

Addressing the Irregularities of Subsidiarity in the EU

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February 2026

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Image: A bronze statue of former German Chancellor Konrad Adenauer, considered as one of the founding fathers of the European Union



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About the Danube Institute

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Abstract

This paper traces the historical development of subsidiarity, analyses its legal enshrinement within the EU treaties, and demonstrates that Hungary's disputes with Brussels arise not from treaty violations by Hungary but from the EU's systematic failure to adhere to its own subsidiarity framework. The paper concludes with key findings and policy recommendations outlining how Hungary can more effectively articulate and defend a legally coherent doctrine of subsidiarity grounded in national sovereignty, constitutional identity and the explicit limits of the EU legal order.

Introduction

The principle of subsidiarity, which today serves as a measure of territorial or administrative governance, is one of the founding principles of the European Union enshrined in Article 5 (2 and 3) of the Treaty on European Union (TEU)¹—the document that forms the basis of EU law. A Catholic tenet in origin, subsidiarity holds that nothing should be done by a larger and more complex organization which can be done by a smaller and simpler one.

Within EU polity, it is intended to ensure that legitimacy always flows upwards from the Member States, regions and peoples, who share sovereignty in and rule together through common institutions. Clear as its function may be, and notwithstanding amendments to the TEU with the Treaties of Edinburgh (1992), of Amsterdam (1999), of Nice (2003) and of Lisbon (2009), the principle of subsidiarity remains both ambiguous and elusive within the EU framework, which has led to an absence of deference to the Member states.

Subsidiarity was first articulated by Pope Pius XI in his Encyclical *Quadragesimo Anno* (15 May 1931) in defiance to the centralizing of power by totalitarian regimes, specifically Communist Russia and Fascist Italy. Its concept, however, is ancient both as a philosophical and a societal system and legal principle.

Its point of emergence dates back to St. Thomas Aquinas's (1225-1274) commentaries on Aristotle's political philosophy and his application of it to the institutional pluralism of medieval society, essentially becoming the catalyst for the birth of subsidiarity.

The principle of subsidiarity, as developed by Pius XI, is uniquely a Catholic social principle, in that it puts forward an account of the proper relationship between a great variety of forms and expressions of human community in addition to the state, such as families, schools, churches, clubs, corporations and labour organizations.

In essence, subsidiarity is the means to assist the pursuit for a balance between the opposing tendencies toward state interference and non-interference.

In apposition, within political discourse, subsidiarity is aligned with both federalism and constitutionalism—the former guides the allocation of authority within a given political order, usually by assigning powers between one central government and some peripheral units; the latter places limits on government under the rule of law.

While both are comparative to subsidiarity, and to a certain point seek to attain similar objectives, they are not identical to it. Subsidiarity excludes neither regulation by state law nor the assumption of strong internal managerial functions for the prevention of concrete injustices to vulnerable members or to third parties.²

For about the past decade, the EU, which is not a sovereign state but a treaty-bound order whose institutions are legally constrained, has been increasingly acting outside the bounds of its delegated legal authority in violation of its own principle of subsidiarity by asserting jurisdiction over matters that properly belong to the Member States.

Its recent aberrations via the Commission—the only EU body that can propose or draft bills to become laws—along with the backing of the EU Parliament, have only empowered it to exert their jurisdiction, thus restricting Member States in their exercise of self-determination.

It has stretched the language of subsidiarity and proportionality beyond their textual limits by referring to “European values” or a purported “spiritual and moral heritage,”³ vague as the terminologies may be, as sources of jurisdiction—even though values are political commitments, not legal competences.

In effect, the EU has abandoned meaningful deference to national constitutional competence, as with Hungary in matters of domestic concern (eg, marriage, family law, education, religion and national identity), despite the absence of transnational necessity and despite explicit treaty language requiring restraint.

