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Towards a European territorial government system?

Umberto Janin Rivolin

Territorial governance is among the most important yet less obvious phenomena produced by the integration process that is being promoted by the European Community since the middle of the 1980's. Its importance yet low visibility may be both explained through paradoxical data: the rapid and growing evolution of Community intervention in the field of territorial and urban policies, in spite of a lack of acknowledgment of pertinent institutional competency. Perhaps something is destined to change for territorial governing systems now in effect in Europe if ever, governmental intention and capacity allowing, the existing project for a European Constitution is sooner or later ratified. The constitutional proposal now under discussion in fact provides that the European legislation will establish the function of a 'territorial cohesion' policy. On the other hand, because it deals with territories and cities, the objective of cohesion tends to be in apparently irreconcilable conflict with that of subsidiarity, which is also a fundamental aspect of Community treaties. On the contrary, as will be attempted to demonstrate in this paper, a European law for a territorial cohesion policy established upon the principle of subsidiarity is not only possible, but also contributes to improving, perhaps in a decisive manner, the effectiveness of territorial government systems currently being implemented in Europe.

The territory in the new European Constitution

The discussions on voting systems and national

representation in the future of the Commission have overshadowed, within the debate that accompanies the passing of the European Constitution (European Convention 2003), some significant innovations. These include the recognition of the territorial dimension of 'cohesion', the Community principle which, having been introduced with the 1986 Single European Act, incarnates the political decision for European integration perhaps more than any other. "Economic, social, and territorial cohesion" already appears in the first lines of the constitutional project among "The Union's objectives" (art. 3). More precisely, there is the same title in part of the document concerning "The policies and functioning of the Union" (*ibid.* part III, title III, chapter III, section 3). This section would therefore substitute the current title XVII ("Economic and social cohesion") of the Treaty establishing the European Community (EC Treaty) which, even though territories are not specifically mentioned, established in the early 1990s that "the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas" (art. 158). To this view therefore "Member States shall conduct their economic policies and shall coordinate them in such a way", while the Community exercises action "it takes through the Structural funds ... the European Investment Bank and the other existing Financial Instruments" (art. 159). In particular, the European regional development fund (Erdp), which is the most consistent among these instruments, "is intended to help to redress the main regional

imbalances in the Community through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions" (art. 160). The novelty of the European constitutional project is not limited to the nominal recognition of territorial cohesion policies, but is extended to the institutional modalities of such policies. The new article III-120, which replaces art. 162 of the EC Treaty, reads first of all: "Implementing measures relating to the European Regional Development Fund shall be enacted in European laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee". Even though similar, the new text differs from the current one in at least two ways. In the first place, the explicit provision of relative "European law" would take the place of the vaguest Council deliberative procedure. Furthermore, the law would not be aimed at establishing "decisions", but rather more concrete "implementing measures" for territorial cohesion policies. In brief, the European Constitution project may mark an important step, perhaps a decisive one, in the affirmation of that Community competence related to territorial governance which, in spite of noted difficulties (Williams 1999; Husson 2002), the European Community has demonstrated that they cannot do without, since they opted for integration.

European integration, cohesion, and territory

The objective of European integration was reinforced, following the Single Act, by the Treaty on European Union in 1992, and by the

subsequent treaties of Amsterdam (1997) and Nice (2000), and culminated, in addition to the constitutional project, in the adoption of a common currency and in the upcoming increase from 15 to 25 member states. At the roots of such an immense constituent assembly, which would have otherwise been incomprehensible over a century after the formation of modern states, laid the desire for prosperity (or even more simply, survival) for the European community in the face of the growing costs of a global market. Compared to the vital need for integration, therefore, the cohesion principle expresses nothing more than a concern for rebalancing the uncertain distributive effects of an internal market with no borders, and avoiding, instead, the pernicious risk of 'disintegrating' Europe. For this reason, in spite of formal reticence, the implementation of territorial and urban Community policies immediately proved itself to be as indispensable as it was agreed upon. With increased efforts during the end of the 1980s, the European institutions and national states found themselves cooperating in various territorial governance activities, generally known by the name of 'European spatial planning' (Williams 1996; Janin Rivolin 2000; Faludi 2002). First of all, the elaboration and the approval of the 'Esdp, European spatial development perspective' (EC 1999; Faludi, Waterhout 2002) by the European Ministries responsible for the territory became, at least symbolically, the most successful result attained so far. European governments are currently involved in the 'application' of the Esdp (Faludi 2003), according to a common 'Action

programme' that provides, among other things, the progressive operability of a European spatial planning observation network (Espo 2002).

