The Inherently Political Nature of Subsidiarity

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Abstract: There is an essential contradiction in contemporary notions of subsidiarity. On the one hand, subsidiarity appeals to the ability of local bodies to engage in their own decision-making; on the other, subsidiarity employs a meta-explanation for appropriate levels of decision-making authority. In fact, therefore, the meta-explanation is assumed to provide a non-partisan basis for identifying when decision-making power should be exercised at a primary level (e.g., by representatives of the local association itself) and when at a subsidiarity level (e.g., by the state), assuming as a premise what needs to be proved as a conclusion. By making such an assumption, the criteria for who gets to decide are taken away from primary actors themselves, limiting the fullness of their political involvement. The answer lies in recognizing that any meta-explanation for the theory of subsidiarity should be fully articulated as part of the democratic process and remain open to being questioned and challenged. The different intentions that lie behind switches to decentralization leave their mark on the nature of interference in sub-state units, proving that it is false to treat a principle of subsidiarity as politically neutral and of equivalent value wherever deployed. The meta-explanation of the criteria for aggregating or disaggregating power is something engaged with by citizens who do subsidiarity as a political practice. They take forward a view of appropriate decentralization in accordance with what they think the state should be doing and what associational groups should be doing. This at times yields priority to larger organizations for coordinated pursuit of some goods over others but does not surrender definitional discretion on the criteria for aggregating power. Defining the basis on which power is made hierarchical in society is part of the practice of doing subsidiarity, rendering subsidiarity by nature inherently political.

Keywords: Subsidiarity, Political Philosophy, Virtue Ethics

I. Introduction

Robert K. Vischer states:

Stripped of its partisan baggage, subsidiarity offers a model that—rooted in a social justice tradition that stresses both individual liberty and communitarian values—rejects the alienations of both the market and centralized government, embracing instead individuals and the mediating structures to which they belong.¹

The need that a principle of subsidiarity be “[s]tripped of its partisan baggage” has become something of a consensus among those who write on subsidiarity. In essence, the argument follows the syllogism:

1. The principle of subsidiarity is best understood as a principle of non-absorption of society’s associational groups.
2. A principle of non-absorption cannot be bestowed on some groups and not others according to political preference; non-absorption is an immunity that is to be enjoyed equally.
3. Therefore, political preferences have no bearing on the principle of subsidiarity.

The implication is that those who invoke the principle of subsidiarity to mean that the state should decentralize are reading into the principle their own preference. They have “politicized subsidiarity by circumscribing the breadth of its application and elevating devolution as its sole operating guideline.” “Devolution for the sake of devolution cannot be justified as furthering subsidiarity.” On such a reading, desire for devolution is a political preference about the way the state’s authority should be distributed; it cannot be universalized as a principle and fails to recognize that inappropriate or inefficient decentralizations can in fact go against the principle of subsidiarity. Subsidiarity is better understood as a-political with respect to how the state should be structured: “subsidiarity is a call for social functions to be fulfilled, not at the lowest possible level but rather at the right level.” As Jonathan Chaplin goes on to explain, “all communities have a potential responsibility towards all other communities (and to persons) to offer them various kinds of ‘help’ or service. The principle turns out to have not only a vertical but also a horizontal application.” What matters is not how society is ordered as a whole, but the recognition of various inter-dependencies between otherwise autonomous groups, inter-dependencies that are best facilitated through a principle of a-political non-absorption.

These perspectives are reluctant to establish any connection between the principle of subsidiarity and the practice of deciding how political authority is structured. As well as synonymizing subsidiarity with the common good, the principle of subsidiarity is explained as subsumed under the principle of solidarity. Overall, the thinking is that it is wrong to presume any relevance of the principle to the question of how the state is structured, and improper to invoke subsidiarity as something one believes will be realized through a specific program of decentralization. At fault for
some people having made this connection was an old, hierarchical view of the world:

the claim that ‘subsidiarity only looks one way’ appears to be a redundant legacy of the hierarchical element in Thomistic metaphysics, an element which, in any case, is no longer to the fore in official Catholic documents. Indeed I suggest we need to go beyond talking even of vertical and horizontal applications. We need to replace the two-dimensional spatial metaphor by means of which subsidiarity has often been handed down to us, with a more complex multi-dimensional picture of mutual interdependencies among numerous, qualitatively different communities of many types, size and location.9

We may therefore add two effects that follow from the above described syllogism:

4. The principle of subsidiarity does not dictate a specific way in which the state’s authority is structured.

5. The principle of subsidiarity cannot give overall hierarchy to the ordering of society.

Those in public policy who write on political decentralization tend to likewise be committed to a non-hierarchical ordering of society. To discuss public participation and local government is to speak into an echo chamber of politically correct neutrality where all become one in a maelstrom of equal citizen affirmation. Public participation is “the involvement of citizens in identifying local priorities, policies, programs, and projects that require allocation of resources,”10 such that “[t]he dichotomy between the state and the people must disappear to make room for collaborative and participatory roles.”11 Participation is thus, according to Oxfam, “a fundamental right” which aims “to give a permanent voice to poor or marginalized people and integrate them into mainstream decision-making structures and processes that shape their lives and the destiny of their society.”12 Accountability comes through engagement with wider society, whereby the very diversity of moral deliberation helps correct the state from taking any extreme view intolerant of minorities. But how society and the state’s hierarchy of authority is ordered is a topic altogether avoided.

To try to mitigate the contradiction in liberal theory between fear of state power and containment of that fear through a deeper incorporation of associational groups into the state, policies related to subsidiarity, decentralization or localism are couched in as politically-correct a way as possible. Hence we speak of the good of public participation regardless of whether we think current public views are good or bad; we speak of the good of civil society even though we are at best members of just a few civil society organizations; or we resolve to listen to

9 Ibid., 76.
11 Josephine S. Mwanzia & Robert C. Strathdee, Participatory Development in Kenya (Farnham: Ashgate, 2010), x.
12 Ibid.
“minorities” even though that very description may prevent them from speaking as equals. Our attempted neutralization of political discourse hopes to defray concerns that a closer state-society relationship merely prepares the way for incorporation into a single political project. However, the truth is that there is no deeper incorporation than one which involves no falsifiable notion of the state’s purpose or hierarchy.