A recent case was when the Court of Justice of the European Court (CJEU) on 5 June 2025, upheld the Commission's previous accusation that the Hungarian government's prohibition of minors from accessing "content that is pornographic or that depicts sexuality as having a purpose in itself or that depicts or propagates divergence from self-identity corresponding to sex at birth, sex change or homosexuality," marginalizes LGBTQ+ people; and thus, undermined the EU's core values of equality, human dignity and respect for human rights as stipulated any Article 2 of the TEU.⁴

This paper traces the historical development of subsidiarity, analyses its legal establishment within the EU treaties, and demonstrates that Hungary's disputes with Brussels arise not from treaty violations by Hungary but from the EU's systematic failure to adhere to its own subsidiarity framework.

The paper concludes with key findings and policy recommendations outlining how Hungary can more effectively articulate and defend a legally coherent doctrine of subsidiarity grounded in national sovereignty, constitutional identity and the explicit limits of the EU legal order.



*EU Council President António Costa with former
Canadian Prime Minister Justin Trudeau
(Shutterstock)*

Origins and Historical Development

Subsidiarity has been among the most characteristic directives of the Catholic Church’s social doctrine since Pope Leo XIII promulgated his Encyclical *Rerum Novarum* (15 May 1891), thereafter enunciated by Pope Pius XI in his Encyclical *Quadragesimo Anno* (15 May 1931). It renders the moral and practical functions to the lower orders that are essential to a well-functioning community by setting the rightful limits on governmental action.

Etymology

The word subsidiarity derives from the word *subsidiary*, which has its roots in the Latin word *subsidium*. Polysemous in nature—“help, aid, relief and troops in reserve,” ie, a “subsidy” + “-arius” = relating to—it was often used in ancient literature in legal, military or administrative contexts where auxiliary support was discussed. Its etymological adjective, *subsidiarius*, means “belonging to a reserve, of a reserve or reserved; serving to assist or supplement.”⁵ The term thus implies a higher governing order has an obligation to help or assist individuals and lower social groups to flourish, not to absorb them.

Catholic Roots

As a concept, it can be said that subsidiarity is a fruition of Greek philosophy developed by Aristotle (384-322 BC) who sought to provide some sort of practical approach to the political phenomena of his time:

“[The king] should have a force, but a force of such a kind as to be stronger than an individual, whether by himself or together with many, but weaker than the multitude.”⁶

In truth, the rationale of subsidiarity’s proto-emergence is found in the development of Aristotelean political theory of St Thomas Aquinas. In the prologue of his commentary on Aristotle’s *Nicomachean Ethics*, in which he underlies the common good as the basis of all social and political organization, using Latin synonyms for *subsidium*, Aquinas says:

Because one (each of us) is by nature a social animal needing for one’s life many things one cannot get for oneself if alone, one is naturally a part of a group that furnishes one help [*auxilium*] to live well.

One needs this help in two respects. First, to have the necessities without which no-one can subsist and get through the present life; and for this, one is helped [*auxiliatur*] by the domestic group of which one is a part. For one is indebted to one’s parents for one’s generation, nourishment and instruction. Likewise individuals, as family members, help [*iuvant*] one another to procure the necessities of life.⁷

This must be read within the context of a tempered government and one of a mixed constitution he advocates in his *Commentary on the Politics*. Commenting on Aristotle’s assertion that a kind of mixed constitution (*quasi commixtum*) is in at least some circumstances the best form of government (*optimum regimen civitatis*), Aquinas argues that if one government is “tempered” by the “admixture” of another, it lends “less material...for sedition” because all—the king, the aristocracy and the people—have a part in the ruling of the city.⁸

Keeping in mind that when St Thomas wrote, while society was primarily a feudal one there was already the presence of absolute monarchs, like the Capetian dynasty in France and the Holy Roman Emperor. Hence, his attempt to place legal constraints on the sovereign was in order to prevent tyranny, which is in compliance with his Treatise on Law, where he clearly states that the best government is one in which there is mixture.⁹ Indeed, he holds that the best constitution (*optima politia*) is one which consists of monarchy, aristocracy and democracy, “well mixed” (*bene commixta*).¹⁰ This, too, applied to the small human communities living in city-states, in that the latter was respectful to the actions of the former in their field of activity.

