

---

This item was submitted to [Loughborough's Research Repository](#) by the author.  
Items in Figshare are protected by copyright, with all rights reserved, unless otherwise indicated.

## **Reading subsidiarity: a critical analysis of interpretations of subsidiarity in the discourse on European Union**

PLEASE CITE THE PUBLISHED VERSION

PUBLISHER

© P.S. Green

PUBLISHER STATEMENT

This work is made available according to the conditions of the Creative Commons Attribution-NonCommercial-NoDerivatives 2.5 Generic (CC BY-NC-ND 2.5) licence. Full details of this licence are available at:  
<http://creativecommons.org/licenses/by-nc-nd/2.5/>

LICENCE

CC BY-NC-ND 2.5

REPOSITORY RECORD

Green, Paul S.. 2019. "Reading Subsidiarity: A Critical Analysis of Interpretations of Subsidiarity in the Discourse on European Union". figshare. <https://hdl.handle.net/2134/27813>.

This item was submitted to Loughborough University as a PhD thesis by the author and is made available in the Institutional Repository (<https://dspace.lboro.ac.uk/>) under the following Creative Commons Licence conditions.



For the full text of this licence, please go to:  
<http://creativecommons.org/licenses/by-nc-nd/2.5/>

BLDSC no:-DX217465



**Pilkington Library**

Author/Filing Title ..... GREW, P. S. ....

Accession/Copy No. ....

Vol. No. .... Class Mark .....

LOANABLE

- 8 JAN 2001  
FOR REFERENCE ONLY

0401990397



BADMINTON HALL  
UNIT 1 BROOK  
SYSTEM  
LEICESTER LE7  
ENGLAND  
TEL: 0116 2602  
FAX: 0116 2606



## Abstract

The concept of subsidiarity has been extensively interpreted in the context of European Union affairs. A significant question which interpretations address in this context is : what is the meaning of the concept ? With respect to this question, interpretations have considered the definition, the instrumental role in European Union politics and the historical origins of the term. Interpretations have been consistent in the answers that they have provided to these three aspects of the meaning of subsidiarity, to the extent that a dominant image of the meaning of subsidiarity in European Union affairs has developed. This dominant image states that subsidiarity is a contested concept which represents, through its different definitions, the incompatible interests inherent in the federal debate between Member States, and which originates from both the social philosophy of the Catholic Church and the political ideology of federalism.

Within this dominant image there is a clear relationship between the different propositions of which it consists. The idea that subsidiarity is a definitionally contested concept is explained in terms of the instrumental role of the different definitions of the term in the federal debate. The interpretation of the origins of the term, as both a Catholic and a federal concept, serves to underpin this by presenting subsidiarity as a concept which is, historically, both an obstacle to the centralisation of power (the Catholic origin) and supportive of the centralisation of power (the federal origin). Consequently, the interpretation of the origins of subsidiarity is itself part of the contest between different meanings of the term.

This dominant image also reads subsidiarity as a concept which addresses the distribution of powers between levels of government. However, analysis of the development of meanings of subsidiarity in the documents of European Union institutions indicates that there are distinct meanings of subsidiarity which relate not to the distribution of powers between the European Union and the Member States but to the character, or quality, solely of the powers of the European Union. This suggests that the dominant image of subsidiarity in the European Union is inadequate because it is incomplete. It also suggests that the concept of subsidiarity affords opportunities for engaging the idea of European Union, and the issues raised by European integration, that extend beyond the question of how powers should be distributed within the EU construction.

## Key Words

Delors

European Commission

European Parliament

European Union

Federalism

Intergovernmental Conference

Maastricht

Meaning

Spinelli

Subsidiarity

### Acknowledgements

My sincerest thanks to my Supervisor, Dave Allen, and to my Director of Research, Mike Smith, for their patience and insight. Their contributions were vital to the successful completion of this project.

I am also indebted to the department of European Studies for its financial and moral support, and to my friends and family for their encouragement.

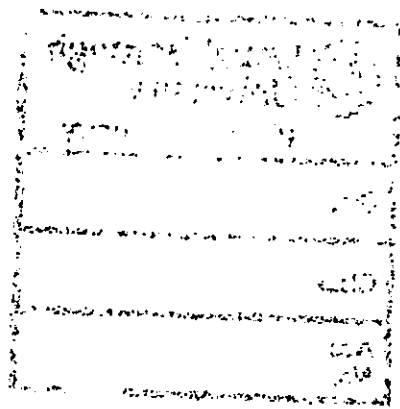
## **Reading Subsidiarity**

A critical analysis of interpretations of subsidiarity in the discourse on European Union


P. S. Green

Supervisor: Dave Allen

Department of European Studies





 <b>Loughborough University</b> Library
Date Jan 99
Class
Acc No. 040199039

K0630698

## CONTENTS

<b>Abbreviations</b>	<b>5</b>
<b>General Introduction</b>	<b>6</b>
<b>Part I: Deconstructing interpretations of subsidiarity in the European Union</b>	<b>12</b>
<b>1: Interpreting subsidiarity in the institutional discourse on European Union</b>	<b>13</b>
1.1 Introduction	13
1.2 Establishing a focus	14
1.3 The ambiguity of subsidiarity in the EU	17
1.4 Subsidiarity definitions and political interests	20
1.4.1 Subsidiarity and levels of government	22
1.4.2 Subsidiarity and the federal debate	24
1.5 Subsidiarity and its origins	28
1.5.1 Subsidiarity in federal Constitutions	29
1.5.2 Subsidiarity in the Catholic church	30
1.6 Conclusion	32
<b>2 Analysing the dominant image of subsidiarity in the EU</b>	<b>33</b>
2.1 Introduction	33
2.2 Subsidiarity and the meaning of meaning	34
2.2.1 Considering the components of meaning	35
2.2.2 Instrumental dependency on semantic meaning	39
2.3 Understanding the context of the dominant image	39
2.3.1 Subsidiarity and the distribution of powers	40
2.3.2 Instrumentalism and the origins of subsidiarity	43
2.4 Assessing the dominant image of subsidiarity	46
2.4.1 The parameters of the historical reconstruction	48
2.4.2 The organisation of material	52
2.5 Conclusion	53
<b>3 The meaning of subsidiarity in the Treaty on European Union</b>	<b>55</b>
3.1 Introduction	55
3.1.1 A note on the structure of the Treaty	56
3.2 Article 3b Title II	57
3.2.1 Understanding paragraph 1 of Article 3b	58
3.2.2 Understanding paragraph 2 of Article 3b	59
3.2.2.1 The scope of the concept - areas, actions and exclusive competence	59

3.2.2.2 The criteria of the concept - sufficiency, better attainment, scale and effects	63
3.2.3 Understanding paragraph 3 of Article 3b	71
<b>3.3 Article B of the Common Provisions of the TEU</b>	<b>73</b>
<b>3.4 The Preamble</b>	<b>75</b>
<b>3.5 The question of judicial enforcement</b>	<b>79</b>
<b>3.6 Conclusion</b>	<b>82</b>
 <b>Part II: Reconstructing subsidiarity in the Institutional discourse on European Union</b>	 <b>85</b>
 <b>4 Developments in the meaning of subsidiarity: 1975-1986</b>	 <b>86</b>
4.1 Introduction	86
4.2 The Commission Report on European Union	87
4.3 Altiero Spinelli's influence on the concept	92
4.4 The contribution of the European Parliament	97
4.5 Towards a Draft Treaty on European Union	103
4.5.1 Subsidiarity and the Draft Treaty on European Union	108
4.5.2 Subsidiarity and the Single European Act	110
4.6 Conclusion	111
 <b>5 Developments in the meaning of subsidiarity: 1986 - 1992</b>	 <b>113</b>
5.1 Introduction	113
5.2 The expansion of the meaning of subsidiarity	116
5.2.1 Subsidiarity and the centralisation of power - Länder, British and Commission concerns	117
5.2.2 Synthesising support for and opposition to the centralisation of powers – Delors' reply	121
5.3 Connecting subsidiarity with the debate on the quality of Community powers	124
5.3.1 Subsidiarity and proximity to the citizen	129
5.3.2 Subsidiarity and the hierarchy of norms	130
5.4 Developments during the Intergovernmental Conference on Political Union	133
5.4.1 The distinction between the grant of competence and its exercise	137
5.4.2 The inclusion of regional government in the distributive equation	139
5.4.3 The distinction between horizontal and vertical subsidiarity	142
5.4.4 The Luxembourg Drafts	143
5.4.5 The Dutch Drafts	148
5.5 Conclusion	152
 <b>6 Developments in the meaning of subsidiarity: 1992-1996</b>	 <b>154</b>
6.1 Introduction	154
6.2 Developments in the distributive meaning of subsidiarity - the dominance of decentralisation	156
6.3 The focus of distributive issues on Article 3b	159

<b>6.4 Transition to a quality context</b>	<b>163</b>
6.4.1 The spatial/affective ambiguity of proximity to the citizen	164
6.4.2 The link between subsidiarity and transparency	168
<b>6.5 Summit outcomes – subsidiarity and the character of EU legislation</b>	<b>172</b>
6.5.1 Birmingham	172
6.5.2 Edinburgh	176
<b>6.6 Responses to the European Councils</b>	<b>177</b>
6.6.1 Objections to developments in the meaning of subsidiarity	182
6.6.2 Dominating the discourse – The debate on the quality of EU action	186
<b>6.7 Conclusion</b>	<b>189</b>
<b>7 Conclusion: Reading Subsidiarity in the EU</b>	<b>191</b>
<b>7.1 Introduction</b>	<b>191</b>
<b>7.2 Meanings of subsidiarity in the institutional discourse</b>	<b>193</b>
7.2.1 Distributive meanings of subsidiarity	193
7.2.2 Qualitative meanings of subsidiarity	196
7.2.3 The ambiguity of subsidiarity as proximity to the citizen	197
<b>7.3 Reading subsidiarity as a contested concept</b>	<b>198</b>
7.3.1 Subsidiarity as a cluster concept	201
<b>7.4 Reading subsidiarity as a new term for an old debate</b>	<b>203</b>
<b>7.5 Reading the origins of subsidiarity</b>	<b>209</b>
7.5.1 Correlation between the origins of subsidiarity and the distributive tension	210
7.5.2 Correlation between the origins of subsidiarity and the distributive/qualitative distinction	213
<b>7.6 Reading the EU through subsidiarity</b>	<b>215</b>
<b>Bibliography</b>	<b>222</b>
Primary Sources	222
Secondary Sources	240
Interviews	271

## ABBREVIATIONS

CDU	Christian Democratic Union
CFSP	Common Foreign and Security Policy
EEC	European Economic Community
EC	European Community
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EMU	Economic and Monetary Union
EP	European Parliament
EU	European Union
FCO	Foreign and Commonwealth Office
HL	House of Lords
IGC	Intergovernmental Conference
JHA	Justice and Home Affairs
MEP	Member of the European Parliament
PU	Political Union
SEA	Single European Act
TEU	Treaty on European Union
UK	United Kingdom
US	United States

## GENERAL INTRODUCTION

The concept of subsidiarity burst onto the political agenda of the European Union during the process of negotiating and ratifying the Maastricht Treaty. As with all concepts, the meaning of subsidiarity is not easy to specify with any precision, particularly as it is manifested in the politics of the European Union. There exists, however, a substantial body of interpretative literature which has attempted, in different ways, to do this, beginning from the general understanding that it expresses a set of criteria designed to answer the question “Who is to do what in an integrated Europe?” (Gretschmann, 1991, p.45).

In its most general sense, this thesis is an examination of the question ‘What is the meaning of subsidiarity in the European Union?’. The thesis engages this question by first examining existing interpretations of the concept within the context of the European Union, and then testing the validity of the dominant themes which emerge from this examination. This is done, methodologically, by organising the thesis into two distinct sections.

The first section consists of three chapters. The opening chapter deconstructs existing interpretations of subsidiarity in the European Union. Whilst these interpretations may not always be commentaries directly or exclusively on the meaning of the concept, they invariably contain, both implicitly and explicitly, specific statements and assumptions about the meaning of the term. An analysis of these interpretations and commentaries on the concept reveals that there exist within these statements and assumptions certain dominant and unchallenged ideas about the basic meaning of the concept. Taken together, these ideas constitute an *image* of the concept. This *image* specifies that subsidiarity is an ambiguous and contested notion which originates from both federal constitutional and Catholic socio-philosophical texts, and which propagates the antagonisms of the debate concerning the organisation of power in the European Union.

This image is analysed by focusing upon the importance of context to meaning and by approaching all expressions of subsidiarity as expressions of its meaning, rather than, for example, drawing distinctions between definition and implementation which would curtail the understanding of the meaning of the term (Ch.2). From this perspective, the image of subsidiarity consists of three different types of meaning, definitional, instrumental and original. Instrumental meanings of the concept are interpretations based upon a correlation between specific definitions of the term and specific political interests. As a consequence, these instrumental meanings are dependent upon the definition of the term. But because the interests behind these instrumental meanings are those of Member State governments and EU institutions, they are also dependent, more specifically, upon the reading of actual expressions of subsidiarity within the institutional discourse involving EU institutions and Member State administrations.

Furthermore, both definitional and instrumental meanings of the term are themselves dependent upon the context within which they are read. This context is clearly that of the institutional discourse. But more specifically than this, it is a particular aspect of that discourse, namely the debate concerning the distribution of powers within the EU. By employing this debate as the specific context for the interpretation of instrumental meanings of subsidiarity, the concept is easily read as a "New terminology for traditional power-sharing debates" (MacInnis, 1995, opening title), i.e. that subsidiarity is a surrogate for the interests promoted in the traditional debate about the development of the European Union into a federation.

The relationship between these definitional and instrumental meanings of the concept and original meaning of the term is not so obvious. The two sources which are most frequently identified as the origins of subsidiarity are themselves very different from each other, and by no means the only possibilities. Furthermore, while federal constitutional texts fit comfortably within the context of a debate concerning the distribution of powers, the Catholic socio-philosophical encyclicals do not. They appear to express notions about the role of the State in society rather than about relations between States.

This puzzle is compounded by the fact that the origins of subsidiarity are not interpreted as contested in the same way as is the modern EU derivative, but simply accepted as originating from these two very different sources. This generates a strong suspicion that the function (although not necessarily the purpose), within this reading of subsidiarity, of demonstrating where the concept originates from is not as simple as that of informing the reader about the background history of the notion. The suggestion is that this identification of the 'origins' of the term also serves to reinforce the idea that the concept is contested around a distributive issue. The two origins of subsidiarity perform this function within the dominant image by reflecting the two different interests which are at the heart of the contest, a pro-federal centralising interest (the federal source) on the one hand and a relatively anti-federal decentralising interest (the Catholic source) on the other.

In order to begin to address this suspicion, as well as other concerns such as the accuracy of the distributive context for locating subsidiarity within EU institutional debates, this reading of subsidiarity in the EU must be put to the test. The analysis of this reading indicates that the method by which this can be done is by examining in detail the development of meanings of the concept within the institutional discourse. Such an examination is justified by the fact that, while the history of subsidiarity in the EU has been employed in existing interpretations of the concept, it has been employed selectively to support the particular points of the interpretation. What has not been conducted is a more thorough study of the history for its own sake.

The obvious starting point, because of its centrality to the understanding of subsidiarity in the European Union, is the Treaty on European Union (TEU). The statements on subsidiarity in the TEU, and particularly Article 3b, are the principal support for the interpretation of subsidiarity as part of the distributive debate. Analysis of these statements (Ch.3) reveals that despite difficulties in understanding clearly what they mean, there is strong evidence to support the idea that the concept is deliberately ambiguous and that it is focused upon the question of the distribution of powers. However, there is also evidence to suggest that some of the ambiguities in the meaning of these statements point to notions of subsidiarity which break out of a purely distributive interpretation of



the concept, pointing instead towards ideas about the relationship between State and society. In so doing, something of the State/society meaning of the Catholic notion of 'subsidiary function', which is presented as the origin of the distributive meaning of subsidiarity in the EU, is recovered. This encourages a detailed reconstruction of the development of the meaning of subsidiarity in the EU by suggesting that a purely 'distributive' reading of subsidiarity may be inadequate.

The reconstruction of the development of subsidiarity in the institutional discourse constitutes the second section of the thesis. Also consisting of three chapters, it is structured chronologically, the division point between the chapters being respectively the signing of the Single European Act (SEA) and the signing of the TEU. Within these chapters, the point of the research is to excavate the significant developments in the meaning of subsidiarity with a view to addressing the questions raised in part one of the thesis. There is no attempt to provide an exhaustive account of every possible meaning based upon an analysis of every single statement about the term.

In chapter 4 I focus upon the activities of Altiero Spinelli and the European Parliament. Prior to the signing of the SEA, the meaning of subsidiarity was consistently expressed in terms of the criteria of comparative efficiency and comparative effectiveness of government actions, and promoted exclusively in the reports and documents of the European Parliament. The concept is aptly interpreted during this period as a federal idea for organising power within a federal State, and it is uncontested. After the SEA had been ratified, however, and undoubtedly in the light of the extensive activity of the EU institutions which the SEA initiated, new meanings of subsidiarity begin to emerge as several different contributors to the institutional discourse begin to take an active interest in the concept (Ch.5). These new meanings reflect the same tensions between States that are visible in the debate concerning the federal organisation of the EU, although there is the distinct development of a regional element to the distributive equation. But they also, particularly in the contribution of Jacques Delors and the European Commission, demonstrate subtle shifts towards an engagement of the idea of European Union not in terms of the ideological specification of how much power it can have, but in

terms of a normative specification of what values and characteristics the powers of the European Union ought to exhibit.

The negotiations for the TEU re-focused the institutional discourse upon distributive questions, but with the rejection of the TEU by the Danish electorate, issues of a more qualitative nature, that engage the question of the character of EU actions as much as the question of its appropriate powers, re-enter the discourse, and with them return meanings of subsidiarity focused once more on the quality of EU powers (Ch.6). This is reflected particularly in the close connection between subsidiarity and transparency, and in the ambiguities of the notion that subsidiarity is about government which is close to the citizen. This shift in the meaning of subsidiarity towards qualitative approaches to the powers of the EU is a reflection of a similar development in the broader discourse which, by the time of the opening of the 1996 intergovernmental conference (IGC), had itself shifted decisively towards the engagement of questions about the quality of EU action. This development suggests that the relation between subsidiarity and the EU is more complex than that expressed through the distributive issue of power allocation between levels of government.

In my conclusions, the findings from the excavation of the different meanings of subsidiarity in the institutional discourse are set against the image of subsidiarity which has dominated interpretations of the concept to date. The suggestion is that subsidiarity has engaged not only questions concerning the increase of EU powers, but also questions concerning the improvement of the powers which it already has<sup>1</sup>. Ideas about subsidiarity as a contested concept and as a propagation of the debate about federalism find support, although there are some new additions to this old debate for which subsidiarity is perceived as a new terminology, such as the development of a strong regional claim to receive powers from the integration process. But more significantly, there is evidence to suggest that the meaning of subsidiarity has developed beyond the parameter of relations between States to engage questions concerning the relations between the State, as an entity, and the citizens which it serves.

---

<sup>1</sup> These two issues relate to each other in a similar either/or manner to the more extensively analysed dichotomy between

This development returns the idea of subsidiarity in the EU back to some of the sentiments expressed in the Catholic notion of 'subsidiary function', and suggests some interesting ideas concerning the fixation, in existing interpretations of subsidiarity, with identifying subsidiarity in both federal constitutional and Catholic socio-philosophical texts. It also suggests that the focus upon interpreting and understanding the meaning of subsidiarity from the perspective of the debate on the distribution of powers within the EU has ignored certain meanings of the concept which relate to a more novel debate on the quality or character of specifically EU competences. This challenges the dominant image of subsidiarity by suggesting that it is inadequate not because of what it retains from the institutional discourse, but because of what it discards.

As to the pertinent question, which arises in the conclusions, 'why have these other meanings of subsidiarity not been appreciated as fully as those meanings which clearly relate to the distribution of powers?', there is no obvious answer. One suggestion could be that it is an indication of the strength of the general preoccupation, among contributors to debates concerning European integration, with the issues of federalism and sovereignty that are contained within this distributive issue context. Conversely, the relative immaturity, particularly prior to the 1990 IGC on Political Union, of debates about the quality of Community powers could also be a factor. What is clearer is that within the meanings of subsidiarity visible in the institutional discourse there are opportunities for engaging the idea of European Union, and the issues raised by European integration, that extend beyond the important question of how powers should be distributed within the EU construction.

---

deepening and widening.

## **PART I: DECONSTRUCTING INTERPRETATIONS OF SUBSIDIARITY IN THE EUROPEAN UNION**

The chapters in Part I analyse interpretations of subsidiarity in the European Union with a view to understanding the meaning of the concept. This analysis begins by considering the elements of the dominant image of subsidiarity in existing interpretations of the concept and proceeds to analyse the relationship between the different components of this image. The problems raised by the components of this image are then addressed to the statements on subsidiarity in the TEU for an initial resolution. Analysis of these Treaty statements, whilst supporting the image to a certain extent, nevertheless seem to be somewhat inconsistent with this image. This encourages a reconstruction, in Part II, of the major developments in the meaning of subsidiarity within the broader institutional discourse in order to explore further the institutional history upon which this image is based.

## 1.2 Establishing a focus

The interpretation of the meaning of subsidiarity in the texts of European Union (EU) institutions is voluminous. Everything from its economic impact (Boch, 1995; Begg, 1993), its influence on specific Community policies such as the environment (Lenaerts, 1994; Golub, 1996) and social affairs (Watson, 1993; Spicker, 1991), its legal status (Kapteyn, 1991; Lasok, 1992; Toth, 1994b; Koopmans, 1994; Gonzalez, 1995), its relevance to the division of powers (Wilke and Wallace, 1990; Gretschnann, 1991; Cass, 1992), its relationship with federalism (Scott et al, 1994; Bermann, 1994a) its political impact (Adonis, 1990; Emiliou, 1994; Vankersbegen and Verbeek, 1994; Dehousse, 1993; Peterson, 1994; Cooper, 1995) its historical development (Millon-Delsol, 1992; Endo, 1994; Howard, 1992) and its definition (Duff, 1993; Miller, 1992; Spicker, 1994; Peterson, 1994; MacInnis, 1995; Hill, 1992) have been studied, to present just some of the categories into which interpretations of subsidiarity in the EU may be organised.

On the basis that the concept was enshrined in the Treaty on European Union as a statement of legal intent, its impact upon EU laws and law-making has, understandably, proven to be a particularly common focus for the analysis of subsidiarity in the EU. In this regard, two major concerns which have arisen are the potential justiciability of the concept before the European Court of Justice (ECJ) (Toth, 1994b; Partan, 1995) and the implications of the distinction between exclusive and concurrent competence, a distinction which is introduced to the legal structure of the EU via Article 3b TEU (Toth, 1992; Steiner, 1994; Schilling, 1995; Bernard, 1996). Opinion would appear to be divided on these issues, with both support for and opposition to both its justiciability and the value of the exclusive/concurrent distinction.

Another frequent focus for studies of subsidiarity in the context of the European Union is environmental policy. This policy is often proclaimed to be the first to which subsidiarity was applied, on the basis of an article in the Single European Act (SEA). Although the SEA does not contain the word 'subsidiarity' it contains a criterion for deciding whether Community or Member

State action should be pursued, which is consonant with the general sense of the word, both as it was used in a non-legal sense at the time and as it appeared later in legal form in the TEU (Golub, 1996; EP Institutional Affairs Committee, 1990c). As a consequence, perhaps, of this correlation and also reflecting the particular relevance of environmental policy to the ideas expressed by the word 'subsidiarity', the impact of the concept upon environmental policy has received considerable attention. Some articles have traced the history of subsidiarity in this regard (Flynn, 1997) while others have focused more upon alterations in the approach to environmental legislation as a consequence of the application of the subsidiarity concept (Lenaerts, 1994; Golub, 1996).

Some interpretations of subsidiarity, such as that by David Begg, have presented normative accounts of what policies, on the basis of the principle of subsidiarity, the Community should take as its own - in this case from an economic perspective. Other studies focus more specifically on the likely impact of subsidiarity on a specific policy. As just mentioned, Lenaerts (1994) considers the impact of subsidiarity on environmental policy. Bernard (1996), as another example, considers the impact of subsidiarity on economic policy. On a different note, other studies have focused on the history of the word 'subsidiarity' and of the ideas expressed through it. The most substantial of these is by Millon-Delsol (1992).

There is, thus, a considerable variety of themes that have been pursued in analyses of the subsidiarity concept in an EU context. These themes vary considerably, primarily because they ask different questions concerning the application of the term within the EU. One study applies the concept to environmental policy, another to social policy, a third to competition policy, a fourth to the role of the ECJ. In one sense, they all ask the same basic question of what 'effect' the concept will have on existing EU practice, and simply address the question to a different area of that practice. However, they are also similar in another, more fundamental respect.

Because subsidiarity is a concept, and a fairly nebulous one at that, all studies invariably express ideas concerning its meaning, not with respect to one policy or another, but with respect to itself, as a

concept. This is particularly the case in such studies as that of Duff (1993b), Peterson (1994) or Spicker (1994), all of which address directly the definition of the concept in the European Union. But it is also true of those studies which focus on different issues such as environmental and economic policy. Even when one is considering the relation between subsidiarity and environmental or economic policy and effectively considering the question of the effect of the idea, it is clearly as necessary to establish the meaning of the concept as much as is the case when considering directly its definition. In fact, before anything substantial may be said about the concept with respect to any issue, there must be a working sense of what it means. Most interpretations of subsidiarity seek at some point explicitly to provide one, whilst every study implicitly utilises one. From a discursive perspective, whenever the word itself occurs, something is meant by it which is there to be discovered if it is not explicitly revealed. This question of what is meant by the word 'subsidiarity' within the discourse on European Union is the basic enquiry of this thesis.

With respect to this question of the meaning of subsidiarity as a concept within the EU rather than in terms of its effects upon existing practice, existing interpretations have proved remarkably coherent and consistent. Three ideas stand out as being both frequent in their occurrence and broad in their acceptance. These ideas relate to the definition of the concept, to its place within political debates and to its origins. There are good reasons why these three different elements serve to develop an understanding of the meaning of the term. Analysis of its definition is obviously important by providing a working semantic expression of the term. Analysis of where the idea originates from serves to underpin the definition by giving it a history, while analysis of its place within political debates gives it a context.

The coherence with which existing interpretations have addressed and answered these three issues serves to generate a dominant understanding of the meaning of the concept. The answers to these themes combine to construct an *image* of subsidiarity in the EU which specifies, in summary, that subsidiarity is an ambiguously defined and contested concept which originates from Catholic and federal constitutional documents, and which is a representation of political interests concerning the

# **1: INTERPRETING SUBSIDIARITY IN THE INSTITUTIONAL DISCOURSE ON EUROPEAN UNION**

## **1.1 Introduction**

The explosion of subsidiarity into the European Union (EU) lexicon during and subsequent to the negotiations for the Treaty on European Union (TEU) was complemented by an increasing academic and media interest in the concept, eager to interpret it and to explain its relevance to the Treaty negotiations. The interpretation of the term was both coherent and consistent, focusing particularly upon the relevance of this 'novel' concept to the existing debate among Member State governments and EU institutions concerning the federal organisation of the Community.

This focus upon the relevance of the concept to the federal debate was supplemented by the closely related notion that the concept is contested. The notion that the concept is contested flowed naturally from the related notion that subsidiarity represented a new method of engaging the federal issue, which itself contained contesting views. In addition, these views were backed up by the frequent iteration of the origins of the concept from two specific sources, federal constitutional texts and Catholic papal encyclicals.

Together, these different ideas represent, by the frequency of their occurrence and the breadth of their acceptance in existing interpretations of the term, a dominant image of the meaning of subsidiarity in the EU. This opening chapter outlines the ideas by which this image is constructed, and presents them as the principal answer, within existing interpretations of the term, to the question: "what is the meaning of subsidiarity in the institutional discourse on European Union?"



balance of powers between the EU and its Member States. I will analyse each of these aspects of this dominant *image* of the meaning of subsidiarity in the EU in detail, with particular attention to their explicit and implicit occurrence in existing interpretations of the concept.

### 1.3 The ambiguity of subsidiarity in the EU

A point which is unchallenged in interpretations of the concept is that the word ‘subsidiarity’ entered the constitutional structure of the European Union with the ratification of the Treaty on European Union in 1992. The Oxford English dictionary defines the word as “the principle that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level”. The Treaty on European Union offers a similar rendition, contextualised to govern the relationship between the European Union institutions and its Member governments:

“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 in so far 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.” (Treaty on European Union, 1992, Article 3b, emphasis added)

The above article from the Treaty on European Union is generally recognised as the legal definition of the principle of subsidiarity, both by statements in the Treaty itself in Article B and by its interpretation. Being a legal article it is relatively permanent in nature, open to alteration only through

an Intergovernmental Conference (IGC), and logically provides the basis for any attempt to establish a definition of the concept within an EU context.

Whilst superficially appearing to be a clear statement about the conditions by which the Community is justified in proposing legislation, interpretations of the definition of the concept have not adopted such a simple conclusion. Instead, subsidiarity is regarded not as a simply defined idea whose meaning can easily be expressed, but rather as one which is difficult to define. Douglas Hurd, while Foreign Minister to the British government, stated that "the true meaning of subsidiarity is highly elusive" (Hurd, 1990) and it is an opinion which is widely reflected in other interpretations of the notion. As examples of a similar perception of the concept, Toth states that "there are few concepts in the Maastricht Treaty, or indeed in Community law as a whole, which are more elusive" (Toth, 1994a, p.37), and Trachtman notes that "The principle of subsidiarity means different things to different people" (Trachtman, 1992, p.468, also Pasquali, 1993, p.139; Scott et al, 1994). Emiliou expresses the same sentiment in the statement that "when it comes to the definition of subsidiarity different people mean different things depending on their viewpoint. Thus the important factor about subsidiarity is the manner in which it is defined. On this there is a general agreement that there is no agreement on the definition of the concept." (Emiliou, 1992, p.383) Rather than interpreting subsidiarity as an idea, the definition of which is established in the Treaty text, it is interpreted, instead, as an idea with a variety of definitions, of which this text represents but one.

Consequently, the view that the meaning of subsidiarity is ambiguous or imprecise is commonly encountered (Emiliou, 1992; Gudin, 1993). Mackenzie-Stuart, commenting in a colloquium in 1991, suggests as a basis for this ambiguity efforts to define the concept within the institutional discourse. He notes that "there are two principal definitions: one is that you define subsidiarity in terms of its effectiveness...The other test is necessity." (Mackenzie-Stuart, 1991, p.39). Other authors have identified a similar distinction. Tyrie, for example, refers to three different definitions of the concept, which he calls an attained better test, a common interest test and a necessity test (Tyrie, 1990, p.23). These authors did not have the benefit of the formal definition of subsidiarity in the TEU to resolve

any confusion because they wrote before the production of the TEU, but contributors after the production of the TEU have made similar points. Scott et al, for example, comment that “There exists no universal, all-encompassing definition of subsidiarity. Like the term ‘federalism’, subsidiarity is open to a number of alternative definitions and competing interpretations of those definitions.” (Scott et al, 1994, p.49).

Some authors have noted that this ambiguity stems initially from the fact that the Treaty itself provides an unclear meaning to the word. Article 3b is notably confusing because of its reference to both the sufficiency of Member State action and the better attainment of Community action as criteria by which to determine the locus of action between Community and Member States. This confusion is compounded by the further fact that the word also occurs in Article B of the Treaty, in relation to the taking of decisions as closely as possible to the citizen, although this latter point is not one which is generally presented in interpretations on the legal formula in the way that the former is. On this basis some authors prefer to identify Article B as the expression of the meaning of the principle and to refer to Article 3b as some kind of procedural rule or device which expresses how the meaning in Article B is to be applied in practice (Schilling, 1995; Scott et al, 1994). One interpretation notes this explicitly in the statement that “The ambiguity of subsequent debates about subsidiarity is in large measure a consequence of the two different definitions of the term contained in the Maastricht Treaty” (Scott et al, 1994, p.49), by which is meant the references to subsidiarity in Article 3b and in Article B. This makes the legal statements on subsidiarity in the TEU themselves part of the problem of fixing the meaning of the term.

That words which occur in the discourse on European Union should have more than one meaning is not a novel phenomenon. The meaning of Europe Union is hardly unambiguous, signifying for some a geographical area of potential conflict which needs to be controlled, and for others a meddling bureaucracy which needs to be avoided, to mention but two. One might consider also the meaning of the Single Market which, for several years between the end of the 1980s and the beginning of the 1990s, provided a focus for political energies. Whilst gaining general support from governments it

will be well known to those who have read interpretations of Margaret Thatcher's tenure in office that the Single Market meant something quite different to Mrs Thatcher from its meaning to the majority of other heads of Member State at the time<sup>2</sup>. The word 'flexibility' is a more recent addition to the EU lexicon which exhibits this same imprecision, undoubtedly meaning to some users a quite different thing to that which it means to others (Curtin, 1995). The difference between the meaning of flexibility in the speech made by John Major at Lieden University in September 1994 and its meaning in a German Christian Democratic Union (CDU) paper from the same month is a good example. Mr. Major presented flexibility as an idea which would accommodate different degrees of integration whilst maintaining a common membership status for all, in contrast to the CDU notion of flexibility, which was synonymous with the idea of a 'hard core' (Major, 1994; CDU, 1994).

But subsidiarity is interesting in ways which these other words are not in two regards, quite apart from the fact that there is an extensive literature describing this ambiguity, which is not the case with the majority of these other words. The first is that there is a legal Treaty definition of the word which has contributed to this ambiguity and which has encouraged an interpretation of it as such. The second is that existing interpretations provide further ideas about the meaning of subsidiarity in the European Union which effectively seek to explain this ambiguity in ways which go beyond the presentation of different definitions of the concept. The ideas to which I allude are the other aspects of the dominant image of subsidiarity in interpretations of the concept, namely the 'history' of the concept and its location within EU political debates.

#### **1.4 Subsidiarity definitions and political interests**

Interpretations of subsidiarity in the EU have generally adopted as the context for understanding the meaning of subsidiarity the ongoing debate concerning a federal Europe. The interpretation of this

---

<sup>2</sup> The chapter from Mrs. Thatcher's memoirs on negotiations for the Single European Act, *Jeux Sans Frontiers*, is a particularly good example of how her own understanding of the Single Market differed from that of some of her continental colleagues in terms of the role of regulation and of political and institutional issues (Thatcher, 1993, Ch.18).

specific debate within the discourse on European Union as the proper context for understanding the meaning of subsidiarity leads to the proposition that the different definitions of subsidiarity in the institutional discourse represent different political interests. This proposition concerning the meaning of subsidiarity is closely related to the idea that subsidiarity is ambiguously defined and effectively provides an explanation for this ambiguity. Some definitions of subsidiarity are interpreted as favouring a relatively decentralised and dispersed government over a number of different territorial layers (Martens, 1988) and correlated with opposition to the extension of EU competences. Other definitions are interpreted as favouring a relatively centralised government which is heavily concentrated at the top and correlated with support for the extension of EU competences (Thatcher, 1988). The former idea is expressed through the interests of both regionalised government and State centred government, while the latter finds expression particularly in the idea of a European federation (Thatcher, 1988; European Commission, 1975a). This interpretation of the relationship between meanings of subsidiarity and political interests is nowhere more succinctly expressed than in the statement that *"subsidiarity has been tailored to meet the needs of competing political interests which has resulted in some confusion as to what subsidiarity is"* (Cooper, 1995, p.180, emphasis added).

This proposition that definitions of subsidiarity reflect different political interests is a substantial claim in itself, but interpretations of the meaning of subsidiarity go further than this to specify in more detail the nature of the interests which are expressed through the different definitions of the concept. The interests to which meanings of subsidiarity relate are defined in terms of the conflicts inherent in the debate concerning the federal organisation of Europe. In the context of the European Union this equates largely to a choice between EU institutions and Member States, but regional government has in recent years become a genuine third option. As a consequence, the different definitions of subsidiarity are comfortably interpreted as a mirror image of the distributive interests in the longstanding, and ongoing, debate about a federal European Union, a debate more usually - until subsidiarity became fashionable - engaged through terms such as federalism, the United States of Europe, national sovereignty and a Europe of States.

#### 1.4.1 Subsidiarity and levels of government

Klaus Gretschnann's comments in a colloquium on subsidiarity from 1991 are a good example of the interpretation of subsidiarity as a representation of the distributive interests in the federal debate. He states at one point that "The discussion of the concept of subsidiarity reflects the fears and concerns that national, regional and local sovereignty will 'whither away', and it seems to indicate at the same time a growing reluctance and unwillingness of the grass roots to transfer more competences upwards. In this respect, subsidiarity appears to operate as a mechanism of protection against an undesired expansion of the supranational level. On the other hand, the principle can also serve as an argument to transfer competences to the higher level in the interest of efficiency." (Gretschnann, 1991, pp.46-47).

The point of the interpretation is that different and often incompatible interests concerning the division of powers between the EU and its Member States have found expression through the subsidiarity concept. Both the interest in preventing the expansion of EU power and the interest in encouraging it have been promoted through the meaning of the concept. These interests are referred to in a variety of ways, from preferences concerning the division of competences or powers between the different levels of centralised government - which for the most part in this context of the European Union means the Union and its Member States - to the more loaded ideological overtones of federalism and national sovereignty. The Gretschnann quote pursues the former method of expressing these interests. Others use the more overtly ideological language of the federal debate. Pasquali, for example, states that "Indeed, those who support the evolution of the Community into a federation of States base their claim on the principle of subsidiarity, in the same way as do those who, on the contrary, see the need for limiting to the utmost the transfer of sovereignty from the Member States to the Community itself. Thus, on the one hand, the principle is used to justify an excessive decentralisation and, on the other, to limit the transfer to the Community of the sovereign powers pertaining to the Member States" (Pasquali, 1993, p.142).

Another good example is provided by Cary, who states that “subsidiarity has been used as a battle-cry for two opposing armies. Crusaders for national sovereignty employ the word as a code for clipping the wings of Brussels, returning power to national parliaments and banishing forever the spectre of European Union. Crusaders for European federalism, by contrast, see subsidiarity as the very incarnation of the federal principle that powers should be clearly divided between different tiers of Government...” (Cary, 1993, p.46). Adonis identifies a similar set of interests, which he also describes in terms of the antagonism between moves towards a federal Europe and attempts to prevent them (Adonis, 1990, p.5). While Holland, in a book from 1993, makes the same basic point but employs intergovernmentalism rather than national sovereignty as the opposite of federalism, stating that “there is the expectation, yet to be tested, that this principle will be capable of deliberating between rival intergovernmental and federal strands within the Community” (Holland, 1993, p.184). This idea is also integral to Peterson’s analysis, entitled “Subsidiarity: A definition to suit any vision?”. In his view, “Subsidiarity is a complex idea which can be (and has been) abused and moulded to suit virtually any political agenda” (Peterson, 1994, p.132). He identifies as the principal frameworks for the development of these different definitions, which he also calls ‘ideologies’ of subsidiarity, a Christian Democratic, a German federal and a British Conservative agenda.

This aspect of the interpretation of the meaning of subsidiarity is not one which is confined solely to an Anglo or Anglo-American perspective. Constantinesco, writing from a French perspective, offers a similar interpretation of subsidiarity in the statement that “subsidiarity, like the Janus God, possesses two faces and two uses: the one turned towards the need to surround the Community in a justified and rational growth, the other directed towards the Member States and their demand for a better balance in the management of competences which they had previously given to the Community. This double nature of subsidiarity provides perhaps an explanation for the fact that everyone is able to support it with the same conviction” (Constantinesco, 1991, p.209, my translation).

Clearly represented in this interpretation of the interests which have driven the development of the meaning of subsidiarity are the Community or Union level of government on the one hand and the

national governments on the other. But the regional level also finds its place as a level of government which might gain through subsidiarity and which has its own set of supporters seeking precisely this outcome. Cary notes, having already discussed the contest between Union and State for the receipt of powers, that “A further distinction can be drawn, here, between those who would apply the principle of subsidiarity to establish a clear division of responsibilities only between European and national institutions - and those who would go further to apply it to divisions of the power within the Member States” (Cary, 1993, p.46). Newman analyses the potential of subsidiarity to advance a ‘Europe of the Regions’ (Newman, 1996, Ch.5), while a whole section is devoted to the relation between subsidiarity and a ‘Europe of the Regions’ in an edited volume on the subsidiarity concept (Duff, 1993, Ch.5). The article by Scott et al, entitled “Subsidiarity: A Europe of the Regions versus the British Constitution”, also considers the potential benefit of subsidiarity for the regionalisation of government power. Whilst taking the meaning of subsidiarity into debates about the regionalisation of the EU, these interpretations remain within the same focus on the federal debate that is characteristic of other interpretations which consider only the relationship between definitions of subsidiarity and the interests of EU institutions and Member State governments.

#### 1.4.2 Subsidiarity and the federal debate

The quasi-ideological language of federalism and of national sovereignty has been present consistently in the discourse on European Union from the very beginning of integrative initiatives, reflecting the fact that ever since measures were first taken to integrate the political and economic activities of France, Germany and the other founding countries, some governments have always been less willing than others to transfer their economic and political powers to common institutions. When Schuman launched his initiative in 1950 he was content to declare that the measures being taken to integrate the production of coal and steel in France and Germany represented “the first concrete foundation of a European federation” (Schuman, 1950, p.45; also EP, 1991g, p.135). But from the moment of its announcement, the idea of a federation of European States met with opposition. At first from without - the British government refusing to participate - but before long from within as well.



Analysis of the failed plans for a European Defence Community would certainly reveal such opposition. But the most lucid expression is probably that which General de Gaulle provided in his attempt to establish a Political Community on the basis of existing State governments, which excluded institutions of a federal form. In a press-conference speech from 1962 he unequivocally sets out his own preference for a Europe of co-operating States. The Fouchet negotiations, to which this speech was targeted, reveal that the basic problem between de Gaulle and the rest of the Community was the issue of introducing any measure which would enable a decision to be taken which would bind a government against its will. It was de Gaulle's view that "at the present time there cannot be any other Europe than a Europe of States, apart, of course, from myths, stories and parades" (General de Gaulle, 1962, p.468). The 'supranational Europe' referred to elsewhere in the speech and attributed as the aim of other member government heads of State belonged, in his view, to the category of myths and parades<sup>3</sup>. Thus the language used by politicians has encouraged the categorisation of the different goals for European Union as federal on the one hand and sovereign national on the other, a federal Europe and a Europe of States<sup>4</sup>. The justification for interpreting subsidiarity as a representation of the interests manifested in this federal debate is that the same groups which have demonstrated their commitment to these different visions of the future European Union are now using the word, and using it with reference to the distribution of powers between different systems of government. This language is as much a feature of the speeches of Mrs. Thatcher and Jacques Delors in the 1980s as it was of De Gaulle in the 1960s (See Thatcher, 1988; EP, 1982a, p.36).

It is this ideological language, constructed around federalism and national sovereignty and related expressions such as supranationalism and intergovernmentalism, a United States of Europe and a Europe of States, which provides the focus for locating subsidiarity within the discourse on European Union<sup>5</sup>. This is clearly expressed in Newman's detailed discussion of federalism, in which he asks in

---

<sup>3</sup> See also De Gaulle's press conference from 5 September 1960, in which he sets out his vision of a Europe built on the framework of sovereign states (De Gaulle, 1960).

<sup>4</sup> This is precisely the language, for example, which is used by Margaret Thatcher (1993). See in particular chapter 18.

<sup>5</sup> Nicoll and Salmon, for example, have as a sub-heading to a section of their book on the European Community "State Versus Community Power: Federalism, Subsidiarity, Supranationalism and Inter-Governmentalism" (Nicoll and Salmon, 1994, p.289).

his introduction "Should the nation-state retain the decisive levers of power as both De Gaulle and Margaret Thatcher argued so forcefully? Or should power move upwards to a political union and downwards to a regional level, as Jacques Delors has advocated? In the current controversy, both sides have invoked the principle of subsidiarity to justify their arguments" (Newman, 1993, p.5; also David, 1994).

Of course, De Gaulle and Thatcher never themselves used subsidiarity to support their arguments. The point which Newman and others demonstrate is that subsidiarity has been interpreted generally as a term by which to promote interests relating to the federal organisation of Europe. This reading of subsidiarity as a concept which engages in a novel manner the federal debate is succinctly presented in the view that subsidiarity represents a "*new terminology for traditional power sharing debates*" (MacInnis, 1993, Title, emphasis added). The traditional power-sharing debates in question are those expressed through this longer standing language in the discourse on European Union, language for which subsidiarity is interpreted virtually as a surrogate. Consequently, because interests which were previously expressed through distinctly different words in the discourse have now found expression through a single term, the ambiguity of the meaning of subsidiarity is explained.

On the basis of this interpretation of the relationship between meanings of subsidiarity and political interests, numerous contributors have specifically stated that the concept is *contested* (De Burca, 1996; Duff, 1993, p.18). The idea that subsidiarity is ambiguous implies that there are several different meanings to the subsidiarity concept. The idea that subsidiarity is contested goes beyond this to imply, in addition, that at least some of these meanings are deliberately supported by contributors to the discourse in preference to others, and that there are clear reasons for the choice. The concept is contested because the interests promoted through its various definitions are themselves, as noted explicitly by Cary (1993, p.46), Adonis (1990, p.5) and Cooper (1995, p.180) amongst others, themselves in contest with each other. This is a logical development from the explanation of the ambiguity of the concept in terms of the interests manifested in the federal debate. One commentator, writing in an MPhil thesis, states "There is no objective definition of the subsidiarity principle, since

interpretations of the principle are tailored to enhance the interests of the individual actor.” (Lyngso, 1995, p.84)

Whilst not only identifying the interests behind subsidiarity, existing interpretations also locate these interests with specific institutional actors (pro-centralisation and anti-centralisation vis-à-vis a specific policy). The actors are distinguished according to the interests that are interpreted as driving the evolution of subsidiarity. For the most part, this equates to the European Parliament and the European Commission on the one hand, and the British Government and the German Länder on the other, but the precise division does vary. Wessels, for example, writes “For the German Länder and for some member governments such as the British, the term should become the instrument to limit the automatic spill-over of competencies toward the Community. For Community institutions, subsidiarity indicates a way to use the EC level more efficiently, as this was already formulated in the Single European Act in relation with environmental policies (Article 130r). Both concepts do not necessarily conflict, even though the basic notions behind them are different.” (Wessels, 1991, p.14) The Penguin dictionary of Politics summarises its entry on subsidiarity along similar lines. It notes that “The British and Danish governments...sought to use subsidiarity as a concealment for their attempts to increase the number of policy areas which rested at the national level, allowing them to claim victories for their respective national sovereignties” (Robertson, 1993, p.453).

Authors such as Endo (1944) and Pollet (1995) also note the centrality of the German Länder and the British government to the development of the concept, while the Länder alone feature strongly in the assessments of Jeffery (1996) and Newman (1996, Ch.5). Newman also points to the importance of Delors when he states that “Both the use of the term ‘subsidiarity’ and its definition had involved compromise between three particular interests: the German Länder, which had sought a constitutional clarification of the powers of each level, the British government, which had wanted to preclude references to sub-national government and to restrict the competences of the EU, and Delors, who had wanted to maintain the initiative of the Commission, while acknowledging that the various policy areas required solutions at different levels” (Newman, 1996, p.124). Other interpretations of

subsidiarity also provide an analysis of interests based upon identified actors involved in the discourse, including de Burca (1996) and Cass (1992).

Some interpretations stop here, but the majority go further and take what is a fairly simple step to the framework of opposing visions of the future European Union couched in the ideological language of federalism and sovereign nationalism (MacInnis, 1993; Peterson, 1994; Van Kersbergen and Verbeek, 1994; David, 1994). As a consequence, subsidiarity is interpreted as a concept which operates as a surrogate for preconceived models of institutional organisation, previously expressed through the language of federal union on the one hand and responses to it such as a Union of States on the other.

### **1.5 Subsidiarity and its origins**

The third element to the dominant image of the meaning of subsidiarity in the EU is perhaps the most easily identifiable because of the clarity and frequency with which it is presented. Occurring with such mantra-like regularity as to appear almost to be a fixation, it states generally that subsidiarity finds its origin in sources which are older than the European Union. Both the word itself and also the ideas which are identified as belonging to its meaning have histories which predate the occurrence of the word in the TEU, and which also predate its occurrence in the context of the discourse on European Union. As such, the word has meanings which relate to contexts other than that of the process of creating a European Union. With amazing regularity interpretations of subsidiarity in the EU express the need to comment on where the term comes from, presumably in an effort to provide some guidance to the interpretation of the meaning of subsidiarity in the context of the European Union.

Virtually every interpretation of the meaning of subsidiarity at some point launches into a presentation of the origins of the concept, seemingly sometimes simply because it has become a standard practice in the interpretation of the concept to do so. Although a bewildering variety of

sources have been identified as representing the origins of the concept, from ancient philosophers such as Aristotle and Aquinas to more recent ones such as Locke and Mill, interpretations of subsidiarity focus on two sources in particular and discuss them at length. These sources are on the one hand the social philosophy of the Roman Catholic church, which has for over half a century promoted what it calls a 'principle of subsidiary function' (Adonis, 1990; Burgess, 1995; Kaufmann, 1988, p.279; Marquardt, 1994; Teasdale, 1993; Endo, 1994; Thiery, 1990; Pasquali, 1993, p.140; Wilke and Wallace, 1990; Nicoll and Salmon, 1994)<sup>6</sup>, and on the other hand the Constitutions of Federations such as the USA and Germany, which contain clauses concerning the distribution of powers between the different systems of government, federal, State and regional of which the Federation is comprised (Constantinesco, 1991; Bermann, 1994a and b; Christiansen, 1992; Scott et al, 1994). Although some interpretations concentrate on one source more than the other, such as Adonis with the Catholic heritage and Bermann with the federal, the majority discusses both sources (Nicoll and Salmon, 1994; Laffan, 1993).

#### 1.5.1 Subsidiarity in federal Constitutions

The texts most frequently referred to in the literature as representing the origin of subsidiarity in a federal context are the tenth amendment to the American Constitution and Article 30 of the German constitution. The U.S. tenth amendment states that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (Constitution of the United States of America, tenth Amendment). The German equivalent states that "The exercise of governmental powers and the discharge of governmental functions is incumbent on the Länder in so far as this Basic Law does not otherwise prescribe or permit" (Constitution of the Federal Republic of Germany, Article 30).

Also sometimes referred to in this respect is another article from the German Constitution which states that "On matters within the concurrent legislative powers the Länder have the authority to

---

<sup>6</sup> From the Latin "subsidiari officii principio" (Pope Pius XI, 1936).

legislate as long as, and to the extent that the Federation does not use its legislative power. The Federation has the right to legislate on these matters to the extent that a need for a Federal rule exists because (1) a matter cannot be effectively dealt with by the legislation of individual Länder, ...” (Constitution of the Federal Republic of Germany, Article 72). Scott et al offer perhaps the most explicit statement of the presence of subsidiarity in these federal constitutions, claiming that “Subsidiarity is explicitly used as a device for determining the structure for democratic governance in most federal states” (Scott et al, 1994, p.51), but they are not lacking in support from others (Bermann, 1994a and b; Cass, 1992; Endo, 1994, Fischer, 1994).

The relevance of these constitutional Articles appears to be clear. They express the division of powers between different levels of government in a federally organised State. In the case of Article 72 of the German Basic Law there is even the idea that this division is according to criteria, one of which is that of comparative efficiency, a criterion which is also found in Article 3B TEU.

#### 1.5.2 Subsidiarity in the Catholic church

The specific source of subsidiarity in the Catholic church is the encyclicals of the Popes. The encyclical most usually paraded in this regard is *Quadragesimo Anno* (Emiliou, 1992; Adonis, 1990; Teasdale, 1993; Marquardt, 1994; Wilke and Wallace, 1990), so titled because it celebrates the fortieth anniversary of the first explicitly social commentary on the modern industrial system. That encyclical whose anniversary it celebrates, *Rerum Novarum*, is itself often mentioned in the discussion of subsidiarity’s origin (Endo, 1994; Wilke and Wallace, 1990).

The relevant passage from *Quadragesimo Anno*, which is worth quoting at length, states that

“just as it is wrong to withdraw from the individual and commit to the community at large what private enterprise and industry can accomplish, so too it is an injustice, a grave evil and a disturbance of right order for a larger and higher organisation to arrogate to itself functions which can be performed efficiently by smaller and lower

bodies...Of its very nature the true aim of all social activity should be to help individual members of the social body, and never to destroy or absorb them.

The State should leave to these smaller groups the settlement of business of minor importance; it will thus carry out with greater freedom, power and success the tasks belonging to it, because it alone can effectively accomplish these, directing, watching, stimulating and restraining, as circumstances suggest or necessity demands. Let those in power, therefore, be convinced that the more faithfully this principle be followed, and a graded hierarchical order exist between the various subsidiary organisations, the more excellent will be both the authority and the efficiency of the social organisation as a whole, and the happier and more prosperous the condition of the State.” (Pope Pius XI, 1936, p.37)

According to the above quotation it is the task of the State to ensure two things; that associations should be ordered in an hierarchical manner with the larger ones being prevented from carrying out tasks which smaller ones may themselves perform, and that the State itself must regulate its own activities in a similar manner and should only do what cannot be done privately. *Rerum Novarum* makes it clear that in addition to this prohibitive interpretation of State activity, there is also a proactive duty upon the State to act whenever private enterprise requires it (Pope Leo XIII, 1891). What cannot be read from these encyclicals, however, is any view that the State itself, in its own organisation, should be hierarchically ordered and its powers distributed to decentralised units as much as is efficiently or effectively possible. Throughout, the State is always regarded as a single entity which is discussed in relation to private associations but never in relation to itself.

The above text expresses the idea, confirmed when read in the context of the entire encyclical, of a moral boundary between the activity of the State and the activity of private initiative. There are certain principles which the State ought to respect, and these serve to provide limits to State expansion into private life. In the context of the period of history in which this was written, the church had an understandable interest in promoting such a concept as it provided a socio-philosophical justification not only for the existence of the church but also for opposition to the

encroachment of public authority into the activities of private associations, the church being one itself. The idea is effectively a normative account of the proper role of the State in society.

## **1.6 Conclusion**

Interpretations of the meaning of subsidiarity in the European Union have consistently focused upon three aspects of the concept, its definition, its place within EU political debates and its historical origins, and have generated a dominant, and remarkably coherent image of the meaning of the term. There appears to be a close connection, within this image, between the idea that subsidiarity is a contested notion and the idea that it propagates the competing interests manifested in the federal debate.

The connection between these two ideas and the origins of the term is not so obvious, at least with respect to the Catholic notion of subsidiary function. An initial puzzle is established with respect to the origins of the concept, and the identification of two very different sources for an idea which has been interpreted fairly consistently within the context of the European Union. This early query is explored further in the next chapter, along with a consideration of the precise context for the location of subsidiarity within EU discourse and a more detailed consideration of the relationship between the different aspects of the image.



