

Subsidiarity:

- A Matter of Political Vocabulary in a Fragmented World -

- 10

Ken Endo, Hokkaido University

- * Paper for the Workshop *Local Governance in a Global Era –In Search of Concrete Visions for a Multi-Level Governance*, 7-8 December 2001
- * None of these papers should be cited without the author's permission.

Subsidiarity – A Matter of Political Vocabulary in a Fragmented World
- Work in Progress -
Conference on the 'Local Governance in a Global Era'
Sapporo, Japan, 7-8 December 2001

Ken Endo
Hokkaido University/Harvard Law School
endo@juris.hokudai.ac.jp

I. Introduction – A Sceptical View on the Scepticism on Subsidiarity

This paper explores the meanings, functions and implications of subsidiarity in the (re-)structuration of governance under globalisation. The working assumption throughout the paper is that we are entering the age of an increasingly loosely bounded political structure, where the functions of governance are to be more dispersed than those in the age of nation-state.¹ The standard-setting capacity of the World Trade Organisation (WTO), for instance, infiltrates into the field of public procurement, not only of the national government but also of the local ones.² The destructive potential of world market is being felt among the Japanese localities, since the rate at which debt-prone regional governments issue bonds has been differentiated from that of Tokyo metropolitan government in the late 1990s.³

The fundamental difficulty in this loosely bounded political structure, however, lies with the vicissitude of the concepts nurtured during the national age. The concepts such as democracy, sovereignty, citizenship and constitution are all deeply embedded in the territorial nation-state. The lack, or the under-development, of political vocabularies in line with the increasingly dispersed governance and territorial transcendence has continuously served to hamper underpinning such political transformation.

The difficulty in vocabularies surely has something to do with the modern mindset. Many of us tend to take for granted the 'sacred conflation' between the state, people, democracy, sovereignty, citizenship and constitution.⁴ The vast majority of legal and political studies presuppose that this conflation be observed everywhere in each nation, allowing the scholars to undertake comparative research and to pursue largely domestic normative agendas etc. Here, 'methodological nationalism', as some put it,⁵ pervades, forming considerable obstacles for such conceptual innovations. It is in this context that the concept of subsidiarity should be reconsidered its significance.

Before stating the relevance of subsidiarity, one could note a widespread scepticism for its conceptual usefulness. Legal experts typically dismiss it, on the ground that it cannot rigidly be employed in the court. The practitioners of local and regional governments are rueful, pointing out that the recourse to subsidiarity has markedly failed to protect their prerogatives in the European

¹ It is of course debatable whether and to what extent this is indeed the case. See Stefano Bartolini's paper for this conference. My own analysis can be found in a Japanese article in *Sekai* (Special Issue on Europe), Vol. 658 (February 1999). (「重層化する政治空間：ポスト通貨統合の秩序像」『世界』1999年2月(「ヨーロッパ新潮流」特集、第658号、96-107頁。)

² See Hideaki Shiroyama's paper.

³ The region of Hokkaido has been imposed a negative premium in the issuance of local bonds. Cf. Atsushi Miyawaki's contribution to this conference.

⁴ See Joseph Weiler, *The Constitution of Europe* (Cambridge: Cambridge University Press, 1999).

⁵ Michael Zürn, 'On the Conceptualization of Postnational Politics: The Limits of Methodological Nationalism,' *Proceedings of the conference: Global Governance*, Vol. 1, Robert Schuman Centre, European University Institute, Florence, 6-7 April 2001; Anthony Smith, *Nationalism in the Twentieth Century* (Oxford: Martin Robertson, 1979): 191. My own reflection on the methodological nationalism is about to be published in *Sôbun* (Tokyo, January 2002, forthcoming, in Japanese) (「思想としてのヨーロッパ統合—あるいは方法論的ナショナリズムへの懐疑—」『創文』2002年新年号)。

governance where the concept is most frequently in use. Yet, the judiciability or any practical and immediate function should not be the only standard against which a concept is judged its significance. The concept of liberty, or of democracy, may not be helpful for immediate purposes in a court or local government. Yet, it serves to frame and reframe the mindset of those policy or legal practitioners. Quite likewise, the concept of subsidiarity has the potential to re-set the frames of reference by indicating some different worldview ('Weltanschauung') than that of the modern, territorial nation-state.⁶

Against this background, the present paper first attempts to clarify the oft-vague idea of subsidiarity in the history of European political philosophy. Here, I seek to recast it as an age-old concept against the excessive centralisation of power by the sovereign state over the last four centuries. It will be shown that, from Johannes Althusius to Jacques Delors, there have been roughly two versions in it, i.e. negative and positive.⁷ Negative subsidiarity refers to the *limitation* of competences of the larger organisation in relation to the smaller entity, whilst its positive concept represents the possibility or even the *obligation* of interventions from the larger organisation.

Then the paper examines the reasons of why the principle of subsidiarity was brought in EC/EU politics, and considers its implications. The short answer is that the EC or EU had by then been firmly established; and the growing concerns over an ever-centralised Leviathan in Brussels led to the formation of a sort of grand-coalition among a variety of actors, so that they would be able to secure the EU's achievement so far and to simultaneously control the process of European integration, under the banner of subsidiarity. With its usage, the principle of subsidiarity signals the rise of multi-level governance in Europe.

After reviewing the use of subsidiarity in Japan, the conclusive section considers the potential the principle of subsidiarity might have for the political re-structuration in a globalised era and its resulting implications for the local governance. It will be argued that, whether in Europe or in Japan, subsidiarity works to put in order at the idea's level the fragmented functions of governance, and to urge to rethink of the tasks properly assumed by a governing unit, local, national and global.

II. Subsidiarity in the History of European Political Thought

1) The Etymology

In Latin, the word 'subsidium' or 'subsidiarius' initially meant something in reserve, or more specifically, reserve troops. Then it was used for the reinforcement or fresh supply of troops. Later it acquired the broader sense of assistance or aid.⁸ In this derivation of the word, we already see that the notion of subsidiarity is double-edged: while it presupposes something proper should be in charge first, it also can contain positive connotations, as it envisages the intervention of forces for the benefit of those in trouble.

2) Althusius: Local Autonomy in a Wider Federative Framework

The notion of subsidiarity cannot date exclusively from the Popes' encyclicals of the Catholic Church. The idea is rather a typically European or western thought, and can be traced back to Aristotle and Thomas Aquinas.⁹

⁶ Hence a section is allocated to the concepts and ideas, dating back to the early modern world. See Hueglin's contribution.

⁷ For a more fully documented article on these points, see Ken Endo, "The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors," *Hokkaido Law Review*, XLIV/6 (1994): 553-652.

⁸ Jean-Marie Pontier, 'La subsidiarité en droit administratif,' *Revue du droit public et de la science politique en France et à l'étranger* (novembre-décembre 1986), p. 1516.

⁹ Chantal Delsol, *L'État subsidiaire* (Paris: PUF, 1993): Chaps. I et III.

It is reasonable however, to also identify Johannes Althusius (1557-1638) as the first proponent of subsidiarity and federalism (he uses, in fact, the word of ‘subsidia’ in the text).¹⁰ He was a Calvinist theoretician and practitioner of politics at the beginning of the 17th century. As the powerful Syndic of Emden, a city in East Friesland which was one of the first in Germany to embrace the Reformed faith, Althusius found himself in the stormy movement of the Counter-Reformation, and tried to maintain the relative autonomy of his city vis-à-vis its Lutheran provincial Lord and Catholic Emperor. In this circumstance, Althusius considerably revised his main book Politica Methodice Digesta in 1610 and in 1614, which first appeared in 1603.

