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Cohesion and subsidiarity

Towards good territorial governance in Europe

The message of this paper is twofold: (a) the pursuit of territorial cohesion, the importance of which the new European Constitution recognises, requires coordination of national planning systems; and (b) subsidiarity, a Community principle usually invoked to counteract it, should instead become the principle underlying a feasible and effective form of such coordination at the EU (European Union) level. Indeed, the Constitution should at least encourage planners to discuss principles of good EU territorial governance by addressing the performance of statutory planning systems in the common area of territorial cohesion. In brief, these principles might be termed vertical subsidiarity, horizontal subsidiarity, and the coordination between subsidiarity and cohesion.

European integration requires ... also new mental maps and removal of Cartesian inhibitions. (Williams, 1996, 264–65)

Territory in the new Constitution for Europe

Discussions on voting systems, Member State representation and the number of Commissioners have overshadowed innovations in the debate of the European Constitution (CRGMS, 2004). As explained in the introduction of this special issue, these innovations include the recognition of the territorial dimension of ‘cohesion’ (the Community principle introduced in the 1986 Single European Act), which perhaps more than any other represents the political will for European integration. Subsequently, ‘Protocol No. 28 on economic and social cohesion’ was formally approved as an addendum to the 1992 Treaty on European Union.

The section entitled ‘Economic, social, and territorial cohesion’ (Articles III–220 to III–224) of the new Constitution would substitute the current Title XVII (‘Economic and social cohesion’, Articles 158 to 162) of the Treaty establishing the European Community (EC Treaty). Without specifically mentioning territory, Article 158 establishes that ‘the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas’. For this purpose Article 159 states that ‘Member States shall conduct their economic policies and shall coordinate them in such a way as ... to attain the objectives set out in Article 158’, while the Community pursues action ‘through the Structural Funds ... the European Investment Bank and the other existing financial instruments’. In particular, the European

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Regional Development Fund (ERDF), being the most effective among these instruments, 'is intended to help to redress the main regional imbalances in the Community through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions' (Article 160).

The novelty of the European constitutional project is not limited to the recognition of 'territorial' cohesion policies, but extends to the institutional modalities of such policies. In particular, Article III-221 announces possible 'European laws or framework laws' which 'may establish any specific measure outside the Funds, without prejudice to measures adopted within the framework of the Union's other policies'. Maybe it would require a constitutional expert to explain the concrete potentialities and limits of such an enunciation. However, planners may rightly wonder about possible connections with provisions concerning environmental policy (Articles III-233 and III-234). There it is stated that 'European laws or framework laws' may establish 'measures affecting ... town and country planning' and even 'land use', albeit 'with the exception of waste management' (Articles III-234). It is true that an almost identical provision (which so far has not been invoked) is found in the existing EC Treaty. But, this being a matter of practical need and of political willingness, the reasons for territorial cohesion could perhaps modify the scenario.

Notwithstanding the uncertainties involved, the hope is that the Constitution makes an important step towards affirming a Community competence for territorial policy; a competence which, since its inception and in spite of well-known difficulties (Williams, 1999; Faludi et al., 2000; Husson, 2002), the European Community has demonstrated that it cannot do without.

European integration, cohesion and territory

After the Single European Act (1986) and the Treaty on European Union (1992), the subsequent treaties of Amsterdam (1997) and Nice (2001) strengthened European integration. In addition to the constitutional project, this process culminated in the adoption of a common currency and in the enlargement, as of 1 May 2004, of the EU to 25 members. At the root of this immense effort, otherwise inconceivable only slightly more than a century after the formation of modern states, lies the desire for prosperity (or even simple survival) in the face of globalisation. It is worth recalling the conclusion of the Commission's White Paper on the completion of the internal market, which inspired the Single European Act:

Just as the Customs Union had to precede Economic Integration, so Economic Integration has to precede European Unity. To do less would be to fall short of the ambitions of the founders of the Community, incorporated in the Treaties; it would be

to betray the trust invested in us; and it would be to offer the peoples of Europe a narrower, less rewarding, less secure, less prosperous future than they could otherwise enjoy. That is the measure of the challenge which faces us. Let it never be said that we were incapable of rising to it. (CEC, 1985, 54)

The cohesion principle expresses nothing but a concern for rebalancing the uncertain distributive effects of an internal market without borders and, in so doing, avoiding the pernicious risk of Europe disintegrating. For this reason, as soon as cohesion was agreed, and in spite of formal objections, the implementation of territorial and urban Community policies proved to be indispensable. With increased efforts during the late 1980s, European institutions and nation states found themselves cooperating in various forms of territorial governance generally under the flag of 'European spatial planning' (Williams, 1996; Faludi, 2002; Janin Rivolin, 2004).

