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**THE GERMAN LÄNDER AND THE EUROPEAN
CONSTITUTIONAL TREATY:
HEADING FOR A DIFFERENTIATED THEORY OF
REGIONAL ELITE SUPPORT FOR EUROPEAN
INTEGRATION**

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ABSTRACT Theorizing subnational and supranational relationship in the EU has been mired by what can be called the 'homogeneity assumption': most analyses firmly, if often only implicitly, presume identical preferences of the various regional actors in an individual member state. As a starting point for analysing regions and local authorities in the EU such a supposition was probably justified and certainly had its merits. Today, however, neglecting intra-national heterogeneity and confining our concepts of regional–supranational exchange to the borders of the nation states seem increasingly problematic. More precisely, not going beyond the country-specific features of subnational authorities may pose a serious obstacle for discovering generalizable characteristics in the relationship between regions or local authorities and the EU which, in turn, would be needed to broaden understanding of the emerging European polity. By analysing the preferences of the German *Länder* - a group of subnational actors which presumably belongs to the most homogeneous set of regional actors in the EU – as regards the European constitutional debate, this article confirms a growing heterogeneity of regional predilections. In an attempt to systematize the inductively collected evidence, four hypotheses for further empirical testing are developed in order to contribute to the discussion about how to work out a more differentiated theory of regional elite support for European integration. As it turns out, the hitherto neglected dimension of party politics appears to bear great potential to explain regional action relating to European integration.

KEY WORDS: Federalism, Regionalism, European Constitution, Germany, Subnational Politics

Introduction

Theorizing the relationship between subnational actors and the supranational level in the EU has been mired by what can be called the 'homogeneity assumption': most analyses firmly presume identical preferences of the various regional actors in an individual member state. As a starting point for analysing regions and local authorities in the EU, such a hypothesis was probably justified and certainly had its merits. Today, however, confining our conceptual lenses of regional–supranational exchange to the borders of the nation states seems increasingly problematic. In other words, although the powers of regions and local authorities vary substantially between the member states of the EU (Marks, 1993; Bullmann, 1994), this diversity of subnational authorities from member state to member state should not prevent an attempt to generalize the relationship between regions or local authorities and the EU (Jeffery, 2000; Sturm and Dieringer, 2004; Hooghe and Keating, 1994). More precisely, not taking into account specific intra-national features of subnational authorities may pose a serious obstacle for discovering generalizable qualities in the relationship between regions or local authorities and the EU. However, an understanding of the emerging European polity can only be broadened if the complexity of that relationship can be understood.

Neglecting intra-national heterogeneity does, however, become ever more difficult as more and more empirical and comparative studies from multi-level governance theorists, political economists and analysts of Europeanization/globalization (Marks *et al.*, 1996; Gabel and Whitten, 1997; Börzel, 2002; van Houten, 2003) draw our attention to the *de facto* diversity of regions within individual member states, thus questioning indirectly the usefulness of the strict conceptual categorization between subnational entities from different member states.

A crucial question is whether a more comprehensive empirical theory of regional elite preferences for European integration could be developed by bringing into the analyses a broader variance of subnational authorities. Another is whether doing so would significantly enhance our understanding of the mechanisms of subnational–supranational relationships within the emerging multi-level governance system.

This article attempts to take on this challenge by analysing the predilections of the German *Länder*¹ with respect to the elaboration of the European constitutional treaty. A first step briefly introduces two empirical explanations dealing with the German *Länder* in European policy-making. To the author's knowledge, these are the only two contributions that explicitly focus on the growing differentiation among this group of subnational actors. After a short introduction to the problems of German federalism and European integration and the particular role of the German *Länder* therein, the key demands of the *Länder* with regard to the European constitutional treaty are summarized, in addition to the internal struggle of the *Länder* to come to grips with the actual results of the negotiation process. The two explanations for growing differentiation between the *Länder* are then confronted with the empirical analysis of successes and failures. As it transpires, neither can comprehensively explain the growing ideological dualism and the shrinking common ground among the *Länder*. The last part uses the empirical evidence to inductively formulate four hypotheses which, it is claimed, are able to specify the crucial relationships. Leaving the German case behind, the propositions are formulated in a general way in order to allow empirical testing across other European regions. The crucial elements of the explanation advocated by these propositions are the re-emphasis of party politics, subnational power struggle with the respective centre and the perception of regional actors as to how they are affected by increased integration. While the two latter propositions are well established in the literature, the importance of party politics has been receiving more serious analytical attention only recently (van Houten, 2001; Fearon and van Houten, 2002; Hough and Jeffery, 2003). One major result of the analysis therefore is that the party political cleavage between the regional and national office holders appears to carry critical explanatory power. By systematically connecting the developed hypotheses, it is hoped to provide crucial explanatory elements for a differentiated theory of regional political elite preferences as regards subnational–

supranational relations.

Growing Differences Among the German *Länder*

Early expectations that European integration would advance a homogeneous subnational layer of government in the form of a 'Europe of the regions' or that the strengthening of regional actors via supranational institutions would alter the role of the national governments have long been relinquished (Bauer, 1991; but recently Warleigh, 2003). Instead, a consensus has evolved that the EU offers subnational actors opportunities for modifying vertical relationships which they may or may not be able to exploit within their national institutional settings, regional–supranational relationships or transnational co-operation (Marks, 1993, 1997; Kohler-Koch *et al.*, 1998; Benz and Eberlein, 1999; Allen, 2000). Most of the analysts of the regional level in the EU focused on the differences of regional actors across member states much more than they conceptualized differences between regional or subnational actors of individual member states.

