



uOttawa

L'Université canadienne
Canada's university

FACULTÉ DES ÉTUDES SUPÉRIEURES
ET POSTDOCTORALES



FACULTY OF GRADUATE AND
POSTDOCTORAL STUDIES

George Reid

AUTEUR DE LA THÈSE / AUTHOR OF THESIS

M.A. (History)

GRADE / DEGRÉ

Department of History

FACULTÉ, ÉCOLE, DÉPARTEMENT / FACULTY, SCHOOL, DEPARTMENT

Popes, Politicians and Political Theory : The principle of subsidiarity in 20th Century European
History

TITRE DE LA THÈSE / TITLE OF THESIS

E. Kranakis

DIRECTEUR (DIRECTRICE) DE LA THÈSE / THESIS SUPERVISOR

CO-DIRECTEUR (CO-DIRECTRICE) DE LA THÈSE / THESIS CO-SUPERVISOR

EXAMINATEURS (EXAMINATRICES) DE LA THÈSE / THESIS EXAMINERS

M. Behiels

R. Connors

Gary W. Slater

LE DOYEN DE LA FACULTÉ DES ÉTUDES SUPÉRIEURES ET POSTDOCTORALES /
DEAN OF THE FACULTY OF GRADUATE AND POSTDOCTORAL STUDIES

**Popes, Politicians and Political Theory: The principle of subsidiarity in 20th Century
European History**

George Reid

**Thesis submitted to the Faculty of Graduate and Postdoctoral Studies
In partial fulfillment of the requirements for the MA degree in History**

**Department of History
Faculty of Arts
University of Ottawa**

© George Reid, Ottawa, Canada, 2005



Library and
Archives Canada

Bibliothèque et
Archives Canada

Published Heritage
Branch

Direction du
Patrimoine de l'édition

395 Wellington Street
Ottawa ON K1A 0N4
Canada

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file Votre référence

ISBN: 0-494-11390-1

Our file Notre référence

ISBN: 0-494-11390-1

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.


Canada

Abstract

The transformation of the principle of subsidiarity from a philosophical principle in Catholic social teachings to a constitutional article in the 1992 Treaty on European Union has been a source of confusion for scholars of European integration. Political scientists have examined subsidiarity from the perspective of political philosophy to account for its transformation and to determine its impact on European integration. However, no attempt has been made to anchor the emergence of subsidiarity in a historical context. This thesis employs a historical approach to analyze the transformation of subsidiarity. It examines the political struggles surrounding the principle in the Catholic Church, in German Christian Democracy, and in the debates over European Union in the European Community. It concludes that the transformation of subsidiarity occurred during the debates over the European Union that began in the 1970s and culminated in the ratification of the 1992 Maastricht treaty on European Union.

Acknowledgements

I would like thank my family, and especially my parents John and Marie Reid, for all their support and encouragement over the course of writing this M.A. thesis. I could not have completed this study without my supervisor, Eda Kranakis. Her direction and support throughout this process, as well as her patience, have made this a very rewarding experience. I also am deeply indebted to Hernan Tesler-Mabe, who read through the many drafts of this thesis. I also owe a debt of gratitude to Anna Watson for her translations and her help with the German sources in this thesis. Last but not least, I want to thank Akiko Sugio for everything she does.

Table of Contents

<i>Introduction</i>	<i>1</i>
<i>Chapter I: The Origins Of Subsidiarity In The Catholic Church</i>	<i>12</i>
Ketteler's Political Philosophy of Subsidiarity	13
Ketteler, Leo XIII and Catholic social teachings	22
Subsidiarity and Corporatism	26
Pius XII: Personalism and Subsidiarity as the Common Good	32
<i>Chapter II: Subsidiarity as a principle in German Christian Democratic Theory</i>	<i>36</i>
Catholic Social Doctrine and Christian Democracy Theory: 1945-1947	37
Subsidiarity, Süsterhenn and The Basic Law	43
The Origin of Article 72 in the German Basic Law	54
Subsidiarity and Christian Democratic theory in the 1970s	60
<i>CHAPTER III: European Visions in Collision Part I</i>	<i>65</i>
Christian Democracy And European Union	66
Subsidiarity And Intergovernmentalism: 1971	69
Spinelli, Subsidiarity, And The Tindemans Report	75
The European Parliament And Subsidiarity	84
<i>Chapter IV: European Visions in Collision Part II, 1988-1992</i>	<i>95</i>
Delors The Christian Democratic Catalyst	97
Regionalism and Subsidiarity	100
Economic and Monetary Union, the Social Charter and Thatcher	103
Down From The Heavens	113
The Legitimacy Crisis And The British Presidency	119
<i>Conclusion</i>	<i>131</i>
<i>Bibliography</i>	<i>133</i>

Introduction

In the late 1980s, the principle of subsidiarity emerged as a focal point for the debate over the limits of European integration and the objectives of European Union (EU). Its detractors called it “a snappy little slogan,”¹ an “ungainly example of Euro-speak”² and a “peculiarly German concept”³ and noted that “everybody from pure federalists arguing for a United States of Europe to Mrs. Thatcher's ministers thought subsidiarity would help their cause.”⁴ Both the Christian Democrat Helmut Kohl, who preferred a federal European Union and the Euro-skeptic Margaret Thatcher, who wanted an intergovernmental Europe, secured its inclusion in the 1992 Treaty on European Union (TEU). An influential paper published in 1990 by the Institute of Economic Affairs summarized the challenge of incorporating subsidiarity in the EU: “its history, proper definition and scope are surrounded by confusion and uncertainty.”⁵ There was (and is) confusion surrounding the history and definition of subsidiarity due to its evolution from a philosophical Catholic principle, to a principle of Christian Democratic theory, and finally to a constitutional article in the 1992 Treaty on European Union (Treaty of Maastricht). This study seeks to establish the historical path by which a Catholic principle became associated with European integration and was finally enshrined as a constitutional mechanism for the division of powers in the TEU. It argues that the concept of subsidiarity was adapted to support opposing visions of European integration and was included in the 1992 Treaty on European Union because it was the only term

¹ Joe Rogaly, “Europe in thrall with a slogan, not a principle,” *The Financial Times*, 7 December 1990, p.19.

² Donald MacIntyre, “While Britain sleeps, Europe’s unity dawns,” *The Independent*, 9 December, 1990, p.12.

³ Quentin Peel and Alison Smith, “German states want a regional voice in EC,” *The Financial Times*, 9 December 1991, p.2.

⁴ George Brock, “Eurocrats bury a buzzword only a pope could understand,” *The Times*, 23 July 1991, p.7.

⁵ Andrew Adonis and Andrew Tyrie, “Subsidiarity: As history and policy,” (London: Institute for Economic Affairs, 1990), p. 1.

broad enough to encompass the opposing political goals of its advocates.⁶

The Catholic Church is acknowledged as the originator of the principle of subsidiarity. In 1931, the German Jesuit Oswald von Nell-Breuning defined subsidiarity in the papal encyclical *Quadragesimo Anno*, pronounced by Pope Pius XI:

...just as it is wrong to withdraw from the individual and commit to the community at large what private enterprise and industry can accomplish, so too it is an injustice, a grave evil, and a disturbance of right order for a larger and higher organization to arrogate to itself functions which can be performed efficiently by smaller and lower bodies. This is a fundamental principle of social philosophy, unshaken and unchangeable, and it retains its full truth today. Of its very nature, the true aim of all social activity should be to help individual members of the social body, but never to destroy or absorb them.

The state should leave to these smaller groups the settlement of business of minor importance. It will thus carry out with greater freedom, power, and success the tasks belonging to it, because it alone can effectively accomplish these, directing, watching, stimulating and restraining, as circumstances suggest or necessity demands. Let those in power, therefore, be convinced that the more faithfully this principle be followed, and a graded hierarchical order exist between the various subsidiary organizations, the more excellent will be both the authority and the efficiency of the social organizations as a whole and the happier and more prosperous the condition of the state⁷

Pius XI applied this philosophical principle to many political and social relationships. He used it as an anti-totalitarian and an anti-socialist principle, a principle to encourage the formation of joint workers' and employers' associations, and to protect the Church's rights in education. The principle was also associated with the concept of the dignity of the individual within the body of papal teachings known as the Catholic social doctrine.

The definition of subsidiarity in the Treaty on European Union in article 3(B) reveals continuity and discontinuity with the Catholic conception of subsidiarity. Article

⁶ Christian Democratic parties came to power in Germany, Italy, Belgium, the Netherlands and France following the Second World War, and many of the founding fathers of European integration, such as Konrad Adenauer, Alcide de Gasperi and Robert Schumann, were Christian democrats. Although there were Christian political parties in almost all European countries prior to 1945, they tended to be divided along denominational lines, and were often monarchist. Christian democracy as it emerged in the post-war period, however, was interdenominational and pledged itself to the defense of democracy. Ronald Irving, *The Christian Democratic Parties of Western Europe*, (London: Allen Unwin, 1979), p.30.

⁷ Oswald Von Nell-Breuning, S.J., *Reorganization of the Social Economy: The Social Encyclical Developed and Explained*. New York: The Bruce Publishing Company, 1936. pp. 194-195.

3(B) states that

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 achieved by the Member States and can therefore, 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. (Treaty on European Union, 1992)⁸

Whereas the Catholic definition of subsidiarity maintains the importance of “individuals” and “smaller and lower bodies,” the EU definition of subsidiarity only pertains to the “Community” and the “Member States.” The papal text notes that the state should not intervene in affairs that can be accomplished by the private action of individuals and lower social bodies. Article 3(B) states that the Community should only act when the individual member states “cannot sufficiently achieve” a proposed action independently. Beyond a change in the subjects of subsidiarity, the expressions of the devolution of action to capable members of society, and of state (or Community) intervention as a last resort are common to both definitions of the principle.

The question posed by this thesis is how and why subsidiarity was transformed from a broad principle of social philosophy to a narrow constitutional article in the Treaty on European Union. In an interview with political scientist Michael Burgess in 1985, British Conservative and Member of European Parliament Christopher Jackson claimed that he was responsible for the inclusion of a federal definition of subsidiarity in a draft treaty on European Union proposed in 1984.⁹ While Jackson implied that he was

⁸ At the Treaty of Amsterdam (1996) the principle of subsidiarity became Article 5. “Text in Full of the Treaty on European Union,” in *Agence Europe*, No. 1759/60 (Documents), 7 February 1992.

⁹ At the instigation of the “godfather” of European federalism, Altiero Spinelli, the European Parliament drafted a treaty on European Union in 1984 that included a definition of the principle of subsidiarity. Interview with Christopher Jackson cited from Michael Burgess, *Federalism and European Union*, (London: Routledge, 1989), p.166. The principle was defined in the preamble of the treaty as “...entrusting common institutions, in accordance with the principle of subsidiarity, only with those powers required to complete successfully the tasks they may carry out more satisfactorily than the states acting independently.” “Draft Treaty establishing the European Union,” *European Parliament Working Documents*. No. 1-1200/83/A, 19 December 1983, p.8.

responsible for altering the nature of the subsidiarity concept, a letter to the editor that he wrote in 1982 undermines this claim. In the letter, Jackson demonstrated his distaste with the term.¹⁰ He characterized subsidiarity as “Eurojargon,” and his comments show unfamiliarity with Catholic social thought. In fact the transformation of subsidiarity has a more complex history than Jackson implied in the 1985 interview with Michael Burgess.

Jackson’s comments underline the confusion surrounding the metamorphosis of subsidiarity. This confusion can be explained partly by the fact that no historian has examined the emergence of subsidiarity in the process of European integration. Political scientists, philosophers and legal scholars have dominated a normative-driven literature on the subject. In consequence, existing works on subsidiarity do not attempt to place its early development in historical context, relying instead on intellectual approaches more consistent with political philosophy. This has led to a common set of assumptions regarding the principle. One endemic misunderstanding that has resulted from the intellectual approach is the belief that subsidiarity was transformed from a concept of Catholic philosophy into an exclusively federal principle *prior* to its introduction into debates over European union that began in the 1970s. By adopting the first explicitly historical approach to the analysis of subsidiarity, this study provides a new understanding of when, how, and why the concept was transformed.

Intellectual histories of the emergence of subsidiarity in Catholic social teaching are based almost exclusively on Papal pronouncements and have stressed the socio-philosophical dimensions of principle, which dictated the parameters for state intervention in society. In 1992, Chantal Millon-Delsol, a professor of political philosophy, published

¹⁰ Jackson wrote that “...we are threatened with another piece of Eurojargon...The ‘principle of subsidiarity’ – a meaningless or even misleading term in English – is being discussed in the European Parliament in connexion[sic] with eventual revision of the Treaty of Rome.”¹⁰ Jackson noted that the object of the principle was to curb centralization of powers at the EC but regretted that “this important and admirable concept is saddled with the frightful title “subsidiarity” unless we find a substitute because the French word for it is ‘*subsidiarité*’, which derives from an old Roman Catholic principle that Rome should not decide those matters best dealt locally.” From his point of view, “states’ rights” or “principle of limitation” or

what is to date one of the most influential works on the history of subsidiarity, *L'État Subsidiaire*.¹¹ She argued that subsidiarity was defined in Papal pronouncements as an exclusively social principle. She also showed that the “subsidiary state” was conceived as a midway point between a liberal “night-watchman” state and a socialist welfare state.¹² However, the emergence of subsidiarity in the European Union and its relationship to federalism are left largely unexplored in her work.

Accepting Millon-Delsol’s conclusion that subsidiarity only applied to the relationship between the state and society in Catholic thought, political scientists have built on her work to explain how the principle became exclusively associated with federalism. Adopting a strictly intellectual approach, they have argued that the federal transformation of subsidiarity occurred before 1970, i.e. prior to its introduction into the debate over European Union. They argue that German Christian Democrats changed the Catholic concept of subsidiarity into an exclusively federal principle.¹³ Ken Endo has synthesized the two most common points of view regarding the Christian Democratic transformation of subsidiarity. First, he claims that Article 72 of the German Basic Law, a federal constitutional mechanism regulating the exercise of concurrent competences, was defined by Christian Democrats and embodied the transformation of subsidiarity. Second, he claims that Christian Democrats de-emphasized the social aspects of

“limited powers” would be better labels to describe a principle of decentralization. Christopher Jackson, “Eurojargon,” *The Times*, 18 September 1982, p.7.

¹¹ For other intellectual approaches to the history subsidiarity in the Catholic Church, see Marc Wilke and Hellen Wallace, “Subsidiarity: Approaches to Power-Sharing in the European Community,” Royal Institute for International Affairs Discussion Paper No. 27., (London: RIIA, 1990), pp .11-20., Andrew Adonis and Andrew Tyrie, “Subsidiarity: As history and policy,” (London: Institute for Economic Affairs, 1990), pp. 1-3., Jean-Louis Clergerie, *Le principe de subsidiarité*, (Paris: Ellipses, 2000), pp. 7-39. Ad Leys, *The Ecclesiological Impacts of the Principle of Subsidiarity*, (Kok: Kampfen, 1996)

¹² Chantal Millon-Delsol, *L'etat subsidiaire*, (Paris: PUF, 1992), pp. 11-12.

¹³ See, for example, P.J.C. Kapteyn, “Community Law and the Principle of Subsidiarity,” *Revue des Affaires Européennes*, 1 no. 2 (1991), p. 36. Ken Endo, “The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors,” *Hokkaido Law Review*, pp 640-639., Andrew Adonis and Andrew Tyrie, “Subsidiarity: As history and policy,” p. 3., Jean-Louis Clergerie, *Le principe de subsidiarité*, Pp. 33-39., Antonio Estella, *The EU Principle of Subsidiarity and its Critique*, (Oxford: Oxford University Press, 2002), pp. 81-84.

subsidiarity in the late 1960s in favour of a purely federal principle.¹⁴ The common conclusion of these arguments, which rests on very little historical evidence, is that, from the outset, subsidiarity was already conceived as a purely federal principle in European Community debates over European Union. These arguments also imply that there was a rupture between a social Catholic and a federal Christian Democratic definition of subsidiarity.

More promisingly, Denis Gloedel provides evidence demonstrating the continuity between the Catholic and Christian democratic conceptions of subsidiarity. In a short article on German Christian Democratic Party platforms, Gloedel demonstrates how subsidiarity informed Christian Democratic theory from the 1950s to the 1970s, showing that it was applied equally to the federal structure of Germany and to the relationship between the state and society.¹⁵ In other words, Gloedel demonstrates that Christian Democrats did not transform subsidiarity into an exclusively federal principle. Yet Gloedel's micro-study does not examine the formative period of Christian Democracy and its relationship to the Catholic social doctrine, nor does he discuss whether and how Christian Democrats employed subsidiarity during the Basic Law negotiations. Building on Gloedel's work not only clarifies the relationship between subsidiarity and Christian Democracy, but it also reveals continuity between the Catholic and Christian Democratic definitions of the principle.

Several authors have chronicled the key documents and major events by which subsidiarity was incorporated into plans for European integration and ultimately codified in the 1992 Maastricht Treaty. Yet these works have also had a normative objective,

¹⁴ Ken Endo. "The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors." *Hokkaido Law Review*. Vol 44 (6 1994). pp 640-639.

¹⁵ Denis Gloedel, "L'Humanisme chrétien en politique: La CDU et La CSU et le principe de subsidiarité," *Revue d'Allemagne*, 25 no. 3 (1993), p.419.

focusing on the relative merits of subsidiarity in the process of European integration.¹⁶ In 1991, Andrew Adonis and Andrew Tyrie argued that the uses of subsidiarity in the debate over European Union revealed nothing more than a “slogan and a debating brick-bat.”¹⁷ Tyrie concluded that subsidiarity should not be inserted in the TEU because, as a meaningless concept, it would not protect Great Britain from extensions of Community competences. Ken Endo, contesting Adonis’ criticism of subsidiarity, argued that it “fused with federalism” and emerged in the European Community as an explicitly federal principle.¹⁸ Endo concluded that subsidiarity embodied “a rich store of political thought” and would play a central role in any further process of European integration.¹⁹ It is crucial to note that Ken Endo and Andrew Tyrie had ideological axes to grind when they wrote about subsidiarity. Andrew Tyrie was a former advisor to John Major, while Ken Endo was a policy advisor to Commission President Jacques Delors.

Michael Burgess has researched the influence of federalist ideas and solutions on the process of European integration, and he identified subsidiarity as an explicitly federal principle with its roots in Christian Democracy. In particular, he argued that Christian Democrats in the Commission and the European Parliament were responsible for introducing a federal interpretation of subsidiarity into the debate over European Union.²⁰ Ultimately, however, Burgess agreed with Adonis’ assertion that in the late 1980s subsidiarity was used indiscriminately and rendered essentially meaningless. These

¹⁶ Ken Endo, “The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors,” *Hokkaido Law Review*, Vol 44 (6 1994), 596., Kees van Kersbergen and Bertjan Verbeek, “The Politics of Subsidiarity in the European Union,” *Journal of Common Market Studies*, 32 no. 3 (1994), p.215., Anthony L. Teasdale, “Subsidiarity in Post-Maastricht Europe,” *The Political Quarterly*, 64 no. 2 (1993), p. 189., Marc Wilke and Hellen Wallace, “Subsidiarity: Approaches to Power-Sharing in the European Community,” Royal Institute for International Affairs Discussion Paper No. 27., (London: RIIA, 1990), pp .11-20, and Andrew Adonis and Andrew Tyrie, “Subsidiarity: As history and policy,” (London: Institute for Economic Affairs, 1990), p. 4.

¹⁷ Andrew Adonis and Andrew Tyrie, “Subsidiarity: As history and policy,” p. 4.

¹⁸ Ken Endo, “The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors,” *Hokkaido Law Review*, Vol 44 (6 1994), 567.

¹⁹ *Ibid.* p.565.

²⁰ This assertion is somewhat problematic. Burgess argues that Leo Tindemans was the first to introduce subsidiarity in his 1976 Report on European Union. However, the Report contains no reference to subsidiarity. See Michael Burgess, *Federalism and European Union*, (London: Routledge, 2000), p. 229.

normative driven accounts, while establishing that the inclusion of subsidiarity in the TEU revealed an emerging federal European system of governance, have emphasized the struggles over the wording of article 3(B) rather than the broader public debate over the principle.

This thesis contributes to the historiography on subsidiarity in the European Community by providing a contextual historical analysis of its emergence and transformation. A historically grounded re-appraisal of the uses of subsidiarity in the Catholic Church, in German Christian Democracy and in debates of the European Union reveals the long process of the transformation of the principle. By invoking a Catholic principle in their political theory and discourse, Christian Democrats introduced subsidiarity to a broader audience. The debate over European Union that began in the 1970s fostered an interchange of ideas between Christian Democrats and political actors from other intellectual traditions. The history of subsidiarity in the EC reflects the struggle among Christian Democrats, ardent federalists, regionalists, and intergovernmentalists to define the principle according to their diverse visions of Europe.

This study does not insist that subsidiarity has a fixed meaning. Rather, its history demonstrates that the principle acted as a framework for Christian Democratic discourse about the role and organization of the state in society.²¹ Drawing from Catholic social teaching, Christian Democrats employed subsidiarity as a theoretical filter through which they expressed a variety of political positions ranging from the non-interference of the state in social life, to the need for federal structures of governance within the nation state and in the building of a unified Europe. Because it expressed a multiplicity of political positions that collectively defined Christian Democracy, there were never any attempts to

²¹ See for example, Ken Endo, "The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors," *Hokkaido Law Review*, 44 no. 6 (1994), pp. 612-614, 639., Alain Faure, ed., *Territoires et subsidiarité*, (Paris: Harmattan Inc., 1997), pp. 108-111., Christophe Réveillard, "L'Allemagne, les institutions européennes et le principe de subsidiarité," *Revue d'Allemagne*, 30 no.3 (1998), pp. 336-337., Anthony Teasdale, "Subsidiarity in Post-Maastricht Europe," *The Political Quarterly*, 64 no. 2 (1993), p.187

narrowly define subsidiarity in law prior to the debate over European Union. This Christian Democratic conception of subsidiarity remains unchanged. The transformation of subsidiarity into a constitutional article is therefore a function of its use by Christian Democrats in the debates over the European Union. Christian Democrats introduced the principle of subsidiarity into the discussions over European integration, and eventually other political groups began to employ the term to express their own ideological visions of European Union. The association of the principle of subsidiarity with intergovernmental and federal visions of Europe that were not based in Christian Democratic theory laid the groundwork for the transformation of the principle into a constitutional article.

A historical approach to the emergence of the principle of subsidiarity in twentieth-century Europe also addresses broader issues relating to European integration. The struggle over subsidiarity in the European Community reveals the process by which member states with different political traditions and with clearly opposing aims were able to reach a compromise on the definition and implementation of the principle. In fact, the conflicts over subsidiarity mirror the larger struggles over the creation of an emergent federal system of European governance. Furthermore, this study is concerned with the process by which philosophical principles become legal constitutional articles. The historical path of subsidiarity from theory to practice demonstrates that the building of Europe necessitated the development of new ideas and solutions to normalize the relationships between nation-states and supranational institutions.

Achieving a deeper understanding of the transformation of subsidiarity requires a balanced investigation of its use before and after its introduction to the debate over European Union in the early 1970s. The first chapter examines the origins of subsidiarity as a philosophical principle in Catholic social teaching from the late nineteenth century to the mid-twentieth century. It traces the origins of the term in German Catholic thought,

its application to both social and political relationships, and its misrepresentation in Papal encyclicals because of the specific historical circumstances in which those encyclicals were written. The continuity of the concept is demonstrated by its implicit and explicit role in German Christian Democratic theory. Building on the work of Denis Gloedel, the second chapter examines how German Christian Democrats employed subsidiarity as a broad philosophical principle to express policy positions ranging from denominational education to European integration, and how they maintained that as a general principle, subsidiarity could never be codified in law. This chapter also corrects the assertion that article 72 was the result of Christian Democratic initiatives, showing instead that it was the result of a compromise between West German politicians and the occupation authorities over the issue of centralization.

The third and fourth chapters examine how subsidiarity came to be employed by Christian Democrats, European federalists, and intergovernmentalists in the debate over European Union that began in the early 1970s and culminated in 1992 with the Edinburgh Council agreement on subsidiarity. The third chapter argues that the period between 1975 and 1984 was the critical stage in defining subsidiarity as a narrow constitutional article. The persistence of the Christian Democratic understanding of subsidiarity and the appearance of new interpretations of the principle are clearly demonstrated in the struggle over its definition in the 1984 Draft Treaty on European Union (DTEU) produced by the European Parliament. The fourth chapter examines how and why subsidiarity was included in the Maastricht treaty on European Union. This section evaluates the development of a strong British intergovernmental interpretation of subsidiarity and the struggles between Christian Democrats and British conservatives to insert their definition of subsidiarity in the TEU. It also traces the growing efforts by regional authorities, particularly the German *Länder*, to insure that subsidiarity was applied in a way that gave sub-state regions a greater role in European governance. The process of incorporating

subsidiarity in the TEU reveals a re-expansion of the concept relative to its definition in the early 1980s and its emergence as a general principle of European governance.

Chapter I: The Origins of Subsidiarity in The Catholic Church

The development of the principle of subsidiarity reflects the accommodation of the Catholic Church to the emergence of democracy, industrialization, and eventually fascism over the period from the nineteenth century to the end of World War II. Subsidiarity was developed alongside the Catholic social doctrine, which is a set of Papal encyclicals outlining solutions and criticisms of issues in the modern world. Papal encyclicals were shaped by the historical context in which they were written and by influential Catholic thinkers within and without the hierarchy. The Bishop of Mainz, Wilhelm von Ketteler, for example, originally formulated the principle of subsidiarity in the late nineteenth century, in response to what he saw as the inherent flaws of liberal democracy and *laissez-faire* capitalism in Germany. The process of developing a complete philosophy of subsidiarity as both a criticism of, and solution to modern political and social issues was complicated by the evolving historical context in which Catholic social teaching emerged.

As the relationships between subsidiarity in Catholic social teachings and in Christian Democratic political theory form an important part of this study, it is necessary to come to grips with the intellectual heritage of subsidiarity within the Catholic Church. Just as British politicians overemphasized the negative aspect of subsidiarity in the early 1990s, (interpreting the principle as a means to “renationalize” the European Community), the Catholic Church likewise overemphasized the social dimension of subsidiarity for historical and ideological reasons. The German Catholic intellectuals Wilhelm von Ketteler and Oswald Nell-Breuning developed the principle of subsidiarity in the Church, and conceived of it as a philosophical principle applying equally to the institutions of the state and society. The exclusively social interpretation of the principle given by Popes Leo XIII (1878-1903), Pius XI (1922-1939) and Pius XII (1939-1958) in official encyclicals was a result of political imperatives on the

formulation of Church doctrine and a lingering hostility to democracy in the Church hierarchy. Since Leo XIII, the Church had refused to endorse one form of government over another. The immediate consequence for the interpretation of subsidiarity was that its implications for systems of political governance such as democracy and federalism were not addressed in Papal teaching. Pius XII, however, altered these teachings during the Second World War. Pius XII's re-orientation of Catholic social teaching toward democracy reconciled official Catholic teaching on subsidiarity to the German Catholic formulation of the concept. In essence, the definition of the subsidiary idea by Ketteler in the late 19th century was only fully endorsed by the Catholic Church in the early 1940s. This return to the original notion of the subsidiarity had important implications, because it was through Pius XII that subsidiarity informed West German Christian Democratic theory.

I Ketteler's Political Philosophy of Subsidiarity

The career and ideas of Wilhelm Emmanuel von Ketteler (1811-1877) provided a powerful stimulus to the development of social Catholic teaching and to the formulation of the philosophical principle of subsidiarity. Ketteler (1811-1877) was born in the Westphalian city of Münster and did not originally intend to join the priesthood. He was from a devoutly Catholic and aristocratic family in a predominantly Catholic region in Prussia. After obtaining a degree in law and receiving a post in the Münster legal bureau, Ketteler quit because of Prussian interference in Church affairs.¹ Soon after, he decided to become a priest, was ordained in 1844 and made Bishop of Mainz four years later by Pius IX. His

¹ Ketteler was trained as a lawyer and received his first post in 1833. He quit this position in 1838 over the "conflict of Cologne," which was a dispute between the Prussian civil authorities and the hierarchy of the Catholic Church. The Prussian government funded both Catholic and Protestant theological schools. When the Archbishop of Cologne requested the dismissal of a professor teaching febronianism, the government refused to acquiesce. The Archbishop closed the theological school in reaction and was arrested in 1839. Edward Bock, *Wilhelm Von Ketteler, Bishop of Mainz: His Life, Times and Ideas*, (Washington: University of America Press, 1977), pp. 7-10.

election to the 1848 Frankfurt Parliament marked the beginning of Ketteler's career as both political theorist and social activist.² Throughout his life, he published many books, pamphlets and articles on social, political and religious issues that influenced the social positions of the German Catholic *Zentrum* party and Catholic social teaching alike.³

The objects of his works were to “guard against state absolutisms; safeguard the natural rights of social institutions such as Church, family, and education; and protect the freedom of the individual.”⁴ In response to the challenges of modern absolutist states, Ketteler proposed a political theory grounded in Church doctrine and the works of Thomas Aquinas.⁵ The idea of subsidiarity pervades Ketteler's political philosophy and expressed his theory of the proper relationships between individuals, social institutions and the state.

Mapping out the subsidiarity concept through a biological metaphor, Ketteler stated that:

Everything about [the social organism] is marked by a free self-determination and a free self-government whereby the individual members serve the whole organism. The activity of the individual member is limited only at that point where, for its fulfillment, it requires the intervention of the higher organism.⁶

Although this is almost identical to the definition of subsidiarity in *Quadragesimo Anno*,

Ketteler never named the principle and only referred to “subsidiary rights” on two occasions.

According to Ketteler, absolutism, which he defined as the “egotistical abuse” of

² In 1952, August and Peter Reichensperger and Hermann von Mallinckrodt, created the Prussian Catholic party *Zentrum partei*, to protect the rights of the Catholic Church from state interference. In 1852, Ketteler became a member of the board of directors of the newly constituted Catholic *Zentrum* party, and was responsible for formulating party policy. He also participated in the Vatican I Council, 1869-1870. Edward Bock, *Wilhelm Von Ketteler*, pp. 192-193.

³ Shortly after learning of Ketteler's death in July 1887, *Zentrum* leader Franz Hitze stated that “We will always revert to the constructive Catholic social and political system of Baron von Ketteler and constantly designate him as the one whom we thank for our social program.” Cited from Edward Bock, *Wilhelm Von Ketteler*, p. 197.

⁴ Wilhelm Ketter, “Catholics in the German Reich,” in Rupert J. Ederer, ed., *The Social Teachings of Wilhelm Emmanuel von Ketteler*, (Washington : University of America Press, 1981), p. 577.

⁵ See, for example, Wilhelm Ketteler, “The Christian Concept of the Private Property Right,” *The Social Teachings of Wilhelm Emmanuel von Ketteler*, pp. 11-15.

⁶ *Ibid*, pp. 196-197.

authority by those in power, destroyed the social fabric.⁷ Ketteler saw the social fabric as composed of individuals and the social organizations created by free peoples such as the family and the Church. The state had the task of uniting the individuals and social bodies into a coherent society. An absolutist state absorbed or co-opted the social organizations that Ketteler felt were the media for all human freedoms, especially the right of self-determination. Absolutism atomized society, isolating men from one another and causing “social distress.”⁸

Ketteler believed that nineteenth century liberalism was merely a developed form of absolutism.⁹ Hegel, according to Ketteler, summarized this position perfectly when he wrote that, “the state is the genuine God here on earth; as the prime mover contains its own end, the state has supreme power over individuals. The people as represented in the state are the absolute power on earth.”¹⁰ According to Ketteler, the consequence of the deification of the state was that liberals sought to control and to interfere in every aspect of society—the very antithesis of the freedom they claimed to champion. Ketteler noted that true liberalism, meaning liberty, was not in conflict with existing Church doctrine. He was not opposed to democracy, so long as it respected the lower bodies of the social fabric, nor was he opposed to capitalism and industrialization so long as workers were paid just wages. He stated, however, that the liberalism of the French Revolution and the 1860s and 1870s in Germany

⁷ I emphasize Ketteler’s use of “social fabric” to describe his vision of society instead of the “organic vs. mechanical” society, as scholars have done when examining Ketteler’s thinking on the state and subsidiarity. I have used the social fabric model instead of the *corpus* metaphor in papal documents as well. The choice was made to avoid using a rhetorical device as an analytic category to clarify the meaning of subsidiarity. See Judith Schlanger, *Les métaphores de l’organisme*, (Paris: Librairie Philosophique J.Vrine, 1971), pp. 7-8, 31-32.

⁸ *Ibid*, p. 176.

⁹ Ketteler distinguished between “mature liberalism” and “infant liberalism”. I use liberalism instead of “mature liberalism” to refer to the sectarian liberalism of the second half of the 19th Century. Its chief attributes were endorsement of materialism, speeding the process of industrialization, *Realpolitik*, and supporting *laissez-faire* economic policies. See Carlton Hayes, *A Generation of Materialism*, (New York: Harper Publishers, 1941), p. 49.

was not true to its own precepts and did not deliver individual freedom, but rather oppression.¹¹ It centralized power by banning guilds and workers' associations and by seizing Church property and interfering in its internal affairs and its traditional roles in society.¹²

To correct absolutist practices in the modern liberal state, Ketteler developed a political theory of the state that was intimately linked to the unnamed principle of subsidiarity. When outlining the proper role of the state, Ketteler noted that

The dignity, solidity, and vitality of civil authority does not hinge on its unbounded extension, so that it thinks for all, guides all, determines everything, and rules over all. On the contrary, these are reflected in how...well [the authorities] are able to confine their activities to the area which is proper to the state and reasonable for it....¹³

The idea of subsidiarity expressed here is that the state should not seek to control and order society, but rather to confine its actions to its "proper sphere of activity."¹⁴ Ketteler defined the state's sphere of activity as safeguarding basic human rights, representing "the nation" in its dealings with other states, and supporting "all that deserves support" by aiding good and moral causes without interfering with the right of self-determination of intermediary social bodies or individuals.¹⁵ The "subsidiary" state had to respect the autonomy of social institutions, but it was also obligated to aid and support these bodies to ensure their strength and vitality. Ketteler's concept of subsidiarity therefore carried both a positive and a negative meaning. The state should intervene in the affairs of intermediary bodies if they

¹⁰ Wilhelm Ketteler, "Liberalism, Socialism and the Church," *The Social Teachings of Wilhelm Emmanuel von Ketteler*, pp. 505-506.

¹¹ *Ibid.*, 501.