## 2 ANALYSING THE DOMINANT IMAGE OF SUBSIDIARITY IN THE EU

### 2.1 Introduction

As has been demonstrated in the opening chapter, the interpretation of the meaning of subsidiarity in the EU is extensive and varied. Numerous themes emerge as focal points for analysis, such as its economic impact, its legal status and its relevance to individual policies such as the environment. But there are several propositions which are dominant and unchallenged, and which together create a specific and distinctive *image* of the notion. This image specifies, in summary form, that the concept is an ambiguous and contested notion, with a variety of different definitions representing a variety of incompatible political interests, and that it is a concept which originates in both federal constitutional texts and Catholic Papal encyclicals. The interests which are identified are basically those which pertain to the allocation of powers between the Union and its Member States, expressed traditionally through the language of federalism and national sovereignty and now also through subsidiarity. Hence subsidiarity is regarded as a “new terminology for traditional power sharing debates” (MacInnis, 1993, opening title).

A number of questions arise from this summary of the image of subsidiarity which dominates existing interpretations of the meaning of subsidiarity in the EU. Perhaps the most important is the manner in which these different propositions, the definitions, the promotion of political interests and the historical origins relate to each other to construct the meaning of subsidiarity. A second question is how the literature has developed such a clear identification of the origins of the concept when it lacks any clear understanding of the meaning of the concept as it occurs in the discourse on European Union. And a third is the relationship between European Union and subsidiarity which underpins this interpretation of its meaning. That is, how exactly is subsidiarity being *read* in relation to the European Union? These are some of the more relevant questions which will help to direct the analysis of the meaning of subsidiarity from this point onwards and to focus the methodology for examining

the accuracy of this reading of the term. Because the thesis seeks to understand the meaning of subsidiarity in the EU, the notion of meaning itself is important, and a starting point for the analysis of this reading.

## **2.2 Subsidiarity and the meaning of meaning**

It is clear that the image of subsidiarity which dominates existing interpretations of the concept in the discourse on European Union is dependent upon expressions of subsidiarity in the institutional discourse, because it is expressions from this institutional discourse which are, for the most part, the object of interpretation. The most important single expressions in this regard are, of course, the statements on subsidiarity in the TEU, in that these are vital to the way in which the meaning of the concept has been interpreted. In so far as the Treaty statements on subsidiarity are vital to the image of subsidiarity that dominates existing interpretations of the concept, they are a logical starting point for an investigation of the accuracy of this image.

This general dependency of an interpretation on that which is interpreted is, however, complemented and extended by a more specific dependency of some types of meaning upon others. This point is a conclusion of investigations into the meaning of meaning itself, as conducted particularly in the discipline of linguistic philosophy. There has been a substantial development of the theory of meaning in linguistic philosophy circles for some time, and a development which can prove useful for the analysis of the meaning of subsidiarity. This theory draws a distinction between meaning based upon the words of a spoken or written sentence and meaning based upon the function or purpose to which a written or spoken sentence is put. The important point is that individual statements are composed of different *types* of meaning, summarised in various ways as sentence meaning and author meaning, semantic meaning and functional meaning, in which author or functional meaning is clearly dependent on semantic or sentence meaning for its construction.

### 2.2.1 Considering the components of meaning

The connection between literal meaning and purpose, or function, is one which is not often discussed directly in the analysis of political processes and certainly not directly in the interpretation of subsidiarity. But the idea that written and spoken language is an action, the meaning of which can be explored like any other, nevertheless has been fully developed in English linguistic philosophy. Of particular interest here is the work of the linguistic philosopher John Austin, who developed a framework of meaning which has been incorporated into both linguistic philosophy and discourse analysis (Tully and Skinner, 1988; Searle, 1979; Scollon and Scollon, 1995; Van Dijk, 1997; Lyons, 1986; Shapiro, 1981).

In his book entitled 'How to do things with words' Austin (1962) analyses the meaning of linguistic actions, which he calls speech-acts, and suggests that they may be deconstructed into three separate components, a locutionary meaning, an illocutionary force and its perlocutionary effect(s)<sup>7</sup>. The locutionary meaning is the literal meaning of the speech-act as constituted by the physical act itself and the definitions of the words, their relation in sentences and the grammar which governs them. The perlocutionary effects are the strategic or teleological elements of the speech-act. "Saying something will often", writes Austin, "or even normally, produce certain consequential effects upon the feelings, thoughts, or actions of the audience, or of the speaker, or of other persons: and it may be done with the design, intention, or purpose of producing them...We shall call the performance of an act of this kind the performance of a 'perlocutionary' act." (Austin, 1962, p.101) Whilst it is probably true that any speech-act will necessarily produce effects in both the speaker and any listener, it is not at all true that there must always be an intention to produce an effect of any kind in any person. The remaining component is explicated by Austin as the "performance of an act in saying something as opposed to performance of an act of saying something" (Austin, 1962, p.100)<sup>8</sup> and may be expressed in language

---

<sup>7</sup> This categorisation closely matches Hanscher's distinction between, programmatic, active and final intention respectively. See M. Hanscher, *Three Kinds of Intention*, Modern Language Notes, 1972.

<sup>8</sup> This distinction is somewhat similar to the distinction between the instrumental and strategic elements to action.

by the use of a performative verb, such as to ask, to beg, or to question, although it has been forcefully argued elsewhere that there are illocutions attaching to speech-acts which are not amenable to explication by the use of a performative, such as patronising (Skinner, 1970).

This illocutionary force is generally 'taken up' by attending to a variety of accompanying factors such as intonation, body language, context and convention. The importance of context in the understanding of meaning, or in the language of Austin the understanding of illocutionary force and perlocutionary effect, is paramount and amply demonstrated by the example commonly employed in the literature on this Austinian theory - the speech-act 'the ice over there is very thin'. In this example, on the basis of the locution, it is conceivable that the illocutionary force could, for example, be informing, warning, boasting, impressing or challenging whilst the perlocutionary effects, where they are present, could conceivably be equally varied according to which illocutionary force is present. If the context is two fishermen looking to break the ice in order to be able to make a catch, immediately certain illocutionary forces and related perlocutionary effects seem more appropriate than others. In this context, it is not reasonable to interpret the agent as intending to provoke the partner into hitting him, or indeed to expect the partner to do so, for the simple reason that the conventions relating to fishermen in this situation dictate that such an outcome would be highly unusual. If this is the intended perlocutionary effect of the one, the other is likely to bring disappointment. It is entirely reasonable, however, to interpret the illocutionary force as informing and the intended perlocutionary effect of the utterer as encouraging the other to investigate. In the literature on this analytical topic the context of the utterance used as the example is actually that of a policeman calling to a skater with the illocutionary force of 'warning' and the intended perlocutionary effect of persuading the skater to avoid the thin ice<sup>9</sup>.

---

<sup>9</sup> Skinner writes, "even when the locution (always a factor limiting the possible range of illocutionary force) and the circumstances (always relevant to the determination of illocutionary force) are both appropriate (as they obviously are in the case of the skater) for the act performed to be assessable as one of warning, a further question still remains, as to whether there exists any mutually-recognised convention such that to speak in the way S speaks in warning A will be acceptable as a form of warning, and so capable of being taken up by A as a warning" (Skinner, 1970, p.131). The point here is that assumptions have to be made about the intentions or interests of S in situation X, and these will differ according to what S and X are, as a consequence of which the interpretation of appropriate illocutionary and perlocutionary elements to a speech act will differ in like manner. In the event that S is a politician and X a forum for discussion of EU issues, assumptions about the interests of the politician will determine the interpretation of intended illocutionary and perlocutionary elements. This is

In their book entitled 'Intercultural Communication: A Discourse Approach', Scollon and Scollon (1995) give a succinct example of the legacy of Austin's ideas to discourse analysis which is useful for the purpose of this study. Their example relates the question "Can you tell me what time it is?" to the answer "Yes I can" (Scollon and Scollon, 1995, p.18). Of this example they write "The answer which B gives in this dialogue is grammatically correct and yet it is completely wrong. A is not asking about B's ability to tell the time at all. He or she is asking B to tell him or her the time. The problem with B's answer is that it is responding to the sentence meaning but not the speaker's meaning" (Scollon and Scollon, 1995, p.18). This example, in the form of a question about the time, adequately demonstrates the components of Austin's framework, and how the complete meaning of a sentence, whether spoken or written, is composed of a combination of different elements. Austin called them locutionary, illocutionary and perlocutionary. Scollon and Scollon, in a simpler analysis, call them sentence meaning and speaker's meaning. In the context of an analysis of political ideas one might call them semantic and instrumental.

Austin's linguistic philosophy, and its contribution to discourse analysis, of the process by which people interpret and explain the speech-acts of others demonstrates clearly how the full meaning of those actions requires a consideration of both the *intentions* of the actor and also the *context* in which the act occurs. The theory demonstrates that when interpreting the meaning of language, whether written or spoken, there are both purpose oriented meanings and semantic meanings to consider. The latter are constructed by the words themselves, the surrounding text and the grammar which governs them, while the former are constructed through a broader interpretation of the semantic meaning within a context. The interpretation of the context helps to establish what an agent is actually doing in the process of producing a statement and to interpret the effects that the statement is intended to have upon those who hear or read it.

---

an important feature of the interpretation of subsidiarity in academic literature.

This analysis of the structure of meaning indicates that it is possible for the same word or sentence to be interpreted as having more than one meaning according to how it is situated. For example, when two politicians separately utter a statement such as 'I support the further development of subsidiarity as a positive step in European integration', it is possible to conclude that they mean different things by this, even where there is an agreement on the definition of the word, by assuming that they are perhaps trying to do different things in the very act of saying it (illocutionary), and perhaps also wish to realise different outcomes or long-term effects (perlocutionary) of having said it. That is, they have different immediate and long-term objectives and use subsidiarity as part of their effort to realise them. One could say that it is assumed that they have an interest in the realisation of different outcomes, or simply different interests vis-à-vis the possible immediate and long-term effects that the concept can most obviously produce. With respect, for example, to the above statement on subsidiarity, on the basis of attention to the past pronouncements of the actors in question it might be concluded that a British minister is hopeful that subsidiarity will have the effect of making any increase in EC activity in a certain policy area more difficult and is in the process of trying to convince listeners of the value of such an outcome. A minister from another government might hope for exactly the opposite. The meaning of the pronouncement, therefore, varies according to the interest which is interpreted as providing the motivation for utilising the idea in any particular case<sup>10</sup>.

Thus, what Austin called the illocutionary and perlocutionary aspects of meaning and what Scollon and Scollon call the author meaning provide an explanation of a sentence or speech-act in a way which the locutionary or sentence meaning does not. This author meaning is determined in the first instance by the sentence meaning, but is also heavily context dependent, as demonstrated by the examples above. The way in which sentences are situated, their semantic context and the interpretation of this semantic context - the way, in fact, in which subsidiarity sentences are read - is important in establishing author or *instrumental* meanings to sentences, as much as is the semantic content of the expressions themselves.

---

<sup>10</sup> For a detailed discussion of the concept of intentional meaning, see Hirsch Jr, (1967).

### 2.2.2 Instrumental dependency on semantic meaning

This discussion of the meaning of meaning highlights that the image of subsidiarity which dominates existing interpretations of subsidiarity in the discourse on European Union is based, in part, upon a correlation between different definitions (semantic meaning) and different political interests (author meaning) in instrumental terms. This correlation establishes instrumental meanings of subsidiarity to complement semantic or definitional meanings, thereby developing the image of the concept and to some extent explaining the ambiguity of definitions of the term.

It has already been stated that this reading of subsidiarity is dependent upon expressions of subsidiarity in the institutional discourse, in so far as these expressions are the object of interpretation. To the extent that this reading constructs an image of subsidiarity which includes instrumental-type meanings of subsidiarity, it is further dependent upon the actual (semantic) content of subsidiarity statements in the institutional discourse, for the reasons outlined above. The instrumental (author) meaning of subsidiarity that interpretations of the concept develop is constructed around the conflicts of interest inherent in the federal debate. This federal debate represents the specific context for reading subsidiarity, as is demonstrated most succinctly in the work of MacInnis (1993). Consequently, at the base of the reading of subsidiarity is the way in which subsidiarity is situated in the institutional discourse as a propagation of the federal debate.

## **2.3 Understanding the context of the dominant image**

The preceding discussion of the meaning of meaning, and of the dependency of interpretations of subsidiarity upon institutional texts, indicates that there are two distinct elements to a full account of the meaning of subsidiarity in the EU. These are the meaning of subsidiarity statements themselves and the speaker or author meaning given to those statements. These different elements of the meaning of subsidiarity can be presented as answers respectively to two distinctly different questions. The meaning of subsidiarity statements answers the question 'what has been said and written?', while the

author meaning behind those statements answers the question ‘Why has what has been said and written been said and written?’.

Austin’s theories and their development by others, both in discourse analysis and linguistic philosophy, indicate that the answer to the first question severely restricts the possible answers to the second, but still leaves open the possibility of a number of different answers, the one which is chosen depending to a considerable extent on the specifics of the context which is chosen to provide the answer. Whilst in the case of subsidiarity the context, the discourse on European Union, is broadly determined for the interpretation, the discourse is itself complex and extensive, and there are many different debates contained within it which might be linked to the meaning of subsidiarity. What linguistic philosophy refers to as closing the context, providing the basic boundaries for the interpretation of the meaning of something, is the specific task which defines precisely how subsidiarity is read in the European Union and determines more than anything else precisely how subsidiarity is understood.

### 2.3.1 Subsidiarity and the distribution of powers

The context of subsidiarity in the EU is partially closed by the meaning of subsidiarity statements themselves. The completion of the context is provided only by the method by which an answer to the second of the two questions outlined above is provided. In the case of subsidiarity this entails a specific reading of subsidiarity in the context of the European Union, which employs a single issue from the broader discourse on European Union to provide explanatory force. The issue which is employed in interpretations of subsidiarity is the concern with the allocation or *distribution of powers* between the Union and the Member States, previously addressed through words such as federalism, federation, national sovereignty and a Europe of sovereign States, and now, according to the interpretation, addressed also through the word subsidiarity. It is this issue-context which enables the meaning of subsidiarity comfortably to break out occasionally from the federal debate into areas such as the decentralisation of powers within a ‘Europe of the Regions’. Although not an element of the



traditional federal debate between Member State governments and EU institutions, it still engages the issue of power-distribution.

That is, the issue which provides the closure for reading subsidiarity in the European Union is fundamentally constructed by a distributive concern in which the focus of the discourse is, as one academic puts it, "Who is to do what in an integrated Europe" (Gretschmann, 1991, p.45). As a consequence subsidiarity is interpreted as no more than "a shorthand for how to allocate and share powers and responsibilities between different levels of government in Europe" (Gretschmann, 1991, p.45). These statements from Gretschmann point towards what is the basic discursive issue which locates the meaning of subsidiarity in institutional texts. They confirm that subsidiarity is fundamentally understood as a principle which governs the division or allocation of powers between levels of centralised government which, for the most part in this context of the European Union, means the Union itself and its Member States (the federal debate) although some attention is also given to the role of regionalisation.

The contributors who state as much are too numerous to be covered thoroughly, but a few references should be sufficient to demonstrate the point. Cass, for example, opens her article with the statement that "The principle of subsidiarity is concerned with the distribution of power" (Cass, 1992, p.1110) and notes more generally that "an interpretation of subsidiarity as concerning power division between levels of government has predominated the debate" (Cass, 1992, p.1112). Thiery states from a French perspective that "The subsidiarity rule is certainly the best criterion that one can find for repartitioning competences between the different levels of association and consequently between the Community institutions and its Member States" (Thiery, 1990, p.21, my translation). As another example, Trachtman comments that "the question of how to allocate governmental functions is the central question of federalism and is treated in the EC under the label 'subsidiarity'" (Trachtman, 1992, p.460). One can virtually select any interpretation of subsidiarity and find similar statements. Steiner, for example, states from a legal perspective that subsidiarity "has been invoked in the Community context to assist in determining the appropriate allocation of powers as between the

Community and its Member States, and to control the exercise of Community powers.” (Steiner, 1994, p.49).

The consequence of this reading is that all contributions to the meaning of subsidiarity within the institutional discourse are understood to express preferences concerning the distribution of powers within the EU structure. Some groups are understood to prefer centralisation, others decentralisation, others still the status quo. Some interpretations might emphasise the link between subsidiarity and centralisation. Others might emphasise subsidiarity as a barrier to centralisation rather than a support. But few contributors to the interpretation of the concept would fail to present the basic connection between subsidiarity and European Union as the concern with the distribution of powers within the European Union, and to imply that, as Emiliou puts it, “subsidiarity can only be fully understood and defined in the context of federalism” (Emiliou, 1992, p.386), where federalism is basically understood as a particular distribution of powers between available levels of centralised government<sup>11</sup>.

This reading of subsidiarity within the specific issue context of the distribution of powers is as true for the interpretation of the actors responsible for promoting the concept as much as it is true for the interpretation of the meaning of the concept directly. Deeg, discussing the Länder contribution to the subsidiarity issue, states that the Länder understand the concept to mean “a clearer separation of policy competencies among the Länder, federal government and the EU” (Deeg, 1995, p.213). Lodge, for example, makes the same point in the statement that “Initially attention focused on the structural degree of decentralisation within the Member States. Regional and local authorities inferred from subsidiarity a greater role for themselves in EC decision-making and in the implementation of EC legislation. The UK was exceptionally vocal in interpreting subsidiarity to mean devolution from EC to national and not to regional or local levels of authority. Subsidiarity and the idea of decision-making close to the people (TEU Title 1 Article A) were viewed differently and with varying degrees of

---

<sup>11</sup> I recognise the generally accepted distinction between federalism, understood as the ideological commitment to a specific

scepticism in the Member States.” (Lodge, 1994, p.346). The point here is that whether it is the regions and the UK, the German and British governments, the Commission and the European Parliament which are considered as the main actors behind the promotion of the concept, it is always the case that these actors are identified on the basis of their instrumental use of the term to influence the distribution of powers. Some authors, such as Lodge in the above example, consider the distribution within Member States, others consider simply the distribution between the States and the Union, but in all cases it is the same issue which is the basis for identifying actors responsible for promoting the term.

### 2.3.2 Instrumentalism and the origins of subsidiarity

This contextual link between subsidiarity and the issue of the distribution of powers suggests an answer to the questions raised by the constant identification of federal constitutional and Catholic socio-philosophical texts as the origin of the subsidiarity concept. The ideas expressed by these different texts, the Catholic on the one hand and the federal on the other, represent different historical traditions and are clearly as different from each other as they are similar to each other. The federal ideas expressed through texts such as the tenth amendment of the U.S. constitution and Article 30 of the German Grundgesetz are essentially statements about the division of powers between different levels of government within a federally organised State. The Catholic notion, however, presenting as it does a normative set of conditions by which the activities of the State are justified, represents the apotheosis of the notion of sovereignty implicit in constitutional State-building, whether federal or unitary. By its very definition it refuses to acknowledge that the State is anything more than a functional mechanism for serving individuals and their associations and does not, in any logical sense, correlate with a process of creating a federal European State. The truth of this view is demonstrated convincingly by later Catholic encyclicals. These include an idea called ‘subsidiarity’, which is clearly a translation of the older idea of the subsidiary function of the State in society into the context of inter-State relations. Encyclicals in which this intra-State derivative of the principle of

---

organisation of power within and between States, in distinction from the federation, understood as a specific example of the hierarchical division of powers between the governments of a State (King, 1982).

subsidiary function is presented call for only world federation as the logical outcome of the application of the normative idea. The European federal State is no more acceptable than the unitary one.

Although there is general agreement that these are both legitimate sources of subsidiarity and dissent from this position is minimal, dissent can be found. Adonis, for example, writing from a British perspective, disputes the relevance of federal texts, arguing that the word “goes unmentioned not only in the Treaty of Rome, but also in the constitutions of all existing federal states and supranational institutions” (Adonis, 1990, p.1). Koopmans makes a similar point in the statement that “As far as I am aware, subsidiarity does not exist as a legal notion in any of the national legal systems of the Member States either. Comparable legal principles are also difficult to discover. The German *Grundgesetz* includes some general rules on the distribution of powers over the federation and its component parts, the *Länder*; it provides, for example, that powers which are not granted to federal institutions by the Constitution, will be reserved to the *Länder*. These general rules do not, however, in any way recall the notion of subsidiarity.” (Koopmans, 1994, p.44) Examples of dissent concerning the Catholic origins of subsidiarity are not so easy to find, but numerous authors do simply ignore it and focus instead on the federal source, thus emphasising the one in favour of the other. However, there is little, if in fact any, denial that both of these traditions legitimately represent the origins of the concept.

More frequently encountered than the denial of one of these sources as a legitimate origin of subsidiarity is the recognition that these sources are different, linked to an attempt to accommodate this difference through the development of descriptively distinct notions of subsidiarity. In mind here is the distinction in the report on subsidiarity produced for the European Parliament by Giscard D’Estaing, in which a distinction is developed between ‘vertical’ subsidiarity, which is a reflection of the federal tradition, and ‘horizontal’ subsidiarity which is a reflection of the Catholic (Institutional Affairs Committee, 1990c). Endo makes the same distinction, but refers to the different ideas as ‘territorial’ and ‘non-territorial’ subsidiarity respectively (Endo, 1994). The point of the descriptive

distinction is to recognise and to accommodate the principal difference between the Catholic and federal notions identified as the origins of subsidiarity, namely that the Catholic idea regulates the activities of the State across society in a theoretical manner (horizontal and non-territorial), while the federal notion regulates the activities between hierarchically organised levels of government in a practical manner (vertical and territorial).

The occasional dissent from the view that subsidiarity originates from these different traditions, coupled with the clear discomfort at combining them both within a single notion, suggests that there is more to this issue of the origins of subsidiarity than simple historical enquiry. Analysis of these origins only highlights the substantial differences between the two traditions, and raises questions concerning the preoccupation, among interpretations of subsidiarity within the EU, with promoting these traditions. The focus upon a distributive issue context for the interpretations of subsidiarity in the EU, however, provides an answer to these questions. It suggests a common link in the fact that these different sources clearly generate different approaches to the development of a federal European State in which powers are slowly transferred, as is the case with the EU, to central institutions. The identification of subsidiarity with federal constitutional texts clearly reinforces the idea that subsidiarity concerns the distribution of powers and also promotes the perception that the concept is essentially a federal one. The relevance of the Catholic texts is not so obvious, but a careful appreciation of the sentiments in the Papal texts indicates that they were concerned with limiting the expansion of the State into the activities of smaller associations within it. This is a sentiment which subtly reinforces the protection of Member State powers against the expansion of the powers of central EU institutions when it is transferred, as it is through the interpretation of subsidiarity in an EU context, to the process of European integration.

This suggests that, individually, these sources reinforce a competing interest in the distributive contest. The Catholic source reinforces the relatively anti-federal decentralising interest, while the federal source reinforces the relatively pro-federal centralising interest, within the context of the EU. Combined, they serve to reinforce the general understanding of subsidiarity as a contested concept

which is focused on the question of power distribution between levels of government, thereby acting as a cohesive element to the other aspects of the dominant image of the concept. These points could suggest a reason for what is almost a fixation with these two traditions in the discussion of the roots of the notion.

## **2.4 Assessing the dominant image of subsidiarity**

This dominant image of subsidiarity appears, in the light of this analysis of the relationship between its different propositions, a curiously compact interpretation of the meaning of subsidiarity in EU debates. The only way to investigate the accuracy of the reading of subsidiarity represented by this image is to go to the history of subsidiarity in the institutional discourse. For the most part, this means examining the collection of texts produced by the institutions of the European Union, the European Parliament, European Commission and others, including the Member States.

That is, the ultimate test of whether this reading of subsidiarity in the European Union is accurate is a detailed examination of precisely what has been said and written about subsidiarity in the institutional texts themselves. Interestingly, interpretations of subsidiarity in the institutional discourse have by and large refrained from a detailed attempt to reconstruct the history of what has been said and written, relying instead upon a selective account of the more visible aspects of that history, the most important of which are the statements on subsidiarity in the Treaties. Why they have largely refrained from a detailed reconstruction of the history of subsidiarity statements is an interesting question. One answer could be that the context for interpreting subsidiarity was so widely accepted from an early stage in the interpretation of the term, and situated subsidiarity so clearly within existing debates about the distribution of powers between the Union and the Member States as to render such a detailed reconstruction unnecessary.

There is no shortage of commentary upon why the history of subsidiarity in the European Union is what it is, but the distinct shortage of inquiry into precisely what this history is demands a detailed

historical account in order to test the interpretation. As a consequence of the paucity of detailed historical analysis there is no contribution to the interpretation of the meaning of subsidiarity which, for example, notes any alterations in emphasis of subsidiarity statements over time or developments in the choice of wording of specific institutional sources. These are both developments which might reasonably be expected to have occurred over a period of some twenty years, If they had, they might equally reasonably be expected to qualify, in some way, the propositions by which the image of subsidiarity is constructed.

There is in fact little, if any, sense of evolution in the meaning of subsidiarity at all and, even where there does seem to be some development in the interpretation of the concept, the distributive reading of the concept proves to be resilient. There is, for example, a clear emergence after the referendum rejection of the TEU in Denmark of an intellectual interest in the question of legitimacy in the European Union, to which subsidiarity is connected (Weiler, 1992; Laffan, 1993; De Burca, 1996). But even in the context of this new interest in the issue of public support for the European Union, the interpretation given to the concept is still that "The term encapsulates a growing debate about the appropriate balance between the policy competences of Brussels-based institutions and the member states" (Laffan, 1993, p.43).

In order to address this gap and to test the dominant image of the concept, the empirical chapters of the thesis will focus on precisely such a reconstruction of what has been said and written about subsidiarity in institutional texts. The purpose of this reconstruction is specifically to excavate the significant developments in the meaning of the subsidiarity concept as a method by which to assess existing interpretations of the notion in an EU context. Focusing in this way upon what has been said and written about subsidiarity in these texts will, apart from avoiding the instrumental approach to understanding subsidiarity, provide a detailed account of the meaning of subsidiarity in these texts. In so doing, it will provide evidence with which to assess the adequacy of the way in which they have been interpreted. This task of establishing what has been said and written about subsidiarity requires not only a detailed account of sentences in which the word occurs but also, as indicated by the

discursive method, a close attention to the context in which these sentences occur, noting such features as the document headings and sub-headings and the occurrence of other ideas which seem to be related to statements about subsidiarity.

The point of the reconstruction is not to present every statement on subsidiarity from every institutional document. The image of subsidiarity which dominates existing interpretations of the term is under investigation, and the point is consequently to present developments and embellishments to the meaning of subsidiarity which impact upon this image. The point of reconstructing the history of subsidiarity in institutional texts is to provide evidence for answering questions concerning the propositions contained in this image. Does the evidence support the idea that the concept is contested? Does it support the view that subsidiarity relates specifically, and solely, to the issue of power distribution and that it originates from Catholic and federal documents? Furthermore, can it shed any light upon the suspicion, raised in the analysis of existing interpretations of the notion, that the claim concerning the origins of subsidiarity reflects the interests which are interpreted as the basis for the ambiguity of the notion, thereby functioning to buttress the other aspects of the interpretation of the concept?

#### 2.4.1 The parameters of the historical reconstruction

The reason for focusing upon the development of subsidiarity in the texts of EU institutions (including Member States) is because this reading of subsidiarity is an interpretation of the meaning of subsidiarity specifically for these institutions. This is not to suggest that there is only an institutional discourse which produces subsidiarity statements and an interpretation of these statements which is dependent in a uni-directional sense upon them. There are, of course, statements on subsidiarity from other sources that are not included within this analysis, such as domestic political and business contexts, which would be worthy of investigation. And with respect to those sources that are included, which for the most part are academic and media interpretations, it is not the case that these are solely concerned with interpreting the institutional discourse. Furthermore, it is also true that



the institutional discourse is dependent, in the sense of being influenced by, on the manner in which it is interpreted as much as its interpretation is dependent upon what is actually manifested within the institutional discourse.

These are important limitations to the approach which I take in assessing the way in which subsidiarity has been read in the EU. However, the focus specifically upon subsidiarity statements in the institutional discourse on the European Union is the best method by which to assess this reading of subsidiarity because it is this institutional discourse which is the *principal object* of that reading. To consider other discourses in detail in addition to this, such as domestic political or business contexts, other than where they are manifested in this institutional discourse, would not test this image of subsidiarity to the same degree.

The word 'discourse' is employed in the thesis to represent both a description of the material under investigation and a method by which to investigate it. As a description of the material, it is a reference to the general context for expressions of subsidiarity. This general context comprises several more specific contexts. As these more specific contexts are referred to as debates, discussion of the more general context as a discourse, comprising numerous different debates, helps to avoid any confusion. This is a fairly simple, political science description of discourse which does not, perhaps, do justice to the more theoretical appreciation of the concept in social science and linguistic science investigations (Shapiro, 1981), but which is, nonetheless, a recognised use of the term (Van Dijk, 1997, pp.1-2; Weiler, 1997a).

As a method for investigating this material, it emphasises that this is an investigation into *meaning* and *context*. As such, meaning is not circumscribed to those statements about subsidiarity which explicitly seek to define the concept, with other statements such as those pertaining to its implementation being treated differently (Endo, 1994; MacInnis, 1995). Instead, all statements about the concept, within the target context, are treated in the same manner, as expressions of its meaning, regardless of consideration about what the author of any individual statement might be doing by

making it. The context is not only important at the macro-level of establishing a broad focus for the inclusion and exclusion of material for which, in this case, the issue of European Union is the edifying element. It is also important at the micro-level of the surrounding text of individual statements, in order to provide a more detailed appreciation of the meaning of statements than the macro-level identification of a general issue can supply.

The employment of the word 'discourse' in preference to alternatives such as debate is perhaps made all the more appropriate by the fact that the context of subsidiarity statements, and the language employed within it, is technical in its nature and dominated in its usage by people who might accurately be regarded as experts or specialists in the field. These are both characteristics of the Foucauldian notion of discourse, although whether or not Foucault would regard the communication of ideas concerning the European Union as a discourse is debatable (Foucault, 1991). It should not, however, be implied that I am attempting to pursue a discourse analysis as such or to theorise on discourse analysis techniques.

The context for the reconstruction of the development of subsidiarity is consequently labelled as the institutional discourse on European Union. The additional reference to European Union reflects the prominence of this general issue in the history of subsidiarity within this institutional discourse, a history which begins with a document entitled 'Report on the European Union' and during its evolution includes numerous documents similarly referring to European Union, leading eventually to a legal expression in a Treaty of the same name, the Treaty on European Union (TEU).

The time-frame for the analysis is provided by the boundaries of the first known occurrence of the word 'subsidiarity' in an institutional document (European Commission, 1975a) and the opening, in March 1996, of the conference of Member States to revise the Maastricht Treaty. This is a manageable time frame, and one which adequately covers the period of EU history which is the focus of existing interpretations of the concept. Statements from contributors to the discourse leading up to and entering the 1996 IGC will be considered but not the negotiations themselves or their outcomes.

This is an appropriate time-frame for the study because it is centred around the legal statements on subsidiarity in the TEU and reflects the centrality of these legal statements to the way in which subsidiarity has been read in an EU context.

Everything which is included in the historical reconstruction is treated as text, whether a reported speech or a document. Interview material which is accessed as direct speech is essentially part of the interpretative consideration. All other interview material is accessed in written form, and as the distinction between written and spoken word is regarded as sufficiently small for both to be included in a general notion of discourse when the spoken is accessed solely through its record in writing, I employ no distinction between types of source material used in the historical reconstruction (Van Dijk, 1997, p.3).

Furthermore, because the question which this historical reconstruction is attempting to answer is 'what has been said and written about the meaning of subsidiarity?' as a prelude to providing evidence of the meaning of the concept, and not the question 'why has what has been said and written about the meaning of subsidiarity been said and written?', it is not concerned with instrumental issues as such, nor with the correlation of interests with actors. The study is concerned with the occurrence of the word subsidiarity and of ideas associated with it and is thus essentially a language analytical reconstruction of the evolution of the subsidiarity discourse for the purpose of testing existing interpretations. The fact that a reference to subsidiarity occurs in a document of the European Commission does not establish 'the position of the European Commission' or reflect 'the interests of the European Commission'. It is simply an institutional reference, for which the specific source is noted for the purpose of clarity.

#### 2.4.2 The organisation of material

As discussed, the most important statements on subsidiarity for the image of the concept in the EU are those contained in the TEU. It is these statements which, more than any other, serve as the support for the propositions concerning the meaning of subsidiarity which dominate the interpretation of the concept. They are crucial to the way in which subsidiarity has been interpreted, and they consequently deserve to be considered in greater detail than do other expressions which are less frequently referred to, and in some cases never referred to at all. They also have a very different status to other references to subsidiarity in the institutional discourse in so far as they are legal statements contained within the context of a constitutional type document. This is very different from other statements of a more informal nature produced in the institutional discourse as part of the development of the concept, and further justifies an examination of the meaning of these statements separately from an analysis of the history of the development of the concept.

These statements can be distinguished from those in the general institutional discourse as the formal-legal meaning of subsidiarity in contra-distinction to its informal-political meaning. Formal-legal subsidiarity is the meaning of subsidiarity in the legal treaties of the European Union. This consists of a number of references to the word and to expressions which are interpreted as part of the meaning of the concept. The most important reference in this respect is Article 3b TEU, but in addition to this there are also references to subsidiarity in the Preamble to the TEU and in Article B (some commentators have, in addition to this, identified subsidiarity in the Article A and in Article 130r of the Single European Act).

This formal-legal meaning is distinct from the meaning of subsidiarity in the broader discourse and can be analysed in isolation. It is distinct not simply because of its legal context, but more precisely because this legal context is fixed and unchanging, at least within the time-frame of the study. This eradicates the evolutionary issue from the formal-legal meaning of subsidiarity, an issue which is a vital element of the informal-political meaning of the concept in the broader discourse. It is also

distinct on the basis of the special place given to it in interpretations of the concept in the institutional discourse. By deconstructing the formal-legal meaning of the concept, the literature interpretation of subsidiarity can be tested in this limited context before being tested in the much larger context of the informal-political development and application of the legal subsidiarity formula. It will also afford some sense to the study of the period from 1975 to 1992 which might otherwise be absent if the formal-legal meaning of subsidiarity is presented strictly chronologically.

On the basis of a different methodology, it would be possible to focus on these legal statements because the time frame for the history of subsidiarity in institutional texts represents the history of the development of a legally binding definition, from 1975 to 1992, and of attempts to enforce this legally binding definition from 1992 onwards. But such a justification would be inappropriate. To base a focus on these legal texts on the fact that they are central to the history of subsidiarity in institutional texts would be to base them upon a reason which, from a discursive perspective, is irrelevant. The reason why these legal statements deserve special attention is because they are the most important objects of interpretation and consequently fundamental to the way in which subsidiarity has been read to date in institutional texts.

## **2.5 Conclusion**

Analysis of the image of subsidiarity which dominates existing interpretations of the concept in an EU context suggests strongly that this image is dependent upon the specific reading of subsidiarity statements within a debate on the distribution of powers. This context dominates interpretations of the concept, to the exclusion of other possible debates within EU discourse. Analysis also suggests further dependencies of this reading of subsidiarity upon the institutional discourse, in so far as there are instrumental meanings contained within this image which are based, in the first instance, upon the semantic meaning of specific subsidiarity statements.

Furthermore, the visible connection between the interpretation of subsidiarity as contested and the interpretation of subsidiarity as a propagation of conflicting interests vis-à-vis the distribution of powers in the EU is supplemented by a more veiled connection between these propositions and the interpretation of the origins of the concept. The precise function of the origins of the concept within the image of the concept is not entirely clear, but the suggestion is that it serves to reinforce the idea that subsidiarity is a contested concept within the context of the distribution of powers.

These findings encourage an examination of the material which is the basis of the interpretation, namely the texts of EU institutions. Most important among these, because of its centrality to the interpretation of subsidiarity, is the Treaty on European Union and the statements on subsidiarity therein. The meaning of subsidiarity in the TEU is the focus of the next chapter, the point of the analysis being to initiate the testing of the dominant image of the concept by deconstructing the most important support for this image from the institutional discourse.

### **3 THE MEANING OF SUBSIDIARITY IN THE TREATY ON EUROPEAN UNION**

#### **3.1 Introduction**

The statements on subsidiarity that occur in the Treaty on European Union are central to interpretations of the meaning of subsidiarity in the European Union and the image of subsidiarity which is developed by them. The reason for this is that these statements are a vital object of interpretation, and form the basis for the development of the image of the concept. As such, they represent the logical starting point for assessing the dominant image of the concept in existing interpretations. There are only three references to subsidiarity in the TEU, one in the Preamble to the treaty, another in Article B of the General Provisions and a third in Article 3b of amendments to the EC.

An analysis of the meaning of these statements reveals that there are numerous uncertainties and confusions contained within them. Article 3b is the most substantial statement on subsidiarity, and is a set of criterion by which powers shared between the EU and its Member States are exercised. The text of Article 3b establishes some legal confusions, such as the identification of a shared as opposed to an exclusive competence and the method by which the provisions of the article will be enforced. But there are also some confusions in meaning of a more general nature. Particularly visible is the tension between the criterion of Member State sufficiency and EU better attainment, and the relationship between these in the determination of the division of tasks for the exercise of shared competences.

The uncertainties contained in Article 3b are compounded by the references to subsidiarity in the Preamble and Article B of the Common Provisions. These references suggest that the criteria in Article 3b are supplemented by the normative commitment to doing things as close as possible to the citizen. This introduces the citizen as a focus for the subsidiarity idea as a complement to the State in

Article 3b, and suggests that the subsidiarity concept is as much about the role of the State in society as it is about the internal division of responsibilities within the State system. Furthermore, because these references to the citizen are in the opening section of the TEU they apply to the entire EU and not just to the EC as is the case with Article 3b, creating more uncertainties concerning the scope of the application of the concept and undermining the restriction of subsidiarity to shared competence within an EC ambit.

Cass correctly notes that “Important issues concerning the interpretation of the actual Treaty provision still require clarification” (Cass, 1992, p.1135), suggesting several herself, and this view has been supported by numerous other academics. This chapter does not pretend to resolve questions of meaning pertaining to the Treaty texts but it does explore them, and considers the implications which they carry for establishing a general meaning to the concept and for reading subsidiarity in relation to European Union. The evidence from the TEU indicates that the concept is a confusing one which creates more problems than it solves. There is a clear tension between different methods of deciding the division of powers, and a clear cleavage between State centred and society centred notions. Furthermore, there is no clear reference to statements of subsidiarity which reflect the texts which have been identified as the origins of the concept.

### 3.1.1 A note on the structure of the Treaty

Before beginning to discuss the references to subsidiarity in the Treaty on European Union, a note on the structure of the TEU is required in order to clarify possible confusions that might arise concerning it. The Treaty consists of a Preamble, seven separate Titles, and a series of protocols and declarations. The Titles comprise a list of common provisions and final provision (Titles I and VII respectively), amendments to the existing Treaties establishing the European Economic Community, European Coal and Steel Community and European Atomic Energy Community (Titles II, III and IV respectively) and new Treaties establishing the Common Foreign and Security Policy and Justice and Home Affairs (Titles V and VI respectively). The new titles are often referred to as pillars, and Title II renames the



European Economic Community as the European Community. All titles taken together constitute the European Union.

Within this treaty structure there are several occurrences of the word ‘subsidiarity’ in the TEU, and some statements which lack the word but convey a similar idea. The word occurs in the Treaty Preamble, the second paragraph of Article B of the *Common Provisions* of the Treaty (Title I), and the second paragraph of Article 3b of the *Provisions Amending The Treaty Establishing The European Economic Community With A View To Establishing The European Community* (Title II). Sections of the Treaty which lack the word but have been identified as containing the subsidiarity idea include Article A of the Common Provisions and Article K3(B)2 of the *Provisions On Co-operation In The Fields Of Justice And Home Affairs* (Title VI).

### **3.2 Article 3b Title II**

The most substantial statement on subsidiarity occurs in Article 3b of Title II to the Treaty, which represents amendments to the original Treaty of Rome. It is Article 3b which is most commonly identified by interpreters of subsidiarity in the discourse on European Union as the definition of the concept, and it is also identified as such in the Treaty itself in Article B of the Common Provisions. That this article provides the definition of subsidiarity is explicitly confirmed in Article B and is therefore not in dispute. The full article reads as follows:

“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 in so far 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.”

There are several elements to this text which require explanation before the semantic meaning of the article can begin to be determined. These include the reference to non-exclusive competence, the ambiguity between the conditions of sufficiency and better achievement, and the scope of its applicability.

### 3.2.1 Understanding paragraph 1 of Article 3b

By opening Article 3b with a reference to the Community the fact that this article applies only to the European Community is emphasised. The reference to the Treaty is clearly to the Treaty establishing the European Community. The reference to ‘powers’ is not quite so obvious. It could be synonymous here with competences, but it could also mean the types of action and instruments which are open to the Community in the exercise of its competences. The objectives of the Community are detailed throughout the original Treaty of Rome, and are found particularly in Articles 2 and 3 (EEC, 1957). These objectives form the ultimate limit upon what the Community is permitted to do. The sentiment expressed in this opening statement is sometimes called the principle of conferred powers (Toth, 1994a, p.38; Steiner, 1994, p.54). As a consequence, this paragraph is not regarded as part of the definition of subsidiarity, and a consideration of its semantic meaning confirms that it makes a point which is unconnected with the paragraph which follows. Authors tend to avoid discussing this first paragraph as part of subsidiarity, and identifying it as the principle of conferred or attributed powers helps to reinforce the distinction (Weiler, 1993, p.438).

One author, however, notably takes a different approach. On the basis of a distinction developed from the Catholic encyclicals *Rerum Novarum* and *Quadragesimo Anno*, Endo develops the idea of positive subsidiarity, the duty of the State to act where its help is needed, from negative subsidiarity, the duty of the State not to act where it is not needed (Endo, 1994, p.2054-3). He then argues that this opening paragraph is an example of the application of positive subsidiarity, on the basis of a reading

of the text as a normative request for Community action, as distinguished from the negative subsidiarity which is applied in the paragraphs which follow (1994, p.1987). Endo's reading of the text does maintain a coherence by identifying every paragraph of Article 3b as an example of the application of subsidiarity, but he does so at the expense of the coherence of the subsidiarity idea itself. His interpretation of this statement as an example of 'positive subsidiarity' is generated by a peculiar synthesis of the legal texts of the TEU with ideas expressed in the encyclicals which he identifies as the birth of the concept. Semantically, the word subsidiarity does not occur, and there is no indication in the text itself or in any other part of the Treaty that the meaning expressed here recalls an aspect of the broad meaning of the word. Consequently, the interpretation of this text as establishing a different notion, called the principle of conferred or attributed powers is the more acceptable.

### 3.2.2 Understanding paragraph 2 of Article 3b

Even a cursory reading of this statement reveals that it is a complex conjunction of ideas. Rather than attempt to analyse them together, I will separate them into two sections. The first section, up to the reference to subsidiarity itself, outlines the scope of the application of the principle, while the section which follows outlines the criteria by which Community action is legitimated. Separating the paragraph into separate sections in this manner is not without its support in the literature which comments on Article 3b. What I have called the 'scope of application' is similarly labelled by Toth (1994a, p.39) and Steiner distinguishes it from the subsidiarity principle proper by defining it as "the exemption" clause (1994, p.54).

#### 3.2.2.1 The scope of the concept - areas, actions and exclusive competence

The second paragraph of Article 3b addresses the concept of subsidiarity directly. It begins, quite clearly, by establishing the scope of the relevance of the principle in legal terms. By 'areas' is probably meant the policy areas of the European Community, but it could also be rendered with perfect syntactic sense as objectives. That governments have competence in policy areas makes sense,

but they also have competence for achieving objectives. However, most analyses of Article 3b seems to assume that 'areas' means 'policy areas' or simply 'policies', such as transport, agriculture and competition (Gonzalez, 1995, p.357; also Schilling, 1995, p.26). Others seem to interpret the opening statement as tautologous, with areas meaning spheres of competence, so that it reads 'In spheres of competence for which the Community does not have exclusive competence...' (Endo, 1994, p.1987). However, this simply begs the question 'what are spheres?', and the notion of policies once more seems to be the most feasible answer. The Commission can help on this point. It has suggested strongly that areas means policies by its proposals to establish a series of policies for which the Community has exclusive competence, and the European Parliament, in the D'Estaing Report on subsidiarity, has done the same<sup>12</sup>.

The distinction between exclusive and non-exclusive competence is a common feature of federal constitutions and has, perhaps, fuelled the interpretation of subsidiarity as a federal principle. It first appears in institutional documents in 1975, in the same Commission report that introduced subsidiarity, and as such has been closely associated with subsidiarity for some time. It is specifically developed as the method for organising the division of powers between the Union and its Member States in the Draft Treaty on European Union produced by the European Parliament in 1984 (European Parliament, 1984). Ordinarily, the distinction might be regarded as precise and unequivocal, distinguishing a set of policy areas which are to be regulated by the subsidiarity principle from those which are not. This is certainly the case in the German Grundgesetz, where the meaning of the distinction is clearly defined and the status of each policy competence is clearly indicated as either exclusive to the federation or concurrent between the federation and the Länder via the use of policy lists<sup>13</sup>. It is also the case in the Draft Treaty on European Union which first proposed

---

<sup>12</sup> Two points are fairly clear. One is that, on the basis of this restriction of Article 3b TEU to areas of non-exclusive competence, Article 3b does not apply directly to the grant of fundamental Community powers, which remains a task for the Member States in intergovernmental negotiation. The other is that it does not apply to the grant of new competences, for which the formal mechanism is Article 235 EC. This latter point is true because, as Article 3b states, subsidiarity applies to non-exclusive competences of the Community that have already been created.

<sup>13</sup> The relevant articles from the Grundgesetz are 70 to 74. Compare the opening statement of the second paragraph of Article 3b TEU with Article 71 of the German Basic Law, which reads: "On matters within the exclusive legislative powers of the Federation the Länder have authority to legislate only if, and to the extent that, a Federal law so authorises them."

a formal-legal definition of subsidiarity for the European Union. However, unlike with the similar reference to the distinction in the German Grundgesetz, the distinction between those policies which are exclusive and those which are not is not established. Nor, for that matter, is any definition of what exclusivity and concurrency actually mean<sup>14</sup>.

For example, the text does not indicate whether this non-exclusivity or concurrence applies to competence or to policy areas. The text is more comprehensible if it is accepted that policy areas are non-exclusive or exclusive as the case may be. Competence, understood as the legal right to act, is always exclusively Member State or Community, by the very fact that the two are distinct enactors of competence. If both Member States and Community act in a given policy area they still act in isolation, and it is the policy area which bestows the right on one or both, so being either exclusive or not. But competence is often referred to in the interpretation of Article 3b as exclusive and concurrent, raising some questions concerning the precise meanings of terms such as policy, competence and power.

These confusions stem from the novelty, in a Community context, of the distinction between exclusivity and concurrence. In fact, the distinction is never mentioned in the previous treaties, and there is reason to believe that it does not concur with the logic of the legal status of the European Community itself. In the words of one commentator, "such a distinction is totally alien to, and contradicts the logic of, the structure and the actual wording of the original EEC Treaty as well as the whole jurisprudence of the Court of Justice." (Toth, 1994a, p.39). This is a view supported by others (Schilling, 1995, p.12; Scott et al) and backed up by the ECJ. The Court of Justice has indicated in its jurisprudence that where objectives of the EEC are concerned the powers of the EEC are by their very nature exclusive or they are nothing. One can hardly equivocate over the meaning of the Court's conclusion that "The existence of Community powers excludes the possibility of concurrent powers on the part of the Member States" (European Court of Justice, 1971, p.276), and Toth argues that

---

<sup>14</sup> The European Parliament, under the auspices of Giscard D'Estaing, attempted to devise policy lists fleshing out the

even where the Community has not acted in an exclusive area Member States are still excluded from acting (1994a, p.40). This feature of the nature of Community law is sometimes referred to as the doctrine of pre-emption and has a history of case law to support it (Weatherill, 1994, p.14).

Other opinions have been expressed on this matter such as that, for example, exclusive competence refers to those areas where the Community has already acted (Steiner, 1994, p.57-8). But the outcome of such a perspective is to negate the idea of a non-exclusive policy area in which, as Article 3b seems to imply, both Member States and Community can act together on different aspects of a policy. This is a point which is noted by Schilling (1995, pp.13-20), who distinguishes concurrent as only so until the centre acts (the view of Steiner and the ECJ), whereupon it becomes exclusive, from concurrent which remains so even after the centre acts (the view adopted by Schilling himself, 1995, p.20).

I neither wish nor need to engage in a detailed legal analysis of the status of exclusive competence in the Community, but only to note that this is indeed a problem which has generated some legal uncertainty. This uncertainty stems from the fact that this division of competences is introduced to existing Treaties that were never designed to accommodate such a scheme. Until it is resolved, the question of whether a policy area is exclusive to the Community or not will continue to generate disagreement, particularly while the Community lacks the clarifying feature of a constitutional categorisation of competences. Acknowledging the difficulties relating to the categorisation of a competence as exclusive or not, the opening sentence of the second paragraph means semantically that there are some policy areas in which the Community does not have exclusive authority but shares this with the Member State governments. Interestingly, there is no mention at all of a sphere of competences exclusive to the Member States, such as occurs in the German Constitution, as a consequence of which subsidiarity pertains only to policies for which the Community has some jurisdiction (Koopmans, 1994, p.45).

---

distinction between exclusive and non-exclusive competence, but failed to secure its inclusion in the TEU.

The continuation of the sentence indicates that it is these ‘policy’ areas for which the Community has non-exclusive competence, alternatively expressed in interpretations of Article 3b as areas for which the Community and the Member States have concurrent competence, that the subsidiarity principle actually applies, and to these areas alone. This is indicated by the fact that, to paraphrase Article 3b, ‘the Community shall take action, in accordance with the principle of subsidiarity...’. Furthermore, it is also fairly clear that the principle only applies to the regulation of Community and Member State action, and not to the actions of other levels of government within the Community’s territory such as those of a regional or local nature. This marginalises the connection between subsidiarity and regional and local government to the informal-political meaning of the concept as far as Article 3b is concerned.

Concluding the examination of this section of Article 3b, ‘to take action’ could mean not only to legislate, which is the primary method by which the Community operates, but also, presumably, to pass other non-legislative agreements and statements such as, for example, common positions of the Council and opinions of the Commission. Of course, the Community must act in a non-legislative capacity simply to be able to reach the decision that, on subsidiarity grounds, it must not act (i.e. one or other institutions of the Community must decide on the matter and communicate its conclusion). This suggests that the action in mind is primarily legislative in nature. Again, this is a point that the text itself does not clarify.

#### 3.2.2.2 The criteria of the concept - sufficiency, better attainment, scale and effects

The manner in which the principle regulates the actions of the Community and its Member States within those areas for which the Community does not have exclusive competence is through the application of a set of conditions which must be observed before Community action in these areas is legally permissible.

The first of these conditions is that 'the objectives of the proposed action cannot be sufficiently achieved by the Member States...'. It would appear that the meaning of 'objective' here is the limited objective of the action itself, rather than the general objectives of the Treaty which are mentioned in the opening paragraph of the article. Consequently this provides the article with two different meanings for objective, the objectives of Community action and the objectives of the Treaty. The text thus reads that for the Community to act the limited objective of the action must both fall within, in the sense of achieving a part thereof, the general objectives of the EEC Treaty and also be insufficiently attainable by the Member States. The double meaning of objective is consequently one of teleological order, with the objectives of action serving to further the objectives of the Treaty. These second order objectives of actions within areas of non-exclusive Community competence can only be carried out by the Community if the Member States cannot sufficiently achieve them. This seems semantically coherent, but there are clearly some uncertainties pertaining to an assessment of the sufficiency of Member State action which is implied in the statement, begging the questions 'what does sufficiency actually mean?' and 'how is Member State insufficiency to be determined?'.

Considering the first question, the text itself gives no obvious indication. The word sufficient is defined in the Chambers Concise Dictionary as literally meaning 'sufficing, adequate and effective', and has the sense of a quantity rather than a quality, clearly suggesting that it is closer to the meaning of effective than it is to efficient and is, consequently, a measure of the extent to which the Member States can actually realise the objective(s) in question rather than the cost of the effort required to do so. The equivocal sense of sufficiency here is noted by several authors. Toth acknowledges that it could be either efficient or effective (Toth, 1994a, p.43). Others, such as Gonzalez, are clear that it means effective (1995, p.360). Asking the question 'What does subsidiarity mean?', his answer is that "action must be taken by the Community institutions only if, in the sphere concerned, it will be more effective than measures adopted by individual States" (Gonzalez, 1995, p.357, also Steiner, 1994, p.49). Other authors are equivocal on the matter. Steiner states at one point that the concept is an effectiveness test (1994, p.49), but then at a later point in the same article states "Paragraph 2 embodies the subsidiarity principle, expressed in terms of comparative efficiency as regards *the*



*achievement of objectives*, assessed by reference to the scale or effects of the proposed action. It is thus an *efficiency by better-results* criterion.” (1994, p.59, original emphasis). The reference to the better attainment of an objective by Community action is also referred to as a comparative efficiency test by Bernard (1996, p.653). These comments reflect, I think, nothing other than the confusion which stems from the original text itself, which does not adequately indicate whether or not the idea of sufficient attainment considers only the proportion of the objective that can be attained or also the efficiency of doing so.

This is an important point, because it distinguishes between an efficiency criterion and an effectiveness criterion which will not always, if necessarily ever, have the same result when applied to a specific policy proposal. It is abundantly obvious that the individual states can manage effectively, in the sense of achieving the objectives they set for themselves, their own monetary policies, but it may not be very efficient for them to do so. However, the phrase “cannot sufficiently achieve” seems to imply that effectiveness is variable and can be more or less according to circumstance, suggesting that effectiveness is not a measure of the ability of Member States to achieve the objective in its entirety, but considers how much of the said objective can be attained. Indeed, if effectiveness/sufficiency is not understood as one of degree, then there would be no reason to include it in the sentence, as it would add nothing to the meaning of the words “cannot achieve”. It could also be that behind this idea of sufficient attainment lies a further consideration of degree vis-à-vis the efficiency of the action, making the idea of sufficiency a two pronged concept, considering not only how much of the objective can actually be attained but also what effort must be applied into doing so.

A further point here is the meaning of Member States. What is unclear is whether or not the text has in mind the Member States acting as individual countries, or as coalitions of countries - theoretically even all - co-ordinating their policies at national level. There may be some policies which, when acting individually, Member States cannot sufficiently achieve but when acting in concert with others

can. As with the uncertainty concerning the meaning of sufficiency, the confusion here has implications for the ability of the principle to regulate Community practice.

