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THE FUTURE OF THE EUROPEAN UNION

by Tyson Smith¹

I. INTRODUCTION

As President Hans Pottering said in his inaugural speech as President of the European Parliament, “Europe is a complex continent. This faces all of us with huge challenges. The European Union (EU) can no longer operate using the inadequate instruments of current treaty law.”² Arguably, efficiency, as in many large organizations, needs to be addressed; complex treaty amendments could be simplified and various EU institutions could be reworked. Yet as the EU contemplates its future as a supranational organization, care must be taken to ensure that it does not overstep its bounds as it engages in this process. Founded in the wake of World War II, the original EU was established to bring peace to a war-torn continent and to promote the shared goal of prosperity.³ As the EU facilitates these foundational principles of peace and prosperity, it must be careful not to stifle two other integral underpinnings of the European Union, namely democracy and subsidiarity. Yet as it has grown in size and scope, the EU has become an increasingly cen-

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 - 2 Hans-Gert Pottering, Inaugural Address by the President of the European Parliament (Feb 13, 2007), *available at* <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20070213+ITEMS+DOC+XML+V0//EN#creitem3>.
 - 3 See Dinan, Desmond, *Europe Recast: A History of the European Union* 1–9, 13–45 (2004).

tralized government with extensive legislative powers. The Treaty of Lisbon, evolved from the proposed Constitution for Europe and signed by EU leaders on December 13, 2007, will take the EU in a direction even further removed from its original role as a facilitator of peace and prosperity. Institutional changes included in the Treaty of Lisbon and in the Charter of Fundamental Rights show how subsidiarity is reduced and that the EU is overstepping its bounds.

The future of the EU should be shaped by the role it was created to play within Europe. It should continue to facilitate peace and prosperity while protecting democracy and subsidiarity. Yet, while the European Union was established to accomplish these ends, the Treaty of Lisbon moves the EU further from these founding principles by creating a more powerful, more centralized government. The initiators of this Treaty believe it will enhance democracy, but the Treaty of Lisbon will further erode the democratic system of the EU by reducing the sovereignty and authority of each nation through the institutional reforms and the Charter of Fundamental Rights which it enacts.

II. FOUNDING VALUES—WORKING TOWARDS COMMON GOALS

A. Peace and Prosperity

As a supranational organization, the European Union was founded on certain fundamental principles. As the history of the EU illustrates, peace is the foundation on which the European Union is built. After centuries of conflict, the end of World War II brought together courageous and revolutionary leaders such as Robert Schuman, Konrad Adenauer, Alcide de Gasperi and Winston Churchill, who envisioned Europe becoming a place united by peace. In 1950, French Foreign Minister Robert Schuman presented a plan for even deeper cooperation than the peace treaty that ended the war, and by 1951, six countries—Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, and the Netherlands—had come together to create the European Coal and Steel Community (ECSC), determined to use common values and resources to establish peace. These

six countries all signed a treaty to run their heavy industries—coal and steel—under a common management. In this way, none of these countries could make weapons of war to turn against the other, as in the past.⁴ Thus, the first priority of this unique coalition of countries was to facilitate peace. Even today, more than fifty years after the European Economic Community (EEC) was founded, European Parliament President Hans Pottering said, speaking of the EU: “The greatest success has been overcoming the division of Europe. Our shared values have prevailed.”⁵ As a result, by allowing common values and resources to be shared, the European Union has been, and continues to be, a tremendous facilitator of peace.

History of the EU also demonstrates its role as a facilitator of prosperity. Cooperation was achieved between these original six countries as they worked together towards common goals in shared institutions, and in 1957 the Treaty of Rome was put into effect. This Treaty broadened the economic scope of the cooperation and established the EEC. The name of this treaty bespeaks the purpose of the EEC: the common goal of economic prosperity. The common institutional platform put in place allowed countries to begin working together towards greater economic prosperity. The success of the EEC prompted other European countries to join the EEC. Thus, during this first enlargement, the United Kingdom, Denmark, and Ireland joined the original six. The EU continued to enlarge and develop, and by 1986, Greece, Spain, and Portugal had joined. The economic structure continued to develop, and although it is debatable whether the current scope of the economic union is appropriate, the European Community did provide a valuable facilitating role as it furthered the founding values of peace and prosperity throughout Europe.