First of all, there was the European Spatial Development Perspective (ESDP) (CEC, 1999; Faludi and Waterhout, 2002), 'the proudest achievement so far of European spatial planning' (Faludi, 2001, 245). At present, European governments are involved in the 'application' of a common Action Programme on the ESDP (Faludi, 2003) providing among others for the operation of the 'European Spatial Planning Observation Network' (ESPON, 2002). (See the paper by van Gestel and Faludi on the origins of ESPON in this issue.)

The first of the 12 actions in the Action Programme focuses on the need to consider the ESDP in the implementation of the Structural Funds. The relevant resources, about 195 billion euro for the period 2000–06 (approximately 35 per cent of Community expenses), are expected to increase to 336 billion in 2007–13, partly due to the enlargement of the EU (CEC, 2004a). So, the Structural Funds have been rightly described as 'the pot of gold at the end of the rainbow' for European spatial planning (Williams, 1996, 114). Since the introduction of the cohesion principle, these Structural Funds are a form of 'territorially oriented' programming. A radical reform in 1988 has led to the standardisation of procedures and the periodic identification of 'priority objectives' and 'eligible zones' (regions or municipalities) every six to seven years.

The territorial orientation of the Community Initiatives in the Structural Funds framework has been even more evident. Since 1988, they have enabled specific actions to be taken by the Commission, using approximately 5–10 per cent of the Structural Funds to obtain results of particular strategic Community significance. In 2000–06, three initiatives out of four (INTERREG III, Urban II and Leader+) promote interventions in the regions and in cities, with a total Community investment of 7.6 billion euro, amounting to 73 per cent of the total. The possibility to cancel the Community Initiatives in the next programming period 2007–13 (CEC, 2004b) must not be viewed as an about turn, but rather as an attempt to reshape the mainstream

Structural Funds in the light of the positive experiences so far. Convergence, regional competitiveness and employment, and territorial cooperation are indeed the priority objectives that the Commission has proposed for implementing ‘an effective cohesion policy’, the main feature of which is ‘its adaptability to specific needs and characteristics of territories’ (CEC, 2004b, xxxi).

Perhaps the most interesting aspect of European spatial planning is the overall results, whether expected or unexpected, of its implementation. Community urban and territorial policies have been developed through complex and progressive innovations in practice and in developing local, regional and national institutions for territorial governance (Janin Rivolin, 2002; 2003; 2004). In other words, in order to achieve concrete transformations, European territorial governance passes through and modifies the complex prism of institutionalised planning (Janin Rivolin and Faludi, 2005).

If this is true, then the ‘European framework laws’ for territorial cohesion policy envisaged may imply more than a first perusal would seem to suggest. The point is to get an understanding of the effects of territorial cohesion policy, rather than merely to measure them periodically (CEC, 1997a; 2001a; 2004b). This applies not only to Community institutions, but to all public authorities which, whether they appreciate it or not, have already participated in this policy and have been progressively transformed by it. In this light, a shared framework of Community principles of good territorial governance may prove to be a good way to exploit the new opportunities offered by the European Constitution.

