# **Subsidiarity, States, and Intermediate Groups:**

# **Maintaining Subsidiarity’s Distinct Contribution to Moral Philosophy**

***[Note: This is an author’s accepted manuscript for archival purposes only. Please read and refer to the published article in the Journal of Social Philosophy.]***

# Subsidiarity typically refers to the presumption that issues should be addressed at the most ‘local’ level capable of addressing them. The nature of the presumption, how to specify the ‘local’ and the entities with valid claims, and how to interpret ‘capability’ remain contested. Yet these basic features figure in most accounts of subsidiarity.[[1]](#footnote-1) Subsidiarity so-understood is asked to play numerous roles in numerous contexts.[[2]](#footnote-2) Yet dominant historical and contemporary accounts thereof can be broadly distinguished along two types detailed below: those seeking to use subsidiarity as a guide to constitutional ordering within legal systems and those seeking to use it as a guide to the appropriate relationship between groups each claiming domains of authority. These purposes are distinct even where related. Whether uses of the term ‘subsidiarity’ for each consistently refer to the same concept, let alone one historically continuous concept, is debatable.

This article argues that subsidiarity is more likely to make a distinct contribution to moral ontology when addressing the relationship between groups claiming distinct domains of authority, particularly as between states and intermediate groups like churches and universities. Deflationary critiques suggest that subsidiarity cannot play its intended constitutional ordering roles. Continuing to use the term in constitutional debates threatens confusion, which is exacerbated where the same term is frequently and aptly used to refer to a distinct concept operating in another normative domain. The term should be reserved for that other domain.

My argument proceeds as follows. First, I outline intended historical and contemporary uses of ‘subsidiarity.’ Next, I detail why subsidiarity is unlikely to play a distinct role in constitutional ordering. Then, I explain how subsidiarity can play its intended role outside constitutional contexts. A conclusion outlines implications of my findings. The mix of historical and conceptual/normative analyses throughout is non-standard in analytic political philosophy but appropriate here for at least three reasons. First, it places the piece in conversation and continuity with existing scholarship. Subsidiarity is a social, rather than natural, phenomenon. Most contemporary work thereon accordingly contains historical and normative components.[[3]](#footnote-3)

Second, attending to historical and normative considerations better fulfills relevant conceptual desiderata. A theory of a political concept should, plausibly, identify its distinct contribution to moral ontology and licit and illicit uses of the term. It should also offer a means of evaluating whether the concept can play its intended normative role(s). Attending to the specific problems subsidiarity has been asked to play helps identify its possible normative roles and referents, thereby providing a target for analysis. A theory will be better, all else being equal, if the theory can explain why the same word has been used to address each problem below or if it permits subsidiarity to play its intended normative roles. It will be better still where it can do both.[[4]](#footnote-4)

Finally, subsidiarity is especially well-suited to historically-informed analysis. Queloz (2023: 209, 211-214) suggests genealogy is useful where and because it lets philosophers identify why a concept appeared necessary and thereby provides a means of analyzing whether and when it is serving its intended purpose(s). Knowing the historical need the concept was intended to fulfill raises questions concerning whether we still have the need, whether the concept is doing as well as it could in serving that need, and why the concept may have arisen with different needs (and underlying values).[[5]](#footnote-5) This provides a means of evaluating theories that is especially useful for concepts subject to deflationary critiques: Genealogy provides a test for determining whether such critiques succeed, calling on normative theorists to explain whether and when a concept fulfills its historical purposes and can still play its intended normative roles. As discussed below, subsidiarity appeared as a response to particular needs and is subject to several deflationary critiques, making it apt for genealogical examination. Yet genealogy’s proponents (*id*.: 43) admit that it can be fruitfully paired with other forms of analysis, including conceptual analysis. The following is also proof-of-concept for continuing combined historical-conceptual analyses. That is, it provides a case study in joint historical-conceptual analysis and thereby demonstrates the potential value of such an approach for analyzing political concepts with similar properties.[[6]](#footnote-6)

Subsidiarity’s Core Historical Roles

This work examines whether and how the concept of subsidiarity can make a distinct contribution to moral ontology that reflects use of the term ‘subsidiarity’ in moral discourse. To play a distinct moral role, subsidiarity should serve a role or function in moral philosophy that no other concept can serve. If, for example, subsidiarity’s guidance for constitutional ordering is reducible to guidance provided by democratic concerns alone and subsidiarity does not provide guidance to any other debates, it makes no distinct contribution. A descriptively adequate account of subsidiarity should, further, reflect the roles/functions subsidiarity is asked to play in moral discourse – and how it is meant to do so. An account that cannot serve any intended roles adds little to moral discourse. And an account that gives up on subsidiarity’s longstanding constitutive commitment to proximity would not plausibly qualify as a theory of ‘subsidiarity.’ An account will be better still if ‘subsidiarity’ provides plausible guidance for relevant debates.

Working models of the two dominant approaches to subsidiarity are useful when reading about its history and evaluating its potential content and roles. They can be characterized as follows:

*The Constitutional Approach*: Subsidiarity is a principle applying to governmental (most often state) conduct, providing tools to guide decisions concerning the allocation of government decision-making powers in a polity.

*The Intermediary Approach*: Subsidiarity is a principle demarcating the limits of claimed overarching (most often governmental) authority, providing tools to assess claims that other (non-governmental) groups should have in resisting an overarching (at least de facto) authority (e.g., contemporary nation-states).[[7]](#footnote-7)

The constitutional approach is common in contemporary legal thought. It holds that subsidiarity is a guide to constitutional ordering within sovereign entities’ legal systems. Subsidiarity could be a principle in a constitutional text or for constitutional interpretation whereby powers should be presumptively placed at the most ‘local’ level. Relevant constitutional authority claims are primarily made by geographical state entities, like central, provincial, and municipal governments. The intermediary approach, by contrast, suggests that subsidiarity is a guide to the appropriate relationship between different sets of groups claiming domains of authority. Victor Muñiz-Fraticelli (2014), Maria Cahill (2017, 2021), John Finnis (2016), and others variously state that subsidiarity, properly understood, cannot adequately resolve questions about the allocation of authority among state bodies – and that subsidiarity was never meant to play that role alone. Subsidiarity is better understood as a principle for addressing competing claims by states and non-state entities, like churches and unions, that arose prior to or contemporaneously with nation-states and possess authority claims that precede or continue to operate alongside states. In the modern era, conflicts between these entities are often resolved within the confines of state law. However, subsidiarity offers a means of articulating where and when states should refrain from interfering with other groups who can validly claim authority over their members.

This work defends and builds on prior work on the intermediate approach by demonstrating that subsidiarity can make a distinct moral contribution when it plays that approach’s constitutive role and by identifying normative reasons to think subsidiarity so understood serves a valuable function.[[8]](#footnote-8) The history of subsidiarity helps identify both the roles and functions subsidiarity may play and central features that any account of subsidiarity must address. This section accordingly surveys core developments in subsidiarity’s conceptual history to highlight those roles, functions, and central features. It thereby helps explain the development of the major approaches above and specifies desiderata for any theory of subsidiarity that I use to evaluate the approaches below.

Standard histories of subsidiarity focus on core moments of conceptual development. These include Aristotle’s work on the relationship between the polity and other groups, like the family; Johannes Althusius’s work on the city and other ‘local’ bodies as the modern state developed prior to the *Treaty of Westphalia*; the adoption of a principle of subsidiarity in nineteenth and twentieth century Catholic thought; and the twentieth century adoption of subsidiarity in European Union [E.U.] law and constitutional law.[[9]](#footnote-9) These moments do not provide a complete conceptual history.[[10]](#footnote-10) Some may contest whether the earlier moments actually referred to something similar to the modern concept.[[11]](#footnote-11) However, these core moments suffice for our purposes. This is not a work in the history of ideas seeking to examine how the concept developed over time. It is a normative work that takes the historical genealogy of the concept to be pertinent in at least two ways: Historical use, again, sets the contours of explanatory desiderata for a theory of subsidiarity and identifies problem-addressing roles subsidiarity could fulfill. Even those who contest whether Aristotle or Althusius, for example, possessed anything resembling the modern concept of subsidiarity grant that those thinkers are part of the concept’s “pre-history” (Muñiz-Fraticelli 2014: 57, 65). Focusing on widely accepted core moments in the development of the concept permits one to identify the main problems that subsidiarity was (and is) meant to resolve and use cases of which any apt theory of subsidiarity should take account.[[12]](#footnote-12)

Attending to core moments in the conceptual development of subsidiarity underlines a consistent focus on conflicting authority claims. Subsidiarity aims to guide decisions about how to allocate powers where different entities possess facially valid authority claims. Core moments in the conceptual history of subsidiarity largely track core moments in the development of the state and, more recently, supra-state institutions. Subsidiarity in its modern form arose alongside the development of the modern nation-state and initially sought to address conflicting state and non-state authority claims. Subsequent developments continued to address challenges that arise where multiple groups have clear authority claims and one group, most often a state, claims a ‘higher,’ most often legal, power that can constrain other groups’ powers. Most conceptions additionally focus on issues concerning the allocation of authority, whether between different ‘levels’ of the state (e.g., federal and state) or on the appropriate distribution of authority between state and non-state (e.g., church, union) actors. Claims that subsidiarity primarily concerns competing claims by different *state* entities are comparatively new. A presumption that subsidiarity should establish legal powers for provinces or municipalities does not consistently feature in the history of the concept. Whether this modern legal presumption is a core feature of the concept for which any account of subsidiarity must account is thus historically contestable. But modern constitutional appeals to subsidiarity have some clear historical precedent. We can accordingly examine whether any newer constitutional roles *should* be considered continuous with earlier roles – and whether the claimed constitutional concept properly fits under the term ‘subsidiarity.’

