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The Committee on the Regions and the Role of Regional Governments in the European Union

By Naomi Roht-Arriaza*

I. Introduction

In recent years, there has been a trend toward redistribution of state functions away from the classical nation-state: upward towards supranational institutions, and downward towards local and regional bodies. The growth in international organizations and arrangements exemplifies the upward movement, while the sometimes violent dissolution of formerly multiethnic states and the demands for regional autonomy in many others, marks the downward trend.

The European Union (EU) epitomizes the upward movement. The 1992 Treaty on European Union (TEU) created new areas of

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1. The European Union (EU) is the current name given to an evolving political and economic institutional framework for uniting European countries organized under the European Coal & Steel Community (ECSC), the European Atomic Energy Community (EURATOM), and the European Economic Community (EEC) (the EEC was changed by Article G of the TEU to the European Community (EC)). See Josephine Shaw, European Community Law 4-5 (1993); European Commission, Chronology of the Union (visited Nov. 3, 1996) <http://europa.eu.int/en/eu/hist/euchron.htm>. The EU is currently composed of Belgium, France, Germany, Italy, Luxembourg, the Netherlands, United Kingdom, Ireland, Denmark, Greece, Spain, Portugal, Austria, Finland, and Sweden. European Commission, EU In Brief (visited Nov. 3, 1996) <http://www.eurunion.org/profile/members.htm>. In order to avoid confusion, references to the EU will represent a reference to all the Communities and their unified institutions. The EU is not a legal personality, so where possible, references to the EU in this Article that would require a legal personality should be understood to be references to the European Community.

competence for European-level institutions and set in motion a process of further integration in the monetary, foreign relations, justice, and domestic affairs arenas. The 1996 Inter-Governmental Conference, which is expected to end in mid-1997, will determine the pace and scope of continued change.

Much has been written about the reasons behind European integration and Europe’s changing nature, as well as about the quasi-federal nature of the European system. However, few scholars have focused on the fact that this centralizing movement towards a larger regional polity has been accompanied by a simultaneous decentralization of many governmental functions in a significant number of European Union member states. This decentralization or devolution implies changes not only in domestic governance, but in the forms of construction and operation of supranational entities like the European Union.

Simultaneous integration and decentralization in Europe raises a host of new problems: How can an integration process conceived in terms of mostly unitary states accommodate, and even benefit from, the growth of subnational regions as political forces? Through what institutional mechanisms do regions, or subnational governments generally, take part in European institutions and affairs? To what extent does the existing accommodation of regions within the European Union make a difference in governance or policy outcomes? Can regional participation serve, as its proponents argue, to decrease the perceived democratic deficit in Europe and to bring European-level affairs closer to everyday citizens?

This Article explores these questions. It looks at the increasingly formal role of subnational governments in EU institutions and at their more informal influence in day-to-day policymaking. Rather than a two-level federal model familiar to U.S. readers, it posits that the EU

EC Treaty]. For the purposes of this Article, references to EC Treaty represent a reference to the Treaties of Rome and the SEA, as amended by the TEU.

3. See, e.g., Ernst B. Haas, The Uniting of Europe: Political, Social, and Economic Forces 1950-1957 (1958); Joseph H.H. Weiler, The Transformation of Europe, 100 Yale L.J. 2403 (1991). The original theory explaining European integration was functionalism, or the idea that growing economic convergence would create a set of political institutions to manage and direct existing economic processes. On a larger scale, growing interdependence, globalization of economic processes, and the need to deal with global problems such as the environment, population movements, and the threat of nuclear war are frequently mentioned explanations for the creation and growth of international institutions. See Commission on Global Governance, Our Global Neighborhood 10 (1995).
is moving toward a model of “multilevel governance.” Professor Gary Marks has defined this as

a system of continuous negotiation among nested governments at several territorial tiers—supranational, national, regional and local—as the result of a broad process of institutional creation and decision reallocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local/regional level.\footnote{Gary Marks, \textit{Structural Policy and Multilevel Governance in the EC, in The State of the European Community: The Maastricht Debates and Beyond} 391, 392 (Alan W. Cafruny & Glenda G. Rosenthal eds., 1993).}

First, this Article considers why subnational governments have assumed a growing role in European affairs in both the ascendant (policy formulation) and descendant (policy implementation) aspects. Factors include a general interest in regional autonomy as a solution to long-standing international problems, and the devolution of power from the national to the subnational level in some major European countries. The answer also encompasses the regions’ concerns that their newly won domestic powers would be snatched out from under them through the back door of European integration, the call for increased forms of popular participation to reduce a perceived democratic deficit, and the new attention to the “regional” in a number of policy areas.

Second, this Article summarizes the mechanisms available in the most decentralized states for subnational input into EU policy formulation and implementation, with a view towards understanding how these domestic arrangements have influenced the shape of European-level participation. Third, the Article focuses on the institutional methods devised to allow subnational governments a greater role in EU affairs. These include the “subsidiarity” principle, other treaty innovations, and especially the Committee of Regions established by Article 198 of the EC Treaty. In addition, this Article evaluates the work of the Committee in its first year or so of operation and looks ahead to its future within the EU. The final section analyzes the 1996 Intergovernmental Conference and speculates as to the role of subnational governments within an expanded, more heterogeneous EU and, more generally, within international governance structures.
II. Why Regions?

Over time, a sizable number of European Union states have moved towards a decentralized structure. The most "devolved" states are Germany, Austria, Belgium, and Spain. Germany emerged from the Second World War as a federal state, with a Basic Law that reserved many governmental powers to the sixteen Länder, or states.\(^5\) While some of the Länder had a specific historical identity and the division predated the Weimar republic, the federal structure was also a response to the victorious Allies' fear of a strong central state.\(^6\) The Länder participate in the federal government through the Bundesrat, the upper legislative chamber, which must approve treaties related to European integration, and are responsible for large areas of governance.\(^7\) Austria, newly incorporated into the EU, is organized into Länder along the German model.\(^8\)

More recently, the 1978 Spanish Constitution devolved varying degrees of power to seventeen autonomous communities.\(^9\) Some are composed of historically distinct peoples with long-standing aspirations to autonomy, like the Basques and Catalans; others are closer to administrative units with no particular identity, like Madrid.\(^10\) Belgium, in a number of constitutional reforms over the last twenty years, delegated most power over domestic affairs to a combination of regions—Flanders, Wallonia, and Brussels—and linguistic "communities."\(^11\)

Other EU member states, notably Italy and France, have also established regional structures.\(^12\) Although to date the Italian regions have exercised little real power, recent elections have given new impe-

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tus to regional parties seeking greater autonomy and even dissolution of the Italian state.13 By 1996, Italy's central government was touting decentralization and regional power as centerpieces of its program.14

Beginning in 1982, decentralization escalated in France and newly formed regional governments obtained competence in areas such as infrastructure planning and socioeconomic development.15 Although the central state remains the ultimate arbiter of national policy, French regional interests play an increasingly important role especially in the formation of EU policy.16 In Portugal, the islands of Madeira and Azores enjoy regional autonomy, and regionalization of the rest of the country has been approved although not yet implemented.17 Even the United Kingdom recognized the pressures for regionalization in the form of “territorial management” in Wales and Scotland, while its conservative governments centralized administrative structures and removed existing powers from local and county governments.18 Of all the EU members, only Greece, Ireland, Sweden, and the Netherlands have remained more or less unitary European Union states.

The politicians' focus on regions and regionalization parallels a new interest among social scientists, development theorists, and policymakers in the virtues of decentralization and local or regional approaches. This upsurge in interest can be attributed to several different theories. First, a renewed acknowledgment of the role of groups in satisfying “deeply felt needs for group identity and dig-

16. Id. at 135.
18. In the 1980s an erosion of local authority and a centralizing movement occurred in the United Kingdom, but this was accompanied by the growth of “territorial ministries” such as the Scottish, Welsh or Northern Ireland Offices.” Andrew Scott et al., Subsidiarity: A “Europe of the Regions” v. the British Constitution?, 32 J. COMMON MKT. STUD. 47, 53 (1994). These may adapt central government legislation to local conditions and have a fair amount of autonomy in implementation, if not in creation, of policies. Id. The Labour Party, widely favored to become the next government, has made regionalization a pillar of its political platform. See Andres Rodriguez-Pose, Socioeconomic Restructuring and Regional Change: Rethinking Growth in the European Community, ECON. GEOGRAPHY, Oct. 1994, at 325.
nity" has challenged the traditional liberal emphasis on individual rights and the liberal contractarian model of states. The current focus on the role of groups, including ethnic, territorial, social networks, or local neighborhoods, appears in communitarian political theory in efforts to encompass group rights within human rights theories and in the insistence of indigenous peoples that their collective claims be taken seriously.

Second, decentralization, regionalization, and autonomy have become politically acceptable answers to the seemingly intractable problems of nationalism, separatism, ethnic conflict, and threat of secession. States and legal commentators, generally unwilling to countenance any right to self-determination entailing a quest for statehood, have increasingly tried to find ways short of secession that respond to a substate group’s demands.

Increased regional autonomy, whether solely in the spheres of language, education, religion, and culture, or extended to political autonomy or control over land and resources, is a preferred solution and one that may stave off the specter of ethnic conflict. Jordi Pujol, President of the Autonomous Community of Catalonia (Spain), has stated that “regionalization is the answer to the need for citizens to express their identities within the European mosaic.”

24. For a discussion of some of the issues surrounding minority autonomy regimes, see Henry Steiner, Ideals and Counterideals in the Struggle Over Autonomy Regimes for Minorities, 66 Notre Dame L. Rev. 1539, 1547 (1991).
In this context, regions seem a natural level for constructing government: they tend to share ecological, cultural, linguistic, historical, demographic, and political affinities. In Europe, self-defined regions have a long history stretching back before medieval times.26 Regions, unlike local governments, tend to be large enough to support an economic and public service base, while avoiding the alienation from a distant, bureaucratic “center.” Strong regions also tend to support integration into multinational units. Moreover, in countries where sizable segments of the population feel alienated from the national political system, the idea of integration into a higher-level community may be attractive because it avoids culturally threatening political decisions; if the integrated entity is by definition culturally heterogeneous it may have a higher tolerance of or respect for cultural minorities within it.27

A third set of considerations arises from a cluster of current theories that stress the importance of local and regional networks and local control over resources. These range from studies examining the role of social networks in civil society,28 to bioregional approaches stressing the importance of developing a sense of place and living within the limits of that place29 to a growing recognition of local communities and their control over their resources as the cornerstone of ecologically and socially sustainable development.30 Much ecological


29. See, e.g., Wendell Berry, The Unsettling of America: Culture and Agriculture (2d ed. 1986).

theory decries the harms of globalization and stresses a locally and regionally based definition of development.\textsuperscript{31} Finally, permeating the humanities and social sciences is a more or less conscious postmodern rejection of "grand theory,"\textsuperscript{32} and an embrace of the local, the discontinuous, and the sui generis. This rejection provides a theoretical justification for looking beyond the nation-state and its alliances to the local and regional spaces where many forms of real power are exercised.\textsuperscript{33}

The desire to remedy a perceived democratic deficit in the EU also underlies the recent focus on substate, or regional, participation in European decision-making bodies. A major topic of Community debate in the pre, and post, Maastricht period, the "deficit" arises because the increasing power of EU institutions is not matched by concomitant accountability to the citizenry. Instead, the "deficit" signifies a shift of power from elected Parliaments to executive officials. At the same time, regulation from EU institutions has been perceived as distant, often inflexible, and ignorant of local conditions. For example, while in some states EU regulation of pollution standards was viewed as lowering existing national protections to a least common denominator, in others it was seen as an unwarranted and anti-competitive leveling-up. The extent of the gap between EU institutions and European citizens was manifested by the rejection of the EC Treaty in Denmark, its near rejection in France, and the later refusal of the Norwegians to become part of an expanded EU.