Planning, subsidiarity and effectiveness of public action

The so-called ‘competence issue’ of whether or not to attribute a territorial competence to Community institutions was not purely academic. The issue has been discussed several times and, even though inconclusive, the debate since the middle of the 1990s has been heated (Husson, 2002; Faludi and Waterhout, 2002, 89–92). In brief, the issue comes down to whether supranational planning makes sense, in particular in view of the fact that some countries have already been experimenting with decentralising planning. Prominent examples of these countries include France, Great Britain, Italy, Portugal and Spain (whereas planning in Belgium, Finland, Germany and Sweden is traditionally decentralised). Since the variety of planning systems in Europe is great, it is difficult to give a definite answer. The attempt to classify different planning systems into four models (a ‘regional-economic approach’ of the French matrix, the ‘comprehensive-integrated approach’ of the German matrix, the British ‘land use management approach’ and the Mediterranean ‘urbanism tradition’) in *The EU Compendium of Spatial Planning Systems and Policies* (CEC, 1997b, 36–37) represents just an initial effort.

What is relevant here is that the ‘subsidiarity’ principle, being an integral part of the EC Treaty, is now recognised as one of the ‘Fundamental principles’ (Article I–11) in the Constitution:

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. (Article I–11, c. 3)

Up to now, the subsidiarity principle has played into the hands of the opponents of Community planning. The argument is that Member States and a sub-national level of government can do the job adequately; there is thus no reason for extending this competence to the Community. However, now that territorial cohesion policy has entered the scene, it should be seen as a distinctive matter from statutory planning in the 25 European countries (Faludi, 2004). Nonetheless, could territorial cohesion policy in isolation from statutory planning be effective? One could indeed argue that the constitutional recognition of territorial cohesion as an objective of the Union implicitly means that even statutory planning is no longer an exclusive matter of the Member States. In fact, it is worth considering how cohesion and subsidiarity relate to each other under the European Constitution. From this perspective, the development of European spatial planning and the decentralisation of planning powers become two sides of the same coin. Since it relates to territory, cohesion policy will be implemented primarily through the medium of local planning. It is not by accident that local responsibility as an alternative to the twentieth-century welfare-state model of public action, which moreover finds itself in a long-term crisis, is one of the basic principles of the White Paper on ‘European Governance’ (CEC, 2001b). In other words, the substantive principle of territorial cohesion does not appear to be in conflict with, but rather supported by, the procedural one of subsidiarity as a safeguard of the effectiveness of public action in times of globalisation.

European integration may, therefore, once more become a stimulus for developing national traditions. In particular, the pursuit of territorial cohesion would require an evolution of statutory planning systems historically based, according to the traditional welfare-state model, on insistence on the conformance of local transformations to centralised decisions (i.e. a predominant hierarchy from central to local plan and from strategies to projects). In its stead, the pursuit of performance would be appropriate to planning systems oriented to the governance of territorial transformations (Faludi, 2000).

This leads to the conclusion that, rather than separating the 25 European planning systems from territorial cohesion policy, subsidiarity may lead to articulating a framework of territorial governance principles shared by all of them.

Instituting European territorial governance

Based on the above, one may expect ‘European laws or framework laws’ which, following the Constitution, may relate to territorial cohesion and affect town and country planning, embracing three key principles for national planning to follow:

- vertical subsidiarity;
- horizontal subsidiarity; and
- coordination between subsidiarity and cohesion.

These might constitute the ‘minimum standards for spatial development policy’ (Ritter, 2003, 9), referred to in a recent position paper of the German Academy for Regional Research and Regional Planning, known by its German acronym as the ARL, concerning spatial development policy in the European Constitution (see also Faludi, 2004). The paper argues for such minimum standards for two very good reasons:

First, a European spatial policy that is based on the principle of cooperation can only be created in any meaningful form if all Member States contribute their ideas on spatial policy. And second, states completely foregoing any kind of spatial policy control in their own territory – or which exercise such control only on a marginal basis – would have an unfair advantage in intra-European competition. (Ritter, 2003, 9)

The paper by Tewdwr-Jones and Mourato in this issue also emphasises the importance of this topic.

Vertical subsidiarity

Vertical subsidiarity is the principle concerning the ‘re-scaling of urban governance in the European Union’ in times of globalisation (Brenner, 1999, 431; see also Swyngedouw, 2000). Vertical subsidiarity pertains to the relations between levels of territorial governance and, therefore, also the relations between plans and programmes on various scales (see Fig. 1). Apart from recognising the scales of planning in the Member States (local, provincial/regional and national), a Community law should formalise objectives, tools and procedures for strategic interventions identified recently in relation to specific EU objectives (cross-border, transnational and supra-national).

