

Ralf Dahrendorf Taskforce on the Future of the European Union

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Everything flows and nothing abides

Or: how the political discussion on subsidiarity in the EU
obscures our view on what really matters

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Introduction: taking a step back

The current political debate on the division of competences within the EU hides more than it clarifies. We see that discussions within this debate often skip directly to concrete policy questions, without addressing the underlying considerations of what is fundamentally at stake. The problem with this focus on questions such as whether Europe should or should not have a say in the shape of cucumbers or the requirements of light bulbs is that there is nothing liberally distinctive or meaningful in the long run to be said about them. Sticking with discussing the matter on this superficial level we might – at best – end up with a nitty-gritty division of competences custom-made for today but worthless for tomorrow. And in the meantime we run the risk of being overtaken by a reality in which national sovereignty on, for instance, pensions silently turns into a fiction because of the functioning of international financial markets. In this paper, we will therefore propose that we take a step back, so that we can do justice to the truly fundamental questions that lie behind the recent political desire to come up with a detailed list of European and national competences.

The subsidiarity discussion – what is at stake?

Within the political debate on European integration, the term ‘subsidiarity’ has been used for decades as a measure to counteract centralizing tendencies in the integration process – for instance by former Commissioner Ralf Dahrendorf as early as 1971, and by Jacques Delors and Dutch Christian Democrat leader Ruud Lubbers in the late 1980s. It became especially popular in the debate surrounding the adoption of the Maastricht Treaty, where it was used by the pro-camp to contain prevailing worries about loss of national control. It was here that the principle of subsidiarity was officially adopted into the treaty, and it has gained a more prominent position with every new treaty since then. Moreover, since the failed constitution and the Lisbon treaty it has become mainstream in the public debate as well, though it is now mostly used by eurosceptics to rally against ‘meddlesomeness from Brussels’ and demand that power is ‘given back’ to the member states. In this context, the term came to the centre of the political debate in the Netherlands when in February 2013 the Dutch Christian Democrats - following a debate Cameron had started in the UK - called for claiming power back from Brussels and proposed a list of EU measures and directives that should be abandoned because they concerned tasks that, ‘according to the rules of subsidiarity’, better befitted the national level of decision making.

The measures and directives mentioned on this list, and those that were on the eventual list that the Dutch government presented in reaction to the Christian Democrats’ call, raised an important question: what is the perceived value of such strictly defined competence lists? We cannot deny that there *is* a reason that the desire and call for a clear division of competences is now at the heart of the political debate and gathers both political and public support. Discomfort with what the EU does and does not do has run sky high; a clear signal that something is wrong, something that should be addressed in order to be able to move forward with European integration in a – from a liberal perspective – productive way. This is something that we at the Van Mierlo Foundation have tried to do in our essay on European integration, published last spring. Here we asked ourselves: what is at the core of the complaints of ‘Brussels governing by decree’ that often tend to lead to a call for a sharply defined list of competences? We observed that above everything else, people experience a distinct loss of grip and influence on their personal and communal lives as a result of ongoing European integration. Europe, or – even worse – ‘Brussels’ (thus it is claimed) takes power away from ‘us’; money that should be spent on the public good (for liberals, that means investments in policy that serves individual liberty) is said to be wasted on things we have no say in. There is a strong perception of EU decisions ‘falling from heaven’, as it were, without a clear reason, and our only choice is to simply ‘obey Brussels’.

Regardless of whether we agree with these complaints in the first place, this is a matter that liberals should take seriously. The essence of liberal politics is to protect and promote people's individual freedom to shape and control their own life and the (political) context in which it takes place. From a liberal point of view, yielding power of decision making to a state authority is only defensible if it contributes to the freedom of individuals to shape their lives.¹ Since it is exactly this freedom that is claimed to be at stake in today's debate on European integration, we should explore this matter carefully. A valid liberal perspective on the issue of subsidiarity should address the relationship between different levels of decision-making and facilitating the individual freedom of citizens.

