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Subsidiarity in the Tradition of Catholic Social
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Abstract

This chapter is an invited contribution to the first English-language comparative study of subsidiarity, M. Evans and A. Zimmerman (eds.), *Subsidiarity in Comparative Perspective* (forthcoming Springer, 2013). The concept of subsidiarity does work in many and varied legal contexts today, but the concept originated in Catholic social doctrine. The Catholic understanding of subsidiarity (or subsidiary function) is the subject of this chapter. Subsidiarity is often described as a norm calling for the devolution of power or for performing social functions at the lowest possible level. In Catholic social doctrine, it is neither. Subsidiarity is the fixed and immovable ontological principle according to which the common good is to be achieved through a plurality of social forms. Subsidiarity is derivative of social justice, a recognition that societies other than the state constitute unities of order, possessing genuine authority, which which are to be respected and, when necessary, aided. Subsidiarity is not a policy preference for checking power with power. This chapter traces the emergence of the principle of subsidiarity to the neo-Scholastic revival that contributed to the Church's defense against the French Revolution's onslaught aimed at eliminating societies other than the state. The concept of subsidiarity has implications for the present, changing socio-political landscape in the United States as the Church faces a state that is poised to compel the Church to violate the moral law.

Michelle Evans and Augusto Zimmermann (eds.),
Subsidiarity in Comparative Perspective
(Springer, forthcoming 2013)

Subsidiarity in the Tradition of Catholic Social Doctrine

by
Patrick McKinley Brennan

I.

Although present in germ from the first Christian century, Catholic social thought began to emerge as a unified body of doctrine in the nineteenth century, first in the condemnations issued by Pope Pius IX (r. 1846-1878) and later in the prolific and forward-looking teaching of Pope Leo XIII (r. 1878-1903). Pius IX's *Syllabus of Errors* (1864) established that the Church would not accede to the deracinated and dissolved world imposed with relentless violence by the revolutionaries of 1789. Pius also recognized, however, that wholesale restoration of the *ancien regime* was out of the question. It thus fell to his successor, Leo, and to Leo's successors to recover and apply the enduring principles of a sound social order.

In the social order ripped to bloody shreds by the revolutionaries, the norm had been for the Church to be the soul of the body politic.¹ Church and state, though distinct, were to constitute a union -- the union of throne and altar. The Church served as the conscience of the state; the state served the common goods, both natural and, indirectly, supernatural. This was the logic of Christendom, the ideal of a Christian commonwealth. Separation, where it occurred, was an objectionable aberration. Not always achieved in practice, union remained both the ideal and the normal structure.

The dissolvent experiences of the nineteenth century taught the popes that the Church's place in the world had to be defended, both *de facto* and *de jure*. The normal structure had been obliterated, the ideal widely rejected. Faced with "rhetorical adrenaline"² and pathological violence on behalf of a laicized state, the question the popes had to answer was this: What was the rightful place of the

¹ See John Dickinson's introduction to John of Salisbury. 1927. *The Statesman's Book of John of Salisbury*. Trans. J. Dickinson. New York: Alfred Knopf. xvii-lxxxii. Berman, Harold J. 1983. *Law and revolution: the formation of the Western legal tradition*. Cambridge: Harvard. 276-88.

² Schama, Simon. 1989. *Citizens: a chronicle of the French revolution*. New York: Knopf. 906.

Church, in all of her pluriform institutional manifestations, in the emergent social order? The Church was fighting for her life, and the transcendent issue faced by the popes was how to differentiate the Church and the rest of the social order without reducing the Church either to a private association like any other or, perhaps worse, to a formless aggregate of members.³

The response of the popes, assisted by philosophers and theologians and other experts, proceeded apace, and by 1931 Pope Pius XI (r. 1922-39) would say that he inherited a body of social “doctrine” handed on from the time of Leo.⁴ Pius said this in *Quadragesimo anno*, the encyclical that gave the principle of subsidiarity -- a key component of the socio-political order affirmed by the Church in response to the social dissolution wrought by the revolutionaries -- its first, and canonical, formulation in Catholic social doctrine. Down to the present, the popes have continued to develop the entire body of social doctrine, by way of clarification and application, thereby shedding further light on the significance of subsidiarity and its relationship to the other principles comprised by this doctrine, including the common good, social justice, and solidarity. Subsidiarity is not, as it is sometimes said to be, a free-standing principle, but one among several principles of a unified and developing body of doctrine. But what is this body of thought known as Catholic social doctrine, and of what does it consist?

The Church’s social doctrine, Pope John Paul II (r. 1978-2004) explained, “belongs to the field, not of *ideology*, but of *theology* and particularly of moral theology.”⁵ Catholic social doctrine is, the Pope continued:

the *accurate formulation* of the results of a careful reflection on the complex realities of human existence, in society and in the international order, in the light of faith and of the Church’s tradition. Its main aim is to *interpret* these realities, determining their conformity with or divergence from the lines of the Gospel teaching on man and his vocation, a vocation which is at once earthly and transcendent; its aim is thus to *guide* Christian behavior.⁶

³ Weber, Wilhelm. 1981. Society and state as a problem for the Church. In: Jedin H (ed.) History of the Church. The Church in the modern age, vol. 10. New York: Crossroad. 229-59.