The second question can be separated into the two component questions 'who is to determine the insufficiency of Member State action?' and 'by what method?'. Considering the former, it is normally for the Court, as the guarantor of the observance of Treaty law, to decide which legislative proposals do and do not fall within the general objectives of the Treaty, but it is by no means clear that the Court will also decide on the sufficiency of Member State action, or whether it will be the Member States or the Community institutions. Given the nature of Community legislative processes and the fact that the Community consists in part of the Member States, and given that no legislative actions can occur without the consent of a majority of the Member States, then it would seem that it is the Member States in some capacity which will determine it. Another question which emerges is 'Who is to set the action?'. This is clearly important as it is the elements of the proposed action which determine Member State sufficiency. Again, because of the overlap between the Member States and the Community, this question finds an answer. As it is always the Member States that will ultimately sanction any proposed Community action, it is the Member States who must determine the sufficiency of Member State action to meet the set objectives. The statement indicates that the Community shall act not only if this condition of Member State sufficiency is met, but also in so far as it is met. This introduces a notion of 'extent' which is presented in more detail in the third paragraph

Still considering the second question of how to determine Member State sufficiency, the text itself indicates a possible method for determining Member State insufficiency in the statement 'and can therefore, by reason of the scale or effects of the proposed action, be better attained by the Community'. Inclusion of the word 'therefore' suggests that the statement is a parenthetical elaboration upon the reference to the sufficiency of Member State action, specifying a necessary

converse of the form <if not A then B<sup>15</sup>>. That is, the Community must better be able to achieve the objective when the Member States, whether acting individually or in coalition, cannot sufficiently achieve it. However, though this is the semantic sense of the statement, it hardly makes logical sense at all when applied to the reality. It is quite feasible that other results might obtain such as <not A and not B> or <A and B> unless, of course, the meaning of sufficiency is so defined as to exclude these other possibilities by including within the definition of the word 'sufficient' the entailment that the objective cannot be better achieved by any other actor or group thereof.

If the sentence is read not as a parenthetical converse condition to sufficiency but as entirely separate this would change the test somewhat. Community action would then have to demonstrate that the Member States cannot sufficiently achieve the goal of the proposal *and* that the Community can better achieve it rather than simply assuming that the latter follows necessarily from the former. It could be argued, however, given that in any policy area where government intervention is required it can only be performed by either the Community or the Member States - and it is unlikely that both will be able to perform it in such a way that the benefits of the one over the other are not perceivable - that the parenthetical interpretation does, almost by default, make sense because it can only be the Community or the Member states which act.

If it is correct to read the reference to the better attainment of Community action as a logical corollary to rather than an addition to the condition of Member State insufficiency then the meaning of the parenthetical condition 'better achieved' is determined by the meaning of Member State insufficiency, and in so far as this is a combination of effectiveness and efficiency then 'better attainment' means more effective and/or more efficient attainment. This is generally the interpretation given to the text by authors on the issue (Steiner, 1994; Adonis, 1990). I suggested earlier that effectiveness is truer to the sense of the meaning of sufficiency than is an efficiency test, but the

---

<sup>15</sup> Where A is the condition that the Member States can sufficiently achieve the objective and B the condition that the Community can better achieve it.

introduction of the adjective 'better' in the logically parenthetical elaboration is ambiguous and clearly allows for both, reinforcing a sense of uncertainty in this regard.

There is another way in which 'achievement' can allow for a variety of different outcomes, and it is not in the extent to which the objective is attained but the effort which is imputed into doing so. Understanding the concept of subsidiarity in this sense, as an efficiency rather than an effectiveness test, resonates well with a legislative programme which is largely economic in nature and designed very much with efficiency and cost-saving in mind. The Treaty on European Union was, after all, a major concluding event of the project to complete the internal single market by January 1st 1993. But one must, I think, acknowledge that on this point the definition simply lacks clarity.

Returning to the question of the method by which the insufficiency of Member State action is determined, the reference to 'scale or effects' suggests an answer. It is interesting that the governments at the time of the Maastricht Treaty negotiations decided to include this statement in the text, for if the second condition is understood as parenthetical and not additional to the first, one wonders why it is necessary to add these words at all. What it suggests is that there are certain scales and effects which themselves are indicators of the sufficient ability or otherwise of the Member States to realise an objective, and vice-versa certain scales and effects which indicate the opposite. It is not clear, however, whether or not these scales and effects are prior to sufficiency and determine it, or are simply aids to that end. The inclusion of the word 'therefore' is the nub of the confusion, because it can be interpreted as implying that scale and effects are to be the determining indication of the better attainment of an objective by the Community or simply as an aid in the assessment. Steiner interprets the reference to scale and effects as indicators of when it is likely that the Community will better be able to achieve the objective (1994, p.49). Other authors have identified the reference to scale and effects as a separate condition to that of better attainment, but the wording of the text does not seem logically to support a reading of the reference to scale or effects in this way (Koopmans, 1994, p.44).

Nor is it clear exactly what 'scale or effects' is a reference to<sup>16</sup>. The text suggests that it is 'the proposed action', and on the basis that Community action is entailed when the scale or the effect is large the statement is that when the scale or effects of the proposed action are large then the Community is likely to better attain the objectives of that action. However, assuming that it is the collective decision of the Member States themselves which sets the proposed action, all that they need to do is to propose an action which is sufficiently large in scale or effects for a Community response to be the more appropriate, and the entire sentence becomes somewhat meaningless. It would make more sense to introduce the notion that scale or effects in at least some measure entails a reference to the problem which the proposed action is designed to solve. The Member States cannot manufacture the problems with the same ease as they can manufacture proposals for action, consequently restoring some sense to the inclusion of the statement. Some authors have interpreted this reference to scale or effects as dependent on the problem which the proposed action is designed to solve (Steiner, 1994, p.63), but it is difficult to read the text in this manner, and the reference to 'scale or effects' as a consequence highlights an incongruity in the definition of the concept.

Furthermore, if 'sufficiency' and 'better attainment' are regarded as each other's logical corollary then the principle would imply not only that if the scale of the problem or the effects of the action required to resolve it are large then the Member States must not be able to sufficiently deal with it, but also that if they are small then they can! This would introduce a possible difficulty, from a logical perspective, in interpreting the two criteria as mutually complementary. Assuming that the words apply to the proposed action, and they imply large scale and cross-border effects, the Community would presumably be excluded from acting to resolve a problem which came under concurrent competence, with limited effects and on a small scale within a single Member State, regardless of that Member State's inadequacy to resolve the problem.

---

<sup>16</sup>A note of caution. One author, in discussing Article 3b, mistakenly reproduces this passage as "scale of effects" and produces some erroneous analytical conclusions as a result, understanding it simply as a cross-border scale test. However, even as he misquotes the passage, he should still query what the object of the word 'effects' is, but does not (Toth, 1994a, p.43).

The point which I am demonstrating here is that the semantic meaning of Article 3b is imprecise and ambiguous, quite apart from the addition of further ambiguities via readings of the text which explore the correlation between the text and the political interests of those actors involved in its adoption. This semantic ambiguity has been noted by interpreters of the text, and has generated a variety of different interpretations of the number and nature of the criteria by which the right to act is granted to the Community. Although not always discussing Article 3b directly, the three criteria identified here have generated in the literature which interprets Article 3b a variety of different criteria which can be regarded as part of the meaning of the concept. Tyrie, writing prior to the adoption of the TEU, discusses a necessity test, the idea that the Community should only act when necessary, a common interest test which expresses the idea that the Community should act when to do so is in the common interest and a better attained test which expresses the idea that the Community should act when there are benefits over State action in doing so (Tyrie, 1990). Kapteyn (1991, p.40), also writing prior to the adoption of Article 3b, proposes a cross-boundary dimension test in place of a necessity test. Emiliou, writing after the signing of the TEU and discussing Article 3b directly, identifies just two different tests, a 'more effective attainment' test and a 'cross-boundary dimension effect' test (Emiliou, 1992, pp.392-393).

Commentators on Article 3b are clearly aware of the tensions inherent in the statement in paragraph 2, but, rather than simply note this, they invariably seek to explain them by relating these tensions to the distributive issue which informs the way in which subsidiarity is read in the European Union. This is much in the same manner as subsidiarity is interpreted in the broader institutional discourse and despite the fact that the statement here does not distribute powers ordinarily understood as policies. One author who analyses the Treaty statements on subsidiarity explicitly states refers to "the question of principle, which is whether, and on what basis, power should be transferred." (Steiner, 1994, p.62). Emiliou interprets the reference to the sufficiency of Member State action as 'bottom-up' subsidiarity which is decentralising in its effect and the reference to the better attainment of an objective by Community action as 'top-down' subsidiarity which is centralising in effect. His conclusion is that "Given the definition adopted by the framers of Article 3(b)(2) EEC, it is clear that preference was

given to the concept of “subsidiarity from above” which suggests a centralising tendency” (Emiliou, 1992, p.401). Emiliou, therefore, assesses the meaning of subsidiarity in terms of its effects upon the distribution of powers between the European Union and its Member States and concludes that, if anything, it is likely to promote rather than to restrict the expansion of Union competences.

### 3.2.3 Understanding paragraph 3 of Article 3b

The third paragraph reiterates the first, and brings the Article back to the primary objectives of the Treaty rather than the secondary objectives of legislative proposals. It clarifies the point that these primary objectives ultimately determine what is and is not permissible for the Community to do, and expresses an idea, developed by the Court of Justice in its case law, called *proportionality* (ECJ, 1986). In one of those cases the Court states that “By virtue of that principle of proportionality, according to well-established case-law of the Court, measures adopted by Community institutions must not exceed what is appropriate and necessary to attain the objective pursued”(ECJ, 1984, p.2715).

One author interprets this paragraph as an example of the ‘negative subsidiarity’ expressed in the preceding paragraph and understood here specifically as a principle of ‘necessity’ (Endo, 1994, p.1987; also Bernard, 1996, p.654). However, it is difficult to justify such an interpretation of the semantic meaning of the statement, particularly as the Member States themselves have indicated that it is a separate legal requirement from subsidiarity and the Court of Justice also understands it as such. The idea that it is a separate principle of proportionality is thus the more logical, and also the more commonly encountered view. However, the fact that it has been read as an aspect of the semantic meaning of subsidiarity cannot be ignored, and has the effect of expanding that meaning to include the condition of proportionality within it.

It is reasonable to say that this paragraph adds little, if anything, to the first paragraph, because it is already stated there that the Community cannot do anything which goes beyond these primary

objectives. Whereas subsidiarity makes sense if it is understood as a test of the problem to be solved, on the basis of which a specific tier of government is commissioned to act, this is clearly a test of the proposed action itself, and is thus logically subsequent to the test of sufficiency in the preceding paragraph. What it does clarify is that, once it has been established that Community action is required because there is a problem, the resolution of which is compatible with the primary objectives of the Treaty and cannot be sufficiently resolved by the Member States, it is still necessary to regulate that action by ensuring that it does not realise secondary objectives which are incompatible with the Treaty, because they go beyond the requirements of its the primary objectives.

This idea of proportionality is thus a test of the *extent* of the action which is designed to realise a Community objective, and is clearly additional to the test of subsidiarity, which asks first if there is a need for action and then, in the event of an affirmation, which level of government should perform it. This interpretation of the relationship is precisely opposite to the view of at least one academic, who writes that “subsidiarity goes a step further than proportionality. Proportionality is concerned with the question whether Community action is necessary at all...On the other hand, subsidiarity comes into place when the decision has been made that a particular measure is necessary. Subsidiarity is concerned with the question who is responsible for introducing the measure in question. Thus subsidiarity refines the principle of proportionality and takes it one step further.” (Emiliou, 1992, p.402). How this interpretation can be married to the text of Article 3b is not easy to perceive. The question of necessity logically precedes the decision to act, and therefore precedes considerations concerning both who shall act (subsidiarity) and how much action (proportionality). The question of who shall act must, in the context of Article 3b, precede the question of how much action, just as paragraph 2 precedes paragraph 3, because the latter is regulating Community action. It can only do so once it has been established, that is once the principle of subsidiarity has been applied and concluded in favour of the Community, that Community action is required at all. Thus, to view proportionality as prior to subsidiarity misreads the clear dependence of the third paragraph of Article 3b on the establishment of the need for Community action. It also confuses the consideration of the requirement of necessity for action with the consideration of the extent of that action, possibly



because of the reference to necessity in paragraph three itself. The logic of Article 3b is to establish first the need for action, then the government which is to perform it, and then, in the event that it is the Community that is to act, the extent of action required to realise the primary objective which creates the need for action in the first place.

### **3.3 Article B of the Common Provisions of the TEU**

It is clear from the analysis of Article 3b that the semantic meaning of formal-legal subsidiarity is complex to say the least. This complexity is extended rather than mitigated by an analysis of the other references to subsidiarity in the Treaty. The first of these is a statement from paragraph B of the Common Provisions which reads:

‘The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty Establishing the European Community.’

This is the final paragraph of an article which sets out the objectives of the Union, and which confirms that Article 3b of Title II TEU is indeed the treaty definition of subsidiarity. The objectives referred to in this statement are separate from those of the Community, and apply equally to it and to the other Titles of the Union arrangement. Being in the Common Provisions of the Treaty, this article extends the application of subsidiarity to the entire Union, as indicated by the statement that the objectives of the Union must be achieved in a manner which respects the principle of subsidiarity. The definition of subsidiarity which the achievement of the objectives of the Union must respect is that in Article 3b. This is potentially problematic, because that definition is specifically related to the objectives of the Community and applies to areas of non-exclusive competence. The problem is thus the method by which the definition is lifted out of its contextualisation within this area of non-exclusive competence serving the objectives of the Community. It is clear that the definition of the

principle in Article 3b of Title II cannot simply be translated into the non-Community context of, for example, the Provisions on Foreign Policy and Home Affairs (CFSP) or on Justice and Home Affairs (JHA). The distinction between exclusive and non-exclusive competence is more meaningless in these other contexts than it is confusing in its Community context, and there is also the potential for conflict between Community and Union objectives.

The truth of this view is made clear by the wording of Article K3(b)2 which does not contain the word 'subsidiarity' but expresses a similar idea to that in Article 3b. This article indicates that the Council may 'adopt joint action in so far as the objectives of the Union can be attained better by joint action than by the Member States acting individually on account of the scale or effects of the action envisaged'. It is different to Article 3b, but sufficiently similar in idea to be labelled as subsidiarity by at least one commentator (Steiner, 1994, p.53). It is also notably free from any reference to the distinction between exclusive and non-exclusive competence, a distinction which makes little sense in the context of the intergovernmental Title from which this article comes, and resolves some of the confusion of the definition in Article 3b concerning whether the Member States must act separately or may act in combinations as well. The fact that the reference here has been substantially altered to cater for its new context reinforces the point that the definition of the principle is Community specific, and thus inappropriate to be applied to the entire Union in that form. Furthermore, in Titles V and VI, the so-called intergovernmental pillars of the TEU, it is not the Community which is the alternative to Member State action but collective action by the Member States themselves, a point which more than any other makes nonsense of any attempt to translate Article 3b into the context of these intergovernmental Titles.

To resolve the confusion that can arise from this, it would have been far better to have a general definition in the Common Provisions, which can then be applied to each individual Title of the Treaty as required, as indeed the European Court of Justice had itself advised (ECJ, 1991, p.22). The current situation defines the idea in the Community context, confirms this as the definition of the idea in the Common Provisions and then, because subsidiarity is included in the Preamble directly and therefore

applies to the entire Union, necessitates further redefinition of the concept when it is included directly in a non-Community context. If it were adequately defined in a general sense in the Preamble, all that would then be required to ensure its unequivocal application in any subsequent articles would be the occurrence of the word.

Furthermore, by including subsidiarity in the Common Provisions, the principle is extended to cover the entire Treaty and throws open the question of which definition of subsidiarity is to be employed. Article B intimates that it is the definition in Article 3b and the problems relating to this have been noted<sup>17</sup>. But a second problem is raised by the fact that the final reference to subsidiarity in the Treaty, which occurs in the Preamble, has generated the view that there is an entirely different definition of subsidiarity in the Treaty which might also fulfil this all-encompassing function.

### **3.4 The Preamble**

This second and final occurrence of the word subsidiarity outside Article 3b is in the Preamble, the relevant section of which reads:

‘Resolved 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.’

This is an interesting conjunction of an old expression from the Treaty of Rome (ever closer union among the peoples of Europe) with a new one (decisions taken as closely as possible to the citizen). Precisely what this notion of ‘taking decisions as closely as possible to the citizen’ means within the context of EU politics is not clear. Given that this notion applies to the activities (and decision-

---

<sup>17</sup> A French National Assembly Report on the TEU implies exactly this in its analysis of Article 3b. The Report notes that Article 3b does not apply directly to Article 235 EC and the extension of new competences, but states that “although it is not expressly stated that the extension of Community competences is regulated by the notion of subsidiarity, it goes without saying, according to our rapporteur, that Article 235 must conform to the subsidiarity principle because subsidiarity is a fundamental principle” (National Assembly of France, 1992, p.368). That is, because subsidiarity is in the General Provisions

making) of the European Union, then it applies de facto to the activities of a relatively centralised government which is, in many respects, already 'far' from the citizen and destined to remain so. This suggests that, in so far as the notion of proximity operating in the expression is a reference to space, the expression intimates towards more localised implementation of decisions taken centrally within the institutions of the Union. However, the notion of proximity also suggests an affective 'closeness', by which is meant the involvement, or at least the impression of involvement, on the part of citizens in the EU decision-making machine.

This ambiguity hints at a State/society parameter for determining the nature of centralised action in addition to the more visible State/State parameter of Article 3b. It is also an ambiguity which is potentially important to the understanding of subsidiarity in so far as the notion of proximity to the citizen in the TEU is intimately linked to subsidiarity in existing interpretations of the concept. The inclusion of the word 'subsidiarity' in the above quote from the Preamble has encouraged some commentators to equate the principle of subsidiarity with the taking of decisions as closely as possible to the citizen, and to progress from this equation to the conclusion that the statement in Article A 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' is also an expression of subsidiarity.

Gonzalez, for example, states that Article 3b "must necessarily be seen in relation to the second paragraph of Article A of the common preliminary provisions of the treaty..." (Gonzalez, 1995, p.356). Toth also notes that "there are references to subsidiarity in the Preamble and in Articles A and B of the Treaty" (Toth, 1994a, p.38) and Emiliou opens a paper with the statement that "The principle of subsidiarity has been enshrined in the European Community legal order by Articles A(2) and B of the Treaty on European Union..." even though the word 'subsidiarity' does not occur in Article A at all (Emiliou, 1992, p.383).

---

of the TEU, it applies across the board to all other Articles of the Treaty.

This equation of subsidiarity with the taking of decisions as closely as possible to the citizen seems to depend upon an interpretation of this Preamble statement as tautologous. That is, the taking of decisions as closely as possible to the citizen is equivalent to the principle of subsidiarity. This interpretation depends upon reading the words 'in accordance with' as an expression of repetition, but it is equally accurate to read these words as an indication that the taking of decisions as closely as possible to the citizen is regulated by the principle of subsidiarity and can only be pursued to the extent that subsidiarity is respected. This alternative reading makes particular sense, quite apart from the fact that it removes the tautology, in the light of the Article B reference to Article 3b as the definition of the subsidiarity principle, in which there is no mention of the taking of decisions as closely as possible to the citizen. This latter reading thus also maintains some consistency to the semantic meaning of the concept.

However, interpretations of the meaning of subsidiarity in the Treaties have read this statement in the first, tautologous, sense (Toth, 1994a; Gonzalez, 1995). Reading the statement in this way fragments the semantic meaning of subsidiarity further than it is already in Article 3b, by adding this additional notion of taking decisions as closely as possible to the citizen. It also provides the justification for referring to Article A, in which the word subsidiarity does not occur but a reference to the taking of decisions as closely as possible to the citizen does, as an example of a subsidiarity statement in much the same way as aspects of Article 3b have encouraged some authors to refer to Article K3(b)2. Consequently, numerous authors note Article A explicitly as an element of the subsidiarity concept (e.g. Steiner, 1994, p.53) and some authors have gone further than this to identify Article A as the true subsidiarity principle while Article 3b is no more than a particular application of this principle. This is the case in the work of Schilling, who refers to Article A as the principle and Article 3b as a rule embodying a specific legal contextualisation of this principle (Schilling, 1995, pp.3-10). Scott et al similarly refer to Article 3b as a procedural device for applying the principle, which is contained in Article A (Scott et al, 1994).

The question is raised as to why authors have interpreted the Preamble as establishing another meaning of subsidiarity. It could indicate a bias among authors towards a meaning of subsidiarity which is relevant to sub-national government. That this is the case is suggested by the fact that some of the authors who refer to Article A as subsidiarity focus upon the impact of the concept for local and regional power (Scott et al, and others). One author even goes as far as to explicitly claim that this article constitutes a reference to the jurisdiction of the regions in the EU (Emiliou, 1992, p.399) and Steiner also comes to the conclusion that subsidiarity relates to regional government when he argues that “the principle clearly has an important role in determining questions of competence at the regional or local level” (1994, pp.51-2), although in his case it is not clear that the claim pertains specifically to the Treaty statements on the concept.

However, this interpretation of Article A as an expression of subsidiarity could equally be a reflection of uncertainty concerning the semantic meaning of subsidiarity in the institutional discourse surrounding these texts. The extent to which subsidiarity is equated with the taking of decisions as closely as possible to the citizen in the discourse and the extent to which the ambiguity of this expression has pulled the meaning of subsidiarity into a State/society context are questions which the reconstruction of the history of subsidiarity in the institutional discourse can answer (see Part II).

One must conclude that the Treaty texts on subsidiarity make no reference to sub-national or regional government and therefore are of no formal-legal relevance to this level of government. This is not to say that the principle of subsidiarity, defined in different contexts, cannot be so understood as having a relevance to regional government, only that it does not as it is defined in the Treaty. Failure to make this distinction can have confusing consequences, as can be seen from Steiner’s comment that “Although the principle clearly has an important role in determining questions of competence at the regional or local level, such questions must, for reasons of time and space, lie outside the scope of this article.” (1994, pp.51-2). The reason for avoiding such questions is because they do not pertain to the meaning of formal-legal subsidiarity.

### **3.5 The question of judicial enforcement**

An issue which has persistently attracted the attention of commentators on the meaning of formal-legal subsidiarity is the extent to which the European Court of Justice is included in the enforcement of the principle in practice. The extent to which this question has dominated assessments of the likely impact of subsidiarity on EU practice is testimony to the dominance of these legal statements, and in particular Article 3b, in the appreciation of the meaning of the term. It is also a testimony to the view that the interpretation of subsidiarity as a concept which relates to the division of powers between levels of government has dominated the understanding of the term. On this basis, what matters from the perspective of the impact of the concept is whether or not the Court will become involved in its enforcement.

The preceding analysis of the Treaty statements indicates that this issue is clearly not addressed by the semantic meaning of those statements. Consequently, it is the general fact that the Court has jurisdiction to ensure that the actions of the other institutions of the Community respect the provisions of the Treaty that suggests that the ECJ is required to enforce the concept. Whilst it is true that, as a consequence of the inclusion of the word in the Common Provisions of the Union, subsidiarity applies to the entire Treaty and not just to Title II which establishes the European Community, it is reasonably clear that, on the basis of Article L of the Final Provisions of the TEU, the jurisdiction of the ECJ does not apply to the Preamble or Titles I, V and VI of the TEU. Thus the ECJ only has jurisdiction to oversee the enforcement of the concept under Titles II, III and IV of the Treaty. The definition of subsidiarity which applies to Title II is Article 3b, but it is not so clear that it is this definition which applies to the other two Titles as well or whether it is the Article B reference instead.

What is clear is that the Court has responsibility for overseeing the correct application of subsidiarity in the Titles for which it has jurisdiction. Within this area of the Court's jurisdiction there are a variety of procedures by which the Court might utilise that jurisdiction. Article 173 EC allows for actions for annulment of legislation. Article 178 EC provides a procedure for action for damages,

which might be particularly relevant in the event of the repeal of existing legislation which might bestow costs upon private or public parties. It might also be possible for private individuals to do likewise if the principle is given direct effect, but on this point the text is unclear.

Given that the Court clearly has jurisdiction over Titles II, III and IV of the TEU, it is reasonable to ask why the judicial enforcement of subsidiarity has become an issue at all. The answer seems to lie in the assessment of subsidiarity as a politically sensitive concept which, while in strictly legal terms is justiciable, in political terms is potentially problematic. The European Court itself holds the collective view that it would be unwise for it to become involved in the application of the concept. In order to avoid being requested to adjudicate on subsidiarity grounds the Court has indicated in a report from 1991 that "We favour including the principle of subsidiarity only in the Preamble to the new Treaty, so as to avoid litigation as to the validity of Council and Commission legislation." (ECJ, 1991, p.122). A similar sentiment has been expressed by some of the Court's previous members, such as Lord Mackenzie-Stuart (Mackenzie-Stuart, 1992).

Academics, however, do not seem to be so unanimous. On the positive side, Weiler argues that "The second paragraph - subsidiarity in the strict sense - is, in my view, justiciable and should be so." (Weiler, 1993, p.438). However, he presents this opinion as part of a 'no-win' thesis that whatever the Court does will adversely affect its reputation. Weiler argues that the only likely event in which the Court will be required to adjudicate is in a dispute between a majority and a minority of Member States. Under such circumstances, if the Court sides with those Member States which support the measure in question, it will be charged with being centralist, and if it rejects the measure it will be charged with interference in political matters. In Weiler's words, "Each time the Court affirms a measure, it will be charged as weak on constitutional limits. When it annuls, it will be accused of being political, ideological and worse." (Weiler, 1993, p.438). Thus, although Weiler supports judicial involvement in the application of the concept, he is acutely aware of the sensitivity and danger attached to it.



These dangers to which Weiler refers have led other academics to be more cautious in their answer to the question. Cass, for example, is equivocal, suggesting that the principle is justiciable but recognising that “The controversial nature of allocation of powers means that these matters may be perceived as matters which should not be resolved at a judicial level.” (Cass, 1992, p.1112). Emiliou takes the view that “it is not amenable to judicial review partly due to its evolutionary character and also because this would permit the judge to intervene in policy considerations.” (Emiliou, 1992, pp.406-7; also Emiliou, 1994, p.78). While Toth concludes that “while the Court will be able to decide that a matter falls within exclusive Community competence and is thus excluded from the principle’s scope of application, in the opposite situation the Court will not be able or willing to go beyond the possible confirmation of the principle’s applicability in general terms. It will not, and cannot, become the ultimate arbiter as to whether the principle of subsidiarity has been properly applied in a particular case.” (Toth, 1992, p.1102; also Gonzalez, 1995, p.366).

That the Court should not intervene in policy considerations is not the reason for equivocation on the justiciability of the concept. The problem is generated by the fact that the concept entails political judgements about the sufficiency of Member State action and the greater effectiveness of Community action which are more naturally for governments. The general opinion seems to be that subsidiarity is justiciable but that it is highly political at the same time, and judgements as to the likelihood of subsequent judicial involvement seem to be based on an assessment of the balance between its legal and its political character. The political judgement at the heart of the concept is sufficient, it would seem, for the Court itself to signal that it does not wish to become involved in the application of the principle, and to leave the majority of authors uncertain. The fact that the Edinburgh European Council decided to initiate an inter-institutional agreement on the concept is sufficient, according to one author, to tip the balance heavily in favour of a primarily political rather than legal status for the notion (Weatherill, 1994, p.27).

This uncertainty in the interpretation of the justiciability of subsidiarity is a reflection of the basic reading of subsidiarity in the European Union as much as it is a reflection of an assessment of the

legal subsidiarity texts themselves. That reading, as presented in the review of the literature which interprets the Treaty texts, situates subsidiarity within a distributive issue context which connects the concept with the ongoing and highly charged debate over the balance of powers between the Union and its Member States. Consequently, it is hardly surprising that the proposal that the Court should become involved in the application of subsidiarity is viewed with some scepticism.

As to what effect judicial involvement is likely to have upon the balance in the exercise of powers one can only speculate, but the signs are definitely that the principle is unlikely to be enforced by the Court in a rigorously restrictive manner. It is well known that the Court tends to favour the development of Community competence rather than its retraction. It is also well known that the federal constitutional Court of Germany has manifestly failed to utilise the similar constitutional provisions of the German system to favour the defence of Länder authority (Blair, 1981).

### **3.6 Conclusion**

Analysis of the meaning of the Treaty references to subsidiarity indicates that subsidiarity is a complex and fragmented concept whose meaning it is difficult to establish with precision. There is a clear cleavage between the meaning which emerges in Article 3b and the meaning of subsidiarity in the Preamble and Article A. The former expresses a set of conditions for regulating the actions of the Community and the Member states in those policy areas for which both have competence. The latter contains a very different expression of subsidiarity which looks towards the citizen explicitly as the normative point of the notion, and which hints, through its ambiguity, at the connection between subsidiarity and State/society relations.

Each of these expressions of subsidiarity has its own problems. In Article 3b, there are at least two different criteria for determining the allocation of tasks under the rubric of the exercise of concurrent competence between the Community and the Member States. These are the insufficiency of State action and the better attainment of the objective by Community action, assessed on the basis of the

scale or effects of the problem being tackled by that action. The wording of the second paragraph has generated numerous interpretations of the semantic meaning of the concept, with necessity, better attainment, sufficiency, scale and effects and comparative efficiency all emerging as conditions by which the allocation of tasks is made.

Detailed analysis of the wording of Article 3b only confirms that it is difficult if not impossible to develop a coherent meaning of the concept from the text. Some problems are resolvable. It is clear that paragraph 2 (subsidiarity) is prior in application to paragraph 3 (proportionality). Furthermore, it is also clear that the concept pertains primarily to the exercise of competence rather than to the distribution of competence, on the basis that the concept is contingent upon a prior division of powers around the exclusive/concurrent distinction between the EU and Member States. This is a point which has been recognised in existing interpretations of the term (Hearl, 1995), but which does not seem to have raised a challenge to the dominance of a distributive focus for the understanding of its meaning.

However, several questions remain unanswered. Does the reference to exclusive competence establish competence, understood as the right to act, as exclusive, or the areas within which competence is exercised? Does the reference to Member States imply individual or collective State action, or both? Does 'scale' refer to problems which actions are designed to solve or to the actions themselves? And is the reference to scale and effects meant as the sufficient condition of the better attainment of an objective by Community action or merely a guide to this end? These are just some of the questions which emerge from a detailed study of the semantic meaning of the text.

The meaning of subsidiarity which has been interpreted from the other references to the concept is no clearer. Numerous authors have identified the idea of 'taking decisions as closely as possible to the citizen' as a meaning of the concept, with some authors suggesting that this is the genuine expression of the principle while Article 3b is simply a specific application of this principle in a Community context (Schilling, 1995; Scott et al, 1994). The statements in the Preamble and Article B, which are the basis for this interpretation, leave a number of questions unanswered. In particular, does the word

‘decisions’ mean legislation, administrative action implementing legislation or any action whatsoever by government? And what constitutes the bounds of possibility in taking decisions close to the citizen? That is, what are the limits to the decentralisation of decision-taking which the expression requests? More important, however, is the fact that where this expression has been recognised as part of the meaning of subsidiarity it has been interpreted entirely within the same distributive context as an expression of the spatial allocation of power, despite the fact that it is a very different expression to the sentiments contained in Article 3b, with very different ambiguities. This raises further questions concerning the containment of the meaning of subsidiarity within the distributive issue-context of the federal debate.

## **PART II: RECONSTRUCTING SUBSIDIARITY IN THE INSTITUTIONAL DISCOURSE ON EUROPEAN UNION**

In Part I of the thesis, an image of subsidiarity was developed from the deconstruction of existing interpretations of the meaning of subsidiarity in the EU. Analysis of this image generated certain questions concerning the validity of its different components and the relationship between them. This validity was then considered through an analysis of the TEU statements on the concept, which are the principal texts upon which this dominant image of the concept is based.

In Part II of the thesis the validity of this image of subsidiarity is examined further through a detailed reconstruction of the major developments in the meaning of subsidiarity in the institutional discourse on European Union since its inception in the context of institutional debates. This reconstruction does not attempt to consider every single statement on the concept from an institutional source but does attempt to excavate the significant developments in the meaning of the term, and to present them in a general chronological order.

## **4 DEVELOPMENTS IN THE MEANING OF SUBSIDIARITY: 1975-1986**

### **4.1 Introduction**

This chapter traces the history of subsidiarity statements in the institutional discourse from its first occurrence in 1975 to the signature of the Single European Act. The history is interesting because it provides an account of governmental and institutional usage of the term prior to its legal formulation at Maastricht, and thereby affords some explanation of why subsidiarity was defined formally in the manner that it was.

The word enters EU discourse with a Commission report on European Union and is later adopted by the institutional affairs committee of the European Parliament. There is no apparent interest in the concept from other institutions and the meaning of subsidiarity, in the Commission report and subsequent EP documents, is consistently based upon a criterion of comparative efficiency/effectiveness applied to the distribution of powers between governments in a federal structure. A consistent influence on the development of the meaning of subsidiarity during this period is Altiero Spinelli. In so far as Spinelli was a committed federalist, this suggests that the concept was part of a general strategy to achieve a federal European Union.

There is little evidence of any contest between different meanings of the concept as it is consistently expressed in terms of comparative efficiency and comparative effectiveness. There are strong signs, however, that the term was employed to pacify opponents of a federal European Union as much as to promote such an outcome. Furthermore, the basic idea of comparative efficiency reflects federal constitutional ideas for dividing powers much more than it reflects the Catholic notion of the subsidiary function of the State.

## 4.2 The Commission Report on European Union

The reconstruction begins with the European Commission's Report on European Union from 1975, in which occurs the first known subsidiarity statement in the institutional discourse to be included in an official institutional publication (Endo, 1994). As stated in the covering letter to the Report, the Heads of State had recently officially resurrected the goal of European Union, and provided Belgian Foreign Minister Leo Tindemans with the mandate to put the flesh on the bones of the basic idea. The idea of European Union was reintroduced in a conference in Paris in October 1972, at which the Governments agreed to "the major objective of transforming, before the end of the present decade, and with the fullest respect for the Treaties already signed, the whole complex of relations of Member States into a European Union" (European Commission, 1972, point 16). The Commission report was published prior to Tindemans' conclusions and represented its official contribution to the task which he was given.

Immediately prior to the publication of the report the then President of the Commission, Jacques Delors, had published a brief analysis of the role for regional and local government in any future Union. The subject was one which would now almost certainly include the idea of subsidiarity if it were discussed by such senior institutional officials, but it was absent from his analysis. What he argued was that the Union needed to be redefined around a new division of authority between citizen, local, regional, national and central European governments according to the dual concerns of efficiency and democracy. It is not clear whether or not these values are working towards the same end, and so in harmony, or to opposite ends and therefore in the conflict which has been interpreted by some academics as integral to subsidiarity in the Maastricht treaty. In one sense it appears that both are promoted when local and regional governments are given power, whilst in another that efficiency seeks unity while democracy requires diversity<sup>18</sup>. What is clear is that the President's opinion that the necessity of Union "is born of a true, actual need to solve, on satisfactory terms, real

---

<sup>18</sup> This same ambiguity recurs in the reflection of Jacques Delors some fifteen years later. See Ch.5 for analysis.

problems common to all our countries, which nothing less than a combined effort can overcome” (European Commission, 1975c, p.5), is begging for a single word which can encapsulate the sentiment. The following month subsidiarity appeared in a similar discussion of the redefinition of Europe around a new division of powers, doing, I think, just that (European Commission, 1975a).

The source in question is a Commission report on European Union which is fundamentally concerned with the idea of the division of competences between the future Union and the Member States. It acknowledges three points: that a decision on this division is highly political in nature; that the time is not right for proposing a list of powers in which the division is made explicit; and that “There is one basic aspect of recent developments in our society which no discussion of European Union should overlook: growing resistance to attempts to centralise power” (European Commission, 1975a, p.10).

The report approaches the idea of a future European Union from the perspective of the redistribution of decision-making between the central institutions and the Member States, and highlights two particular goals in this regard: to improve the efficiency of public administration and to increase the involvement of the citizen, presumably in the reorganised institutional decision-making. By way of elaboration upon this redistribution of decision-making, the Commission report employs the distinction between exclusive and concurrent competence which is found both in the eventual formal-legal definition of subsidiarity and also in other constitutions creating a union of states, such as the German, and also adds a third category of potential competence which is reminiscent of the idea expressed in Article 235 EEC.

There is little, if anything, of contention in the manner by which the report elaborates upon this categorisation, and consequently no need to comment any further upon it. More interesting is the report’s distinction between competence and power, the competence of the union meaning “the *areas* in which the Union can act, and the ‘powers of the Union’, meaning the *ways* and *means* by which it acts” (European Commission, 1975a, p.10). This distinction suggests that a competence is understood here as a right to act in a given regulatory policy area, and a power is understood as the process by



which action is taken, including not only whether the action is or is not legislative but also, in the event that it is, what form the legislation is presented in. The comment on the definition of competence affords some justification, albeit somewhat anachronistically, for understanding the reference to 'areas' in Article 3b as a reference to competence in which the Union has the right to act, and renders the statement 'In areas which do not fall within its exclusive competence' as essentially the same in meaning to the statement 'With respect to those competences which are not exclusive'. Such a rendering of Article 3b removes one possible confusion of the text of the article, namely the possible perception of a distinction between areas and competences. According to the Commission's 1975 Report, they are in fact one and the same.

It is within this context of the discussion of the redistribution of decision-making utilising a framework of exclusive, concurrent and potential competence, and with a view to the goals of the improved efficiency of, and citizen participation in, public administration, that the concept of subsidiarity is introduced. The relevant section of the report reads:

"No more than the existing Communities have done so, European Union is not to give rise to a centralising super-state. Consequently, and in accordance with the *principe de subsidiarite*, **the Union will be given responsibility only for those matters which the Member States are no longer capable of dealing with efficiently**" (European Commission, 1975a, p.10, italics in original, bold added)<sup>19</sup>.

The assumption behind this definition of the term is clearly that where the Member States cannot manage a matter efficiently the Union can, as a consequence of which the principle identifies the 'best government' according to a criterion of comparative efficiency. As to the method by which the inefficiency of Member State action is determined, there is no mention. It could be an absolute criterion, or a relative criterion based upon the greater efficiency of Union action. What is most

---

<sup>19</sup> There are two other occurrences of the word in the document. On page 11 the report states that "Of course, in deciding on the Union's competence, application of the *principe de subsidiarite* is restricted by the fact that the Union must be given extensive enough competency for its cohesion to be ensured". On page 16 it states that "Intervention by the Union in those fields should be consonant with the *principe de subsidiarite* already mentioned" (European Commission, 1975a).

remarkable about this notion of 'best as most efficient' is its label. The word subsidiarity is introduced into the document rather as a matter of fact. This suggests that the institutions were familiar with the term at this time, but there is no evidence of earlier connections between the word and the idea in the institutional discourse.

The semantic meaning of this statement, when read in the context of the entire report, is rather different from the formal definition of subsidiarity in Article 3b TEU. The report proposes that the future Union should have the division of competences between Union and Member States written into a Constitution, and suggests that subsidiarity will apply at the stage of deciding this division, that is during the formulation of the constitution, with any future additions to Union competence, not included in the original division in the Constitution, being decided unanimously by constitutional amendment. This is different from the TEU, in which the division of competence must be decided *before* subsidiarity can apply rather than as a result of its application. This could provide encouragement for the interpretation of the Maastricht definition as itself pertaining to competence division. Not forgetting how the Commission report defines competence, it is fairly clear that the drafters envisaged subsidiarity as a regulatory idea by which to determine in which policy areas the Union should be given the formal right to act, the determination depending on the inefficiency of State action in any given area. It would seem that the concept is primarily an efficiency criterion, but a later reference, in the same report, to the concept as giving to the Union "responsibility for problems for the solution of which the range of efficient action available to the Member States is insufficient" (European Commission, 1975a, p.16) invokes the additional idea of effectiveness, upon which the Maastricht definition is more clearly based.

Whilst it might not be clear why Spinelli introduced the word into the debate, it is clear that the tone of the text is unambiguously defensive, introducing the concept of subsidiarity as an insurance against the development of what is termed a centralising super-State. This suggests not only that there was, at this time, a clear concern about the possibility of just such an outcome, to which there must have been some considerable opposition, but also that there existed a body of opinion which was determined to

push ahead with integration. Support is thus afforded in the text for the connection of subsidiarity, from the very outset of the occurrence of the word in institutional documents, with a divergence of preferences concerning the way forward for the Community. The reference to subsidiarity is thus interpreted quite naturally as a guarantee that the Union will not emerge into the super-State to which there is such opposition, whilst simultaneously allowing for further centralisation at Union level of Member State competence.

The way in which subsidiarity is presented, as a principled approach to the emphasis of what the central authority will neither do nor become, encourages the view that the concept is functioning in this report with the same negative focus given to the identification of the origin of the idea. One academic concludes that “Beyond doubt, this provision proposes the subsidiarity principle as an antidote to the “Centralising super-state”” (Endo, 1994, p.2016) and generates the notion of negative subsidiarity to capture this sentiment. There are undoubtedly reasons why the writers of the report, primarily Spinelli’s chef du cabinet Riccardo Perissich, may have been concerned to do this (Endo, 1994, p.2017). But there is considerable semantic evidence to indicate that the idea is far from restrictive, expressing as much a justification for Union action as an obstruction to it.

The report indicates that subsidiarity applies to the process of deciding the division of competence to be written into the future constitution, but it qualifies this in two ways. Firstly, should the Union require any competence at a later stage which is not included in the Constitution then it can be provided with such by constitutional amendment (European Commission, 1975a, p.11). Secondly, the report also states that “in deciding on the Union’s competence, application of the *principe de subsidiarite* is restricted by the fact that the Union must be given extensive enough competency for its cohesion to be ensured” (European Commission, 1975a, p.11). This particular provision is similar to Article 72.3 of the German Constitution, which specifies as a criterion for the transfer of power from the Länder to the federal government the need “to safeguard the legal or economic unity, and particularly to safeguard the homogeneity of the living conditions beyond the territory of a Land”. This provides a strong justification for interpreting the semantic meaning of subsidiarity in the Report

as part of a strategy to allow further centralisation of power rather than to prevent it. Cohesion, whatever this means, is rendered as more important than subsidiarity and sufficient to justify the grant of a power to the Community which the Member State can manage perfectly well. If this is not the sense of the statement then there is simply no need for it to be included in the report.

Thus, the division of competence is not only open to amendment in the future, but the efficiency principle according to which the Union must justify its authority is counteracted by a cohesion principle which supersedes the subsidiarity condition and serves to guarantee a minimal set of Union competences where subsidiarity itself might not. The report is also, on the whole, rather generous in its allocation of competence to the Union, far more so than the Tindemans Report produced for the European Council. But perhaps the most revealing evidence that countenances against an interpretation of the introduction of subsidiarity as an obstacle to the centralisation of competence is the apparent fact that the idea was the inspiration of the unrepentant federalist Altiero Spinelli.

#### **4.3 Altiero Spinelli's influence on the concept**

Spinelli's track record as a committed federalist is well established. Having been interned by Mussolini until 1943 as a prisoner on the island of Ventotene, he penned in 1941 along with a fellow prisoner by the name of Ernesto Rossi a federal Manifesto of the same name as the island which was their prison. According to one author, the importance of this manifesto cannot be overestimated. It became "one of the basic documents of the European Federalist Movement, and the intellectual foundation of the Italian Federalist Movement" (Mayne, 1990, p.85). Ironically, it was English writers such as Lionnel Robbins who provided Spinelli with his early inspiration. In his Memoirs he writes that "I was not attracted by the foggy and contorted ideological federalism of a Proudhon or a Mazzini, but by the clean, precise thinking of these English federalists, in whose writings I found a pretty good key to understanding the chaos into which Europe was plunging and for devising alternatives" (Spinelli, 1984, pp.307-8). The alternative upon which his opinion came to rest was the creation of a European federation.

By all accounts, his own approach differed considerably from the functionalism of Monnet and his supporters. Gradual integration from the starting point of converging economic interests had its merits, but according to one author, Spinelli “always stressed the need for genuine federal institutions which would ensure the ultimate extension of supranational powers from economic to defence and foreign policies. That is why he never ceased to insist on the constitutional approach, in place of the functional one, by calling for a federal Constitution from the start, obtained by a democratic procedure” (Pistone, 1991, p.355; also Constantinesco, 1985).

The reason for interest in Spinelli at this point is that he was, at the time of the writing of the Report on European Union, the Commissioner for Research and Technology of the European Communities and heavily involved in the production of the report. This presented him with an ideal opportunity to promote his cherished vision in a more formal manner. According to his erstwhile secretary Virgilio Dastoli he was, in fact, directly responsible for the inclusion of the idea of subsidiarity in the report and for fleshing it out in the context of a future European Constitution (Dastoli, interview). In his early writings as a prisoner of the Italian government and then as an enthusiastic proponent of a European federation, Spinelli suffused his work liberally with unadulterated federalist language and with visions of a United States of Europe comparable in form and authority to its namesake across the Atlantic. The Report, however, is notably more restrained in its tone, direct reference to federal systems being avoided.

The Manifesto that he wrote whilst imprisoned is absolutely clear on one point of relevance to the discussion of subsidiarity, and that is that the sovereign power of states must be abolished. “The question which must first be resolved, and if it is not then any other progress made up to that point is mere appearance, is that of the abolition of the division of Europe into national, sovereign states” (Lipgens, 1985, p.478). The solution proposed is to federate the states of Europe using the American system as the model. In a letter from the Ventotene prisoners to a sympathiser, Count Sforza, it is implied that the prisoners have resolved to strive for a European federation as a result of reflection

“on the profound significance of the work of Washington, Hamilton and the other fathers of the federal Constitution” (Lipgens, 1985, p.496). However, the Ventotene writers were aware that the European situation was somewhat different from that of the federating states in America. Spinelli warns that “The European federation cannot come into existence as simply as did the United States of America. The way will probably be much more circuitous” (Lipgens, 1985, p.538). Another writer who published in the *L’Unita Europea*, founded by Spinelli and his Ventotene companions, Giorgio Peyronel, provides a pertinent analysis of why this is the case. With almost prescient wisdom he argued that the federation of Europe should not be of a supranational form, coming from the centralisation of activities above the States, but ‘infranational’ via decentralisation. This ‘infranational’ federalism, as he defined it, “involves the effective internal decentralisation of national states, a reaffirmation of the cultural, political and administrative autonomy of regions and communes, and protection of minorities which are distinct, racially or linguistically or for any historical reason, from the ‘nation’ to which they belong at the present day” (Lipgens, 1985, p.535). By balancing the decentralisation of authority with a matching central control of all, a system of efficient and effectively controlled government should emerge.

The benefits of decentralising seem to be twofold. The one is that “This form of federalism appeals primarily to the democratic principle of self-government from below” (Lipgens, 1985, p.535). The other is that “Only a skilfully designed system of local autonomy, allowing each region to find and apply solutions to its own vital problems, as it is best able to do, will make possible the fruitful development of local initiatives, co-ordinated and not obstructed by the central government” (Lipgens, 1985, p.535). The argument for this combined approach of centralisation towards European government and decentralisation away from the existing State governments was, thus, based on the view that it better promotes the two values of democratic self-government and efficient use of resources through a greater respect for the diversity of cultures and histories.

However, when subsidiarity appeared in the Commission’s Report on European Union it contained no discernible connection with a concern for local autonomy and respect for the diversity of cultures,

languages and traditions within EC borders. Instead, subsidiarity was introduced as an efficiency criterion designed to ensure that only those competences which are more efficiently managed by the federal centre, with control over the entire federal territory, than by authorities with control over parts of the federal territory should be transferred to that centre. The origin of this particular meaning of the word can be traced back neither to the church nor to these federal thinkers, and most likely pertains to the use of the word in the German federal politics of the post-war period. But to a degree the development remains a mystery.

Despite its importance in the Commission Report, the principle of subsidiarity was not included in the Tindemans Report on European Union that was submitted to the Heads of the Member States at the time. Tindemans acknowledged that there was some tension between governments concerning the format of any future European Union and a general lack of political will to overcome it, but whereas the Commission attacked the issue directly and produced a framework of constitutionally guaranteed powers based on the categories of exclusive, concurrent and potential competence, with subsidiarity included as a criterion for determining the division, Tindemans shied away entirely. He was content to acknowledge that he was personally convinced that the Union should be a federal organisation of States but unwilling to propose concrete measures to that end in the text of his own report. He touched on the issue of citizen participation in the project<sup>20</sup>, but nowhere mentions subsidiarity or even comes close to expressing the efficiency idea encapsulated by it at this time<sup>21</sup>. He does speak of the efficient functioning of the institutions, and this reappears in European Council comments in subsequent annual reports (European Commission, 1977, pp.9-10), but it is a different concern to the allocation of competence to the Union on the grounds of optimal managerial efficiency. The fact that subsidiarity was not utilised by Tindemans could suggest that he was unconvinced of its utility vis-à-vis the resolution of the tension to which both his and the Commission's reports refer. It could also

---

<sup>20</sup>He also referred to this issue in a separate statement announcing the completion of the report (European Commission, 1975b, p.7).

<sup>21</sup> The issue of taking decision-making to the citizen is integral to the analysis of the prospect for a European Union, but not at this stage connected by either Spinelli or Tindemans with subsidiarity.

indicate, perhaps, that he regarded it as too partisan an idea, either for the promotion or for the obstruction of federalisation.

The fact that the term appeared in none of the other reports submitted to Tindemans by the institutions of the EC is further evidence for its specificity to the Commission, and by extension to Spinelli himself. The fact that it failed to appear in the subsequent reports on progress towards European Union that both the Commission and the other institutions were invited by the European Council to submit on an annual basis, but reappears in European Parliament documents, coupled with the fact that Spinelli left the Commission to become an MEP in 1976, suggests that the idea was so specific to Spinelli that when he left the Commission the idea of subsidiarity went with him<sup>22</sup>.

From this point onwards the issue of European Union was firmly on the agenda of the Member States, and received annual attention in the form of reports from both the Ministers of foreign affairs and the Commission. But the issue of subsidiarity remained absent. The commitment to creating a 'Europe for its citizens', fast becoming by 1977 something of a cliché, continued to be given expression by the European Council (European Commission, 1977, pp.10-11), most obviously through the introduction of direct elections to the European Parliament in 1979. The Commission reports also picked up on the idea of a Europe for its citizens, but in neither case was the expression connected with subsidiarity. In fact, it was not until 1980 and the emergence of a new initiative in the European Parliament that subsidiarity reappeared.

---

<sup>22</sup> Even the analysis of the Commission's Report on European Union, which was published in the following issue of the Bulletin and with which Spinelli had no connection, notes only that "the tasks assigned to the Union will be *only those which the Member States cannot effectively accomplish*" (European Commission, 1975d).



#### **4.4 The contribution of the European Parliament**

Spinelli failed to complete his term of office as a Commissioner, which was not scheduled to end until January 1977, and became an MEP of the Communist and Allies Group on October 15th 1976 (Dastoli, 1986). In the EP, Spinelli continued his personal crusade to witness the idea of European Union take shape. Initially he was assigned to the Committee on Budgets and Economic and Monetary Affairs, but moved from this to the Committee on Political Affairs with which he remained until the direct elections in 1979, for which he stood as an independent candidate of the Italian Communist Party. He was re-elected and found himself once more working on the Budgets Committee, but soon after initiated an important development which was to give rise to the Committee on Institutional Affairs and ultimately the Draft Treaty on European Union.

The initiative has become commonly known as the Crocodile Club, named after the restaurant in which Spinelli and several like-minded figures met to discuss a Parliamentary strategy for European Union (Schmuck, 1990). In October 1980 this Club, under the authorship of Spinelli and Felice Ippolito, published its first issue of the Crocodile, which was circulated among the Members of the European Parliament. The document comprises largely of an attack upon the existing intergovernmental method of legislating at European Community level and the Member State veto which it entails, referring to this method as indicative of a con-federal system of governing (Gazzo, 1985, p.13). Ascribing various ills of the Community as the effects of this method, the document called for an all-encompassing institutional reform and proposed that the Parliament should itself establish to this end a 'constitutional working party' with the task of formulating a new Treaty. The European People's Party ensured that this initially ad hoc group became permanent, and thus was borne the Committee on Institutional Affairs (Schmuck, 1990, p.193). This Committee became the main vehicle for the promotion of the subsidiarity idea in Parliament.

For the preparatory work and the drafting of the new Treaty Spinelli was appointed co-ordinating rapporteur and thus was able to exert some considerable influence upon both the form and the content

of the eventual text. The Parliamentary groups proved to be divided over what the Treaty should include. Whilst a majority supported a full Treaty based on a federal model, there was a substantial minority in favour of more limited proposals based upon the existing Treaties and a smaller minority against any changes at all<sup>23</sup>. There was, thus, within the Parliament a similar diversity of preferences concerning the way to progress towards European Union as there had, for a long time, existed between the governments of the Member States. Support for the final product was, however, substantial, with the British and Danish Members recording the largest objection<sup>24</sup>.

The whole initiative was launched on the basis of a forward study presented by Spinelli to the EP in the form of three working documents of the Institutional Affairs Committee - a motion for a resolution, report and resolution, on June 21st 1982 (EP Institutional Affairs Committee, 1982)<sup>25</sup>. From this point onwards the word 'subsidiarity' appears constantly in Institutional Affairs Committee documents, and it is not necessary to detail every statement in which it is included. It is, however, important to detail the development of the ideas encapsulated by the word, and to assess the impression of MEPs concerning its utility in order to be able to establish the nature of the interests which were providing the idea with its momentum. The report clearly indicates that the focus for the forthcoming draft Treaty will be a new distribution of tasks between the Union institutions and the Member State governments, and introduces the notion of subsidiarity as the principle upon which the division of tasks is to be based.

The suggestion seems to be, as with the Commission Report from 1975, that subsidiarity is applied at the pre-constitutional stage to determine the constitutional division of powers between the central and State governments. According to this division, "the Union will undertake only - but all - those tasks

---

<sup>23</sup> The Liberals, the EPP and some of the Socialists were in favour of a new Treaty, the majority of Socialists, the French Gaullists and the British Conservatives in favour of limited changes and the Danes and French Communists against all changes (Schmuck, 1990, p.193).

<sup>24</sup> Schmuck makes the interesting point that the Committee was dominated by Italian and German Members, and argues that these exerted a decisive influence in ensuring that the Draft Treaty modelled a Federal constitution (Schmuck, 1990, p.194). The Institutional Affairs Committee was established on the basis of a European Parliament decision of July 9th 1981.

<sup>25</sup> The European Council had earlier launched a similar initiative on the basis of a joint German/Italian proposal, in November 1981, for a European Act.

which can be carried out jointly more efficiently than by the Member States individually, or which are essential to the existence of the Union” (European Parliament, 1982b, para.16). The statement indicates clearly that subsidiarity is a comparative efficiency concept, in which the two subjects for the comparison are the Union and the individual Member States. The statement also indicates unambiguously that the concept is subordinate to the need for cohesion in the Union, in the sense that the condition of comparative efficiency is overridden by cohesion concerns where they conflict.

There is no elaboration upon the method by which the principle might be applied, but there is a list, in the accompanying motion for a resolution, of the powers likely to be given over to the Union as a result. With respect to the powers of the Union the report indicates that the achievement of European Union will require both a strengthening of the existing powers of the Community and also the grant of entirely new ones in areas for which intergovernmental co-operation among Member States is currently, and sensitively, the norm<sup>26</sup>. The fact that the report envisages endowing the Union with powers for which even intergovernmental negotiation was at that time delicate would suggest that it was fairly bold in its proposals for competence transfer from Member States to Union. This view is supported by the fact that it concludes that nothing other than a ‘qualitative leap forward’ will provide the transition from Community to Union with any substance.

It is also supported by the details of an EP resolution on the report. In this resolution, again formulated under the direction of Spinelli, subsidiarity is presented in some detail. The report states that:

“The principle of subsidiarity - one of the essential principles of the Union - implies that:

---

<sup>26</sup> The report states that “This implies that the Union should possess appropriate powers to ensure compatibility and convergence among the policies of the Member States and the development of common policies not only in those areas laid down by the existing Treaties (which themselves need, in most cases, further strengthening and development) but also in a number of new areas including those in which intergovernmental co-operation among Member States has already tentatively begun. These areas are outlined in the draft resolution” (EP, 1982b, para.17).