Subsidiarity by the sixteenth century assumes the concept of ‘responsibility’ with the Spanish Dominican Friar, Francisco de Vitoria (1483 – 1546). Considered the Father of International Law (*ius gentium*), he reinvigorated Thomistic teaching, specifically on the natural law at the School of Salamanca, by reformulating it with new theoretical strands and by applying it with practical imagination to the pressing national and international issues of his day—the spread of Protestantism, the continuous wars between the French and Hapsburg monarchs (complicated by the Turkish threat) and the Spanish campaigns of colonial conquest in the Americas.

For him, the “principle of ‘responsibility to protect’ was considered by the ancient *ius gentium* as the foundation of every action taken by those in government with regard to the governed: at the time when the concept of national sovereign States was first developing...[he] described this responsibility as an aspect of natural reason shared by all nations, and the result of an international order whose task it was to regulate relations between peoples.”¹¹

In his most famous work, *De Indis (On the American Indians, 1532)*, which deals with the Spanish occupation of Indians in the newly discovered world, he tries to answer the following questions:

- By what rights were the barbarians (Indian) subjected to Spanish rule?
- What powers have the Spanish monarchy over the Indians in temporal and civil matters?
- What powers have the Spanish monarchy over the Indians in spiritual and religious matters?¹²

Vitoria, while ceding that “irrational creatures, like animals who neither *rule* nor *own* their acts and bodies, cannot be victims of an injustice and cannot have legal rights, admits no class of human beings—neither barbarians, nor children nor madmen—to be irrational in this subhuman sense, and so incapable of suffering injustice and devoid of legal rights.

Madmen may not, perhaps, be civil owners, but no men are slaves by nature, lawfully deprived against their will of freedom, lands, possessions and government.”¹³

He thus highlighted that the European States’ claim to universal jurisdiction over those who are inferior, regardless of any papal mandate giving them permission to colonize and exploit at will, cannot be qualified as a *de facto* or *de iure* reality.

Alignment to Federalism

Subsidiarity by the seventeenth century was intertwined to federalism; at least, that is the view of some scholars today. They point to the Calvinist German-Dutch jurist Johannes Althusius (1557-1638) as its precursor.

In his effort to counteract the theory of absolute sovereignty formulated by French jurist Jean Bodin (1529-1596), who abetted the sovereign’s absolute and indivisible power to command at will, Althusius advocated for the distribution of powers encompassing the individual—family, guilds, city and province. Sovereignty, Althusius held, was entrusted to organized people.¹⁴

The German Catholic Bishop of Mainz, Wilhelm Emmanuel von Ketteler (1811-1877), who was perhaps the first to use the term in Catholic social teaching, is also referred to by modern scholars as a proponent of linking subsidiarity to federalism. In his 1873 *Die Katholiken im Deutschen Reich*, Ketteler listed a number of points reaffirming his commitment to subsidiarity, including recognition of autonomy of all the states of the German Empire, and individual freedoms for all living in those states.

Ketteler, who dissented from the Catholic doctrine of papal infallibility that was defined in 1871, used the words “subsidiary” and “subsidiary right” as a way of curbing the ever-increasing centralization of the German/Prussian state, and of prioritizing the freedoms of individual persons and local communities over more complex social organizations—from the family, to the local village, town, and to successively larger and encompassing communities, such as, national and international bodies.¹⁵

For this reason, he advocated labour associations, including co-operative unions, to be established in order to defend the poor.¹⁶

The allocation of competencies that would be familiar with federalism, and subsequently attributed to the EU, did not come from the German intelligentsia but from the Republic of the United States of America. Indeed, it is first mentioned in 1789, in the Tenth Amendment of its Constitution:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”



*The Federal Palace of Switzerland
(Shutterstock)*

This amendment, in fact, helps to delineate the concept of federalism—the vertical relationship between Federal and state governments. It also establishes, as per constitutionalism, the limitation of the exercise of authority of the federal government over the states.

