaction and exchange involving complementary rights on the part of the account-holder and obligations on the part of the accouter". Bovens (2006) further conceptualizes accountability as "a relationship between an actor and a forum, in which the actor has obligation to explain and to justify his or her conduct, the forum can pose questions and pass

judgement, and the actor may face consequences”, a definition that Lindberg (2013) concedes.

Throughout development in definitions, accountability remains to be understood as a procedural mechanism between two inter-related subjects with different authority. Also, the accountability relationship between account-holder (interchangeable with principal) and accounter (interchangeable with agent) remains inherently unequal. However, obligation to answer on the part of the accounter is magnified.

This tendency seems to have reinforced the corrective function of accountability: monitoring, judging, and sanctioning accounter’s performance. Representatively, the Universal Periodic Review (UPR) of the UN “ensures that all countries are accountable for progress or failure” in implementing international human rights conventions and recommendations provided by peer reviewers (OHCHR).

Corrective function loses its meaning without sanctioning mechanism. Ambiguity involved in judgement of performance, however, is a serious drawback found in corrective function. Judgements entail account-holder’s subjective interpretation of performance; and as Black (2008) notes, the relationship between account-holder and accounter is relational. Depending on the changing nature of relationship, interpretation and thus the judgement of performance can change.

In addition to inherent ambiguity in judgement, efficacy of sanction is fundamentally questionable. If Country A is to be held accountable for its human rights violation against civilians and sanctioned by its partner or international community, would this sanction cause civilians to enjoy better human rights protection? International community’s experiences with the Syrian Civil War and the North Korean nuclear crisis attest that sanction directly hurts (the already weak) living conditions of civilians rather than state behavior. With this aspect, sanctions are rather failed remedies in accountability.

Sharing concerns over impracticality of corrective function of accountability, a need to discover and develop preventive function is in the spotlight (Argyris, 1996; Yang, 2013; UN, 2013). On the same line, Mulgan (2000) notes that accountability has moved beyond ‘external scrutiny’ (Finer, 1941) toward ‘inner responsibility’ (Friedrich, 1940), voluntary responsibility that individuals possess in response to their conscience and moral value.

Of the recognized constituent elements, transparency invites preventive function, which incentivizes actors to refrain from misuse of authority and power. Responsibility, answerability, and enforceability are all employed due to limitation in transparency and limited access to full information for assessment on accountability process.<sup>5</sup> Under a system where transparency is institutionally internalized, actors are likely to lose their incentive to conduct misbehavior. But precisely because complete transparency is unlikely to happen, the best option left would be to increase the sphere of transparency in intra- and inter-state affairs; and institution is frequently introduced as the adequate instrument (Olsen, 2013; Waldron, 2013).

The following sections of this chapter deals with preventive function of accountability. Within the preventive function, a dichotomous nature – positive and negative – of accountability is addressed.

## 2.2 Going Negative: Accountability and Governance Structure

Studies on the relationship between accountability and governance structure tend to be misinterpreted as a subcomponent of studies on democratic system of governance. As a matter of fact, democratic system of governance is the

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<sup>5</sup> UN defines *responsibility* as the obligation of authority holders to clearly define their duties for transparent and objective assessment for their job, *answerability* as an obligation of authority holders to explain and justify their decisions and actions to the public, and *enforceability* as an institutional guarantee of public’s enforcement of their rights and use of institutional mechanism to sanction authority holders when their rights are violated (UN, 2013).

subcomponent.<sup>6</sup> The misinterpretation is understandable, for ‘control of power’ is the key feature shared between accountability and democratic governance. Indeed, Mulgan (2003) states that accountability has become a “general term for any mechanism that makes powerful institutions responsive to their particular publics”.

This tendency observed in the scholarly discourse of accountability is a product of many theoretical and empirical research that discovers accountability system embedded in constitutional institutions of democratic states (Donnelly, 1999; Young, 2000; Debeljak, 2003; Waldron, 2013). Moreover, democracy’s emphasis on responsiveness to public interest aligns with the answerability dimension of accountability.

Decentralization of power has been emphasized in creating a responsive government through accountability embedded institutional measures: checks and balances, administrative hearings and complaints procedure, election and tax systems. By placing state within the framework of mutual and hierarchical *control*, violent state of nature is achieved involuntarily – a ‘constitutional function’ (Willems and Van Dooren, 2012) of accountability.

### *Checks and Balances*

Checks and balances is a fundamental principle in democracy, for even democratic power cannot limit their own power. Principle of democratic inclusion does not allow a single branch of government to have exclusive power to decide the boundaries of liberal constitutional rights (Debeljak, 2003).

For example, the executive generally has the constitutional right to appoint judges in the judiciary but does not have a power to unilaterally pass a law. The legislature is in control of budgetary power and drafts and passes laws, based on which courts make decisions. The court has the constitutional right to order

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<sup>6</sup> A non-democratic state – such as soft authoritarianism – may have stronger accountability system in operation and produce better outcome in democratic governance and human rights. Compare the case of Singapore (soft authoritarianism) and India (the largest democracy).

impeachment of the executive and judge constitutionality of laws legislated by the executive and the legislature. Collectively, the constitution assigns distinctive rights that structurally holds each other accountable to each branch of government. Each branch of government has the burden of justification to each other and ultimately to their people.

### *Hearings and Complaints Procedure*

Government agencies can be held publicly accountable through hearings and complaints procedure. Hearings can be voluntarily and involuntarily organized by government institutions themselves. Government agencies are required to provide requested information and justify their decisions and actions. In the process, information is disseminated to the public, which allows for monitoring and sanctioning of government agencies.

While executive agencies enjoy considerable amount of power, such as budget management and policy-making, this institutional mechanism clarifies that executive agencies are accountable to at least three different political entities: the people, the head of government, and the legislature.

### *Electoral System*

Electoral system can incentivize government be more answerable (UN, 2013). Debeljak (2003) notes that elections capacitate citizens to exercise their constitutional right to periodically hold “representative” arms of government. Disagreement over the scope of the term seems to remain. Debeljak (2003) and Waldron (2013) seem to believe that the legislative and the executive arms represent the people. However, it seems plausible to argue that all three branches of government are representative arms and thus under the influence of periodic accountability due to the intimate institutional linkage that is to be explained in the following paragraph.



Although judges are not elected by the people but appointed by the executive and (in many cases) the legislative, they are selected by entities who are under direct influence of the public. In addition to being protectors of the constitution and laws, judges cannot always be completely independent from public sentiment.

Voting rights is necessary for citizens to pursue self-rule and self-determination. It is the most direct form of accountability instrument owned by citizens. But quality of electoral system – the strength of accountability – is highly dependent on political actors and environment. Legislature constructs electoral laws and candidates for election are determined by political parties. Constituents can play only within a framework that is already designed by political party's agenda. Election may be exploited merely to justify political elite's decisions even though it does not necessarily originate from or represent public interest (Schumpeter, 1942).

### *Tax System*

Civilians become account holders through their liability to taxation. Because the major source of government budget is tax collected from civilians, governments automatically hold a duty to be attentive to public interest. Although indirect in form, it is the basis of social contract and the perpetual source of civilian's authority to hold their government accountable. In addition, efficient, equitable, and capable tax administration is believed to make a government more responsible and responsive (UN, 2013).

But the issue of practicality remains unsolved. The accountability drawn through taxation is rather normative in value and ambiguous and broad for judgement. Individuals are sanctioned immediately and uniformly for failing to perform the duty, while governments cannot be punished promptly nor uniformly for failing to respond. For example, public has less power to correct their government's weak tax administration and policies. In some cases, government may abuse tax on extravagant welfare spending for re-election but may avoid accountability due to the 'satisfied' majority of the public.

It has become difficult to oppose accountability instruments due to its connection to good governance and democracy (Politt and Hupe, 2011). However, accountability does not automatically hold good purpose nor result in good outcome, as it is observant in authoritarian states that have strong network of accountability. Institutional accountability mechanisms are not sufficient but a necessary condition for good governance. The quality of mechanism and the resulting network of governance are determined by sociopolitical factors: political actors and sociopolitical contexts. Despite the observed uncertainties, however, accountability apparatus that allows for public access to information does imply institutional transparency – a setting ground for accountability itself.

## 2.3 Going Negative or Positive: Governance Structure and Human Rights

As revisited in the previous section of this chapter, democratic deficit exists even within democratic system of government. In fact, court system that abides by the democratic principle of checks and balances in democracies is considered anti-democratic, for elected bodies of government are subject to judicial review by an unelected elitist group of individuals (Debeljak, 2003).

Through the lens of human rights, there is no question regarding where sovereignty resides: the people. Here, “how people rule and what they do so in ruling” are the questions that are always at hand (Donnelly, 1999). Here, *empowerment*, rather than control, is the primary nature of accountability. Making accountability actionable, creating incentives for action, and promoting participation are the central task for materialization of self-determination. Governance structure based on mutual accountability among institutions should promote and preserve non-domination.<sup>7</sup>

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<sup>7</sup> Distinguish non-domination from non-intervention.

Indeed, Article 25 of International Covenant on Civil and Political Rights (ICCPR) indicates individuals' rights and opportunities to political participation. Empowerment of people's political capacity seems to be the governing principle of this article. This principle is in accord with the capability approach developed by Sen (1980), Nussbaum (1992), and Pettit (1996), which focuses on the freedom to choose and raises the fundamental question of what people are *able* to do.

Academics argue that the principle of democratic inclusion <sup>8</sup>, rather than the principle of plurality, should be implemented through institutions, such as the rule of law, judicial independence, and communicative structure. Communicative structure that would encourage intense political deliberation has been winning louder voice in studies on human rights and democratic governance (Young, 2000; Debeljak, 2003; Gutmann, 2007).

Deliberation makes majority opinion provisional and open to reinterpretation, amendment, and wholesale revision. It welcomes public participation, discussion, and negotiation among individuals who are from similar or different social class but who are affected by decisions. Minorities obtain greater chance of being heard by majority and winning majority's support. It is a chance for minorities to hold the majority accountable. Moreover, the public is publicly accountable for political decisions and actions they participated. This requires the public to be more responsible for their decisions.

Civil and political rights and deliberation seem to form reflexive relationship through institutions; each reinforces the other. Rule of law and judicial independence guarantees freedom of conscience, freedom of expression, and freedom of assembly. These rights are conditions for deliberation. In turn, deliberation consolidates the list of rights. Through deliberation, constitutions are established, debated, and

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<sup>8</sup> The 'principle of democratic inclusion' emphasizes the prevention of the 'tyranny of majority'. Self-rule and political equality are the basis for realizing the principle (Young, 2000; Debeljak, 2003). Self-rule is about citizens having more control over decisions that affect them, and political equality is about a political environment that provides greater equal distribution of opportunities for political participation. Also refer to the 'principle of all affected interests'.

maintained or revised. In consequence, constitutions influence degree of rule of law and the listed rights necessary for deliberation. This entire process of mutual development, in which beginning and the end are unclear, determines the character and strength of human rights.

Although institutions are the primary channel of civic empowerment, it cannot be completely relied upon by the people. Institutional competitions and lack of political interest can incentivize institutions to become more loyal to their institutions and forsake their obligation to civilians. This practical concern could bring us to a conclusion that a political instrument that would empower civic to be not entirely dependent on institutions is necessary. Communicative structure could indeed be the answer, for public communication can lead to public monitoring of institutions that further reaches down to institutional transparency.

## 2.4 Discourse on Direction: Horizontal vs. Vertical

Relationship in accountability has been understood as inherently unequal. An account-holder is given authority to judge and control decision and action of an accounteer(s). Relational inequality is certainly true in vertical accountability and not necessarily true for horizontal accountability.

In vertical accountability, an account-holder has power and authority to monitor and reward or sanction an accounteer(s). Rights and duties of account-holder and accounteer are often clearly divided. Account holder can exercise stronger power against accounteer(s) who are expected to comply to the account holder. Generally, this relationship is observed in hierarchical structure, such as bureaucracies.

In horizontal accountability, the account-holder does not always have superior power nor authority over accounteer(s). Account-holder and accounteer can share power in this relationship and own authority to mutually demand explanations and impose penalties. In some cases, power and authority need not be shared as it is the case in vertical relationship – but account holder does not necessarily exercise

stronger control over account-holder. Thus, the strength of accountability is generally weaker in this relationship.

Despite different degrees of strength generally observed in the two types of relationship, vertical relationship is not always strong. For example, account-holder and accountee form vertical relationship in representational accountability in democracy. Here, citizens are collective account-holders and the entire government of a country is accountable to the collective entity. Nonetheless, accountability deficit is observed in the relationship, for citizens cannot always access to information to monitor nor utilize diverse instruments to reward or sanction their representatives and their government.

Sharing of power and authority observed in horizontal accountability relationship may appear more democratic and human rights friendly. Indeed, scholars have been arguing for a shift in approach from ‘command-and-control’ (vertical) to collaborative (horizontal) in pursuit of not only moral value but also practicality and efficiency in public administration (Philip, 2008; Guy Peters, 2014; Vibert, 2014).

However, sharing of authority in horizontal relationship can lead to the ‘joint decision trap’ problem, a circumstance in which agents veto against each other and reach suboptimal option (Scharpf, 1988). The situation of ‘paradox of shared responsibility’ is another similar concern that arises from horizontal accountability – a case where agents can attempt to avoid responsibility or shift blames to peer agents (Bovens, 1998).

Taking into account the success and limitations tied to the two type of accountability, a mixture of the two types is deployed in governance structure. The system of checks and balances would be the representative example of the mixture. Apparently, the proportionality of the two types of accountability differ by countries. The difference in proportionality could be speculated as the determinant of the nature of the regime. The correlation between the proportionality of the two types and the nature of the regime could be a field subject to future research that would contribute

to the practice and theory of accountability in governance and rights protection in general. Always dealing with balancing accountability deficit and accountability overloads, each government has already been experimenting with their own system – a collection of interactions between the structure and actors. This research covers a part of the numerous interactive routines.

Collectively, an intersection is found from all definitions and types of accountability is found: control and incentivization of institutions and actors through transparency. Henceforth, this research accepts definition articulated by Bovens (2006): “a relationship between an actor and a forum, in which the actor has obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences” – a definition widely accepted and established in the existing literature.

### 3. Research Design

This research studies a web of accountability relationships entailed in the state's network of governance and its influence on human rights development. The study proceeds at two level: institutions and agents. First, institutional approach is taken to explore accountability relationships between institutions for analyzing the given structure of governance. At another level, performance of agents within the system and its influence on structure are scrutinized. Sociopolitical context of each reunified state is considered throughout the work.

The two-level approach is influenced by the structuration theory developed by Anthony Giddens. The underlying assumption of the approach is that structure and agents are reflexive; structure and actors are products of each other. They influence each other through exchange of meaning, standards, and values, a repetitive process that is referred to as “structuration” by Giddens (Giddens, 1984).

But the analytical approach designed for this research differs from Anthony Giddens's in terms of the scope of analysis. While Giddens takes micro-level day-to-day life analysis on actors in the long term to find reflexivity, this research focuses on the political interactions observed among political actors observed during limited seven-year term.

Despite the difference in the scope of analysis, this research and Giddens's analytical framework share a fundamental assumption that actors (what Giddens calls members of society) make intended and unintended decisions that leads to *reproduction* of “conditions that make such action possible” (Giddens, 1984, 26). Through reversible time framework, structure is “both medium and outcome of the practices” that structure and actors recursively formulate – a phenomenon Giddens termed ‘duality of structure’ (Giddens, 1984, 25).

Similar to the structuration theory, institutional approach gives considerable attention to the evolution of institutions as a result of their interactions with other institutions and individuals. Representatively, Putnam (1993) argues that the change

in formal institutions can change informal practices of actors who are influenced by the institutions. Olsen (2014) argues that institutional approach is particularly suitable for discovering how institutions are organized and where accountability is found.

The compliance-control approach that has been prevalent in the literature of accountability is less applicable particularly “in unsettled polities and unfamiliar situations, especially in multi-level and multi-centered polities embedded in heterogeneous, pluralistic, and dynamic societies”, which is the story of each integrated states (Olsen, 2014).<sup>9</sup> Accountability’s demand for clarity and consistency may project possible solution to circumstantial ambiguity and uncertainties.

Instead of the traditional approach, this research seeks to discover accountability network that would incentivize political actors and institutions to voluntarily or involuntarily choose to make interactions that may lead to better systematic protection of civil and political rights. It should be clear that the research is designed not to establish a definite causal loop between a certain form of governance structure or institutions and civil and political rights.