⁴ Pope Pius XI (1931). Encyclical letter *Quadragesimo anno* Nos. 18-21. Available via http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html See also Pontifical Council for Justice and Peace, Compendium of the Social Doctrine of the Church. 2004. Rome: Libreria Editrice Vaticana. No. 87. Available via http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html

⁵ Pope John Paul II. 1987. Encyclical letter *Sollicitudo rei socialis* No. 41 (emphasis original). Available via http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis_en.html

⁶ Id. (emphasis original)

The Church's social doctrine "finds its essential foundation in biblical revelation and the tradition of the Church,"⁷ and it also makes use of philosophy, for, as the *Compendium of the Social Doctrine of the Church* (2004) explains, "[b]y means of reason, the Church's social doctrine espouses philosophy in its own internal logic It is philosophy . . . that shows the reasonableness and acceptability of shining the light of the Gospel on society"⁸ In addition to philosophy, the Church's social doctrine is informed by the human sciences and the social sciences, because while the principles of the social order are natural and therefore unchanging, social realities "change over time with social developments."⁹ Social changes call for the fresh application – and indeed sometimes the discovery or re-discovery – of permanently valid principles, always under the authoritative guidance of divine revelation.¹⁰ When he named the principle of subsidiarity in *Quadragesimo Anno* and described it as a "most weighty" ("*gravissimum*") principle, Pius also acknowledged it as "fixed and unshakable" ("*fixum . . . immotumque*").¹¹ The Church proposes subsidiarity, then, not as a "policy" or a mere political preference, but instead as one among the unchangeable ontological principles of the socio-political order.

II.

The *Compendium* introduces subsidiarity by stating that the principle "is among the most constant and characteristic directives of the Church's social doctrine and has been present since the first great social encyclical," a reference to Leo XIII's *Rerum Novarum* (1891), the fortieth anniversary of which Pius XI celebrated in *Quadragesimo anno*. While *Rerum novarum* did indeed contain the rudiments of the conceptual structure of subsidiarity¹², it would take until *Quadragesimo anno*, the subtitle of which is "On the Restoration of the Social Order and Perfecting It Conformably to the Precepts of the Gospel," for the term to enter the lexicon of Catholic social doctrine.¹³ Or, more precisely, what entered there was

⁷ *Compendium*, supra note 3, at No. 74 (emphasis omitted)

⁸ *Compendium*, supra note 3, at No. 77

⁹ Pope Pius XII quoted in Hittinger, Russell (2008). The coherence of the four basic principles of Catholic social doctrine: an interpretation. Available via <http://www.pass.va/content/dam/scienze-sociali/pdf/actapass14.pdf>. Note 5.

¹⁰ *Compendium*, supra note 3, at No. 85 (emphasis omitted).

¹¹ *Id.* at No. 79.

¹² Pope Leo XIII. 1891. Encyclical letter *Rerum novarum*. Nos. 29, 36. Available via http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html

¹³ It is telling that the widely respected *Catholic Encyclopedia* published in 1917 does not so much as contain an entry for subsidiarity (though it does include one for suburbicarian dioceses), but the *New Catholic Encyclopedia* (second edition 2003) does devote an entry, of not quite three pages, to the term.

the phrase “*servato hoc ‘subsidiarii’ officii principio,*” which means “in observance of the principle of ‘subsidiary’ function.” The Latin work *subsidium*, the focal meaning of which is “help,” had been attested since Roman times.¹⁴ Pius’s *subsidiarium* was a neologism.¹⁵ The pope does not identify the source of the linguistic *novum* his text sets off in quotation marks, but we know from external evidence that it represents the Latinization of an earlier Italian neologism by Luigi Taparelli D’Azeglio, the Jesuit whose thought Pius XI recommended by name, quite remarkably, in his encyclical *Divini Ilius*, promulgated in 1929, just two years before the promulgation of *Quadragesimo Anno*.¹⁶

A crucial link in the genealogy of the emergence of the principle of subsidiarity is Taparelli’s experience of a “conversion,” in 1825, to Thomism, the philosophical theology of St. Thomas Aquinas (1225-1274).¹⁷ By virtue of this conversion, Taparelli became an instigator of a paradigm-shifting intellectual movement. Specifically, Taparelli was in the vanguard of Catholics who re-learned the learning of St. Thomas which had been mostly lost, except in the caricatured form in which it was ridiculed by the protagonists of Enlightenment philosophy, since the early seventeenth century. Taparelli taught as professor in the recently re-founded Jesuit seminary in Rome, where, as providence would have it, Gioacchino Vincenzo Pecci was his student. Half a century later, Pecci, now as Pope Leo XIII, would inaugurate his pontificate by publishing the programmatic encyclical *Aeterni patris* (1878) calling for the recovery, development, and application of Thomism throughout the Church.

¹⁴ On the history of the usage of “subsidium” in ancient times, see Lewis and Short, *A Latin Dictionary*, 1781. On its usage during the Middle Ages, see DuCange et al., *Glossarium mediae et infimae latinitatis* (Niort: L. Favre, 1883-87). Available via <http://ducange.enc.sorbonne.fr/SUBSIDIUM>

¹⁵ On earlier uses of the neologism, see Leys, Ad (1995). Ecclesiological impacts of the principle of subsidiarity. Kampen: Uitgeverij Kok. 75-78.