Subsidiarity Enunciated as Catholic Social Teaching

The Catholic Church during the nineteenth century saw the need to respond to the “social question,” that of poverty arising from the very specific, and very new, conditions of the Industrial Revolution. Notwithstanding the attention given to the Napoleonic Wars (1803-1815) by the European powers, industrialization continued to accelerate from Britain and Belgium to France, Germany and beyond. Its regional variation included mass migration from rural to urban areas, where there was an almost total absence of infrastructure: housing was inadequate; sanitation was poor; education, which was provided by religious orders, was limited; and wages were poor.

These were situations Pope Leo XIII addressed in his Encyclical *Rerum Novarum* (15 May 1891). While making no specific mention of subsidiarity, he nevertheless pointed to it by calling for state intervention, ie, assistance for citizens in need. For the Pope, the underlying principle of subsidiarity was that “[m]an precedes the State, and possesses, prior to the formation of any state, the right of providing for the substance of his body.”¹⁷

For this reason, “if a family finds itself in exceeding distress, utterly deprived of the counsel of friends, and without any prospect of extricating itself, it is right that extreme necessity be met by public aid, since each family is a part of the commonwealth.... public authority should intervene to force each party to yield to the other its proper due; for this is not to deprive citizens of their rights, but justly and properly to safeguard and strengthen them.”¹⁸

Pope Pius XI, on the fortieth anniversary of *Rerum Novarum*, revolutionized the concept of subsidiarity as a principle of non-interference by the state vis-à-vis Fascist Italy and the Soviet Union in his Encyclical *Quadragesimo Anno*.¹⁹ In defence of the Church, society and, above all, the human person, he enhanced the concept of subsidiarity highlighting the “fundamental principle of the social philosophy: *neque moveri neque mutari* (fixed and unchangeable).

This meant that one should not withdraw from individuals, as the state was doing, and commit to the community what they can accomplish by their own enterprise and industry.”²⁰

“The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly. Thereby, the State will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands. Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of “subsidiary function,” the stronger social authority and effectiveness will be, the happier and more prosperous the condition of the State.”

— Pope Pius XI, *Quadragesimo Anno*²¹

The Pope did not create a new social doctrine, but instead refined it by casting “society as a complex web of family, social, religious and governmental ties with the ultimate goal of encouraging and empowering the individual exercise of responsibility.”²² Authority in general and the state in particular were now perceived in their role of harmonizing, supporting and guaranteeing the well-being of the human person created in the image and likeness of God.²³

The overriding issue of social doctrine, as Pope Pius XII would further elaborate, was based on the fact that “...man and the family are by nature anterior to the State, and that the Creator has given to both of them powers and rights and has assigned them a mission and a charge that correspond to undeniable natural requirements.”²⁴

Subsidiarity, therefore, became the foundation capable of assisting the pursuit for a balance between the opposing tendencies toward interference and non-interference; tendencies which, in turn, have been perceived as dangerous temptations or genuine necessities, depending on the interpretations suggested by historical circumstances, for it has the same source as human life itself.