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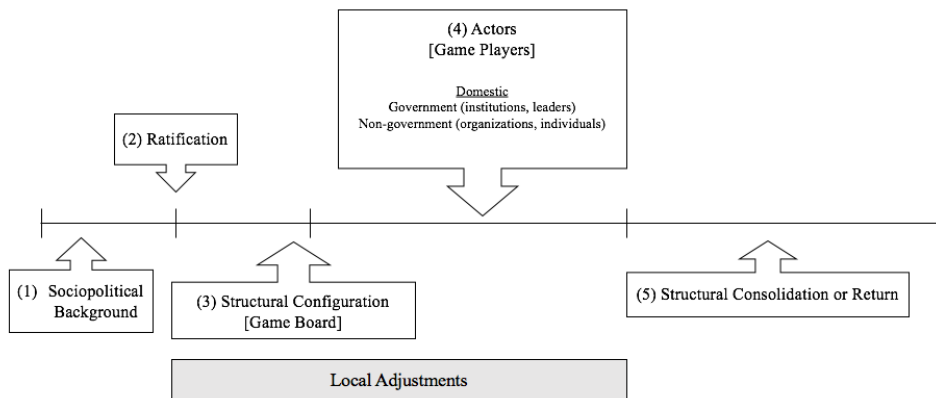
<sup>9</sup> Compliance-control approach focuses on principal’s control of agent through sanctioning device.



### 3.1 Analytical Framework

Through comparative case studies, structural configurations of two unified states' government, local adjustments to the structure, and corresponding results in civil and political rights of each of the two country cases during a specified period are dissected for analysis.

As explained in the introductory paragraphs of Chapter 3, the analytical framework demonstrated below is designed based upon the structuration theory and institutional approach. Tasks carried out at each stage of the analytical framework are outlined below:



**Figure 1.** Analytical Framework

- (1) Sociopolitical contexts of each integrating states are reviewed to observe their impact to the establishment of a new structure of governance in an integrated state.
- (2) Ratification
- (3) Analysis on the new structural configuration through the lens of conceptual framework of principal-agent theory. The basic structural configuration and network found in constitutions and agreements ratified for state integration are subject to analysis.

- (4) Exploration of how the structure and network affect actors to take (intended and unintended) actions that turn out to affect civil and political rights protection; how actors react to accountability pressures and what enables the actors to react in demonstrated manners.
- (5) Exploration of how actors' reactions can be linked to the establishment of the new system or consolidation of the old structure and governance network in integrated states and its impact on civil and political rights in the early stage of integration.
- (6) Comparative analysis on the structure and network of governance and resulting local adjustments observed in the process to find "the less likely to deviate" conditions (Olsen, 2013).

Reflexive interactions between structural configuration and actors – refer to (3) and (4) of the figure – are specifically under analysis through the lens of accountability based on the principal-agent theory, the theoretical foundation of the accountability literature.

Traditionally, principal (P) and agent (A) have been the primary unit of analysis in principal-agent theory. Since this research takes institutional approach, this research invites implementing agent (I) in between the positions of principal and agent to see how accountability relationships that are formed between institutions affect civilians' enjoyment of civil and political rights.

The principal-agent relationship is a continuous *process* of interaction between the subjects. Principal delegates authority and some of their rights to agent. With the delegated authority, agent uses its rights and capacity to perform on behalf of the principal. Principal remains to have a right to monitor agent, hold them accountable for their actions, and sanction them if necessary. Lindberg adds that principal also has a right to request for information. In response to the request, agent has a duty to not only provide requested information but also to provide justification for their decisions and actions (Lindberg, 2013).

Principal can hold an agent accountable for its action in many forms: legal, financial, reputational, societal, etc. Simultaneously, agent may also be given some power to hold the principal accountable for its action. The boundary between principal and agent are not mutually exclusive and cannot be clearly defined. This ambiguity in relationship allows for endless scholarly debate and practical application of the theory in public administration and development studies.

Principal, agent, and implementing agent are not fixed to a certain category of political position or individuals. Moreover, each subject can simultaneously be a principal, agent, or/and implementing agent in their dynamic web of relationships with other subjects as they are set by the constitution. In all cases, however, citizens are considered as the ultimate principal.

To demonstrate the observed pattern of accountability network, accountability relationships established by the constitutions and agreements for state integration are visualized for each country case.

### 3.2 Case Selection

Yemen and Germany display contextual (structure and actors) similarities and differences in the state integration process. Despite sociopolitical contextual differences (e.g. political culture, familiarity with democratic institutions, and wealth), Yemen and Germany display significant commonalities in the early course of state integration (refer to Chapter 6). Despite the commonalities observed before and after state integration, however, Yemen and Germany reach different end in civil and political rights protection.

For studying civil and political rights protection in the early stage of state integration, Yemen and Germany allows for John Stuart Mill's 'method of difference' and 'method of agreement' in comparative method. Coexistence of the contradictory methods implies significant value for comparison of the two country cases.

In addition, Yemen and Germany are the right cases for studying the effect of accountability network in government structure and structure-actor interactions

within the network and its connection to civil and political rights protection. Both Yemen and Germany intended to design a government structure based upon the democratic principle of checks and balances out of its traditional governance system in which local (regional) governments, or authorities, enjoy considerable autonomy in public administration and governance.

## Period

This research defines early phase of state integration as a period during which state institutions remain preliminary, not completely certain about their rights, duties, and relationship within the governance network. The uncertainty and unfamiliarity are observed at every level of society, micro and macro.

Yemen's early stage for state integration was interrupted by a civil war in 1994. As a result of the civil war, first constitutional amendment was carried out on September 29 of 1994. The constitutional amendment is the mark of failure in unified Yemen's democratic political integration. Yemeni case is set to a period in between the declaration of unification and the first constitutional amendment. The Unification Treaty of Germany explicitly fixes December 31, 1995 as the official deadline for institutional reconstruction in Article 4 and 25. Thus, German case is set to the period stated in the German unification treaty.

## Primary Sources

Primary sources include legal agreements drafted and signed by integrating states with the upcoming of state merger. The documents are chosen to explore the structural design of accountability mechanisms.

For Yemeni case, the Agreement Establishing a Union between the State of the Yemen Arab Republic and the State of the People's Democratic Republic of Yemen of 1990 and the Constitution of the Republic of Yemen declared in 1990 are the primary sources under analysis.

For German case, the primary sources for analysis are the Basic Law of the Federal Republic of Germany (used at the time of reunification in 1990) that was first established in 1949 and the Unification Treaty of 1990 signed between the GDR and FRG.

## Secondary Sources

They include court decisions, and human rights reports from Amnesty International, Carnegie Endowment, Freedom House, and the United Nations. The sources are used to infer civil and political rights level of each country case. The information provided in the reports are useful for explicating linkage between structural configuration of new governments and its influence on protection of civil and political rights.

## 4. Case 1: Unification of Yemen

### 4.1 Pre-unification (1988-1990)

Prior to 1988 – the year when actual preparation for unification began – there were shared efforts as well as confrontations in preparing for the unification. The two North-South unity initiatives were carried out after each of the two border wars – first in 1972 and second in 1979 – that consequently led to drafting of a unity constitution that is to be ratified in 1991. In the meantime, assassination and execution of two North Yemeni and one South Yemeni head of state happened (Dunbar, 1992, p. 458).

Despite armed conflicts, the two Yemen finally found their (divergent) interest in unification with the change in the norther regime and increasing economic and political crisis in the South. The two Yemen came to term with Yemeni unification in 1988 with the signing of 4 May Agreement.<sup>10</sup>

The sociopolitical context of the two Yemen that led to unification is a useful source for analyzing the politics behind the establishment of the new structural configuration of a unified Yemen.

#### **Yemen Arab Republic (North Yemen, 1962-1990)**

Since its establishment, Yemen Arab Republic has been in a struggle for power with local tribal authorities. People were more reliant on tribal leaders, and the central government remained weak in its power, authority, and public reputation (Dunbar, 1992; Al-Dawsari, 2012; Burrowes, 1992). Abdulla Saleh, a charismatic new figure, sought to enlarge the central government's position by rearranging contested relationship with tribes and reforming central government as well as military.

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<sup>10</sup> The agreement on joint exploitation of oil, free border crossing, and ratification of unity constitution draft (Ayalon 1988: 776).

Unlike his predecessors, President Saleh (in office 1978-1990) increased state's capacity to penetrate local societies and politics by constructing infrastructures, such as schools and hospitals. Moreover, he invited tribal members to the central government and assisted their settlement outside of tribal politics (Dunbar, 1992, p. 467; Burrowes, 1992).

Dunbar (1992) argues that the aforementioned moves successfully and smoothly neutralized tribal power and turned out critical in achieving Yemeni unification. As central government's budget becomes the primary financial source and sometimes political source of tribal groups' welfare, tribal leaders were incentivized to be compliant with central government's agenda (Dunbar, 1992).

Military reform – which included professional training and re-equipment, positioned military at the top of hierarchy within central government. Better protection of border and civilians from internal and external threat, such as kidnapping, roadblock, and hijacking (Burrowes, 1992, pp. 47-48).

Institutional immaturity and ambiguity allowed for much freedom to Saleh in carrying out his agenda in domestic politics and unification. The 1970 Constitution, the ruling constitution of YAR in 1988, was the first constitution of YAR and a constitution that does not clarify rights and duties distributed to each government division. In effect, the People's Constituent Assembly (PCA) – a institution whose constitutionality is still questioned – enjoyed executive and legislative authorities for ten years between 1978 and 1988. In 1988, Saleh ended the PCA period and appointed 159 members to Consultative Council, a presidential right designated by the 1970 Constitution (Burrowes, 1992, pp. 52-53).

The observed democratic deficits due to constitutional ambiguities on the separation of power and checks and balances caused loss of many lives. The Amnesty International Reports published between 1998 and 2000 all describe numerous specific cases of kidnapping, detention, and persecution committed on political grounds by the state.

Systematic violation of physical integrity rights was practiced through violation of due process rights, a right that YAR's constitution promises in words in Article 24 and 25, but not materialized through institution or additional judicial instrument.

### **People's Democratic Republic of Yemen (South Yemen, 1967-1990)**

Compared to Yemen Arab Republic, People's Democratic Republic of Yemen weakened tribal authorities' predominance over social and political influence through socialist ideology. Nonetheless, the 'Events of 1986' evidently shows that political and social linkage to tribalism remained in suburban areas.<sup>11</sup>

The Amnesty International (1988) records the number of detention without a trial to be at least 4,700. Meanwhile, the leadership incessantly appealed to their international donors, regional partners, and even to the YAR to expand economic ties. This was important for regime survival in the South (Burrowes 1989).

Burrowes (1989) argues that South Yemen escaped from financial scarcity for the first time in their history thanks to its successful reestablishment of relationship with the Saudi and other regional partners, such as Kuwait. But Dunbar (1992) gives out a contradicting observation that the PDRY's economic failure caused public dissatisfaction, which catalyzed Yemeni unification.

But a consensus that both the leadership and the public had high expectation on the possible economic upsurge with the coming of Yemeni unification is established. Especially with a new discovery of oil in the Marib basin in 1984, YAR's economy appeared to signal brighter future. This incentivized South Yemenis to cross the border to migrate into North (Burrowes, 1992).

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<sup>11</sup> In 1986, armed conflict within Yemeni Socialist Party occurred. The four political elites who were exiled to Moscow returned to PDRY and openly criticized President Ali Nasir Muhammad for bypassing the socialist party and favoring certain regions over others. Feeling threatened, Muhammad invited the four officials to politburo meeting in January 1996 and gunshot all of them. But opponents had superior military capacity and trials that led to many detention and execution happened (Burrowes, 1989; Amnesty International, 1988).



For its own legitimacy to power, the new leadership maintained and developed cooperative relationship with the YAR. Starting with a resolution to withdraw troops from the border in 1988, the government abandoned socialism in 1989, and discharged political prisoners and dismantled secret police in 1990 (Freedom House, 1991). These efforts seem to have produced some positive outcome in human rights compared to pre-1988 era.

### **The Consensus**

The two Yemen had a quest for centralized government with multi-party system. At least two incentives exist for the two Yemen to design another centralized government: an internal threat posed by the northern tribes and an external threat posed by Saudi Arabia, the regional hegemon.

First, calculation of the population ratio explains why tribal groups in the northern part could remain as a potential threat to both Yemen. South Yemenis are estimated to compose only 20 percent of an estimated total of 13 million Yemenis in unified country, and 50 percent of North Yemeni population are tribal members (Dunbar, 1992).<sup>12</sup> Collectively, the proportion of tribal members are greater than the de-tribalized South Yemeni population by 20 percent. The impact of this 20 percent gap in population is indispensably big enough to become a threat in a unified state.

Second, probably because of their weak economy and considerable financial and economic reliance on Saudi Arabia, they felt vulnerable to potential external threats. Although PDRY could no longer rely on USSR's financial assistance due to USSR's economic deterioration in 1989, it was receiving considerable economic assistance from Saudi Arabia – which is also the long-time donor to YAR (Burrowes, 1989).

In YAR, repetitive conflict between Yemeni and Saudi civilians in border region and Saudi's ignorance on the issue caused the YAR to believe that Saudi was

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<sup>12</sup> Source of data: The Economist Intelligence Unit, *Oman, Yemen Country Profile*, 1991-2.

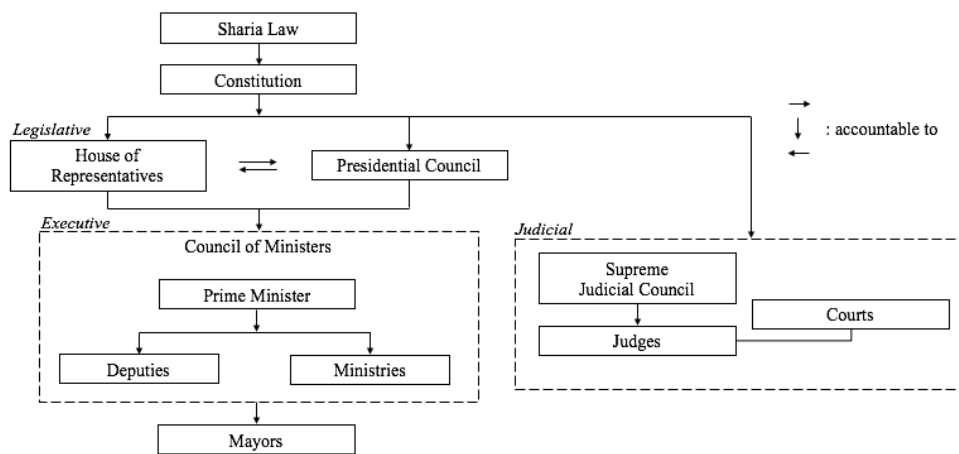
attempting to encroach upon YAR's territory (Burrowes, 1992). Territory being the issue of sovereignty, Saleh had reasonable incentive to build a centralized government with strong military capacity; and so did South Yemeni leadership.

Simultaneously, the two Yemen sought for a multi-party system to avoid possibility of future secession. Negotiation and participation of North and South leaderships made them believe that their new political system is democratic and fulfilling freedom of speech and the right to organization (Burrowes, 1992).

## 4.2 Game Players Playing on the New Game Board

The local adjustments observed from unified Yemen's new structural configuration and carried out by actors within the configuration are analyzed through the lens of accountability in this chapter.

### The Basic Structure of Government: The New Game Board



**Figure 2.** Structural Configuration of Yemeni Government in May 1991 through the Lens of Accountability  
(source: author; reference: *Unity Constitution of 1991*)<sup>13</sup>

As a founding document of a unified country, the government structure demonstrated in the government tends to be resilient and long-standing, thus producing lasting effects in every dimension of human lives. **Figure 2** is drawn only based on information provided by the unity constitution of a unified Yemen ratified in 1991.