¹⁶ Specifically, he recommends Taparelli’s textbook *Saggio teoretico di Diritto Naturale (A Theoretical Treatise on Natural Right, Based on Fact)* (1840-43), “a work never sufficiently praised and recommended to university students.” No. 50 n.33. *Saggio* has not been translated into English, and very little has been written about Taparelli in English. On the various influences behind *Quadragesimo anno*, we have the detailed first-hand report of the leading ghostwriter, Oswald von Nell-Breuning, “The Drafting of *Quadragesimo Anno*. 1986. In: Curran, C and McCormick R (eds). *Readings in moral theology No. 5: official Catholic social teaching*. 60-68.

¹⁷ Behr, Thomas C. 2003. Luigi Taparelli D’Azeglio, S.J. (1793-1862) and the Development of Scholastic Natural-Law Thought As a Science of Society and Politics. *Journal of Markets and Morality*. 6:99-115. 100. See also Behr, Thomas. 2000. Luigi Taparelli and the Nineteenth-Century Neo-Scholastic ‘Revolution’ in Natural Law and Catholic Social Sciences.” Ph.D. diss., SUNY Buffalo.

Modern political theory tended to hold, in one way or another, that “[w]e do not know what man is.”¹⁸ Taparelli grasped, in particular, “that the post-Cartesian abandonment of the hylomorphism of Aristotle and Aquinas came at a steep cultural and political price. Unlike the natural sciences, where differences of opinion, Taparelli analogized, have no effect on the actual course of nature, mistaken metaphysical assumptions have a direct bearing on the direction of individual wills and lead to disorder in society.”¹⁹ Taparelli’s textbook, *Saggio teoretico di diritto naturale appoggiato sul fatto, Theoretical Treatise on Natural Right Based on Fact*, the study commended by Pius XI, manifested “[h]is thoroughly Thomistic intention . . . to merge a deductive theoretical approach with an inductive historico-sociological approach in a dialectical method that would form the basis of a modern science of society and politics.”²⁰ Taparelli believed that he had found in Thomas an empirical method that could discover universal laws of nature in constellations of individual facts, and it was on the basis of those universal laws, one of which is the principle of subsidiarity, that Taparelli insisted that the post-revolutionary socio-political order must be structured.

Taparelli carried on this work of recovery and development not only as a seminary professor but also as a leading contributor to the *La Civiltà Cattolica*. That influential journal, co-founded by Taparelli and another Jesuit, represented nothing less than a wholesale movement to realize what the journal’s name means, Catholic civilization. Catholic counter-revolutionaries had not been wanting since 1790, of course, but it took the revolutions that convulsed most of Europe in 1848 for a systematic presentation of the Catholic position to emerge, and emerge it did on the pages of *La Civiltà Cattolica* starting in 1850, thanks to the endorsement of (including loans from) Pius IX. The contributors to *La Civiltà* have been accused of “intransigence.”²¹ The charge is true if it be understood as confirming the *Civiltà*’s confidence in the certainty of its counter-revolutionary position. “[T]he Roman journal believed that respect for the authority of the Word in the Church was itself historically responsible for building confidence in the value of Reason in the first place,”²² and this very confidence is the context in which to single out “Taparelli’s openness to new ideas.”²³ The concept neologized as “*subsidiarium*” was just that, a

¹⁸ Manent, Pierre. 1998. *The city of man*. Trans. Marc A. LePain. Princeton: Princeton University Press. 124

¹⁹ Behr, supra note <>, at 100

²⁰ Behr, supra note <>, 102-03

²¹ Rao, John. 1999. *Removing the Blindfold: Nineteenth-Century Catholics & the Myth of Modern Freedom*. Ch. 1, 32-33. Available via http://www.romanforum.org/wp-content/uploads/rem_01.pdf

²² Rao, John. 2011. *Black legends and the light of the world*. Forest Lake, MN.: Remnant Press. 475

²³ Rao, *Removing*, supra note <>, at 34. W.E. von Ketteler (1811-1877), Bishop of Mainz, also converged on the social principle that would later be called subsidiarity. Rather than from a neo-scholastic analysis, von Ketteler reached the principle through a combination of Romantic and liberal thought. See Leys, *Impacts*, supra note <>, at 25-40.

new idea creatively culled from the depths of the Catholic philosophical and theological tradition that had roots in Greek philosophical speculation.

III.

