

## Survey Article: Subsidiarity\*

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The “principle of subsidiarity” regulates authority within a political order, directing that powers or tasks should rest with the lower-level sub-units of that order unless allocating them to a higher-level central unit would ensure higher comparative efficiency or effectiveness in achieving them. This principle of subsidiarity has recently come to political prominence primarily through its role in quelling fears of centralization in the Maastricht treaty on European Union. But it has also figured in discussions of the proper scope for local autonomy for social policies in Germany, the Netherlands and Scandinavia, and in Green party calls for decentralization quite generally.<sup>1</sup>

The present survey of alternative interpretations and justifications of the principle of subsidiarity suggests that apparent consensus on it has been gained only by obfuscation.<sup>2</sup> Section I sketches the political backdrop of the debate within the European Union where, rather than reducing and removing fundamental political conflicts, the principle of subsidiarity increases and shapes such tensions. In Sections II and III, I delineate alternative conceptions of the principle of subsidiarity and its possible institutional role. The alternatives have strikingly different institutional implications regarding the objectives of the polity, the domain and role of sub-units, and the allocation of authority to apply the principle of subsidiarity itself. The need for a political theory of subsidiarity thus established, Sections IV through IX present and assess five alternative normative justifications of conceptions of subsidiarity, illustrated by reference to the European Union.

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<sup>1</sup>See Genesko 1986; Therborn 1989; Goldsmith 1996; and Green Committees 1986, European Greens 1989 and Die Grünen 1983, respectively.

<sup>2</sup>van Kersbergen and Verbeek 1994

## I. THE PRINCIPLE OF SUBSIDIARITY IN THE EUROPEAN UNION

The principle of subsidiarity takes on particular salience in periods of institutional transformation, often as part of the bargain among sovereign communities agreeing to a common authority. In order to reduce the risk of permanent minority status, the powers of central unit are restricted by various checks such as specific “lists of competences,” rules of unanimity or qualified majority voting, weighted votes—and principles of subsidiarity.

The principle of subsidiarity was introduced in the European Union in the late 1980s through the initiative of the European Parliament, Britain and Germany in response to fears of centralized power by placing the burden of argument with integrationists. Britain feared European federalism, and the German Länder sought to maintain their exclusive powers enjoyed in the German Federal Republic.<sup>3</sup> Thus the principle of subsidiarity was introduced in the 1992 Maastricht Treaty on European Union (TEU),<sup>4</sup> further elaborated in a Protocol of the 1997 Treaty of Amsterdam. The formulation in the Treaty of the European Community holds that:

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.<sup>5</sup>

Fears of centralization were not without warrant. Member states of the European Union enjoy little exclusive legislative authority due to doctrines of “direct effect,” “supremacy” and “absorption of community law,” and use of qualified majority voting.<sup>6</sup> Yet safeguards typical of federations are absent. There is no doctrine of enumerated powers, and rather than enjoying competences for specific fields of legislation, Union institutions enjoy whatever competences they need for specified ends.<sup>7</sup>

Few, however, believe that the Maastricht formulation can be sufficiently precise and influential to prevent centralization. The principle of subsidiarity can be interpreted and applied in several different ways, as will be discussed below. Moreover, since it merely places the burden of proof upon those who would centralize, it can have a centripetal effect by providing warrant for such moves.<sup>8</sup> Furthermore, the principle of subsidiarity may be used by sub-state regions

<sup>3</sup>Wilke and Wallace 1990, 219; Taylor 1996.

<sup>4</sup>Expressly in the Preamble and in Article B (2), and said to be implied in Article A (2).

<sup>5</sup>Article 3b (2), Treaty of the European Community.

<sup>6</sup>Weiler 1996, 105.

<sup>7</sup>SEA Article 100, 100a, 235; Weiler 1991.

<sup>8</sup>Endo 1994, 2062; Taylor 1996.

against member states, with the unforeseen centrifugal effect of draining national state powers from within.<sup>9</sup>

Three current debates in the EU illustrate that the principle of subsidiarity plays a political role which warrants philosophical attention.<sup>10</sup> Firstly, there is a dispute over the proper domain of sub-units to be regulated by that principle, particularly over the status of sub-state regions. In the body of the Treaty on European Union the principle of subsidiarity only regulates relations between member states and central EU bodies. However, proponents of the “rights of regions” appeal to the statement in the Preamble of the Treaty which does not exclude sub-units from its domain. They argue that the principle of subsidiarity must apply all the way down to ensure that “decisions are taken as closely as possible to the citizen.”<sup>11</sup>

Secondly, there is a dispute over the scope and mode of central intervention, as exemplified by UK resistance to the Community Charter of the Fundamental Social Rights of Workers (1989). Disagreements concern the respective roles of government and market regarding working environment and wages, and whether Community law should only prevent “social dumping” among member states and correct imperfections in the market for working conditions, or whether it should intervene in labor conditions generally.<sup>12</sup> The form of EU regulation is also contested: can it regulate conditions of work directly, or can it instead regulate only the bargains struck by labor and employers’ organizations?

Thirdly, the principle of subsidiarity makes essential reference to the “objectives” of the political order, but these are often disputed. Consider debates concerning redistribution among regions and member states within the EU. Structural funds promote development and structural change to combat high unemployment and low income in certain regions. Some regard these funds primarily as temporary side payments in the inter-governmental bargains.<sup>13</sup> Others view them as central instruments for a Community goal of convergence of

<sup>9</sup>Kapteyn 1991, 42; Schilling 1995.

<sup>10</sup>Some have objected to attempts at identifying and clarifying these issues, holding that the PS in the EU has been deconfessionalized and shorn from its theological and other roots (Toonen 1992, p. 114, in Blichner and Sangolt 1994, p. 297). Some proponents of the PS regard it as a dynamic or evolutionary principle which for that reason should not be defined (Blichner and Sangolt 1994, p. 300). Indeed, attempts at defining the PS which include “goals, choice of the best alternative and... the expected effect of alternative actions” (p. 291) might be counter-productive: “A serious effort to construct a clear and unambiguous definition of subsidiarity will tend to undermine constructive debate whether the effort fails or not. If it fails, the likely conclusion would be that the concept is too ambiguous and impossible to use. If successful, the matter would then be left to an established authority, like the courts, to decide. This would limit debate and seems counteractive to the very idea inherent in the principle of subsidiarity” (Blichner and Sangolt 1994, p. 292).

This concern appears to rest on a conception of the content, justification and role of the PS which itself requires attention. The arguments for the PS have historically drawn on drastically different conceptions of the proper purposes of political order. It is thus of practical importance to determine where and how appeals to the PS may lead to agreement, and where it may instead lead to confrontation or joint deliberation on principles and objectives.

<sup>11</sup>Article A (2) TEU.

<sup>12</sup>Degimbe 1991.