The government structure visualized above is different from the structural configuration of a unified Yemen demonstrated by the *ConstitutionNet* (*constitutionnet.org*), which locates the Presidential Council inside the executive

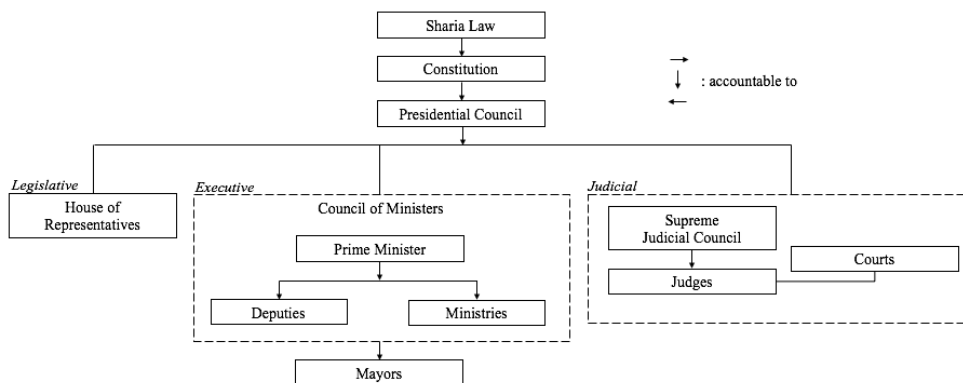
<sup>13</sup> All the figures included in the research are original and visualized by the author based upon the author's analysis of the constitutions and laws. Refer to Appendix for clarification on how the diagrams are visualized.

branch. This understanding has generally been shared in the news reports and majority of scholarly articles. However, there is no constitutional provision that clarifies the Presidential Council's membership in the executive branch.

Due to ambiguities embedded in the distribution of rights and duties to government bodies in the constitution, the general government structure appears rather simple. The simplicity due to ambiguities leads to the possibility of divergent understanding and confusion in structural configuration and power relations within the government itself.

### *Feature 1. The Paradox of Presidential Council*

The structural configuration given in **Figure 2** faces possibility of significant change with the passing of *Article 6* of the *Unity Agreement of 1990* that stipulates the Presidential Council to form a technical team that has the authority to reconsider administrative division of unified Yemen for thirty-month, the interim period set by *Art. 3* of the same agreement. The technical team's independence from key government organs and its constitutionality is unknown, because it is not clearly stated in the agreement of 1990 nor the constitution ratified in 1991.



**Figure 3.** Structural Configuration of Yemeni Government through the Lens of Accountability in the Interim (reference: *Unity Agreement of 1990* and *Unity Constitution of 1991*)

In such circumstance, constitutional status and position of the agent's principal – the Presidential Council – becomes significant. *Art. 94(1)* of the unity constitution sets forth Presidential Council as the head of state that represents the Republic at home and abroad.

As the head of state, the Presidential Council remains to enjoy a level of power and authority that amounts to those of supreme executive bodies of other countries even after the thirty-month interim period. They are: the right to appoint a person to form the Government and to issue a Republican decree naming its members (*Art. 94(4)*), uncontested authority to nominate members of the National Defense Council (*Art. 94(7)*), the right to create Military ranks (*Art. 94(10)*), the right to declare a state of emergency with the consent of the House of Representatives (*Art. 94(17)*).

Simultaneously, *Art. 102* of the unity constitution prescribes that the Council of Ministers is “the supreme executive and administrative body of the state” with all executive bodies and organizations of the state subordinate to the Council. Considering the amount of power and authority that the constitution grants to the Presidential Council, it is a paradox that the Council of Ministers is the supreme executive body. Rights to lay down and execute general domestic and foreign policies in collaboration with the Presidential Council and the House of Representatives prescribed in *Art. 94(4)* and *Art. 109(1)* are insufficient to make the Council of Ministers supreme executive organ.

Indeed, an over majority of the paragraphs under *Art. 109* – an article about rights and duties of the Council of Ministers – enumerates the Council's joint right with either the Presidential Council or the House of Representatives to prepare for and draft policies and plans. The Council's coordination and supervision of its subordinate executive agents are the only chances when the Council of Ministers is the principal that can hold agent accountable (*Art. 109 (6)* and *(7)*).

While executive power and authority are shared, creation (refer to *Art. 94(4)*) and removal (refer to *Art. 114*) of the Council of Ministers are in the hands of the

Presidential Council and the House of Representatives. Conclusively, *Art. 105* holds the supreme executive body accountable to the Presidential Council and the House of Representatives respectively. However, no article promises the supposedly supreme executive body the power to hold the legislative branch and the Presidential Council accountable in any direction in any dimension.

The one-way vertical accountability relationship between the head of state (Presidential Council) and the head of government (Council of Ministers) reaches the highest point in *Art. 111*: “The Presidential Council shall be entitled to suspend the Prime Minister, his deputies, or the ministers from their work and refer them to investigation for any crimes committed by them” during their term in office. In addition, *Art. 113* sets the Presidential Council in an advisory position to which the Prime Minister can rely on in the case of internal conflict within the Council of Ministers.

In effect, the Council of Ministers is the nominal supreme executive body, and the Presidential Council is the actual supreme executive body. Monopolizing power in the thirty-month interim, the Presidential Council can unilaterally carry out structural rearrangements in government structure, even when it can disrupt democratic principles of separation of power and checks and balances. Specific cases follow in subsequent sections on how political actors in the executive exploited the other two branch of government and the overall structure of checks and balances.<sup>14</sup>

Unified Yemen formed a dual executive system (can also be referred to as authoritarian-parliamentary system) that assorts parliamentary system and authoritarianism in the executive branch. Separation of the head of state and the head of government comes from a parliamentary system, but centralization of power to the head of state is tantamount to that of authoritarianism.

It could be argued that the big power imbalance between the head of state and the head of government is commonly observed in any typical parliamentary

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<sup>14</sup> Refer to *Feature 1. Two Charismatic Executives Sharing Power* on p. 33.

system. The Yemeni case, however, is different in that *Art. 102* alone causes confusion in political order within executive branch by setting the nominal head of government as the supreme executive body. This novice political order is not accidental, for it is a structure that the incumbent political elites devised based on their agreement to share executive power (Phillips, 2007; PA-X, 2017).

*Feature 2. The Only Horizontal: The Presidential Council and the House of Representatives*

Instead of electing a single president, political elites of the two Yemen agreed to form a five-member Presidential Council to systematically prevent one side's monopolization of power. The five members are democratically elected by a joint legislature composed of the incumbent members of the Supreme People's Council (south) and the Shura Council (north) (*Art. 2* of the unity agreement). The power of appointment is maintained after the interim period by *Art. 82* of the new constitution. Theoretically, legislature has the capacity to balance power between the south and the north inside the head of state.

As stated in the previous section, however, the Presidential Council is in control of the entire government arrangement during thirty-month interim period (*Art. 6* of the unity agreement). As *Art. 3* of the agreement assigns to the Presidential Council the power to fill in vacancy in the House of Representatives, the horizontal relationship between the Presidential Council and the House of Representatives laid out by the new constitution is damaged. The House of Representatives, however, remains to be the most constitutionally *equipped* government body that can hold the Presidential Council accountable through sharing of certain executive and legislative authorities.

The legislature's power to co-authorize can be translated as a power to hold the executive accountable for its decisions and actions by dissenting to the Presidential Council. Mobilization of national military force (*Art. 23*) and guidance of the executive bodies (*Art. 40*), approval and issuance of laws (*Art. 94(8)*), and

suspension of the Council of Ministers (*Art. 111*) all require the Presidential Council to accept co-authorization from the House of Representatives. The listed rights are significant administrative tasks that directly influence national stability and the lives and security of the Yemeni people.

*Art. 79* is the area at which horizontal relationship is at equilibrium. The article stipulates that any law passed by the House can be reconsidered by the Presidential Council and be nullified with the Council's submission of a resolution in thirty days from the House's presentation of the law to the Council. If not returned to the House by the Council, the House can enact the law with a majority approval from the House. For enactment of any law, the House and the Council must justify their rationale, decision, and action to each other and establish agreement for their own institutional survival.

A clause that is supposed to empower legislature by giving the House an authority to monitor the entire executive is in place. *Art. 70* gives the House of Representatives the right to requires hearings to which all executive and private bodies must respond and dispose their possessions deemed problematic by the legislature in the hearings. However, the legal status of the Presidential Council in relation to the executive branch must be affirmed – again – to effectively operate *Art. 70*. If the judiciary does not interpret the Presidential Council as a part of the executive, it is exempted from legislature's accountability measure set by the article.

But the House can still manage to contain the Presidential Council with its exclusive right to accuse the Council at the request of half of the members of the House. With two-thirds majority vote of the House, the Presidential House can be put into trial, and the Chairmanship Board of the House of Representatives can replace the Council during the trial (*Art. 101*).

Concurrently, the Presidential Council owns an exclusive right to dissolve the House of Representative through referendum with sound evidence when perceived necessary (*Art. 78*). This constitutional measure, however, lacks practicality with *Art. 89* in force. The article states that Presidential Council exists



only until 90 days after the expiry of the House of Representatives. For Presidential Council to exist, the House of Representatives must exist.

Thus, it is unlikely that the Presidential Council would be incentivized to dissolve the legislature as their strategy for institutional survival or competition. Instead, the two are incentivized to cooperate and collude depending on actor composition of the two bodies of government. If members of the two organs are share political line, mutual accountability function is likely to be lost.

There are institutional efforts to keep legislative independence through partial elimination of inter-branch accountability. The House of Representatives can determine validity of its members' membership (*Art. 46*), independently keep peace and order inside the House through its special guards (*Art. 47*), have final accounts of the State budget (*Art. 49*), and can avoid public blame (*Art. 63*), interrogation, search, arrest, detention, or any penal action (*Art. 64*). These rights provide the legislature some political and security safeguards so that it can defend itself against potential threats posed primarily by the Presidential Council.

But the House of Representatives is not the only organ that *enjoys* the inter-body accountability deficit. *Art. 62* of the constitution asks the House of Representatives to “not interfere in *business* which is the responsibility of the Executive and the Judicial Authorities”. Separation of *business* in addition to separation of power is likely to lead to accountability deficit, for non-interference does not allow for inter-governmental inspection, justification, nor deliberation. This damages transparency within the entire government system.

### *Feature 3. Subsidiary Laws Not Accountable to the Constitution*

To simply put, it is too easy for government bodies to not violate the constitution even when making grand structural rearrangement. The term “by law” and “specified in law” makes over 80 appearances in the new constitution. It can be inferred from this that government institutions can redistribute power and authorities

by revising corresponding subsidiary laws without necessarily violating the constitution.

In this case, the general political structure, order, and procedure are determined by subsidiary legislations that tend to be more easily transformable than the constitution. The constitution, despite its supremacy, must rely on its subsidiary laws to demonstrate a complete foundational structure of a state. A paradox in accountability relationship observed in *Feature 1* is observed again: nominal supremacy of the constitution and its reliance on subsidiary legislations to function ordinarily.

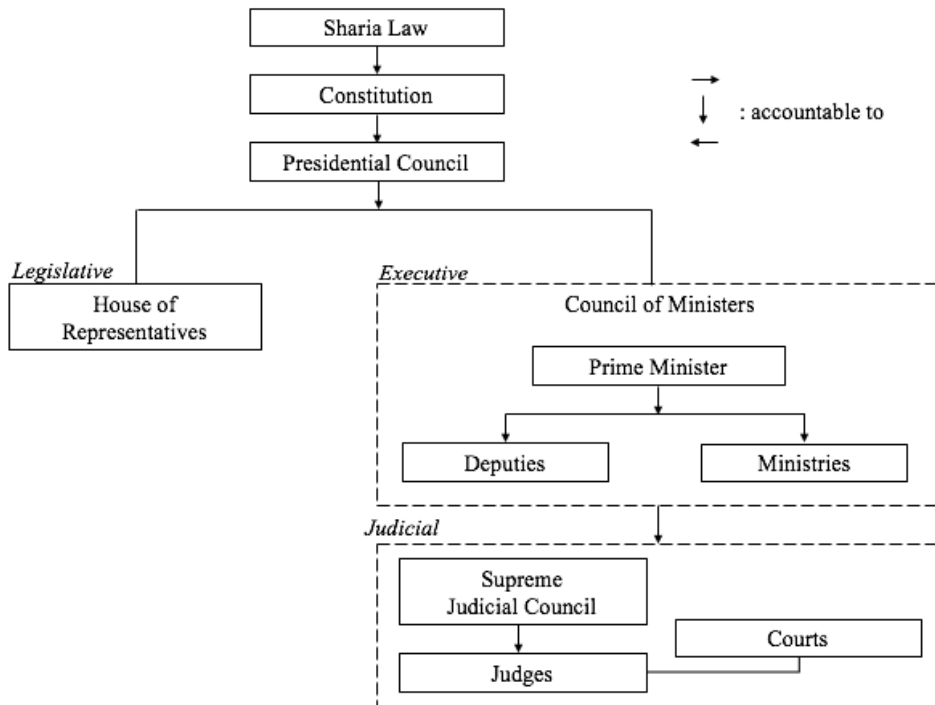
In the worst-case scenario, a single legislation or revision of a subsidiary law can lead to destruction of a system of accountability established through separation of power and checks and balances. The system loses its resilience from shifting composition and attitudes of political elites.

The most representative case would be the judiciary. Composition of the Supreme Court and hierarchy among courts (*Art. 124*) are not established by the constitution. “The law” that governs the judiciary is a buzzword in Part Four of the constitution, but it is unclear what exactly “the law” is. No standard judicial system is established by the constitution, but Supreme Judicial Council is demonstrated as playing a significant role in appointment, promotion, and dismissal of judges.

Law on Judicial Power (1991) includes more details about the judiciary than the constitution does. As claimed by the law, the Minister of Justice and his Deputy, the two Vice Presidents of the Supreme Court, the Attorney General, and the President of the Judicial Inspection Board<sup>15</sup>, and three legal experts and judges nominated by the Presidential Council - all under executive’s influence – constitute the Supreme Judicial Council (Al-Zwaini 2012). Below is the resulting structural transformation.

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<sup>15</sup> Judicial Inspection Board is established by *Arts. 92-97* of Law on Judicial Power (1991) and is subordinate to the Ministry of Justice.



**Figure 4.** Structural Configuration of Yemeni Government through the Lens of Accountability with the legislation of the *Law on Judicial Power (1991)* (reference: *Unity Agreement of 1990, Unity Constitution of 1991, and Law on Judicial Power of 1991*)

Identical to the accountability deficit observed in the House of Representatives, the judiciary can unilaterally decide its own internal regulations (Arts.120-123). Furthermore, any party that interferes with judiciary's business is punished (Art. 120). In the judicial system established by the Law on Judicial Power (1991), any party that interferes with the *executive's business* in judiciary are punished.

The same law gave birth to a judicial institution that political leaders can too easily exploit. The Office of Public Prosecution belongs to the judicial branch and performs policing, prosecution, and judicial functions. According to Art. 53 of the LJP (1991), the prosecutors' office can investigate and prosecute crimes, order detention beyond 48 hours, execute criminal sentences, and supervise detention centers. But the law does not clearly answer its vast scope of authority in relation to

authorities of the court and police, causing misuse and abuse of judicial power. Indeed, in Amnesty International's annual country report, kidnapping and detention of political opponents without due judicial process are most frequently found between 1990 and 1994.

Considering the number of structural changes possible through additional legislation of subsidiary laws in diverse dimensions of Yemeni politics, proliferation of subsidiary laws in the absence of standard system of government set forth by the constitution is likely to weaken any institution and the entire system of governance.

When Paragraph 5 of Article 94 orders the Presidential Council to collaborate with the Government over "the general policy of the State and to supervise its implementation in *the manners stated in the Constitution*", the constitution fails to provide precise orders on what exactly the appropriate *manners* ought to be with respect to political stability and morality.

#### *Feature 4. Democratic Law Accountable to Non-Democratic Law*

Like in many Islamic states, Sharia Law is the supreme governing law in the unified Yemen (*Art. 3* of the constitution). In addition to the all-time internationally contested anti-human rights punishments practiced under the name of Sharia Law, legitimacy of its supremacy in a state that claims to support democracy and the rule of law is in question.

One-way top-down vertical direction is not necessarily problematic in establishing legal, political, and social stability. Such directional relationship is believed to be necessary between the founding document (the constitution) and other laws. However, a democratic constitution being accountable to a religious law is a different story.

Because the constitution must not dissent to the principle of the Sharia Law, it is difficult for the constitution to have a static form of institutional arrangements and legal instruments prescribed as the foundation of the state. Because anything considered as a violation of the Islamic principles must be revoked, constitution's

ambiguous self-identification in between democracy and Islamic state is likely to weaken the rule of law; and the rule of law is undeniably an essential instrument in democratic accountability (Warren, 2014).