Instead, our disagreements oscillate around the method by which equality is to be achieved, for example whether and how minorities should be categorised. While liberal theory holds that democracies should allow a plurality of opinions to be voiced, republican theory emphasises that a democracy’s equality of citizenship requires no person be given special status when voicing their opinion. These two positions, though in the first instance similar, fall into disagreement when individuals prefer to advocate in terms of groups. How can group demands be navigated when democracy depends on “one person one vote”? The liberal position fears insufficient protection of minorities against majorities unless minority groups are given special recognition; the republican position fears the imbalance produced by arbitrarily categorising some citizens as of special status. While numerous strategies have met each of these fears on its own terms, it has proven extremely difficult to deal with both simultaneously. Liberal theory remains set in a language of managing group relations so as to help usher in future political equality; republican theory remains set in a language of refusing to acknowledge present political inequalities lest arbitrary preference be given to one group at another’s expense.

Self-categorisation of identity achieves no stable solution to this problem of how individuals and groups should relate to each other. Trying to let self-categorisation solve the dilemma runs afoul of the same logic behind the finding that social welfare cannot be optimised by means of citizen self-profession of preferences, proved by Kenneth J. Arrow’s impossibility theorem. If we are the ones to categorise our own identities, it is possible that we change or exaggerate them in order to better position ourselves politically. This may be within our rights as individuals, but it renders state-led attempts to provide group-based exceptions, rights or welfare unstable over time. The solution suggested by John Rawls of an original position attempts to overcome the problem by making permanent a single moment where differences can be tracked without anyone engaging in self-interested positioning, as they do not know who in society they will be.

It is important to remember, however, that such an original position never occurs. Further, the argument falsely assumes that only one conclusion can arise from an

impartial position. As Amartya Sen writes in *The Idea of Justice*, we overcome real-world injustices by engaging with them, not by distancing ourselves through the construction of transcendental institutions (i.e., when state of nature accounts narrate idealised political settlements). A democratic order hosts participatory decision-making insofar as the people are sovereign in the fullness of their political nature. This requires concurrent navigation of the criteria of legitimate authority alongside deciding what should be done.

The difficulty of such concurrent navigation points to an essential contradiction in the above discussed notions of subsidiarity. On the one hand, subsidiarity appeals to the ability of local bodies to engage in their own decision-making; on the other, subsidiarity employs a meta-explanation for appropriate levels of decision-making authority. In fact, therefore, the meta-explanation is assumed to provide a non-partisan basis for identifying when decision-making power should be exercised at a primary level (e.g., by representatives of the local association itself) and when at a subsidiary level (e.g., by the state), assuming as a premise what needs to be proved as a conclusion. By making such an assumption, the criteria for determining who gets to decide are taken away from primary actors themselves, limiting the fullness of their political involvement. The current attempt by international organizations to further an agenda of politically-neutral decentralization in the developing world is the maximal example of such a curtailment of democratic participation. The prevailing approach fails to appreciate that man’s political nature can only be realized in engagement with the meta-explanation of legitimate authority and what politics is aiming at.

This article counter-argues that the principle of subsidiarity is one with the practice of defining the basis on which power is made hierarchical in society. Subsidiarity is, therefore, best studied as an intentional practice. In pursuit of this argument, the article proceeds to outline the principle of subsidiarity and four difficulties that, I believe, can help structure debate surrounding it. First, whether subsidiarity is a principle that is, or a practice that is done; second, whether a principle of subsidiarity should be established within law; third, whether subsidiarity can be proved or vindicated through its results; and fourth, whether a commitment to subsidiarity necessitates moral relativism. The various ways in which these difficulties have been navigated can be understood through what I describe as five approaches to subsidiarity: liberal, republican, utilitarian, relativist and virtue ethicist. The article argues that such approaches to subsidiarity should be fully articulated as part of the democratic process and remain open to being questioned and challenged. The different intentions that lie behind switches to decentralization leave their mark on the nature of interference in sub-state units, proving that it is false to treat a principle of subsidiarity as politically neutral and of equivalent value wherever deployed. The meta-explanation of the criteria for aggregating or disaggregating power is something engaged with by citizens who do subsidiarity as a political practice. They take forward a view of appropriate

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II. The Principle of Subsidiarity

In the *Stanford Encyclopedia of Philosophy*, Andreas Føllesdal defines the principle
of subsidiarity as holding that ‘authority should rest with the member units unless
allocating them to a central unit would ensure higher comparative efficiency or
effectiveness in achieving certain goals.’20 John Finnis instead prefers to frame
things more negatively, stating that the principle of subsidiarity is ‘shorthand for
the principle that it is unjust for a higher authority to usurp the self-governing
authority that lower authorities, acting in the service of their own members
(groups and persons), rightly have over those members.’21 There is great diversity
of opinion over the basis for determining when such usurpation occurs, and even
resistance against the terms “higher” and “lower” as affirming the consequent on
which group bears greater authority.22 I turn now to four difficulties, confronting
which may help us better understand subsidiarity, its use and purpose.

A. Whether Subsidiarity Is a Principle that Is, or a Practice that Is Done

Paolo G. Carozza describes the concept of subsidiarity as “useful both descrip-
tively—helping to make sense of a number of central features of human rights
law—and also prescriptively—helping to indicate an order and direction for the
further development of the law and institutions.”23 This dual feature helps iden-
tify how the principle of subsidiarity has been deployed both descriptively and
prescriptively at various moments, though not always in harmony. Complication
is most obvious when trying to find common ground between on the one hand
the principle of subsidiarity and, on the other, political practices of decentraliza-
tion, devolution and federalism. Part of the reason for such difficulty is that, in its
origins, subsidiarity sought to act as politically-neutral defense against an over-
reach of politics. As Carozza explains, the distinct notion of subsidiarity grew up
“as a fundamental principle of justice in the organization of society in the context
of a rich and complex and active civil society that was being threatened in Europe,
in different ways, by an aggressively statist form of liberalism in the 19th century

21 John Finnis, “Subsidiarity’s Roots and History: Some Observations,” *American Journal of
22 Maria Cahill, “Theorising Subsidiarity: Towards an Ontology-Sensitive Approach,” *International
23 Paolo G. Carozza, “The Problematic Applicability of Subsidiarity to International Law and
and by the totalitarian ideologies of the left and of the right in the 20th century.”