Had Althusius aspired only to protect the independence of his city, he could have made recourse to the language of separatism. Yet, his age was that of state building. Indeed, his immediate upper echelon of governance was the provincial lord who tried to establish a sovereign state in East Friesland – the complicate relations with which he could not afford to neglect. Another factor in his mind was the fact that Emden was then a leading centre for interdependent commerce, especially after the capital had fled from the Netherlands in the middle of the Eighty Years (independence) war.

Thus he commenced his theoretical enterprise with the Aristotelian presupposition: “no man is self-sufficient.” For him, a man is unable to live comfortably, being isolated from society. Men need the assistance or aid of others, and thus establish, cultivate and conserve associations, such as family, collegium (e.g. guild and corporation), city, province and the state. None of associations is self-sufficient, and they are therefore required to cooperate each other within a universal association. Seeking for ‘sympiotics’ among them, which is the essential subjective matter of politics, Althusius picks up a biblical concept of ‘foedus’ (the alliance or league that originally meant the bond between God and men), and secularised it to apply for associations in this world. This term is the origin of the word ‘federalism’ as we use it today. Within this federal structure, he tried to maintain both the political and commercial interests of Emden.

He was also the theorist who first conceptualised the consociational political systems; indeed, his ideal in politics was to ‘associate (consociandi)’ men, as seen at the beginning of his Politica:

(§1-2) Politics is the art of associating (consociandi) men for the purpose of establishing, cultivating, and conserving social life among them. Whence it is called “sympiotics.” The subject matter of politics is therefore association (consociatio), in which the symbiotes pledge themselves each to the other, by explicit or tacit agreement, to mutual communication of whatever is useful and necessary for the harmonious exercise of social life.

(§3-4) The end of political “sympiotic” man is holy, just, comfortable, and happy symbiosis, a life lacking nothing either necessary or useful. Truly, in living this life no man is self-sufficient, or adequately endowed in nature. ... Nor in his adulthood is he able to obtain in and by himself those outward goods he needs for a comfortable and holy life, or to

¹⁰ See for the most, systematic and thoughtful introduction of the political ideas of Althusius, Thomas O. Hueglin, Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism (Waterloo, Ontario: Wilfrid Laurier University Press, 1999).

For the following discussions on Althusius, see also Patrick Riley, ‘Three 17th Century German Theories of Federalism: Althusius, Hugo and Leibniz. Publius: The Journal of Federalism 6/3 (1976): 7-41; Thomas Hueglin, ‘Johannes Althusius: Medieval Constitutionalist or Modern Federalist?’ Publius: The Journal of Federalism 9 (4 1979): 9-41; idem, ‘New Wine in Old Bottles? Federalism and Nation States in the Twenty-First Century: A Conceptual Overview,’ in Karen Knop, Sylvia Ostry, Richard Simeon, and Katherine Swinton. eds., Rethinking Federalism: Citizens, Markets, and Governments in a Changing World (Vancouver: University of British Columbia Press, 1995): 203-223.

My own reflection of subsidiarity and sovereignty in relation to Althusius can be found in Ken Endo, ‘Subsidiarity and its Enemies: To What Extent Is Sovereignty Contested in the Mix Commonwealth of Europe,’ EUI Working Paper RSC No. 2001/24, pp. 1-41.

provide by his own energies all the requirements of life [subsidia].¹¹

He thus refers to the word 'subsidia' but not in a systematic manner akin to the later Pope Pius XI (see the next section). It was rather used in the sense of supply of all the necessities. Nonetheless, his name is likely to be repeatedly mentioned as an origin, because his 'Weltanschauung' fits almost perfectly that of subsidiarity: a presupposition of diverse but co-operative groups of people, support of local autonomy within a wider federative framework, an ascending series of contracts leading up to the formation of a universal association, etc. Also, both of the two currents of subsidiarity, soon to be discussed, can be found in Althusius, which is another reason why he can be considered as a point of departure.

Here, I wish to emphasise the two faces of Althusius. On the one hand, he aspired to harmonise the graduated social order, namely amongst the levels of families, guilds, cities, provinces, the universal empire. His 'Weltanschauung' was strongly coloured by an organic harmony, pointing to a consociational and corporatistic governance. By communicating 'whatever useful and necessary for the harmonious exercise of social life' among various associations (i.e. consociations), the universal body politic would be orderly preserved.

On the other hand, Althusius evidently wished to protect the religious and political autonomy of his city, Emden - the stronghold of the Reformist Church. Power in this context must be reserved at the lowest possible level, rejecting unnecessary interference from the upper echelons. One could easily imagine the oft-violent circumstances of Counter-Reformation, under which he wrote his *Politica*. The Catholic soldiers from Spain were fighting with his Dutch neighbours, while the Lutherans (who held the power of the East Friesland) locally competed with the Calvinists for post-Reformation hegemony.

Against this backdrop, his book aimed at protecting the local autonomy in an interdependent and mutually respectful world. It is better to be reminded that Emden was one of the most prosperous trade centres at that time. His dual aim, and two-face character, embodied in the idea of subsidiarity, thus derived from the double necessity of preserving the local autonomy and the commercial interests of the city, in a symbiotically graduated world. From here, two conceptual currents of subsidiarity flow, that is, negative and positive, with which to reaffirm the importance both of autonomy of smaller entities and of a larger framework.

3) A Counter-Tradition to the Excessive Centralisation

From Althusius on, the tradition opposing the over-centralisation of the State's power runs throughout the history of European political thought. Here is not the place to do justice to all the important theorists who contributed to the tradition, though later sections will cover some. Instead, this section will only briefly demonstrate the link between Althusius and the pluralist thinkers in the last century.

With the arrival of the age of state- and nation-building, Althusius himself was almost forgotten for a long time, except as a dangerous thinker undermining the foundations of absolute monarchy. It was only in late 19th century when Otto von Gierke reintroduced the Althusian theme that his name and theory regained currency.

Gierke's use of Althusius derived from one of his main concerns that the Prussia-led State-building

¹¹ Carl Joahim Friedrich, *Politica Methodica Digesta of Johannes Althusius* (Cambridge: Harvard University Press, 1932), p. 15. The English translation can also be found in Frederick S. Carney, *The Politics of Johannes Althusius* (London: Eyre & Spottiswoose, 1965), p. 12, reprinted as: Johannes Althusius, *Politica: An Abridged Version of Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples*, ed., trans. & intro., by Carney (Indianapolis: Liberty Fund, 1995), Chap. I, pp. 17-8. All the following quotations are taken from this new version.

process under Bismarck, coupled with the tendency of individualistic atomism, would destroy the good old Germanic tradition of 'Genossenschaft'. By referring to the Althusian system of the universal consociation, composed of smaller consociations, Gierke tried to restore and develop the more pluralistic but harmonious society vis-à-vis the excessively centralised and bureaucratised State.

It was not a coincidence that the English pluralists relied on Gierke, in their opposition to the unitary state in the UK. Both Frederic Maitland and Ernest Barker extensively translated and introduced Gierke's work to the British audience¹²; and Harold Laski, much influenced by these pluralists, remained one of the most critical of the state sovereignty, until he shifted further to the left in his political belief.¹³

Subsidiarity, taken together with the theorists and practitioners analysed below, should be seen in this light of the counter-tradition against the over-centralised sovereign state. After the double-faced Althusius, there would be roughly two versions, positive and negative, or personalistic or liberal currents, with a number of variants in each of these two. The following sections will trace these versions in some detail.

