



Subsidiarity in the EU: Reflections on a centre–right agenda

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Abstract

This article re-examines the problem of EU subsidiarity in the light of the political economy of federalism and centre–right thinking. It argues that if Christian Democratic, conservative and liberal parties are serious about strengthening subsidiarity, they should urge the EU to take steps in the direction of scenario four of the European Commission’s *White Paper on the Future of Europe*. Misleadingly titled ‘Doing less more efficiently’, this scenario is in fact about ‘delivering more and faster in selected policy areas, while doing less elsewhere’, as the subtitle correctly states. A new compact combining the targeted strengthening of key federal policies at the EU level with the EU’s gradual disengagement from other policy areas seems the most promising way to take the Union out of the doldrums and strike a compromise between Eurosceptics and Europhiles.

Keywords

EU, Subsidiarity, EPP, Centre–right, White Paper, Future of Europe, Federalism

Introduction

Whether explicitly mentioned or left unspoken, subsidiarity has been crucial to most recent discussions about the future of European integration. When the European Commission of President Jean-Claude Juncker announced that the EU should be ‘big on big things and small on small things’, it was clearly implying that a principle—subsidiarity—to operationalise the distinction between big and small was readily available. This principle has often been emphasised in the European speeches of Austrian Chancellor

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Sebastian Kurz, and it featured prominently amongst the priorities of the autumn 2018 Austrian EU presidency. And what, other than some sort of stricter subsidiarity, can widespread calls to bring the EU ‘closer to the people’ mean? Interest in subsidiarity stems from the principle’s promise ‘to address the allocation or use of authority within a political order’ in a way that accords the highest protection to the prerogatives of the sub-units, as opposed to the central level (Føllesdal 2014, 214). In other words, subsidiarity is appealing as a way to operationalise the notion of ‘unity in diversity’ in the EU by putting a strong emphasis on the protection of diversity. For this reason, this principle is more popular with Christian Democrats, conservatives and right-wing liberals than it is with progressive liberals and socialists, who are more geared towards equality and, therefore, unity.

This article argues that if Christian Democratic, conservative and liberal parties are serious about strengthening subsidiarity, they should urge the EU to take steps in the direction of scenario four of the Commission’s *White Paper on the Future of Europe* (European Commission 2017). Misleadingly titled ‘Doing less more efficiently’, this scenario is in fact about ‘delivering more and faster in selected policy areas, while doing less elsewhere’, as the subtitle correctly states. A new compact combining the targeted strengthening of key federal policies at the EU level with the EU’s gradual disengagement from other policy areas seems the most promising compromise to take the Union out of the doldrums.

To substantiate those claims, this article is organised into three sections. The first recaps the findings of the political economy of federalism, assessing the distribution of competences between member states and the Union in their light. The second reflects on the special meaning and importance of subsidiarity in centre–right politics. The third assesses the Commission’s scenarios on the future of Europe from a centre–right perspective. Some conclusions follow.

The political economy of federalism and the EU

Studies on the political economy of federalism have been taking place for decades, fundamentally enriching our understanding of the effectiveness and limits of federal arrangements. For our purposes, however, their most essential contribution is the construction of an analytical framework to assess when government decisions are best taken at the federal (meaning the central) level and when, instead, they should be taken at the state level.

In a nutshell, this literature has identified a trade-off ‘between the benefits of centralization, arising from economies of scale or externalities, and the costs of harmonizing policies in light of the increased heterogeneity of preferences in a large union’ (Alesina et al. 2001, 1). The general implication for the EU is obvious: like any other union of heterogeneous states, it ‘should focus exclusively on policy areas where economies of scale are large, and internalizing externalities is important, and delegate to national or lower-level government the policy areas where heterogeneity of preferences is predominantly relative to the benefit of scale’ (Alesina et al. 2001, 2).