More generally, the first of the 12 actions programmed contemplate the need to consider the Esdp in the implementation of the structural funds (currently equal to approximately 37% of Community expenses). Since the introduction of the cohesion principle, on the other hand, such resources have begun to be distributed through 'territorially oriented' programming. Even clearer is the territorial orientation of the Community initiatives, through which a specified quota of the structural funds (5-10%, according to each programming period) is aimed at sustaining actions that the Commission determines to be of particular strategic significance: after a decade of articulate experimentation, since 2000 three initiatives out of four (Interreg III, Urban II and Leader+) promote interventions in the territory and in the cities, with a total community investment of 7,6 billion euro (73% of the total) until 2006. Even if less evident in its manifestation, the perhaps most interesting aspect of European spatial planning regards the overall results, expected and unexpected, of its implementation. Community urban and territorial policies, in fact, have been developed through complex and progressive processes of innovation in practices and in local, regional, national institutions for territorial governance. In other words, in order to result in concrete forms of territorial transformation, European territorial governance passes through and modifies the variegated and stratified prism of instituted territorial government

practices (Janin Rivolin 2002; Janin Rivolin, Faludi 2004).

If this is true, the constitutional indication of a European legislation that establishes the implementing measures of territorial cohesion policy reveals implications, for territorial government decision-makers and technicians, that are much deeper than they apparently seem. In fact, the opportunity to govern the effects of the cohesion policy responsibly, rather than be satisfied to measure them periodically (EC 2001a, 2004), demonstrates regard not only for community institutions, but for all public authorities that, knowingly or not, already participate in this very same policy and are transformed by it. From this point of view, a framework of territorial governance principles, shared on a community level, may prove itself to be a potential outlet of the European constitutional dictate.

Territory, subsidiarity, and efficiency of public action

It may be opportune to specify that the so-called 'competency issue' (that is to say, whether or not to attribute a competency in the subject of territories to Community institutions) did not emerge due to pure academic speculation. The argument has been officially discussed several times, and since the middle of the 1990s has been discussed heatedly, even if up to now there have been no appreciable results (Faludi, Waterhout 2002, pp. 89-92; Husson 2002). In brief, the unresolved discussion between national and Community institutions, opposite in geometries that vary according to the specific themes on the agenda, may be reduced to deciding whether it makes sense to institute a supranational dimension to

territorial governance, since each nation is experimenting the need to decentralise such competencies. The possibility of a positive answer to these issues will probably be as demanding as the variety and distinct characteristics of current forms of territorial governments in Europe: the effort made by the 'EU Compendium' on national planning systems (EC 1997) to summarise them into four models constitutes, as is evident, a simplification of only relative usefulness. On the other hand, being an integral part of the EC Treaty and of the future constitution, *Protocol n. 30 on the application of the principles of subsidiarity and proportionality*, adopted in Amsterdam (1997), clearly states: "For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community" (art. 5). The subsidiarity principle, up to now, has played into the hands of detractors of a community competence in territorial government and, in any case, is called upon more than any other as a principle of 'safeguarding' for national petitions for subscribed Community commitments. The current tendency in the political debate, now that the territorial cohesion policy has officially made its appearance on the institutional scene, would be to maintain it as an entity that is distinct from the territorial planning system instituted in 15, soon to be 25, European countries (Faludi 2003). Attention must be paid, however, to how the cohesion and subsidiarity

principles coexist in the community constitutional charter, so that the spread of the European spatial planning and the contextual decentralisation of planning powers become, in practice, simply two sides of the same coin: if it must pass by the territory, cohesion will probably be implemented through government systems that are more effective and responsible on a local level. In other words, when faced with the vital necessity of European integration, the essential principle of territorial cohesion does not appear to be threatened, but rather favoured by the procedural principle of subsidiarity, as a guarantee of public action efficiency. In conclusion, subsidiarity, rather than maintaining territorial government systems separate from the territorial cohesion policy and maintaining them as two separate entities, may serve to articulate a framework of territorial governance principles to be shared on a Community level.