- (a) the Union shall only undertake those tasks which can be executed more effectively in common than by the Member States separately, or those, the execution of which requires a contribution from the Union;
  - (b) the Union shall act only in clearly delineated areas;
  - (c) the Union's competence shall take strict account of the distribution of tasks and areas of activity between the Union and the Member States;
  - (d) the distribution of tasks, of areas of activity and of competence shall take account of the present state, but also of the prospects and the inevitable evolution of the Union;
- (European Parliament, 1982b, para.5).

The developments to the idea in evidence here do not have a history worth speaking of. There is no evidence to suggest that Spinelli and the other drafters of this resolution were at this point drawing on any other source for their embellishments to the concept than their own imaginations and the overall strategy of the European Parliament for achieving a European Union. Of the four points listed above only the first seems to constitute the idea itself as it was then presented in the documents of the European Parliament (the others representing qualifying conditions of its legal application in any future Treaty) but they are all significant to the understanding of the meaning of the concept.

Several points for discussion emerge from this expression of the idea. The first is that the principle cannot be understood without reference to the constitutional division of powers which it is designed to justify. Secondly, the principle applies to the constitutional division itself and therefore operates in the formation of the constitution, but there is no mention of its operation in the application of the constitution after it is formed. Thirdly, it seems, from the statement in point 'd', that the division of powers is somewhat open-ended, suggesting that subsidiarity would continue to be relevant whenever changes to the constitutional division of powers are made. Fourthly, it is clear that this statement on subsidiarity continues the idea initially established in the Commission Report from 1975, and remains largely true to the sense of the word therein, but with one obvious difference. The idea is now equated with effective government as opposed to efficient.

It is not entirely clear what the relation is between the categories of task, area of activity and competence introduced in point d. From the succeeding paragraph (six), which lists the expected competences of the future Union, it would appear that tasks are actions performed for which the Union possesses competence and one must presume that competences are possessed in areas of activity. This application of the word 'subsidiarity' differs in a number of ways from the Maastricht definition. Not only is the wording clearly different, but the basic framework for the application of the principle is entirely so, applying to the constitutional division of competences between Union and Member States rather than to the 'tasks' performed within a particular type of competence, i.e. concurrent.

Furthermore, Spinelli, who was the rapporteur, seems to have been proposing that the Parliament present, for ratification by the Member States, a draft Treaty in which a division of competences is already concluded, leaving subsidiarity functioning as no more than an apologetic justification from Spinelli and the other rapporteurs for the particulars. Reading paragraph six of the motion for a resolution does not leave the impression that here is a man sensitive to the need to limit the competences of the Union to a bare minimum. Rather, the motion proposes that the Union will be given competence not only for existing Treaty of Rome objectives, but also for general economic policy, monetary policy and monetary union, a 'policy for society' and a 'policy for security', and on top of this the power to "propose new initiatives, whenever the principle of subsidiarity so requires" (European Parliament, 1982a, para.6) in any of these categories. This particular statement from the motion is extremely revealing, for it unequivocally indicates that the report, and presumably therefore the rapporteurs responsible for it, envisaged that the subsidiarity principle was likely in the future to require that the Union do more rather than less.

In Part B to the same report subsidiarity is again referred to as an effectiveness criterion. However, this reference is qualified in much the same way as it was in the 1975 Commission report as indicating that "the Union will undertake only - but all - those tasks which can be carried out jointly more efficiently than by the Member States individually, *or which are essential to the existence of the*

*Union*” (EP, 1982a, para.16, emphasis added). This recalls the earlier implication, in the Commission Report from 1975, that the need for cohesion overrides subsidiarity where the two might conflict. The concept is also referred to a number of times in the EP debate on the Institutional Affairs Committee report (EP, 1982a, pp.13,22 and 32). These comments do not add anything of note to the meaning of the term. Interestingly, some criticism of the strategy of dividing powers in the report was levied, with the accusation re-emerging that some members of the EP described the European Union in language reflective of a super-State (EP, 1982b, pp.24 and 34).

There can be no doubt that Spinelli was creating and recreating the concept not on the basis of historical precedent but upon the basis of the wish of the institutional affairs committee to utilise it as part of a strategy to achieve a European Union. To this end it was designed as an appeal for the extension of Community powers on efficiency grounds in the belief that this would find a greater resonance with the preferences of citizens than allusions to a federal Europe, and that it would, given the then balance of powers between the Union and the Member States, result in pressure for further transfers of power from States to Union. In order to ensure that the principle did not undermine the development of this goal, the additional measure of cohesion was introduced as an insurance<sup>27</sup>.

---

<sup>27</sup> Pinder argues that Spinelli was aware of the danger and the unpopularity of centralising powers, and that Spinelli devised the concept of subsidiarity as the principal protection against such an eventuality (Pinder, 1985, p.105). But the analysis of subsidiarity statements and their semantic context suggests just the opposite, that Spinelli saw the concept as a clever method by which to promote his federal strategy. Consequently, whereas Pinder concludes that subsidiarity is unlikely to provide a strong enough guarantee against centralisation to counterbalance the various centralising emphases of the Treaty (Pinder, 1985, p.106), I would suggest that it was never intended to provide such a protection.

#### 4.5 Towards a Draft Treaty on European Union

It was not until July 15th 1983 that Spinelli and his fellow rapporteurs produced further statements on subsidiarity, in the form of another series of working documents<sup>28</sup>. The motion for a resolution on the proceedings is nothing but positive on the need for a Union, espousing the various benefits which the rapporteurs believe will be obtained and ignoring completely the sensitivities, cultural and political, to the transfer of competences that this would touch upon. Spinelli was responsible for the Preamble of the motion, and reiterated the importance of subsidiarity. The framework for the division of competences was written under the guidance of another rapporteur, Mr Karel de Gucht, but differs little from previous comments on the subject, reflecting closely the Commission Report's framework from 1975. The motion does, however, specify the nature of each category. Exclusive competence entails that the Union alone can act; concurrent competence entails the right of Member States to act only so long as the Union has not; potential competence entails the possibility of currently intergovernmental co-operation in specified areas becoming at a later date either exclusive or concurrent competence of the Union. For the main report Spinelli was given responsibility "for the preamble, the final provisions and the co-ordination of the various texts into a single resolution" (European Parliament, 1983b, para.3). Spinelli reiterated the implicit centralising agenda of the whole initiative, explaining its purpose as "to take a qualitative step in the process of European integration going beyond the important, but limited, achievements of the existing Communities" (European Parliament, 1983b, para.7).

The early draft which was published as part of this series confirmed that the proposed Treaty was "seeking, as the ultimate goal, to create a European Union with a constitution accepted by the member nations which specifies the federal nature of the relationship between the Member States and the Union....in accordance with the principles of representative democracy, the division of powers and subsidiarity" (European Parliament, 1983b, p.37), with nothing less than "an independent European

---

<sup>28</sup> There were six rapporteurs for the entire project. Spinelli's task was that of overall co-ordinator.

Government” (European Parliament, 1983b, p.38). It is not clear why the division of powers is expressed as a separate idea from subsidiarity given that to date the concept had been consistently defined in such a manner as to generate a division of powers through its application.

This is the only mention of subsidiarity in the text, but a similar idea appears later in Article 6 on the extension of the powers of the Union. This shall only be permitted when either “a matter cannot be effectively resolved by the legislation of individual Member States or the regulation of an issue by one Member State may be detrimental to the interests of other Member States or the Union or it is a question of preserving legal or economic unity, in particular preserving the uniformity of living conditions beyond the territory of a Member State” (EP Institutional Affairs Committee, 1983, p.44). The word also occurs in the explanatory statements preceding the draft and demonstrates a certain consistency in its emphasis upon the need for greater effectiveness, which seemed to have triumphed over efficiency as the basic variable of the subsidiarity principle. The principle also demonstrates a certain clarity in its emphasis that it is the greater effectiveness of the Union over that of the Member States acting individually which is the test, a clarity which is lacking in Article 3b of the Treaty on European Union. This paragraph includes, along with the subsidiarity statement, an indication of which powers will be given to the Union on the basis of the criterion, with new powers being granted in “foreign policy, security, European citizenship, culture and the achievement of monetary union” (EP Institutional Affairs Committee, 1983, para.12).

Spinelli also attached to the working documents an explanation of the terminology pertaining to the redistribution of competences (presumably dissatisfied with what had already been written by Karel de Gucht) in which he elaborates on the categories of exclusive, concurrent and potential competence and on subsidiarity. His comments on the categories of competence are not interesting for this discussion, but the comments on subsidiarity are, for they indicate, for the first time, that the principle was to apply both as a determinant of the constitutional division of powers, a feature absent from the eventual Treaty on European Union, and to the grant of action in any area of concurrent competence, a feature which becomes the essential operative characteristic of Article 3b TEU. At this point



subsidiarity has taken on two distinct roles in the proposed constitution. This is significant because where the original role remained unpalatable to the Council, the second was eventually to find favour. It is a moot point that this second role is considerably more limited than the first. The fact that the original role for subsidiarity was never adopted could suggest, on the justifiable assumption that the Council was on balance more reticent than the Parliament about granting new powers to the Union, that the Council was unconvinced of its utility as a restrictive criterion.

The content of this early draft and its partner documents demonstrates fairly conclusively that the agenda of the rapporteurs was to create a federal constitution which extended substantial powers to the central government of the Union. The tone of the idea of subsidiarity is no more that of a condition which limits the options for the justifiable centralisation of power than was the Commission expression from 1975, but of a condition which necessitates it. That the concern of the rapporteurs was to enable rather than to restrict centralisation is confirmed by the further conditions quoted above which, when read together, afford ample justification for the centralisation of a whole host of what were then Member State powers. Paragraph twelve of the explanatory statements is particularly revealing in this regard, for Spinelli is here content to follow upon the reference to the principle with a list of new powers for the Union which makes a mockery of an anti-centralising or restrictive interpretation, and is surely sufficient to dispel any lingering impression that the idea of subsidiarity is employed in any seriously restrictive or self-regulatory manner.

One might wonder why the principle is included at all. What did Spinelli hope to achieve by including it in Parliamentary analyses of the prospective Union and the requisite powers required to substantiate it? It is difficult to believe that he was in any meaningful sense demonstrating restraint. It is almost as difficult to believe that he was appealing to a common value which finds some sympathy in Council with the Member State governments. There is no evidence to suggest that the Council was at all interested in the idea or really understood its utility. Council statements on European Union and the studies produced on its behalf, such as the Tindemans and the Genscher-Colombo Reports, consistently ignore the term. Furthermore, the meaning of the concept had been altered from the

socio-philosophical ideas of the Catholic church to such an extent that it is equally difficult to believe that he was appealing to an antiquarian value of Western European political thought which might give weight to his arguments. The most convincing reason for the EP's persistent promotion of this principle seems to be that it afforded a justification for the demand for new and extensive powers to be ceded by Member State governments to the Union, based upon a rather vague respect for a criterion which was undoubtedly relevant to the integration process and probably well respected by governments. This was particularly true in the early 1980s when the Parliament was developing the idea. As it turned out, it was in fact the development of the single European market and not European Union which proved itself to be the more palatable to the governments of the time, and the idea of subsidiarity as an efficiency criterion certainly resonated well with such an endeavour.

On the basis of this evidence it is difficult to perceive the inclusion of subsidiarity in the Commission and Parliament documents as a barrier to the transfer of competence from the Member States to the Union in any sense at all. It is difficult indeed to find any connection between this idea and that in the Catholic church other than a loose linguistic one. Not only has any semblance of the church's focus upon the relation between the public and the private and the sense of personal dignity and individual sovereignty informing it failed to find expression, so too has any sense that the idea serves the interests of anti-centralising groups. It is easier to perceive subsidiarity in these initial Parliamentary documents as providing some theoretical justification, by a proxy appeal to the value of efficient government, for the grant of new competences to the European institutions which are to be proposed as the substance of the future Union. The real concern is not to limit what the Union shall do to a bare minimum. It is not even to limit the Union to what it can more efficiently perform. The reports indicate that any powers required for the existence of the Union, however defined, shall be given to it regardless of whether the Union can manage them more efficiently than can the Member States. The real concern is to develop a constitution based upon a guaranteed division of powers and responsibilities between Union and Member States, and the idea of subsidiarity is adopted and

developed to serve this end, with the division of competence which it serves to support being decided by Parliament and then presented to the Member States<sup>29</sup>.

Spinelli was certainly aware that his and the other rapporteurs' efforts were not that popular with the other institutions of the Community and surely foresaw that much of the draft Treaty under construction would have had little chance of being translated by the Council into law. That he was aware of this is indicated by his complaint, in a note on the main resolution of July 15th 1983, that "these resolutions have been virtually ignored by the Commission and the Council, both of which have flouted the political authority of the Assembly, the former by continuing its tactics of deliberately putting forward isolated and excessively detailed measures in line with a supposed 'pragmatic' approach, the latter by confirming its determination to reduce everything to perpetual, and all too often inconclusive, intergovernmental negotiations" (European Parliament, 1983b, p.163).

In this light, the promotion of subsidiarity as a reassurance to the Council that the Union would only take powers that would improve the effectiveness of the policies currently under Member State control is entirely comprehensible. That it failed to convince is perhaps a measure of Spinelli's failure to limit his own, and his colleagues', ambitions for the Union likewise, thus proving to the Council the inability of the principle to have such a restrictive effect, and simultaneously demonstrating the EP's own lack of serious interest in it having such an effect. In the event, the draft Treaty was by and large ignored by governments, who employed a Commissioner, Lord Cockfield, instead to produce a less ambitious set of proposals which provided the basis for the single market programme, leading eventually to the Single European Act. The overtly federal agenda of the EP Draft Treaty was undoubtedly partly to blame for its rejection by the Member States as a basis for negotiation.

---

<sup>29</sup> Van Kersbergen and Verbeek (1994) interpret these early definitions of subsidiarity in a similar vein.

#### 4.5.1 Subsidiarity and the Draft Treaty on European Union

The final Draft Treaty was ratified in Parliament on February 14th 1984 and then submitted to the Member State governments for their endorsement. It adopts a similar framework to that of the earlier proposals from the Commission in 1975, structuring the powers of the Union around a division of competence between the EU and the Member States, although the categories are slightly different. Exclusivity and concurrency remain, but the category of potential competence is abandoned. The word ‘subsidiarity’ occurs only in the Preamble to the text and with reference to the division of powers between the Union and the Member States, according to which the Union shall be endowed ‘only with those powers required to complete successfully the tasks they may carry out more satisfactorily than the States acting independently’. The choice of the word ‘satisfactorily’ is something of a departure from previous expressions of the idea, and suggests that the principle was rather fluid in definition. But the idea also occurs in Article 12.2 in reference to actions performed under the rubric of concurrent competence, whereupon the more familiar language of effectiveness returns:

“Where this Treaty confers concurrent competence on the Union, the Member States shall continue to act so long as the Union has not legislated. The Union shall only act to carry out those tasks which may be undertaken more effectively in common than by the Member States acting separately, in particular those whose execution requires action by the Union because their dimension or effects extend beyond national frontiers” (Single European Act, Article 12.2).

The opening sentence suggests that the notion of concurrence is one in which Member States act only until the Union acts and thus reflects the idea of pre-emptive concurrence explored by authors such as Schilling (1995). The second sentence indicates that the Union is allowed to act when its own actions are more effective than those of the Member States. It is a clear expression of comparative effectiveness in which the comparison is between the Union and individual Member States. The second sentence is also clear on the relevance of ‘dimensions and effects’, these being particular instances where Union action is likely to be more effective. The sense is that both ‘dimensions and

effects' apply to the required action rather than the problem which the action is required to resolve. This introduces the same incongruity as is present in Article 3b TEU, namely that the need for Community action is dependent upon the generation of the task itself which, if large enough, automatically justifies it.

The final draft firmly establishes the dual function of subsidiarity as a determinant of both the constitutional division of powers between the Union and the States and also the division of tasks between the Union and the States vis-à-vis those competences defined as concurrent. It also elaborates the definition of the concept, reiterating its effective government basis, but adding to this a reference to the cross national effects of the required action as an indication of when it is likely that Member State action will be less effective than Union.

At this point there is no evidence of any contest between alternative meanings of the concept or, by extension, of meanings of the term other than that offered by Spinelli. This meaning appears in a functional sense to be part of his, and the Parliament's, agenda to realise their federal version of European Union. The European Parliament debates on the Draft add little to this meaning, but one comment is, however, particularly interesting. One MEP, having claimed patrimony for the concept and later being rebuked for it, supports the idea as a reassurance to those in the UK who do not understand, in his view, what Europe means (EP, 1982a, p.32). The implication of his comment is that subsidiarity means that the European Union will not become the super-State which he suggests many in the UK think it will, and points towards a clearly restrictive understanding of its relation to integration. Furthermore, he continued by stating that "I am in one sense a minimalist for the Community and for every other level of government, be it local or national. I want decisions and decision-making to be kept as close to the people as possible, only raising them to a more remote level - a county, or a State, or European level - if there is real advantage to the people in doing this. But it is no contradiction that I want to build a Community of real powers, more than at present, but of functions, of course, limited to those matters which the Community can perform better than the Member States" (EP, 1982a, p.33). The context of this statement indicates clearly that subsidiarity is

the concept under discussion. It introduces, for possibly the first time, a clear connection between subsidiarity, understood as a principle of comparative efficiency, and the taking of decisions close to the people. The connection established here is one of conflict between two values working towards opposite ends. On the one hand, a value of representative democracy that specifies localised decision-making, and on the other hand subsidiarity which weakens the localised element in return for efficiency gains. This conflict is interesting because at a later stage the notion of decisions which are close to the citizen becomes a standard, and ambiguous, substitute for subsidiarity.

This connection is reiterated later in the same debate by another MEP, who suggested as a component to the word 'subsidiarity' "the reservation of powers in our union at the most local level, compatible with efficient government" (EP, 1982a, p.49). At this juncture the concept is no longer one of comparative efficiency in the strict sense. A distinct bias has been introduced in favour of decentral government. In practice, it might result in a simple comparative efficiency outcome but semantically this expression of subsidiarity is distinctly different from that which had dominated the institutional discourse to date.

#### 4.5.2 Subsidiarity and the Single European Act

The references to subsidiarity in the Draft Treaty were not translated into the Single European Act. Nor was the basic scheme of competence division, suggesting that the subsidiarity idea was at the time intimately linked with the division of powers between levels of government upon which the structure of the Draft Treaty was based. The fact that the word is not included in the Treaty at all makes the SEA of peripheral significance to the development of the meaning of the concept. Consequently, despite the importance of the Single European Act to the evolution of the European Union, it is not as important to the development of the meaning of subsidiarity.

However, the SEA did serve to bring subsidiarity to the attention of the British government, whence emerged an early indication of a different notion of the concept from that which was current at the

time. A British House of Lords (HL) Select Committee analysis of the SEA, as part of the ratification process in the UK, expressed the view of subsidiarity that “It is an important restraint against wide-ranging incursions by the Union into areas where it has no business to be. It would be enforceable by the Court of Justice”. (HL Select Committee on European Legislation, 1985, pxxxv). Consequently, the SEA seems to be a pivotal point, despite its rejection of the subsidiarity principle and the scheme of competence division upon which it was then based, in the emergence of an interest in the concept beyond that of the European Parliament.

It has also proven important in retrospect as a reinforcement of the notion of subsidiarity as comparative efficiency in policy areas of a clearly, as is the case with environmental policy, transboundary nature. This has been achieved by an interpretation of Article 130r, a provision relating to environmental policy, as an example of subsidiarity. The relevant section of the article states that “The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States” (Single European Act, 1986, Article 130r.4).

Numerous authors have identified this text as an example of subsidiarity in the SEA (Teasdale, 1993; Golub, 1996). The fact that they have done so is perhaps the most significant aspect of the relationship between subsidiarity and the SEA, for the reason outlined above, namely that it has proven important in promoting the idea that subsidiarity is a comparative efficiency concept most suited to those policies which have undisputed transboundary implications.

#### **4.6 Conclusion**

The evolution of the meaning of subsidiarity prior to the Single European Act was dominated by a comparative efficiency notion developed by the European Parliament. Spinelli was a key figure in this development, being the link between the Commission Report of 1975 and subsequent institutional affairs committee reports of the European Parliament, for which he was the rapporteur.

The meaning of subsidiarity during this time finds its context in the strategy of the EP to achieve a federal type European Union. Consequently, the concept is aptly interpreted within a distributive issue context as a novel term by which to engage distributive issues. However, the concept reads as a term by which to promote the development of a federal Union rather than as one designed to prevent it, and there is little, if any, sign of the meaning of the term being contested by other contributors to the institutional discourse. In fact, one might go so far as to say that the concept was incomprehensible outside the context of the scheme of competence division devised by the institutional affairs committee for the Draft TEU.

The link between this comparative efficiency notion and the texts of federal constitutions is reasonably clear. Both contain constitutional type requirements within the context of power distribution. However, the link is not semantic. That is, there is not a similar expression of comparative efficiency in the 10<sup>th</sup> amendment of the U.S. constitution or in Article 30 of the German Grundgesetz. The link would appear to be based more upon contextual similarity. As for the relevance of the Catholic ideas in *Quadragesimo Anno*, the comments from MEPs, which demonstrate an emerging bias towards decentralised government, perhaps provide an early indication of the instrumental link between ideas of subsidiarity in the EU and this Catholic church tradition, but there is certainly no indication of any appreciation of the philosophy of encyclicals such as *Rerum Novarum* and *Quadragesimo Anno* in the meaning of the term. Given the agenda into which the concept had been placed by the institutional affairs committee, this is not surprising.



## **5 DEVELOPMENTS IN THE MEANING OF SUBSIDIARITY: 1986 - 1992**

### **5.1 Introduction**

The period between 1985 and 1992 is characterised by efforts on the one hand to implement the Single European Act, and by efforts to amend the existing treaties in a new Intergovernmental Conference on the other. Before 1985, the concept of subsidiarity remained an idea that was focused upon simple notions of comparative efficiency and comparative effectiveness, applied in the context of the distribution of powers between the Member States of the European Community and its central institutions. The concept also remained an idea that appeared almost exclusively in the documents of the European Parliament with little, if any, sign of interest in the concept from other institutions or from the Member States.

This is not true, however, for the period between 1985 and 1992. During this time the appeal of the concept widens among both the institutions of the Community and its Member States, signifying an increase in its profile as a concept in the institutional discourse on European Union. The meaning of the concept also expands during this period, with several new notions emerging to complement the existing ideas of comparative efficiency and comparative effectiveness. Of these new meanings, the most visible are that subsidiarity is a concept which permits the centralisation of powers only when absolutely necessary and that it is a concept which specifies that decisions should be taken as closely as possible to the citizen. Other ideas, such as a general expression of comparative advantage via the use of the term 'better', also become frequent methods by which to express the subsidiarity notion.

Furthermore, when these expressions are considered in relation to their context, the range of meanings expressed through the concept increases even further. The Commission President, Jacques Delors, for example, relates ideas of comparative efficiency specifically to the importance of protecting cultural and linguistic diversity (Delors, 1989c). As a consequence the idea of subsidiarity

becomes a more synthetic fusion of the need both to protect diversity and to expand the powers of the Community than is the case, for example, with the idea as it is presented in documents of the European Parliament. A link also emerges between subsidiarity and a debate about the role of regional government in the European Union. This link is reflected in the inclusion of regional government alongside the Community and its Member States as a level of government which the meaning of subsidiarity addresses.

In addition to the expansion of the institutional sources in which subsidiarity statements occur, and an increase in the number of basic ideas which are expressed through the meaning of the term, a clear distinction also emerges in the way in which these ideas relate to the issue of the distribution of powers. On the one hand these different ideas are applied to the distribution of actual control over policy areas, which is closely linked to the development of the categories of exclusive Community powers and those powers which the Community shares with the Member States. On the other hand these ideas are applied to the distribution of tasks or actions between the Community and its Member States within the category of shared powers. This distinction has sometimes been expressed in the interpretation of subsidiarity as the difference between the allocation of powers and their exercise.

However, both the allocation of powers and their exercise remain within a distributive issue context, insofar as they both address the question "who is to do what?" (Gretschmann, 1991, p.45). But there is also evidence during this period of an emerging application of subsidiarity in a very different context, namely the non-comparative assessment of the quality or character of Community powers. This is a different context primarily because it addresses the question not of what powers the Community should have but of how the management of those powers can be improved. This is a fundamentally different question expressing a fundamentally different concern because it is non-comparative and addresses solely the European Community as opposed to the European Community in relation to other levels of government within it. In particular, it does not bear at all upon the distributive question of the balance of powers between the Community and its Member States.

This issue of the quality, as opposed to the quantity, of Community powers becomes an increasingly clear aspect of the institutional discourse after the signing of the SEA. It is initially connected with the meaning of subsidiarity only in the sense that the terms by which this issue is engaged, such as efficiency and democracy, are the same as those by which the meaning of subsidiarity is often expressed. But before long, this contextual development is reflected in the statements about subsidiarity itself.

The emergence of the ambiguous notion of proximity to the citizen is an early sign of such a shift in the meaning of subsidiarity. The idea of proximity could refer spatially to the relationship between different degrees of centralised government. It could also refer, however, qualitatively to the relationship between the citizen and the State, expressing closeness between the two not in spatial terms but in terms of involvement and inclusion. This subtle link is made more explicit in the proposal for a hierarchy of norms. The hierarchy of norms is presented as an aspect of the meaning of subsidiarity and is designed not to influence the distribution of powers between different degrees of centralised government but to improve the comprehensibility and effectiveness of Community legislation.

However, the connection between subsidiarity and the quality of Community powers is heavily overshadowed by its connection with the distribution of powers, particularly once the negotiations began to revise the existing treaties. However, a sign of this connection is incorporated into the eventual Treaty on European Union in the Preamble, which states that the Union is 'Resolved 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'.

## **5.2 The expansion of the meaning of subsidiarity**

The Single European Act (SEA) was signed in December 1985 and became part of the legal structure of the Community in July 1987. Despite the commonly encountered view that subsidiarity was written into the SEA in Article 130r, the word itself was not. Member States contented themselves with the inclusion of no more than a general statement on the regulation of environmental issues according to the criterion of which government - Community or Member State - could 'attain better' the policy objectives expressed in the above article.

Institutional and Member State reactions to the SEA made little reference to the exclusion of subsidiarity from the Treaty. Nor did these reactions criticise the SEA in terms of subsidiarity, apart, that is, from the European Parliament. This is not surprising, given that prior to the signing of the SEA the subsidiarity concept was the almost exclusive property of the European Parliament. What little the documents of the EP expressed concerning subsidiarity and the SEA added little to the meaning of the concept which the EP had already developed. The EP continued to promote the structure of its Draft Treaty, including the Draft Treaty's system of competence distribution and its explicit federal goal. Several resolutions on "the strategy of the European Parliament for achieving European Union" and on "preparations for the transition to European Union" confirm this (EP, 1987a, para.r; also EP, 1986b). In one of these resolutions, the EP specified four basic principles of this federal Union. One of these is subsidiarity, "according to which only those powers which, in the general view, can more effectively and at less cost be exercised at European rather than national level, are transferred to the Union" (EP, 1987a, para.5).

The differences between this definition and previous EP expressions of the subsidiarity idea are minimal. The use of the word 'powers' in the statement suggests, perhaps more strongly than definitions before where the words 'task' and 'action' were preferred, that the meaning of subsidiarity incorporates a regulation of the allocation of powers in general rather than a regulation of action in

the field of concurrent competence<sup>30</sup>. Another of the four principles upon which this federal Union is premised is an open-ended upper limit to the powers of the Union, enabling the grant of new powers to the Union in the future should there appear to be grounds for doing so. This confirms, as have other ideas such as the cohesion principle, that the meaning of subsidiarity was not one that would seriously restrict the transfer of powers to the Community.

However, in 1988 a meeting between the Commission President and representatives of the German Länder initiated a widening of interest in the concept, which was reflected in the emergence of some distinctly different meanings of subsidiarity to that expressed in the documents of the EP. In the period prior to the signing of the SEA, Commission documents, except for the brief interest demonstrated by Spinelli while he was himself a Commissioner, had demonstrated little interest in the concept of subsidiarity. With the new President, Jacques Delors, taking office in 1985 this began to change, particularly following the meeting between the Commission President and the Länder representatives in May 1988.

#### 5.2.1 Subsidiarity and the centralisation of power - Länder, British and Commission concerns

The meeting provided a forum in which the Länder representatives could bring to the attention of the Commission President competence problems which had arisen as a direct consequence of the increased legislative activity that the SEA had initiated. Subsidiarity was presented by the Länder representatives as a useful method for resolving these competence problems in areas such as media policy. As an example of what was discussed in the meeting, the Bavarian representation stated that:

“It is...unfortunate that the community also tends to include areas like cultural policy, education and training policy, health policy and regional policy in their competence. These are areas that, according to the Grundgesetz, belong exclusively to the German federal states... Accordingly, the prime ministers of the federal states decided

---

<sup>30</sup> This recalls the point that there is a difficulty in drawing distinct differences in the meaning of powers, competence and action, but failure to do so generates confusion.

unilaterally in October 1987 the ways of proceeding towards European unification taking these thoughts into consideration. According to this decision a future oriented fruitful co-operation between the EC and the member states must be based upon: compliance with the contractual basics of European unification, realisation of the principle of subsidiarity and compliance with the federal values in EC politics" (Länder of the Federal Republic of Germany, 1988, my translation).

The extension of Community competence was clearly an issue of serious concern for the Länder. Their response was to request the introduction of the subsidiarity principle into Community affairs as part of a strategy to regulate future extensions of Community competence. The context in which they presented the concept expresses a meaning of subsidiarity which is both federal and anti-central in essence, and very different from the EP ideas of comparative efficiency and comparative effectiveness. The idea is still linked strongly with a federal system and power distribution, but it is also linked with the creation of a proper balance of responsibilities between the central authority and its constituents, a link which stresses, in considerably cooler tones than is the case in EP statements, the relation between subsidiarity and central authority. This is confirmed in an important Länder report called the "Cornerstones of the Länder for federalism in a Unified Germany" (Länder, 1990). This particular report indicates that the Länder were seeking to protect their powers from incursion by the Community, by altering both the Community system and their own federal system which, at the time, enabled the central German government to transfer powers from the Länder to Community institutions.

Delors responded positively to the ideas presented to him at the Bonn meeting and soon began to make statements on subsidiarity himself. One of the first of these of any significance was in a speech delivered to the EP in January 1989, in which he referred to the policies of the Community as "adhering to the principle of subsidiarity to avoid wasteful and excessive centralisation" (Delors, 1989a, p.10). The tone of this reference to the concept clearly recalls the idea of the 'centralising super-State' which first introduced subsidiarity to the institutional discourse on European Union back in 1975. It also reflected the sentiments expressed in the meeting with the Länder. It is not clear

whether Delors was referring, by 'centralisation', to powers to make laws or to powers to implement them, and by extension whether he was referring to issues of power allocation or to what are essentially administrative concerns. But it is clear that he was expressing subsidiarity in similar anti-centralising terms to those used by the Länder representatives, and in so doing reviving the contextual focus of the 1975 Commission Report.

This sentiment is developed, and linked specifically with the notion of diversity, in the statement that "This principle has another, even more cogent, justification. Europe was in danger of being paralysed by internal division. Europe's diversity, by contrast, makes it prodigiously rich. This diversity must be preserved, so that it can bear fruit for the common good." (Delors, 1989a, p.10). This link between subsidiarity and the protection of national diversity is also expressed in a later speech to the College of Europe in Bruges. There he states that "The acceptance of the subsidiarity principle implies respect of pluralism and thus of diversities" (Delors, 1989c, p.5). This focus upon the connection between subsidiarity and the protection of national differences reinforces the idea that subsidiarity is concerned more with preventing the expansion of the central authority than with promoting it.

In both of these statements Delors recalled the meeting in Bonn, six months earlier, through his emphasis upon the potential of the subsidiarity idea to protect Europe's diversity. Turning to this notion of diversity might also have been a response to the critical identification of the European Union with the United States (U.S.), the reference to the U.S. implying that the existing cultural and linguistic diversity in the Community would eventually be lost if the Community continued to accrue power. Delors was clearly concerned with the equation between the Community and the United States. Later in his Bruges speech he specifically addressed it, in the statement that "For my part, I have always rejected such a parallelism, since I know that we have to unite, between them, old nations which have their own traditions and their own personality. There is thus no plot against the nation, and nobody is requested to give up legitimate patriotism" (Delors, 1989c, p.6). The clear inference is that Europe must unite, but in a manner which will produce a very different outcome from that exhibited by the US, and subsidiarity is one reason why the outcome will be different.

Delors suggested, as one specific method for limiting the powers of the Community, that the Commission itself must apply the concept to its own activities. "The Commission", he states, "must never become intoxicated by the extent of its powers. It rigorously applies the subsidiarity principle" (Delors, 1989c, p.4). This connection between subsidiarity and the specific control of the powers of the Commission, as opposed to the general control of the powers of the central institutions, is one which is adopted later by the United Kingdom (UK) government and developed into the notion that subsidiarity means 'centralisation only when absolutely necessary'. In a UK House of Lords report from October 1990, for example, (HL Select Committee on the European Communities, 1990a), the then Foreign Secretary is questioned about subsidiarity, and states that "That struck us as a good concept and an antidote to some of the activities of the Commission before the current President took office, when there was undoubtedly a certain amount of scurrying around on matters of minimal importance which did not really require to be dealt with at Community level. If one could - and it is still an 'if' - define the doctrine satisfactorily, and how and who should test the wisdom of Community effort at decision-taking within the sphere of competence, that might be an advance. We have taken up the idea and are working to see if it can be given some more specific character, as opposed to the common-sense character it already has, but we are not yet clear." (HL Select Committee on the European Communities, 1990b, p.208). The definition which they were eventually to produce focused upon the centralisation of powers on the basis of the inability of constituent States to manage them, rather than on their inefficiency in comparison with that of the central government.

With the ideas of the UK government in mind, Delors was perhaps wise to adopt a conciliatory and self-deprecating meaning of subsidiarity. Not surprisingly, this is quite different to the meaning of the concept which is visible in the documents of the European Parliament. The EP developed a meaning of subsidiarity as a general notion of comparative advantage which supported totally the programme for a federal Union based on a generous division of powers in favour of the centre. Delors' ideas represented a meaning of subsidiarity which broke out of this comparative advantage mould and expressed genuine concern with the dangers of centralisation. This concern would eventually find expression in the notion that subsidiarity means 'centralisation when necessary', which would prevent



the centralisation of a policy unless the states were unable to manage it, quite apart from any comparative advantage in doing so.

#### 5.2.2 Synthesising support for and opposition to the centralisation of powers – Delors' reply

Prior to his meeting with the Länder, Delors had already demonstrated a clear concern with the issue of competence distribution in the European Union and an awareness of the sensitivities of some Member States to a loss of national sovereignty. This awareness was demonstrated by his emphasis upon decentralised government, particularly through the link between subsidiarity and proximity to the citizen. But Delors did not abandon entirely the positive connection between subsidiarity and centralised government visible in the documents of the European Parliament. Instead, he developed a synthetic approach to the relation between centralisation and decentralisation.

A central event in this development was his speech to the College of Europe in Bruges. The previous year Margaret Thatcher had addressed the College and set out her vision of Europe, and Delors' speech to the college could be read as a direct response to her ideas. At one point in the speech he states that "I see in it [subsidiarity] the inspiration needed to reconcile what appears to many irreconcilable: the emergence of a united Europe and fidelity to our nation, to our motherland; the need for a European power, commensurate with the problems of our times, and the vital imperative of preserving our nations and our regions, as a place in which to nurture our roots; the decentralised organisation of responsibilities, in order never to entrust to a bigger structure what can be better implemented by a smaller one. This is precisely what is meant by the subsidiarity principle." (Delors, 1989c, p.1).

The idea expressed in this statement is that subsidiarity is a concept which balances the need to increase the powers of the Community with the equally important need to protect national diversities. Subsidiarity thus becomes a synthetic idea which brings together the two sides of the distributive argument and offers a solution by suggesting that, in subsidiarity, both sides might find a common

value. Delors does demonstrate a greater sensitivity to what he regards as the need to protect decentralised authority against the centre than is the case with the European Parliament, but he does not back away from the need also to increase the power of the centre. Interestingly, he stresses this point through the employment of language strongly reminiscent of the papal encyclical *Quadragesimo Anno* - the text which has been interpreted as the origin of the subsidiarity concept. The reference to 'the decentralised organisation of responsibilities in order never to trust to a bigger structure what can be better implemented by a smaller one' maintains a focus on the distribution of powers, but it does so by utilising the abstract framework of 'structures' which is visible in the papal encyclical rather than the more specific framework of 'governments'. In so doing, the idea that subsidiarity relates to the role of the State in society as well as to the distribution of functions within the State itself is again inferred.

Delors' contributions to the meaning of subsidiarity represent a dialectical analysis of the distributive problem, for which subsidiarity is the synthetic solution. This is a theme which occurs throughout the Bruges speech. Delors posed the dialectical problem in terms of unity and diversity, individual sovereignty and common sovereignty, freedom and power<sup>31</sup>. The tension between shared and individual sovereignty is a particularly frequent concern. At one point Delors attacks what he calls "the fiction - deliberately perpetuated - of full sovereignty, and consequently of the absolute effectiveness of national policies" (Delors, 1989c, p.4). This is, perhaps, a misreading of the logic behind the promotion of national over Community solutions to public policy problems, insofar as it is not obvious that the basic argument for the protection of national sovereignty rests on effectiveness at all. But it clearly indicates that on this sovereignty issue Delors favours the idea of common as opposed to individual State sovereignty. Yet equally, and somewhat paradoxically, he also supports an idea of subsidiarity which is designed to control the powers of the centre rather than to promote them. It was his support for both of these outcomes which enabled him to develop subsidiarity as a synthetic solution which, as he later stated himself, was designed to take the debate out of the "sterile

---

<sup>31</sup> The theme of 'unity in diversity' re-emerges during the ratification of the TEU and also, for example, in the high profile

dichotomy” (Delors, 1991, p.8) between support for further integration on the one hand and opposition to it on the other.

Delors’ ideas continued to mature along this synthetic and conciliatory line. The focus of the meaning of subsidiarity on the issue of the distribution of powers persisted, and even became, at times, explicit. In his speech to the EP on the Commission’s programme for 1990, he stated, for example, that “As far as competences are concerned, the notion of subsidiarity, as I have already said, should be the key to any programme for the redistribution of responsibilities between the different levels of power, community, national and regional. And in the Federation of twelve - unusual insofar as the central authority will have primarily a role of impetus - it should provide the permanent counterweight to the natural tendency of the centre to accumulate power in order to reduce the risks of an excessive bureaucratisation.” (Delors, 1990, p.7, my translation).

This statement demonstrates clearly that Delors, in developing his own notion of subsidiarity, remained primarily focused on the distribution of powers as the basic issue which subsidiarity addresses. But it also indicates that he continued to stress subsidiarity as a concept which would control the expansion of the central authority rather than promote it. In so doing, he created a clear bias in favour of decentralised government which takes far more seriously than does the expression of subsidiarity in EP documents the need to control the growth of the central government. The seriousness with which Delors perceived this need to control the centre is reflected in his efforts to synthesise, in the meaning of subsidiarity, the opposing theories of sovereignty which he identified as the basic problem which must be overcome if European Union is to be achieved. It is also reflected in his emphasis on the protection of the powers of local and regional authorities as much as those of the central governments of the Member States. The inclusion of regional and local government in the distributive equation is a constant feature of the meaning of subsidiarity in Commission documents in general, and in the statements of Delors in particular.

---

Chatham House speech by the German foreign minister Dr. Werner Hoyer entitled “Unity in Diversity: The Future of

Interpretations of the meaning of subsidiarity in the institutional discourse on European Union recognise the importance of both the meeting between Delors and the Länder representatives and Delors' subsequent interest in subsidiarity. But the interpretation of this period focuses more upon the reasons why the Länder and the Commission President were interested in the concept than on what they meant by it. To this end the philosophy of Delors, which is traced from Catholic ideas and the personalism of thinkers such as Mounier, is offered as an explanation of his own interest in the idea. The Länder interest in the concept is explained in more instrumental terms (Endo, 1994)<sup>32</sup>. Interpretations largely ignore, however, the meanings of subsidiarity that emerge from this period, the most significant of which is the subtle connection between the State and society, and the hint at a qualitative approach to the powers of the Community in addition to a distributive one.

### **5.3 Connecting subsidiarity with the debate on the quality of Community powers**

It was noted earlier that the documents of the European Parliament were critical of the SEA. What has not yet been mentioned, but which represents an important contextual development for subsidiarity statements, is the specific nature of the criticism. The opinion that the Community needs more powers, or that it needs a clear framework for allocating powers - both of which one might expect on the basis of what had gone before in EP documents - is absent. Instead, criticism is directed towards qualitative points rather than quantitative ones, as in the statement that "the proposed modifications to the decision-making process do not offer the necessary guarantee as to the effectiveness and the democratic character thereof" (EP, 1985, para.3).

This criticism of the quality of Community powers and structure occurs in a succession of EP resolutions and reports during 1985 and 1986. A resolution on the SEA from 1985, for example, states that the Single Act "fails to make any provision for methods of decision-taking and execution

---

Europe" (1995).

which would allow the Community to act effectively, or for a legislative procedure which would make it possible for the European Parliament to take a democratic part in the powers which have been removed from the national parliaments and transferred to the European level" (EP, 1985b, p.144). Again, the criticism focuses on the quality of Community structures rather than the quantity of its powers, and is both non-distributive and non-comparative.

The relevance of these criticisms to the meaning of subsidiarity is twofold. Firstly, they are a first indication of a development in the focus of the discourse on European Union from distributive issues, relating to the question of how much power the Community should be given, towards qualitative issues, relating to the question of how the management of the powers which have already been given to the Community might be improved. This development is important for the interpretation of the meaning of subsidiarity because it is closely linked in a contextual sense to subsidiarity statements. It also mirrors similar changes which are apparent in the meaning of subsidiarity. Secondly, these criticisms are made through the use of ideas such as efficiency and democracy, both of which have also been used to express the meaning of subsidiarity. Whilst this does not mean that subsidiarity itself must be changing in meaning, simply because other concepts to which subsidiarity is related are themselves occurring in a new context, it does signify a connection between subsidiarity and the quality of Community powers insofar as both are discussed through the use of the same language.

The interplay of efficiency and democracy ideas between the issues of the *quality* or *character* of Community powers and the *quantity* of Community powers is taken a step further in an EP resolution on the SEA from October 1988 (EP, 1988a). This resolution summarised the opinion of the EP on the SEA, arguing that the SEA is inadequate in three respects. These three respects are the competences of the Community, the efficiency of decision-making and the closely related issue of the quality of institutional democracy, all of which are held to be insufficient. In particular, the resolution states that the lack of democracy is increasing "since the competences which are being transferred to the

---

<sup>32</sup> Delors himself acknowledges the importance of this philosopher for his own intellectual development (Delors, 1989c, p.2).

Community by the national parliaments are not subject to adequate powers on the part of the European Parliament” (EP, 1988a, p.97). This statement suggests that the transfer of powers to the EC is itself a cause of the democratic deficit, the solution to which is to give greater powers to the European Parliament<sup>33</sup>. The complex interplay of related ideas across these two issue contexts is thus taken a stage further through the direct link between the increase in Community powers and a concomitant decrease in the democratic character of Community structures, which can only be remedied by altering the balance of powers among the central institutions.

The same point emerges from the EP’s other resolutions on European Union during this period. In 1987, for example, the European Parliament published a report on the democratic deficit and the effectiveness of the institutions of the Community (EP Institutional Affairs Committee, 1987b). The word ‘subsidiarity’ does not occur in the comments, but a link is established through the idea that the democracy and efficiency of the institutions is adversely affected by increases in the powers of the Community (EP Institutional Affairs Committee, 1990b; also EP, 1990c). From this it follows that increasing the powers of the Union on the basis of the subsidiarity notion will reduce the effectiveness and democracy inherent in the institutional system, as a consequence of which subsidiarity lends an added urgency to these other requests for greater institutional effectiveness and democracy, and in some cases transfers of power from the Council to the EP. The report demonstrates a continued development in the construction of the EP’s ideas for engaging the issue of a European Union, along the lines of the two sub-issues of power distribution and power management, for which efficiency and democracy become the central ideas (see also EP, 1990d: annex<sup>34</sup>). In addition, subsidiarity is further connected to qualitative issues to the extent that the distribution of powers is linked as a cause of the democratic deficit, which can only be reduced through improvements to the institutional system of the Community itself (EP, 1988d). Democratic legitimacy, the democratic

---

<sup>33</sup> The European Commission later takes up this idea in a Report on subsidiarity (European Commission, 1992). It discusses what it calls “an interinstitutional dimension to subsidiarity which also has a bearing on the democratic deficit” (European Commission, 1992, p.119).

<sup>34</sup> This report also offers a rare expression of subsidiarity from an EP source as a genuine barrier to centralisation, in the statement that “the dynamism deriving from the principle of subsidiarity, with the system of powers and counter-powers inherent in it, should forestall any temptation towards centralisation and safeguard freedoms.” (1990d, p.19)

deficit, efficiency and effectiveness emerge as a nexus of concepts by which proposals for a European Union are formulated (also, Dutch Government, 1990a). They also exhibit a distinct cleavage in their employment across these two separate issues of the quantity of Community powers and the quality of their management.

The development of a qualitative approach to the powers of the Community is one which is not confined to the documents of the European Parliament. Both the European Commission, and the Member States - individually through government memoranda and collectively through the European Council and the Council of Ministers - express the same concern. In its work programme for 1991 the Commission, for example, summarised the issues for the forthcoming IGC on Political Union as "democratic legitimacy and powers of co-decision for Parliament; effectiveness and efficiency of the institutions, including extension of majority voting; foreign and security policy; Community competences, notably in the social area; subsidiarity; and European citizenship." (European Commission, 1991a, para.40).

As the IGC approached, Member States also began to express concern about the quality of Community powers, primarily addressed in terms of efficiency and democracy, but also in terms of the somewhat novel concept of transparency. A joint Memorandum from Chancellor Kohl of Germany and President Mitterrand of France in May 1990, for example, specified as the objectives of this IGC the need both to "strengthen the democratic legitimization of the union and to 'render its institutions more efficient'" (Kohl and Mitterrand, 1990, p.126). This served to maintain the profile of efficiency and democracy as organising ideas for the debate and also the issue of institutional improvement as an important domain of the broader discourse on European Union. The Italian Presidency also released a report on Political Union in November 1990, in which it confirmed the themes of 'greater efficiency and democratic legitimacy of the decision-making process' (Italian Government, 1990). A whole section is devoted to improving the democratic legitimacy and efficiency of the EU's institutions, emphasising the same concern with these issues as was demonstrated in the conclusions of previous European Councils. The formulation of the issues facing

the IGC in terms of efficiency and democracy forms the basis also for a Dutch policy document from October 1990 (Dutch Government, 1990b).

The collective Member State position on European Union was published in a European Council reflection document from the 1990 Dublin summit. This document gives an indication of the basic agenda for the conference from the perspective of the Member State governments. The document stated that for the European Union to be achieved "the European Council has already identified three principal means (strengthening the democratic legitimacy of the Union, enabling the Community and its institutions to respond efficiently and effectively to the demands of the new situation, and assuring unity and coherence in the Community's international action)." (European Council, 1990a, para.1). The same set of ideas is promoted in the conclusions of the subsequent summit in Rome (European Council, 1990b). In so doing, the European Council indicated that the language of democracy, efficiency and effectiveness, which had for some time now been closely linked to the meaning of subsidiarity, particularly through the concept of federalism (e.g. Agence Europe, May 1990) was to form the basic framework for the organisation of ideas pertaining to the revision of the Treaties.

New terms such as transparency and openness are also present in the European Council conclusions, indicating that open government was emerging as another idea related to the issue of the quality of Community power (see also Danish Government, 1990b; European Commission, 1990b). With the language of European Union expanding to include the ideas of transparency and 'closeness to the citizen' the issue of the quality of Community powers was continuing to develop. Subsidiarity, while also discussed in these documents, was not directly expressed as a concept which itself pertains to the quality of Community powers, or for that matter a concept which pertains to the involvement of citizens in Community activity<sup>35</sup>. However, both of these connections are soon established.

---

<sup>35</sup> The document also acknowledges both that subsidiarity is likely to be included in any future treaty and that the question of an increase in Union competences is one which requires urgent consideration (European Council, 1990a, paras.2a and c).



### 5.3.1 Subsidiarity and proximity to the citizen

Both the Länder documents and the speeches by Delors suggested an emerging bias in the meaning of subsidiarity towards decentralised government, and this bias is also visible in another important speech by Delors which was delivered this time to the Wissenschaftszentrum in Bonn in October 1989. The difference between this speech and previous ones is that subsidiarity is linked not with diversity but with the *citizen*.

In this speech Delors praised Germany for bestowing the principle of federalism on the Community, the essence of which, he states, 'is that the powers of the central government are shared with those of pre-existing territorial authorities, ensuring that each decision is taken as closely as possible to citizens' (Delors, 1989b). Delors appears at this point to equate federalism with a tiered system of government with as much decentralised government as possible, according to a single condition or set of conditions which he does not specify. In so doing, he adopted the idea of proximity to the citizen as a constructing concept of federalism<sup>36</sup>. Although Delors does not specifically link subsidiarity with this expression, it is clear that he infers such a connection from a statement later in the speech that 'The implementation of the Single European Act, for example, is inspired from the federal principle of subsidiarity. It appears for the first time in Article 130, the Community environment policy. Its spirit now permeates the entire Community legislative process' (Delors, 1989b, p.2).

This connection between subsidiarity and proximity to the citizen introduces 'the public' as part of the meaning of subsidiarity. It also introduces a different expression of the spatial location of power to that of the more common central/decentral dichotomy. It is interesting not only for its novelty, but also for its ambiguity. The idea of proximity to the citizen could mean closeness to the citizen in a spatial sense, thereby bringing the idea into line with the decentralisation of government. But it could also mean closeness to the citizen in the non-spatial, qualitative sense of involving the citizen in Community affairs. This second sense is significant because it establishes what might be called a

State/society focus for the discourse on EU alongside the intra-State focus of expressions of subsidiarity based around the comparative efficiency and effectiveness of different degrees of centralised government.

This qualitative meaning of closeness could help to make sense of the claim that subsidiarity has regulated the legislative activity of the Community for some time. As there is no evidence from this time of any alteration to the distribution of competence on subsidiarity grounds, it is difficult to interpret this as meaning that subsidiarity affected the powers of the Community. However, it could suggest efforts to involve the citizen more closely in Community processes. It could be a reference to administrative activities, and the opportunity that instruments such as the directive afford for reducing central influence on the implementation of legislation. This reading recalls the ambiguity of the earlier expression of subsidiarity in terms of 'excessive and wasteful centralisation', and hints at another new meaning of subsidiarity, this time through its link with policy implementation. These are signs of important developments in the meaning of the concept which, while perhaps only nascent at this point, will later emerge as strong alternatives to comparative efficiency. The clearer point at this stage is that Delors was developing a meaning of subsidiarity which, when read in context, was more about controlling the centralisation of power than about promoting it. The introduction of the citizen as an aspect of the meaning of subsidiarity reinforced this development, but it also signified, by its ambiguity, the emergence of a new issue context for the idea of subsidiarity. This new context is the relationship between the Community and private society rather than the relation between levels of government within the Community system.

### 5.3.2 Subsidiarity and the hierarchy of norms

The proposal which explicitly connects the meaning of subsidiarity with improvements to the quality of Community practice is the hierarchy of norms. The European Commission exclusively developed this proposal for a hierarchy of norms, a proposal which specified a new set of legislative instruments

---

<sup>36</sup>The European Charter of Local Self-Government also expresses this idea (Council of Europe, 1985).

designed to *rationalise and simplify* future Community laws. The proposal was based upon a distinction between fundamental Community laws, regulations and implementation measures. The outcome of adopting this proposal would be, in the Commission's opinion, to "increase European Parliament participation....fully ensure the respect of the principle of subsidiarity...organise, on rational and balanced bases, relations between the Institutions and, in so doing, increase overall efficiency of the Community decision-making process" (European Commission, 1991b, para.3.2.2). In addition, it would "simplify and clarify the Community act system" (European Commission, 1991b, para.3.2.2).

Delors discussed in detail the hierarchy of norms proposal in a colloquium on subsidiarity which was held jointly by the European Commission and the European Institute for Public Administration in Maastricht (Delors et al, 1991). His comments confirm that the proposal for a hierarchy of norms was designed to bring improvements to Community legislation in both its content and its implementation. In terms of implementation, he states that the proposal "leaves to national and regional authorities a great deal of room to manoeuvre in the choice of means to implement common policies." (Delors, 1991, p.10). In terms of the content of legislation, the principle of mutual recognition, qualified majority voting (a measure more usually discussed in reference to improving the efficiency of the institutions) and the legislative instrument of the directive are all included under the hierarchy of norms umbrella (Delors, 1991, pp.12-13).

That this idea of a hierarchy of norms is an expression of subsidiarity is indicated by Delors in the same colloquium in which he presented the hierarchy proposal. He introduced the hierarchy of norms idea with the statement that "subsidiarity cannot be just a state of mind, a fervent obligation; it has to be given body. This is what the Commission is suggesting in the framework of a new hierarchy of norms..." (Delors, 1991, p.10). The logic behind the connection is presented later in the revealing comment that "While subsidiarity does not mean less integration or less solidarity, it does however challenge us to organise the decision-making process in the Community more effectively..." (Delors,

1991, p.13)<sup>37</sup>. It is also linked with the protection of decentralised government in the statement that the hierarchy idea is designed “to break with a centralism which is often ineffective, in order for implementation decisions to be taken as closely as possible to whom they are addressed.” (Delors, 1991, p.16). This latter statement also reiterates the connection between subsidiarity and proximity to the public.

This direct connection between subsidiarity and the quality of Community legislation reflects another Commission report, from October 1990. This report is significant because, whereas documents to date had demonstrated the use of words related to subsidiarity, such as efficiency and democracy but not subsidiarity itself (the D’Estaing report excepted), to address this emerging debate on the quality of Community powers, this document demonstrates that subsidiarity itself was beginning to show signs of making the transition. It states explicitly that the question of subsidiarity is one which addresses “*ways of improving the effectiveness of the institutions.*” (European Commission, 1990a, p.169).

Subsidiarity is presented here as a principle which governs the category of implementation measures in the hierarchy of norms scheme, and forms part of a general strategy not to find a basis on which to give new powers to the Community but to improve the overall efficiency and effectiveness of the powers which the Community already has. Moreover, the Commission explicitly states that this hierarchy of norms respects subsidiarity, and that it is geared essentially to improving the comprehensibility and efficiency of legislative instruments. On this basis, the meaning of subsidiarity is expanded to include specific institutional improvement measures which have little if any relation to the distributive power issue which had for the most part provided the issue focus for subsidiarity statements to date. At this point the concept has been placed in a different issue context to that of the basic distributive question, namely that of a general qualitative question addressing how Union actions should be organised, rather than what should be Union as opposed to national competence. It has effectively followed efficiency, effectiveness and democracy and made the transition into a

---

<sup>37</sup> It is worth noting the reappearance of democracy and efficiency as central concepts in the discourse, in the statement that

debate not about what powers should belong to the Community as opposed to the State but about how the exercise of Community powers can be improved.