<sup>13</sup>Padou-Schioppa 1995.

living standards, to “promote . . . economic and social cohesion and solidarity among Member States.”<sup>14</sup> Such goals may require centralization of monetary, social and fiscal policies, the principle of subsidiarity notwithstanding.<sup>15</sup>

## II. ISSUES OF INTERPRETATION: THE CONTENT OF THE PRINCIPLE OF SUBSIDIARITY

The principle of subsidiarity holds that an allocation of authority must satisfy a condition of *comparative efficiency*. The central unit must secure the desired outcomes better than the sub-units, due to differential ability or willingness or both. Three conflicting interpretations of this condition are offered by alternative theories of subsidiarity. One is that the central unit must satisfy a condition of *effectiveness*. A second condition that it must often satisfy is one of *necessity*.<sup>16</sup> Finally, the principle of subsidiarity can take either negative or positive forms, either *proscribing* or *requiring* central action.

### A. EFFECTIVENESS CONDITION

The principle of subsidiarity regulates central unit action according to a given standard of efficiency. Two important issues concern when and how central unit intervention may take place.

Firstly, the limits may be placed on the sectors to which the principle of subsidiarity applies, or else the sectors to which it applies may be determined by the principle of subsidiarity itself. The former option is illustrated in the European context by treaties specifying that the principle of subsidiarity applies to environmental regulations, the Social Charter and media policies. The latter pattern is found in so far as the Community can intervene as necessary to promote a free market in goods and services: there the principle of subsidiarity is said to regulate its own scope of application.<sup>17</sup> The German *Grundgesetz*—the Basic Law of the German Federal Republic—provides another example of this. A principle of subsidiarity applies to issues which satisfy one or more of the following three conditions:

The Bund shall have the right to legislate in these matters to the extent that a need for regulation by federal legislation exists because:

1. a matter cannot be effectively regulated by the legislation of individual Länder;  
or
2. the regulation of a matter by a Land Law might prejudice the interests of the Länder or of the People as a whole; or
3. the maintenance of legal or economic unity, especially the maintenance of

<sup>14</sup>Part 1, Article 2, Treaty of the European Community.

<sup>15</sup>Scharpf 1997.

<sup>16</sup>For lists and interpretations, compare: Endo 1994; Kapteyn 1991, 40–1; Neunreither 1993, 209; and Mackenzie-Stuart 1991.

<sup>17</sup>Schilling 1995, p. 14.

uniformity of living conditions beyond the territory of any one land, necessitates such regulation.<sup>18</sup>

Secondly, the principle of subsidiarity can also regulate how the central unit is to act, so as to respect sub-unit autonomy. This *Minimal Intervention Condition* may have various implications. Central regulation ought, firstly, to respect sub-unit discretion. For instance, other things equal, the EU should employ directives which stipulate results, while leaving choice of means to member states, rather than adopting detailed regulations which are directly applicable to member states, firms and individuals.<sup>19</sup> Thus EU environmental legislation contains directives specifying CO<sub>2</sub> maximum emission standards, leaving it to member states to decide how to meet those targets.<sup>20</sup> Secondly, the central unit might actually bolster sub-unit capability, as when Jacques Delors argued that the Community must enable sub-units to achieve ends of their own accord.<sup>21</sup> The central unit can also foster cooperation, or facilitate agreement on coordination, by offering to monitor compliance by sub-units to those agreements.<sup>22</sup>

## B. NECESSITY CONDITION

The principle of subsidiarity can include a necessity condition, allowing central unit action only when sub-units *cannot* achieve the desired result on their own.<sup>23</sup> It is not always clear when this criterion applies, though. Parties may disagree, for instance, whether joint action is required and efficacious for environmental problems.<sup>24</sup> (Thus, Denmark, Germany and the Netherlands have higher environmental standards than the common level set in the EU.) Furthermore, sub-units may be *able* to cooperate without a central unit: they may just not desire any action. For instance, some European states may rank environmental improvement lower than others, *vis-a-vis* other objectives.<sup>25</sup>

Several responses are possible, consistent with some conception of principle of subsidiarity. Respect for sub-unit autonomy may grant each sub-unit a veto; alternatively, central unit action may override objections to combat free-riding. Important dilemmas arise when the sub-units disagree on goals, and hence on whether cooperation is desirable. For instance, sub-units committed to green goals of self-reliance and low consumption may reject the goal of increased

<sup>18</sup>*Grundgesetz*, Article 72 (2).

<sup>19</sup>Amsterdam Protocol, Article 6; Neunreither 1993; Schilling 1995, p. 6.

<sup>20</sup>Brinkhorst 1991, p. 92.

<sup>21</sup>Delors 1991, 9; Gretschmann 1991; cf. Amsterdam Protocol, Article 7.

<sup>22</sup>cf. Goodin 1992, 162–8.

<sup>23</sup>Thus, regarding the EU, the Minister-Presidents of the German Länder insisted in 1987 that “the European Community shall carry out new tasks only if their carrying out on the European level is absolutely necessary in the interest of the citizens and if their full effect can be attained only at the community level” (cited in Endo 1994, p. 2046; Kapteyn 1991, p. 40).

<sup>24</sup>For the European case, see Article 25 SEA/Article 130R ECT. cf. Brinkhorst 1991, 92; Pelkmans 1995; Golub 1996.

<sup>25</sup>Neunreither 1993, p. 212; Blichner and Sangholt 1994, p. 289.

economic prosperity, and hence question the desirability of increased trade. Other examples might concern aesthetic standards for drinking water and the prevention of commercial hunting of endangered species.

One response to such dilemmas is further specification of the necessity condition. Thus the *Cross-boundary Effects Criterion* only allows central-unit action to correct territorial externalities.<sup>26</sup> Competing principles of distributive justice differ in their assessments of unfortunate effects. Uniformity of living conditions for inhabitants across sub-units may require drastic redistribution across borders.<sup>27</sup> A minimal safety net, on the other hand, may not require any transfers among sub-units. Similarly, some see “social dumping” as a violation of social justice, while other states maintain that low worker protections are a legitimate international comparative advantage.

### C. PROSCRIPTIVE VS PRESCRIPTIVE SUBSIDIARITY

The centralizing effect of the principle of subsidiarity depends on whether it is interpreted negatively (or proscriptively) as a legal immunity, or whether it is interpreted positively as a prescription.<sup>28</sup>

The principle of subsidiarity can *proscribe* central unit action in the absence of comparative efficiency, thus protecting the sub-units from intervention by the central unit. This “negative” version of the principle of subsidiarity entrenching the powers of sub-units finds expression in the Maastricht Treaty as a prohibition on intervention except under certain conditions.<sup>29</sup>

Alternatively, intervention from the central unit may be *required* when it is comparatively more efficient. This “positive” conception of the principle of subsidiarity may stimulate centralization of authority. It is found in Article 235 of the Maastricht Treaty, and is endorsed by Jacques Delors and others.

## III. ISSUES OF APPLICATION

The principle of subsidiarity can apply to various sorts of subject matter, and it can regulate the discretion of various different bodies. These will be surveyed next.

### A. REGULATING COMPETENCE ALLOCATION OR COMPETENCE EXERCISE

The principle of subsidiarity can regulate the allocation of legal competences or powers between units of government,<sup>30</sup> or it can regulate the making and execution of laws. Thus in the EU the conferring of powers is said to remain with

<sup>26</sup>*Grundgesetz*, Article 72.

<sup>27</sup>Schilling 1995, fn 66.