In seeking to avoid politicization, the principle was affirmed as ahistorical and an ideal towards which all can aim. Taken this way, subsidiarity is a principle, an ideal, not a practice. The relevant practice might loosely be said to be governance, with the principle of subsidiarity acting as a guiding moral principle, a moral ideal like justice, fairness or love. Decentralization, devolution and federalism are in contrast held to be things that are done: they are ways in which the state or a collection of states are organized. They are the material output being pursued temporally and temporarily through campaigns for self-direction and self-determination; political visions that orient a particular body politic, at a particular time and place.

The crisis of the distinction between subsidiarity as a way of thinking about how things ideally are and centralization / decentralization as a doing of politics, is that it pulverizes study of subsidiarity as an intentional practice. Under the dominant reading, subsidiarity is akin to a Weberian ideal type, something that can be observed on a spectrum of manifestations but not something one tries to make happen through a program of decentralization. For those who take subsidiarity in this way, their reflections on the concept are independent of prescribing any particular constitutional structure. Those who pursue self-determination through decentralization / devolution / federalism are then seen as advancing their preferences independently of the principle (presumably best legitimized through popular will, such as a referendum), with it being a question of output rather than intention whether they are acting for what is practically reasonable in accordance with the fullness of human reason and the nature of the human person and the family.

There is thus a rift between the principle of subsidiarity and the practice of deciding the basis on which power is made hierarchical in society. I counter that the two are one. To establish this fundamental connection, I argue that we should study subsidiarity as an intentional practice. This requires re-mergence of the principle of subsidiarity that is with the practice of subsidiarity that is done, such that even political expression in favor of or in opposition to decentralization or centralization should be taken as constituent of the practicing of practical reason and the political nature of man.

24 Ibid., 64.
25 The use of the term “practical reason” is intended to be in accordance with Finnis’s view of the central case of law. John Finnis, Natural Law & Natural Rights, 2d ed. (Oxford: Oxford University Press, 2011).
26 Indeed, without any notion of the practice of doing subsidiarity (however political that may sometimes be), there is no room for incorporating the principle of subsidiarity into a notion of goodness of action revealed through habits and practice (discussed partially in section 3). Refusal to see subsidiarity as an intentional practice cuts it from possible evaluation as something that can be refined like a virtuous disposition. Julia Annas explains the connection between the virtues and knowledge that occurs through practices in her excellent book outlining virtue ethics: “One of the major suggestions of this book is that virtue is like practical skill. . . . Because a virtue is a disposition it requires time, experience, and habituation to develop it, but the result is not routine but the kind of actively and intelligently engaged practical mastery that we find in practical experts such as pianists and athletes.” Julia Annas, Intelligent Virtue (Oxford: Oxford University Press, 2011), 14.
B. Whether a Principle of Subsidiarity Should Be Established within Law

Theorists of the principle of subsidiarity have sought an abstract definition to help settle competing claims about what the principle does. However, an approach that only looks at theoretical consistency of definitions without examining the practice of doing subsidiarity produces a distance to real cases. In this sense, the principle can become an ideal expressing the unique value of local organizing that is indifferent to how state-society relationships are really done. One purported solution to such a dilemma is to establish the principle of subsidiarity clearly within law as part of a constitution. The danger, however, lies in the way in which law identifies a principle only in order to find a consistent basis for determining when it is transgressed. Law does not generate life, for example, only the category of murder which helps to protect life. And whether or not judges determine a murder took place, the person whose cause of death is disputed remains dead throughout the hearing and even stays dead after judgment has been handed down. For subsidiarity, it should likewise be remembered that a law explicitly protecting the principle of subsidiarity does not of itself bring about political decentralization. Only when decentralization already exists might it contribute to a protection of the status quo.\(^27\)

Secondly, legal attention itself presupposes a state structure, even though many communities, groups and associations predate the state and do not require a legal codification of subsidiarity to realize it. Indeed, there is something of an inner self-contradiction in developing a legal ideal for subsidiarity, given the way in which the legal personality of associations is almost always an afterthought in their formation, never their raison d’être, and often an incomplete descriptor. Associations do not aim, ultimately, at being perfectly represented and constituted within law, but instead aim at doing good things with people; they sometimes—

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\(^{27}\) Finnis explains that the role of judges is particularly oriented toward the past, while the executive looks to the present, and the legislature to the future. John Finnis, "Judicial Power: Past, Present and Future" Lecture Sponsored by the Judicial Power Project, Gray’s Inn Hall, 20 October 2015. Available at: http://judicialpowerproject.org.uk/wp-content/uploads/2015/10/John-Finnis-lecture-20102015.pdf (accessed 29/07/17). In their normal role judges cannot, therefore, establish decentralization that requires a law stating such-and-such sub-state unit has certain powers, autonomies, rights or responsibilities. A law that affirms a principle of subsidiarity would achieve nothing of this except through the grossest of misinterpretations. To take the European Union as an example, one would have to ask whether the arrangement of powers and duties in the Treaty on the European Union establishes local government, to which the principle would then at best provide some grounds for checking supranational usurpation of the powers that have already been allotted by the Treaty to the local level. Because the Treaty does not establish member states or their local governments, its positing of a principle of subsidiarity has no reference point for what is to be defended. As Hittinger explains from a more theoretical standpoint, "Any application of the principle of subsidiarity ahead of the distribution of offices and powers is to put the cart before the horse. For the question of just relations between social offices and institutions presupposes the existence of these social forms, each having its own esse proprium. And where the nature and scope of these social forms is in doubt, subsidiarity remains a principle without matter." Russell Hittinger, "Social Pluralism and Subsidiarity in Catholic Social Doctrine," Annales theologici 16 (2002): 397 (emphasis in original). Within the European Union, the establishment of powers for local government or associational groups remains with the constitutions of member states, making a treaty-level establishment of principles for their possible retention meaningless. At Union-level the principle of subsidiarity therefore only indicates the ground on which powers can legitimately travel to the supranational level: when the aim of ever closer union can be better achieved at Union-level, a tautology.
not always—use legal structures as a means towards their ultimate aims. In this sense, the notion of sovereignty does not extend to the state being the source of authority for defining associational groups or setting out their aims. The state is a pupil that learns over time and does its best to write down the main points it thinks it should remember. Though society’s ultimate authority, the state neither made nor makes that society. As Maria Cahill argues,

the vision of authority being proposed by subsidiarity sharply contrasts with that proposed by sovereignty. For a start, the state does not have a monopoly on authority; moreover, the state does not even have first place in the authority stakes. Subsidiarity turns our expectations on their head: as a “higher association,” the state has only the subsidiary authority, yielding to the primary authority of the “lesser organizations,” like families, charities, trade unions, town councils, and so on.28