Taparelli's socio-political philosophy is thick with fresh insights and corresponding neologisms, such as "Hypostatic Right," the novel title under which Taparelli gathers the natural and just relations among the countless and varied associations that humans tend to form. Both words carry freight. First, "right" is, of course, a jurisprudential commonplace of ancient vintage, and easily given a familiar meaning that would obscure Taparelli's insight. The modern mind must resist, as Taparelli did, the philosophical prejudice according to which only individual rational substances, *but not groups or societies*, are the subject of right and of rights. Subsidiarity is a principle of "group right" and, derivatively, of "group rights," but, as we are about to see, in a far subtler structure than is commonly heard today. Second, then, Taparelli's Italian neologism *ipotattico*, of which the English hypostatic is a transliteration, is a borrowing from the Greek word *hypotaxis*, which refers to the rules of grammar that govern the modalities of coordination among clauses and, specifically, the arrangement of subordinate clauses within the structure of a grammatically complex sentence. The concept of *hypotaxis*, as Thomas Behr has observed, was the starting point for "an excellent extension into the neologism *ditto ipotattico* to convey the rights of social groupings, within their just relationships, organized toward the common good."²⁴ Behr goes on to explain that "the Greek *hypo taxis* can be rendered directly in Latin as *sub sedeo* [to sit below]. The Latin expression *subsidia* applied, then, not just to mean help but in the first instance to auxiliary troops within the Roman legion, as they 'sat below' ready in reserve to support the battle."²⁵ Taparelli's critical insight was that all societies, other than the most basic ones such as family or simple partnerships, are always composed of other societies, and there exist social rules governing the relations among such nested and overlapping societies.

Specifically, subjacent societies are to provide "help" *from the bottom up*, each by performing its own proper ("*proprium*") work and by referring the fruits of thereof to the larger and more perfect societies -- including the *societas perfecta* that is the state -- in the achievement of their respective common goods.²⁶ We can say, then, that "the point of subsidiarity is a normative structure of plural social forms, not a trickling down of power or aid."²⁷ It is important to emphasize this point, because subsidiarity is often but erroneously described as a matter of devolution or smallness of scale. In Taparelli's thought, however, and, in turn, in Catholic social doctrine, it is neither. *Pace* much modern political theory, power is not all held at

²⁴ Behr, *supra* note <>, at 105.

²⁵ Behr, *supra* note <>, at 105.

²⁶ Behr, *supra* note <>, at 104-05.

²⁷ Hittinger, Russell. 2006. Introduction to modern Catholicism. In *The teachings of modern Christianity on law, politics, & human nature*, eds. J. Witte and F. Alexander, 3-38. New York: Columbia university press. 23

the top in the first place, so the possibility that subsidiarity is a devolution norm turns out to be based on a fallacious premise; smallness, furthermore, is not *per se* good (or bad). The principle of subsidiarity recognizes, instead, "that there are plural authorities and agents having their 'proper' (not necessarily, lowest) duties and rights with regard to the common good."²⁸

It is against this background that we can at last approach Pope Pius XI's articulation of the principle of subsidiary function in *Quadragesimo Anno*:

79. As history abundantly proves, it is true that on account of changed conditions many things which were done by small associations in former times cannot be done now save by large associations. Still, that most weighty principle, which cannot be set aside or changed, remains fixed and unshaken in social philosophy: Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.

80. 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.²⁹

As stated in *Quadragesimo Anno*, then, the principle of subsidiarity enjoys both positive and negative aspects. Negatively, it is a principle of non-absorption of lower societies by higher societies, above all by the state. This is the aspect of subsidiarity that is commonly invoked today, but it represents only half the story. Positively, subsidiarity is also the principle that when aid is given to a particular society, including by the state, it be for the purpose of encouraging and

²⁸ Hittinger, Introduction, *supra* note <>, at 23.

²⁹ Pope Pius XI. 1931. Encyclical letter *Quadragesimo anno*. Nos. 79-80. Available via http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html

strengthening that society; correlatively, flourishing societies contribute to the flourishing of the greater societies of which they are so many irreducible parts.

In sum, “[e]very social activity,” Pope Pius XII (r. 1939-1958) explained, “is for its nature subsidiarity; it must serve as a support to the members of the social body and never destroy or absorb them.”³⁰ It bears emphasis that the libertarian misinterpretation of subsidiarity, which reduces the principle to little more than its non-absorption aspect, is falsified by the popes’ repeated insistence that the state has a right, and sometimes a duty, to intervene, as Pope John XXIII (r. 1958-1963) made unmistakable in the encyclical *Mater et Magistra* (1961): “in [its] work of directing, stimulating, co-ordinating, supplying and integrating, [the state’s] guiding principle must be the ‘principle of subsidiary function’ formulated by Pius XI in *Quadragesimo Anno*.”³¹

The full significance of the principle of subsidiarity comes into focus if we attend to why it took until *Quadragesimo Anno* for the Church definitively to articulate so basic a principle. Until the Revolution of 1789, the Church lived by this as-yet-unnamed principle -- and flourished thanks to its countless manifestations -- without being made to feel self-conscious about it. It was perfectly congenial to the Church to manifest her nature as the Mystical Body of Christ in the world through the diverse and irreducible operations of her many social members or organs. The Dominicans did work that was different from the Carthusians’ work. (We will have more to say about these two Orders’ respective works below). Likewise, no one was tempted to fold Christian Brothers’ schools into Benedictines’. Similarly, the Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta (Knights of Malta) was not at risk of being suppressed or dissolved into Equestrian Order of the Holy Sepulchre of Jerusalem. All of the just-mentioned associations, along with many more, survive to this day in the life of the Church, and each continues to refer the gift of its unique service to the common good.