It is possible to interpret this connection between subsidiarity and the hierarchy of norms as nothing more than a representation of the distributive issue, applied to the implementation of laws rather than the more fundamental right to make them. Indeed, the previous quote could suggest that the hierarchy of norms was relevant to subsidiarity because it addressed the question of who should do what at the specific stage of implementation. But to do so would be to gloss over significant variations in the meaning of the subsidiarity concept which betray a more complex connection between subsidiarity and European Union than which powers should be centralised and what should be the basis for doing so. The subsidiarity concept, in its connection with the hierarchy of norms, is certainly about 'doing less and doing it better', as Delors later defines subsidiarity (European Commission, 1992). But it cannot be interpreted as part of a debate between federalism and alternatives such as a Europe of States without serious simplification of the nuances of the link between the two concepts, a link which expresses the idea that subsidiarity means improving the quality of Community legislation.

#### **5.4 Developments during the Intergovernmental Conference on Political Union**

In December 1989 the European Council took the decision to hold an IGC on Economic and Monetary Union, which was scheduled to begin in December 1990. This was supplemented by a decision, at the subsequent European Council in Dublin, also to hold an IGC on Political Union. With the context of the discourse on European Union now that of official negotiations to revise the Treaties, the language of subsidiarity statements unsurprisingly becomes more focused on finding an adequate legal definition of the concept and on where, in the Treaties, to place it. With the debate on the meaning of subsidiarity focusing on the legal language of a Treaty article, the connection between subsidiarity and federalism becomes increasingly prominent, with the consequence that the meaning

---

the hierarchy of norms also "aims not only at strengthening democracy but also at improving efficiency" (Delors, 1991, p.14).

## **6 DEVELOPMENTS IN THE MEANING OF SUBSIDIARITY: 1992-1996**

### **6.1 Introduction**

After the signing of the Maastricht Treaty, discussion of subsidiarity unsurprisingly turns to methods by which to implement the ideas expressed through it. However, the fact that the debate on subsidiarity turns to the implementation or application of the concept does not mean that debate about the meaning of the concept suddenly stops. One of the important inferences of the theory of meaning is that all statements express meaning, regardless of their point. In the interpretation of subsidiarity, the meaning of the concept is established largely through an appreciation of explicit attempts within the institutional discourse to define the term, while attempts to apply it are treated separately. This focus, in interpretations of the meaning of subsidiarity, upon explicit attempts to define it is, perhaps, partly responsible for the appreciation of subsidiarity exclusively within a distributive issue context, in so far as it does not consider the implicit developments of the meaning of subsidiarity inherent in the methods which are chosen to apply the concept, which are not what one would expect from a reading of Article 3b TEU.

On the basis of the content of Article 3b TEU, one would reasonably expect statements concerning the application of subsidiarity to engage questions of task allocation in the category of shared or concurrent competence, based upon the criteria of Member State sufficiency and comparative efficiency. However, this does not happen. Instead, statements on the application of subsidiarity engage the question of how to improve European Union legislation. Various proposals emerge after 1992 which are designed to bring this improvement in terms of efficiency, simplicity and comprehensibility. Subsidiarity is presented as a concept which is both applied and respected through this rationalising process. Consequently, the new idea of transparency, the idea that government should be open and accessible, is constantly discussed in relation to subsidiarity as part of a set of

of the subsidiarity concept focuses more than ever on the distributive issue. Conversely, discussion of subsidiarity in the context of a debate on the quality of Community policy all but disappears. This was particularly the case once the first draft treaty emerged from the European Council Presidency.

The influence of the debate on the quality of Community power on the meaning of subsidiarity does not entirely disappear. The Commission continued to promote, as a lone voice, the idea of a hierarchy of norms. Elsewhere, the notion of federalism, with which subsidiarity was becoming increasingly and inexorably entwined, exhibited signs that it also was influenced by this quality debate. The European Parliament, for example, held a debate on Political Union early in 1991, at which both Delors and the Council of Ministers President were present (EP, 1991a). The issue of a federal Europe was under criticism, but Delors defended it, stating that "To my way of thinking, federalism, as we see it in the federally-structured states, is the most complete form of democracy, since it combines efficiency, transparency of power, and democracy within arm's reach..." (EP, 1991a, p.164). He continued by linking subsidiarity with this idea of federalism in the argument that the three tier structure of regions, Member States and the Union was consistent with federal theory and the preferred structure of government for the Union (EP, 1991a, p.165).

By this stage the basic ideas for addressing the revision of internal aspects of the EC were well established. Delors had already, back in 1989, tried to overcome national sensitivities to the transfer of powers to the Community by developing an idea of federalism which guarantees national sovereignty rather than undermines it. Then, he incorporated subsidiarity, democracy and efficiency into his argument for the benefits of a federal structure for the Union. With the concept of transparency having by this time emerged in the discourse, he now incorporates this notion as well into his description of federalism. Federalism, for Delors, is thus clearly an encompassing and flexible notion which he promotes in an effort to accommodate and overcome differences.

However, signs of the meaning of subsidiarity developing in relation to the quality of Community powers are overshadowed by the development of meanings which pertain to the distribution of

powers between the Community and its Member States. The strengthening of the connection between subsidiarity and the distribution of powers is visible in an EP report on the IGC on Political Union. In this report the Institutional Affairs Committee reiterated the EP meaning of subsidiarity in the statement that "Parliament's draft treaty of 1984 proclaimed the principle of subsidiarity to be the basis for deciding what competences or responsibilities should be allocated to the European Union. The European Union should exercise only those tasks which it can carry out more effectively than the Member States acting separately, or which are essential to the Union" (EP Institutional Affairs Committee, 1990a, para.8).

The Belgian government also published a memorandum in March 1990. The interesting feature of this memorandum is that it discussed subsidiarity from the perspective of its potential treaty status and provided a clear indication of the government's opinion. "It is essential that the principle of subsidiarity be formally written into the Treaty, for example in the form in which it was expressed in the draft Spinelli Treaty" (Belgian Government, 1990, p.123). The text continues by requesting "more precise details of respective powers in sensitive areas in which national traditions frequently differ" and also that "the provisions of the Treaty should so be formulated as to enable a Member State to appeal to the Court of Justice if it considers that a Community decision exceeds the Community's powers as defined by the principle" (Belgian Government, 1990, p.123). The Belgian paper was a first indication of Member State support for a legal, and justiciable subsidiarity clause which would regulate the distribution of powers, although on this last point the document is rather vague.

This request was generally supported by a Dutch memorandum from May 1990 which states that a federal structure is "the ultimate objective for Europe" (Dutch Government, 1990a, p.127). The Dutch proposed that subsidiarity be included in the Preamble to the Treaty which, if it occurred, would extend subsidiarity to the entire Union structure as a general principle. Also in May, with a second IGC now expected on the basis of the Belgian, French and German support for one, the proposals of the EP became more focused. In its resolution on the forthcoming Dublin European Council, it called for a 'European Union of a federal type' which includes as an element "the conferring of powers on



the basis of the principle of subsidiarity, allowing for a dynamic development of the Union” (EP, 1990e, para.4b). The reference to powers, rather than tasks or actions or even competences, suggests that the notion refers directly to the allocation of actual policy areas rather than actions under already allocated policy areas.

In addition to this statement, the resolution also “Calls on the Member States to ensure that progress towards the European Union should go hand-in hand with greater regional autonomy, in accordance with the principle of subsidiarity” (EP, 1990e, para.8), expressing a decentralising idea of subsidiarity which was rare for EP statements. The then President of the Council of Ministers, Hans Van den Broek, also linked subsidiarity with regional authority in the statement that “it must be decided how active the Community should become in this and other new areas. Subsidiarity is the underlying principle in this context. I take this to mean: what the Community can do better, it must do; what countries or regions can do better, the Community must leave to them. Integration is not the same as centralisation, and the federal idea is diametrically opposed to the united state.” (EP, 1991b, p.87). The meaning of subsidiarity developed here is that of a federal notion based upon a general criterion of comparative advantage but with an emphasis on its opposition to centralisation.

This meaning of subsidiarity is also reflected in a European Peoples Party (EPP) document from November 1990 (EPP, 1990). The basic position presented in the document is that the EU must have a federal constitution. In relation to this request, the document launches into a discussion of competence with the statement that “In line with its general political philosophy, the EPP considers that, for the European Community to become a European Union (i.e. a federal Europe), four objectives must be pursued”, one of which is that there must be a “transfer of sovereignty from Member States to the Union and distribution of powers between the European Community (or Union) and the Member States on the basis of the subsidiarity principle, with due regard to local autonomy” (EPP, 1990, para.6).

This was one of the most explicit and strongest links to date between sovereignty and subsidiarity in the institutional discourse, adopting the line of analysis developed in some of the statements of the

Commission President but without the nuances. Subsidiarity is unequivocally expressed as the concept by which powers are redistributed between the Union and Member States, and the document returns to this point with a separate heading entitled “Distribution of powers on the basis of the subsidiarity principle” (EPP, 1990, para.12). Under this heading the EPP indicated that its view of federation included local, regional, national and European government in the equation and defines subsidiarity as follows: “The Union should be granted those powers of which it can make the best use or of which it will have sole use. In other words, the Union will have powers in those areas where it can act more effectively than the Member States working alone, particularly in cases where the scale or effects of the action go beyond national frontiers.” (EPP, 1990, para.15). The meaning of subsidiarity as a principle of power distribution on the basis of a general comparative advantage criterion was still popular, but it increasingly included regional government in the distributive equation, indicating a strengthening of the link between the meaning of subsidiarity and the promotion of regional government. A more interesting development than this, however, is the development of a clear distinction in the application of subsidiarity between the regulation of competence distribution and the distribution of actions within the category of shared competence.

#### 5.4.1 The distinction between the grant of competence and its exercise

This connection between subsidiarity and the quality of Community powers is more subtle than its connection with the distribution of powers. With the intergovernmental conference approaching, and the possibility of a transfer of powers to the Community becoming a distinct and imminent reality, the dominance of a distributive issue context increases. As it does, a distinction in the application of the subsidiarity idea emerges between the allocation of powers on the one hand and their exercise on the other.

The Commission’s statement on subsidiarity in a report from October 1990 suggested as much (European Commission, 1990b). It states that “The question of subsidiarity is closely linked to the redefinition of certain powers. The Commission considers that this common-sense principle should be written into the Treaty, as suggested by Parliament in its draft treaty on European Union. It should

serve as a guideline for the institutions when, under a new article 235 freed from its purely economic purpose, they have to take a unanimous decision of principle on new Community action in pursuit of general Treaty objectives.” (European Commission, 1990b, section IV, para.2).

The connection between subsidiarity and Article 235 EEC is, of course, necessary if subsidiarity is to regulate the allocation of powers in any meaningful sense, a point which the later D’Estaing Report implicitly notes by making the same request for the inclusion of subsidiarity in Article 235. This is because it is Article 235 which provides the formal mechanism for expanding the powers of the Community to act in areas where it already has competence. The proposal to submit Article 235 to a subsidiarity test is adopted later by the Italian government in a document which outlines its own proposals for the IGC (Italian Government, 1990). The Italian document proposed to link subsidiarity with Article 235 EEC to create a new “flexible instrument for the extension of Community competence...” (Italian Government, 1990, p.193). The point is that Article 235, which regulates the grant of new competences to the Community, had been ignored in the subsidiarity debate with the consequence that subsidiarity could not regulate the distribution of competences in any formal sense. The emergence of a proposal to alter Article 235 represented a step towards the formal regulation of the distribution of competences in a dynamic fashion. It also created a clear distinction between competence allocation and task allocation with respect to shared competence.

The meaning of subsidiarity clearly exhibits the distinction from this point onwards. The EP, for example, stated in a 1990 resolution that an essential element of this Union is “an allocation of powers based, above all, at the time they are conferred or, in particular, in the case of concurrent powers, at the time they are exercised, on the principle of subsidiarity” (European Parliament, 1990b, p.72; also EP, 1990d, para.3; EP, 1990c, paras.7 and 11). This point is also reinforced in a later EP resolution on the subsidiarity principle itself in the statement that “the principle of subsidiarity should be a guide not just to determine legally the areas in which the Community may act (which has been done in the Treaties) but also, and especially, as a political guide to the extent of Community action in

the fields of concurrent competence” (EP, 1990c, para.7)<sup>38</sup>. Paragraph 11 of the same document is even more explicit, stating that the EP “Believes that the principle of subsidiarity is important not only as a means of clearly defining the respective competences of the Community and the Member States, but also in respect of the way those competences are exercised” (EP, 1990c, para.11). The exercise of competence seems to be the focus when specific proposals are made for a legal definition of the concept, while the allocation of competence is the focus when subsidiarity is being discussed more flexibly. This could reflect the fact that the EP addressed the issue of competence allocation through the idea of a list of powers which would be written into the Treaty. The production of a list of powers in this way removed the need for a subsidiarity clause which would regulate competence allocation<sup>39</sup>.

The Italian government’s report from November 1990 is another good example of this distinction (Italian Government, 1990). The report states that “Subsidiarity should be a guiding criterion although not so rigid as to hinder Community action. Respect for subsidiarity as regards the actual principle of a new policy should be a matter for political control by the Community institutions within the framework of their normal competences. However, subsidiarity should also be a guiding criterion for all the institutions in the exercise of their respective areas of competence, in order to prevent, *inter alia* by excessive regulations, abuse of power vis-à-vis citizens and undertakings. Accordingly, unlike the monitor of a new area of competence, which would continue to be mainly political, respect for subsidiarity involving post-control in the exercise of competence could be entrusted to the Court of Justice...” (Italian Government, 1990, p.196). The idea of subsidiarity presented in the report is thus of a political notion controlling the grant of competence via a new Article 235, and a judicially protected notion regulating the exercise of competence.

---

<sup>38</sup> This comment, on the extent of the exercise of competence, later becomes known as the proportionality principle.

<sup>39</sup> This resolution also confirms the EP’s commitment to judicial control of any subsidiarity article which might be included in the new Treaty being proposed (para.14).

#### 5.4.2 The inclusion of regional government in the distributive equation

The issue of regional representation had already been linked with the meaning of subsidiarity by Delors but was ignored by other contributors to the discourse. However, the link persisted and during the intergovernmental conference it was discussed in detail in a debate on the role of the regions in the integration process (EP, 1991d). The debate is important because it redirected the meaning of subsidiarity towards the promotion of regional interests. This was an aspect of subsidiarity which, as noted, had emerged in the statements of President Delors but had not really extended beyond this into, for example, Member State proposals to include a regional reference in any treaty statements on the concept.

The debate confirms the interplay between subsidiarity and other ideas as much as it confirms a shift towards regional concerns. Mr. Raggio, speaking at the debate for the Group of the European Unitarian Left, connects a number of ideas in the statement that “The progress of integration involves a further transfer of sovereignty and powers from the States, and hence also from the regions, to the supranational institutions. If it is not accompanied by participation, integration will take power away from the regions and create a democratic deficit there as well. So the principle of subsidiarity cannot be separated from the principles of participation and decentralisation.” (EP, 1991d, p.130). The focus here is clearly the transfer of powers and the relationship between intergovernmental and supranational outcomes. Subsidiarity is introduced as a concept relating to this distribution and supporting decentralisation. But it is regions which are the beneficiary, and the democratic deficit - a concept already linked with subsidiarity - is discussed directly as a problem which regional government can redress.

Another member took up this point and justified the case for the inclusion of regional government directly in the Community decision-making process on the basis of the democratic credentials that regions can bring to the Community (EP, 1991d, p.131). The regions were thus presented as a possible solution to the democratic deficit. Other speakers at the debate made the same point (EP,

1991d, p.131), and the meaning of subsidiarity was presented as one means by which to introduce regional participation in the integration process. Yet another member suggested “creating mechanisms for direct participation by the regions in Community decision-making on the matters which affect them, as the way to construct a real Europe, a Europe close to the citizens...” (EP, 1991d, p.147).

This statement suggests that the issue of regional government was being combined with the notion of proximity to the citizen, a notion which was already part of the meaning of subsidiarity (see also EP, 1991d, p.148). It could be that the emergence of the idea of ‘proximity to the citizen’ encouraged the development of a meaning of subsidiarity which addressed directly the powers of regional government. This is suggested by a Council of Europe report on the “Definition and limits of the principle of subsidiarity” (Council of Europe, 1994). The report emphasised the relationship between subsidiarity and regional government, whilst also defining subsidiarity as specifying that “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of the responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy” (Council of Europe, 1994, p.13). This definition expresses a decentralising emphasis of the meaning of subsidiarity based upon a reading of ‘proximity to the citizen’ in spatial terms.

The definition of subsidiarity, thus, provided a means by which to incorporate regional authorities into the policy process. The issue of a new regional institution was the other, and this met with more success than the proposal for redefining the subsidiarity concept. The EP Martin Reports (EP Institutional Affairs Committee, 1990a and b) had proposed a consultative regional committee, and the Commission had already established a consultative council of local and regional authorities in 1988, reflecting a growing concern with the lack of regional government involvement in Community affairs. The Commission supported the Martin report proposal, and also supported the Länder request for amendment of Article 146 of the EC treaty to enable sub-national government representatives to sit at Council of Ministers meetings. A regional chamber was eventually included in the TEU, but

despite attempts to link it with subsidiarity, the subsidiarity concept remained formally isolated from issues of regional authority and participation.

#### 5.4.3 The distinction between horizontal and vertical subsidiarity

A further development in the meaning of subsidiarity during the IGC was the distinction between horizontal and vertical subsidiarity. This development is particularly visible in a Report on subsidiarity produced for the EP under the chairmanship of Giscard D'Estaing (EP, 1990c). He defined vertical subsidiarity along comparative efficiency lines as specifying that “the Member State must retain all the powers which it is able to wield more efficiently itself and must transfer to the Community those powers which it is unable to use effectively. The Community, therefore intervenes only in a subsidiary capacity and in accordance with a principle of exact appropriateness whereby each level is granted powers only because these cannot, given their nature and scope, be exercised efficiently and effectively at any other level” (EP, 1990c, p.2) <sup>40</sup>. This was distinguished from horizontal subsidiarity, which was understood as a concept concerning the relation between the State and society (see Ch.2, p.45). The distinction is well recognised in the interpretation of subsidiarity, and forms the basis for an elaborate discussion of territorial (read vertical) and non-territorial (read horizontal) traditions of the concept in the work of Endo (1994, pp.2052-2050).

This distinction between horizontal and vertical subsidiarity was reinforced by Delors in a colloquium on the concept in 1991. Delors discussed at some length the difference between subsidiarity as an organising idea for distributing competence between levels of government and as a normative idea about the proper role of the State in society. Delors referred to “the widely recognised idea that subsidiarity can be applied in two different situations: on the one hand, the dividing line between the private sphere and that of the State, in the broad meaning of the term. On the other hand, the repartition of tasks between the different levels of political power” (Delors, 1991, p.7). What is

---

<sup>40</sup> This statement reinforces the view that the documents and reports of the EP made no distinction between efficiency and effectiveness, confirming the suggestion made in chapter 5.

engaging about this distinction is that so-called horizontal subsidiarity is persistently presented as the origin, along with federal texts, of meanings of the subsidiarity concept which are focused entirely on relations between governments, such as the comparative efficiency idea. This is a peculiar phenomenon, and further challenges the view that the different meanings of subsidiarity developed in the institutional discourse are legitimately traced back to the Catholic church on the grounds of a similarity in meaning.

Furthermore, the distinction between the two ideas is unnecessary from the perspective of the different meanings of the concept that are visible in the discourse. Apart from the ambiguous notion of subsidiarity as proximity to the citizen, which suggests a 'State/society' focus for the concept, meanings had been consistently related to a distribution of powers between different levels of government. This is particularly true of the meaning of the concept in the documents of the EP, where it is consistently expressed in terms of comparative efficiency and comparative effectiveness. The fact that D'Estaing and Delors both discussed the idea of subsidiarity in the context of relations between the State and society cannot be explained as part of the development of existing distributive ideas. It suggests, instead, the influence of the Catholic tradition, but why Delors and D'Estaing should need to discuss this tradition is not obvious, as doing so simply introduces meanings of subsidiarity which were of little relevance to the focus of subsidiarity at the time. It could have been a subtle indication of the emergence of the debate about the quality of Community policy, particularly insofar as this debate incorporated the citizen as a reference for policy improvement. Equally, it could have been an attempt by Delors to reinforce a distributive notion of subsidiarity which is genuinely protective of decentralised authority, a reinforcement which, in the light of the anti-federal turn to debates at the time, possessed a clear utility.

#### 5.4.4 The Luxembourg Drafts

In April the first draft text on European Union emerged in the form of a Luxembourg Presidency 'non-paper' designed "to provide a general framework for further negotiations" (Luxembourg



Government, 1991a, para.1). With the appearance of a draft treaty, the question of a legal definition of subsidiarity began to dominate statements on the concept. This 'non-paper' gave the first indication of the progress of formal negotiations and included within it a list of general activities of the Union in a new Article 2 and a statement on subsidiarity in a new Article 3b, both of which were amendments to the Treaty of Rome. The statement on subsidiarity reads as follows: "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 the areas which do not fall within its exclusive jurisdiction, the Community shall take action in accordance with the principle of subsidiarity, if and in so far as those objectives can be better achieved by the Community than by the Member States acting separately because of the scale or effects of the proposed action." (Luxembourg Government, 1991a, Article 3b). This statement is similar to that of the EP draft of 1984, and defines the principle in terms of the general comparative advantage criterion.

For reasons which are not entirely clear, the draft completely ignored any connection between subsidiarity and either the allocation of powers or the quality of Community powers, presenting instead a definition of the concept which related solely to the regulation of activities under concurrent competences. Furthermore, because of the separation of the text into three isolated sections, or 'pillars' as they became known, the concept was also restricted solely to revisions of the existing Treaties and of no relevance to the new proposals relating to foreign policy and home affairs. The Commission, perhaps aware of this limitation, responded with criticisms of both the 'pillar' structure of the 'non-paper' and the limited relevance of subsidiarity (European Commission, 1991c). In response it proposed a single institutional framework for the treaty and also a statement on subsidiarity in a new Article D3, which would extend the application of the concept beyond that of the Community to the entire Union structure. The Belgian Parliament also responded with a resolution calling for a federal structure for the Union in objection to the separate pillar structure of the Luxembourg 'non-paper' and a new statement on subsidiarity which "must form the basis for each extension of Community powers and intergovernmental co-operation" (Belgian Parliament, 1991, para.4). The Belgian request was in part met by the subsequent draft treaty which the

Luxembourg Presidency released in July, through the inclusion of a reference to federalism (Luxembourg Government, 1991b). The draft opens with a series of common provisions covering the entire structure of the Union, in which it is stated among other things that "This Treaty marks a new stage in a process leading gradually to a Union with a federal goal" (Luxembourg Government, 1991b, Article A). The pillar structure was, however, maintained.

The reference to federalism might have satisfied some Member States, but it clearly did not please others. In a Question Time session in the UK House of Commons the Prime Minister indicated that he would not accept any such references in the Treaties. He stated that "Federalism means different things to different people, but if it implies a central government for the federation, this is not what people in this country want. If it means decentralisation, then it sounds more like subsidiarity, which many people in this country would find more acceptable. But in no way could we permit that word to appear in the treaty, until or unless it is clear what it means and that it does not mean the centralisation of power" (Major, 1991).<sup>41</sup> This statement confirms other evidence that the connection between subsidiarity and federalism was turning sour, as meanings of the subsidiarity concept began to develop which were inconsistent with the type of transfer of competences to the Community which would be necessary to achieve a federal Union. Delors had hinted at this development in his own effort to synthesise in the meanings of both subsidiarity and federalism both support for and opposition to increases in the powers of the Community. But developments in Britain signalled a failure of this synthesis, and the peculiar outcome of a meaning of subsidiarity which was presented as the antithesis of federalism rather than synonymous with it.

This outcome is visible in a House of Lords Select Committee Report on Political Union (HL Select Committee on the European Communities, 1991). The report acknowledges that "the words sovereignty, federalism and subsidiarity were relevant in measuring the key political question of the division of power between the Community as an entity in its own right and its constituent Member

---

<sup>41</sup> An ICM poll for the Daily Mail apparently indicated that in fact 43% of the British public supported a federal Europe while

States” (HL Select Committee on the European Communities, 1991, p.8). With respect to subsidiarity it criticised the positive approach to the concept in the discourse on European Union and although it does not name institutions it is clear from the preceding analysis that the criticism was aimed largely at the European Parliament. The Report cited a Foreign and Commonwealth Office (FCO) criticism of the Luxembourg draft treaty definition of the subsidiarity principle that “it seemed to impose a duty on the Community to act if conditions were fulfilled; secondly, the test of “better achieved” favoured Community action too much and should be replaced by a “necessity” test; and thirdly the principle should apply not only where the Community shares competence but should apply to all areas of Community activity.” (HL Select Committee on the European Communities, 1991, p.21).

The report elaborated on this by stating that the FCO “favoured a definition which would minimise the possibility of Community action - allowing the Community to act only where such action was necessary to achieve an objective.” (HL Select Committee on the European Communities, 1991, p.29). In the oral evidence Mr. Eaton, an FCO legal advisor, expressed dissatisfaction with the Luxembourg draft rendition of subsidiarity on two grounds:

“The first criticism is that we would say the test is the wrong way round. It is stated positively, i.e. the Community shall act if certain conditions are fulfilled. That seems to establish a presumption of action at the centre unless it can be shown that these conditions do not exist. In our view, the presumption should be the other way round, that action by the centre shall not take place unless the objectives cannot be satisfactorily achieved by the component parts. That would be achieved by a negative formula such as “shall act only if”, something like that. The second criticism is that the condition for action as laid down here, that it shall take place if the objective can be “better achieved by the Community than by the Member States”, is too subjective and, again, seems to create a presumption in favour of Community action. That is not an encouragement which in practice we find is actually necessary! The test should rather, we feel, be one of necessity, that the Community should take action only if the objectives cannot satisfactorily be achieved by action at the level of the Member

---

only 39% were against it. It would have been interesting to note what percentage of the population understood the meaning of the word subsidiarity.

States. The third criticism is that the Presidency text, in our view, wrongly confines subsidiarity to areas outside the exclusive competence of the Community. In our view, the principle applies across the board, to all areas of Community activity.” (HL Select Committee on the European Communities, 1991, p.15).

These sentiments were confirmed by both the Foreign Secretary and by Tristan Garel-Jones, a junior Minister at the FCO, in the minutes of evidence on the Rome and Maastricht European Councils (House of Commons Foreign Affairs Committee, 1990 and 1991b). Commenting on the Rome European Council, the Foreign Secretary reiterated the view that “Subsidiarity means that the Community should not act at all unless such action by the Community is *necessary*,” (House of Commons Foreign Affairs Committee, 1990, p.9, emphasis added; also 1991a, p.34).

The emphasis on the meaning of subsidiarity as a guarantee against the expansion of the central authority is adopted by the UK delegation and developed further into the legal language of a treaty article via the idea of necessity and a rejection of the existing definitions which focused on better attainment. The documents of the European Parliament, however, persisted in promoting a meaning of the concept which supported the centralisation of power. EP documents emphasised the need to promote a federal structure as that which is consistent with the objectives of the founders of the Community, and in this context the EP “points out that the Community already has a number of federal characteristics, but does not yet have the full range of powers which should, under the subsidiarity principle, be allocated to it, and exercises its responsibilities in a manner which is neither sufficiently efficient nor sufficiently democratic.” (EP, 1991g, para.22). The EP clearly expressed through this statement a desire for more powers for the Union and presented subsidiarity as a justificatory means to the end. But it also, through its reference to the efficiency and democracy of institutional activity recalled the connection between subsidiarity and qualitative improvements to institutional activity.

The wording of the subsidiarity principle in the Treaty was thus becoming an issue in its own right, with a clear distinction emerging between the EP definition of the concept as one of an unbiased

comparative efficiency and comparative effectiveness test and the British preference for a necessity test which would inverse the wording of Article 3b in the Drafts so that the Community would only act if the Member States could not. These points are confirmed by events during the final negotiations to produce the TEU. Ideas of subsidiarity which relate to the citizen, or to the quality of Community power, are absent from the negotiations, apart from the promotion of the hierarchy of norms idea by the European Commission.

#### 5.4.5 The Dutch Drafts

When the Dutch government assumed the Presidency in July it attempted to incorporate criticisms of the pillar structure of the emerging Treaty through a draft of its own which abolished this pillar format (Netherlands Government, 1991a). The Dutch had considerable support in this endeavour, but were forced by the majority to re-adopt the Luxembourg formula. Delors indicated, in a debate in the European Parliament, that he was angry at the way the Dutch drafts had been dismissed (EP, 1991d, p.134). He objected to the pillar structure of the Luxembourg Draft, with its separate treaties held together by a set of Common Provisions, stating that this temple/pillar structure, as it was known, for the TEU was incongruous with the philosophy underlying the SEA (EP, 1991d, p.136)<sup>42</sup>. He himself preferred the 'tree' structure of the Dutch Drafts, in which all the different aspects of the TEU belong to a single central core with a common institutional structure and 'branch' off from this core as required.

The debate over the appropriate structure for the different aspects of the treaty was mirrored by the debate concerning the meaning of subsidiarity and its connection with federalism. Council President Van der Waal picked up the federal issue in a debate on political union in the European Parliament (EP, 1991e). He criticised the efforts by some participants in the negotiations to undermine the connection between federalism, subsidiarity and decentralisation, and argued that "there is a

---

<sup>42</sup> An MEP, Penders (PPE), describes the choice of metaphor between temple with pillars and tree with branches explicitly in terms of a supranational (Dutch) versus an intergovernmental (Luxembourg) structure for the final treaty (EP, 1991d, p.143).

misunderstanding over federalism. What is federalism, with all due respect to the special definition given in British dictionaries? Federalism guarantees and clarifies the devolution of powers. Everyone knows who does what. It protects nation states and regions, despite claims to the contrary, and, lastly, it underpins subsidiarity.” (EP, 1991e, p.126). In expressing this view, the President provided an official Netherlands position on the issue of a federal Europe. He also provided a final attempt by a Member State to identify federalism with both subsidiarity and decentralised authority. In this endeavour he was supported in the debate by Giscard D’Estaing, who called for a more federal Treaty and indicated that “I should also have wished the text to affirm that this federation was to be extensively decentralised and, of course, to contain an explicit reference to subsidiarity” (EP, 1991e, p.129).

Their efforts were of no avail. Subsequent drafts did not attempt to remove this pillar structure of the Treaty. They did, however, continue to make alterations to the statements on subsidiarity and federalism. The second Dutch draft was published on 8 November 1991 and presented to Foreign Ministers at Noordwijk during their meeting of 12-13 November (Dutch Government, 1991b). It retained the reference to the federal goal of Union in its general provisions. The list of competences and the definition of subsidiarity in the amendments to the Treaty of Rome also remain largely the same (but for some very minor semantic alterations). The one significant difference was that a new paragraph was inserted into Article 3b establishing the commitment that ‘Action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty’. This statement later becomes known as an expression of the principle of proportionality, and represented a new expression of the limits of Community action to that expressed under the subsidiarity label (see chapter three for analysis). The Dutch Draft also provided the first draft treaty reference to the Committee of the Regions, signalling a development vis-à-vis regional representation at Union level (Netherlands Government, 1991b, Article 4) and retaining the issue of regional representation as an important issue in the discourse.

The Dutch Presidency presented a third and final draft to Foreign Ministers during their meeting of 2-3 December and discussed at the Maastricht European Council of 9-10 December 1991 (Netherlands Government, 1991c). The Dutch Presidency proposed, as with its previous drafts, to retain the statement that 'This Treaty marks a new stage in the process leading gradually to a Union with a federal goal', but it was rejected in favour of the alternative statement that 'This Treaty marks a new stage in the process creating an ever closer Union among the peoples of Europe, *where decisions are taken as closely as possible to the citizen*' (emphasis added). This was a significant development and indicated that at the 11th hour of negotiations the reference to the federal goal of Union was finally abandoned in favour of an expression which had previously been linked with subsidiarity but which was somewhat underdeveloped. Quite clearly, this reference to a federal goal was extremely sensitive and met with some considerable opposition, generally attributed to the British delegation (see EP, 1991d, p.134). The Dutch also proposed a reference to subsidiarity in Article B of the general provisions which was accepted but modified to indicate clearly that subsidiarity regulates specifically the objectives of the Union.

The other important alteration to previous drafts was in the wording of the subsidiarity definition in Article 3b. The Dutch proposed to retain a list of Community powers in Article 3. This was accepted at the time but was eventually abandoned before the Treaty was signed in February 1992. The Dutch also proposed the same wording as that from its previous draft. This was rejected at the time in favour of the definition which occurs in the actual TEU. The main alteration was the inclusion of the condition that the Member States cannot sufficiently achieve an objective as a supplement to the reference to the Community better achieving it. In this final version, the distributive tension between two different ways of expressing subsidiarity is clearly exhibited, and at this point the complexity of the meaning of subsidiarity in the discourse finds its way definitively into the legal structure of the Union.

The reasons behind this eleventh hour alteration to the wording of the subsidiarity definition and the abandonment of a reference to the federal goal of the Union are fairly clear thanks to the minutes of

evidence of the UK government from the earlier Council meeting at Maastricht in November, which discussed the previous Dutch draft. In the FCO minutes of the Maastricht European Council (House of Commons Foreign Affairs Committee, 1991b) the Foreign Secretary engaged in a detailed discussion of the inclusion of references to a federal goal in the draft and indicated his opposition to it, stating that "That is not our view and that is why we are arguing for these phrases to be omitted." (House of Commons Foreign Affairs Committee, 1991b, p.5). He also indicated that "I cannot imagine circumstances in which the Prime Minister would accept a Treaty which committed Britain to a federal vocation or indeed the phrase at the end which committed us to a new conference with a prejudged conclusion"(House of Commons Foreign Affairs Committee, 1991b, p.5).

The text being circulated in November was still not, in his own view, adequate. "The text is improving", he states, but "We and the Germans will seek to improve it further." (House of Commons Foreign Affairs Committee, 1991b, p.9). This is confirmed by Tristan Garel-Jones, who states that "The point about the subsidiarity text in general...is that it has been a steadily improving text so far as we are concerned. Each time we have met our lawyers have expressed themselves pleased with the way the text is shaping up but there is still some improvement we would like to have in it. We are supported in this for reasons of the Länder as much as anything else, strongly supported by the federal republic." (House of Commons Foreign Affairs Committee, 1991b, p.10). Furthermore, he gives an indication of how he wished to see it improve in his later comment that "the essential thing we want to achieve is that the objectives of any proposed action cannot be sufficiently achieved by Member States acting on their own." (House of Commons Foreign Affairs Committee, 1991b, p.11). This is precisely what emerged from the Maastricht summit in December.

On the basis of the evidence from these minutes there seems to be no mystery about the eventual wording of Article 3b. It also seems clear that the British saw subsidiarity as a method of controlling the actions of the Community and of the Commission in particular, while the documents of the EP and of other Member States, including the Dutch and the Luxembourg governments, undoubtedly retained a much more generous view of the concept in its relation to Community activity. Not all the



ideas in the British documents found their way into the Treaty. Subsidiarity was not, for example, extended to include exclusive competence, an outcome which, if achieved, would have provided a more congruous connection between the formal-legal definition and the question of the distribution of powers between the Union and its states.

## **5.5 Conclusion**

This period between the ratification of the Single European Act and the signing of the Treaty on European Union witnessed the emergence of several different meanings of subsidiarity to that developed previously, and exclusively, in the documents of the European Parliament. With the context changing to that of preparations for another intergovernmental conference and more treaty revisions, the discourse on the distribution of powers is accompanied by the emergence of a discourse on the character or quality of the powers of the prospective Union. This discourse is engaged through the notions of efficiency and democracy, terms which had previously been used to express the meaning of subsidiarity.

With time, ideas relating to the character of the Union's powers and of the institutional mechanisms for managing them begin to creep into the meaning of subsidiarity, initially through association between the distribution of powers and the democratic and efficient functioning of the Union, but later through specific statements to the effect that measures designed to improve institutional efficiency and rationality are direct expressions of the subsidiarity idea. The connection between subsidiarity and the issue of institutional improvement can make sense of what appears to be an incongruity in the interpretation of the meaning of the concept. The incongruity to which I refer is the identification of the legislative instrument of the directive as an example of subsidiarity. It is incongruous because it is identified as such in the interpretation of subsidiarity solely within a distributive issue context. Recognising that subsidiarity does in fact expand into the issue context of institutional improvement removes the confusion, but for the most part this recognition is absent.

In addition, subsidiarity crystallises into several different ideas within the distributive context. A distinction emerges between the regulation of the grant of competences to the centre, primarily through alterations to Article 235 EEC, and the regulation of actions within concurrent competences. A distinction also emerges between the EP notion of comparative efficiency as the basic criterion of the subsidiarity idea, and the notion, developed by Delors, of a strong bias in support of decentralised authority, expressed through the phrase that decisions should be taken 'close to the citizen'. This bias is given a legalistic expression in the contribution of the British Government, which developed the idea of a necessity criterion to replace the comparative efficiency criterion of the European Parliament.

Delors also attempted to synthesise both centralisation and decentralisation in the subsidiarity concept by developing it as an idea which affords an acceptable continuation of integration because it is simultaneously able to guarantee the protection of both individual states and the diversities which distinguish them one from the other. But he persists with efforts to demonstrate that federalism represents this same synthesis, and with the ultimate expulsion of federal references from the TEU so too disappears any notion of subsidiarity along this line of reasoning. The eventual legal expression of subsidiarity is fragmented between a general and vague commitment to the 'taking of decisions as closely as possible to the citizen' on the one hand, and a combined and confusing 'necessity/comparative efficiency' criterion on the other. Interestingly, there is no mention at all of the regulation of the grant of competence via Article 235.

## **6 DEVELOPMENTS IN THE MEANING OF SUBSIDIARITY: 1992-1996**

### **6.1 Introduction**

After the signing of the Maastricht Treaty, discussion of subsidiarity unsurprisingly turns to methods by which to implement the ideas expressed through it. However, the fact that the debate on subsidiarity turns to the implementation or application of the concept does not mean that debate about the meaning of the concept suddenly stops. One of the important inferences of the theory of meaning is that all statements express meaning, regardless of their point. In the interpretation of subsidiarity, the meaning of the concept is established largely through an appreciation of explicit attempts within the institutional discourse to define the term, while attempts to apply it are treated separately. This focus, in interpretations of the meaning of subsidiarity, upon explicit attempts to define it is, perhaps, partly responsible for the appreciation of subsidiarity exclusively within a distributive issue context, in so far as it does not consider the implicit developments of the meaning of subsidiarity inherent in the methods which are chosen to apply the concept, which are not what one would expect from a reading of Article 3b TEU.

On the basis of the content of Article 3b TEU, one would reasonably expect statements concerning the application of subsidiarity to engage questions of task allocation in the category of shared or concurrent competence, based upon the criteria of Member State sufficiency and comparative efficiency. However, this does not happen. Instead, statements on the application of subsidiarity engage the question of how to improve European Union legislation. Various proposals emerge after 1992 which are designed to bring this improvement in terms of efficiency, simplicity and comprehensibility. Subsidiarity is presented as a concept which is both applied and respected through this rationalising process. Consequently, the new idea of transparency, the idea that government should be open and accessible, is constantly discussed in relation to subsidiarity as part of a set of

ideas designed to improve the legislative system of the EU. At times, transparency even appears to be an aspect of the meaning of subsidiarity.

This focus upon improvements to EU law as the method by which to apply subsidiarity reflects a further shift in the discourse on European Union away from distributive issues and towards the issue of the quality of EU action. The equation between subsidiarity and proximity to the citizen, given a formal-legal status in the Preamble to the TEU, is pivotal to this shift. The idea that subsidiarity means proximity to the citizen incorporates concerns with both the distribution of powers between governments and the quality of the exercise of powers by government as a whole. This meaning of subsidiarity increases in profile after the signing of the Maastricht Treaty, and appears to be an important link between the two issue contexts in which subsidiarity statements occur. The key event in promoting the profile of this meaning of subsidiarity is the rejection of the TEU by the Danish electorate, and the dissatisfaction with the TEU expressed in other countries such as France and the UK. This general public reaction against the Treaty gave rise to a new appreciation of the importance of public support for political change, reflected in the emergence of literature investigating the idea of legitimacy.

Although the meaning of subsidiarity strikes out in a direction which relates more to the quality of EU actions than to the distribution of powers, the distributive issue context does not disappear. The dominance of a distributive focus for Article 3b TEU alone is sufficient to prevent such an outcome. However, two distinct developments are visible concerning the relation between subsidiarity and the distribution of powers. The first is that notions of comparative efficiency and comparative effectiveness are played down in favour of ideas which place greater stress upon the decentralisation of power, including the idea of proximity to the citizen and others which emphasise the protection of decentralised authority. Secondly, the distributive issue context is visible particularly when Article 3b is the focus, suggesting that a cleavage has developed between Article 3b and more general notions of subsidiarity in the discourse. Article 3b is never, for example, discussed when the issue of improving EU legislation is being addressed.

## **6.2 Developments in the distributive meaning of subsidiarity - the dominance of decentralisation**

In the immediate aftermath of the signing of the TEU it is its ratification which dominates the discourse on European Union and which, by extension, provides a focus for subsidiarity statements. Given that the context is now one in which a legal statement of subsidiarity exists, attention is concentrated in part upon elaborating upon the meaning of this legal formula.

Early reactions to the TEU focused heavily on the subsidiarity principle, regarding the application of the concept as an important issue in post-Maastricht Europe. The UK House of Lords, for example, had stressed, in a report on the enlargement of the EU, that "The Committee consider that full application of the principle of subsidiarity must be the key to the effectiveness of the Community with functions and membership wider than originally established" (HL Select Committee on the European Communities, 1992a, para.176). An EPP document on the Maastricht Treaty also commented substantially on the need to apply the concept, and indicated that the justiciability of subsidiarity was, in its view, an important factor in this regard (EPP, 1992a).

However, while the enforcement of Article 3b was regarded as important, discussion of the general meaning of subsidiarity in relation to the distribution of powers focused specifically upon decentralising ideas which emphasised the protection of the State rather than the more centralising notion of comparative efficiency. In March 1992 the UK Foreign Affairs Committee of the House of Commons published an extensive report on the Maastricht Treaty, taking into account the opinions of various Member State governments on the Treaty (House of Commons Foreign Affairs Committee, 1992a). Reporting on the opinions of the institutions of the Union, it states that "Subsidiarity meant that the Commission would in future think twice before taking on new tasks. The burden of proof now rested on the Community. Subsidiarity would be used by lawyers as a counter-argument to arguments of "ever-closer union"" (House of Commons Foreign Affairs Committee, 1992a, p.ix) In addition, "The relative importance of the Commission within the Community and its competences

might be expected to diminish and it was possible that areas of responsibility could be removed from the Commission and given to member states (or lower levels) for decision.” (House of Commons Foreign Affairs Committee, 1992a, p.ix). It interpreted ever-closer union as the antithesis of subsidiarity, and was quick to interpret the meaning of subsidiarity in practice as less power for the Commission.

The meaning given to subsidiarity by the Foreign Affairs Committee, after an assessment of the views of the EU institutions, was fairly consistent with its pre-Maastricht position and focused, as it did during the IGC itself, upon an anti-central meaning in a distributive context which stressed the need to control the Commission. But other contributors to the institutional discourse who began to give a similar tone to the meaning of subsidiarity were less consistent. The Institutional Affairs Committee of the EP, for example, published a report on the TEU in March 1992, expressing its own opinion on the results. It was generally critical of the pillar structure and the lack of democracy and efficiency in decision-making (EP Institutional Affairs Committee, 1992, p.5), but welcomed a number of developments, including subsidiarity. Concerning the concept, it states that it welcomes “The inclusion in the Treaty of the principle of subsidiarity in defence of national and, especially, regional powers” (EP Institutional Affairs Committee, 1992, p.7). This is clearly a different tone from that of previous EP documents published before and during the IGCs and was an early sign of a shift in the balance of the meaning of subsidiarity between justification for and opposition to the centralisation of authority.

This shift of the meaning of subsidiarity in relation to the distribution of powers towards decentralisation and the restriction of EU actions was visible before the critical rejection of the TEU by the Danish electorate. After the Danes rejected the TEU on 2nd of June 1992 it became even more so (Duff, 1994). That the Danish people would react badly to the substantial developments contained in the TEU was perhaps not surprising. The Danes had a history of reticence towards increases in the authority and responsibility of the Community institutions which is well appreciated. The Danes could accept the new powers given to the Community by the SEA because, in the opinion of the then

Danish Prime Minister Poul Schluter, “they did not involve any erosion of sovereignty” (European Council, 1985b, p.18). But as a consequence of the substantial transfers of competence to the Union in the TEU it was not so easy to express a similar judgement.

One of the first reactions to the Danish referendum in the institutional discourse was a speech from Commissioner Leon Brittan in June 1992. Brittan assessed this rejection in the distributive terms of “the sensitivity of the relationship between national sovereignty and European integration” (Brittan, 1992, p.1), and proposed as the principal lesson of this rejection that “if the process begun by Robert Schuman is to be successfully completed, public opinion needs to be carried along as Europe evolves” (Brittan, 1992, p.1). This link which he forged between the referendum and a public support for integration was reflected in the emergence around this time of a theoretical assessment of the legitimacy of the European Union, in the work of authors such as Weiler (1992), Lodge (1994), Hauser and Muller (1995) and de Burca (1996).

Brittan recalled the initial context of the word ‘subsidiarity’ in the Commission report of 1975 in his statement that “The new responsibilities conferred upon the Community’s institutions by the Maastricht Treaty should not give rise to fears of the creation of a European super-State with a bureaucracy intervening in every aspect of life” (Brittan, 1992, p.2). But he also gave voice to a decentralising meaning of subsidiarity in his explanation of the reason why this fear should not materialise. It should not materialise because subsidiarity is designed “to act as a restraint on the Community’s scope of action. This is clearly of great importance in providing reassurance that the Community will not lead to the disappearance of national identities and customs” (Brittan, 1992, p.3)<sup>43</sup>. In order to reinforce this meaning of subsidiarity as a guarantee against centralisation, Brittan retrospectively unearthed two examples of subsidiarity in action which do exactly this. The first is a

---

<sup>43</sup> Of course, analysis of Article 3b demonstrates its formal incapacity to provide such a guarantee because it regulates neither Treaty changes nor policy extensions.

competence dispute between the Commission and the German authorities and the second a merger dispute between the Commission and the UK” (Brittan, 1992, pp.4-5)<sup>44</sup>.

### **6.3 The focus of distributive issues on Article 3b**

In addition to the emphasis of a decentralising meaning of subsidiarity vis-à-vis the distribution of powers, this distributive issue context also becomes increasingly restricted to the analysis of Article 3b of the TEU. Furthermore, a whole host of other issues relating to the application of Article 3b, such as its justiciability and the identification of concurrent competences, are exclusively attached to discussion of Article 3b in a debate which appears increasingly independent of the discussion of subsidiarity in relation to other issues such as the simplification of EU legislation. The Birmingham European Council conclusions, for example, discussed subsidiarity at length in the context of the quality of EU action and referred frequently to the involvement of the citizen in EU affairs and to the efficiency and clarity of Community action. However, when the conclusions engage directly the definition of subsidiarity in the TEU, the language switches to that of competence allocation and refers back to the distributive question of deciding when the respective governments, Member State and EU, should act (European Council, 1992b).

The Commission report on subsidiarity to the Council and the Parliament also demonstrated a split between a general discussion of subsidiarity in the context of the quality of EU action on the one hand and specific discussion of Article 3b in the context of the distribution of powers on the other. Suggesting that comparative efficiency is the basic criterion of the assessment of the need for Community action, the Commission listed a number of factors or dimensions which could be used to determine the relative efficiencies of each, including ‘the effect of the scale of the operation’ (note, this does not help to resolve the relation between scale and effects in Article 3b) ‘the cost of inaction,

---

<sup>44</sup> The examples which he describes do not demonstrate at all a rationale which produced a judgement on the basis of the greater ability of the Community or the insufficiency of the Member State to handle the matter. The dispute between Germany and the Commission was a straightforward dispute over whether or not the Community actually had competence in the area in question, while the merger dispute was a problem of Competition Policy.



the necessity to maintain a reasonable coherence...and the necessity to ensure that competition is not distorted within the common market'. But it also identified a necessity test in the annex. At one point it specifically referred to the second paragraph of Article 3b as a test of this type (European Commission, 1992, annex, point 2). This is elaborated in the statement that "The burden of proof is on the Community institutions to show that there is a need to legislate and take action at Community level..." (European Commission, 1992, pp.1-2), confirming that there existed a bias in favour of national action first.

The Committee of the Regions also confirmed that the issue of the distribution of powers was becoming increasingly restricted to the discussion of Article 3b (Committee of the Regions, 1995). It opened a 1995 report with the comment that "by declaring subsidiarity to be a fundamental principle, the Maastricht Treaty limits Union activities to fields where efficiency requires supranational action" (Committee of the Regions, 1995, p.1), thus resurrecting one of the longer standing notions of the concept in the context of the distributive issue in preference to the newer emphases on necessity and proximity to the citizen. Having linked subsidiarity with the notion of comparative efficiency, it also resurrected the distinction between, on the one hand, the boundary between the public and the private (D'Estaing's horizontal subsidiarity) and, on the other hand, the boundaries between the different degrees of centralised authority within the public sphere, in the statement that "The principle of subsidiarity implies that the public authorities do not take action when this can be done adequately and effectively by citizens. The principle also introduces the concept of gradation, i.e. higher levels of government act only when lower levels cannot act satisfactorily" (Committee of the Regions, 1995, p.3).

It then continued to discuss Article 3b, and in so doing ignored completely any notion of subsidiarity other than that of comparative efficiency relating to the distribution of powers. Undoubtedly encouraged by the constant connection between subsidiarity and regional government in Commission documents, it argued for a new wording of Article 3b which would read "The Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the

proposed action cannot be sufficiently achieved by the Member States, or by the regional and local authorities endowed with powers under the domestic legislation of the Member States in question” (Committee of the Regions, 1995, p.9). In addition, it proposed other changes which would make the principle enforceable by the European Court of Justice and also give the Committee powers to bring proceedings before the ECJ on subsidiarity grounds (Committee of the Regions, 1995, p.10).

The Committee thus had some considerable changes to propose concerning the formal-legal statement on subsidiarity in Article 3b, and maintained a distributive focus while engaged in presenting them. But once the report moves away from the formal notion of subsidiarity in the Treaty the meaning of the statements on subsidiarity exhibits a shift towards qualitative issues. At one point the report states that “Subsidiarity in general, and subsidiarity within the process of European integration in particular, strengthens: democratic legitimacy...the closeness of the Union to its citizens being one of the basic components of this legitimacy, transparency, since it encourages a clear-cut allocation of functions between various levels of government..., efficiency, since it presupposes that powers are exercised at the most appropriate level of government” (Committee of the Regions, 1995, p.3). The report attempts to define these three outcomes of the application of subsidiarity in distributive language, but in linking subsidiarity so closely with transparency and democratic legitimacy the interplay between the allocation of tasks and the improvement of their exercise is inescapable.

The same split is visible in the expert Report on the functioning of the TEU, commissioned by the European Council and Council of Ministers as a representative document of the positions of Member States (Council of the European Union, 1995b) This Report also discusses the quality of EU action in detail but returns to the question of the distribution of powers when Article 3b comes into focus. When discussing Article 3b, issues such as the Committee of the Regions’ request that it be allowed to bring proceedings before the Court of Justice for a breach of subsidiarity and that Article 3b be altered to include regional government in the distributive equation provide the focus. In this context, subsidiarity is presented clearly as “a guide to the proper exercise of the powers shared between the

Community and the Member States [which]... cannot be used as an excuse for lack of solidarity or for the re-nationalisation of common policies” (Council of the European Union, 1995b, para.69).

The individual Member States also published proposals concerning Article 3b prior to the convening of the 1996 IGC, which are focused within the context of the distribution of powers. They are thoroughly summarised in an EP briefing document (EP, 1996a). The heading for the document, “Subsidiarity and the demarcation of powers”, immediately locates the concept in the context of distributive concerns. The document presents the positions of the participants not only on the subsidiarity articles of the Treaty but also on the question of the powers of the Union, thus mixing proposals on the exercise of existing powers with proposals pertaining to the grant of new ones. One reason, perhaps, for this persistent connection between subsidiarity and power distribution is Article 235, which does provide mechanisms for power transfer and has constantly been discussed in conjunction with subsidiarity. Attempts to regulate the use of Article 235, and even to bind it by subsidiarity, have indicated that the concept is, in the minds of some groups, really one which can control power distribution, but only if alterations are made to other treaty articles, most notably Article 235. This is an issue which is discussed in the briefing document, with most opinions being against any alterations to this article (EP, 1996a, p.9).

In this EP briefing document on the Member States’ approach to subsidiarity for the forthcoming 1996 IGC there is no real discussion of proposals which might be interpreted as overlapping with other ideas such as transparency or democracy. This could reinforce the idea that the EP was reticent about the location of subsidiarity in discourses other than the distributive. However, it could also reinforce the idea that the distributive focus for subsidiarity statements was isolated to discussion of the formal-legal statement on subsidiarity in Article 3b TEU, as all the proposals in the EP briefing document relate to the formal-legal status of the concept. Only the lone voice of the Commission reminds the reader that the discourse on European Union had moved away from such distributive concerns, in the statement that “The primary goal of the Intergovernmental Conference is not to increase the powers of the Union” (EP, 1996a, p.6).

The same feature is visible in the Commission Report on the functioning of the TEU, also from 1995. It discusses subsidiarity in relation to the quality of EU action, but returns to a distributive issue context when it presents ideas relating to Article 3b, stating, for example, that “Subsidiarity involves working out the right level for the most effective action, whatever the question concerned. That level may be local, regional, national, European, or in some cases even world-wide.” (European Commission, 1995, preface). The Commission continued to incorporate sub-national government in the distributive equation. This link is reiterated in the statement that subsidiarity is a concept “which limits Community action to matters where it is more effective than action by national, regional or local authorities” (European Commission, 1995, p.1). The distributive focus of subsidiarity also occurs in other statements such as the comment on the formal status of subsidiarity that “The principle of subsidiarity has been explicitly set out in the Treaty, with the aim of reinforcing the legitimacy of acts adopted by the Union as well as clarifying the exercise of powers as between the Union and the Member States.” (European Commission, 1995, p.29). It is also related at one point to the notion of the “Debate on the distribution of powers” (European Commission, 1995, Preface).

#### **6.4 Transition to a quality context**

Whilst subsidiarity retains a connection with the distribution of powers, particularly through the discussion of Article 3b and issues related to it, the concept is also unmistakably employed within the issue context of the quality of EU action, in a manner which it always promised to do during the IGC that produced the TEU. Central to the transition of the meaning of subsidiarity into this alternative issue context is the equation between subsidiarity and proximity to the citizen. This meaning of subsidiarity was established prior to the signing of the TEU but it was only during and after its ratification that this particular meaning of subsidiarity was widely adopted in the institutional discourse. The link between subsidiarity and transparency, another idea which was rapidly increasing in profile in institutional debates at this time, is also an important development in this regard.