III. The Personalistic and Corporatistic Current of Subsidiarity

The social-conscious, personalistic Catholics began to acquire the notion of subsidiarity in the 19th century, and later came to occupy the main seat in the subsidiarity discussions. Yet before examining the Catholics' systematic formulation of subsidiarity as a principle, we would better examine another personalist thinker, quite influential in the current subsidiarity discourse: that is, Pierre Joseph Proudhon.

1) Proudhon's Personalistic Federalism

Although a fiercely anti-Church himself, Proudhon was ironically influential on the later Catholic thinkers and practitioners; and not without reasons. While he is usually identified as a socialist, his views were coloured by agrarian Catholicism: an attachment to 'natural' communities, organic view of society, stress on voluntary contributions to society, as well as an anti-city, anti-establishment, anti-State, anti-bourgeois, and anti-liberal (and anti-Jewish and somewhat xenophobic) attitude earned him supporters from all corners of the political spectrum, including fascism.¹⁴

Relevant for the present study among his many radical ideas is his hostility towards the over-centralised state and popular sovereignty in the Jacobin mould. What was at stake, for Proudhon, was the right balance stroke between the two imperatives: authority and liberty. The centralised state, founded on the Rousseauist notion of one and indivisible republic, undermined this balance, in favour of the authority. Liberty would have to be recovered within the framework of co-operative and federative pact amongst the plurality of more 'natural' groups such as families, guilds,

¹² Cited as above. It might be noted, in connection with the discussion below, that Ernest Barker quoted and espoused an Encyclical of Pontiff Pius XI who established the principle of subsidiarity. See Barker's work in the middle of WW2, Reflections on Government (London: Clarendon Press, 1942), p. 353.

¹³ See for instance his The Foundations of Sovereignty and Other Essays (London: George Allen & Unwin, 1921); 'The Pluralist State', Philosophical Review 28 (1929): 562ff.

¹⁴ The 'Cercle Proudhon' was founded within the 'Action Française' in 1911. See Donald Kelley and Bonnie Smith's 'Introduction' to Proudhon's What is Property? (Cambridge: Cambridge University Press, 1994), p. xxxiii.

Amongst the supporters of the Vichy regime could also be found a significant number of Proudhonists. It might be interesting to note that the young Jacques Delors, himself deeply imbued with social Catholicism, felt sympathetic towards the Vichist propaganda for social harmony, as he himself confessed in his Changer: Conversations avec Clause Glayman (Paris: Stock, 1975). Here I draw on my unpublished paper: 'What is "Delorism"? Convictions of Jacques Delors,' *European Studies, Katholieke Universiteit Leuven*, August 1992.

communes and regions.¹⁵

The Proudhonian concept of 'liberty' has a double connotation, both deeply related to the fulfilment of personality. On the one hand, one's personality does not blossom without an autonomous sphere for reflection and action. Thus one needs a certain degree of freedom, in the sense of non-interference. On the other, if one does not contribute to society, simply staying aloof from it as an atomised individual, his or her personality will not be fully realised.

From here it is not too distant from the two-fold concept of subsidiarity – the idea that Proudhon himself did not referred to, unlike his followers, but that comes close to his own remark:

Tous ce que peut exécuter l'individu, en se soumettant à la loi de justice, sera donc laissé à l'individualité; tout ce qui dépasse la capacité d'une personne sera dans les attributions de la collectivité.¹⁶

Against the two evils of excessive atomism and (nation-)statism, his theory of federalism was an essential part of his theoretical construction. The federal structure would links the natural groups in a wider pluralistic governance, which would punish the over-centralisation of the nation-state and would encourage the individuals' contribution to the concrete and particular societies. This view is nothing but an immediate origin of 'fédéralisme personnaliste' or 'integral federalism', as will later be called.

Set against this background, it is no surprise that Proudhon made a frontal attack on the state sovereignty.

Je demande le démembrement de la souveraineté politique...¹⁷
La commune est comme l'homme, comme la famille, comme toute individualité, et toute collectivité intelligente, un être souverain.¹⁸

Semblablement, selon le nouveau pacte, la souveraineté politique, l'autorité civile et l'influence corporative se cordonnent entre les régions, districts, communes et autres catégories, et par cette coordination s'identifient avec la liberté même.

La vieille loi d'unité et d'indivision est abrogée. En vertu du consentement, au moins présumé, des diverses parties de l'Etat au pacte d'union, le centre politique est partout, la circonférence null part.¹⁹

Sovereignty in the Proudhonian system would thus be dissolved, as a result of a federal and union pact among the natural entities: families, guilds, communes and regions. The states, unionised and federalised within themselves, would then form a European federation. The state in this picture would retain the function to guide and co-ordinate the natural groups, but lose its foremost character: i.e., sovereignty. It is in such a multilevel system that the balance between authority and liberty would be recovered and that a person could develop his or her potential fully, with no overwhelming

¹⁵ For the same reason opposing the homogeneous nation-state in France, Proudhon objected the contemporary establishment of a national state in Italy which, for him, would lead to the suppression of natural groups such as municipalities and regions. One of his main publications (Du principe fédératif) derived from his struggles to counter-argue for the federal union in Italy, which would then be incorporated to a wider European federation.

¹⁶ P. J. Proudhon, De la capacité politique des classes ouvrières, Oeuvres complètes III (Paris: M. Rivière, 1924), p. 213

¹⁷ Théorie de la propriété (Éd. Lacroix), chap. IX, p. 241, cité par Jean Bancal, Prodhon: Pluralism et autogestion, tome II: les réalisations (Paris: Aubier Montaigne, 1970), 118.

¹⁸ Proudhon, De la capacité politique, cited by Bancal, *ibid.*, pp. 104-5.

¹⁹ De la capacité politique des classes ouvrières, Oeuvres complètes III, nouvelle édition (Genève- Paris: Slatkine, 1982), pp. 197-8.

authority to intervene in detail but with more likelihood to contribute to concrete societies.

He thus became the founder of a still significant current of socialist thinking, the integral federalism, and influential for the later social Christian thinkers. Emanuel Mounier, Denis de Rougemont and Alexandre Marc are the followers in one sense or another of Proudhon, and Jacques Delors, a social Catholic, is the prominent practitioner of our age.²⁰

2) '*Rerum Novarum*': The Catholics and the Problematic of Subsidiarity

Around the same time as Proudhon, some social Catholic thinkers like W. von Kettler and Luigi Tapprelli became aware of social problems intensified by the Industrial Revolution.²¹ In order to solve these problems, they urged the higher entity to assist the weakest in society, thereby championing 'positive subsidiarity'. Influenced notably by Ketter's idea of 'le droit subsidiaire', as we shall soon discuss in detail, Pontiff Leo XIII will issue an encyclical '*Rerum Novarum*' in May 1891, which officially committed the Church into social reforms and which admitted that the State should play a role in the social field, though not without limitations to its role.

This encyclical turned out to be a monumental landmark in the official teachings of the Catholic Church, with which the Church started to commit itself to social problems. In the document, Leo condemned, for the first time in Church history, the capitalistic exploitation of the poor, just as harshly as the socialists did. This must be seen as a radical change of stance, especially in the view that the 19th century was the age of Catholic fundamentalism when most of the Popes, notably Pope Gregory XVI of the mid-19th century, averted their eyes from the problems of political, economic or social modernisation.

In relation to the subsidiarity principle, it is important to note that '*Rerum Novarum*' cleared the way for the State to protect the workers. This meant that the Church officially allowed the State to intervene in the social field where the Church had traditionally found itself as the main actor. The Vatican, however, was cautious of the resulting over-expansion of State power, which, the Church, hereafter, sought to counterbalance. One can find such an attempt already in the Leo's encyclical. Take, for example, the paragraphs 35, 36 and 55:

<Para. 35> We have said that the State must not absorb the individual or the family; both should be allowed free and untrammelled action so far as is consistent with the common good and the interest of others.