<sup>28</sup>This is discussed in the European context as “negative” versus “positive” subsidiarity. See: Endo 1994, pp. 2054–2; Dehousse 1994, pp. 109–10.

<sup>29</sup>Article 3b, Treaty of the European Community.

<sup>30</sup>*Grundgesetz*, Article 72.

the national governments, while the principle of subsidiarity regulates the exercise of powers which are shared between member states and the Community.<sup>31</sup>

It is often said that EU lacks any clear allocation of powers, and there are now no statutory guarantees for the powers of national or local governments—there is no “Competence Catalogue.”<sup>32</sup> Others, however, point out that the principle of subsidiarity serves a more dynamic and evolutionary development when regulating the exercise of powers.<sup>33</sup> Such flexibility is important when sub-units gradually give up instruments and powers, such as control over exchange rates, as a way of buffering the domestic economy from external shocks. However, the principle of subsidiarity can also play a dynamic role, albeit more slowly, when allocating powers between central unit and sub-units over time—as witnessed by the reduced role of Länder in West Germany due to Keynesian policies.<sup>34</sup>

## B. DOMAIN OF SUB-UNITS: TERRITORIAL OR FUNCTIONAL

The principle of subsidiarity may regulate territorial units, as in federal arrangements<sup>35</sup> and in the EU. This is sometimes called its “vertical” application.<sup>36</sup> Alternatively it applies non-territorially (“horizontally”) to associations, social sectors or social functions.

An important issue for territorial applications is the size of sub-units. (For instance, should sub-state regions enjoy some political autonomy?) Non-territorial applications of the principle of subsidiarity typically address conflicts when groups or issue areas are territorially intermingled and toleration is absent.<sup>37</sup> Thus theological defenses of subsidiarity have often sought to protect private and religious issues, or the “natural” groups of family, church and guild. This functional focus is also maintained by Delors and the German Christian Democratic Party.<sup>38</sup> The principle of subsidiarity has also been applied to corporatist and consociational arrangements. The domain of legitimate sub-units—families, labor unions—and their proper functions are contested.

<sup>31</sup>Amsterdam Protocol, Article 3; cf. Taylor 1996; Schilling 1995, p. 4; CEPR; Commission of the European Communities 1992.

<sup>32</sup>Schmitter 1997; Weiler 1996.

<sup>33</sup>Mackenzie-Stuart 1991.

<sup>34</sup>Genesko 1986; cf. Endo 1994, p. 2023; Kirchner 1997, p. 82.

<sup>35</sup>*Grundgesetz*, Article 72; US Constitution, 10th Amendment.

<sup>36</sup>d’Estaing 1990.

<sup>37</sup>cf. the introduction to Knop, Ostry, Simeon and Swinton (1995).

<sup>38</sup>Delors 1989; Taylor 1996, p. 94.

### C. WHO SHOULD APPLY AND REVIEW THE PRINCIPLE OF SUBSIDIARITY?

The principle of subsidiarity may be applied by any of three bodies: the sub-units (or their representatives) unanimously; by a (qualified) majority; or by the central unit.<sup>39</sup> The first occurs in confederations and consociational systems. Both of the first two are found in EU policy-making and in federal arrangements with “interlocking powers,” where sub-units take part in central unit decision-making.<sup>40</sup> The third occurs where the principle of subsidiarity allocates or regulates powers of the central unit which is independent of sub-unit cooperation<sup>41</sup>—as in the EU’s “negative” interventions against national market restrictions.

Likewise, responsibility for reviewing applications of the principle of subsidiarity may be lodged with different judicial bodies.<sup>42</sup> Such judgments are difficult, requiring assessment of comparative efficiency and necessity of central unit action.<sup>43</sup> To avoid undue court activism, any reviewing authority must respect the political discretion of the Community actors.<sup>44</sup> A review of a more limited nature still seems possible.<sup>45</sup> For example, a court can review compliance with procedures of consultation and whether comparative efficiency arguments have been provided, as specified in the Amsterdam Protocol on Subsidiarity.<sup>46</sup>

All these are contentious issues. The aims of the common undertaking and standards of achievement are often contested, as is the allocation of authority to pursue and apply such norms. Disagreements may also exist concerning the need for unanimity or qualified majority decisions. Contested issues concerning application of the principle of subsidiarity include the domain of sub-units (sovereign states, regions, families or labor market parties) and which issue areas are to be regulated. The principle of subsidiarity regulates the allocation and exercise of powers only after these important issues have been laid to rest. But those issues are often left to one side, in order to achieve apparent consensus.

<sup>39</sup>Other procedures include double majority, various arrangements for override, etc.

<sup>40</sup>King 1982, p. 77.

<sup>41</sup>Hueglin 1995, p. 215; Scharpf 1985.

<sup>42</sup>In the European case the Amsterdam Protocol empowers the European Parliament and Council to review the Commission’s record (Art. 10, 11), and appeals will de facto be the responsibility of the European Court of Justice (ECJ) as the guarantor of the treaties (Weiler 1991; CEPR 1993, p. 22; d’Estaing 1990). However, known for its centralizing interpretations of EU law, the ECJ is not likely to interpret the PS as restricting Community policy-making.

Bodies securing the interests of sub-units may provide better blocks against centralization. National supreme courts may serve this role, or, to prevent conflicting judgments, a body of representatives of national parliaments or a “European Constitutional Council” consisting of judges representing Supreme Courts of each Member State (Weiler 1995; Muller-Graff 1996, p. 85).

<sup>43</sup>Muller-Graff 1996, p. 87; González 1995, p. 366; Kapteyn 1991; Weiler 1991.

<sup>44</sup>A changing scope of applications and policies regulated by the PS makes it even more difficult for a court to determine both whether an issue is of exclusive or concurrent jurisdiction, and the ends and standards for assessing efficiency (Swinton 1995, p. 296; Dehousse 1994, pp. 114–19).

<sup>45</sup>Muller-Graff 1996, pp. 88–91; Dehousse 1994, pp. 120–5.

<sup>46</sup>Articles 4, 5, 9.



#### IV. JUSTIFYING THE PRINCIPLE: THEORIES OF SUBSIDIARITY

Legitimate appeals to a principle of subsidiarity must rest on a sound political theory, so we now turn to consider attempts to justify the subsidiarity principle's presumption in favor of sub-units.<sup>47</sup> By way of introduction, consider two common but flawed arguments for the principle of subsidiarity. As a stop-gap measure in times of transition, the principle of subsidiarity might be regarded as a valuable protection against illegitimate institutions: for example, faced with vague accusations of a "democratic deficit" on the part of EU bodies, Community legitimacy is sometimes said to depend on the transfer of powers by consent from legitimate Member States. However, such a line of defense would have to resolve two contested issues. The principle of subsidiarity must be justified as a criterion for delimiting the scope of transferable powers, since governments are not as a rule authorized to transfer all their powers by treaty.<sup>48</sup> Secondly, the current sub-units and their *de facto* powers must be shown to be normatively acceptable in the first place.

