

Chapter 1

Rethinking Subsidiarity as a Principle of Educational Policy in the European Union

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For Europe, the turn of the century has meant the end of a decisive decade full of hopes and disappointments. The euphoria following the events that unfolded in the eastern countries at the end of the 1980's, symbolized by the fall of the Berlin Wall, was in turn followed by a much lower moment of European ideals, worsened by the uncertainty that usually follows 'revolutionary' processes (Dahrendorf, 1991), by the recurrent war in former Yugoslavia, the return of xenophobic attitudes and neo-fascist movements, political scandals, economic ups and downs, etc. In this irresolute context, the European Union has often been perceived by the citizens of its Member States as a distant bureaucracy that affects our daily lives through regulations, taxes, the currency we use to buy and sell,... and yet we fail to see ourselves reflected in its decisions. Those who drew up the Treaty of the European Union signed in Maastricht in February 1992 were well aware of this 'democratic deficit' and largely responded to it with the Treaty's appeal to the principle of subsidiarity. It is also probably part and parcel of the new role that the Treaty conceded to education.

By modifying the Treaty of 1957 establishing the European Economic Community, now simply the European Community, and broadening its action to areas not originally foreseen, the Maastricht Treaty placed education under Union authority, confirming the initiatives that had been underway in this matter since the 1970's. A new article was included to set the goals and principles of educational policy-making. According to this article, "the Community shall contribute to the development of quality education by encouraging cooperation among Member States and, if necessary, by supporting and supplementing their action, while fully

respecting the responsibility of the Member States for the content of teaching and the organization of education systems and their cultural and linguistic diversity” (EC Treaty, Art. 126.1; now Art. 149.1)¹.

The limit of Union intervention was thus set at *encouraging cooperation* among the States, *supporting* and *supplementing* their action when needed, and *respecting their cultural and linguistic diversity*, turning down any pretensions at harmonizing educational systems in terms of content and organization. The statement thereby confirmed the basis of educational policy in the Union as what can be called principles of subsidiarity and respect for cultural diversity, in-keeping with the views that European politicians had been expressing from the late 1980’s. Thus, some Conclusions of the Council of the European Communities (now the Council of the European Union) from 1989 on cooperation and Community policy on education foresaw that such “must be based on two fundamental principles: respect for linguistic and cultural diversity and the affirmation of the subsidiarity of Community activities. The fundamental powers of the Member States in matters of general education policy must be respected” (OJ C 277, 31-10-1989).

In its most widely accepted terms, the principle of subsidiarity is usually associated today with the determination of levels of competency or authority in federal government systems. In the last phase of European construction, debate over the principle has, however, spread far beyond this context. What for some time was called the ‘golden rule’ or the ‘S-word’ has been used as a magic wand for solving many of the problems and much of the dissatisfaction that undermine the process of cooperation and union of the peoples of Europe. Nevertheless, it has not been without its share of ambiguities. Thus, the first part of this chapter will concern itself with a few of the main difficulties that have been detected in the legal formulation of the principle in the Treaty of the European Union. To a large extent, such ambiguities arise because subsidiarity functions more as a political principle than as a criterion for automatic legal applicability. Even the term ‘political principle’ is subject to a variety of interpretations, according to whatever is meant by ‘political’. In the second part, the ‘Machiavellian’ sense of politics will lead us to review the instrumental use that has been made of subsidiarity in the process of European unity, to such an extent that it has been emptied of any specific content. Finally, the ‘Aristotelian’ sense of politics will allow

¹ The revision of the Treaty of the European Union approved in Amsterdam at the end of 1997 did not change the wording of this article on education, which became number 149 in the new consolidated version of the Treaty establishing the European Community. Nor has the latest version of the Treaty, passed in Nice in February 2001 and now awaiting ratification, made any changes in this regard.

discovering the pedagogic scope that may be applied to the principle, as a generator of some shared *ethos*.

1. AMBIGUITIES OVER SUBSIDIARITY AS A LEGAL CRITERION

The 1992 Treaty of the European Union made subsidiarity an essential principle of Union action. The Treaty alludes to it on several occasions. The preamble highlights the efforts of the Member States “to continue the process of creating an ever-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”.² In almost identical fashion, but omitting the explicit reference to the principle, Article A (now Article 1) of Title I (Common Provisions) points out that “this Treaty marks a new stage in the process of creating an ever-closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen”.³ And again, according to Article B (now Article 2) of the same Title I, “the objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community”. This Article 3b (now Article 5) of the Treaty constituting the European Community sets out the legal meaning of the principle, stipulating that:

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 within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar 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.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

² Unmodified in the later versions of the Treaty.

³ The wording changed slightly in the revision passed in Amsterdam, stating that decisions are taken *as openly possible and as closely possible* to the citizens.