Such associations, however, represent exactly what the architects of the modern monolithic nation state wished to eclipse, elide, and eliminate, as circumstances and force would permit. This idea of the all-encompassing Leviathan state that began with Hobbes assumed the following form in the French *Declaration of the Rights of Man* (1789): “The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not

³⁰ Pope Pius XII, *La elevatezza e la nobilita* (February 20, 1946), quoted in Hittinger, Intro., 23 n. 63.

³¹ Pope John XXIII. 1961. Encyclical letter *Mater et Magistra* No. 53. Available via http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_15051961_mater_en.html See also Pope John Paul II. 1991. Encyclical letter *Centesimus annus*. No 48. Available via http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html See also Calvez, J., and Perrin, J. 1961. *The Church and social justice: the social teachings of the popes from Leo XIII to Pius XII*. Trans. J. R. Kirwan. 328-37.

proceed directly from the nation.”³² It was this idea that took coercive juridical force, two years later, when the French state passed a law de-creating corporations:

‘Since the abolition of all kinds of corporations of citizens of the same occupation and profession is one of the fundamental bases of the French Constitution, re-establishment thereof under any pretext or pretence or form whatsoever is forbidden.’ (sec. 1) ‘Citizens of the same occupation or profession . . . may not, when they are together, name either president, secretaries, or trustees, keep accounts, pass decrees of resolution, or draft regulations concerning their alleged common interests.’ (sec. 2)³³

At a legislative stroke, then, the plurality of society was reduced, as least aspirationally, to the unity of the state through the elimination of the countless and varied societies that previously were nested within political society. The Church knew all along what was wrong about this, but it took time for the Church to articulate, thanks to the insights of Taparelli and others, the principle of “subsidiary function” as the name for the reason to condemn the summary execution of societies.

IV.

Commentators who treat subsidiarity as a matter of devolution or simple smallness of scale overlook the deep ontological springs of the principle. The principle of subsidiarity does not purport to *create* a social ontology. Instead, the principle of subsidiarity *recognizes*, and thus honors, the ontological facts about how individuals associate for the performance of unique functions which are so many irreducible contributions to the common good. It *recognizes*, specifically, that not just individuals have functions to perform, but so too groups. At the same time as he was articulating and applying the principle of subsidiarity, Pope Pius XI was also developing the complementary doctrine of social “*munera*,” and the pope’s creative extension of this sacral language into the socio-political realm helps to show the true significance and ontological substrate of the principle of subsidiarity function.

Munera is the plural of the Latin noun *munus*. Serviceably translated as “function,” *munus* also denotes gift-giving: the Magi offered *munera* to the Christ child. The key insight is that the performance of social functions constitutes the giving of gifts for the common good. Such functions are *assigned*, explicitly or implicitly, either by nature, as in the state and the family, or by supernature (and nature), as in the Carthusians and the Sovereign Military Order of Malta. The performance of these functions is, moreover, what Pius XI meant by “social justice,” another new concept in the development of Catholic social doctrine.³⁴ As Russell Hittinger explains, “for Pius XI, social justice is nothing other than the manifold

³² Stewart, John. 1951. *A Documentary History of the French Revolution*. New York: Macmillan. 114.

³³ Chapelier Law, 14 June 1791. Stewart, *supra* <>, at 165.

³⁴ Shields, Leo William. 1941. *The history and meaning of the term social justice*. Notre Dame: Notre Dame. 26-73.

organicity of the common good; or, to put it another way, it is the demand that the common good be brought about through organizations, institutions, and groups.”³⁵ In Pius’s own words, social justice is realized when “each individual member is given what it needs for the exercise of its proper function. . . . all that is necessary for the exercise of his social *munus*.”³⁶ Subsidiarity, then, is a principle *derivative* of social justice, according to which each member of society is capacitated to perform its social role for the common good.³⁷

An example of what Pius XI meant by the performance of a social *munus* may be helpful, and we can do no better than to attend to what that pope said about the aforementioned Carthusians, founded in the south of France in 1084 by St. Bruno of Cologne. The case of the Carthusians, the Church’s most contemplatively-focused monastic order, is especially instructive, for the revolutionaries nursed a special hatred of the contemplative orders, for their purportedly passive presence in the social order silently denied the exigency and sufficiency of “liberty, equality, and fraternity,” in favor of the social Kingship of Christ and His demand for social worship. So, already in 1790 the self-laicized French state enacted the Decree Suppressing Monastic Vows, which began with this: “The constitutional law of the kingdom shall no longer recognize solemn monastic vows of persons of either sex. Consequently, the regular orders and congregations in which such vows have been made are and shall remain suppressed in France, and no similar ones may be established in the future. All individuals of either sex living in monasteries and religious houses may leave them”³⁸

Following a century of vicissitudes of Catholic resistance and more than ample pushback by the successive Republics, the government raised the stakes still further by enacting the Law of Associations (1901), which provides (in part) as follows: “No religious congregation may be formed without an authorization given by a law which shall determine the conditions of its operation. No congregation may establish any new foundation except by virtue of a decree of the Council of State. The dissolution of a congregation or the closing of any establishment may be declared by a cabinet decree.”³⁹ Few of the required “authorizations” were granted. The Law, which provided for the “liquidation” of religious orders’ property, was

³⁵ Hittinger, Russell. 2002. Social pluralism and subsidiarity in Catholic social doctrine. *Annales theologici* 16: 385-408. 393

³⁶ The larger context includes distinguishing “social justice” from the more familiar concept of commutative justice. See Pope Pius XI. 1937. Encyclical letter *Divini Redemptoris*. No. 51. Available via http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19031937_divini-redemptoris_en.html

³⁷ Hittinger, Pluralism, supra note <>, 394.