¹² Ketteler also pointed to the institution of civil marriage, the secularization of education as examples of this trend. ¹² Wilhelm Ketteler, "Liberalism, Socialism and the Church," *The Social Teachings of Wilhelm Emmanuel von Ketteler*, pp. 501-505.

¹³ Wilhelm Ketteler, "Freedom, Authority and Church," *The Social Teachings of Wilhelm Emmanuel von Ketteler*, p. 139.

¹⁴ *Ibid.*

¹⁵ *Ibid.*, p. 141.

were unable to accomplish their functions, but otherwise the state should respect the autonomy of the social fabric. The positive and negative strictures on state action were brought together in the principle of subsidiarity. This distinguishing feature of subsidiarity remained constant throughout the emergence of the principle in the Catholic Church, post-war Christian Democracy and in the European Union.

The aim of Ketteler's political philosophy, and hence his conception of subsidiarity, was to secure human freedom and dignity. His understanding of human freedom was rooted in Catholic theology. God created man in his own image with the ability to distinguish and choose between right and wrong actions.¹⁶ As a creature made in the image of God, man was imbued with an inherent dignity. Ketteler believed that the dignity and freedom of the individual meant that "man, in his personal social, and political life, to the extent that he is able to take care of his own needs without violating the rights of others, enjoys the widest possible latitude in managing his own affairs."¹⁷ However, to secure individual autonomy, Ketteler emphasized that human beings could not survive in isolation but relied from birth on social structures such as the family.¹⁸ Individual freedom was therefore tied to the vitality of the intermediary bodies that formed the social fabric. Ketteler noted that "the right of a man to guide his own destiny in all such societies, whether one is speaking of the family, the community, the province, or other corporate bodies which men establish, is what social and political liberty are all about."¹⁹ In other words, there could be no individual freedom without a concomitant freedom for the structures of the social fabric.

Ketteler's definition of the social fabric deserves particular emphasis here because of its relevance for understanding subsidiarity. By stating that the community and the province

¹⁶ *Ibid*, p. 119.

¹⁷ *Ibid*, p. 135.

formed part of the social fabric, Ketteler mixed sub-state governments with non-state associations in the social fabric. This was a crucial point because it demonstrated that Ketteler did not believe that the idea of subsidiarity applied only to social bodies such as the family and the Church as implied in *Quadragesimo Anno*. None of the passages in which he defined the concept of subsidiarity distinguished between functional and territorial bodies. Because the subsidiarity idea was a principal of political philosophy, it attempted to define a universal relationship applicable to all social and political relations within a state that would provide the greatest degree of liberty and freedom for individuals.

Ketteler's 1848 speech on the education system provides an example of both the negative and positive aspects of subsidiarity as well as his broad definition of the social fabric. In the one speech he gave as a member of the 1848 Frankfurt Parliament, Ketteler outlined the fundamental idea of subsidiarity in opposition to state control of education.²⁰ He declared that parents had the right to have their children educated as they chose, and that the Catholic Church had the right to provide education. He referred to these rights as *le droit subsidiaire*, or subsidiary right, which required that the state recognize the legitimacy of the Church's role and parental choice in education. Furthermore, Ketteler stated that in areas where local communities did not have the means to provide separate school systems, the state had an obligation to provide financial assistance to facilitate parents' decisions regarding the form of their children's education.²¹ For the rest of his life, Ketteler argued against total state

¹⁸ *Ibid*, p. 253.

¹⁹ *Ibid*, p. 135.

²⁰ Wilhelm Ketteler, *Devoirs des parents et de la famille en présence des conditions nouvelles faites aux écoles primaires*, (Paris: Oeuvre de Saint-Paul, 1882), p. 1.

²¹ Chantal Millon-Delsol, *Le principe de subsidiarité*, (Paris: PUF, 1993), p. 127. Ad Leys, *The Ecclesiological Impacts of Subsidiarity*, (Kampen: Kok, 1995), p. 36.

control over education and urged that questions of denominational schools should be left to local and regional governments, rather than the Prussian dominated Reich.²²

The negative and positive dimensions of subsidiarity were both evident in Ketteler's speech on education. Ketteler charged that the state should not seek to monopolize the education system, but rather to support the decisions of families as to the form of education. The negative aspect of subsidiarity constrained the state from absorbing the Church's role in education while the positive aspect required that the state provide the necessary funds if religious organizations were unable to afford the costs of running separate school systems. The breadth of Ketteler's vision of the social fabric was also evident in the schooling issue. The subsidiary rights of the family, the Church and the local and regional governments are all present in Ketteler's discussion of the state's proper role in education. These institutions played pivotal roles in the education system in accordance with self-determination and local governance. Their rights took precedence over any interference from the state. Social institutions such as the family and political bodies such as the municipality had their own rightful claims to autonomy and freedom in the issues that concerned them directly.

Education, however, was a minor theme in Ketteler's writing compared to his concern for the plight of industrial workers in Germany.²³ Ketteler stated that liberal social and economic policies had led to the spiritual and material degradation of labourers. *Laissez-faire* economic policies reduced workers to chattel by subjecting the labour market to the vagaries of supply and demand to determine wages and working conditions.²⁴ Ketteler

²² Edward Bock, *Wilhelm von Ketteler*, p. 18-19.

²³ After the publication of "Freedom, Authority and Church" in 1862, Ketteler's works focused mainly on the condition of labourers, see, for example, "The Labor Problem and Christianity" (1864), "Liberalism, Socialism, and Christianity" (1871), and "Can a Catholic Worker Be a Member of the Socialist Workers' Party?" (1877) in Wilhelm Ketteler, *The Social Teachings of Wilhelm Emmanuel von Ketteler*.

²⁴ Wilhelm Ketteler, "The Labor Problem and Christianity," *The Social Teachings of Wilhelm Emmanuel von Ketteler*, p. 326-327.

believed that the primacy of the state in social life was in large measure responsible for the deterioration in the conditions of workingmen and their families as well as for the emergence of revolutionary socialist movements.²⁵

Ketteler noted that when the French Revolutionary government abolished the guilds of the *ancien régime* in the late eighteenth century, it had removed a fundamental element of the social fabric and had destroyed social authority in the economy.²⁶ Labourers in Ketteler's time could not seek better working conditions through unions or worker's associations because the liberal state, dominated by capitalists, monopolized economic policy and forbade the creation of such associations. Furthermore, he asserted that the liberal state had not protected the basic human rights of workers by legislating minimum wages, or safe working conditions because it preferred to emphasize that in a free market, all men were free to choose their employment. This presented a twofold problem in that the social fabric was weakened by the absence of socioeconomic associations such as guilds and the state was not fulfilling its proper function as a protector of human rights. Ketteler applied the same theory of subsidiarity that he had employed in the education question to the labour issue. He first proposed that associations of workers and employers modeled on guilds should be resurrected and granted subsidiary rights.²⁷ These updated guilds, which Ketteler called corporations, would foster social harmony by forging an understanding between workers and employers on questions of working conditions and wages and generally avert class conflict. Ketteler also argued that the plight of the worker could be improved if the state took an active role in protecting the basic human rights of labourers and encouraged the re-establishment of corporations. This would in turn strengthen the social fabric and rehabilitate

²⁵ Ketteler argued that socialism was the "logical child" of liberalism and *laissez-faire* economic policies. He believed that both ideologies were essentially flawed because they took a "mechanical" or materialistic view of

state authority.

II Ketteler, Leo XIII and Catholic social teachings

Ketteler's pre-occupation with social issues was the feature of his political thinking that most overtly influenced Leo XIII's encyclical *Rerum Novarum*, "On Capital and Labour," (1891).²⁸ Pope Leo XIII (1878-1903) said that he considered himself Ketteler's "spiritual heir", and declared that "it is from him that I have learned".²⁹ Many of Ketteler's criticisms of liberal economic policies and the need for corporations are present in *Rerum Novarum*. Ketteler's theory of subsidiarity is also present in *Rerum Novarum*. However, Leo XIII also stated that the Church was not concerned about which form and structure of government is suited to Catholic social teaching.

A conservative at heart, Leo XIII took the most important steps in reconciling the Church to the realities of the modern world.³⁰ His predecessor, Pius IX (1846-1877), had personified the hostile reaction of conservative Catholics to the spread of liberalism and democracy in the nineteenth century.³¹ Pius IX ignored the social problems caused by liberalism and industrialization that had been identified by Ketteler. However, in the

the individual and neglected man's spiritual needs that were met in the bodies of the social fabric such as the family and the Church.

²⁶ The "Le Chapelier Law" banned guilds and was passed in 1790 by the first French Republic and was exported to Germany by Napoleon. *Ibid*, p. 329-330.

²⁷ Ketteler asserted that socialist worker's only unions exacerbated class conflict and encouraged instability and division in society.

²⁸ Edward Bock, *Wilhelm von Ketteler*, p. 213.

²⁹ Rupert J. Ederer, ed., *The Social Teachings of Wilhelm Emmanuel von Ketteler*, 307. Edward Bock maintains that Ketteler was not widely influential outside of Germany or the Church, but that his application of Thomist principles to modern industrial society is what influenced Leo XIII. Edward Bock, *Wilhelm von Ketteler*, p. 213.

³⁰ Jean-Dominique Durand characterized Leo XIII as an essentially pragmatic Pope, whose positions and encyclicals were shaped by national issues such as the *Kulturkampf*, the emergence of Christian Democracy and the relationship between the Vatican and the Italian Republic. Jean-Dominique Durand, *L'Europe de la démocratie chrétienne*, (Paris: Editions Complexe, 1995), p. 64.

³¹ Pius IX's "Syllabus of Errors" pronounced in 1864 thoroughly condemned liberal principles and democracy. He was especially antagonistic to the Italian republic because of its seizure of the Papal States. For the *Syllabus Errorum* and reactionary Catholic commentary, see Emile Keller, *L'encyclique et les principes de 1789*, (Paris, Librairie Poussielgue et Fils, 1865).

development of *Rerum Novarum*, Leo XIII sought to return the Church to a more positive role in modern society by taking up the issues and solutions that Ketteler had examined.³² In 1882, Leo XIII commissioned the Union de Fribourg, a group of conservative Catholic social theorists, to produce research and reports to serve the Pope as a basis for his future encyclical on social issues.³³ Leo XIII's closest advisors, the Cardinals Luigi Taparelli and Matteo Liberatore, drafted *Rerum Novarum* using the Union's research, finishing in 1891.³⁴ The most pressing question *Rerum Novarum* had to address was the desirable degree of state intervention in social and economic issues.³⁵

Leo XIII utilized Ketteler's theory of subsidiarity to define the role of the state in society, although he never named the principle.³⁶ In *Rerum Novarum* Leo XIII revealed his understanding of the principle as a means to human freedom and dignity when he asserted, "Man precedes the state, and possesses, prior to the formation of any State, the right of providing for the substance of his body."³⁷ Like Ketteler's theory, subsidiarity was the lynchpin ensuring a proper ordering of the relationships between the state and society to

³² There was a fear among Catholics that workers were abandoning the Church to join Social democratic and Communist organizations because the clergy had not addressed the effects of *laissez-faire* economic policies on wage labourers. It was a question of the very survival of the Church in Europe.

³³ Members of the Union de Fribourg, such as the Frenchman René La Tour du Pin and the Austrian Karl Vogelsang were reactionary Catholics who believed that capitalism and parliamentary democracy were responsible for all social ills. They proposed to Leo XIII a vision of an authoritarian neo-feudal state known as corporatism. La Tour du Pin had been inspired by Ketteler's social writings and had founded worker's associations with Albert de Mun during the 3rd Republic. See Guy Debouelle, "De l'influence réelle de l'union de Fribourg sur l'encyclique *Rerum Novarum*," in *Rerum Novarum: Ecriture, Contenu et réception d'une encyclique*, Philip Boutry, ed., (Farnèse: Collection de l'École Française de Rome, 1997), p. 241-245.

³⁴ Cardinals Luigi Taparelli and Matteo Liberatore had also been members of the Union de Fribourg and took more moderate positions on issues such as democracy and capitalism as reflected in the encyclical. For the political and social views of Matteo Liberatore, see Matteo Liberatore, *Principles of Political Economy*, Trans by Edward Dering, (London: Art and Book Company, 1891), p. 277-278.

³⁵ For example, just prior to the pronouncement of *Rerum Novarum*, liberal and intransigent Catholics debated over whether the state should intervene in social issues. See Robert Talmy, *Aux sources du catholicisme social*, (Tournai: Desclée & Co., 1963), p. 51-52.

³⁶ Leo XIII is often cited as the originator of the principle of subsidiarity in the Catholic Church. See, for example, Richard Mulcahy, "Subsidiarity," *New Catholic Encyclopedia*, (New York: McGraw Hill, 1967), pp. 762-763.

³⁷ Leo XIII, "Rerum Novarum," *The Papal Encyclicals: 1878-1903*, Claudia Carlen, ed., (Raleigh: McGrath publishing Company, 1981), p. 243.

secure true liberty and dignity for the individual. The positive and negative obligations on state intervention expressed in Ketteler's subsidiarity idea were also present in *Rerum Novarum*. For example, Leo XIII warned against excessive state intervention in the social sphere, arguing,

It is not right, as We have said, for either the citizen or the family to be absorbed by the State; it is proper that the individual and the family should be permitted to retain their freedom of action, so far as this is possible without jeopardizing the common good and without injuring anyone.³⁸

However, Leo XIII acknowledged that the state should legislate on such matters as the length of the workday, sanitary and health conditions and the employment of minors. He characterized the limitations of state law in these matters, arguing that

There can be no question but that, within certain limits, it would be right to invoke the aid and authority of the law. 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.³⁹

The continuity between Leo XIII's principle and Ketteler's theory of subsidiarity is evident—the state should interfere in the social fabric only when there was a need. Leo XIII justified the obligation of the state to pass labour legislation on the grounds that the state had a responsibility to protect individuals, especially labourers and the “needy,” because they had no means of helping themselves.⁴⁰ However, Leo XIII stated that if corporations and workers' associations were permitted to form and to function, there would be less need for direct state intervention. Leo XIII balanced state intervention with the precept that when the individual alone or as a member of an intermediary body was capable of providing for

³⁸ *Ibid.* p. 250.

³⁹ *Ibid.* p. 250-251.

⁴⁰ *Ibid.* p. 251.

himself, the state had to respect the inherent freedoms of both the individual and social institutions and refrain from interfering.

Leo XIII's immediate influence on the development of subsidiarity was to narrow the conception of the social fabric in Catholic social teaching so as largely to exclude its political dimension. In *Immortale Dei*, pronounced in 1885, Leo XIII maintained that since all political and social authority emanated from God, "to despise legitimate authority, in whosoever vested, is unlawful, as a rebellion against the divine will, and whoever resists that, rushes willfully to destruction."⁴¹ According to Leo XIII, Catholics should endure unjust treatment at the hands of civil rulers because "the Almighty will one day bring them to account."⁴² The need for obedience was related to the turbulent relationships between Catholics, the clergy and the governments of several European countries. The alliance between reactionary Catholics and monarchists in France and Spain, the *Kulturkampf* in Germany and the precarious state of the Vatican in the Italian Republic had created political barriers to Leo XIII's desire to address social questions and strained the position of the Church in those countries.⁴³ *Immortale Dei* addressed the question of the Christian constitution of the state in an attempt to quell Catholic hostility to democratic governments.⁴⁴ According to Leo XIII, the structure and form of government was not important so long as it

⁴¹ Leo XIII, "Immortale Dei," *The Papal Encyclicals: 1878-1903*, p. 108.

⁴² *Ibid.*

⁴³ Monarchist Catholics in France and Spain were hostile to their Republican governments and argued that they should be overthrown. For a summary of the Leo XIII's relationship with Germany, France, Spain and Italy during this period, see Lillian Parker Wallace, *Leo XIII and the Rise of Socialism*, (Durham: Duke University Press, 1966), pp. 277-300., Paul Misner, *Social Catholicism in Europe*, (New York: Cross Road, 1991), 169-188. and Jean-Dominique Durand, *L'Europe de la démocratie chrétienne*, (Paris: Editions Complexe, 1995), pp. 66-84.

⁴⁴ In fact, Leo XIII addressed this question in *Diuturnum illud* (1881) and *Au milieu des deux sollicitudes* (1892) this last addressed specifically to exhort French monarchists to accept and work within the Republic. In 1901 he pronounced *Graves di communi* (1901) which opposed the creation of Christian democratic political parties. Lillian Parker Wallace, *Leo XIII and the Rise of Socialism*, p. 302. and Paul Misner, *Social Catholicism*, p. 248.

exercised its authority according to Christian principles.⁴⁵ In an effort to reconcile Catholics to democratic governments, Leo XIII was forced to accept all forms of government, whether legitimate or illegitimate, and to forgo discussing the necessity of strong sub-state political institutions in the social fabric to secure human freedom and dignity. It is important to note, however, that Leo XIII, like Ketteler, often referred to rights and freedoms of municipal governments and the need to avoid undue state interference, implicitly emphasizing that the theory of subsidiarity applied to sub-national levels of government as well as to purely social institutions.⁴⁶

III Subsidiarity and Corporatism

Leo XIII's refusal to endorse a specific form of government placed the Church in an ambiguous position with respect to the authoritarian regimes that arose during the papacy of Pius XI (1922-1939). Pius XI had to confront the advent of fascist regimes, revolutionary Communist movements and economic depression. Following a pragmatic course, Pius XI preferred fascists to communists and worked with Hitler and Mussolini to secure concordats normalizing relations with the Church in their countries.⁴⁷ Although Pius XI denounced the Nazi regime in 1937, his maintenance of Leo XIII's dictum that the Church did not prefer one form of government to another meant in practice that he only challenged fascist

⁴⁵ Leo XIII, "Immortale Dei," Claudia Carlen, ed., *The Papal Encyclicals: 1878-1914*, (Raleigh: McGrath Publishing Company, 1981), 106-110.

⁴⁶ For example, "Rulers should, nevertheless, anxiously safeguard the community and all its members; the community, because the conservation thereof is so emphatically the business of the supreme power..." Leo XIII, "Rerum Novarum," p. 250., and "... Whatever in the State is of chief avail for the common welfare...to keep in check the leading authorities from unwarrantably interfering in municipal or family affairs..." Leo XIII, "Immortale Dei," p. 115.

⁴⁷ Pius XI's greatest achievement was to secure a concordat with Mussolini finally resolving the "Roman Question" and establishing the Vatican state. See John McKnight, "The Papacy and Fascism," Charles Delzell, ed., *The Papacy and Totalitarianism between the two World Wars*, (Toronto: John Wiley & Sons, Inc, 1974), p. 20-21., and Oswald Von Nell-Breuning, S.J., *Reorganization of the Social Economy: The Social Encyclical Developed and Explained*, (New York: The Bruce Publishing Company, 1936), p. 210.

totalitarianism when it threatened the Church.⁴⁸ He offered no rebukes when civil liberties and political institutions such as parliaments or regional and local governments were abolished or absorbed into authoritarian state structures. Pius XI's exclusively social focus led him to stress authority and social institutions over individual freedom and dignity in *Quadragesimo Anno*, the encyclical that contained the first explicit definition of subsidiarity.⁴⁹

Quadragesimo Anno is unique in that it is the only encyclical ever to have been written by one individual. In the late nineteen-twenties, Pius XI charged the head of the Jesuit order in Germany to produce an encyclical to commemorate and expand *Rerum Novarum*. This task was given solely to Oswald von Nell-Breuning, SJ (1890-1991), who was instructed to work in total secrecy.⁵⁰ He maintained that the social theory in *Quadragesimo Anno* was derived from four sources: Leo XIII, the Jesuits Gustav Gundlach, SJ (1892-1963), and Heinrich Pesch (1854-1926), and the *Königswinter Kreis*, a group of German liberal economists and social thinkers who met in the 1920s.⁵¹ Nell-Breuning stated

⁴⁸ In particular, Pius XI was opposed to Mussolini's hostility to Catholic Action, an Italian grassroots organization for youth and workers that was controlled and organized by the clergy. See Pius XI, "Mit Brennender Sorge," in *The Papal Encyclicals: 1914-1939*, Claudia Carlen, ed., (Raliegh: McGrath Publishing Company, 1981), p. 525., and John Pollard, *The Vatican and Italian Fascism*, (Cambridge: Cambridge University Press, 1985), pp. 44-45.

⁴⁹ It is important to note that in the Latin version of *Quadragesimo Anno* subsidiarity appeared as "subsidium" and "subsidiarii officii principium." In the English version it was translated as a "principle of social philosophy," and in French as "principe de la fonction supplétive de toute collectivité." Only the German translation translated it as "Subsidiaritätsprinzip." Ad Leys, *The Eccleseological Impacts of Subsidiarity*, (Kampen: Kok, 1995), p. 64.

⁵⁰ Nell-Breuning believed he was chosen because of his expertise in economics, having published a thesis on the morality of the stock exchange in 1928. Oswald von Nell-Breuning. "The Drafting of *Quadragesimo Anno*," Charles Curran and Richard McCormick, eds. *Readings in Moral Theology No. 5: Official Catholic Social Teaching*, (New York: Paulist Press, 1981), p. 63.

⁵¹ *Ibid.*

that it was through Heinrich Pesch and Leo XIII that he came to understand and define subsidiarity. Pesch had, in turn, derived his economic and social theories from Ketteler.⁵²

Quadragesimo Anno, as a development of *Rerum Novarum*, built up on the same themes of the evils of *laissez-faire* and socialist approaches to socioeconomic problems. Leo XIII had located his discussion of subsidiarity within the broader context of the social fabric, including the individual, the community, the Church and corporations. Because Nell-Breuning was charged with exposing only socioeconomic issues, he linked the principle exclusively to the need for corporations. Nell-Breuning, informed by Ketteler, Pesch and Leo XIII, felt that corporations could address issues of wages, working conditions and employment so that state intervention in social and economic affairs would not be required. The subsidiarity principle was meant to rehabilitate state authority by limiting it to activities that could not be achieved by any social institution. Nell-Breuning referred to the function of corporations as co-determination.

Nell-Breuning noted with regret that Pius XI had interpreted co-determination in the encyclical as consistent with fascist corporatist theories.⁵³ There was a certain degree of agreement between Catholic and fascist corporatist theorists on the need for corporations to overcome class conflict and avert the extremes of liberalism and socialism.⁵⁴ The scholar Peter Williamson has noted that “quite simply, corporatist theory is essentially not found

⁵² For an outline of Pesch’s thought, the influence of Ketteler on his writings and his definition of subsidiarity, see Richard Mulcahy, *The Economics of Heinrich Pesch*, (New York: Henry Holt, 1952), pp. 7, 175-177, and 184.

⁵³ The Corporatist State was “a scheme of occupational estates [corporations] drawn together in economic councils which would provide a framework for industrial self-government and supplement the supreme political parliament in economic and social affairs.” Ralph Bowen, *German theories of the Corporate State*, (New York: Whittelesy House, 1947), p. 10.

⁵⁴ For an example of fascist theories on corporatism, see Benito Mussolini, *The Corporate State*, (Firenze: Vallecchi Editore, 1936). Peter Williamson, *Varieties of Corporatism*, (Cambridge: Cambridge University Press, 1985), pp. 30-31.

outside countries where there is a strong or dominant Catholic intellectual tradition.”⁵⁵ The same could be said of corporatist states, since authoritarian dictatorships that implemented corporatist structures and institutions appeared in such Catholic countries as Italy, Austria and Portugal during the 1930s.⁵⁶ For Nell-Breuning, however, fascism and corporatism were antithetical to the spirit and teachings of *Quadragesimo Anno*.⁵⁷

Pius XI’s ambiguous relationship with authoritarian corporatism was made evident in a passage he wrote and had Nell-Breuning insert into the text of *Quadragesimo Anno*. In 1971, Nell-Breuning avowed that “It is clear to me today that the insertion of Pius XI’s comments on fascism bears the chief blame for the total misunderstanding of the picture of order, or rather outline of a social order, developed in QA....”⁵⁸ Nell-Breuning charged that Pius XI’s misunderstanding of the dangers of authoritarian states led him to give a “benevolent nod” to corporatism in the section Pius XI wrote. Pius XI noted that institution of corporatist structures by certain states was a laudable development and should be encouraged. He saw many advantages in the establishment of corporations, such as “peaceful collaboration of the classes, repression of socialist organizations and efforts, the moderating influence of a special ministry.”⁵⁹ However, Pius XI criticized authoritarian corporatists for not observing the principle of subsidiarity, in that, after creating these corporative bodies, they remained an arm of the state apparatus. “The state is substituting

⁵⁵ *Ibid*, p. 22.

⁵⁶ In his study on corporatism, Williamson notes that Nazi Germany and Franco’s Spain and Vichy France had corporatist features, but cannot be designated as corporatist states. Peter Williamson, *Varieties of Corporatism*, pp. 4-5, 131.

⁵⁷ Nell Breuning blamed himself for Pius XI’s misinterpretation and misrepresentation of *Quadragesimo Anno*, pointing out that he had been given ample opportunity to make alterations, comments or suggestions to the Pope. Oswald von Nell-Breuning. “The Drafting of *Quadragesimo Anno*,” Charles Curran and Richard McCormick, eds. *Readings in Moral Theology No. 5: Official Catholic Social Teaching*, (New York: Paulist Press, 1981), p. 65.

⁵⁸ *Ibid*, p. 63.

⁵⁹ Pius XI “*Quadragesimo Anno*,” Oswald von Nell-Breuning, ed. *Reorganization of Social Economy: The Social Encyclical Developed and Explained*, p. 244.

itself in the place of private initiative, instead of limiting itself to necessary and sufficient help and assistance.”⁶⁰ While he applauded the creation of corporations, Pius XI did not approve of the implicit control that fascist states continued to exercise over these socioeconomic institutions. Nevertheless, he did not attempt to dispel the notion that fascists and Catholics shared the same conception of a corporatist order for society.⁶¹ He even contributed to identification of Catholic social teaching with fascist corporatism by hailing the creation of the “QA State” in Austria.⁶²

For Oswald Nell-Breuning, a “QA state,” or a Catholic brand of fascism was impossible in the context of the social doctrine, in part because of subsidiarity. Nell-Breuning characterized *Quadragesimo Anno* as “progressive, liberal, definitely democratic, against individualism and against statism; in short correct.”⁶³ It is important to note that whereas Pius XI emphasized that the Church did not prefer one form of government to another and sided with the fascists on the question of corporatism, Nell-Breuning understood *Quadragesimo Anno* as an espousal of democratic practices. He believed that the organization of the state could not be separated from the organization of society when

⁶⁰ *Ibid.*

⁶¹ After the pronouncement of QA, the Italian fascist newspaper, *Il Lavoro Fascista*, asserted that “the best commemoration of this document [*Quadragesimo Anno*] has already been made by Fascism, which has gone well beyond the proposals that were regarded as audacious forty years ago.”⁶¹ In Germany, the Catholic politician Franz von Papen commented in 1934 that “Everywhere we view a happy harmony and full agreement between the demands of *Quadragesimo* [sic] *Anno* and National Socialist policies... The Third Reich, under Hitler, is the first state in the world in which the sublime principles of the popes have not only been acknowledged, but... have been put into practice.” Cited from John Pollard, *The Vatican and Italian Fascism*, (Cambridge: Cambridge University Press, 1985), p. 138. and Arnold Heidenheimer, *Adenauer and the CDU*, (The Hague: Martinus Hijhoff, 1960), p. 15.

⁶² In 1933, Engelbert Dollfuss, the Austrian Chancellor and leader of the Catholic Social Party, dissolved the Parliament and instituted an authoritarian corporatist regime. Dollfuss ruled by decree as a dictator, and replaced the parliament with a chamber of representatives of trades and professions. He referred to the new constitution as embodying the principles of QA. Nell-Breuning, noted that Pius XI had privately spoken of the Dollfuss regime as the “QA” state. “New Regime in Austria,” *The Times*, May 11, 1933, 13., and Oswald von Nell-Breuning, “The Drafting of *Quadragesimo Anno*,” *Readings in Moral Theology No. 5: Official Catholic Social Teaching*, 65.

⁶³ Oswald von Nell-Breuning, “The Drafting of *Quadragesimo Anno*,” *Readings in Moral Theology No. 5: Official Catholic Social Teaching*, 65.

attempting to secure human freedoms and dignity. Consequently, while Pius XI interpreted subsidiarity as applying narrowly to corporations and other social bodies, Nell-Breuning conceived of the principle as applying to political institutions such as regional and local governments.⁶⁴ In other words, subsidiarity had federal implications that Nell-Breuning, writing after war, asserted applied to the organization of the state and to the development of European Union.⁶⁵ Nell-Breuning understood the social fabric and subsidiarity in the same manner as Ketteler. Subsidiarity was a philosophical principle that sought to secure human dignity and freedom through a norm concerning the relationship between the individual, the social fabric (including both political and social institutions), and the state.

IV Pius XII: Personalism and Subsidiarity as the Common Good

Pius XI's refusal to discuss the form or organization of the state derived partly from political necessity and partly from established Church doctrine. However, the experiences of the Second World War solidified the need to address the dangers of totalitarianism, whether fascist or communist, and to clarify the Church's position on the importance of the individual. Despite the uncertainty of his record, Pius XII (1939-1958) altered the focus of Church doctrine propagated in *Quadragesimo Anno* by stressing that all social and political activity should be directed to the development of the person.⁶⁶ Pius XII also reconciled Catholic social teaching with democracy and redefined the objectives of the state.

⁶⁴ For Nell-Breuning's discussion of the application of subsidiarity to local and regional governments, see Oswald von Nell-Breuning, ed. *Reorganization of Social Economy: The Social Encyclical Developed and Explained*, 204-205.

⁶⁵ Oswald von Nell-Breuning, *Baugesetze der Gesellschaft*, (Freiburg: Herder Verlag, 1990), 132, 144-145.

⁶⁶ Pius XII is a controversial figure in the history of the Catholic Church. John Cromwell has charged that he was *Hitler's Pope*, and too friendly to fascist regimes and failed to do enough to prevent the Holocaust. Others have criticized Cromwell for blaming the results of complex events on a Pope who had attempted secret peace initiatives in the early 1940s. This debate however, does not consider Pius XII's role in giving the first outline of the Christian democratic state, or Catholic social teaching in general. John Cromwell, *Hitler's Pope*, (New York: Penguin Books, 2000), pp. xi-xii., Ralph McNerny, *The Defamation of Pius XII*, (Colorado Springs: St. Augustine Press, 2001). p. 1.

It is important to note that, just as the works of Ketteler and other socially minded Catholics preceded Leo XIII's *Rerum Novarum*, so too had the ground been prepared for Pius XII to discuss democracy and the place of the individual in the state and society. The notion of the centrality of the individual in all social and political activity was part of a doctrine developed by lay Catholics in the inter-war period that was designated as "personalism." Taking their cue from Leo XIII's teaching that "Man precedes the State," personalist thinkers such as Emmanuel Mounier and Jacques Maritain in France and the Dominican Eberhard Welty in Germany developed the personalist doctrine that became the theoretical backbone of Christian Democracy in Europe. While the Church has never employed this term, the similarity between Pius XII and the personalists on the questions of democracy and the individual reveals a convergence between the re-orientation of Papal teaching and a lay Catholic response to the challenges of the twentieth century.⁶⁷

The foundation of Pius XII's re-orientation of Catholic social teaching on the individual and democracy was a redefinition of the concept of the common good. Catholic social teaching since Leo XIII had maintained that the role of the state in society was to promote and secure the common good. Leo XIII had defined the idea in *Rerum Novarum* as comprising "well-regulated family life, respect for religion and justice, the moderation and fair imposing of public taxes, the progress of the arts and of trade, the abundant yield of the land...everything, in fact, which makes the citizens better and happier."⁶⁸ Thusly defined, the common good related only to the material and spiritual well being of individuals. Pius XII, however, believed that the common good had a deeper significance than simply low

⁶⁷ The French catholic philosopher and publicist Emmanuel Mounier coined the term in the early 1930s as part of an attempt to define a third way between liberalism and socialism and to create a progressive Christian movement in France. In recent usage, scholars have used personalism to characterize the political theory behind Christian Democracy. See Emmanuel Mounier, *Révolution personaliste et communautaire*, in *Oeuvres de Mounier: 1931-1939*, Vol 1 (Paris: Éditions du Seuil, 1961), p. 175.

taxes and good harvests. He emphasized that the common good was the development and dignity of the person within a strong social fabric. The state's role in society was mediated by subsidiarity, making the principle a key feature of the common good. Furthermore, Pius XII stated that a Christian democratic society provided an ideal framework for pursuing the common good, marking the first official support for democracy by a Pope.

Pius XII's 1942 and 1944 Christmas radio messages on the internal order of the state and on Christian Democracy marked an important development in Catholic social teaching. In 1942, Pius XII argued that "The origin and goal of social life must be the conservation, the development and the perfection of the human person...."⁶⁹ He also asserted that the state should maintain a legal order that protected human rights and aided in the development of the dignity of the human person.⁷⁰ Pius XII's focus on the individual is what distinguishes him from Pius XI and even Leo XIII. The development of Catholic social doctrine allowed Pius XII to maintain his criticisms of nineteenth century liberalism and socialism while distancing the Church from any association with corporatism. The new emphasis on the individual also enhanced the importance of the social fabric and the principle of subsidiarity.

Pius XII maintained Ketteler's teaching that social associations and institutions were the media for the development of the individual. He invoked the principle of subsidiarity to describe the proper relationship between the social fabric, the state and the individual. When social bodies were insufficient in securing the common good, (i.e. the material, spiritual and cultural lives of citizens), it was incumbent on the state to intervene and establish the external

⁶⁸ Leo XIII, "Rerum Novarum," p. 249.

⁶⁹ Pius XII, "Radiomessage de Noël 24 décembre, 1942," in *Documents Pontificaux de Sa Sainteté PIE XII*, Vol IV, Simon Delacroix, ed., (Saint Maurice: Editions Saint-Augustin, 1963), p. 333.

⁷⁰ Among the rights Pius XII lists are freedom of conscience, choice of schooling, private property and freedom to choose a state of life. *Ibid*, p. 341.

conditions necessary to all citizens for the development of their personality.⁷¹ This was Pius XII's interpretation of subsidiarity in relation to the common good, which he outlined in his first encyclical, *Summi Pontificatus* (1939). Pius XII described the subsidiary nature of state action, noting "it is...the function of the State to control, aid and direct the private and individual activities of national life so that they converge harmoniously towards the common good."⁷² He qualified this by arguing that authoritarian state intervention in "private enterprise" damaged the social bodies and lessened the freedom and dignity of individuals in consequence.