<Para. 36> The limits must be determined by the nature of the occasion which calls for the law's interference – the principle being that the law must not undertake more, nor proceed further, than is required for the remedy of the evil or the removal of the mischief.

<Para.55>... The State should watch over these societies of citizens banded together in accordance with their rights, but it should not thrust itself into their peculiar concerns and their organisation, ...²²

It is clear that he intended to limit the sphere of State intervention in societal - especially family - activities. Probably, for a Pope towards the late 19th century, memories of anticlericalism were too vivid to ignore the dangers of excessive State power. Whatever his reasoning, we can interpret his remarks as being an embryo of the negative notion of subsidiarity, since they represent the limitation of activities by the higher organisation.

²⁰ Here, I draw on my unpublished paper, "What is 'Delorism'? The Convictions of Jacques Delors," Katholieke Universiteit Leuven, Leuven, August 1992; idem., 'Principle of Subsidiarity,' *op. cit.*, esp. Part III.

²¹ See with this regard, Delsol, *L'État subsidiaire*, *op. cit.*, p. 126-36.

²² Leo XIII, '*Rerum Novarum*: Encyclical of Pope Leo XIII on Capital and Labor, May 15, 1891,' in *The Papal Encyclicals 1903-1939* (Raleigh: McGrath Publishing Company, 1981), paras. 35, 36, 55.

However, Leo's starting point and priority concerned the duty of the State to protect the workers' dignity, as can be seen in the following quotation:

It would be irrational to neglect one portion of the citizens and favor another, and therefore the public administration must duly and solicitously provide for the welfare and the comfort of the working class. ... Whenever the general interest or any particular class suffers, or is threatened with harm, which can in no other way be met or prevented, the public authority must step in to deal with it.²³

Thus he repeatedly emphasised the necessity of public intervention in favour of the workers, who “have no resources of their own to fall back upon and must chiefly depend upon the assistance of the State.”²⁴ This brought, as was said before, a breakthrough in the Vatican's position in that the Church made legitimate the State's intervention in social affairs. In this instance, Leo is affirming positive subsidiarity, which admits the obligation of the higher organisation. Here, we can already have a glimpse of the two conflicting ideas of subsidiarity: negative and positive, with an inclination to the latter.

3) *‘Quadragesimo Anno’ of Pius XI: The Making of a Principle*

The principle of subsidiarity acquired its first explicit formula in 1931 when Pope Pius XI made an address entitled ‘Quadragesimo Anno.’ Before turning to its content, a few remarks should be made concerning the background and context of this encyclical.

First of all, as the title of the encyclical tells us, the address was made on the occasion of the forty years' celebration of Leo's ‘Rerum Novarum.’ During this period, the Church had, if not always, attempted to secure an autonomous sphere for the intermediate corps of civil society, while admitting the State's role in the field of social questions. Pius XI's ‘Quadragesimo Anno’ can be understood as a development in the internal thinking in the Church.

Secondly, Pius' reign was characterised by rising Totalitarianism where the State apparatus tried to penetrate every sector of society. Against this background, ‘Quadragesimo Anno’ expressed growing scepticism about the excessive State control over society, although the relationship between the Catholic Church under Pius XI and the Fascist regime was highly ambiguous and complex during the inter-war period.

Bearing these contexts in mind, it would be useful to quote the first expression of the subsidiarity principle:

<Para. 79> ... that most weighty principle, which cannot be set aside or changed, remains fixed and unshaken in social philosophy: *Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is injustice and at the same time a great evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do.* For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.

<Para. 80> The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concern of lesser importance, which

²³ Para. 33 and 36, respectively. See Leo's ‘Rerum Novarum,’ *ibid.*

²⁴ Para. 37, *ibid.*

would otherwise dissipate its efforts greatly. Thereby the State will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands. Therefore those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of *the principle of "subsidiary function,"* the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State.²⁵

This is the birth of 'the principle of subsidiary function' (in German translation 'das Prinzip der Subsidiarität'). What is immediately apparent from this extract is that this time the Church's main intention was to restrict the State's interference rather than to emphasise the State duty. Following the formula above, the higher organisation cannot be assigned the tasks which the smaller entities can carry out by themselves, just as the community cannot take away from the individual what he or she can accomplish. This 'most weighty principle,' 'cannot be set aside or changed,' and 'remains fixed and unshaken in social philosophy.' With this limitation on the activities of the higher organisation, we can say, that the principle of subsidiarity took on a negative character.

Nevertheless, one should not overlook the elements of positive subsidiarity, i.e. the emphasis on the duty of State intervention, in 'Quadragesimo Anno.' Indeed, Pius XI fully agreed with Leo XIII in that the State had obligations in the field of social reforms, and he urged the State to put into effect what was called in 'Rerum Novarum.'

While the positive aspect of subsidiarity thus derived from the Church's internal development and thought since Leo, it also came from Pius' conception that the State had to revive its efficiency and strength through easing its burdens. The classic formulation of subsidiarity, as quoted above, was preceded by the following passages:

When we speak of the reform of institutions, the State comes chiefly to mind ... because things have come to such a pass through the evil of what we have termed 'individualism' that, following upon the overthrow and near extinction of that rich social life which was once highly developed through associations of various kinds, there remains virtually only individuals and the State. This is to the great harm of the State itself; for, with a structure of social governance lost, and with the taking over of all the burdens which the wrecked associations once bore, the state has been overwhelmed and crushed by almost infinite tasks and duties.²⁶

Thus, Pius XI delineated the sphere of State intervention also on the grounds of the State's own interest. By leaving to smaller groups the settlement of minor business, 'the State will more freely, powerfully, and effectively do all those things that belong to it alone'. This can be related to the ideas of many of Christian Churches that, the State is also one of the natural groups which should have its own *raison d'être*. In the end, Pius XI too, took the State's duty of intervention in society seriously.

4) *The Human Dignity in the Idea of Subsidiarity*

Behind the papal doctrine, there is a firm metaphysical conviction on the nature of human being. It would be useful to consider it briefly in order to understand the 'Weltanschauung' of subsidiarity fully.

²⁵ Pius XI, 'Quadragesimo Anno: Encyclical of Pope Pius XI on Reconstruction of the Social Order, May 15, 1931,' in *The Papal Encyclicals 1903-1939, op. cit.*, paras. 79-80. Emphasis added.

²⁶ *Ibid.*, para. 110.

According to this conviction, a person is at once created by God and bound by destiny to God. Only man and woman were created with some resemblance to God and destined to immortal lives with God. This nature of the person confers upon him or her a unique and unalienable value which is called dignity. It is for this reason that a person should be fully respected as a free and responsible agent. For example, the Church's protest against capitalistic exploitation of workers at the end of the 19th century, was based upon the argument that the workers should not be treated as a commodity but with dignity.

And yet, this intrinsic dignity will never become concrete and finalised unless a person tries to develop it through interactions with other persons.²⁷ Therefore, a person needs Society. Encyclicals dealing with the social questions do not usually fail to emphasise this importance of Society. The following serves as an example:

God has likewise destined man for civil society according to the dictates of his very nature. In the plan of the Creator, society is a natural means which man can and must use to reach his destined end. Society is for man and not vice versa.²⁸

In order to reach his or her end, that is, to complete the dignity and to fulfil the potentials given by God, a man or woman has to 'use' Society.