Alternatively, the principle of subsidiarity could find support from the role that local democracy plays in character formation. Many have argued that the requisite character formation and affective development requires personal interaction with other affected parties in the small-scale groups of families, towns and small communities.<sup>49</sup> One arena for the formation of values and plans is the political deliberation characteristic of civic republicanism.<sup>50</sup> And political participation is furthered in small communities, since individuals there see the impact of their actions. Hence some, including Greens, hold that political units and decisions should preferably be local, with larger units being invoked only when strictly necessary.<sup>51</sup>

This argument, however, only requires that some politics must be local, and that people should participate first in local arenas. The issue addressed by the principle of subsidiarity is a different one, concerning which powers such small units should enjoy.

A theory of subsidiarity might aspire to identify the unique set of legitimate sub-units and their appropriate powers once and for all.<sup>52</sup> In the following we consider theories with more modest aspirations. These theories indicate some constraints on the appropriate set of sub-units, authorities and allocation of discretion. In light of the political issues identified above, three particular concerns must be addressed by a theory of subsidiarity: Which sub-units should

<sup>47</sup>Oostlander 1992, p. 373 (quoted in van Kersbergen and Verbeek 1994, p. 224).

<sup>48</sup>Schilling 1995, p. 4. With regards to the EU, such issues raised by the Maastricht Treaty were addressed by the German Constitutional Court in 1993 (Gustavsson 1997; Pogge 1997), and will be addressed by the Danish Supreme Court.

<sup>49</sup>Montesquieu 1748, bks 4, 5; Rousseau 1760. Mill 1861; Wilson 1967, pp. 788–9.

<sup>50</sup>Wollstonecraft 1792; Beitz 1989; Cohen 1991.

<sup>51</sup>Laslett 1956.

<sup>52</sup>Such theories could, and indeed probably would, eliminate any political role for subsequent applications of a principle of subsidiarity altogether. Blichner and Sangolt 1994.

be recognized and endowed with authority? Which objectives should inform the standards of efficiency? And who are to make such assessments?

By identifying the competing theories of subsidiarity we can also hope to increase our capacity to understand, predict and assess the political conflicts generated by appeals to the principle of subsidiarity. Few systematic and consistent theories of subsidiarity can be found. In particular, there has been little attention paid to the principle within the liberal contractualist tradition, which might be thought plausibly to provide a justification of the egalitarianism characteristic of some European welfare states.<sup>53</sup>

The following three elements seem required by a theory of subsidiarity. Firstly, the theory should offer certain conceptions of the individual and of the proper relations between individuals, various social associations (including states) and the larger political system. Secondly, normative arguments must be offered for standards of just distribution of benefits and burdens among individuals and among associations/states within a larger political system. Such arguments should provide criteria for the allocation and use of political authority, on the basis of some conception of individuals' good.

Thirdly, most theories will also rely on institutional arguments drawing on empirical generalizations regarding the likely consequences of institutions or policies embodying a particular interpretation of the principle of subsidiarity. Such empirical arguments are required to show that, compared to the alternatives, the principle of subsidiarity satisfies the normative standards of distribution acceptably well.

From the point of view of normative political theory, at least two conditions seem required for theories of subsidiarity. Firstly, they should be based on *normative individualism*. The only ultimate bearers of value are individual human beings. Thus arguments regarding the legitimacy of social institutions (including associations and nation-states) must be made in terms of how they affect the interests of all affected parties. These interests may well include interests in community with others.

Secondly, the justifications offered should recognize *pluralism* regarding somewhat conflicting conceptions of the good life. The justification should offer reasons that are not based on one such conception to the exclusion of others.<sup>54</sup> This constraint of pluralism must inform conceptions of individuals and their interests and views about just distribution among them, as well as arguments in favor of the principle of subsidiarity.

The following sections considers various arguments in favor of subsidiarity, with particular attention to their implications for the domain, scope and

<sup>53</sup>Erikson and Aaberg 1984; Hansen 1988.

<sup>54</sup>cf. Rawls 1971; Nagel 1987; Macedo 1993.

objectives of that principle.<sup>55</sup> Each argument can be assessed in light of the two desiderata just stated, though few of the arguments constitute full theories addressing all issues of interpretation and application. Arguments from liberty are addressed in Sections V–VI, arguments from efficiency (fiscal or economic federalism) in Section VII. Two arguments from justice are considered: a Catholic argument based on Personalism (Section VIII) and liberal contractualism (Section IX). The order roughly reflects the decreasing autonomy of sub-units granted by each argument.

## V. LIBERTY: ALTHUSIUS

Johannes Althusius (1557–1630), by some regarded as the father of modern federalist thought, developed a theory of subsidiarity influenced by French Huguenots and Calvinism.

### A. BACKGROUND<sup>56</sup>

Althusius, “syndic” of the German city of Emden in East Friesland, sought to maintain its autonomy vis-a-vis its Lutheran provincial Lord and the Catholic Emperor. Calvinists regarded Christianity as a personal matter of direct contact with God. At the same time, they endorsed political activism and theocratic oligarchy, insisting that the true mission of man and the state is to serve as an instrument of God in this world. As a permanent minority in several states, Calvinists developed a doctrine of resistance which influenced Protestants in Switzerland, the Low Countries and Scotland, as well as the American Puritans. Resistance came to be justified as the right and duty of “natural leaders” to resist tyranny. On this basis Knox fought the Catholic Crown in 1560. The French Protestant Huguenots developed a theory of legitimacy further in *Vindiciae Contra Tyrannos* (Languet 1579/1994). The king enters two contracts, with God to turn the community into a Christian “church,” and with the people, to rule justly. The people, as a corporate body in territorial hierarchical communities, has a God-granted right to resist rulers without rightful claim. In *Politica Methodice Digesta* (1614), Althusius developed this body of political thought seeking protection for the religious associations in Emden and of the city itself against abuse of central power. He developed a non-sectarian, non-religious contractualist political theory of federations.

Orthodox Calvinists insisted on sovereignty in the social circles—to be developed as the Dutch doctrine of “sovereiniteit in eigen kring”<sup>57</sup>—subordinate only to God’s laws. Rejecting theocracy, Althusius prohibited state

<sup>55</sup>See Millon-Delsol 1992 for a historical overview of many writers on the Principle of Subsidiarity, including Aristotle, Thomas Aquinas, Johannes Althusius, John Locke, Montesquieu, von Humboldt, Abraham Lincoln and J. S. Mill (1861).

<sup>56</sup>See, more generally: Friedrich 1932; Hueglin 1987; Hoetjes 1993; Endo 1994; Carney 1995.

<sup>57</sup>Kuyper 1880.

intervention even for purposes of promoting the right faith. Accommodation of dissent and diversity prevailed over any interest in subordinating political powers to religion or vice versa.

## B. CONCEPTION OF THE PERSON

Althusius relies on a conception of humans as fundamentally dependent on others for the reliable provision of requirements of a comfortable and holy life. Communities and associations are both instrumentally and intrinsically important for supporting [*subsidia*] the needs of individuals. Families, guilds, cities, provinces and states are all justified in this way. Such associations owe their legitimacy and claims to political power to their various roles in enabling a holy life, rather than individuals' interest in autonomy. Each association claims autonomy within its own sphere against intervention by other associations. Borrowing a term originally used for the alliance between God and men, Althusius holds that associations enter into secular agreements—"pactum foederis"—to live together in mutual benevolence.