International trade, for example, is characterised by large externalities and a relatively low heterogeneity of preferences; it is therefore best assigned to the EU level. On the other hand, educational choices in local schools are characterised by a high heterogeneity of preferences and relatively low economies of scale, and should thus be assigned to the national level. Unfortunately, allocating policy areas between different levels is not always so straightforward: for example, EU defence is characterised both by significant economies of scale that would justify centralisation on efficiency grounds and by an equally significant heterogeneity of preferences that has so far complicated even closer coordination. A similar, though not identical, case is that of social and redistribution policies. There are some—limited—economies of scale here, but there is also a radical heterogeneity of preferences.¹ These ambiguities are one very important reason why the analytical apparatus offered by the political economy of federalism is not enough to satisfactorily solve the competences' allocation problem. Citizens' preferences and political values must step in, at the very least to adjudicate in fields such as foreign policy or defence.

It is interesting to briefly summarise here the main conclusions of the most relevant application of the political economy of federalism to existing EU competences (Alesina et al. 2001). Although the analysis refers to the institutional set-up preceding the Lisbon Treaty, matters do not seem to have fundamentally changed since.² Strong EU competences are found to be largely appropriate in international trade, the single market and the single currency, while the role of the EU in education, research and culture appears 'justifiably limited' (Alesina et al. 2001, 19). As far as single market legislation is concerned, an important caveat is added: '[it] should aim at ensuring effective mobility of goods, services, capital and people in the Single Market area, but does not need to go beyond that. Top-down harmonization of national practices can be equally at odds with economic principles as impediments to trade are' (Alesina et al. 2001, 18). This is a clear indictment of the widespread misuse of single market legislation to try and harmonise health, social policy and other fields by stealth, which arguably has intensified in the last 20 years.

According to this analysis, the main EU competences most visibly deviating from these normative priors are agriculture and social protection, where the rationale for centralisation turns out to be very weak. In contrast, environment and international relations are areas where, on balance, the further development of supranational solutions appears justified. In other words, 'the allocation of EU policy prerogatives is partly inconsistent with normative criteria for the proper assignment of policies at different government levels. The EU is too involved in certain areas where economy of [*sic*] scale seem low and heterogeneity of preferences high and not involved enough in others, which, in principle, should have the opposite characteristics' (Alesina et al. 2001, 21).

These conclusions are fundamentally at odds with those reached on the topic by the recent Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently promoted by the European Commission. 'There is EU value added', its final report reads, 'in all existing areas of activity and the Task Force did not, therefore, identify any Treaty

competences or policy areas that should be re-delegated definitively, in whole or in part, to the Member States' (European Commission 2018, 4).

The report's findings are all the more puzzling if one considers that the economic and financial crisis of the early 2010s has arguably further distanced the EU from a well-constructed federation, particularly as far as the Economic and Monetary Union (EMU) is concerned. For example, the crisis has seen a significant strengthening of the old Stability and Growth Pact, which is now 'both more encompassing and intrusive than what is found in federal or unitary states' (Wyplosz 2015, 17). There is no doubt that, in a monetary union, significant externalities can arise from decentralised fiscal policies, as we have repeatedly seen during the crisis. It is equally doubtless, however, that fiscal policy is one of the areas where the heterogeneity of preferences is strongest. A set-up based on a rigorous no-bailout rule and the decentralisation of taxing, spending and budgetary decisions therefore seems most appropriate, and ways to transition towards it should be seriously studied in the years ahead (Castañeda 2018).

Given the current political context in Europe, one final note is warranted. A consistent line of thought originating in *The Federalist No. 10* by James Madison has argued that a central government is better at handling civil rights issues and protecting minority rights than individual states. This is essentially because states tend to be more homogeneous than big federations; therefore the tyranny of the majority is a much greater risk at the state than at the federal level. A quick look at the role the federal level played in ending slavery and segregation in the US confirms this prediction (Calabresi and Bickford 2014, 132–3). On the other hand, one must bear in mind that maintaining separate arrangements over fundamental moral disagreements while enjoying the advantages of unity in fields such as defence or trade is one important—perhaps the most important—reason for privileging a federal order over a unitary one. Therefore, trying to federalise issues pertaining to fundamental rights over which there are moral disagreements between different states or groups of states, while perhaps morally commendable, can be politically disastrous in so far as it tends to encourage secession (Calabresi and Fish 2016). After all, the American Civil War was essentially fought on the issue of whether banning slavery should be a state or a federal competence. In the EU these considerations seem to justify a cautious strengthening of the federal role in protecting and enforcing the fundamental rights of individuals and minorities, which have recently appeared threatened in several member states. By cautious, it is meant that the accepted definition of fundamental rights to be enforced at the EU level should be prudent and limited to stronger safeguards for the rule of law and the so-called negative freedoms.