Instituting European territorial governance

If the above arguments are accepted, a European law on the implementing measures of territorial cohesion policy may be essentially finalised in the institution of three key principles, to be subjected to the enforcement of national territorial government legislation: vertical subsidiarity; horizontal subsidiarity; the relationship between subsidiarity and cohesion. *Vertical subsidiarity* regards relations between the administrative levels of European territorial governance and, therefore, the relationship between plans and programs on different scales. Besides recognising the scales of territorial government instituted in the European states (local, provincial-

regional, national), a community law should formalise objectives, instruments and procedures for those strategic scales of intervention that have been more recently identified in relation to specific EU objectives (cross-border, transnational, supranational). In brief, the scope would be the establishment of a shared framework of relationships among multiple territorial governance instruments and among competencies, autonomous and co-operative, of the institutional subjects responsible for their formation. In essential terms, the subscribed principle of subsidiarity would constitute the ratio upon which the vertical relationships between instruments and competencies are structured, aiming at an overall simplification and the progressive convergence of currently instituted national systems. Subsidiarity would suggest, for example, that all prescriptive land use regulatory powers in all European countries be reserved exclusively for the local level, assigning higher level institutions different tasks concerning the construction of general policies and territorial strategies, to which local policies must be coherent. *Horizontal subsidiarity* is an apparently more complex concept, which is justified through an authentic sharing, even in the fields of urban and territorial policies, of governance prospects as an alternative to the 20th century model of public intervention, of welfare matrix, which has proven itself incapable of meeting the challenges imposed by the global market (CE 2001b). If, in fact, the contraposition between the models of 'government' and 'governance' has a significance that goes beyond a taste for academic dissertation, this must

regard a radically different way of conceiving the interactions between private and public and, in the specific case of urban and territorial policies, between individual projects and collective strategies. From this point of view, it is necessary to recognise that even the recent experiences of European spatial planning and the international debate that it sparked were decisive in their contribution to defining territorial governance as a 'performing' practice, rather than a 'conforming' one, of relations between projects and strategies (Faludi 2000). The challenge of a European law appears, in this case, by nature to be exclusively cultural (in terms of political culture as well as technical culture) and may be overcome according to what measure we are able to accept that, in dealing with the territory, the fundamental principle of subsidiarity must extend towards a 'horizontal' plane of relations between citizens and institutions. In concrete terms, attributing performing capacities to the territorial government appears possible, provided that the prescriptive planning powers are limited to regulating existing uses and rights, and separateness from 'provisions' of transformation is maintained. These would continue to be legitimately and more opportunely pursued by each institution through non-limiting, but much more effective programs and strategies capable of involving and channelling the local planning capacity. Choosing to give up the institutional power to prescribe the future of cities appears to be not only a gesture of elementary intellectual sobriety, but implies a decisive added value for planning practices, even if we only consider the increasingly scarce and

often perverse effectiveness of territorial government systems that, in spite of the evidence and criticism that have developed over time, continue to operate according to the principle of conformity of transformations to prescribed provisions. On the other hand, it is not necessary to deal with European spatial planning in order to recognise that, in today's Europe, on a continental scale as well as a local one, the provisions of territorial transformation require no prescription in order to be carried out, but reliable strategies and shared programs. Otherwise, according to growing indications, collective strategies, when they exist, prove to be obstructed, or at least impeded, by those projects justified by conformity to transformation rights that have been assigned a priori, as well as needful of the coordination of local projects that are effectively capable of attaining the expected results (and deserving, only consequentially, of being assigned the relative transformation rights). The relationship between subsidiarity and cohesion. Besides technocratic heritage and obvious professional and political interests that benefit in different degrees, the persistence of institutions and planning practices founded upon the prescriptive powers of provisions of transformation may be explained by the concern, which is sometimes authentic and simply misdirected, to guarantee urban and territorial transformation with an overall coherent plan. This concern is not only legitimate, but indispensable, if we believe that territorial government continues to be, even if only within a framework of relationships founded on

subsidiarity, political activity, that is to say, justified by public causes. It is, in fact, one thing to sustain that subsidiarity implies a giving up of the power instituted to prescribe territorial transformations; but quite another to derive the corollary, which is unacceptable in the contexts of a market democracy, that individual projects can substitute or determine collective strategies. In practice, this corollary, which is theoretically equivalent to confusing subsidiarity with autarchy, is gaining support among technicians and decision-makers who, instead of repudiating it, tend to apply it by exploiting the prescriptive power of transformation. On the contrary, in territorial politics, as in any social practice, collective strategies are not born of simple summations of individual projects, as a plan on a higher scale is not triggered by the juxtaposition of a smaller scale plan. Rather, experience teaches us that, compared to aggregated projects, individual projects and local plans are rather more often and more easily in conflict. In terms of territorial governance, therefore, the problem of the relationship between subsidiarity and cohesion touches more upon vertical subsidiarity than the horizontal one, since the conflicts are common between either plans or programs on similar or different scales, or among local projects, or between these and plans that should include them. The principle of cohesion expresses, in this light, the need for the giving up of the power to prescribe provisions of transformation does not imply, by public authority, the abandonment of the prerogatives to orientate territorial transformations according to regulations and

