Only a short while ago, anyone who asked the question “What federalism for Europe?”, prompted an indulgent smile. Even people otherwise full of sympathy and interest in the European integration found it difficult to believe how topical this question was, let alone what the answers might be. Today, the federal constitution, basic treaty or whatever it may be called, is on the political agenda in Europe.

... from the Charter on global information society ...

If today we turn to cultural autonomy and endeavour to define - in the best sense of the term - European cultural governance, we run into a further difficulty. Largely unnoticed by the wider public, despite and even because of unbridled enthusiasm for the advantages of the meteoric growth of internet, a global constitutional reality of the information society has developed in parallel to national constitutional demands and the European “Charter of Fundamental Rights”.

Guiding principles of this cyber reality are now being described by the “Charter on global information society”, as adopted by the Heads of State and Government at the Okinawa G8 summit from 21 to 23 July 2000. Awareness of this “cyber-constitution” is only just awakening, eclipsed by debates on globalisation, a new economy and the world-wide role of civil society.

The digital economy and global information society are leading to far-reaching changes in all areas of life. With daily reports about the complete transparency of internet, the perceived demise of privacy, tracking down through “webcams”, “cookies” and “click trails”, “cyber-crime”, “spamming” and “big brother real life soaps”, internet surveillance, media power and control through to global espionage systems such as “Echelon”, and not forgetting “cyborg linguistics”, the impression is being created that traditional constitutional orders are inadequate.

Expert committees warn about the social risks of the information society, warn about an erosion of democratic participation rights, about “le culte internet”, right up to the loss of human rights, protection of private life and the right of free expression. Alongside the splendid prospects for real-time and world-wide communication, the negative impact of digital multimedia techniques on cultural identity is backed up by hard facts. How much of this is justified? What is exaggerated or simply internet paranoia?

... to the Charter of fundamental rights ...

The EU “Charter of Fundamental Rights” as solemnly adopted by the EU summit in Nice, 7-9 December 2000, is understood - according to Belgian Prime Minister Guy Verhofstadt,
speaking about Europe on 21 September 2000 - as “the first step towards a European constitution”. The Charter leaves the debate on the European cultural diversity in the digital age essentially untouched. This does not diminish the historic contribution of the Convention, but at the same time shows clearly the limits of the approach taken hitherto.

What are the largest obvious deficiencies of the Charter? In the first instance, it is not the fact that it is not legally binding – have no fear, that will come. There are other, at least two substantial shortcomings, and they are directly linked to each other.

Alongside the absence of rights of political participation and direct decision-making for citizens in the age of digital communication, the second major deficiency in the Charter is no re-orientation of cultural fundamental rights as an expression of modern individualism and personal cultural identity. These main structural shortcomings of the Charter both arise from the failure to come to grips with the challenges of the global information society, i.e. with the cultural challenges of the cyber-constitution.

... and the European cultural charter ...

There have been important attempts to define the leitmotifs for a European cultural charter. Some of these proposals are remarkable not only because they envisage the functional autonomy of cultural fundamental rights, but start from the assumption of cultural cooperation between European Union and Council of Europe, rejecting the exclusivity of the “EU acquis communautaire”.

By raising questions about cultural subsidiary and autonomy, the traditional exclusiveness of vertical federalism will be widened and integrated forms of different concepts of federalism (“integral federalism”6, “functional federalism”7, etc.) might be found.

When it is a question of culture in Europe, the Council of Europe suddenly springs back into life and thereby becomes a third element in the overall composition of European institutions: a political union, an economic community and a cultural council, each with a different membership and different forms of integration and subsidiarity8. It is time to remind us of this composition.

---

5 see the proposals made by Raymond Weber, director for cultural questions at the Council of Europe, for a European cultural charter, in: "La Nouvelle Lettre International", no. 3, summer 2000
8 the standard EU/EC “institutional square” (Council of ministers, Commission, Parliament, and Court) in fact is overlapped or superseded by three functional entities (Council of Europe, European Economic Community/EC, and European Political Union/EU; this three-functional mega-structure is supplemented by the cross cutting monetary system, represented through the European Central Bank/ECB, see: http://www.IG-EuroVision.org
But what does it actually mean when we repeatedly use the word “European”? This does not only mean the open-ended territorial reality of Europe, but the richness, diversity, contact between and interpenetration of different cultures, a Europe which from time immemorial was no more than a mythological bridge between Hellas and Asia.

The European identity has always been the simultaneous presence of a wide range of cultural identities. The idea of Europe is characterised by a community of values based on this diversity, beyond the geopolitical territorial myth. But in the end, does identity not always mean individual identities, not only in Europe?

Due to these multi-cultural identities across Europe, and often even throughout the same localities, the question of European cultural governance, and of governance in general, cannot simply be a question about different levels of government. Why do alternative forms of subsidiarity and federalism - complementary to the traditional vertical approach - not receive the attention they deserve? How can this be changed and how can functional federalism enter mainstream thinking? That is the real challenge.

... towards European cultural governance ...

Just as democracy is the heart of any political constitution, freedom of cultural life is the heart of cultural governance as understood in European terms. This freedom cannot be ensured merely through solemn declaration of cultural fundamental rights. A European “Charter of Fundamental Rights” should contain decisive elements for a constitution that gives organic life to this theme.

Thus, the Charter is not the conclusion of this constitutional process, superimposed on existing treaties, as many would wish it to be, but its necessary beginning. The constitution in its overall composition, as “social sculpture”, following on from the basic conception of the Charter, must allow, promote and, as and when necessary, guarantee cultural freedom.