## C. CONCEPTION OF THE STATE

The Althusian argument for subsidiarity addresses the tensions between stability and pluralism. By insisting on non-interference by the central unit, it secures a coherent political order while accommodating diverse religious views. The state emerges as a confederal compact among self-sufficient small communities.<sup>58</sup> Sovereignty resides collectively in the constituent cities and provinces which grant a state legitimacy. Central government enjoys legitimacy by delegation, based on sovereign and legitimate units of the union whose interests must be served by the common action. The role of the state is not to regulate a political sphere separate from the social communities but to coordinate and secure their common purposes in a symbiosis. Thus state sovereignty is not unconditional. Instead, sovereignty resides in the people, not individually but as a corporate body constituted by cities and provinces, and the state has no power to address matters only of concern to lower levels. Regions and associations may rebel and secede if the federation fails to satisfy its tasks by their lights.

## D. CHARACTERISTICS OF ALTHUSIAN SUBSIDIARITY

Althusius' theory fails to provide criteria for legitimate sub-units, partly because it seeks to secure the religious and cultural associations from state intervention on

<sup>58</sup>Beer 1993; 1995.

such grounds. In Althusius' historical context, these sub-units were in turn constituted by families or functional groups rather than by individual persons. The sub-units were territorially determined—hence federal theories developed on this basis. What counted as within the religious domain, however, has varied and would appear to be for the sub-units to determine among themselves.

This conception of subsidiarity yields a weak confederate center. The sub-units enjoy a privileged position in this conception, with veto rights against any central unit action combined with few if any restrictions on their internal powers over constituent members. Assessment of effectiveness and necessity is placed with the “natural leaders” of sub-units, who enjoy veto rights. The legitimate tasks of state intervention are limited to resolving border disputes, protecting against abuse of power and maintaining natural unity of the state, together with any powers granted by the sub-units.

The Althusian conception is proscriptive, protecting autonomy of lower units against states intervention. There is little room for obligations of central units to assist sub-units or to require central units to act.

Althusian arguments can in principle regulate either the allocation or the exercise of competence. However, the concern for institutional safeguards and a limited range of issue areas suggests that this argument primarily supports competence allocation.

This argument for the principle of subsidiarity has clear political implications for some of the issues facing the EU. An illuminating example of subsidiarity of an Althusian ilk is consociational democracy.<sup>59</sup> This is a non-territorial form of federalism, characterized by cooperation among elites of different segments of a society, often split along religious or ethnic lines. It entails government by grand coalitions, granting autonomy to groups with veto rights over matters important to them.

The origin of consociationalism was with Orthodox Calvinism. Each group enjoys legal autonomy and immunity though each regards itself as subordinate to God's law as interpreted by the group. Each group maintains a separate and parallel “pillar” of institutions such as business corporations, churches, labor unions, schools and health care organizations. Though the grass roots of each group are separated, elites cooperate in power-sharing. Complete pillarization of society amounts to “a society and state organized as a confederation of pillars . . . and successful pillarization presupposes a weak central state and involves a political perspective of a marginal or subsidiary state.”<sup>60</sup>

Consociationalism does not address the domain of sub-units. Recognition is largely a matter of organizational resources, thus embedding the status quo of current sub-units. The scope of intervention is pragmatically determined by bargains among the sub-units, who jointly determine the role and objectives of

<sup>59</sup>Lijphart 1968; 1979; 1995.

<sup>60</sup>Therborn 1989, p. 203.

the state. Thus, for example, in the Netherlands the pillars were “bent on defending a separate social world against the state, not least against the liberal state,” with the confessional conceptions of the proper role of the state supporting certain public corrections to the market (including poor relief and patriarchic pension policies) but preventing an active public labor market policy.<sup>61</sup>

## E. PROBLEMS

The prominent place of sub-units accorded by the Althusian model raises practical and normative challenges. Historically, such political orders tend to be weak and oligarchic confederal arrangements.<sup>62</sup>

A theory must also respond to standard normative challenges to communitarian theories, particularly concerning the status of sub-units and the implicit conception of the common good. This theory offers few if any criteria of legitimate communities or associations, and it leaves application of such standards to the leaders of the communities themselves. Firstly, this approach fails to identify standards for legitimate associations regarding their treatment of members, their proper scope of activity and their legal powers. Perhaps appeal might be made at this point to the value, within certain areas of human life, of freedom as absence of state constraint. But the grounds and scope of this paramount interest in non-intervention remain to be identified.

Secondly, on this view the common good of a political order is limited to such immunities and to those undertakings deemed by every sub-unit to be of their interest compared to their status quo. This account of the common good apparently offers no constraints on the impact of differential organizational resources or bargaining positions; and coercive redistributive arrangements among individuals or associations are deemed illegitimate. Such libertarian standards of distributive justice might best draw on a conception of justice as mutual advantage along the single dimension of formal freedom from state intervention.<sup>63</sup> The Althusian theory of subsidiarity might generate conditions on the domain of sub-units and on standards for power allocation among sub-units, but such restrictions are not readily apparent.<sup>64</sup>

<sup>61</sup>*ibid.*

<sup>62</sup>As noted by Harrington (1656) and Madison and Hamilton (Federalist 20) regarding the Republic of United Provinces in the Low Countries of 1579. Joined solely by economic and military considerations, unanimity was required for all major decisions, rendering it highly unstable.

<sup>63</sup>Barry 1989.

<sup>64</sup>This concern is perhaps most vividly underscored by the fact that the South African practice of apartheid and separation into “homelands” was long regarded as justified precisely by the tradition of “sovereignty in one’s social circle” (Kuyper 1880; de Klerk 1975, 255–60).

## VI. LIBERTY: CONFEDERALISM

Some of those lacunas and assumptions are addressed by a confederal argument from liberty in favor of subsidiarity. Several authors have argued for decentralized government as the best guarantee for our interest in liberty, on a republican interpretation harking back to Machiavelli of avoiding subjecting oneself to the arbitrary will of another.<sup>65</sup>

By limiting central unit action, more room is left for individuals' liberty understood as non-interference. Veto rights for sub-units ensure that joint gains do not come at the price of despotism.<sup>66</sup> Thus argued the American Anti-Federalists drawing on Montesquieu.<sup>67</sup> Environmentalists have also argued for decentralized government on similar grounds, holding that local decisions give more control to the individual.<sup>68</sup> Similarly, some anarchists have doubted (or downright denied) that political rule by threat of force is necessary to maintain human society, stressing instead the role of reciprocal agreements among independent associations.<sup>69</sup>

### A. CHARACTERISTICS OF SUBSIDIARITY

The confederal argument supports a proscriptive interpretation of the principle of subsidiarity, primarily addressing the allocation of competence. With regards to political implications, the domain of sub-units is primarily a pragmatic matter of institutional design: the American Federalists argued for territorial domains, but functional sub-units can serve a similar check on common action.

The application of the principle of subsidiarity is by sub-units enjoying veto powers. The best justification of this appears to rely on a conception of the common good as mutual advantage, leaving the areas of application open. Unlike Althusius' argument, this view is clearly compatible with normative individualism. The principle of subsidiarity is, on this confederal account, thought to offer the best protection of individual liberty against tyranny, allowing for further cooperation in so far as it benefits each subset of individuals.

