

Making the Principle of Active Subsidiarity the Foundation of European Governance

The European Convention and the debate on the future division of competences of the Union offer a unique opportunity to found the relations among Europe, the Member States, and their regions on a new principle of governance, which meets the twofold requirement of addressing both unity and diversity

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Résumé

Europe is a project of civilization, not a large market. It is rich both with its unity and its diversity: the problems raised by European governance are therefore of same nature as those raised by global governance.

The Convention on the Future of the European Union opened the debate on the division of competences. A constitutional statement of the areas in which the European Union is founded to act would constitute a major step backward. The Union's action is defined by its reasons for acting and by the way to do so, not by the technical areas in which it acts.

No serious contemporary problem can be dealt with at a single geographic level. The fundamental principles of governance no longer have to do with the management of one level of community and the identification of the jurisdiction exclusive to this level, but with the relations between levels of governance and the exercise of a shared responsibility.

This is why European governance must, in order to enable a new stage in the construction of Europe, be founded on the principle of active subsidiarity.

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On Monday April 15, during its third plenary session, the Convention opened the debate on what is to be one of its essential questions: **On what is** the European Union founded to intervene and **in what form is** it authorized to do so?

This question is crucial. It was already at the core of the White Paper on European Governance. The weakness of the findings of the White Paper is precisely the result of the Commission's inability to answer this question clearly. The question is also, at another scale, at the core of what will undoubtedly be the crucial issue of the twenty-first century: setting up world regulations that are both legitimate and democratic.

In my view, there is only one possible answer to this question: the implementation of a new principle of governance, **the principle of active subsidiarity**.

This principle rests on two elementary findings:

- **none of today's problems can be treated at only one level of governance**, whether dealing with economic development, with the balance between human activity and the biosphere, or with solidarity and social cohesion;
- **the art of governance is to ensure both the greatest possible unity**, taking interdependence into account, **and the greatest possible diversity**, with respect for the differences of context, culture, and aspirations.

Hence, it follows that:

- **tomorrow's fundamental principles of governance are those that define the relations between the different levels of governance** rather than those that define the rules of management of society at only one level;
- interdependence and unity cannot be guaranteed by the statement of uniform rules, which constitute obligations of means, but by **the statement of common guiding principles**, with obligations of results that are to be interpreted locally according to the specificities of every society and every context.

This is why any attempt to define a durable list of division of competences, that is, what a given level of governance—here the European Union—should cover and for what it must be responsible exclusively, is dangerous and meaningless. Even worse, the effect of determining areas of jurisdiction constitutionally would be to fossilize governance and the institutions, to force public action into rigid, subdivided and separate fields of intervention, whereas the objective of public action in a complex world is on the contrary to interlink actions drawn from a large variety of domains. Administrative segmentation, a bureaucratic cancer that has been repeatedly denounced, is thus mistaken for the very essence of democracy.

For Europe, such a move would be, in addition, a dramatic step backward. The crisis of the European institutions, those related to governance and even to the European project itself, should not conceal **the deeply innovative nature of European construction**. Indeed, it has succeeded, following the steps of Jean Monnet, **to start out from the objectives to be reached and not from the means for doing so**. That it thus, over the years, came to encroach on many areas that the Member States considered to be the exclusive privilege of their sovereignty, is obvious indeed. But this crisis will not be overcome by moving backward. It will be overcome, on the contrary, by moving forward, and by putting the principle of active subsidiarity at the core of European governance. In doing so, **the Union will help the States to reform and to**

redefine the nature of their relations with the other levels of governance, in particular with the regions and the local territories.

This need to build, not more lists of jurisdiction and a rigid distribution of competences at different levels of governance, but rules for the management of **shared jurisdictions** was masked for two decades by what is actually only an episode of history: the construction of Europe through the opening of a single market. Episode, because the intention of the founders of Europe was to enable the blossoming of a peaceful and diverse European society, to make of Europe, no longer the detonator of periodic wars spreading to the whole world but, on the contrary, one of the essential and stabilizing partners of a global governance. After the failure of the European Defense Community (EDC) in 1953, European economic unification appeared to be the only way to pursue European construction given the state of the power-struggle politics of the time and considering the different European countries' diversity of positions with regard to the Soviet bloc. But economic unity was never an end in itself. It is not one more today than it was yesterday. Now that economic unification has been successfully achieved, all things considered with brio and pragmatism, **the challenge of the European reform is to refocus on the very purposes of Europe**: What Europe do we want? What European civilization do we want? What European territories do we want? What is the essence of European civilization that we wish to preserve? What are the common values on which our projects for the future are based? What position do we wish to occupy in the world? All of this makes it necessary to adopt methods of governance that are adapted to this new stage.