#### *Development of Top-Down Vertical Accountability Structure*

A separation of government with a serious lack of checks and balances prevails within the Yemeni government structure. There is little institutional instrument that would materialize inter- or intra-branch mutual accountability. With constitution alone, there is considerable space for establishing mixed accountability system through adoption of bottom-up vertical or horizontal accountability. However, when it is combined with unity agreement and additional legislations that govern individual political bodies, the government structure becomes increasingly top-down vertical. This is likely to cause centralization of power to a single or two government institutions, a political environment in which state's systematic violations of human rights becomes less difficult in diverse dimension.

With centralization of power to the Presidential Council, local governments form direct accountability relationship with the Council and the executive branch. In contrast, a rather indirect and not much visible connection is established between the local government and other government bodies. No constitutional provision on requiring local government's response to the legislative nor judicial orders is found, and vice versa.

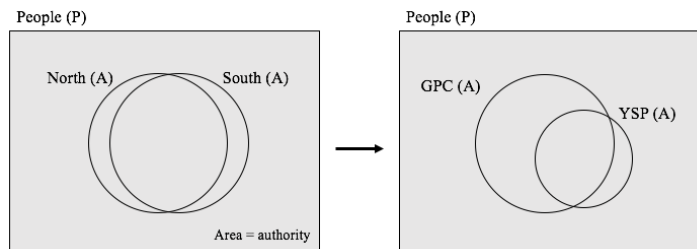
Having a strong tribal culture enrooted in its politics, the system of accountability that the central government builds in their relationship with tribes is particularly important in state governance. Systematic control of strong tribes remains questionable with Yemen's comparatively strong legislature, weak executive, and meaningless judiciary. Whether the government can provide adequate institutional instrument that would incentivize tribes to cooperate with the premature central government is also subject to debate.

## Actor Composition within the Structure: The Players

Primary political actors who affect and are affected by the accountability system in governance network are South Yemen, North Yemen, Yemeni people, Saleh (President of North Yemen), al-Beidh (General Secretary of South Yemen), tribes, civil servants, and Saudi Arabia.

### *Feature 1. The North-South Divide in State Power*

The two Yemen agreed in *Art. 6* of the unity agreement that administrative division based on the ‘principle of 50-50 split positions’ should be the framework for the new government until the first election. It was a unification strategy prepared to eliminate the effects of partition, despite the 8:2 population ratio between North and South (Dunbar, 1992).



**Figure 5.** The North-South Divide

The House of Representatives – a collective body of incumbents from north and south – gave majority of seats of the Presidential Council to political elites from the north. The south took half of the ministerial positions in the Council of Ministers (Dunbar, 1992). Even with a structural configuration that is already top-down vertical, however, south managed to enjoy considerable prestige under provisional government until the end of interim period in 1993 (Phillips, 2007, p. 6).

First free election in April 1993 caused power loss that led to huge dissatisfaction among southern elites. In addition to the two leading parties, a newly formed Islah Party – a coalition of tribal and religious elites who are also moderate

and hardline Islamists – became the major parties (Phillips, 2007, p. 6). Of all 301 seats in the House of Representatives, the General People's Congress (GPC) from the north won 122 seats followed by the Islah winning 62. Yemeni Socialist Party (YSP) from the south came next, winning 56 seats. Considering at least 21 additional seats that moved from independent group to the GPC, the GPC occupied almost half of the entire seats in the House of Representatives (Inter-Parliamentary Union, 1993).

Election legitimized the north's control of state power, and it became more difficult for the south to contain the north. Dunbar's argument in 1992 that it is politically wise for the YSP to create a common cause with the northern leadership (particularly, Saleh) and protect its political ground by influencing policy from within was not accepted by leaderships of both sides.

Despite structural setbacks, the YSP attempted to influence the GPC from within by proposing political reforms in 1993, which involves decentralization of power and investigations on the mysterious assassination of over 150 officials from the south. The demand was not reciprocated by the north (Halliday, 1995, pp. 131-132). Within the Yemeni government structure, in which weaker opponents are not institutionally equipped to exercise power that would replace the sitting leadership with a new one, the south found armament as the only alternative available.

With rising violence between the north and the south, northern elites opened National Dialogue of Political Forces and recommended in the Document of Pledge and Accord for limits on the executive power, a bicameral legislature, and decentralization of power. Although the proposals did win wide public support, a deep-rooted distrust between leaderships led to the outbreak of a civil war in 1994 (Phillips, 2007, p. 7).

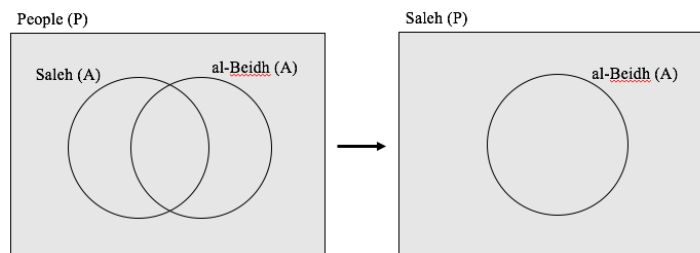
The North-South divide was materialized through intense inter-party conflict between the GPC and the YSP. The intense inter-party competition was triggered, because the two parties each equally identified itself as a competent and legitimate candidate to power. Though there is no point of criticism on this

conviction, this engendered a more intense conflict in occupying the powerful and hierarchical system of government.

The North-South competition for more power is found in the second Supreme Court decision in April 1993. The prime minister (southerner) and his deputies filed a case on unconstitutionality in the implementation of the electoral law by the High Committee. The Electoral Committee prevented the southerner prime minister and his deputies from running in the coming parliamentary election based on a constitutional provision that prohibits accumulation of power in the parliament. The court decided that the interpretation of the Electoral Committee cannot be accepted.

*Feature 2. “Principal-ization” of an Agent*

President Saleh and General Secretary al-Beidh began their new political life as two leading agents with equal standing in front of their principal, the Yemeni people.



**Figure 6.** Principalization of an Agent

With increasing centralization of power to the Presidential Council, the Council became a principal who monopolizes the power to partially delegate authority to multiple agents. It is an unavoidable phenomenon in a system where power is concentrated to a single entity. But serious confrontation rises when there



is a charismatic leader as the opponent. In unified Yemen, the former leaders of divided Yemen retained their political charisma in their own circles.

For the powerful Presidential Council, President Ali Abdullah Saleh – a head of state of the YAR by 1990 – was elected as the head of the first Presidential Council of the unified Yemen in a joint session of the Supreme People’s Council (PDRY’s legislative branch) and the Shura Council (YAR’s legislative branch). Ali Salem al-Beidh – the leader of Yemeni Socialist Party of PDRY until unification – became the vice president of the country, a position that is not mentioned in the constitution. If he chooses to act, considerable reform can be achieved in a reasonable time (Phillips, 2007, p. 21).

With additional legislations – representatively, the Law on Judicial Power (1991) – carried out by Saleh and his entourage in the government, Saleh quickly got into principal position and al-Beidh was forced into agent position who is institutionally restricted from influencing the principal until the principal delegates the power to do so.

### *Feature 3. Tribes: The More-Influential Implementing Agent*

Prior to unification, Saleh spent considerable time and resource in neutralizing tribal influence. This agenda continued after unification, and there is no single reference to tribal forces in the constitution. Nonetheless, the principal receives administrative support from two groups of agent: the government and the tribes.

Observing the increasing tension between the two parts of Yemen, the public responded to the instability by ‘re-tribalization’ in both parts of the country. The motivation was to protect their lives from unpredictable violence of the state; politics was less of an issue (Dresch, 1995). The administrative authority was delegated to tribal leaders not by the central government but by the people.

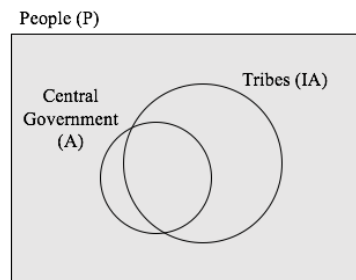
Traditionally, tribes have played significant role in conflict mediation. For millennia, the central governments of Yemen have almost always been unstable and

unable to provide security and welfare to civilians. Tribalism was the only option available for the public.

Yemeni people from both north and south increasingly chose to rely on tribal arbitration from 1991 to 1994 for two reasons: public's little respect for law and the entire court system and central government's partial renunciation of its own jurisdiction through the legislation of the Arbitration Act of 1992 (World Bank, 2000, pp. 7-9; Al-Dawsari, 2012).

Public's distrust on Yemen's justice system is derived from institutional corruption and disability that people experienced personally or indirectly through press, which remained active until the outbreak of civil war in 1994. Despite high literacy rate, no single case submitted by civilians reached the supreme court until 1994. Whether public's exclusion from court system was voluntary or not, courts became meaningless institutions for people in managing their ordinary lives.

The central government responded to the public's distrust on judicial system by enacting the Arbitration Act (1992), which does not limit judges and courts as the only arbitrators. It accepts independent arbitrators with the consent of two parties (*Arts. 2 and 20*). The law strategically leaves a space for legal and judicial validity of tribal arbitration structure and delegates judicial power to tribal leaders in dispute settlement. Institutionally, the central government assigned implementing agent position to tribal powers. This systematically encourages Yemeni people to become more reliant on tribal system, which led to further weakening of state institutions.



**Figure 7.** The More Influential Implementing Agent (I), the Tribal Groups

As a “state within a state”, each tribe could control their own territories to the extent that government need access permission from tribal leaders. Government soldiers who stepped into the area without permission were killed by tribes (Phillips, 2007, 19). The government increasingly lost control of the unconstitutional group that retains higher public legitimacy than does constitutional government bodies.

Al Dawsari (2012) argues that stability in the Yemeni tribal system is maintained through inter-tribe cooperation and horizontal relationship even in the absence of the rule of law. The reality, however, was inter-tribal conflict. The rival parties stimulated the ‘us-versus-them’ sentiment between northern and southern tribes, while the Supreme Court lost its arbitration power on region-based politics (Dresch, 1995). South’s declaration of secession in 1993 marked the return to pre-unification era.

#### *Feature 4. Divide in the Implementing Agent Group*

At executive level, the North and the South shared civil workers by sending northern deputies to public offices in the South and sending southern deputies to the North. Despite the institutional effort, however, government officials remained divided (Dunbar, 1992).

Any dispute between government agencies is settled through either a legal opinion of Ministry of Legal and Parliamentary Affairs or Government Arbitration, which is also handled by the Ministry of Legal Parliamentary Affairs (World Bank, 2000). In effect, the executive – the nucleus of North-South divide – is the only branch that exercises judicial power over government affairs. But as the course of consolidation of power to Saleh and his entourage showed, the executive did not have the administrative capacity nor willingness to be an impartial arbitrator in solving the divide.

Tribal groups – the traditional arbitrators – also did not have the administrative capacity nor willingness in solving the divide, because of their

implicit consensus on respect for each other's autonomy. Each tribe does not have the authority to request for information nor monitor other tribal groups' misbehaviors that happen within their own territories.

The inter-tribal cooperation cannot be understood to have stemmed from mutually accountable relationship among tribal groups. Al-Dawsari (2012) explains that tribal groups form cooperation based on solidarity to counter central government's pressure on tribal communities. When tribes share a perceived threat (apparently, the central government), they collaborate. But in the absence of shared foe, they easily encounter armed inter-tribal conflict (Al-Dawsari, 2012, pp. 11-12). Lack of inter-dependence seems to have contributed to lack of mutual accountability among tribal groups.

From this pattern of long coexistence, it appears that tribal leaders and the subordinate population did not interpret autonomy as non-domination but as non-intervention. In short, there was only inter-tribal mutual respect without inter-tribal mutual accountability, which could be the source of tribal groups' administrative incapacity in solving the divide.

### 4.3 Return to Pre-unification (1994)

Although government structure remained strictly hierarchical, the horizontal sharing of power and authority among political elites caused greater competition for power. In effect, the central government was de-stabilized with the revival of strong tribalism. Voters unintentionally permitted centralization of power to the North through election. The political incumbents – majority of them coming from the North – intentionally created a structural condition that would further intensify power imbalance between the South and the North, which is rigidly against the contract that was initially promised as the founding principle (the principle of equality) of a newly integrated state between the two contracting parties.

Despite centralization of power to a minor political elite group, the central government remained unstable due to its administrative incompetence and thus lack of public recognition. Due to its own instability, detention against political opponents and attempted assassination of a member of the Political Bureau of the Yemeni Socialist Party were continuously observed until the outbreak of civil war in 1994 (Amnesty International, 1992, 1993, 1994).

In 1994, a civil war that calls for South's secession from the North occurred. A state of emergency was declared in May 1994. But civil and political rights were entirely violated by the state through unlawful detention of civilians suspected of political opposition. Detainees were not discharged after the lifting of state of emergency in July 1994 (Human Rights Watch, 1994). In addition, it was only in 1999 that Yemeni population could exercise their voting rights after their participation in the first parliamentary election in 1993 after the state integration.

## 5. Case 2: Reunification of Germany

### 5.1 Pre-unification (1989-1990)

Starting with the end of communism in Hungary in January 1989, that year brought significant changes to Germany and Eastern Europe in general. Consecutive fall of communist regimes in the Eastern Bloc was followed by the fall of Berlin Wall in November 1989.

Prior to the revolutions of 1989, West Germany made serious efforts for détente with East Germany and the eastern bloc in general. From Ludwig Erhard's introduction of 'Soziale Marktwirtschaft (Social Market Economy)' in mid 1960s to the establishment of 'Ostpolitik (Eastern Policy)' – which called for normalization of relations with the eastern bloc – by Willy Brandt in 1970s, state-driven efforts became the foundation for German reunification processes (Mertes, 1994, p. 9).

In addition to the efforts of high-level officials, there was growing public demand for reunification inside the German Democratic Republic. Press and politicians from the West met contacts with East German politicians and organizations while their visit to the East before reunification. The non-state-driven contacts permitted East Germans the opportunity to reflect on their government and publicly express the reflections (이상신, et al., 2017). For the GDR, this was a grave threat to state survival.

#### **The Federal Republic of Germany (West Germany: 1949- )**

By 1989, the Federal Republic of Germany was already enjoying high levels of political and social stability based on its wealthy economy. Employment was rising and unemployment was decreasing between 1989 and 1990. In 1989, the FRG was not in budgetary deficit for the first time in its history. Aware of serious economic difficulties in the East, the West German public – particularly, the younger generation – was not comfortable with the idea of reunification. Only 25 percent of

West Germans supporting reunification in 1986, people in the West grew increasingly pessimistic toward reunification (Henke, 2014, p. 6).

Despite public concern, the FRG leadership remained quite assured and consistent in their path to constructing reunification. West German Chancellor Helmut Kohl met with the Soviet President Mikhail Gorbachev in June 1989 and signed a joint declaration with regard to disarmament, cooperation, and people's rights and self-determination. This joint declaration was not limited to the bilateral relation between the FRG and the USSR; it was a declaration to end the East-West confrontation (McCartney, 1989).

In addition, Kohl introduced the 'Ten Point Program' in November 1989 to address actual steps that two Germany shall take toward reunification. Creating a market economy within GDR together with implementation of "monetary union and economic reform" was part of the program, which won considerable support from the people in the GDR (Ritter, 2013, p. 248). Kohl's guideline was indeed carried out in accordance with its original layout throughout the reunification process.

The FRG played significant role in democratizing the East and continued to exercise significant influence within the democratized GDR regime between 1989 and 1990 by financially supporting the bankrupt GDR. The GDR's exorbitant debt and cost to maintain its impellent social welfare policy caused much burden to the FRG. In response, Kohl and premieres of 11 Länder in the West negotiated to create the 'German Unity Fund' in May 1990 to cover the expenses for transformation through reorganization of budgetary plan, cutting their defense budget spent for West Berlin and border regions (Protzman, 1990).

Two days after the establishment of the 'German Unity Fund', the FRG and the GDR signed a treaty on establishing a monetary, economic, and social union, with which the FRG's D-Mark was introduced as the new currency for the GDR. The institutional changes in the GDR made it become more financially and politically reliant on the FRG that FRG supervised GDR's social welfare policies,

such as the development of a labor administration and reestablishment of social insurance scheme (Ritter, 2013, p. 258).

### **The German Democratic Republic (East Germany: 1949-1990)**

The German Democratic Republic was strictly governed by the Socialist Unity Party of Germany (SED) alone. Multiple parties that existed were satellite parties controlled by the SED. Compared to other eastern bloc countries, East Germany was intensively partisan and did not allow for political pluralism even in the realm of social welfare policies (Schmidt, 2013, pp. 24-26).

