

Michelle Evans and Augusto Zimmermann, eds. *Global Perspectives on Subsidiarity*. Springer, 2014. Pp. 223. \$129. ISBN 9789401788090.

Michelle Evans and Augusto Zimmermann's edited volume *Global Perspectives on Subsidiarity* is a timely piece of literature on the topic of subsidiarity which has been gaining attention outside the circles of experts on federalism and EU law.¹ The book brings together historical, political, and legal insights into subsidiarity as a concept that favors decentralized, rather than centralized, decision-making (at 3–4). The editors claim that this is one of the first books devoted to subsidiarity which offers a multidimensional approach (at 3).

The book's eleven chapters situate subsidiarity broadly in five contexts. Nicholas Aroney (Chapter 2) traces the philosophical origin of the concept of subsidiarity to Aristotle's political theory and its theological interpretation by Thomas Aquinas. Their philosophies, according to Aroney, already accommodated the idea of "graduated orders or hierarchies" (at 11) among different human communities, with Thomas Aquinas being more cognizant of a plurality of communities than Aristotle.

Several chapters, particularly those by Patrick McKinley Brennan, Lael Daniel Weinberger, Jonathan Chaplin, and Rev. Robert A. Sirico (Chapters 3–5, 7), elaborate how Christian theology nurtured the principle of subsidiarity in the nineteenth century. Subsidiarity has been known as a principle of Catholic social doctrine since Pope Pius XI coined the term "principle of 'subsidiary function'" in his 1931 encyclical *Quadragesimo Anno*.² Much less acknowledged is the fact that the principle does not stand on its own;

subsidiarity must be understood as part of the ontological principles of the socio-political order contemplated by the Church. Pope Pius XI's encyclical was built in particular on the thought of Luigi Taparelli D'Azeglio, a Jesuit scholar, as well as other thinkers who upheld "plural authorities" or "the plurality of society" (Brennan, at 34, 36) against a monolithic sovereign state. According to Catholic social pluralism, human communities, which are diverse and naturally possess the right of self-governance, work towards a common good and respectively contribute to human flourishing. The "subsidiary function" of the state is therefore to support these human communities and help them to realize their respective goals and the common good. Interestingly, as explained by Weinberger, a theory of social pluralism also emerged in the late nineteenth century within Reformed theology in the form of an analogous concept called "sphere sovereignty." Subsidiarity in Catholic social thought focuses on the vertical division of authority, while sphere sovereignty in the Reformed doctrine emphasizes the horizontal division of authority among family, state, and church.

Jürgen Bröhmer and Michelle Evans analyze and critique the legal (in)significance of subsidiarity in German and Australian federal systems (Chapters 8 and 10). In principle, the idea of subsidiarity underlies German Basic Law which allocates legislative and administrative powers to the federal level (*Bund*), German states (*Länder*), and municipalities. According to Bröhmer, the principle of subsidiarity is also embodied in the Basic Law's protection of fundamental rights of individuals. In Australia, the drafters of the Constitution honored a "decentralist philosophy" (Evans, at 193) in order to protect state powers from the authority of the Commonwealth. In practice, however, subsidiarity's legal presence in defining politics has been incrementally diminished in both countries, as Bröhmer and Evans critically observe. In Germany, the principle of subsidiarity often "describes the consequence" (Bröhmer, at 154) as opposed to providing clear conditions for the allocation of decision making powers. In Australia, the

¹ See, e.g., 79 *LAW AND CONTEMPORARY PROBLEMS* (2016), Special issue on Subsidiarity in Global Governance (edited by Markus Jachtenfuchs & Nico Krisch).

² Pope Pius XI, *Quadragesimo Anno*, *On Reconstruction of the Social Order*, Encyclical, May 15, 1931, ¶ 80, available at <http://www.papalencyclicals.net/Pius11/P11QUADR.HTM>.

High Court expansively interpreted the Commonwealth's legislative and financial powers and thereby contributed to the reduced role of subsidiarity. Evans argues that subsidiarity must be restored in Australia by relegating some legislative and financial powers back to the state level.

