

SUBSIDIARITY IN ASIA

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Abstract: The principle of subsidiarity is a principle of social organization. In recent years, the application of this principle has been found in areas as diverse as international law (especially European Union law), the social teaching of the Catholic Church, and in the structuring of organizations, such as credit unions and co-operatives, and it is influential in a variety of political debates. The key elements of the principle are its perspective from the lowest level to higher levels and its insistence that the purpose of higher levels includes help or support to lower levels. As the principle becomes better known in Asia, there is potential for its application to assist co-operative development of disputed resources and to assist in the growth of globalized professional and business ethics.

Keywords: subsidiarity; European Union; South China Sea; social teaching of the Catholic Church; global ethics; professional ethics

Introduction

The principle of subsidiarity has attracted the interest of scholars in Asia and deserves to be better known among policy-makers. It is a principle of the organization of society. The meaning of the principle is to some extent dependent on the context, especially as it has been used in law, in social teaching, in cooperatives and other organisations, and in political discourse. The meaning of the principle is evolving along with experience of its implementation.

Understanding of the principle of subsidiarity, not in isolation but in its interaction with other principles, may be helpful in social organisation in Asia. Some Asian societies have historically been very complex, with a wide variety of forms of organization. However, subsidiarity may help a new generation to work effectively together, especially in international cooperation. Subsidiarity may also provide insights into the appropriate level of responsibility in the ethics of globalizing business and professions.

Translation and Definition

In English, the word "subsidiarity" is unfamiliar. You can read many discussions where you will find that the definition and meaning of subsidiarity is contested. Some dictionaries do not even recognize the word, even though subsidiarity is a recognised concept in European law and is used at the highest level of treaties, and it is a recognized concept in social teaching. (Even the Microsoft spell-check function on my computer refuses to recognize the word and wants me to substitute "subsidiarily.")

A few years ago, I gave a lecture on subsidiarity to an audience in China. One difficulty became apparent when I wanted to translate my lecture into Chinese. There doesn't seem to be an agreed upon translation of subsidiarity. My academic friends, who were specialists in legal English, puzzled over this word. Since then, I have collected different translations: 基层化原则 (jiceng huayuanze), 辅助性原理 (fuzhuxing yuanli), 自主权原则 (zizhuquanyuanze), 权利自主原则 (quanlizizhuyuanze), 从属原则

(congshu yuanze), and 权力下放原则 (quanlixiafangyuanze). Perhaps the most frequently used is 辅助性原则 (fuzhuxing yuanze). I understand that there may be similar difficulties of translation into other languages.

My difficulties with translation alerted me to the issue that "subsidiarity" is not originally an English word. I understand that its roots are in Latin. The meaning of the word is contested and depends on the context in which it is used. We should use the word with some care, both because of different views about the core meaning of the term and because of the problems in translation of the original Latin and then other languages.

Nearly a decade ago, Chinese political scientist Liu Junning pointed out that one of the defining features of the principle of subsidiarity is that governments at all levels should not be engaged in any work that can be done by the next lower level of government. All things which can be done by civil society organizations should not be done by the government. All things which can be done by individuals or families should not be done by government or civil society organizations (Liu 2003). However, Liu's observation reflects only part of the definition and, perhaps, the less important part. More important is the concept that higher levels of society (when seen as an organic whole) are meant to support or assist the levels below them. The original Latin meaning of "subsidium" carries this meaning of help, support, or assistance (Ross, 1993). Only later has the related English word "subsidiary" come to have a meaning of "subordinate to" as in the usage of "subsidiary companies" within a group of companies, and this can cause confusion for readers. Some writers suggest a third element to the principle, which is the respective competencies of the different levels should be clearly defined.

The Oxford English Dictionary definition of "subsidiarity" reads: "(in politics) the principle that a central authority should have a subsidiary function, performing only those tasks which cannot be performed at a more local level." This definition is only partial in that it fails to include the meaning of support or assistance and does not include definition of competencies.