The longest serving General Secretary of the SED, Erich Honecker exercised unconstrained power until 1989. In 1989, the strongman and his party faced a serious political challenge within his party and East Germany primarily due to its economic failure. Considering the high level of education and training that East Germans received, its deficient system is responsible for low productivity and competitiveness of East German economy (Pohl, 1991, p. 17). Serious economic deterioration commonly experienced among communist regimes in Europe caused huge public dissatisfaction that led to political demonstration and opposition in the GDR. Setting social welfare as the source of its legitimacy, the GDR's economic collapse meant loss of legitimacy.

Honecker's deteriorating relationship with Gorbachev on the issue of 'perestroika' (restructuration) and 'glasnost' (openness) caused greater political instability and uncertainty within the German communist regime. While Gorbachev ordered political reform for communist regime survival, Honecker responded to increasing number of East Germans crossing the border to the West with more violent use of stringent measures such as Stasi (the communist secret police) and border guards to strengthen its control over borders (Henke, 2014, p. 6). Losing the Soviet umbrella meant loss of national security.

Personal exchanges and contacts stimulated East's admiration for West Germany's freedom and prosperity, which motivated East Germans to escape to the



west. Financially benefitting from its intimate relationship with West Germany, Hungary – which democratized itself early in 1989 – opened its border and allowed East Germans to escape to the West through Hungarian and Austrian borders (McAdams, 1993, p. 4).

Peaceful demonstration demanding for democracy, market economy, and human rights realization happened in Leipzig in September 1989. Their call for democracy soon added a slogan that calls for reunification: “Wir sind ein Volk” (“We are one people”) (Ritter, 2013, p. 168). Collective loss of legitimacy, national security, and control over public demonstrations forced Honecker to step down from power. As a replacement, Egon Krenz succeeded Honecker’s place for only two months, which shows weak GDR leadership between 1989 and 1990.

With increasing number of escapees, GDR unintendedly opened its border permanently without condition in November 1989. This unprepared opening of border proved fatal for the East German regime. In March 1990, East Germany held its first democratic election for Volkskammer (legislature of the GDR). 75 percent of the registered voters voted for parties that call for the GDR’s accession to the FRG (Mertes, 1994, p. 3). By the electoral result, it became clear that the people and political elites consented that reunification was the only last resort left for the GDR and its people to survive.

### **The Consensus**

Although reunification was abrupt with the fall of the Berlin Wall, the East and the West accorded to achieving gradual integration of the system for internal stability. The East and the West also agreed that the lingering German Question concerning unity and liberty after the Second World War must be solved for the sake of reunified German’s own stability and security (Randelzhofer, 1991; Frowein, 1992; Mertes, 1994).

There was no question nor controversy over who will lead the reunification. Proudly achieving stable modernization, people and leadership in the FRG asserted

the FRG's lead in the reunification process. The first free and popular election in the GDR came earlier than the reunification. The election of March 1990 clearly reflected East Germans' call for Christian Democratic Union (CDU)'s lead in the new GDR government. Germans from both side believed that CDU would be the answer for stable but fast reunification (Mertes, 1994; Henke, 2014, p. 11).

The principle of 'no experiment' has been considered as the recipe for stable modernization and development of West Germany. This principle continued to prevail along the reunification, which caused concentration of power to the western elites in both economic and political sphere (Mertes, 1994, pp. 15-18). As a matter of fact, the former communists were objects rather than subjects in the year of unification due to its political incompetence and unpreparedness and the Four Powers' conviction that they will not interrupt with West Germany's desire to make the East adjust to the West (Roesler, 1991, p. 172).

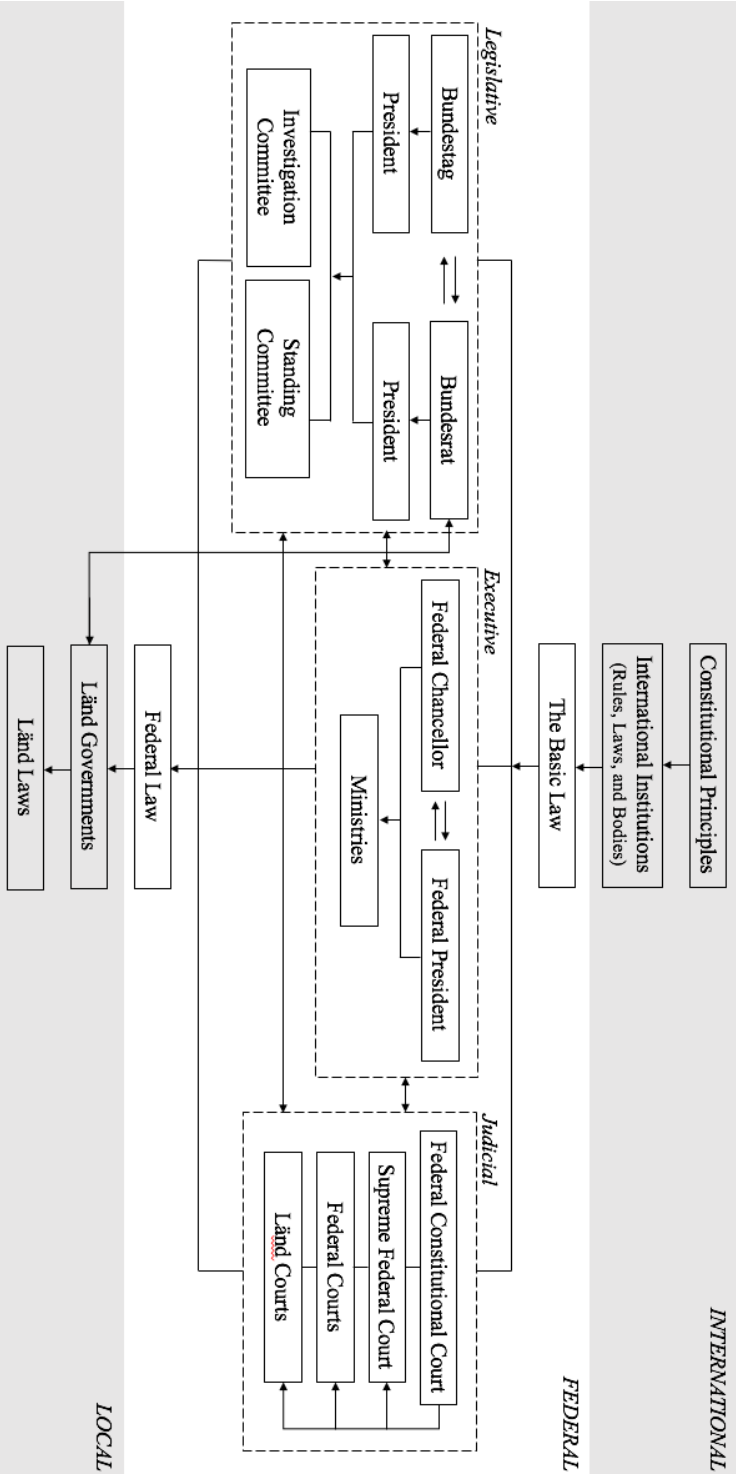
## 5.2 Game Players Playing on the New Game Board

The local adjustments observed from reunified Germany's structural configuration and carried out by actors within the configuration are analyzed through the lens of accountability.

### **Structural Configuration: The New Game Board**

The Federal Republic of Germany and the German Democratic Republic agreed to adopt FRG's Basic Law as the federal constitution of reunified Germany. Although there have been some revisions since 1949, there has not been significant change in general principles and structure of the state at the time of reunification.

In unifying their system, two Germany drafted and ratified the Unification Treaty (1990) enumerating specific agenda for creating unity at federal, state (Land), and individual level. No significant structural change in government is observed with the effect of the Unification Treaty of 1990.



**Figure 8.** Structural Configuration of German Government through the Lens of Accountability (reference: *The Basic Law, 1990*)

Mutual accountability observed in the German structure is not merely a system of containment. *Politics* of accountability is embedded in the simplified map of accountability relationships between and among multiple government bodies. The structure is dissected to uncover accountability networks that institutionally enables the observed mutuality.

*Feature 1. Consolidation of Constitutional Principles through the Three-Tier System*

Within the Basic Law, the German system can be divided into three tiers: international, federal, and state. The three tiers generally form hierarchical but bidirectional relationships (refer to **Figure 8**).

The inviolability of human dignity is constitutionally declared as the basis of *every* human community, which includes Germany itself. The first article of the Basic Law declares that basic rights written in the constitution legally binds laws on legislative, executive, and judicial administration.

Germany's sovereignty is limited by international institutions (bodies, rules, and laws), if necessary for international peace and human rights (*Art. 24* of the Basic Law). The general rules of international laws take precedence over federal laws, and are directly relevant to creating rights and duties of all habitants within German territory (*Art. 25*). These constitutional provisions were installed to prevent Germany from returning to the legacy of the Third Reich.

With the ratification of the Two-Plus-Four Agreement between unified Germany and the Four Allied Power, the four powers terminated their rights over entire Germany (*Art. 7*), which permitted Germany to enjoy full internal and external sovereignty. The change of legal status in international community did not affect Germany to abandon supremacy of international rules and principles in domestic legal order.

*Art. 19(2)* of the Basic Law designates basic rights as the *eternity* principle that can never be affected in its content by any law in all circumstances. In dealing with government criminality, the court placed international human rights principles

above East German laws, which justifies state's systematic violation of civil and political rights.

International human rights standard made its impact on domestic laws for the first time in the GDR border guard cases (Geiger, 1998, p. 541). In the relevant cases, the Federal Constitutional Court brought in the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the General Comment 6(16) of the Human Rights Committee in their ruling that the defendants' violation of the right to life and the right to movement cannot be justified with the GDR domestic law alone (Geiger, 1998). With this decision, Germany officially recognizes that they accept international laws as a supreme entity that can hold domestic laws of a sovereign state accountable.

The German Basic Law makes a practical approach to protecting basic rights and stipulates that anyone who abuses basic rights of others are considered to have voluntarily forfeited their own, thus punishable by relevant laws (*Art. 18*). The unification treaty confirms that the essence of basic rights can never be affected in any circumstance (*Art. 4(5)*). The constitutional principle of human rights is domestically consolidated through Germany's maintenance of hierarchical top-down relationship with international rules and norms.

The principle of the rule of law defines hierarchical legal order between federal and state institutions. In issuing administrative order, federal and Länder government are required to cite legal basis for issuing the order. GDR being a communist state that does not put much value in the rule of law, the treaty repeatedly requires compliance to the principle of the rule of law in approximately ten separate articles in addition to the preamble of the treaty, which takes up almost a quarter of the entire content.

While each Land has independent authority to legislate its own state constitution and state laws, each state law is valid *only if* its provisions are compatible with federal laws and constitutional principles established by the Basic

Law: respect for federal system of government, democratic order, the rule of law, and basic rights.

In an effort to not damage the principle of the rule of law, unified Germany agrees to accept continued validity of the GDR's laws (*Art. 9*), court decisions (*Art. 18*), and administrative decisions (*Art. 19*) after reunification, provided that they do not infringe federal laws and constitutional principles established by the FRG. Indeed, former East Germans' accusation against the GDR government were ruled based on GDR's rules, and FRG's federal laws intervened when the GDR does not provide appropriate protection for rights that are protected by the FRG's federal laws.

Supremacy of federal law is balanced through Länder governments' participation in the federal legislation process through the Bundesrat, the senate composed of three or more proportional representatives from each Land government. Further details on the role of bottom-up vertical relationship that is established between federal and state bodies are discussed in *Feature 5* within this chapter.

*Feature 2. Dissecting Mutuality: Transformative Network of Accountability among (Not One or Two, but) Three*

For a government body to make federal-level decisions, German system often requires consent and review from at least two other government bodies. The role and position of each government body *transforms* in accordance to the nature of the accountability observed within its system of governance: 1) deterring imperial head of government, 2) deterring imperial house of representatives, and 3) deterring fiscal accountability to safeguard accountability network.

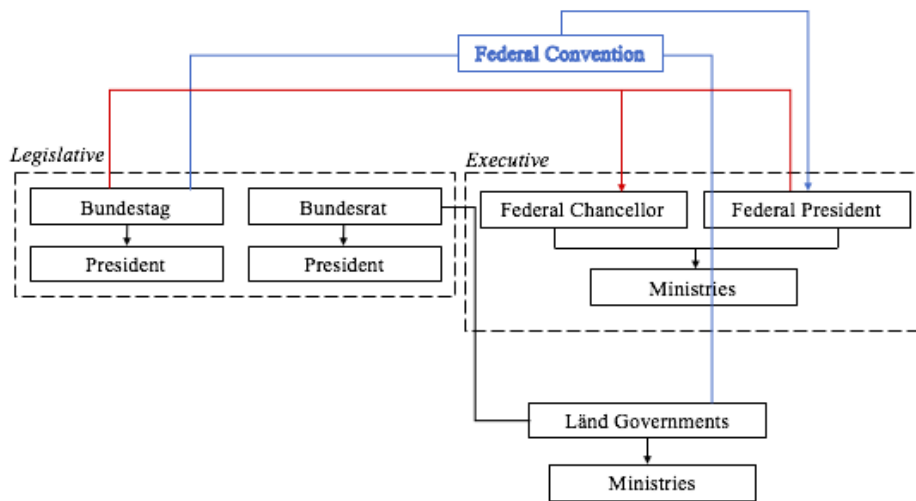
Accountability within government network is composed of the power of appointment, the power of dissolution, and administrative authorities distributed to each body. Accountability network inside the government is assumed based on the interactions that government bodies collectively make using their power for their institutional survival within the government structure.

Systematically, it is difficult for one government body to abuse its power to target one particular institution for political retaliation under Germany's structure of governance, because it is difficult to clearly distinguish its ally from foe, and vice versa.

[Nature 1] Deterrence of Imperial Head of Government

Experiencing Third Reich under a democratically elected head of state and government, West Germany has been particularly conscious about deterring emergence of another Adolf Hitler. The permanently constitutional principles set in the Basic Law – inviolability of democratic governance, human rights, the rule of law, and the federal state – clearly reveals that the quintessence of West German state is a historical product. Experiencing authoritarianism under communist regime after the fall of the Third Reich, East Germans desired West Germany's federal system, which institutionally decentralized the executive power.

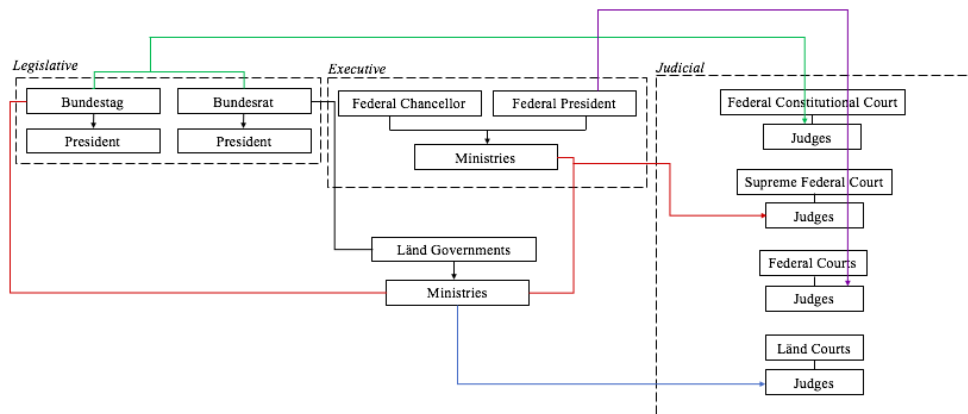




**Figure 9.** Appointment of the Executive Bodies (reference: *The Basic Law, 1990*)

- The Federal Chancellor is appointed by the nomination of the Federal President and election by the Bundestag (*Art. 63*).
- The Federal President is elected through the Federal Convention that is composed of equal number of members from the Bundestag and the Länder governments (*Art. 54*).

The Federal Chancellor, the strongest executive body, is restricted from appointing government bodies other than his deputies and federal ministers with the consent of the Federal President. In fact, the two leading federal executive powers - Federal Chancellor and the Federal President – can exercise power only when the Bundestag (the House of Representatives) and Länder governments delegate executive power to them (*Arts. 63 and 54*).