To give an example, imagine you believed it necessary to regulate what books were being read in book clubs nationwide. One difficulty in implementing such a measure would be that from the perspective of the legal system, book clubs often do not exist. If my book club is between like-minded friends where we each purchase books in an individual capacity, there is no membership fee, and anyone is in principle free to join, from the perspective of law the club may not have any identifiable personhood. If you felt the material being read was inflammatory and encouraging of violence, you would only be able to take members of the book club to court as individuals, or to ban the reading or selling of particular books nationwide. You could not outlaw my book club qua book club without first taking the pains to create my book club as an entity the law can then recognize. After all, my friends and I may not have named our book club, and we may not even know that what we are doing is best described as a book club.29

Overall, therefore, assertion that the principle of subsidiarity needs to be provided for within law encounters an initial difficulty of requiring state-based identification of local associations and groups. This is not necessarily a problem, just so long as the law’s description of the distinct functioning of an associational group is not taken as an exhaustive description of the group’s aims. For example, a religious school may be different to a state school in that it selects entrants of one particular religion, but that is not to say that the aim of a religious school is religious segregation. From the perspective of an associational group, the state can sometimes fall into using its own notion of what makes the association distinct as grounds for the association’s limitation or usurpation, even though it is something that might have been willingly adapted by the association itself and be inessential for its ultimate aim. Representation in law is therefore a risk that an association takes, hoping firstly that the state will not make the process administratively too burdensome, and secondly that the state will be humble in doing its best to

29 Indeed, what one usually thinks of as a book club involves holding meetings where no actual reading need take place and members need not bring the book on the day. Some people come and just pretend they read the book.
understand the association’s true aims (and even recognizing the association’s ability to change aims).

Aside from this difficulty, codification in law of the principle of subsidiarity carries the further danger that it places decision-making power of when the principle should apply in the hands of actors at the center of the political establishment. The Treaty on European Union pledges in its preamble 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.”

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

These provisions, although at first sight helpful for restricting the otherwise vague wording of “ever closer union,” in fact have not proven much of a caveat. Indeed, Gabrieël A. Moens and John Trone review cases brought on the basis of a breach of the principle of subsidiarity and conclude that its enforcement has been “strikingly ineffective,” with the Court of Justice of the European Union having “never held that any EU legal act was invalid for breach of the principle.”

Cahill describes the Treaty provisions for the principle as “reductivist,” while Nicholas W. Barber and Richard Ekins caution that:

Since its introduction in the Maastricht Treaty in 1992, the principle of subsidiarity within European Law has not proved effective as a principle which is invoked by litigants and applied by the courts. Judges appear reluctant to make use of subsidiarity directly—and, given the complicated factual and political questions that the principle raises, perhaps they are right to be cautious. Like other sound constitutional principles, such as the rule of law or the separation of powers, it may be that subsidiarity does not have the form to be fit for adjudication but should instead inform constitutional argument less directly.

When a principle of subsidiarity is implemented through law, it invites judges to determine when the right level of decision-making has been exercised, in turn making them the final decision-makers. Arguably, this has been the case with the Court of Justice of the European Union’s “asymmetry” of effectively operating “two separate standards of judicial review, a light one for all EU measures and an exacting

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30 Ibid., 131.
32 Ibid.
much higher one for national laws allegedly infringing EU laws.”34 It is not strange that this is the case, however, for the hierarchy of authority in law tends in general to mirror the structure of political centralization; referring to legal authority in cases of dispute will almost always lead one higher up the chain of constitutional authority towards what is intelligible at the center. For the European Union, what is most intelligible is the Treaty on European Union, not the constitutions of member states. And because the European Union is a treaty-based organization, the Court of Justice of the European Union is not required to weigh or reflect on the importance of local government set out in the constitutions of member states. Referral to the Court of Justice of the European Union on grounds of a failure to honor the principle of subsidiarity therefore implicitly requires a hollowing out of a member state’s intranational distinctions. And because national constitutions do not in any case have a goal akin to ‘ever closer union’, they are in general unintelligible with respect to the European Union’s aim of union through Union.

Moens and Trone thus criticize implementation of the principle in stark terms: “Subsidiarity assumes that the Union’s goals are valid and makes their achievement the paramount consideration. It asks only which level is better able to achieve those Union goals.”35 Looking at things from a policy angle, I would describe the European Union even more harshly as an anti-subsidiarity machine, for the more developed it believes a region, the more specifically it believes the region’s funds should be directed from the center. The Europe 2020 Strategy, for example, has as its main priorities:

1. research and innovation;
2. information and communication technologies;
3. small and medium-sized enterprises; and
4. promotion of a low-carbon economy.36

How funds are to be directed towards these goals is explained thus:

The level of concentration required varies according to the category of regions being supported. More developed regions are to allocate at least 80% of their ERDF [European Regional Development Fund] resources to at least two of these priorities and at least 20% to the low-carbon economy. Transition regions are to allocate at least 60% of their ERDF resources to at least two of these priorities and at least 15% to the low-carbon economy. Less developed regions are to allocate at least 50% of their ERDF resources to at least two of these priorities and at least 12% to the low-carbon economy.37

This is a policy of greater restriction over funds the more self-sufficient a region, the exact opposite to what a principle of subsidiarity suggests. The equivalent in the academic world would be to allow one’s PhD supervisee to write whatever he or she likes while a student but then to come down heavy on what they should and should not write after they pass their viva. An Aristotelian notion of self-sufficiency works in the opposite direction: the more one develops, the greater the capacity for self-direction.38

Finnis takes a strong tone in asserting that, for all its merits, the principle of subsidiarity “is a presumptive and defeasible, not an absolute, principle.”39 As such, it is to act as a general first line of defense against usurping the authority of groups at a primary level, but does not mean their authority can never be overriden for the sake of the common good. This further problematizes manifestation of the principle of subsidiarity in law, for the law would have to be an assertion of partial immunity for the authority of groups—that they enjoy immunity from state interference not as an absolute right but as a preferred trait that should be upheld so long as other conditions legitimizing intervention are not satisfied. Again, such a law would take the criteria for upholding immunity away from associational groups themselves, placing final decision-making authority at the center of the political establishment.