Many core developments occur in the context of the development or changes to the construction of states. They aim to address conflicting authority claims occasioned by the creation and development of early state-like entities (e.g., empires) and, later, modern states. Aristotle, for example, is relevant to the history of subsidiarity by virtue of an interest in polity-group-individual relationships that was later translated into a problem for empires, religious groups, and then-nascent intermediate groups, like guilds.[[13]](#footnote-13) Aristotle is at least considered a proto-theorist of subsidiarity insofar as he was concerned with the relationship between the Athenian polity, associations like the family, and individuals. Finnis (2016:136) thus discusses a “proto-emergence” of the principle in Aristotle sourced in Aristotle’s comments on the role of associations in fostering individual flourishing. Finnis further ties Aristotle to subsidiarity via one of Aristotle’s most influential interpreters, the Catholic Saint Thomas Aquinas, who discussed how different associations aid individual flourishing and associations’ duties to foster such aid by supporting their members and other associations better positioned to do so (134-135). Untangling the relationship between putative authorities and their ability to serve individual ends is a core function of modern theories of subsidiarity. Follesdal (1998: 199) suggests the first desiderata of any theory of the concept is to provide plausible “conceptions of the individual and of the proper relations between individuals, various social associations (including states) and the larger political system.” While Aristotle himself may not have been a theorist of subsidiarity,[[14]](#footnote-14) this problem remains one that subsidiarity is intended to solve today.

Discussion of Aristotle in prehistory of subsidiarity thus remains apt, but much had obviously changed by the time Aquinas translated the underlying concern into one involving something resembling subsidiarity. Neither Aristotle nor Aquinas discussed modern nation-states. Nation-states had not yet developed when they wrote. However, Aquinas’s treatment of governmental entities, associations, and individuals already had to address the development of Catholic influence, empire, and what would become intermediate associations, like universities. Any ‘modern’ subsidiarity-like concept linked to Aquinas thus already includes empires and (proto-)intermediate groups. Indeed, Finnis (2016: 136) plausibly reads Aquinas as distinguishing the private and public realms and articulating a public good commitment common to justification of each.

The problem of conflicting authority claims remained acute as modern nation-states developed, leading to the co-development of a subsidiarity principle focused on resolving claims by new states and traditional authorities. Althusius addressed the same problem in the light of the emergence of state-like bodies and continuing development of intermediate groups at a time when the interests and values of states and intermediate groups did not resolve under a clear ‘higher’ authority. Althusius was a community leader (“syndic”) in Emden, a Calvinist community in a Lutheran province in a Catholic empire (Follesdal 2014: 200). Althusius sought to protect the city *and* a particular political community from ‘higher’-level government authorities, drawing on public good-style reasoning to do so.[[15]](#footnote-15) Families, guilds, cities, provinces, and states are useful for Althusius where and because each serves individual needs. Each must maintain a sphere of authority that is necessary to protect its members’ good, lest those members lose an association that gives them meaning.[[16]](#footnote-16) Any incursion into their respective domains by a claimed ‘higher’-level body is justified only if necessary to fulfill the needs (Follesdal 2014).

While Follesdal (216) accuses Althusius of taking the groups in the prior paragraph as relevant units of analysis without argument, Althusius wrote at a time when these and other groups had developed distinct claims Althusius sought to adjudicate. Muñiz-Fraticelli (2014: 244) notes that the development of different spheres of authority in this era was the result of particular groups making particular kinds of claims. He and Levy (2014: 89) each highlight the Medieval development of universities, cities, churches, guilds, and independent military orders, for example, and note that these institutions created tensions when modern nation-states sought to become overarching authorities for all spheres.[[17]](#footnote-17) ‘Pluralists’ sought to maintain diverse jurisdictions and legal systems, with the Catholic Pope and the Emperor, for example, each maintaining domains of authority. Intermediate groups would not rely on the state for their authority but would serve as a ‘check’ on state authority claims (Muñiz-Fraticelli 2014: 39, 246-247). Subsidiarity at least seeks to mediate conflicting claims. For Althusius, this minimally meant de facto ‘higher’-level authorities that gained control over a region where other groups previously led, whether provinces or Empires, faced a discursive burden to ensure public arguments occur wherever they attempt to limit those groups’ domains of authority (Follesdal 2014: 212). Subsidiarity further provided a burden of justification for incursions by any entity into another entity’s domain. This too was meant to protect distinct city or religious interests.

The subsidiarity principle developed in Catholic social thought of the late nineteenth and early twentieth century continued the tradition of mediating relationships between groups central to individual lives and each claiming distinct forms of authority. Relevant work developed Aquinas-style insights on the importance of families and other groups. Finnis (2016: 139-141), for instance, highlights that the encyclical *Rerum Novarum* (1891) issued by Pope Leo XIII again notes the import of the family but adds that the same rights of association justifying the nation-state also justify the existence and authority of other intermediate groups, like unions. The encyclical further states that interference within the domains by any entity, including the state, should be exceptional and tied to the interests justifying the groups’ existence. Follesdal (2014: 218) suggests the encyclical also had a political purpose, seeking “to protest capitalist exploitation of the poor and to protect the Catholic Church against socialism.” The latter, at least, again speaks to the basic interest in mediating other interests in non-state authority and claimed state political authority. This mediating role remains central to Catholic social thought despite later developments in Catholic thought whose details are outside the present scope of inquiry.[[18]](#footnote-18)

Each major moment in the development of subsidiarity canvassed above highlights conflicting authority claims by state-like entities (if not states) and other groups, most often intermediate associations. The adoption of the *Treaty of the European Union* [viz., the Treaty of Maastricht] in 1992 marks the final core moment in the development of subsidiarity. Article 5.3 famously reads:

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.[[19]](#footnote-19)

This article is explicitly intended to structure relationships between a regional body and states. The E.U. and its member states agree that a subsidiarity principle is binding in E.U. law and should limit when the E.U. acts. How this is to be understood is contested. The E.U. and member states differ in their interpretation of whether the Treaty is constitutional and their views on its normative status and whether E.U. law is hierarchically superior to member states’ constitutions.[[20]](#footnote-20) Subsidiarity’s basic function in E.U. law nonetheless remains reasonably clear; it is meant to be a legal ordering principle for allocating jurisdiction between levels of government.[[21]](#footnote-21) Focusing on supra-state organizations, like the E.U., arguably reflects earlier acknowledgments that conflicting claims can exist beyond ‘state’ boundaries, as when predecessors to modern subsidiarity arose in pre-nation-state empires. Yet post-Maastricht forms of subsidiarity also take the existence of states for granted and take the allocation of authority among state entities as their primary focus. The E.U. is a quasi-state-like body on this approach. Some even consider the Treaty a constitutional document such that subsidiarity is a constitutional principle for the E.U.[[22]](#footnote-22) Particular states can (and, on many accounts, should) adopt subsidiarity to structure relationships between their constitutive parts (e.g., federal, provincial, and municipal governments). The focus on subsidiarity as a constitutional concept is even more explicit in some countries. Only 16 countries constitutionally recognize a subsidiarity principle (Cahill 2021: 136). But subsidiarity has explicit constitutional status in each. It can be a decision principle for constitutional moments or means of interpreting constitutional texts or structuring debates.[[23]](#footnote-23)

While much has rightly been made about differences between conceptions of subsidiarity,[[24]](#footnote-24) continuities and influence between conceptions of subsidiarity developed at the core moments are notable. Per Barber (2018: 188), “subsidiarity as a principle of constitutionalism has its origins in the Catholic principle, mediated through German federalism and ending in the European treaties.” Cahill (2017) adds that Catholic and E.U. conceptions are at least intended to be continuous. Some continuity is unsurprising given that each conception attempts to deal with related challenges concerning conflicting group public and private authority claims. Difficulties mediating authority claims made by intermediate groups and claimed ‘higher’ authorities (like empires, universal churches and, in the modern era, nation-states) remain consistent throughout core moments in the development of the concept of subsidiarity. Modern challenges adjudicating claims between supra-state (e.g., E.U.), state, and sub-state (e.g., provincial) entities at least appear to share a similar form as these earlier challenges, leading many to look to earlier work on subsidiarity to resolve conflicts. Yet the preceding also suggests the E.U. conception of subsidiarity aims to address a different problem than earlier ones. Related modern ‘constitutional’ conceptions aim to establish a more distinctly legal role for subsidiarity.