The legal marginalization of subsidiarity can also be observed in the context of EU law. Gabriël A. Moens and John Trone (Chapter 9) find it problematic that the jurisprudence of the Court of Justice of the European Union (CJEU) has effectively negated the judicial enforceability of the principle of subsidiarity. Moens and Trone characterize the CJEU's approach as "one of excessive deference" (at 167), presumably due to the perception that compliance with subsidiarity should be left to "a political judgment" (at 168). Moens and Trone submit that the CJEU "should adopt a more stringent test for compliance with subsidiarity," under which "disproportionate" restrictions of national autonomy would be prohibited (at 179).

Finally, Andreas Føllesdal (Chapter 11) identifies subsidiarity as a "global order" concept and focuses on the example of the margin of appreciation. The European Court of Human Rights developed the doctrine as a way of respecting domestic democratic processes. The future prospect of subsidiarity in a global context is ambivalent, however, according to Føllesdal. On the one hand, "the rampant value pluralism and variations in natural and social conditions across states" (at 218) in a global context may create a demand for subsidiarity; on the other hand, the state-centric global order does not readily coincide with conceptions of subsidiarity.

The volume should be praised for bringing together a wealth of analyses of subsidiarity and providing an overview of subsidiarity's origins and destinies. The book clearly signals that subsidiarity has survived centuries of social and political change as a doctrine dealing with the allocation of authority. While several chapters highlight the somewhat marginalized role of subsidiarity as a legal doctrine, its conceptual flexibility is one of the reasons why the idea of subsidiarity

still underlies federal and supranational systems. At the same time, despite—or perhaps because of—the richness of the eleven chapters, the book has left some fundamental questions unanswered.

First, one of the thorny questions about subsidiarity is what values, if any, it purports to protect through decentralizing decision-making. As Chaplin and Sirico articulate (Chapters 5 and 7), subsidiarity is more than just a principle of decentralization. Other chapters offer several clues about subsidiarity's added values. Brennan's contribution (Chapter 3) makes it clear that the principle of subsidiary function enunciated in *Quadregesimo Anno* in 1931 is "a principle of social pluralism" (at 41, emphasis original) which not merely acknowledges diversity, but assumes that each society performs its social role for the common good or "social justice" (at 34–41). Sirico (Chapter 7) observes that subsidiarity "lies at the core of the concept of the free and virtuous social order" (at 109) which respects "the freedom of individuals, families, and communities" (at 111). Beyond the context of Catholic social doctrine, Evans and Zimmermann point out in their introductory chapter that "[o]ne of the most characteristic implications of subsidiarity is political participation" (at 2). Zimmermann (Chapter 6) sees subsidiarity's potential in facilitating citizens' participation in social and political relationships, enhancing democracy, and protecting individual liberty. Decentralized governance allows those who are familiar with local issues to address them directly and effectively, as suggested by Evans in her analysis of the Australian federal system (Chapter 10). Building on these clues about the virtues of subsidiarity, the concluding piece of the volume could have assessed what justifies subsidiarity as distinct from decentralization.

Second, and a related point, the volume triggers questions as to whether subsidiarity is indeed "a chameleon due to its ability to adapt to" many different contexts (Evans & Zimmermann, at 223), and, if so, whether such flexibility diminishes subsidiarity's conceptual depth. As pointed out by Zim-

mermann (Chapter 6) with reference to the example of Brazil, subsidiarity does not fit into all social and political contexts. Zimmermann suggests that Brazil may not have developed “a culture of personal responsibility that underpins the principle of subsidiarity” (at 103). While Zimmermann’s analysis pertains to one specific country, one can readily expect that there are many societies that do not put a strong emphasis on personal responsibility but rely on the provision of social goods by a central government. Even if subsidiarity is able to adapt to many different contexts—as if it were “a chameleon” (at 223)—this may be possible only if we understand subsidiarity as a principle of decentralization devoid of any specific normative values. Chaplin (Chapter 5) indicates that the use of subsidiarity outside the Catholic social doctrine may empty it of “much of normative meaning” (at 71). According to Sirico (Chapter 7), the principle of subsidiarity “deeply informs religious concerns” that local communities should bear the function of “bringing the *evangel* of Christ to people and cultures” (at 115). These analyses leave us wondering whether subsidiarity can be “a chameleon” without losing its normative and historical baggage.