As regards the particular position of the German *Länder* within the EU, two related arguments have been put forward recently, pointing to growing differences among that group of regional players (Jeffery and Collins, 1998; Knodt, 2002; Jeffery, 2003a). According to Charlie Jeffery, the growing differentiation of the socio-economic bases between the German *Länder* will give rise to a de-solidarization among them and create, in the long term, new territorial politics. Jeffery expects that issue-specific interests will become ever more prominent and lead to changing interactions and shifting coalitions (Jeffery, 1999).

Similarly, Michèle Knodt, referring to Jeffery, sees a new legitimacy discourse on a competitive instead of a co-operative federalism gaining ground among the German *Länder*. It is that vision of a competitive federalism, the argument goes, which increasingly fuels the German *Länder's* notion of the EU and how to organize European policy-making in the future. The *Länder* want to renew the subnational scope of action and they want the Union to give precipitately 'Europeanized' competences 'back'. Moreover, the EU is the test case for injecting more competitive drive into German federalism itself (Knodt, 2002). While Knodt portrays this new competitive thinking as the emerging dominant discourse, her empirical evidence indicates that not all *Länder* embrace that kind of ideology. Thus, one should expect increased discursive differentiation as regards the *Länder's* perception of their role in European integration.

The two propositions are, strictly speaking, not competing with each other, since Charlie Jeffery can be understood as more policy-orientated, while Michèle Knodt

appears more interested in explaining changes in the polity dimension.² Moreover, a closer look reveals that these authors do incorporate in their detailed works a variety of explanatory factors. For example, both of them take into consideration the significance of the

growing differentiation of the socio-economic bases and the resulting de-solidarization between the German *Länder* as well as growing ideological incoherence between the *Länder* with regard to the preferred vision of German federalism. Yet, focusing the core of their respective arguments, these authors do prompt one to concentrate attention on two presumably crucial variables: cohesion and coherence. Cohesion of policy objectives which is, according to Jeffery, ever more lacking; and, according to this article's interpretation of Knodt, ideological incoherence with respect to a new competitive vision for reforming the regional dimension of the EU preferring regional autonomy to multi-level co-operation. In the following, these notions of 'cohesion' and 'incoherence' will be used as vantage points to gauge the position of the German *Länder* in negotiating and assessing the European constitutional treaty. In particular, focus is on empirical evidence throughout the negotiation period from 28 February 2002 to 16 September 2004.³ In order to assess the specific interests of the *Länder* within this period, it is necessary to give a short historical overview of the problems of German federalism and European integration.

The German *Länder* and European Unification

By all accounts, the *Länder* responded late to the challenges of European integration.⁴ Having lost the opportunity to be compensated for what they perceived as a creeping loss of competences through increasing integration on the occasion of the Single European Act, they managed to realize some of their crucial demands at Maastricht (such as establishing a Committee of the Regions, including a subsidiarity principle into the EC treaty and being able to participate and even head the German delegation to the EU if their competences are at stake). Even more impressive than such European-level changes, were the concessions (including changes to the German basic law) that the *Länder* were able to obtain 'at home', i.e. in their internal relation with the federal level, as regards participation in European affairs (Borkenhagen *et al.*, 1992). After Maastricht, they were not able to match these achievements. At the end of the 1990s, with ever more issues being dealt with at European level by qualified majority (which, for the *Länder*, decreases the significance of national legal procedures to influence the federal position) and new forms of governance such as the 'open method of coordination' having come into fashion (Kno"ll and Bauer, 2003), the *Länder* felt increasingly threatened by the dynamics of the integration process (Fischer, 1998; Kalbfleisch-Kottsieper, 2001). The disregard of the heads of state at the Nice summit for what the *Länder* perceived as crucial regional issues made them force the federal government to insist on yet another intergovernmental conference until 2004. The explicit purpose of that conference was to tackle problems of subsidiarity and the delineation of competences between supranational, national and regional layers of government (Hrbek, 2001b). The German *Länder* have therefore been co-responsible for triggering the 'post-Nice process' that swiftly led to the establishment of the convention on the

future of Europe and, in turn, to the draft European constitutional treaty (Hrbek and Große Hüttmann, 2002).

Preparing for the convention, the *Länder* drafted two crucial resolutions (Bundesrat, 2001, 2002). The first resolution was a relatively concise account of how the *Länder* wanted the subsidiarity principle and a new delineation of competences applied. The second was a rather wide-ranging 'wish list'. Next to demands for a simplification of the treaties and more transparency and democracy, principles for a new organization of competences were specified, together with numerous recommendations with respect to individual policy areas (from agriculture, to education, public health, tourism, judiciary policy and criminal law). Erwin Teufel, Minister President of Baden-Württemberg and member of the convention by appointment of the Bundesrat, was requested to use these resolutions as an orientation for the negotiations. The finetuning as regards the regional dimension of the EU, which is the focus of the following analysis, in terms of how the *Länder* should respond to the development of the negotiation process, was provided by the Europaministerkonferenz (EMK) – the conference of the *Länder* ministers for European affairs – whose members had been briefed by a round of senior officials from their regional administrations.⁵

Key Issues in the Negotiation

Below are listed the key demands of the German *Länder* regarding the regional *acquis* the new EU should posit.⁶ To classify them, two categories are used. The first category includes those demands the *Länder* formulated before or at an early stage of the convention. It can be argued that those are the demands the *Länder* hoped for and attempted to realize in terms of a best case scenario. These demands indicate how the *Länder* would have liked to see the *status quo* changed. The second category consists of those demands – in essence rather defensive – the *Länder* formulated in view of the development of the discussions within the convention and the following Intergovernmental Conference (IGC). As regards this second category, the *Länder* usually would prefer the *status quo* to the proposed changes. If retaining the *status quo* turned out to be impossible, the *Länder* aimed at minimizing possible negative implications.