C. Whether Subsidiarity Can Be Proved or Vindicated through Its Results

In line with utilitarian fixations in Anglo-Saxon jurisprudence, the principle of subsidiarity is often explained as in accordance with measures of efficiency at each level of decision-making, with the definition outlined earlier taking the criteria of intervention by subsidiary units as justified if ensuring “higher comparative efficiency or effectiveness.”40 What is efficiency? As a descriptive term for assessing competence, the term specializes at being a-political, a-historical and a-moral. Efficiency fixes on subsidiarity a mask of pretend neutrality, where the real decision of what counts as efficient is in fact then placed in the hands of the more centralized. It is a metric of assessment for whether respecting the autonomy of local associations is worthwhile, or whether the same outputs can be achieved at lower cost by a central authority,41 and therefore implies that those best at measuring efficiency should be the ones ultimately in charge. Note that this utilitarian approach therefore forces one to distinguish between those best at

38 For identification of the roots of the principle of subsidiarity in the thought of Aristotle and Aquinas, see Nicholas Aroney, “Subsidiarity in the Writings of Aristotle and Aquinas,” in Evans & Zimmermann, Global Perspectives on Subsidiarity. On the greater self-sufficiency of larger political units, see especially pp. 20-1.
40 Føllesdal, “Federalism.”
41 For criticism of the narrow evaluation of decentralization through policy variables, see Jean-Paul Faguet & Caroline Pöschl, eds., Is Decentralization Good for Development? Perspectives from Academics and Policy Makers (Oxford: Oxford University Press, 2015). However, the authors return to similarly narrow metrics of evaluation, arguing that decentralization is good for development by “(1) improving governance, (2) creating competition among subnational governments, (3) reducing clientelism, and (4) strengthening the state. Ibid., 4.
measuring efficiency and those best at doing things efficiently. Ultimate decision-making authority is to rest with those best able to measure, like for example in the UK’s National Health Service where authority over reform is given to those who set targets, rather than those who care for patients.

Finnis explicitly rejects the metric of efficiency, stating that subsidiarity’s “deepest rationale is the intrinsic desirability of self-direction (not least in cooperatively associating with other persons), a good that is to be favored and respected even at the expense of some efficiency in the pursuit of other goods.” 42 Barber and Ekins concur, arguing that

[subsidarity], by insisting on the worth of smaller associations, protects people’s capacity to choose and pursue valuable activities within groups: individuals are more likely to be able to exercise control within smaller units than larger ones, and this capacity for control is morally valuable. Indeed, this benefit is such that it justifies a certain amount of inefficiency. Even if the activity would have been more effectively run by a state body, it will often be unjust to wrest control from the association’s members. Subsidiarity is not reducible to a simple test of comparative efficiency because the exercise of local self-government is, in itself, sufficiently valuable to justify tolerance of some inefficiency. 43

To admit a notion of efficiency without specifying the end towards which it aims is to assume away the fullness of political life. Perhaps because of this difficulty, Finnis moves the meta-explanation of what counts as the most appropriate level of decision-making from efficiency to self-direction. At the same time, however, as the principle of subsidiarity is defeasible, it is possible to imagine that mere profession of desired self-direction may sometimes be insufficient for establishing whether true self-direction is really occurring, whereby aspects of self-direction may be better established and maintained through a subsidiary authority instead. This would be in line with an Aristotelian method of optimal levels of governance revealed through the depth of self-sufficiency of a community, if “self-sufficiency” can be understood as covering necessary aspects of self-direction not provided for internally by the primary group. For example, my book club is self-directed with respect to membership (which happens to be set up as wanting people who are a bit committed), but not self-directed with respect to literacy (which we obtained with the help of schooling), so we are not entitled to use a self-direction argument for refusing to participate in an obligatory schooling program merely because we have organized our own book club. Equally, our self-direction is in fact further established by the obligatory schooling program that ensures literacy, because literacy is something that enhances our community’s self-sufficiency, and capacity for founding independent book clubs.

42 Finnis, “Subsidiarity’s Roots and History,” 133. Or, as Paul Marquardt puts it when criticizing the European Union’s understanding of a principle of subsidiarity: “its principles are fundamentally corrosive to rather than supportive of the sovereignty of the nation-state [because] the underlying logic of subsidiarity reduces the claim of rightful governance to a technocratic question of functional efficiency that will eventually undercut the nation-state’s claims to loyalty.” Quoted in Vischer, “Subsidiarity as a Principle of Governance,” 121-2.
Carozza states:

The most comprehensive formulation of subsidiarity is one that does not merely reduce it to localism or devolution, nor to a utilitarian principle of efficiency in the allocation of powers, but rather that regards subsidiarity as a principle of justice that requires larger communities to protect the legitimate autonomy of smaller communities, to provide them with the assistance (subsidium) needed to fulfill their ends, and to coordinate and regulate their activities within the common good of the larger community, of which they are a part and which is also necessary to the flourishing of their individual members.44

I agree that subsidiarity is ‘a principle of justice’ and is therefore inextricably bound to the true self-direction of a group. It is in precisely this sense that regard for subsidiarity requires full incorporation of the principle into the realm of politics. As a virtue, justice is expressly political in that it engages with the social nature of persons who seek to order what they have. This is justice as the making of judgments, whereby the practice of decision-making on what is fair acts to sharpen one’s attention towards fairness. It is false to assume that a just outcome can be arrived at through a theory of the good that lies outside the practice of human decision-making. As our conceptions of justice sometimes differ, we must practice the art of acting justly to come closer to the truth and to a common understanding. A part of the practice is the very decision of what is the most appropriate level of decision-making. At its core, this is achieved through the cut and thrust of debating self-direction, rather than any pre-conceived computation of efficiency.