The liberal case for European and national decision-making

So why do liberals support EU integration in the first place? Or, put differently, wherein lies the value for liberals of policymaking on a European rather than a national level? When we look back in history, we see that liberals initially turned to constructing the modern nation-state in order to free the individual from restrictive feudal ties. And the nation-state fulfilled its promises in this regard: by means of constitutions, basic arrangements for social security etc, that nation-state freed individuals from private interdependencies. However, as a result of globalization and growing transnational interdependencies, the framework of the nation-state could no longer in and by itself guarantee the freedom of people. Here, the concept of shaping a transnational governmental framework enhancing and protecting liberties became a logical next step. Liberals support decision-making on the EU level because it is better equipped to "internalize the externalities"² of cross-border issues (such as crime, pollution etc.) that have an impact on the freedoms of citizens. This is not just a technocratic argument, but a *liberal democratic* argument in essence: when the networks within which our economic, social and environmental activities take place increasingly stretch beyond national borders, but the political institutions able and mandated to shape and set limits to these networks remain on a lower level, democratic control is weakened; politics loses its ability to counterbalance vested interests and power asymmetries that threaten the *de facto* freedom of (certain groups of) citizens.

Just as there are good reasons, from a liberal democratic perspective, to deal with certain issues on a European level, there are also benefits to doing things nationally. Representative democracy as we know it today has developed within the context of the nation-state. As a result, its functioning relies strongly on an established public sphere, a specific institutional infrastructure and an interpretation of norms, values and policies that does justice to our sensitivities. While nation-states are in a sense quite arbitrary focal points of identification, the shared historical experience of communal decision-making has created conditions like a degree of mutual trust and a sense of involvement in shaping a common destiny³ that reinforce popular identification with fellow nationals in particular. National identity is a valid consideration for liberals when interpreted in this political sense: control over our environment shared with those people we identify with, as fellow citizens. Such political identification on a national level should not be confused with one based on more absolute and exclusive ethnic notions of identity, revolving around race, culture or religion. From a liberal point of view, a political community cannot be based on a single, one-dimensional ethnic identity. However, effective and legitimate government does require a sense of political identification that causes people to accept that fellow members of the polity have an impact on the laws that govern their daily lives. The existence of functioning mechanisms for popular control that are

¹ Within the liberal family we often dispute how and to what extent governmental authorities can or should contribute to individual liberty (i.e. the debate on positive/negative freedoms). Notwithstanding the importance of this discussion, it is left out of consideration for the moment.

² Levy, J. (2007). Federalism, liberalism, and the separation of loyalties. *American Political Science Review*, 101, 3, p. 462.

³ Bellamy, R. & Castiglione, D. (1997). Building the Union: the nature of sovereignty in the political architecture of Europe. *Law and Philosophy*, 16, p. 436.

perceived as legitimate can be a valid argument for solving certain issues nationally – at least for the foreseeable future.

Thus, we see that from a liberal perspective, one level of decision-making is not to be *a priori* preferred over the other. On the contrary: spreading political decision-making over multiple levels is inherent to the nature of the EU and part of its checks-and-balances system. Democratic legitimacy within the EU traditionally comes from two sources: national citizens and EU citizens. These are the same people, taking on different roles, and both are valid and valuable, as they balance different values and interests.⁴ As Bellamy and Castiglione (1997) have observed, both people’s allegiances and their social, political and economic interactions have become increasingly multilayered, but this does not invalidate considerations of subsidiarity. Rather the opposite: it causes a need for mechanisms that arbitrate between different interests and viewpoints to be available on more levels. “If politics is defined by the questions of who gets what, when, where and how, then the answers increasingly must be in the plural – different people, in different ways and employing different criteria according to the context and the good concerned.” In sum: the existence of plural identities is in fact a strong argument for plural sovereignty.⁵

Towards a politicized subsidiarity debate

Does this mean that such plural sovereignty should take shape as a fixed division of competences between the EU and the national level? From the perspective of promoting individual freedom and democratic control, we would argue that this is neither possible nor desirable. What problem should be addressed on which governmental level is never a black-and-white matter, nor something that can be discussed apart from time, place and historical circumstances. As political history has shown us, most often various levels of government need to work together in order to guarantee the best result for citizens and not seldom tasks are shifted back and forth overtime. Which level of government can best protect the interests of citizens in each specific case is a question to be answered in a political discussion that needs to go on continuously on all levels of politics. The need for such politicization has so far been largely ignored in the subsidiarity debate: it has mostly focused on *what* should be done where, rather than *how* we decide on what is done by whom in the first place. Without clarity on this second question, it will be difficult to come to any decision on the first one that is democratically legitimate. We argue that the solution is not to be sought in a rigid division of competences, but rather in an ongoing and open contestation of this division, with an equal role for both EU and national citizens, and spelling out clearly how the level of decision-making that is chosen may affect policy content. In this way, we can start to move towards a European Union that takes its people’s right to shape and control their own destiny seriously.

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⁴ Habermas, J. (2012) *Over de constitutie van Europa: een essay*, pp. 47-50.

⁵ Bellamy & Castiglione (1997), p 422.