Tables 1 and 2 summarize the key requests of the *Länder*. In the event, it would require skilful network and discourse analyses to establish exactly where the *Länder* managed to change significantly the development of negotiations directly within the convention or indirectly via the federal level in the IGC. However, as regards the definition of a new competence order, guarantees for regional and local self-government, and the issues of subsidiarity and proportionality, it is not implausible that the *Länder*, being represented directly within the convention, could make a difference.

The third columns of Tables 1 and 2 indicate approximately where the *Länder* have been 'successful' (b) and where not (2). There are eight demands (or major parts of them) that have been adopted in

the constitutional treaty and nine issues that were not accepted. One is tempted to conclude that this is not a bad outcome. However, 'soft' demands can be distinguished from 'hard' ones. Under 'soft demands' would be subsumed the vague legal self-commitments of the EU, such as the guarantee of regional self-government, the reformulation of the subsidiarity principle, and the new definition of European competences.

If such a distinction is accepted, it can be argued that the *Länder* have been very successful as regards such 'soft demands', which may or may not pay off in the

Table 1. Key demands of the German *Länder* within the EU constitutional process

Changing the <i>status quo</i>		Realized
	?	
1. Defining European competences	The central issue for the <i>Länder</i> was to delineate more clearly the competences, thereby clarifying what level of government would be able to start collective action, at what point and with what means; defining the competences of the European level was the cornerstone of that clarification agenda.	+
2. Reformulating the subsidiarity principle	The existing subsidiarity principle did not provide the sort of protection against expansive interpretation of European-level rights of action the <i>Länder</i> wanted.	+
3. Reformulating the proportionality principle	The existing proportionality principle should be more precisely formulated and more centrally posted.	+
4. Right to appeal for regions with legislative competences	A right of action of the regions with legislative competences before the European Court was seen essential to ensure the prerogatives of the <i>Länder</i> and to safeguard the principle of subsidiarity.	-
5. Guaranteeing local and regional right of self-government	A revised regional identity clause should make sure that the legal order of the EU formally respects the regional and local right of self-organization.	+
6. Strengthening the Committee of the Regions: (a) making it a real EU organ and (b) giving it the right to appeal	A 'reformed' Committee of the Regions should be awarded full institutional status and, for the preservation of its own rights, it should have a right to appeal to the European Court.	-
7. Narrowing down the scope of the internal market provisions	The scope of the application of Articles 94 and 95 EC Treaty should be restricted to projects which are 'primarily and directly' aimed at the establishment or the operation of the internal market – basically to stop misuse (of the choosing) of that treaty base for only loosely related issues.	+
8. Abolishing Article 308 EC treaty, later being more restrictive as regards flexibility clause	According to Article 308, the Council can take appropriate measures unanimously, if action should prove necessary to attain and the treaty has not provided the necessary powers on a proposal of the Commission after consulting the Parliament. The <i>Länder</i> see in this provision an unjustified empowerment of the Council. In the draft constitution this provision was renamed 'flexibility' clause and the <i>Länder</i> asked in the course of the negotiations to connect a 'sunset clause' with action agreed upon on the basis of that provision.	-
9. Creating an 'early warning system'	The early warning system was conceived to involve national parliaments in the European legislative process for the protection of subsidiarity. In those Member States which have two legislative chambers, each of these chambers should participate.	+

Table 2. Key demands of the German *Länder* within the EU constitutional process

Minimizing negative implications		Realized
	?	
10. No 'Open Method of Coordination' (OMC)	The German <i>Länder</i> did not want to see the OMC included into the constitutional treaty as a formal institutional device; nor did they want single issue areas opened up for the OMC method.	-
11. Retaining equal legal quality of all parts of the constitutional treaty	At the convention there was a lively discussion whether the different 'parts' of the constitutional treaty (principles, charter, policies) could have different legal qualities in order to lower, for example, the hurdles for changing provisions in the policy area, while leaving the principles and value area under a stricter regime, i.e. national ratification. A differentiation of legal quality would deprive the <i>Länder</i> of their veto as regards the transfer of individual competences to the European level. Therefore it was of crucial importance to keep equal legal quality.	+
12. No 'Passerelle'	Various devices have been introduced to tackle issues in the Council – without changing the treaty – in future with qualified majority voting. The Council may therefore agree, in specified areas, by unanimity to do so. That constituted a threat to the <i>Länder</i> , since the federal government could agree to such 'passerelle' -depriving the <i>Länder</i> of their (national) veto right.	-
13. No EU competences as regards general interest service obligations	The <i>Länder</i> were against any provision conferring to the EU the right to take legislative action in the area of provision of general interest services, fearing their habits of public subsidizing in this area (<i>Daseinsvorsorge</i>) could come under (further) threat by European competition law.	-
14. No EU competence in the area of tourism	The <i>Länder</i> see this area as a matter of their central regional competences where the influence of the EU would not be justified.	-
15. No (more) EU competence in the area of health	The <i>Länder</i> see this area as a matter of their central regional competences where the influence of the EU would not be justified.	-
16. Clarifying that the <i>Länder</i> are able to lead the German delegation in the Council	In the redrafting of the constitutional treaty, the formulation of Article 203, which opened Council negotiations to subnational delegates, changed, putting the crucial achievement of the Maastricht Treaty suddenly in question.	+

future. Concerning 'hard issues' (such as abolishing Article 308 EC Treaty, restricting 94 and 95 EC Treaty, no *passerelle*,⁷ no 'open method of coordination', no EU competences in services of general interest) – i.e. demands focused on changing present operational procedures with short-term redistributive implications – there is only one provision with which the *Länder* can be satisfied: that of the equal legal quality granted to all parts of the constitutional treaty (which would exclude the possibility to change the legal basis without consent of the *Länder* via the Bundesrat). Admittedly, one could try prioritizing, weighing individual demands and start arguing for each individual request.⁸ While this cannot be done in the present article (see, however, Bauer, 2004a, b), the evidence already presented supports the interpretation that the *Länder* failed where they wanted direct procedural leverage or a kind of a veto with respect to the European policy process. By contrast, they succeeded with respect to their demands for constitutional provisions of general quality, whose payoffs are uncertain and only to be expected some time in the future.