The new attention to the local and regional, and to regional autonomy as a strategy that diminishes conflict and enhances legitimacy, constitutes one part of the story of European integration. The other part is the increasing recognition in international law and policy that states are not the only participants in international rule-making processes. The classical view of international law as rules derived from interactions among sovereign states has been largely superseded by recognition that international rule-making is a multilayered process

\footnotesize{Development with Conservation, in Rebuilding Communities: Experiences and Experiments in Europe 35 (Vithal Rajan ed., 1993).}

\footnotesize{31. See David Morris, Free Trade: The Great Destroyer, in The Case Against Free Trade 139, 150 (Ralph Nader et al. eds., 1993).}

\footnotesize{32. "'Grand Theory' is the belief that the primary goal of the social disciplines should be that of seeking to construct a systematic theory of the nature of man and society." William P. Alford, On the Limits of "Grand Theory" in Comparative Law, 61 WASH. L. REV. 945, 945 n.1 (1986) (quoting Quentin Skinner, The Return of Grand Theory in the Human Sciences 3 (1985).}

\footnotesize{33. See, e.g., Michel Foucault, Two Lectures, in Power/Knowledge 78 (1980).}
that also involves individuals, corporations, nongovernmental organizations (NGOs), intergovernmental organizations like those related to the United Nations, and subnational governments. In this view, the state is the major agent in international norm-creation and rule-making, but it is not the only player. In Europe, nonstate actors provide consultations, advice, and sometimes even make law on a wide range of issues. The Economic and Social Committee (ESC), created at the outset of the European integration process to incorporate the views of civil society—unions, employers, and professional associations—on social matters, set a precedent for the limited incorporation of nonstate actors into the framework of European decision-making. The ESC must provide its opinion on Commission proposals before the Council of Ministers decides whether to adopt legislation on the matter. The ESC’s consultative function later served as a template for one method of integrating the regions into EU decision-making.

III. The Effect of European Integration on Regions

The process of devolution and decentralization in a number of European countries gave regional governments increasing control over land use, environment, education, training, industrial development, and a host of other policy areas. In a few cases, regional gov-

34. Richard Falk, among others, has long been a proponent of this multilayered view of international society. See generally Richard Falk, Revitalizing International Law (1989).

35. Id. ch. 1.

36. For example, much European-level negotiations over labor policy has been entrusted to the “social partners”—labor union and employer federations—with the results to be binding law. See Agreement on Social Policy Concluded Between the Member States of the European Community with the Exception of the United Kingdom, arts. 2(4), 4 (1992). Private standard-setting bodies made up largely of industry experts routinely create technical standards that become part of EU requirements for products. See Turner Smith, Jr. & Rosell D. Hunter, International Environmental Law Developments: A Focus on Europe, C795 A.L.I.-A.B.A. 301, 303 (1993). NGOs play a critical role as advisors on treaty negotiations in environmental and other areas. See Phillippe Sands, European Community Environmental Law: The Evolution of a Regional Regime of International Environmental Protection, 100 YALE L.J. 2511, 2521-22 (1991).

37. The ESC plays a consultative role in the decision-making process. Josephine Steiner, Textbook on EEC Law 21 (1994). Its members represent a variety of sectional interests, including farmers, workers, trade unionists, and members of the general public. Id. When consultation is provided for in the EC Treaty, it is an essential procedural requirement; additionally, subsequent legislation may require consultation. Id. The ESC is also entitled to advise Community institutions on its own initiative on questions affecting Community law. Id.; see also Clive Archer, Organizing Europe 116 (1974).

38. Steiner, supra note 37, at 16.

39. Archer, supra note 37, at 118.
ernments began to participate directly in international negotiations over subjects within their competence. In many others, autonomist parties won control of the regional government and began searching for ways to expand the range of control over regional resources and services.

From the point of view of these decentralized or autonomous regions, European integration was a decidedly mixed blessing. Regions with a specific linguistic or historical background welcomed connections with a larger Europe and the possibility of creating cross-border alliances. But at the same time, integration raised the possibility of having their recently-won competences eroded. As the ambit of European regulations, directives, and decisions expanded to cover subjects within the competence of some regional governments, these found themselves implementing and administering rules made in Brussels. For example, procurement rules and technical standards for infrastructure projects, environmental assessments, vocational training, and a host of other regional and local functions became subject to European rules. Moreover, national governments often claimed that because the rules arose in an international forum, their implementation and legislative development belonged within the foreign affairs powers of the central government and not within any competence held by subnational governments.

Thus, from the point of view of the regions, competences won through hard-fought and delicate constitutional arrangements were

40. For example, the Flemish and Wallonian regions of Belgium participated alongside the representatives of the Belgian federal state in negotiating a treaty on the protection and use of the Meuse River. Agreement on the Protection of the Rivers Meuse and Scheldt, Apr. 26, 1994, 34 L.L.M. 851.

41. The national government assumes the obligation to implement EU law within its territory. How it does so is a matter of each state's constitutional and territorial principles, and the EU does not intervene. EC TREATY art. 5. Where subnational governments are competent under national law in the area involved, they will generally implement the European legal obligation, with the national government exercising a supervisory or coordinating function. CASES AND MATERIALS ON EU LAW 204-06 (George A. Bermann et al. eds., 1993).

42. See Mazey, supra note 15, at 138-39.

43. Perhaps the most glaring example was the Common Agricultural Policy (CAP). While agriculture, especially its land use and rural development aspects, was within the competence of subnational governments in Germany, Spain, and Belgium, under the CAP it became an EC concern. National governments then claimed the right to regulate agricultural production on the federal level as part of their foreign affairs powers because the question was now implementation of a European-level program. See W. Gary Vause, The Subsidiarity Principle in European Law—American Federalism Compared, 27 CASE W. RES. J. INT'L L. 61, 79 (1995).
being denied through the back door of European integration. To make matters worse, the regions had no role in the formulation of EU policies they were expected to implement; regional representatives had neither a voice in the Council of Ministers nor direct access to the European Commission. Under these circumstances, it is not surprising that many subnational governments looked at a further expansion of European-level competences with trepidation. Regional governments developed two parallel strategies to defend their newly-won prerogatives. They sought to increase their ability to influence the formulation of European policies at the national level, and they sought to expand their direct influence in the institutions of the EU.

A. National Arrangements Permitting Subnational Input into Decisions on European-Level Issues

The subnational governments of the EU member states continue to develop both formal and informal mechanisms to ensure that they are adequately consulted and involved in the formulation of their state's positions within the EU. The following is a brief summary of the mechanisms in the most devolved states. Rather than an exhaustive inquiry into the national law of these states, this section focuses on the ways in which these national mechanisms have shaped the regions' demands for direct participation in EU-level institutions.

1. Germany

The German Federal Constitution grants the L"ander, or states, near autonomy in internal affairs through original legislative, executive, juridical, and budgetary competencies.44 The L"ander have a voice in federal affairs through the operation of the Bundesrat, or Federal Council, a legislative body composed of representatives from each of the L"ander governments.45 The Bundesrat may veto federal legislation that directly or indirectly affects the L"ander.46

Until recently, the federal government retained the sole right to represent Germany at the European level and could enter into binding agreements even in matters of exclusive L"ander competence.47 The ratification of the EC Treaty provided the leverage the L"ander could use to protect their interests.

45. Id. at 191.
46. Id.
47. Klaus H. Goetz, National Governance and European Integration: Intergovernmental Relations in Germany, 33 J. COMMON Mkt. STUD. 91, 95-100 (1995).
needed to force change in domestic arrangements. Changes to the original Treaty of Rome required Bundesrat approval, and the Länder used their veto power to push through changes at both the domestic and European levels. Domestically, Germany modified its constitution in 1992 by adding Article 23, which grants the Länder, through the Bundesrat, the ability to impose their views of EU law on the federal government. In areas of exclusive Länder competence, the federal government and the Bundesrat must agree on a joint position to be taken in the Council of Ministers. Where agreement fails, a vote by two-thirds of the Bundesrat is now binding on the federal government.

In all instances where the Länder are affected by EU law, the federal government must take the Bundesrat's position into account. The German federal government ensures the Bundesrat and Länder access to EU data available to other member state governments, and the federal ministry will ask for the Bundesrat position if the Bundesrat would have participated in a similar internally generated act. The permanent German representative in Brussels transmits all relevant EU materials to the Bundesrat.

In addition, the Constitution now requires a two-thirds majority of both the Bundesrat and the Bundestag, or Parliament, for further transfers of power to the EU. Länder representatives may also participate on European Council of Ministers and Commission committees where the subject or project at issue would have required Bundesrat action in the corresponding internal activity, or where the Länder have competence. They may establish permanent links to EU institutions, and a Länder representative participates in Germany's permanent mission to the EU. Finally, the Bundesrat may demand that the federal government initiate proceedings before the European Court of Justice in appropriate cases.

48. Id. at 106.
49. Id.
50. Id.
51. Gerstenlauer, supra note 44, at 209.
52. Id. at 203.
53. Id. at 208.
54. Goetz, supra note 47, at 103.
55. See generally Dian Schefold, La participación de los Länder alemanes en el proceso de adopción de decisiones de la Unión Europea, in LA ACCIÓN EXTERIOR Y COMUNITARIA DE LOS LÄNDER, REGIONES, CANTONES, Y COMUNIDADES AUTÓNOMAS 125 (Manuel Pérez González ed., 1994) [hereinafter LA ACCIÓN EXTERIOR].
56. Only the federal government, of course, may bring a case before the Court. Gesetz über die zusammenarbeit von Bund und Ländern in Angelegenheiten der
2. Belgium

Presently, Belgium is comprised of three communities based on the Flemish, French, and German language and culture and three overlapping territorial regions, Flanders, Wallonia, and the capital region of Brussels.\(^{57}\) Constitutional reform throughout the 1970s and 1980s transformed Belgium from a unitary state to a federal one in which each of the regions and communities began to enjoy its own areas of exclusive competence.\(^{58}\) The communities have jurisdiction over education, culture, health, social services, and other welfare-related areas, while the regions exercise control over employment and industry, economy, land use, environment, infrastructure, and similar matters.\(^{59}\)

Belgium has gone farther than any other European state in providing ample opportunities for its communities and regions to directly participate in EU affairs. The Belgian Constitution obliges the federal executive to inform subnational governments about proposed EU legislation or policies, and to transmit proposed regulations and directives to those subnational Parliaments that have competence over the proposed areas of legislation.\(^{60}\) The Belgian position in the Council of Ministers is determined by agreement among the federal government and the affected regions and communities; a lack of consensus, although rare to date, results in a Belgian abstention on the matter.\(^{61}\) Ministers of the appropriate subnational government may represent Belgium before the Council of Ministers when the topic under discussion is one which falls under the jurisdiction of the regions or communities. However, in that situation they must represent the position of the entire Belgian state.

In addition, Article 128 of the Belgian Constitution provides that, with the exception of the Brussels Capital region, regional and community executives may enact treaties within areas of their competence.\(^{62}\) A series of interministerial committees on different types of

\(^{57}\) Hooghe, *Belgian Federalism and the European Community*, supra note 11, at 139.

\(^{58}\) Id.

\(^{59}\) Id.


\(^{61}\) Hooghe, *Belgian Federalism and the European Community*, supra note 11, at 152.

\(^{62}\) BELGIAN CONSTITUTION art. 128.
treaties ensures coordination among the different levels of government in their external affairs. The King of Belgium may, in certain cases, halt the negotiations, for example, if a region wishes to negotiate a treaty with a state that Belgium has not recognized.63

3. Spain

The Spanish Constitution of 1978 devolved varying degrees of power to seventeen autonomous communities; while some enjoy their own taxing and spending powers, others are competent in a minimal, although growing, number of areas.64 Certain competences belong only to the autonomous communities and others only to the central government.65 Many are shared, with a framework or minimum law at the federal level filled in by the regions.66

The Spanish Constitution makes no provisions for the effective integration of the regions into the central government’s decision-making on European affairs.67 Nonetheless, under considerable political pressure from strong regional governments such as the Catalan and Basque, several attempts at coordination and consultation with the regions have been sketched out, although the last few years have seen little in the way of implementation.68

First, the Law of Public Administration69 states that when European institutions require information or reports from Spain, the state must ask the autonomous community governments for information they wish to submit on the subject. Moreover, the central administration must take into account and reflect the interests of other levels of

63. Article 167 of the Belgian Constitution sets out the competence of the regions and communities, with the exception of the capital region, to negotiate and enter into treaties. Id. art. 167. Article 81 of the Special Law of August 8, 1980 contains the mechanisms for federal oversight of the negotiation process. See generally Yves Lejeune, L’action extérieure des régions et des communautés belges et leur participation à la conclusion de traités internationaux, in LA ACCIÓN EXTERIOR, supra note 55, at 493.