Uses of Principle of Subsidiarity

This principle has a variety of applications, and four main areas are in international law (especially European Community Law), in Catholic Social Teaching, in economic organisation of credit unions, co-operatives, and similar organisations, and in contemporary political discourse. This list is not exhaustive. Each of these is worth some discussion, but I will exclude the topic of economic organization of credit unions and co-operatives because this will be dealt with by another author. I will also focus on the modern development of the principle of subsidiarity, rather than its historical origins (Jiang, 2011).

International Law

The countries of Europe are slowly and resolutely moving towards an increasing degree of cooperation. What began as the European Iron and Steel Community has slowly expanded into the European Union. Understandably, this movement is very cautious. It takes place against a background in which localism is also powerful. We have seen the former nation of Czechoslovakia divide to become the Czech Republic and the Slovak Republic. The former Yugoslavia has splintered into many parts, and the process is not complete. At the same time, without nations breaking up, there is a movement towards the devolution of greater power at local levels. Thus, a local parliament has been formed in Scotland, a component of the

United Kingdom of Great Britain and Northern Island. Yet, at the same time, as localism is powerful, there is also a constant increase in the degree of cooperation in Europe. The process of increasing cooperation has been uneven, and the recent history of the Euro shows how the limits of cooperation are constantly being tested. It is a process, and there will be many stages in the future.

Subsidiarity as a principle of international law has been written into international agreements, creating what is now the European Union (Lei, 2007). It allows the implementation of two political imperatives. One imperative is to avoid the centralization of all political and economic power in the Union headquarters in Brussels by protecting other levels of government, including national, regional, and local. The European people are not ready for full union and may never be. The second imperative is to provide a test whereby the validity of centralized legislation or action can be measured, and, thus, disputes can be settled through the European courts, rather than through armed conflict.

Article 5 of the Treaty on European Union contains the definition of the principle of subsidiarity. It ensures that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at Union level is justified in light of the possibilities available at national, regional, or local levels. Specifically, it is the principle whereby the Union does not take action (except in the areas that fall within its exclusive competence) unless it is more effective than action taken at national, regional, or local level. It is closely bound up with the principle of proportionality, which requires that any action by the Union should not go beyond what is necessary to achieve the objectives of the Treaties.

As a legal principle, subsidiarity could also be of assistance among the nations of Asia. Perhaps even more slowly than the nations of Europe, Asian nations are learning to work together and build cooperative structures. Not surprisingly, the nations of Asia are very cautious about this process. In Asia, as in Europe, there is a history of wars, large and small, political, colonial, and hegemonic domination, and religious division. Some countries in Asia and Europe are new and not yet stable. There are powerful regionalisms and even rebellions in both Asia and Europe. However, clearly Europe has been able to move forward more rapidly than Asia. The application of the principle of subsidiarity helps each nation to make the cautious steps towards peaceful international cooperation.

Let us take an example. In the 1960s, European countries had only a few years earlier concluded a major war. Yet these nations were able to conclude a cooperative regime on boundaries and licensing of the petroleum resources of the North Sea. Perhaps this could be a model for Asian countries in areas such as the South China Sea. Professor Shen Dingli of Fudan University has suggested the co-management and development of disputed areas, waters, and resources (Shen, 2012). The application of the principle of subsidiarity could enable Asian parties to see the value of working, as far as possible, at the lowest national or sub-national level and to accept that higher structures that were to aid or assist the lower levels. This would assist a movement to co-management.

When considering the place of subsidiarity in international law, it should be emphasised that the principle of subsidiarity cannot be considered in isolation. It must take its place along with other principles of international law, and in the application of the principle of subsidiarity in the European Union, it is closely bound up with the principle of proportionality, which requires that any action by the Union should not go beyond what is necessary to achieve the objectives of the Treaties. Other principles of international law include respect for sovereignty, equality, and reciprocity, principles relating to treaties, and principles relating to human rights and dignity.

Catholic Social Teaching

Catholic Social Teaching understands human society as a complex network of relationships in which individuals participate in a wide variety of groups, including economic, social, cultural, sporting, recreational, professional, and political. The principle was first expressed in negative form in 1931: “Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organisations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them” (Pontifical, 2005). The forms of help (Latin *subsidium*) can include support, promotion, and development.