Within the framework of Society, a person ought to fulfil his or her proper responsibility to it. In the process of finding his or her own role, making decisions and taking actions through various kinds of contacts with others, one can develop his or her potentials, and thus point to the full realisation of his or her dignity.

Crucial here is that any society should not override a person. Without the sphere of freedom, a person would never be able to think of his or her proper tasks nor to initiate actions. With detailed interventions from societies, he or she might not dare to take action. These situations would impede a person to blossom fully. Therefore, if he or she can fulfil his or her own goals, any society should not intervene into details, and, borrowing Pius XI's words, "it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community" (as quoted above). Needless to say, this is the negative concept of subsidiarity.

Nevertheless, all societies exist for each person, thus for the realisation of his or her dignity. If the person can develop his or her own possibilities, any society does not have to interfere his or her own business, as was seen above. Yet, if, on the contrary, he or she cannot attain his or her goals alone, various levels of societies have an obligation to assist the person. Here is the *raison d'être* of any society (inclusive of the State). The Church expected societies to help those who lacked the means or ways to attain their goals. Here, we can have a look at the positive notion of subsidiarity.

Thus the idea of dignity is deeply imbued with that of subsidiarity. On the one hand, an upper organisation should leave the sphere of freedom to each person. Only within this sphere and through interactions with others, one can develop his or her full potentials. On the other hand, the society has to assist him/her when in trouble. In either of the cases, societies are necessary for the development of any person, therefore for the 'concretisation' of human dignity.²⁹ This is why the Catholics can defend both the positive and negative concepts of subsidiarity.

²⁷ See Delsol, *L'Etat subsidiaire*, op. cit., pp. 123ff.

²⁸ Pius XI's 'On Atheistic Communism,' in Rev. John F. Cronin, *Catholic Social Principles: The Social Teaching of the Catholic Church Applied to American Economic Life*, 3rd Print (Milwaukee: The Bruce Publishing Company, 1952), p. 67.

²⁹ Delsol, *L'Etat subsidiaire*, op. cit., pp. 123ff.

IV. The Liberal Current of Subsidiarity

By 'liberal' what is meant here is the tendency that favours the reservation of power at the lowest possible level or unit, including individuals ultimately. Let us trace this liberal current in the following section.

1) The Emden Synod in 1571

The Synod held in Emden in 1571 - before Althusius took the power of the city - symbolises a negative notion of subsidiarity to regulate the relationship between several levels of synods.

Provinzial- und besonders Generalsynoden soll man nicht Fragen vorlegen, die schon fröhler behandelt und gemeidsam entschieden worden sind, ... und zwar soll nur das aufgeschrieben werden, was in den Sitzungen der Konsistorien und der Classcalversammlungen nicht entschieden werden konnte oder was alle gemeinden der Provinz angeht.³⁰

This pointed to a formula in which decisions should be made at the lowest possible level. With striking similarities to the multilevel governance discourse in the present Europe, the Provincial or General Synod could not take decision in the areas where the community synods had taken decision, or could take decision only if the latter could not decide or if the questions under consideration concerned all the parishes.

2) Liberal Thinkers & Negative Subsidiarity

The negative notion of subsidiarity can be found in liberal thinkers at the later periods as well. In the second half of 17th century, John Locke argued that governmental power ought to be restricted to those instances where the people could not solve their own problems. With some influence of Calvinism, it might be possible to read Locke in relation to subsidiarity, despite differences with Althusius especially in a Locke's dichotomic view of society between individuals and government.³¹

In the 18th century, Montesquieu already claimed that the State's functions should be secondary and supplementary. William von Humboldt also gave one of those liberal interpretations in the 19th century. In his argument on the State's role, he maintained that the State should not intervene if individuals possess the means to achieve their goals. Humboldt's idea comes close to "negative subsidiarity" when it tries to limit activities of the higher organisation.

Some national constitutions followed this liberal stream. Take the example of Article 3 of the Swiss Constitution in 1874:

Les cantons sont souverains en tant que leur souveraineté n'est pas limitée par la constitution fédérale, et, comme tel, ils exercent tout les droits qui ne sont pas délégués au poivoir fédéral.

Or, the 10th Amendment of the US Constitution can be seen another case in point:

The powers not delegated to the United States by the Constitution or

³⁰ Dieter Perlich, 'Die Akten der Synode der niederländischen Gemeinden, die unter dem Kreuz sind und in Deutschland und Ostfriesland verstreut sind, gehalten in Emden, den 4. Oktober 1571' in Elwin Lomberg (Hrsg.) *1571 Emden Synode 1971* (Neukirchener, 1973): 49-66, at p. 63.

³¹ For the following paragraphs, I mainly rely on Delsol, *L'Etat subsidiaire*, op. cit., esp. Chap. VI.

prohibited by it to the States, are reserved to the States respectively, or to the people. (US Constitution 10th Amendment, 1791)

Both of these constitutional provisions make it clear that the competencies of the central authority should prove to be exceptions, not the rule, with the power resting with the Canton, the state or the people. In a spirit similar to subsidiarity, moreover, US President Abraham Lincoln left a remark in 1854 that:

The legitimate object[sic] of government is to do for a community of people whatever they need to have done but cannot do at all, or cannot so well do for themselves in their separate and individual capacities. In all that people can do individually well for themselves, government ought not to interfere.³²

It is important to quote this passage since it shows a link between the European notion of subsidiarity and the American federalism.

To these can be added a remark by J. S. Mill in 1861 that: 'It is but a small portion of the public business of a country, which can be well done, or safely attempted, by the central authorities.'³³ According to him, implementation of policies set by the central government should be left to the hands of local authorities, thus freeing the local habitants from the detailed interventions from the central government.

3) Negative Subsidiarity & European Integration

In the context of European integration, this liberal interpretation has prevailed in its appearance, though almost always coupled with the proposed increase of the EU's competence. It was Altiero Spinelli, for instance, the champion of European federalism since the Resistance period, who introduced the principle of subsidiarity in the EU's formal document: he first led the European Commission to make a contribution report to the Tindemans Report in 1975, and then the European Parliament to adopt the Draft Treaty on European Union in 1984. On these two occasions, he attempted to soothe the fear for a over-centralised Leviathan in Brussels, by stressing the negative aspect of subsidiarity.³⁴

In case of Spinelli, the upholding of subsidiarity was partly designed to form coalition with the Christian Democrats in the Parliament, who were more eager to support the principle for the reason I stated earlier in this paper. It was Ralf Dahrendorf, a Liberal, who, earlier than Spinelli, advocated for the principle of subsidiarity, as a 'cri de coeur' rather than as a calculated political act of a Spinellian mould. Let us quote his controversial article in Die Zeit in 1971:

Not everything in Europe is lovely because it happens to be European. A European Europe is also a much differentiated, colourful, multiple Europe. It is a Europe in which those matters are dealt with and regulated in common which could perhaps only sensibly be dealt with in this way. The transition from the First to the Second Europe demands a move away from the dogma of harmonisation towards the principle of subsidiarity.³⁵

³² Quoted by Oswald Nell-Breuning, Baugesetze der Gesellschaft: Solidarität und Subsidiarität (Freiburg: Herder, 1990), S. 88.

³³ John Stuart Mill, Considerations on Representative Government, Collected Works of John Stuart Mill Vol. XIX (Tronto: University of Tronto Press, 1977), p. 534.

³⁴ A detailed discussion on these Spinelli initiatives can be found in Endo, 'Principle of Subsidiarity,' op. cit., Part III.

³⁵ Quoted (with some minor revisions of translation) from Micheal Hodges ed., European Integration: Selected Readings (Harmondsworth: Penguin, 1972), p. 82.