64. Morata, supra note 10, at 132.

65. Id. at 117.

66. Id. at 116-17, 119-20.

67. Id. at 118.

68. Interview with Joaquin Llimona, Generalitat de Catalonia, in Barcelona, Spain (Sept. 1995). In part, the problem until April 1996 was the near-paralysis of any new initiatives in light of the crisis of the Socialist government and the subsequent call to elections. As of October 1996, it was still unclear what would happen under the government of José María Aznar.

69. Ley 30/1992, de 26 de Nov. 1992, de Regimen Jurídico de las Administraciones Publicas y del Procedimiento Administrativo Comun, cited in Oriol Casanovas y La Rosa, La accion exterior de las Comunidades Autónomas y su participación en la celebración de tratados internacionales, in LA ACCIÓN EXTERIOR, supra note 55, at 63.
government in formulating its position; if it does not, it is subject to suit. Second, the Conference for Affairs Connected to the European Communities has drafted agreements establishing the manner of autonomous community participation in disputes with the Commission and at the European Court of Justice (ECJ) and has spawned an agreement for periodic meetings of regional and national ministers in different subject areas to fix a common position and exchange information. A 1994 Accord on the Participation of the Autonomous Communities in EU affairs calls for the regions to develop a common position and provides for the central government to exercise varying degrees of deference to the regional position depending on whether it relates to areas of exclusive regional competence. Finally, in 1994 the Senate agreed to transform itself into an organ of territorial representation, with consultative and information-gathering functions on behalf of the regions; this transformation is still incomplete.

4. Italy

At the end of the 1960s, twenty regions were set up in Italy, but for the most part, their makeup was a question of political expediency rather than long historical roots. In recent years the northern regions have pressed for increased regional power, but so far this pressure has not resulted in the development of institutional mechanisms for regional participation in European affairs.

Nonetheless, some mechanisms do exist. Sectoral conferences between central and regional governments serve primarily as information-sharing mechanisms. A presidential decree issued on March 31, 1994 now regulates regional participation in European and foreign

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70. See Luciano Parejo Alfonso, *La participación de las Comunidades Autónomas en el proceso de adopción de decisiones de la Unión Europea, in LA ACCIÓN EXTERIOR, supra note 55, at 65, 104.

71. Morata, *supra* note 10, at 116. The Spanish regions have differed in their views over the appropriate model for incorporation of regional perspectives. Some strong regions prefer a series of bilateral relationships between the central and regional governments, while others stress the need for a strong interregional coordinating mechanism that will then negotiate with the central authorities on behalf of the regions as a group. See Casanovas y La Rosa, *supra* note 69, at 45, 51. These differences have also delayed implementation of the proposed structures.

72. PABLO PÉREZ TREMPS, COMUNIDADES AUTÓNOMAS, ESTADO Y UNIÓN EUROPEA: NUEVO PASOS HACIA LA INTEGRACIÓN DECENTRALIZADA 590, 611 (Barcelona, Informe Comunidades Autónomas, 1994).


74. El Decreto del Presidente de la República en curso de adopción contiene normas de dirección y coordinación de las actividades de las regiones en el extranjero,
affairs. The regions may maintain direct contacts with EU institutions and offices without informing the central government and may undertake “promotional activities” as well as activities with international ramifications. However, they may not participate directly in treaty-making. In addition, the government must transmit to the regions for their observations all proposed EU legislation, and must hold biennial meetings of the State-Regions Conference dealing with EU affairs. This conference is consultative only, however, and has no ability to bind the government. Collectively, the conference of presidents of regions may appoint a delegate (given, however, the title of “agricultural attaché”) to the Italian permanent mission in Brussels.

5. Austria

Austria, like Germany, is a federal state composed of nine Länder. The Länder were early supporters of integration into the EU but were also suspicious of the effects on their powers. Therefore demanded and received an agreement setting out mechanisms for Länder participation in formulating Austria’s positions in EU institutions. The agreement provides, first, that the Federation must supply adequate information to the Länder on all projects or proposals of the EU that might affect the Länder’ interests or otherwise be of concern. A unanimous vote of five Länder on a proposal, in an area where they are competent to legislate, binds the Federation to that position except under extraordinary circumstances. If the Federation is likely to invoke the extraordinary circumstances exception it must inform the Länder as soon as possible, and in any case it must make its reasons known. A Conference of Länder has met regularly since 1992 to establish common positions on issues.

In addition, Länder representatives may, but need not, be included in the Austrian delegations to EU institutions, and may, with


75. Agostini, supra note 74, at 31-32.


79. Id.
the permission of the chief of the mission, speak at meetings. Länder may also, at their own cost, have representatives act as observers at the permanent mission in Brussels. With respect to judicial action, if a Länder government feels that an EU action will hurt its interests, the Federation government is obligated to bring the appropriate complaint before the ECI.80

6. Conclusions on Subnational Participation

This brief overview of the mechanisms developed in the most decentralized states to incorporate regional perspectives into EU decision-making leads to several conclusions. With respect to the kinds of regional participation in European institutions, the least common denominator seems to revolve around access to, and transmission of, information to and from the region to the EU. Internally, national governments generally organize this transmission, although, as the next section shows, much information is transmitted directly from the EU level to subnational governments.

A second area concerns the formulation of a national position on proposals that impact the regions either directly or indirectly. Here, Belgium, because of the small number of regional players, relies on direct negotiation between each region/community and the federal government, while in the other countries, a central clearinghouse must define a unified position of the regions. This process is most advanced in the German Bundesrat; in contrast, Spain suffers from the lack of any similar institution, at least until the Senate fully takes on this role. Furthermore, only in Belgium, Germany and Austria is the decision of the regions potentially binding on central government negotiators in Brussels. Nonetheless, the idea of a quasi-legislative “chamber” of regions, and of horizontal links among regions to develop common positions, has been central to the emerging European-level architecture.

A third form of participation is the direct inclusion or participation of regional representatives as part of a state’s Brussels delegation. Again, the German and Belgian arrangements allow for substantial participation, while other states permit more limited access to both the Council of Ministers and the permanent mission. In all cases, however, contacts with members of the Commission and informal consultations are permitted.

Analysis of “regional” representation in the EU must accommodate the various types, extents, and modalities of participation of the

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80. Id. at 192.
regions in EU affairs. Many countries allow little or no participation by regions or local governments; the differences among those that do are substantial. Thus, any EU policy regarding the regions will have to be flexible and allow considerable room for variations both in the definition of a “region” and in the powers ascribed to regions by national law.

B. Direct Access by Regions to European Union Institutions

At the same time that regional governments pushed for changes in national law to accommodate their participation in the formulation of national positions on European issues, they also expanded their direct contacts with the Commission, the Parliament, and, to a lesser extent, the Council of Ministers. The results of their efforts included the creation of a strong regional lobbying group, the Association of European Regions, built from a host of satellite groups, as well as the strengthening of regional initiatives in other institutions like the Council of Europe, and the opening of a number of regional offices in Brussels.

1. European-Wide Organizations

The Council of Europe was the first pan-European organization to recognize the role of regions: its Standing Conference of Local and Regional Authorities of Europe (SCLRAE) was originally formed in 1961. The SCLRAE is limited by the fact that its regional and local representatives are appointed by central governments, but it provided an early and permanent means for communication and joint work among regions. Accords on transfrontier cooperation recognized the role of subnational governments in concluding agreements on a range

81. The Council of Europe, established in 1949, was among the earliest pan-European organizations formed after WWII. It was conceived as a vehicle for political integration in Europe. Its aims include “agreements and common action in economics, social, cultural, scientific, legal and administrative matters.” Statute of the Council of Europe, May 5, 1949, art. 1(b), 87 U.N.T.S. 103, 106. The Council acts through a Committee of Ministers and a Parliamentary Assembly; it includes both members of the European Union and non-members, including those from Eastern Europe. ARCHER, supra note 37, at 57-64.

82. Resolution 61/20 of the Comm. of Ministers, Sept. 13, 1961 (Council of Eur.), created a permanent Conference of Local Powers as a consultative and technical organ of the Council of Europe. Regions were added as members in 1975. Resolution 75/4 of Feb. 19, 1975 (Council of Eur.). More recently, the Conference divided into two parts: A Chamber of Local Powers and a Chamber of Regional Powers, stressing the wider and more overtly legislative nature of the powers attributed to at least some regions within Europe. CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE (CLRAE), 1994 EUR. Y.B. (Council of Eur.) 42-43.
of border issues. In addition, the Council of Europe's Charter of Local Self-Government has served to mobilize municipal and regional governments to communicate with and organize among themselves.

A second pan-European organization, the Council of European Municipalities and Regions, based in Paris, was formed in 1951. It comprises national associations of local and regional governments in Western Europe, although in practice it focuses on local government issues. It works closely with both the Council of Europe and the EU, and has argued for equal representation of regions and local governments in European institutions. Periodic General Assemblies have produced a series of influential Declarations on European Unity.

A third organization represents only regional, not local, governments. The Assembly of European Regions (AER) was formed in 1985 on the initiative of nine specialized inter-regional groupings. It is composed of some 269 Western, Central and Eastern European regions, that, at least in principle, represent elected regional legis-


84. Congress of Local and Regional Authorities of Europe (CLRAE), supra note 82, at 43.


89. These included long-existing transborder associations like the Association of Border Regions (ARFE/AGEG), founded in 1971 by the Rhine border regions in Germany and the Netherlands; the Working Group of the Regions of the Central Alps (Interregional Association of Alpine Countries), which brings together German, Swiss, and Italian regions; and those representing specific geographic and economic interests like the Conference of Peripheral Maritime Regions of Europe, grouping the less-developed island and coastal regions, or the Traditional Industry Regions (RETI), which includes some 20 regions of the EU affected by the loss of the coal, steel, shipbuilding and other traditional industries. See Jasone Astola Madariaga, Poder Regional de la Unión Europea, VAP 95-110 (Basque Gov't ed., 1995); Hooghe, Subnational Mobilisation in the European Union, supra note 86, at 187.
tures.\textsuperscript{90} The AER, as a private lobbying group, has served as a political focal point for mobilizing important regional leaders and pressing the case for a regional presence in European affairs. It has, at least until the recent formation of the Committee on the Regions, served as the main unified voice for regions in European-level institutions. In addition, its constituent regional groupings continue to provide a dense network of horizontal information-sharing and lobbying on joint interests.

2. \textit{Regional Government Offices in Brussels}

Regional governments also acted independently to protect their interests against encroachment from European integration and to insert themselves into the Community's decision-making processes. Following the early example of the German \textit{Länder}, many subnational governments have opened offices in Brussels—there are now some seventy such offices.\textsuperscript{91} The offices serve a combination of functions: they provide information on Community institutions to regional governments and social actors, they monitor upcoming Commission proposals and funding decisions, they organize meetings between regional authorities and the relevant Community officials, and they carry out general promotional and commercial activities. The meetings with European officials, and the attendant publicity, are often important as a boost for regional politicians, showing that they matter on the larger "European" stage. Regional office staff consult regularly with Commission officials without the participation, although generally with the knowledge, of central state representatives, thereby underlining their relative autonomy from the state delegations. Many offices also promote a "European" vision within their respective regions, publishing summaries of EU activities and bringing speakers on European topics. In general, the offices serve as both the "eyes and ears" of the regions in Brussels, and as lobbying and promotional entities for the regions.

The first regional offices in Brussels generally represented those regions with historical claims to autonomy or from countries with strong regional structures. However, the expanding role of regions in the EU, first in administering the structural funds and later through


regional participation under the EC Treaty has caused the number of offices to increase. From those with historical claims to autonomy or independence such as the Basque or Catalan, the offices now represent areas with little or no historical regional identity, including some English counties and the Spanish autonomous communities of Murcia and the Community of Madrid. Like it or not, these areas must now recognize and identify themselves as regions to claim the perceived advantages of that status.

Establishment of the regional offices has led to sharp conflicts between national and subnational governments in some states. In Spain, for example, the Basque Office was originally established as a "Representation of the Basque Government." Madrid objected and filed suit in the Spanish Constitutional Court, pointing to constitutional provisions reserving foreign affairs to the central government. The Basque Office was subsequently reorganized as a private corporation with the regional government as majority shareholder, in a pattern followed by other regions. In a landmark 1994 decision the Spanish Constitutional Court found that, because Community law affected competences and areas constitutionally granted to the Autonomous Communities, these areas had the right to independent representation and participation in European affairs on issues within their competence.