However, this article is not concerned with when and how the *Länder* managed to push through 'their' demands. The question is whether they were able to unify behind a common position and whether their vision, expressed in their demands, amounted to a more competitive ideal for the future structure of the EU that stands in the centre of the present inquiry.

Growing Differences: Ideological Incoherence with Respect to Autonomy?

According to Knodt one should see the *Länder* aiming at not just maintaining but increasing subnational autonomy instead of aiming for more participation rights in EU affairs (Knodt, 2000, 2002). The question is whether the autonomy ideology is really appealing to all *Länder*. A large number of not so well off German *Länder* may well have difficulties in literally affording that kind of liberty. Knodt correctly depicts that only some *Länder* do indeed advocate a new vision of separation of powers. Her argument is taken as a starting point to look for ideological incoherence among the German *Länder*, especially with regards to their vision for their future role in the EU. Indeed, only about the half of the key demands of the German *Länder* with respect to the constitutional treaty negotiations can be subsumed under the heading of 'increasing regional autonomy'. Defining the European competences, subsidiarity and proportionality improvement and guaranteeing local self-government are clearly meant to strengthen the role of the *Länder* in terms of autonomy. The same holds true for the demanded restrictions to the internal market provisions and the wish to abolish Article 308 of the EC treaty. The rejection of the 'open method of coordination' or the attempt to avoid enhanced competences of the EU in the areas of tourism or health, are less obvious cases. These were purely defensive responses (which

did not succeed anyway) to keep the *status quo*, i.e. not to change the level of EU involvement. By contrast, there are a number of *Länder* demands which aimed at improving the *Länder's* participation rights, such as strengthening the committee of the regions, retaining equal legal quality of the various parts of the constitutional treaty and clarifying subnational involvement in the Council negotiations or the *Länder* support for an early warning system. Such demands do clearly symbolize wishes of enhanced participation in the EU process. The same holds for the compromises found as regards the 'passerelle' clause and the new general interest service provision. In these areas both chambers of national parliaments, i.e. in the German case also the Bundesrat, will bind the vote of the respective national government in the Council. A special case is the demand to install a right to appeal for individual regions in front of the European Court of Justice. While it was argued that this would be a formal way to preserve sub-national prerogatives (Hrbek, 2003), it is clear that most of the *Länder* wanted to have such an instrument if only to be taken more seriously in Brussels and therefore to enhance their influence on the drafting of legal proposals of the Commission in the first place (Koch, 2001, 2002; Teufel, 2002, 2003).

Hence, increasing and preserving their autonomy were important aims. However, the autonomy aim was also clearly accompanied by the desire to enhance participation if possible. Accordingly, the various documents of the *Länder* position carry clear signs of an internal compromise of those wanting to focus on participation and those highlighting autonomy. In fact, it was only the government of Bavaria that clearly prioritized autonomy over participation (Bocklet, 2003a, b). While some *Länder* such as Baden-Württemberg and Hesse occasionally supported the positions of Bavaria, most other *Länder* were usually not inclined to compromise participation aims for increasing autonomy (Gemeinsame Erklärung, 2002; Koch, 2002; Bauer, 2004a). It can thus not be argued that *the Länder* abandoned their 'let us in' tactic for a rigid 'leave us alone' policy (Jeffery, 1996, 1999; Große Hü ttmann, 2004). Instead, under the opinion leadership of Bavaria some of the conservative-led *Länder* were ready to attach greater significance to the 'leave us alone' strategy. Most of the other *Länder* (numerically even a majority) would maximize both, if they could. But if they ha to choose, they would rather strive for more 'let us in' (Pahl, 2004). Hence, the compromise on the two crucial resolutions about the convention on the future of Europe (Bundesrat, 2001b, 2002) has been a compromise between the 'autonomy' and the 'participation' camps. The more concrete the negotiations became, the more difficult it became for the *Länder* to hold on to that compromise. Hence, there is no new ideological coherence in the direction of an autonomy-orientated, let alone competition-orientated political order of regional- supranational relationships. At its simplest, there is a new cleavage between those *Länder* preferring autonomy to participation and those – i.e. mainly Bavaria – who prioritize participation over autonomy.

Growing Differences: Internal Cohesion or Territorial Politics?