#### 6.4.1 The spatial/affective ambiguity of proximity to the citizen

Early signs of the importance of the idea that subsidiarity means government that is close to the citizen occur in the speech, already discussed (p.156), by Commissioner Brittan which followed the first Danish referendum. Having already stressed the link between subsidiarity and control of the central authorities, Brittan concluded his speech with a statement on subsidiarity which is similar in tone to the ideas developed by Delors before the TEU was signed. He states that “the Community seems to have found, in subsidiarity, a means for its long term evolution that is both progressive and acceptable to its citizens” (Brittan, 1992, p.6). The reference to the citizen in the subsidiarity idea recalled the statement which was included in the Preamble to the TEU, and it is a reference which, from this point onwards, became increasingly common. The Lisbon European Council, occurring just after Brittan made his speech, reiterated the need for a ‘Europe close to its citizens’ and connected this with subsidiarity in the request that proposals on the application of subsidiarity be prepared for the forthcoming summit in Edinburgh.

In addition, the Lisbon European Council also requested that existing Community law be re-examined for conformity to, and future law be drafted in conformity with, subsidiarity, stating that “This will be essential to ensure a direction of the European construction which is in conformity with the common wish of Member States and of their citizens” (European Council, 1992a, p.7). Reporting on a speech made by Delors at the European Council, Agence Europe quotes him as having said that “These commitments...should reassure citizens and make them understand that “this Europe is for them and not for a minority of technocrats”” (Agence Europe, 1992a, p.2).

The equation between subsidiarity and proximity to the citizen, first visible in the build up to the IGC (Ch.5), also featured strongly in the Birmingham European Council. The involvement of the European Parliament directly in the European Council meeting, not a normal occurrence, could be seen as a concession designed to reinforce the role of the citizen in decision-making. The European Council conclusions included a declaration bearing the heading of “A Community close to its

citizens” in which the points raised by a previous EP resolution and the events surrounding the ratification of the Treaty were addressed. A whole host of proposals were made concerning ways to implement the improvements called for in the EP resolution. Concerning democracy, the declaration requested the greater involvement of national parliaments and of the Committee of the Regions in EU activity while, in reference to transparency, the declaration not only proposed to open Council of Ministers meetings to the public but also to improve both the consultation process and the accessibility of information. Improving the accessibility of information would require improvements to the comprehensibility of legislation, a measure which would soon become connected to the meaning of subsidiarity (European Council, 1992b, paras.3-4).

The governments also sought to ‘reaffirm that decisions must be taken as closely as possible to the citizen’, strongly suggesting that this phrase had become virtually synonymous by this time with the meaning of subsidiarity, particularly given that it was followed by the statement that “Bringing to life this principle - “subsidiarity” or “nearness” - is essential if the Community is to develop with the support of its citizens.” (European Council, 1992b, para.5). The meaning of subsidiarity as comparative efficiency or effectiveness, and even as necessity, is significantly absent. Subsidiarity is equated entirely with proximity to the citizen, summed up here in the vacuous notion of ‘nearness’, an ambiguous idea which, as discussed in the previous chapter, could express a spatial or a qualitative relation between the State and its electorate. The idea also occurs in the Edinburgh Declaration, in the opening statement of basic principles that “European Union rests on the principle of subsidiarity, as is made clear in Articles A and B of title I of the Treaty on European Union. This principle contributes to the respect for the national identities of Member States and safeguards their powers. It aims at decisions within the European Union being taken as closely as possible to the citizen.” (European Council, 1992b, Annex 1, point A.1).

Some of these expressions of subsidiarity in terms of proximity to the citizen seem to infer proximity in a spatial sense, and so engage the distributive issue. This is clearly the case, for example, in the Commission statement that subsidiarity “should help to assure the citizen that decisions will be taken

as closely as possible to the citizen himself, without damaging the advantages which he gains from common action and without altering the institutional balance" (European Commission, 1992, p.2). But other occurrences of the idea express a meaning of proximity in the qualitative sense of involving citizens in EU activities. As an example, consider the statement from an EP Legal Affairs Committee report that subsidiarity means "organising Community activity effectively by bringing it closer to the concerns and aspirations of citizens" (EP Legal Affairs Committee, 1994, point B).

Some comments from an EP debate on the Edinburgh summit, in which the British Presidency had to give an assessment of its term of office, are particularly revealing (EP, 1992b). Prime Minister Major indicated that the period of the British Presidency was one of the most difficult in the Community's history, offering the Danish rejection of the treaty as the main cause (EP, 1992b, p.110). One of the tasks set for the British Presidency by Douglas Hurd speaking to the EP in July 1992, was to implement the principle of subsidiarity, and "to make the Community more open and closer to its own citizenry" (EP, 1992b, p.111). Major declared that "In Edinburgh we had to tackle three Maastricht-related issues: the Danish issue, subsidiarity and openness." (EP, 1992b, p.112) and that it had successfully done this. The Edinburgh agreement would, in his opinion, "improve the working of the Community, making the institutions more accountable, strengthening the rule of law, giving the principle of subsidiarity for the first time a clear-cut legal base." (EP, 1992b, p.112). In his view, the problem was that "There was a general fear, reflected in each of the referenda, that the Community was in danger of becoming too remote from its citizenry." (EP, 1992b, p.112), and the solution that "It [the EU] had to become more open. Decisions had to get closer to ordinary people and for the first time the principle of subsidiarity is now formally enshrined in a European Community Treaty. People everywhere it seemed were baffled by a paper principle - they needed to be persuaded in practice. So in advance of formal implementation, the Commission is showing what that principle will mean." (EP, 1992b, p.112). What the Commission showed, of course, is that it means the simplification and rationalisation of EU legislation.

The suggestion that 'proximity' was meant as an affective as well as a spatial idea also occurs in an EP briefing document on transparency, in which the German government is reported to have urged that "decisions should be taken as close as possible to the citizen, according to transparent procedures and subject to democratic control" (EP, 1995f, p.8). This suggestion is more explicit in later documents, such as a British government paper entitled "A Partnership of Nations" from March 1996, which states that 'the Government attaches priority to openness in the European Union, which brings it closer to the people, enabling them to follow and participate in decision making' (British Government, 1996). Also tuning in to this notion of proximity, the Commission report on the functioning of the TEU suggests that the task of the forthcoming intergovernmental conference is "to make Europe the business of every citizen" (European Commission, 1995, preface).

The Commission's hierarchy of norms proposal, which it continued to promote subsequent to the signing of the TEU, can be read as a transitional idea in the move from distributive to qualitative issues and by extension from spatial to affective notions of proximity to the citizen. The hierarchy of norms idea proposes that, with respect to the management of Community action (meaning its implementation), decentralisation should be pursued as much as possible through the use of the framework directive. This decentralisation of the management of Community action is the method which, in the Commission document, "corresponds to the need to maintain such actions as close to the citizen as possible" (European Commission, 1992, p.117).

This leads into the notion that subsidiarity specifies guidelines before directives and directives before regulations, the idea that "when exercising its powers, the Community must, where various equally effective options are available, choose the form of action or measure which leaves the Member States, individuals or businesses concerned the greatest degree of freedom." (European Commission, 1992, p.122). This commitment to guidelines before directives and directives before regulations is an expression of subsidiarity because "If legislation is not imperative on the basis of these tests, subsidiarity requires that: preference be given to support programmes to co-ordinate national measures, as opposed to harmonisation of laws;" (European Commission, 1992, p.123). From this



point it is a small step to the uninhibited discussion of the simplification and rationalisation of legislation in the name of subsidiarity, whereupon the notion of subsidiarity as proximity to the citizen has shifted decisively from distributive questions concerning the extent of EU action to qualitative questions considering the simplicity, comprehensibility and accessibility of those actions<sup>45</sup>.

#### 6.4.2 The link between subsidiarity and transparency

The hierarchy of norms idea which was promoted by the European Commission during the IGC did not find any favour with Member State governments and did not find its way into the TEU. The Commission continued to push this proposal prior to the signing of the TEU, but the implicit connection within the proposal between subsidiarity and the simplification and rationalisation of EU legislation continued to find expression through the emergence, as a response to the Danish referendum result, of the idea of transparency.

Subsequent to the signing of the TEU the connection between subsidiarity and transparency is clearly visible. Delors referred to the triangle of subsidiarity, openness and democracy in a debate in the European Parliament (Agence Europe, 1992e), while the Danish pro-European June Movement had tabled its own proposals to the Folketing (the Danish parliament), calling for more transparency, proximity and democracy. This suggested that subsidiarity was not only closely connected with transparency and democracy as part of a triptych of ideas addressing the quality of EU action, but also that subsidiarity had become virtually synonymous with proximity to the citizen (Agence Europe, 1992e). The Commission's Report on subsidiarity (European Commission, 1992) also discusses transparency at length as an aspect of the implementation of the subsidiarity principle, the idea of 'comprehensive legislation' being the point where the two concepts meet (European Commission, 1992, p.124).

---

<sup>45</sup> A recent example of the legacy of this interplay of ideas occurs in an article from the publication "Britain in Europe". Discussing the Amsterdam Treaty, the author of the relevant article states that one of the aims of the IGC "was to bring the Union "closer to the citizen", which meant a style of decision-making which was both simpler and more accessible"

The idea in these and other contributions is that transparency and the simplification of legislation are additional notions to that of subsidiarity. This was reflected in the Lisbon European Council conclusions. At one point the conclusions state that "The European Council agrees that specific steps must be taken to increase transparency in the decision making process of the Community and to reinforce the dialogue with the citizens of Europe on the Maastricht treaty and its implementation. The approach of the Maastricht treaty of bringing the process of European Unity closer to the citizens and reaffirming the importance of the identities of the nations that are part of the Union must be forcefully reflected in the Community's actions and behaviour." (European Council, 1992a, para.4). The text of the Presidency conclusions continues by emphasising the importance of subsidiarity to all future policy developments at Union level, but the manner in which application of subsidiarity is emphasised is unexpected. "The European Council is convinced that harmonious development of the Union over the coming years depends to a considerable degree on the strict application to existing and future legislation of the principle of subsidiarity by all the institutions." (European Council, 1992a, para.4). The statement indicated that the content of EU legislation must respect the subsidiarity idea, a point which is accommodated neither in the formal-legal expression of the principle in Article 3b nor in those meanings of subsidiarity which pertain generally to the distribution of powers.

The EP also took up this connection. In a resolution from October 1992 it criticised what it called 'the lack of transparency in the intergovernmental negotiations' and urged the forthcoming extraordinary European Council summit in Birmingham to concentrate upon the improvement of both transparency and democracy in the European Community (EP, 1992a). The resolution supported the ratification of the Treaty on European Union as it was drafted and did not call for any changes to be made, but it did insist that the TEU must be supplemented with an inter-institutional solemn declaration on transparency and democracy and "Believes it essential that an inter-institutional conference (Council, Commission and Parliament) should be convened with a mandate to: prepare the means needed to ensure swift and effective implementation of the principle of subsidiarity, draw up an inter-

---

(Bainbridge, 1998, p.111).

institutional agreement on this principle, committing all three institutions and covering both the substance of the idea and the procedures for implementing it [and] make it obligatory for the Commission to forward to the Council and Parliament an annual report on the application of this principle, which in turn would give rise to a debate in Parliament each year.” (EP, 1992a, para.4).

This document also expressed the view that the EU could not wait for the scheduled IGC in 1996 and called for another, earlier, IGC to put right the democratic deficit, increase transparency, simplify the decision-making process and increase the institutional powers of the Parliament (EP, 1992a, para.3). An early IGC was not convened but eventually an inter-institutional declaration on subsidiarity, democracy and transparency was released (Council of the European Union, 1993), for which the focus was not federalism or the distributive issue. The declaration was concerned, instead, with methods of improving the existing institutional structures along three specific parameters, democracy, transparency and subsidiarity, and demonstrated a distinct shift towards quality issues which address solely the actions of the EU’s institutions.

Whereas these reports suggested that transparency is an idea which functions alongside subsidiarity, others indicated the different idea that transparency is in fact part of the subsidiarity notion. An Agence Europe editorial entitled “No subsidiarity without prior transparency” for example, argued that “what lies at the very root of subsidiarity to be respected” is “transparency in the decision-making process so that both the obligation and the limits of the action are clearly visible” (Agence Europe, 1992b, editorial). Later, in response to the Birmingham European Council, the European Commission produced several reports for which the basic focus was the simplification and rationalisation of legislation through the application of the subsidiarity concept (European Commission, 1992). This focus upon the simplification and rationalisation of Community legislation became the principal effect of the application of the subsidiarity concept, as indicated by a subsequent report on ‘Adapting Community Legislation to Subsidiarity’ (European Commission, 1994).

The essential point is that the call for transparent, simple and comprehensible legislation was presented as an aspect of the application of the subsidiarity concept, as a method by which to address the problems (with EU action) raised by the referendum rejection in Denmark. It is a point which is demonstrated clearly in the preface to the Commission report on the functioning of the TEU, which states that “In the same spirit of openness, the principle of subsidiarity, which took pride of place in the Union Treaty, has begun to change the attitudes of the institutions” (European Commission, 1995: preface). In the document proper the concept is discussed in relation to the general heading of ‘Democracy and transparency in the Union’ with the comment that “transparency is a crucial instrument in bringing the Community closer to its citizens and in increasing their confidence in its operation, such confidence being a key element in any democracy. The Treaty sets out to meet this requirement by introducing, in the form of subsidiarity, a dynamic and evolutionary principle for the exercise of the Community’s powers. At the same time and *to make the functioning of the Union more transparent, it has spawned mechanisms for giving access to information and engendered a requirement for clearer legislation*” (European Commission, 1995, p.5, emphasis added).

This statement links subsidiarity to transparency as the means to the end, and both are linked in the same manner to the goal of taking decisions closer to the citizen, which further supports the idea that proximity is an ambiguous notion which contains both emotional and spatial overtones. It also unequivocally expresses a meaning of subsidiarity which relates to the improvement of the existing powers of the Union as much as it relates to the extension of new ones, and this fusion is confirmed later in the document in the statement that in introducing subsidiarity to the TEU “The aim was to ensure that tasks are properly distributed *and the Union itself more easily understandable*” (European Commission, 1995, p.29, emphasis added).

## **6.5 Summit outcomes – subsidiarity and the character of EU legislation**

Despite a greater emphasis upon decentralisation in the meaning of subsidiarity after the signing of the TEU, practical measures to reverse the Danish referendum result did not carry this meaning through into alterations to the balance of task allocation between the EU and its Member States. The practical response to the problem of the Danish referendum result involved efforts to improve the functioning of the European Union much more than efforts to reduce the scope of its powers, and this is reflected in the transition of the meaning of subsidiarity into the issue of the quality of EU action. That is, rather than emphasise subsidiarity as a principle which will prevent any further loss of national powers (although this does happen to some degree), the institutional response emphasised, instead, the need to improve the quality of the exercise of those powers which had already been lost by national governments, and presented subsidiarity in this context.

### **6.5.1 Birmingham**

One of the responses of the European Council to the various problems raised by the Danish rejection of the TEU was to convene an extraordinary European Council in Birmingham. The Declaration produced by the summit, which I have already discussed to some extent, focused entirely upon subsidiarity and transparency, and ways in which these concepts could be applied to reassure the Danish electorate and so produce a different outcome in a second referendum. But surprisingly, the Declaration did not seek to apply subsidiarity to issues of disputed action within the sphere of those competences shared by the Union and its Member States (as would be logical from the meaning of Article 3b TEU). Instead, it sought to apply the notion of subsidiarity, along with transparency, to EU legislation in general in an effort to bring about qualitative improvements in its content. The Declaration produced by the Birmingham European Council proposed that subsidiarity should become ‘an integral part of the Community’s decision-making’, but this was to be achieved not by a detailed consideration of task allocation between the EU and the Member States. It was to be achieved by reducing the complexity of legislation and allowing for a maximum amount of

manoeuvre on the part of individual states in implementing it. Subsidiarity was to be applied “for instance by using the lightest possible form of legislation, with maximum freedom for the Member States on how best to achieve the objective in question. Community legislation must be implemented and enforced effectively, and without interfering unnecessarily in the daily lives of our citizens” (European Council, 1992b, point.5).

These proposals were presented under the general heading of “A Community close to its Citizens” and as an expression of the European Council’s intention that “We want Community legislation to become simpler and clearer” (European Council, 1992b, point.3). This indicated that the issue which was being addressed in the declaration was that of the quality of EU action. The additional fact that subsidiarity was discussed in detail in relation to this issue is evidence of a tentative transition of subsidiarity into this issue context. The idea of simplifying and improving the effectiveness of Community law was one which had been, since the Danish referendum result, linked to subsidiarity. Delors had urged against the connection, but at the Birmingham European Council signs emerged that this equation was more likely to strengthen than to disappear. This is exactly what happened at the subsequent Edinburgh European Council, which reinforced subsidiarity as an idea relating to the quality of EU action. John Major’s press conference after the Birmingham European Council indicated as much. Confirming the centrality of subsidiarity to the discourse on European Union at this time in the statement that the Birmingham European Council was not just about Maastricht and subsidiarity, he goes on to call for “more limited, clearer and better explained legislation” from the European Commission (Agence Europe, 1992d, p.6)<sup>46</sup>. This could so easily be an expression of transparency as subsidiarity, and this emerging interplay is confirmed in media comments from the time. Agence Europe, for example, writes of making the Community “open and transparent and closer to the citizen” (Agence Europe, 1992e, editorial).

---

<sup>46</sup> This statement could also equally, from its content, be a reference to transparency, which confirms the coalescence, or better the submergence, of transparency ideas within the subsidiarity concept.

Primarily through the reference to simplifying and clarifying legislation, the Birmingham declaration established clear links between transparency and subsidiarity and located subsidiarity in the context of the quality of EU action. The nature of the link in the declaration was that the implementation of subsidiarity was a method by which to improve the transparency of Community activity. In a Commission report on the implementation of subsidiarity which was produced at the European Council's request, the link is maintained, but is slightly different. The report presents, in stronger terms than does the idea that transparency is an outcome of respect for subsidiarity, the sense that open and transparent government is a fundamental aspect of the meaning of subsidiarity itself. The opening paragraph of the Commission report goes to the heart of the quality issue in its reference to "the three linked issues of greater democratic control, more transparency in Community legislation and other action and the respect of the principle of subsidiarity" (European Commission, 1992, introduction). Concerning these three linked issues, "The Commission considers that all three elements need to be carried through into the practices of the Community". Subsidiarity is thus unequivocally connected with democratic control of and greater transparency in Community practice, and addresses the improvement of institutional practice as much as it addresses the distribution of powers between the EU and its Member States.

In its discussion of the hierarchy idea, the Commission report returned to the transparency of Community acts and reiterated the need to improve, as part of the application of subsidiarity, their comprehensibility and availability to the public (European Commission, 1992, p.124). The issues of legislative clarity and comprehensibility were linked to both citizen participation and subsidiarity. The document states that "in view of the importance of the public debate on subsidiarity and the need for instruments to be made more comprehensible, not only for economic operators but also for ordinary citizens who to an increasing extent are directly concerned by Community legislation, special care and attention should be paid to clarity and conciseness right from the proposal stage" (European Commission, 1992, p.124).

The document thus moves from a distributive issue context in the discussion of the definition of Article 3b to the context of the quality of EU action in the analysis of how to implement Article 3b. These two different issue contexts are reflected in the wonderfully manufactured expression at the end of the report that the Community must “*do less, but do it better*”, an expression which succinctly confirms the combination of distributive and qualitative elements to the meaning of subsidiarity which it had by this stage acquired (European Commission, 1992, p.125). This is a phrase which would appear in various forms in institutional documents from this point onwards<sup>47</sup>.

The sentiments of the Commission report were reiterated in a Danish Political Parties declaration (Danish Political Parties, 1992). In order to overcome the Danish referendum result the parties regarded a number of changes to the Community structure and activity as necessary, including greater democracy, openness, transparency and participation of the Danish Parliament (Danish Political Parties, 1992, pp.1-2). These general requests are fleshed out in more detail in paragraph B, with measures such as publicly accessible Council of Ministers meetings, more transparent administration and simplification of Community legislation among the demands. Furthermore, the declaration states that subsidiarity itself “must be applied here in order to clarify and adjust EC rules in order to take greater account of different traditions and forms of organisation in the individual Member States” (Danish Political Parties, 1992, p.2). In summary the document states that “The Danish “no” set in motion a positive process: a breakthrough was achieved in that governments and the EC institutions came to realise that the people required democracy, openness, nearness and respect for each country’s distinctive character.” (Danish Political Parties, 1992, p.4). Having emphasised, in the name of subsidiarity, the need to improve legislation it reiterates the equation of subsidiarity with nearness, a novel notion which, as in the case of closeness to the citizen, again invokes both distributive and qualitative concerns.

---

<sup>47</sup> As an example, the Reflection Group report from December 1995 states that “the Community should try to do not more but better” (Council of the European Union, 1995b, para.140). This is echoed later in a Commission report for the IGC in the



### 6.5.2 Edinburgh

The Commission report on 'Defining and implementing the principle of subsidiarity' was swiftly followed by the Edinburgh European Council, where it was expected that a number of the issues raised and analysed in the report would be resolved. Prior to the European Council the British Presidency of the Council itself issued a forward note to the foreign ministers establishing a draft text to be discussed there (British Government, 1992). The paper was entitled 'Denmark and the Maastricht Treaty', suggesting that the Danish referendum result continued to drive the negotiations between the EU's leaders. Subsidiarity was not mentioned in the paper, but it was mentioned later, in an open letter, on the eve of the European Council where Prime Minister Major proposed to discuss, in the same session, subsidiarity and openness (Major, 1992b). The conclusions of the Edinburgh European Council, however, produced a considerable contribution to the concepts of subsidiarity, transparency and openness, which clearly established the dominance of quality issues over distributive ones and the location of subsidiarity firmly within this quality context at the time.

Towards the end of the first annex of the Edinburgh conclusions the same concern that was expressed in the Commission report on subsidiarity - with the simplicity and clarity of legislation - emerges. The report states that "The form of action should be as simple as possible...Other things being equal, directives should be preferred to regulations and framework directives to detailed measures" (European Council, 1992c, annex 1, point A.2.v)<sup>48</sup>. In addition, this simplification was to be applied retrospectively to existing legislation. Commission documents had promoted this particular idea and the European Council formalised it in the Edinburgh conclusions, with the result that a number of policy areas were listed by the Commission for review or for annulment (European Council, 1992c, annex 2). This is further evidence in support of the interpretation of subsidiarity as a principle for rationalising the legislation of the EU and thus improving its character, here in terms of coherence and comprehensibility, and strong evidence for the submergence of quality issues within the broad

---

words that "Europe must do less, so as to do it better" (European Commission, 1996, para.19).

<sup>48</sup> It is worth noting that the sentiments here reflect very closely the notion of extent in the third paragraph of Article 3b and more usually identified in the discourse as proportionality.

meaning of the subsidiarity concept. The sense is that transparency is one of the outcomes of the application of subsidiarity, to the extent that subsidiarity almost includes, as part of its post-Maastricht meaning, a normative commitment to making the Community more transparent (European Council, 1992c, annex 2). The third annex of the Declaration discusses transparency in detail and in so doing retains the distinction between the two in form if not in substance. But in discussing as goals of the application of transparency “Simplification of and easier access to Community legislation” and “Making new Community legislation clearer and simpler” (European Council, 1992c, annex 4), the link with subsidiarity is maintained as these are goals which elsewhere are attributed to the application of the subsidiarity concept.

This idea that subsidiarity means the simplification and clarification of the content of EU legislation is not confined to the European Councils. It is stressed later, for example, in the Commission report on the functioning of the TEU. The report recognises that realising these objectives of greater comprehensibility and rationality of legislation is not easy but at the same time indicates that these objectives are part of the meaning of subsidiarity in the statement that “The desire to protect individual interests still means that excessively detailed instruments are enacted, *flying in the face of the search for clarity and simplicity that subsidiarity implies.*” (European Commission, 1995, p.30, emphasis added).

Also, a Council of Ministers report on the functioning of the TEU adopts a similar line, discussing subsidiarity, transparency, democracy and efficiency in detail in relation to the institutional system, citizenship and the structure of the treaty. The report notes the importance of “Bringing Europe closer to the people” (Council of the European Union, 1995a, para.6) and also the need to “make secondary legislation more readable and more accessible” (Council of the European Union, 1995a, para.14). The report also notes the need to “reinforce the democratic legitimacy of the institutional system while making the decision-making process more efficient” (Council of the European Union, 1995a, para.16).

## 6.6 Responses to the European Councils

The European Councils had focused on the need to improve the quality of EU actions. This was to be achieved in a variety of ways, and the meaning of subsidiarity - both as proximity to the citizen and as the simplification and clarification of legislation - was an important method by which to stress this objective. The European Council requested that the Commission examine ways by which this might be done, and its reply came in November 1993 (European Commission, 1993b). The Commission report reconfirmed the equation between subsidiarity and proximity to the citizen in the opening statement that "The aim of the subsidiarity principle is to see to it that decisions are taken as closely as possible to the citizen" (European Commission, 1993b, section 1.1) The peculiar conjunction of proposals addressing the character of EU legislation with this notion of proximity strongly suggests that proximity is here qualitative as much as spatial. This is supplemented by the additional statement that "*The main aim of the subsidiarity principle, therefore, is to improve the quality of Community action*" (European Commission, 1993b, para.I.1, emphasis added), which was to be achieved essentially by doing less rather than more and doing better that which is retained.

Reflecting the Commission document prior to the Edinburgh European Council, the report elaborates upon its earlier suggestions by suggesting further that this simplification was to be achieved through a "justification included in legislative proposals, withdrawal or revision of pending proposals, [and] review of existing legislation" (European Commission, 1993b, para.II). With respect to the justification of proposals, this entailed a detailed account of precisely why a Community measure is required, quite apart from the prior decision implied in Article 3b that Community action is more efficient than that of Member States. With respect to the withdrawal of pending proposals, numerous areas were being examined at the time, to be finalised at a later date. With respect to the revision of existing legislation, this entailed 'recasting' laws which were badly structured, 'simplifying' laws which were needlessly complex and 'repealing' laws which were no longer required (European Commission, 1993b, para.III.2).

These proposals under the name of subsidiarity were soon transformed into a substantial list of laws to be altered in one of the three ways identified in the Commission report. A provisional list was attached to the original report in November 1993 and in January 1994 a modified list was confirmed in a document entitled 'Adapting Community legislation to subsidiarity' (European Commission, 1994). The reiteration of the text of Article 3b reads as misplaced in a document which is making proposals to simplify, repeal and recast existing legislation which, even by the most liberal interpretation, could not be inferred as an aspect of the formal-legal statement. Interestingly, even competition laws, previously intimated by the Commission to be an exclusive competence of the Community (European Commission, 1992, p.121), were not protected from the surgical knife.

Also in response to the European Councils, the European Parliament requested an inter-institutional agreement on subsidiarity and transparency which would set out the practical procedures for achieving the Birmingham and Edinburgh European Council objectives. In a debate in the European Parliament, UK Prime Minister Major supported the proposal. Delors also supported the idea, stating that "Regarding the problem of bringing decision-making closer to the citizen, the European Council adopted texts on subsidiarity and transparency concerning the three institutions, and an inter-institutional agreement is going to be required for the purposes of applying these texts." (EP, 1992b, p.115). In October 1993 an inter-institutional conference between the Parliament, Commission and Council was convened, producing a joint text entitled "Inter-institutional declaration on democracy, transparency and subsidiarity" (Council of the European Union et al, 1993). Numerous procedural measures were established in the declaration which were designed to improve the character of Community activities along the lines of these three concepts, the language being that of improvement and simplification. Concerning subsidiarity, it was confirmed that the Commission must justify its proposals on subsidiarity grounds, as must the other institutions when they amend a Commission proposal and where the amendment entails a greater degree of intervention. In addition, the Commission would from now on be required to produce an annual report to the other two institutions on the compliance of legislation with subsidiarity, which would be debated in the Parliament.

The EP was a convert to this new approach to subsidiarity. It published a declaration on the three concepts of transparency, democracy and subsidiarity which does not even mention subsidiarity in the text itself, strongly suggesting that the three concepts were seen as interrelated as part of a strategy to improve the functioning of the Community and do not necessarily need to be discussed individually (EP, 1993). This was followed by an Institutional Affairs Committee report on the European Constitution, under the guidance of its new rapporteur, Mr. Hermann. The so-called Hermann report consisted of a resolution, a draft constitution and an explanatory statement of the Committee's and the Parliament's aims in producing the text. The report picked up the mantle of Spinelli in so far as it was very much a remodelling of the draft treaty of 1984. The resolution which preceded the draft confirmed that the report was the next stage in the development of a 'federal style Union' (EP Institutional Affairs Committee, 1994a, preamble), but what is most revealing about the report is the difference in language from that of previous reports on the Constitution. References to federalism and the distribution of powers, so dominant in the previous Institutional Affairs Committee reports for which Spinelli and David Martin were the rapporteurs, are played down in favour of language which addresses the need to improve the existing powers and practices of the institutions.

As an example, the resolution states that there is a "need to ensure that decisions are taken as closely as possible to the citizens themselves and to delegate powers to higher levels only for proven reasons of the common good" (EP Institutional Affairs Committee, 1994a, preamble). This linkage of the expression of proximity to the citizens with the common good is a novel one for documents of the European Parliament. The normal linkage would be with the greater efficiency or effectiveness of higher level action, and it reflects the importance which the notion of 'proximity to the citizen' had gained as an expression of subsidiarity. As a better example, it states that one of the tasks of the future Constitution, vis-à-vis the Union, is to "increase the efficacy, transparency and democratic vocation of its institutions" and "to simplify and clarify its decision-making procedures" (EP Institutional Affairs Committee, 1994a, preamble). Again, these statements are unusual for EP documents but familiar in the documents of other institutions.

The report discussed in detail the relation between subsidiarity and the competences of the Union, in language which is lifted directly and with little alteration from the TEU. In this regard the report is unoriginal, and maintains the link between subsidiarity and the discourse on the distribution of powers (EP Institutional Affairs Committee, 1994a, Article 10)<sup>49</sup>. But the focus of the report had significantly altered. Competence distribution is relegated to that of a simple reiteration of TEU statements. There is no discussion of lists of powers for the Union or of the need to give more powers to the Union. Instead, the issues of proximity to the citizen, transparency and simplification of legislation infuse the report and determine its overall tone.

In its explanatory statement this difference in tone from previous reports is abundantly apparent. The pre-Maastricht goal of a federal-type Union is replaced by “an open and democratic federal-type political union [which is] in line with the requirements of efficiency, transparency and democracy, and consequently more favourable to the interests of the citizens which the European Parliament represents” (EP Institutional Affairs Committee, 1994a, Explanatory Statement, p.20). The report is presented not as a draft for a federal union which extends substantial new powers to the central authority but as “an alternative strategy based on elements such as clarity, simplicity, legibility and the definition of political and legal principles which everybody can understand” (EP Institutional Affairs Committee, 1994a, Explanatory Statement, p.22). Furthermore, the report discussed three different models for the Union and provides as its reason for favouring one model over the others that “it corresponds best to the contradictory requirements of the respect of national identities, the effectiveness of collective action, transparency, democracy and closeness to the citizen” (EP Institutional Affairs Committee, 1994a, Explanatory Statement, p.24). Subsidiarity is not discussed in detail of itself. However, it is also revealing to note that where it is referred to in the explanatory statement the comments reveal a potential reason why the concept is given less direct attention. It notes that “Federalists fear a return to intergovernmental systems and the re-nationalisation of policies under the pretext of subsidiarity” (EP Institutional Affairs Committee, 1994a, Explanatory statement,

---

<sup>49</sup> A draft constitution is included in the Report.

p.), further confirming the extent to which, in its distributive sense, the meaning of the concept had become largely anti-central in its emphasis<sup>50</sup>.

A report from the EP Committee on Legal Affairs and Citizens' Rights is interesting for similar reasons (EP Legal Affairs and Citizens' Rights Committee, 1994). It emphasised subsidiarity in the distributive language of comparative efficiency but, as a reflection of the shift in the balance between distributive and qualitative issues, could not avoid referring to subsidiarity as "organising Community activity effectively by bringing it closer to the concerns and aspirations of citizens" (EP Legal Affairs and Citizens' Rights Committee, 1994, Motion for a Resolution, point B, p.4) and also as "a catalyst, which should guarantee greater clarity in the future Community legislative process" (EP Legal Affairs and Citizens' Rights Committee, 1994, Motion for a Resolution, point D, p.4).

#### 6.6.1 Objections to developments in the meaning of subsidiarity

The developments in the meaning of subsidiarity, in the context of both the distribution of powers and the quality of EU activities, did not go without criticism. These criticisms, where they occur, serve to reinforce the argument that subsidiarity was indeed developing in meaning in the ways which I have outlined. The EP's Legal Affairs Committee report was supportive of the Commission's approach to the revision and repeal of legislation and of the Commission's request to this end for a hierarchy of norms (EP Legal Affairs and Citizens' Rights Committee, 1994, Motion for a Resolution, para.14, p.6), but offered a note of caution against an abuse of this aspect of the meaning of subsidiarity (EP Legal Affairs and Citizens' Rights Committee, 1994, Motion for a Resolution, para.11) to achieve outcomes other than an improvement of the comprehensibility and effectiveness of Community law (EP Legal Affairs and Citizens' Rights Committee, 1994, Motion for a Resolution, para.7).

---

<sup>50</sup> The Report also blames the current lack of public confidence in the European Union on both "the confusion of powers and responsibilities" (a point discussed in Chs.3 and 4) and "the opaqueness of Community legislation" (EP Institutional Affairs Committee, 1994a, Explanatory statement, p.22)

This note of caution reflected a concern with certain contexts for the occurrence of subsidiarity which is also visible elsewhere in the discourse. Numerous voices expressed dissent, for example, from the decentralising notion of subsidiarity which dominated the distributive debate after Maastricht, particularly where it inferred less power for the Commission. The Irish Premier, reacting to the Birmingham European Council, defended the Commission from the criticism that it was too active and rejected the inference that Commission activity was the problem to be addressed through subsidiarity. In a letter to John Major he argued that “while there have been some excesses of regulation - often at the prompting of the Member States - it is not our view that the Commission has generally been too intrusive” (Agence Europe, 1992e, p.3). The Premier responded to the emergence of what was undoubtedly an anti-central notion of subsidiarity with the statement that “our concerns are rather in the opposite direction, that the application of subsidiarity could be a pretext for rolling back existing Community achievements or heading off further integration in areas where we see this to be desirable.” (Agence Europe, 1992e, p.3).

Other groups, such as the Green MEPs, are also reported to have expressed a similar concern to that of the Irish Premier. The use of subsidiarity to undermine the Commission’s position was sufficiently serious to prompt the Liberal Democratic and Reformist Group in the EP to issue an amendment to an EP resolution which rejected “the abuse of the notion of subsidiarity to discredit the Commission” (Agence Europe, 1992c, p.3). A similar objection was made by contributors to an EPP document which brought together Ministers from numerous Member State governments of the time. Jean-Claude Juncker, for example, the Finance minister of Luxembourg, noted that “many people are searching too eagerly for areas in which the Community must not or must no longer be involved, whereas I would hope that in the interests of subsidiarity we will devote just as much energy to looking for areas where the Community must act or must redouble its activity” (European People’s Party, 1992b, p.27).

These criticisms are reflected in the determination of some MEPs to define subsidiarity in distributive terms and, more than this, to define it as a notion which promotes centralisation rather than prevents



it. In a debate on 'Community legislation and the subsidiarity principle', one MEP rejected the amendments proposed by another (Mr Vandemeulebroecke of the Rainbow Group) to extend the application of subsidiarity beyond concurrent competence, on the grounds that "subsidiarity must not be regarded simply as a kind of brake on Community development." (EP, 1994d, p.67). In his own view "Subsidiarity must be interpreted, at the level of building the Community structure, as a positive factor in the construction of Europe, not a negative factor". Another member points out that the British BBC consistently misinterpreted it as "non-interference", about which he complained and received a written apology (EP, 1994d, p.68). He is equally critical of the Commission for interpreting it as "a repatriation of policy, which is wrong" (EP, 1994d, p.68).

The development of the meaning of subsidiarity within the context of the quality of EU activities also comes under fire. Delors, despite encouraging such a development by constantly connecting subsidiarity with both the hierarchy of norms and proximity to the citizen, urged leaders not to "confuse subsidiarity with the need to simplify Community work and make it 'less cumbersome'". In order to emphasise his point, he repeated that subsidiarity meant "taking decisions as close to the citizen as possible and in conditions offering the most effectiveness." (Agence Europe, 1992a, p.2)<sup>51</sup>. He clearly wished to resist the extension of the meaning of subsidiarity out of a distributive issue context, yet he himself, in linking subsidiarity so cogently with the notion of a hierarchy of norms, had undoubtedly contributed to such an outcome.

The same criticism is made in the debate, previously mentioned, concerning subsidiarity and Community legislation. The rapporteur for the report upon which the debate was based noted that subsidiarity is used "in a very general way in relation to all kinds of situations" (EP, 1994d, p.67). This comment on the generality of the notion is developed by another contributor to the debate into a specific rejection of those aspects of the concept which pertain to qualitative improvements to Community practice. Garcia Amigo of the EPP states that "in applying subsidiarity we should not

---

<sup>51</sup> This is a point which is also made by the British Prime Minister (Major, 1992a) in a speech to the London Forum.

confuse it with other principles which are also in the Treaty. We therefore find it strange - and say so in paragraph II [of the report] - that the Community should now wish to take advantage of the principle of subsidiarity, to codify and simplify Community law.” (EP, 1994d, p.68). In his own view “That is a different question [and] It is as well to make that clear...so that we should not distort the meaning of the words, and much less that of the principles” (EP, 1994d, p.68). In its written opinion on the Committee on Legal Affairs report, which was under discussion in the debate, the Committee on Institutional Affairs, under the guidance of Mr. Cerretti, is equally critical of this development. According to the opinion, the Commission had developed “a bureaucratic interpretation bordering on the ridiculous” consisting of “as many as 14 conditions which a Community act would have to satisfy in order to be deemed to conform to the subsidiarity principle” (EP Institutional Affairs Committee, 1994b, Introduction).

However, the opinion was also generally supportive of both the Commission’s attempt to rationalise legislation (EP Institutional Affairs Committee, 1994b, section 2.d, p.10) and the request for a hierarchy of norms which, if introduced to the TEU, would “mark an essential step forward in ensuring compliance with the subsidiarity principle” (EP Institutional Affairs Committee, 1994b, section 3.d, p.11). This suggests that while MEPs were objecting to developments in the meaning of subsidiarity they were also accepting them, a point which is reflected in the comments of the rapporteur for the Legal Affairs and Citizens’ Rights Committee report. On the one hand, he criticised the possibility of national governments using Community law to deal with domestic problems for which the Community does not really have competence because, in his view, the “application of the principle of subsidiarity should lead us to consider the need to accord the Union all the powers it needs to attain its objectives and will enable us to call for those powers to be fully and effectively exercised...” (EP, 1994d, p.68). But on the other hand, he supported the proposal for a hierarchy of acts and states that “It is my belief that the proper distribution of responsibilities between the legislature and the executive involves laying down simpler and less detailed rules which, for that very reason, take better into account the principle of subsidiarity...” (EP, 1994d, p.68).

### 6.6.2 Dominating the discourse – The debate on the quality of EU action

Members of the EP were, perhaps, unable to resist discussing subsidiarity as an idea designed to improve the quality of EU actions because the quality of EU actions had become a substantial issue for debate since the signing of the TEU. Indeed, while the MEPs were resisting the extension of the meaning of subsidiarity into this issue of the quality of EU action, Vanni D'Archirafi, speaking for the European Commission at the EP debate, was reminding them that the distributive debate had given way to this concern with the quality of EU action, in the statement that "The principle should guarantee effectively that the decision-making process comes as close as possible to the citizen. Along with transparency and democracy, subsidiarity continues a three-pronged concept which, more than any other, marks out and defines the way forward in the construction of Europe." (EP, 1994d, p.70).

The dominance of this issue of the quality of EU actions is reflected throughout institutional documentation. In the build up to the 1996 IGC, for example, the European Council and the Council of the European Union jointly published a Reflection Group report, which presented the opinions of the Member States concerning the issues to be discussed during the IGC (Council of the European Union, 1995b). The report categorised its proposals into sections on external action, the citizen, and efficiency and democracy, and splits comments on subsidiarity between the latter two. To some extent with the issue of the citizen and the Union, and undoubtedly with the issue of an efficient and democratic Union, qualitative changes to existing procedures are the focus for the proposals and the report thus engages the issue of the quality of the exercise of EU powers rather than the issue of the quantity of EU powers. Under the heading of "An efficient and democratic Union" (Council of the European Union, 1995, Index) the report states that the task ahead was "to ensure that the adjustments decided at the Conference will enable the instruments of the Union to operate according to criteria of efficiency, democracy, solidarity, transparency and subsidiarity" (Council of the European Union, 1995, para.75). Elaborating on the relevance of subsidiarity, it presents opinions on the hierarchy of norms, and notes that those who support this framework do so because "this classification would

render simpler and more transparent the application of subsidiarity” (Council of the European Union, 1995, para.126).

The report also contains a section on transparency, a concept which would, in the opinion of the Reflection Group, “make Union affairs more accessible and comprehensible to the general public” (Council of the European Union, 1995, para.67). In this regard, “it is recommended that individuals be allowed more information and the clarity and quality of legislative texts be improved” (Council of the European Union, 1995, para.67). Subsidiarity is also mentioned in so far as “Application of the principle of subsidiarity contributes to increase transparency” (Council of the European Union, 1995, para.67). The idea is again that transparency is an outcome of the application of subsidiarity, as is the hierarchy of norms, confirming the interplay in meaning between these different ideas and by extension the combination of distributive and qualitative elements to the meaning of subsidiarity. It also confirms a shift in the discourse on European Union from concerns over the distribution of powers between the EU and its Member States to concerns with the quality of EU action.

This is a point which is frequently demonstrated in the Reflection Group Report (Council of the European Union, 1995), and nowhere more succinctly than in the mission statement that “The objective of the 1996 reform, as defined in the terms of reference and given the challenge of enlargement, is to ensure that the Union functions efficiently and with legitimacy; in short, *the purpose is to improve the quality of the way the Union works*. To this end it will be necessary to clarify its objectives and refine the instruments that serve those objectives, bearing in mind that in future *the intention is not that the Union should necessarily have more powers but that it should perform its tasks better.*”( Council of the European Union, 1995, para.75, emphasis added). This is the clearest expression to date of a debate on the quality or character of EU institutional practice, and suggests that this debate had reached maturity prior to the opening of the IGC.

Other documents fail to reach this degree of succinctness, but do generally confirm the importance to the forthcoming IGC of both the quality issue and of subsidiarity as an idea which relates to it. An EP

Institutional Affairs Committee report on the IGC, for example, is dominated by quality concerns (EP Institutional Affairs Committee, 1996). Transparency is still regarded as inadequate in Community practice in Justice and Home affairs (EP Institutional Affairs Committee, 1996, section II, para.5). But the problem is perceived by the EP as more serious than this, and an entire section is devoted to the issue of "Transparency and openness in the European Institutions" (EP Institutional Affairs Committee, 1996, section V), as is a section given also to the issue of "More efficient and Democratic European Institutions and Procedures" (EP Institutional Affairs Committee, 1996, section VI). This latter section is the longest in the document, and contains a whole host of proposals for altering the institutional balance in such areas as legislation and the appointment of officials.

The European Council in Cannes pronounced that the aim of the IGC should be "to make the institutions more efficient, democratic and open so that they are able to adjust to the demands of an enlarged Union; to strengthen public support for the process of European integration by meeting the need for a form of democracy which is closer to the citizens of Europe [and] to put the principle of subsidiarity into practice more effectively" (European Council, 1995a, section IV). This was setting an agenda for the institutions and member states which clearly focused on qualitative issues as much as if not more than distributive ones and this is reflected in institutional documents on the forthcoming conference.

The Turin European Council, which opened the intergovernmental conference, went even further, declaring that "institutions, as well as their functioning, and procedures have to be improved in order to preserve its capacity for action, while maintaining the "acquis communautaire" and developing it and also respecting the balance between the institutions. It is essential to sustain the very nature of European construction, which has to preserve and develop its features of democracy, solidarity, cohesion, transparency and subsidiarity" (European Council, 1996, p.9). It then proceeds to present ideas under the headings of "A Union closer to its citizens" (European Council, 1996, p.9) and "The institutions in a more democratic and efficient Union" (European Council, 1996, p.10), in which subsidiarity is mentioned as a way "to provide transparency and openness in the Union's work". The

distributive issue and attendant notions such as sovereignty and federalism, which provided the focus for the IGC that produced the TEU, had been decisively, by the time of the opening of the 1996 IGC, replaced by issues of the quality of legislation, the involvement of the citizen and the general improvement of EU activity.

## **6.7 Conclusion**

The findings from the reports analysed in this chapter demonstrate convincingly that while the meaning of subsidiarity, fragmented as it is in the debate on the distribution of powers, remains connected with distributive issues, it is also extended to a debate on the quality of EU action through a variety of notions pertaining to the improvement of EU practice, including the hierarchy of norms and the simplification and clarification of legislation. This development in the meaning of subsidiarity statements reflects a shift in the focus of the issues discussed in the discourse on European Union away from the question of what powers the Union should be given to the question of how the management of these powers can be improved. As a consequence, references to federalism and sovereignty diminish considerably to be replaced by references to the citizen and to open, efficient and democratic government. Even the die-hard European Parliament demonstrates such a shift, linking subsidiarity with open government and legislative rationalisation, and expressing federalism, where it does persist, in terms of the better quality of government which it delivers.

The persistence of the distributive focus for subsidiarity statements appears to be closely linked with comment upon the formal-legal statement on subsidiarity in Article 3b TEU. This in turn suggests that a dislocation has developed in subsidiarity commentary between reference to the expression of subsidiarity in the TEU and reference to its application to institutional practice. One would expect on the basis of Article 3b that the application of subsidiarity would focus upon methods by which to assess the sufficiency of Member State action and the advantages of Community action with reference to specific proposals, but this is not the case. Statements addressing the application of subsidiarity focus instead upon the creation of new legislative instruments and the overhaul of the

content of existing laws in order to make them simpler and more understandable. For this, a notion of subsidiarity other than that expressed in Article 3b TEU is required. Article 3b is dominated by distributive concerns, and could hardly be discussed in any other way. The fact that subsidiarity is, however, discussed in other ways which do not relate to Article 3b clearly indicates that the issues dominating the discourse on European Union during the 1991 IGC which produced the TEU were not the same as those which were likely to dominate the IGC that would amend it.

## 7 CONCLUSION: READING SUBSIDIARITY IN THE EU

### 7.1 Introduction

I have identified, through the excavation of different meanings of subsidiarity in the institutional discourse, several notions of the concept, not all of which are fully appreciated in existing interpretations of the meaning of subsidiarity in the European Union. These meanings are focused around two different issue contexts. On the one hand, a distributive issue context which concerns the allocation of competence between different levels of government. On the other hand, a qualitative issue context which concerns the character of the exercise of specifically EU competence. The former issue context is constructed around the relationship between governments and addresses the internal organisation of the EU system, while the latter is largely constructed around the relationship between the State and society and addresses the role of the State, which in this case means the role of the EU, vis-à-vis the citizen.

Some meanings of subsidiarity are located squarely within a distributive issue context, such as the notions of subsidiarity as comparative efficiency and as necessity. These notions are reflected particularly in Article 3b TEU which, by extension, represents the principal legal expression of subsidiarity in this distributive issue context. Within this context, there is a clear tension between different meanings of subsidiarity. This tension is the basis for the notion that subsidiarity is *contested*. Other meanings, reflecting efforts to apply subsidiarity in the post-Maastricht EU, such as subsidiarity in the hierarchy of norms and subsidiarity as the basis for simplifying and clarifying EU legislation, are located much closer to a qualitative issue context. The notions of subsidiarity as proximity to the citizen and the hierarchy of norms appear to function as a bridge between these two different issue contexts. The extent to which they become standard ideas in the discourse is a reflection of the extent to which the issue of the quality of EU policy is entrenched in the broader institutional discourse on European Union.



These different meanings of subsidiarity carry some significant implications for the way in which subsidiarity has been read in the European Union in existing interpretations of the concept, qualifying the propositions by which this reading is principally constructed. These meanings confirm that subsidiarity exhibits the differences in meaning which are a premise of the proposition that subsidiarity is a contested concept, and offer support for the instrumental relation between meanings and interests which this claim to contestedness implies. But they also confirm that there is a tension between different issue contexts for meanings of the concept, and this carries implications for the other two propositions about the meaning of subsidiarity that complete the dominant image of the concept, namely that subsidiarity propagates the federal debate and originates from Catholic and federal texts.

These meanings qualify the proposition that subsidiarity is a new term for an old debate by suggesting an alternative issue context to the distribution of powers inferred in the proposition. They also qualify the interpretation of the origins of subsidiarity by indicating that the basis for the identification of these origins is not simply a semantic correlation, but is based upon the fact that these origins reflect the differences in the meanings of subsidiarity in the institutional discourse. On the one hand they reflect the distinction between distributive and qualitative issue contexts, the federal origin establishing that subsidiarity governs relations between States, while the Catholic origin establishes that it governs the relationship between the activities of the State and its citizens. On the other hand they also reflect the different approaches to the centralisation of power within the distributive debate, the federal origin supporting a federal interest and the Catholic origin, as it is doctored to this new context, supporting the defence of decentralised government. These different parameters along which the different meanings of subsidiarity vary offer an explanation of why it is these specific sources which are constantly identified as the origins of subsidiarity in both the institutional debate on subsidiarity and in the interpretation of that debate.

On the basis of this evidence, the idea that subsidiarity is a *cluster* concept (Connolly, 1993) is more useful than the idea that it is a contested one because it separates the important fact of different meanings of a single concept from the distracting interest/meaning correlation which is inferred in the view that the concept is contested. This correlation is distracting because it has damaged as much as it has enhanced a full understanding of the meaning of subsidiarity in the EU.

## **7.2 Meanings of subsidiarity in the institutional discourse**

The meanings of subsidiarity which are visible in the institutional discourse on the concept are numerous, and exhibit two distinct cleavages among them. One cleavage is along a distributive parameter, with different meanings reflecting different approaches to the distribution of powers within the European Union. The other cleavage is between distributive meanings on the one hand and meanings which address the quality of EU action on the other. This distinction suggests the citizen-centred issue context of policy quality as an alternative issue context for subsidiarity to that of the State-centred distribution of powers.

### **7.2.1 Distributive meanings of subsidiarity**

The issue context of the distribution of powers is common to several different meanings of subsidiarity. These meanings also share a basically comparative approach to the relation between levels of government. They differ according to the criteria by which this distribution of powers is determined and also according to the scope of the application of these criteria. The most visible meanings within this context are that subsidiarity means centralisation on the basis of comparative efficiency/effectiveness and that it means centralisation on the basis of necessity.

The first of these, the principle of comparative efficiency, is the basic notion promoted by the European Commission in 1975 and adopted, under the auspices of Altiero Spinelli, by the European Parliament. Analysis of the European Parliament's version of subsidiarity reveals that the word

‘efficiency’ was used virtually interchangeably with the word ‘effectiveness’. In dictionary terms and probably also ordinary English usage they are, of course, different. Effectiveness is a measure of the ability of an action to achieve its goal. If the goal is fully achieved then the action is fully effective. Efficiency is a measure of the effort or cost of achieving that goal, as a consequence of which an action may be effective but inefficient and vice-versa. But the occurrence of both words in the same paragraph and even in the same sentence in EP documents indicates that no such distinction was implied and that the words are to all intents and purposes synonyms of each other.

The history of subsidiarity’s evolution in the context of the institutional discourse on European Union indicates that for some considerable time there was a fairly constant identification of subsidiarity with the two closely related criteria of efficiency and effectiveness. The domination of a distributive meta-narrative as the interpretative context for the concept is most obviously based upon this connection between subsidiarity and effectiveness and efficiency. As a consequence, the concept has been interpreted “as an efficiency criterion in a predominantly federal setting” (Van Kersbergen and Verbeek, 1994, p.218; see also Emiliou, 1992, p.386). This connection becomes so unquestionable in some interpretations that the mere existence of references to effectiveness and efficiency in institutional texts has proven sufficient to identify them as examples of subsidiarity. Golub writes that “Although not explicitly described as subsidiarity, the concept of allocating authority amongst several levels of decision making has always been present in EC environmental policy” (Golub, 1996, p.688) and quotes as an example a Commission text from 1973 in which it is stated that “In each category of pollution, it is necessary to establish the level of action (local, regional, national, Community, international) best suited to the type of pollution and to the geographical zone to be protected. Actions likely to be *most effective* at Community level should be concentrated at that level” (Golub, 1996, p.688, emphasis added).

This notion of comparative efficiency/effectiveness sometimes becomes an even more general notion of simple comparative advantage. Textual discussion of the concept often slips into the discussion of subsidiarity as a general commitment to optimal government. One author, for example, comments

that “there are two instances - transboundary pollution and market distortion - in which subsidiarity clearly legitimates EU environmental action as ‘better’ than strictly national remedies” (Golub, 1996, p.696; also Marquardt, 1994, p.638; Scott et al, 1994, p.77)<sup>52</sup>. One finds similar expressions in European Parliament oral debates, and the text of Article 130.r of the Single European Act, which is often cited as the first inclusion of subsidiarity in the treaties of the European Union (Dehousse, 1993; Golub, 1996; Teasdale, 1993) - at least in idea if not in name - itself simply refers to the distribution of competences according to which level of government can manage them the best<sup>53</sup>.

The second meaning of subsidiarity is closely related to the first in terms of its issue context and specifies in principle that government functions should only be centralised across separate territories when absolutely necessary. In the event that the domain for this principle is the regulation of Union and Member State competences, then it specifies that the Union, being the centralised government in relation to the Member States, shall only act when necessary. Necessity, of course, can be determined in a number of different ways, but the language employed in the discourse in this regard has referred to the insufficiency of action by the decentralised government as the most common test in this regard.

This notion of centralisation when necessary, independently of how necessity is determined, clearly implies that it is for some reason - most probably to do with democracy - better to decentralise public policy unless there is an evident gain in the opposite. It specifies in general terms that rather than competences being distributed between different systems of government according to an efficiency or effectiveness imperative, they should be distributed according to a necessity imperative which works in favour of decentralised authorities. In relation to the European Union it specifies that the EU level of government should not have competence for a particular public policy unless the Member States are unable to manage that competence. What constitutes inability remains an issue, and the development of different definitions of the idea may not shed any light on this particular concern.

---

<sup>52</sup> As another example Thiery writes that “It is necessary...to choose the collective which is best able to resolve the problem – economic or otherwise – which is faced” (Thiery, 1990, p.22, my translation).

<sup>53</sup> The article in question states that “The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member

Numerous criteria are feasible, such as insufficiency, inefficiency and ineffectiveness. If necessity is rendered as inefficiency, then it brings this idea very close to the EP's notion of optimal efficiency.