Over time the offices have developed relations among themselves. Relations are especially close among regions of a single State, who tend to meet regularly, as well as among regions sharing a common border or area. The offices participate in dense networks of lobbying groups and commission—or parliament—led working groups on a range of subjects. The offices' staff have also used their technical expertise in EU subject areas like agriculture to assume roles in policy formulation at the Commission and Parliament level. All these organizations and offices have served as an often informal means of con-

92. Morata, supra note 10, at 125.
94. Id.
96. Of course, regions and local offices compete as well as cooperate for access, for potential funds and investments, and for visibility. See Richard H. Williams, Spatial Planning for an Integrated Europe, in The European Community and the Challenge of the Future 344-45 (Juliet Lodge ed., 1993).
97. Interview with Marcos Ortiz, Adviser, Comunidad Autónoma de Valencia, in Brussels, Belgium (May 1995).
necting the regions to the European Union’s bureaucracy and to each other.

A final significant channel of this type is the number of Members of the European Parliament (MEPs) who are elected by regional parties or who represent regionalist sentiments in their respective countries. Although elected to represent a national, not regional, constituency, these MEPs not only became informal channels of information and intelligence to their regional governments, but also served to raise issues of concern to subnational governments before the Parliament.

The development of these region-initiated channels corresponded with a need on the part of the EU institutions for region-level interlocutors. First, the increasing importance of regions as recipients of programmatic funds under the structural funds program provided the initial wedge for direct regional participation in EU administration. Second, under the 1986 Single European Act (SEA) the powers of the then European Community expanded to include a number of areas that as a matter of national law were exclusively or primarily within the purview of local and regional government. In the period leading up to the negotiation of the EC Treaty at Maastricht, these events set the stage for the incorporation of formal mechanisms for regional participation in the Union’s decision-making.

C. The Structural Funds and the Regions

The first major regionalization of policy came through the creation and subsequent reform of the EC’s structural funds. Initially, the European Regional Development Fund (ERDF), created in 1975, served primarily to coordinate member-state aid to underdeveloped or depressed regions. The process of creating a single market increased regional disparities, thus skewing development towards the center within each state as well as among states. The need for a coordinated and proactive Community-wide approach to ameliorate...
these disparities became clear. So did the need to focus on regions rather than states. Even within the wealthier states, some regions could slip further into poverty; the Italian Mezzogiorno is the best example. The 1986 SEA added as EC objectives, "the strengthening of economic and social cohesion" with the aim of "reducing disparities between the various regions and the backwardness of the least-favored regions."\textsuperscript{101}

In keeping with this new mandate, in 1989 the ERDF, together with the other structural funds,\textsuperscript{102} began operating under a set of objectives that prioritize help to (1) regions whose development is lagging behind, (2) regions suffering industrial decline, and (3) rural areas, with the regions to be favored decided by Community-set criteria.\textsuperscript{103} For the 1994-1999 period, the amount allocated to structural funds increased by more than sixty percent after doubling from 1988-1994, and now accounts for some thirty percent of total EU spending. By 1999 that sum will rise to over a third.\textsuperscript{104}

The definition of the region as the appropriate unit for much development aid led eventually to a perceived need to involve regional and local authorities, who were closer to the ground and would be key players in implementation, in the design of projects and plans to be funded by the EC. In some cases, the choice of objectives was itself a

\begin{footnotesize}
\begin{enumerate}
\itemSEA, \textit{supra} note 98, art. 130A.
\itemThe European Social Fund funds the retraining and migration of workers, and the Guidance Section of the Agriculture Fund helps depressed farming areas. The European Coal and Steel Community provides funds for retraining and new industries in coal and steel-producing regions, and the European Investment Bank makes low-cost loans.
\itemObjective 1 regions have a per capita Gross Domestic Product (GDP) of less than 75\% of the EU average; objective 2 regions are those seriously affected by industrial decline; objectives 3 (combating long-term unemployment), 4 (facilitating occupational integration of young people), and 5a (speeding up adjustment in agricultural structures) are not region-based; objective 5b goes to rural development in selected regions; and objective 6 (added later) aids regions particularly dependent on fishing. Structural funds have increased from 12\% of the EC budget in 1984 to 30\% in 1994. Of that, objective 1 regions absorbed 65\% of the funds for the 1994-1999 period. The New Regional Programmes Under Objectives 1 and 2 of Community Structural Policies, COM(95)111 final. See Marks, \textit{supra} note 4, at 393.
\itemMarks, \textit{supra} note 4, at 392. As the amount spent on agriculture declines under the CAP reforms, this amount can be expected to increase still further, although it is, according to most observers, still entirely inadequate to the tasks it confronts. See, e.g., Armstrong, \textit{supra} note 99, at 144. In addition, under the EC Treaty, a new Cohesion Fund targeting the four countries (Greece, Ireland, Portugal, and Spain) with a per capita Gross National Product (GNP) of less than 90\% of the Community average. Spain pushed hard for this formula rather than another region-based program because it excludes the remaining two of the three most populous poorer regions of the EU, the Italian Mezzogiorno and eastern Germany, leaving Spain with a lion's share of the funding. Marks, \textit{supra} note 4, at 393.
\end{enumerate}
\end{footnotesize}
product of lobbying by regional associations, as in the efforts of Traditional Industry Regions (RETI), the group representing declining industrial regions, to create and expand objective 2 of the structural funds. Moreover, the availability of funds induced regional and local authorities to pay greater attention to European-level politics and policies.

The concept of “partnership” among all government levels developed as a key principle of the structural fund reforms. Henceforth, regional authorities would play a role, together with national governments and the EC itself, in the planning and execution of regional policy initiatives. Under the current scheme, each member state prepares a draft regional development plan, which after consultation and negotiation with the Commission becomes a Community Support Framework within which project funds are allocated. The regional governments work directly with the Commission to identify appropriate projects. Projects are then carried out by central, regional and local governments.

“Partnership” is carried out through both regional government participation in plan drafting in almost all the EU states and Regional Monitoring Committees. Funds are allocated through division of the Community Support Frameworks into a “national” and a “regional” section, with the regional projects planned at the regional level. In Spain forty-two percent of ERDF funding is for regional projects, and in Italy fifty-one percent. In addition to a growing role in project

106. Marks, supra note 4, at 396.
107. Id.
108. McALEAVY, supra note 105, at 16. The Regulations governing the Structural Funds are more cautious: Article 4 of the revised 1993 Regulation states only that Community operations shall be such as to complement or contribute to corresponding national operations. They shall be established through close consultations between the Commission, the Member State concerned and the competent authorities and bodies - including, within the framework of each Member State’s national rules and current practices, the economic and social partners, designated by the Member State at the national, regional, local or other level, with all parties acting as partners in pursuit of a common goal.
selection and implementation, regional and local authorities participate in Regional Monitoring Committees which evaluate the progress, implementation and financial solvency of ongoing projects. These Committees include economic and social actors (i.e., trade unions, chambers of commerce, environmental observers) as well as local and regional authorities. According to one commentator, "partnership is intended as a way of decentralizing decision-making in accordance with the principle of subsidiarity, taking advantage of local expertise, and meeting the priorities of local communities."\(^{110}\)

Despite continuing complaints from regional authorities that “partnership” is still a vague concept,\(^{111}\) the structural funds and their administration became the thin edge of the wedge for regional participation in European Community structures as well as increased Community consciousness of the importance of regional and local government. Starting in the late 1980s, the Commission had helped to organize a series of conferences of regional representatives, both generally and for specific policy aims.\(^{112}\) In 1988, based in part on lobbying from the AER and SCLRAE,\(^{113}\) the Commission Directorate in charge of regional policy (DGXVI) convened a Consultative Committee of Local and Regional authorities to help the Commission in the design of structural funds programs and in evaluating the regional impacts of other Community policies.\(^{114}\) The Committee was composed of forty-two members, nominated jointly by the regional lobbying organizations, and was divided into a regional chamber and a local chamber.\(^{115}\)

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111. A study carried out by the Committee on the Regions in 1995 found that programmes were still constructed by central government, and that regional and local authorities felt their role was still inadequate at the programming stage, although they had a greater role in implementation and monitoring. Opinion on the Role of Regional and Local Authorities in the Partnership Principle of the Structural Funds, 1996 O.J. (C 100) 17.

112. Thus, for example, in July 1991 the Commission’s regional directorate called a meeting of the 60 regions eligible for Objective 2 funding (depressed industrial regions) and urged them to organize themselves. McAleavy, *supra* note 105, at 12.


115. *Id.* arts. 3.1, 3.2, 4. See IRIGO BULLAIN LÓPEZ, LAS REGIONES AUTÓNOMAS DE LA COMUNIDAD EUROPEA Y SU PARTICIPACIÓN EN EL PROCESO DE INTEGRACIÓN 72 (IVAP,
The Consultative Committee met at the Commission's request, creating greater cohesion among regional authorities from different states and providing a direct link from regional governments into the Commission bureaucracy. Other Directorates, notably the Environment Directorate (DGXI), also began to convene similar informal working groups.116 These regional representative consultative groups showed both sides the usefulness of dialogue; they also convinced the regional organizations that a more self-directed structure with broader consultative abilities was necessary and helped set the stage for future reforms.

D. Expansion of the regional aspects of other EC policies

Over time, and especially after 1992, a number of other areas of EU policy have begun to reflect this expanded consciousness of the importance of regions and regional-level actors. Employment policy now emphasizes the role of territorially-based networks of small and medium enterprises and the centrality of a territorial/regional dimension to creating employment.117 Environmental policy, according to the EC Treaty, aims for a "high level of protection taking into account the diversity of situations in the different regions of the Community."118 The Fifth Action Programme on the Environment includes the concept of "shared responsibility" among the Commission, Member States, subnational and local governments and social forces,119 with regional governments in decentralized states playing a key role at the same level as member states in legislating, monitoring, and implementing environmental policy and changing consumer attitudes. In December 1993, the Commission hosted a conference of environmental ministers and regional political leaders to discuss the creation of

1989). The Consultative Committee was disbanded upon the creation of the Committee of the Regions.

116. Interview with Maria Lozano, DGXI, European Commission, in Brussels, Belgium (May 1995).


118. EC TREATY art. 130r.

regional plans for sustainable development. Since then, it has met regularly with regional environment officials, both in the context of project approval under the structural funds and for joint planning of environmental projects.

Two further areas bear mention as examples of the growing importance of a regional focus in EU planning. First, the current emphasis on trans-European communications, energy and transport networks is conceived largely on a regional basis, with a growing number of projects linking regions across national boundaries. Title XXI of the EC Treaty specifically authorizes Community action in these areas; a Community-wide urban policy is also under discussion. The idea of spatial planning organized by regions is gaining currency. In 1991, the Commission published the Europe 2000 study, advocating the creation of regional networks in communications, transport, research and development, and similar matters that would span parts of a number of EU states in large "arcs" of development. Since then, a series of seminars, workshops, and networking among regions have carried forward the spatial planning agenda on a regional level.

Second, competition policy is increasingly concerned with the effects of state aids granted by regional, not national, governments. The Commission has in the past challenged state aids granted, inter alia, for regional development purposes or to stop the flight of local industry. Establishing a coherent policy requires greater contacts and co-

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120. EC Commission, Provisional Revision of the Application of the Policy and Action Programme of the European Community in Relation to Environment and sustainable Development, COM(94)453 final at 59.
121. Interview with Raul Zorita, DGXVI, European Commission, in Brussels, Belgium (May 1995).
123. *Id.* at 356-57.
ordination between regional authorities and the Commission. Combined, these developments have increased the visibility and weight of subnational governments within the Community. The 1992 Maastricht reforms presented the opportunity to push the regional agenda forward.

IV. The Regions in the Treaty of European Union

Negotiations for the 1992 Treaty of European Union took place in the context, described above, of devolved government in a number of important states, a perception of “democratic deficit” within Community institutions and the concomitant distrust of governance from Brussels, and concern over the continuing destabilizing and centralizing effects of the single market. Several of the Maastricht provisions contemplate a larger role for subnational authorities.