Subsidiarity and diversity in centre–right thinking

Since, as just illustrated, the problem of EU competences cannot be solved on purely technocratic grounds, one's vision of the common good must assist in adjudicating ambiguities and lending coherence to our plans for the future of Europe. This is especially so given the overpowering role of subsidiarity in the political outlook of Christian

Democracy, as well as in the streams of conservatism and liberalism represented within the European People's Party (EPP).

While the values listed in Article 5 of the Treaty on European Union are shared by all mainstream political families, subsidiarity entered the discourse—and the law—on European integration purely as a contribution from the Christian Democratic tradition.³ It therefore belongs to the EPP more than to any other political family, and to it more than any other EU value. Article 5 of the Treaty of Lisbon gives a very minimalist definition of subsidiarity, stating that EU action is justified only if and insofar as its objectives cannot be sufficiently achieved by the member states, but can rather, by 'reason of the scale or effects', be better achieved at Union level. But reasons of scale and effects can always be found to justify EU action, and have been. The centre-right cannot be satisfied with a notion of subsidiarity based merely on the utilitarian criteria of efficiency and effectiveness.

To be of any help in the debate on EU competences, subsidiarity should rather be given a stricter interpretation by the centre-right, and understood as guaranteeing the integrity of Europe's historically developed nations and regions. Taking subsidiarity seriously means that the Union should primarily be seen as the protector of its members' integrity, autonomy, independence and identity, and not as an agent of uniformity and centralisation. Subsidiarity should thus urge not only EU institutions but each member state to accept and tolerate other members' values and preferences, however different they may be from theirs.⁴

When the strictest understanding of subsidiarity is adopted to protect diversity, the particular nature of European unity as defended by the centre-right stands out. Socialists and liberals see the EU as a tool to advance their ideologies, that is, to promote the advent of a uniform continent characterised by high economic redistribution, equality, liberal lifestyles and multicultural societies. For the centre-right, in contrast, the Union's primary role should be guaranteeing each country's right to an autonomous existence in a world in which each of them in isolation would become the vassal of extra-European powers. The Union of our competitors needs the very intrusive power of regulations and control to ensure conformity on a wide variety of issues. Ours can be a lean and agile framework for continental openness and joint action, a minimalist federation or confederation that ensures peace, deals with a few strategic issues, and fully respects national and regional autonomy (Reho 2017). The motto 'as much Union as necessary, but as little as possible' should encapsulate our European vision better than 'ever closer union', which implies convergence towards a predefined identity. EU integration should be strong, but focused and limited.

This specific philosophical outlook on subsidiarity—which is not universal even within the EPP political family—has a bearing on the problem of EU competences as elucidated by the political economy of federalism. It strengthens the case for solid continental unity on external policies—those that reinforce the ability of Europe's historical states to survive and thrive in the increasingly competitive international environment of

the twenty-first century. It thus urges the EPP to decisively adjudicate policies such as defence, foreign affairs and border control in favour of the EU.⁵ At the same time it calls for extreme caution in advocating EU action whenever it would weaken the autonomy and powers of those member states which are in pursuit of totally different goals, such as ‘equality’ or ‘progress’, whatever these vague notions may mean. This is surely the case for the measures of economic equalisation commonly associated with ‘social Europe’, as well as for initiatives that promote a ‘work–life balance’ or tax harmonisation at the EU level.

The Commission’s White Paper and the future of Europe

In 2017, the Commission implicitly acknowledged that there was no longer a consensus on the future trajectory of the European project. It did so by publishing its important *White Paper on the Future of Europe*, which, for the first time, laid out alternative scenarios about how the EU might evolve in the future. The paper was extensively commented on at the time of publication, but it still offers a useful range of options on which to base our reflections. Here it will suffice to briefly assess its scenarios against the technical and ideological criteria sketched above.