These different meanings of subsidiarity are applied to two distinctly different degrees of control over the distribution of powers. On the one hand, the concept regulates the formal division of powers and of any alterations to this division. On the other hand, it regulates only the division of tasks within the constitutional category of concurrent powers, the actual division of powers being determined according to other criteria. The link between subsidiarity and the division of powers is strong in the institutional discourse prior to the signing of the Maastricht Treaty. However, the extent to which this application of the concept was accommodated by the TEU is highly ambiguous. Furthermore, it is dependent upon a reading of the reference to Article 3b in the Preamble of the TEU as an indication of the regulation by Article 3b TEU of Article 235 (Duff, 1994, pp.27-28). What is clearer is that the concept does formally regulate the division of tasks under the category of concurrent powers, sometimes also referred to as the regulation of the exercise of concurrent competence.

#### 7.2.2 Qualitative meanings of subsidiarity

Meanings of subsidiarity which address the quality of EU action rather than the quantity seem to grow out of distributive meanings through the employment of terms such as efficiency and effectiveness in this alternative issue context. This eventually leads to the idea that subsidiarity itself, originally defined in terms of efficiency and effectiveness, includes non-comparative notions of the general character of central action in addition to its character vis-à-vis decentralised alternatives. Over time, the concept becomes intimately linked in this alternative context with transparency and democracy, and with objectives such as the simplification and rationalisation of EU legislation. Interpretations of subsidiarity in the EU often note that the effectiveness and efficiency of EC institutions has become an issue in the EU discourse in its own right, but generally do not recognise that subsidiarity itself has meaning in this regard within the institutional discourse (Laffan, 1993, p.44).

The proposal for a hierarchy of norms, which was developed by the European Commission, is integral to the development of subsidiarity in this direction. The idea of generating a new set of legislative instruments that would improve the accessibility of EU legislation in the name of subsidiarity signified a tentative transition out of the rigid context of power distribution. After the TEU ratification crisis, this proposal continued to promote meanings of subsidiarity which addressed the quality of EU action, and to draw other concepts into the debate such as democracy and transparency. At times, the boundary between subsidiarity and these other notions becomes so blurred as almost to disappear. This transition to a quality context is also promoted to a degree by the novel idea of proximity to the citizen, which introduces the citizen as a factor to be respected in the general meaning of subsidiarity. This factor operates as a normative support for the quality debate by connecting the various initiatives to improve the character of EU action under the umbrella objective of making the EU more accessible to the citizens which it serves<sup>54</sup>.

### 7.2.3 The ambiguity of subsidiarity as proximity to the citizen

The notion that public policy should be managed, i.e. that decisions should be taken by government, as closely as possible to the citizen seems to introduce the citizen as a factor in the management of public policy in addition to qualitative and distributive ideas. It is an idea that emerges in the EU institutional discourse in the late 1980s and is quite distinct in its focus from the other two, addressing the relations between the State and society and functioning as a bridge between distributive and qualitative approaches to EU policy. The substantive sense of this expression is that government competence should be decentralised, i.e. as close to the citizen, as possible. In this respect, it relates to the internal organisation of authority within the State in the same distributive manner as other notions.

---

<sup>54</sup> The point here is that these ideas all become part of the same 'theme' with inter-related meanings rather than representing different 'themes', as is argued by De Burca (1996).

However, the idea also expresses a relation between the State and society, particularly when, as is the case in the EU discourse, it is clear that the idea regulates only the existing power of the European Union and does not impinge normatively upon the balance of powers between different degrees of centralised authority. In this respect, proximity is not a spatial reference to the distribution of powers between different degrees of centralised government but an affective reference to the extent to which individuals feel involved in the EU and a part of it. This meaning of proximity is particularly evident in the equation between subsidiarity and nearness. The British Prime Minister specifically makes this equation and nearness is also interpreted by Petersen (1997, p.162) as the Danish word for subsidiarity. This point is supported by comments in the Danish position paper of November 5th 1992 in which nearness is often referred to but never subsidiarity (Danish Political Parties, 1992). It is also a meaning which is invoked at times by the use of the concept of 'closeness'.

It is in this sense that the meaning inferred in this particular expression of subsidiarity seems to address both the internal organisation of State activity and the external role of the State in society, thereby bridging the two issue contexts of policy quality and policy distribution. The institutional discourse demonstrates that this is an ambiguity which emerges over time, suggesting that there are shifts in the meaning of subsidiarity over time. Interpretations of subsidiarity do not, however, discuss this ambiguity because the dominance of a distributive reading of subsidiarity - as a propagation of the federal debate - can accommodate only distributive interpretations of proximity in spatial terms.

### **7.3 Reading subsidiarity as a contested concept**

The proposition that the meaning of subsidiarity in the EU is contested is closely related to the idea that it is a 'new term for an old debate', as it is the representation of the interests from this old debate in the different meanings of subsidiarity which is the root of its contested nature. The old debate referred to is the question of the distribution of powers from Member States to the EC, now EU, and the support for and opposition to the development of the EC towards a federation. The concept of subsidiarity becomes contested on the basis of an interest/meaning correlation between, on the one

hand, relatively pro-central meanings of subsidiarity such as the comparative efficiency idea and an interest in centralisation and, on the other hand, relatively anti-central meanings of subsidiarity such as the necessity idea and an interest in preventing centralisation.

It is clear that there are indeed different meanings of subsidiarity which could be correlated with interests in this way. It is also clear that it is not possible, even by the most elaborate of interpretative sophistry, to regard these different meanings of subsidiarity as no more than different expressions of a single substantive concept. This opens up the possibility that these irreducibly different meanings of subsidiarity are contested, in so far as the variation of meanings correlates to a variation of political interests. Interpretations of subsidiarity in the institutional discourse frequently infer this correlation, and by extension that subsidiarity is a contested concept (Endo, 1994; MacInnis, 1993; Peterson, 1994). Sometimes this is made more explicit. One author, for example, states, in terms which summarise the sentiments of many others, that “It is precisely because subsidiarity is an essentially contested concept that it has proved vulnerable to exploitation for political ends” (Cooper, 1995, p.180; also de Burca, 1996; Adonis, 1990, p.3).

The reference to ‘essentially contested’ in the above quote recalls the theoretical development of the idea of contestedness by W. B. Gallie as far back as 1964. He developed a set of criteria by which to establish a concept as ‘essentially’ contested, that is by its very nature necessarily so. He argued that the most important conditions in this respect are that the concept is “*appraisive* in the sense that it signifies or accredits some kind of valued achievement” (Gallie, 1964, p.161) and that there is evidence of it being used aggressively and defensively by the participants in the discourse. It is the appraisive element which introduces the variability upon which a contest can develop. In order to establish that a contest has developed it is necessary to indicate that a group which is offering a meaning to a concept is aware that, in Gallie’s words, “its own use of it is contested by those of other parties” (Gallie, 1964, p.161), to which end Gallie suggests the aggressive and defensive use of the concept as a sufficient indication. Writing about this theory of contested concepts, Hampshire states, in language similar to that of Gallie and eminently relevant to subsidiarity, that “there are some



concepts that are permanently and essentially subject to question and revision, in the sense that the criteria of their application are always in dispute and are recognised to be at all times questionable.” (Hampshire, 1959, p.230).

The variations in the meaning of subsidiarity within the distributive parameter are undoubtedly amenable to this framework, demonstrating conditions of appraisiveness, aggressive and defensive employment and awareness among contributors to the discourse of alternative meanings to that which they themselves contribute. However, the proposition that subsidiarity is a contested concept gives no recognition to meanings of subsidiarity which do not seem to relate to the distributive context, such as those meanings which address the issue of the quality of the exercise of EU powers. By ignoring such meanings, it also ignores the fact that some of these other meanings of subsidiarity do not show the same tension upon which contestedness is based, which makes the proposition a limited one. It could, in fact, be precisely because these other meanings of subsidiarity do not conform to the framework upon which the proposition of contestedness is based that they remain under-analysed and under-appreciated in interpretations of subsidiarity in the EU. That is, the effort to present subsidiarity as a propagation of the debate between federal and national visions of Europe has diverted attention away from meanings of subsidiarity which express more novel, non-distributive ideas.

The idea that subsidiarity is contested also fails to recognise that there are occasions in the institutional discourse when the meaning of subsidiarity being promoted by the various institutional contributors is surprisingly coherent and unified. This is the case with the Birmingham and Edinburgh European Council statements on subsidiarity, which expressed a common (uncontested) approach to applying the concept. Furthermore, whilst there is a clear tension between alternative meanings of subsidiarity in a distributive issue context, the same tension does not appear to be present between distributive and qualitative meanings of subsidiarity. These are able, quite comfortably, to exist alongside each other. In fact, the claim that subsidiarity is contested applies principally, if not entirely, to meanings within a distributive context and thus does not pertain to all meanings of subsidiarity in the institutional discourse.

### 7.3.1 Subsidiarity as a cluster concept

These limitations to the proposition that subsidiarity is a contested concept are a logical outcome of the centrality, to the proposition, of competing political interests. The centrality of competing political interests is a point which is emphasised in Connolly's assessment of the Gallian notion of contestedness. In Connolly's summary, "The thesis claims (1) that a conceptual contest involves rival parties who accept some elements of the concept in common; (2) that the common resources of reason and evidence available can illuminate these debates but are insufficient to reduce the number of interpretations rationally defensible to one; (3) that a strong case can sometimes be made within this remaining area of contestability in support of a particular reading" (1993, pp.226-7; also pp.16 and 226). The reason for definition preference is provided by purpose, and purpose can legitimately vary.

The idea of contestedness is clearly premised upon a correlation between meaning and political interest, in which the different meanings of a concept which are promoted by actors in a discourse are accounted for on the basis of the different interests which actors are seeking to promote through the employment of the term. It is also premised, of course, on the existence of different meanings of a concept in a single discourse. The study of subsidiarity in this thesis has made no attempt to investigate the meaning/interest correlation directly, but has simply focused upon identifying irreducibly different meanings of the concept. The approach of this thesis has been to examine the interplay of meanings inherent in the subsidiarity concept rather than to pursue an instrumental explanation of specific different meanings. Consequently, I have not examined in any great detail the extent to which specific meanings can be accurately interpreted as expressions of specific interests. The evidence from the institutional discourse confirms the presence of the different meanings of subsidiarity which are necessary for the leap to the view that it is contested.

However, this instrumental reading of subsidiarity as contested is not a particularly revealing insight. This interpretation is just as feasible for other ideas in the institutional discourse such as transparency and flexibility as much as for subsidiarity. The reason why subsidiarity seems to have been given this reading so consistently could be as much a reflection of the general preoccupation with the question of federalism as much as it is a reflection of the actual promotion of subsidiarity in the institutional discourse along these lines. This is an insufficient reason for criticising the constant interpretation of subsidiarity in these terms, but the evidence from my analysis has also revealed several meanings of subsidiarity which are not accommodated within this framework and which pose a more serious challenge to the adequacy or completeness of this interpretation. Drawing on this evidence, the interpretation of subsidiarity as contested appears to be of limited value in understanding the full meaning of the concept. On the basis of this evidence the notion that subsidiarity is a *cluster* concept is more useful than the notion that it is a *contested* one because it is able to accommodate the whole range of meanings of subsidiarity in a way in which the notion that subsidiarity is contested cannot.

Connolly discussed politics as an example of a cluster concept, and listed eight elements which might feasibly be included in the concept of politics. The idea of a cluster concept infers two characteristics, that there are different elements or ideas which are included within the concept, and that none of these ideas or elements is alone sufficient to constitute the concept. Connolly writes that "Taken together, these two points mean that we cannot specify an invariant set of necessary and sufficient conditions for the proper application of the concept of politics but that we must treat politics as a cluster concept to which a broad range of criteria apply" (Connolly, 1993, p.14). When the history of its definition is analysed, subsidiarity appears to be precisely a cluster concept in this sense. Connolly states that with such cluster concepts "We often find that various people jointly employing such a cluster concept weight the importance of shared criteria differently; they might also interpret the meaning of particular criteria jointly accepted in subtly different ways; and some persons might find it advantageous to add new criteria to, or drop old criteria from, the established list, while other groups object to such moves" (Connolly, 1993, p.14).

From the perspective of understanding the full meaning of subsidiarity, it is the fact that subsidiarity exhibits the characteristics of a cluster of ideas which in different combinations lead to specific expressions of its meaning which is important, not the idea that different meanings correspond to different political interests. As a cluster concept, the notion of subsidiarity as comparative efficiency is understood as a combination of a distributive issue context with the notion of comparative efficiency between states. The elements of a distributive issue context and inter-government relations are shared in the notion of subsidiarity as necessity, with just the criterion of power transfer varying. The idea of subsidiarity as proximity to the citizen becomes a combination of very different elements. In this case, a relation between the State and the citizen, and ambiguous criteria governing this relation which could be either spatial or affective, or indeed both. The idea of subsidiarity as the simplification and clarification of legislation is very much a combination of a policy quality issue context with a relation between the State and the citizen, and criteria of simplicity and accessibility.

It is not necessary to identify the specific combinations of ideas which are visible in the various expressions of subsidiarity to recognise that expressions are indeed combinations of different ideas from the cluster. Nor is it necessary to establish an interest/meaning correlation to recognise that subsidiarity is a concept which consists of a variety of irreducibly different notions, each of which represents a different combination of elements from the cluster<sup>55</sup>.

#### **7.4 Reading subsidiarity as a new term for an old debate**

My analysis of the meanings of subsidiarity in the institutional discourse confirms that there are several different meanings of subsidiarity which address the issue of the distribution of powers between the EU and its member states. The analysis also confirms that at certain times during its evolution, and particularly during the IGC on Political Union, subsidiarity was intimately connected with both the promotion of a federal outcome and with opposition to it. All of this supports the

---

<sup>55</sup> This idea of cluster concepts is in many respects similar to the notion of discursive nodal points which operates in

reading of subsidiarity as a new term for an old debate in which the politics of power distribution between the EU and the Member States, earlier engaged through the language of federalism and sovereign nationalism, is effectively employed as a meta-narrative by which subsidiarity is situated and interpreted in the broader institutional discourse on European Union. However, the analysis of the meaning of subsidiarity in the institutional discourse also confirms that this is neither a full account of the meaning of subsidiarity, nor a full account of its relation to either the fact, or the idea, of European Union.

There are numerous signs of dissatisfaction with this distributive reading of subsidiarity coming from the institutional discourse itself. Delors referred critically to the focus upon subsidiarity as a method of addressing the distributive debate as a “sterile dichotomy” (Delors, 1991, p.8). From the analysis of Delors’ own contribution to the meaning of subsidiarity it is clear that he regarded this dichotomy as sterile because subsidiarity offered, in his view, a resolution to the federal/sovereign national impasse rather than its propagation. His own development of the meaning of subsidiarity is testimony to this. But there is also evidence to suggest that he perceived this dichotomy as sterile because he was aware of meanings of subsidiarity which had little, if any, relevance at all to the distributive issue. He fully explored these other meanings, through the ideas of both proximity to the citizen and the hierarchy of norms. The dichotomy was sterile because the discourse on European Union had expanded beyond distributive debates altogether into qualitative policy debates and the meaning of subsidiarity in relation to European Union had expanded likewise. Delors’ constant discussion of the Catholic origins of the subsidiarity notion find a logic in this regard.

This focus on the meaning of subsidiarity within a distributive context as a new term for an old debate which, when taken to its anti-centralising extreme, leads one author to define it as “the irreducible authority of the individual State to determine its own destiny in meaningful ways”, (Heinze, 1994, p.57) is also criticised in one interpretation of subsidiarity in the institutional discourse (Marquardt,

---

discourse analysis (Diez, 1996).

1994). Marquardt rightly argues that in the rush to demonstrate that subsidiarity represents a novel method by which to protect Member State powers from EU interference “few have noted a subtler point: even if subsidiarity works exactly as intended, its principles are fundamentally corrosive to rather than supportive of the sovereignty of the nation-State. The institutional quick fix may support the nation-State in the short run, but the underlying logic of subsidiarity reduces the claim of rightful governance to a technocratic question of functional efficiency that will eventually undercut the nation-State’s claim to loyalty” (Marquardt, 1994, p.618)<sup>56</sup>. The point need not be as subtle as the author suggests, and the reasoning here is based on one particular meaning of subsidiarity among several, but it is basically consistent with the meanings which have emerged in the institutional discourse on the issue. Subsidiarity, in so far as it possesses a meaning which concerns the legitimate powers of the State (church idea) or their distribution within it (EU discourse), stands as a clear alternative to sovereignty as the principle by which states are expected to relinquish that power.

Delors and Marquardt express a general dissatisfaction with the reading of subsidiarity (and, in the case of Delors, perhaps also European Union?) solely within the context of the distribution of powers and particularly as a surrogate for the language of the ‘old debate’. The evidence from the analysis of the meanings of subsidiarity in the institutional discourse indicates a further, more substantial reason for this dissatisfaction. The reason is that there are clear meanings of subsidiarity which relate not to the distribution of powers but to the quality of their exercise, and which address not the relation between the EU and its member states but the relation between the EU and the citizen. These meanings emerge tentatively during the IGC on Political Union but remain suppressed by distributive notions of subsidiarity until the ratification crisis of 1992.

After the ratification crisis these meanings of subsidiarity gain a wider recognition and become, for a time, dominant over meanings within a distributive context. This occurs at roughly the same time as

---

<sup>56</sup> The point is reiterated later that “Subsidiarity reduces the question of sovereignty to one of efficiency. Without the emotional and historical appeal of the classic vision of sovereignty, the state is reduced to a functional justification” (Marquardt, 1994, p.636). This is nowhere more clearly the case than in the so-called original formulation of subsidiarity in the Papal encyclicals.

the emergence of a new academic interest in the question of the legitimacy of the EU in relation to the citizen, and a distinct shift in the broader discourse on the EU away from distributive concerns towards concerns with the proper exercise of EU powers. The fact that these meanings of subsidiarity increase in profile at the same time as these other developments reinforces the view that these meanings of subsidiarity do indeed address the relation between the citizen and the State and ways by which the State can improve its actions vis-à-vis the citizen.

Other ideas which also increase in profile in the institutional discourse during this period are transparency and democracy. Subsidiarity is intimately connected with these ideas as part of a triptych of notions designed to improve the quality of the exercise of EU powers and to develop better relations between the EU and the citizen (Council of the EU et al, 1993). Together they indicate the importance in the post-Maastricht EU of the issue of the quality of EU powers. An importance that is carried through to the 1996 IGC which would amend the TEU. This suggests that subsidiarity is as much a *new term for a new debate* as for an old one, and that a meta-narrative on the relation between the EU and the citizen could as equally be applied to interpret the concept as could a meta-narrative on the distribution of powers. That is, as much as subsidiarity is part of the old politics of State-centred power distribution, it has also developed to become an integral element in a new politics which places the citizen, as an idea if not as an actor, at its centre.

The new debate to which I refer is reflected, for example, in a speech from Minister of State at the German Foreign Office, Dr. Werner Hoyer, in which he urges "Let us make our Union less complicated, not more complicated, let us make its structures and procedures better understandable and more transparent. And last but not least let us give our citizens credibly the confidence that in Europe we deal with the problems which they expect us to tackle" (Hoyer, 1995, p.1). However, because the issue of the relation between the EU and the citizen does not have the same history as the issue of the distribution of powers, it would be more difficult to place subsidiarity in an historical issue context of this type. The fact that it does not have the same history could be a factor in its

relative neglect as a context for understanding the role of subsidiarity as an idea in the politics of the EU.

Even the occasional recognition of the connection between subsidiarity and these quality issues fails to break out of a distributive reading of subsidiarity in the institutional discourse. The most sustained discussion of the connection between subsidiarity and other concepts such as transparency and democracy is from Neuwahl. In an article on the three concepts, she states that “An issue where there is yet new ground to be covered is the possible meaning of subsidiarity in the light of a citizen’s Europe. In this context, subsidiarity, transparency and democracy can be seen as a trinity” (Neuwahl, 1995, p.1). Because Neuwahl’s reading of subsidiarity in the institutional discourse is still dominated by a distributive context, instead of exploring the meanings of subsidiarity in the institutional discourse which already relate to this citizen’s Europe, she continues by arguing that “It is the opinion of this writer that an interpretation of subsidiarity which would leave factors so important to a citizen’s Europe out of account would be too narrow. The debate on the meaning of subsidiarity has to be reopened” (Neuwahl, 1995, p.2). Neuwahl then goes on to reopen it herself by suggesting possible ways in which these other ideas could be incorporated into a subsidiarity concept. The method by which she suggests that subsidiarity could be connected to the issue of a citizen’s Europe is through a reading of the word ‘effects’ in Article 3b TEU that includes the effects on transparency and democracy as part of any assessment of the relative efficiencies of EU and Member State action. The reading of subsidiarity is entirely within a distributive framework, and gives no acknowledgement to the fact that subsidiarity is already, in the institutional discourse, intimately connected with the question of citizen participation and policy quality and does not need to be reinterpreted in a distributive context to find a relevance to these issues.

The same point can be applied to the discussion of political union by Lodge (Lodge, 1993b). She addresses the subsidiarity idea through a consideration of Article 3b under the heading of “A transparent Union closer to the people?” (Lodge, 1993b, p.378). Whilst superficially suggesting that the concept is related to notions of transparency and non-spatial meanings of proximity to the citizen,



subsidiarity is still presented as a distributive notion and is not recognised as an idea which also addresses directly the relationship between the State and society in non-distributive terms. These contributions, from Lodge and Neuwahl, and also from others such as Burgess (1995), suggest that the interpretation of the meaning of subsidiarity is thoroughly dominated by Article 3B TEU, to the detriment of the rich variety of meanings of the concept in the broader institutional discourse. The focus upon Article 3b also accounts for other aspects of the interpretation of the concept, such as the interest in the question of judicial control, as that which will determine how subsidiarity works in practice.

In some respects it is the characteristics of the 'old debate' that provides the meta-narrative for interpreting subsidiarity in the institutional discourse which are the problem. The language of this debate is restricted to opposites; federal State on the one hand, intergovernmental collection of states on the other. The particular terminology can change, but the basic feature of a polarised debate between two opposing visions of Europe remains (Weiler, 1997c). As a consequence, the reading of subsidiarity as no more than a propagation of this debate almost forces the development of an image of subsidiarity which is contested, and which contains no more than two basically opposite meanings related through their approach to the distribution of powers.

It could also be argued that the debate concerning the distribution of powers itself suffers in this respect. Delors' 'sterile dichotomy' is as much a criticism of the simplification of the distributive issue into a 'for and against a federal State' scenario as it is a criticism of the appreciation of the issues facing the European Union in purely distributive terms. But the subsidiarity concept has suffered beyond the simplification entailed by the limits of distributive language. It has also suffered when the concept has engaged issues and conveyed meanings which are not accommodated by the distributive issue, and the reading of subsidiarity as a concept contained by this issue is a modern testimony to the dangers of putting new wine in old wine-skins.

## 7.5 Reading the origins of subsidiarity

The analysis of the different meanings of the concept in the institutional discourse does not demonstrate, any more than existing interpretations of subsidiarity, the connection at a semantic level between the Catholic and federal origins and the EU institutional meanings for which they represent the origin. Ideas within a distributive context, such as comparative efficiency and necessity, match neither the meaning of the church notion of the principle of subsidiary function nor the federal notion of levels of government directly.

There is, of course, some considerable overlap. These original ideas do in their different ways relate to the functioning and organisation of the State and they do specify principles by which that functioning and organisation should be structured. However, the constant recourse to these two different sources of subsidiarity with almost mantra-like predictability in interpretations of subsidiarity in the EU is not adequately explained by this overlap. The dominant notions of subsidiarity in the EU, particularly with respect to the interpretation of subsidiarity in the institutional discourse, are based upon distributive notions of necessity and comparative efficiency aimed at relations between levels of government. These are very different, as has been discussed already, from the normative ideas about the role of the State in society which one finds in the Papal encyclicals *Rerum Novarum* and *Quadragesimo Anno*.

Furthermore, there are numerous other sources of subsidiarity which overlap equally as much, as has sometimes been recognised (Wilke and Wallace, 1990). One author specifically denies the existence of the subsidiarity principle in federal constitutions (Koopmans, 1994, p.44) while numerous authors infer the irrelevance of the church by simply ignoring it and speaking only of federal constitutions as the origins of the concept. In particular, there is a clear appreciation of how these Catholic ideas made a transition into the context of relations between States, through post-war European Christian democracy (Burgess, 1995). On this basis, it is peculiar to say the least that interpretations should

persist in ignoring this much closer context of Christian Democratic philosophy in favour of the distant Papal encyclicals when talking about where ‘EU’ subsidiarity comes from as a concept.

The suggestion is that there are other reasons why the origins of subsidiarity are referred to in the specific manner in which they are, and why they are so frequently referred to in this way. It was suggested in the opening analysis of existing interpretations of subsidiarity that answers are potentially found in the relevance of federal and Catholic texts to the propositions in the dominant image of the concept, and this study is now in a position to develop that early suspicion, whilst also adding to it some additional reasons, provided by the historical reconstruction, for the focus on these texts.

#### 7.5.1 Correlation between the origins of subsidiarity and the distributive tension

In so far as subsidiarity in the EU is a cluster of ideas then these Catholic and federal sources, different as they are from each other, are not likely to represent the origins of every element of the cluster, but are more likely to emphasise particular aspects of it. This point directs analysis to a consideration of which aspects of the cluster are emphasised by these specific texts, with the answer that they emphasise the tension which exists between meanings of subsidiarity in a distributive issue context between pro-central federal and anti-central sovereign State approaches to integration.

The contest which is inferred by interpretations of subsidiarity in the EU is constructed around the differing amenability of meanings of subsidiarity to the centralisation of powers within the EU. What is interesting about this interpretation of subsidiarity as contested in this manner is that relatively anti-central meanings of subsidiarity, such as the necessity idea developed by the British Government, reflect closely the Catholic notion of the principle of subsidiary function in instrumental terms. Relatively pro-central ideas of subsidiarity, such as the EP’s comparative efficiency notion, reflect equally closely the federal ideas contained in the US tenth amendment and Articles 30 and 72 of the German Grundgesetz.

When the church notion of the subsidiarity function of the State (see Ch.2) is read in the context of the documents from which it comes, it clearly expresses ideas which are designed to limit the expansion of the State into the activities of private associations such as the church itself and is restrictive of State intervention. This sentiment is closely mirrored in the sentiment behind the notion of subsidiarity as 'centralisation when necessary' developed by the British, which has equally been interpreted as an idea designed to restrict the expansion of the EU level of government and its further expansion into the activities of Member States. Correlating the EU to the State and the Member States of the EU to the church, the relation between the church notion and that of subsidiarity as 'centralisation when necessary' is clear. The constant recourse to the church as the source of subsidiarity consequently serves to reinforce meanings of subsidiarity in a distributive context which are essentially restrictive of the expansion of EU authority. That this is the case is confirmed by its converse. It would seem unusual in the extreme to find the British government, or interpretations of subsidiarity which focus on relatively anti-central notions of the concept, identifying federal texts as the origin of the idea, and indeed it doesn't happen.

The same is true for those meanings of subsidiarity in a distributive context which are more generous to the expansion of EU powers such as the comparative efficiency notion developed by the EP. The evidence from the institutional discourse suggests that this idea served more to justify the expansion of EU powers than to prevent or restrict it. Furthermore, the evidence also suggests that this idea was part of a general strategy to achieve a federal European Union. Of its very essence, the identification of federal texts as the origin of subsidiarity simply reinforces the idea that the concept is basically a federal one, thereby serving the overall objective of promoting a federal Europe. The fact that church and federal notions mirror respectively pro and anti-central meanings of subsidiarity in the EU serves to explain why these two sources are identified so often as the origins of subsidiarity. It could also be used to support the idea that subsidiarity, in its distributive context, is indeed a contested notion based on an interest/meaning correlation and thus reinforces this interpretation, further explaining the frequent discussion of the origins of the term.

It follows from this explanation that the identification of the origins of subsidiarity is part of the process of influencing the perception of the proper meaning of subsidiarity and promoting one meaning in preference to others. The constant recourse to the church as the source serves to support ideas of subsidiarity in terms of necessity rather than comparative efficiency, and vice-versa in the case of federal sources. This could explain why these two particular traditions rather than others such as the ideas of English liberals or the works of Althusius, for example, have so dominated the discussion of the origins of the term.

The same can be said, but with less clarity as to precisely which meaning of subsidiarity is being promoted, of those statements which identify subsidiarity in texts that lack the word but are, nevertheless, claimed to express its meaning - i.e., that they all serve to influence the understanding of subsidiarity and to suggest one meaning in preference to others. This is the case particularly with respect to the environmental policy measures in the SEA and earlier (Golub, 1996; Pasquali, 1993; European Parliament, 1990c). It is also true of institutional reports such as those produced by Tindemans and by Padoa-Schioppa, the legal instrument of the directive (Cass, 1992; Gretschmann, 1991; Peterson, 1994, p.118; European Parliament, 1990c) and Article 235 EC (Pasquali, 1993, p.143). When subsidiarity is identified with the legal instrument of the directive, the implication, or rather the stress, is on the administrative focus of the concept, as one which allows for central decision-making but demands decentralised implementation. Thus, the focus is shifted away from disputes over the meaning of the principle and towards implementation issues. When subsidiarity is identified with environmental measures such as Article 130r SEA, the trans-national focus of the concept is stressed. Referring to Article 235 as an example of subsidiarity further entrenches the concept within a distributive focus on policy competence, as this article is about nothing other than the conditions pertaining to an extension of Community powers. The point is that all such comments influence the balance of meanings within the cluster and contribute to different perceptions of the true or proper meaning of subsidiarity. In so referring to these different texts as examples of subsidiarity,

whilst not obviously promoting a specific contested meaning of the term the perception of the meaning of subsidiarity is still being influenced.

If this is a justified interpretation then it affords a fresh perspective on the activity of excavating both the origins of subsidiarity, and examples of the idea which are unsupported by the occurrence of the word. The suggestion is that these activities are significant beyond providing a greater historical knowledge of the word or of the occurrence of ideas now reflected by it. It also suggests that the view that subsidiarity has become an ambiguous concept which has obscured its 'true' or 'proper' meaning (OostLänder, 1992) which ought to be rediscovered is in fact erroneous. Because of the variety of meanings of subsidiarity within this distributive issue context, there are no true or proper meanings but only alternatives, in relation to which it is the purpose of the general discourse to promote one meaning over others, thereby establishing a dominant notion. As a consequence, interpretations of subsidiarity which identify a meaning of subsidiarity in the EU and trace it back to a specific origin are open to objection. To do so is to ignore what appears to be a process of promoting some meanings and ignoring others whilst simultaneously, whether intentionally or otherwise, engaging in this very process.

#### 7.5.2 Correlation between the origins of subsidiarity and the distributive/qualitative distinction

I have already argued that differences in meaning between the two principal origins of subsidiarity reflect closely the differences in meaning between distributive notions of the concept in the EU. They could also reflect the differences of interest which have been interpreted as the driving force behind these different distributive notions of subsidiarity in the EU and so provide support for the idea that subsidiarity is a contested concept. What is more certain is that the constant recourse in the interpretation of subsidiarity to church and federal ideas as the origins of subsidiarity reinforces the proposition that subsidiarity is contested, by providing origins which are on the one hand anti-centralist and on the other federalist.

But differences in the meanings of these two origins of subsidiarity also reinforce the evidence that subsidiarity is a cluster of different notions which straddle both distributive and qualitative issue contexts as much as they represent different approaches to the distribution of powers. Reading texts such as the often quoted passage from *Quadragesimo Anno* in the context of the entire encyclical indicates that the church notion of the subsidiary function of the State is a normative notion about the proper role of the State in society. The idea addresses the relation not between different levels of government but between the State as a single entity and the private associations over which it has authority. Furthermore, it specifically develops certain characteristics which all State action should exhibit. At the most basic level all State activity should be subsidiary to that of private action. But this is developed into a distinction between the State not acting at all unless there is some benefit to it doing so, and being obliged to act when there is a need for it to do so, thereby finding its proper role vis-à-vis the citizens which it serves.

The idea is very similar in focus to those meanings of subsidiarity which address the role of the EU vis-à-vis the citizen and establish criteria by which the relation between the two should develop. The church notion specified the criterion that State action should be subsidiary and developed this into a more specific prescription through encyclicals such as *Rerum Novarum* and *Quadragesimo Anno*. Comparable meanings of subsidiarity in the EU specify criteria such as proximity, simplicity and clarity. The criteria might be slightly different but the basic concern with the proper characteristics of State action is very much the same. The fact that the church idea of subsidiary function is concerned with this issue and not with the issue of the distribution of powers between levels of government is confirmed by the fact that the Catholic idea is visibly altered in later encyclicals in the 1960s to a new notion pertaining to the internal organisation of power within the State (Pope John XXIII, 1963, para.140). This correlation between the idea of subsidiary function in *Quadragesimo Anno* and meanings of subsidiarity pertaining to the normative role of the State in society suggests as a reason for the constant reference to the origin of subsidiarity in this and other encyclicals a nascent or latent recognition of this alternative issue context for the meaning of subsidiarity in the EU. It also affords a further explanation of why the church is so often referred to as the source of subsidiarity in the EU.

In the same manner, those meanings of subsidiarity in the EU which pertain to the issue of the distribution of powers between levels of government of correlates to the basic issue addressed by federal constitutions. The tenth amendment of the US constitution and Articles 30 and 72 of the German constitution refer to this division of powers, in a descriptive manner in the case of the US tenth amendment and Article 30 of the German constitution, and in a more normative manner in the case of Article 72. These texts are quite clearly distributive in focus, and capture the question of ‘who shall do what?’ which is addressed by distributive meanings of subsidiarity in the EU.

Some interpretations of subsidiarity in the EU have, as noted, specifically called for a change in the understanding of the concept. Neuwahl, for example, has called for a new definition of subsidiarity to be able to address the quality of EU actions (Neuwahl, 1995). Similarly, several authors have noted the shift in the discourse on European Union towards questions of the quality of EU action (Laffan, 1996a; Curtin, 1996). The evidence from the research that I have conducted suggests that subsidiarity itself has already made such a transition in meaning into this quality context. This transition, which is, on the basis of the meaning of the Catholic notion of subsidiary function, a return to an older idea, has generally not been recognised<sup>57</sup>. This transition of subsidiarity into a citizen centred quality context further explains the frequent and lengthy discussion of the origins of subsidiarity in church encyclicals and federal constitutional texts.

## **7.6 Reading the EU through subsidiarity**

To the extent that the meaning of subsidiarity has been analysed in the context of the documents in which they occur, the institutional discourse on European Union has itself been read through subsidiarity. The image of this discourse which has emerged is constructed of distributive debates on the one hand and qualitative debates on the other. These qualitative debates do not develop until the

---

<sup>57</sup> Interpretations of subsidiarity in the EU in 1997 are as focused on a distributive notion of the concept as they ever were. Vaubel (1997), for example, explicitly defines subsidiarity in distributive terms whilst paradoxically discussing subsidiarity along with transparency and democracy as constitutional concepts which relate to the citizen.



IGC on Political Union, and do not become widely recognised until after the TEU was rejected by the Danish electorate.

From this point onwards, those meanings of subsidiarity which address the relation between the State and the citizen significantly increase in profile, marginalising distributive meanings of the concept to the debate about the definition of subsidiarity in Article 3b TEU. Laffan writes, "The TEU ratification crisis ended the "permissive consensus" whereby governing elites could rely on their electorates to endorse their approach to the development of the Union" (Laffan, 1996a, p.7). This shock to policy elites is widely recognised as a transitional event in the appreciation of public support for integration. The importance of this event is reflected in the emergence, at the same time, of a new interest in the question of legitimacy, and of the relevance of legitimacy to successful policy development. The relevance of subsidiarity as a method by which to address the public support and legitimacy problems raised by this event is demonstrated by, for example, the use of subsidiarity in the referendum debate between the Danish political parties (Political Parties of Denmark, 1993), and by the focus on subsidiarity in subsequent European Council meetings.

This event is also recognised as an important stage in the development of a general debate on the character of EU policy in terms of its efficiency, democracy and transparency. Laffan and others indicate that this shift is visible in the agenda for the 1996 IGC, which was focused on the task of addressing the effectiveness, legitimacy, transparency and democracy of the institutions and their policies, and of marrying these with the diversity inherent in the cultures and political systems of its Member States. Laffan, for example, states that the 1996 IGC "is about the effectiveness and legitimacy of the Union's governance structures and their capacity to accommodate a continental enlargement (Laffan, 1996b, p.289)<sup>58</sup>. This is a point which is well supported by the institutional reports on the functioning of the TEU, in particular the reports of the Commission (European

---

<sup>58</sup> Elsewhere she states that "The debate on European integration has moved from concrete institutional matters to the form and the character of the European project" (Laffan, 1996a, p.2).

Commission, 1995) and the Council of Ministers Reflection Group (Council of the European Union, 1995b).

The evidence points to the supplanting of a distributive concern with what powers the Union should be given by a qualitative concern with the manner in which the Union should exercise them. Lists of new powers to be given to the EU have given way to lists of quality criteria which existing powers should meet, in terms of their democratic control, transparency, efficiency and legitimacy. It is a shift which is as visible in European Member State politics as much as in the politics of the EU, with Tony Blair's 'People's Britain' and Lionel Jospin's commitment to a French government which is 'close to the people' (Graham and Jack, 1997, p.19). This is in some respects unsurprising, at least in a purely EU context. The IGCs on Political Union and Economic and Monetary Union culminated in relatively massive transfers of powers to EU institutions. The debates at the time were consequently dominated by distributive questions. Once the TEU had been signed by the Member States it was natural for an interest in the character or spirit in which these powers should be exercised to develop, particularly in the light of the problems generated by the ratification process. What is more surprising is that while the development of the institutional discourse towards the issue of policy quality is recognised, the parallel development in the meaning of subsidiarity is not.

Questions about the distribution of powers and the quality of their management have been asked about the integration of Europe for longer than subsidiarity has been an idea in EU discourse. However, through the subsidiarity notion they seem to find a new focus. But more than this, the history of subsidiarity in the EU seems to reflect not only different questions, but also different approaches to integration which are to some extent inferred by these different questions. On the one hand, the distributive meaning of subsidiarity relates to a constitutional approach to integration which attempts to construct European Union through transfers of competence to its institutions. But on the other hand, the qualitative question relates to a societal approach to integration which attempts to promote European Union through the benefits which it can bring to the citizen. Both approaches are expressed in the ambiguous meaning of the opening phrase of the Treaty of Rome that integration is

building an 'ever closer Union among the peoples of Europe'. Through the introduction of subsidiarity this ambiguity is engaged and fully explored via the different meanings of the concept.

Subsidiarity was introduced into the EU discourse by Spinelli and for some considerable time remained the exclusive property of Spinelli and the Institutional Affairs Committee of the EP. This constitutional approach, with its focus upon constitutional development based around strong institutions, dominated Spinelli's strategy for the building of the EU (Pistone, 1991; Burgess, 1986). Unsurprisingly, the meaning of subsidiarity which was employed as part of this strategy was focused upon power distribution between levels of government rather than the service of citizens, although it might still seem peculiar to employ a concept which undermines the notion of States with defined boundaries to this end (Marquardt, 1994; see also Ch.1)<sup>59</sup>. This constitutional approach leads right up to Maastricht and culminates in the TEU, a Treaty which was clearly influenced by the Draft TEU of the European Parliament and something for which the EP had been striving for a decade. The construction of the TEU around the EP's earlier draft ensured that the definition of subsidiarity which dominated the debate on subsidiarity at the time was itself constructed around the distributive question which is at the centre of the constitutional approach to integration.

However, another meaning of subsidiarity, directed more towards quality concerns, was included in the Preamble to the TEU. This reflects the fact that a concern with the character of EU powers was already emerging prior to the signing of the Treaty. This alternative meaning of subsidiarity, addressing the question of the character of EU policy in relation not to other levels of government but to society in general represents a very different approach to building the European Union. It is an approach which attempts to construct the EU from the base rather from the top, generating electoral support for integrative projects which provides the necessary impetus for change<sup>60</sup>. The elitist strategies of the formative figures in European integration such as Schuman, and in particular

---

<sup>59</sup> In so far as the idea does take its root from the Catholic notion of the subsidiary function of the State it demonstrates the limit to which the concept, even in its mutated 'comparative efficiency' form, can serve to define and maintain boundaries between States.

<sup>60</sup> Delors (1989, p.2) specifically indicates that this approach must go hand in hand with the other in his speech to the College

Monnet, and the theoretical appreciation of these strategies in the notions of functionalism, federalism and their various derivatives, were not amenable to this approach simply because they did not perceive the ordinary citizen as an important element in the generation of momentum for change. As one of Delors' advisers has stated, Monnet's method assumed that "The people weren't ready to agree to integration, so you had to get on without telling them too much about what was happening" (Ross, 1995, p.194). With the advent of Delors as head of the European Commission, the lack of appreciation of the importance of the relationship between the EU and electorates begins to dissipate.

Whether or not Delors was an initiator of this change or simply an unsuspecting agent is beside the point. It is the case that some of the ideas which he brought to the debate on European integration demonstrated an increasing awareness of the need to address the relationship between the EU and the citizen. In some cases this was exhibited through distributive strategies to incorporate regional government in the policy process. One authority on Delors goes as far as to say that "The heart of Delorism is the defensive belief that what is genuinely distinctive in modern European society can be saved only by creative new action at European regional level" (Ross, 1995, p.243). In other cases it was exhibited through more affective strategies designed to incorporate people themselves in the process and specific discussion of the importance of incorporating the citizen into the EU, quite regardless of the need to demonstrate the greater effectiveness or efficiency of EU level policy over State and regional levels.

The growing interest in subsidiarity in the late 1980s was an integral part of this shift towards the citizen. Delors spent some considerable time promoting subsidiarity as an idea which is focused upon this relationship between the State and society as well as the internal relationship between levels of government, and with a persistence that sometimes seemed misplaced, given that other contributors to the institutional debate on the concept were so clearly concerned solely with a distributive notion of the concept. It was eventually to appear almost prescient when events took over and shifted the entire

debate on integration towards a concern with precisely this State/citizen relationship. Delors' general interest in this issue is well appreciated and attributed in part to his personalist and Catholic philosophy. One of his Cabinet, Francois Lamoureux, summarises this aspect of Delors' philosophy on European integration as much as his own sentiments in the reflection that "the most important lesson that I learned from recent debate is that a united Europe cannot come into being unless it is understood as a commonwealth of its peoples, reflected upon and built by citizens themselves" (Ross, 1995, pp.244-5). It is not appreciated that developing the meaning of subsidiarity was an important method by which to engage this new concern.

Delors is often compared to Monnet, and is known greatly to admire Monnet's achievements. In some ways, the emergence of a new appreciation of the importance of the relationship between the EU and the citizen, for which Delors is in part responsible, distances him from Monnet as much as it connects him with the man and his ideas. The retrospective Monnet, writing about his later understanding of his past actions, was respectful of the importance of public support for integration, so much so that he chose to open his memoirs with the statement that 'We are not forming coalitions between States, but union among people' (Monnet, 1978). But Monnet the functionalist was not, at least outwardly, concerned with this relationship. He was as concerned with the building of strong institutions with genuine supra-national powers as was Spinelli (Monnet, 1978, p.393), and explicitly defends his elitist institutional approach in his Memoirs, stating that "I thought it wrong to consult the peoples of Europe about the structure of a Community of which they had no practical experience" (Monnet, 1978, p.367).

In this respect, subsidiarity relates to Monnet's efforts in more ways than have previously been recognised. Burgess comments that "subsidiarity has entered the contemporary debate about federalism and European Union, adding further confusion and further complication, precisely because of the success of Monnet's vision of Europe" (Burgess, 1995, p.12), by which he means that Monnet's success in developing Europe towards a federation by his functional method has resulted in the EU debate searching for ideas with which to engage the question of power distribution within a

federal type system. However, this statement is also true in a more negative sense, in so far as the neglect of public support for integration and the lack of analysis of the benefits of integration to the citizen within this functional strategy has generated a clear need for notions of subsidiarity which address these issues.

In the light of events surrounding the ratification of the Maastricht Treaty, Monnet's change of tone was wise. The citizens of the 1990s cannot be ignored in the same way as were the citizens of the 1950s, and the rise of subsidiarity as a concept in institutional debates is as much an acknowledgement of this as it is a reinforcement of elite driven constitutional and institutional strategies. The meanings of subsidiarity represent new methods by which to address the fundamental question of 'what kind of Europe?' and afford solutions to the problems of integration in ways which extend beyond the distributive reading which has dominated interpretation of the concept to date.

## BIBLIOGRAPHY

The Bibliography is a compilation of referenced material and other sources consulted for the thesis. These are separated into the sections of primary, secondary and interview sources to reflect the use of material in the thesis itself.

### Primary Sources

Belgian Chamber of Representatives (1991), Resolution on the Intergovernmental Conferences on European Political Union and Economic and Monetary Union, 27th June in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

Belgian Government (1990), Memorandum of 20th March in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

Belgian Senate (1990), Resolution on the achievement of European Union and preparation of the parliamentary Assizes on the future of Europe, 13th July in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

Brittan L (1992), Subsidiarity in the Constitution of the European Community, Robert Schuman Lecture to the European University Institute, Florence, Europe Documents, no. 1786, *Agence Internationale d'Information pour la Presse*, 18 June.

British Government (1992), Note from the Presidency, Europe Documents, no. 1813, *Agence Internationale d'Information pour la Presse*, 8 December.

-(1996), A Partnership of Nations: the British approach to the European Union Intergovernmental Conference 1996, Command 3181, Foreign and Commonwealth Office, HMSO.

Bundesrat of the Federal Republic of Germany (1991), *Resolution on the EC-intergovernmental conference on political union and economic and monetary union*.

Bundestag of the Federal Republic of Germany (1992a), Beratung am 08.10.92, 110. Sitzung, Doc. D-7, Drucksache 12/3334, 1 October.

(1992b), Beratung und Schlusabstimmung, 02.12.92, Doc. D-9, Drucksache 12/3334, 1 October

Committee of the Regions (1995), *Opinion on the revision of the Treaty on European Union*, CDR 136/95, Brussels, 20 April.

Conference of Parliaments on the European Community (1990), Final Declaration, 30th November in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

Council of Europe (1994), *Definition and limits of the principle of subsidiarity*, Report prepared for the Steering Committee on Local and Regional Authorities, Local and Regional Authorities in Europe, no. 55, Council of Europe Press.

Council of the European Union (1995a), *Report on the Operation of the Treaty on European Union*, General Secretariat of the Council of the European Union, 6 April.

-(1995b), *Reflection Group Report on the 1996 Intergovernmental Conference*, General Secretariat of the Council of the European Union, 5 December.

Council of the European Union, European Parliament, European Commission (1993), *Inter-institutional declaration on democracy, transparency and subsidiarity*, Bulletin of the European Community, no. 10, October.



Danish Government (1990a), Memorandum of 10th May in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

-(1990b), Memorandum of 4th October in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

Danish Political Parties (1992), Denmark in Europe, Joint report of the parties without the support of the Progress Group, Europe Documents, no. 1806, *Agence Internationale d'Information pour la Presse*, 5 November.

De Gaulle General (1960), *Speech*, reprinted in Mayall et al (ed.), Documents on International Affairs.

Directorate General for Research of the European Parliament (1993), Les Rapports entre Competences Nationale et Communautaire: Le Principe de Subsidiarite, *Revue du Marche Commun et de l'Union Europeenne*, no. 367, Avril.

Dutch Government (1990a), Memorandum on steps towards European Political Union, May in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

-(1990b), Policy Document on European Political Union, 26 October in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

-(1991a), Draft Treaty Towards European Union, Europe Documents, no. 1734/1735, *Agence Internationale d'Information pour la Presse*, 3 October.

-(1991b), Draft Union Treaty, Working Document, Europe Documents, no. 1746/1747, *Agence Internationale d'Information pour la Presse*, 20 November.

-(1991c), Treaty on Political Union, Final Draft, Europe Documents, no. 1750/1751, *Agence Internationale d'Information pour la Presse*, 13 December.

European Commission (1972) *Bulletin of the European Communities*, no. 10, October.

-(1973) *Official Journal of the European Communities*, C Series, no. 112, 20 December.

-(1975a) *Report on European Union*, Supplement to the Bulletin of the European Communities, no. 5.

-(1975b) *Bulletin of the European Communities*, no. 12, December.

-(1975c) *Bulletin of the European Communities*, no. 4, April.

-(1975d), *Bulletin of the European Communities*, no. 6, June.

-(1977) *European Union Annual Reports for 1977*, Supplement, Bulletin of the European Communities, no. 8.

-(1978) *European Union Annual Reports for 1978*, Supplement, Bulletin of the European Communities, no. 1.

-(1979) *European Union Annual Reports for 1979*, Supplement, Bulletin of the European Communities, no. 9.

-(1980) *European Union Annual Reports for 1980*, Supplement, Bulletin of the European Communities, no. 4.

-(1990a), Formal opinion pursuant to Article 236 of the EEC Treaty on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union, 21 August in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

-(1990b), Formal Opinion pursuant to Article 236 of the EEC Treaty on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union, 21 October in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

-(1991a), Commission Programme for 1991, Europe Documents, no. 1684, *Agence Internationale d'Information pour la Presse*, 25 January.

-(1991b), Political Union: Commission proposals (submitted to the intergovernmental conference) on the Parliament's powers and a new legislative procedure (co-decision), Europe Documents, no. 1694/95, *Agence Internationale d'Information pour la Presse*, 5 March.

-(1991c), Political Union: The structure of the Draft Treaty, Europe Documents, no. 1715, *Agence Internationale d'Information pour la Presse*, 31 May.

-(1991d), Proposal on the social dimension and the development of human resources in Corbett R., *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

-(1992), *The Subsidiarity Principle: Communication of the Commission to the Council and the European Parliament*, Bulletin of the European Communities, no.10.

-(1993a), *The Commission's Work Programme for 1993-94*, Supplement, Bulletin of the European Communities, no. 1.

-(1993b), *Commission report to the European Council on the Adaptation of Community Legislation to the Subsidiarity Principle*, COM(93) 0545, Final, Brussels 24 November.

-(1993c), *Bulletin of the European Communities*, no. 12, December.

-(1994), *Adapting Community Legislation to Subsidiarity*, Background report, ISEC/B3/94, 25 January.

-(1995), *Report on the Operation of the Treaty on European Union*, 10 May.

-(1996a), *Reinforcing Political Union and Preparing for Enlargement*, Opinion, Com/96/90 Final, 28 February.

-(1996b), *Openness and Transparency in the EU Institutions*, Office for Official Publications: Luxembourg.

-(1997), *The Reform of the European Union in 150 Definitions*, Office for Official Publications: Luxembourg.

European Council (1985a), *Milan Summit, summary*, Bulletin of the European Community, no. 6, June.

-(1985b), *Luxembourg Summit, summary*, Bulletin of the European Community, no. 11, November.

-(1985c), *Intergovernmental Conference, summary*, Bulletin of the European Community, no. 12, December.

-(1990a), Political Union, document for reflection at the Dublin summit, Europe Documents, no. 1628, *Agence Internationale d'Information pour la Presse*, 23 June.

-(1990b), Conclusions of the Presidency, Extraordinary Session of the Rome European Council, Europe Documents, no. 1658, *Agence Internationale d'Information pour la Presse*, 30 October.

-(1990c), *Conclusions of the Presidency*, Rome European Council, Bulletin of the European Community, no. 12, December.

-(1991), *Conclusions of the Presidency*, Luxembourg European Council, Bulletin of the European Communities, no. 6.

-(1992a), *Conclusions of the Presidency*, Lisbon European Council, Bulletin of the European Communities, no. 6.

-(1992b), *Conclusions of the Presidency*, Birmingham European Council, Bulletin of the European Communities, no. 10.

-(1992c), *Conclusions of the Presidency*, Edinburgh European Council, Bulletin of the European Communities, no. 12.

-(1994), *Conclusions of the Presidency*, Corfu European Council, Bulletin of the European Communities, no. 12.

-(1995a), *Conclusions of the Presidency*, Cannes European Council, Bulletin of the European Communities, no. 6.

-(1995b), *Conclusions of the Presidency*, Madrid European Council, Bulletin of the European Communities, no. 12.

-(1996), *Conclusions of the Presidency*, Turin European Council, Bulletin of the European Communities, no. 3.

European Court of Justice (1971), *Commission v Council*, Case 22/70, Reports of Cases before the Court, part 1, Luxembourg: Office for Official Publications of the European Communities.

(1984), Case 15/73, Reports of Cases before the Court, Luxembourg: Office for Official Publications of the European Communities.

(1986), *Bilka Kaufhaus GmbH v Weber Von Hartz*, Case 170/84, Reports of Cases before the Court, Luxembourg: Office for Official Publications of the European Communities.

-(1991), *Political Union. Law-Making Powers and Procedures*, 17th annual report, Office for Official Publications of the European Communities.

European Parliament (1982a), Reform of the Treaties and European Union, *Debates of the European Parliament*, Official Journal of the European Communities, no. 1-287, 5-6 July.

-(1982b), Resolution on the European Parliament's position concerning the reform of the Treaties and the achievement of European Union, *Official Journal of the European Communities*, no. C 238, 13 September.

-(1984), Draft Treaty Establishing the European Union, *Official Journal of the European Communities*, no. C77, 19 March.

-(1985), Resolution following the debate on the statements by the Council and the Commission after the meeting of the European Council on 2 and 3 December 1985 in Luxembourg, *Official Journal of the European Communities*, vol. 29, no. C352, 31 December.

-(1985b), Resolution on the position of the European Parliament on the Single European Act approved by the Intergovernmental Conference on 16 and 17 December 1985, *Official Journal of the European Communities*, no. C36, 17 February 1986.

-(1986a), Resolution on the Single European Act, *Official Journal of the European Communities*, no. C7, 12 January 1987.

-(1986b), Resolution on European Union and the Single Act, Doc. B2-102/86, *Official Journal of the European Communities*, no. C120, 20 May.

-(1987a), Resolution on the strategy of the European Parliament for achieving European Union, Doc. A2-28/87, *Official Journal of the European Communities*, no. C190, 20 July 1987.

-(1987b), Resolution on the democratic deficit in the European Community, Doc. A2-276/87, *Official Journal of the European Communities*, no. C187, 18 July 1988.

-(1987c), Resolution on the Single European Act, Doc. B2-500/87, *Official Journal of the European Communities*, no. C190, 20 July 1987.

-(1988a), Resolution on the results obtained from implementation of the Single Act, Doc. A2-176/88, *Official Journal of the European Communities*, no. C309, 5 December 1988.

-(1988b), Resolution on the report by the Council of the European Communities on progress towards European Union in 1987, Doc. A2-177/88, *Official Journal of the European Communities*, no. C309, 5 December 1988.

-(1988c), Resolution on the report by the Council of the European Communities on progress towards European Union in 1987, Doc. A2-201/88, *Official Journal of the European Communities*, no. C309, 5 December 1988.

-(1988d), Resolution on the strategy of the European Parliament for achieving European Union, Doc A2-332/88, *Official Journal of the European Communities*, no. C69, 20 March 1989.

-(1988e), European Union, *Debates of the European Parliament*, Official Journal of the European Communities, no. 2-370, 26 October.