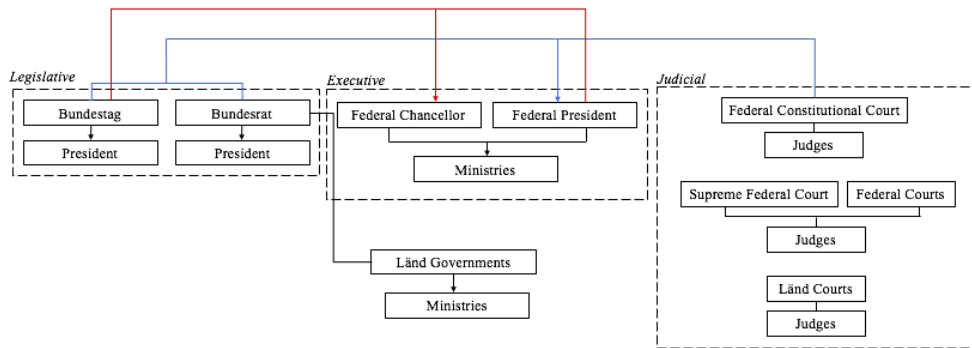
**Figure 10.** Appointment of Judges (reference: *The Basic Law, 1990*)

- Judges of the Federal Constitutional Court are half elected by the Bundestag and the other half by the Bundesrat (*Art. 94*).
- Judges of the Supreme Federal Court are selected jointly by the Federal Minister of Justice, Länder Justice Ministers, and an equal number of members from the Bundestag (*Art. 95*).
- Judges of the Federal Courts are appointed by the Federal President (*Art. 60*).
- Judges of the Länder Courts are selected and appointed by each Länder government (*Art. 98*).

In containing the Federal Chancellor, the Basic Law disperses executive power and control across the German federation. It entrusts some appointing power to Länder governments so that federal authorities cannot be the source of state power. Representatively, local executive powers engage (and not merely participate) in selecting federal judges for the Supreme Federal Court and local judges at Länder courts. The authority to appoint judges is noteworthy in the German system, which operates on the basis of the rule of law principle. Judiciary being the only constitutional organ that can interpret the constitution and laws, it exercises considerable power over the executive and the legislative powers at all levels of society.

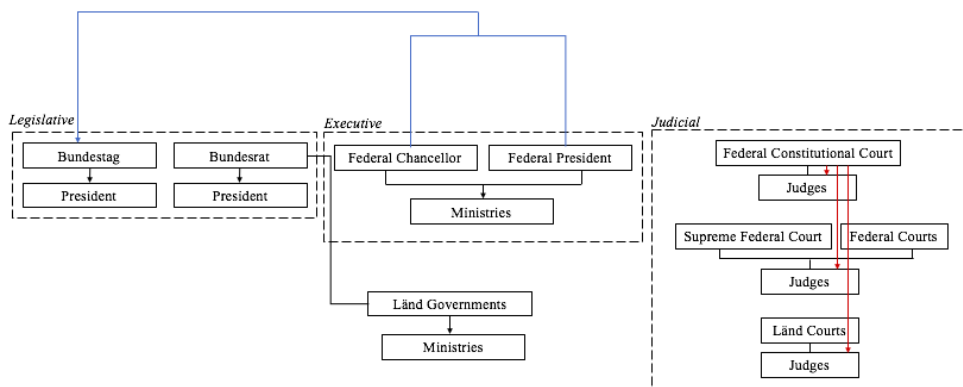
Since the Federal Ministry of Justice is directly accountable to the Federal Chancellor, its participation in appointing federal judges of the Supreme Federal

Court may be counted as having the power. However, the Federal Ministry of Justice shares only a quarter of the power (*Art. 95(3)*).



**Figure 11.** Impeachment of the Executive Bodies (reference: *The Basic Law, 1990*)

- The Federal Chancellor is dismissed with the request from the Bundestag and the Federal President's consent with the Bundestag's election of a new Federal Chancellor (*Art. 67*).
- The Federal President can be impeached for violation of the Basic Law by the joint motion of the Bundestag and the Bundesrat before the Federal Constitutional Court (*Art. 61*).



**Figure 12.** Dissolution/Impeachment of the Legislative and the Judicial Bodies (reference: *The Basic Law, 1990*)

- The Bundestag can be dissolved at the request of the Federal Chancellor to the Federal President. Dissolution ends when the Bundestag elects another Federal Chancellor (*Art. 68*).

- Judges of the Federal Constitutional Court, the Federal Courts, and the Länder Courts can only be dismissed by the adjudication of the Federal Constitutional Court are impeached only through the adjudication of the Federal Constitutional Court (*Art. 98*).

To disperse state power, government bodies – except for the Federal President – cannot unilaterally appoint or dissolve other government body. In **Figure 9, 10, 11 & 12**, at least three government bodies share the appointing and dissolving power. The number of participants in the process is significant. If a single body is given the power to appoint and dissolve another body, the two related bodies can easily set its target to achieve certain political goals for institutional survival.

As another dispersion effort, no two or three government bodies – to the exclusion of the Federal Chancellor – are both appointers and dissolvers to another body. If one body holds both powers, it would create vertical top-down relationship, in which one government body can always control the other. Additionally, no multiple bodies are dissolver to each other, which makes inter-body political retaliation difficult, but inter-institutional collaboration not much difficult.

#### [Nature 2] Deterrence of *Imperial* House of Representatives

For a rule-of-law state, legislation is significant in that courts make judicial judgement based on the laws legislated by the legislature. It is ultimately the legislature that creates standard procedures that govern the state, society, and people's daily lives. Given the significance of the task and authority, extra-parliamentary accountability in addition to parliamentary accountability within the legislature has been highlighted in the literature on parliamentary studies.

Germany being the rule-of-law state, the Basic Law endows the legislature considerable power over legislation. Even though the federal government can introduce bills, the bills must go through series of legislative reviews that involve rigorous political interaction between the Bundestag and the Bundestag as it is demonstrated in **Figure 13** below. Consequently, each bill must always be approved

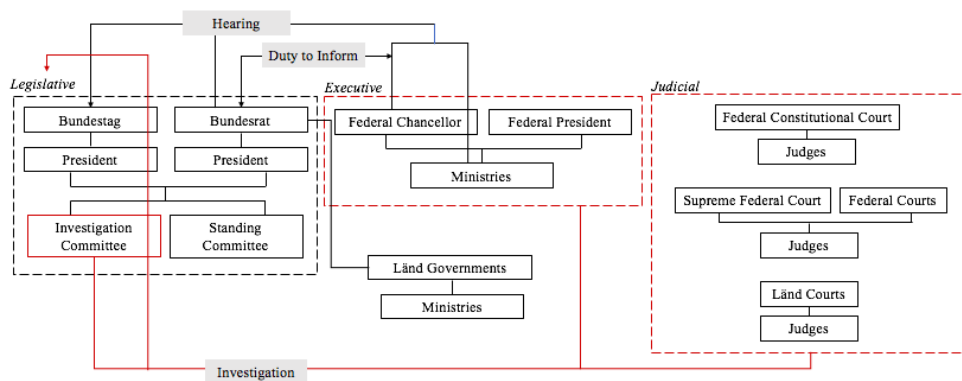
by the Bundesrat for it to become a federal law. Even the exclusive rights are carefully regulated through internal horizontal accountability between the Bundestag and the Bundesrat.

Introduction of Bills	Review	Submission	Bill Adopted as Federal Law by the Bundestag	Requirement for Review	Review	Outcome of Review	Bundestag's Response to the Outcome	Bundesrat's Response	Status of the Bill
Federal Government  (Federal Chancellor + Federal Ministries)	Bundesrat	Bundestag		No	Bundesrat	Approve			Federal Law
				Veto		Reject	Accept		
						New Decision	Reject		
Bundestag		Bundesrat		Yes	Joint Committee  (Bundestag + Bundesrat)	Consent			Federal Law
Bundesrat	Federal Government  (Federal Chancellor + Federal Ministries)					Veto	Reject	Accept	
							New Decision	Reject	

**Figure 13.** Federal Legislative Process (reference: *The Basic Law, 1990*)

In addition, The Bundestag can exercise self-defense by drawing up its own Rules of Procedure (*Art. 40(1)*), controlling its own police power within the institution, and prohibiting search or seizure (*Art. 40(2)*). Deputies of the Bundestag remain immune from prosecution until the Bundestag permits restriction on the deputies' rights and freedoms stated under *Art. 46*. While autonomy is respected, the legislative tasks that the Bundestag must carry out is "limited by the constitution, the executive, and the administration of justice by legislation and the law" (*Art. 24(3)*).

Evans provides a limited definition of extra-parliamentary accountability. He argues that the role of extra-parliamentary accountability works only to the extent that the public is exposed to sufficient information that would incentive voters to make certain decision in the next election (Evans 1999, 88). In addition to the limited definition, unconstrained definition that calls for outside (government) agency's intervention into disciplining the parliament is found (Bhanu 2007-2008, 23).



**Figure 14.** Accountability to the Legislature (reference: *The Basic Law, 1990*)

Accountability apparatus that follows the wider definition of extra-parliamentary accountability exists within German system of governance as demonstrated in **Figure 14**. The legislature has its own investigation committee to hold itself accountable for misbehavior. In carrying out the task, the Basic Law requires the courts in the judiciary and administrative offices in the executive to render assistance for the Investigation Committee (*Art. 44(3)*). Although the committee's decisions are not subject to judicial review by the court, the court can independently "evaluate and judge the facts on which the investigation is based" (*Art. 44(4)*).

This horizontal mechanism that involves all three branches of government could be believed to be weak. Nonetheless, the accountability regime's invitation to the court for a separate evaluation on the case at issue can stimulate debate outside the House, which is likely to place the legislature under reputational accountability – a double-edged sword for the House. This effect corresponds to the expectation put forth by the narrow definition of extra-parliamentary accountability.

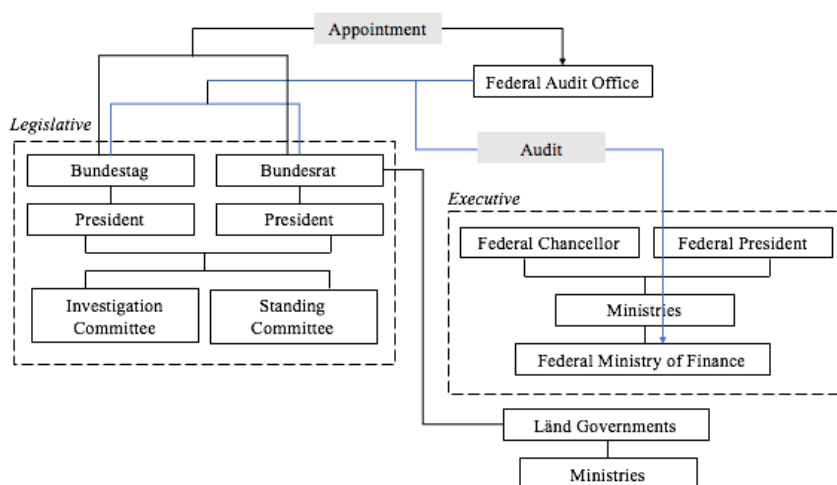
In addition to the accountability attached to investigation process, the Bundestag is mandated to always allow the Bundesrat and the Federal Government (the Federal Chancellor and the Federal Ministries) to access all meetings held by the Bundestag and its committees (*Art. 43(2)*). Inter-branch horizontal accountability

is enabled through sharing of information, which also sets the ground for transparent governance within the legislature.

#### [Nature 3] Deterrence of Vertical-Downward Fiscal Accountability to Safeguard Accountability Network

As it is frequently observed in international development cooperation, recipient countries that are fiscally accountable to donor countries tend to be strategically more responsive to donor countries' interests to continue receiving aid. Such imbalanced relationship can also be created within the government, and this relationship paralyzes institutional independency that is carefully arranged by the constitution to sustain checks and balances. The effect of fiscal accountability in governance is especially conspicuous at a time of organizational change and economic transformation.

Since 1989, West Germany's Federal Ministry of Finance has been given significant task in deciding the amount of fiscal support for the bankrupt East Germany and organizing the corresponding amount. Länder ministries of finance being agents of the Federal Ministry of Finance (*Art. 108 (3)* of the Basic Law), the Federal Government was given the largest power in executing reunification policies at federal and state level.



**Figure 15.** Federal Financial Management (reference: *The Basic Law, 1990*)

Federal Audit Office, an independent government body whose members are appointed by the Bundestag and the Bundesrat, is an accountability institution established by the Basic Law that contains the Federal Ministry of Finance's budgetary power. The institution's role is pivotal for systematically administering Federal Ministry of Finance's supervision of their agents in the Länd governments.

In the context of state integration, government programs become more complex and the role of the Federal Audit Office becomes more important, for the accountability institution provides information necessary for the public and government officials themselves to decide on their confidence to the government as the ultimate principal (Posner and Shahan, 2014, 488). The institution makes assessment on financial activities of each government organ (i.e. federal ministries) and submits collected assessment to the Federal Government, the Bundestag, and the Bundesrat. For neutral and transparent assessment, the members of the Federal Audit are granted judicial independence (*Art. 114 (2)*) and not expected to express political opinion or make judgements on the legislature or the federal ministries' policies (Gray *et al.* 1993; Posner and Shahan, 2014).



Controversy remains on the unclear separation of boundary between financial and political decisions. Kisker (1989) argues that certain financial decisions at the legislature are designed for certain political goal. He explains that auditory judgements on the politics-driven decisions automatically make the decisions a political act (Gray *et al.*, 1993). Indeed, multiple empirical cases provided by Czasche-Meseke (1995) show that the Office's reports and publications produced considerable political response both within and outside the government. Moreover, the Federal Audit Office makes specific suggestions to individual authorities within the Parliament and the Federal Government in some cases.

Despite the concern and facts with regard to increasing political influence exercised by the judicially independent entity, the role of the Federal Audit Office is vital in allowing the Parliament and the Federal Government to oversee their own and each other's financial management, which would be reflected in their future political decisions and interactions. All of these are connected to reach the process of accountability *within* the government.

### *Feature 3. Federal President, the Power Balancer*

Although Federal President conducts executive role within the government, the Basic Law clearly states that the Federal President is not a member of the Government or the legislature at both federal and state level (*Art. 55(1)*). As an independent executive body, Federal President is expected to fulfill administrative roles that need to be distanced from the game of politics within the central government. For example, the Federal President shares power to dismiss the Federal Chancellor and dissolve the Bundestag, each of which is the leading government body in the executive and the legislative branch (*Art. 67(1)* and *68(1)*) (refer to **Figure 11 & 12**). Also, it is the only government body that can unilaterally appoint federal judges as prescribed in *Art. 59* of the Basic Law.

Institutional arrangement that symbolizes the Federal President as a neutral body is also found in the appointment process in **Figure 9 & 10**. Federal President is appointed by the Federal Convention, an independent and temporary constitutional body that is built only for appointing the Federal President. The Federal Convention consists of members of the Bundestag and an equal number of members from the Länder governments. Collectively, the Federal Convention is composed of democratically elected representatives. Although Federal Convention is likely to turn out to be another institution that represents the majority power, its political orientation is subject to change.

Another institutional arrangement that constitutionally incentivizes the Federal President to stay distanced from the threat of political game is found in the impeachment process. For impeachment of the Federal President, approval from two-thirds of the members of each the Bundestag and the Bundesrat and decision from the Federal Constitutional Court are required. It is the only case that requires the Federal Constitutional Court's intervention in dismissal of a government body. As it is the case for judges, the Federal President is accountable only to constitutional principles and the law.

Indeed, the independent power-balancing position consigned by the Basic Law has facilitated the sitting Federal President's opposition to the Federal Chancellor who comes from the same party most of the time. Helms argues that intense 'conflict-ridden partnership' was observed even when the two executive heads were from the same party (Helms, 1998, 60-62). The constitutionally independent power balancer's political position was determined by the incumbent's personal characters, political environment, and public demand rather than the seat itself.