The principle of subsidiarity gives us a standpoint to analyse social and economic organs through the way in which they relate to the individual and to the social communities to which the individual belongs. Thus, subsidiarity has been used to critique unregulated and unrestrained market capitalism, which reduces the individual to an economic pawn, largely deprived of means of production. In the twentieth century, the principle of subsidiarity has influenced the distributivist movement, which has as its focus the distribution of the means of production to the lowest possible level. The principle continues to influence anti-trust legislation and anti-trust regulators, providing a basis for resisting monopolies and cartels and allowing the distribution of market power.

When considering the place of subsidiarity in Catholic Social Teaching, it should be emphasised that the principle of subsidiarity cannot be considered in isolation. Catholic Social Teaching is grounded in the human dignity of each individual, and subsidiarity is one of three pillars. The other two are the Common Good and Solidarity.

Political Discourse

We have seen that the principle of subsidiarity has influenced distributivism and anti-trust. Perhaps it also has an influence on federalism. A version of subsidiarity is also part of discourse among conservative or libertarian thought, particularly as that is emerging in the United States of America. In this discourse, subsidiarity is sometimes equated with small government and limits to the function of government.

However, it should be noted that the principle of subsidiarity is neutral as to big government or small government. It simply relates to the appropriateness of taking decisions and action at the lowest possible level. It also sets out the function of higher levels to support or assist lower levels. Catholic Social Teaching articulates situations where it is necessary for the state to act directly in the economy and other aspects of society, at least on an exceptional basis. Also, some thinkers emphasize the importance of subsidiarity without balancing this with other principles. Catholic Social Teaching has three pillars: the common good, solidarity, and subsidiarity. Without these balancing principles, over-emphasis on subsidiarity has led away from social justice and towards an individualist conception of the public order.

Mencius and Subsidiarity

I sought to find some guidance in the Asian philosophical and spiritual traditions. I turned to the classical Chinese philosopher Mencius 孟子 (circa 372 to 289BC), who taught in the Confucian tradition. Mencius wrote on a variety of topics, but it is his teaching on social organisation that interests me in this

context. Mencius was not afraid to challenge the rulers of his time, and his words have been kept for us. Mencius (14.14) said: “Of the first importance are the people, next comes the god of land and grains, and of the least importance is the ruler” (Zhao, 1999).

This text turns upside down the conventional thinking of the time. Conventionally, the people had to serve the spirits and to serve the ruler. Mencius makes us realize that the higher levels in a hierarchy are to be at the service of the lower levels. Also, the authority of the higher levels is subsidiary because its purpose is to undertake tasks that could not be practicably undertaken by lower levels alone. This can come as a surprise to those who think that subsidiarity stresses the subordinate role of lower levels. In fact, subsidiarity stresses the primacy of lower levels: higher levels can only be justified insofar as they support or subsidize the lower levels that are closer to the grass-roots. The text from Mencius is often quoted on a variety of issues, but I suggest that it also provides us with the insight into subsidiarity. Of course, Mencius is only one of many classical thinkers. Yet, his influence continues to resonate today. His wisdom may be uncomfortable for rulers or leaders in higher levels of organization, but his wisdom should not be forgotten.

Subsidiarity in Business and Professional Ethics

Subsidiarity is a principle of social organization. We know that none of us is an island, and even the smallest business requires some higher-level organisation. A sole proprietor running a small store cannot exist without complex services to supply the goods that he or she sells. A sole practitioner in medicine or law cannot exist without the complex arrangements and traditions that enable practice.

In fact, we are experiencing new levels of complexity in the globalization of business and of the professions. For example, recently, two law firms in China and Australia entered a new business relationship, forming one of the largest legal service organizations in Asia. When such unions bring together very different ethical traditions, the principle of subsidiarity can help us to enable appropriate ethical decision making within the new body. The principle of subsidiarity is not just about efficiency but has important moral or ethical consequences. It is not just about gaining popular support by devolving power to the grass-roots. Its basis is personalistic: that is, a conviction that each human person has a unique human dignity. The value of the person is ontologically and morally prior to organizations in society, even the family.