³⁸ MacLear, J.F. (ed.) (1995). *Church and state in the modern age*. New York: Oxford. 77.

³⁹ MacLear, supra note <>, at 294-95.

executed with special ferocity against the Carthusians,⁴⁰ as the *New York Times* reported on March 27, 1903.⁴¹ The soldiers came at three o'clock in the morning, while the community was gathered to sing the Divine Office in church, and arrested the monks one at a time. Without the monks' having enjoyed so much as a proper hearing, the community of monks dispersed, its property liquidated, and its common life of prayer succeeded by men driven into *diaspora*. As Matthew Arnold wrote of the affair and its consequences: No longer "[w]ith penitential cries they kneel/ And wrestle; rising then, with bare / And white uplifted faces stand, / Passing the Host from hand to hand."⁴²

The dissipation of the Carthusians' irreducibly social *munus*, captured so exquisitely but painfully by Arnold, would have been very much on the mind of Pope Pius XI when, in 1924, he approved the Carthusians' revised statutes in the extraordinary form of an Apostolic Constitution that included a lengthy encomium to their shared way of life, of which the following is indicative:

According to his great kindness, God, who is ever attentive to the needs and well-being of his Church, chose BRUNO, a man of eminent sanctity, for the work of bringing the contemplative life back to the glory of its original integrity. To that intent Bruno founded the Carthusian Order, imbued it with his own spirit and provided it with those laws which might efficaciously induce its members to advance speedily along the way of inward sanctity and of the most rigorous penance, to the preclusion of every sort of exterior ministry and office: laws which would also impel them to persevere with steadfast hearts in the same austere and hard life.⁴³

Pius goes on to make unmistakable that the heart of the matter is the capacity of each group to perform its own particular work, in this case contemplation, and to refer its effects to the common good. Writing a year later, in the encyclical *Rerum Ecclesiae*, Pius explained the reason for his unusual commendation of the Carthusians' unique gift to the work of the Church, and went on to generalize the point with reference to the work of a Trappist Cistercian monastery of contemplatives, some one hundred in number, in what was then called Peking: "It is, therefore, not to be questioned that these hermits, while they guard intact the spirit of their holy Founder and therefore do not engage in an active life,

⁴⁰ Brennan, Patrick McKinley. 2009. Differentiating Church and state (without losing the Church). *The Georgetown journal of law and public policy*. 7:29-49. 30-33

⁴¹ Quoted in Brennan, *supra* note <>.

⁴² Quoted in Brennan, *supra* note <>.

⁴³ Pope Pius XI. 1924. Apostolic Constitution *Umbratilem*. Available via http://www.vatican.va/holy_father/pius_xi/apost_constitutions/documents/hf_p-xi_apc_19240708_umbratilem_lt.html

nevertheless they prove themselves of great *assistance in the successful work of the missions*.”⁴⁴

The Carthusians continue to flourish throughout the world to this day, but in the monastery founded by St. Bruno before France as we know it even existed, they live now as tenants of the French government. The Law of Associations of 1901 has not been repealed. The conditions of “passing the Host from hand to hand” remain vulnerable to legislative violence in violation of the non-absorption aspect of the principle of subsidiarity, and this is but one among countless possible examples of why the Church was compelled to resist the revolutionaries’ push to dissolve the organs of the Church into the heap of civil society.

V.

Taparelli’s new idea recognized by Pius XI as a “fixed and unshakable” principle of the social order soon made its way into the leading mid-twentieth century studies of Catholic thought on the socio-political order, and attention to some aspects of those expositions will illuminate facets of subsidiarity sometimes left underdeveloped at the level of magisterial exposition. The distinguished Georgetown political scientist Heinrich Rommen (1897-1967), glossing the relevant language of *Quadragesimo anno*, explains that “the principle of subsidiarity applies . . . to the different natural or freely created communities in the social order. Social life is governed by the principles of autonomy, of hierarchy and intervention.” With respect to the third principle, intervention, Rommen stresses that “[t]he purpose of this intervention is the reconstruction of the order, the rehabilitation of the function, not the abolition of the part or the substitution of the state for the lower society.”⁴⁵ Subsidiarity cannot, therefore, be understood as a principle militating in favor of smallness of scale *per se*.⁴⁶

Rather, subsidiarity is an ontological principle of competencies or, to return to Pius XI’s complementary insight, *munera*. The principle derives its ontological traction, so to speak, from the fact that subsidiary function is an aspect of the

⁴⁴ Pope Pius XI. 1926. Encyclical letter *Rerum Ecclesiae* (emphasis added).