The second proposition regarding the role of the German *Länder* in European politics is, according to Jeffery, that the growing differentiation of their socio-economic bases (not least as a result of German unification) will lead to a de-solidarization among the German *Länder*. Jeffery argues that this growing variance between *Länder* positions can be explained by a new salience of 'territorial politics' (Jeffery, 1999, 2003a; see also Christiansen, 1999). Hence, issue-specific interests will lead to changing interactions and shifting coalitions. Translated into the bargaining over the regional dimension of the European constitutional treaty one should see that the cleavages between rich and poor countries, East and West, big city states and large territory states impinges on the efforts of the *Länder* to come to common positions. Indeed, as Table 3 indicates, there has been a dramatic rise of disagreement among the

Table 3. Shrinking common ground? Rising conflict in EU constitutional matters among the German *Länder*

EMK Conference of Ministers on European Affairs	Remark	Statements to the protocol ^s
16 September 2004	Assessment of the June IGC compromise	- BB, BY, BW, HE, HH, NI, SN - BY, BW, HE, TH - HH
28/29 April 2004	Pushing last crucial demands of the <i>Länder</i> as regards negotiations in the IGC.	- BB, BW, BY, HE, NI, SL, SN, SA, TH - BB, BE, BY, HE, NI, NRW, RP, SL, SN, ST, - TH
11 December 2003	No formal decision	
2 October 2003	No formal decision	
18 June 2003	Most controversial assessment of the draft constitutional treaty as produced by the convention; Bavaria refuses to say anything positive and abstains by giving a number of concerns to the proceedings.	- 6 different statements from BY alone - BY, BW, BB, HH, HE, NI, SL, SN, SA, TH - BW, NI, NRW, SL, SA - BW, BY, TH - BY, HE - BY, HE, TH - BY, BB, HH, HE, TH - BY, TH - BY, HE, TH - BY, HE, TH - BY, TH - BY, TH - BY, TH
13 March 2003	No formal decision	
5 December 2002	Report on the reception of the <i>Länder</i> requests within the convention was endorsed. Conflict on the issue whether or not to demand a direct mentioning of God within the preamble of the constitutional treaty.	- BW, BY, BB, HH, HE, SL, SN, SA, TH - BE, HB, MV, NI, NRW, RP, SH
25/26 September 2002	No formal decision	
5/6 June 2002	In that session the mandate of the <i>Länder's</i> delegate to the convention has been discussed. The compromise position agreed upon – with a number of conflicting issues expressed in the proceedings – was later formalized by a	- HH - BW - BE, HH - BE, HB, MV, NI, NRW, RP, SH - BE, HB, MV, NI, NRW, RP, SH - BE, HB, MV, NI, RP, SH

(Table continued)

Table 3. *Continued*

EMK Conference of Ministers on European Affairs	Remark	Statements to the protocol ^s
	decision of the Bundesrat (2002).	- BB, BW, BY, HE, TH - BE, BW, HE, HH, HB, MV, NI, RP, SL, SN - BB, BW, HB, HH, NI, NRW, MV, SH - BE, BW, HB, HE, HH, MV, NI, NRW, RP, SH, SL, SN
28 February 2002	Report on the debate about the future of the EU was endorsed unanimously.	- BB, BY, TH

BB, Brandenburg; BE, Berlin; BW, Baden-Württemberg; BY, Bavaria; HB, Bremen; HE, Hesse; HH, Hamburg; MV, Mecklenburg-Western Pomerania; NI, Lower Saxony; NRW, North Rhine-Westphalia; RP, Rhineland-Palatinate; SA, Saxony; SH, Schleswig-Holstein; SL, Saarland; SN, Saxony-Anhalt; TH, Thuringia.

^sThe EMK decides unanimously. However, the *Länder* have the possibility to indicate or clarify deviating positions by giving a statement to the proceedings (*Protokollerklärung*).

German *Länder* as regards their common stance on the negotiations about the constitutional treaty. But, as shall be seen, the diversity cannot be explained by the socio-economic variable alone.

The dramatic nature of that picture depicted by Table 3 can be appreciated only if one knows that the *Länder* do not usually use the Conference of European Ministers for bold political statements but for checking and preparing common ground. Decisions can be taken only by unanimity. Dissenters have the option to give their points of disagreements to the 'protocol'. By doing so, they do not prevent the majority to take at least a formal decision – however void of meaning the compromise formulations would sometimes render it. During the negotiation of the European constitutional treaty and the final assessment of the *Länder* Ministers - the period between 28 February 2002 and 16 September 2004 – 35 such statements were made on the issue of the European constitutional treaty. In various combinations of *Länder*, virtually each *Land* thus documenting a certain objection. In comparison, during the same period, there were altogether only six such declarations or statements made to the protocol by the conference in all the other issue areas.⁹ However, the combinations of supporters of the various 'statements to the protocol' show a mixture between small and large countries, between Eastern and Western *Länder*, and also, very often, between city states and larger states. Thus, although Bavaria is clearly the most proactive and most critical *Land* as regards the new constitution and the regional dimension therein,¹⁰ there seems to be little evidence for a strong territorial political dimension. Moreover, more than two

thirds of the 35 statements¹¹ are supported either by a CDU- or by an SPD-led government (see Table 4). That strongly points to the salience

Table 4. Abbreviations used throughout the article

CDU/CSU-led government	CDU/SPD Coalition	SPD-led government
Baden-Württemberg (BW)	Brandenburg (BB)	Berlin (BE)
Bavaria (BY)	Bremen (HB)	Mecklenburg-Western Pomerania (MV)
Hamburg (HH) ^s		North Rhine-Westphalia (NRW)
Hesse (HE)		Rhineland-Palatinate (RP)
Lower Saxony (NI) ^s		Schleswig-Holstein (SH)
Saarland (SL)		
Saxony (SA) ^s		
Saxony-Anhalt (SN) Thuringia (TH)		

^sGovernment change, but *Land* led by CDU government during crucial stages.

of the traditional left– right cleavage between conservatives and social-democrats in explaining the apparent variation. On the basis of that evidence, it cannot be claimed conclusively that growing socio-economic differences are the crucial variable for explaining the preference of the *Länder* as regards their concept of the regional dimension in the future EU.

Growing Differences: The Return of Party Politics?