strategies shared by the community of citizens who are represented. In a European system of territorial governance founded upon vertical and horizontal subsidiarity, "economic, social and territorial cohesion" is, therefore, the constitutional principle on which public authority, at various levels of government, bases the resolution of emerging conflicts in planning practices. As long as this is possible, the European legislation should concern itself with the establishment, referring to the application of national legislation, of simple but clear compensation principles for collective and individual interests which are subject to losses due to territorial transformations. Compensation to losing parties, aimed at guaranteeing the cohesion of the distributive effects deriving from the territorial transformation that are carried out, would allow public authority to resolve emerging conflicts in planning practices on any scale, thanks to technical evaluations that would be both more responsible and independent of transformation provisions backed by prescriptive value or moral or ideological concerns towards specific distributive results. The Community principle of economic, social, and territorial cohesion, in conclusion, may supply the constitutional reason capable of developing, within planning decisions, regulations for compensation among interests and needs involved in territorial transformation, which would otherwise be inhibited, as national experience has demonstrated, by the difficult practice of inspiring territorial government to consider "institutional" needs of solidarity (10). On the other hand, compensation

to losing parties seems to constitute the most concrete way to eradicate the fundamental conflict between cohesion and subsidiarity which, as has been said, has up to now prevented European territorial governance from being attributed that institutional recognition that, if the current constitutional process is not pure fiction, appears to be vital for the future of European citizens.

Conclusions

The considerations presented in the preceding paragraphs were not induced from the assumption that a European territorial law is necessary; they are, rather, born of the realisation that a European law that establishes implementing measures for the territorial cohesion policy is being provided for by the Community constitutional project. The reasons, if we reiterated briefly in relation to the overall sense of the European integration process, that justify this even lead to the conclusion that a law of this scope, in order not to fail in its intentions, should interact with national territorial government systems and, in particular, with procedures instituted for planning local transformations. The impression of an unacceptable interference from higher levels that a similar aim might suggest is only apparent, since, on the contrary, only a top-level veto could prevent a European law from recognising the elementary premise that any territorial policy (including territorial cohesion) is implemented, by definition, through local actions. From this point of view, the law cannot aspire to instilling effectiveness into local transformation processes; it should, rather, set the simple objective of establishing new Community constitutional

principles, especially subsidiarity and cohesion, within the institutional context of territorial government practices in Europe.

Furthermore, if it is true that laws intervene to confirm standard procedures rather than establish new ones, it is also true that territorial governance practices, which are rapidly spreading also thanks to Community innovations that have been appreciated by technicians and decision-makers across Europe, struggle to be recognised in established or attempted reform processes by national (and regional) institutions based upon constitutional models of 20th century hierarchical government. Existing laws and instruments, in other words, in spite of attempts at reform, not only appear incapable of adequately serving the emerging needs of territorial government, but as seen above, they appear to obstruct them considerably. Not by chance, the aspect of this process of change most deserving of attention in recent years is the innovative ideas, implemented a bit everywhere in Europe by more enlightened operators and decision-makers in the attempt to make territorial governance practices functional, even within inadequate institutional contexts. With the upcoming challenges that Europe must face, however, creative innovation risks becoming, for lack of a conscious and adequate effort in institutional regulation, a grotesque consolation for noble souls or, even worse, an easy pretext for promoting unspeakable interests in a context of uncertain regulations. The conclusion of the proposed hypotheses is that the institution of a Community level of

territorial government is not the objective of a European law to apply territorial cohesion. It is, if anything, the means (as effective as it is founded upon constitutional reasons) to confer institutional dignity and shared regulations to innovative practices of territorial governance, which have already been experimented, but are otherwise destined to become exceptionality or remembered simply as good intentions. Unless territorial cohesion is a mistake being made by European constituents (which is always possible, but this would be another story), exceptions and good intentions are no longer sufficient.

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