There would be scope here for a shared framework to develop various planning tools as well as autonomous and joint competencies of the responsible institutional actors. Essentially, the agreed principle of subsidiarity would constitute the rationale upon which the vertical relationships between planning tools and competencies are based, generally aiming at simplification and a common terminology. Subsidiarity

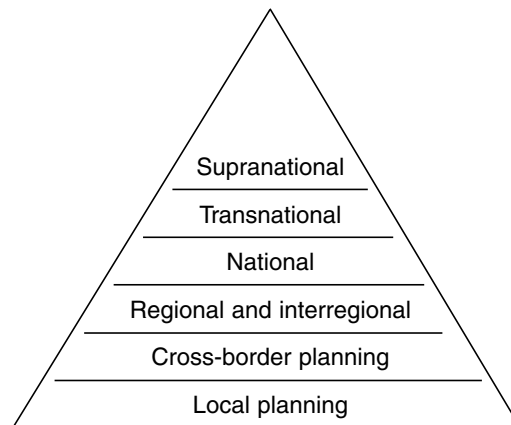


Figure 1 Typology of scales of EU spatial planning

Source: Tewdwr-Jones and Williams, 2001.

would require above all that regulatory land use powers in all European countries be the exclusive reserve at the local level (where necessary subject to exceptions), assigning higher-level institutions other tasks such as the formulation of general policies and overall territorial strategies, into which local policies may fit, but which are subject to the ‘performance’ principle as discussed above.

Horizontal subsidiarity

Horizontal relations in planning are usually seen as a matter of coordinating sectoral policies (see Schäfer elsewhere in this issue). Here the concept of horizontal subsidiarity implies an authentic sharing of governance perspectives, concerning primarily the relations between public and non-public actors. After all, attention to governance leads to new ways of conceptualising the interactions between these actors, and in the case of planning also between individual projects and overall strategies. Indeed, facing the challenges of globalisation, cities in Europe have shown that ‘private actors (individual and collective) are increasingly salient in the governance of cities’ (Le Galès, 2000, 195). However, this does not mean that public powers are subservient to private interests. Rather,

seeing in a public–private partnership a substitute for local government and/or negotiated relations between social groups, community organisations, local councils and employers’ organisations, as is sometimes suggested in some accounts of new

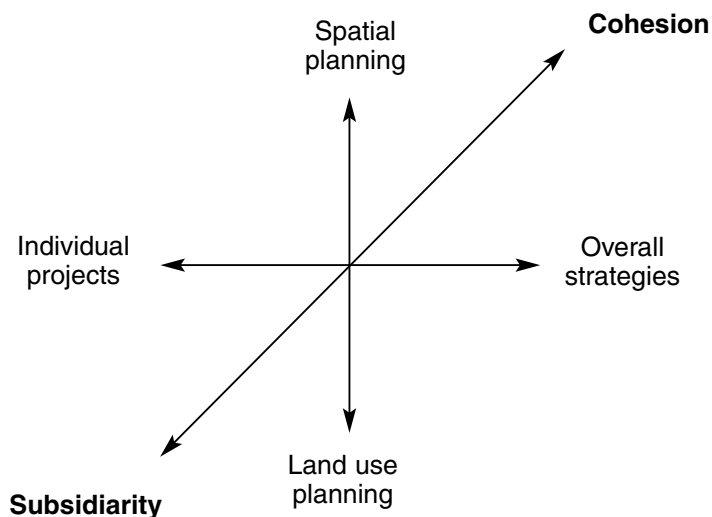


Figure 2 Vertical and horizontal relations and the coordination between subsidiarity cohesion in planning

urban governance, is grossly misleading and not even fully accurate. (Le Galès, 2000, 196; see also Camagni, 2000)

It is worth emphasising that recent experiences in European spatial planning have contributed decisively to the appreciation of the need for these relationships between plans and projects to be governed by the performance rather than the conformance principle (Faludi, 2000). It follows that by its very nature the challenge posed by the matter of European competence of territorial cohesion lies in its cultural significance (in terms of political as well as expert culture). The challenge may be faced successfully to the extent that we are able to accept that subsidiarity must extend to the ‘horizontal’ relations between individual projects and overall strategies (see Fig. 2). In concrete terms, attributing performing capacities to planning appears possible, provided that the prescriptive powers are limited to regulating existing uses and rights, without affecting the ‘visioning’ of transformations. Such visioning would continue to be legitimate and rightly pursued by each institution through non-binding programmes and strategies, effective in so far as they are capable of involving and channelling local planning capacities.