Economic unification imposed harmonization of the conditions of competition, and to this effect, uniform rules. This might have given the impression that such was, such could only be the vocation of Europe: to deny the diversity of situations and cultures in order to unify our everyday life down to the last detail. But this practice comes from the detour taken to construct Europe through the unification of the markets. It is in no way recorded in the genes of Europe. Quite the contrary, of all the continents, Europe is the richest in terms of its diversity of cultures, traditions, and ecosystems. **We need not only to preserve but also to enhance this diversity**. It is the very image of what the contribution of European civilization to the world can be.

For Europe, there is no future in the traditional form of federalism, which is founded on the distribution of jurisdictions nor, subsequently, in the indefinable "federation of Nation-States" model. Europe can only be founded on specific rules of articulation between unity and diversity, on know-how that is constantly enhanced by experience. This is what summarizes the principle of active subsidiarity.

The European Union cannot be defined by the areas in which it intervenes. It must be defined by the reasons for which it is brought to intervene in an area and by the way in which it does so. The reasons are to be sought in the positive definition of the Europe that we want, a definition that will be the preamble of its constitution. The way is precisely the principle of active subsidiarity, the art of associating each of the parts of Europe, States and regions, in the definition of common guiding principles, the art of seeing to their implementation according to the specificities of every context. In a word, Europe is not defined by a "what" but by a "why" and a "how."

Decentralization as applied in France is a good example of what happens when one decides to apply, on the verge of the twenty-first century, the principles of governance inherited from the previous centuries. The legislators imagined that democracy could only live by assigning exclusive responsibilities at every level of the community. Such were the famous "blocks of jurisdiction" ("blocs de compétences") at the heart of the reform initiated by former French Minister of the Interior Gaston Defferre. This principle postulates citizens as immature. According to this

postulate, citizens can only judge the quality of their elected officials insofar as these possess exclusive jurisdictions. The rest of history is known. The result was the opposite of the sought objective. Every territorial community's legitimate concern is to take action according to the citizens' real concerns. The result is a muddled set of actions taken at the different levels of territorial communities, all the more muddled that it was not thoroughly and properly thought out at the start. Everyone, on the occasion of the French presidential elections, notes and often deplores the increasing indifference of citizens to voting and the increasingly deep skepticism regarding the rhetoric of politicians. Is this not because, among others, each side, regarding employment for instance, explains, as seriously as the Pope would, that when everything is going well it is thanks to its action, and that when things go badly it is because of international conditions? Citizens, be they French or European, should not be taken for fools. **They know as well as you and me that no problem depends on only one level, that only cooperation among the different levels of governance is likely to bring about the relevant solutions.** They would like the different public bodies to learn to cooperate instead of engaging in trench wars of another age.

By putting the principle of active subsidiarity at the core of its Constitution, Europe would finally be able to take the initiative on a world scale again. For the meantime, the conflicts in Palestine or in Afghanistan are occupying the front of the stage and it would seem that only military power provides a possibility for initiatives. But that is not so. **Major initiatives are of another nature, they are found in the effort to define a global political community and to lay the foundations of a democratic governance placing superior value on unity and diversity.** The excesses of economic globalization have resulted in the fact that only the WTO has any effective means of sanction. The majority of other international conventions are more of the order of wishful thinking. Their implementation depends on the good will of states, first to ratify them, then to ensure their application. This situation is not very different from the situation of Europe at a time when its means for economic unification could become its model and *raison d'être*. In fact, the distinctive weakness of global governance comes from its basic architecture not having been seriously changed, despite many improvements in the details, since the end of World War II, with the exception, precisely, of the unification of the markets. Not having placed the two major questions of "why act?" and "how?" at the core of global governance, the latter has been locked into traditional relations among sovereign states. Only the adoption of a Global Constitution will legitimize limiting the sovereignty of states. And only the introduction of the principle of active subsidiarity will allow the slowly emerging global political community to develop practices that are likely to take full advantage of the interdependence among the societies of the world and of the infinite diversity of cultures and situations. **If the European Union is capable, on the occasion of its Convention to lay down its future foundations, of expressing this new principle clearly and constitutionally, it will provide the kickoff of the new constructional stage of the global community.** If it does not, if it locks itself into the outdated model of relations among sovereign states, it will send a signal of regression and will drive the global community into a dead end. This underscores the historic responsibility that weighs upon the shoulders of the Members of the Convention.