From the confusing collection comprising this and other available draft charters and constitutions, two draft charters should be presented briefly. Both manage to achieve what has already been described as necessary for a widening of the present constitutional debate: (a) the Stuttgart draft charter by the initiative “Netzwerk3Gliederung”, and (b) the Achberg draft integrated charter by the “Initiativ-Gesellschaft EuroVision”.

... through the draft charter by “Netzwerk3Gliederung” ...

In March 2000, the initiative “Netzwerk3Gliederung“ produced its own draft European charter of fundamental rights, oriented consistently on human rights, democracy and subsidiarity, and submitted derived proposals in connection with the hearing of civil society in Brussels on 27 April 2000.

---


In the proposals made, the initiative concentrates on an extension of the principle of subsidiarity beyond the traditional vertical understanding (which level of the state is empowered to take decisions?). Instead, it incorporates a horizontal perspective: what can be settled on the initiative of individual communities, should and must not be settled by state activity.

Examples of horizontal or functional subsidiarity include initiatives in the field of culture and education, in health care, social welfare, and consumer protection, etc. In the economic domain technical standard setting through joint and autonomous initiatives by providers and users could be mentioned. Other topical issues include alternative or extra-judicial dispute regulations between e-commerce stakeholders. Many more examples could be mentioned.

This understanding of subsidiarity takes the same line as Goethe’s motto: “What government is best? That which teaches us to govern ourselves”.

Functional subsidiarity and in consequence thereof “functional federalism” should ensure the autonomy of cultural life and creates the precondition for exercise of cultural fundamental rights. These rights (including media freedom, pluralism of method, freedom of parental responsibility for upbringing and even-handed promotion of public and private schools) are set out in detail and incorporated in the draft charter.

... and the draft charter by “IG-EuroVision” ...

For practical and political reasons, the Stuttgart draft follows the Charter and formulates its proposals directly as a complement or amendment to the original Convention’s draft. Instead, the Achberg draft is free from that constraint and seeks to take a new approach, which incorporates a wide range of relevant draft charters in its own conception.

What seems decisive about the Achberg draft charter (despite its provisional status) is the clearly recognisable approach to composition of the constitution through a careful distinction between different legal categories: human beings, citizens and peoples. Accordingly, following a summary introduction setting out universal human rights, it is broken down into: (1) “fundamental human rights”, (2) “fundamental rights of EU peoples”, and derived from that (3) “fundamental civil rights”, including the legislative right through the three stages of civil legislation (initiative, petition, decision).

Under this approach, all legislative, executive and judicial power in the EU derives from the relevant level of society (vertical subsidiarity) and, decentralised, from the relevant legal entity or functional community (horizontal or functional subsidiarity). This can be developed further and needs public debate.

The question of who is the subject of the rights linked to culture, polity and economy respectively needs to be studied more closely. Who is the subject of cultural rights and obligations? Who is responsible for upholding economic solidarity, who is the subject of

---

1 e.g.: global internet standards setting through hundreds of autonomous industry committees and/or consortia (http://www.cenorm.be/iss/Consortia/Surveyshort.htm), just to mention ebXML standards or T13 committee jurisdiction (http://www.t13.org/), are today of paramount importance for the global cyber reality

2 for “functional federalism” see footnote 7

3 named for the eponymous town near Lindau on Lake Constance, Germany

economic rights? And, lastly: who are the people as legal communities? This recalls the great European vision of cultural governance based on freedom, a democratic order in politics, and an associative economy based on solidarity.

Looking forward to a future constitution, the Achberg draft charter expands and expresses in concrete terms the traditional right to “human dignity” with the “right to identity” and the “right to freedom of initiative”.

In this respect, the cultural identity of a person is regarded less as an expression of belonging to a group than as an expression of his personality, his human individuality. This new constitutional approach indicates new avenues to be followed to widen the understanding of subsidiarity and federalism beyond the traditional vertical exclusiveness.

... to the year 2002 and beyond: quo vadis Europe?

Where do we go from here? The year 2002 is above all the year of the euro, the year in which EU citizens will have tangible euros in their pockets.

However and perhaps even more crucial seen from the angle of global cultural governance, the year 2002 is the year when activities on “Teledesic” will start, a multi-billion dollar satellite network for broadband communication, a “global screen” with around 300 low-orbit satellites (operational from 2004).\footnote{http://www.teledesic.com/}

Furthermore, it is expected that “UTMS” (Universal Mobile Telecommunication System), the next generation of mobile phones, will start in Europe in 2002 (following Japan in 2001). And to remember: the European Commission’s “eEurope action programme” runs until the end of 2002.

In 2002, the transeuropean infrastructure for the next generation of internet, the backbone of the future European “Internet II network” will be in place for up to 30 European countries. This is only another, very real dimension of enlarged EU governance.

Even though deadlines are often missed, these few examples suffice to illustrate the significance of developments to the year 2002 and beyond.

With a view to an inter-governmental constitutional conference or Constitution-building Convention, conceivable as of as 2004, first initiatives for a European referendum have already been launched\footnote{see: “Aufruf zum Projekt 21 - für einen Verfassungsprozess von unten” (“A global solidarity appeal EU 21 - constitution from below”), \url{http://www.IG-EuroVision.org}}. Key issues of European cultural governance could throughout this process find easily the attention of the European citizens. In the East and in the West.

It is to be hoped that freedom, as the main motive of cultural autonomy, will be preserved beyond that conjuncture. That is the main motive of cultural history, not only in Europe. Multi-functional federalism between the three autonomous realms of society – economy, polity, and culture – might then be remembered. Towards European federalism.

\textit{\footnote{\url{http://www.teledesic.com/}}\footnote{\url{http://www.IG-EuroVision.org}}\footnote{* attorney-at-law and consultant in Brussels (h.lueders@village.uunet.be)}}