These principles, peace and prosperity, form the foundation of what the European Union is trying to accomplish. This being said, the EU must use caution to not overextend its powers in facilitat-

4 See Philip Malcolm Waller Thody, *An Historical Introduction to the European Union* 1–2 (1997). See also Dinan, *supra* note 3, at 45–83.

5 Hans-Gert Pottering, Inaugural Address by the President of the European Parliament (Feb 13, 2007), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20070213+ITEMS+DOC+XML+V0//EN#creitem3>.

ing these objectives. Otherwise, it runs the risk of undermining two other founding principles: democracy and subsidiarity.

B. Democracy and Subsidiarity

The EU should accomplish its role as a facilitator of peace and prosperity without stifling well-established principles of democracy and subsidiarity. It can readily be seen that democracy is an espoused virtue of the EU. For example, while member states of the EU have obvious differences in their government institutions, each nation state in the EU must demonstrate that they function as a democracy before they can become a member of the EU.⁶ If the EU requires its members to be run by democratic governments, it must also follow the same principle.

Working hand-in-hand with the principle of democracy is what the EU refers to as subsidiarity. Subsidiarity means that “the Community [i.e. the European Union] shall take action . . . 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.”⁷ Even as the European Community transformed itself from an economic to a political entity, the Treaty on European Union of 1992, which forms the “European Union,” declares that the European 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.”⁸ As the EU decides what is “appropriate” for action on the European level, it must remember to take decisions

6 Presidency Conclusions, Copenhagen European Council (June 1993), available at http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/72921.pdf.

7 Treaty on European Union, July 29 1992, O. J. (C 42), available at http://europa.eu/eur-lex/en/treaties/dat/EU_treaty.html.

8 Consolidated Version of the Treaty on European Union, Dec. 24, 2002, 2002 O.J. (C 325) 9, available at http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf.

as close to the people as possible. Subsidiarity is thus an important concept in the EU, and it is a characteristic of any democratic nation. Rhetoric extolling the need for subsidiarity within the European Union is heard in speeches and in official literature of the Union. For example, in the document “Communication from the Commission to the European Council” issued in October 2006, we read that “[t]he EU must respect the principle of subsidiarity, acting at the European level only when appropriate.”⁹ However, the course that the Treaty of Lisbon sets for the EU will reduce subsidiarity rather than encourage it.

III. SHIFTING AWAY FROM DEMOCRACY AND SUBSIDIARITY

As the EU charts its future as a facilitator of peace and prosperity, it should be promoting these two vital, governing principles of democracy and subsidiarity. What’s more, as the EU has grown both institutionally and through enlargement, it must be particularly vigilant in promoting subsidiarity. Support for the Treaty of Lisbon claims that promotion of democracy is one of the purposes of the Treaty, which states the desire “to complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union.”¹⁰ Yet the Treaty of Lisbon will create institutional changes in the name of democracy that push the Union even further from subsidiarity and open up more doors to do so even further in the future.

A. Fundamental Changes

For example, the Treaty provides for moving from one Commissioner per country (twenty-seven) to only eighteen commissioners

9 Communication From the Commission to the European Council, A Citizens’ Agenda Delivering Results for Europe, COM(2006) 211 final (Nov. 5, 2006), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServe.do?uri=COM:2006:0211:FIN:EN:HTML>.