‘We never wanted an individual right for regions to appeal [before the European Court of Justice]. Such a right just does not make sense in terms of our conception of Europe’.¹² That remark from an official of the most populous German state, North Rhine-Westphalia, illustrates that strength and capacity alone are insufficient to explain the assertiveness of regional demands as regards the reform of the EU. The point is that North Rhine-Westphalia did not oppose inclusion of the demand of such an individual right to appeal into the wish list of the *Länder* as regards European constitutional reform. Only when some *Länder* argued for a rejection of the whole constitutional treaty because of the right to appeal had not been obtained, did North Rhine-Westphalia have to reveal (more of) its true preference set. NRW is not only the biggest German state but the one that counted as a stronghold of the Social-Democratic Party.¹³ One can make the case that the German Social-Democratic Party has a long tradition of federal state-centric preferences to which a regional right of appeal does not really fit. Moreover, the wish of the social-democratic-led state governments to use not-realized *Länder* demands to make a point about the incompetence of the also SPD-led federal government was understandably much less pronounced than within the group of conservative state governments. Hence, the political colour of the regional governments remains an important factor for explaining differences among the *Länder* in view of their concepts and assertiveness for reforming the regional dimension of the EU.

The constitutional process also showed deep divisions within the conservative camp.¹⁴ The Bavarian branch of the Christian-Democrats, the CSU, – in aspiration actually the only distinctively ‘regional’ political party of significance in Germany – probably additionally incited by the heat of three election campaigns within the two years of interest of this analysis, increasingly took to more pronounced autonomy- focused positions. The details of the internal struggle within the conservative camp have been described elsewhere (Bauer, 2004a). One notes, however, that Bavaria managed to punch high above its weight, as it conquered the opinion leadership about the assessment of the constitutional treaty at the expense of Angela Merkel (the leader of the bigger Christian-democratic party) and of the negotiator of the *Länder* (the longest-serving Christian-democratic Minister President from Baden-Württemberg, Erwin Teufel).¹⁵ As regards the explanation of the differentiation, the point to be made is that party politics and, perhaps more importantly, party politics including parties with an exclusively regional constituency, are factors of potentially high salience for any explanation of regional elite preferences for European integration (van Houten, 2001; Fearon and van Houten, 2002; Deschouwer, 2003).

Elements of a Theory of Regional Elite Preferences for European Integration

As regards their position about how to shape the regional dimension of the future EU, the findings of the presented analysis indicate a trend towards growing differentiation among the German *Länder*. Intra-national differentiation will make it more difficult to generalize about subnational– supranational relationships, since more variance in positions among subnational elites will have to be accounted for than hitherto. Starting with concepts of legitimacy discourse (of competitive federalism) and socio-economic conditions (leading to growing interest divergence) it has been possible to trace increasing differentiation in the case of the German *Länder* as regards their positions towards reforming the regional dimension of the European integration project. However, the explanations underlying these mechanisms cannot satisfactorily clarify the whole pattern observed. On the basis of the insights retrieved from empirical analysis, an attempt is made to provide a more suitable explanation for the German case. This is then used in a second step for formulating abstract but testable hypotheses to stimulate further empirical research on regional elite preferences for European integration.

The expectation formulated on the basis of the work of Knodt that an autonomy- orientated ideology would come to dominate the *Länder's* concept for their position in the EU has not materialized. Instead, one can observe a bifurcation. There are some *Länder* that prefer partnership over autonomy and there are other *Länder* that appear to prefer autonomy over partnership. In other words, there

is growing divergence in the concepts of a working federalism within a multi-level context and no common trend towards a purely autonomy-focused vision for the regional dimension of European integration.

In a similar vein, the hypothesis of Charlie Jeffery that socio-economic differences can explain growing divergence of interests remains inconclusive. It was the merit of that proposition to point for the first time to a systematic explanation for observable growing divergence among the *Länder* position; and it is still the best proxy for explaining the variation in the pattern. Hence, the role of resources must be considered carefully (Jeffery, 2000). But the evidence does not support beyond doubt the socio-economic hypothesis, because various conflict issues among the *Länder* with respect to the constitutional treaty cannot be explained solely by a pattern of rich versus poor *Länder*. Rather, most conflicts appear to be along the line of the traditional left–right division that, in the case of Germany, cuts across the socio-economic divide. Since the most active players - Bavaria, Hesse and Baden-Württemberg - are all governed by conservatives and, at the same time, belong to the wealthier *Länder*, the German case therefore remains incidentally ill-suited to confirm or dismiss the socio-economic argument.

The major positive finding of the empirical analysis, then, is that the national party political struggle, the cleavage between the political left and political right – between Social-Democrats and Christian-Democrats – carries significant explanatory power with respect to accounting for the observed variance. That points to a trend towards a re-politicization of the process of European integration in terms of its subnational constituencies. It thus seems reasonable to draw more attention to the logic of party political competition inside the member states in order to explain the behaviour of regional elites with respect to the supranational level. How can all three elements be brought together in order to learn from the German case for the interpretation of subnational–supranational relationship elsewhere in the EU?

It seems indeed that the German *Länder* see their room for manoeuvre affected by European integration. However, the *Länder* increasingly come to different conclusions on how to respond to that challenge. Put simply, they appear to have two answers: autonomy orientation and partnership orientation. The more resources the particular *Land* has at its disposal, the greater seems the likelihood that it opts for the autonomy-orientated position. A 'weak' *Land* with few resources simply cannot afford to push for 'autonomy' when this would mean replacing European funds with regional funds, or investing in regional regulation instead of adopting European solutions.