Pius XII also addressed the issue of the Christian democratic state and its role in securing the common good. His 1944 Christmas address broached the nature of Christian Democracy, so long neglected by Catholic social teachings. The Pope made it clear that his discussion of democracy was linked to the Allies' post-war plans and the universal desire for democracy.⁷³ He stated that the people of Europe had learned from their bitter experiences with war and dictatorship. They now opposed all authoritarian, uncontrollable power and demanded a system of government compatible with the liberty and dignity of the individual.⁷⁴ Citing Leo XIII's dictum that the Church did not prefer one form of government to another, he demonstrated that the Church was not opposed to democratic governments. He emphasized that a democratic state should not be an agglomeration of individuals expressing the "will of the people," but should instead represent the organic unity of its people and promote the common good.⁷⁵ This vision of a democratic state finally

⁷¹ *Ibid*, p. 334.

⁷² Pius XII, "Summi Pontificatus," Claudia Carlen, ed., *The Papal Encyclicals: 1939-1958*, (Raliegh: McGrath Publishing Company, 1981), p. 13.

⁷³ Pius XII, "Radiomessage de Noël au monde entier, 24 décembre, 1944," Simon Delacroix, ed., *Documents Pontificaux de Sa Sainteté PIE XII*, Vol VI. (Saint Maurice: Editions Saint-Augustin, 1963), p. 244.

⁷⁴ *Ibid*, p. 244.

⁷⁵ *Ibid*, 246.

addressed the role of the form and structure of government in securing human freedom.

While he did discuss democracy in general terms, Pius XII refused to comment on the structure and organization of the Christian democratic state, asserting that this depended “on the particular aspirations of each people.”⁷⁶ The political dimensions of subsidiarity therefore remained unresolved by Pius XII.

Conclusions

Ketteler’s theory of subsidiarity had as its object freedom and human dignity, but it was not until Pius XII that the Church accepted the idea that a responsible democracy was the surest form of government to secure human liberty. However, the bodies of the social fabric capable of acting with a degree of independence from the state were conceived by Ketteler, Nell-Breuning and even Leo XIII as including not only social but also political bodies such as local and regional governments. The political dimension of subsidiarity had been present since its inception in Ketteler’s political theory and was only later suppressed because of historical circumstances. Historical imperatives affected not only the interpretation of subsidiarity but also the Church’s position on democracy revealed in the social teachings of Leo XIII, Pius XI, and Pius XII. For example, Leo XIII by-passed the question of democratic governments in order to avoid exacerbating political tensions in Italy, France and Spain. Pius XI had to bear in mind the survival of the Church in a fascist Italy when commenting on authoritarian rule. The commitment of the Allies to fostering the creation of democratic governments after the war also played an important role in Pius XII’s decision to address foundations of a Christian Democratic state. Pius XII’s acceptance of democracy and his statement that the development of the person constituted the aim of all political and social

⁷⁶ *Ibid*, 245

activity opened the door to a re-evaluation of the principle of subsidiarity by Christian Democrats in the post-war era.

Chapter II: Subsidiarity as a principle in German Christian Democratic Theory

As the intellectuals who contributed to the development of subsidiarity (Ketteler, Pesch, Gundlach and Nell-Breuning) were Germans, it is not surprising that West German Christian Democrats took up the principle in the immediate post-war period. German Christian Democrats employed subsidiarity as a philosophical principle that applied to both the political and social order. This does not mean that subsidiarity was “transformed” but rather that it was liberated from the restraints of social Catholic teaching. Treated as a philosophical principle, subsidiarity was at most intended to guide lawmakers on a case by case basis. It was not to be a law in and of itself—it was a Christian principle according to which the state should be governed. The principle served not only to express the Christian Democratic approach to building a democratic society in West Germany on the ruins of the Nazi state, but also to express the Christian Democratic vision of a unified Europe.

The principle of subsidiarity as expressed by German Christian Democrats and in their party programs bears witness to the continuation of a German intellectual tradition grounded in the social and political thinking of Wilhelm Emmanuel von Ketteler. In the Christian Democratic *Weltanschauung*, subsidiarity was a philosophical principle that informed the relationships between the state, public institutions, and social organizations in order to secure the development and dignity of the person. In order to establish the meaning and role of subsidiarity in Christian Democratic theory, this chapter proceeds in three sections. It first argues that Catholic social teaching influenced the content of German Christian Democratic theory as expressed in the party’s founding documents between 1945 and 1947. The second section argues that because subsidiarity was a philosophical principle, it was not codified in the German Basic Law. Instead, the uses of subsidiarity in the Basic Law negotiations of 1948-1949 demonstrate that it was

employed as a philosophical principle expressing Christian Democratic positions on the nature of basic rights and federalism. The last section demonstrates the continuity of the post-war conception and uses of subsidiarity in German Christian Democracy by examining their election programs of the mid-nineteen seventies.

I Catholic Social Doctrine and Christian Democracy Theory: 1945-1947

The early political programs of German Christian Democratic parties reveal the influence of Pius XII's social teaching on the relationship between the dignity of the individual (personalism) and subsidiarity.¹ The CDU and the Christian Social Union (CSU²) used these interrelated concepts to express their policies on a broad spectrum of issues ranging from opposition to Communism and state planning, advocacy of human rights, and constitutional protection for self-governing autonomies. Direct references to the importance of fostering the development and dignity of the individual abound in the early party programs of the CDU/CSU, but the word "subsidiarity" is entirely absent from the political manifestos written between 1945 and 1947.³ In his study of CDU/CSU election platforms from the 1950s and 1960s, Denis Goeldel maintains that the absence of the *expressis verbis* until the programs of 1976 does not detract from the presence and influence of subsidiarity in Christian Democratic theory.⁴ Indeed, the concept of

¹ Personalism, the doctrine that the freedom and development of the individual should be the aim of all political and social activity is the defining characteristic of European Christian Democracy. Although Pius XII never used the term "personalism," it is consistent with his teaching and is employed here to characterize the Christian Democratic preoccupation with the place of the individual in the state and society. This approach has been adopted by many scholars of Christian Democracy, see for example Ronald Irving, *The Christian Democratic Parties of Western Europe*, (London: Allen & Unwin, 1979), and Michael Fogarty, *Christian Democracy in Western Europe: 1820-1953*, (London: Routledge, 1974), and Jean Julg, *La Démocratie Chrétienne en République Fédérale Allemande*, (Paris: Economica, 1985).

² The Christian Social Union of Bavaria is a distinct political party that has remained the CDU's coalition partner from its inception to the present. The establishment of a separate Bavarian Catholic Party occurred in 1922, when Bavarian members of the Catholic *Zentrum Party* created the Bavarian People's Party.

³ There are no studies on the expression of subsidiarity in Christian Democratic theory in the political programs of the CDU/CSU between 1945 and 1945. For the emergence of Christian Democracy in Germany, see Jean Julg, *La Démocratie Chrétienne en République Fédérale Allemande*, and Arnold Heidenheimer, *Adenauer and the CDU*, (The Hague: Martinus Nijhoff, 1960).

⁴ Goeldel extrapolates a key set of words that for him constitute the presence of subsidiarity, for example independence, autonomy, federal structure, order, and the state "in the service of the individual." Goeldel p.421-422.

subsidiarity informs many positions taken in the programs between 1945-1947, especially regarding parents' rights in education, the rights of the family, and the rights of churches.

Regional Christian Democratic parties “spontaneously” emerged in the immediate post-war period all across occupied Germany, almost exclusively under the leadership of ex-members of the Catholic *Zentrum* party.⁵ Until 1950, when delegates from the regional Christian Democratic parties established a national, federal party structure, the CDU remained a loose alliance of regional parties brought together by a similar *Weltanschauung* characterized by the application of Christian principles to the state.⁶ The foundation of Christian Democratic theory on the abstract concepts of personalism and subsidiarity helped bring diverse groups together, such as liberal Protestants, Catholic socialists, capitalists, and union members.⁷ Their diversity of political views helped to create a popular political party that was able to overcome the weaknesses of the smaller Weimar parties and contribute to the stability of the West German State.⁸

The founding documents of the Cologne CDU demonstrate the continuity and influence of Pius XII's social teaching on personalism and subsidiarity. The Cologne CDU provides an excellent example because it was one of the first Christian Democratic parties formed in occupied Germany and its political manifestos, the “Directives of Cologne,” were distributed across Germany and influenced the content of other regional

⁵ The *Zentrum* party had been created in 1870 to protect minority Catholic rights in the Prussian Reich. After the *Kulturkampf*, the *Zentrum* often supported the monarchy. In the Weimar era, it was part of every coalition government between 1919-1932. After voting for the Enabling Act of 1933, the *Zentrum* dissolved itself on 5 July 1933. See Joseph Rovin, *Le Catholicisme Politique en Allemagne*, (Paris: Editions du Seuil, 1956), pp. 83, 187-188.

⁶ These parties were aware of each and each used the words “Christian” and “Democratic” to name their party. As regional party delegates began to meet in late 1945, they decided to adopt the common name, Christian Democratic union, but refrained from creating any central party organization. For the founding of regional Christian Democratic parties in occupied Germany, see Jean Julg, *La Démocratie Chrétienne en République Fédérale Allemande*, pp. 79-85.

⁷ The early history of the CDU/CSU was marked by the conflict between progressive Christian Socialists influenced by Eberhard Wetly such as Leo Schwing, Jacob Kaiser and Johann Albers and more conservative and reformist Christian Democrats such as Konrad Adenauer and Ludwig Erhard. Ultimately, Adenauer succeeded in moving the party towards a neo-liberal economic platform by the first West German elections in 1949. Arnold Heideheimer, *Adenauer and the CDU*, 146-147.

Christian Democratic parties.⁹ The Cologne CDU emerged when Leo Schwering, a former member of the Prussian *Landtag*, brought together former members of the Zentrum party in Cologne who were convinced of the need to create a new Christian party that included both Catholics and Protestants. Schwering and others, agreeing that the Zentrum party should not be resurrected, founded the Cologne Christian Democratic party in June 1945.¹⁰ In early July, the party founders convened a working group to draft the party manifesto at an Abbey in Walberberg. It included among others, Schwering and the Dominican priest Eberhard Welty.¹¹

Eberhard Welty played an important role in the development of Christian Democratic theory, through his participation in the drafting of the “Directives of Cologne” and the 1947 Ahlen program.¹² A professor of moral philosophy at Walberberg before the war, Eberhard was deeply influenced by the philosophy of Thomas Aquinas. His works, which were associated with other personalist writers such as Jacques Maritain, attempted to show the consequences of personalism in social and political philosophy.¹³ During the war, he had printed and circulated Pius XII’s Christmas messages to German Catholics.¹⁴ Welty had also sheltered Jacob Kaiser and Johann Albers, future leaders of

⁸ The CDU/CSU formed the governments of West Germany from 1949 until 1967 when they were replaced by a Social Democratic Party (SPD)/ Free Democratic Party coalition

⁹ Jean Julg, *La Démocratie Chrétienne en République Fédérale Allemande*, p. 43.

¹⁰ The other founders of the Cologne CDU were Wilhelm Warsch, mayor of Krefeld, Pater Schäven, the former Zentrum secretary, and Theodor Scharmitzel, a Catholic publisher. Konrad Adenauer, the former mayor of Cologne, had been approached by Schwering about the creation of a new party in early 1945, but did not join the CDU until August 1945. Arnold Heidenheimer, *Adenauer and the CDU*, p. 38.

¹¹ In the fall of 1945, the British occupation officials permitted the creation of larger political parties. The Cologne Christian Democratic Party became the Rhineland-Westphalian Christian Democratic Union. The “Directives of Cologne,” were reprinted and adopted by the larger party. Jean Julg, *La Démocratie Chrétienne en République Fédérale Allemande*, p. 43.

¹² The Ahlen program was the last party program demonstrating the influence of left-wing socially minded-Catholics. Adenauer, who did not approve of the “socialist” tendencies in the program, began to actively support and court Ludwig Erhard, a neo-liberal economist who would in part be responsible for Germany’s recovery after the war. See Anthony Nicholls, *Freedom with Responsibility*, (Oxford: Clarendon Press, 1994), pp.156-158, and 228-229.

¹³ Welty also subscribed to Oswald Nell-Breuning’s conception of the socio-economic order. Jacques Maritain, *The Person and the Common Good*, (Notre Dame: University of Notre Dame Press, 1946), p. 14., and Bernd Kettern, “Welty, Eberhard,” in *Biographisch-Biographisches Kirchenlexikon*, Vol. 18, (Hamburg: Verlag Traugott Bautz, 2001), p. 1510.

¹⁴ Jean Julg, *La Démocratie Chrétienne en République Fédérale Allemande*, p. 102.

the Berlin Christian Democratic Union, from the Gestapo.¹⁵ In early 1945, he published a pamphlet, “What now?” which elaborated on Pius XII’s Christmas Messages concerning the individual, the state and society and was one of the first publications after the Nazi surrender. It was also the basis for “Directives of Cologne.”¹⁶

Because “subsidiarity” does not explicitly appear in the “Directives of Cologne” or “What now?” it is important to examine Welty’s understanding of the concept.

Subsidiarity is thoroughly discussed in his most important work, *A Handbook of Christian Ethics*, which he wrote between 1951 and 1961.¹⁷ Welty defined subsidiarity as a basic law of the social order:

1. The (higher) community does not have the right to hinder that development and to arrogate to itself those tasks which are proper to, and within the competence of, the individual person or the member communities;
2. Both the individual and the community may (and should) themselves accomplish what they are capable of doing themselves.¹⁸

He stated that he had derived this definition from the encyclicals of Pius XI and Pius XII. However, he also built on existing Catholic social teaching by discussing the application of subsidiarity in a democratic society and in law. According to Welty, “A democracy ought to be concerned particularly [to insure] that subsidiary groupings retain their special character and have an effective voice in the political sphere as a whole; and that any abuse of power is forestalled.”¹⁹ For Welty, “subsidiary groupings” were territorial political bodies such as municipalities and regional governments that provided self-governance, and had the right to participate in the decisions of the state. In other words,

¹⁵ Welty was the central figure of the “Christian socialism” movement, whose leaders were Jacob Kaiser and Johann Albers. They agreed to give up the “Christian socialist” name because of its association to the SPD and marxism under pressure from both conservatives such as Adenauer and the clergy. Bernd Kettern, “Welty, Eberhard,” in *Biographisch-Biographisches Kirchenlexikon*, Vol. 18 p. 1510.

¹⁶ Jean Julg, *La Démocratie Chrétienne en République Fédérale Allemande*, p. 102., and Ossip K. Flechtheim, ed., *Dokumente zur parteipolitischen Entwicklung in Deutschland seit 1945: Programmatik der deutschen Parteien*, Vol II, (Berlin: Dokumenten-Verlag Dr. Herbert Wendtner & Co., 1963), p. 8.

¹⁷ Bernd Kettern, “Welty, Eberhard,” in *Biographisch-Biographisches Kirchenlexikon*, Vol. 18 p. 1510.

¹⁸ Eberhard Welty, OP. *A Handbook of Christian Social Ethics*, Vol. I, (New York: Herder and Herder, 1960), pp. 167-168.

¹⁹ Eberhard Welty, OP. *A Handbook of Christian Social Ethics*, Vol. II, p. 297.

Welty maintained that a democratic form of government implied a federal structure. In addressing federalism, he noted that “the term ‘federal’ is also used in a social sense. It means that the lesser social units such as the family, vocational organizations, voluntary associations etc. enjoy their own natural rights in accordance with the principle of subsidiary function.”²⁰ Here it is evident that Welty went beyond Catholic social teaching by arguing that the philosophical principle of subsidiarity applied equally to social and to political communities.

Welty also emphasized the philosophical nature of subsidiarity when he discussed the application of the principle. He argued that subsidiarity

Of itself it reveals nothing about what functions and tasks are proper to the smaller communities and ought to be left to them. What these functions are must be learned from the nature, the aims and the origin...of the specific community. Historical and other relevant factors ought to be taken into consideration. This formal significance may be interpreted as a weakness and a defect of [subsidiarity].²¹

For Welty, the principle of subsidiarity was not a principle that could be codified in law. It had to be applied on a case-by-case basis. Each application of the principle required specific reflection on unique sets of circumstances. As a principle of the social order, subsidiarity acted as a filter to view the relationships between the individual, the state and society and to inform policies or positions in specific cases. Subsidiarity was a universal law that could not be applied uniformly. Given the complexity of subsidiarity and its role within Catholic philosophy, it is not surprising that the principle was not defined in the “Directives of Cologne”, “What now?” or in any other founding Christian Democratic program in Germany.

Nevertheless, the “Directives of Cologne” demonstrated the influence of personalism and subsidiarity on Christian Democratic theory. The program declared

²⁰ *Ibid.* p. 298-299.

²¹ Eberhard Welty, OP. *A Handbook of Christian Social Ethics*, Vol. I, (New York: Herder and Herder, 1960), p. 177.

“The dignity of men will be recognized. Man will be judged as a responsible person, not as a mere component of the Community.”²² This broad statement about the sanctity of the individual captured the basis for personalism in Christian Democratic theory. The influence of subsidiarity could be felt in many sections dealing with the family, education, centralization and the federal structure of Germany. The family was considered the foundation of society, with its own rights and deserving the protection of the state. Furthermore, the “Directives of Cologne” discussed the rights of parents in education, the issue that Ketteler had used to develop the principle of subsidiarity. As in Ketteler’s thought, parents were to be given the right to decide whether their children were to be educated at private, public or confessional schools. The state was to ensure parents’ freedom of choice in education.²³ Regarding the structure and organization of the state, the program posited that centralization of political power was an aberration in German history, and that municipalities and regional states (*Länder*) would regain their lost autonomy. The idea of subsidiarity was expressed in the need to disperse power amongst social and political organizations such as families, churches and local and regional public institutions to avoid centralization of power.

Personalist ideals and the idea of subsidiarity as expressed in Pius XII’s Christmas messages were outlined and fleshed out in other regional party programs written in 1945 and 1946.²⁴ The CSU basic program stated that the dignity of humans emanated from God and it was the state’s responsibility to protect the rights and freedoms of the person.²⁵ Both CSU and CDU documents reserved considerable space for declarations on the

²² “Kölner Leitsätze,” in Ossip K. Flechtheim, ed., *Dokumente zur parteipolitischen Entwicklung in Deutschland seit 1945: Programmatik der deutschen Parteien*, Vol II, p. 35.

²³ *Ibid.*, 32.

²⁴ This analysis is based on readings of the *Kölner Leitsätze* (1945); the *Frankfurter Leitsätze* (1946); *Aufruf der CDU Württemberg-Hohenzollern* (1946); the *Aufruf und Parteiprogramm von Neheim-Hüsten* (1946); and the *Grundsatzprogramm der CSU* (1946). These party programs are compiled in Ossip K. Flechtheim, ed., *Dokumente zur parteipolitischen Entwicklung in Deutschland seit 1945: Programmatik der deutschen Parteien*, pp. 30-53, 213.

²⁵ “Grundsatzprogramm der CSU,” In *Ibid.* p. 214.

centrality of the “person” in Christian Democratic theory.²⁶ The family received a privileged place in all regional party platforms, the CSU lauding it as “the moral force of a people.”²⁷ A constant theme in these documents is the right of parents to choose the form of their children’s education. The state’s role was to facilitate this freedom by ensuring funding for both denominational and non-denominational schools. The 1946 Neheim-Hüsten program of the Rhineland-Westphalia CDU, for example, proposed to work with the Church in the field of education and pledged itself to ensure state funding for denominational schools as well as public schools.²⁸ The pervasiveness of parents’ rights in education and the assertion of the family’s pre-eminent status in society is the most pervasive influence of subsidiarity in these party programs and its relationship to personalism. The matter of federalism, however, is barely discussed in these programs beyond simple declarations on the need for a federal Germany. Jean Julg has noted that Christian Democrats did not formulate specific policies on federalism in 1945 and 1946 because the future of Germany was still uncertain.²⁹ The conflict between Soviet Russia and the Western Allies reached a climax in 1947, resulting in the formal dissolution of Prussia and the division of Germany. It was only when it became clear that the Allies intended to create a West German state that the CDU/CSU began to formulate positions on federalism.

II Subsidiarity, Süsterhenn and The Basic Law

Christian Democrats employed the principle of subsidiarity during the constitutional negotiations (1948-1949) to express their vision of a West German state. While the principle was invoked to define the role of the state with respect to the individual and the *Länder*, Christian Democratic delegates did not attempt to codify

²⁶ “Kölner Leitsätze,” *Ibid.* p. 30-31. And “CSU: Grundsatzprogramm,” *Ibid.* p. 214.-215.

²⁷ “Grundsatzprogramm der CSU,” *Ibid.* p. 215.

²⁸ In the fall of 1945, the Cologne CDU became a party and was renamed the Rhineland-Westphalian CDU. “Neheim-Hüsten,” in *Ibid.* p.51.

subsidiarity in the constitution. Adolph Süsterhenn, a Christian Democratic delegate to the constitutional negotiations, who Peter Merkl called the “apostle of subsidiarity,” emphatically stated that subsidiarity could not be defined or employed as a law.³⁰ Many scholars, however, have asserted that Article 72 of the German Basic Law represents the transformation of subsidiarity from a social principle in Catholic social teaching to a federal constitutional principle in the West German Basic Law.³¹ This argument does not acknowledge that Christian Democrats rejected the the codification of subsidiarity nor does it take into account the role of the Allies and other political parties in the genesis of Article 72.

When the Nazi State collapsed in May 1945, Germany reached “constitutional ground zero” as the Western Allies and the Russians occupied and divided the country into four zones of occupation. The four occupying powers, working through a supreme Allied Control Council, failed to agree on the recreation of a decentralized German state because of Russian-American conflict.³² The hope for a unified Germany was all but abandoned in early 1947, but the United States and Britain, who were later joined by France, had already committed to fusing their zones of occupation.³³ This became the first step in creating a democratic West German state.

²⁹ Jean Julg, *La Démocratie Chrétienne en République Fédérale Allemande*, p. 102.

³⁰ Peter Merkl, *The Origin of the West German Republic*, (New York: Oxford University Press, 1963), p. 47.

³¹ Andrew Adonis and Andrew Tyrie, “Subsidiarity: As history and policy,” (London: Institute of Economic Affairs, 1990), p. 3., Jean-Louis Clergerie, *Le principe de subsidiarité*, (Paris: Ellipses, 2000), pp. 33-39., Ken Endo, “The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors,” *Hokkaido Law Review*, 44, no. 6 (1994), pp. 612-614, 639., Alain Faure, ed., *Territoires et subsidiarité*, (Paris: Harmattan Inc., 1997), pp. 108-111. Christophe Réveillard, “L’Allemagne, les institutions européennes et le principe de subsidiarité,” *Revue d’Allemagne*, 30 no.3 (1998), pp. 336-337., and Anthony Teasdale, “Subsidiarity in Post-Maastricht Europe,” *The Political Quarterly*, 64 no.2 (1993), p.187.

³² Peter Merkl, *The Origin of the West German Republic*, (New York: Oxford University Press, 1963), p. 18.

³³ The fusion of the British and American zones of occupation began in the fall of 1946. The French did not join Bi-zonia until early 1948. Wolfgang Renzsch, “German Federalism in Historical Perspective: Federalism as a Substitute for a National State,” in *Publius: The Journal of Federalism*, 19 no. 4 (1989), p.26.

In June 1948, the Western Allies called for the establishment of a Parliamentary Council, composed of delegates from the various *Länder* parliaments, for the purposes of drafting a constitution for West Germany.³⁴ The Allies defined the mandate of the Parliamentary Council as

...(drafting) a Democratic constitution which will establish for the participating states a governmental structure of federal type which is best adapted to the eventual re-establishment of German unity... and which will protect the rights of the participating states, provide adequate authority, and contain guarantees of individual rights and freedoms.³⁵

The military governors of West Germany retained the power to reject the work of the Parliamentary Council if it did not conform to these guidelines. In other words, the constitution could not be ratified without the consent of the Allies.

The Western Allies, however, had pursued different policies on the political reconstruction of Germany.³⁶ The American military government of southern Germany, under the command of General Lucius Clay, followed a policy of rebuilding German political structures from the ground up. By December 1946 Bavaria, Hesse and Württemberg-Baden had ratified new constitutions.³⁷ American policy on German political structure remained consistent throughout 1945-1949—to rebuild a Democratic, federal State from the municipality to the federation. The British occupation government, under the command of General Brian Robertson favored more centralized institution

³⁴ Referred to as the “London Documents” or “Frankfurt Documents”, they were the result of negotiations between the Allies and Benelux countries on the future of a West German State. See “The London Documents: Directives Regarding the Future Political Organization of Germany (1948),” in *Source Materials on the Government and Politics of Germany*, John Lane, and James Pollock, eds., (An Arbor: Wahrs Publishing Co., 1964), p.7-9., and John Ford Golay, *The Founding of the Federal Republic of Germany*, (Chicago: University of Chicago Press, 1958), pp. 6-13.

³⁵ “The London Documents: Directives Regarding the Future Political Organization of Germany,” In *Source Materials on the Government and Politics of Germany*, p.7.

³⁶ The CDU/CSU and SPD had 27 delegates each, the liberal FDP had 5 and the German Party (DP), Zentrum party (ZP) and Communist party (KPD) each had two delegates. Peter Merkl, *The Origin of the West German Republic*, p.59.

³⁷ Lucius Clay, *Decision in Germany*. Westport: Greenwood Press, 1950. pp. 393-394.

building in line with a planned economy.³⁸ Despite this difference, the British were not intrinsically opposed to the U.S. policy of instituting an “American-style” federation. The French, however, desired an extremely weak confederation, and feared that the British and Americans wanted to create a strong West Germany which might again dominate the continent. General Pierre Koenig, the French military governor, accordingly implemented French policies to create a weaker, confederate West German State. For example, General Clay noted that Koenig often attempted to disrupt the fusion of the French zone with the rest of West Germany. He also obstructed the constitutional negotiations for a West German state.³⁹ Due to American hegemony and the Soviet menace, however, the French and British moved from their respective positions toward the position of their dominant partner.

The positions of the two major German political parties on the future structure of a West German government mirrored the policies of the Allies. Because the British military government had created central agencies to administer their zone of occupation, political parties were also permitted zone-wide organization.⁴⁰ The British zone SPD advocated a strong central government and a planned economy and was supported in this regard by the British occupation officers in the field like Raymond Ebesworth.⁴¹ The British zone CDU, under the leadership of Konrad Adenauer, was also not opposed to centralizing decision making. Adenauer and Kurt Schumacher, leader of the SPD, both said that a federal government would be “as federalistic as possible and as centralistic as

³⁸ See Raymond Ebesworth, *Restoring Democracy in Germany*, (London: Stevens, 1960), p. 45., and Wolfgang Renzsch, “German Federalism in Historical Perspective: Federalism as a Substitute for a National State,” p. 25.

³⁹ For French obstructionism, see Jean Smith, ed., *The Papers of General Lucius D. Clay*, Vol 2 (Bloomington: Indiana University Press, 1974), pp. 531-532.

⁴⁰ The British zone contained the Länder North Rhine Westphalia, Lower Saxony, Schleswig-Holstein, and Hamburg. Peter Merkl, *The Origin of the West German Republic*, p.59.

⁴¹ Raymond Ebesworth. *Restoring Democracy in Germany*, p. 54.

necessary.”⁴² In the American and French zones of occupation, however, no central agencies were created and consequently political parties were not permitted to create zone-wide organizations. The Bavarian CSU and elements of the French and American CDU parties advocated a central role for the *Länder* in the new West German State.⁴³

The North/South split in the CDU/CSU on the question of federalism and centralization of the West German State led to the creation of the Ellwangen Kreis, a faction within the Christian Democratic delegation to the Parliamentary Council. Because the centralist British zone CDU was larger and more organized than the southern CDU, it dominated politics among the various Christian Democratic parties as the “Prussia within the CDU.”⁴⁴ Furthermore, the British zone contained the industrial heartland of West Germany and a third of its population. It was concern about the future dominance of a “Rhineland Prussia” in a West German state that prompted Josef Müller, one of the founders of the Bavarian Christian Social Union, to establish the Ellwangen Circle in 1947. The group, comprising the entire CSU and the CDU in the French and American zones, wanted to insure a central role for the *Länder* in the new West German constitution. A prominent member of the group, Hans Erhard, leader of the CSU and Minister-President of Bavaria, stated that the new West German constitution should express federalism according to the principle of subsidiarity.⁴⁵ Since the delegates to the Parliamentary Council were chosen on a regional instead of a zonal basis, the Ellwangen faction comprised nearly half of the entire CDU/CSU delegation. The strength of the

⁴² For Schumacher and Adenauer on federalism, see Peter Merkl, *The Origin of the West German Republic*, p. 40, 70., and Jean Julg, *La Démocratie Chrétienne en République Fédérale Allemande*, p. 93.

⁴³ Bavaria and the Rhineland Palatinate had strong separatist movements and had historically resisted any attempts to curb their independence.

⁴⁴ Cited from Peter Merkl, *The Origin of the West German Republic*, p.47.

⁴⁵ Wolfgang Renzsch has noted that “The ideological convictions of the predominantly Catholic membership of the CDU were in correspondence with the principle of subsidiarity, which is an important part of the social teachings of the Roman Catholic Church, and is in accordance with reasoning about federalism.” Wolfgang Renzsch, “German Federalism in Historical Perspective: Federalism as a Substitute for a National State,” p. 29. For Erhard’s vision of federalism, see Karl Scwend, ed., “Ansprachen und

group was represented in the appointment of its members to prominent positions within the Parliamentary Council.

The Parliamentary Council established ten committees to work on aspects of the Basic Law. The main committee, composed of twenty-one members (eight CDU/CSU, eight SPD, two from the Free Democratic Party (FDP) and one each from the three small parties) reviewed the draft proposals of the special committees and made major political decisions. The most important special committees vis-à-vis subsidiarity were the committee on principles and basic rights and the committee on distribution of powers.⁴⁶ In addition, there was a Council of Elders created on 26 January 1949 to negotiate with the Allies regarding the substance of the Basic Law.⁴⁷ Because of the even distribution of party delegates on these committees, the politicians had to compromise in order to arrive at a consensus on the content of the Basic Law.

Ellwangen members occupied key posts on these committees due to their strength within the CDU/CSU delegation. While Konrad Adenauer was elected President of the Parliamentary Council, the head of the CDU/CSU delegation in the Council of Elders was not Adenauer but Dr. Anton Pfeiffer of the CSU.⁴⁸ Pfeiffer and Adolph Süsterhenn (both members of the Ellwangen Circle) were members of the main committee and the committee on principles and basic rights. Dr. Strauß, another Ellwangen member, sat on the main committee, the committee on constitutional court and judiciary affairs, and was

Reden des bayerischen Ministerpräsidenten Dr. Hans Ehard," in *Bayerische Politik*, (Pflaum: Munich, 1952), pp. 60-61.

⁴⁶ The committee on principles and basic rights was composed of five members each from the CDU/CSU and SPD, one member each from the FDP and the German Party. The committee on distribution of powers was composed of five members each from the CDU/CSU and SPD, one member each from the FDP and from the reconstituted *Zentrum* party. For the structure of the Parliamentary Council, see Office of Military Government for Germany (US), *Documents on the Creations of the German Federal Constitution*, (Berlin, 1 September 1949), pp. 63.

⁴⁷ The Council of Elders was composed of the party delegation leaders and the committee of five, later seven. For the structure of the Parliamentary Council, see Office of Military Government for Germany (US) *Documents on the Creations of the German Federal Constitution*, (Berlin, 1 September 1949), pp. 63.

⁴⁸ *Ibid.*

also the deputy chairman of the committee on distribution of powers.⁴⁹ Süsterhenn was the most ardent champion of subsidiarity in both the Ellwangen Kreis and the Parliamentary Council, so his conception and use of subsidiarity demonstrates to what extent Christian Democrats employed the principle during the constitutional negotiations.

Little has been written about Süsterhenn's role in promoting subsidiarity in the Basic Law and yet it was he who invoked it most ardently in speeches and proposals at the Parliamentary Council to express the Christian Democratic vision of the state.⁵⁰ In an Article published in 1952, "The Principle of Subsidiarity as the foundation of a Vertical Separation of Powers," Süsterhenn outlined his understanding of the principle of subsidiarity. He argued that subsidiarity is a principle of both political and social organization, structuring the state and society.⁵¹ He considered Pius XI the Montesquieu of vertical powers since Pius had asserted that the state should leave to lower bodies what they could achieve for themselves as a means to protect the individual against absolute government.⁵² While acknowledging that the Pope had not addressed the role of provinces or component states within a federation, Süsterhenn believed that the *Länder* should be counted among the "lower bodies" to which Pius XI referred but did not define.⁵³ As Welty had argued, Süsterhenn noted that the *Länder* were natural bodies and should be accorded the same rights of autonomy and self-government that Pius XI awarded to other social groupings such as churches, families, and vocational corporations.

⁴⁹ *Ibid.*

⁵⁰ Süsterhenn was originally from Cologne and had been on the city council as a member of the *Zentrum* party. During the war, Süsterhenn had acted as a public defender in Rhineland-Palatinate, which after the war was occupied by the French army. Joining the CDU in 1946, Süsterhenn became the chairman of the Constituent Assembly for Rhineland-Palatinate and subsequently Minister of Justice and Minister of Culture in the Länd government. From 1949-1951 Süsterhenn was a member of the *Bundestag*, the upper house of the federal republic, after which he was appointed as the president of the Rhineland constitutional court. Politically, he was a self-described moderate and had supported the call to ban the term "Christian socialism" from the CDU. For Süsterhenn's position on Christian socialism, see Arnold Heidenheimer, *Adenauer and the CDU*, p.120.

⁵¹ Adolf Süsterhenn, "Das Subsidiaritätsprinzip als Grundlage der vertikalen Gewaltenteilung" in *Vom Bonner Grundgesetz zur gesamtdeutschen Verfassung*, Theodor Maunz, ed., (München: Isar Verlag, 1956), p. 141.

⁵² *Ibid.* p.142-143.

The functions of the state should be limited in order to guarantee the autonomy of action and self-government of the *Länder*. For Süsterhenn, the personalism of Pius XII also formed a basis for subsidiarity. Süsterhenn directly quotes Pius XII's 1942 Christmas address, stating that subsidiarity should prevent the arrogant use of power by the state and foster the development of the person.⁵⁴

Like Welty, Süsterhenn argued that the principle of subsidiarity could not be codified in law or in the constitution. It is important to note that Süsterhenn located subsidiarity in the Basic Rights section of the Basic Law but not in Article 72 on the division of concurrent competences between the *Bund* and *Länder*.⁵⁵ Süsterhenn had based his federal interpretation of subsidiarity on the fact that the German *Länder* were natural bodies and therefore ought to be granted a wide degree of autonomy from the national government. However, he noted that the principle was not a "catalogue of competences," but rather a dynamic socio-political principle that could be applied in various situations regarding relationships between the individual, family, vocational organization, regional government, and the state.⁵⁶ The dynamic quality of subsidiarity as a theoretical principle meant that it should be applied on a case by case basis and not rigidly codified in law.⁵⁷ Significantly, Süsterhenn, the "apostle of subsidiarity" and future constitutional judge in Rhineland Palatinate, did not want the principle codified in the Basic Law.