A. Subsidiarity

One of the most remarked-upon aspects of the EC Treaty is the official inclusion of the concept of subsidiarity. Article 3b of the Treaty reads:

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein . . . . In areas which do not fall under its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Thus, as an action criterion in cases of concurrent competence, higher levels of government should only do what lower levels cannot do as well; conversely, higher levels should do what lower levels cannot accomplish as well. This general rule is to help the Community institutions to decide whether and how to act, and when action can best be left to the Member States. It can as easily, however, be extended to higher and lower levels within each Member State—that is,

127. EC Treaty art. 3b.
to stand by analogy for the proposition that regional governments should act where there is no reason to think national governments will do a better job.

First expressed in Catholic social doctrine of the early twentieth century, subsidiarity represented the ideal relationship between the individual and society.129 Germany first used the concept politically to describe its federal system, in which all power was presumed to lie with the Ländere unless explicitly granted to the central authority.129 The concept made its way into the EC Treaty based on two different motivations: As discussed, the German Ländere, worried about the erosion of their competences in the integration process, used their power (through the Bundesrat) to block adoption of the Treaty unless it incorporated the concept, which they saw as limiting the power of Bonn, not Brussels.131 On the other hand, in a number of states, notably the UK and Denmark, subsidiarity was a convenient method to limit perceived excessive growth in the Commission’s powers at the expense of the Member States.132 The crisis precipitated by Denmark’s rejection of the Treaty in June 1992 led EU supporters to seize upon the subsidiarity principle to reassure voters that EU power could not continue to increase unfettered.133

Subsidiarity has long been a part of EC law. The Treaty of Rome in Article 3(h) declared that the harmonization of Member State laws should occur “only to the extent required for the proper functioning

129. In his Papal Encyclical of 1931, Pope Pius XI declared that “it is an injury and at the same time both a serious evil and a disturbance of right order to assign a larger and higher society what can be performed successfully by smaller and lower communities.” Bermann, Taking Subsidiarity Seriously, supra note 126, at 339 (quoting Pius XI, Quadragesimo Anno (1931)); Marquardt, supra note 6, at 618.

130. Marquardt, supra note 6, at 620.


132. Scott et al., supra note 18, at 51-52.

133. Marquardt, supra note 6, at 626. The growth of Community powers over the previous decade had taken several forms. The ECJ’s recognition of the doctrines of direct applicability, direct effect and supremacy, and its creation of the concepts of enumeration, implied powers and preemption gave the Community a decidedly federalist legal basis. Bermann, Taking Subsidiarity Seriously, supra note 126, at 349, 362. The shift from unanimous to qualified majority voting on a wider range of issues after 1986 diminished Member States’ ability to scuttle unwarranted legislation. Id. In addition, as noted, the Community seemed to be spreading its legislative and regulatory net ever-wider, sometimes to an absurd level of detail.
of the common market."134 The Commission has long recognized the Member States’ superior capacity to implement Community legislation through the preference for Directives over Regulations in many areas.135 Moreover, in 1975, the Commission’s Report on the Economic Union introduced the notion that Community powers should complement, rather than compete with Member State powers, and that the Community should not interfere where Member State action could more effectively accomplish the desired results.136

Subsidiarity next appeared in the Preamble and Article 12 of the ultimately unsuccessful 1984 Draft Treaty on the European Union.137 The European Parliament, placing the subsidiarity idea within the context of reducing the democratic deficit, included it in several Reports and Resolutions.138 The SEA incorporated the principle only in the area of environmental protection.139 Article 130r(4) of the SEA states that “the Community shall take action relating to the environment to the extent to which the objectives can be attained better by the Community than at the level of the individual Member States.”140 It soon became clear that the test merely begged the question of when an objective could be better attained at one level or the other.

At the 1992 Edinburgh Summit, the European Council of Ministers issued guidelines for EU legislation under the subsidiarity principle.141 In areas where the Union and the Member States exercise joint competence, the issue must either have significant transnational aspects; and/or independent action by the Member States would damage a collateral treaty goal; and/or action at the EU level would produce clear benefits of scale or effectiveness.142 Moreover, the principle would not have direct effect so as to support judicial chal-
lenges on that basis, and it would not alter powers previously allo-
cated to the Community.\textsuperscript{143}

The Commission has explained that it will implement the principle when considering or revising legislation by justifying all future proposals according to the Edinburgh criteria.\textsuperscript{144} In practice, the Commission’s legislative agenda has diminished considerably in the last year or two, and several Directives, especially in the environment and social policy areas, have been simplified or withdrawn. Although no case has yet been decided, most authors agree that alleged Commission or Council violations of the subsidiarity principle could be challenged by the Member States under Article 173 of the Treaty.\textsuperscript{145} Subsidiarity constitutes an eminently political criterion leaving necessarily wide discretion to the legislator.\textsuperscript{146} Nonetheless, German Constitutional Court jurisprudence,\textsuperscript{147} together with the ECJ’s existing interpretations of such closely-related concepts as proportionality,\textsuperscript{148} probably provide a basis for minimal judicial control.

Article 3b as currently drafted refers only to the relations between the EU and the Member States.\textsuperscript{149} Similarly, the listed applications of the principle to specific areas also refer only to the method for

\begin{itemize}
\item \textsuperscript{143} Id. According to the Commission, subsidiarity merely regulates the way in which shared competences are exercised, and does not affect how competences are allocated. \textit{Id.} pt. A, annex 1. Direct effect would allow individuals to bring a complaint of violation before the ECJ. \textit{Steenber}, supra note 37, at 314-15.

\item \textsuperscript{144} Id.

\item \textsuperscript{145} See, e.g., Bermann, \textit{Taking Subsidiarity Seriously}, supra note 126, at 391-95; Emilioi, \textit{supra} note 126, at 402-03.

\item \textsuperscript{146} This is the case because one’s judgment about whether a measure comports with subsidiarity is profoundly political in the sense that it depends on one’s assessment of the measure’s merits, in addition to predicting the consequences of allowing the Member States to act. “It is fully an exercise in speculation as well as judgment.” Bermann, \textit{Taking Subsidiarity Seriously}, supra note 126, at 335. \textit{See also} Daniel T. Murphy, \textit{Subsidiarity and Human Rights}, 29 U. Rich. L. Rev. 67, 72 (1994).

\item \textsuperscript{147} The German Constitutional Court has interpreted Article 72 of the Basic Law, which encapsulates a similar idea, leaving wide discretion to the Federal authorities, with abuse of discretion the only limit. \textit{See} Barnes, \textit{supra} note 131, at 547-49. Similarly, in the United States, federal legislation rarely treads on a state’s prerogatives.

\item \textsuperscript{148} “Proportionality” has been prominent in Court of Justice jurisprudence. The doctrine generally requires that government measures (1) bear a reasonable relation to a legitimate governmental purpose, (2) produce benefits that outweigh the corresponding costs, and (3) represent the least burdensome or intrusive alternative among available means. George A. Bermann, \textit{Subsidiarity and the European Community}, 17 Hastings Int’l & Comp. L. Rev. 97, 111 (1993) (citation omitted) [hereinafter Bermann, \textit{Subsidiarity and the European Community}].

\item \textsuperscript{149} EC TREATY art. 3b.
\end{itemize}
sharing competences at the national and EU levels.\textsuperscript{150} Nowhere is there a specific reference in the article, or in subsequent official interpretations, of its application “downwards,” i.e. to include subnational governments. The starting point for analyzing a possible application to regions and local governments must come from considering the subsidiarity debate in light of Article 3a of the EC Treaty, in which the Member States pledge “to continue the process of creating an even closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity.”\textsuperscript{151}

Here, subsidiarity is a substantive, normative principle, not merely a criterion for distributing legislative functions efficiently.\textsuperscript{152} As such, it has no natural stopping point at the border of each state: regional and local governments presumably are closer to the citizen than higher levels. Such an interpretation would support Bermann’s contention that the ‘drafters’ [of Article 3b] apparent purpose was to reassure Member State populations, and subcommunities within those populations, that the Community’s seemingly inexorable march toward greater legal and political integration would not needlessly trample their legitimate claims to democratic self-governance and cultural diversity.”\textsuperscript{153}

\textbf{B. Article 146}

Of all the Community institutions, the most impermeable to influence by subnational governments has been the Council of Ministers, composed of national representatives and their staffs. At the same time, much of the decision-making power of the Community lies in the Council, which debates and approves legislation and programs. Many regional governments place a higher priority on access to the Council, as the place “where the action is,” than on access to other EU institutions. Thus, the German and Belgian regions have been especially vocal in demanding subnational access to the Council when it discusses and votes on issues within the competence of regional governments.

\textsuperscript{150} \textit{Id.} arts. 126, 127, 128, 129, 129a, 129b, 130a, 130f, 130r, 130u. In addition, application of the principle might, for example, lead to preferential use of the Directive over the Regulation, or to a preference for mutual recognition or minimum standards over harmonization. All these also refer only to relations between the EU and the member states.

\textsuperscript{151} \textit{Id.} art. 3a.

\textsuperscript{152} See Scott et al., \textit{supra} note 18, at 50.

\textsuperscript{153} Bermann, \textit{Taking Subsidiarity Seriously}, \textit{supra} note 126, at 334.
As a result, the EC Treaty now permits the participation of regional-level ministers in Council meetings. Before Maastricht, Article 146 read “the Council shall consist of representatives of the Member States. Each Government shall delegate to it one of its members.”\(^{154}\) After Maastricht, the Article reads “the Council shall consist of a representative of each Member State at ministerial level, authorized to commit the government of that Member State.”\(^{155}\) Thus, regional ministers may commit the national government so long as they are authorized to do so. Importantly, the minister does not represent only her own region, but the entire State. Regional participation requires a high degree of coordination among national regions to derive a common position as well as authorization from the central authorities and a constitutional structure which permits such participation. Thus, the change may only be useful to states like Germany, which through the Bundesrat has a well-developed coordination mechanism for the Länder, or Belgium, where only two or three authorities are involved and an extensive consultation system is already in place.\(^{156}\) Given central government resistance as well as the lack of adequate coordinating mechanisms among the larger number of Spanish or Italian regions, for example, their use of Article 146 will probably be limited.

C. The Committee of the Regions

The most concrete expression of regional input as a result of the EC Treaty is the addition of Chapter 4, Article 198a-c setting up a formal consultative body of regional and local representatives.\(^{157}\) The Committee of the Regions (COR) is to offer advisory opinions to the Council of Ministers on legislative proposals covering a specified range of subjects.\(^{158}\) The structure, functions and operation of the COR offer a detailed view of both the potential and the limits of regional participation in European institutions. Although it is still early for a definitive evaluation of the COR’s importance, some initial observations on the origins of the committee, its structure and functions, and its potential and limits may be in order.

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155. EC Treaty art. 146.
156. Indeed, as noted above, the Belgian approach illustrates some of the limits of regional participation. If regional representatives cannot agree on a joint position on issues within exclusive regional competence, the Belgian government must abstain in the Council of Ministers. See supra note 61 and accompanying text. An abstention, however, is not neutral, but acts as a “no” vote, creating a drag on positive Community actions.
157. EC Treaty art. 198.
158. Axelrod, supra note 139, at 118.
1. Origins

The impetus for proposals for a COR came from both within and outside the Community institutions. For many years, the Commission, as discussed above, sought to build a consultative regional grouping that would serve as a sounding-board and implementation channel for proposed and actual Commission policies, especially in the structural funds area.¹⁵⁹ The Consultative Council of Regions and Municipalities created in 1988 served many of the Commission's goals, but left the regions and their lobbying groups unsatisfied. For one thing, its consultative functions depended entirely on the initiative of the Commission. In the pre-Maastricht negotiations, the Commission supported a regional body, although noting that "the wide variety of regional structures in the Member States precludes—and will probably continue to do so—the involvement of such a body in the decision-making process."¹⁶⁰

The European Parliament (EP), pushed by MEPS of regionalist parties, also was a vocal supporter of a greater role for elected subnational governments. The EP's 1988 Community Charter for Regionalization¹⁶¹ called for a greater role for regions. In the months leading up to the Conference to discuss the EC Treaty, the EP passed resolutions calling on the Member States to "ensure that the construction of European Union goes hand-in-hand with a strengthening of regional autonomy according to the principle of subsidiarity"¹⁶² and for improving the decision-taking capacity of the Council by creating a regional body to "ensure the participation of the regions."¹⁶³

The first proposals for a COR came from Germany, supported by Denmark and Belgium. The Spanish and Italian governments showed lukewarm support, while the French and British governments opposed any new regional initiative.¹⁶⁴ Eventually a majority of States and

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¹⁵⁹. See supra note 114 and accompanying text.
Community institutions agreed on the need for some kind of regional consultative body. But several thorny issues remained. Debates revolved around: (1) the degree of independence of the new body from the existing Economic and Social Committee; (2) its membership, including the inclusion of local governments and of non-elected officials; (3) the scope of its consultative powers and the required response to its opinions; and (4) the ability of the COR to bring cases before the ECJ. To a large degree, these same issues frame current discussions about the COR's post-1996 role.