Scenario one is ‘carrying on’, meaning that the Union would continue to implement already agreed reforms and gradually improve upon the status quo, but nothing more (or less). Clearly, this scenario does not address the flaws underlined by the political economy of federalism, nor does it correct the indiscriminate bias towards ‘more Europe’ that has been quintessential to the European project so far and has provoked fears of the inadequate protection of subsidiarity.

Scenario two is ‘nothing but the single market’, meaning that the EU would increasingly focus ‘on deepening certain key aspects of the single market’ (European Commission 2017, 18) while giving up integration in areas such as migration, security and defence. This is highly unsatisfactory too: it excludes from the integration process policies characterised by high externalities/economies of scale and relatively low heterogeneity of preferences. It also leaves weak and uncoordinated member states at the mercy of extra-European powers. Interestingly, the Commission associates this scenario with significantly reducing the ‘regulatory burden by withdrawing two existing pieces of legislation for every new initiative proposed’ and fears that a ‘race to the bottom’ might ensue (European Commission 2017, 18). This is notable for the implicit admission—in line with the reported findings of Alesina et al.—that enforcing the four freedoms in the EU does not require the amount of top-down harmonisation that has been pursued since the 1990s and which is therefore not defensible based on the political economy of federalism. This harmonisation seems rather to have been pursued to avoid so-called ‘races to the bottom’. Unfortunately, on close inspection and despite widespread proclamations to the contrary, race-to-the-bottom arguments are untenable from the vantage point of a centre-right approach to subsidiarity. To my knowledge, no one has said it better than Giandomenico Majone, formerly of the European University Institute:

[I]f harmonization prevents competition on, say, environmental quality, then states would presumably try to compete over other variables, such as worker safety, minimum wages, or taxation of corporate profits. To avoid these alternative races to the bottom, and the resulting instability, the central regulators would have to harmonize all national rules, so as to eliminate the possibility of any form of inter-state competition altogether. But this would amount to eliminating any trace of national autonomy, so that race-to-the-bottom arguments are, in the end, arguments against subsidiarity.' (Majone 2014, 277)

To summarise, the Commission's treatment of scenario two is more interesting for what it reveals about the (questionable) mindset that has dominated European (market) integration in the past, than for its viability as a future scenario. It tells us that, if our commitment to subsidiarity is to be taken seriously, this mindset should change.

Scenario three is 'those who want more do more', meaning that the EU allows willing member states to do more together in specific areas such as defence, internal security, taxation and social matters, accepting that variations in EU citizens' rights may result (European Commission 2017, 20). The rudimentary summary of the political economy of federalism expounded above does not throw much light on this problem. It suffices here to add that 'in equilibrium one should observe either small unions that centralize many prerogatives, or large unions in which few prerogatives are delegated above national governments. . . . [E]nlargement of the union and a deepening of coordination of policies are contradictory if the new members and the incumbents are heterogeneous' (European Commission 2017, 3). This implies that the heterogeneity of a union now enlarged to 28 very diverse members may justify some forms of differentiated integration. That is unless we can agree on moving towards a large EU27 in which only a few core prerogatives, as opposed to many diverse ones, are centrally exercised, which is the proposition of scenario four.

Here the union would focus 'its attention and limited resources on a reduced number of areas', in which stronger tools would be given to the EU27 to directly implement and enforce collective decisions (European Commission 2017, 22). Fields mentioned by the Commission as candidates for such a refocusing are strikingly in line with what theoretical arguments show to be ideal federal policies: innovation, trade, security (e.g. police and judicial cooperation against terrorism), migration, the management of borders and defence. The document adds:

Conversely, the EU27 stops acting or does less in domains where it is perceived as having more limited added value. . . . This includes areas such as regional development, public health, or parts of employment and social policy not directly related to the functioning of the single market. . . . New standards for consumer protection, the environment and health and safety at work move away from detailed harmonisation towards a strict minimum. More flexibility is left to Member States to experiment in certain areas. (European Commission 2017, 22)

These proposals are not only in line with the political economy of federalism, but also with the requirements of a rigorous centre-right approach to EU subsidiarity. This is surely not so for scenario five of the Commission's White Paper: 'doing much more

together' across all policy areas (European Commission 2017, 24). Although the rhetoric of so-called Europhiles has historically identified with this vision, and still often usurps the name of European federalism, it should be emphasised that it has nothing to do with proper federalism. It is, in fact, an instance of European centralism incompatible with any real subsidiarity.