D. Whether a Commitment to Subsidiarity Necessitates Moral Relativism

Cahill posits:

The first characteristic of subsidiarity’s model of authority is that authority exercised by the state is fundamentally incommensurable with the authority exercised within other associations. Unlike sovereignty’s authority archetype, subsidiarity insists that to sweep up all of those associations into one central unit would be “a grave evil and disturbance of right order.” Rather, associations that exist on different levels for diverse purposes must be deliberately maintained in their very difference: their authority cannot be weighed by reference to a common measure or plotted along the same axes; it may not even be mutually intelligible.45

To avoid fixation on an efficiency metric that would steal authority away from primary groups, we sometimes assert incommensurability between the values held by primary groups and those held by subsidiary units such as the state. I understand that affirmation of a certain incommensurability of values has been useful for protecting communities against incursions by the state under a one-size-fits-all

principle of efficiency, but there is an opposite danger that over-affirmation of incommensurability can in fact amount to affirmation of moral relativism. For a start, who out there is able to say that the values they hold for their family are entirely separable from the values they believe political representatives should cherish? Who is able to say that what they are doing in their book club is completely independent of the state’s concerns over literacy? Even if the state is blinded to the value of religion because of church-state separation, members of religious congregations still often assess the state’s work as either part of God’s plan or contrary to it. These are areas of communicative overlap, for which a full assertion of incommensurability of values can be strong tobacco indeed. Incommensurability as “lacking a basis of comparison” asserts incommunicability, amounting to moral relativism in the realm of social norms and conceptions of justice, and ruinous of the very idea of democracy. At the level of a social whole, the position in fact readmits liberal sovereignism through the back door by giving the state an independent existence held accountable to only its own notions of efficient regulation under conditions of moral neutrality. As Alasdair MacIntyre explains:

For liberal individualism a community is simply an arena in which individuals each pursue their own self-chosen conception of the good life, and political institutions exist to provide that degree of order which makes such self-determined activity possible. Government and law are, or ought to be, neutral between rival conceptions of the good life for man, and hence, although it is the task of government to promote law-abidingness, it is on the liberal view no part of the legitimate function of government to inculcate any one moral outlook.

Such a position is symbiotic with a principle of subsidiarity that affirms incommensurability between community ideas of the good and state-based ideas of the good.

If we are to demonstrate the inadequacies of a single efficiency metric for adjudicating what level of decision-making is most appropriate, while nevertheless avoiding a reduction to moral relativism, I believe we would be better placed affirming intransitivity. Intransitivity is the principle that the measure used to compare two items cannot be effectively used to compare with a third item. It does not exclude being able to make comparisons, only insists that comparisons are binary in nature, and so do not produce a general comparative metric. For questions of decentralization or subsidiarity, the principle amounts to saying that one level of organization can be most appropriate for realizing a certain good, but that does not provide a general theory of decision-making competence. After all, we seek particular things when in associations or enjoying the assistance of the state, and can certainly then debate which level is best for achieving that particular thing. We cannot be sure which level is most competent until we are settled on
what is the aim, with our aims ultimately dictated by the intrinsic desirability of self-direction, enjoyed through fostering the basic goods.\textsuperscript{49} The point is that binary comparison over which level of decision-making is best for realizing a particular good only yields authority over pursuit of that particular good, not systematic authority over deciding the totality of goods for which pursuit is acceptable. Together, our good aims and pursuits make up the common good, but that does not mean a common good is realized by a single, common institution. The state probably has as its particular area of specialty law and order, and the fostering of stable international political alliances, but the topic of who is thought sovereign over all affairs is uninteresting as a general way of determining who is best at pursuing what things. Furthermore, it must be added that the need to coordinate the pursuit of specific goods in order to arrive at the common good is not a responsibility specific to the state. Sometimes commentators confuse the state’s responsibility to coordinate its own institutions with a responsibility to coordinate society as a whole. This is usually because of the near ubiquitous presumption that the state is responsible for what is in the public domain, with the public domain defined as everything that involves common action to be optimally resolved.\textsuperscript{50} Admission of the social and dependent nature of man then renders everything as of possible public consequence, and the state becomes responsible for everything. As Russell Hittinger remarks, “arguments to the common good can prove counter-productive in the face of the modern state, which is more than happy to make common the entire range of goods.”\textsuperscript{51} In fact we do not give the state powers in order to coordinate society as a whole but in order to do particular things which are best done in a coordinated manner. There is no single institution solely responsible for coordination: it is the responsibility of all who act that they act with appropriate prudence and passivity so as not to unnecessarily duplicate or undermine the efforts of others.\textsuperscript{52} If there is a single institution with particular specialty in facilitating coordination it is the family, which has the most direct line into the formation of the habits, manners and social mores that bring about the coordination of society’s parts, as Alexis de Tocqueville reflected so interestingly on.\textsuperscript{53}

\textsuperscript{49} The basic goods as described in Finnis,\textit{ Natural Law & Natural Rights}. In keeping with such an approach, Cahill observes, “subsidiarity proposes an archetype of embedded authority that runs counter to disembodied authority in all its vital characteristics. Moreover, that archetype is undergirded by conceptions of the person, of freedom, of justice, of the good and of the common life that also diverge significantly from those of sovereignty and liberalism.” Cahill, “Sovereignty, Liberalism and the Intelligibility of Attraction to Subsidiarity,” 131.


\textsuperscript{51} Hittinger, “Social Pluralism and Subsidiarity in Catholic Social Doctrine,” 393.