Legality of Subsidiarity

In papal teachings since Pius XI, subsidiarity is proposed as a principle of non-absorption, not a devolutionary one, let alone one of decentralization. As it is commonly understood, they are the opposite of subsidiarity, for they presuppose, to a certain extent, either:

- an ontological deficiency measured by a kind of cost-benefit analysis; or
- that the central government rightly possesses a plenary power that it has now decided to redistribute to other powers and authorities.²⁵

The principle does not require “lowest possible level” of governance but, rather a “proper level,” which is not determined by size or locality.²⁶

The component of responsibility of subsidiarity as developed by Pius XI would then mean that it would be unjust for a higher authority to dispel the self-governing lower ones, who, acting in the service of their own members (groups and persons), rightly have their own autonomous jurisdiction. From this perspective, the notion, or rather, the principle of subsidiarity incorporates two components, one negative and the other positive:

- the negative aspect is embodied in a duty of non-interference, which comes forth from the understanding that anyone in a position of authority, the state in particular, should not impede individuals and social groups from being free to self-determination
- the positive aspect assigns to each authority the task of encouraging, supporting, and, if necessary, replacing inadequate actors who become an obstacle to such self-determination.²⁷

Scrutinizing both aspects—negative and positive—one realizes that they complement and balance each other. There is proportionality, which embodies a standard for evaluating the scope and extent of permitted interference or the intervention of the higher governmental authority that must aim exclusively at pursuing the desired public objectives.

The principle of subsidiarity thus has a two-fold end: that of protecting the autonomy of the individual from social strictures that risk crushing it; and of safeguarding relationships between communities, particularly between lower and higher.

Subsidiarity in EU Politics

The purpose of subsidiarity in the EU is “to arbitrate the tension between integration and proximity in all matters dealt with by the Union and its Member States.”²⁸ Indeed, as a “constitutional safeguard of federalism,” it aims at restraining the exercise of powers allocated to the EU at the national level.

As per Protocol 30 of the Treaty of Amsterdam, subsidiarity is linked to proportionality in order “to ensure that decisions are taken as closely as possible to the citizen,” thus extending the principle; for example, so that all legislative proposals are assessed for their impact on subsidiarity.

The Treaty of Lisbon made further adjustments, specifically, greater consultation with the local and regional level when drafting legislative proposals; and closer communication with national parliaments during the legislative process.²⁹

In the realm of EU politics, notwithstanding its horizontal relationship with the Member States, subsidiarity has been linked to federalism, as in the legal rapport between the Federal Republic of Germany and the *Länder*—the sixteen states. Article 72 of the German Basic Law says:

- On matters within the concurrent legislative power, the *Länder* shall have power to legislate so long as and to the extent that the Federation has not exercised its legislative power by enacting a law.
- there is no specific prerequisite for the EU to act whenever the national level cannot achieve the objective sufficiently and where the objective would be better achieved at the EU level.³⁰



*La Pietà, City of Vatican
(Shutterstock)*

This is mirrored in Article 5 (3) of the TEU, which establishes subsidiarity as the principle that governs the exercise of competence: "...in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."³¹

The two features of the German Basic Law are both parallel to the implementation of subsidiarity found in Article 5 of the TEU in that

- once the EU has determined to act and meets the stipulations—there is no directive as to which body initiates this—that allow it to act under the subsidiarity principle, the Member States can no longer regulate on their own;
- there is no specific prerequisite for the EU to act whenever the national level cannot achieve the objective sufficiently and where the objective would be better achieved at the EU level.

The material dimension of subsidiarity can be verified from two angles inherent in the wording of Article 5(3) TEU—the national insufficiency test and the comparative efficiency test.³² Under the former, the EU can act only when the proposed action cannot be sufficiently achieved at the national level. This regards the deficiency of means at a Member State's disposal to achieve the objectives of the proposed action. The latter dictates that the EU shall act solely if the objectives of the proposed action can rather by reason of the scale or effects of the proposed action, be better achieved at Union level.³³

In order for EU action to be justified both subsidiarity and proportionality must be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Union. In order for this to be achieved, the following guidelines are to be accommodated:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.³⁴

Regarding the nature and the extent of Community action, the Protocol also says that Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. While respecting Union law, care should be taken to respect well established national arrangements and the organization and working of Member States' legal systems. Where appropriate and subject to the need for proper enforcement, Community measures should provide Member States with alternative ways to achieve the objectives of the measures.