Secondly, the national governments, as members of the Council of ministers, have a unique position within the decisional process of the EU. That power may be contested by subnational actors. *Länder* governments from a different political family than the national government thus have an interest in seeking political advantages in marking different political positions. The German case is

characterized by such national party politics, as regional governments' political choices on the European constitutional treaty appear strongly influenced by the Social-Democratic or Christian-Democratic party positions.

Thirdly, if the regional struggle for political power is truly regionalized – i.e. if there exists a perception of regional identity/distinctiveness or even a regional party system – then it also becomes more likely that the regional government chooses to opt for the autonomy orientation. In the case of Bavaria a major reason for its persistence in pushing for autonomy preservation in the constitutional debates has to be connected with three major election campaigns throughout that period. The Christian Social Union (CSU) exists only in Bavaria. Its success depends on a high level of regional political mobilization which is sought traditionally by highlighting regional distinctiveness (Pridham, 1978; Mintzel, 1998). Thus, affectedness, party-politics and regional distinctiveness are crucial elements for explaining the German pattern of variance of subnational positioning in the debate about the European constitutional treaty. Before attempting to formulate testable empirical hypotheses of a more general character, the basic assumption on which the suggested propositions rest has to be made explicit. This is the assumption that European integration in general is perceived by all actors as beneficial, i.e. the basic logic of integration as an attempt to increase the general welfare is not put into question. Thus, the political strategy of regional actors is limited. It varies between 'more autonomy/subsidiarity' and 'more participation/co-operation' as regards the preferred design of subnational and supranational relations. According to this explanation, exit is excluded as a viable political strategy. It has been noted that 'strong' regions, i.e. subnational entities which are well-endowed with competences, will take a stronger interest in the European integration process than regions with fewer proper competences (Marks *et al.*, 1996). Recently, van Houten summarized the proposed relationship as such:

If a region has limited powers, European integration can be one of the instruments to improve this. If, however, a region has considerable powers, then European integration and the development of state-like structures at the European level may erode these powers (van Houten, 2003: 115).

However, as was seen from the analysis of the German *Länder*, formal affectedness alone does not explain the direction and vigour of regional engagement in European matters. Charlie Jeffery gives the main clue on how to dissolve the contradiction. The actual socio-economic base of the region has to be taken into consideration. What is meant by 'actual'? An example from Germany illustrates the point: formally, Mecklenburg-West Pomerania and Bavaria may have the same constitutional competences. However, in reality, the actual resources of Bavaria exceed by far anything that Mecklenburg-West Pomerania would be capable of undertaking. In simple terms, for Mecklenburg-West Pomerania it does not make much of a difference whether it depends upon the German federal level or upon the EU; for Bavaria things are different. Thus, an 'actual affectedness proposition'

is suggested:

Hypothesis 1: A subnational government is expected to favour a more autonomy-orientated relationship with the European Union, the more its actual political room for manoeuvre is affected by further European integration.

The German evidence strongly points to the importance of the party political factor in terms of the traditional left–right cleavage. It seems that the social-democratic-led *Länder* governments have been more understanding and supportive of what could be achieved as regards the regional dimension in the convention with the help of the social-democratic-led federal government. And, for the same reason, the conservative *Länder* governments have increasingly complained about a federal government which they perceived as disregarding *Länder* interests in the IGC. The evidence on the statements to the protocols of the Conference of European Affairs Ministers clearly indicates that most controversial issues have been along the left–right divide and that the conservative governments were the more proactive part, i.e. had further reaching demands that were not satisfied by the convention or the IGC. Thus, a proposition is suggested that rests on the ‘logic of internal party political struggle’ of regional actors within a particular member state:

Hypothesis 2: One may expect a subnational government to favour a more autonomy-orientated relationship with the European Union if the subnational government belongs to the political family which is – according to the logic of national struggle for political power – in opposition to the national government.

The most proactive *Land* has been Bavaria. No other rich or conservative German *Land* fought so fiercely for its autonomy-orientated vision of regional–supranational relationship. The crucial factor that distinguishes Bavaria from other conservative and wealthy *Länder* is its sense of regional distinctiveness. The CSU has a pronounced regional appeal and exists as a political party only in Bavaria. For a long time, the CSU has been able to govern Bavaria without having to share power with any other political party. A ‘regional distinctiveness proposition’ is thus suggested:

Hypothesis 3: One may expect a subnational government to favour a more autonomy-orientated relationship with the European Union if the subnational constituency is mobilized on matters of regional distinctiveness.

Finally, the German case holds an obvious bias: the *Länder* are real ‘states’ - not just in their self-understanding, but according to the German constitution. The rights of the German *Länder* as regards participation in federal, i.e. national matters are extensive. European integration *per se* poses a threat to the firmness of their national position (Ipsen, 1966; Hrbek, 1986). However, there are other regions in Europe that still want to change their formal relationship with their national governments. For those regions that

are unsatisfied with their national *status quo* of internal power distribution, intensified European integration poses not so much a threat as an opportunity. Thus, as a kind of a background condition one has to ask the question whether subnational governments want to change their basic institutional situation within their constitutional setting. Therefore, the following final hypothesis is added:

Hypothesis 4: Whether subnational governments favour an autonomy-orientated or a partnership-orientated relationship with the European Union depends upon whether they still perceive themselves in a phase of improving on or rather in a phase of defending subnational competences in their respective national political system. 'Improvers' may see an ally, 'defenders' a foe in further integration.