\textsuperscript{53} In Tocqueville, who saw so clearly the relevance of social mores for understanding society’s overall coordination, we nevertheless find a mixed appreciation of the role of the family. Tocqueville
In pursuing a particular good through community action and state assistance, the critical evaluation of what level of decision-making will be most appropriate is part of the practice of subsidiarity. As such, subsidiarity is inherently political. Politics is an activity that considers 1) how things are, in order to establish 2) what is practically reasonable, 3) for the flourishing of human society. There is no philosophical difference, on this view, between the formation of primary rules about what should be done and secondary rules about how primary rules are made. Both are in the realm of politics, for both seek what is practically reasonable. It is in deciding who gets to decide that we take forward the fullness of our nature as political animals.

III. The Practice of Subsidiarity

I have discussed the principle of subsidiarity and have sought to establish how an attempt to immunize it from politics in fact takes a damaging turn by relativizing community notions of the good and community political participation. Affirmations of the value of local decision-making cannot be dismissed as espousals of indigeneity, disability or primordiality but must be taken as exhibitions of the fullness of what it means to be political, or, more simply, what it means to be.

There are thus many ways to practice the principle of subsidiarity. As justificatory methods, they depend on connecting the question of the division of authority with the human person’s social aims, in keeping with the distinct definition of politics outlined above. Five approaches to affirming subsidiarity are offered here, though the outline is cursory at best. The point is not to exhaustively explain them as schools of thought, but to illustrate the diversity of possible approaches to practicing subsidiarity, and then to briefly provide some criticisms in connection to the difficulties identified above. The five distinct

observed an erosion of the authority of fatherhood in America, which he noted as parallel to the erosion of inequalities in the democratic age. Even in its breakdown, however, the family is of fundamental importance for influencing the habits and mores that go on to shape society as a whole. Take, for example, the following: “In the aristocratic nations of the Middle Ages, the passing of the generations seemed an empty event because each family was like a man who stood still forever and never died; ideas varied hardly any more than social conditions. Every man in that society, therefore, saw the same objects before his eyes and viewed them in the same light. His eye gradually took in the smallest details and his vision could not fail in the long term to become sharp and accurate. Thus, not only had the men of feudal times very extraordinary opinions of what constituted their honor but each of these opinions assumed a definite and precise shape in their minds. It could not ever be the same in a country like America where all the citizens are on the move and where society, itself subject to daily modification, changes its opinions according to its needs. In such a country, men have glimpses of the rule of honor but rarely have enough time to consider it attentively. Were society to stand still, it would even then be difficult to settle the meaning of the word honor.” Tocqueville, Democracy in America, Trans. Gerald E. Bevan (London: Penguin Books, 2003 [1835]), 724.

54 Politics concerns itself with restrictions of time, space and scarcity, in contradistinction to theology which concerns itself with eternity, universality and abundance (grace).

approaches are: liberal, republican, utilitarian, relativist and virtue ethicist. In broad terms, a liberal approach advances subsidiarity to affirm the autonomy of community decision-making in order to better hold the state to account. Autonomy from the state is framed in terms of individual freedoms and rights that are established by the state through law. A republican approach to subsidiarity takes centralized state authority as legitimate only when specific tasks are placed in its hands. It is the people that must choose what particular powers are given to a central authority, with anything not specified remaining at the community level. State powers should pertain to goods that are hard to achieve locally, and their exercise must not be used as a pretext for further expansion of state power. The utilitarian takes state and societal goals as commensurable under a principle of efficiency and so advances subsidiarity according to which authority would be most efficient in making decisions. The question of to what ultimate end decision-making can be regarded as efficient is not broached, though can loosely be said to consider the resulting pleasure and pain derived by individuals. The relativist holds that diverse community ideas of the good are incommensurable, especially with state-based ideas of the good. Community articulations of self-direction are justified on their own terms and of equivalent moral authority to each other’s and the state’s articulations. Authorities need to recognize the independence of associational groups through a principle of non-absorption.

I believe these four approaches are flawed. The liberal approach entails lexical dependency on the state, whereby the articulation of local authority must succumb to the state’s standards on the rule of law, in turn requiring conformity to a process of standardization through equivalence of community demands according to a doctrine of individual rights. To explain, the fairness of state procedures means advocacy is to be in keeping with principles of the rule of law and theories of minority rights, when in fact the original demand may not have been for fairness of treatment before the law or an extension of rights but, rather, defeasible freedom to do something, simpliciter.

The republican approach can run into difficulty in being unidirectional, that is to say it asks the question, “When can the state take away what I have?” without developing a principle for relocating power in the other direction from the state to associations. While some associations pre-date the state, many do not; often the good ideas and creativities that come from groups require new liberties to be obtained from the state that were hitherto justifiably denied. Suppose, for example, that my research lab discovers medicinal aspects to a drug that was previously banned outright, or if I were to seek to build a “graffiti park” where young people would be free to do graffiti as art. These are moves back towards associational or group behavior that take away from the central state its neatness of standards of criminality, in areas where we used to think it good to give the state full authority. In the republican approach, one talks first of the people’s freedom,

56 For robust discussion of a republican approach to subsidiarity, though under the alternative language of “a federal ordering of society,” see Aroney, “The Federal Condition: Towards a Normative Theory.”
that is then selectively given over to the state for particular activities. The principle for relocating the scope of authority back to the community is not clear.

The utilitarian stance suffers from failing to appreciate that the ends aimed at by community members are often qualitatively distinct from what can be measured along a single metric of “efficiency.” By focusing on a single metric, the approach puts decision-making power in the hands of the “measurer,” rather than the “doer.” Not only is this a problem for imposing an arbitrary distance between leader and member, it underappreciates how more measurable aims can change within the same associational group over time, without that being in contradiction with the group’s less measurable raison d’être. Like, for example, when a neighborhood organization starts up because of the problem of crime in the area, then switches to building teams for trash collection in nearby parks. The ultimate aim of the group is “neighborhood togetherliness,” which can be illustrated by the specific achievements of the group at any one time, though is irreducible to any single achievement. The group’s aim can even be accomplished in spite of every specific activity being inefficient on its own terms.