-(1989), Resolution on the Intergovernmental Conference decided on at the European Council in Madrid, Doc. B3-471/89, *Official Journal of the European Communities*, no. C323, 27 December 1989.

-(1990a), Resolution on the Intergovernmental Conference in the context of Parliament's strategy for European Union, Doc. A3-47/90, *Official Journal of the European Communities*, no. C96, 17 April 1990.

-(1990b), Resolution on the European Parliament's guidelines for a draft constitution for the European Union, *Session Documents*, Doc A3-165/90, 11 July.

-(1990c), Resolution on the principle of subsidiarity, *Session Documents*, Doc A3-163/90, 12 July.



-(1990d), Resolution on the Intergovernmental Conference in the context of Parliament's strategy for European Union, *Session Documents*, Doc A3-166/90, 11 July.

-(1990e), Resolution on the Dublin European Council, *Official Journal of the European Communities*, no. C149, 18 June.

-(1991a), Political Union, *Debates of the European Parliament*, Official Journal of the European Communities, no. 3-406, 12 June.

-(1991b), Programme of the Dutch Presidency, *Debates of the European Parliament*, Official Journal of the European Communities, no. 3-407, 9 July.

-(1991c), Resolution on the Intergovernmental Conference on Political Union, Doc. B3-102791, *Official Journal of the European Communities*, no.C183, 15 July.

-(1991d), The Role of the Regions in the Process of European Integration, *Debates of the European Parliament*, , Official Journal of the European Communities, no. 3-409, 9 October.

-(1991e), Political Union, *Debates of the European Parliament*, , Official Journal of the European Communities, no. 3-409, 9 October.

-(1991f), Intergovernmental Conference on Political Union, *Debates of the European Parliament*, , Official Journal of the European Communities, no. 3-411, 20 November.

-(1991g) Joint Resolution on the European Council meeting in Luxembourg on 28 and 29 June 1991, *Official Journal of the European Communities*, no. C240, 16 September.

-(1992a), Resolution on the State of Progress of European Union and Ratification of the Maastricht Treaty, Europe Documents, no. 1803, *Agence Internationale d'Information pour la Presse*, 16 October.

-(1992b), European Council of 11-12 December 1992 - Term of Office of the British Presidency, *Debates of the European Parliament*, Official Journal of the European Communities, no. 3-425, 16 December.

-(1993), *Declaration of the European Parliament's delegation concerning democracy, transparency and subsidiarity*, Doc A3-0356/93.

-(1994b), Constitution of the European Union, *Debates of the European Parliament*, Official Journal of the European Communities, no. 3-442, 9 February.

-(1994d), Community Legislation and the Subsidiarity Principle, *Debates of the European Parliament*, Official Journal of the European Communities, no. 3-447, 19 April.

-(1994e), European Council of 9-10 December 1994 - Term of Office of the German Presidency, *Debates of the European Parliament*, Official Journal of the European Communities, no. 4-455, 14 December.

-(1995a), Programme of the French Presidency, *Debates of the European Parliament*, Official Journal of the European Communities, no. 4-456, 17 January.

-(1995b), Commission Work Programme, *Debates of the European Parliament*, Official Journal of the European Communities, no. 4-457, 15 February.

-(1995c), Treaty on European Union and the 1996 Intergovernmental Conference, *Debates of the European Parliament*, Official Journal of the European Communities, no. 4-463, 16 May.

-(1995d), Programme of the Spanish Presidency, *Debates of the European Parliament*, Official Journal of the European Communities, no. 4-466, 12 July.

-(1995e), Resolution on the Operation of the Treaty on European Union with a view to the 1996 Intergovernmental Conference, *Session Documents*, Doc. A4-0102/95.

-(1995f), *Briefing on the IGC and Transparency, Task-Force on the Intergovernmental Conference*, Working Party Secretariat, Luxembourg, 25 September.

-(1996a), *Briefing on Subsidiarity and Demarcation of Responsibilities, Task-Force on the Intergovernmental Conference*, Working Party Secretariat, Luxembourg 15 March 1996.

-(1996b), Resolution on the European Council in Turin, *Session Documents*, Doc. A4-0068/96, 13 March.

European Parliament Institutional Affairs Committee (1982), *Report drawn up on behalf of the Committee on Institutional Affairs on the European Parliament's position concerning the reform of the Treaties and the achievement of European Union*, Doc 1-305/82, 21 June.

-(1983), *Report drawn up on behalf of the Committee on Institutional Affairs concerning the substance of the preliminary draft Treaty establishing the European Union*, Doc 1-575/83, 15 July.

-(1990a), *Interim Report drawn up on behalf of the Committee on Institutional Affairs on the Intergovernmental Conference in the context of Parliament's strategy for European Union*, Session Documents, Doc A 3-0047/90, 27 February.

-(1990b), *Second Interim Report drawn up on behalf of the Committee on Institutional Affairs on the Intergovernmental Conference in the context of Parliament's strategy for European Union*, Session Documents, Doc A 3-166/90, 25 June.

-(1990c), *Interim Report drawn up on behalf of the Committee on Institutional Affairs on the principle of subsidiarity*, European Parliament, Session Documents, Doc A3-163/90/part B, 4 July.

-(1990d), *Report of the Committee on Institutional Affairs on the convening of the Intergovernmental Conferences on Economic and Monetary Union and on Political Union*, Session Documents, Doc A3-0281/90, 7 November.

-(1992), *Report of the Committee on Institutional Affairs on the results of the intergovernmental conferences*, Session Documents, Doc A3-0123/92, 23 March.

-(1994a), *Report of the Committee on Institutional Affairs on the European Constitution*, Session Documents, Doc A3-0031/94.

-(1994b), *Opinion for the Committee on Legal Affairs and Citizens' Rights*, attached to Committee on Legal Affairs and Citizens' Rights, Session Documents, Doc. A3-0187/94.

-(1996), *Report on the convening of the IGC and an evaluation of the work of the Reflection Group*, Session Documents, Doc. A4-0068/96/B.

European Parliament Legal Affairs and Citizens' Rights Committee (1994), *Report on the Commission report to the European Council on the adaptation of Community legislation to the subsidiarity principle*, Committee on Legal Affairs and Citizens' Rights, Session Documents, Doc A3-0187/94, 29th March.

European Peoples Party (1990), For a Federal Constitution of the European Union, Europe Documents, no. 1665, *Agence Internationale d'Information pour la Presse*, 5 December.

-(1992a), *The Maastricht Treaty (analysis and commentary)*, Research and Documentation Service, June.

-(1992b), *Enlargement, Subsidiarity and Democratisation*, European Parliament Research and Documentation Service, September.

Forward Studies Unit of the European Commission (1992a), *Note for the dossier on the intellectual formation of the idea of subsidiarity*, Forward Studies Unit, 15 January, unpublished document, Commission of the European Communities.

-(1992b), *Note for the dossier on the Philosophical history of the concept of subsidiarity*, Forward Studies Unit, 20 October, unpublished document, Commission of the European Communities.

-(1992c), *The Vertical Division of Power in American Political and legal History*, Note for the file on the Concept of Subsidiarity, no.81/92, unpublished document, Commission of the European Communities, 14 January.

Greek Government (1990), Aide-Memoire of 15th May in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

House of Commons Foreign Affairs Committee, (1989), *The Operation of the Single European Act, Minutes of Evidence*, HMSO.

-(1990), *European Council, Rome, Minutes of Evidence*, HC 72.i, Session 1990-91, 5 December, HMSO.

-(1991a), *European Council, Luxembourg, Minutes of Evidence*, HC 72.ii, Session 1990-91, 12 June, HMSO.

-(1991b), *European Council, Maastricht, Minutes of Evidence*, HC 35.i, Session 1991-92, 19 November, HMSO.

-(1992a), *Europe After Maastricht, Second Report, Volume 1*, Session 1991-92, 4 March 1992, HMSO.

-(1992b), *Europe After Maastricht, Minutes of Evidence*, Session 1992-93, HMSO, 19 October.

-(1992c), *Europe After Maastricht: Interim Report, First Report*, Session 1992-93, HMSO, 4 November 1992.

(1992), *Europe After Maastricht, Second Report, Volume I*, London: HMSO, 4 March.

-(1993a), *Europe After Maastricht, Second Report, Volume 1*, Session 1992-93, HMSO, 20 April 1993.

-(1993b), *European Council, Brussels, October 1993, Minutes of Evidence*, Session 1992-93, HMSO, 27 October 1993.

House of Commons Select Committee on European Legislation (1992a), *Fourth Report*, Session 1992-93, London: HMSO, 8 July.

-(1992b), *Ninth Report*, Session 1992-93, London: HMSO, 18 November.

House of Lords Select Committee on the European Communities (1985), *European Union with minutes of evidence*, Session 1984-85, 14th Report, HMSO.

-(1990a), *Economic and Monetary Union and Political Union*, volume I, 27th Report, Session 1989-90, HMSO, 30 October.

-(1990b), *Economic and Monetary Union and Political Union*, volume II, Evidence, Session 1989-90, HMSO, 30 October.

-(1991), *Political Union: Law-Making Powers and Procedures with evidence*, 17th Report, Session 1990-91, HMSO, 23 July.

-(1992a), *Enlargement of the Community*, 1<sup>st</sup> Report, Session 1992-93, HL Paper 5, HMSO.

-(1992b), *Scrutiny of the Inter-Governmental Pillars of the European Union*, 28th report, Session 1992-93, HL Paper 12, HMSO.

-(1995), *The 1996 Intergovernmental Conference*, Session 1994-5, 21st Report, HMSO.

Italian Chamber of Deputies (1990a), Resolution of 21st March in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

-(1990b), Resolution of 20th November in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

Italian Government (1990), European Council Presidency report on the Intergovernmental Conference on Political Union, 16th November in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

Kohl H. and Mitterrand F. (1990), Joint letter of 20th April in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.

Länder of the Federal Republic of Germany (1988), The Meeting of the Ministers President with the President of the European Commission, Jacques Delors, Summary, *Europa Archiv*, vol. 43, no. 12, May.

-(1990), Cornerstones of the Länder for Federalism in a Unified Germany in Jeffery and Sturm (eds.) (1993), *Federalism, Unification and European Integration*.

Luxembourg Government (1991a), Draft Treaty Articles with a view to achieving Political Union, Non-Paper, Europe Documents, no. 1709/1710, *Agence Internationale d'Information pour la Presse*, 3 May.

-(1991b), Draft treaty on the Union, Europe Documents, no. 1722/1723, *Agence Internationale d'Information pour la Presse*, 5 July.

National Assembly of France (1992), *Information Report of the National Assembly Delegation for the European Communities on the Treaty on European Union Signed at Maastricht 7th February 1992*, Second Ordinary Session of 1991-92, no. 2633, National Assembly.

Schuman R (1950), Declaration, reprinted in Salmon T and Nicoll W (1997), *Building European Union: A documentary history and analysis*.

Spanish Government (1990), Proposals Towards a European Citizenship, September in Corbett R, *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*.



Thatcher M. (1988), *Speech to the College of Europe*, Bruges, Europe Documents, *Agence Internationale d'Information pour la Presse*, no. 1527, 17 October.

*Treaty on European Union* (1992), Luxembourg: Office for Official Publications of the European Communities.

### Secondary Sources

Adams W. J. (1992) (ed.), *Singular Europe: Economy and Polity of the European Community after 1992*, University of Michigan Press.

Adonis A. (1990), *Subsidiarity:- Myth, Reality and the Community's Future in Adonis and Tyrie, Subsidiarity as History and Policy*.

-(1991), *Subsidiarity: Theory of a New Federalism?* In King P. and Bosco A. (eds.) (1991), *A Constitution for Europe: A comparative study of Federal Constitutions and Plans for the United States of Europe*.

Adonis A. and Tyrie A (1990), *Subsidiarity as History and Policy*, Institute of Economic Affairs, London.

Agence Europe (1992a), European Council Summary, *Agence Internationale d'Information pour la Presse*, no. 5760, 28 June.

-(1992b), *Should we Dramatise Birmingham? Subsidiarity as a Factor of Division*, *Agence Internationale d'Information pour la Presse*, no. 5835, 14 October.

-(1992c), Should We Dramatise Birmingham? (3) Denmark Must Accept Its Responsibilities, *Agence Internationale d'Information pour la Presse*, no. 5836, 15 October.

-(1992d), Press Conference on the Birmingham Summit, Special Edition, *Agence Internationale d'Information pour la Presse*, no. 5839, 18 October.

-(1992e), In the Wake of Birmingham: How to "Persuade" despite Economic Conditions?, *Agence Internationale d'Information pour la Presse*, no. 5840, 19/20 October.

-(1992f), Subsidiarity: Beware of the Stick in the Spokes, *Agence Internationale d'Information pour la Presse*, no. 5848, 30 October.

Armstrong H. (1993), Subsidiarity and the Operation of European Community Regional Policy in Britain, Policy Review Section, *Regional Studies*, vol 27, no 6.

Andersen S. and Eliassen K. (eds.) (1996), *The European Union: How Democratic is it?*, Sage Publications.

Apel K. (1972), The *a priori* of communication and the foundation of the humanities, *Man and World*, no. 5.

Austin J. L. (1962), *How To Do Things With Words*, Oxford University Press.

Bainbridge T. (1998), The Treaty of Amsterdam in Fraser (ed.), *Britain in Europe*, Strategems Publishing Ltd.

Barnes B. and Bloor D. (1982), Relativism, Rationalism and the Sociology of Knowledge, in Hollis and Lukes (eds), *Rationality and Relativism*, Basil Blackwell.

Barnett R. (1995), Subsidiarity, Enabling Government and Local Public Finance, *Ulster Papers in Public Policy and Management*, no. 54, University of Ulster.

Barry B. (1970), *Political Argument*, Routledge and Kegan Paul.

Beale A. and Geary R. (1994), Subsidiarity Comes of Age?, *New Law Journal*, 7 January.

Begg D. K. (1993), *Making Sense of Subsidiarity: How much centralisation for Europe?*, Monitoring European Integration, 4, Centre For Economic Policy Research.

Benditt T. M. (1975), The Concept of Interest in Political Theory, *Political Theory*, vol. 3, no. 3, August.

Bermann G. (1994a), Taking Subsidiarity Seriously: Federalism In The European Community And The United States, *Columbia Law Review*, 94, 2, March.

-(1994b), Subsidiarity and the European Community in Lutzeler P.M (ed.) *Europe after Maastricht: American and European Perspectives*, Bingham Books, Ch.9.

Bernard N. (1996), The Future of European Economic Law in the Light of the Principle of Subsidiarity, *Common Market Law Review*, 33, pp.636-666.

Bevins A. et al (1991), Major on the spot over EC, *The Independent*, 18 June.

Bevins A. and Savill A. (1992), Major acclaims subsidiarity, *The Independent*, 28 June.

Bhaskar R. (1979), *The Possibility of Naturalism: A Philosophical Critique of the Contemporary Human Sciences*, Harvester Press.

Bieber R., Jacque J. P. and Weiler J. (1985), *An Ever Closer Union: A critical analysis of the Draft Treaty establishing the European Union*, European Perspectives Series, Office for Official Publications of the European Communities: Luxembourg.

Binkley R., Bronaugh R. and Marras A. (eds.) (1971), *Agent, Action and Reason*, Oxford University Press.

Blair P. (1981), *Federalism and Judicial Review in West Germany*, Clarendon Press.

Boch C. (1995), Rules to Enforce the Rules: Subsidiarity v. Uniformity in the Implementation of the Single European Market Policy in Mayes D (ed.), *The Evolution of Rules for a Single European Market*, Luxembourg.

Bosco A. (ed.) (1991), *The Federal idea, volumes 1-3*, Lothian Foundation Press, London.

Brittan L. (1992), Subsidiarity in the Constitution of the European Community, *Agence Internationale d'information pour la Presse*, Documents, no.1786, 18 June.

Brock G. (1993), F-word buzzes back into the European battle, *The Times*, 1 October.

Brock G. and Oakley R. (1991), Summit shelves federalism issue, *The Times*, 27 June.

-(1992a), Delors outlines Brussels reform, *The Times*, 20 June.

-(1992b), Major warns of 'monster super-state', *The Times*, 26 June.

Bruce P. et al (1992), The tempo quickens: FT writers examine the public debate on European integration, *Financial Times*, 30 November.

Buchan D. (1991), Federalism may become the non-word of Europe, *Financial Times*, 19 June.

Burca G. de (1996), The Quest for Legitimacy in the European Union, *The Modern Law Review*, 59, 3, Blackwell Publishers, pp.349-376.

Burchell G., Gordon C., Miller P. (1991), *The Foucault Effect: Studies in Governmentality*, Harvester Wheatsheaf.

Burgess M. (1984), Federal Ideas in the European Community: Altiero Spinelli and 'European Union', 1981-84, *Government and Opposition*, Summer.

-(1986), Altiero Spinelli, Federalism and the EUT in Lodge (ed.), *European Union: the European Community in Search of a Future*, Ch.9.

-(1995), Federalism, Subsidiarity and the European Union in Furlong and Cox (eds.), *The European Union At The Crossroads: Problems In Implementing The Single Market Project*.

Cafruny A. and Rosenthal G. (eds.) (1993), *The State of the European Community, vol.2, The Maastricht Debates and Beyond*, Lynne Reinner Publishers.

Capotorti F., Hilf M., Jacobs F. and Jacqué J. P. (1986), *The European Union Treaty: Commentary on the draft adopted by the European Parliament on 14 February 1984*, Clarendon Press Oxford.

Cary A. (1993), Subsidiarity – Essence or Antidote to European Union? In Duff A. (ed.), *Subsidiarity within the European Community*.

Cass D.Z. (1992), The Word That Saves Maastricht? The Principle Of Subsidiarity And The Division Of Powers Within The European Community, *Common Market Law Review*, 29, pp.1107-1136.

CDU/CSU (1994), *Reflections on European Policy*, Bonn, 1 September, German Embassy: London.

Chirac J., Speech on his ideas for Europe, Texts of the Week, *Agence Internationale d'Information pour la Presse*, no. 6446, 23 March.

Christiansen T. (1992), The Länder Between Bonn and Brussels: The Dilemma of German Federalism in the 1990s, *German Politics*, vol.1, no. 2, Frank Cass.

Collier U. (1996), *Deregulation, Subsidiarity and Sustainability: new challenges for EU environment policy*, EUI Working Paper, no. 96/90, European University Institute.

Connolly W. (1972), On Interests in Politics, *Politics and Society*, Summer.

-(1993), *The Terms of Political Discourse*, Third Edition, Basil Blackwell Ltd.

Constantinesco V. (1985), Division of fields of competence between the Union and the Member States in the Draft Treaty establishing the European Union in Bieber R. et al, *An Ever Closer Union: A critical analysis of the Draft Treaty establishing the European Union*.

-(1991), La Subsidiarite comme Principe Constitutionnelle de l'Integration Europeenne, *Aussenwirtschaft*, 46, III/IV, Zurich: Ruegger, pp.439-459.

Cooper Mark P. (1995), Understanding Subsidiarity as a Political Issue in the European Community, *Talking Politics*, vol. 7, no. 3, spring, The Politics Association, pp.178-183.

Corbett R. (1993), *The Treaty of Maastricht, From Conception to Ratification: A Comprehensive Reference Guide*, Longmann, Current Affairs Series.

Council of Europe (1985), *European Charter of Local Self-Government*, reprinted in Duff (ed.), (1993), *Subsidiarity within the European Community*.

Crampton S. (no date), *1992 Eurospeak Explained*, Rosters Ltd in association with Consumers in the European Community Group.

Curtin D. and Heukels T. (eds.) (1994), *Institutional Dynamics of European Integration: Essays in honour of Henry G. Schermers*, vol. II, Martinus Nijhoff.

Curtin D. and Van Ooik R. (1994), *Denmark and the Edinburgh Summit: Maastricht without Tears* in Okeefe and Twomey (eds.) *Legal Issues of the Maastricht Treaty*.

Curtin D. (1995), *The Shaping of a European Constitution and the 1996 IGC. Flexibility as a Key Paradigm*, Aussenwirtschaft,

-(1996), *Between and Between: Democracy and Transparency in the Governance of the European Union* in Winter et al (eds.) *Reforming the Treaty on European Union - The Legal Debate*, Kluwer Academic.

Daffern T. (1991), *The etymology of federalism and the dissemination of federal ideas in Europe* in Bosco (ed.), *The Federal Idea*.

Dastoli P. (1986), *Altiero Spinelli: Speeches in European Parliament 1976-1986*, Communist and Allies Group, European Parliament.

David W. (1994), *The European Parliament and the Principle of Subsidiarity*, European Public Policy Institute, Occasional Papers, University of Warwick, no. 6/94.

Davidson I. (1991), New era for EC family, *Financial Times*, 30 November

Deeg R. (1995), Germany's Länder and the Federalization of the European Union in Rhodes and Mazey (eds.), *The State of the European Union, vol.3, Building a European Polity*.

Dehousse R. (1993), Does Subsidiarity really matter?, *EUI Working Paper Law*, no. 92/32, European University Institute.

-(ed.) (1994), *Europe After Maastricht: An Ever Closer Union?*, Law Books in Europe: Munich.

-(ed.) (1997), *Europe: The Impossible Status Quo*, MacMillan Press Ltd.

Delors J. (1988), Europe: obstacles to sovereignty, *Politique Internationale*, no. 41, Autumn.

-(1989a), Speech to the European Parliament in Strasbourg, Europe Documents, no. 1542/1543, *Agence Internationale d'Information pour la Presse*, 26 January.

-(1989b), Address to the Wissenschaftszentrum, Bonn, Europe Documents, no. 1574, *Agence Internationale d'Information pour la Presse*, 12 October.

-(1989c), Speech to the College of Europe, Bruges, Opening Session, Europe Documents, no. 1576, *Agence Internationale d'Information pour la Presse*, 21 October.

-(1990), Speech to the European Parliament presenting the Commission Programme for 1990, Europe Documents, no. 1592, *Agence Internationale d'Information pour la Presse*, 24 January.



-(1991), The Principle of Subsidiarity: Contribution to the Debate in Delors J. et al, *Subsidiarity: The Challenge of Change*, proceedings of the Jacques Delors colloquium, European Institute of Public Administration.

-(1992a), *Le Nouveau Concert Europeen*, Editions Odile Jacob: Paris.

-(1992b), Europe and the World after 1992, Speech to the London Forum, Europe Documents, no. 1795, *Agence Internationale d'Information pour la Presse*, 10 September.

-(1993), *Address to the European Parliament on the occasion of the investiture debate of the new Commission*, Supplement to the Bulletin of the European Communities, 1/93.

Delors J. et al (1991), *Subsidiarity: The Challenge of Change*, proceedings of the Jacques Delors colloquium, European Institute of Public Administration.

Dessler D. (1989), What's at stake in the agent-structure debate?, *International Organisation*, vol. 43, no. 3, Summer, MIT Press.

Devine P. J. et al (1996), *Competitiveness, Subsidiarity and Industrial Policy*, Industrial Economic Strategies for Europe Series, Routledge.

Diez T. (1996), *Reading the EU: Discursive Nodal Points in the British Debate on European Integration*, Paper presented at the Workshop "Genealogies of Government: Thinking about a key concept in political science, Salzburg, December.

Dilthey W. (1977), *Descriptive Psychology And Historical Understanding*, Translated by R. M. Zaner and K. I. Heiges, Martinus Nijhoff.

Duff A. (ed.) (1993), *Subsidiarity Within The European Community*, Federal Trust for Education and Research.

Duff A., Pinder J. and Pryce R. (eds.) (1994), *Maastricht and Beyond: Building the European Union*, Routledge: London.

Duff A. (1993), Towards a Definition of Subsidiarity in Duff (ed.), *Subsidiarity Within The European Community*.

-(1994), Ratification in Duff A et al (eds.), *Maastricht and Beyond: Building the European Union*.

Edwards G. and Pijpers A. (eds.) (1997), *The Politics of European Treaty Reform: The 1996 Intergovernmental Conference and Beyond*, Pinter Publishers.

Emiliou N. (1992), Subsidiarity: An Effective Barrier Against the 'Enterprises of Ambition'?, *European Law Review*, vol. 17, Sweet and Maxwell, London, pp.383-407.

-(1994), Subsidiarity: Panacea or Fig Leaf? in Okeefe and Twomey (eds.), *Legal Issues of the Maastricht Treaty*.

Endo K. (1994), The Principle Of Subsidiarity: From Johannes Althusius To Jacques Delors, *Hokkaido Law Review*, vol. 44, no. 6, pp.2064-1965.

Errko H. (1996), *Subsidiarity Principle as EU Policy*, Seminar paper, University of Helsinki, Faculty of Social Sciences, Internet Site, <http://www.helsinki.fi/valtttdk/neusem/hterkko/>

Federal Republic of Germany (1949), *Constitution*, Amended by the Unification Treaty of 31 August 1990 and the Federal Statute of 23 September 1990.

Femia, J. V. (1988), An historicist critique of "revisionist" methods for studying the history of ideas, in Tully and Skinner (eds.), *Meaning and Context: Quentin Skinner and his Critics*.

*Financial Times* (1991), Last-minute bargain on eve of EC summit, 9 December.

Fischer T. (1994), "Federalism" in the European Community and the United States: A Rose by any other Name..., *Fordham International Law Journal*, vol. 17.

Flatham R.E. (1975), Some Familiar but False Dichotomies Concerning 'Interests', *Political Theory*, vol. 3, no. 3, August.

Flynn B. (1997), *More than Mere Rhetoric, Less than Hard Law?: the evolution of subsidiarity in EU environmental policy making*, Essex Papers in Politics and Government, no. 121, University of Essex.

Foucault M. (1991), Politics and the Study of Discourse in Burchell et al (eds.), *The Foucault Effect: Studies in Governmentality*.

Franklin M., Marsh M. And McLaren L. (1994), Uncorking the Bottle: Popular Opposition to European Unification in the Wake of Maastricht, *Journal of Common Market Studies*, vol. 32, no. 4, December.

Fraser M. (ed.) (1998), *Britain in Europe*, Strategems Publishing Ltd.

Furlong P. and Cox A. (eds.) (1995), *The European Union At The Crossroads, Problems In Implementing The Single Market Project*, Earlsgate Press.

Gallie, W. B. (1964), *Philosophy and the Historical Understanding*, Chatto and Windus, London.

Gardner D. (1992), Pandora's box or a panacea: EC members are pinning their hopes on subsidiarity to calm fears about European integration, *Financial Times*, 12 October.

Gazzo M. (1985), *Towards European Union: From the "Crocodile" to the European Council in Milan (28-29 June 1985), selected documents*, Agence Europe.

Gellner E. (1973), *Cause and Meaning in the Social Sciences*, Routledge and Kegan Paul.

General de Gaulle (1962), *Speech*, Information Bulletin, French Embassy, 19 May.

Gilpin R. G. (1981), *War and Change in World Politics*, Cambridge University Press.

- (1984), The richness of the tradition of political realism, *International Organisation*, vol. 38, no. 2, Spring, MIT Press.

Goldstein L. J. (1961), The Phenomenological and Naturalistic Approaches to the Social, *Methodos*, vol. XIII, no. 51-52.

Golub J. (1996), Sovereignty and Subsidiarity in EU Environmental Policy, *Political Studies*, vol. 44, no. 4, pp.686-703.

Gondrand F. (1992), *Eurospeak: A user's guide*, translated by Bowen P, Nicholas Brealey Publishing.

Gonzalez J. P. (1995), The Principle of Subsidiarity: A guide for lawyers with a particular community orientation, *European Law Review*, vol. 20, no. 4, August.

Gowan P. and Anderson P. (eds.) (1997), *The Question of Europe*, Verso: London.

Graham K. (1980), The Recovery of Illocutionary Force, *Philosophical Quarterly*, 30.

-(1988), How Do Illocutionary Descriptions Explain? in Tully and Skinner (eds.), *Meaning and Context: Quentin Skinner and his Critics*.

Graham R. and Jack A. (1997), France's New Champion, Interview with Lionel Jospin, *Financial Times*, 9 December.

Grant C. (1994), *The House that Delors Built*, London: Nicolas Brearly.

Grant W. (1993), The Politics of Economic Policy, *Contemporary Political Studies*, Harvester Wheatsheaf.

Gretschmann K. (1991), The Subsidiarity Principle: Who is to do what in an integrated Europe? in Delors et al, *Subsidiarity: The Challenge of Change*.

Grieco J. M. (1988), Anarchy and the limits of co-operation: a realist critique of the newest liberal institutionalism, *International Organisation*, vol. 42, no. 3, Summer, MIT Press.

Gudin C. E. (1993), *Subsidiarite et transparence de l'action communautaire*, R.A.E. no. 1.

Haas E. B. (1968), *The Uniting Of Europe*, Stanford University Press, 2nd edition.

Habermas J. (1972), *Knowledge and Human interests*, translated by J. J. Shapiro, Heinemann.

-(1988), *On The Logic Of The Social Sciences*, translated by S. W. NicholSEN and J. A. Stark, Polity Press.

Hamilton M. B. (1987), The Elements of the Concept of Ideology, *Political Studies*, 35, 1.

Hampshire S. (1959), *Thought and Action*, Chatto and Windus.

Hanscher M. (1972), Three Kinds of Intention, *Modern Language Notes*, no. 87.

Hauser H. and Muller A. (1995), Legitimacy: The Missing Link for Explaining EU-Institution Building, *Aussenwirtschaft*, vol. 50, no. 1, Zurich:Ruegger.

Hearl D. (1995), *Crisis or Opportunity? Subsidiarity, The Public and the EU Credibility Gap*, Discussion Paper of the Jean Monnet Group of Experts, Centre for European Studies, University of Hull.

Heinze E. (1994), Equality: Between Hegemony and Subsidiarity, *International Commission of Jurists*, Review no. 52.

Hill A. (1992), The S word: teach yourself summit speak, *Financial Times*, 8 December.

Hirsch Jr. E. D. (1967), *Validity in Interpretation*, New Haven.

Holland M. (1993), *European Integration: From Community to Union*, Pinter Publishers: London.

Hollis M. and Lukes S. (eds.) (1982), *Rationality and Relativism*, Basil Blackwell.

Howard P. (1992), Defining the S-word, *The Times*, 15 October.

Hoyer W. (1995), *Unity in Diversity: The Future of Europe*, Chatham House Speech, Royal Institute of International Affairs, 13 September.

Hueglin T. O. (1994), Federalism, Subsidiarity and the European Tradition: Some Clarifications, *Telos*, vol. 27, no. 2, Summer.

Hurd D. (1990), *Speech to Conservative Group for Europe*, 11 October.

Hurwitz L. and Lequense C. (eds.) (1991), *The State of the European Community: Policies, Institutions and Debates in the Transition Years*, Lynne Reinner Publishers Inc.

*Independent* (1991), Federalism real and imagined, 19 June.

-(1992), Subsidiarity in the EC will not preserve national sovereignty, 4 July.

Jachtenfuchs M. (1992), Die EG nach Maastricht: Das Subsidiaritätsprinzip und die Zukunft der Integration, *Europa Archiv*, vol. 47, no 10.

Jeffery C. (1996), Towards a 'Third Level' in Europe? The German Länder in the European Union, *Political Studies*, vol. 44, no. 2, June 1996, Blackwells.

Jeffery C. and Sturm R. (eds.) (1993), *Federalism, Unification and European Integration*, Frank Cass and Co. Ltd.

Jeffery C. and Yates J. (1992), Unification and Maastricht: The Response of the Länder Governments, *German Politics*, vol. 1, no. 3, Frank Cass.

Jenkins R. (1990), Thatcher: an alternative to Delors?, *European Affairs*, vol. 4, no. 1, spring, Elsevier Publishers.

Jerneck M. (1995), *The Principle of Subsidiarity in the European Union*, Department of Political Science, Lund University.

Johnson M. (1992), Everything you wanted to know about subsidiarity, Letters, *The Independent*, 4 July.

Kapteyn P. (1991), Community Law and the Principle of Subsidiarity, *Revue des Affaires Europeennes*.

Kaufmann F. J. (1988), The Principle of Subsidiarity Viewed By the Sociology of Organisations, *The Jurist*, vol. 48, pp.275-291.

Keane J. (1988), More theses on the philosophy of history in Tully and Skinner (eds.), *Meaning and Context: Quentin Skinner and his Critics*.

Keeley J. F. (1990), Toward a Foucauldian analysis of international regimes, *International Organisation*, vol. 44, no. 1, Winter, MIT Press.

King P. (1982), *Federalism and Federation*, Croom Helm.

King P. and Bosco A. (eds.) (1991), *A Constitution for Europe: A comparative study of Federal Constitutions and Plans for the United States of Europe*, Lothian Press Foundation.

Koopmans T. (1994), The Quest for Subsidiarity in Curtin and Heukels (eds.), *Institutional Dynamics of European Integration: Essays in honour of Henry G. Schermers*, vol II, Martinus Nijhoff.

Kratochwil F. (1982), On the Notion of "Interest" in International Relations, *International Organisation*, vol. 36, no. 1, Winter.



-(1984), Errors have their advantage, *International Organisation*, vol. 38, no. 2, Spring.

Kühnhardt L. (1992), Federalism and Subsidiarity, *Telos*, vol. 25, no. 1, Spring.

Laffan B. (1993), The Treaty of Maastricht: Political Authority and Legitimacy in Cafruny and Rosenthal (eds.), *The State of the European Community, vol.2, The Maastricht Debates and Beyond*.

-(ed.) (1996a), *Constitution-Building in the European Union*, Institute of European Affairs.

-(1996b), The IGC and Institutional Reform of the Union in Edwards and Pijpers (eds.), *The politics of European Treaty Reform: The 1996 Intergovernmental Conference and Beyond*.

Lasok D. (1992), Subsidiarity and the occupied field, *New Law Journal*, 11 September.

Laursen F. (1997), The Lessons of Maastricht in Edwards G and Pijpers A (eds.), *The Politics of European Treaty Reform: The 1996 Intergovernmental Conference and Beyond*.

Laursen F. and Vanhoonacker S. (eds.) (1994), *The Ratification of the Maastricht Treaty: Issues, Debates and Future Implications*, European Institute of Public Administration, Martinus Nijhoff Publishers.

Lavine T. Z. (1953), *What is the Method of Naturalism?*, *The Journal of Philosophy*, vol. L, no. 5.

*Le Monde* (1992), Federation or Confederation, 5 September, p.10.

Lenaerts K. (1994), The Principle of Subsidiarity and the Environment in the European Union: Keeping the balance of federalism, *Fordham International Law Journal*, vol. 17.

Lhoest O. and Nihoul P. (1992), *Le Traite de Maastricht vers L'Union Europeenne*, Journal des Tribunaux, 111 annee, no.5652, *Recueil Annuel de Jurisprudence Belge*, Maison Larcier: Bruxelles.

Lipgens W. (ed.) (1985), *Continental Plans for European Union 1939-1945*, Documents on the History of European Integration, vol. 1, Walter de Gruyter.

Lodge J. (ed.) (1986), *European Union: the European Community in Search of a Future*, Macmillan: London.

- (ed.) (1993a), *The European Community and the Challenge of the Future*, 2nd edition, Pinter Publishers Ltd.

-(1993b), *Towards a Political Union?* in Lodge (ed.), *The European Community and the Challenge of the Future*, 2nd edition, Ch. 21.

-(1994), *Transparency and Democratic Legitimacy*, *Journal of Common Market Studies*, vol. 32, no. 3, September.

-(1996), *The European Parliament* in Andersen S. and Eliassen K. (eds.) (1996), *The European Union: How Democratic is it?*, Ch.11.

Longley C. (1990), *Catholics could show us the real meaning of an EC buzzword*, *The Times*, 13 December.

Ludlow P. (1988), *Beyond 1992*, *European Affairs*, vol. 2, no. 3, Autumn, Elsevier Publishers.

Luke T. W. (1987), *Methodological individualism: The Essential Ellipsis of Rational Choice Theory*, *Philosophy of the Social Sciences*, vol. 17.

Lukes S. (1974), *Power: A radical view*, Macmillan Education Ltd.

Lyngso L. (1995), *The Impact of the Subsidiarity Principle on the European Union*, MPhil thesis, University of Oxford.

MacDonald K. (1976), Is power essentially contested?, *British Journal of Political Science*, 6.

MacInnis D. J. (1993), *The Meaning of Subsidiarity in the European Community: new terminology for traditional power-sharing debates*, M.Phil. Thesis, University of Oxford.

-(1995), *The Meaning of Operationalised subsidiarity in the European Union*, D.Phil. thesis, Oxford University.

Mackenzie-Stuart Lord (1991), Assessment of the Views Expressed and Introduction to the Panel in Delors et al, *Subsidiarity: The Challenge of Change*.

-(1992), A Formula For Failure, *The Times*, 11 December.

Major J. (1991), Question Time, 26th June, Editorial, no. 5512, *Agence Internationale d'Information pour la Presse*, 27 June.

-(1992a), Europe and the World after 1992, Speech to the London Forum, Europe Documents, no. 1799, *Agence Internationale d'Information pour la Presse*, 16 September.

-(1992b), Letter to Heads of State, *Agence Internationale d'Information pour la Presse*, no. 5876, 11 December.

-(1993), Raise your eyes, there is a land beyond, *The Economist*, 25 September.

-(1994), Europe: a future that works, William and Mary Lecture, Leiden University, 7 September.

Manning D. J. (ed.) (1980), *The Form of Ideology*, George, Allen and Unwin.

Mansbridge J. J. (ed.) (1990a), *Beyond Self-Interest*, University of Chicago Press.

-(1990b), The Rise and Fall of Self-Interest in the Explanation of Political Life in Mansbridge (ed.), *Beyond Self-Interest*.

Marquardt P. D. (1994), Subsidiarity And Sovereignty In The European Union, *Fordham International Law Journal*, vol. 18, no. 2.

Martin D. (1991), *Europe: an Ever Closer Union*, Spokesman: Nottingham.

Mauthner R. (1991), Federalist faithful give Delors a hero's welcome, *Financial Times*, 9 December.

Mayall J., Navari C. and Watt D. C. (ed.) (1971), *Documents on International Affairs: 1962*, Oxford University Press.

Mayne R. (ed.) (1990), *Federal Union: The Pioneers*, Macmillan Academic and Professional LTD.

Middlemas K. (1995), *Orchestrating Europe: The Informal Politics of European Union 1973-1995*, Fontana Press.

Mill J. S. (1861), *Representative Government*, London: Parker Son and Bourn.

Miller V. (1992), *Defining Subsidiarity*, Research Note, 92/90, House of Commons Library.

-(1993), *The Maastricht Debate: further developments on subsidiarity*, Research Paper, 93/26, House of Commons Library.

-(1995), *Progress in the Implementation of Subsidiarity*, Research Paper 95/36, International Affairs and Defence Section, House of Commons Library.

Millon-Delsol C. (1991), *Les Idees Politiques au XXe Siecle*, Presses Universitaires de France.

-(1992) *L'Etat Subsidaire*, Presses Universitaires de France.

Monar J. et al (eds.) (1996), *Butterworth's Expert Guide to the European Union*, Butterworth's: London.

Monnet J. (1955), *Les Etats Unis ont Commencé*, Paris.

-(1978), *Memoirs*, translated from the French by Richard Mayne, Collins, London.

Morgenthau H. (1973), *Politics Among Nations*, 5th edition revised.

Moussis N. (1996), *Handbook of European Union: Institutions and Politics*, 3rd revised edition, European study Service: Belgium.

Nagel E (1953), On the Method of *Verstehen* as the Sole Method of Philosophy, *The Journal of Philosophy*, vol. L, no. 5.

Nectoux F. (1996), The Politics of European Integration after Maastricht in Barbour P (ed.), *European Union Handbook*, Fitzroy Dearborn Publishers, Ch. 3.

Neunreither K. (1993), *Subsidiarity as a Guiding Principle for the European Community Activities, Government and Opposition*, Spring.

Neuwahl N. A. (1995), *A Europe Close to the Citizen?: The "Trinity Concepts" of Subsidiarity, Transparency and Democracy in Rosas and Antola (eds.), A Citizen's Europe: In Search of a New Order*, Ch.3.

Newman M. (1993), *The European Community - Where Does the Power Lie?*, European Dossier Series no. 25, University of North London Press.

-(1996), *Democracy, Sovereignty and the European Union*, Hurst and Company: London.

Nicoll W. and Salmon T. (1994), *Understanding the New European Community*, Harvester/Wheatsheaf.

Norton A. (ed.) (1995), *The Hutchinson Dictionary of Ideas*, Helicon Publishing Ltd.

Obradovic D. (1996), *Policy Legitimacy and the European Union*, *Journal of Common Market Studies*, vol. 34, no. 2.

-(1997), *Repatriation of Powers in the European Community*, *Common Market Law Review*, vol. 34, Kluwer Law International.

O'Keefe D. and Twomey P. (eds.) (1994), *Legal Issues of the Maastricht Treaty*, Chancery Law Publishing Ltd.

Oostländer A. (1992), *Horizontale Subsidiariteit*, *CD Verkenningen*, vol. 12, no. 9.

Oppenheim F. E. (1975), Self -Interest and Public Interest, *Political Theory*, vol. 3, no. 3, August.

Partan D. G. (1995), The Justiciability of Subsidiarity in Rhodes and Mazey (eds.), *The State of the European Union, vol.3, Building a European Polity*.

Pasquali G. (1993), Subsidiarity, *Journal of Regional Policy*, vol. 13, no. 1.

Peel Q. and Smith A. (1991), German states want regional voice in EC, *Financial Times*, 28 October.

Pennings F. (1993), Is the Subsidiarity principle useful to guide the European integration process?, *Tilburg Foreign Law Review*, vol. 2, Tilburg University, Netherlands.

Perrissich R. (1992), Le Principe de subsidiarite, fil conducteur de la politique de la Communaute dans les annees a venir, *Revue du Marche Unique Europeen*, no. 3.

Petersen N. (1997), The Nordic Trio and the Future of the EU in Edwards G. and Pijpers A. (eds.), *The Politics of European Treaty Reform: The 1996 Intergovernmental Conference and Beyond*.

Petersmann Ernst-Ulrich (1996), The Moral Foundations of the European Union's Foreign Policy Constitution: Defining 'European Identity' and 'Community Interests' for the Benefit of EU Citizens, *Aussenwirtschaft*, vol. 51, no. 2, Zurich:Ruegger.

Peterson J. (1994), Subsidiarity: A Definition to Suit Any Vision?, *Parliamentary Affairs*, vol. 47, no. 1, pp.116-132.

Pinder J. (1985), Economic and social powers of the European Union and the Member States: subordinate or coordinate relationship? in Beiber R. et al, *An Ever Closer Union: A critical analysis of the Draft Treaty establishing the European Union*.

-(1996), *The European Union of the Future: Federal or Intergovernmental* in Barbour P. (ed.), *European Union Handbook*, Fitzroy Dearborn Publishers, Ch. 22.

Pistone S. (1991), Altiero Spinelli and a Strategy for the United States of Europe, in Bosco (ed.), *The Federal Idea: The history of Federalism from Enlightenment to 1945*, vol. 1, Lothian Foundation Press.

Plamenatz J. (1954), *Interests*, *Political Studies*, vol. 11, no. 1.

-(1974), *Ideology*, Key Concepts in Political Science Series, Macmillan and Co. Ltd.

Political parties of Denmark (1993), *The Danish Referendum: Views of the political parties and political groups on the referendum issues*, Secretariat for Cultural and Press Relations, Royal Danish Ministry of Foreign Affairs.

Pollet K. (1995), Subsidiarity and its effects on business in Holmes G. (ed.), *European Trends: key issues and developments for business*, no. 1, Economist Intelligence Unit.

Pope John XXIII (1963), *Pacem In Terris*, Catholic Truth Society.

Pope Leo XIII (1891), *Rerum Novarum*: Encyclical on capital and labour.

Pope Pius XI (1936), *Quadragesimo Anno*, Catholic Truth Society, London.

Popper K. (1964), *The Poverty of Historicism*, New York.

Price D. (1995), *A European Super-State? Schuman's conception of Europe*, UACES Research Conference, University of Birmingham, 18-19 September.



Pryce R. (ed.) (1990), *The Dynamics of European Union*, Routledge.

Quirk P. J. (1988), In Defence of the Politics of Ideas, *Journal of Politics*, 50.

Rayner J. D. (1980), The Uses of Ideological Language in Manning (ed.), *The Form of Ideology*.

Redwood J. (1989), *Europe 1992: The Good and the Bad*, Centre for Policy Studies.

Rhodes C. and Mazey S. (eds.) (1995), *The State of the European Union, vol. 3, Building a European Polity*, Lynne Reinner Publishers.

Risse-Kapen T. (1996), Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis Meet the European Union, *Journal of Common Market Studies*, vol. 34, no. 1.

Robertson D. (1993), *The Penguin Dictionary of Politics*, second edition, Penguin Group.

Rosas A. and Antola E. (1995), *A Citizens' Europe: In Search of a New Order*, Sage Publications Ltd.

Ross G. (1995), *Jacques Delors and European Integration*, Polity Press.

Roumeliotis P. (1991), The Subsidiarity Principle: The View of the European Parliament in Delors et al, *Subsidiarity: The Challenge of Change*.

Salmon T. and Nicoll W. (eds.) (1997), *Building European Union: A documentary history and analysis*, Manchester University Press.

Santer J. (1991), Some Reflections on the Principle of Subsidiarity in Delors et al, *Subsidiarity: The Challenge of Change*.

Sayer A. (1992), *Method In Social Science: A Realist Approach*, second edition, Routledge.

Schaefer G. F. (1991), The rise and fall of subsidiarity, *Futures*, September.

Schelter K. (1994), *La Subsidiarite: Principe Directeur de la Futur Europe, Problems Juridiques et Institutionnels*, European Parliament Archives, Luxembourg.

Schilling T. (1995), *Subsidiarity as a Rule and a Principle, or: Taking Subsidiarity Seriously*, Harvard Jean Monnet Working Paper Series, no. 10.

Schmuck O. (1990), The European Parliament's Draft Treaty Establishing The European Union (1979-84) in Pryce (ed.), *The Dynamics of European Union*, Ch. 9.

Schull J. (1992), What Is Ideology? Theoretical Problems and Lessons from Soviet-Type Societies, *Political Studies*, vol. 40.

Schutz A. (1954), Concept and Theory Formation in the Social Sciences, *The Journal of Philosophy*, vol. LI, no. 9.

Schwarze J. (1992), *European Administrative Law*, Office for Official Publications of the European Communities.

Scollon R. and Scollon S. W. (1995), *Intercultural Communication: A Discourse Approach*, Blackwell.

Scott A., Peterson J. and Millar D. (1994), Subsidiarity: A Europe of the Regions v. the British Constitution, *Journal of Common Market Studies*, vol. 32, no. 1, pp.47-67.

Searle J. R. (1979), *Expression and Meaning: Studies in the Theory of Speech Acts*, Cambridge University Press.

Sen A. K. (1990), Rational Fools: A Critique of the Behavioural Foundations of Economic Theory in Mansbridge (ed.), *Beyond Self-Interest*.

Shapiro M. J. (1981), *Language and Political Understanding: The Politics of Discursive Practices*, Yale University Press.

Sidjanski D. (1991), L'Europe sur la voie du federalisme, *Cadmos*, quatorzieme annee, no. 55, Automne.

Sinnott R. (1994), *Integration Theory, Subsidiarity and the Internationalisation of Issues: The Implications for Legitimacy*, EUI Working Paper RSC no. 13, European University Institute, Florence.

Skinner Q. (1970), Conventions and the Understanding of Speech Acts, *Philosophical Quarterly*, 20.

Smith S. and Barents R. (1996), *Neutrality and Subsidiarity in Taxation*, Kluwer Law International.

Sperber D. (1982), Apparently Irrational Beliefs, in Hollis and Lukes (eds.), *Rationality and Relativism*.

Spicker P. (1991), The Principle of Subsidiarity and the Social Policy of the European Community, *Journal of European Social Policy*, vol. 1, no. 1.

-(1994), *Concepts of Subsidiarity in the European Community*, PSSP Occasional Papers Series 1, no. 10, University of Dundee.

Spinelli A. (1983), *Towards the European Union*, Sixth Jean Monnet Lecture, European University Institute.

-(1984), *Come Ho Tentato Di Diventare Saggio: Lo, Ulisse*, Bologna: Il Mulino.

Stadler H. (1951), *Subsidiaritätsprinzip Und Foederalismus*, Freiburg, Universitätsbuchhandlung.

Steiner J. (1994), Subsidiarity Under the Maastricht Treaty in Okeefe and Twomey (eds.), *Legal Issues of the Maastricht Treaty*.

Stewing C. (1992), Subsidiarität und Federalismus in der Europäischen Union, *Scripten zum Wirtschafts*, Köln: Carl Heymanns Verlag.

Stone J. (1991), New Term, Uncertain Future, Viewpoint, *Town and Country Planning*, October.

Strawson, P. F. (1973), Intention and Convention in Speech-Acts, *Philosophical Review*.

Taylor K. (1995), European Union: The challenge for Local and Regional Government, *Political Quarterly*, vol. 66, no. 1, Blackwell Publishers.

Taylor P. (1996), *The European Union in the 1990s*, Oxford University Press.

Teasdale A. (1993), Subsidiarity in Post-Maastricht Europe, *Political Quarterly*, vol. 64, no. 2.

Thalberg I. (1972), *Enigmas of Agency: studies in the philosophy of human action*, Allen and Unwin.

Thatcher M. (1993), *The Downing Street Years*, Harper Collins.

*The Times* (1992a), Mr Major goes native, 4 July.

-(1992b), Subsidiarity: divining the true sense of Maastricht, 7 July.

Thiery A. (1990), Le Principe de Subsidiarite au Parlement Europeen, *L'Europe en Formation*, no.280, Winter 1990 - Spring 1991.

Timmins N. (1992), Major struggles to find formula for subsidiarity, *The Independent*, 12 October.

Tomlinson R. S. et al (1997), Discourse Semantics in Van Dijk (ed.), *Discourse as Structure and Process, Discourse Studies: A multidisciplinary Introduction*, vol. 1.

Toner M. and White C. (1996), *Bluff Your Way in the EU*, Ravette Publishing

Toth A. G. (1992), The Principle Of Subsidiarity In The Maastricht Treaty, *Common Market Law Review*, 29.

-(1994a), A Legal Analysis of Subsidiarity, in Okeefe and Twomey (eds.), *Legal Issues of the Maastricht Treaty*.

-(1994b), Is Subsidiarity Justiciable?, *European Law Review*, vol. 19, no. 3, June, pp.268-285.

Trachtman J. P. (1992), L'Etat C'est nous: Sovereignty, Economic Integration and Subsidiarity, *Harvard International Law Journal*, vol. 33, no. 2, Spring, pp.459-473.

Tschofen F. (1991), Article 235 of the Treaty Establishing the European Economic Community: Political Conflicts Between the Dynamics of Lawmaking in the Community and National Constitutional Principles, *Michigan Journal of International Law*, vol. 12, no 3.

Tully J. and Skinner Q. (1988), *Meaning and Context: Quentin Skinner and his Critics*, Polity Press.

Tyrie A (1990), Subsidiarity - What Should the Governments Do? in Adonis and Tyrie, *Subsidiarity as History and Policy*.

United States of America (1787), *Constitution*, with amendments.

Usborne D. (1991), U.K. recoils as Luxembourg slips in the dreaded “f word”, *The Independent*, 18 June.

Utz A. (1958), The Principle of Subsidiarity and Contemporary Natural Law, *Natural Law Forum*, vol. 3, no. 1.

Van Dijk T. A. (1997), The Study of Discourse in Van Dijk (ed.), *Discourse as Structure and Process, Discourse Studies: A multidisciplinary Introduction*, vol. 1.

Van Dijk T. A. (ed.) (1997), *Discourse as Structure and Process, Discourse Studies: A multidisciplinary Introduction*, vol. 1, Sage publications.

Van Kersbergen K. and Verbeek B. (1994), The Politics of Subsidiarity in the European Union, *Journal of Common Market Studies*, vol. 32, no. 2.

Vaubel R. (1997), The constitutional reform of the European Union, *European Economic Review*, vol. 41, no. 3-5, April.

Walsh C. (1994), *The Subsidiarity Principle and decentralisation: perspectives from Australia's federal experience*, Economics Division Working Papers, no. 94/4, Research School of Pacific and Asian Studies, Australia National University.

Watson P. (1993), Social Policy after Maastricht, *Common Market Law Review*, vol. 30, no. 3.

Watson R. (1997), Push to fortify the principle of subsidiarity, *European Voice*, vol. 3, no. 6

Watt L. (1957), Pope Pius and social reconstruction: an introduction to the encyclical *Quadragesimo Anno*, Oxford: Catholic Social Guild.

Weatherill S. (1993), *Subsidiarity and Responsibility*, Research papers in Law, no. 6, Department of Law, University of Nottingham.

-(1994), Beyond Preemption? Shared Competence and Constitutional Change in the European Community in O'Keefe and Twomey (eds.), *Legal Issues of the Maastricht Treaty*.

Weiler J.H. H. (1992), After Maastricht: Community Legitimacy in Post-1992 Europe, in Adams (ed.), *Singular Europe: Economy and Polity of the European Community after 1992*.

-(1993), Journey to an unknown destination: retrospective and prospective of the European Court of Justice in the arena of political integration, *Journal of Common Market Studies*, vol. 3, no. 4.

-(1994), Fin-de-siecle Europe: On Ideals and Ideology in Post-Maastricht Europe in Curtin D. and Heukels T. (eds.), *Institutional Dynamics of European Integration: Essays in honour of Henry G. Schermers*, vol II.

-(1997a), *The Division of Competences in the European Union*, European Parliament Directorate General for Research, Working Paper W-26, Political Series.

-(1997b), Legitimacy and Democracy of Union Governance in Edwards G and Pijpers A (eds.), *The Politics of European Treaty Reform: The 1996 Intergovernmental Conference and Beyond*.

-(1997c), Does Europe Need a Constitution? Reflections on Demos, Telos and Ethos in the German Maastricht Decision in Gowan and Anderson (eds.), *The Question of Europe*, Verso: London.

Wendt A. E. (1987), The agent-structure problem in international relations theory, *International Organisation*, vol. 41, no. 3, MIT press.

Wessels W. (1991), The Institutional Strategies Toward Political Union in Hurwitz L. and Lequense C. (eds.), *The State of the European Community: Policies, Institutions and Debates in the Transition Years*.

Wilke M. and Wallace H. (1990), *Subsidiarity: Approaches to Power-sharing in the European Community*, Royal Institute Of International Affairs, Discussion Paper 27.

Wolf M. (1991), Federalism before a fall, *Financial Times*, 30th November.

### Interviews

David Martin MEP (1996 and 1997), Vice-President of the European Parliament and rapporteur for the Institutional Affairs Committee.

Richard Corbett (1996), Sector head of political co-ordination, citizens' rights and institutional affairs for the Socialist Group and now an MEP, European Parliament.



Virgilio Dastolli (1996), Secretary to Altiero Spinelli MEP and Principal Administrator of the Committee on Culture, Youth, Education and the Media, European Parliament.

Christoph Bail (1996), Adviser at the Forward Studies Unit, European Commission.

Francois Lamoureux (1996), Chef du Cabinet to Edith Cresson, European Commission.

Nigel Evans (1996), Adviser, Intergovernmental task-force, European Commission.

Dr. Debloch (1997), Head of Bavarian Länd Representation, Brussels.