It has been stated that subsidiarity inspired the many articles of the Basic Law, and that it was not "constitutionalized" because of its identification with Catholic Social

⁵³ *Ibid.* p. 151-152.

⁵⁴ *Ibid.* 149.

⁵⁵ *Ibid.* p. 144-145.

⁵⁶ *Ibid.* p. 149.

⁵⁷ *Ibid.* p.150.

teaching.⁵⁸ Süsterhenn, however, maintained that the principle of subsidiarity was expressed only in the first two Articles in the Basic Law on civil rights:

Article 1. (A) The dignity of man is inviolable. To respect and protect it is the duty of all state authority.

Article 2.(A) Everyone has the right to the free development of his personality, insofar as he does not infringe upon the rights of others or offend against the constitutional order or the moral code...⁵⁹

These proposals are similar to Pius XII's exhortations to democratic governments to respect the dignity of the person and create the conditions for his/her full development. In fact, in earlier proposals, Süsterhenn had advocated formulas that were even closer to Catholic teaching. Article 1, for example, as originally proposed was "(1) The State exists for Man, not Man for the State. (2) The dignity of human personality is inviolable. The public power is in all its manifestations obligated to respect and protect human dignity."⁶⁰ Leo XIII had proclaimed "the state exists for man, not man for the state" and this teaching was, for Süsterhenn, the basis for the West German State.⁶¹

Süsterhenn returned to this theme in speeches in the main committee and the committee on basic rights and principles. He clearly outlined the relationship between personalism, federalism and subsidiarity when referencing the principle in a speech during the first plenary session of the Parliamentary Council in September 1949:

We must get back to recognizing that man does not exist for the State, but the State for man. For us, freedom and the dignity of human personality have the highest value. The state serves these ends by creating the external conditions and institutions which enable the individual to realize his physical and spiritual capacities and freely to develop his personality within the limits set by natural moral law...The state ought not to be an end in itself, but must be deliberately *confined to fulfilling a subsidiary function vis-a-vis the individual and the various groups within the community*...The state is not for us the source of all law, but is itself

⁵⁸ Denis Goeldel, "L'Humanisme Chrétien en Politique: La CDU et La CSU et le Principe de Subsidiarité," *Revue D'Allemagne*, 25 no. 3 (1993), p. 418-419.

⁵⁹ "Basic Law for The Federal Republic of Germany." Cited from Peter Merkl. *The Origin of the West German Republic*, pp. 213-214.

⁶⁰ Office of Military Government for Germany (US), *Documents on the Creations of the German Federal Constitution*, p. 64.

⁶¹ Adolf Süsterhenn, "Das Subsidiaritätsprinzip als Grundlage der vertikalen Gewaltenteilung," pp. 147 and 150.

subject to the law. There are... rights prior to and superior to the state, resulting from the nature and being of man and his various associations which the state has to respect. Every power of State finds its bounds in these natural God-given rights of the individual, the family, *the local communities of town and [Länder]*, and the occupational groups. [my italics]⁶²

Süsterhenn's assertion that "the state is subsidiary to the individual" was a complete exposition of the principle of subsidiarity as it applied to both political and social organizations. In the context of the constitution, Süsterhenn employed subsidiarity to relate individual rights to the proper role of the state. The link between the inviolable dignity of man and the free development of the person reveals the consistent theoretical/ideological position taken by early CDU party programs. Süsterhenn used subsidiarity to express the Christian Democratic vision of the state based on the teachings of Pius XI and Pius XII. The subsidiary state's role was essentially to protect the dignity of the person.

The principle of subsidiarity also helped to express the position on federalism of the Ellwangen Kreis. Since its creation in 1947, the Ellwangen faction had worked towards producing a draft constitution for a federal state.⁶³ In May 1948, while the Allies were debating the future of West Germany in London, various regional leaders of the CDU/CSU met in Bad Meinburg to advance proposals on the future constitution.⁶⁴ At the meeting, which was held under the auspices of the British zone CDU, Süsterhenn presented the Ellwangen draft constitution to the assembled Christian Democrats.⁶⁵ While Süsterhenn had maintained that subsidiarity should not be codified in law, he did use the principle to express the theory behind the division of powers between the federal and *Land* government in the Ellwangen proposal.

⁶² Office of Military Government for Germany (US), *Documents on the Creations of the German Federal Constitution*, p. 81.

⁶³ Peter Merkl, *The Origin of the West German Republic*, p. 47.

⁶⁴ See "Protokoll über die Sitzung des Zonenausschusses der CDU der britischen Zone am 19. und 20. 4. 1948 in Bad Meinberg/Lippe," in *Konrad Adenauer und die C.D.U. der britischen Besatzungszone, 1946-1949*, Helmuth Pütz, ed., (Bonn: Eichholz-Verlag, 1975), p. 492.

The Ellwangen proposal advocated a strong federation and invoked the principle of subsidiarity as a guideline for federal division of powers in the West German constitution:

The legislative competencies of the federation and of the states are to be clearly separated from one another. This is to be achieved by the principle of subsidiarity, according to which everything that falls within the range of what the *Länder*, from their own strength, can accomplish, is a competence of the *Länder*. Everything else that must be uniformly regulated in the interest of the whole country, belongs to the competence of the federal government.⁶⁶

The Ellwangen document emphasized that the important feature of decentralized political life in Germany was a division of competences that ensured the *Länder* the maximum possible legislative autonomy. Competences that would necessarily belong to the federation were foreign policy, currency and economic policy as well as the post and railways. The *Länder* were to be responsible for the administration of federal law and justice. In every other area “Fields of application, which are not expressly assigned to the federal government by the constitution, belong to the competence of the *Länder*.”⁶⁷ In invoking subsidiarity to characterize the federal structure of the Basic Law, Süsterhenn never claimed that he was defining the principle. He employed it in the presence of Christian Democrats to provide a foundation for a division of competences between the *Land* and federal government in the language of Christian Democratic theory.

The discussion of Süsterhenn’s proposal at the Bad Meinburg meeting demonstrated that the application of subsidiarity was not the centrepiece of the CDU’s constitutional proposals for a division of powers. Adenauer, the meeting chairman, summarized Süsterhenn’s proposal, and referred to the division of powers between the *Länder* and the federal government as *Kompetenz-Kompetenz*, or the authority to decide

⁶⁵ *Ibid*, p.500.

⁶⁶ *Ibid*, p.501.

⁶⁷ *Ibid*.

which level of government is responsible for which competence.⁶⁸ Adenauer never referred to the “word” subsidiarity, but it is clear that he did not think it was important. He quickly dismissed Süsterhenn’s proposal by suggesting that the meeting move on to more pressing matters, specifically the composition and duties of an Upper House (*Bundestag*).⁶⁹ This was a central issue in the Parliamentary Council with Christian Democrats arguing for direct *Länder* representation and the SPD advocated a nationally elected senate. In other words, Adenauer, who was elected president of the Parliamentary Council, believed that the question division of competences was secondary to securing *Länder* representation in the central government. More importantly, Adenauer’s qualification of Süsterhenn’s subsidiarity proposal as *Kompetenz-Kompetenz* revealed that he did not associate the principle with a division of competences. He instead employed a precise constitutional/legal term to express Süsterhenn’s subsidiarity proposal. Furthermore, Adenauer firmly believed that the federal government should have *Kompetenz-Kompetenz*, which was established during the Basic Law Negotiations.

The Origin of Article 72 in the German Basic Law

The genesis of Article 72 reveals that subsidiarity was not concretized in law by Christian Democrats nor by any other political party. Article 72 outlined the limitations on federal legislation in the sphere of concurrent competences:

Art. 72. Concurrent Legislation of the Bund [Federal Government]

- (1) In matters within concurrent legislative powers, the Länder shall have power to legislate as long as, and to the extent that, the Bund does not exercise its right to legislate.
- (2) The Bund shall have the right to legislate in these matters to the extent that a need for regulation by federal legislation exists because:
 1. a matter cannot be effectively regulated by the legislation of individual Länder, or
 2. the regulation of a matter by a Land law might prejudice the interests of the other Länder or of the people as a whole, or

⁶⁸ *Ibid.* p.503

⁶⁹ *Ibid.*

3. the maintenance of legal or economic unity, especially the maintenance of uniformity of living conditions beyond the territory of any one Land necessitates such regulation.⁷⁰

This federal Article has been quoted by many European scholars as being the genesis of the constitutional expression of subsidiarity.⁷¹ In their studies on the origins of the Basic Law, Peter Merkl and John Ford Golay have argued that federalism in the West German Republic was rooted in “German constitutional and political developments in the past, the present needs and interests of the Western German people, and the influences brought to bear by the Western Allied governments.”⁷² They correctly underlined the importance of constitutional continuity with the Weimar constitution as well as the influence of the Allies to secure a decentralized West Germany.⁷³ Article 72 resulted from the negotiations between the Allies and the German political parties working together in the Parliamentary Council.

The German political parties in the Parliamentary Council quickly arrived at compromise solutions on the division of powers between the central and regional governments that favoured a strong central government. The lack of partisanship is evident in the speed with which a draft of the constitution was produced.⁷⁴ Prior to the opening of the Parliamentary Council on 1 September 1948, the Ministers-President of the Länder called a preparatory conference at Herrenchiemsee. The preparatory conference, composed of delegates from Länd parliaments and constitutional experts,

⁷⁰ “Basic Law For the Federal Republic of Germany,” cited from Peter Merkl, *The Origin of the West German Republic*. New York: Oxford University Press, 1963. pp. 213-248.

⁷¹ It is crucial to note that this assertion has been made in the absence of any historical context on the foundation of the Basic Law. See, for example, PJC Kapteyn, “Community and the Principle of Subsidiarity,” *Revue des Affaires Européennes*, no. 2 (1991), p.36.

⁷² John Golay, *The Founding of the Federal Republic of Germany*, p. vii. and Peter Merkl, *The Origin of the West German Republic*, p. xvii.

⁷³ They stressed that any German influence was dictated by compromise solutions between the SPD and the CDU/CSU that were often complicated because of interference from the Allies. For example see John Golay, *The Founding of the Federal Republic of Germany*, p. 201.

⁷⁴ Wolfgang Renzsch, “German Federalism in Historical Perspective: Federalism as a Substitute for a National State,” pp. 28-29.

produced a draft of the Basic Law in thirteen days.⁷⁵ The rapidity with which the Herrenchiemsee committee was able to produce a result was to a lesser extent mirrored in the Parliamentary Council. By 10 November 1948, the main committee began the first reading of a draft of the Basic Law.⁷⁶ Until late 1948, the division of powers was a non-issue between the political parties.⁷⁷ As John Ford Golay has noted “on the proposition that the main competence in legislation should belong to the federation, German opinion of all shades, all parties and interests, united from the beginning.”⁷⁸ The motivation for a strong central government was derived from the need to deal with food, fuel, and power shortages as well as the issue of refugees.⁷⁹

Even members of the regionalist Ellwangen faction acknowledged that the desperate material plight of Germany required a strong central state. During the first reading of the Basic Law in November 1948, Walter Strauß, a member of the Ellwangen Kreis and the deputy chair of the committee on the distribution of powers noted that:

In the committee stage, we have very deliberately...made the federation strong when it came to...the division of powers, because we are convinced that under present conditions which will face the country for some time, it is impossible...to confine the federation to a narrow competence...Those members who originally began their work with quite a different point of view have been convinced by the weight of the facts and the views of the experts.⁸⁰

For Strauß and other committed federalists, there was a recognized need to go beyond their convictions and support a strong central government to permit the re-construction of

⁷⁵ “Chiemsee Proposal: Draft of Basic Law,” in Office of Military Government for Germany (US), *Documents on the Creations of the German Federal Constitution*, p. 64.

⁷⁶ “Draft Basic Law as Passed in Third Treading in November-December 1948,” in *Ibid*, p. 88.

⁷⁷ For continuity in the division of competences in the early drafts of the Basic Law, see “Chiemsee Proposal: Draft of Basic Law,” in Office of Military Government for Germany (US), *Documents on the Creations of the German Federal Constitution*, pp. 65-66., and ““Draft Basic Law as Passed in Third Treading in November-December 1948,” in *Ibid*, p. 96-98.

⁷⁸ John Ford Golay, *The Founding of the Federal Republic of Germany*, p.59.

⁷⁹ For a statistical account of the material situation in West Germany, 1945-1949, see *Germany Reports*, (Bonn: The Press and Information Office of the Federal Government of West Germany, 1964)., and Jean Smith, ed., *The Papers of General Lucius D. Clay*, Vol 2 (Bloomington: Indiana University Press, 1974), pp. 531-532.

⁸⁰ Dr. Walter Strauß, “Main Committee’s First Reading of the Basic Law,” cited from John Ford Golay, *The Founding of the Federal Republic of Germany*, p.59.

West Germany. In other words, a federal division of competences favouring the *Länder* was of secondary importance to the need to re-build West Germany.

However, interference from the military governors over the degree of centralization in the Basic Law brought about the formulation of Article 72 as a constitutional mechanism to limit the powers of the central government.⁸¹ The U.S., France and Great Britain presented two *aide-mémoires*, or “Letters of advice” to the Parliamentary Council on 22 November 1948 and 2 March 1949 in an attempt to reverse the centralist character of the Basic Law. The French in particular wanted to ensure that West Germany remained a weak decentralized state. The American General Lucius Clay noted that “the French administration in Germany...was determined to delay if not to thwart the establishment of West German Government.”⁸² French General Koenig, who desired a weak central government, felt that the first draft of the Basic Law allowed too much centralization and ran contrary to the mandate of the Parliamentary Council. According to Peter Merkl, the French sought to achieve future security from Germany through “constitutional engineering,” by forcing the Parliamentary Council to reduce the powers of the central government.⁸³ General Clay and British Military Governor Robertson ceded to French demands and sent a “Letter of Advice” to the Parliamentary Council on 22 November 1948. The letter fixed “the considerations they [the Allies] would examine to determine the compliance of the constitution with the broad principles which it had to meet.”⁸⁴ On the division of powers, the letter noted that the Federal

⁸¹ As John Ford Golay observed, “few discordant notes were sounded [between the political parties] until the Allied military governors entered the proceedings.” John Ford Golay, *The Founding of the Federal Republic of Germany*, p.59.

⁸² In a cable to Washington on 22 November, Clay noted that the French were more concerned about German economic recovery than their national security. Lucius D. Clay, *Decision in Germany*, (Westport: Greenwood Publishing, 1950), pp. 413-414.

⁸³ Peter Merkl, *The Origin of the West German Republic*, p. 121.

⁸⁴ The “Letter of advice” set out a number of features to which the constitution would have to conform. These features included, for instance, a bicameral legislature with one house representing the *Länder* (Bundestag), prescribed emergency powers for the executive branch, and limited revenue streams

government had been given too many powers in public welfare. The federal government was to be limited to the co-ordination of social security measures.⁸⁵ In addition, the letter noted that the Allies had precluded certain powers from being transferred to the federal government. These competences, in education, culture, religious affairs, and local government, were nonetheless granted to the federation in the early draft of the Basic Law.⁸⁶ The Parliamentary Council, however, did not implement the “considerations” of the military governors in the third reading of the Basic Law which passed on 10 February 1949.⁸⁷

The second “Letter of Advice” was sent to the Parliamentary Council on March 2, 1949 and formed the basis for negotiations over the wording of Article 72. After the military governors had reviewed the February draft of the Basic Law, even Clay had become concerned with the level of centralization it established.⁸⁸ One of the Allied concerns related to the division of the concurrent powers of the federation regulated by Article 72.⁸⁹ Clay and his French counterpart Koenig strongly opposed the large number of concurrent powers; those in which the Länder were allowed to legislate insofar as the federation did not.⁹⁰ Given the supremacy of the federal government in the constitution, Clay and Koenig were concerned that strict constitutional mechanisms were not in place to stem a centralization of authority. The March “Letter of Advice” called for clearly

for the Federal government, covering only federal programs. Lucius D. Clay, *Decision in Germany*, p. 405.

⁸⁵ *Ibid.*

⁸⁶ When the Basic Law was passed in May 1949, these powers, coupled with that of public administration, remained the exclusive competences guaranteed to the Länder. Lucius D. Clay, *Decision in Germany*, p. 405. Michael Hancock, *West Germany: The Politics of Democratic Corporatism*, (Chatham: Chatham House Publishers, 1989), p.49.

⁸⁷ See “Progression of the Basic Law: Introductory notes,” and “Draft Basic Law, as passed in the third reading (10 February 1949) by the Main Committee of the Parliamentary Council,” Office of Military Government for Germany (US) *Documents on the Creations of the German Federal Constitution*, p. 88.

⁸⁸ For Clay’s reaction the centralization of the draft constitution, see Lucius D. Clay, *Decision in Germany*, p. 421.

⁸⁹ The list of concurrent powers is extensive, including, among others, justice, public welfare, laws relating to economic matters, labor laws, road traffic and highways, census and registry matters, prevention of the abuse of economic power, and various health-related laws.

defined limits on the Federal government's ability to legislate in areas of concurrent competence.⁹¹ They asked for the insertion of an Article to the effect that "where it is clearly impossible for a single Land to enact effective legislation, or where the legislation of enacted would be detrimental to the rights or interests of the Länder; ...and provided that the interests of the Länder are clearly, directly and integrally affected."⁹² The committee of seven in the Parliamentary Council, charged with negotiating with the Allies, was wholly opposed to this clause. The committee instead proposed an additional clause permitting the federal government to legislate in areas of current competence for "the maintenance of legal or economic uniformity."⁹³ This effectively gave the federal government discretion to legislate in the field of concurrent competences. In essence, the committee sought to weaken any brake on the ability of the federal government to legislate in areas of concurrent competence. The Allies accepted the proposal because of its near unanimous support in the Parliamentary Council.⁹⁴ The origins of the legal definition of Article 72 are rooted in this compromise between the German representatives and the military governors. It is important to note that, above all, Article 72 assured *Kompetenz-Kompetenz* or the decision to act in concurrent competences to the federal government and not to the *Länder*. In other words, even Christian Democrats supported a strong federal government for the West German State.

The role of subsidiarity in the Basic Law negotiations was to express the Christian Democratic vision of the state. It was not codified as a constitutional principle, nor did Christian Democrats attempt to secure its inclusion or definition in the Basic Law. As

⁹⁰ For Clay's reaction the centralization of the draft constitution, see Lucius D. Clay, *Decision in Germany*, p. 421.

⁹¹ General Roberston was prepared to accept the draft with only a few minor alterations. Lucius D. Clay, *Decision in Germany*, p.432.

⁹² "Military Governors' Memorandum to the Parliamentary Council on the Basic Law. March 2, 1949," in *Germany under Occupation*. Berlin, 1949. p.14.

⁹³ "Text of Proposal Made by the Parliamaentary Council's Committee of Seven on the Basis of the Memorandum of 2 March 1949, Bonn, 10 March 1949," Office of Military Government for Germany (US), *Documents on the Creations of the German Federal Constitution*, p. 110.

Süsterhenn noted, subsidiarity served as a guideline to discuss what the state should or should not do and how it should relate to regional and municipal governments. More fundamentally, the principle characterized the obligations of the state with respect to the individual and other bodies in the social fabric. While the Ellwangen faction invoked the principle as a rationale for the division of competences, subsidiarity played no role in the inclusion of Article 72 in the Basic Law. Article 72 was not shaped by a philosophical principle of Christian Democracy, but rather by the practical considerations on the need for a strong federal government capable of ensuring the reconstruction of West Germany. Indeed, Article 72 finds its origins in the compromise between the Parliamentary Council and the military governors.

III Subsidiarity and Christian Democratic theory in the 1970s

The CDU/CSU coalition governed throughout the 1950s and the 1960s but in 1969 was replaced by an SPD/FDP coalition government. It was not until 1982 that the CDU/CSU returned to power. By the early 1970s, heavy taxes and extensive social programs threatened economic performance, which was experiencing a period of stagnant growth, coupled with growing inflation and unemployment.⁹⁵ The appearance of the welfare state in Germany during the 1960s and 1970s, and the relative popularity of the SPD, forced Christian Democrats to re-define their political profile. Christian Democrats referred to the establishment of a welfare state as “the new social question” and they addressed the issue by referring expressly to the principle of subsidiarity.⁹⁶ In the mid-1970s, German Christian Democratic parties re-affirmed their commitment to the principle of subsidiarity, explicitly defining it for the first time in election programs. As Bernd Jungeblut noted, the CDU and CSU chose to re-state their earlier positions and

⁹⁴ See John Ford Golay, *The Founding of the Federal Republic of Germany*, pp. 60-61.

⁹⁵ Bernd Jungeblut, “Le Developpement de la CDU/CSU Depuis 1976,” *Revue D’Allemagne*, p. 255.

⁹⁶ See for example “Grundsatzprogramm der CDU (1978) in *Christliche Demokratie in Detuschland: Analysen un Dokumente zur Geschichte*, Holger Asmussen, ed., (Melle: Verlag Ernst Knoth, 1978) p. 1015.

define themselves as anti-socialists and European integrationists rather than change the orientation of the party.⁹⁷

The relationship between subsidiarity and the growing welfare state was first broached in 1962 by the president of the *Bundestag*, Eugen Gerstenmaier. Gerstenmaier, addressing the CDU congress at Dortmund, stated that the CDU had based its political decisions on the principle of subsidiarity.⁹⁸ However, he noted that the recent increase in social programs at the federal level was creating a welfare state in Germany.

Gerstenmaier called for a return to the principle of subsidiarity to limit state social programs and direct intervention in society in general.⁹⁹ He linked the concept of subsidiarity to the exercise of freedom and responsibility in a liberal democratic state, and posited that state intervention in social policy should be more limited in the future. The use of subsidiarity as an anti-socialist principle provided one of the main axes for the CDU/CSU re-affirmation of subsidiarity in the mid-1970s.

The CSU program of 1976 and the CDU program for 1978 stressed the dangers of the welfare state in constraining the freedoms of citizens and proposed subsidiarity as a remedy.¹⁰⁰ The CSU invoked subsidiarity to provide a guarantee for those interests and areas of responsibility independent from the state: namely, the private spheres of self-development that were so important in personalist doctrine.¹⁰¹ The role of the state was therefore to assist and to help individuals and communities only when they were in need and to create the frameworks and conditions whereby citizens could exercise personal responsibility and freedom.¹⁰² In the same spirit, the CDU program of 1978 declared that

⁹⁷ *Ibid.*, p. 254.

⁹⁸ Gerstenmaier acknowledged the Catholic origins of the principle and also noted that Protestants were as likely to invoke as Catholics. Eugen Gerstenmaier "Künftige Aufgaben der CDU, 5 Juni 1962, Dortmund," in *Christliche Demokratie in Deutschland: Analysen und Dokumente zur Geschichte*, p.481.

⁹⁹ *Ibid.*, p.482.

¹⁰⁰ Christian Social Union, *Grundsatz Program der Christlich Sozialen Union: 1976*, (München: Landesleitung, 1983), p.17

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

true liberty demanded the responsible organization of social life according to the principle of subsidiarity.¹⁰³ The CDU and CSU invoked subsidiarity as a principle of freedom and personal development and to encourage a reduction of the welfare state so as to permit a sphere of action for smaller social organizations and communities.

The CDU also invoked the principle of subsidiarity in relation to European integration. The 1976 “*Europäisches Manifest*” of the CDU and the 1978 *Grundsatz* program both referred to the need to incorporate subsidiarity in the process of creating a federal European Union.¹⁰⁴ The 1978 program called for new powers to be granted to the European Commission and the European Parliament. These competences were to be regulated by subsidiarity. The program stated that “what can be accomplished by the municipalities and regions and member states” should be reserved to those levels of government.¹⁰⁵ The program was unclear, however, about who had the right to decide what each level of government was able to achieve.

The 1976 and 1978 re-affirmation of Catholic social teachings reveals that subsidiarity remained a multi-faceted principle that served to express Christian Democratic positions on a range of issues including European integration and social welfare programs. The 1978 CDU program observed that subsidiarity applied to the family and free associations as well as federal and regional governments. The re-affirmation of subsidiarity revealed that the principle had not been transformed or defined exclusively as a social or a federal principle. As Gerstenmaier noted, the CDU and had

¹⁰³ “Grundsatzprogramm der CDU- Ludwigshafen, Oktober 1978,” in *Christliche Demokratie in Detuschland: Analysen un Dokumente zur Geschichte*, p. 994.

¹⁰⁴ “Europäisches Manifest (1976),” in *Christliche Demokratie in Detuschland: Analysen un Dokumente zur Geschichte*, p. 946.

¹⁰⁵ “Grundsatzprogramm der CDU- Ludwigshafen, Oktober 1978,” in *Christliche Demokratie in Detuschland: Analysen un Dokumente zur Geschichte*, p. 1027.

taken subsidiarity from Catholic social teaching, and he characterized it as a socio-ethical and theological principle.¹⁰⁶

Conclusion

The principle of subsidiarity in German Christian Democracy was a philosophical principle. It expressed the emerging Christian Democratic *Weltanschauung* and was directly linked to the doctrine of personalism. As a principle of Christian Democratic theory, it could be applied in a bewildering number of contexts. The scholar Michael Fogarty has pointed out that “it is not always easy for people brought up in the political and social thought of modern Britain to grasp the consistency with which the Christian Democrats apply their principle of subsidiarity or ‘sovereignty in one’s own sphere.’”¹⁰⁷ The principle of subsidiarity was embedded in the Christian Democratic approach to the person, the state, and society, but it was not seen as a principle that could be codified in law.

The invocation of subsidiarity in the drafting of the Basic Law also demonstrated how it was conceived as a broad principle but not as a specific law. While Süsterhenn employed the principle to characterize the role of the state with respect to the individual, he also used it as a rationale for the division of competences in the Ellwangen draft constitution. Süsterhenn explicitly stated in 1952 that the principle should not and could not be codified in law. The reason was that subsidiarity was a dynamic principle whose application depended upon the specifics of each case. Article 72 therefore, did not represent the codification or transformation of subsidiarity.

Far from being transformed or employed solely as a rhetorical device divorced from its Catholic parentage, subsidiarity in Christian Democratic theory shows

¹⁰⁶ Eugen Gerstenmaier “Künftige Aufgaben der CDU, 5 Juni 1962, Dortmund,” in *Christliche Demokratie in Deutschland: Analysen und Dokumente zur Geschichte.*, p.481.

¹⁰⁷ Michael Fogarty. *Christian Democracy in Western Europe: 1820-1953*. London: Routledge, 1974. p. 99.

remarkable intellectual continuity. The conception of subsidiarity advanced by Bishop Ketteler and the Jesuit Nell-Breuning was clearly present in the works and actions of Eberhard Welty, Adolph Süsterhenn, and Eugen Gerstenmaier. The CDU/CSU party programs of 1976 and 1978 reveal an unbroken intellectual line between Catholic social theorists and Christian Democratic politicians. However, the invocation of subsidiarity by Christian Democrats allowed for a secular interpretation of the principle and its eventual transformation into a narrow constitutional principle. Whereas prior to the establishment of the CDU/CSU, the principle had remained within tracts of papal encyclicals and the tracts of Catholic writers, Christian Democrats introduced the term to broader arena of German and European politics. The use of subsidiarity outside the Catholic social teachings was an important factor in the transformation of the principle.

CHAPTER III: European Visions in Collision Part 1

Throughout the early post-war period, subsidiarity remained an exclusively philosophical principle of Christian Democratic theory. In the 1970s and early 1980s, however, European federalists reconceptualized it as a constitutional principle for a federal European Union. EC institutions and member states began discussing political integration and the formation of a federal union in the early 1970s. They debated whether a full-blown constitutional federation should be established or whether the member states should continue to co-operate on an intergovernmental basis. Subsidiarity was invoked in schemes that ranged from an American-inspired federation, to an intergovernmental union of nation states, to proposals for building a united Europe through a gradual process.

The introduction of subsidiarity into these debates over European Union constitutes the beginning of its transformation into a constitutional federal article, a transformation that culminated with the 1992 Treaty on European Union (Maastricht Treaty). The question of how this transformation took place has never been examined because most scholars have assumed that subsidiarity became a federal principle in the immediate post-war period. This chapter demonstrates that the concept of subsidiarity became fragmented among competing visions of European Union that were not associated with Christian Democratic theory. It was through this fragmentation that the concept was ultimately transformed into a legal mechanism regulating a federal division of competences between the European Union and its member states.

The first section of the chapter examines the emergence of a European-wide Christian Democratic organization in the period from 1949 to 1979, and how it employed subsidiarity in support of European integration. The second part discusses the ideas of Ralf Dahrendorf, a member of the European Commission who linked subsidiarity to an

intergovernmentalist vision of Europe in the early 1970s. This section also demonstrates how and why Altiero Spinelli, a federalist who was also a member of the European Commission, invoked the principle in a 1975 Commission report on European Union. The final section examines how Spinelli and Christian Democrats in the European Parliament disputed the role of subsidiarity in a “Draft Treaty on European Union” proposed in 1984. It was in this draft treaty that subsidiarity was first narrowed to a constitutional, federal article.

I Christian Democracy And European Union

Christian Democratic parties in post-war Europe committed themselves to the creation of a federal Europe and established an organization to discuss the means of achieving that goal. In 1946, Robert Bichet, a member of the *Mouvement Populaire Républicain*, founded *Les Nouvelles Équipes Internationales* (NEI) that assembled Christian Democratic parties from across Europe.¹ Speaking to the NEI congress in 1949, Bichet put the goal of the NEI in the starkest terms. “To make Europe or die, these seem the alternatives of European nations, devastated after five years of war.”² The main goals of the NEI were European unification, Franco-German reconciliation, and the protection of democratic institutions.³ Resolutions for the creation of a federal “United States of Europe” were standard features of NEI congresses.⁴ The organization also helped to initiate the famous Hague Conference of 1948 that established the Council of Europe.⁵ The founding fathers of many European projects such as the European Coal and Steel Community and the European Economic Community were members of the NEI, for

¹ Roberto Papini, *L'internationale démocrate-chrétienne*, (Paris: Les Éditions du Cerf), pp.47-50.

² “Discours de Robert Bichet, 25 février, 1949,” Collections, COL. Walter Lipgens, WL. WL 89. Cited from the Centre Virtuel de la Connaissance sur Europe (CVCE), [www.ena.lu/mce.cfm].

³ Roberto Papini, *L'internationale démocrate-chrétienne*, p. 55.

⁴ For example, see “Résolution adoptée par la Conférence des Nouvelles Equipes Internationales tenue à Luxembourg du 29 janvier au 1er février 1948,” Cited from the CVCE [www.ena.lu/mce.cfm].

⁵ Thomas Jansen, *The European People's Party*. (New York: St. Martin's Press, 1998), p. 41.

example Konrad Adenauer, Robert Schumann and Joseph Bech.⁶ The NEI, however, was mainly a forum for communication between national Christian Democratic parties, and for organizing youth groups. It did not co-ordinate policy among the national parties.

The loose association of Christian Democratic parties was unable to achieve a common agenda for European integration until the late 1970s. Unlike the Socialist International, which in some cases preceded and helped to create socialist parties in countries where none existed, the NEI never achieved supranational unity.⁷ Agreement was reached on the general principles of personalism, a rejection of materialism in politics and opposition to socialism.⁸ Apart from an agreement on such general principles, the NEI remained associative and refrained from developing common political platforms among the various national parties. In 1964, the NEI changed its name to the European Union of Christian Democrats (EUCD), creating a new organization with the specific goal of achieving common policies in European affairs among European Christian Democratic parties.⁹ The first secretary-general of the EUCD, Leo Tindemans, drew up a report outlining the changes and continuities of the new organization with the old, which clearly stated that EUCD was an evolution of the NEI. Although unitary elements of the international party were strengthened, the EUCD continued to function as a confederation of Christian Democratic parties and no common platform was achieved.¹⁰ The goal of the new organization was to create a common political platform and to provide supportive structures for the Christian Democrats in the institutions of the European Economic Community: the European Parliament, the Commission, and the Council of Ministers as

⁶ Georges Le Lorrain, "MM. Adenauer, Bech et Robert Schuman affirment à leur tour la nécessité de l'Europe unie : A la tribune des Grandes Conférences catholiques," *Le Monde*, 27 September 1956, p. 5.

⁷ Thomas Jansen, *The European People's Party*, p. 31.

⁸ Jacques Fauvet, "Où va la démocratie chrétienne?" *Le Monde*, 30 April 1957, p. 5.

⁹ Thomas Jansen, *The European People's Party*, p. 47. Roberto Papini, *L'internationale démocrate-chrétienne*, (Paris: Editions du CERF, 1988), p.94.

¹⁰ *Ibid.*

well as national parliaments.¹¹ In 1976, when the Council of Ministers agreed to direct elections to the European Parliament, the EUCD established the European People's Party as the Christian Democratic parliamentary group. The inability to forge a common political program in the NEI and the EUCD was resolved with the creation of the EPP.

Motivated by the first elections to the European Parliament in 1979, the first congress of the EPP met to formulate a party manifesto.¹² The program set out a gradualist approach to achieve a federal European Union and defined the roles of personalism and subsidiarity in shaping the group's policies. The Christian Democratic goal of integration was still federation, and the 1978 manifesto endorsed gradualism as the EPP approach to achieving that goal.¹³ In practice, the gradualist agenda for integration involved an incremental accumulation of competences in the institutions of the EC. On a policy level, gradualism was expressed in the EPP's desire to achieve economic and monetary union (EMU), followed by social union, meaning common domestic policies, and culminating in political union.¹⁴ The EPP committed itself to the gradualist approach and to work within the treaties establishing the EC to achieve this vision of European federation.

The EPP program also explicitly defined subsidiarity and affirmed the party's commitment to personalism, anchoring its vision of Europe in Christian Democratic theory. The personalist doctrine, as in CDU/CSU programs, formed the basis of the EPP's political positions. In recognizing the liberty and responsibility of the individual, the program stated that the family, as the most important social organization, could not be replaced by the state, as the former provided for the development of the "moral

¹¹ Roberto Papini, *L'internationale démocrate-chrétienne*, p. 94.