### B. PROBLEMS

The American Federalists questioned such blessings of small government, partly on empirical grounds. No polity is so small as to avoid minorities with different interests, and tyranny of the majority happens more easily within small polities.<sup>70</sup>

<sup>65</sup>Skinner 1984; Pettit 1997.

<sup>66</sup>For systematic treatments, see: Braybrooke 1983; Goodin 1996.

<sup>67</sup>Montesquieu 1748; Beer 1993, 219–43.

<sup>68</sup>Sale 1980; cf. Goodin 1992, p. 150.

<sup>69</sup>Proudhon 1840; 1863.

<sup>70</sup>Madison in *Federalist Papers* 10 and “Letter to Jefferson” of October 24, 1787, quoted in Beer (1993, p. 257).

Larger units provide better checks against tyranny, since majority coalitions are more likely to secure the liberty of all and not be motivated by desires to harm minorities.<sup>71</sup> This institutional claim directly questions the subsidiarity principle's presumption against centralization.<sup>72</sup>

Furthermore, Madison observed that collective action suffers when parties enjoy veto rights. Coordination on common issues require some central powers, contrary to the views of anarchist and environmentalist decentralists.<sup>73</sup> The overriding focus on protecting sub-unit immunity hinders confederal standards for overruling sub-unit protests.

This argument for the subsidiarity principle relies on a conception of individuals' good and of the common good which is couched exclusively in terms of avoiding state tyranny. This minimalist conception may be regarded as a response to pluralism of worldviews and conceptions of the good life.<sup>74</sup> Across this plurality there might be a common interest in meeting certain basic needs and in the value of certain means;<sup>75</sup> but the distributive conflicts concerning other goods and benefits lie outside this approach. This is a flaw in so far as we require a political theory to address the background practices which affect bargaining positions, and since veto power tends to skew joint decisions in favor of powerful units. (Thus the American Federalists regarded the predominance of the Province of Holland as a flaw of the Republic of United Provinces.<sup>76</sup>) Such observations are objections, of course, only from the perspective of conceptions of the common good which insist on distributive objectives other than immunity from tyranny.

## VII. EFFICIENCY: FISCAL FEDERALISM

Fiscal federalism holds that powers and burdens of creating public goods should lie with the populations that benefit from them. "For an economist, the principle of subsidiarity means that the production of public goods should be attributed to the level of government that has jurisdiction over the area in which that good is 'public.'"<sup>77</sup> The costs of public goods which benefit only a subset of the community should be borne by that subset.<sup>78</sup>

Assuming that individuals' preferences vary systematically according to external or internal parameters such as geography and tastes and values, a preference for decentralized government arises for two reasons. Firstly, local

<sup>71</sup>Hume 1793, 5pp. 14–15; Federalist Papers 10, 51.

<sup>72</sup>For further discussion, see Goodin 1992, 147–50.

<sup>73</sup>Goodin 1992, 146–68.

<sup>74</sup>Possibly including Weber (1972), Schumpeter (1976), Nozick (1974) and Hayek (1976).

<sup>75</sup>Hayek 1976, pp. 120–1.

<sup>76</sup>Federalist 20.

<sup>77</sup>Padou-Schioppa 1995, p. 155.

<sup>78</sup>Musgrave 1959, pp. 179–80.



decisions prevent decision-making from becoming overloaded. Local decision-makers have a better grasp of affected preferences and alternatives, making for better service.<sup>79</sup>

Secondly, for certain goods—“internalities”—it is possible to isolate subsets of those individuals who prefer them.<sup>80</sup> Central government tends to ignore local variations in preferences, whereas according powers to such subsets allows them to act on those preferences and hence increase efficiency.<sup>81</sup> Thus, standard considerations of economic efficiency endorse the principle of subsidiarity, and “only indivisibilities, economies of scale, externalities, and strategic requirements are acceptable as efficiency arguments in favour of allocating powers to higher levels of government.”<sup>82</sup>

### A. CHARACTERISTICS OF SUBSIDIARITY

This theory provides efficiency standards for determining the domain and scope of sub-unit powers. Since public action is based on efficiency, the theory allows for a prescriptive interpretation of the principle of subsidiarity. Furthermore, it can apply both to the allocation and to the exercise of powers, and it allows both territorial and functional sub-units.

Sub-units do not necessarily enjoy veto powers, for two reasons. Firstly, the central unit may overrule free-riding sub-units to ensure coordination problems. Secondly, sub-unit performance can be assessed according to whether they provide public goods. The scope of central unit intervention is determined by whether there are public goods which can thereby be obtained.

Sub-units' claims to authority rest on the match between policies and subjects' preferences, allowing overlapping territorial and functional sub-units determined according to shared preferences. We may truly be faced with a “neo-medievalist” world system, of overlapping authority and multiple loyalties where neither order nor accountability are easy to achieve.<sup>83</sup> Thus we should expect a Europe “*a la carte*,” of asymmetrical or differential integration as in Canada and Spain where sub-units have different bundles of powers regarding taxation, education, language or culture.<sup>84</sup>

### B. PROBLEMS

There are at least four weaknesses with this as a general theory of principle of subsidiarity. Firstly, note that this principle of subsidiarity does not avoid the

<sup>79</sup>Smith 1776, p. 680.

<sup>80</sup>Olson 1969.

<sup>81</sup>Oates 1972.

<sup>82</sup>Padou-Schioppa 1995, p. 155. Kirchner 1997 develops such a framework for analysis of competence allocation in Europe.

<sup>83</sup>Bull 1977, pp. 264–76.

<sup>84</sup>Schmitter 1997.

problem of decision-making overload—on the contrary, it requires empirical comparative assessments of sub-unit and central unit action. Secondly, while coordination deadlock among sub-units is avoided, choice among alternative bundles of sub-unit powers is an important organizational challenge which the theory fails to address. Thirdly, the common good is exclusively interpreted as “public goods,” exclusion from which is infeasible and whose consumption is non-competitive.<sup>85</sup> Undoubtedly a fruitful approach for some issues, such as the environment, it fails to address the acquisition and distribution of divisible goods, or cases where gains or burdens are not shared symmetrically among parties.

Finally, as a political theory of subsidiarity, this economic approach runs up against standard challenges to the premises of economic theory. The focus on economic utility and preferences to the exclusion of other indices of individuals’ well-being is theoretically problematic.<sup>86</sup> It is also politically dangerous, insofar as governments (both central unit and sub-unit) can secure a match between policies and preferences by manipulating either one. Moreover, the focus on Pareto-improvements ignores the impact of skewed starting positions among parties which affect where they end up on the Pareto frontier.<sup>87</sup> Thus this approach is ill-equipped to assess institutions which affect individuals’ starting points.

These considerations do not preclude the fiscal federalist defense of subsidiarity. But such applications need to be located within a broader normative theory. We turn now to consider two such theories.

## VIII. JUSTICE: CATHOLIC PERSONALISM

The Roman Catholic tradition of subsidiarity—presented in the 1891 encyclical of Leo XIII, *Rerum Novarum*, and developed in Pius XI’s 1931 encyclical *Quadragesimo Anno*<sup>88</sup>—rests on a particular conception of the person and on a conception of a natural social order.