The distinct problems that competing conceptions of subsidiarity seek to address help explain differences between them. Muñiz-Fraticelli (2014) and Cahill (2017) highlight ways in which competing conceptions focus on different entities. Those choices arguably reflect different roles the concept is meant to play. Althusius and the Catholic thinkers above discussed distinct authorities with (often) conflicting claims. They could not and did not assume that state claims have presumptive priority over conflicting non-state claims. Althusius dealt with the development of a particular state-like governmental entity. He sought to protect the groups to which he was duty-bound from authority claims by that entity that would otherwise encroach on the groups’ existing powers. Catholics sought to maintain private institutions while also dealing with states. The intermediate approach to subsidiarity may still assume a state will have final authority on these views– a point to which I return below –but the intermediate groups that are central to that approach seek to maintain distinct realms of authority. E.U. law, by contrast, seeks political compromise between states who each otherwise claim complete sovereignty in their country. Constitutional equivalents seek similar compromise between their constituent units. They aim to adjudicate claims among state or state-like entities with legally recognized authority claims and largely presuppose legal orders in which intermediate groups play no major role.

Differences between the constitutional and intermediate approaches to subsidiarity do not entail that specifications thereof must be wholly disconnected. For instance, approaches to each problem speak to relationships between different kinds of groups, suggesting that groups are the primary objects of any subsidiarity principle.[[25]](#footnote-25) Each also offers variants of what ‘subsidiarity’ might do. Subsidiarity might be a rule or a trigger for discourse and justification on either. One thing that does not appear consistent throughout is the idea of a presumption of full decision-making capacity for sub-state entities, like provinces, such that federal governments will not intervene in their spheres, let alone full constitutional authority for provinces. Any case for this common implication of constitutional accounts will likely depend on normative considerations. If a theory of subsidiarity can establish such a presumption and thereby provide useful guidance on constitutional matters, that likely counts in favour of the theory. However, it now appears that subsidiarity could play other distinct roles, requiring more analysis of what it can and should do.

Subsidiarity’s Intended Normative Roles

The main historical problems subsidiarity was meant to resolve are mirrored in contemporary understandings of the concept and its intended role(s) in political philosophy. Legal problems now appear primary. Barber is representative of this more legally-oriented trend. Barber (2018: 188)’s explicitly “constitutional” principle of subsidiarity “focuses on the division of public power within the state, whereas, when it turns to the state, the Catholic principle focuses on the public-private divide, the boundaries of the proper reach of the state.” Bednar (2014: 231)’s description of subsidiarity as the “soul of federalism” is also exemplary. Major philosophical volumes on subsidiarity likewise focus on its relationship to federalism and, by extension, constitutional ordering questions central to that domain: Even the prominent volume co-edited by Fleming and Levy (2014) understands the concept primarily through its relationship to federalism, with Levy’s own contribution being one of the few emphasizing its non-legal roles.[[26]](#footnote-26)

Subsidiarity research is, in turn, common in E.U. studies and constitutional scholarship on some states. Scholars seek to understand how it should structure E.U. governance or the law of particular (most often federal) states. Many then draw generalizations about the concept from whether and how it applies in E.U. law or specific constitutions.[[27]](#footnote-27) Barber (2018)’s discussion of subsidiarity in E.U. law is exemplary. While Cahill (2021: 131) suggests that the E.U. is a bad paradigm case of subsidiarity usage given the lack of normative agreement on why subsidiarity appears in the Treaty of Maastricht,[[28]](#footnote-28) Barber (2018: 191) suggests that the E.U. principle develops “one of the oldest and most basic maxims of democratic government: that what touches all should be approved by all.” This ‘all-affected-principle’ is common in contemporary political philosophy.[[29]](#footnote-29) Barber is not alone in suggesting that it could support something like subsidiarity understood as a constitutional preference for locating authority at local levels. All-affected principle proponents who are oft-considered proponents of world governance, including Robert Goodin (2007), notably acknowledge that it could call for subsidiarity in practice. Principle skeptics also grant this implicature (e.g., Saunders 2010). Other accounts take specific countries’ constitutional laws as primary, with some further suggesting that their approach can apply to the E.U.[[30]](#footnote-30) Some even suggest subsidiarity should structure international or transnational authority.[[31]](#footnote-31) In each case, particular legal conceptions of ‘subsidiarity’ are meant to have broader application.

The legal concept of subsidiarity can be relevant for distinct constitutional moments, including decision-making fora for allocating powers in constitutions; debates about when powers should be reallocated or informally provided to or shared with another body; and judicial proceedings about the constitutionality of particular actions that claim to be within a body’s powers (Da Silva 2023). Subsidiarity can be a principle in a constitution or a principle that can guide constitutional design or interpretation. Many relevant works focus on questions concerning which powers should be allocated to which bodies. Subsidiarity proponents, like N.W. Barber (2018: 212, 218), and critics, like Trevor Latimer (2018ab), take this to be its characteristic role. It is also invoked to guide determinations on how to understand the scope of particular powers and what to do when powers overlap. If, for instance, an issue could be construed as falling under federal or provincial jurisdiction, subsidiarity could favour an interpretation whereby it falls under a provincial power or a conflict resolution rule that would let valid provincial laws ‘trump’ otherwise valid but inconsistent federal laws on that issue.[[32]](#footnote-32) This form of subsidiarity is often proffered as a rule for resolving questions about recognized federal and provincial powers. Recent work suggests subsidiarity should additionally help identify which entities have claims to power or help identify the contours of their powers (or even boundaries). Daniel Weinstock (2014) and Loren King (2014), for example, discuss whether and how arguments for ‘local’ rule could lead to greater recognition of municipal authority than is seen in major federations like the U.S.A. and Canada.[[33]](#footnote-33) Barber (2018: 197-198) says subsidiarity can even require the creation of new entities to maintain the institutional architecture necessary for its implementation. Still others suggest it entails duties for any groups that are recognized, like duties to transfer funds to or otherwise aid local groups so those groups can fulfill set ends.[[34]](#footnote-34) In each case, subsidiarity is primarily viewed as a principle of legal ordering with particular purchase in federal countries.

A smaller community of theorists, including the aforementioned Muñiz-Fraticelli (2014), Cahill (2017, 2021), and Finnis (2016), continue to highlight the importance of intermediate groups and their claims to authority. They are less amenable to dominant legal interpretations. Cahill and Finnis argue that the E.U.’s ‘subsidiarity’ principle is a basic efficiency principle at odds with historical use of the term. Cahill (2017, 2021) suggests that subsidiarity requires flexibility and ongoing contestation among groups with equally valid claims. This challenges claims that subsidiarity should serve any constitutional role outlined above: constitutionalization appears to be a bar to subsidiarity operating properly. Muñiz-Fraticelli (2014) is, in turn, skeptical of subsidiarity’s ability to identify candidate authorities or begin to structure their claims. He suggests the principle can only apply where decisions about who can have some powers and who will have final authority have already been resolved. Here too constitutionalization appears to ossify power in a manner inconsistent with subsidiarity as a first order principle for structuring constitutions. Some focused on intermediate groups suggest that subsidiarity can identify who can make authority claims. But attending to the range of groups who are uniquely positioned to protect their members’ interests within a domain, and so have valid claims to authority therein, makes subsidiarity less plausible as a constitutional principle. Cahill (2017), for example, notes that plausible accounts of the groups to whom the subsidiarity principle may apply could even provide boxing clubs with valid claims where they require a “sphere” of authority to protect member ends. Whether constitutions can consistently recognize a wide range of authorities, let alone plausibly specify their domains of authority in ways likely to protect members, is at best contestable. Typical federal constitutions at most recognize three levels of governments.[[35]](#footnote-35)

Both sets of theorists view subsidiarity as a principle for addressing competing authority claims and each plausibly raises similar analytic burdens. Follesdal (2014: 199)’s adequacy criteria for a theory not only include (1) aforementioned conceptions of the individual, particular groups, and their relationships but also (2) “normative arguments … for standards of just distribution of benefits and burdens among individuals and among associations/states within a larger political system” and (3) “empirical data” suggesting subsidiarity “satisfies the normative standards of distribution acceptably well.” Cahill (2021), in turn, suggests that any theory should explain which groups can have authority, which cannot, and the normative reasons why. I agree (Da Silva 2023). Cahill (2021) further suggests the principle must provide answers consistent with a basic commitment to a proximity principle: subsidiarity, however defined, must show some preference for more proximate groups. These desiderata apply equally to questions about distributions of power in a polity with a clear locus of sovereignty and political questions about how to resolve conflicts between claimed authorities. It is thus unsurprising to see Cahill engage with Barber (2018) or Follesdal (1998, 2014, etc.) treat both problems under a common rubric.