10 Treaty of Lisbon, Dec. 17, 2007, 2007 O.J. (C 306) 3, available at <http://eur-lex.europa.eu/JOhtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>.

in 2014 (i.e. two-thirds of the member states).¹¹ This will abolish the link between the Commission and country, thus reducing subsidiarity even more as these Commissioners are instructed to look after “the general interest of the Union.”¹² The new treaty also makes the European Council (the heads of state of the EU nations) an official institution,¹³ thus subjecting the heads of state to sanction by the Court of Justice of the European Union (ECJ), the highest court of the EU.¹⁴

Another important inclusion in the Treaty of Lisbon officially recalls the primacy of EU law over the law of Member States in accordance with the case law of the ECJ.¹⁵ While already somewhat in practice, this official recognition of the primacy of EU law will give more clout to EU laws when pitted against national laws. Also, a new office, “High Representative of the Union for Foreign Affairs and Security Policy,” i.e. European Foreign Affairs Minister, is created by the new treaty.¹⁶ The High Representative will be the Vice-President of the Commission and President of the Council for Foreign Affairs, and as such will represent the EU in international relations. While the Treaty says the powers of this new position “do not affect the responsibilities of Member States . . . for the formulation and conduct of their foreign policy,” creation of such an influential position will give the EU extended influence in foreign affairs and security matters and open the door to increased usurpation

11 Treaty of Lisbon, *supra* note 10, at 20.

12 *Id.* at 19.

13 *Id.* at 16.

14 *Id.* at 22.

15 Draft Declaration, Intergovernmental Conference (July 23, 2007) 54, available at <http://www.consilium.europa.eu/uedocs/cmsUpload/cg00003.en07.pdf>.

16 Treaty of Lisbon, *supra* note 10, at 17.

of competency from Member States in the areas of foreign affairs and security.¹⁷

Institutional reforms are needed, but they are needed to help the EU return to a facilitating role based on national subsidiarity instead of a creating a more central legislative body that can more readily impose its will upon its member states in an undemocratic fashion as these changes do.

B. Charter of Fundamental Rights

Another part of the Treaty of Lisbon not reflective of subsidiarity is a clause that contains a cross reference to the Charter on Fundamental Rights. The clause gives the Charter the same legal value as the Treaties and sets out the scope of its application.¹⁸ The EU has long spoken of its commitment to human rights and fundamental freedoms, and this Charter of Fundamental Rights seeks to guarantee these rights to all citizens of the EU, rights that are said to be based on common values and a resolution to share a peaceful future.¹⁹ The motives for this Charter may be pure, but whether or not the resulting legislation reflects the “inalienable rights” of human beings, to borrow a phrase from the U.S. Declaration of Independence, is not the issue. The issue is that the EU should not be imposing its will upon its members on certain applications of the Charter or be making decisions that Member States have the right to decide for themselves. As can be seen in the following two examples, the Charter of Fundamental Rights is one part of the Treaty of Lisbon that reduces subsidiarity and shifts power from the member states to the EU.

17 Presidency Conclusions, Brussels European Council (June 2007) 19, available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/94932.pdf.

18 Treaty of Lisbon, *supra* note 10, at 13.

19 Charter of Fundamental Rights art. 2, Dec. 7, 2000, available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

1. ECJ interpretation of the Charter and primacy of EU law

The first example indicative of how the Charter is not reflective of the subsidiarity principle is that the EU defines what the words in the Charter mean, not the Member States. Title I of the Charter is “Dignity,” which states, “Human dignity is inviolable. It must be respected and protected.”²⁰ The second Article (Article II-62) under this title deals with the right to life. It declares that “[e]veryone has the right to life.”²¹ Pro-life activists, who argue against abortion and destruction of the live embryo for embryonic stem cell research, would seemingly be exultant at this declaration. Ireland, for example, is a nation that has traditionally been “pro-life” according to this definition in that they haven’t legalized abortion. Yet the ECJ has defined who “everyone” is, and “everyone,” according to its definition, does not include unborn children. As already established, the Treaty of Lisbon officially recalls the primacy of EU law over the law of Member States in accordance with the case law of the ECJ,²² and the Charter is given the same legal value as the Treaties.²³ Thus, if the Charter of Fundamental Rights becomes binding upon the countries in the EU, the ECJ’s definition of “everyone” will apply, and the right of dignity and the right of life (i.e. the right to not be aborted) is not extended to unborn children. Ireland (and more importantly the people of Ireland) will not get to decide if abortion will be legal, but instead the legal institution of the EU will decide. The issue is not whether or not abortion should be legal; the issue is that, based on the principle of subsidiarity, the European Union should not be deciding for its Member States, like Ireland, on issues such as this.