Available via

http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_28021926_rerum-ecclesiae_en.html Pius certainly did not imply that the Carthusians’ or Trappists’ only function and gift were the ones he emphasized.

⁴⁵ Rommen, Heinrich. 1947. *The state in Catholic social thought*. St. Louis, MO: Herder. 302, 303

⁴⁶ Johannes Messner is in accord: “The reality of the common good, therefore, is impaired insofar as it is pursued by means of a diminution of the spheres of responsibility and of competence belonging to the members of society. . . . Here, then, is the fundamental task of social reform today: to reform society with a view to the organization of strong autonomous bodies, both regional and occupational. . . .” Messner, Johannes. 1965. *Social ethics in the natural law tradition*. Trans. J.J. Doherty. St. Louis, MO: Herder. 210, 214

common good, as the distinguished Austrian theologian and social theorist Johannes Messner (1891-1984) explains:

The principle of subsidiary function . . . means that the common good does not establish for society any right or authority over what the individual person or the member society can do by his own power. We say that “the common good” establishes no right for society beyond this limit, in order to emphasize the fact that every right to social activity is founded on the common good, the end of society, and that hence the subsidiary principle is inherent in the nature of the common good. Basically, therefore, the common good principle and the subsidiary principle are one. . . . The common good confers powers and at the same time limits them: it empowers them to do everything necessary for its actual realization, but *only* that. The common good principle and the principle of subsidiary function are two sides of one and the same thing. Thus it was that *Pius XI*, when he coined the term “subsidiary function,” called it the “fundamental principle of social philosophy,” . . . while Leo described the common good principle as “after God, the first and last law in society.”

As Pius XI elaborated in the doctrine of social *munera*, the principle of subsidiarity function is a concrete principle, not merely a formal principle. It has content, not just form: it “declares a quite definite distribution of competencies based on the order of being and of ends.”⁴⁷ Although subsidiarity does not create a social ontology, it discerns and announces the one ordained by the common good.

The functions and competencies of morally upright associations exemplify genuine authority, that is, the right of dominion and command within their respective spheres. It is these genuine authorities, of course, that Leviathan in all of its successive instantiations wished to vaporize, and the principle of subsidiary function responds by observing that the vigor and vitality of such authorities are required by the common good. To that end, Messner notes, such societies are to engage in “[a]s much self-help as possible”⁴⁸ to promote and sustain their respective competencies, for (it bears repeating) “the Latin word *subsidiarius*, although it derives from *subsidium*, does not connote help pure and simple in its fundamental military sense, but rather in the sense of ‘reserve,’ a word used of those forces which were to provide help when the frontline troops failed.”⁴⁹ Right and authority are preceded by social obligation.

An important but sometimes unwelcome(d) consequence of subsidiarity’s being the inverse of which the obverse is the common good follows: the application of the principle of subsidiarity always depends on the particulars of the given situation. Those who look for the certainty of geometry in practical science will be frustrated by the fact, observed by Messner, that “the *range* of its authority widens

⁴⁷ Id. at 210

⁴⁸ Id. at 213

⁴⁹ Id. at 212

or contracts according to the energy and will of the individual members of society to undertake responsibility in looking after their rights.”⁵⁰ Messner is quick to add, though, that (1) the burden of proof that an extension of authority is on the society seeking the extension and (2) any intervention and subvention are to be arranged “to make them superfluous as quickly as possible.”⁵¹ Like other forms of justice, social justice -- from which, as we have seen, the principle of subsidiarity is derivative -- will never take perfect shape in this fallen world. The more the work of a particular state can be accomplished through the competencies and authorities of the many and varied societies that are nested within that state, however, the richer that particular state’s socio-political order. States that are frequently obliged to intervene to rescue societies that lack the vigor necessary to fulfill their functions will soon be sapped of their own strength or, in the alternative, become totalitarian as they succumb to the temptation to intervene not to restore but, instead, to colonize.

I have emphasized that the principle of subsidiarity function is a principle of social *pluralism*, and, in fact, Jacques Maritain (1882-1973), perhaps the most influential neo-Thomist of the twentieth century, eschewed the term subsidiarity in favor of “pluralism,” “the pluralist principle,” and the like. “As opposed to the various totalitarian conceptions of society in vogue today,” Maritain wrote in 1935, “the conception here is of a pluralist body politic bringing together in its organic unity a diversity of social groupings and structures, each of them embodying positive liberties.”⁵² Maritain then quoted the sentence of *Quadragesimo anno* that calls attention to the “injustice” and “grave evil” of withdrawing from groups functions that they themselves can perform, and concluded as follows: “Civil society is made up not only of individuals, but of particular societies formed by them, and a pluralist body politic would allow to these societies the greatest autonomy possible and would diversify its own internal structure in keeping with what is typically required by their nature.”⁵³ Maritain’s preference for “pluralism” rather than subsidiarity highlights an important but often overlooked aspect of the doctrine, but it also invites a misunderstanding. In contemporary political theory, “pluralism” is typically commended either as a way of checking power with other power or, instead, as an acknowledgment of socio-ethical diversity. Maritain, however, understands groups as first of all occasions and opportunities for positive liberties, and these are not all created equal, let alone created for the purpose of producing a “thermodynamics of power”⁵⁴: “The pluralist city multiplies liberties; the measure