Normative theorists nonetheless address different problems and so take different approaches. Dominant trends take the state– or state-like E.U.– as their target and seek to determine how to allocate constitutional powers therein. A contrary tradition questions whether and when a state should be able to restrict the powers of intermediate groups even conditional on state sovereignty existing. These reflect responses to historical problems above. If a stable conception of subsidiarity can solve both problems, it will likely reflect historical uses *and* fulfill desired normative roles. This would be an ideal outcome for proponents of subsidiarity. However, the problems remain distinct. There is reason to question whether any conception can adequately resolve both – or even, as we will now, whether any can address the constitutional one alone.

Issues With the Constitutional Approach

The constitutional approach to subsidiarity faces several challenges. One concerns use of subsidiarity as an ordering principle for the development of states. Muñiz-Fraticelli (2014: 70) persuasively argues that subsidiarity “is not a principle through which to organize a polity, but rather a principle by which to govern a polity already organized, in which ultimate arbitral authority is settled.” Questions about what qualifies a group as ‘close’ and how to determine whether and when a subsidiary-like presumption favouring ‘closer’ groups is established or defeated are contestable. Absent some pre-existing rule on how to resolve these disputes, subsidiarity cannot be applied. Subsidiarity accordingly requires the existence of a constitutional order with rules on how to adjudicate disputes. It may still prove valuable for other constitutional tasks, like reallocation or interpretation of powers. However, it cannot be applied prior to an agreement on the relevant jurisdiction’s basic features, including who may possess powers and how to resolve disputes. The constitutional approach thus, at best, has more limited application than proponents claim. Subsidiarity can only apply when constitutional essentials have already been established and accordingly cannot itself serve as a fundamental constitutional principle.

A related but distinct concern pertains to whether subsidiarity is consistent with long-term constitutional entrenchment of powers. Jacob T. Levy (2014: 335-336), for example, notes that

allocation of responsibility within a regime of subsidiarity is supposed to be flexible and sensitive to context. Authority over a given subject is supposed to lodge in the smallest or most local level that is appropriate to the question—a standard of evaluation that requires ongoing judgments about the merits of what each level of government could and would do, about what is at stake in decisions of a particular kind, and over social-geographic evolution in what units are affected by what questions.

Decisions are made in particular contexts at particular times. Constitutional entrenchment short-circuits necessarily nuanced analysis of whether and when local factors should justify authority. It at least makes it more difficult to respond to changes in contexts that would make justifications apt. While entrenched powers can clearly be reinterpreted, that is a slow process that should not deviate from the plain language of an initial allocation. Cahill (2021: 136) accordingly states that “subsidiarity poses significant challenges for constitutionalism’s way of dealing with authority,” namely “dogmatizing” it.[[36]](#footnote-36) This issue is not merely theoretical. Levy (2007: 462) elsewhere notes that no existing federal regime demonstrates this commitment to flexibility.[[37]](#footnote-37) This presents challenges for subsidiarity as an ordering principle for constitutional moments regardless of whether the principle can only apply where a single state authority is already presumed or can only apply where no final authority is presumed. Constitutional entrenchment of powers can, moreover, make it more difficult to do the kinds of analyses subsidiarity demands.

Subsidiarity could still usefully guide allocation of “authority, powers, tasks, or functions within a multilayered political order” (Latimer 2018a: 285)– its primary intended role in contemporary constitutional theory[[38]](#footnote-38) –but several deflationary arguments suggest legally-oriented conceptions of subsidiarity are also ill-suited for that task. Subsidiarity cannot play its constitutional ordering role without further specification of its constitutive parts (the entities to whom it applies, the objectives it meant to fulfill, the meaning of efficiency, etc.). [[39]](#footnote-39) Plausible specifications of those components then face significant normative challenges or raise descriptive adequacy concerns.

Attending to subsidiarity’s intended roles in constitutional discourse underlines the challenges. Subsidiarity in intrastate authority allocation contexts– that is, in standard constitutional contexts –purportedly establishes a presumption that final decision-making powers over a particular subject or issue will rest at the most ‘local’ level or the level ‘closest’ to those affected by a decision (*id*.; Follesdal 1998; Da Silva 2023; etc.). This presumption can be defeated where higher levels of governance are necessary to address a subject/issue and can more efficiently address it (Follesdal 1998; Allard-Tremblay 2017). Necessity and efficiency criteria may differ across countries, explaining why some interpretations do not specify which precise powers ‘local’ bodies must possess (Follesdal 1998: 192; Hueglin 2000; etc.). But subsidiarity should allocate powers over areas of jurisdiction and explain which particular issues local bodies should address. The defeasible presumption is that local bodies will possess each. In regional entities, this aims to justify broad areas of state jurisdiction vis-à-vis a regional authority like the E.U. In particular countries, it aims to justify broad areas of provincial/state/canton/lander jurisdiction free from federal governance.[[40]](#footnote-40) On some readings, the ‘higher’ level is also bound to assist lower levels in fulfilling their aims and justifiable higher-level involvement may even be best explained as a form of assistance (e.g., Allard-Tremblay 2017).[[41]](#footnote-41) Even minimalist constitutional conceptions hold that ‘higher’-level involvement is only justified where more local bodies raise problems. This offers some guidance for decisions in multi-level states. For instance, forms of federal governance could make it more likely that local groups will aptly make decisions in particular contexts. If, for instance, most contextual analyses would make park development and maintenance an issue of local concern, this would favour a constitutional power over parks for a more local group. If some park-related decisions that a full contextual analysis would move elsewhere are ill-captured by this rule, no rule is perfect. Subsidiarity can still guide analysis.

Unfortunately, persuasive deflationary arguments suggest that subsidiarity cannot consistently provide plausible guidance in intrastate authority allocation contexts in a manner that reflects core features of the concept recognized by constitutional theorists. Subsidiarity does not consistently allocate powers to the ‘closest’ level possible of addressing an issue in practice and there is reason to question whether any constitutional principle could consistently protect the interests of ‘local’ groups. The claimed constitutional presumption in favour of local control is often defeated in the practice of political entities that purport to adopt the constitutional approach to subsidiarity. Even subsidiarity-invoking entities like the E.U. and Canada experienced increased centralization; their low bars for establishing the necessity and efficiency of centralization help explain this phenomenon.[[42]](#footnote-42) As I have argued elsewhere (Da Silva 2023), there is reason to question whether a presumption exists if it is consistently defeated. Insofar as subsidiarity does exist, in turn, its constitutive local presumption cannot explain why provinces/states/canton/lander possess many powers or provide them with a defeasible claim to all powers (*id*.). Where subsidiarity is concerned with local control, it more plausibly justifies municipal control – or even control by lower-level units, like neighbourhoods (*id*.). However, no presumption favouring them appears where the principle is invoked. Philosophers above/below offer multiple reasons to think other considerations would easily defeat such a presumption.

This result does not merely underline a descriptive inadequacy with existing theories whereby they fail to account for real-world constitutional realities. If the constitutional version of subsidiarity cannot actually establish its constitutive presumption of ‘local’ authority in the real world, this raises questions about its normative implications: Subsidiarity’s distinct normative contribution is unclear absent a constitutional presumption favouring more local groups. Practices in many states raise questions about the existence of such a presumption even where subsidiarity language is invoked to guide relevant analyses. While one could still salvage the concept by providing other normative reasons to favour the presumption and alter existing practices, further critiques above/below make that move more difficult than many suppose.

Further questions remain as to whether subsidiarity is even coherent when discussed in terms of ‘higher’ and ‘lower’ governance (Cahill 2017; Latimer 2018a; Da Silva 2023; etc.). What levels of governance are ‘higher’ and ‘lower’ is often unclear. So are the ‘most affected’ individuals that might ground their claims. While these problems are surmountable, compelling solutions may not favour anything that fits existing constitutional uses of ‘subsidiarity.’ Stipulations that ‘closest’ must be understood geographically and that persons are most affected by the decisions made in their nearest geographical proximity require further arguments and may not withstand scrutiny. Cahill (2017) thus suggests that discussions of higher and lower levels of governance amount to mere dogmatic assertions divorced from the considerations that would justify ‘closer’ rule. Once one attends to those reasons, Cahill holds, one will see that they justify rule by many types of entities outside the state proper, including the churches, unions, and boxing clubs above. If so, subsidiarity is better understood as a principle for allocating state and non-state authority, rather than powers among states’ parts. And questions about whether these groups are specially ‘affected’ in ways that would justify anything like a constitutional subsidiarity principle remain. There is little reason to presume all powers must go to the most local entity, however defined.

