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## Subsidiarity



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# Subsidiarity

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As a societal structure and guiding principle, subsidiarity emphasises the precedence of individual self-determination and personal social responsibility. Larger communities or state institutions should only help individuals or smaller communities to help themselves if they are unable to cope.

## 1 Clarification of the term

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In pursuing the conjectured initial meaning of the term *subsidiarity*, the Latin word *subsidium*, from which *subsidiary* and *subsidiarity* are derived, has two different meanings: while it is used in the sense of help, assistance, and support, its other meanings have a rather different emphasis: alternatively, temporarily, provisionally, or as a substitute or surrogate for something else (cf. Wegner 1989). Both meanings can also be found in the modern interpretations of subsidiarity as a basic principle shaping modern social orders, as seen in Catholic social teaching as well as liberal constitutional doctrine, according to which societal action by its nature should be organised as subsidiarily as possible, i.e. supportively and only as a surrogate for something else (cf. von Nell-Breuning 1990; Isensee 2001).

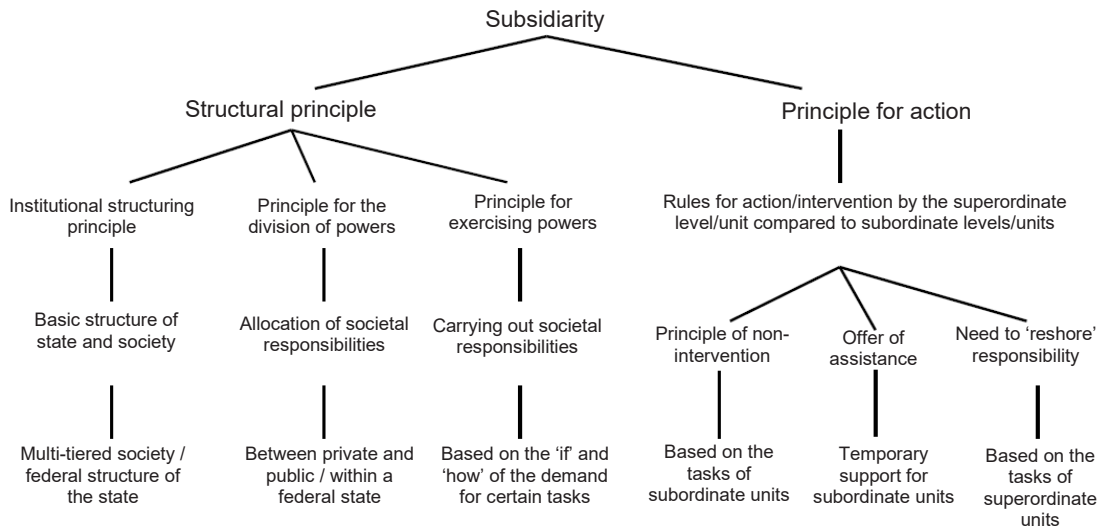
This expresses the belief that social responsibilities that can be undertaken by the individual or the subordinate, smaller social unit – for example the family, neighbourhood, or local authority – should be left to these and not delegated to anonymous societal institutions (especially the state). The concept of subsidiarity encompasses both a pro and a contra guiding principle (cf. Döring 1994). In the contra sense, it opposes a centralist (totalitarian) state, which supplants individuals and smaller, manageable human communities as well as the local and regional levels of the state. In the positive sense, the subsidiarity principle supports the individual and solidarity of the social units amongst each other against excessive individualism and the inadequate fulfilment of social obligations within society.

## 2 Dimensions and principles of action and intervention

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As a societal and political principle which structures and shapes the relationship between the state and society, the principle of subsidiarity has three different dimensions: (1) it serves as a principle for structuring institutions as it calls for a multilevel structure of the state and society where this has yet to be realised (e.g. in the form of granting autonomy to collective bargaining bodies or the federalisation of the state), (2) it also serves as a principle for the division of powers to regulate the relationship between private versus public rights and responsibilities, as well as between the levels of a multilevel state, whereby private responsibilities take precedence over those of the state and the subordinate state unit takes precedence over the superordinate state unit, (3) it further serves as a principle for how powers are exercised to regulate the way in which societal responsibilities allocated to the state are fulfilled by individual decision-making units (cf. Pieper 1993; vgl. Fig. 1).

Figure 1: The subsidiarity principle



Source: The authors, based on Döring 1997: 34

In its function as a guiding principle, it encompasses a set of rules governing how and when decision-makers should intervene (cf. Schneider 1990). The principle of non-intervention sets out that the state/superordinate community should not intervene unless the issue in question exceeds the capacity of the individual or the powers of the subordinate community. In parallel to this is an offer of assistance, according to which the superordinate community is to provide help and assistance to its members in such a way as to enable them to fulfil their original responsibilities and obligations in the first place. State interventions must follow the principle of helping others to help themselves in this respect. Furthermore, to the extent that state measures are aimed at restoring the ability of the subordinate unit to resolve problems on their own, the subsidiarity principle is essentially about ‘reshoring’ the subordinate community’s responsibilities. Accordingly, the state or superordinate community may not continue to act or intervene once the individual or smaller community can manage for itself again following the temporary support. While the subsidiarity principle refers to situations that exceed the capacity or powers of a subordinate unit, or whereby the latter is unable to meet its responsibilities, what precisely this means requires further elucidation.