The independence of the Committee was an early source of contention. One proposal envisioned the COR as a chamber of the Economic and Social Committee (ESC), while the Commission proposed enlarging the existing Consultative Committee. The regional associations and the German government opposed these options, preferring a completely independent organ not linked to the political and administrative fortunes of the ESC. The regions also preferred a regions-only body, with a separate Committee for local governments if necessary. They argued that local governments, especially urban ones, had different needs and viewpoints, and that their inclusion in a single joint committee would reduce the cohesion and effectiveness of a future COR. Many States disagreed, however, pointing out that while some Member States have well-developed regional or subnational structures, others have either no regional governments or very weak ones, and that the only way to account for the Member States' diversity was to include all levels of subnational government in a single body. This position eventually prevailed.

The independence of the COR from central government officials was also a priority of both the European Parliament and the regional lobbying groups. They argued that only elected representatives could help reduce the "democratic deficit," and especially objected to the possibility, raised at one point by the UK, that appointed regional delegates of the central government could serve as COR members. The final proposal left the choice of members up to the Council of

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165. See supra note 37 and accompanying text for a description of the Economic and Social Committee.

166. Interview with Lut Fabert Goosens, DGXVI, European Commission, in Brussels, Belgium (May 23, 1995).


Ministers, based on proposals from the Member States.\textsuperscript{169} Thus, States are free to propose whomever they want as delegates, although in practice States have rarely nominated unelected officials.\textsuperscript{170}

Finally, the original German initiative gave the COR the right to be consulted on issues related to regional development and regional policy, and the option of providing an opinion on its own initiative in other cases. The regional associations unsuccessfully tried to go further, proposing mandatory consultation in all areas generally within the domestic competence of regional authorities. The German draft also provided that, where the Council or Commission acts against the Committee’s recommendation, they must justify their actions.\textsuperscript{171} Most controversial was the German proposal that the new committee have standing before the European Court of Justice to challenge violations of its right of consultation or of the principle of subsidiarity. Given the reluctance of the Member States to concede that subsidiarity even referred to the subnational level, this last provision was destined to fail.

After several rounds of negotiations, a German-French-Spanish joint proposal was submitted as part of the October 1991 draft. With a few minor modifications, that proposal became the current Articles 198a-c of the Treaty of European Union.

2. \textit{Structure and functions}

The COR is to provide advisory opinions to the Commission and Council\textsuperscript{172} in five mandatory areas. These are: education and youth,\textsuperscript{173} culture,\textsuperscript{174} public health,\textsuperscript{175} trans-European networks in the

\textsuperscript{169} \textit{Council Says Regions Representation Up to Member States, supra} note 167.

\textsuperscript{170} The European Parliament, in a resolution generally supportive of the creation of the COR, noted as a shortcoming of the results of the IGC the fact that the EC Treaty "does not stipulate that members of the Committee of the Regions must be democratically elected representatives of regional or local bodies." European Parliament Resolution on the Results of the Intergovernmental Conferences, Apr. 7, 1992, \textit{reprinted in Corbett, supra} note 162, at 484-85.

\textsuperscript{171} This is the case under German law; if the government departs from the position approved by the \textit{Bundesrat} during the course of negotiations in the Council of Ministers, it must explain the reasons for such departure. \textit{See, e.g.}, Eduard Roig Moles, \textit{La Participación de los Entes Regionales: Una Perspectiva Comparada}, 1 \textit{Informe Comunidades Autónomas} 577, 587 (Instituto de Derecho Público, Barcelona, Spain 1995).

\textsuperscript{172} Several early proposals called for the Committee’s opinions to be forwarded to the Parliament. Although the final draft excludes any reference to the European Parliament, in practice the Committee’s opinions find their way to the Parliament as well. Interview with Pedro Cervilla, COR Secretariat, in Brussels, Belgium (May 1995).

\textsuperscript{173} \textit{EC Treaty} art. 126.

\textsuperscript{174} \textit{Id.} art. 128.
areas of transport; telecommunications and energy;\textsuperscript{176} and economic and social cohesion, including the structural funds.\textsuperscript{177} In addition, it may be consulted whenever the Commission or Council considers it appropriate and may, on its own initiative, submit an opinion on any other proposal which it believes has regional implications.\textsuperscript{178} Whenever the Economic and Social Committee is consulted, the COR shall be informed and may, if it wishes, submit an opinion. These opinions will be forwarded to the Community decision-makers together with the opinion, if any, of the Economic and Social Committee.

The Committee is composed of 222 delegates and their alternates, distributed by Member State in the same proportion as the Economic and Social Committee, based on gross domestic product (GDP), population, and political weight.\textsuperscript{179} Members comprise both regional and local authorities, the relative proportions to be determined by each member state. While some states have few or no regional representatives (Greece, Luxembourg, Ireland, Portugal),\textsuperscript{180} others split their delegations more or less evenly (France, Denmark, Italy, Netherlands).\textsuperscript{181} Predictably, in those states with a greater degree of decentralization, regional representatives predominate.\textsuperscript{182} Members are appointed for four-year renewable terms. They must not be bound by mandatory instructions, and are independent in the performance of their duties.

\textsuperscript{175} Id. art. 129.
\textsuperscript{176} Id. art. 129d.
\textsuperscript{177} Id. art. 130a.
\textsuperscript{178} Id. art. 198c.
\textsuperscript{179} See P. Malaga Tello, El Comité de las Regiones de la Unión Europea, 2402 Boletín Económico de Información Comercial Española 419 (1994). The distribution of members parallels that of the Economic and Social Committee as follows: Belgium 12; Ireland 9; Denmark 9; Italy 24; Germany 24; Luxembourg 6; Greece 12; Netherlands 12; Spain 21; Portugal 12; France 24; United Kingdom 24; Austria 12; Finland 9; Sweden 12. EC Treaty art. 198(a).
\textsuperscript{180} Pérez Gonzalez, supra note 113, at 46.
\textsuperscript{181} Denmark has 4 regional and 5 local representatives, Italy is split 13-11, Netherlands 6-6, and France 13-11. The United Kingdom, however, has 8 regional and 16 local government members. Id.
\textsuperscript{182} Thus, Belgium has only regional representatives (although three local government members are alternates), Germany splits 21 regional and 3 local government representatives, and Spain has representatives from each of 17 Autonomous Communities and 4 local mayors. Id.
Internally, the COR has a President,\textsuperscript{183} a First Vice-President, and a thirty-six member executive Bureau.\textsuperscript{184} Eight Commissions and three Sub-Commissions carry out the day-to-day work of analyzing proposals and preparing opinions.\textsuperscript{185} The COR’s Bureau decides on the need for an opinion (either own-initiative or required under the EC Treaty) and on the appropriate Commission. At the Bureau, a \textit{rapporteur} is assigned to prepare a draft opinion, which is discussed first in the relevant Commission(s) and finally debated by the full COR.\textsuperscript{186} A sixty-person Secretariat, with some twenty professional staff, assists the COR, often proposing areas for own-initiative opinions. In practice, much of the routine preparatory work is done by the regions and local governments themselves, although the Secretariat plays an important role in advising on the selection of \textit{rapporteurs} and the drafting of opinions.\textsuperscript{187} Technical services and a proportion of the budget are shared with the Economic and Social Committee.\textsuperscript{188}

3. \textit{The First Year of the COR}

The COR’s main business has been preparing and releasing opinions. Of the more or less 100 opinions produced from its inception to May 1995, almost half are own-initiative opinions, and slightly over half are required by the EC Treaty. The own-initiative opinions range from major questions of EU policy like the reform of the Common

\begin{flushright} 183. The first president was Jacques Blanc, of the French Languedoc-Roussillon Regional Council. He was succeeded by Pasqual Maragall, Mayor of Barcelona, Spain, the current President. Malaga Tello, \textit{supra} note 179.  
185. The Commissions are as follows: (1) Regional Development, Economic Development, and Local and Regional Finances (Subcommission on Finances); (2) Spatial Planning, Agriculture, Hunting, Fisheries, Forestry, Marine Environment and Upland Areas; (3) Transport and Communications Networks (Subcommission on Telecommunications); (4) Urban Policies; (5) Land-use Planning, Environment and Energy; (6) Education and Training, (7) Citizen’s Europe, Research, Culture, Youth and Consumers (Subcommission on Youth and Sport); and (8) Economic and Social Cohesion, Social Policy and Public Health. There is also a Special Commission on Institutional Affairs, in charge of preparing the COR’s participation in the 1996 Inter-Governmental Conference. Committee of the Regions, \textit{The Commissions of the Committee of the Regions} (visited Mtr. 2, 1997) <http://europa.eu.int/comreg/ccr.html>.  
186. Interview with Pedro Cervilla, \textit{supra} note 172.  
187. \textit{Id.}  
188. As of April 1996, the COR took a step towards independence from the ESC, setting up separate offices. \textit{Committee of the Regions Changes Address}, EUR. REP., Apr. 3, 1996.\end{flushright}
Agricultural Policy, White Papers on Social Policy,189 and on Growth, Competitiveness and Employment,190 to opinions on telecommunications, bathing water quality and combating drug addiction.191 While most respond to a specific Commission proposal or program, a few attempt a more proactive stance.192 Few of the opinions reject a Commission proposal outright; most support the general thrust of proposals and propose amendments and additions.

Despite the variety of subjects covered, the overwhelming constant in the opinions is the concern with subsidiarity, broadly defined. On the one hand, this takes the form of defining the Committee’s role as the guardian of subsidiarity within the EU. The COR has tried to establish its legitimacy and usefulness as representing the level of government closest to the ordinary citizen, tying its role to the solution of the democratic deficit. For example, with respect to Commission Green Papers (overall policy documents in a given sector), the Opinion framed the Committee’s contribution as asking questions for each policy regarding the implications of the application of the subsidiarity principle. The Opinion outlined questions as to whether the Commission has adequately taken account of the specificity of the regions, and whether the proposals "will contribute to improving the ordinary lives of European citizens and, therefore, make European integration more tangible for them."193 The Committee "intends to pay particular attention to this aspect in all of its Opinions."194

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194. COR, Opinion on the Revision of the Treaty on the European Union and of the Treaty Establishing the European Community, 1996 O.J. (C 100) 1, appendix (Supplemen-
The COR’s Opinions stress its insistence that regional and local authorities are to be consulted, taken into account and involved in policy formulation. Participation and consultation are the priorities; only a few opinions view regional or local government participation in terms of extra financial, legal or administrative burdens. The intent of the COR seems to be to serve as a constant reminder of the existence and importance of a “third level” of governance in EU-Member State debates, as well as to assert its own relevance in Community decision-making.

Related to the concern for subsidiarity and regional powers is the COR’s insistence on the importance of regional cultures, languages, and heritage. For example, in its Opinion discussed above, on consumers’ access to justice, and again in its proposals to the Inter-Governmental Conference, the Committee argued that diverse languages and legal systems were not a negative factor, but an expression of the rich cultural diversity of Europe. In opinions on cultural activities, audiovisual policy, information policy, educational exchange and tourism, the Committee has suggested better attention to regional diversity as a strength of the Union.

In other areas, the Committee’s output has been a mixed bag. Its opinions on environment, for example, range from several seeking to restrict Community control and allow a greater role for national, regional and local authorities (on the bathing water directive, for example) to others seeking greater attention to environmental criteria (for example the BST Opinion or several opinions on the development of trans-European networks). The Committee has often pointed to

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tary Opinion on the Application of the Principle of Subsidiarity in the European Union) para. 8 [hereinafter COR Opinion on Revision of TEU].

195. This differs, for example, from the well-known debates over “unfunded mandates” familiar to the state-federal balance in the United States.


197. Indeed, the Flemish government has proposed enshrining respect for cultural diversity and the cultural identity of each member state and each region in the common principles of the EC Treaty. Flanders Government Adopts Proposals on IGC, Reuters European Community Report, May 20, 1996.