Finally, the volume’s title, *Global Perspectives*, seems to suggest an analysis of how the idea of subsidiarity can be applicable in guiding the exercise of authority by international organizations and international courts within the international legal order. The volume’s chapters on Christian theology are extremely insightful, yet they rather make us doubt if subsidiarity can be applied to any “global” settings. The margin of appreciation analyzed by Føllesdal (Chapter 11) is one good illustration which mitigates such doubt, yet this was the only chapter that explored the relevance of subsidiarity at the international level outside the contexts of Christian theology, federalism, or the EU. In addition to the margin of appreciation within the Strasbourg court’s jurisprudence, the existing literature suggests that subsidiarity can guide the manner in which other international courts, international organizations, and the rules of international

law respect self-governance at the national and regional levels³ in the areas of international human rights law,⁴ international trade law,⁵ and international security law.⁶ Without addressing these dimensions, the volume under review may not fulfill the promise of its title. Despite these limitations, however, the book informs and inspires legal and political science scholarship on subsidiarity which has existed for centuries, or even millennia.

Machiko Kanetake

Utrecht University

Email: m.kanetake@uu.nl

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Individual contributions

Michelle Evans & Augusto Zimmermann, *The Global Relevance of Subsidiarity: An Overview*;

Nicholas Aroney, *Subsidiarity in the Writings of Aristotle and Aquinas*;

Patrick McKinley Brennan, *Subsidiarity in the Tradition of Catholic Social Doctrine*;

³ See, e.g., Isabel Feichtner, *Subsidiarity*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶¶ 16–30 (Rüdiger Wolfrum ed., online ed. 2008–); Andreas L. Paulus, *Subsidiarity, Fragmentation and Democracy: Towards the Demise of General International Law?*, in THE SHIFTING ALLOCATION OF AUTHORITY IN INTERNATIONAL LAW: CONSIDERING SOVEREIGNTY, SUPREMACY AND SUBSIDIARITY: ESSAYS IN HONOUR OF PROFESSOR RUTH LAPIDOTH 193 (Tomer Broude & Yuval Shany eds., 2008).

⁴ See, e.g., Paolo G. Carozza, *Subsidiarity as a Structural Principle of International Human Rights Law*, 97 AM. J. INT’L LAW 38 (2003); Gerald Neuman, *Subsidiarity*, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW 360 (Dinah Shelton ed., 1st ed. 2013); Dinah Shelton, *Subsidiarity and Human Rights Law*, 27 HUM. RTS L.J. 4 (2006).

⁵ See, e.g., Robert Howse & Kalypso Nicolaidis, *Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?*, 16 GOVERNANCE 73 (2003).

⁶ See, e.g., Nicholas Tsagourias, *Security Council Legislation, Article 2(7) of the UN Charter, and the Principle of Subsidiarity*, 24 LEIDEN J. INT’L L. 539 (2011).

Lael Daniel Weinberger, *The Relationship Between Sphere Sovereignty and Subsidiarity*;

Jonathan Chaplin, *Subsidiarity and Social Pluralism*;

Augusto Zimmermann, *Subsidiarity, Democracy and Individual Liberty in Brazil*;

Rev. Robert A. Sirico, *Subsidiarity and the Reform of the Welfare of the Nation State*;

Jürgen Bröhmer, *Subsidiarity and the German Constitution*;

Gabriël A. Moens & John Trone, *Subsidiarity as Judicial and Legislative Review Principles in the European Union*;

Michelle Evans, *Subsidiarity and Federalism: A Case Study of the Australian Constitution and Its Interpretation*;

Andreas Føllesdal, *Subsidiarity and the Global Order*;

Editors' Conclusion: Future Directions for Subsidiarity.