### 3 Elucidating the subsidiarity principle

Both as a structural and as a guiding principle, the idea of subsidiarity has close parallels with how economies and markets function (cf. Döring 1999). For example, the competitive market system embodies a subsidiary order insomuch as the emphasis is on the development of private capabilities for the purpose of realising more efficient – i. e. more preferential and cost-effective – solutions to problems. Accordingly, the state only needs to act in the event of a ‘market failure’. This understanding of the subsidiarity of market economies also has consequences for the way

in which the state fulfils its responsibilities. This should be done in keeping with the market as much as possible so that individual independence and economic responsibility are maintained and unfair competition is avoided. This generally results in incentivisation policies to establish a certain framework taking precedence over direct market intervention and structural activities by the state. With regard to a multilevel state (▷ *Federalism*) structured along the lines of the subsidiarity principle, the economic arguments in favour of the extensive decentralisation of tasks include making better allowance for the fact that people living in different regions have different preferences, as well as reduced policy, information, and steering costs due to state actions being closer to citizens on the ground. This type of decentralised (subsidiary) system, however, reaches its limits from an economic point of view where tasks which do not need to be undertaken locally as well cost-effective economies of scale require a task to be centralised for reasons of efficiency.

In the field of political science, subsidiarity in conjunction with the demand for the denationalisation and regionalisation of public tasks is considered to be the ‘intentional handing over of the state’s steering problems to social organisations to independently resolve on their own’ (Schimank/Glagow 1984: 16). The advantages of this sort of unburdening of state decision-making bodies under the principle of subsidiarity are primarily considered to be pre-empting or reducing potential public protests through increased public participation by using the relevant sub-state level governance structures (▷ *Governance*). It also relates to the principle of democracy: while subsidiarity, as a guarantor of grassroots democracy, determines what needs to be regulated in principle and at what level of society, the need for democratic participation determines how this should happen (in this case: by public participation) (cf. Kerber 1981; Zippelius 2010). From a constitutional point of view, the concept of subsidiarity is linked in particular to the idea of the diffusion of power as reflected in the constitutional principle of the separation of powers. While the principle of democracy demands a horizontal separation of powers (executive, legislative, jurisdiction), subsidiarity requires governance to be separated vertically as well. Furthermore, the principle of subsidiarity is also closely linked to the constitutional principle of proportionality, which encompasses the two principles of necessity and commensurability the exercise of government responsibilities. This states that the ‘mildest’ of means should be used to achieve the objective in question and that said means must not be disproportionate in relation to the objective (cf. Isensee 2001; Blickle/Hüglin/Wyduckel 2002).

## 4 Fields of application

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The principle of subsidiarity is used in various fields, such as in structuring social, regional, environmental, or spatial planning policy; in assessing the economic activity of public administrations; in cooperative self-help; in insurance; in applying the law or in the field of federalism in Germany and Europe. In the latter case, the subsidiarity principle serves as a gauge for the exercise of the European Union’s non-exclusive powers (EU; ▷ *European Union*) as per section 5(3) of the Treaty on the European Union (TEU), according to which the EU may only act if tasks can be better accomplished at a supranational level due to their scope or effects. The EU may not act if a matter can be effectively managed at a national, regional, or local level by the member states. This is to ensure that state decisions in the EU are made at a grassroots level where possible and the identities of the member states are preserved. Accordingly, all legislative acts of

the EU are subject to a subsidiarity check, with national parliaments having both a right of veto in the drafting of laws (subsidiarity objection), as well as a right of action with the Court of Justice of the European Union in relation to laws that have already been adopted (subsidiarity action) (cf. Caro 2014; Ritzer/Ruttloff 2006). From a German point of view, Article 23 of the Basic Law states that the transfer of powers to the EU must take into account the principle of subsidiarity.

In regional, environmental, or even spatial planning policymaking, the application of the concept of subsidiarity aims to decentralise policymaking and planning powers to the greatest degree possible while limiting centralised authorities to framework-setting and supplementary measures (cf. Döring 1993; Döring 1997; David 2005). In social policy, helping others to help themselves takes precedence over direct assistance by the state, which not only results in the involvement of non-government institutions (e.g. free charities, churches, etc.), but also includes specific recommendations, such as social welfare benefits being used on a purely subsidiary basis (cf. Althammer/Lampert 2014). In the cooperative system, the concept of subsidiarity comes into play by virtue of the fact that superordinate affiliated companies – unlike the centrality principle in the corporate group – have a purely supportive role compared to upstream organisational units where the latter cannot adequately fulfil tasks themselves (cf. Wegner 1989). With regard to the scope of economic activity by public administrations (*▷ Administration, public*), a ‘contra’ interpretation of subsidiarity indicates that they are only allowed to act in a commercial capacity if private providers are unable to adequately meet an existing requirement (cf. Brede 2005; Döring/Aigner-Walder 2012). Subsidiarity in insurance, by contrast, means that two or more insurance policies are in a tiered relationship, i.e. that the subordinate policy only comes into play when the other policy cannot or need not pay out. Finally, this concept of a hierarchical relationship according to subsidiarity is also characteristic of certain areas of law, for example German criminal law, whereby certain offences outweigh others, such that the subsidiary offence is not pursued.

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