Relinquishing institutional power to prescribe the future of cities is not only a matter of intellectual honesty, but also has added value for planning practice. Current planning systems have been under persistent criticism for operating according to the conformity principle of transformations to prescribed provisions, which tend to have

limited and often perverse effects. In today's Europe, on a continental as well as a local scale, visions of territorial and urban transformations can be achieved without resorting to the use of law. Rather, they require reliable strategies and programmes that are shared between the relevant actors. However, such collective strategies may on the one hand be obstructed, or at least impeded, by projects legitimated by previously acquired transformation rights. On the other hand, pursuing them can imply the need for projects that are effectively capable of achieving the expected results (and only subsequently being assigned the relative transformation rights).

The coordination between subsidiarity and cohesion

The persistence of institutions and planning practices founded upon the conformance principle of technocratic traditions can be explained by the concern, sometimes authentic but nevertheless misdirected, to safeguard the implementation of coherent plans. This concern is not only legitimate but also indispensable, if we believe that planning continues to be (even within a framework of relationships founded on subsidiarity) a government activity justified by public concerns. It is one thing to maintain that subsidiarity implies giving up the power to prescribe territorial transformations, but quite another to conclude the corollary, unacceptable in the contexts of a market democracy, that individual projects can substitute for collectively decided strategies. This corollary, equivalent to confusing subsidiarity with autarchy, is gaining support among experts and decision makers who, curiously enough, tend to apply it by exploiting, instead of repudiating, the principle of conformity.

The opposite is the case. In territorial politics, as in any public practice, collective strategies are not the sums of individual projects, much as a plan at a higher scale is not based on juxtaposing lower-order plans. Rather, compared with overall plans, individual projects and local plans are often shown to be in conflict with each other. So in terms of territorial governance the problem of the relation between subsidiarity and cohesion touches upon both vertical and horizontal relations. This is because conflicts are common between plans or programmes at similar or different scales, and between local projects or between them and the relevant plans. Seen in this light, cohesion may guarantee, within a framework of relationships founded on subsidiarity, the prerogatives of public authorities to guide territorial transformations according to regulations and strategies shared by the Community.

More particularly, in a European system of territorial governance founded upon vertical and horizontal subsidiarity, 'economic, social and territorial cohesion' could become the constitutional principle on which public authorities, at whichever level of government, base the resolution of conflicts in planning practice. To the extent feasible though, European legislation should establish simple but clear compensation clauses for collective and individual interests that are suffering losses due to territorial

transformations. Any planning decision is inherently discriminatory, which leads to a simultaneous process of 'expansion' and 'exclusion' (Plotkin, 1987). Discrimination can affect both individual as well as collective interests. There is insufficient opportunity for representing various interests and the good intentions of collaborative planning promoters is not enough (Allmendinger and Tewdwr-Jones, 2002). Hence, some forms of compensation of the interests concerned is the only guarantee that the distributive effects of planning take account of economic, social and territorial cohesion.

Although an appropriate form of institutionalisation still has to be found, some kind of Community compensation clause applying to planning systems would facilitate public choices concerning the daily conflicts occurring in planning at every scale, from the local to the supranational level. Additionally, this would allow decisions to be based on technical evaluations, since these would be relieved not only of the burden of prescriptive transformation visions, but also possible moral or ideological concerns with regard to distributive effects. Thus, an indirect but perhaps not negligible result of Community regulation of territorial governance would be to redirect the attention of European planners towards managing the relations between spatial, social and economic configurations.

