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**When Dreams Come True:
The Role Of Powerful
Regions In Future Europe**

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When Dreams Come True: The Role Of Powerful Regions In Future Europe¹

1. Introduction

When addressing a certain subject it is usually the first responsibility of a political scientist to define the subject he wants to explore and to explain. Otherwise the audience would not be able to understand what the speaker is talking about. What could we mean when we are talking about regions and their role in the ongoing, indeed path breaking, Constitutional process led by the Convention on the future of Europe? The first problem is that a clear definition of what "regions" are does not exist. Nevertheless, in my considerations on the subject I will conceptualise "regions" as a kind of "third level" in the European multilevel governance system. From this broader and more general governance perspective it is possible to make a general observation which is important to keep in mind: It is one of the most important implications of European integration, or better: Europeanisation, that we face a multiplication of extra-national channels for subnational political activity.² Territorial relations are being transformed: nation states are losing control over important areas of decision-making while a variety of

- 1 Lecture held at the Workshop "European Regions in the Laeken Process: Real Players or only Spectators?", organised by the Center for European Integration Studies (ZEI) in Bonn and the Representation of North Rhine Westphalia to the European Union, Brussels, November 14, 2002.
- 2 See Hooghe, Liesbet/Marks, Gary: „Europe with the Regions“: Channels of Regional Representation in the European Union, in: *Publius: The Journal of Federalism* 26, pp. 73-91.

new channels have been created for regional mobilisation, and subnational governments are engaged in innovative, transnational patterns of interaction. Regional governments are no longer constrained to dyadic political relations with national state actors, but interact with a variety of actors in diverse arenas and in several formal and informal networks. This is indicated for example by the fact that regional governments from several member states have set up independent offices in Brussels. But of course regions do not engage in these transnational European activities equally.

As this is not a very exciting observation, I will return to the key question: what role could powerful regions play in future Europe? Several scenarios are possible, and especially the scenarios offered by representatives of constitutional regions are rather optimistic. Their basic premise is that a strong Europe needs strong regions as its constituent units. On the one hand this perspective is justified and legitimated, and, usually the underlying arguments of this thesis are craftily developed. On the other hand, alternative, even opposite, views are also possible. In order to demonstrate this rather pessimistic argument, I imagine Europe's future, say in the year 2007, after the new Constitutional treaty is in force as such. Under this new treaty the regions have the rights and powers, which they should have following the proposals made in the Convention's working group documents and following some proposals of some Members of the Convention. In other words, seen from the perspective of the regions, dreams will come true. As I will be a little more critical, my reflections are labelled under the provocative title "Do Dreams or Nightmares come true? The role of powerful regions in future Europe". I will present my critical, sometimes polemic reflections in two steps. First, I will offer a short view on the "dream" expressed by the "Assembly of European Regions"³ in view of the hearing at the European Convention at the end of June 2002. In a second step I imagine the situation in a couple of years, after all these dreams of the regions dreams come true, and will make some critical comments on the role of powerful regions in future Europe.

3 Assembly of the European Regions: The European Convention, 2002

II. The Dream

So what is the dream? Obviously, especially the constitutional regions try to be powerful players in the constitutional process despite the fact that their representatives are not equipped with formal voting power within the decision-making process of the Convention. Of course we have some de-facto regional representatives in the Convention with formal voting power, in the German case it is Erwin Teufel, Prime Minister of Baden-Württemberg, but seen from a European top-down perspective he does not represent a region but only a second chamber the German Parliament, which, by the way, does not exist in Germany in a constitutional sense. Nevertheless, especially the constitutional regions are highly engaged in influencing the choices of the Convention, and, more directly, the choices of their national representatives in this Convention.⁴ Not a week passes without a new communication, statement, or manifesto of a regional organisation or the Committee of the Regions. Interestingly enough, these papers address not only matters of direct regional concern, i.e. subsidiarity, autonomy of legislative regions, the used implementation methods and so on, but they are also very engaged in big constitutional questions like the democratic deficit, the institutional relationship within the Triangle Commission-Council-Parliament, the question of a Union presidency, the Union's general capacity for action and so on.