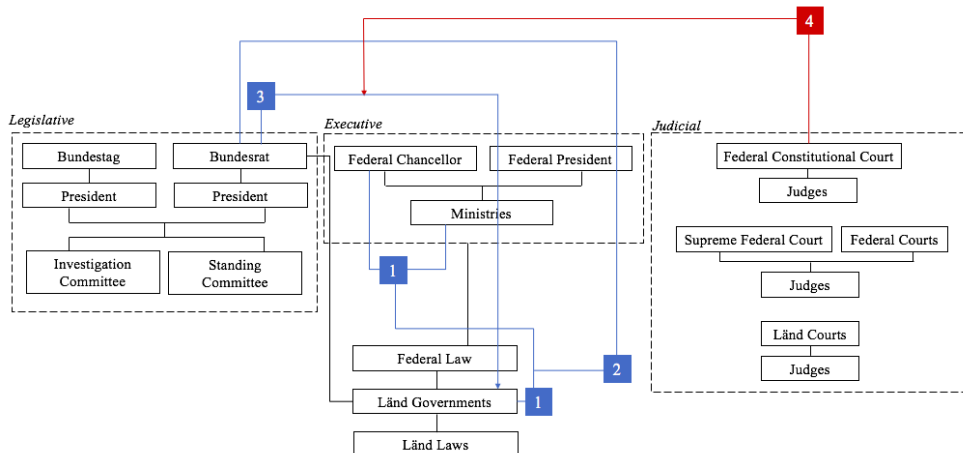
All these accountability regimes that protect the constitutional power balancer will, however, not make the Federal President the center of power, because the president's political influence is limited to participation in political decision-making processes. Key executive and legislative powers are concentrated to the

Federal Chancellor and the Parliament in ordinary conditions and in emergency conditions.

*Feature 4. Rigidly Top-down Vertical Legal and Judicial Order*

Law governs the entire German system. As the only law-executing body in the government, no other branch of government can hold the judiciary accountable. This normative principle is materialized and institutionalized through appointing process visualized in **Figure 9 & 10**. Judges at four different levels of court system are appointed by different combination of appointers, despite their common membership to the judiciary. In the case of institutional competition between the executive and the legislative powers, this system of appointment prevents the entire judiciary from being accountable to a single branch of government. In addition, judges can be dismissed only through the decisions from the Federal Constitutional Court, which is itself a judicial body, and full salary is constitutionally guaranteed for all judges to eliminate the possibility of financial accountability working against the judiciary (*Art. 97(2)*).

The principle of the rule of law and constitutional supremacy made the new state prioritize settling the issue with regard to territory, for it is directly related to the issue of jurisdiction – a necessary condition for implementing the rule of law. Provisions on territorial unity and rearrangement comes first in the Unification Treaty and the Two-Plus-Four Agreement. Territorial settlement through international agreements exempted the reunified Germany from disputes that were in place at that time and could potentially weaken legitimacy and sovereignty of the new federal state in the future. Moreover, it enabled the federal government to hold the responsible Land government accountable for its decisions and actions that violate federal laws and policies.



**Figure 16.** Federal Administration of Laws (reference: *The Basic Law, 1990*)

The federal government is strict in executing federal laws at all levels of government. This argument can be driven from the fact that all three branches of government are involved in the execution of federal laws. According to *Art. 84(4)* of the Basic Law, if either the Land or the Federal Government's application for review, the Bundesrat makes decision, and its decision can be challenged by the Federal Constitutional Court (demonstrated in **Figure 16**). No matter how interconnected and intricate the decision process would be, the word from the judiciary is the final remark for any administrative process that involves judicial review.

Similar to the Federal President, courts and judges function as the 'balancer' who keeps order not only within the government but throughout the reunified society in general. To maintain its role, courts – unlike the Federal President – must secure its supreme hierarchy in legal and judicial order. In the absence of a shared group of political elites, adherence to the judicial system created a political ground for the 'one state two nation' Germany.

Reliance on the judicial system began quite early – within six months after the official declaration of reunification. In *1 BvR 1341/90* case, former East Germans

filed complaints to the Federal Constitutional Court regarding constitutionality of Art. 13 of the Unification Treaty.<sup>16</sup> In 1991, a former civil servant of the GDR who lost her job due to winding up of her workplace (public institution) argued that the provision violated her fundamental right to decide her own occupation that is promised by the Basic Law. In its judgement, the court give legal and social explanations that led to final decision. The court explains that the GDR does not legally promise for permanent employment for the civil servants and that institutions would have been abolished due to GDR's bankruptcy even if the former communist regime had continued to exist.

In addition to the specific case, a considerable number of constitutional complaints were submitted by former East German civil servants against the treaty, federal authorities, and Länder governments. This signifies that a system of judicial supremacy was trusted and accepted by the general German public as a protection regime institutionalized for them.

#### *Feature 5. Top-down Vertical Comes to Term with Bottom-up Vertical*

Basic Law clearly defines that Länder are agents who are delegated administrative authorities over Länder by the Federal Government. While the Federal Government is given the constitutional right to give orders to Länder with the consent of the Bundesrat (Art. 32), the Basic Law and the Unification Treaty demand federal- Länder partnership in both federal and Länder administration.

Art. 35(1) of the Basic Law prescribes that all federal and Land authorities have duty to mutually provide legal and official assistance in carrying out administrative works. In case federal compulsion is constitutionally allowed, the Federal Government is required to receive consent from the Bundesrat, the house

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<sup>16</sup> Article 13(2) gives federal authorities the right to decide on transfer and winding-up of former GDR administrative institutions. Because GDR enforced full employment for everyone, public service was overstaffed and unproductive. As a result, federal authorities of the reunified state – who were incumbents of the FRG since before the reunification – decides to wind up a number of public institutions as a part of the effort to recover administrative efficiency.

filled with Länder representatives. In addition, Länder participation is required for future constitutional amendments (*Art. 5* of the Unification Treaty). By requiring Länder's involvement, the Basic Law institutionalized deters the Federal Government's infringement of Länder authorities that are also promised by the constitution.

The federal government's right exercise top-down vertical accountability against the Länder is also regulated through the Basic Law's authorization of the administrative authorities of the Länder. *Art. 32(2)* requires the federal authorities to inform and consult with Länder sufficiently early before making final decision, if the content of the treaties is expected to affect the Länder. The Unification Treaty not limiting the provision, the constitutional provision remains to be in effect.

With the signing of the Unification Treaty, considerable amount of Länder governments' local autonomy is restricted by the federal government for the purpose of carrying out adjustments necessary for equalization between eastern and western Länder and supervise the GDR to adapt to the new system in the interim. Transfer of authority is particularly evident in arbitration of tax and education system. In the relevant provisions, specific termination dates are stated. This indicates that transfer of authority is a temporary measure designed only for the interim and not as an intermediate stage for the Federal Government's expansion of power.

Areas that do not require administrative harmony are under the full responsibility of the Länder. Representatively, the Unification Treaty stipulates that responsibility over culture management is delegated to each Land and Land authorities not by the Federal Government but directly by the Basic Law (*Art. 35(3)*). Considering politicization of culture in former communist states in Eastern Europe and in the Third Reich, putting culture management in the hands of each Land signifies that the *federal* system is fully respected and in pursuit in the new state.

In addition, continuation of the 'Rundfunk der DDR' and the 'Deutscher Fernsehfunk' (the GDR's broadcasting enterprises) under joint and direct supervision of the former East German Länder and its self-financing system give the

Länder to exercise bottom-up vertical force against federal authorities through media. This measure implies that the former eastern Länder are recognized as an agent of the German federation that shall receive due respect from the federation.

### **Composition: The Players**

#### *Feature 1. West's Monopolization of State Power*

A move for political integration is found before complete integration of the East and the West. West German elites financed newly emerging parties in the East. Birth of the Christian Democratic Union (CDU) – which is often the majority party in the West – in the East is the very product of western elite's political influence in the East. The CDU, German Social Union (DSU), and the Democratically Awakening (DA) formed a coalition that replaced the SED by winning 48% of the entire seats in the Volkskammer (East German Parliament) in East Germany's first democratic parliamentary election in March 1990. In the same election, the SED's political heir, the Party of Democratic Socialism (PDS) won 16.4% of the seat (Inter-Parliamentary Union: German Democratic Republic, Election Held in 1990). The result from the first election (for which 93.38 % of the eligible voters participated) displayed possibility for stable and complete political integration without leaving one side behind the stage after reunification.

With the accession of the GDR to the FRG due to political demise of the GDR leadership, the CDU of the East and West merged. But the merger did not mean that there was free exchange between incumbent elites in the FRG and former elites of the GDR (Mertes, 1994, pp. 15-18). Both the East and the West believed that the East should learn from the West. Until the first all-German general election of the new state in December 1990, the elected members of the Volkskammer merely participated as observers in the Bundestag meetings (Inter-Parliamentary Union: German Democratic Republic, Election Held in 1990).

Unsurprisingly, the West monopolized state power with the first all-German general election that was held in December 1990, two months after the reunification.

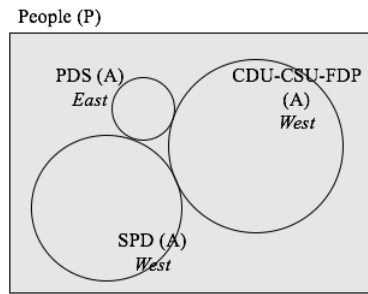
A coalition of the CDU, Christian Social Union (CSU), and the Free Democratic Party (FDP) each obtained 36.7%, 7.1%, and 11% of entire votes, respectively (while the PDS gained only 2.4%) (Inter-Parliamentary Union: Germany, Election Held in 1990). The coalition's victory in the historic election and Federal Chancellor Helmut Kohl's reelection in January 1991 showed that the public was content with the CDU's reunification agenda and its leadership in executing the agenda.

By 1993 dissatisfaction toward the CDU and Kohl's leadership extended from both western and eastern public to high level executives. The German population, especially the westerners, were highly dissatisfied with their economy. The easterners – who had high expectation on making their voice heard in the new democratic system – felt more alienated from politics in the reunified state (Anderson & Zelle, 1995, p. 13).

Despite lower public support for the coalition headed by the CDU due to economic difficulties after the reunification, Kohl was reelected as the Chancellor by the Parliament in 1994. Perceiving the threat of losing power, the CDU decides to conduct the (unusual) “Chancellor Campaign” that personalizes the CDU through the longest sitting Federal Chancellor who designed and has been implementing state integration since 1982 (*Ibid.*, p. 16-17). This strategy turned out very successful.

In the same 1994 parliamentary election, the PDS earned more seats in the parliament with increased public support (Inter-Parliamentary Union: Germany, Election Held in 1994). But still winning less than 5% of the entire vote, former communist regime's elites were consigned to the periphery of state affairs.





**Figure 17.** Western Political Parties' Monopolization of Politics

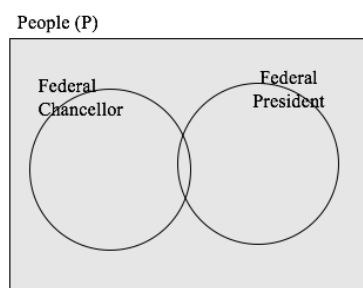
The western-origin coalition could be politically contested only by the Social Democratic Party (SPD) – another western-origin political party – in the first two consecutive parliamentary elections in 1990 and 1994.<sup>17</sup> The system offered more opportunity for western elites to extend their political stage to the East. Absorption, rather than integration, proceeded, and this distressed not only East Germans but also incumbents who valued harmony between the East and the West.

The very lack of homogeneous elite group in reunified Germany brought the emergence of 'Moralpolitik' instead of 'Realpolitik' (Mertes, 1994, pp. 15-18) to meet the common ground of all Germans. The transformation in the nature of German politics was an outcome of the reunified nation's strong desire for social integration and harmony: normative principles, rather than power, determines political development (Metres, 1994; Langenbacher, 2005). 'Moralpolitik' includes the "disdaining repression, forstering transparent discussion, acknowledging responsibility symbolically and materially, emphasizing human rights, etc." (Langenbacher, 2005, p. 125). The listed components of 'Moralpolitik' tie in with the constitutional principles set forth by the Basic Law. In effect, the Basic Law enjoyed greater leverage as a unifying force for all Germans; and Germans had good enough incentive to maintain the system implanted by the Basic Law.

<sup>17</sup> The SPD won 33.5% of the entire vote in 1990 and 36.4% in 1994 (Inter-Parliamentary Union: Germany, Election Held in 1990 & 1994).

*Feature 2. The Double Headed Executive: Separation of Sword and Shield within the Executive*

The Federal Chancellor and the Federal President achieved impressive harmony within the executive by separating their weapons – one holding the sword and the other holding shield. They utilized the institutional arrangement based on their individual competence and political relations with one another.



**Figure 18.** Coexistence of the Executive Heads

Federal presidents effectively used its constitutionally independent and supposedly neutral position in the government in dealing with the most sensitive issue for the country. Richard von Weizsäcker (1984-1994) and Roman Herzog (1994-1999) publicly acknowledged Germany's Nazi past during their public speech at home and abroad. This contributed to the development of mature and democratic political culture and creation of shared political consensus at home (Helms, 1998, 64). The federal presidents also contributed to easing of the German Question that have been consistently raised by its allies and regional neighbors. Collectively, stability was achieved.

Weizsäcker was the most politically active federal president in Germany history. He made constitutional but bold intervention in German politics and did not avoid engaging in political tensions with political elites, which some perceived as trespassing of Chancellor's constitutional authority (Abromeit, 1994, p. 17). Helms,

however, analyzes that criticisms against the politically active federal president turned out beneficial for Kohl. In contrast to Weizsäcker, Kohl concentrated on publicly acknowledging and sharing public hardships and grievances that stemmed from reunification (Helms, 1998, p. 61). When President Weizsäcker decided to with the sword for reunification, Chancellor Kohl chose to use shield to protect his government, which protected his leadership and cabinet. This helped Kohl receive more support from the German public and his inner circle in carrying out policies for reunification.

Herzog is characterized as a less politically aggressive figure compared to Weizsäcker. Nonetheless, he managed to touch upon many sensitive and important political and social issues tied to reunified Germany through his public speech (Helms, 1998, p. 62). His moderate personality balanced well with Kohl's time as a proactive executive head who is in dire need of solving the serious unemployment crisis through general economic recovery since 1994. The Federal President was very cautious about creating criticism against presidential leadership inside and outside the government. In this new president-chancellor relationship, President Herzog armed himself with a shield to deal with social issues (i.e. unemployment and the Nazi past), while Chancellor Kohl decides to take sword to take proactive and reactive measures to German economic crisis and political threats posed against his political party.

Intended or not, clear division in the executive task between the presidency and chancellorship provided public relief and social security for Germans. In distribution of tasks, Kohl and the two presidents were perfectly cognizant of their political boundaries determined by the Basic Law.

### *Feature 3. Agentification of the New Agents from the East*

The general organization and order of the Unification Treaty reveals administrative priorities shared between the integrating states. A lengthy and detailed provision on establishment of a financial system for the newly reunified state follows immediately after the first two issues on territorial realignment and amendments to the Basic Law resulting from accession. Reorganization of a new financial system was regarded as one of the most imminent issues for federal and democratic governance by the rule of law; and the very effort led to *agentification* of the new agents in the East – the five former GDR Länder.

With the accession, the federal Special Fund of the new state assumes liability to debts incurred by the GDR (*Art. 23* of the Unification Treaty). By purchasing the debt titles of the GDR, the former GDR Länder are indebted and thus accountable primarily to the federation.

In addition, tax system enforced by the Unification Treaty reinforces the *agentification*. Article 7 of the Unification Treaty calls for federal government's proactive intervention in Länder economy for equalization. Income tax revenue is distributed by the number of inhabitants and not by the amount paid by inhabitants of each Land. 85 percent of the German Unity Fund (which is expropriated from the FRG's budget) is appropriated for recovering former GDR Länder. With the provisions, the former GDR is formally bound within the structure of West Germany.

Concurrently, *Art. 7(3)* of the treaty orders that the existing tax system persist to operate within the former GDR Länder. The existing system (prescribed in the Basic Law) allows for local autonomy in planning, collecting, and managing receipt from taxes (*Art. 106* and *108*) and budget (*Art. 109*). Tax and budget management that involve serious inequality among Länder (*Art. 107(2)*), federal administration by federal statute (*Arts. 106-109*), and economic activities within the framework of European Communities (*Art. 108(2)*) are subject to federal intervention and supervision.

Although some early and temporary dependence on the principal strengthens patronage relationship between the federal government and the five eastern Länder government, agentification in governance reduces administrative uncertainty within the five eastern Länder and federal level, which impedes administrative integration of the contracting states.

### 5.3 Consolidation of the Old

For Germany, the principal-agent relationship between the contracting parties (the GDR and the FRG) and the federation and the Länder are clearly defined and understood by both the principal and the agent(s). Even though the structural configuration of the government became increasingly hierarchical with adoption of the Unification Treaty, the structural change was set only for an interim period that is fixed to less than 5 years.