For understandable historical reasons, the absence in national constitutions of any requirement for planning to consider the need for Community solidarity is a fact. Indeed, we may assume that safeguarding property rights and the pursuit of an all-too-generic concept of the 'public interest' are the constitutional principles on which national planning systems are based. Economic, social and territorial cohesion may thus represent constitutional grounds for providing, within planning, equitable and efficient compensation of the various interests involved. Moreover, compensating losing parties seems the most concrete way to eradicate the seminal conflict between cohesion and subsidiarity. As indicated, up to now this conflict has prevented European territorial governance from receiving institutional recognition that is vital for the future of Europe.

Conclusions

These considerations are born out of the realisation that, under the Constitution for Europe, 'European laws or framework laws' may relate to territorial cohesion policy as well as to town and country planning. Albeit subject to various interpretations as to its practical significance, at a minimum, this means that European institutions have taken steps towards acknowledging that a Community planning competence is necessary for the European project to succeed (Husson, 2002). A crucial issue in this paper has been whether and how a Community planning competence should interact with national planning systems.

The prevailing position is that it should not, and that, in view of the subsidiarity principle, statutory planning should remain the responsibility of Member States. Statutory planning is, of course, the only institutional power for implementing local transformations. So, looking at the elementary premise that any territorial policy is implemented through local actions, it is relevant to ask how, in the absence of institutional interactions with national planning systems, Community territorial cohesion policy is expected to be effective.

For this reason this paper argues that statutory planning systems based on the conformance of local transformations to centralised decisions, in both vertical (regional/local plans) and horizontal (overall strategies/individual projects) directions, counteract territorial cohesion. Conformance planning may have been viable under a traditional welfare-state model, but under contemporary conditions it has proven to be increasingly ineffective, if not perverse. On the other hand, globalisation has led to the emergence, especially in Europe, of progressive forms of territorial governance (Brenner, 1999; Bagnasco and Le Galès, 2000; Camagni, 2000; Swyngedouw, 2000). Of course, the Community principle of subsidiarity also expresses the need for good European governance (CEC, 2001b).

For these reasons, there is no inherent conflict between adopting subsidiarity and the coordination of national planning systems through European laws of territorial cohesion policy. Such laws would not in the least aspire to guide local transformations. Rather, they would simply establish new Community constitutional principles, especially subsidiarity and cohesion, within the institutional contexts of planning in Europe. In particular, subsidiarity should guide both vertical and horizontal relations in planning practices, while economic, social and territorial cohesion would be regarded as the constitutional reference point for resolving conflicts. In concrete terms, this means Community institutions and Member States agreeing that everywhere in Europe

- regulatory land use powers are a matter exclusively for local planning;
- these are limited to regulating existing uses and rights, without affecting visions of future transformations; and
- some compensation clauses are instituted, protecting collective and individual interests adversely affected by territorial transformations.

Laws are generally said to confirm existing procedures rather than establish new ones. Indeed, rapidly spreading territorial governance practices, inspired among others by Community innovations being appreciated by experts and decision makers across Europe, face an uphill struggle to gain acceptance in attempts to reform national (and regional) institutions based upon hierarchical twentieth-century constitutional models. Notwithstanding attempts to reform them, existing laws and instruments not only appear incapable of adequately serving the emerging needs of

performance in planning but, as indicated, they also appear to obstruct them. It is not by accident that the innovative ideas of this process of change received most attention in recent years. These ideas could be implemented incrementally everywhere throughout Europe by enlightened operators and decision makers in attempts to make territorial governance practices functional, even within inadequate institutional contexts.

However, with the emergent challenges that Europe faces, creative innovation risks becoming a grotesque consolation for noble souls or, even worse, an easy pretext for promoting hidden interests in an uncertain context. The conclusion is that the institution of a Community planning competence is therefore not the necessary objective of a possible European law to apply territorial cohesion. It is, if anything, the means of conferring institutional recognition on practices of good territorial governance which are already being experimented with but might otherwise be destined to be great exceptions or remembered simply as good intentions. Unless the inclusion of territorial cohesion has been a mistake committed by the makers of the European Constitution (which is always possible, but this would be another story), exceptions and good intentions are no longer sufficient.

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