Each hypothesis points to a potentially crucial link (see Figure 1). Drawing on the German case, the willingness to change the internal subnational to national relationship, the degree of regional distinctiveness, the cleavages of national party politics and the actual affectedness appear to be the variables for explaining subnational elite preference formation with respect to further European integration. The greatest surprise of the presented analysis has certainly been the salience of party politics as a crucial factor. Further research in this direction is therefore strongly encouraged. However,

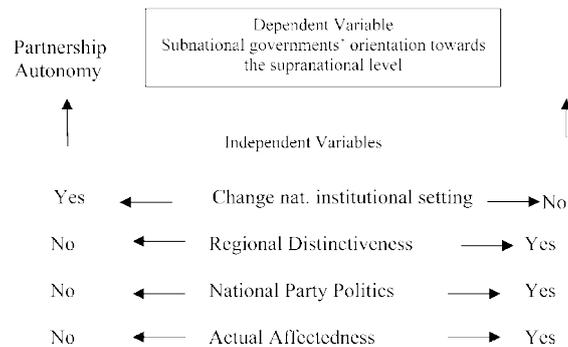


Figure 1. Influence patterns of regional elite preference formation for European integration

the robustness and explanatory value of all these mechanisms now needs to be tested on other empirical examples.

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Notes

- ¹Where not indicated otherwise, the term *Länder* refers to the governments and the administrations of the German states. The perspective of the regional parliaments is not covered by the present analysis.
- ²For example, it is not implausible that the differentiation of the socio-economic base may lead more affluent *Länder* to increasingly use the competitive philosophy to protect themselves against redistributive claims from their poorer partners. At any rate, the purpose is not to prove either of these propositions wrong, but to build on their work in order to firmly anchor the following analysis in the pertinent debates.
- ³Within this period, the crucial negotiations and discussions about the European constitutional treaty among the German *Länder* took place.
- ⁴Given that many excellent accounts of the history of the German *Länder* within the European integration process already exist – see, among many, Schmidt-Meinecke (1988), Jeffery (1996), Klatt (1999) and Hrbek (2001a) – this section only gives a crude summary.
- ⁵The analyst is confronted with a selection problem. The original Bundesrat resolutions are so broad that it is virtually impossible to include all expressed demands into an analytical framework for assessing success or failure of the *Länder* negotiations strategy. Besides, it is clear that points of low importance to the *Länder* as a group could be included easily on the list, since there was no political cost associated with such demands at the stage of formulating the resolutions. The following therefore exclusively regards the much narrower resolutions of the Ministers of European Affairs of the *Länder*. It was this forum that shaped the *Länder* position and redrafted it continuously in the view of the ongoing resolutions. Most of the issues of the – although formally binding – Bundesrat motions have never played any role in this circle. One can thus argue that the ‘true’ demands of the *Länder* as regards the regional dimension of the EU are those expressed, adapted and put forward by that horizontal conference. Hence, focus is on those demands that concerned the *Länder* directly in their understanding as states of a federation and administrative entities implementing European decisions. The decisions of the EMK are published online at www.europaminister.de (Europaministerkonferenz der Länder, 2001, 2002a, b, c, 2003a, b, 2004).
- ⁶The resolutions would iterate general demands to make the EU more democratic, more transparent or such as regards the powers of the European Council or the new permanent ‘foreign minister’. With the possible exception of the inclusion of an ‘*invocatio dei*’ into the preamble, on which considerable internal debate among the German *Länder* took place, none of those demands can be said to be of central concern to the *Länder* as regards their own position in the EU system. Therefore, they are excluded from the current analysis.
- ⁷According to the article 24 (4) of the draft constitution (IV 444 (4) of the version signed in Rome), the European Council will be able to decide unanimously to transfer issues that hitherto required unanimity in the Council into the ‘normal’ legislative procedure, i.e. to qualified majority voting. That and similar provisions are referred to as ‘*passerelle*’ or bridge clause (Craig, 2004: 8).
- ⁸For example, as regards general interest services, a compromise formulated by Austria was eventually agreed upon, which the *Länder* also grudgingly ‘accepted’ since they had no leverage in the IGC to prevent it. Furthermore, within the early warning system the *Länder* would have liked to be able to stop a Commission proposal if a significant number of no votes could have been arranged.
- ⁹The data have been taken from <http://www.europaminister.de/11929.htm>. One of those other statements was purely a matter of wording and the rest was about the question of the accession of Turkey as well as about the debate about the new European structural policy.
- ¹⁰The general thrust of the Bavarian arguments has been developed throughout the last decade or so. After having lost the federal elections against the incumbent Gerhard Schröder in autumn 2002, Edmund Stoiber, Bavaria’s long-serving Prime Minister, won a two-thirds majority in the regional elections one year later. In both campaigns, the EU has been an issue where Stoiber attempted to sharpen his political profile – even against his sister-party colleagues from the Christian Democratic Union. The strong opposition of the

Stoiber government to the constitutional treaty, however, did not soften until after the European elections in the summer 2004.

¹¹Only six statements are counted where the supporters come from conservatives and social-democrats; the counting depends, however, on whether one excludes the 'grand coalition' governments of Brandenburg and Bremen where CDU and SPD are in the government together.

¹²Interview Official in the State Chancellery of North Rhine-Westphalia, Nov. 2004.

¹³The election in May 2005 brought a landslide victory for the Christian-Democratic Party, thus ending 40 years of social-democratic rule in NRW.

¹⁴*Die Welt*, 12 July 2003: 4 - Streit über die EU-Verfassung spaltet die Union. CSU-Abgeordnete fordern Nachbesserungen – CDU 'hoch zufrieden' mit den Ergebnissen.

¹⁵*Frankfurter Allgemeine Zeitung*, 10 June 2003: 4 – Basis for accepting the European constitutional treaty: Stoiber raises 16 points. *Frankfurter Allgemeine Zeitung*, 30 September 2003: 5 – The European draft constitution to be changed: Christian Social Union prevails with demands.

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