West Germany's monopoly of power in German society under democracy caused further alienation of East Germans from politics. GDR's political elites were evacuated from politics and civil servants who sustained the communist regime were removed, all of which caused public grievance. In response, the new state's leadership and politicians managed to set the tone for a common political ground referred to as 'Moralpolitik' that united the reunited nation's political goal.

With the transformation of political nature, the constitutional principles set by the constitution became more deeply enrooted in German politics, contributing to consolidation of (West) Germany's federal and democratic system of governance based upon the complicated but concrete network of accountability.

## 6. Discussions and Conclusion

After all, state integration involves instability that stems from multi-dimensional transformation. In the process, common threats and response to the threats were observed from Yemen and Germany – the two countries that stand at the far end of cultural spectrum against each other. The pattern of similarity raises questions on Putnam (1993)'s argument that cultural factors are pivotal determinants of institutional performance.

The story gets more interesting as similar patterns observed in the two reunified states' undertaking of reunification reach different outcome in the level of civil and political rights. Giddens (1984)'s argument that reflexivity between structure and agents determines future development of structures, agents, and their reflexivity could provide better explanation for the puzzling phenomenon.

### 6.1 The Common Scenario in State Integration

#### *Demand for Stability*

For both Yemen and Germany, stability was always the major issue at stake. But they took different approach to stability. But they were driven by different political strategies toward pursuing stability. Perceivably, the different strategies formulated actors' decisions throughout the process.

For Yemen, eliminating potential source of secession was the path to stability. To incentivize the South Yemen leadership to maintain Yemeni unification, share of power through horizontal partnership was adopted. The executive role was divided into two, one occupied by the head from each side. But ambiguity embedded in setting constitutional boundaries between the head of government and the head of state caused the two heads to engage in conflict in their struggle for more power.

Germany perceived the East's complete absorption into the West as the path to stability. The West's constitution remained to be the foundation of the new state, and agreements were made to assist East Germany's adaptation to the system. The

GDR's law, government, leadership, and civil servants were publicly held accountable first to their own constitution and legal orders, and second to the western elites.

### *Centralization of Political Power to a Single Personality*

In both Yemen and Germany, centralization of political power to a single politically influential figure was derived by incumbent political elites: President Saleh from the North in Yemen and Chancellor Kohl from the West in Germany. Centralization of power, however, generated different structural configuration in governance structure due to different accountability network embedded within the original structural model.

Yemen and Germany aimed for double-headed executive for different account. For Yemen, it was to equally distribute state power between the North and the South. Concentration on *sharing* of state power led Yemen to forfeit *dividing* the boundary of influence between the heads. The ambiguity in hierarchy at central level encouraged the dissatisfied South to convene southern elites and tribal elites to partake in secession movement. The northern elites responded to the South's move by exploiting weakly institutionalized judiciary, detaining and executing political opponents secretly within permitted legal boundary set and progressively transformed by the President (a self-made figure who is designed to be immune from any sort of accountability).

For Germany, the executive was divided to deter (another) emergence of imperial head of state/government. With clear boundary set between the two executive heads – Chancellor positioned higher in the hierarchy of the executive – the Federal Chancellor and the Federal President could negotiate and complement one another in seeking complete and stable reunification. Unlike the presidency in Yemen, federal chancellorship and presidency are tied to multiple accountability instruments with multi-level institutions by the constitution in carrying out executive role.

### *Back to the Old System*

The process of local adjustment led the newly integrated states to return to and maintain the old system of governance. Yemen returned to North Yemen's authoritarian system of governance and Germany proceeded with West Germany's federal democratic system of governance.

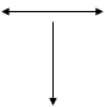
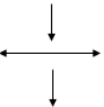






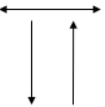


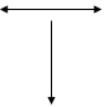




Although no definite answer can be provided to the question of why the old system remains so resilient, a possible explanation can be supplied through the lens of accountability. To simply put, Yemen did not have accountability institutions that could prevent actors from returning to constructing authoritarian system of governance with which they are more familiar and easy to follow. In contrast, multi-level accountability network and political elites' good acquaintance with the mechanism institutionally incentivized political elites to maintain and consolidate the West German system for control of state power and harmonization.

The significance of institutionalization of accountability regime is found in German case as well. In preparing for reunification, the Unification Treaty decides to temporarily put off the issue of refugees until they set the ground for administrative integration. According to the Amnesty International Report published for year 1994, increasing number of police ill-treatment of foreign nationals is reported. Foreign nationals were not appropriately protected by racist attacks and detained under anti-terrorist legislation.



## 6.2 Transformation of Accountability Network

**Table 1** summarizes the transformation of accountability network generated in the early phase of state integration between 1990 and 1994 (Yemen) / 1995 (Germany). The structural pattern can provide some insights on how structure incentivize actors to take certain actions in the interim period, and how the political decisions and actions build up to transformation of structure that seem to have influenced civil and political rights.

	Gov. Level	<i>Original Model</i>		Pol. Elites	<i>Transformed Model</i>		Gov. Level
		Structure	Actors		Actors	Structure	
Yemen	Central			North			Central
	Local			South			Local
Germany	Federal			West			Federal
	Land			East			Land

**Table 1.** Transformation of Accountability Networks<sup>18</sup>

### Yemen

Collectively speaking, while the executive monopolized the power of enforceability, neither nor the local political elites display sufficient responsibility nor answerability. Due to weak and easily transformative accountability network at state- and local-level governance, instrumental value of accountability diminished.

<sup>18</sup> The table should be read from left to right in order: structure of the original model → actors of the original model → actors of the transformed model → structure of the transformed model. ‘Central’, ‘Federal’, ‘Local’, and ‘Land’ under ‘Gov. Level’ column each indicates the level of government found in each country case. ‘Pol. Elites’ column indicates political elites from each integrating states – North Yemen, South Yemen, West Germany, and East Germany.

The following paragraphs summarizes the [structure → actors → structure] course of transformation in accountability network at central, central-local, and local level.

### *Central*

Initially, Yemen attempted to build a mutually and horizontally accountable relationship was sought after between the House of Representatives and the Presidential Council within the central government. In the meanwhile, little effort was put into defining the power and authority of the judiciary within the central government. With weak judiciary, the Presidential Council was granted constitutional freedom to transform the structural configuration of the entire governance network.

In addition, lack of interdependence is observed among the executive, the legislative, and the judiciary seems to have led to weakening of mutual accountability – the precondition for the system of checks and balances. Sudden abolishment of a government body would not necessarily hurt its counterparts; discontinuation of the judiciary would not impede the House of Representatives nor the Presidential Council from making legislation in accordance with their political interest.

Northern elites and southern elites had their own hierarchical structure, and the two blocs of elites agreed to share equal power. But as Saleh, his party, and his inner circle won in popular elections, the winners easily centralized the state power to the Presidential Council and President Saleh to form a vertical-downward accountability network within the central government.

### *Central-Local*

Central government had (strong) desire for building a concrete top-down vertical accountability relationship with local units. The Arbitration Act of 1992, stipulates that state delegates the arbitration power to local units, which sets the central government as the principal and local units as agents. However, this

institutional arrangement loses its strength and legitimacy due to central government's incompetency and rising dissatisfaction among political elites from the East and tribal groups in general. The principal loses its power to give order and monitor the local units. The central government responds to the phenomenon with state-organized violence.

### *Local*

No local government was established by the constitution. Instead, tribal communities remained as local units. The traditional network formed among tribes was easily transformative and thus could be precisely defined by neither tribal groups themselves nor the central government. Although it could not hold the central government accountable through institutions, it could remain unresponsive to central government's orders and decrees. Moreover, with high level of autonomy and independence consolidated by tribal groups prevented installation of horizontal and mutual accountability network among tribal groups. This failed to incentivize local agents become more *responsible* to one another and weakened its collective power against the more institutionalized violence carried out by the incompetent central government.

### **Germany**

Collectively speaking, strong interdependence among multi-level government bodies and transformative network of accountability relationships among government bodies makes the network solid and difficult to break for actors. the vertical-downward network did not lead to further 'verticalization' of the system due to strong horizontal accountability network that is settled earlier at federal and Länder level. The following paragraphs summarizes the [structure → actors → structure] course of transformation in accountability network at federal, federal-Länder, and Länder level.

### *Federal*

Mutual and horizontal accountability network was formed among the executive, the legislative, and the judiciary based on the (rigid appreciation for) rule of law and strong judiciary. Setting the judiciary as the watchdog of the accountability network, the process of justification, monitoring, and carrying out consequence were institutionalized.

Inter-institutional inter-dependence and collaboration are indispensable for governance. The constitution obligates the three branches of government to partake in carrying out administrative tasks. Political competition was not limited by the East-West framework; rather, inter-party competition was intensified after reunification. This seems to have incentivized the West's political elites to invent a new political culture – the 'Moralpolitik' for their own survival. In addition, the West German elites' monopolization of political power, at least during the interim period, was mutually anticipated and (to large extent) agreed upon result for the GDR and the FRG prior to the reunification.

### *Federal-Länder*

Länder governments enjoy considerable autonomy in governance. Institutionally mandated to partake administration at the federal level through the Bundesrat, Länder governments are put into a more *responsible* position. The Länder authorities can hold federal authorities and other Länder authorities accountable through courts in the system in Germany's system of judicial supremacy. Both federal and Länder authorities are institutionalized to be *answerable* to each other, and federal authorities *enforce* constitutional principles and federal laws through the court system. Accumulation of the processes consolidates the German system of governance.

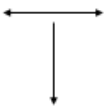
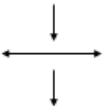






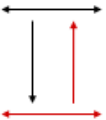


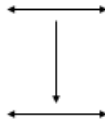




During the interim period, the Länder authorities were delegated back to the Federal government, particularly for economic stabilization and reorganization. But it was also a mutually agreed-upon delegation of power carried out and sustained by

the federal and the Länder authorities for a limited time. During the time, the federal authorities were legally mandated to acknowledge and interact with Länder authorities in carrying out the tasks.

### *Länder*

Together with the Basic Law, the Unity Treaty of 1990 mandates Länder governments to cooperate and help each other in recovering stability. Similar to the Federal-Länder relationship, the Länder can hold each other accountable through strong judicial system and order that prevails in the entire system of governance. In addition, with each Land being invited by the federal government to partake in federal decision-making processes, Länder governments are interdependent on each other, based on which mutual-horizontal accountability seems more sustainable. Institutional attempts to protect the system of mutual-horizontal accountability at local level are found in the tax systems set by the Basic Law and the Unity Treaty.

## Difference Observed from Yemen and Germany

	Gov. Level	<i>Original Model</i>		Pol. Elites	<i>Transformed Model</i>		Gov. Level
		Structure	Actors		Actors	Structure	
Yemen	Central			North			Central
	Local			South			Local
Germany	Federal			West			Federal
	Land			East			Land

**Table 2.** Difference Observed from Transformation of Accountability Networks

As stated in Section 6.1, ‘top-down verticalization’ of accountability network is observed in both structure and relationships formed by actors. Within the similar developmental pattern in state integration, however, Germany established mutual and horizontal accountability at local (Land) level and vertical bottom-up accountability at federal-local level, the device that is absent in Yemen. Hereafter, the two types of accountability will be referred to as ‘localization of accountability’,

This seems to project an implication about the significance of localization of accountability in pursuing a stable and sustainable state integration on the whole. To make a bolder argument, it seems valid to insist that localization of accountability may create conditions under which institutions and actors are less likely to deviate from original terms of state-building.

In testing the argument, neither the concept of necessary-sufficient conditions nor the concept of causality can be employed due to different level of quality (or integrity) observed from the accountability networks designed by each Yemen and Germany in the first place. Nonetheless, localization of accountability resulting in better civil and political rights outcome and its absence resulting in less

favorable civil and political rights outcome remains noteworthy. This is because localization of accountability – apart from the issue of different starting point of Yemen and Germany – may be a contributing factor to the betterment of civil and political rights through accountable governance.

Clearly in both cases, the presence and absence of localization of accountability instrument in structure influenced actors' course of decisions and actions. In Yemen, absence of the instrument diminished the locals' power to confront 'top-down verticalization' of accountability network imposed by the central government. Moreover, tribal groups could not control their own power.

When political conflict went intense at the central level, for example, the local tribes could have utilized mutual accountability to refrain one another from partaking in the high-level political conflict. Obsession with local autonomy in the absence of responsibility, answerability, and enforceability toward each other failed northern and southern tribes from refraining one another.

In Germany, mutual and horizontal accountability formed among/by Länder at local level reinforced its position to an extent that the federal government could (and would) not damage the mutual and horizontal connection formed among Länder amidst temporal centralization of power to the executive branch at federal level. Localization of accountability was institutionalized through legal measures that are found in the Basic Law and the Unity Treaty of 1990. Based on the localized accountability among Länder, the collective authority of Länder in its bottom-up vertical accountability with the federal government remained significant in administration.

The legally institutionalized interactions between the federal government and Länder governments led to a significant level of inter-dependence among multi-level governments and agencies. In the process, sharing of information and thus transparency was secured. Based on transparency, the rule of law was further acquired and accepted by not only governments but also by the public in general,

which led government institutions to be more responsible and enforceable in public administration, answerable to each other and ultimately to the public.



## 6.3 Conclusion

This study analyzed the course of interactions observed between structure and actors in the early phase of state integration of Yemen and Germany through the lens of accountability. An amalgam of political decisions coming from the public and political elites transformed and reproduced the conditions of pre- state integration.

Both Yemen and Germany reflected their common needs in designing their governance framework. Within the framework, public demand was implied through the first election after state integration. The electoral result influenced the political elite groups' course of decision-making within the government. Legitimacy, however, was a different issue. For Yemen, election did not fully assign legitimacy to the central government due to its incompetence in public administration and return of tribalism. In Germany, the legitimacy given through electoral system was retained through justification process at all levels of governance by and for all political actors.

The justification process was pivotal particularly for informing former communist state's elite groups and the public in general. It was a necessary step toward political and social cohesion. The integrity efforts in implementing the justification process appears to have determined the strength and quality of each accountability relationship and the accountability network in general. The justification process was well institutionalized in Germany, but almost absent in Yemen.

In the course of state integration, the incumbents of both Yemen and Germany formed downward-vertical accountability network through additional legislations and agreements. It was a political decision made for the sake of stable integration of two diverging administrative systems with less confusion under one leadership. The network, however, was designed to function permanently in Yemen but temporally in Germany.

The source of the difference is found in the initial design of accountability network, and goes back to the issue of justification and transparency. The rigidly downward-vertical relationship and lack of inter-dependency formed between institutional bodies at all levels of governance left room for the powerful executive to manipulate the entire system through single (or perhaps two) legislation(s). In the case of German accountability network, high inter-dependency and collaboration ordered by the law at all levels of governance prevented the powerful executive's deviation from the founding principles of contracts for state integration.

Consequently, Yemen returned to a system that is similar to the one observed in YAR's military dictatorship, a system that suffer from accountability deficit and absence of horizontal accountability at all levels of governance structure. In contrast, Germany consolidated the FRG's democratic and federal system that is ran through mixed form of accountability based on mutual consensus between the two contracting parties.

If this pattern of 'downward verticalization' is an indispensable phase of state integration, it seems desirable to complement the trend with localization of accountability (mutual-horizontal accountability at local level and upward-vertical accountability at central-local level of governance framework) to sustain accountable governance network as a whole. Institutionalization of external and internal control of each institutional body within the network of accountability supports and preserves the entirety.

Interpretation through the lens of accountability being the foundation of all analysis involved in this study, interpretations on the accountability relationship found in and between governance structure and actors in Yemen and Germany may diverge by researchers. This leaves room for future research with contradictory conclusion and further expansion of research in this area. In addition, the role of civil societies (diagonal accountability) in the structure-actor interactions are left for future research. Although not covered in this study for the purpose of limiting the

scope, the role of civil society and its interaction with government agencies and international institutions are also worthy of attention and research.

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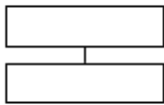
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## Appendix: Diagramming Accountability Network

- ↓ Vertical-downward Accountability
- ↑ Vertical-upward Accountability
- ↔ Mutual and Horizontal Accountability
- | Institutional Connection



Implies hierarchical order



Implies government function (Executive, Legislative, Judicial)