As has been discussed, the relativist approach suffers from overextension of the argument that values are incommensurable. Affirming incommensurability can appear useful for establishing some kind of equivalence between community articulations of the good and state articulations of the good, but the stance at the same time denies basic aspects of human coordination and communication, and therefore the very feasibility of original group formation. One can also make the argument that affirming incommensurability in any case fails to prove equivalence of moral demands and therefore any right to non-absorption. Incommensurability simply asserts that two things cannot be compared. This, in effect, says that one does not know whether there is any equivalence between them. It does not establish that they are of equal standing as that would require some ability to compare. Take, for example, me saying that I have no way of knowing if the reader prefers apples or oranges. That does not mean I can say the reader is indifferent between apples and oranges. Ignorance of comparative value does not generate equality. Any hypothesis of equality presupposes a commensurable value with respect to something.

One can alternatively imagine a virtue ethicist approach to subsidiarity which would, I believe, meet the demands of many if not all of the points raised in discussion above. A virtue ethicist approach to subsidiarity takes the practice of solving social problems as generative of greater awareness of human needs, demands and capacities. This in turn forms zones of debate on what level of authority would best realize particular goods in tandem with discussion on the meta-explanation of the aim of human society. The stance does not affirm incommensurability between community and state values, for it believes that communication about ends is part of the practice of human coordination. At the same time, a virtue ethicist refuses to place all activities on a single spectrum of efficiency, for associations can act towards diverse ends, each of which can be considered good in itself, just like the diversity of virtues that make up our notion of the life well lived. The comparative mechanism is, therefore, irredicibly binary, for it asks if one aim will be better established by one actor or by the other, or asks
which aim of two possible aims is best. It does not assume either the state or the associational group is better at decision-making in general. Any movement from one realm of authority to another must satisfy the method of binary evaluation, and one cannot excuse usurpation on the grounds of one authority type being in general more effective. Equally, as one’s values in the public realm are never entirely incomprehensible to those in the private realm, a declaration of incommensurability is insufficient grounds for usurpation of authority. Regular dialogue on aims and means is part of a generative practice of human coordination, which in turn facilitates two-directional changes in authority structures, depending on what the common good requires. Primary group and subsidiary get to know each other not through legal codification—which may, nevertheless, be a complementary by-product—but through sharing the practice of solving social problems.

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In the above, I have mixed normative prescription of what subsidiarity should do with notions of what subsidiarity is. Indeed, that is the role played by these approaches: justificatory methodologies for the conversion of the principle of subsidiarity into practices of subsidiarity. Some justificatory method is inescapable if a principle of subsidiarity is to be maintained. Because these justificatory methods are, at any one time, expressly political views about what kind of subsidiarity is required, they should be fully articulated as part of the democratic process and open to being questioned and challenged. To instead hide them, any others, or any combination of them as inappropriate because judgmental on the human good, is to fix on subsidiarity a mask of pretend neutrality.

IV. Conclusion

The article began with the apparent contradiction that the principle of subsidiarity is on the one hand used to explain how perceived lower groups should not have their decision-making authority usurped unnecessarily and, on the other hand, is used as a meta-explanation for how authority is distributed within a constitutional order. The article has shown that it is, in fact, impossible to establish a meta-explanation that neutrally guides allocation of powers, as that would at the same time take the fullness of political life away from primary groups. Rather, the challenge is in reconciling these two uses of the principle so that formulation of the criteria for subsidiarity does not lie wholly outside the groups themselves. It is a hard task, and one that discussion of subsidiarity has hitherto avoided.
difficulties were identified as key to why our notion of subsidiarity often struggles to deliver. The first was the confusion that ensues when subsidiarity describes on the one hand a principle that is, and on the other a practice that is done. The difficulty of this distinction is epitomized in the separation between whether there is a principle of subsidiarity and whether one should do decentralization. The article has counter-argued that subsidiarity is best understood as an intentional practice that participates in the fullness of man’s political nature. Because the question of what parts of society should have authority over what things is inherently political, there is no principle of subsidiarity that can be held aloft as providing a-political ordering. A political program of decentralization is justified under the principle of subsidiarity and therefore forms the intentional practice of subsidiarity. The policy may be mistaken, of course, and not achieve the aim of better ordering levels of authority toward the common good. But it does not fail because of falling short when measured against some kind of independent, a-political and ideal notion of the principle of subsidiarity. It fails on its own terms of what it set out to achieve as an intentional practice. It is not possible to separate meta-explanation of how society’s hierarchy of authority is ordered from the practice of evaluating what society is aiming at here where we are.

As a second difficulty, the article considered whether establishing the principle of subsidiarity in law can successfully reunite the principle with its practice. It was found that, in fact, a principle of subsidiarity made into law is vulnerable to numerous deficiencies, not least that the law often fails to capture the essence of associational groups. In more abstract terms, implementing a principle of subsidiarity through law bears the danger of centralizing the arbitration of disputes around those who are more in touch with what the state is aiming at than what associational groups are aiming at. The third difficulty considered an alternative way of providing a value-free notion of subsidiarity: utilitarian attention towards the relative efficiency or effectiveness of primary groups versus subsidiary units. The approach falsely assumes an equivalence of cost-benefit evaluation between groups that in fact have qualitatively distinct aims. Further, it places ultimate authority in the hands of those who measure efficiency, rather than those who are efficient. In the face of there seeming to be no possible way to provide a politically-neutral notion of subsidiarity, the fourth difficulty considered the fallback position of maintaining that there is no way to compare the respective authorities of groups, and that one should accept that society is made up of units with incommensurate moral ideals. That position is sometimes believed to help establish an equality of equivalence between competing moral demands, though there is no logical reason why such equality follows. Indeed, as a conclusion on the nature of primary groups, it amounts to an affirmation of incommunicability that contradicts the very notion of human cooperation through group-based behavior.

In and among these philosophical difficulties one can posit five justificatory methods for uniting the principle of subsidiarity with the practice of subsidiarity: liberal, republican, utilitarian, relativist and virtue ethicist. Each of the first four suffers from points raised throughout the article, while a virtue ethics approach instead provides a basis for acknowledging diverse group ends that are nevertheless
in communication through the practice of deciding who decides. I leave for later work a more expanded treatment of the strengths and weaknesses of a virtue ethics approach to the distribution of authority in a political order, and make as my argument here only that some justificatory method is necessary to link the principle and practice of subsidiarity. Without such a link, one denies subsidiarity as part of the intentional practice of politics.