Arguments from economic efficiency, democracy, and liberty then raise theoretical and empirical concerns. They do not appear to establish a presumption for the local (Latimer 2018a). Whether distinctly local values or epistemic concerns can ground a presumption favouring provincial or municipal control is contestable (Da Silva 2023). Indeed, any such considerations can support provincial control over particular subjects/issues without creating a presumption favouring such control. Subsidiarity yet again appears unable to establish its own constitutive presumption.

Insofar as appeals to democracy, liberty, or local values provide compelling reasons to favour local control, one can apply those values without discussing subsidiarity. Invoking subsidiarity does not clearly add content to moral deliberation. The need to, for instance, establish the democratic value of municipal control over housing policy would remain. If subsidiarity’s constitutive constitutional presumption can be established on other grounds, its distinct contribution to morality becomes unclear. Appeals to subsidiarity could even obscure relevant interests by making the democratic concerns less central or by establishing a presumption that municipal control is more democratic that cannot withstand theoretical or empirical scrutiny (*id*.). If subsidiarity adds nothing distinct to moral analyses of authority allocations and can mask relevant moral reasons, there is at least a strong presumptive case against its continued use.

Subsidiarity could still be a tool in constitutional *discourse*. It could, for instance, guide important discussions about the uses of existing powers, including judicial interpretation of constitutional authority in the context of countries that recognize it. Subsidiarity proponents like Yann Allard-Tremblay (2017) argue that using it in constitutional discourse makes participants more likely to discuss the underlying values that should guide analysis and even makes it more likely that proper decisions will be made. Per Allard-Tremblay, subsidiarity can play a valuable discursive role by triggering discussion of moral considerations that otherwise should apply. Likewise, Follesdal (1998)’s discussion of subsidiarity’s ability to regulate political deliberation suggests that subsidiarity-based discussions can beneficially lead disputants to focus on arguments favouring local control. Per Follesdal, this creates a beneficial shared template of understanding of relevant moral reasons that itself predisposes participants to recognize their value and work together to find agreements that properly balance them.[[43]](#footnote-43) Even skeptics grant that this would be useful. For instance, Levy (2007: 462) accepts that subsidiarity “may offer a useful critical language” despite subsidiarity failing as an “institutional decisional rule.”

Even if we take deflationary accounts as given, in other words, reasonable disagreement about what concepts matter could still lead us to seek a method in which persons can raise related claims in new ways. Not engaging with subsidiarity claims may foreclose this possibility. James Tully (2012), for another example, argues for the need to consistently rewrite the rules of politics in deliberative processes. Tully notes the value of local communities for building coalitions that can bring about shared ends through existing processes and challenge rules to produce just ends. Others read Tully’s concern as reflecting the fundamental value of subsidiarity (Rollo 2015), which will bring about those intended beneficial ends. Some advocates of ‘treaty federalism,’ the view on which Indigenous self-determination should lead to recognition of Indigenous powers at least as strong as provincial powers in North American federal constitutions, then highlight subsidiarity as a useful means of bringing about that specific end (Hueglin 1994, 2000, 2003, 2013; Rollo 2015). Where Western concepts have been used to commit injustices against Indigenous peoples, calling for non-use of such a concept when they could use it to further their interests should create unease. E.U. law, in turn, recognizes subsidiarity as an “ongoing process” of reallocating powers (Hueglin 2007: 212). Subsidiarity processes may be most conducive to building community. Subsidiarity might even help justify increased voice for actors that should participate: one reinterpretation of the principle suggests that a plausible version requires a right of inclusion whereby those lacking voice can make formal claims to be heard (Latimer 2018b).

There are, however, several challenges with viewing subsidiarity as a tool for specifically constitutional discourse. An obvious one is that appealing to subsidiarity can just as easily bring about negative ends. As the subsidiarity champion Thomas Hueglin (2007: 215) notes, subsidiarity can be “used and abused.” It may not even be necessary to achieve positive ends it is meant to produce. Treaty federalism pioneer James Youngblood Henderson (1994) does not refer to subsidiarity in his most famous work on the topic. And while Tully discusses subsidiarity in some works (2012), he does not do so when discussing Indigenous rights or the need for contested political discourse.[[44]](#footnote-44) Those interested in furthering Indigenous justice, for example, may find that subsidiarity is unnecessary to pursue it and could be used for contrary ends.

Risks of moral confusion present still stronger arguments against continued use of constitutional conceptions of subsidiarity in liberal-democratic discourse. Appeals to subsidiarity where other factors do relevant work obscures discussion of moral interests at play. This puts actors in unfair discursive positions whereby discussion of relevant reasons must be mediated by a principle without clear independent justification. It also increases the chance of misunderstandings on what is normatively the case in a given deliberative context. This concern is particularly pressing where subsidiarity’s relationship to other concepts remains contested. For instance, subsidiarity may be a rival principle to, rather than logical consequence of, both federalism and self-determination (Barber 2018). Treating subsidiarity as a site of overlapping consensus on what should occur (Allard-Tremblay 2017) would then threaten to obscure the way in which the concepts could demand different things. If federalism and self-determination are also rival principles, as Barber (2018) suggests, placing both under a subsidiarity banner invites more confusion and keeps us from properly disentangling their contributions to a given deliberation.

Possibilities of confusion are particularly acute where another tradition of subsidiarity practices and research uses the term ‘subsidiarity’ in a distinct manner to address a distinct problem. Challenges in the preceding paragraphs may not fully deflate the concept of subsidiarity on their own. But they challenge the constitutional approach to subsidiarity. Where another approach provides for a more compelling concept that, at worst, equally fits the history and use of the term while making a distinct contribution to moral ontology, the other approach appears preferable. That approach may be distorted if forced to fit in constitutional narratives. Where two distinct approaches are inconsistent and only one makes a clear contribution, there is reason to begin eliminating use of the other. This supports more direct discussion of the values that make subsidiarity appear plausible in constitutional contexts, like democracy or self-determination.[[45]](#footnote-45)

Motivating the Intermediate Approach

There is, then, reason to question whether a conception of subsidiarity that accounts for its core elements and uses can play its intended constitutional ordering role. This alone does not provide reason not to use constitutional conceptions. Yet persistent use of different conceptions to address other problems invites confusion. If a descriptively acute conception of subsidiarity can address that problem, that provides reason to reserve the term for work on the other problem.

This raises a question: What is left for subsidiarity to do if deflationary critiques above succeed? Historical and normative considerations above provide an obvious, promising response: Subsidiarity can still resolve disputes between different groups with apparently valid but otherwise conflicting authority claims. More specifically, subsidiarity can and should be understood as identifying when states should not get involved in the work of other groups with such claims.[[46]](#footnote-46) Questions concerning whether and when states should limit the internal affairs of groups remain pertinent even as the nation-state’s sovereignty has become a basic fact of politics. Consider questions about whether and how states can limit the structure or rules of private clubs or unions, whether professional guilds like legal bars should be self-regulating, or whether states can place limitations on religious education. These are central issues in their respective domains and in aspects of domestic politics. The underlying problems further impinge on theoretical concerns about the limits of state authority, the value of intermediate institutions, and whether such institutions have plausible claims to their own domains of authority. ‘Subsidiarity’ can denote an approach to these kinds of pressing questions. Subsidiarity so-understood is more likely to resolve these queries than constitutional ones and better fits historical uses of the term.

This approach to subsidiarity has clear historical precedent detailed above. It also has continuing contemporary value. The basic approach is grounded in the value of intermediate groups for individual goods and necessity of their possessing some domain of authority to secure that value for their members. Groups have claims to authority where and because that authority is necessary to protect relevant interests in the pertinent way. If this is established, it should be presumptively protected absent signs of the groups’ inability to further the justificatory ends and some other groups’ ability to further those ends better. This provides a schema for addressing the kinds of questions outlined in the prior paragraph: First, identify whether an intermediate group has a valid claim. Second, if so, identify the scope of that claim. Third, determine whether the intermediate group can fulfill the underlying justificatory end. If so, there is a strong presumption other groups should not interfere. If the group fails to fulfill its end, next see if another group is better positioned to do so. Any such group will have a stronger interference claim. There will be no need to appeal to external considerations to justify interference in these kinds of cases. One can then, finally, see if other, external considerations defeat the presumption. But other groups will bear the burden of explaining why interference is justified where the first can fulfill its ends.