¹² Charles-Ferdinand Nothomb, "Un parti populaire européen," *Le Soir* 20 November 1976, pp. 1, 6.

¹³ It is important to note that the CDU election programs of 1976 and 1978 also championed the gradualist approach to achieving European Union. See "Europa wählen, Die europäische Volkspartei, 23 Februar 1978 im Brüssel," (Bonn: Europa Union Verlag GmbH, 1978), cited from CVCE [www.ena.lu/mce.cfm].

¹⁴ *Ibid.*

personality” of children.¹⁵ One consequence of the EPP’s dedication to personalism was a resolution to establish a European Charter of Rights.¹⁶ In connection with the need to protect and promote the development of “personality” and “pluralist democracy,” the program invoked subsidiarity. The program endorsed

...decentralized political power according to the principle of subsidiarity, in particular to the municipalities through the normalization of local autonomy, and to the regions through acknowledgment and participation in the democratic decision making process.¹⁷

The requirement of subsidiarity in EPP policy was the recognition of regional and local levels of government in the process of European integration. This use of the principle reveals its intellectual continuity from the Catholic social doctrine, through national German Christian Democrats, to the EPP.

Christian Democrats did not employ the principle of subsidiarity to describe the division of powers within a European Union, nor did they fundamentally alter their conception of the principle. It is important to note that the EPP never linked the principle of subsidiarity to a constitutional separation of powers. It remained a philosophical principle that operated within the context of Christian Democratic theory and derived from Catholic social teaching. Beginning in 1971, however, rival interpretations of subsidiarity were advanced that were associated with different approaches to European Union.

II Subsidiarity And Intergovernmentalism: 1971

Intergovernmentalism and federalism were the persistent forces in proposals for European Union in the 1970s. As opposed to the gradual federalism of Christian Democracy, the intergovernmental approach to European Union assumed that the nation state was and should remain the dominant actor in any process of European integration.

¹⁵ “Europa wählen, Die europäische Volkspartei 23 Februar 1978 im Brüssel,” Cited from CVCE [www.ena.lu/mce.cfm].

¹⁶ *Ibid.*

Any powers jointly exercised were to be balanced by national vetoes, and the decision-making processes of common institutions were to be kept firmly under the control of the member states.¹⁸ The intergovernmental and Christian Democratic federal interpretations of subsidiarity first appeared in the debate over European integration in articles in 1971 written by the Commissioner for external relations and trade, Ralf Dahrendorf, and in an article written in 1973 by the Christian Democratic Prime Minister of Luxembourg, Pierre Werner.¹⁹ Dahrendorf employed subsidiarity to outline an intergovernmental Europe where the member states co-operated outside the framework of the institutions of the EC in foreign and domestic policy. Pierre Werner, a Christian Democrat employed subsidiarity to define his approach to a federal Europe.

The label “European Union” was first debated among the original six members of the EC because of a proposal submitted by the intergovernmentalist Charles de Gaulle in 1962.²⁰ De Gaulle submitted a plan for deeper political cooperation in areas of foreign policy, defense, commerce, and culture outside the framework of the EC.²¹ He advocated a Union of European States commonly referred to as *L’Europe des patries*, instead of a federal or supranational Europe.²² The proposal reflected de Gaulle’s belief that “supranational organisms...tend inevitably and abusively to become irresponsible superstates.”²³ Even with Adenauer’s hesitant support, the other Member States of the EC vehemently opposed De Gaulle’s plan. The demise of de Gaulle’s intergovernmental vision and subsequent blockage of further supranational development during the “empty-

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ The two articles published by Dahrendorf under the pseudonym *Weiland Europa* (What kind of Europe?) in June 1971 appear translated in Ralf Dahrendorf, “A New Goal for Europe” in *European Integration: Selected Readings*, Michael Hodges, ed. (London: Penguin Books, 1972), p. 82.

²⁰ Desmond Dinan, *Ever Closer Union*, (Boulder: Lynne Rienner Publisher, 1999), p. 43.

²¹ The de Gaulle proposal was named after its author, foreign minister Christian Fouchet. Christian Fouchet, “Draft Treaty—Fouchet Plan I.” In *European Parliament-Committee on Institutional Affairs: Selection of texts concerning institutional matters of the Community from 1950 to 1982*, (Luxembourg: European Parliament, 1982), pp.112-115.

²² Christian Fouchet, “L’Europe de 1962: un projet d’union d’états,” *Le Figaro*, 06 March 1969, p. 9.

chair” crisis of 1965-1966 did not seem to bode well for the future of European political integration.

Nevertheless, de Gaulle’s departure from politics in 1969 and replacement by the more moderate Gaullist Georges Pompidou helped to create an atmosphere conducive to discussing the future of European integration.²⁴ At The Hague summit of 1969, the leaders of the Six affirmed their commitment to completing the single market, enlarging the Community and deepening political integration which was summed up in the slogan “completing, widening and deepening.”²⁵ Although it ultimately achieved only modest success, this summit engendered what was called the “spirit of The Hague,” which denoted the general sentiment that integration could proceed again.²⁶ The two most significant developments of the summit were the decision to initiate accession negotiations with Great Britain, Ireland and Denmark, and the call for reports on political integration in foreign policy and economic and monetary policy.²⁷ Specifically, The Hague summit charged Pierre Werner, the Christian Democratic Prime Minister of Luxembourg, with the preparation of a report on economic and monetary union. The summit also charged Belgian diplomat Etienne Davignon with submitting a report outlining an approach to political union in the context of enlargement.

The Werner reports on economic and monetary union and the Davignon Plan for European political co-operation were submitted to the six heads of government in October 1970 and highlighted the federal and intergovernmental approaches to European Union. The Hague summit charged had Pierre Werner, the Christian Democratic Prime Minister

²³ Cited from William Hitchcock, *The Struggle for Eruope*, (New York: Doubleday, 2002), p. 227.

²⁴ Michael Burgess, *Federalism and European Union*, (1989), p. 66.

²⁵ Trevor Salmon and Sir William Nicoll, eds., *Building European Union*, (Manchester: Manchester University Press, 1997), p. 105.

²⁶ “Summitry”, the meeting of the heads of government of the EC, became a regular feature after 1969, until it was institutionalized in 1975 as the European Council, “Communiqué of the meeting of the Heads of Government of the member states at The Hague on 1 and 2 December 1969,” Cited from CVCE. [<http://www.ena.lu/mce.cfm>].

²⁷ Desmond Dinan, *Ever Closer Union*, p. 61-63.

of Luxembourg, with the preparation of a report on economic and monetary union. The Werner Report, submitted to the Commission and the Council of Ministers, called for the establishment of a single European currency in progressive stages by 1980 and embodied the gradualist approach to European Union. Werner stated that economic and monetary union necessitated the creation of a European Central Bank and a transfer of national powers in economic and monetary policy to the Commission. Furthermore, the European Parliament would require more powers to provide democratic oversight.²⁸ According to Werner, economic and monetary union and the concomitant transfer of powers to the Community led inevitably to political union. In a 1973 article published in *The Times*, Werner made the link between the Christian Democratic gradualist approach to European Union, and subsidiarity when discussing the political consequences of economic and monetary union.

I am convinced that once [European Union] has been defined clearly, the means of attaining it can be found. The principle of subsidiarity combined with a limited necessary degree of centralization will be of great help in preparing the ground on a purely political level. In my view, this structure will have a quality of its own, being neither entirely confederal nor federal.²⁹

Werner employed the principle of subsidiarity as a guideline for deciding what powers should be transferred from national governments to empowered Community institutions. Werner envisaged building up the institutional structure of the EC to achieve a quasi-federal European Union.

In contrast, the Davignon plan adopted specifically intergovernmental solutions to achieve European political co-operation.³⁰ Davignon's report, called for increased co-operation in international policy on an intergovernmentalist basis.³¹ This co-operation

²⁸ Pierre Werner, "Report on the realisation by stages of economic and monetary union (8 October 1970)," in *Bulletin of the European Communities*, (November 1970), Supplement 1/70, p. 14.

²⁹ Pierre Werner, "Crucial time for negotiation," *The Times*, 23 February 1973, p.9.

³⁰ Named after Etienne Davignon, the Belgium diplomat who produced the Report. See "Davignon Report Submitted to the Council of Ministers in Luxembourg, 27 October 1970" in *Bulletin of the European Communities*, November 1970, n.11, pp.9-14.

³¹ *Ibid.*

was to take place outside of the framework of the institutions of the EC. Davignon proposed meetings every six months between the foreign ministers of the nine to work “for a harmonization of views, concertation of attitudes and joint action when it appears feasible and desirable.”³² This plan was seen as providing an important step towards creating a European identity at home and in the world.³³ The Commission as a whole supported an increase in the powers of the institutions of the EC, inline with the Werner Report.³⁴ However, Commissioner Ralf Dahrendorf believed that intergovernmentalism based on the Davignon approach was the only way to secure a unified Europe.

Ralf Dahrendorf, Director-General for external relations and external trade, opposed achieving a federal European Union through the institutional structures of the EC as outlined in the Werner Report. Dahrendorf published his ideas on how European integration should proceed in two articles published in the *Die Zeit* in July 1971 under the pseudonym “*Weiland Europa*.”³⁵ In these articles, Dahrendorf attacked the assumption that deeper European integration should proceed through the institutions of the European Community, which he called “the first Europe.” According to Dahrendorf, the Commission pursued a policy of harmonizing as many member state laws as possible. He charged that “the search for European solutions for their own sake is already recognizable as incipient ideology –and it is dangerous.”³⁶ An “illiberal and bureaucratic Europe” was the result of the Commission’s craze for uniformity which Dahrendorf believed was inefficient and threatened democracy in the EC. He proposed instead that the member states should meet outside of the framework of the Community institutions to discuss and co-operate on means to achieve economic and political union. To Dahrendorf, the EC

³² “Davignon Report, 27 October 1970, Luxemburg,” in *Bulletin of the European Communities*, no. 11/70, (November 1970), p. 10.

³³ For reaction to the Davignon report, see, for example Emmaneul Gazzo, “L’union politique - (1) Les cheminements difficiles de la diplomatie,” *Europe*, no.568, 13 May 1970, p. 1.

³⁴ “Report by the Commission to the Council (30 October 1970),” in *Bulletin of the European Communities*, no. 11, (November 1970), pp.15.

³⁵ Ralf Dahrendorf, “A New Goal for Europe” in *European Integration: Selected Readings*, pp. 82-88.

had exhausted its limits in the process of European integration.³⁷ It was with regards to this “second Europe” outside of the EC framework that Dahrendorf invoked the principle of subsidiarity.

In the English version of Dahrendorf’s articles, subsidiarity is translated as “the principle of functional utility.” “The Second Europe demands a move away from the dogma of harmonization toward the principle of functional utility (*Subsidiarität*).”³⁸ As the word “subsidiarity” did not exist outside of a Catholic frame of reference in the early 1970s, its translation as “the principle of functional utility” was derived from the context of Dahrendorf’s article. For Dahrendorf, the member states should only meet to discuss common issues as they arose between the member states, hence the definition of subsidiarity as functional principle. He invoked it not only to champion diversity over unity in an intergovernmental Europe, but also to demonstrate the need for the member states to take common action in order to “play their own role in the world as vehicles for the progress of humanity in peace and freedom.”³⁹ So while Dahrendorf acknowledged the need for common action he felt that this should take place outside of the confines of the EC institutional framework and its culture of harmonization and centralization. He had outlined a vision of European Union that was not federal, and which employed the principle of subsidiarity to avoid uniformity and centralization of powers at the European level.

Dahrendorf’s curt denunciation of supranationalism demonstrated that his understanding of subsidiarity was directly opposed to the Christian Democratic interpretation of the principle and vision of Europe.⁴⁰ Although he was a member of the

³⁶ *Ibid*, p. 82.

³⁷ *Ibid*.

³⁸ *Ibid*, p. 84.

³⁹ *Ibid*.

⁴⁰ Shortly after the articles were published, Dahrendorf’s identity was discovered and West German Christian Democrats began calling for his resignation. See Roger Berthoud, “W German official denies resignation plans,” *The Times*, 3 August 1971, p.4.

German liberal party (FDP), Dahrendorf had come across the concept of subsidiarity while writing a dissertation on Marxist and Catholic ideas of social justice.⁴¹ However, his utilitarian interpretation of subsidiarity conflicted sharply with Christian Democratic theory because it implicitly rejected the creation of a federal Europe since it refused to establish any higher authority than the member states. In the absence of a federal European level of governance, the Christian Democratic notion of subsidiarity could not apply.

III Spinelli, Subsidiarity, And The Tindemans Report

At a 1972 summit, the member states of the EC, began to act on the recommendations of the Werner and Davignon Reports. Resolutions were advanced on the achievement of economic and monetary union (EMU), the creation of a European Monetary Cooperation Fund and strengthening the institutions of the Community. The proposed increases in Community competences led to a discussion on the need to create a more politically integrated European Community.⁴² The summit, which was now composed of nine members (because of the accession negotiations of Great Britain, Denmark and Ireland), set an ambitious project that was linked to The Hague program of deepening integration through economic and monetary union and European political co-operation. The Nine declared that “the Heads of States and Government have assigned themselves the key objective of converting, before the end of this decade and in absolute conformity with the signed Treaties, all the relationships between Member States into a European Union.”⁴³ To this end, they invited the Community institutions—the Commission, the European Parliament, and the European Court of Justice—to submit reports on European Union to a “further summit conference.” Commentators noted that

⁴¹ Interview with Ken Endo, cited from Ken Endo, “The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors,” *Hokkaido Law Review*, 44 no. 6 (1994), p. 607.

“European Union” was a politically safe term since no specific actions were taken to reach this goal.⁴⁴

Political will and consensus on how to achieve European Union were not forthcoming, however, due in part to the momentous enlargement of the Community from six to nine members in 1973. A 1974 summit in Paris acknowledged that the process of creating a European Union had “already started” while stating without irony that “they consider that the time has come for the Nine to agree as soon as possible on an overall concept of European Union.”⁴⁵ The 1972 declaration had called for the submission in 1975 of reports on European Union from the Community institutions. The 1974 summit appointed Leo Tindemans, the Christian Democratic Prime Minister of Belgium, to write a report on European Union based on the reports of the EC institutions, member states, and any public or private consultations he might wish to make.⁴⁶

The Commission Report on European Union, submitted to Tindemans in 1975, was an ambitious attempt to define a federal European Union. Altiero Spinelli was the dominant figure behind proposals for European Union that featured subsidiarity in both 1975 and in 1984, and he constantly pushed for a fully integrated Europe created by a constituent assembly. His approach to and conception of European federation, however, differed sharply from Christian Democrats. After the Second World War, Spinelli devoted his life to the unification of Europe. While imprisoned as a Communist during the Mussolini regime, he co-wrote the *Ventotene Manifesto* with Ernesto Rossi. The manifesto called for the convocation of a constituent assembly to produce constitution

⁴² This was in line with the 1969 Hague conference when the member states had committed themselves to “study the best way of achieving progress in the matter of political unification. *Bulletin of the European Communities*, no. 10 (1972), pp. 16-23., and “Communiqué of the meeting of the Heads of Government of the member states at the Hague on 1 and 2 December 1969,” Cited from CVCE. [<http://www.ena.lu/mce.cfm>].

⁴³ *Bulletin of the European Communities*, no. 10 (1972), p. 17.

⁴⁴ See, for example, “Un supplément d’âme,” *Le Monde*, 21 October 1972, p. 1.

⁴⁵ Michael Burgess. *Federalism and European Union*, (1989), p.9.

⁴⁶ *Ibid.*

establishing a United States of Europe.⁴⁷ After his release, Spinelli became involved with many federalist groups, such as the European Union of Federalists (UEF) and the Movement Federale Europe (MFE), he served as the secretary-general for the latter until 1963. After a posting in the Italian Foreign Office, Spinelli joined the Commission from 1970 to 1976 as the head of the Directorate General of Industry, Research and Technology.⁴⁸ He joined the Commission “to learn what it meant to be a Commissioner, to have a certain influence in the Commission and to pay attention to how we could have the institutional developments necessary to go beyond merely the coordination of national policies.”⁴⁹ Spinelli used the opportunity presented by the Tindemans mission to define European Union as a means to advance his constituent approach and vision of a United States of Europe.

A committed federalist, Spinelli believed that the only way to secure a real and lasting European Union was through a constituent assembly. As a member of the Union of European Federalists, Spinelli recalled how the Socialist International and the NEI had abandoned attempts to create a Federal European Constituent Assembly in the late 1940s.⁵⁰ Spinelli criticized the Christian Democratic gradualist approach to European Union as overly moderate and wholly ineffectual because he asserted that the member states would never willingly surrender their sovereignty to a federal Europe.⁵¹ He was equally hostile to those who supported member-state based solutions because they constituted an insurmountable obstacle to the creation of a people’s Europe.⁵² It was not until 1981 that Spinelli would be able to convince the Parliament to use its democratic

⁴⁷ Altiero Spinelli and Ernesto Rossi, “The Manifesto of Ventotene,” cited from CVCE [www.ena.lu/mce.cfm].

⁴⁸ Michael Burgess, “Altiero Spinelli, Federalism and the EUT,” in *European Union: The European Community in Search of a Future*, Juliet Lodge, ed., (London: The MacMillan Press, 1986), pp. 175-176.

⁴⁹ Michael Burgess, *Federalism and European Union*, (2000), pp. 107-108.

⁵⁰ Altiero Spinelli, “L’Union européenne des fédéralistes en 1952,” *La voix fédéraliste*, no. 1 (1952), p.2

⁵¹ Altiero Spinelli, “Towards European Union,” Sixth Jean Monnet Lecture at the European University Institute, (13 June 1973), p.10.

⁵² Altiero Spinelli, *The European Adventure*, (London: Charles Knight & CO, 1972), pp. 9-14.

mandate to act as a quasi-constituent assembly and draft a Treaty to establish European Union.⁵³ Although he knew it was unlikely that the treaty would be acceptable to national governments, he maintained that it would provide a basis for discussions and negotiations.

In addition to Spinelli's disagreement with Christian Democrats on the question of the constituent versus gradualist approach to European Union, he also opposed the Christian Democratic notion of federalism derived from subsidiarity and personalism. Spinelli avowed that he was not attracted by "the nebulous, contorted and hardly coherent ideological federalism" based on personalism, "but by the polished, precise and anti-doctrinaire thought of the English federalists...who proposed to transplant into Europe the great American political experience."⁵⁴ In particular, Spinelli subscribed to the Anglo-Saxon model of a strictly constitutional federation espoused by English federal writers such as Lord Lothian, Lionel Robbins and Sir William Beveridge.⁵⁵ Spinelli had read the works of these authors during his imprisonment during World War Two.

Before the Commission Report on European Union was even completed, Spinelli attempted to employ it as a basis for constitutional discussions. In 1974, at the close of the Paris Summit, Altiero Spinelli sent a letter to his fellow commissioners on the importance of the Tindemans mission and the need to create a federal Europe.⁵⁶ Spinelli feared that the governments of the Nine would push for a confederal or intergovernmental definition of European Union. He noted that intergovernmental solutions had proven

⁵³ Although he was aware of the limited possibility that the treaty would be acceptable to national governments, he maintained that it would provide a basis for discussions and negotiations leading to European Union. Altiero Spinelli, "Towards European Union," Sixth Jean Monnet Lecture at the European University Institute, (13 June 1973), p.10.

⁵⁴ Cited from and translated by John Pinder, "Prophet Not Without Honour: Lothian and the Federal Idea," *The Round Table*, 286 (1983), p.217.

⁵⁵ Lord Lothian, Lionel Robbins and Sir William Beveridge formed a group called the Federal Union in 1938. They posited that national sovereignty led to competition and war. The solution was a Federal Union of nations. Michael Burgess, *The British Tradition of Federalism*. (Cranbury: Leicester University Press, 1995), pp. 140-142, 174.

inefficient and sterile in the face of economic crises.⁵⁷ The object for the Commission should be to work closely with Tindemans to argue “realistically and forcefully” for a federal Europe and to bypass the governments of the Nine by submitting the Tindemans Report directly to the European Parliament (EP). The EP was to use the report as the basis for a draft constitution establishing a European Union, to be submitted directly to national parliaments for ratification.⁵⁸ Spinelli’s attempt to apply the constituent approach to the Tindemans Report failed, however, because Tindemans refused to depart from the protocol that placed the task of defining European Union firmly in the hands of the member states.

Spinelli’s charge that the community method of intergovernmentalism was ineffectual provided the starting point for the Commission Report. The Report stated that, to meet the dual challenge of economic crises and a changing international environment “[intergovernmental] cooperation can only be inadequate given the weak structures and the disproportionate strengths involved.”⁵⁹ In other words, not only was European cooperation necessary to overcome economic and social challenges, but the institutions facilitating this cooperation must be given the powers and responsibilities consistent with the solutions envisaged. The Commission report was overtly federalist in its definition of European Union and proposed a formal division of powers between a European government and the member states.⁶⁰

The Commission Report stated that the motivation for increasing the competences of a European Union were: “democracy, freedom of opinion, the free movement of people and of ideas, participation by the peoples through their freely elected

⁵⁶ Altiero Spinelli, “Lettre d’Altiero Spinelli, membre de la Commission des Communautés européennes, à ses collègues les commissaires Bruxelles, le 16 décembre 1974.” Cited from CVCE, [<http://www.ena.lu/mfe.cfm>].

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ “Commission Report on European Union,” *Bulletin of the European Communities*, Supplement 5/75, (1975), p. 5.

representatives, and the protection of humans rights.”⁶¹ Following this, the report acknowledged a recent development in European countries of a “growing resistance to attempts to centralize power.”⁶² The relevance for an eventual European Union was obvious because while the report advocated an extension of Community powers, it also noted that EC citizens were demanding that their nation states decentralize decision-making powers to local and regional levels of government. The Commission, however, stressed that “it is neither the purpose nor the ambition of this report to outline a model for the distribution of powers at different levels (European, national, local).”⁶³ It is significant to recall that the EPP’s founding manifesto had called specifically for the decentralization of power to regional and municipalities according to the principle of subsidiarity. But if the Commission did not presume to comment on the level of centralization in any of the member states, it did hope that a European Union would help a “...general historical process of redistribution of decision-making powers throughout society....”⁶⁴ This seemed to imply that powers should be redistributed up to the European level of governance. The acknowledgement of fears of centralization inherent in the European project led directly into the endorsement of a division of powers “in accordance with the *principe de subsdiarité*.”⁶⁵

The Commission report’s discussion of subsidiarity as a mechanism to divide competences between the EU and the member states was bereft of any association with Christian Democratic doctrine. EU action, according to the principle of subsidiarity, would only be allowed in areas where unity of action was required. To this end, the EU would have specific competences assigned to it by the member states. The competences

⁶⁰ The Report called for other federalist measures.

⁶¹ *Ibid.*, p. 9.

⁶² *Ibid.*, p. 10.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

of the Union were divided into three categories: exclusive, concurrent, and potential. The exclusive competences of the future EU, areas where it would have complete authority, included monetary policy, a Central Bank, and commercial and trade policy. Concurrent powers would allow for action by either the member states or the EU, but the superior body “would only assert its authority when it felt the need...”⁶⁶ From agriculture to transportation, culture, education, research and development and social programs, the concurrent competences listed in the report covered an enormous legislative domain. A third category contained potential competences, those that member states agreed might fall within the competence of the EU at a future date. While the Commission advocated a division of competences according to subsidiarity, it did not propose to constitutionalize the principle in an “Act of Constitution.” Yet, adhering to the principle meant that “the Union must be given extensive enough competency for its cohesion to be ensured.”⁶⁷ This was a definition of subsidiarity cut from its roots in Catholic social teaching.

Subsidiarity in the context of the Commission report is a narrowly federal principle as opposed to a philosophical concept of Christian Democratic theory. The building blocks of this federal interpretation were democratic participation, and the centralizing/decentralizing dynamic as opposed to personalism, and Catholic social teaching in Christian Democratic theory. Furthermore, the Commission definition only addressed the necessity of distributing competences between the member states and the EU and tacitly rejected the application of subsidiarity to regional devolution. Christian Democrats, in their understanding of subsidiarity, applied the principle not only to municipal and regional governments but also to non-state actors such as unions and churches in order to ensure a healthy democracy and a free society.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

Here is the moment in which the concept of subsidiarity was narrowed to a federalist principle. Notable in the Commission document is the absence of any political ideology other than an ambitious plan to create a federal European Union. The important factor is that Spinelli advanced a definition of subsidiarity that, having lost its historical roots in Christian and personalist thought, was now grounded in an Anglo-Saxon democratic federal tradition. The Commission's definition of the principle was indeed analogous to the article 72 of the Federal Republic of West Germany but not because the former represented subsidiarity. The federal articles in the Basic Law are basic federal principles found in the constitutions of almost every Anglo-Saxon inspired democratic federation.⁶⁸ Nevertheless, Leo Tindemans did not include the term "subsidiarity" in his official report on European Union.

Leo Tindemans submitted the "Report on European Union" to Liam Cosgrave, the Prime Minister of Ireland and President of the Council, in December 1975. Tindemans composed his on the basis of interviews with leaders of the member states, and submissions from the institutions of the EC.⁶⁹ Tindemans used three questions as a starting point for his quest to define European Union. "What political integration projects are acceptable? What will be the role of the European institutions? What is the goal of European Union?"⁷⁰ In the midst of his research, Tindemans conceded that the 1980 target to achieve European Union was a "dead letter" because of opposition by the Danish and British governments.⁷¹ Emmanuel Gazzo, the head of the *Agence Europe* congratulated Tindemans for making the choice "between utopia and moderation. He

⁶⁸ See Introduction.

⁶⁹ Leo Tindemans, "Note de Leo Tindemans précisant les objectifs et les procédures de sa mission en vue de définir l'union européenne, Paris, 23 septembre 1975," Cited from CVCE [<http://www.ena.lu/mfe.cfm>].

⁷⁰ *Ibid.*

⁷¹ Roger Berthoud, "Mr. Tindemans treads warily on the way to European unity," *The Times* 15 April 1975, p.14

chose the moderate line.”⁷² Indeed the Tindemans report was the embodiment of the gradualist Christian Democratic approach to European Union.

The gradualist tenor of the Tindemans Report was clearly spelt out in the conclusion. “The progress achieved as a result will gradually transform the nature and intensity of relations between our States. It is foreseeable that other European democratic States will want to join the undertaking. This will be open to them, on condition that they accept... the constraints imposed by its gradual creation.”⁷³ Tindemans stated that “the time was not ripe yet” to discuss the form and structure of a European federation.⁷⁴

Although Tindemans did not criticize Spinelli’s endorsement for the creation of a full-blown constitutional federation, he did not believe it to be feasible. According to Ken Endo, Tindemans was aware of the principle of subsidiarity, having been deeply inspired by the personalists Jacques Maritain and Emmanuel Mounier and Catholic social doctrine.⁷⁵ However, he had to incorporate the views of the member state governments in his report, and therefore refused to write a quasi-constitutional document as a basis for future talks.⁷⁶ He knew that a discussion of a formal division of powers between the member states and a proposed European Union according to the principle of subsidiarity was not feasible at this juncture. Indeed, Tindemans revealed that “the European concept is passing through a crisis and the incomplete European structure is swaying.”⁷⁷ What Tindemans’ report finally proposed was a set of modest reforms to EC institutions, such as direct elections for the European Parliament, an extension of Community competences into social policy, and co-determination between unions and large enterprises.

⁷² *Agence Europe* was founded in 1953 by journalists from different countries and is considered the most important news source on European. Emanuel Gazzo, “The Tindemans Report: triumph for ‘moderation,’” *Europe*, no. 1892, 08 January 1976, p. 1.

⁷³ Leo Tindemans, “Report on European Union,” *Bulletin of the European Communities*, Supplement 5/76, (1976), p. 34.

⁷⁴ Interview with Leo Tindemans, cited from Ken Endo, “The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors,” p. 603.

⁷⁵ *Ibid.*

⁷⁶ Leo Tindemans, “Report on European Union,” *Bulletin of the European Communities*, p. 5.

The reception of the Tindemans Report among the member states was mixed. While Foreign Minister Hans Dietrich Genscher of the West German SPD-FDP coalition government hailed the Report as a “constructive and realistic concept for Europe,” there was opposition to it in France, Britain and Denmark.⁷⁸ In the end, the Tindemans report received “a polite burial” in the Council of Ministers.⁷⁹ It did have one significant outcome—the establishment of the first direct elections to the European Parliament in 1979.

IV The European Parliament And Subsidiarity

The first elections to the European Parliament provided Spinelli with an opportunity to apply the constituent method he had advocated for so long. In a 1977 interview, Spinelli referred to the upcoming parliament as a “constituent assembly.” He saw an opportunity for the parliament to expand its powers and those of the Community, stating that “if the Parliament is not able to insist on strong constituent powers, it is worthless.”⁸⁰ The Draft treaty establishing European Union (DTEU) was the result of Spinelli’s determination to achieve European unity via an elected parliamentary assembly.

The Draft Treaty on European Union established subsidiarity as a federal, constitutional article and foreshadowed its inclusion in the 1991 Treaty of Maastricht. The process of defining subsidiarity in the DTEU cemented its redefinition as a strictly federal principle of European Union and its separation from Christian Democracy in European politics. The European People’s Party, constituting 108 members of the 410-member parliament, insisted on the inclusion of a Christian Democratic definition of

⁷⁷ *Ibid.*

⁷⁸ See, “Bonn wants even greater efforts towards union,” *The Times*, 08 January 1976, p.5., George Clark, “MPs of all parties forecast strong objection in Britain to some proposals in the Tindemans Report,” *The Times*, 9 January 1976, p. 4., Ernst Kobbert, “Europa im Konvoi: Der Tindemans-Bericht will der Gemeinschaft neuen Antrieb geben,” *Frankfurter Allgemeine Zeitung*, 10 January, 1976, p. 8.

⁷⁹ David Cross, “Optimism over European Union,” *The Times*, 7 December 1976, p.7.

⁸⁰ Lidia Gazzo, “Moving towards an elected Parliament,” *Vision*, no 84, November 1977, p.39.

subsidiarity in the preamble of the DTEU. However, Spinelli's distrust of "ideological federalism" led him to resist the incorporation of subsidiarity. He eventually altered the broad Christian Democratic proposal on subsidiarity to a more narrow, federalist definition, despite opposition from members of the European People's Party. The conflict between the EPP and Spinelli over the inclusion of subsidiarity represents a conflict between Spinelli's Anglo-Saxon inspired federalism and the EPP's less rigid Christian Democratic vision of a unified Europe. Spinelli's success in narrowing subsidiarity set the parameters for the debate over subsidiarity in the late 1980s and forced members of the EPP to accept a narrow legal definition of the principle.

The European People's Party demonstrated its commitment to the principles of personalism and subsidiarity in an initiative proposed to the European Parliament in September 1979 immediately following the first direct elections. Nine members of the EPP, including Leo Tindemans, tabled a resolution to extend the legal bases of the Community. This short resolution captured the essence of Christian Democratic personalism and subsidiarity as expressed in the EPP election program. The most significant proposal in the resolution was for a Charter of Fundamental Rights based on "the principles of freedom, equality and brotherhood."⁸¹ Roughly half of the resolution was dedicated to outlining the features of the proposed Charter of Rights, such as the safeguarding of fundamental national civil rights and legal guarantees to protect these rights in EC courts.⁸² The preoccupation with the rights and freedoms of the individual expressed in this resolution and in the 1979 election program is a hallmark of Christian Democratic personalism.

The 1979 EPP resolution also contained a reference to the principle of subsidiarity. It argued that the "...functions and responsibilities of the Community

⁸¹ *European Parliament Working Documents*, Document 1-347/79, 12 September 1979.

⁸² *Ibid.*

[should] be modified in accordance with the principles of subsidiarity.”⁸³ The principle was not defined and it was unclear what functions and responsibilities were to be regulated by subsidiarity. However, in the 1979 election program, it was interpreted as the need to give municipal and regional governments a voice in Community decision-making processes through a decentralization of powers.⁸⁴ The concern for the role and status of European regions in the EC contrasts sharply with Spinelli’s pre-occupation with subsidiarity as a means to regulate the balance of power between the member states and the Union (as expressed in his 1975 Commission Report). Nevertheless, the resolution was not endorsed by the EPP and was never discussed in the parliament.⁸⁵ It was Spinelli’s draft treaty initiative that provided the opportunity to include and define the principle of subsidiarity.

The Draft Treaty establishing the European Union (DTEU) marks the crucial stage in the emergence of subsidiarity as a federal principle of a European Union. Altiero Spinelli launched this so-called “Crocodile initiative” in an open letter to MEPs in June 1980.⁸⁶ The initiative, named after a restaurant in Strasbourg where Spinelli and his political allies often met, claimed that the European Parliament had a duty to debate and submit reforms of the treaties establishing the EC directly to national parliaments. Spinelli wanted to avoid certain rejection of a draft treaty in the working groups of the Council of Ministers where past initiatives such as the Tindemans Report had been diluted.⁸⁷ The EPP was initially absent from discussions pertaining to the Crocodile initiative, claiming that: “The EPP group did not rise to the Crocodile initiative because in federal initiative and orthodoxy, it had greater seniority and continuity of thought than

⁸³ *Ibid.*

⁸⁴ “Die europäische Volkspartei. *Europa wählen* 28 Februar 1978 in Brüssel,” Cited from the CVCE [www.ena.lu/mce.cfm].

⁸⁵ The EPP group did not endorse the proposal. Richard Corbett, *The European Parliament’s Role in Closer EU Integration*, (New York: St Martin’s Press, 1998), p. 143.

⁸⁶ Paolo Patruno, “Crocodile leading out of blind alley,” *The Times*, 6 January 1981, p.4.

any other group.”⁸⁸ Yet as the second largest party in the parliament, their participation was essential to the success of the draft treaty. To bring the Christian Democrats on board, Spinelli offered to accept an amendment to the initiative stating that a full parliamentary committee would be created for the initiative instead of an *ad hoc* working group.⁸⁹

The Committee on Institutional Affairs was created to produce the DTEU. This Committee had the responsibility of drafting the DTEU and ensuring political support among the parties of the EP. Spinelli was elected chairman of the Committee while Gero Pfennig of the CDU and Ortensio Zecchino of the *Democrazia Cristiana Italiana* were elected as *rapporteurs* for social policy and institutional reform, respectively. According to Michael Burgess, Pfennig and Zecchino exasperated Spinelli with their attempts to include specific references to federalism in the treaty and by making last minute proposals, highlighting the tension that existed between Spinelli and the EPP.⁹⁰

In September 1983, the Committee agreed on a resolution “concerning the substance of the preliminary draft Treaty establishing the European Union.”⁹¹ The resolution provided the guiding principles from which the first draft of the DTEU would be written. In this text, subsidiarity was defined within the preamble and conceived along the personalist lines favoured by Christian Democrats. The proposal stated that “...the aim of the Union shall be to contribute, according the principle of subsidiarity: a) towards the stable economic development of its peoples...by strengthening the capacity of its Member States, its citizens and their undertakings to adapt their structures and activities

⁸⁷ Richard Corbett, *The European Parliament's Role in Closer EU Integration*, (New York: St Martin's Press, 1998), p. 145.