As a then Commissioner in Brussels, he was alerted by the scope and depth of the bureaucratisation of the Commission, especially in the field of Common Agricultural Policy. This First, over-bureaucratised Europe should, in his eyes, give way to the Second one of differentiation, in line with the principle of subsidiarity. Here we see a typical expression of the liberal current of subsidiarity.

And one could add that the criticism against Brussels, unleashed after the Danish rejection of Maastricht in 1992, led to the emphasis on the negative version of subsidiarity. Delors became a central figure upholding the principle of subsidiarity, in this post-Maastricht debate, in which he made full use of negative subsidiarity. By promising to return some of the competences to the member states under the banner of subsidiarity, Delors retreated from an ever expanding programme for integration in an attempt to allay the fear for over-centralisation of power in Brussels.³⁶

V. Subsidiarity Constituting the Multi-Level Governance in the European Union³⁷

The principle of subsidiarity always comes to the fore when the political system experiences, or attempts at, centralisation. Its use in EU politics is no exception.

The above-mentioned initiatives of Altiero Spinelli exemplify it. When he first introduced the concept in the EEC Commission's contribution report to the Tindemans Report in 1975, which was accompanied by his radical proposals for strengthening the Community. The same can be said with the 1984 Draft Treaty on European Union by the European Parliament.

Apart from Valéry Giscard d'Estaing who made a major report on the subject in the EP, it was Jacques Delors who came out as a champion of subsidiarity, or 'M. subsidiarité', in the late 1980s. When he set out the date of 1992 in his inaugural speech in 1985, he mentioned this principle of subsidiarity. When he chaired the committee of central bankers whose report was later named as the Delors Report on EMU, he explicitly referred to the principle once more. With the 1992 boom starting to attract attentions, inside or outside of Europe, Delors felt it necessary to allay the fear for over-centralisation in Brussels.

It should be noted that this Delorist initiative under the name of subsidiarity was initially triggered in part by Länder. They expressed their concern in a meeting with Delors in Bonn in May 1988 that they lost control over legislative decisions taken in Brussels by their federal government. With subsidiarity, both Delors and Länder found a solution.³⁸

The Maastricht Treaty and the successive Treaty of Amsterdam, which enshrined the detailed provisions for implementing subsidiarity, elevated the principle to one with a constitutional status.

After referring in the Preamble that "decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity," Article 3b (currently renumbered 5) reads as follows:

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently

³⁶ For details, see Ken Endo, 'The Art of Retreat: A Use of Subsidiarity by Jacques Delors,' Hokkaido Law Review, XLVIII/6 (1998): 1684-1700.

³⁷ For a fully documented analysis of subsidiarity within the context of European integration, see my 'Principle of Subsidiarity' Hokkaido Law Review, op. cit., Part III, pp. 569-609.

³⁸ 'Document de travail de Jacques Delors, Président de la Commission des Communautés européennes à l'occasion de la rencontre avec la Conférence des Présidents des Länder, Bonn, 19 mai 1988.'

achieved by the Member States and can, by reason of the scale or effects of the proposed action, be better achieved by the Community.
Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

Here, subsidiarity works as a principle constitutive of a multilevel governance in Europe. So far as subsidiarity features into the EU treaties, it presupposes some well-justified intervention from the larger organisation, i.e. the EU, into the member-states' affairs. The overall structure of European governance distinctly shows a multi-level or at least two-level character, which the upholding of the subsidiarity principle embodies and supports. Some time ago, European integration proceeded by stealth, most of its activities being impinged – and to some extent legitimised – on their functional achievement. Now, its entire structure is constituted, or at least flanked, by this principle. The constitutionalisation of a multi-level governance in this sense is thus signalled by the rise of the principle of subsidiarity.

The point here is that while defending the further strengthening of the EU, the principle has been in use to assuage the fear for its over-centralisation. Yet, so far as the concept subsidiarity, not of sovereignty, is in use as the principle governing Community or Union, it presupposes the just and necessary interference from Brussels. The introduction of subsidiarity into EU politics means both the securing of the EU's achievement so far and the simultaneous control over the process of European integration.

Increasingly, the question seems to be how to use this principle for the sake of their own levels. Regions, member states and indeed the EU all try to interpret it in their favour. Even Margaret Thatcher initially tried to use it for her favourite sports of Brussels' bashing, though later she became critical of the idea.³⁹ Länder remain a keen supporter in advocating the strict implementation of the principle, though their priority seems to have shifted to the constitutionally explicit division of competences.

That almost everybody tries to use it in his or her favour strengthens, rather than weakens, the multi-level governance. This is because, these actors of two-to-three levels are constrained by the very use of subsidiarity which does not allow any level or unit to go absolute. With the principle of subsidiarity thus framing the way of thinking, Europe does seem miles away from the sovereign state system, indeed.

VI. Subsidiarity in Japan

Looking to the other edge of Eurasia, there is clearly no such conceptual tradition in depth in Japan. Nonetheless, the idea of subsidiarity is increasingly widely circulated amongst the policy-makers and civic activists alike. Just a glimpse at the websites would reveal its popularity, with the subject ranging from the autonomy of local governments to the organisational principle of the Japanese 'futsal' sports federation.⁴⁰ This section in this context examines the principal actors favouring subsidiarity, policy sectors under review in the name of subsidiarity, and the potential functions that the concept might serve in Japan.

1) Three Actors – An Advocacy Coalition

Roughly speaking, there are three groups of principal actors who advocate for the principle of

³⁹ Margaret Thatcher, *The Path to Power* (New York: HarperCollins, 1995): 482.

⁴⁰ My own survey in 1998 found only three reports and several academic articles in Japanese on the subject; this time, Google-Japan, as well as Yahoo-Japan, searches ('Hokaisei Genri (補完性原理)' 'Hokanse Gensoku (補完性原則)' 'Sabusidiariti (サブシディアリティ)') hit some 100, rather substantial discussions.

subsidiarity in Japan. The first category of such group centres around the governments, whether local, regional, or central. The Committee on the Promotion of Local Decentralisation, under the authority of the Premier's Cabinet Office, serves as an example, when it made a final recommendation in June 2001 explicitly pointing to the principle of subsidiarity. With it, the Committee pointed out the need to devolve more tasks to the localities.⁴¹ In the meantime, the local and regional governments themselves were quick to import the idea from Europe from the 1990s on. The Prefectures of Osaka, Aichi, Hyogo, Shiga and Gifu, as well as the City authorities of Kyoto and Takarazuka, all favourably refer to the principle of subsidiarity, often as the main policy guideline.⁴²

In particular, the Aichi Prefecture adopted the Guideline for Merging the Localities, specifically referring to subsidiarity as the guiding principle in merging the smaller localities such as cities, towns and villages. Echoing the European Charter for Local Autonomy of 1985, its Section Two (1) of the Guideline concerning the future image of localities (after the Comprehensive Law for Local Decentralisation in 1999) states:

The 'principle of subsidiarity' is the hierarchical principle of a bottom-up character, according to which an individual does what he or she can accomplish by himself or herself, a small unit such as family or local community does what an individual cannot accomplish, and likewise a village/town/city, prefecture or the state should supplement what a smaller unit cannot do by itself.⁴³

With the General Guideline for Kyoto Municipal Reforms in the New Century, adopted in February 2001, the City of Kyoto, too, clarified its two central principles that inform its city administrative reforms: the principle of subsidiarity and the New Public Management (NPM). The Kyoto version runs:

The 'principle of subsidiarity' is an idea which enables free citizens to settle the matters they can through self-help and solidarity, and encourages Non-Profit Organisations (NPOs) and companies to tackle the matters unsettled through those mechanisms, and then, the local - and only finally, national - authorities to lend public support and supplement these activities.⁴⁴

Likewise, the Osaka Prefecture held an electronic conference in late 2000. In the proceedings, one of its administrators referred to the ideal of the regional governance in which:

Along the line of the subsidiarity principle, a local community assumes the tasks individual persons cannot do, village/town/city authorities undertake the matters the local communities cannot settle and, only then, prefectures do what these

⁴¹ 'Summary of the Final Report, Committee on the Promotion of Local Decentralisation,' Cabinet Office, Government of Japan, 14 June 2001, chap. 4, IV. (「地方分権推進委員会最終報告の概要—分権型社会の創造：その道筋—」内閣府(平成13年6月14日)、第4章IV参照。)

⁴² The following on the web serve as illustrations:

- Osaka: 'Reply to the Opinion No. 96', in Proceedings of Conference One: Administrative & Fiscal Programme towards the Renovation of Osaka Prefectural Politics (9 December 2000), The Prefecture of Osaka (www.pref.osaka.jp/ekaigi/gaiyou/gyozai/1209.html). (大阪府、「電子会議室1：府政再生に向けた新たな行財政計画。あなたならどうつくる。」平成12年12月9日分)
- Aichi: 'The Image of Cities, Towns and Villages in the Age of Local Decentralisation', The Guidelines for Merging the Cities, Towns and Villages, The Prefecture of Aichi, December 2000 (www.pref.aichi.jp/shichouson/kouiki/gapei/youkou/). (愛知県「地方分権時代の市町村像」『愛知縣市町村合併推進要綱』第2章2(1)、平成12年12月)
- Kyoto: The General Guideline for Kyoto Municipal Political Reforms in the New Century, www.city.kyoto.jp/somu/gyakaku/siseikaikaku.html (京都市『京都新世紀市政改革大綱』平成13年2月15日)

⁴³ Cited from *ibid.*, 'The Image ...'

⁴⁴ Kyoto: General Guideline, *op. cit.*

entities cannot do, while the central authority undertakes the residual tasks impossible for all the smaller entities to shoulder.⁴⁵

The common feature here is that a number of local and regional authorities in Japan are in search of a coherent vision that would guide them through the difficult adjustment process of decentralisation, especially since the implementation of the Comprehensive Law for Local Decentralisation in 2000.

Another set of actors in favour of subsidiarity in Japan can be found in the Non-Governmental Organisations (NGOs), civic movements and pressure groups. A representative example is a series of reports and proposals elaborated by Kansai Association of Corporate Executives (Kansai Keizai Dôyûkai), based on their two tours in Europe in 1997 and 2000. In a recent report, the Association made publicly endorses the principle of subsidiarity, which should help reverse the tangible and intangible dependency on Tokyo, with its re-appropriation of local communities in assuming the tasks of governance. It may be noted that it criticises part of the Comprehensive Law for Local Decentralisation (e.g. Art 1, 2 (2) of the amended Law of Local Autonomy) for retaining the spirit of the central state ‘allowing’ the localities to administer local affairs, not assuming that it is the localities that should first undertake those tasks.⁴⁶

Finally, the group of research institutes and academicians form a sort of epistemic community in support of subsidiarity. A report by the Centre for the Research on Local Autonomy (Jichi Sougô Kenkyû Centre), Kanagawa Prefecture, established a comprehensive report on the principle, early-on in 1994.⁴⁷ Since 1995, the PHP Forum on Regional Policy has launched a campaign, with which it aims local decentralisation should be implemented along the line of subsidiarity.⁴⁸ In parallel with these, many numbers of scholars are introducing and debating the principle.

All of three groups of actors form the so-called ‘advocacy coalition’ for subsidiarity in Japan. It is all too easy to dismiss this coalition as something minor. Yet, it is rather rapidly extending its reach and constituencies. More important, it would be constructive to look closely at the manners in which this principle of subsidiarity is being in use by the Japanese people. Only by doing so, it would be possible to assess the ‘rootedness’ of an alien idea in a culturally different context. After all, all ‘western’ concepts like ‘liberty’, ‘democracy’ and ‘justice’ have successfully been transplanted – and, to some extent, rooted – in our society here, through a daily and concrete use of such concepts as well as occasional struggles over them.

2) Three Issue Areas

Here, we will only make a tentative exercise, in reflecting on the acceptance of the idea of subsidiarity in Japan. We do so, by locating three major policy areas where the idea is floated and discussed most frequently.

The most evident policy arena is one of local decentralisation. Ever since the autonomy of local and

⁴⁵ Osaka: Proceedings, op. cit.

⁴⁶ Kansai Association of Corporate Executives, ‘Executive Report and Proposal: Local Autonomy and the Establishment of Individual Responsibility,’ 2000 (www.kdoyukai.on.arena.ne.jp/teigen-iken/2000/jiritsu/). (関西経済同友会「地方の自立と自己責任の確立～総合報告と提言～」) Other small-sized associations and civic movements, e.g. in favour of direct democracy and local environmental assessment also refer to subsidiarity as a supportive principle. See, for instance, EcoNavi’s Homepage (www.econavi.org).

⁴⁷ Centre for the Research on Local Autonomy, ‘Research and Study on the Principle of Subsidiarity and the Government,’ February 1994. (自治総合研究センター「補完性の原則と政府に関する調査研究」平成6年9月。)

⁴⁸ PHP Forum for Regional Policy, PHP Research Institute, ‘What is “the Principle of Subsidiarity” – A New Principle for Action to Realise Local Decentralisation,’ (<http://research.php.or.jp/field/chiki/forum.html>). (PHP研究所「『補完性の原理』って何?—地方分権を実現する行動原理—」『PHP地域フォーラム・ダイジェスト』)

regional entities becomes an issue, particularly since serious discussions on decentralisation started in the post-bubble and post-one-party-dominance Japan in the 1990s, quests have been made on how to legitimise and guide such political transformation in a country previously known for its excessive centralisation.

The fact that the idea of subsidiarity rapidly gained currency, especially after the Comprehensive Law for Local Decentralisation set in force, suggests that the localities are discovering subsidiarity in the process of soul-searching on what roles it should ‘properly’ play. As the citations above indicate, the majority strongly point to the bottom-up reorganisation of governmental functions, allowing the larger entity to intervene only when strictly necessary.

The second policy arena where the idea of subsidiarity proves popular is that of welfare state reforms. Typically, the use of subsidiarity in this field refers to the German conception of subsidiarity, and to the sister idea of solidarity. For instance, Shozo Ikeda, an advocate of subsidiarity in this field sets out the three to four stages of graduated support in the post-centralised welfare state:

- ‘Jijo’: self-help or self-support,
- ‘Gojo’: mutual assistance, drawing on informal support from family, neighbourhood, and friends,
- ‘Kyôjo’: co-operative assistance, amongst professional and local communities,
- ‘Kôjo’: public support, as the final recourse to the public administration.⁴⁹

As Japan is under severe pressure from the rapidly ageing population, coupled with the equally severe constraints in budget, it has undergone, and will probably undergo further, reforms of social welfare. There is more and more need to reflect on the basic principles on which to proceed this process. Small wonder why some point to subsidiarity which has long presupposed the graduated order of mutual assistance.

Finally, there are some voices for subsidiarity amongst NGOs and NPOs. It is a reflection of their growing number and confidence. When they find and expand the sphere of activities, it probably inevitably leads to the reconsideration of their ‘proper’ tasks or spheres, particularly in relation to those of the local authorities.