### A. BACKGROUND

*Rerum Novarum* had a dual aim: both to protest capitalistic exploitation of the poor and to protect the Catholic Church against socialism. The Church allows and requires state intervention in the social field, hitherto exclusively a domain for the Church. At the same time, the state is prohibited from absorbing the individual and the family.<sup>89</sup> The latter theme continues in *Quadragesimo Anno*,

<sup>85</sup>Musgrave 1959; Olson 1965, pp. 14, 38.

<sup>86</sup>cf. Cohen 1989.

<sup>87</sup>e.g. Sen 1982.

<sup>88</sup>Precursors include Bishop Ketteler in Germany, writing on “Labour and Christianity” (van Kersbergen and Verbeek 1994, p. 222).

<sup>89</sup>Article 35.

opposing fascism by stressing the limits on legitimate state interference and downplaying the state's duties of intervention.

## B. CONCEPTION OF THE PERSON

The Catholic argument for subsidiarity rests on the view that the human good is to develop and realize one's potential, thus realizing one's dignity as made in the image of God.<sup>90</sup> As developed by Mounier, this theory of *Personalism* had profound influence on Jacques Delors.<sup>91</sup>

The defense of associations is based on a religiously-informed normative individualism.<sup>92</sup> Finding one's role and pursuing one's good requires active voluntary interaction with others, without much intervention by the state or other parties.<sup>93</sup> Associations play two roles: through voluntary interaction persons develop their intrinsic dignity;<sup>94</sup> and associations assist those who lack ways or means of developing.<sup>95</sup> While all persons are held to be of equal worth, this entails not absolute equality but equal dignity,<sup>96</sup> within a diversity of hierarchically ordered organizations according to individuals' potential, interests and functions in society.

## C. CONCEPTION OF THE STATE

This Catholic conception of the state holds that the state must comply with natural and divine law to serve the common interest.<sup>97</sup> Non-intervention is appropriated both to protect individuals' autonomy, as required for their proper development,<sup>98</sup> and to save the scarce resources of the state.<sup>99</sup> Conversely, state intervention is legitimate and required when the public good is threatened, such as when a particular class suffers.<sup>100</sup>

Dutch Catholic policies illustrate how the scope of intervention is informed by the conception of the person and of social justice.<sup>101</sup> Not only does the state have residual responsibility, typical of Calvinist approaches, for alleviating poverty; it also must ensure just wages sufficient to maintain a family, since that is the social function of work. At the same time, the Catholic pillar of Dutch consociational democracy has not required the state to undertake measures combating

<sup>90</sup>cf. Finnis 1980 and Millon-Delsol 1992 chs 8, 9.

<sup>91</sup>Mounier 1957; Delors 1989a.

<sup>92</sup>Finnis 1980, p. 168.

<sup>93</sup>ibid. pp. 146–7.

<sup>94</sup>Pius XI 1952.

<sup>95</sup>Leo XIII 1890.

<sup>96</sup>Pius XII 1948; Leo XIII 1891, para. 40.

<sup>97</sup>John XXIII 1961, para. 20; Leo XIII 1891.

<sup>98</sup>Finnis 1980, pp. 146–8.

<sup>99</sup>Pius XI 1931, para. 80.

<sup>100</sup>Leo XIII 1891, paras 36, 37; Pius XI 1931, para. 78.

<sup>101</sup>van Kersbergen 1995.

unemployment, in part because paid work is not regarded as necessary for equal social standing.<sup>102</sup>

#### D. CHARACTERISTICS OF SUBSIDIARITY

The Catholic argument allows for more state intervention than the Althusian one. It has both proscriptive and prescriptive elements, endorsing minimal intervention aimed at bolstering sub-unit autonomy. Sub-units are not accorded veto rights, since the central unit may have to intervene in the interest of affected individuals.

The Catholic conception of the subsidiarity principle employs a conception of the human good to regulate both the allocation and exercise of competence. The Catholic doctrine was traditionally non-territorial, delimiting private sector spheres from public sector so that natural groups such as church, guilds and families would retain their spheres of autonomy. However, such arguments may also hold for geographical arrangements. They allow societal corporatist decision making, where “functional sectors” of society participate in political decisions according to talent and interest.<sup>103</sup> The problem with Fascist or statist corporatism, on this view, was not the skewed and undemocratic mode of representation, but rather that the wrong set of units were identified and empowered by the state.<sup>104</sup> This tradition also challenges the current exclusive status of states as sub-units, since the conception of the just social order might warrant transfers of powers.

#### E. PROBLEMS

As a political theory, the Catholic conception of subsidiarity faces a challenge regarding pluralism. It rests on contested views of the social order and of human flourishing, along with a correspondingly controversial view of personal autonomy. These assumptions guide the choice of units of association, determine their legitimate activity and set standards of comparative efficiency.

Once these assumptions are called into question, the theory can neither settle issues concerning the domain of sub-units nor identify their legitimate powers, which are among the contested political issues within the EU and elsewhere. Thus, this account does nothing to ease disagreements regarding the role of families, labor unions, companies, the state and the EU for wages and unemployment protection.

<sup>102</sup>Therborn 1989, pp. 212, 234. In the EU, this conception of subsidiarity finds expression in acceptance of liberal economic thought by the Christian Democratic governments and the European People's Party in the European Parliament, but coupled with insistence on state and EU support for a welfare system based on the Social Chapter. It furthermore lends support to a vision of a federal Europe, regulated by the principle of subsidiarity (Burgess 1993, 148).

<sup>103</sup>Schmitter 1974.

<sup>104</sup>Hoetjes 1993, p. 133.

A deconfessionalized conception of a natural social order might leave the domain of associations somewhat more open, leaving such issues to be determined by arguments appealing to a shared, agnostic conception of the human good. Certain sub-units enjoying certain powers must be shown to secure and promote the specified human interests of all affected individuals to an acceptable degree. However, since the contested conception of persons and their good play a significant role, it is an open question whether a modified theory can still offer guidance for a polity characterised by pluralism.

## IX. JUSTICE: A LIBERAL CONTRACTUALIST ARGUMENT

Finally, we turn to consider whether the principle of subsidiarity can be justified within a liberal contractualist framework in the Kantian tradition. Contributions within this tradition include Rawls's "justice as fairness," Scanlon's conception of morality as "reasonable unrejectability," Brian Barry's "justice as impartiality" and Jürgen Habermas' theory of rational discourse.<sup>105</sup>

A normatively legitimate social order must be justifiable to all affected individuals. Under pluralism, the reasons for accepting the subsidiarity principle must thus rest on a non-denominational account of the person and of the social order. Two reasons may be offered, based on our interest in controlling institutional and cultural change, and on our interest in fostering a sense of justice among the population at large.