This raises a fundamental question about the legitimate role of authority within a complex and multiple-layered polity, in particular, what are the competences to be exercised in areas shared by Member States and the EU, especially those at the national level?



*Jordan Bardella and Marine Le Pen during a rally
(Shutterstock)*

Points of Contention

A point of dispute with the principle of subsidiarity in the EU is that there are two constituent aspects that are difficult to reconcile. The first is that there are certain enactments achieved by Member States' that are exclusively of local self-government, ie, they are non-transnational, as with the Hungarian decision to protect children by prohibiting any access to LGBTQ+ information.³⁵ Hungary's right to self-determination is to be respected in this case since the Preamble of its Constitution "recognize[s] the role of Christianity in preserving nationhood,"³⁶ and any LGBTQ+ agenda directly violates Christian teaching.

The EU's overreach, in this case, is in direct violation of Article 14 (3) of the CFREU, which says:

"The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right."³⁷

The Commission's decision to bypass the deferential component of subsidiarity as stipulated in Article 5 (3) of the TEU should be of no surprise. In the EU, subsidiarity is devoid of its historical and Christian context, more so since, at the behest of some Member States, it collectively opted to omit any mention of its Christian roots in the Preamble the Constitutional Treaty of 2004-2005—the Treaty was never ratified. Hence, the principles of "indivisible, universal values of human dignity, freedom, equality and solidarity" the EU is called to safeguard are morally relative, at best.

The second point of dispute is the flaw of the principle of proportionality as a joint-governing tenet of subsidiarity as laid out by Article 5 (1, 3 and 4) of the TEU. With regard to the Hungarian decision to protect children, arguments could be made that EU legislation would allow a more integrated Christian-based curriculum for minors. This would be undisputed, other than that the cultural and social reality in countries, like France, whose constitutional law is rooted in the secular Revolution of 1789, make such proportionality impossible. This is where judicial review by the CJEU is to step in to ensure that the Treaties are correctly interpreted and applied.³⁸

It addresses the concerns of the central government (the European Union), with regards to any violation of its foundational human rights, and of local government (the Member States). The objective is not to replace the other, but rather to achieve mutual compatibility.

Failure of CJEU

Judicial review of subsidiarity has been strikingly ineffective in that, although the founding Treaties make clear that subsidiarity is a legally binding principle, the CJEU has adopted an excessively deferential approach to its judicial enforcement.³⁹

The complexities in applying the principle of subsidiarity stem, in part, from the inherent limits of judicial review. For the CJEU to strike down a measure under Article 5(2) EC, in which "...the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein," it must uphold, in the case of Hungary, that such "[c]ompetences not conferred upon the Union in the Treaties remain with the Member States." The principle of conferred powers expresses two complementary ideals. One is that of limited government: the EU is to operate only in specific, confined fields; it has no general law-making power. The other is derived government: the European Union has only such powers as are assigned to it by the treaties. It is the treaties, rather than any other consideration, that ultimately determine what the EU can and cannot do.

Hungary, like any Member State, can invoke subsidiarity in its appeal before the CJEU in order to safeguard against any infringement of its sovereignty at the national level. This is easier said than done because the CJEU has been disinclined to second-guess the decisions of the EU institutions. Striking a measure down would be arduous in that CJEU would have to come to a different conclusion from the view already taken by the Commission (and the European Parliament), for the Court to be admonishing them for flawed measures.⁴⁰ In fact, the CJEU has apparently never held that any EU legal act was invalid for breach of the principle of subsidiary. The permissive standards of review applied by the Court suggest that it is likely to do so only on extremely rare occasions. In essence, the CJEU has been more of a placebo than a panacea.⁴¹

Conclusion

Subsidiarity in the EU is, as already explained, a principle that foresees a government hierarchy, as with the federal government in Germany and the *Länder*, i.e., at least two levels, a superior one and an inferior one. The disparity is that the EU does not fall into this category. While it has clearly evolved into a unique arrangement of multilevel horizontal governance, in addition to assuming aspects of a system of a federal system, its polity remains ambivalent.