The activities of these civic organisations vary wildly. Yet, an illustration can be found in a civic movement favouring environmental assessment and, for this purpose, some direct democracy measures (such as ‘re-call’ of local officials).⁵⁰ In this context, some mechanism regulating who does what, becomes necessary. Subsidiarity has been mentioned to clarify the task allocation. The same can be said in the field of town planning and welfare arrangements; here, the local authorities, civic movements and communities face the uneasy question of how to allocate the tasks.⁵¹

3) Functions of Subsidiarity

Against these backgrounds, subsidiarity, gradually introduced from around 1994 onward in Japan, is likely to serve a few functions.

⁴⁹ Shôzo Ikeda, ‘Autonomy, Decentralisation, and the Nursing Insurance: Towards the Construction of Cooperative System of Assistance,’ at: www.kaigo.or.jp/jichibunken.html (池田省三「自治・分権と介護保険——共助システムの構築に向けて」)

⁵⁰ See EcoNavi’s Homepage, op. cit.

⁵¹ I was once invited to discuss the manners in which the actors involved in town/urban planning in Japan can draw on the principle of subsidiarity. The organiser, Mr. Akifumi Wakabayashi, an official at the Prefecture of Saitama, has translated it as the principle assisting autonomy (‘Jiritsu Shien no Gensoku’). Waseda Urban Planning Forum Seminar, ‘Thinking of the Shape of This Country – Cutting A Way Through the Future of Local Decentralisation By the Principle of Subsidiarity,’ Dept. of Engineering, Waseda University, 22 April 2000. (早稲田都市計画フォーラムセミナー「この国のかたちを構想する・地方分権の行方を principle of subsidiarity で切り開く」早稲田大学理工学部、2000年4月22日。

It first points to ‘revendication’, as some might put it in French: that is, a sort of ‘taking-back’ of the political rights that should from the outset have been located at the nearest possible level to the citizens, rather than the idea of a political centre granting them down to the local and regional authorities. Here, the previously existent top-down hierarchy is to be reversed, so as to reconsider the mindset that has so long and so instinctively allowed local and regional practitioners to rely on Tokyo.

Also, the emergent idea of subsidiarity makes it possible for localities to rethink of their relations with their own populations and organisations, just as it does with Tokyo. Here, the questions are how to forge relationship with their own local communities, civic movements, and pressure groups, as well as how to organise the competences amongst their own localities such as villages, towns, cities and so forth. In other words, once decentralisation is set in motion, many of the localities have been obliged to review what ‘proper’ tasks they should perform, not simply those largely pre-determined by the central government or/and as deep-seated practices. This probably should be related to another context in which the localities have been given competences but not sufficient budgets to back them up, in an increasingly constrained national budgetary capacity. In any event, local and regional authorities found themselves in a strange situation in which they now have some freedom to decide what to do, but in which they have not sufficiently given consideration on what principles they should make the crucial decision. The principle of subsidiarity is taken as filling part of the gap.

Thirdly, though rather at the speculative level, the principle of subsidiarity has the potential to embrace the fragmented governance beyond the national boundaries, too. The obvious case in mind is the WTO whose power comes to regulate the backroom dealings of public procurements at the local and regional levels. The way of thinking in line with subsidiarity would encourage local and regional practitioners to prepares for the sort of interventions from the international authorities, provided that those interventions are justifiable in terms of incapacity of smaller – including national – entities. The resource to subsidiarity thus potentially frames the mindset in favour of the internationalisation of governance and its acceptance at local/regional arena.

Finally, all these changes in the ways of thinking about governance, would unavoidably hit the previously dominant position of the central State. Perhaps in the case of Japan, it was the State which set in motion the actual process of decentralisation, though partly due to intense pressures from various corners of society. Yet, once in motion, localities started the process of soul-searching, a non-negligible number of which have looked to the principle of subsidiarity. If the recourse to the principle serves those above-mentioned functions, the State will increasingly be subject to the review of its own central roles in a more fragmented governance.

VIII. Conclusions

Having shown the two main interpretative currents of the idea of subsidiarity, its developments and meanings in the EU context, as well as the potential that the idea might have in Japan, we are now in the position to conclude and to reflect on the findings’ implications.

1) A Grand-Coalition under the Banner of Subsidiarity

It is better not to underestimate the width of support to the principle of subsidiarity in Europe. The Liberals, Catholics and even Socialists of a Proudhonian flavour all are keen to uphold this principle. The widespread support can also be found in the current EU: the Commission, Member States and Regions all espouse the principle of subsidiarity, if to varying degrees and purposes. It is a sort of grand-coalition, which elevated the principle of subsidiarity to a constitutional status at Maastricht.

The recent spread of the idea of subsidiarity in Japan should not be dismissed, either. The post-2000 (Comprehensive Law for Local Decentralisation) localities here are in the middle of soul-searching

process, as to what ‘proper’ roles they should play vis-à-vis the central government and the local communities within. Subsidiarity has principally gained currency in this context, while other contexts such as welfare state reforms are also contributed to its circulation.

2) Not an Un-principled Principle

However malleable it may look, the principle of subsidiarity points to a set of certain norms. If one looks at the limits of its permissiveness, it is obvious that the excessive centralisation at any level, be it the State or the EU, cannot be tolerated under this principle.

Thatcher, for instance, wished to utilise the idea of subsidiarity, yet at some point (certainly by the time when she wrote the second volume of her Memoirs) realised that she cannot command the interpretation only to justify the State’s power. On the other hand, the militant segments of post-Spinelli Euro-federalists dislike the idea of subsidiarity, for the opposite reason: it would prevent the EU from acquiring further competence easily. The excessiveness of both the EU’s and State’s power is likely to be punished by the principle of subsidiarity. This is why we still can call subsidiarity a principle.

In the context of the Japanese discourse, it should be noted that the over-centralisation of the State’s power has been targeted by the resource to subsidiarity, favouring the further devolution of powers to the localities. Yet, at the same time, the same principle of subsidiarity urges the localities to review the tasks that they themselves have assumed. This is the so-called ‘boomerang effect’ of subsidiarity, with which any unit advocating it would be subject to the critical review of its own tasks. Thus, despite the difference in ‘rootedness’ of the concept between Europe and Japan, the same can be said that over-centralisation of power at any one unit would be punished, so far as subsidiarity is a preferred term in the discourse.

3) A Subsidiarian World

As does any conceptual change in history, the rise of subsidiarity represents a significant change both in the actual world of politics and in the world of political languages. It is not merely accompanied by the process in which the functions of governance is being fragmented; but rather, it is further consolidating the fragmentation, compelling the authorities and civic actors to rethink what roles they should play in the post-decentralisation world.

Nothing is absolutely sovereign in the world of subsidiarity, as advanced here. Subsidiarity does not tolerate the excessive centralisation of any entity – which is why it remains a principle. Particularities of communities and entities, be they affectional or functional, territorial or non-territorial, are all given recognition in the world of subsidiarity. This, on the other hand, does not mean to exclude or suppress a national community; on the contrary, subsidiarity can easily give it due weight, as long as it remains the focal point for civic loyalty and as it does not suppress smaller communities and individual liberties within. The concept of subsidiarity thus can be seen one of the most inclusive and flexible in terms of recognising communities.

With subsidiarity, at the same time, these communities are to be co-ordinated in a bottom-up hierarchy, in which they renounce any absolute sovereign claim and review what proper tasks they should assume in a mutually co-operative governance. In a world at once globalised and fragmented, this new life of the age-old vocabulary points to the viability of such a mode of governance, utterly different from that of the sovereign nation-state.