2. Binding nature of the Charter

A second example is found in the reason the United Kingdom fought for an opt-out from the binding nature of the Charter. One of

20 *Id.*

21 *Id.*

22 Draft Declaration, *supra* note 15.

23 Treaty of Lisbon, *supra* note 10, at 13.

the UK's concerns with the original proposed Constitutional Treaty was the legal status given to the Charter of Fundamental Rights. The UK, along with the Netherlands and a few other countries, did not want to have the Charter included as part of the new treaty. While the Charter is not included in the text of the Treaty of Lisbon, it is, as already mentioned, given the same legal value of the Treaties.²⁴ Article II-88, under Title IV, Subsidiarity, declares the "[r]ight of collective bargaining and action."²⁵ This, in other words, gives the right to strike. The UK has its own labor laws, as does each country, and labor leaders in the United Kingdom are concerned with a Charter guaranteeing the right to strike and the implications it might have for their labor laws.

What those implications are does not matter; what does matter is that, based on subsidiarity, the UK's own democratic system of government should be responsible for governing its own citizens. As with the right to life, the issue is not whether the right to strike should be guaranteed; it is whether or not the EU should be taking upon itself more control of matters belonging to the member states. That the UK has obtained an 'opt-out' from the enforceability of this Title is irrelevant; the point remains that through the Charter of Fundamental Rights, the EU is assuming rights that "can be sufficiently achieved by the Member States" without EU involvement.²⁶

The EU, instead of devolving itself of decision making prerogatives to comply with the principle of subsidiarity, has, with the legalization of the Charter and the establishment of primacy of EU law, usurped control from its Member States that is inconsistent with subsidiarity.

IV. CONCLUSION

As a supranational institution, the European Union has a unique role to build upon common principles and shared values of its member states without encroaching on the individuality of those member

24 *Id.*

25 Charter of Fundamental Rights, *supra* note 19.

26 Treaty on European Union, *supra* note 7.

nations. The future of Europe depends on the shape this role takes. In 1849, Victor Hugo dreamed that “[a] day will come . . . when all [the] nations of [this] continent will, without losing [their] distinct qualities or [their] glorious individualities, be blended together in a superior unity, and constitute a European fraternity. A day will come when the only battlefield will be the market opening to commerce and the mind opening to new ideas. A day will come when bullets and bombs will be replaced by votes.”²⁷ Hugo’s vision for a better Europe was based on common values of peace, prosperity, and democracy. These three values must continue to guide Europe as it determines what its future will be. In order to restore the appropriate balance of government, the EU must become more of a facilitator and coordinator, as it was created to do, and less of a central legislator. The EU must continue to promote peace, as it was established to engender in this historically war-prone region of the world. It must also facilitate democracy by increasing the subsidiarity of its institutions and encouraging European nations to do the same. However, as can be seen in institutional changes it will effect and the Charter of Fundamental Rights it will make binding, the current Treaty of Lisbon goes beyond its bounds of facilitating peace and prosperity by reducing democracy and subsidiarity. The future of the European Union rides on its ability to create a framework that will promote peace and prosperity while protecting democracy and subsidiarity. If that can be done, the future of Europe looks bright.

27 American Peace Society, *The Advocate of Peace* 67 (American Peace Society, ed., 1837).