The principle of subsidiarity, in theory, operates as an intra-system principle within the relations between the EU institutions and the EU Member States, and as an inter-system principle between the EU legal order and the national legal order. It can thus be said that since the principle of subsidiarity presumes a hierarchical governmental structure: there is no need for it in the EU since both systems have a horizontal relationship, not a vertical one. This is a case to be studied separately.

A key component missing in subsidiarity as a principle in EU governance is its Christian component, as developed by Catholic theologians and jurists alike. It, in fact, renders more than a scholarly explanation of subsidiarity. It provides the historical and theological context that gives the term meaning in order to serve as a measure to address the problems of modern society—an approach that reflects a broad understanding of human nature, government and social structures.⁴² The concept of subsidiarity is one that is embedded in the teaching that man precedes the state. If the EU is not going to be held to divine moral standards, then it has free reign to become, as St Thomas Aquinas warned, tyrannical.

In its Annual Report of 2024 on the application of the principles of subsidiarity and proportionality and on relations with national Parliaments, the EU Commission congratulated itself, stating that, in compliance with the principles of subsidiarity and proportionality, its “regulation system, ranked at the top level by the Organisation for Economic Cooperation and Development.”⁴³ This favourable and categorical outlook is contradicted by a 2024 report on the EU’s Cohesion Policy by Professor Päivi Leino-Sandberg of the University of Helsinki.⁴⁴

In compliance with Article 174 of the TFEU, the EU’s Cohesion Policy aims to strengthen economic, social and territorial cohesion to help reduce gaps and disparities between European territories and regions.

The competences are to be shared between the Union and the Member States (Article 4, 2 of the TFEU) at the behest of the latter: “The Member States shall exercise their competence to the extent that the Union has not exercised its competence or to the extent that the Union has decided to cease exercising its competence.”⁴⁵

According to the Leino-Sandberg report, the EU has been utilizing financing as a “key tool for promoting its institutional agenda. While the Union does not formally legislate in areas of Member State competence, it uses its money actively to steer Member States’ choices in those areas.”⁴⁶ The EU has, in fact, broadened the powers of its institutions without public debate, thereby further affecting the division of competences between it and Member States, not to mention the application of the principle of subsidiarity.

Where do we move from here? It is not so much restructuring the decision-making process of the EU, in as much as calling attention to what the principle of subsidiarity is and what it demands, ie, call attention to its Catholic component. If a proper exegesis of subsidiarity is clarified, then there is hope that justice can be served for countries, such as Hungary, that seek to legislate in accordance with their founding Christian principles. This is vital not only for Hungary but also for the entire European Union if it is to survive as a Community.

For this reason, Hungary, above all Member States, should establish an “Office of the Legal Adviser” to the Ministry of Foreign Affairs and Trade modeled on the US State Department’s Legal Adviser Office, which furnishes advice on all legal issues, domestic and international, arising in the course of the Department’s work. This “Office” would be responsible for publishing legal doctrine on key questions of subsidiarity and competence to shape the interpretive environment, and for issuing authoritative legal opinions on treaty interpretation and sovereignty disputes. In turn, it would provide internal support for Hungary’s international negotiations, Council of Europe and EU Council positions, as well as defending Hungary’s actions before EU institutions and the ECJ. To achieve this, the “Office” would need to invest in training a rising generation of Hungarian international lawyers who can articulate these positions publicly and credibly.

Endnotes

¹Consolidated version of the Treaty on European Union, TITLE I - COMMON PROVISIONS, Article 5, EUR-Lex. https://eur-lex.europa.eu/eli/treaty/teu_2016/art_5/oj/eng.

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