This type of approach to subsidiarity requires greater elaboration, but challenges with the constitutional approach outlined above also offer reason to explore it further. This work can be read as a call to reorient subsidiarity research (back) toward this historically valuable path. There are descriptive and normative reasons to believe that the intermediate approach promises a valuable framework for developing a conception of subsidiarity capable of making a distinct contribution to moral ontology by fulfilling one of the concept’s intended roles. This approach accounts for a wider array of historical practices while offering guidance for contemporary debates. It beneficially connects the concept to its pre-E.U. origins while permitting subsidiarity to address a distinct contemporary challenge. Subsidiarity so-understood can, moreover, play important normative roles. Most notably, subsidiarity creates burdens of justification that provide a continuing ‘check’ on state authority in a world structured around Westphalian nation-states. This was one of its main historical roles. Subsidiarity can and should play that role today. While the pluralists mentioned above suggest many conceptions of subsidiarity too easily grant state claims to overarching authority, subsidiarity so-understood can be a check on state exercises of authority where a state has established de facto control and restraints thereon remain necessary.

One may then worry that any intermediate approach will raise the same problems used to ‘deflate’ the constitutional approach above, but an intermediate approach promises to avoid the most forceful challenges. The way such an approach may do so offers further reason to prefer an intermediate approach. Consider, first, the challenge that subsidiarity can only apply if one can plausibly identify candidate authorities and their potential powers. The intermediate approach admittedly provides minimal guidance on this question. It still provides adequate guidance without begging questions about subsidiarity’s value. The schema alone is, for instance, silent on which ends ground valid intermediate groups’ claims. Various justifications for subsidiarity could cause issues for this approach too. But the schema above limits possible claimants to a plausible set on any specification of the limited range of potential justifications. Only certain kinds of groups are likely to safeguard operative moral interests, whether they be Althusian liberty or a Catholic conception of the public good. Historical intermediate groups are good candidate authorities. Groups like churches and unions have consistently protected their members’ interests over time. Such groups’ continued value is likely to be established on most normative accounts of what gives a group status to claim authority. Other works can develop the normative accounts.

Political practice helps further identify plausible candidate authorities and their possible powers. Subsidiarity is, recall, a particular response to particular claims (Muñiz-Fraticelli 2014). More specifically, it is a call by intermediate groups for others to respect their “spheres” (Cahill 2017) of authority with which other groups should not interfere. The kinds of claims made by intermediate groups delimit subsidiarity’s possible scope of application. Plausible claims can be used to further specify and test given conceptions thereof. If, for instance, a given conception would not select most historical intermediate groups as valid candidate authorities, there is reason to question whether it is properly described as a conception of ‘subsidiarity,’ rather than another concept. This possibility is particularly enticing where the domains in which groups may need some insulation from state involvement already have some intuitive purchase. Existing intuitive judgments are supported by the kinds of theoretical and practical concerns that would ground self-determination claims, for example. For instance, professional guilds’ membership and religious groups’ leadership rules are core to their functions. State involvement in each risks limiting the groups’ distinct abilities to maintain their members’ interests – and their ability to serve as checks on state authority. Use of these and other paradigm cases as a guidepost for further analysis of whether and when the concept might apply should result in reflective equilibrium whereby there are domains in which states minimally owe a duty of justification for any interference therein. This domain protection is the kind of thing that subsidiarity was meant to provide. Where other principles do not serve a similar purpose, reserving subsidiarity for discussions of these kinds of interactions is a promising means of securing its distinctiveness.

Likewise, second, the proposed view admittedly may require substantive calls on what ends are relevant and how we can judge whether groups fulfill them for which it will be difficult to gain widespread support, but it is no worse for so doing. The idea that some groups even have distinct domains of authority pre-existing the state will strike some as controversial. One may worry that identifying the groups will be difficult. Yet difficulties identifying groups and their powers apply equally in constitutional domains and mistakes there are, again, institutionalized in ways that make them difficult to resolve. Further, historical claims of real groups and ample work on whether and when these claims may be valid provide guidance on whether and when to recognize them, minimizing this concern. Historical and normative arguments for certain kinds of groups as those that could have the relevant kind of authority claim seem like good guides to who may have valid claims. This approach accounts for the broader range of entities that seem to have valid claims on plausible accounts while retaining some flexibility in determinations thereon over time. The non-existence of distinct domains of authority cannot, moreover, be taken for granted. Even the appearance of such domains calls for some response. Insofar as subsidiarity helps one analyze how to properly address related claims, subsidiarity can play a distinct role in moral philosophy. Research on subsidiarity so-understood can even help evaluate existing claims. If application of the principle to most intermediate group claims are consistently unintuitive, this would provide reason to deny their presumptive authority. Even then, subsidiarity would play a distinct role in moral philosophy, helping unearth new findings.

Third, subsidiarity so-understood may again become a guide to discussing first order ends, rather than a standalone normative principle. This too would, at worst, make it equivalent to the constitutional approach. Subsidiarity being a second-order norm would be less problematic where the principle remains less likely to be self-undermining in practice. Subsidiarity would, again, primarily be justified by more fundamental values. However, applying those values in particular contexts maintains this version of subsidiarity’s constitutive commitments by establishing a justificatory burden for state actors that treats some claims by other entities as primary. That burden is itself a distinct contribution to moral ontology. The present approach also maintains subsidiarity’s commitment to proximity in a way the constitutional approach fails to do. Even if domains of authority are justified by virtue of the public good, for example, appeals to the public good here establish a distinct analytical principle consistent with past uses of the term ‘subsidiarity.’ This is distinct from how subsidiarity was meant to point to concerns with democracy but ultimately failed to consistently prioritize or favour local rule in the last section.

This form of subsidiarity can be a more useful discursive tool even if it too fails as a ‘decisional rule.’ One may charge any objections to subsidiarity as a discursive tool in constitutional contexts apply equally in the present context.[[47]](#footnote-47) But the main discursive problem in constitutional contexts does not apply here. The problem in the last section was not the treatment of subsidiarity as a discursive norm. The problem was treating subsidiarity as a discursive norm in a context where discourse was likely to run contrary to subsidiarity’s animating sub-principles and ossify the results in a constitutional order. If subsidiarity is instead understood as a discursive tool for contexts where state power is given but must be contested, the intermediate approach appears fit for purpose. It places a burden on the state to justify its powers and thereby offers some protection for other important claims. It does not treat those claims as having magical properties that insulate them from evaluation or review even absent underlying justification. Rather, the claims themselves always demand reassessment and rearticulation. Cahill (2021: 132)’s statement appears apt for establishing this discursive potential: “Subsidiarity expresses a preference, rather than a dogma. If authority is to be vested in one particular institution or person, reasons must be given, justifications must be expressed, and they must be articulated in conversation.” There is little reason to assume that the results of this discourse will consistently favour broader states in ways that would undermine subsidiarity’s intended moral contribution.

Some discursive challenges above could clearly still arise on an intermediate approach to subsidiarity. Appeals to ‘subsidiarity’ could, for example, still produce all-things-considered positive or negative outcomes. However, this is likely true of any discursive posit. It is arguably less problematic if a concept is not *only* a tool. ‘Subsidiarity’ at least makes a distinct contribution on the present account. And limits on which kinds of groups can make which kinds of claims identified by plausible intermediate accounts should at least minimize bad outcomes.

A further concern that ‘subsidiarity’ could collapse into an ‘affect’ principle and so fail to make a distinct contribution to moral ontology is likewise surmountable. One way to establish the presumption at issue would be to state that it reflects an interest in ensuring all persons affected by or those most affected by decisions should make them.[[48]](#footnote-48) A church or union can be impacted by particular decisions in importantly different ways, justifying members having greater influence over those decisions. Some decisions may only affect members of that church or union in a politically relevant sense, justifying that decisions are made by group members alone. Either state of affairs would support at least some decisions being made by those intermediate groups. If this provided the best possible account for when and why a presumption favouring intermediate group decision-making powers independent of state interference, then reading ‘subsidiarity’ as an ‘all affected’ or ‘most affected’ principle would have merit. Such principles also appear outside subsidiarity contexts. However, conceptual fit between concerns with affect and subsidiarity need not be problematic. Appeals to ‘affect’ are not the only means of justifying the relevant concept. And if subsidiarity *were* a version of an all or most affected principle, that need not render it redundant. If it applies insights from democratic theory to a unique domain, it can make a unique contribution. Indeed, links between affect and subsidiarity should be unsurprising. Several historical accounts of subsidiarity, like Finnis (2016), note its origins in a concern with *special kinds* of affect. If the concept evolved to reflect an all or most affected principle, that development would be notable. Attending to the problems that it was meant to address and possible contemporary distinctiveness suggests intermediate group affect matters. And if this is a problem, constitutional conceptions notably also appeal to ‘affect’ principles,[[49]](#footnote-49) raising the same redundancy charge with the further risk of not letting affect properly track influence. The present approach could call for discourse on whether and when affect suffices to ground distinct claims, beginning with a recognition that some groups already established defeasible claims over time.