### A. CONCEPTION OF THE PERSON

Among the interests of individuals that could command general agreement for purposes of arguments about legitimate social orders are the satisfaction of basic needs and all-purpose means for pursuing one's conception of the good life. Furthermore, individuals must be acknowledged to have an interest in procedural control over the social institutions which shape values, goals, options and expectations.<sup>106</sup>

Political influence is of value not only for those who value self-governance, but also because it secures and promotes two important interests. Firstly, liberal contractualism may agree with the republican claims of the Antifederalists (in Section VI) that political influence serves our interests by avoiding pervasive subjection to control by others. In modern polities these risks are reduced by a broad dispersion of procedural control.

Secondly, control over institutional change serves to maintain our legitimate expectations. This is not only a value for those who appreciate a context for

<sup>105</sup>Rawls 1971; Scanlon 1982; Barry 1995; Habermas 1996. MacCormick 1997 may be taken to provide one such account of subsidiarity.

<sup>106</sup>Scanlon 1978, p. 102.

meaningful choices of conception of the good.<sup>107</sup> Abrupt and unforeseen changes challenge our ability to form correct expectations about our life. We thus have an interest in regulating the speed and direction of change, and in being informed and participating (insofar as that reduces the risk of false expectations).<sup>108</sup>

## B. THE CASE FOR PRINCIPLE OF SUBSIDIARITY REGULATING POLITICAL POWER

These interests in political control provide some support for a principle of subsidiarity. When individuals share circumstances, beliefs or values, they have a *prima facie* claim to share control over institutional change to prevent subjection and breaking of legitimate expectations. Those similarly affected are more likely to comprehend the need and scope for change.

Though reminiscent of the argument from fiscal federalism, this argument does not regard honored expectations as public goods. Acceptable redistribution may require the violation of some expectations. Moreover, immunity and expectations are but two interests, and both are often overridden by others' need for material goods, means or political control. Finally, the interest based on expectations is not to maintain institutions or cultures but, rather, to control the speed and form of change.

This conception of principle of subsidiarity supports minimal intervention—for instance, directives rather than regulations—allowing local accommodation both to circumstances and to expectations.

## C. THE CASE FOR A PRINCIPLE OF SUBSIDIARITY REGULATING POLITICAL DELIBERATION

A second argument for the principle of subsidiarity concerns its role in character formation. As with other allocations of formal rights, the principle of subsidiarity affects both the process and the outcome of political bargains by regulating the exercise of rights and powers.<sup>109</sup> The principle of subsidiarity fosters and structures political argument and bargaining in ways beneficial to public deliberation and the character formation required to sustain a just political order. Legitimate governance in Europe requires political deliberation aimed at identifying and promoting the common good. This requires a “problem-solving” frame of mind, on the basis of some shared values and agreement on the objectives of cooperation.<sup>110</sup> By requiring impact statements and arguments of comparative efficiency,<sup>111</sup> the principle of subsidiarity facilitates the socialization

<sup>107</sup>Kymlicka 1995, p. 105.

<sup>108</sup>Neither of these interests support unjust institutions or expectations in ways that prevent eradication of injustice, of course. The concern to prevent subjection and to honor expectations may be overruled when other important interests are at stake.

<sup>109</sup>Dahl 1956, p. 137; Goodin 1996, p. 513.

<sup>110</sup>Scharpf 1988.

<sup>111</sup>cf. Amsterdam protocol.

of individuals into the requisite sense of justice and concern for the common good.

This role in character formation does not require that the principle of subsidiarity offer standards for the resolution of issues. But it merely requires public arguments about the legitimate status of sub-units, the proper common goal and the likely effects of sub-unit and central unit action.

This argument in favor of the subsidiarity principle is also weak, in that it does not require that principle in particular. Other rules for the exercise of political power which require public argument would also further deliberation and character formation. Some such principle guiding political deliberation is required insofar as it is needed to foster the character formation required for stable compliance with the institutions over time. Such a guide may be all that political philosophy can, and need, provide.<sup>112</sup>

#### D. CHARACTERISTICS OF SUBSIDIARITY

Such a theory does not indicate which sub-units are required in a just social order, insisting only that such claims to authority must be justified by their merits, measured by some liberal contractualist conception of the common good. Likewise, whether sub-units should enjoy veto or votes or only “voice” is primarily a matter of the likely institutional effects on character formation and on the distribution of benefits and burdens likely to ensue, compared to alternative rules regulating political authority.

However, it does offer some guidance regarding plausible interpretations of the principle of subsidiarity. It is not obvious that equal representation or voting weight of all individuals is required, either in sub-units or at the central unit. The allocation of votes would appear to be a matter of likely cleavages and of likely effects of alternative allocations of control. Thus it remains an open question whether the member states of the EU form important cleavages for veto or blocking votes. Likewise, permanent minorities within states (such as migrant workers, cultural minorities or the unemployed) may have interests that are poorly served by a principle of subsidiarity focussed on the bargaining relations among states. For issues of working conditions, employment policies and pay, the case remains to be made whether labor unions and employers’ organizations are the only and most appropriate sub-units for consultation and decision, when some affected are unlikely to be represented.

This argument for principle of subsidiarity allows intervention in sub-units to protect members’ interests.<sup>113</sup> For character formation some institutional features must be in place. Deliberations must occur within a system of checks and balances, either such that both sub-units and central unit must strive to influence

<sup>112</sup>O’Neill 1986, p. 48.

<sup>113</sup>cf. Kymlicka 1995.

each other by arguments, or such that the deliberative process can be reviewed. Moreover, the representatives making decisions should not only be delegates taking the interests and preferences of their constituency as fixed. Rather, the representatives should be able to argue with their constituency, and such discussions should be transparent to the public to foster character formation.

### E. OBJECTIONS

The liberal contractualist approach only supports a *prima facie* preference for sub-unit authority, which is easily overridden by other important interests. It rests on a contractualist conception of justice, which is controversial both on account of its approach to the value of community<sup>114</sup> and on account of its view of moral motivation as based on respect rather than empathy. Both of these concerns are at stake, since the egalitarian distributive implications characteristic of some such theories (and consistent with the EU objective to “promote . . . economic and social cohesion and solidarity among Member States”)<sup>115</sup> appears to conflict with our judgments regarding the priority of compatriots.<sup>116</sup>

Another unresolved challenge to the egalitarian objective concerns whether and how to reduce differences in living conditions across sub-units, when some differences may be due to costly local policy choices.

### X. CONCLUSION

The different arguments offered for the principle of subsidiarity have striking implications, both for the interpretation of the principle and for public policies. Fiscal federalism, Catholic personalism and liberal contractualists offer drastically different conceptions of the proper objectives and scope of authority for central political action. They offer different responses to the challenge facing European institutions faced with conflicting commitments to equality and respect for local autonomy.

A commitment to equal respect requires careful delineation of which goods and burdens must be secured on an equal basis across sub-units. At the same time, this commitment also entails toleration for democratically generated variation in local and state institutions. Europeans currently hold conflicting conceptions of the ends of Europe, different views about the future role of member states, and conflicting conception of what are social problems and what might solve them. The principle of subsidiarity may help to generate systematic deliberation about these issues. It may help to identify a just European order, as well as helping to foster a shared commitment to such an order. Both tasks are urgently required.

<sup>114</sup>Fishkin 1986; Miller 1995.

<sup>115</sup>Article 2 ECT.

<sup>116</sup>Beitz 1983.



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