Part of that human dignity is also responsibility: not only does power belong to the lowest practicable level, but also the matching responsibility to act belongs at the lowest practicable level. Thus, there are two ethical issues here: the first issue is the ethical duty to order society in accordance with the unique human dignity of the person, and the second issue is the ethical duty of each person to act in accordance with their dignity and the responsibility it carries. It is the application of this principle that is the special task of ethicists in fields of applied ethics, such as business ethics or professional ethics. Philosophers might make their contribution, but practical ethicists have the task of finding the ways of applying the principle of subsidiarity in their own fields.

Another area of application for the principle of subsidiarity is in evaluating the work of professional organizations and business organizations. Do these organisations work to help, support, and assist the lowest level in the profession or business, giving emphasis to the development of all individual members? Or has the organisation been dominated by an outside group or a small clique within the profession or

business? In Asia, business and professional organizations are growing in number and in maturity, and the application of the principle of subsidiarity can help to keep them rooted in the mass of members.

Subsidiarity and Its Contrasts

It may be useful to distinguish the principle of subsidiarity and its application from some other principles or practices that have some similar features.

Devolution or Delegation

Some modern business or management theories emphasise the importance of devolution of power and authority to lower levels in an organization, such as a corporation. This is sometimes called empowerment. Such a management practice should not be confused with subsidiarity. Delegation or empowerment relies on the delegation of power from higher levels to lower levels (for example, from a management office to the shop floor). By contrast, subsidiarity takes as its premise that power already belongs to the lowest possible level and is granted to higher levels only when necessary. Of course, the other side of the coin is that responsibility also belongs as far as possible to the lowest levels, starting from the individual human being and then moving into more complex sectors of society.

Centralization

Centralizing doctrines argue that the most efficient level of government is the central level because the centre has the maximum information or knowledge and the maximum power or leverage. Therefore, all resources should be best subordinated to centralized decision and control. According to centralizing doctrines, power and responsibility properly belongs to the centre, though it may in practice be delegated to subordinate organs. This is in contrast with subsidiarity as it is defined in this paper.

Federalism

Federalism, with its divisions of power and responsibility at different levels and with its clarification of respective competencies, can seem close to subsidiarity. However, they are not the same. Federalism is based on the unification of previously independent units into a single mega-unit while reserving certain competencies to the smaller units. Subsidiarity as a social philosophy applies as much in a unitary state as in a federal state. The European example reminds us that subsidiarity is also applicable in co-operative structures that encompass a number of states or other units.

Complementarity

The principle of complementarity has been applied in the establishment of the International Criminal Court. It is intended to emphasize that the court does not function in a national or international hierarchy of courts. It is not superior to or inferior to national courts. Rather, the International Criminal Court is intended to serve as a complement to existing national courts, having jurisdiction only when national courts are unwilling or unable to act (El Zeidy, 2008).

Conclusion

The principle of subsidiarity is grounded in the dignity of each human person and has a variety of applications: first, it is one of three pillars of Catholic Social Teaching; second, it has an important place

in international law, especially in the development of European international structures; and third, it is a principle of societal and organisational arrangement. However, the principle has many definitions or applications. It has evolved in history, and the meaning of the principles has been amplified by experience. Like its companion pillars, solidarity and the common good, subsidiarity is complex. The principle has important ethical consequences in its approach to both responsibility and power.

The principle of subsidiarity is not magical. The application of the principle requires consistency and perseverance. However, it may be a useful principle for policy-makers in Asia to enable development in accordance with the human dignity of each person and to enable development in growing cooperation. For business and professional ethics, the principle of subsidiarity assists in promoting the growth of ethical individuals and enterprises that accept responsibility at every appropriate level of society. For governments, the application of the principle of subsidiarity may assist in cautious but ever-deepening peaceful cooperation.

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