The current proposal’s seeming assumption of state authority is also unproblematic. Muñiz-Fraticelli (2014) argues that subsidiarity does not treat associations as independent authorities but instead makes them “organs of the state” in a manner inconsistent with genuine pluralism. This is a fair critique. Subsidiarity can play a distinct role even if it holds. Indeed, insofar as the nation-state is now a given of transnational politics, subsidiarity’s role as a check on the presumptive state (or E.U.) is all the more important. Insofar as subsidiarity places burdens of justification on states for how they will exercise any ‘sovereignty’ that they possess, it presents discursive demands on one of the most dominant forms of authority. This moral ‘check’ may lack purchase in real world contexts absent institutionalization. However, subsidiarity is no worse in this respect than any other discursive norm. Constitutionalization appears unnecessary at best.

Subsidiarity so-understood would remain important even if the status and influence of nation-states were to wane. As discussed previously, problems concerning how to address competing claims to authority and subsidiarity’s role as a potential solution thereto predate nation-states. The schema above can also plausibly be used by other groups claiming authority in ways that could encroach on others. Churches, for example, can use it to determine whether and when to interfere in family life. The principle will even remain useful if the Westphalian order fails. A return to empire would see the empire face a justificatory burden like the one outlined above. These are, in fact, traditional roles subsidiarity was meant to play. The discussion above focused on nation-states primarily because the principle is most likely to apply to state-non-state interactions where nation-states remain dominant. But other groups can also be properly ‘checked’ by the exercise of a plausible subsidiarity principle. A church needing to explain why it can justifiably limit family life should be less likely to make unjustified incursions therein.

Subsidiarity alone is no panacea. A church may, for instance, limit family life in unjustifiable ways where it erroneously believes it has met a burden of justification. And not all institutions will be responsive to the moral reasons that apply to them. Some will surely simply refuse to recognize the principle and reject the need to meet any justificatory burdens. However, normative reasons above favour the existence of a subsidiarity-based justificatory burden. Such a burden will, at minimum, make it more costly for groups to make egregiously bad decisions.

The proposal on offer has further explanatory benefits. For instance, one may worry that the proposed account fails to address the prevalence of the E.U. in subsidiarity scholarship. Yet if subsidiarity is envisaged primarily as a principle for adjudicating claims between different claimed authorities, appeals to the concept in E.U. and international law are unsurprising. Those are domains in which multiple groups claim authority and a rule is necessary to adjudicate their claims. Appeals to subsidiarity as a form of treaty federalism are also explicable. The idea is that Indigenous peoples are distinct groups who retain powers with which the nation-state cannot interfere. Subsidiarity is a principle meant to mediate between groups claiming full authority, like Westphalian nation-states and Indigenous peoples. Use of subsidiarity discourse may be useful for resolving these disputes. Yet clear challenges arise when one attempts to resolve them through the use of subsidiarity as a constitutional ordering principle. They are particularly acute when nation-states do not recognize the constitutional authority of the E.U. or sovereignty of Indigenous peoples. Use of subsidiarity in constitutional contexts gives claimants the sense that state authority is being allocated among groups with valid claims and that the more ‘local’ ones will presumptively maintain their powers. However, such an assumption would be mistaken in (at best many) contemporary nation-states. Subsidiarity should provide groups with means of protecting their interests given the state’s claim to full authority. Use of two distinct versions of subsidiarity obscures important distinctions, complicating attempts to raise valid claims. It may even give groups with other valid moral claims to authority, including Indigenous peoples, a mistaken sense that the constitutional version of subsidiarity is a useful tool for more complete self-governance. This risks their not making apt, more direct self-determination claims on other grounds.

Conclusion

A conception of ‘subsidiarity’ focused on its role in structuring relationships between groups claiming distinct domains of authority is more likely to make an explanatorily adequate, distinct contribution to moral ontology than one focused on constitutional ordering. The concept appears best suited to political discussions about whether state interference with intermediate groups or intermediate group interference with other groups’ actions or decisions are justified, rather than legal ordering questions. More work is necessary to specify a conception of subsidiarity that can serve the purpose intended on an intermediate approach. The preceding offered reasons to seek such a specification. At minimum, it suggested that some challenges with the constitutional approach do not arise on the intermediate approach and other challenges are less forceful. Some challenges still apply to the intermediate approach, which itself raises distinct issues. But there is now reason to believe an intermediate approach to subsidiarity is more likely to establish a distinct concept that can provide plausible guidance for historical debates that persist today.

Subsidiary on an intermediate approach is consistent with diverse institutional approaches.[[50]](#footnote-50) Yet the preceding further offers reason to question use of subsidiarity as a principle of federalism. Federalism appears to ossify power in manners inconducive to the ongoing contestation. While this may look problematic to those who view subsidiarity and federalism as necessarily linked, there is no explanatory loss where that link is itself conditioned on a constitutional understanding of subsidiarity. Different approaches may even be necessary to realize this form of subsidiarity.

Subsidiarity so-defined is not, however, institutionally open-ended, permitting apt analysis thereof. ‘Subsidiarity arrangements’ only plausibly describes forms of governance in which distinct groups have recognized domains where they are presumed to have authority and there is some means of ensuring no other group interferes with them absent justification. One can accordingly use the descriptor ‘subsidiarity arrangements’ in a particular way and evaluate the concept of ‘subsidiarity’ further in light of how these arrangements operate in practice. This result leaves ample room for empirical research I hope others will undertake. Importantly, the result also leaves open questions about whether subsidiarity can survive debunking challenges. Filling in the schema above requires identifying which groups have valid claims. This can combine with empirical data to determine whether and how subsidiarity actually plays its intended distinct normative role. One could still debunk the concept by denying any groups have valid claims or showing that the principle cannot protect their distinct domains. This too would require some explanation. One can no longer simply take a nation-state’s claim to complete sovereignty for granted. This alone is a notable ‘check’ even if deflation ultimately succeeds.

If, in turn, one finds my argument for focusing on subsidiarity’s potential role in resolving conflicting state and non-state authority claims unpersuasive, similar burdens for and possible means of resolving conceptual challenges remain remarkable. For example, the importance of identifying which groups have claims and the commitment to prioritizing claims of particular groups is common to both approaches. This strengthens the case for viewing these as desiderata for any plausible theory of subsidiarity. Challenges meeting these burdens in an explanatory manner appear less acute on the intermediate approach. But their persistence highlights burdens for an adequate theory of subsidiarity. The way in which subsidiarity’s discursive potential is central to meeting the analytical burdens is also notable. An adequate theory may make subsidiarity a mere trigger for discourse rather than a ‘rule’ on any view. This is less revisionary than accounts that would give up on the concept’s core commitment to presumed ‘local’ power, for example. But it departs from many mainstream views. This is another way in which the account above is generative even if one rejects its anti-constitutional interpretation. Subsidiarity is, it now appears, *always* a second-order principle, operationalizing or calling for the apt implementation of other, first-order values, like liberty or democracy.

These findings also have broader conceptual and methodological implications. If the foregoing is correct, there is a class of potentially eliminable but useful concepts. If they are redundant and present risks of misuse, this may speak to eliminating them from our moral ontology. However, if there is another way of understanding the concept, we may prefer using that alternative, especially if no other concept does the same work or the alternative interpretation of the same word serves a distinct purpose whose use would minimize risks. Subsidiarity is now an example. We can prefer the approach aimed at mediating relationships between states and intermediate groups in which subsidiarity can serve a distinct role without creating risks of moral confusion, self-undermining application, or other grounds for deflation. Even if subsidiarity is only a mid-level concept, historical and normative reasons favor maintaining it. We need not be eliminativists about all such concepts. Yet we can now see how they can raise problems where they invite distinct interpretations and have a way to think about how to choose between them.