Right at the top of the constitutional regions priority list ranks the concept of subsidiarity. It is, therefore, a cornerstone of the region's dream how the Union should look like in future. In this perspective, the principle of subsidiarity is not only a word, but a fact as it should be explicitly applied with regard to the regions. In their view regions form the ideal middle ground between the unity and diversity that characterise the European Union of the future. They express cultural autonomy, they increase democratic legiti-

4 In Germany the „Bundesländer“ are very successful in influencing the German European policy choices since they are equipped with powerful instruments through the new Art. 23 of the German Constitution. See Große Hüttmann, Martin: Die Europäisierung des deutschen Föderalismus, in: *Aus Politik und Zeitgeschichte*; in comparison with the Belgian case Roller, Gerhard: Die Mitwirkung der deutschen Länder und der belgischen Regionen an EG-Entscheidungen, in: *AöR* 123, pp. 21-59.

macy, they lead to the separation of powers, and they integrate the citizens into the polity. Therefore, in constitutional terms, European governance and law making should be allowed on the following basis: a) (only limited) exclusive competences of the Union, b) (some) shared competences and c) supplementary competences of the European Union. In order to protect the regional communities, the division of competences should be verified by a mixed body to be set up parallel to the European Court of Justice. At least, the regions should have the right to appeal to the European Court of Justice in order to preserve their rights and competences in the framework of the European and national constitutional orders. Moreover, at the Union level, the role of the regions should be strengthened by enhancing their influence in European decision-making. This could be done at best by institutionalising the Committee of the Regions as a kind of third chamber next to the European Parliament and the Council of the European Union.

III. When Dreams come true: Powerful Regions in Europe

What would happen with Europe when all these dreams mentioned above will come true? It could be characterised by the following facts:

- As you can imagine, the phrase in Article 1 TEU “an ever closer Union” is not replaced by the words “A United States of Europe” or something similar, but with “The United Regions of Europe”. Of course this is exaggerated, but sometimes one might have the impression that regions overestimate their importance in the constitutional architecture of the European Union. Realistically, the states of course remain the Masters of the Treaties in the near future. And this is not a bad thing.
- In order to secure the principle of subsidiarity,
 - every constitutional or legislative region
 - the Commission
 - a minority in the Council

- and a minority in the European Parliament

has the right to refer before the Court before a European legislative act (regulations, directives) comes into force when they think this act infringes on principles of subsidiarity and proportionality. This could lead to an even more cumbersome European decision-making process. Whenever a minority is overruled by a majority, be it in the Council or in the European Parliament, this minority is still able to prevent undesired political outcomes by turning to the judges in Luxemburg. In a comparative constitutional politics perspective we can observe that this manoeuvre is well-known in all polities with powerful Constitutional Courts. At least – with this judicial weapon in their hand – these minorities are able to postpone undesired legislative acts or, at least, they are able to set the majority under political pressure. If one tends to be pessimistic in this question, interested regions could even be able to blackmail European decision-makers. The motto of these minorities, no matter where they are coming from, could be: “Do this or that for us, compensate us, give us a side-payment, otherwise we go to Luxemburg!” You will always find some political minorities who lose out in the decision-making process who can find an argument when referring to subsidiarity and so you will always find a way to Luxemburg to block European legislation. At least this mechanism is a great incentive for negotiating additional package deals behind closed doors. Under these circumstances it is only wishful thinking to believe that the future Union will be characterised by more transparency and a clearer fulfilment of the principle of accountability. How then, given the statements by the Assembly of European Regions I mentioned above, could such conditions “enhance democratic legitimacy”? It is of course also wishful thinking to believe that the future Union could be able to enhance its capacity and ability for action if you endow political minorities, say regions for instance, with this judicial weapon to hinder legislative action.

- Moreover, the principle of subsidiarity is not only the subject to ex post judicial review by the European Court of Justice. It is also guaranteed by the Constitutional Treaty that national parliaments (including regional parliaments, at least German’s Second Chamber, the Bundesrat) are able to organise ex ante political monitoring of the

principle of subsidiarity.⁵ This “early warning system” is even more. It is functioning as an “early blocking system”. In the Union we really do not have the problem that there are not enough veto-players in the political arena. In the future we will also have national parliaments who are in fact able to veto important decisions at the European level. It is to expect that you will always find national parliaments who do not want to accept that a certain decision is made at the European level.

- Regions are more and more not only responsible for the implementation of Union policies but also in European decision-making processes – via national and European channels (Committee of the Regions). This is not a very comfortable situation for national governments since they lose power – vis-à-vis the European level and vis-à-vis the regional level. If it is true that the European multilevel governance system could be described as a sandwich, one might say that the sausage smashed between the two sandwich halves is becoming thinner and thinner. One may indeed be left asking, “where’s the beef?!” Regions may win autonomy and federal decision-making power, but only at the cost of autonomy and decision-making power of central governments. The integration process is partially the reason why more and more member state governments lose power and influence vis-à-vis their sub-national regions. Take Spain as an example to see what results an overstretched regionalism can produce in the end. In Catalonia only Catalan speaking people can be office-holders in the public service. Moreover, in Catalan schools the Spanish language is after English only a second “foreign” language while Catalan is the official native language pupils have to learn. Is there something we can learn from these examples? If yes, then it leads us to the conclusion that too much independence and autonomy for the legislative regions would not only threaten the European Union. They would also threaten the “masters of the Trea-