⁸⁸ Cited from *Ibid*, p.145.

⁸⁹ *Ibid*, p.145.

⁹⁰ Michael Burgess, *Federalism and European Union*, (1989), p.164-165.

⁹¹ Committee on Institutional Affairs, “Resolution Concerning the substance of the preliminary draft Treaty establishing the European Union,” *Official Journal of the European Communities*, No C 277/95, 17 October 1983, (Brussels: The European Commission, 1984).

to present-day economic change.”⁹² Seven other aims were also listed, including “promoting the human and harmonious development of society by endeavouring to attain full employment, roughly comparable living conditions in all the regions, and a high level of social justice,” and “enabling local and regional authorities to participate – in an appropriate manner – in the unification of Europe.”⁹³ These broad goals read as a Christian Democratic political program rather than as a constitutional article. The simultaneous applicability of subsidiarity to the social (“a high level of social justice”), the political (“enabling local and regional authorities to participate), and economic spheres is the hallmark of Christian Democratic subsidiarity.

Aided by a team of lawyers and linguists, the Committee on Institutional Affairs proceeded to incorporate the principles set out in the September resolution into a draft version of the DTEU to be submitted to the EP in January 1984. Accompanying this draft was a report explaining how it had taken shape. Interestingly enough, the report featured a narrow, federalist definition of subsidiarity consistent with the 1975 Commission Report on European Union. Subsidiarity “under which the Union may on the one hand take action only in those cases where its intervention is likely to be more beneficial than that of the Member States acting in isolation.”⁹⁴ The report also stated that in order to implement subsidiarity effectively, “a distinction has been made in the sphere of common action between exclusive competence... and concurrent competence...”⁹⁵ The broadly conceived principle of the EPP group was completely replaced by a narrow interpretation of the principle.

The suppression of the Christian Democratic proposal remains somewhat of a mystery. According to Burgess, Spinelli stated that the absence of Pfennig and Zecchino

⁹² *Ibid*, p. 97.

⁹³ *Ibid*, p. 97-98.

⁹⁴ Committee on Institutional Affairs, “Report on the preliminary draft Treaty establishing the European Union,” *European Parliament Working Documents*. 1-1200/83/B, 10 January 1984. p.8.

from the committee in the final stage of voting was “divine intervention,” since it enabled changes to the definition of subsidiarity.⁹⁶ However, during the ratification sessions in February 1984, Gero Pfennig showed his displeasure that Spinelli had altered the definition of subsidiarity and bypassed the compromises reached through long negotiations in committee.⁹⁷ According to Pfennig, Spinelli deliberately convened a committee meeting in his absence to change the principle. Spinelli’s triumph over Pfennig and Zecchino ensured a definition of subsidiarity in the DTEU as applying exclusively to the exercise of concurrent competences, analogous to the 1975 Commission Report.

The final version of the DTEU retained the same notion of subsidiarity as expressed in the Committee’s report of January 1984. The broad Christian Democratic definition of subsidiarity formulated in September 1983 had been entirely replaced. Subsidiarity was explicitly incorporated only in the preamble of the DTEU. The preamble speaks of “...entrusting common institutions, in accordance with the principle of subsidiarity, only with those powers required to successfully complete the tasks that they may carry out more satisfactorily than the states acting independently.”⁹⁸ All other references to subsidiarity were removed from the body of the DTEU. Even the section on concurrent competences no longer referred to the principle. Article 12(2) in Part II “Objectives, Methods of Action and Competences of the Union,” of the DTEU defined the parameters for Union action in the field of concurrent competence:

Where the Treaty confers concurrent competence on the Union, the Member States shall continue to act so long as the Union has not legislated. The Union shall only act to carry out those tasks which may be undertaken more effectively in common than by the Member States acting separately, in

⁹⁵ *Ibid*, p.9.

⁹⁶ Spinelli gives no reason for their absence. Michael Burgess, *Federalism and European Union*, (1989), p.164-165.

⁹⁷ *Debates of the European Parliament*, No 1-309, 14 February 1984, p.100.

⁹⁸ “Draft Treaty establishing the European Union,” *European Parliament Working Documents*, 1-1200/83/A, 19 December 1983. p.8.

particular those whose execution requires action by the Union because of their dimension or effects extend beyond national frontiers....⁹⁹

The list of concurrent competences included consumer protection, environmental policy, education, research, cultural policy, information policy and the European Monetary System.¹⁰⁰ Subsidiarity as defined in article 12(2) of the DTEU is a federal principle, bereft of any link to its personalist or Catholic origins.

By applying subsidiarity solely to the sphere of concurrent competence, Spinelli had successfully blocked the major EPP influence on the draft. Spinelli not only narrowed the principle; he also enlarged the scope of Union competence in article 56 to include health and social policy. In the draft treaty, article 56 gave the Union the right to legislate extensively in labour law, working conditions, equality between men and women, social security and welfare, the prevention of addiction, and work hygiene.¹⁰¹ Gero Pfennig vociferously opposed the extension of Community competence in health and social policy. Pfennig attempted in vain to amend Spinelli's last minute change to the draft, by inserting a specific reference to subsidiarity in article 56. He argued that "if this amendment is not accepted the entire social and health policy, including therefore matters which do not require harmonization or which cannot be harmonized, would become the competence of the Union, contrary to the resolution and to the principle of subsidiarity."¹⁰² However, Pfennig's amendment did not have enough support and was not carried.¹⁰³

The DTEU linked federalist reforms and an increase in Community powers to a conception of subsidiarity as a principle that protected national spheres of action from a more powerful European Union. The EPP had not succeeded in including their broad

⁹⁹ *Ibid*, p.34.

¹⁰⁰ *Ibid*, pp. 25-32.

¹⁰¹ "Draft Treaty establishing the European Union." *European Parliament Working Documents*. 1-1200/83/A, 19 December 1983, p.30.

¹⁰² *Debates of the European Parliament*, No 1-309, 14 February 1984, p.100.

definition of the principle into the DTEU. Spinelli's narrow federal principle of subsidiarity would hence dominate the debate over European Union. It is critical to note that in an interview with scholar Michael Burgess after the drafting of the DTEU, Spinelli stated that he had opposed the inclusion of subsidiarity in the draft treaty, but had been forced to accept it because of pressure from Christian Democrats.¹⁰⁴ Yet Spinelli voluntarily employed the term nine years earlier, in his 1975 Commission report. How is this inconsistency to be explained?

Spinelli's definition of subsidiarity in the 1975 Commission report on European Union reveals a narrow constitutional mechanism similar to Article 72. According to Ken Endo, it was Spinelli's chief of staff, Riccardo Perissich, who chaired the working group charged with writing the report. In an interview with Ken Endo, Perissich stated that Spinelli took an active role in writing the report, and it was due to his influence that subsidiarity was included in it.¹⁰⁵ Perissich asserted that it was Spinelli's idea to include subsidiarity in the report and that he had been influenced by West German federalism.¹⁰⁶ The hypothesis advanced here is that Spinelli invoked the term, aware of its roots in the Catholic social doctrine, in order to appeal to Tindemans and other prominent Christian Democrats. Subsidiarity was employed because the Commission Report was submitted to Leo Tindemans, who had been charged with submitting a report on European Union to an EC summit in 1976. Furthermore, in the mid 1970s, Christian Democrats held majorities in the parliaments of Belgium, Italy and Ireland and strong minorities in West Germany, the Netherlands and Luxembourg.¹⁰⁷ Christian Democratic and conservative parties were

¹⁰³ *Ibid.*, p.101.

¹⁰⁴ Michael Burgess interviewed Spinelli 15 September 1983 at Strasbourg. Cited from Michael Burgess, *Federalism and European Union* (2000), pp. 230 and 251.

¹⁰⁵ Interview with Riccardo Perissich, cited from Ken Endo, "The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors," *Hokkaido Law Review*, p. 605.

¹⁰⁶ *Ibid.*

¹⁰⁷ For data on the strength of Christian Democrats in Europe in 1972-1974, see Theo Loch and Gerhard Eickhorn, eds., *Zusammenarbeit des Parteien in Westeuropa*, (Bonn: Institute for European Politics, 1976), pp. 399-403.

the most powerful political movement in the EC, accounting for 39.30% of national parliamentary seats.¹⁰⁸ It is entirely reasonable to assume that Spinelli wanted to mobilize Christian Democratic support for his constituent approach to a federal Europe Union embodied in the 1975 Commission report.

While Spinelli's political pragmatism led him to endorse subsidiarity in 1975, it also led him to oppose a Christian democratic definition of the principle in the DTEU. By ensuring that a narrow, federalist definition of subsidiarity on the model of the 1975 Commission Report was incorporated in the DTEU, Spinelli was able to advance his own vision of an American-inspired European federation. What he wanted was a concrete document to present to national parliaments for negotiations, rather than a set of broad principles of European governance. The consequence of his definition of subsidiarity, however, was a fundamental and enduring transformation of the concept.

¹⁰⁸ *Ibid*, p.398.

Conclusion

In the period 1975-1984, the Commission and the European Parliament advanced proposals for a European Union that invoked the principle of subsidiarity. Within these proposals, whether advanced by federalists or Christian Democrats, there was an understanding that subsidiarity would become an important principle of European Union. Pfennig and Zecchino had aimed to have a more comprehensive definition of the principle in the DTEU that included the participation of regions, municipalities and labour unions. Spinelli opted for a narrow federal article, applicable only to the Member States and the Union. His hostility to the inclusion of subsidiarity was rooted in his dislike for the “ideological” federalism of Christian Democrats. Spinelli played a central role in transforming subsidiarity by removing it from the context of Christian Democratic theory. Spinelli’s victory was to define subsidiarity as a non-ideological federal principle that was consistent with his approach to creating a European federation.

This transformation of subsidiarity in its DTEU definition did not extinguish intergovernmental or Christian Democratic interpretations of the principle. The DTEU validated Spinelli’s interpretation of subsidiarity as a federal principle regulating the exercise of concurrent competences. Yet Christian Democrats maintained their understanding of subsidiarity as a broad philosophical principle. For example, as European leaders were debating the meaning and applicability of subsidiarity, enshrined as Art. 3(B) in the Treaty on European Union in 1992, the EPP was drafting an election manifesto with specific references to that same principle. In the EPP 1992 *Basic Program*, subsidiarity was defined under the heading “Our conception of man”:

The principle of subsidiarity means that power must be exercised at the level which corresponds to the requirements of solidarity, effectiveness and the participation of citizens, in other words where it is both most effective and closest to the individual. Tasks that can be performed at a lower level must not be transferred to a higher level. However, the principle of subsidiarity also means that the higher level must help the lower level in the performance of its

tasks. This principle is based on the premise that society can be constructed in freedom. The public authorities must therefore respect human rights and fundamental freedoms, recognize the relative autonomy of social groups and not take the place of private initiative unless the latter is weak or non-existent.¹⁰⁹

The EPP document equally referred to the newly minted EU principle of subsidiarity as providing a mechanism for organizing the distribution of powers between the EU, the member states and sub-national regions.¹¹⁰ The EPP definition of subsidiarity reveals that the Christian Democratic vision of the concept persisted throughout the process of its constitutionalization.

¹⁰⁹ European People's Party, "Basic Program," [<http://www.eppe.org/Default.asp?SHORTCUT=174>], November, 1992.

¹¹⁰ *Ibid.*

Chapter IV: European Visions in Collision Part II, 1988-1992

The 1984 Draft Treaty on European Union, which first defined subsidiarity as a constitutional federal principle, was shelved after the member states refused to use it as a basis for negotiations to create a federal European state. Less than a decade later, however, subsidiarity was officially enshrined in European law in the 1992 Treaty on European Union (Maastricht Treaty). In the intervening period three important changes took place that transformed the debate over subsidiarity and European Union. First, new leadership in the member states and the Commission stimulated a further round of debate on the aims of integration. Second, acceleration of the integration process led to a renewed commitment to the establishment of a single market (enshrined in the 1986 Single European Act) and plans for economic and monetary union (EMU). Finally, the changes in the Communist bloc that ultimately brought the collapse of Communism in Eastern Europe added a dimension of practical urgency to plans for European integration which might otherwise have foundered (as happened in the 1970s).

The emergence of a new group of Western European leaders between 1979 and 1985 played a significant role in this period of ferment, in part by intensifying conflicting positions in the debate over integration. Margaret Thatcher, a conservative Euro-skeptic who served as Britain's Prime Minister between 1979 and 1990, resisted all attempts to deepen political integration. Helmut Kohl, who was Chancellor of Germany from 1982 to 1998, returned Christian Democrats to power after more than a decade in opposition. Kohl emerged as the leading voice for the creation of a federal Europe, and along with François Mitterrand, French President from 1981 to 1995, resurrected the Franco-German motor of European integration. A crucial result of this new Franco-German coalition was the 1985 appointment of Jacques Delors to the post of Commission President. Delors, who arguably ranks as the Commission's most dynamic President ever, subscribed to the

Christian Democratic gradualist approach to building Europe, but his ultimate goal was a federal union. Delors played a central role in developing the proposals that led to the 1986 Single European Act (SEA) and the 1989 agreement that established a formal commitment to achieve Economic and Monetary Union (EMU).

The SEA and the agreement on EMU addressed predominantly economic issues, but the need to strengthen Community institutions to deal with these new responsibilities, coupled with German re-unification after the collapse of Communist states in 1989, intensified interest in political integration and the goal of European Union. This renewed interest, which culminated in the 1992 Maastricht Treaty, was again accompanied by struggles over subsidiarity. The forces and debates that emerged around this principle led to a re-expansion of the definition and meaning of subsidiarity relative to the European Parliament's draft treaty of 1984. The turning point in this transition occurred after the Danish rejection of the TEU in early 1992, in the context of negotiations over improving the democratic legitimacy of the Community that culminated in the Edinburgh agreement.

To lay the groundwork for analyzing these negotiations, the first part of the chapter examines the late 1980s, when Jacques Delors' growing use of the term brought the principle of subsidiarity again into focus. Federalists in the European Parliament and in Germany, intergovernmentalists like Thatcher in Great Britain, regionalists in France, Scotland and Germany, and six Christian Democratic heads of state all struggled to define the proper role of subsidiarity in a contested European Union. The second section of the chapter examines the 1991 Maastricht negotiations that produced the Treaty on European Union and the compromises reached in defining subsidiarity through article 3(B). The final section demonstrates how the term subsidiarity was ultimately concretized through an agreement at a summit in Edinburgh in 1992, following the initial rejection of the Maastricht Treaty by Danish voters.

I Delors The Christian Democratic Catalyst

Jacques Delors became Commission President in January 1985 on the eve of a prolonged commitment to European integration that culminated in the ratification of the Maastricht treaty in 1993. He is arguably the most effective Commission President in the history of European integration. Politically, Delors, who was a member of the French socialist party, has been described as a “left-of-center technocrat.”¹ In 1979, Delors was elected to the European Parliament on the socialist ticket, but left in 1981 when François Mitterrand appointed him to the post of minister of finance in the French government, a position he held until he became Commission President. An understanding of Delors’ political orientation is essential to demonstrate his understanding of subsidiarity as a Christian Democratic principle. In the framing of the debate over subsidiarity, Delors was the catalyst for the emergence of the nationalist and regionalist interpretations of subsidiarity. More importantly, he represented the persistence of the Christian Democratic conception of the principle. Delors applied subsidiarity to express many features of the Christian Democratic vision of European federation, including personalist appeals for social policy, and regional participation in a European Union. For Delors, it was not necessary to codify subsidiarity in law since it already served as a guiding principle for Commission governance by 1990.²

Although Delors was a member of the Socialist party in France, his background and political philosophy were essentially Christian Democratic.³ Born in Paris 1925, Delors joined a progressive Catholic youth movement inspired by Emmanuel Mounier’s

¹ Richard McAllister, *From EC to EU*, (London: Routledge, 1997), p. 162.

² “ECC: European Commission and Irish Presidency prepare for first six months of 1990,” in *European Report*, 1 January 1990, p.3.

³ Delors joined the Socialist party because the Christian Democratic party in France, the MPR, was too right-wing. George Ross, *Jacques Delors*, (New York: Oxford University Press, 1995), p.16.

personalism.⁴ Years later, in a speech given in 1989, Delors confirmed his belief in personalism and the Christian Democratic concept of subsidiarity:

For my part, I have many opportunities of using Federalism as a method, but I include in it the subsidiarity principle. I see in it the inspiration needed to reconcile what appears to many as irreconcilable: the emergence of a united Europe and fidelity to our nation, to our motherland;...and the vital imperative of preserving our nations and our regions;... the decentralized organization of responsibilities, in order never to entrust to a bigger structure what can be better implemented by a smaller one. This is precisely what is meant by the subsidiarity principle. As an advocate of personalism also, and as a disciple of Emmanuel Mounier whose influence will, I am sure, become once again very important as Europeans will notably become aware of the impasses resulting from wholesale individualism, just as they have been rejecting, for the last few years, collectivism and its lesser form, i.e. the State as tutor of every individual and every single thing.⁵

Delors leaves no doubt that he believed in the Christian Democratic principle of subsidiarity based on Catholic social teachings. The breadth of the principle in his speech included regionalism, federalism, and personalism.

From the beginning of his Presidency in 1985, Jacques Delors concentrated his energies on the completion of the single market by 1992, which became known as the “1992 program.” Taking advantage of widespread support among the member states to complete the single market, Jacques Delors presented the “White Paper” to the Council of Ministers on 14 June 1985 for discussion at the Milan European Council meeting at the end of the month.⁶ The Commission’s “White Paper” listed 310 Commission proposals requiring member state decisions to achieve a fully integrated internal market and it covered policy fields such competition, research and development, consumer protection, social affairs and EMU. These proposals were listed according to a detailed timetable,

⁴ *Ibid.*

⁵ Jacques Delors, “Address given by Jacques Delors, Bruges, October 17, 1989,” in *Bulletin of the European Communities*, no. 10, October 1989, p.118.

⁶⁶ The “White Paper,” or “Cockfield Paper” was produced by Lord Arthur Cockfield, Commissioner for the internal market, who was ironically appointed by Margaret Thatcher who accused him of going native at the Commission. Margaret Thatcher, *The Downing Street Years*, (London: HarperPerennial, 1995), p.547.

ending in 1992.⁷ The completion of the single market, however, raised broader issues outlined by the Commission's program. Completing the single market required an extension of Community competences into new areas like regional, environmental and social policy.⁸ More importantly, making a reality of the Commission's program required changes to the Community's legislative process.⁹ Adopting the Commission's 1992 goal of the achieving a single market, and recognizing the need for institutional reform to achieve that goal, the 1985 Milan Council convened an intergovernmental conference that produced the Single European Act (SEA) in 1986.

One of the most significant features of the Single European Act was the reform of the decision-taking procedures in the Council of Ministers.¹⁰ The 1966 "Luxembourg Compromise," gave the member states a veto over any measure that affected their vital interests, meaning that unanimity in the Council was usually required to pass any rule, regulation or directive.¹¹ In order to achieve the single market by 1992, the member states agreed to renounce the Luxembourg Compromise.¹² The SEA established that measures for the completion of the internal market would be subject to qualified majority voting in the Council of Ministers (QMV).¹³ QMV insured that no single member state, nor a combination of the two largest, could defeat a proposed law in the Council of

⁷ For the timetable and proposals, see Commission of the European Communities, "Completing the Internal Market," COM (85) Final, (Brussels, 14 June 1985), pp. 62-92.

⁸ *Ibid.*

⁹ The Dooge Report, which was written by an ad hoc committee of the Council of Ministers, endorsed the single market and stressed that the decision-making processes in the Council would have to be reformed in order to achieve total economic integration. See, the Ad hoc Committee on Institutional Affairs, "Report to the European Council, Brussels, 29-30, March 1985," (Brussels, 1985), p. 26.

¹⁰ In the EC, the Commission has the right to initiate legislation. The Council of Ministers has the power accept, reject and amend legislation. While the Commission insures compliance with Community law, all final decisions on legislation rest with the Council. See John McCormick, *The European Union*, (Boulder: Westview, 1999), p. 67.

¹¹ For the text of the Luxembourg Compromise, see "Final Communiqué of the extraordinary session of the Council, January 1966," in *Bulletin of the European Economic Community*, no. 3, (March 1966), pp.5-11.

¹² In 1984, Mitterrand renounced the use of the Luxembourg Compromise in a speech to the European Parliament. "Speech by François Mitterrand to the European Parliament," in *Official Journal of the European Communities*, 24 May 1984, no. 1-314, p. 260.

¹³ "Conclusions of the Luxembourg European Council," in *Bulletin of the European Communities*, no. 11, (November 1985), p.10.

Ministers. The use of QMV after the ratification of the SEA in 1987 permitted the rapid passage of legislation required to complete the single market. The extension of Community competences and QMV in the Council, however, raised concerns among the West German *Länder*, for whom the SEA represented a loss of constitution powers.

Regionalism and Subsidiarity

Delors first expressly invoked the principle of subsidiarity at a meeting with the Ministers-President of the German *Länder* in 1988 in relation to the ratification of the Single European Act (SEA).¹⁴ The *Länder* were concerned with the extension of Community competences into areas of their exclusive competence, namely education and culture.¹⁵ The issue concerned Articles 24(1) and 32(2) of the German Basic Law. Article 24(1) gave the Federal government the right to transfer its powers and those of the *Länder* to international organizations while Article 32(2) stipulated that the federal government had to consult the *Länder* if an international treaty affected their special interests.¹⁶ Many of the Community's early education policies, like LINGUA, violated the *Länder*'s constitutionally protected competences.¹⁷ The difficulty was that although the federal government permitted the *Länder* to send "observers" to the negotiations at the Council of Ministers, qualified majority voting (QMV) in the Council of Ministers bound Bonn's

¹⁴ Almost every account of subsidiarity within a survey of European integration during this period cites the Single European Act as the first time subsidiarity was codified in European law in article 130(R) on environmental legislation. Delors is usually implied to have been responsible for this "subsidiarity" article. However, Jonathan Golub has correctly demonstrated that Delors opposed the wording of article 130(R). As Golub demonstrates, it was the British delegation that was responsible for the wording of the article. See Jonathan Golub, "Sovereignty and Subsidiarity," *Political Studies*, 44 (1996), pp.689.

¹⁵ Micheal Keating, and Barry Jones, *Regions in the European Community*, (Oxford: Clarendon Press, 1985), p.181.

¹⁶ Marc Wilke and Helen Wallace, "Subsidiarity: Approaches to Power-Sharing in the European Community," RIIA Discussion Paper No. 27. (London: RIIA, 1990), p. 34-35.

¹⁷ One area where the *Länder* felt that the EC was infringing on its competence was in the area of public broadcasting. In 1961, the German constitutional court ruled that the right to legislate in broadcasting and create public broadcasting corporations belonged to the *Länder* and not to the federal government. In 1984, however, the Commission issued a directive, "Television without Frontiers" to create a single market for Television. Bavaria appealed to the Federal government in Bonn and to the Constitutional court but was unable to have the EC directive declared unconstitutional. "The Basic Law of the Federal Republic of Germany," in *Source Materials on the Government and Politics of Germany*, John Lane and James Pollock, eds., (Ann Arbor: Wahrs Publishing, 1964), pp. 14, 16., "'Television Decision' of the Federal

decisions.¹⁸ The ratification of the SEA in 1987, however, provided an opportunity for the *Länder* to gain more influence vis-à-vis the federal government.¹⁹ Since the assent of the *Bundestag*, the upper house representing the *Länder*, was required to ratify the SEA, assurances from Delors and Chancellor Kohl about respecting the *Länder's* autonomy in education and culture were necessary to ensure their continued support in the process of European integration.

When Delors visited Bonn in May 1988, the *Länder* expressed their concerns regarding the loss of constitutionally protected powers to the federal government and to the EC.²⁰ Max Streibl, the Prime Minister of Bavaria and leader of the Christian Social Union, criticized Delors for the Commission's infringements on *Länder* competences in education and culture.²¹ The *Länder* joined Streibl in calling on Delors to recognize the principle of subsidiarity and the autonomy of regions in the EC.²² Delors responded that the Commission did not want to interfere with *Länder* competences, but merely supplement them and he invited closer cooperation between the Commission and the *Länder*.²³ From the German point of view, Delors was advocating German regionalism according to the Christian Democratic concept of subsidiarity. From a political point of view, it was a brilliant speech enlisting German support in Delors' attempt to enlarge Community competences.²⁴ More importantly, it demonstrates how subsidiarity became

Constitutional Court," in *Politics and Government in Germany, 1944-1994: Basic Documents*, Carl-Christoph Schwitzer et al. eds., (Oxford: Berghahn Books, 1995), pp. 367-369.

¹⁸ The *Länder*, who had no direct representation in the EC, attempted to resolve the constitutional issue in negotiations with the Federal government. The negotiations lasted from 1977 to 1980 and the *Länder* were awarded a cooperation procedure that enabled them a limited influence on the Bund's position in EC decisions. However, this policy was ineffectual since the *Länder* could only influence federal policy in the institutions of the EC and their positions were not binding on the federal government Michael Keating, and Barry Jones. *Regions in the European Community*, p.181.

¹⁹ Wolfgang Renzsch, "Recent Attitudes of the German *Länder* Towards European Integration," in *Federal-Type Solutions and European Integration*, C.Lloyd Brown- John.ed., (Boston: University Press of America, 1995), p.377.

²⁰ Guenther Schaefer, "The Rise and Fall of Subsidiarity," *Futures*, 23 no.7, (1991), p.689.

²¹ Wolfgang Renzsch, "Recent Attitudes of the German *Länder* Towards European Integration," p.386.

²² *Ibid.*

²³ *Ibid.*, p.387.

²⁴ *Ibid.*

tied to the concept of a “Europe of the Regions” through the agency of Christian Democrats.

The “Europe of the Regions” was a vision of European Union that until 1988 had not employed subsidiarity to characterize its goal of devolving powers to regional governments. While the *Länder* were the most powerful sub-national governments in the EC, the regionalist movement was not a uniquely German phenomenon. In 1985, the Council of Europe drafted the “European Charter of Local Self-Government.”²⁵ Article 4(2), stated that “local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.”²⁶ This expression of regional devolution emphasized the autonomy of local and regional governments in matters where they were able and competent to act. It was not until CSU leader and Minister President Max Streibl characterized regional devolution as subsidiarity that the term spread to other regional movements, for example, in France and in Scotland.²⁷

The regionalist interpretation of subsidiarity envisaged a federal European Union that took into account the sub-national demands for recognition at the European level. In the *Länder*’s case, the principle would limit Commission competences in areas guaranteed to the *Länder* by the German constitution. In the words of Bavarian Education Minister Dr. Kurt Schelter, “only in a federally-structured Europe can the principle of subsidiarity develop its full potential as a maximizer of activity and only thus

²⁵ The Council of Europe, an intergovernmental organization, was formed in 1949 to foster co-operation between its member states in the defense of democracy and social and economic progress. The member states of the Council of Europe included almost every European country. In the 1990s Eastern European Countries joined the Council of Europe.

²⁶ It is significant to note that Great Britain did not sign this Charter because of regions within its own borders that it did not want to empower. “European Charter of Local Self-Government,” in *Subsidiarity within the European Community*, Andrew Duff ed., (London: Federal Trust, 1993), p.131.

²⁷ For French regionalists invoking subsidiarity see, for example, Thierry Brehier, “Super-préfets et communauté de communes,” *Le Monde*, 7 February 1990, p.7., Thierry Brehier, “Un colloque à Rennes sur le bilan de huit années de décentralisation,” *Le Monde*, 4 October 1990, p.9., Thierry Brehier, “Les états généraux de l’opposition sur la décentralisation,” *Le Monde*, 22 May 1990, p.9.

will diversity within a unified Europe be retained.”²⁸ Within a federal Europe, Schelter believed that regional governments such as the *Länder* would be given a voice in the decision making process. The German *Länder*, due to their powerful position within the Federal Republic of Germany, played a leading role in putting regional acknowledgement on the agenda at the Maastricht negotiations. The *Länder* exerted pressure on Kohl’s government to ensure that questions of sub-national levels of government were addressed through the creation of a Committee of the Regions.

Economic and Monetary Union, the Social Charter and Thatcher

The Christian Democratic definition of subsidiarity, which encompassed the concerns of regionalists, was present in two of Delors’ major initiatives: Economic and Monetary Union and the Social Charter. Immediately after the Single European Act went into effect in 1987, Delors launched a series of proposals that sought, among other aims, to extend Community competence in economic and social policy to complete the internal market.²⁹ At the June 1988 European Council meeting in Hanover, the heads of government invited the Commission to produce a report on European Monetary Union (EMU).³⁰ They charged Delors with “studying and proposing concrete stages leading towards this Union.”³¹ The report was to be submitted to the Madrid European Council in June 1989, which was to decide how to achieve EMU. The Hanover summit also underlined the importance of the social dimension in completing the internal market.³² The Commission was asked to prepare “a comparative study about rules applied in the

²⁸ Cited from Marc Wilke and Helen Wallace. “Subsidiarity: Approaches to Power-Sharing in the European Community,” p. 34-35.

²⁹ Also known as the Delors Package. Delors submitted these ideas in a White Paper to the European Council. Richard Mcallister, *From EC to EU*, pp. 198-203.

³⁰ EMU had been a goal of the EC since the early 1970s, although repeated attempts to get it off the ground had failed. The SEA however, contained a declaration for the member states to examine the matter. *Ibid.*

³¹ “Report of Economic and Monetary Union in the European Community,” April 17, 1989, [http://aei.pitt.edu/archive/00001007/01/monetary_delors.pdf].

³² “Hanover European Council: Conclusions of the Presidency,” in *Bulletin of the European Communities*, no. 6/1988, p. 165.

various Member States concerning working conditions.”³³ In September 1988, the Commission signaled that the foundation of the social dimension of the internal market would be a European Charter of Social Rights.³⁴

The British Prime Minister, Margaret Thatcher, saw these initiatives as the harbinger of a European super-state. Thatcher’s anti-integrationist stance was directly related to her distrust of what she saw as supranational technocrats like Delors. In her view, Delors had “slipped his leash” and was attempting to destroy the sovereignty of the member states.³⁵ Thatcher’s vision of Europe recalls Dahrendorf’s criticisms of the Commission in the early 1970s.³⁶ Delors and the Commission, so the argument went, had a mania for harmonization and uniformity, which sought to centralize power in technocratic, illiberal institutions.

Opposition from Thatcher to federalist visions of European integration was most clearly expressed in her speech at the College of Europe in Bruges, Belgium in September 1988. Thatcher’s Bruges speech was written in response to what she saw as the growing bureaucratization of an expanding Commission into social policy and EMU.³⁷ The Bruges speech was significant because it was also one of the most succinct expositions of the British vision of European Union. One of the main points of the speech was the need to retain national sovereignty rather than its transfer it to “a wider but as yet theoretical European nationhood.”³⁸ Thatcher’s statement that the EC was not the only manifestation of a European identity closely echoed Ralf Dahrendorf’s earlier criticism that the Europe of the Treaty of Rome was not the only means to further the cause of

³³ *Ibid.*

³⁴ Commission of the European Communities, “Social Dimension of the Internal Market: Commission Working Paper,” SEC (88) no. 1148 final, Brussels, 14 September 1988, p. 68.

³⁵ Margaret Thatcher, *The Downing Street Years*, (London: HarperCollins, 1995), p. 742.

³⁶ Ralf Dahrendorf, “A New Goal for Europe,” in *European Integration: Selected Readings*, Michael Hodges ed., (London: Penguin Books, 1972), p. 82.

³⁷ Margaret Thatcher, *The Downing Street Years*, p.744.

³⁸ *Ibid.*, p.745

European integration.³⁹ Thatcher believed that European integration and identity were best served through “willing and active cooperation between independent sovereign states” to build a “successful European Community.”⁴⁰ Significantly, Thatcher rejected the idea that a European Union could be modeled on the U.S., because of strong national identities in the member states. At the end of the speech, she warned that, although success for the future of Europe “depends on dispersing power from the center, some in the Community seem to want to move in the opposite direction.”⁴¹ Although subsidiarity was not a part of Thatcher’s political vocabulary at the time of her Bruges speech in 1988, the speech gave an indication of how she would interpret the principle a year later. After creating a minor tempest amongst federalists because of her views on integration, Thatcher and the Conservative government began advancing a definition of subsidiarity that sharply criticized the ambitious Delors proposals for EMU and a Social Charter.

Despite Thatcher’s attacks on Delors’ federalist approach to building a European Union, the Madrid European Council, held 26-27 June 1989, made momentous decisions on Economic and Monetary Union and the Social Charter. On 17 April 1989, the Delors Report on EMU was submitted to the Council in preparation for the Madrid summit. On 12 June, Delors presented a draft of a Charter of Fundamental Social Rights to the Council of Ministers for social affairs.⁴² These reports explicitly invoked subsidiarity as a guideline for the division of competences between European, national, and regional levels of governance in monetary policy and in social policy. The use of subsidiarity in these reports revealed Delors’ commitment to the broad Christian Democratic understanding of the subsidiarity.

³⁹ Ralf Dahrendorf. “A New Goal for Europe,” p. 82., and Margaret Thatcher. “A Family of Nations,” in *The European Union: Readings on the Theory and Practice of European Integration*, Brent Nelsen and Alexander Stubb eds., (Boulder: L.Rienner, 1994), pp.44-45.

⁴⁰ *Ibid.* p.46.

⁴¹ *Ibid.*

⁴² “The European Council: Madrid, 26 and 27 June,” in *Bulletin of the European Communities*, no 6/1989, p. 10.