Conclusion

This paper has argued that the current design of EU competences is unsatisfactory on both technical and political grounds. Technically, EU competences do not correspond to the recommendations of the political economy of federalism. Politically, they do not respect the rigorous conception of subsidiarity expounded by centre-right political thinking.

Based on this, we can sketch the contours of a five-pronged centre-right political agenda at the EU level for the next legislative cycle and beyond.

First, the EU27 is characterised by a very high heterogeneity of preferences. If it wants to survive as a big, diverse union, it must refocus its limited resources and legitimacy on integrating a few strategic areas and returning all the rest to the competences of the member states.

Second, environmental protection, control of immigration and borders, defence against terrorism, foreign and defence policy, and promoting research and innovation are all best addressed at the European rather than the national level. In these fields, the highest possible level of ambition and integration is appropriate and should be pursued.

Third, the EU should gradually withdraw from agricultural policy, cohesion policy and social policy. It should also explore ways to restore full national responsibility for economic and fiscal policy decisions, which de facto became a shared competence during the crisis.

Fourth, EU regulation needs to be scaled back to what is necessary to complete the single market and nothing more. A review of all existing EU legislation against these requirements should be carried out. For all the Juncker Commission has achieved in stemming the flow of new regulations, the legacy of over-regulation must be dealt with, and the excess of regulation discarded, thus reopening spaces for national autonomy.

Fifth, the abuses of single market legislation to pursue other—for example, social or health policy—goals by stealth should be ended. Redistribution and the welfare state are at the core of national democracies and must therefore remain firmly in the hands of the member states, without European constraints.

In everything but name, scenario four of the Commission's White Paper should serve as the outline for the federal Europe to be built in the coming decades under centre-right

leadership. This Europe can reconcile Europhiles, who want stronger continental integration, with Eurosceptics, who demand stronger national prerogatives and the repatriation of some powers. It seems the only viable agenda of unity for the EU27 in the twenty-first century.

Notes

1. In fact things are more complicated than that. The notion of economies of scale merely tells us that costs per unit of output decrease with increasing scale. It tells us nothing about the desirability of producing a good, such as defence or redistribution, that may benefit from economies of scale. For those who believe that an expensive welfare state has a detrimental effect on economic performance, even the presence of economies of scale coupled with a very low heterogeneity of preferences would not be decisive for advocating centralisation at the EU level.
2. The best recent account of post-Lisbon EU competences is offered by Garben and Govaere 2017.
3. It is well known that the principle of subsidiarity was first formulated in Leo XIII's encyclical 'Rerum Novarum' (1891) and further refined in Pius XI's encyclical 'Quadragesimo Anno' (1931) as a systematisation of traditional Catholic doctrines expounded at least since Thomas Aquinas.
4. It goes without saying that none of this justifies acquiescing to radical deviations from the protection of commonly accepted fundamental rights and freedoms. These include the rule of law and the basic constitutional foundations of a functioning liberal democratic order, to which all EU member states have committed. As explained in the previous section, what it does justify is a prudent and, so to say, 'conservative' definition of such fundamental rights and freedoms. It is important that EU institutions dissociate themselves from any attempts to force progressive values on more conservative member states as part of an ideological agenda that alters the EU constitutional order, as opposed to protecting it.
5. Obviously, this only tells us that these should be EU policies. It tells us nothing about how they should be exercised at the EU level. Should we favour the community method, intergovernmentalism or a different model altogether? However important, such questions lie beyond the scope of this short article.

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