5 Chairman of Working Group I on the Principle of Subsidiarity: Conclusions of Working Group I, The European Convention – Secretariat, Brussels, 23 September 2002, CONV 286/02, p. 3.

ties” themselves, the nation states, which are historically the well-established, and still the only existing frameworks of democracy, burden-sharing solidarity and human rights protection. At least the Spanish example teaches us that not everything under the banner of “subsidiarity” is a worthy contribution for the constitutional architecture of our Union.

- The new Article 6 TEU will contain the provision that the Union respects regional and local self-government. This is indeed a necessary and worthy principle. But given the cross-border nature of many problems we face today we have to achieve a truly united Europe. Therefore, the regions conversely must respect the benefits of a functioning and efficient decision-making system at the European level. Moreover, regions must allow the architects of Europe a certain amount of leverage in laying down the common rules which define the space in which a half billion citizens make the European Union a reality. However, the visions of the founding fathers would be totally undermined if the regions cry bloody murder whenever the Union seeks to fulfil its responsibility for bringing the citizens of Europe together through appropriate directives, regulations, and decisions.
- Moreover, the European Constitution will contain an explicit text stating that “all powers not conferred on the Union by the Constitutional Treaty remains with the Regions”. Again, this is exaggerated, but sometimes one may have the impression that this is exactly the attitude of some very convinced lobbyists of strong regions in Europe.
- The powerful regions are able to decide themselves if a Community measure is appropriate at their territory which they govern and in which they have legislative power. This is still an unspoken intention of powerful and strong regional governments in Bavaria, Flanders or the regions in Northern Italy. I admit that this scenario is not a hot issue at the moment but imagine that also this dream comes true in future. What is the principle of solidarity for example in Article 2 TEC worth if strong regions are able to “opt-out” whenever they feel the

need to stress their egoistic regional interests in opposition to broader European interests or interests of poorer regions? Remember that solidarity is actually a worthy but also fragile and contested constitutional principle. This is the case not only in the multinational European Union, but also in well-developed nation states such as Germany, Belgium or Italy where the principle of solidarity is frequently challenged by the “haves” against the “have-nots”. This is for example indicated by the fact that in Germany the richer Bundesländer are more and more unwilling to pay financial transfers to poorer regions in the mechanism of the so-called “Länderfinanzausgleich”.

IV. Conclusions: Powerful Regions in future Europe: a Dream or a Nightmare?

I am aware of the fact that I painted the devil on the wall regarding the role of strong regions in future Europe. This provocative statement tries only to sharpen the consciousness that in a contested polity like the EU,⁶ any overstretching of legitimating ideas, as is the idea of a strong Europe through strong regions, also has its negative implications.⁷ The overstretched dreams of the strong regions in Europe could develop to nightmare scenarios very soon. Nevertheless, it should be pointed out, that regions, especially constitutional regions have legitimate interests within the ongoing constitutional process. But what I intended to demonstrate is that powerful regions do not automatically lead to a powerful European Union, as is always claimed by the proponents of this “third-level-philosophy”. Therefore, not only the Union has to respect the legitimate interests of regions, but also, conversely, the regions must respect the benefits of a functioning and efficient decision-making system at the European level. Moreover, re-

6 See only Lord, Christopher: Legitimation traps, problems and solutions, an the role of the Convention on the future of Europe, paper presented at the SWP Conference: Democracy and Accountability in the Enlarged European Union, 7/8 March, 2003, paper available under: <http://www.swp-berlin.org/pdf/conveu/Lord.pdf>

7 See for a fully developed version of this argument Höreth, Marcus: Die Europäische Union im Legitimationstrilemma. Zur Rechtfertigung des Regierens jenseits der Staatlichkeit, Baden-Baden 1999.

gions must allow the architects of Europe a certain amount of leverage in laying down the common rules which define the space in which a half billion citizens make the European Union a reality. However, the visions of the Community founding fathers would be totally undermined if the regions cry bloody murder whenever the Union seeks to fulfil its responsibility for bringing the citizens of Europe together through appropriate directives, regulations, and decisions. It is to hope that the Convention Members are still breathing this philosophy of the Community's founding fathers. From their perspective, then, the dreams of the constitutional regions are important to take into account, but their complete fulfilment should not be their most urgent concern.

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