The Delors Report on EMU concluded that free trade, free movement of capital, fixed exchange rates and independent monetary policies were an “inconsistent quartet,” and moved to support a single currency as the only viable solution. The creation of a single currency meant that the Community would need new powers and institutions to regulate and carry out monetary policy for the member states of the Union. The Delors Report explicitly called for the respect of regional autonomy according to subsidiarity to balance the new powers given to the Community in macro-economic and monetary policy. Paragraph 20 of the Delors Report invoked subsidiarity to outline the division of powers that would result from a common monetary policy:

An essential element in defining the appropriate balance of power within the Community would be adherence to the ‘principle of subsidiarity’, according to which functions of higher levels of government should be as limited as possible and should be subsidiary to those of lower levels....All policy functions which could be carried out at national (and regional and local) levels without adverse repercussions on the cohesion and functioning of the [EMU] would remain within the competence of the member countries.⁴³

The Community, according to the report, should be able to act in any area where the economic unity of the EU was endangered by regional or national actions.⁴⁴ However, Delors stressed that, according to subsidiarity, the Community’s powers were to be limited to what was strictly necessary to ensure cohesion. Central to the report’s concept of the balance of power within the Community was the need to recognize the competence of regional and local governments in economic policy as well as national governments.

The Social Charter was based on proposals from the European Parliament, the Council of Europe and the Organization for Economic Cooperation and Development. It contained provisions on living and working conditions, vocational training, and freedom

⁴³ Committee for the study of Economic and Monetary Union, “Report of Economic and Monetary Union in the European Community,” April 17, 1989, Brussels, p. 14.

⁴⁴ In 1949, the West German Parliamentary Council had added a similar clause in order to dilute limitations on federal legislation in areas of concurrent competence. See Chapter II.

of movement as well as protection for children, the elderly and the disabled.⁴⁵

Furthermore, the Social Charter partly served to calm fears about the possibility of “social dumping” in the single market.⁴⁶ As in the Delors Report on EMU, the Charter balanced new Community powers with the requirement to respect the autonomy of national and regional governments. Subsidiarity was invoked in the preamble of the Charter to establish the method of implementing Community legislation in social policy:

Whereas responsibility for the initiatives to be taken with regard to the implementation of these social rights, which must be guided by the principle of subsidiarity, lies, according to the circumstances, with the member states or their constituent parts or with the [EC]; whereas this implementation requires the involvement of the two sides of industry;⁴⁷

Subsidiarity again protected the member states and regional governments from overzealous Community action in social policy. Even more striking was the requirement of collective bargaining which stood in direct contrast to Margaret Thatcher’s anti-labour stance in the UK but which was consistent with Christian Democratic notions of co-determination in a social market economy.

The 1989 Madrid Council confirmed a federalist approach to building European Union. The Council endorsed the Delors Report on EMU and called for the convocation of an Intergovernmental Conference (IGC) beginning in late 1990 to determine the stages needed to achieve a single currency.⁴⁸ In addition, the Council discussed the Commission’s draft of the Social Charter. The Council noted that “there was general consensus on the fundamental rights set out in the preliminary draft Charter and that they constituted the social identity of the Community.”⁴⁹ Furthermore, the Council declared its

⁴⁵ Commission of the European Communities, “Draft of the Community Charter of Fundamental Social Rights,” COM (89) 248 Final, 30 May 1989, Brussels, p. 2.

⁴⁶ Social Dumping: The idea that businesses would relocate to countries in the EU with less stringent labour laws, union policies and other social rights.

⁴⁷ Commission of the European Communities, “Draft of the Community Charter of Fundamental Social Rights,” p. 5.

⁴⁸ “The European Council: Madrid, 26 and 27 June,” in *Bulletin of the European Communities*, no 6/1989, p. 11.

⁴⁹ *Ibid*, 13.

intent to adopt the Charter as soon as possible. It is important to note that in relation to both the Social Charter and the Delors Report, the Council declared that any extension of Community competence must “respect” or “comply with” the principle of subsidiarity.⁵⁰

Both the Delors Report on EMU and the Social Charter were affronts to Thatcher’s vision of Europe. The debate in the European Council over the Social Charter in 1989 prompted Thatcher’s “discovery” of subsidiarity.⁵¹ She cited a failure to respect the principle of subsidiarity as one reason why the UK “felt unable to sign” the Social Charter when a final version was presented to the December 1989 Strasbourg Council.⁵² The British government soon began to discuss the principle as a means of restricting the powers of the Commission. Sir Christopher Prout, a Conservative Member of the Foreign Affairs Committee, defined the principle of subsidiarity within the national interest:

All that the concept of subsidiarity boils down to is an expression of the national interest of member states. In other words, if a qualified majority of member states want to adopt a piece of legislation which has the effect of transferring sovereign powers from national governments to the European Community institutions, that is at one and the same time an expression of national interest...and a statement about subsidiarity.⁵³

Sir Prout defined the notion of subsidiarity as protecting the national prerogative, revealing a total ignorance of the Christian Democratic understanding of the principle. Thatcher’s interest in rolling back the Delors proposals using subsidiarity demonstrated that her definition of the principle was entirely derived from the debate over European integration.

While Thatcher’s government opposed the creation of a single currency and the Social Charter, the European Parliament reacted in a wholly different manner to the

⁵⁰ *Ibid*, 11 and 13.

⁵¹ See “Summit will decide pace to European unity,” in *Agra Europe*, 27 April 1990, p. P.

⁵² While the Social Charter in the end only constituted a “solemn declaration” and had no legal bearing, she opposed it as “German protectionism,” and “socialism through the back door.” Margaret Thatcher. *The Downing Street Years*, p.752., John Hughes, *The Social Charter and the Single European Market*, (Bertrand Russell House: Nottingham, 1991), p.viii, Michael White, “Eyewitness: Dama de jaw-jaw all war-war,” *The Guardian*, 27 June 1989, p.4., and “European Commission: Dictionary Time,” *The Economist*, 9 December 1989, p. 52.

decision to convene an IGC on EMU. On 27 June 1989, just after the Madrid Council, the European Parliament called for a parallel intergovernmental conference on political union. Many MEPs charged that EMU and the Social Charter contained nothing in the way of institutional reform and that any extension of Community competence required stronger and more democratic EC institutions.⁵⁴ Inspired by Spinelli's DTEU initiative, the Parliament decided to draft new proposals that were supposed to serve as the basis for negotiations between the member states at an IGC on political union. The so-called Martin reports were based on the *acquis communautaire*, the DTEU, national parliamentary opinions on the draft treaty and the experience of operating the Single European Act.⁵⁵ Work on the Martin reports began in November 1989 and the first proposal was completed 14 March 1990 (Martin I). Between March and July 1990, these proposals were "translated" into the legal language of the treaties establishing the European Community (Martin II). Richard Corbett, a former MEP, notes that the Martin Reports were concerned with three broad areas of institutional reform: the extension of Community competence, increased efficiency of Community decision-taking procedures and enlarging the Community's democratic features.⁵⁶ Subsidiarity appeared alongside proposals for enlarging Community competences as it had in the DTEU. A separate Committee, chaired by former French President Giscard d'Estaing was charged with formally defining the principle.

Giscard d'Estaing, French President from 1974 to 1981, was elected to the EP in 1989 and was a central figure in the definition of subsidiarity in the Treaty on European Union. D'Estaing wanted the Presidency of the parliament, but as a member of the small

⁵³ House of Commons, Foreign Affairs Committee, 1989/90, 82-II, p.31.

⁵⁴ Richard Corbett, "The Intergovernmental Conference on Political Union," *Journal of Common Market Studies*, 30 no. 3 (1992), p. 273.

⁵⁵ The proposals were named after Labour MEP David Martin, who was elected *rapporteur* to the Committee of Institutional Affairs. Richard Corbett, *The EP's Role in Closer EU Integration*, (New York: St. Martin's Press, 1998), p. 282.

⁵⁶ *Ibid*, p.287.

Liberal party, this proved impossible.⁵⁷ Seeking a greater role in the affairs of the EP, Giscard d'Estaing volunteered to chair the Committee on subsidiarity in late January 1990.⁵⁸ The Committee on subsidiarity was charged with drafting a legal formulation of subsidiarity, and was concerned with its practical function within a federal Union. Giscard d'Estaing understood the roots of subsidiarity as a Catholic principle. However, in the context of the EU, he identified it with federalism asserting that "the subsidiarity principle means that we can opt for a form of federalism with extensive decentralization to the Member states and also to their local authorities."⁵⁹ While Giscard d'Estaing observed that the principle should be the foundation of 21st-century European federalism, he also noted that the Committee was defining subsidiarity as a legal principle along the lines of its formulation in the 1984 DTEU.⁶⁰

The Committee's final definition of subsidiarity resembled articles 12(2) of the DTEU and 3(B) of the 1991 Treaty of Maastricht.⁶¹ As D'Estaing had acknowledged, the principle of subsidiarity was no longer solely a Catholic principle, but had become a principle of 21st century federalism. The EP definition of subsidiarity was critical because it provided a solid working document for the member states to determine how the principle should be defined in the Treaty on European Union.

The European Parliament was not alone in calling for an IGC on political union. After the submission of the Martin I report in March 1990, the Belgium and Italian governments submitted memoranda to the European Council that endorsed many of the Parliament's proposals on institutional reform and political union. In April 1990, President Mitterrand and Chancellor Kohl sent a letter to the Irish

⁵⁷ Giscard d'Estaing soon joined the Christian Democratic European People's Party. See Marcel Scotto, "M. Giscard d'Estaing adhère au groupe des démocraties-chrétiens," *Le Monde*, 13 December 1991, p.48.

⁵⁸ Ken Endo, "The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors," *Hokkaido Law Review*, 44 no 6 (1994), pp. 579-580.

⁵⁹ *Debates of the European Parliament*, no 3-392/97, 11 July 1990, p. 97.

⁶⁰ *Ibid.*, 97-98.

Presidency in Dublin calling for a parallel IGC on political union. “We believe that it is time to transform relations as a whole among the member states into a European Union... and invest this union with the necessary means of action, as envisaged by the Single Act.”⁶² The IGC on political union, according to the Kohl-Mitterrand letter, should “strengthen the democratic legitimation [sic] of the union, render its institutions more efficient, ensure unity and coherence of the union’s economic, monetary and political action....”⁶³ On the basis of the Kohl-Mitterrand letter, the European Council resolved to convene a parallel IGC on political union and to establish a European Union.

The broad Christian Democratic notion of the principle was well represented in the European Council. Six of the twelve member states had Christian Democratic governments and they formed an unofficial coalition committed to achieving their vision of a federal European Union at Maastricht.⁶⁴ According to Christian Democratic MEP Arie Oostlander, Dutch Prime Minister Ruud Lubbers had tabled resolutions on subsidiarity in the European Council since 1988.⁶⁵ In Christian Democratic proposals for European Union, subsidiarity was related to the incorporation of a direct reference in the treaty to the “federal vocation” of the European Union and to the creation of a Committee of the Regions.⁶⁶ It is important to note that, with the exception of Kohl, Christian Democratic leaders favoured the insertion of subsidiarity within the preamble of the

⁶¹ Italics added, “Report of the Committee on Institutional Affairs on the principle of subsidiarity,” *European Parliament Session Documents*, A3-0267/90, p. 90.

⁶² This statement was almost identical to the Paris declarations on European Union of 1972 and 1974. “Kohl—Mitterrand Letter to the Irish Presidency, April 1990,” in *Building the European Union: A Documentary History and Analysis*, Trevor Salmon and Sir William Nicoll, eds., (Manchester: Manchester University Press, 1997), p. 233.

⁶³ *Ibid.*

⁶⁴ The six leaders were Ruud Lubbers (Nlids), Helmut Kohl (FRG), Jacques Santer (Lux) Wilfried Martens (Belg), Guilio Andreotti (Ital), and Konstantin Mitsotakis (Gre). Karl Magnus Johansson, “Another Road to Maastricht: The Christian Democrat Coalition and the Question for European Union,” *Journal of Common Market Studies*, 40 no. 5, (2002), pp. 871-872.

⁶⁵ Cited from Kees van Kersbergen and Bertjan Verbeek, “The Politics of Subsidiarity in the European Union,” *Journal of Common Market Studies*, 32 no. 2 (1994), p. 220.

⁶⁶ *Ibid.*, pp. 881-882.

treaty, as opposed to a binding principle within the body of the text, in order to ensure a broad interpretation of the principle. In refusing to define subsidiarity in legal terms, Christian Democrats employed subsidiarity as a principle of their *Weltanschauung* and as an expression of their policy choices. Chancellor Kohl pushed for a legal definition of subsidiarity because of pressure from the *Länder* on the question of legal recognition for their areas of competence in the European Union.

At the announcement of the IGC on political union in April 1990, Thatcher convened a strategy session with her cabinet committee. The basis of the British strategy at Maastricht was subsidiarity, “under which Britain would retain power over the policy on which it did not wish the Commission to have competence, such as taxation.”⁶⁷ Thatcher’s foreign secretary, Douglas Hurd, outlined the British interpretation of subsidiarity at the Institute d’Etudes Politiques in France, stating

We need to consider a more systematic application of the principle of subsidiarity to Community legislation. The closer the level of decision-taking to the citizen, the better. Subsidiarity is a simple practical and democratic principle which, properly applied, could take much of the heat out of the decision-taking process in the Community.⁶⁸

Hurd’s explanation of subsidiarity as a “simple and practical democratic principle” reveals to what extent British conservatives had derived their understanding of subsidiarity from its context in European politics. A glaring difficulty with the British definition was that, in stating that it should bring “decision-taking to the citizen,” no mention of regional or local governments was made. Thatcher had tied the British definition of subsidiarity to the national interest and the intergovernmentalist vision of Europe. Subsidiarity as protecting the interests of the member states never gained support on the continent simply because, as noted, Christian Democrats wanted to incorporate subsidiarity as a feature of a federal European Union. This was precisely what Thatcher

⁶⁷ Colin Brown, “Thatcher’s heart and head remain at odds over union,” *The Independent*, 30 April 1990, p.10.

wanted to avoid. Despite the clearly opposing aims of Christian Democrats and British Conservatives at the second Dublin Council in late June 1990, Thatcher pressed for the inclusion of a legal definition of subsidiarity at Maastricht. Margaret Thatcher, however, did not remain long as British Prime Minister. In November 1990, conservative backbenchers, angered over her isolationist European policies, voted her out of office.⁶⁹ John Major, who became Prime Minister just before the IGC on political union was convened, did not alter Thatcher's definition of subsidiarity or related vision of Europe.

The positions of the European Parliament and the member states on subsidiarity reveal that although there was a consensus on the need to include subsidiarity in the TEU, important differences persisted on its function. Christian Democrats generally wanted a reference to subsidiarity in the preamble of the treaty. The exception, Kohl, was pressured by the Länder during the Maastricht negotiations to define subsidiarity to incorporate regional levels of government. The British also wanted a legal definition of subsidiarity to protect the sovereignty of the nation-state from Brussels. As these forces played out in the Maastricht negotiations and into the treaty ratification sessions of 1992, clashes between the national and federal visions of Europe were reflected in the struggle over the meaning and interpretation of subsidiarity. Interestingly enough, the compromise between the extremes of the nationalist and regionalist interpretations of subsidiarity led to the adoption of the European Parliament's overtly federal definition of the principle.

II Down From The Heavens

The process of codifying subsidiarity lasted from the start of the Maastricht negotiations in December 1990, until the Edinburgh Council agreed on an annex to the treaty that defined the aims and implementation of the principle as defined in article 3(B)

⁶⁸ "Panorama from Brussels," *Agra Europe*, 27 April 1990, p. P.

⁶⁹ See for example Ronald Butt, "Who is safest on Europe?" *The Times*, 27 November 1990, p. 3.

in December 1992. At Maastricht, the Anglo-German advocacy for a legal definition of subsidiarity led to a federalist formulation of the principle in the TEU. Article 3(B) was established as a mechanism regulating the division of concurrent competences. Neither Major nor Kohl was entirely satisfied with this definition. Kohl wanted specific references to regional governments incorporated in the definition of subsidiarity. Major was confronted with an implicitly federal principle that was potentially unacceptable to his Conservative caucus.

The actual Maastricht negotiations were preceded by the normal IGC preparatory negotiations between the member states over the general form of Treaty. They officially began in December 1990 during the Italian Presidency. In the first phase of these talks, the central question was not over of the definition of subsidiarity but where it should be placed in the treaty. Prior to convening the IGC on Political Union in Rome on 15 December 1990, Giulio Andreotti, the Christian Democratic Prime Minister of Italy, submitted an assessment on the preparations for the IGC. The desire to include subsidiarity, it stated, was apparent:

Delegations agree that subsidiarity is an important principle which will have to be laid down in the Treaty in an appropriate form. At the present stage most delegations prefer an inscription in the preamble and possible subsidiarity elements inscribed in individual Treaty articles. The presidency notes however the link which some delegations establish between a basic Treaty article on subsidiarity and transfer of competence in specific areas.⁷⁰

The position that subsidiarity should be included into the preamble of the Treaties reflected a desire of the majority to avoid a strict interpretation of principle and to include it as a symbol of the Community's commitment to respect the legislative powers of the member states.⁷¹ If Christian Democrats preferred to invoke subsidiarity in the preamble, the German and British delegations, for different reasons, wanted the principle included

⁷⁰ "Preparation of the Intergovernmental Conference on Political Union: The Presidency's Assessment," in *Agence Europe*, no. 1666 (Documents), 6 December 1990.

in the main text of the treaty. For Kohl, a legal definition could offer quasi-constitutional protections for the *Länder*.⁷² The British felt a legal definition of subsidiarity could be employed to “roll back Brussels.”⁷³ While Andreotti and the Christian Democratic heads of government only wanted a broad reference to subsidiarity in the preamble of the treaty, both Germany and the UK remained adamant that it should be incorporated as an article in the main body of the treaty and in this, they were successful.

The Christian Democratic desire for a preambular reference to subsidiarity was defeated because of an extensive list of concurrent competences agreed on during the Maastricht negotiations. The concurrent powers of the EU were education, industry, trans-European networks, economic and social cohesion, research and technological development, culture and public health. For Germany, any EC competence in education and culture was problematic because of the *Länder*’s exclusive competence in these areas. Similarly, Major opposed any extension of Community competence in social policy.⁷⁴ Given British and German pressure to limit EC action in concurrent competences through a legal formulation of subsidiarity, the Dutch Presidency advanced a definition of subsidiarity intended for the main text of the treaty in June 1990.⁷⁵

The definition of subsidiarity in the Dutch draft varied only slightly from Giscard D’Estaing’s formulation in the Martin Reports, and from the final version agreed upon at Maastricht in December 1991. The agreed version of subsidiarity was placed in the main text of the TEU:

Article 3(B):

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

⁷¹ “Political Union: Subsidiarity featured at first meeting EEC Political Union experts,” *European Report*, 1 December 1991, p.3.

⁷² “EMU train starts off from Rome with UK on board,” *Agra Europe*, 21 December 1990, p. E1.

⁷³ “Who wants what in a brave new Europe,” *The Economist*, 1 December 1990, p.46.

⁷⁴ John Major, *John Major: The Autobiography*, (London: HarperCollins Publishers, 1999), p. 267.

⁷⁵ “Luxembourg Presidency Non-Paper; Draft Treaty Articles with a View to Achieving Political Union,” in *Agence Europe*, no. 1709/1710 (Documents), 3 May 1991., and “The Dutch Draft Treaty Towards European Union,” *Agence Europe*, no. 1734 (Documents), 3 October 1991.

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 achieved by the member states and can therefore, 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.

This definition did not satisfy either the German or British governments. The German delegation, under pressure from the *Länder*, championed the creation of a new advisory body, the Committee of the Regions (CoR) while the British insisted on the removal of all explicit references to federalism in the treaty.

In the fall of 1991, the *Länder* increased pressure on Kohl to address the role of regions in the European Union. The *Bundestag* “threatened to reject the future European Community treaties on political union and monetary union, if the twin principles of federalism and ‘subsidiarity’ are not enshrined in them.”⁷⁶ To the *Länder*, a definition of subsidiarity that did not take into account the regions was wholly unacceptable. Kohl needed to secure regional interests to acquire the support of the *Bundestag* in order to ensure ratification of the Treaty of Maastricht. The Chancellor had little choice but to endorse the demands of the *Länder* governments, stating that “in the process of creating the United States of Europe,...it will be of particular importance to safeguard the traditions of local self-government as a structural principle for our democratic federal system.”⁷⁷ The regionalist vision of Europe and the traditional Christian Democratic interpretation of subsidiarity were evident in the German position on subsidiarity. With the *Länder* effectively holding Kohl hostage, the Maastricht negotiators agreed on the establishment of a Committee of the Regions (CoR).⁷⁸

⁷⁶ The *Bundestag* is the upper house in the German legislature, and it is composed of delegates from the *Länder* governments, not directly elected politicians. Quentin Peel, and Allison Smith, “German states want a regional voice in EC,” *Financial Times*, 9 November 1991, p.2.

⁷⁷ Cited from “Germany in Europe,” *The Times*, 3 October 1991, p.7.

⁷⁸ The Committee of the Regions was meant to give regions a degree of representation in the European Union and to enhance the overall democratic legitimacy of the Community institutions. The institutional power of the Committee was, however, relatively weak. The Commission and the Council of Ministers

The clear relationship between federalism and subsidiarity acknowledged by Christian Democrats put Major in a difficult political position with respect to his anti-European conservative caucus. John Major maintained throughout the Maastricht negotiations that subsidiarity was a protection for the member states *against* a federal Europe. He saluted article 3(B) as “treaty acknowledgement of ‘subsidiarity’ – the principle that European should only do what the nation state could not do equally well—so that we could end the creep of increasing Commission power.”⁷⁹ Major’s understanding of subsidiarity as a brake on increasing Community action, however, did not include the federal preoccupation with devolving power to sub-national levels of government. In June 1991, Dutch Prime Minister Ruud Lubbers, with the support of the five other Christian Democratic governments, called for the inclusion of a reference to subsidiarity and federalism in the preamble of the treaty. The treaty declaration characterized the European Union as having a “federal vocation respecting the principle of subsidiarity.”⁸⁰ Whereas Kohl, Lubbers, and even the liberal Giscard d’Estaing made a direct association between subsidiarity and federalism, Major was presented with a serious problem in employing subsidiarity as an anti-federal principle. Lubbers characterized the problem succinctly, stating that “the word ‘federal’ has different meanings depending on the country: we must consider this; it is a problem of semantics.”⁸¹ Major, however, believed that there was more at stake than semantics by including a federal reference in the treaty, despite his insistence on the legal formulation of subsidiarity.

were not obligated to consult the Committee. CoR could nonetheless submit opinions on matters of regional interest but its opinions whether solicited or not, were not binding on either the Council or the Commission. It was not until the legitimacy crisis of 1992 that further integration of the regions was seriously addressed, and even then, no explicit link between subsidiarity and the CoR was made. Colette Mazzucelli, *France and Germany at Maastricht*, (New York: Garland Publishing, 1997), p.78.

⁷⁹ John Major, *John Major: The Autobiography*, p. 274.

⁸⁰ “Union politique: une majorité se prononce en faveur d’une union ‘à vocation fédérale,’” *Europolitique*, 19 June 1991, p.1.

Major's difficulty with the federal reference, while of seeming paltry importance compared to the extension of Community competences, was that for Euro-skeptics in Britain, it symbolized the building of a European super-state. Thatcher unceasingly denounced the Maastricht negotiations as creating a supranational government, forcing Major to address the issue in the House of Commons. Major pointed out that

Federalism in the Community means different things to different people, but if it implies a central government for the federation, this is not what people in this country want. If it means decentralization, then it sounds like subsidiarity, which many people in this country would find more acceptable. But in no way could we permit that word to appear in the treaty, until or unless it is clear what it means and that it does not mean the centralisation of power.⁸²

Major was faced with the ultimate contradiction. In seeking to include a binding definition of subsidiarity, he was inviting charges of hypocrisy by demanding a federal principle while rejecting a reference to the word itself. According to Annika Savil, columnist for the *Independent*, Major had explained to the other EC leaders behind closed doors that "it is not me who has the problem with the word federalism, it is my parliament."⁸³ Essentially, Major needed to disassociate subsidiarity from federalism in order to make Maastricht acceptable to the British parliament. Pleading domestic politics did not stop Christian Democrats from forcing the "federalism" issue.⁸⁴ It was not until the final Maastricht negotiations that all references to federalism were dropped. Dutch foreign minister Hans van de Broeck stated prior to the final negotiations that "it's not out of the preamble yet....a price will have to be paid."⁸⁵ The British proposal, replacing the "federal vocation" with "a Europe closer to its citizens," was ultimately included in the treaty in December 1991.

⁸¹ Christian Cartier, "Selon le premier ministre, M Ruud Lubbers, la présidence néerlandaise de la CCE sera 'difficile'," *Le Monde*, 3 July 1991, p.1.

⁸² Colin Brown and David Osborne, "Major ready to support a form of 'federal' EC," *The Independent*, 26 June 1991, p.1.

⁸³ Annika Savil, "Inside file: The F-word is used and abused by all," *The Independent*, 13 November 1991, p.11.

⁸⁴ George Brock, "Britain still dogged by reference to federalism," *The Times*, 04 December 1991, p.8.

The codification of subsidiarity in Article 3(B) of the Treaty on European Union was accepted by all the member states in December 1991. The broad Christian Democratic conception of subsidiarity was replaced by a constitutional mechanism for the division of powers and responsibilities between the EU and its member states. The irony in the definition of subsidiarity as a federal “states’ rights” article was in Major’s rejection of the word “federal” for domestic consumption. It did, however, permit the British Prime Minister to interpret subsidiarity as a mechanism for “renationalizing” the Community in the wake of the legitimacy crisis of 1992. The rejection of the TEU in Denmark and the “petit oui” in France provided the British Presidency in late 1992 with an opportunity to implement Thatcher’s “family of nations” vision of Europe. Ultimately, the rejection of Major’s approach demonstrated how little the nationalist interpretation of subsidiarity had to offer, either for the decision making processes, democratic legitimacy, or decentralization in the European Union.

III The Legitimacy Crisis And The British Presidency

The question of the legitimacy of the nascent EU was called into question during the 1992 ratification process in the member states and resulted in a fervent debate over the meaning and implementation of subsidiarity. Although much emphasis is placed on the popular Danish rejection of the treaty, it should be noted that only a slim majority (50.7%) voted against it and an overwhelming majority of the Danish Parliament voted for ratification (130 to 25).⁸⁶ In France, the treaty only passed by 51.05%.⁸⁷ Half of those who voted against Maastricht in France did so out of fear that Brussels technocrats would control the EU.⁸⁸ In the only three countries to submit the treaty to popular

⁸⁵ *Ibid.*

⁸⁶ Palle Svensson, “The Danish Yes to Maastricht and Edinburgh: The EC Referendum of May 1993,” *Scandinavian Political Studies*, 17 no. 1 (1994), p. 70.

⁸⁷ Colette Mazzucelli, *France and Germany at Maastricht*, p.221.

⁸⁸ Eric Dupin et Pierre Giacometti, “Premier regard sur un paysage électoral mis sens dessus-dessous par le scrutin,” *Libération*, 22 September 1992, pp. 4-6.

ratification—the third was Ireland—the results easily translated into a perception of popular dissatisfaction with the EU. Legal scholar Antonio Estella has noted that “as often happens, the theoretical interpretations of these facts had more impact than their actual emergence.”⁸⁹ Whether or not these results were meant to send a message to European heads of state, the question of democratic legitimacy was front and center in a public debate whose focal point was subsidiarity.

The heads of State of the EC met at Lisbon in June 1992 to discuss how to make Maastricht more popularly acceptable. The Lisbon Council charged the Commission and the Council of Ministers to submit reports on the procedural and practical steps required to implement subsidiarity.⁹⁰ The reports were to be presented to the European Council at Edinburgh in December 1992. John Major, who held the EC presidency during this period, used this office in an attempt to redefine subsidiarity to “renationalize” the Community. The compromise on subsidiarity achieved at the Edinburgh Summit, however, demonstrated the resilience of a broader definition of subsidiarity as a general guideline for European governance more consistent with Christian Democracy and federalism than with intergovernmentalism.

Major stated that he wanted to reinforce subsidiarity to ensure democratic legitimacy and to make the European Union more acceptable to its citizens. Yet, during the British presidency in late 1992, the hypocrisy of the British interpretation of the principle became more evident. Championing subsidiarity as a principle of democratic legitimacy provided cover for Major’s goal of advancing the “family of nations” model of European Union. He was aided in large part by the general malaise in 1992 over the

⁸⁹ Antonio Estella. *The European Union Principle of Subsidiarity and its Critique*, (Oxford: Oxford University Press, 2002), p.38.

⁹⁰ “European Council in Lisbon (June 26-27, 1992): Conclusions of the Presidency,” *Rapid*, 27 June 1992, p.5.

future of European integration.⁹¹ In a speech outlining the goals of his presidency, Major asserted that in order “to keep Brussels at bay” the Community would need to “breathe life into the concept of subsidiarity” and force Delors and the Commission to justify “any future attempt to interfere in everyday life.”⁹² Major argued for the necessity of a greater role for the member states in initiating legislation and for a lesser role for the Commission in order to increase the democratic legitimacy of the Union. His preferred methods to enforce subsidiarity were further legal guarantees and intergovernmental co-operation instead of qualified majority voting in the Council of Ministers, increased oversight powers for the European Parliament, and a greater role for European regions.⁹³ Other member state leaders, however, vehemently criticized this approach. Even before the first test of Major’s interpretation of subsidiarity at the October 1992 Birmingham Council, Germany and the other five Christian Democratic leaders signaled that they favoured a return to the philosophical notion of subsidiarity as a general guideline for European governance.

The leaders of the six Christian Democratic governments met in September 1992 to propose their own solution to the uncertain future of the Maastricht Treaty.⁹⁴ The return to the traditional understanding of subsidiarity endorsed by the Christian Democratic at this meeting was expressed in the German memorandum on subsidiarity submitted to the Birmingham summit. The memorandum invoked traditional Christian Democratic notions of subsidiarity, for example when it supported “the preservation of the rights and competences of the social partners, as well as the rights of local administrative areas and groups of local administrations in the organization of local

⁹¹ Steve Doughty and Jackie Davis, “Major: We’ll tame Brussels,” *The Daily Mail*, 27 June 1992, p. 1.

⁹² *Ibid*, p.10

⁹³ “Union européenne: La subsidiarité vrai ou faux débat?” *Europolitique*, 10 October 1992, p.2.

⁹⁴ “News,” *Agence Europe*, no. 5824, 28/29 September 1990, p. 3.

communities.”⁹⁵ The invocation of the “social partners” was indicative of the more broadly conceived idea of subsidiarity held by Christian Democrats that included union and business groups in the decision making process. Furthermore, the German memorandum proposed to protect the autonomy of the regions by investing the Committee of the Regions with the responsibility “to examine proposals relating to the adoption of Community measures from the standpoint of the principle of subsidiarity.”⁹⁶ The concern for local and regional governments undermined the British position that the nation state was the only guarantor of democratic legitimacy or that subsidiarity was only applicable to the relationship between the European Union and the member states. Nevertheless, Major continued to push his nationalist interpretation of subsidiarity at the Birmingham summit.

The British government’s willingness to use subsidiarity as way to “renationalize” the Community was evident at the Birmingham European Council in October 1991. Prior to the Council meeting, Annika Savil, a columnist for *The Independent* quoted an unnamed British official as stating “Birmingham will start the ball rolling on concrete ways to apply the principle of subsidiarity - whereby Brussels keeps out of matters that can be dealt with by national governments.”⁹⁷ The aim, according to the official, was to reach an agreement on this interpretation of subsidiarity in time to codify it at the Edinburgh Council. British Foreign Minister Douglas Hurd presented a document on subsidiarity to the foreign ministers in the Council that had not been approved by the Committee of Permanent Representatives as a basis for discussion.⁹⁸ The rejection of this document was confirmed by a “clear majority” of the foreign ministers in the Council.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.* pp.13-14.

⁹⁷ Annika Savil and Tim Jackson, “British attempts to sway sceptics,” *The Independent*, 30 September 1992, p.12.

⁹⁸ “General Affairs council Invites Presidency to Tackle Subsidiarity in a Less Negative Fashion for the Community Spirit,” *Agence Europe*, no. 5854, 9/10 November 1992, p. 8.

The British proposal on implementing and applying subsidiarity was characterized as interpreting the principle “in such a negative way for Community action...it would only encourage cooperation between member states and the intergovernmental approach to the detriment of the Community approach.”⁹⁹ Major was perhaps pushing the intergovernmentalist vision of Europe too far, as his only real ally in the process was Denmark.¹⁰⁰ The British proposal argued that the Council of Ministers should implement and apply the principle of subsidiarity, not the Commission. Among the member states, however, there was significant opposition to this position and vocal support for the Commission, which was directly threatened by the intergovernmentalist approach.

Spain, Germany, Ireland and Italy all publicly raised concerns about the British interpretation of subsidiarity. An unknown British official, relating Spanish concerns to Hurd stated that “there is an underlying Spanish anxiety, or keenness, not to allow subsidiarity to be used as a 'backdoor way' to bringing the EC to a halt or as a way of undermining the balance between institutions.”¹⁰¹ None of the criticism, however, was so damning as the rebuke delivered by Irish Prime Minister Taoiseach Reynolds.

While there have been some excesses of regulation –often at the prompting of the member states –it is not our view that the Commission has generally been too intrusive. Frankly, our concerns are rather in the opposite direction, that the application of subsidiarity could be a pretext for rolling back existing Community achievements or heading off further integration in areas where we see this to be desirable.¹⁰²

Here the accusation was made that the British government had exaggerated the degree of Brussels bureaucratization and that their interpretation of subsidiarity could undo the entire process of European integration.

⁹⁹ *Ibid.*

¹⁰⁰ The Danish view on the implementation and application of subsidiarity was that it “must be a notion essentially political and cannot lead...to a technocrat-legal approach.” *Ibid.*

¹⁰¹ Annika Savil, “Hurd told UK must not hold Community hostage,” *The Independent*, 9 October 1992, p.8.

¹⁰² “Taoiseach Rejects Any Interpretation of subsidiarity that would weaken European Integration,” *Agence Europe*, no. 5834, 19/20 October 1992, p.3.

Other factors continued to undermine the Major's interpretation of subsidiarity. The charge that the Commission harmonized too many laws, and over-regulated the member states was the central component of the British government's intergovernmental criticism of European federalism. As Delors and other commissioners noted, they were frequently asked by the Council of Ministers (i.e. the member states) to increase regulatory controls. For example, Delors pointed out at the Lisbon summit that in a regulation on the free circulation of poultry, the Council of ministers had asked the Commission "to set the point in time at which slaughtered chickens should have their feet cut off."¹⁰³ According to Delors, the Commission refused. Furthermore, prior to the Birmingham summit, Major's government had asked the Foreign Office to produce a list of Community excesses in regulation. The Foreign Office, to the embarrassment of the government, was unable to produce any examples of overzealous technocracy.¹⁰⁴ In a last rebuff, the leaders of the eleven member states refused Major's invitation to hold the opening sessions of the Birmingham Council in public to increase the transparency of the decision-making process, calling it "window dressing."¹⁰⁵ Under pressure, the British were forced to revise their position on subsidiarity for the Edinburgh summit in December 1992.¹⁰⁶

Major's attempt to use subsidiarity to renationalize the EU underlined the weakness of the intergovernmentalist critique of European integration. Major and Thatcher based their resistance to further extensions of Community power and strengthening European institutions by invoking the specter of a European super-state. Thatcher even characterized the Commission as the harbinger of a Soviet-style

¹⁰³ David Buchan and David Gardner, "A state of limbo in Lisbon," *Financial Times*, 29 June 1992, p.12.