198. See Opinions on the Commission Communication to the European Parliament and the Council on Community Guidelines on Trans-European Energy Networks, the Pro-
the need for action to combat the negative effects of market-oriented liberalization.¹⁹⁹

The Committee has also actively tried to focus the attention of Community institutions on areas where it believes too little attention has been paid to date. For example, the Committee issues recurrent own-initiative opinions on employment issues, including new forms of work, the effect on workers of relocation of international business, territorial employment pacts, small and medium enterprises, workers' rights upon transfer of businesses, and the link between work and education.²⁰⁰ The issue clearly bears on the subject of economic and social cohesion. Nevertheless, these initiatives seem to represent an attempt by the Committee, or its Secretariat, to stake out a few areas outside its formally narrow purview in which to develop a leadership role vis-à-vis other Community institutions. This is similar to what the European Parliament has done in the past.

The danger, of course, is that by opining on such a wide range of subjects, the Committee will lose its focus and, eventually, any possibility of influence. According to some Committee staff, this has been the case with the sister Economic and Social Committee and thus a fate to be avoided.²⁰¹ In his own evaluation of the COR's first two years, its President insisted that the "incisive, efficient style" of the


²⁰¹ Interview with Pedro Cervilla, supra note 172; interview with Winnie Bang Petersen, COR Secretariat, in Brussels, Belgium (May 1995).
opinions meant "there will be no risk of them being too thinly spread over subjects outside the remit of local and regional authorities."\textsuperscript{202}

Still, in an attempt to focus the Committee's efforts as well as ensure timely and well-researched input into the relevant decisions, in April 1995 the COR and the European Commission agreed on criteria for non-obligatory opinions. The Commission presented a work plan of Commission activity for 1995 where it believed the COR would need to opine. The COR will emit opinions on (1) those actions that require the participation of territorial collectivities (i.e. regional and local authorities) for their implementation; (2) those actions that directly affect territorial collectivities; (3) those actions which may have consequences in matters of cohesion; and (4) those documents transmitted to allow the Committee to prepare its position in the major debates before the Union.\textsuperscript{203} The Commission lists the specific programs within these criteria where it expects to emit proposals or other documents over the year.\textsuperscript{204}

The drafting of a joint work plan is emblematic of the Commission's efforts to help the new Committee find a clear role. The Commission has been the strongest supporter of the COR within the European Union institutions, maintaining regular contacts at several levels.\textsuperscript{205} Commission representatives regularly attend COR sessions and respond to criticisms. The Commission has been generally supportive of attempts by the COR to bolster its powers, possibly seeing a strong regional presence as a useful counterweight to national governments.\textsuperscript{206}


\textsuperscript{203} The fourth category seems to be a catch-all for communications, reports, and other non-legislative proposals within the COR's general competence as well as White Papers and general debate documents. For example, communications on the structural funds and on education are listed here. Programme Prévisionnel des Saisines du Comité des Regions Soumis par la Commission pour 1995, annex I, Apr. 18, 1995 (author's translation from French).

\textsuperscript{204} In the nonmandatory area, these include employment and social policy, energy, environment, training, telecommunications and information society, sports, tourism, transport, civil protection, land use, audiovisual policy, industrial competitiveness, fisheries, research and development, completion of the internal market, postal services, and Mediterranean policy. \textit{Id.}

\textsuperscript{205} Contacts exist at the commissioner level, with the commissioner in charge of regional policy, through a liaison on management matters, and through each directorate general. Interview with Pedro Cervilla, \textit{supra} note 172.

\textsuperscript{206} \textit{See} James Kellas, \textit{European Integration and the Regions}, 44 PARLIAMENTARY AFF. 226, 235 (1991) (EC Commissioners may be natural allies of regions.).
The COR’s relations with the European Parliament have been more ambivalent. As mentioned, the European Parliament was an early and consistent supporter of greater regional participation in EU affairs. Both institutions exist to bring the EU closer to the citizens, and to that extent they are allies against the Council of Ministers. On the other hand, the higher internal (and sometimes international) profile of regional political leaders, who often wield power (and represent constituencies) in their respective states far exceeding that of an MEP, creates certain jealousies and tensions. Thus, in certain instances parliamentary committees have declined to use COR studies or to ask for or take into account the COR’s opinions.\(^{207}\) It remains to be seen how strongly the Parliament will continue to support regional participation in the current IGC.

To evaluate the COR’s potential as an instrument for democratization and regional participation in community politics, some attention is due its internal dynamics. The varied and hybrid nature of the Committee in several respects makes these dynamics complex and may make it more difficult for the Committee to play the political role it seems to seek within the Community.

First, the wide disparity in the competences of regional authorities within the different member states makes it hard for the Committee to take a unified position. While in some states regional and local authorities simply reproduce the positions and viewpoints of the central government, in others they have a distinct agenda. Thus, for most issues, the main source of agreement for the Committee’s members is the need to be consulted and taken into account. Beyond that, the North-South divisions within the Council of Ministers tend largely to be reproduced. One exception to this general rule arises where regions within member states are themselves divided along economic lines.\(^{208}\) In addition to North-South splits, the Committee also divides

\(^{207}\) Although as noted these Opinions are not required by the Treaty to be circulated to the European Parliament, in practice they circulate widely. Interview with Alain Crespinet, COR Secretariat, in Brussels, Belgium (May 1995); Interview with Pedro Cervilla, supra note 172.

\(^{208}\) The best example comes from the debate over the market in wines, perhaps the most controversial issue taken up by the COR in 1994. An initial Commission proposal would have resulted in the pulling up of thousands of acres of vineyards, mostly in Spain and Italy, and would have favored Northern (especially German) producers who use more intensive cultivation methods and add sugar to boost the potency of their wine. Proposal for a Council Regulation (EC) on Reform of the Common Organization of the Market in Wine, COM(94)117 final. The COR’s draft Opinion provided detailed and reasoned opposition to the proposal, alternative proposals for bringing supply and demand into line, a plea for taking into account the “special circumstances of the poorer and less productive
along ideological lines, especially around questions of social and labor policy; however, formal party blocs like those of the European Parliament have not materialized to date.\textsuperscript{209} Regionalist or nationalist parties are, as expected, among the most active representatives on the COR.

In contrast, despite the expressed fears of AER and other regional advocates, significant differences between regions on the one hand and local or municipal authorities on the other, or differences along rural-urban lines, have been less salient.

It is difficult to judge the effectiveness of the COR as a political body. A number of its Opinions have resulted in changes to Commission proposals or Council decisions, mostly those referring to administration of the structural funds or to issues of regional participation.\textsuperscript{210} Analysis by the outgoing President of the COR found that forty of seventy-four opinions produced some change in Commission or Council proposals, guidelines or commitments or influenced final documents.\textsuperscript{211} In several cases, Committee opinions have resulted in conferences, specific programs or increases in funding in specific ar-

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\textsuperscript{209} Interview with Pedro Cervilla, supra note 172; interview with Alain Crespinet, supra note 207.

\textsuperscript{210} Vila, supra note 193, at 509-10. For example, in the wake of the Committee's Opinion on the Proposal for a Regulation (EC) Establishing a Cohesion Fund, 1994 O.J. (C 217) 1, the Council added a provision on the participation of regional and local authorities in the monitoring committees. The Commission revised a proposal on the modernization of the Portuguese textile sector to include regional and local authorities in the preparation and implementation phases after the Committee suggested language to that effect. Opinion on the Community Initiative on the Modernization of the Textile and Clothing Industry of Portugal, 1994 O.J. (C 217) 4. However, the COR also proposed that it be consulted periodically on the local and regional effects of Community initiatives within the structural funds framework, but the proposal was rejected. Compare The Future of Community Initiatives Under the Structural Funds, COM(94)46 final, with Opinion on the Future of Community Initiatives Under the Structural Funds, 1994 O.J. (C 217) 2.

\textsuperscript{211} Blanc, supra note 202.
On the other hand, repeated suggestions to include regional representatives or the COR in Community-level policy committees have not been heeded.\textsuperscript{213}

Of course, it is not easy to know how many of these changes would have occurred simply based on informal lobbying by regions, even in the absence of a formal Committee.\textsuperscript{214} To date, much of the COR's clout arises from the vocal participation of well-known elected regional politicians who can make life difficult for their national governments if they so choose. If these major political figures, people such as the Presidents of Catalunya, Baden-Württemburg or Flanders, lose interest, the COR may fade. Moreover, those regions that won the right to formal participation at the Council or Permanent Representative level may focus their energies there, rather than strengthening the merely consultative role of the COR.\textsuperscript{215} Perhaps the most difficult task for the COR will be forging an identity—one that goes beyond mere calls for more power—among regions and local governments with vastly different roles within their national contexts.

\section{V. The 1996 Intergovernmental Conference and the Regional Perspective}

Article N of the 1992 EC Treaty stipulates that an Intergovernmental Conference shall be convened in 1996 to examine and possibly revise certain Treaty provisions. The examination was considered necessary due in part to substantial opposition within Europe to the Treaty as well as to an awareness that the Union might shortly be expanded to twenty-five or more states.\textsuperscript{216} As part of the preparatory process, a Reflection Group was created to consider reports from the Commission, the Parliament and other EU bodies on possible institutional reforms. The main issues on the agenda include monetary union, the feasibility of a “two-track” or “Europe-à-la-carte” app-

\textsuperscript{212} For example, the Committee’s suggestions resulted in a conference on combating drugs, in a specific Community initiative on training (ADAPT-BIS) and in strengthening other Community initiatives and in numerous changes to final proposals of the Commission. Blanc, supra note 202. Several proposals were subsequently taken up by the European Parliament. \textit{Id.}

\textsuperscript{213} \textit{Id.}

\textsuperscript{214} Interview with Joaquín Llimona, Generalitat de Catalunya, in Barcelona, Spain (Sept. 1995).

\textsuperscript{215} According to Pedro Cervilla of the COR Secretariat, this is already the case with Belgian representatives. Interview with Pedro Cervilla, supra note 172.

proach, shoring up the foreign policy and justice "pillars" of the union, and a possible reallocation of seats on the Commission and the Council to accommodate new members.\textsuperscript{217} Although the "democratic deficit" remains an urgent subject of discussion, discussions have centered on proposals to increase the powers of the European Parliament and to involve national parliaments more closely in the decision making process.\textsuperscript{218} In the debate so far, the voice of the regions has not yet resonated loudly. Nonetheless, the Conference agenda calls for discussing the place of regions in Europe. For the first time, regional governments will take part.

Increased attention to the potential role of regions might help solve some of the dilemmas of legitimacy in the Community structures, but may also raise new problems. The COR and a number of academics and policymakers have put forward proposals ranging from a second, territorial-based chamber of the Parliament to a modest expansion in the scope of the COR's consultative function. While the first seems unlikely in the current political climate, the latter may very well be achieved in 1997.

The COR itself, supported by organizations like the AER, has focused its efforts on two areas: redefining the meaning and role of "subsidiarity," and gaining access to the Court of Justice.\textsuperscript{219} As discussed above, Article 3b of the EC Treaty establishes subsidiarity as the principle that the Union should only act when member states cannot do so more effectively.\textsuperscript{220} The Committee recognizes that, as currently applied, subsidiarity refers only to relations between the EU

\textsuperscript{217} Id.

\textsuperscript{218} Mr. Pujol Welcomes Participation of Representatives of the Regions, Agence Europe, Apr. 2, 1996, available in LEXIS, Inlaw Library, ECNews File. The Parliament wants parity with the Council of Ministers in co-decision and cooperation procedures, more control over the budget and the right to assent to revision of Union Treaties and all international treaties. Some representatives are also pushing for changes in the method of election of MEPs, while France and the United Kingdom have been the champions of a greater role for national parliaments. Id.

\textsuperscript{219} COR Opinion on Revision of TEU, supra note 194, Explanatory Memorandum. In addition, the COR requests an expansion of the areas where consultation is mandatory to include agriculture, transport, social policy, research and technological development, vocations training, environmental protection, industry, energy, and consumer protections. It also proposes to revisit earlier proposals for EC institutions to justify any disagreements with the Committee's opinion, for representatives to be appointed on the recommendation of elected regional and local bodies, and for total separation from the Economic and Social Committee. Id.