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1. Maria Cahill (2021: 129) thus states that “[i]f there is one thing that everybody seems to agree on in relation to subsidiarity, it is that it consists in a preference for proximity.” Føllesdal (2025) chs 3-4 summarizes many debates. [↑](#footnote-ref-1)
2. See surveys in Føllesdal (1998, 2025); Da Silva (2023). [↑](#footnote-ref-2)
3. This is true of nearly every author below, including Føllesdal, Cahill, Finnis, Levy, and Muñiz-Fraticelli. [↑](#footnote-ref-3)
4. If no theory can do both, knowing the relevant history can help one identify normative and explanatory trade-offs attending to any theory. [↑](#footnote-ref-4)
5. Queloz distinguishes historical and state-of-nature genealogies. He suggests ‘practical’ origins are primary (2023: 24n9) but elsewhere explicitly tries to combine them (2021). Historical genealogy is important in any case. [↑](#footnote-ref-5)
6. Queloz is clearly not the only person to fruitfully combine historical and normative work. See also, e.g., Skinner (2002) or other works by Levy. Other works on subsidiarity also combine them, as previously stated in note 3. [↑](#footnote-ref-6)
7. I use the term ‘approach’ here to denote types. The basic positions here elide differences between accounts discussed below. One could frame the analysis in terms of constitutional approach*es* and intermediate approach*es*. [↑](#footnote-ref-7)
8. I both specify existing arguments and offer unique historical-conceptual arguments for the same conclusions reached by others. I do not take a stand on some issues that other proponents address. Cahill (2017: 215-216), for example, defends a view on the duties and limits of assistance inherent in subsidiarity that I do not address here. [↑](#footnote-ref-8)
9. See also Levy (2007: 462). Føllesdal (2014: 216) suggests Althusius discusses the principle in “embryonic” form. [↑](#footnote-ref-9)
10. For instance, Finnis (2016: 140) suggests Italian political philosophy at the turn of the nineteenth and twentieth centuries influenced Catholic thought and is thus historically important. For another example, Follesdal (2025: 6-11)’s most recent work identifies non-Western phenomena that Follesdal views as part of subsidiarity’s conceptual history. It later (21-29) suggests that confederalists, Immanuel Kant, Christian Wolff, Pierre-Joseph Proudhon, and fiscal federalists are also historically important. [↑](#footnote-ref-10)
11. Finnis (2016), for example, traces continuities from Aristotle to Catholic social thought and suggests the historical concept should inform modern legal uses. But he also notes discontinuities and criticizes E.U. law. Muñiz-Fraticelli (2014: 57, 65), by contrast, suggests that subsidiarity “in its modern form, is first articulated in Roman Catholic social thought.” Barber (2018: 187) and Cahill (2021: 130)’s accounts also start with Catholic social thought. [↑](#footnote-ref-11)
12. The core moments can also inform debates about whether subsidiarity continuously refers to one concept throughout history and when that history actually begins. Those debates are not of primary interest here. [↑](#footnote-ref-12)
13. The groups at issue typically meet standard definitions of an ‘association.’ I make no strong claims about the ontology or metaphysics of groups or associations here but discuss intermediate groups and associations. [↑](#footnote-ref-13)
14. Even Finnis (2016: 137) notes a discontinuity between the parts of Aristotle that suggest the ‘proto-emergence’ here and other parts of Aristotle. Finnis thus invokes Catholic thought to complete his own theory of subsidiarity. See also notes 11-12, surrounding. The passages here admittedly make some minimal commitments in debates there. [↑](#footnote-ref-14)
15. As Hueglin (1978: 38) summarizes, “the more limited associations submit themselves to the broader ones only to that degree which is necessary and useful to fulfill the purpose for which the broader association has been established,” namely a concern with protecting the individual interests those groups necessitate and protect. [↑](#footnote-ref-15)
16. *Cf*. contemporary work on how cultures provide “contexts of choice” for their members (Kymlicka 1995: 89). Subsidiarity does not only seek to protect cultural groups. And groups’ subsidiarity-based claims to authority need not be justified by liberty interests central to the contexts of choice thesis. This comparison is nonetheless helpful for helping one understand the basic structure of the kind of arguments on offer. Attending to the contexts of choice literature also highlights how similar claims have been accommodated in liberal-democratic political philosophy. [↑](#footnote-ref-16)
17. Per Levy (2014: 99), universities initially developed as a particular kind of guild. [↑](#footnote-ref-17)
18. I also take no view on whether Catholic social thought is continuous. Muñiz-Fraticelli (2014: 67) discusses possible discontinuities. [↑](#footnote-ref-18)
19. Feb. 7, 1992. 1992 O.J. (C191) 1; 31 I.L.M. 253 (1992). Further elaboration of the E.U.’s structure generally and subsidiarity particularly appears in the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, European Council, Dec. 13. 2007, C2007/C 306/01. [↑](#footnote-ref-19)
20. *Id*. See also texts on the public law of member states, like Elliott and Thomas (2020). [↑](#footnote-ref-20)
21. Barber (2018) is explicit on this point. [↑](#footnote-ref-21)
22. See, e.g., Fabbrini (2018). The Treaty is usually viewed as quasi-constitutional given that the explicit Treaty establishing a Constitution for Europe failed in 2004. For an interesting overview of the attempt to create a formal constitution edited by subsidiarity scholars, see Barber, Cahill, and Ekins (2019) (also discussing Maastricht). [↑](#footnote-ref-22)
23. See, e.g., discussions of how the principle operates in Føllesdal and Muñiz-Fraticelli (2015); Da Silva (2023). [↑](#footnote-ref-23)
24. *Cf*., Føllesdal (1998, 2015); Finnis (2016); etc. Recall also discussions of (dis)continuities in notes 11-12. [↑](#footnote-ref-24)
25. *Cf.* the individualist conception in Ashley (2023). This reduces the concept to a basic individual liberty right. This critique need not apply to the “person-promoting” theories of subsidiarity preferred by Follesdal (2025) insofar as they hold that (a) subsidiarity furthers individual interests (as stated at, e.g., 64). It may challenge claims that (b) subsidiarity must “apply ‘all the way down’ to the person” (as stated at 17). But many compelling views, including what I take to be the most historically significant ones at issue here, plausibly support (a) without supporting (b). [↑](#footnote-ref-25)
26. As an anonymous reviewer rightly notes, Barber’s focus on constitutional law could be a function of his primarily legal orientation. Barber could hold that the concept has a broader or different application in political morality. Fleming and Levy’s focus on federalism may best explain why many authors therein focus on constitutional questions. Federalism is itself often considered a quintessentially constitutional concept. The primarily constitutional focus of each text remains notable. Whether and how constitutional uses/conceptions relate to others is important. [↑](#footnote-ref-26)
27. In addition to sources above/below, includingthe Fleming and Levy volume and works by Hueglin,Føllesdal, Muñiz-Fraticelli, and Barber, consider the line of U.S. scholarship dating to at least Bermann (1994) (or, more recently, Calabresi and Bickford (2014)), texts on Canada (e.g., Levi and Valverde (2011); Kong (2015)), or the many works on subsidiarity in the E.U., like Schütze (2009). Føllesdal (2006) also writes on the E.U. [↑](#footnote-ref-27)
28. Barber (2018: 190) grants this lack of agreement. [↑](#footnote-ref-28)
29. Canonical articulations appear in Arrhenius (2005) and Goodin (2007). For an overview of the ‘boundary problem’ it is meant to solve, consult sources in Miller (2020). Barber (2018: 187)’s subsidiarity aims to solve it. [↑](#footnote-ref-29)
30. *Id*. [↑](#footnote-ref-30)
31. *Cf*., e.g., Carozza (2003, 2016); Blank (2010); Føllesdal (2006, 2013, 2025); Besson (2016). [↑](#footnote-ref-31)
32. This plausibly fits the Canadian legal approach in note 27 sources. But *cf*. my skepticism in Da Silva (2023). [↑](#footnote-ref-32)
33. I draw on both in Da Silva (2023). [↑](#footnote-ref-33)
34. On transfers, see, e.g., Drew and Miyazaki (2010). On assistance, see, e.g., Allard-Tremblay (2017). [↑](#footnote-ref-34)
35. Levy (2007) makes *two* levels constitutive of federal design. But some recognition of municipal governance does occur. For theoretical analysis of this fact in the subsidiarity context, consider Weinstock (2014) and Arban (2022). [↑](#footnote-ref-35)
36. See also Carozza (2003, 2016). [↑](#footnote-ref-36)
37. Still others suggest that subsidiarity’s commitment to ongoing negotiations about authority allocation makes it inconsistent with recognition of a single final authority. See Cahill (2021: 133). [↑](#footnote-ref-37)
38. See also Føllesdal (1998: 195); Da Silva (2023). [↑](#footnote-ref-38)
39. I thank an anonymous reviewer for this formulation of the critique. [↑](#footnote-ref-39)
40. # See Føllesdal and Muñiz-Fraticelli (2015) for a comparison of its role in a major regional body and country,

    [↑](#footnote-ref-40)
41. See also Cahill (2016) on justified state authority as a form of assistance for more primary community bodies. [↑](#footnote-ref-41)
42. See, e.g., Føllesdal and Muñiz-Fraticelli (2015); Cahill (2016, 2021); Da Silva (2023). [↑](#footnote-ref-42)
43. See also Føllesdal (2014); Føllesdal and Muñiz-Fraticelli (2015). [↑](#footnote-ref-43)
44. Direct analysis is absent in (1995). He invokes it for other purposes in (2012). [↑](#footnote-ref-44)
45. See also Da Silva (2023). [↑](#footnote-ref-45)
46. For a different argument for subsidiarity as a political, rather than legal, principle, see Burbidge (2017). [↑](#footnote-ref-46)
47. I also thank an anonymous reviewer for this point. [↑](#footnote-ref-47)
48. See note 29, surrounding. [↑](#footnote-ref-48)
49. Recall, e.g., Barber (2018). [↑](#footnote-ref-49)
50. Cahill (2021: 135) believes no concrete form of governance necessarily follows from recognition of subsidiarity. [↑](#footnote-ref-50)