¹⁰⁴ Michael White, "Britain's Summit stance undercut," *The Guardian*, 14 October 1992. p.3.

¹⁰⁵ *Ibid.*

planned economy.¹⁰⁷ Vilifying the Community institutions and “Brussels” by blaming them for centralization in the Community covered up an important fact that undermined the British criticism of the Community. The decision-making centre in Brussels was neither the Commission nor the European Parliament. It was the Council of Ministers. The ministers of the member state governments passed, rejected or amended all Commission proposed legislation. In other words, no law in the Community was passed that was not acceptable to the member states.¹⁰⁸ The governments of the member states (not the “Brussels technocracy” as Major and Thatcher maintained) were responsible for centralization and the creation of a “super-state.” Since the member states were in full control over the process of the integration, Major’s attempt to define subsidiarity as a legal protection for the member states was hypocritical because the member states, including Great Britain, collectively constituted the “technocratic leviathan” in Brussels.

The Commission report on subsidiarity, which was submitted to the Council of Ministers in advance of the December 1992 Edinburgh summit, was clearly opposed to Major’s interpretation of Article 3(B). For the Commission, Article 3(B) emphasized the obligation to respect the principle of subsidiarity, which, alongside greater democratic controls, a voice for the regions and greater transparency in decision-making formed the foundation of a “people’s Europe.”¹⁰⁹ The report examined the application of subsidiarity in “the preparation of Community action, the management of Community policies and the financial and other control of Community activities.”¹¹⁰ The Commission guaranteed that

¹⁰⁶ “General Affairs council Invites Presidency to Tackle Subsidiarity in a Less Negative Fashion for the Community Spirit,” *Agence Europe*, no. 5854, 9/10 November, 1992, p. 8.

¹⁰⁷ Margaret Thatcher, *The Downing Street Years*, p. 744.

¹⁰⁸ Even with the institution qualified majority voting, the practice of achieving consensus, which was the norm prior to the 1986 Single European Act, prevailed in the Council of Ministers. Desmond Dinan, *Ever Closer Union*, pp. 263-263.

¹⁰⁹ “Position of the European Commission of Defining and Implementing the Principle of Subsidiarity,” *Agence Europe*, no. 1805/05 (Documents), 30 October, 1992, p.1.

¹¹⁰ *Ibid.*

it would alter or retract any proposals that violated the principle.¹¹¹ To ensure observance of article 3(B), Delors suggested not further “codification” of the principle of subsidiarity, but rather an inter-institutional agreement to ensure its observance. According to Delors, an inter-institutional agreement between the Council of Ministers, the European Parliament, the European Court of Justice and the Commission on Subsidiarity would allow the Community to reabsorb the democratic deficit. In other words, the problem of legitimacy should be dealt with at the Community level, as opposed to elevating the role of the member states in the Union’s legislative process.

The Commission report bore many similarities to the German memorandum with regards to the implementation and application of subsidiarity. Delors and Kohl had proposed that subsidiarity should constitute a “hierarchy of norms.” This interpretation stated that when a decision had been taken to enact legislation in an area of concurrent competence, the Commission should use framework legislation or directives instead of rules and regulations. Directives and framework legislation would outline the desired effect of a given law, but would leave the administration and details to the member states, which could in turn empower regional or local authorities to implement these laws.¹¹² It was hoped that these types of decisions would involve national parliaments and help to secure the diversity of European identities while providing the necessary degree of unity. The hierarchy of norms expressed the Commission’s desire to “do less, but do it better.”¹¹³ It is important to note that, as opposed to the actual definition of article 3(B), the Commission report stressed subsidiarity as a decision-making process rather than

¹¹¹ *Ibid.*

¹¹² *Ibid.* pp.12-13.

¹¹³ *Ibid.* p. 15.

mechanism for the division of competences.¹¹⁴ In this sense, subsidiarity remained a broad principle consistent with Christian Democratic theory.

The hierarchy of norms had as its goal the protection of the Commission's right of initiative and consequently to avoid any "renationalization" of the Community. The report also made clear that "subsidiarity is part of decision-making, not a precondition for it."¹¹⁵ So while the Commission Report, supported by Germany, Italy and Spain, called for a hierarchy of norms and an inter-institutional agreement to ensure that subsidiarity was considered throughout the legislative process, the UK and Denmark maintained that subsidiarity should strengthen the role of the member states in the decision-making process. The conflict at this point was between the federal Christian Democratic and intergovernmentalist visions of Europe.

The member states finally agreed on an overall approach to the implementation of subsidiarity in early December at the Edinburg Summit. The agreement, which was condensed into a protocol and formally incorporated into the treaty at Amsterdam in 1997, reflected a compromise between the Christian Democratic and intergovernmental visions of Europe.¹¹⁶ The agreement reflected the Delors position that subsidiarity should be used to "reabsorb the democratic deficit" by calling for its application in the Community process through an inter-institutional agreement. The Commission, as agreed at Lisbon, also identified several powers that were to be returned to the member states, such as shoe labeling, and public merger laws.¹¹⁷ Furthermore, Denmark was allowed to "opt out" of certain Community initiatives such as EMU, and Justice and Home Affairs. Although no renationalization took place under the banner of subsidiarity, the

¹¹⁴ Sarah Lambert and Andrew Marshall, "Bad omens for Birmingham summit," *The Independent*, 15 October 1992, p.12.

¹¹⁵ *Ibid.*

¹¹⁶ Michael Burgess, *Federalism and European Union*, p. 197.

¹¹⁷ Major had initially promised to repeal 71 laws to the Commission's proposed 21 laws. At Edinburgh, the Commission list, with the support of the majority of the member states, was accepted. David Gardner,

Commission committed itself to seeking other methods than harmonization to achieve common results. The success of the Edinburgh summit led to the ratification of the TEU in Denmark and marked the beginning of a new stage in European integration.

Conclusion

Subsidiarity was included in the Treaty of Maastricht despite the opposing aims of its advocates because it was the only principle acceptable to intergovernmentalists, federalists and Christian Democrats. Pressure from the German and British governments ensured the formulation of subsidiarity as a constitutional principle modeled on Giscard d'Estaing's work in the European Parliament's committee on subsidiarity. Despite the opposition of Christian Democratic heads of state, subsidiarity was defined as a narrow federal test for the Union action in areas of concurrent competence. After the Danish "no," however, subsidiarity concept was re-expanded and became closely associated with a means to ensure democratic legitimacy in Community action and provide a voice for regions in the European Union.

The intergovernmentalist vision of Europe failed because Major had argued against the extension of Community competences because of Brussels technocracy, which had proved untrue. Thatcher and Major had essentially argued that the EC was undemocratic and would become a centralized super-state and that subsidiarity was needed to protect the nation-state. Christian Democrats had also proposed the principle of subsidiarity to limit centralization. The difference between these two interpretations was reflected in the clash between different visions of Europe. Major, in seeking to "renationalize" the Community, wanted to turn back the process of integration. The TEU, however, included an extension of Community competences, a process for achieving a single currency and the creation of new institutions such as CoR and the European

"The Edinburg Summit: Bonfire of Brussels fails to catch light—Subsidiarity," *Financial Times*, 14 December 1992, p. 2.

Central Bank. In the face of deeper integration and more federal features, the British position of a Europe of nation states was untenable. Complicating matters for the British government was that its accusations of bureaucratization and centralization were hypocritical. If Brussels was a technocratic leviathan, it was only because the heads of government and the Council of ministers had so decreed. The secret to the myth of the terrible, Soviet-esque Brussels super-state was that the member states, including Great Britain, were responsible for the monster they had created.

The process of achieving the Edinburg compromise revealed the re-expansion of the subsidiarity concept. For example, the Commission report on subsidiarity recalled the philosophical origins of the principle:

The subsidiarity principle as applied in the institutional context is based on a simple concept: the powers that States or a federation of States wields in the common interest are only those which individuals, families, companies and local or regional authorities cannot exercise in isolation. This commonsense principle therefore dictates that decisions should be taken at the level closest to the ordinary citizen and that action taken by the upper echelons of the body politics should be limited.¹¹⁸

This is the Christian Democratic definition of subsidiarity, which remained unchanged by the process of interpreting subsidiarity in 1992. The State should act in the “common interest” and allow lower levels as much autonomy as possible. The aim of the principle was to limit the powers of the Community by recognizing the competency of regional levels of governance.¹¹⁹ This re-expansion of the subsidiarity concept relative to its definition as a narrow constitutional article in the DTEU demonstrates the emergence of a European principle of governance that was concerned not only with the division of

¹¹⁸ “Position of the European Commission of Defining and Implementing the Principle of Subsidiarity,” *Agence Europe*, no. 1805/05 (Documents), 30 October, 1992. p.3.

¹¹⁹ The role of the regions, however, in the process of the decision-making and administration was ambivalent at best, since the Commission recognized that, with a few exceptions, it was ultimately up to the member states if they would empower sub-national levels. “Position of the European Commission of Defining and Implementing the Principle of Subsidiarity,” *Agence Europe*, no. 1805/05 (Documents), 30 October, 1992, p.13.

competences between the member states and the European Union, but also the role of regional governments, and the need for more democratic decision-making practices.

Conclusion

Ideas are not developed in a void; they are more than words on paper. Concepts come to prominence because of the people and groups who shape and advocate them. To understand the emergence of the subsidiarity concept requires a historical approach to examine the political struggles that shaped the meaning of the term. In Papal encyclicals, subsidiarity was narrowly defined as only applying to social relationships because of the tense relationships between the Catholic Church and West European states in the early 20th century. Christian Democratic parties founded in post-war West Germany based their political theory on Catholic social teachings and they employed the principle to express their view on the entire set of relationships among the state, society and the individual. In debates over European integration in the 1970s and early 1980s, Altiero Spinelli subverted the broad Christian Democratic understanding of the principle to advance his federalist agenda. In the late 1980s, the momentum to include subsidiarity in the TEU heightened tensions over its proper definition. The final definition of subsidiarity as Article 3(B) reflected not only the compromise reached among opposing political actors, but also the need for new terminology to describe the multifaceted process of European governance.

This historical study on the principle of subsidiarity also gives insight into the major conflicts and compromises that have characterized the emergence of the European Union. The diametrically opposed aims of John Major and Helmut Kohl in building a European Union were both partially satisfied in the inclusion of subsidiarity in the Treaty of Maastricht. Intergovernmentalism and federalism were both seemingly embodied in article 3(B). Kohl and other Christian Democrats acknowledged the partial validity of Major's interpretation of subsidiarity as a legal protection for the member states. What Major refused to recognize, however, was that for Christian Democrats, a commitment to

subsidiarity was also a commitment to increasing the role of the regions and the “social partners” in Community decision-making processes. In a sense, this misunderstanding over the principle was rooted in the fundamental differences that existed between British conservatism and continental Christian Democracy in European social and economic policy. The compromise over subsidiarity, however, showed how European actors were prepared to accommodate one another to ensure the progress of European unification.

The larger history of the inclusion of the principle of subsidiarity in the TEU also reveals the diverse influences at work in the creation of a European system of governance. The principle of subsidiarity has been associated with corporatist decision-making in the Catholic Church, with American federalism both in post-war Germany and in debates over European Union, and with nationalism on the part of Euro-skeptic politicians. All of these influences—corporatism, federalism and intergovernmentalism—are embodied in subsidiarity, which has now become a fundamental principle of European governance. The history of subsidiarity demonstrates that none of these influences, taken alone, can account for the structure of the European Union. The Commission’s consultations with the Committee of the Regions and the social partners on the basis of subsidiarity are evidence of corporatist practices. The leadership of the heads of government in the European Council and the Council of Ministers and the *de facto* division of powers between the EU and the member states are indicative of the institutionalized tensions between federalist and intergovernmental structures in the European Union embodied by subsidiarity. The emergence of this multifaceted principle represents the emergence of a unique political structure of supranational governance.

WORKS CITED AND BIBLIOGRAPHY

Primary Sources

Adenauer, Konrad. *Memoirs: 1945-1953*. Chicago: Henry Regnery Company, 1966.

Bichet, Robert. "Discours de Robert Bichet, 25 février, 1949," Collections, COL. Walter Lipgens, WL. WL 89. Cited from the Centre Virtuel de la Connaissance sur Europe (CVCE), [www.ena.lu/mce.cfm].

Clay, Lucius. *Decision in Germany*. Westport: Greenwood Press, 1950.

Carlen, Claudia, ed. *The Papal Encyclicals: 1878-1914*. Raleigh: McGrath Publishing Company, 1981.

-----, ed. *The Papal Encyclicals: 1914-1939*. Raleigh: McGrath Publishing Company, 1981.

-----, ed. *The Papal Encyclicals: 1939-1958*. Raleigh: McGrath Publishing Company, 1981.

Delacroix, Simon. *Documents Pontificaux de Sa Sainteté PIE XII*, Vols II & IV. Saint Maurice: Editions Saint-Augustin, 1963.

Delors, Jacques ed. *Subsidiarity: The Challenge of Change*. Brussels: European Institute of Public Administration, 1991.

Ebesworth, Raymond. *Restoring Democracy in Germany*. London: Stevens, 1960.

Ederer, Rupert, J., ed.. *The Social Teachings of Wilhelm Emmanuel von Ketteler, Bishop of Mainz*. Washington : University of America Press, 1981.

Gierke, Otto von. *The Development of Political Theory*. New York: W.W. Norton & Company, 1939.

Holborn, Louis *et al*, eds. *German Constitutional Documents Since 1871*. New York: Praeger Publishers, 1970.

Keeton, George and Georg Schwarzenberger, eds. *The Allied Military Government of Germany*. London: Stevens & Sons, 1947.

Keller, Émile. *L'encyclique du 8 décembre 1864 et les principes de 1789*. Paris: Librairie Poussielgue et Fils, 1865.

Ketteler, Wilhelm. *Devoirs des parents et de la famille en présence des conditions nouvelles faites aux écoles primaires*. Paris: Oeuvre de Saint-Paul, 1882.

Lane, John, and Pollock, James, eds. *Source Materials on the Government and Politics of Germany*. Ann Arbor: Wahrs Publishing, 1964.

- Leo XIII. *Rerum novarum*. St. Paul: Apostolate of the Press, 1942.
- , "Immortale Dei." Claudia Carlen, ed. *The Papal Encyclicals: 1878-1914*. Raliegh: McGrath Publishing Company, 1981. p.106-110.
- Liberatore, Matteo. *Principles of Political Economy*. London: Art and Book Company, 1891.
- Major, John. *John Major: The Autobiography*. London: HarperCollins Publishers, 1999.
- Maritain, Jacques. *The Person and the Common Good*. Notre Dame: University of Notre Dame Press, 1946.
- Mussolini, Benito. *The Corporate State*. Firenze: Vallecchi Editore, 1936.
- Mounier, Emmanuel. *Personalism*. Notre Dame: University of Notre Dame Press, 1952.
- , *Oeuvres de Mounier: 1931-1939*. Vol 1. Paris: Éditions du Seuil, 1961.
- Nell-Breuning, Oswald von, ed. *Reorganization of Social Economy: The Social Encyclical Developed and Explained*. New York: The Bruce Publishing Company, 1936.
- , "The Drafting of Quadregesimo Anno," Charles Curran and Richard McCormick, eds. *Readings in Moral Theology no. 5: Official Catholic Social Teaching*. New York: Paulist Press, 1981.
- , *Baugesetze der Gesellschaft*. Freiburg: Herder Verlag, 1990.
- Nelson, Brent, and Alexander Stubb, eds. *The European Union: Readings on the Theory and Practice of European Integration*. Boulder: L.Rienner, 1994.
- Pollock, James, et al, Eds. *Germany Under Occupation: Illustrative Materials and Documents*. Ann Arbor: Edwards Brothers, 1949.
- Salmon, Trevor and Sir William Nicoll, eds. *Building the European Union: A Documentary History and Analysis*. Manchester: Manchester University Press, 1997.
- Karl Scwend, ed. *Bayerische Politik*, (Pflaum: Munich, 1952).
- Schwitzer, Carl-Christoph et al, eds. *Politics and Government in Germany, 1944-1994: Basic Documents*. Oxford: Bergahn Books., 1995.
- Smith, Jean, ed. *The Papers of General Lucius D. Clay*. Vol 1 & 2. Bloomington: Indiana University Press, 1974.
- Spinelli, Altiero. "Towards European Union." Sixth Jean Monnet Lecture at the European University Institute, 13 June, 1983.
- , *The European Adventure*. London: Charles Knight & CO, 1972.
- and Ernesto Rossi. "The Manifesto of Ventotene," cited from CVCE [www.ena.lu/mce.cfm].

Süsterhenn, Adolph. "Das Subsidiaritätsprinzip als Grundlage der vertikalen Gewaltenteilung." In *Vom Bonner Grundgesetz zur gesamtdeutschen Verfassung*. Theodor Maunz, ed. München: Isar Verlag, 1956.

Thatcher, Margaret. *The Downing Street Years*. London: HarperPernnial Publishers, 1995.

Tindemans, Leo. "Note de Leo Tindemans précisant les objectifs et les procédures de sa mission en vue de définir l'union européenne, Paris, 23 septembre 1975," Cited from CVCE [<http://www.ena.lu/mfe.cfm>].

Welty, Eberhard Welty, OP. *A Handbook of Christian Social Ethics*. Vol. I & II. New York: Herder and Herder, 1960.

Government Documents

Ad hoc Committee on Institutional Affairs, "Report to the European Council, Brussels, 29-30, March 1985," Brussels, 1985.

Commission of the European Communities, "Completing the Internal Market," COM (85) Final, (Brussels, 14 June 1985), pp. 62-92.

"Social Dimension of the Internal Market: Commission Working Paper," SEC (88) no. 1148 final, Brussels, 14 September 1988.

----- "Draft of the Community Charter of Fundamental Social Rights." COM (89) 248 Final, 30 May 1989, Brussels.

Committee for the Study of Economic and Monetary Union, "Report on Economic and Monetary Union in the European Community," 17 April 1989, Brussels.

The Committee of the Regions. *Regional and Local Government in the European Union: Responsibilities and Resources*. Luxembourg: Council of Europe Press, 2001.

Council for the Development or Regional Local Authorities (CDLR). *Definition and Limits of the Principle of Subsidiarity*. Strasbourg: Council of Europe Press, 1994.

Debates of the European Parliament.

European Council. "Communiqué of the meeting of the Heads of Government of the member states at The Hague on 1 and 2 December 1969," Cited from CVCE. [<http://www.ena.lu/mce.cfm>].

European Parliament Working Documents.

European Parliament-Committee on Institutional Affairs. *Selection of texts concerning institutional matters of the Community from 1950 to 1982*. Luxembourg: European Parliament, 1982.

Germany Reports. Bonn: The Press and Information Office of the Federal Government of West Germany, 1964.

Office of Military Government for Germany (US). *Documents on the Creations of the German Federal Constitution*. Berlin, 1 September 1949.

Party Documents

Asmussen, Holger, ed. *Christliche Demokratie in Deutschland: Analysen und Dokumente zur Geschichte*. Melle: Verlag Ernst Knoth, 1978.

Christian Social Union. *Grundsatz Program der Christlich Sozialen Union: 1976*. München: Landesleitung, 1983.

Ossip K. Flechtheim, ed. *Dokumente zur parteipolitischen Entwicklung in Deutschland seit 1945: Programmatik der deutschen Parteien*. Vol II. Berlin: Dokumenten-Verlag Dr. Herbert Wendluer & Co., 1963.

European People's Party. "Basic Program,"
[<http://www.eppe.org/Default.asp?SHORTCUT=174>], November, 1992.

Die Europäische Volkspartei. "Europa wählen, Die europäische Volkspartei, 23 Februar 1978 im Brüssel," Bonn: Europa Union Verlag GmbH, 1978.

Kunz, Rainer, et al., Eds. *Programme der politischen Parteien in der Bundesrepublik*. München: C.H. Beck, 1975.

Pütz, Helmuth, ed. *Konrad Adenauer und die C.D.U. der britischen Besatzungszone, 1946-1949*. Bonn: Eichholz-Verlag, 1975.

Nouvelles Équipes Internationales. "Résolution adoptée par la Conférence des Nouvelles Equipes Internationales tenue à Luxembourg du 29 janvier au 1er février 1948," Cited from the CVCE [www.ena.lu/mce.cfm].

Newspapers and Periodicals

Agra Europe
Agence Europe
Bulletin of the European Economic Community
The Daily Mail
The Economist
Europe
European Report
Europolitique
Frankfurter Allgemeine Zeitung
Le Figaro

The Guardian
 London *Financial Times*
The Independent
Libération
Le Monde
Official Journal of the European Communities
Rapid
 Brussels *Le Soir*
 London *The Times*
Vision
La voix fédéraliste

Secondary Sources

Adonis, Andrew and Andrew Tyrie. "Subsidiarity: As history and policy." London: Institute of Economic Affairs, 1990.

Adriányi-Quitín, Gabriel, et al., eds. *The Church in the Modern Age*. New York: Crossroad, 1979.

Aubert, Roger, et al., eds. *The Church in the Age of Liberalism*. New York: Crossroad, 1981.

----- et al, eds. *The Church in the Industrial Age*. New York: Crossroad, 1989.

Balkenende, Jan Peter, et al. *Les démocrates-chrétiens et l'économie social du marché*. Paris: Economica, 1988.

Becker, Winfried et al, eds. *Lexikon der christlichen Demokratie in Deutschland.*, Bonn: Schöningh, 2002.

Bermann, George. "Taking Subsidiarity Seriously," *Columbia Law Review* 94 no.2 (1994), pp.331-456.

Black, Antony. *Guild and State*. London: Transaction Publishers, 2003.

Bock, Edward. *Wilhelm Von Ketteler, Bishop of Mainz: His Life, Times and Ideas*. Washington D.C.: University Press of America, 1977.

Boutry, Philip, ed. *Rerum Novarum: Ecriture, Contenu et réception d'une encyclique*. Farnèse: Collection de l'École Française de Rome, 1997.

Bowen, Ralph. *German theories of the Corporate State*. New York: Whittlesey House, 1947. p.9.

Brown- John, C.Lloyd, ed. *Federal- Type Solutions and European Integration*. Boston: University Press of America, 1995.

Burgess, Michael, ed. *Federalism and Federation in Western Europe*. London: Croom Helm, 1986.

-----, *Federalism and European Union: Political Ideas, Influences and Strategies in the European Community, 1972, 1987*. London: Routledge, 1989.

-----, and Alain Gagnon, eds. *Comparative Federalism and Federation: Competing Traditions and Future Directions*. Toronto, University of Toronto Press, 1993.

-----, *Federalism and European Union: The Building of Europe, 1950-2000*. London: Routledge, 2000.

-----, *The British Tradition of Federalism*. Cranbury: Leicester University Press, 1995.

Centre for Economic Policy Research. *Making Sense of Subsidiarity: How much Centralization for Europe?* London: CEPR, 1993.

Clergerie, Jean-Louis. *Le principe de subsidiarité*. Paris: Ellipses, 2000.

Corbett, Richard. *The European Parliament's Role in Closer EU Integration*. New York: St Martin's Press, 1998.

-----, "The Intergovernmental Conference on Political Union," *Journal of Common Market Studies*. 30 no. 3, (1992), pp. 271-298.

Cornwell, John. *Hitler's Pope*. New York: Penguin Books, 2000.

Cotta, Alain. *Le Corporatisme*. Paris: PUF, 1984.

de Búrca, Grainne. "The Principle of Subsidiarity and the Court of Justice as an Institutional Actor," in *Journal of Common Market Studies*. Vol 36, no.2 (June 1998), pp.217-235.

Delzell, Charles ed. *The Papacy and Totalitarianism between the two World Wars*. Toronto: John Wiley & Sons, Inc, 1974.

Dinan, Desmond. *Ever Closer Union*. Boulder: Lynne Rienner Publisher, 1999.

Duff, Andrew, ed. *Subsidiarity within the European Community*. London: Federal Trust, 1993.

Duff, Andrew; Pinder, John, and Pryce, Roy, eds. *Maastricht and Beyond: Building the European Union*. London: Routledge, 1994.

Durand, Jean-Dominique. *L'Europe de la démocratie chrétienne*. Bruxelles: Editions Complexe, 1995.

Ehler, Sidney and John Morrall, eds. *Church and State Through the Centuries: A Collection of historic documents with commentaries*. New York: Biblo and Tannen, 1967.

Endo, Ken. *The Presidency of the European Commission under Jacques Delors*. New York: St Martin's Press INC, 1999.

-----, "Subsidiarity and Its Enemies: On a Post- National constitutional Principle of the European Union," in *After the Global Crises: What Next for Regionalism?* CSGR 3rd Annual Conference: Scarman House, University of Warwick, September 16-18, 1999.

-----, "The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors," *Hokkaido Law Review*. 44 no. 6 (1994), pp. 553-652.

Durand, Jean-Dominique. *L'Europe de la démocratie chrétienne*. Paris: Éditions Complexe, 1995.

Estella, Antonio. *The EU Principle of Subsidiarity and its Critique*. Oxford: Oxford University Press, 2002.

Evans, David. *Britain in the EEC*. London: Victor Gollancz, 1973.

Evans, Ellen. *The Cross and Ballot: Catholic Political Parties in Germany, Switzerland, Austria, Belgium and the Netherlands, 1785-1985*. Boston: Humanities Press, Inc., 1999.

Faure, Alain, Ed. *Territoires et subsidiarité*. Paris: Harmattan Inc. 1997.

Flamm, Franz. *Système Social et Travail Social en République Fédérale D'Allegmange*. Frankfurt am Main: Pulibcations de l'Union Allemande Pour L'assistance Publique et Privée, 1976.

Fogarty, Michael. *Christian Democracy in Western Europe: 1820-1953*. London: Routledge, 1974.

Gargan, Edward, ed. *Leo XIII and the Modern World*. New York: Sheed and Ward, 1961.

Goeldel, Denis. "L'Humanisme Chrétien en Politique: La CDU et La CSU et le Principe de Subsidiarité," *Revue D'Allemange*, 25 no. 3 (1993), p. 412-422.

Golay, John. *The Founding of the Federal Republic of Germany*. Chicago: University of Chicago Press, 1958.

Golub, Jonathan. "Sovereignty and Subsidiarity." *Political Studies*. 44, no. 4 (1996), pp.686-703.

Goyau, Georges. *Ketteler*. Paris: Librairie Bloud & Co., 1907.

Hancock, Donald. *West Germany: The Politics of Democratic Corporatism*. Chatham, NJ: Chatham House Publishers, 1989.

Hanley, David. Ed. *Christian Democracy in Europe*. London: Pinter Publishers, 1994.

Hayes, Carlton. *A Generation of Materialism*. New York: Harper Publishers, 1941.

Heidenheimer, Arnold. *Adenauer and the CDU: The Rise of the Leader and the Integration of the Party*. The Hague: Martinus Nijhoff, 1960.

Hitchcock, William. *The Struggle for Eruope*. New York: Doubleday, 2002.

Hix, Simon, and Lord, Christopher. *Political Parties in the European Union*. New York: St Martin's Press, 1997.

Hodges, Michael, ed. *Selected Readings in European Integration*. London: Penguin Books, 1972.

Howse, Robert and Kalypso Nicolaidis, eds. *The Federal Vision*. New York: Oxford Unisterity Press, 2001

Hueglin, Thomas. *Early Modern Concepts for a Late Modern World*. Waterloo: Wilfred Laurier University Press, 1999.

Hughes, John. *The Social Charter and the Single European Market*. Bertrand Russell House: Nottingham, 1991.

Irving, Ronald. *The Christian Democratic Parties of Western Europe*. London: Allen and Unwin, 1979.

Jansen, Thomas. *The European People's Party: Origins and Development*. New York: St. Martin's Press, Inc., 1998.

Jeffrey, Charlie, and Peter Savigear, eds. *Germany and Federalism Today*. London: Leicester University Press, 1991.

Johansson, Karl Magnus. "Another Road to Maastricht: The Christian Democrat Coalition and the Question for European Union," *Journal of Common Market Studies*, 40 no. 5, (2002), pp. 871-872.

Jonasson, Robert Fredereick. *The Political Uses of Subsidiarity*. London: University of Western Ontario, 2000.

Jones, Jackie. "The Committee of the Regions, Subsidiarity and a Warning," in *European Law Review*. 22, no.3 (August 1997), pp.312- 326.

Julg, Jean. *La Démocratie Chrétienne en République Fédérale Allemande*. Paris: Economica, 1985.

-----, "La Genèse de la C.D.U.," *Revue d'Allemagne*. 4 no. 4 (1972) p. 818-840.

Jungeblut, Bernd. "Le Developpment de la CDU/CSU Depuis 1976," *Revue D'Allemagne* 11 no. 2, (1979), pp. 251-266.

- Kapteyn, P.J.C. "Community and the Principle of Subsidiarity," *Revue des Affaires Européennes*, no. 2 (1991), pp. 17-30.
- Keating, Micheal, and Jones, Barry. *Regions in the European Community*. Oxford: Clarendon Press, 1985.
- Kersberben, Kees van, and Verbeek, Bertjan. "The politics of Subsidiarity in the European Union," in *Journal of Common Market Studies*. 32, no.2 (1994), pp. 142-162.
- Leys, Ad. *The Eccleseological Impacts of Subsidiarity*. Kampen: Kok, 1995.
- Loch, Theoand Gerhard Eickhorn, eds. *Zusammenarbeit des des Parteien in Westeuropa*. Bonn: Institute for European Politics, 1976.
- Lodge, Juliet, ed. *European Union: The European Community in Search of a Future*. London: The MacMillan Press, 1986.
- McCormick, John. *The European Union*. Boulder: Westview Press, 1999.
- Maier, Hans. *Revolution and Church: The Early History of Christian Democracy, 1789-1901*. Lonodn: University of Notre Dame Press, 1969.
- Mayeur, Jean- Marie. *Des Partis Catholiques à la Démocratie Chrétienne*. Paris: Armand Colin, 1980.
- , *Catholicisme social et démocratie chrétienne*. Paris: Éditions du Cerf, 1986.
- Mazzucelli, Colette. *France and Germany at Maastricht*. New York: Garland Publishing, 1997.
- McAllister, Richard. *From EC to EU*. London: Routledge, 1997.
- Ralph McInerny. *The Defamation of Pius XII*. Colorado Springs: St. Augustine Press, 2001.
- Merkel Peter. *The Origin of the West German Republic*. New York: Oxford University Press, 1963.
- Millon-Delsol, Chantal. *Le Principe de Subsidiarité*. Paris: Que sais-je?, 1993.
- , *L'État Subsidiare: Ingérence et non-ingérence de l'État, le principe de subsidiarité aux fondements de l'histoire européenne*. Paris: PUF, 1992.
- Misner, Paul. *Social Catholicism in Europe*. New York: Crossroad, 1991.
- Mulcahy, Richard. *The Economics of Heinrich Pesch*. New York: Henry Holt and Company, 1952.
- Nicholls, Anthony. *Freedom with Responsibility*. Oxford: Clarendon Press, 1994.

Papini, Roberto. *L'internationale démocrate-chrétienne, 1925-1986*. Paris: Les Éditions du CERF, 1988.

Pinder, John. "Prophet Not Without Honour: Lothian and the Federal Idea." *The Round Table*, 286 (1983) p.217.

Pollard, John. *The Vatican and Italian Fascism, 1929-32*. Cambridge: University of Cambridge Press, 1985.

Renzsch, Wolfgang. "German Federalism in Historical Perspective: Federalism as a Substitute for a National State," *Publius: The Journal of Federalism*, 19 no. 4 (1989), pp.17-31.

Réveillard, Christophe. "L'Allemagne, les institutions européennes et le principe de subsidiarité," *Revue d'Allemagne*. 30 no.3, (1998), pp. 335-345.

Ross, George. *Jacques Delors*. New York: Oxford UP, 1995.

Rovan, Joseph. *Le Catholicisme Politique en Allemagne*. Paris: Editions du Seuil, 1956.

Schaefer, Guenther. "The Rise and Fall of Subsidiarity," in *Futures* 23 no.7, (1991), pp. 681-993.

Schlanger, Judith. *Les métaphores de l'organisme*. Paris: Librairie Philosophique J. Vrin, 1971.

Schmitter, Philippe, and Gerhard Lehmbruch. *Trends Toward Corporatist Intermediation*. Beverly Hills: Sage Publications, 1979.

Sémichon, Roger. *Les idées sociales et Politiques de La Tour du Pin*. Paris: Gabriel Beauchesne et ses Fils, 1936.

Stack, Christian, ed. *Main Principles of the German Basic Law*. Baden Baden: Nomos Verlagsgesellschaft, 1983.

Stavridis, Setlios et al, eds. *New Challenges to the European Union: Policies and Policy-Making*. Hampshire: Dartmouth Publishing, 1997.

Smith, M.L., and Peter Stirk, eds. *Making the New Europe: European Unity and the Second World War*. London: Pinter Publishers, 1990.

Svensson, Palle. "The Danish Yes to Maastricht and Edinburgh: The EC Referendum of May 1993," *Scandinavian Political Studies*. 17 no. 1, (1994), pp. 69-82.

Talmy, Robert. *Aux Sources du Catholicisme Social: L'École de La Tour du Pin*. Tournai: Desclée & Co., 1961.

------. *René de La Tour du Pin*. Paris: Bloud & Gay, 1964.

Taylor, Keith. "European Union: The challenge For Local And Regional Government," in *The Political Quarterly* 66, no. 1 (1995), pp74-83.

Teasdale, Anthony L. "Subsidiarity in Post-Maastricht Europe." *The Political Quarterly*. 64 no. 2. (1993), pp.187-197.

Wallace, Lillian. *Leo XIII and the Rise of Socialism*. Durham: Duke University Press, 1966.

Wilke, Marc and Helen Wallace. "Subsidiarity: Approaches to Power-Sharing in the European Community," RIIA Discussion Paper No. 27. London: RIIA, 1990.

Williamson, Peter. *Varieties of Corporatism*. Cambridge: Cambridge University Press, 1985.