\textsuperscript{220} See supra notes 126-127 and accompanying text.
and Member States. The Committee proposes rewording the second paragraph of Article 3b to explicitly refer to regional and local authorities:

The Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, or by the regional and local authorities endowed with powers under the domestic legislation of the Member State in question.

Thus, Article 3b would serve “not only as a criterion for exercising shared powers between the Union and the Member States, but also as a criterion for sharing powers and responsibilities among all levels of government participating in the European Union.” By focusing only on limits to the Community’s authority, and not on that of the states themselves, this formulation avoids the inconvenient fact of widely varying degrees of regional and local government power, and the potential accusation that Treaty reform is indirectly changing the internal structures of member states.

In addition, the COR, based on a proposal from the German Länder, also calls for listing the respective powers of the Union and of Member States to establish a clear demarcation and facilitate applica-

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221. However, a concurrent Supplementary Opinion of the COR on the Application of the Principle of Subsidiarity in the European Union points out that Article 3b “does not refer exclusively to the central organs of the state,” so that there is no legal impediment to expanding the understood meaning of the term. COR, Opinion on the Revision of the TEU, supra note 194, appendix, para. F.

222. Id.

223. Id. Explanatory Memorandum.

224. The Committee broadly supports the approach of the Edinburgh Council of December 1992, which established guidelines for the exercise of the subsidiarity principle, as well as the Commission’s review of existing legislation. The COR proposes a greater COR role in advising on the subsidiarity implications of proposed EU legislation and in monitoring observance of the principle. COR Opinion on the Revision of TEU, supra note 194, appendix, paras. 4-9. Thus, the COR “considers, in keeping with the principle of subsidiarity, which shared competences between the Community and the Member States should be exercised at as decentralized an administrative level as possible, taking into account the competences of the regions and local authorities, as well as the political and administrative structures of the Member States, and consistently satisfying criteria of suitability and efficiency.” Id. para. 11. Likewise,

[w]hile in parallel with the process of European integration, Member States have seen radical changes in the territorial distribution of power, crystallizing in some Member States in a federal or highly regionalized structure and, in other Member States in a growing tendency to decentralization; [and w]hile a reorganization of administrative structures along these lines must inevitably lead to a more efficient and more democratic administrative system . . . .

Id. paras. B & C.
tion of the subsidiarity principle by the Court of Justice, among others.225 While such listing might increase transparency, it would probably be difficult to agree on. If the list were minimal, it would act as a brake on the process of Community law-making; an expansive approach to listing competences, on the other hand, would no doubt run into objections from the United Kingdom at least. The proposal is therefore vulnerable to attack from both pro- and anti-Union forces.

Another route to a greater role for the regions would be to increase the power of the COR. Most sweepingly, the Committee's consultative function could be transformed into a mandatory assent procedure. Some "Europe of the Regions" visionaries, recalling the limited powers initially accorded to the European Parliament, have suggested some version of this approach.226 However, the dominant sense among politicians and policymakers is that still more institutional complexity would be disastrous, and that the political climate is not propitious for major structural reforms, especially reform as contentious as this would be.

An alternative way to upgrade the COR's powers within the current institutional framework would be to enhance its ability to bring complaints before the European Court of Justice.227 There are essentially two versions of this approach presently on the table: one that affects only the prerogatives of the Committee itself and a more ambitious one that would enshrine the COR as the guardian of the subsidiarity principle.

Under the first approach, the COR, like the European Parliament and Central Bank, would be able to bring actions under Article 173 to annul illegal Community acts that infringe on its prerogatives. As it now stands, Article 173 gives the Commission, Council and Member States a general right to bring actions, while other natural or legal persons must show that a legal act affects them directly and individually—a narrow standing test that the COR would be unlikely to

225. Interview with Pedro Cervilla, supra note 172.


227. Early proposals for a Committee of Regions included provisions granting the COR the ability to bring annulment proceedings under Article 173 of the Treaty of Rome in cases where either its prerogatives or the principle of subsidiarity were abridged. One example of this is the Assembly of European Regions, proposal of December 5-6, 1990, later adopted by the German government. Pérez Gonzalez, supra note 113, at 34-35.
meet. The European Parliament has expressed support for this approach.\footnote{228}

Second, and in a similar vein, the COR would be able to bring proceedings under Article 175 for failure to act. Thus, for example, if the Council and Commission enacted legislation in an area within the Committee's advisory jurisdiction without having first forwarded the proposal to it for an Opinion, the Committee would have standing to challenge the legislation.\footnote{229} More ambitiously, the COR proposes ECJ jurisdiction over actions "brought by the Committee of the Regions against violations of the principle of subsidiarity, and in actions brought by the regions whose legislative powers may be affected by a regulation, directive or decision."\footnote{230} Thus, the COR would legally become a guardian of the subsidiarity clause in the treaty, able to sue when it believes a Community action could, according to Article 3b, have better been taken at a lower level (or, presumably, if the Community failed to act where Community action was required under the subsidiarity criteria).\footnote{231} Even assuming that Member States would be able to bring such an action (i.e., that the debate over the justiciability of subsidiarity is resolved positively), acceptance of the Committee's jurisdiction would embroil the ECJ in another whole layer of debate over the appropriateness and proportionality of action, with the attendant dangers of legislative paralysis. To an even greater extent, the

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\footnote{229. Two possible avenues would obtain this result in the case of Article 175. One is to amend that article to specifically include the Committee of the Regions among those who may bring an action. The other is to upgrade the COR's status to that of an "institution." As such, it could bring actions under the current wording of Article 175, which permits the Member States and the other institutions of the Community to bring infringement actions. Under this variant, Article 4 of the EC Treaty would read:
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\footnote{1. The tasks entrusted to the Community shall be carried out by the following institutions:
}  
\footnote{a European Parliament, a Council, a Commission, a Court of Justice, a Court of Auditors, a Committee of the Regions.
}  
\footnote{Each institution shall act within the limits of the powers conferred upon it by this Treaty.
}  
\footnote{2. The Council and the Commission shall be assisted by an Economic and Social Committee acting in an advisory capacity.
}  
\footnote{COR Opinion on the Revision of the TEU, \textit{supra} note 194, at para. 4. In this context, it is interesting to note that the Court of Auditors only became an "institution" in the 1992 EC Treaty. \textit{Archer}, \textit{supra} note 37, at 117.
}  
\footnote{230. COR Opinion on Revision of TEU, \textit{supra} note 194, at para. 2.
}  
\footnote{231. \textit{See} Conclusions of Dec. 11-12 Edinburgh Summit, \textit{supra} note 141 and accompanying text.
}
proposal to extend standing to regions whose legislative powers may be affected by Commission or Council action would potentially unleash a torrent of new litigation.²³² As such, the proposal is unlikely to prosper in the short term.

On the other hand, a series of more modest proposals will probably win some acceptance. These include expanding the COR’s advisory responsibilities to include consultation by the European Parliament, expanding the scope of mandatory consultations to other subject areas, ensuring that members of the Committee are elected or politically accountable to an elected body, and establishing administrative and budgetary independence from the Economic and Social Committee.²³³

So far, these predictions have been borne out. As part of the preparatory process, a Reflection Group headed by the Spanish Foreign Minister considered reports from the Commission, the Parliament and other EU bodies on possible institutional reforms. The Reflection Group’s Report is to form the basis for negotiations on treaty modification, which in 1996.²³⁴ The Group underlined the importance of the COR, but affirmed that because of its recent origins it made sense to give the Committee time to establish itself fully before expanding its functions.²³⁵ While sympathetic to some of the COR’s concerns on its administrative independence and on the European Parliament’s ability to consult, the Reflection Group declined to endorse the Committee’s views on establishing a catalogue of rights or on the definition of subsidiarity.²³⁶ According to the Reflection Group’s report, a large majority felt that it was not the Committee’s role to interpret the subsidiarity principle in cases of shared competences between the Union and the Member States.²³⁷

²³². In decentralized states, disputes over the effects of central government actions on the legislative competences of subnational entities have occupied constitutional courts for quite some time. See generally Antoni Choy i Tarres, La Conflictivitat Competencial: Medi Ambient (1994) (citing numerous clashes between central government and Spanish autonomous communities regarding division of competences).


²³⁴. There is some concern that negotiations are dragging and that the original timetable, which runs until June 1997, may not be long enough. See Committee of the Regions/ European Parliament Conference, supra note 228.


²³⁶. Id.

²³⁷. Id. paras. 71, 123, 125.
VI. Evaluation: Possible Roles for the Regions

The arguments for strengthening the regional voice in European Union institutions vary depending on the underlying rationales. There are at least three possibilities. First, an increased role for regional and local governments could help solve Europe's continuing democratic deficit, allowing the elected officials closest to the grassroots access to decision-making. This would allow a wider range of political voices to be heard, especially from regionalist or nationalist parties unable to command nationwide majorities but still representative of a significant portion of the electorate. Similarly, the presence of local authorities opens up at least the consultative process to forces on the right and left who are less likely to win nationwide votes.

This rationale would place local officials, who are presumably closest to the complaints and aspirations of citizens, at the same or even higher level than regional officials, who are farther away. It assumes that regional and local officials will in reality be democratically elected and will best transmit the real grassroots concerns of everyday citizens. This may in some cases be true, but in others local officials may be tied into national political machinations or otherwise less than fully representative of the concerns of their constituents.

Moreover, those minorities, peoples, and groups who are not territorially-based, or who are too weak economically or politically to capture local governments, will continue without direct representation. If the aim is greater representation, it seems illogical to limit such representation to regional governments. Rather, a strengthened Economic and Social Committee, as well as enhanced roles for the other institutions of civil society, including NGOs, consumer groups, small business associations and others, would be required.

A variant on this approach would focus not on all regions, but on the subset of regions that have a "consciousness of nationhood." Increasing powers for regions would serve to bind these regions directly into the European project, allowing them some independent voice without challenging the primacy of existing states. To a large extent, these are the regions which play a leading role in the Committee on Regions and have pushed hard for wider powers for regional institutions. Thus, wider powers for regions qua regions would be unnecessary if we could devise a way of distinguishing the Basques, Scots, Flemish, Corsicans and Catalonians from others without unacceptable impingements on concepts of national unity and sovereignty;

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to date we cannot, so we talk about wider roles for regions in general. Under this argument, we should focus instead on defining markers of conscious nationhood—Petchen suggests the persistence of nationalist regional political parties in the European Parliament—and focus efforts on incorporation of just those regions, abandoning the larger project.

Two other potential rationales suggest themselves. From both an administrative efficiency and an equity point of view, increased regional representation facilitates the implementation of European policy initiatives and alleviates the perceived injustice of EU policy “invading” the prerogatives of regional governments. If regions are to be primarily responsible for implementation of Directives and Regulations, greater input to the policy-making process should result, at the least, in a greater sense of ownership of the final product. Moreover, from the point of view of both the Commission and the Parliament, a greater regional role could help balance the power of national governments. Under this rationale, only those regional governments with significant legislative responsibilities under national law need be involved, and access to information seems the primary need. A consultative role combined with procedural safeguards to ensure adequate information and the ability to voice objections during policy formulation would seem the most useful.

A final rationale focuses at the national and local, not European level. An enhanced role for regions serves as a bridge between far-off Brussels and the local government where the citizenry is most likely to interact, investing local governments in the European project. It also raises the profile of regional governments at the national level and may facilitate demands towards greater decentralization within national polities. This rationale starts from a belief that greater regionalization and decentralization are desirable, and looks to an enhanced regional role in Europe as a means towards that end. Although current arrangements are obviously insufficient, they set in motion a process which, over time, may lead to a greater preeminence of the regional model. Of course, this rationale often remains unstated, as it conflicts with the mantra of noninterference in domestic legal arrangements.

VII. Conclusion

As the European Union looks to expand beyond its current fifteen members to twenty or more, granting a more formal role to re-
Regional and local governments may prove attractive. Several Eastern European states have significant ethnic minorities and are moving towards greater local and regional autonomy, in part in response to international concern for peaceful resolution of minority rights issues. Some form of participation in European institutions may again prove a necessary balance to the transfer of newly-won regional powers to what will no doubt appear an even more remote Brussels' bureaucracy. If that is the case, one or more of these rationales may serve to buttress their arguments. But the design of future measures depends heavily on which, or which combination of, discourse underlies any such proposal. Some additional thinking about justifications and rationales may be a necessary step before regional power in the EU can move forward.