⁵⁰ Id. at 214

⁵¹ Id. at 215

⁵² Maritain J. (1935). Integral humanism. In Bird O. (ed). Integral humanism, Freedom in the modern world, and A letter on independence, The Collected Works of Jacques Maritain. 1996. South Bend, University of Notre Dame Press. Vol. 11, 256

⁵³ Maritain, Integral, supra <>, at 256. See also Maritain, Jacques. 1951. Man and the State, 11, 22, 23, 123, 150

⁵⁴ Hittinger, Coherence, supra note <>, at 108.

of these is not uniform, and varies according to a principle of proportionality.”⁵⁵ The reason for respecting morally upright groups is that they exercise irreducible social functions, some more important than others.⁵⁶ A collateral benefit of such plural authorities is that they can, perhaps, thwart totalitarianism, a point to which I return at the end.

VI.

First, however, we do well to emphasize exactly what the instrumentalist justification of social pluralism -- power-checking-power -- wholly overlooks: the intrinsic perfections that make society or association worth undertaking for its own sake. As Taparelli saw, the occlusion of the ontology of association is part and parcel of modernity’s abandonment of the Aristotelico-Thomistic understanding of man as a *naturally* social animal. Modern thought would have it that the human person is “social” only by accident or desperation, sometimes memorialized in a fiction called the “social contract.” The truth and value of the principle of subsidiarity come into relief if we zero in on the fact that what it protects and preserves is the *intrinsic* and not merely instrumental value of associating. Catholic social doctrine frequently refers to this as “solidarity:”

Solidarity highlights in a particular way the intrinsic social nature of the human person. . . . Solidarity must be seen above all in its value as a moral virtue that determines the order of institutions. . . . Solidarity is also an authentic moral virtue, . . . a firm and persevering determination to commit oneself to the common good. . . . Solidarity rises to the rank of fundamental social virtue since it places itself in the sphere of justice. It is a virtue directed *par excellence* to the common good⁵⁷

Solidarity is never just one thing, but rather the varied ensemble of firm dispositions that serve the common good by a unity of action for the ends of particular, upright societies.

In defending the value and integrity of the societies “formed in the bosom of the commonwealth,” Leo XIII quoted Thomas’s *Contra Impugnantes* (1256?), an occasional work usually titled in English “An Apology for the Religious Orders.”⁵⁸ There, Thomas defended the new mendicant form of religious life against contemporary attack by conservatives who wished the Church to confine contemplatives to monasteries, rather than allow them to travel and teach as participants in the work of these recently founded orders, including the Dominicans to which Thomas himself belonged. Thomas defends the right of individuals to form such community on the ground that to associate is already to “communicate,” which,

⁵⁵ Maritain, *Integral Humanism*, supra note <>, at 261.

⁵⁶ Maritain, *Integral Humanism*, at 267-68.

⁵⁷ *Compendium*, supra note <>, at Nos. 192, 193 (emphasis and internal quotations omitted)

⁵⁸ *Rerum novarum*, supra note <>, text at nn. 36 and 37

in turn, is to make gifts common, as reflected by the fact that the etymology of “communicate” is *co-* plus *munus*. As Hittinger explains:

Although *societas* is an analogous term, every society, [Thomas] argues, is constituted by “communications” whereby goods are given and received. In Thomas’s works, every analogous use of the word *societas* is mirrored by uses of the word *communicatio*: *communicatio oeconomica*, *communicatio spiritualis*, *communicatio civilis*, and so forth. The word *communicatio* simply means making something common, one rational agent participating in the life of another. Society, for Thomas, is not a thing, but an activity.⁵⁹

Thomas’s defense of the right to associate -- in contravention, it should be noted, of settled norms of social class and vested privilege -- rests on the arresting claim that “to prevent free men and women from associating for the purpose of communicating gifts is contrary to the natural law. It is tantamount,” Hittinger continues, “to denying to rational agents the perfection proper to their nature, and denying to the commonweal goods it would not enjoy were it not for free associations.”⁶⁰ It is tantamount, in other words, to denying humans the solidarity by which they, as social beings, are perfected. The rationale of Thomas’s defense of the freedom claimed by the mendicant Dominicans extends not only to Carthusians and all other ecclesial societies but also, in laicized form, to all groups in which good gifts are communicated, from the Boy Scouts, to The Salvation Army, the Benevolent and Protective Order of Elks, labor unions, and so forth.

The meaning of subsidiarity, solidarity, and the common good in Catholic social doctrine turn on what we mean by society. Thomas saw with perfect clarity that a society is neither a mere aggregate of individuals nor a mere partnership, but a *unity of order* that “does not just aim at a common objective, but intends to have it brought about by united action.”⁶¹ As Yves Simon observes, “[m]ere partnership does not do anything to put an end to the solitude of the partners,”⁶² but in a true society, by contrast, corporate unity is one of the reasons for action. Someone leaving a partnership can export his share; the common good of a society, however, cannot be divided, only shared and participated in. Each participant in a society perfects himself and the other members of the society by communicating goods as gifts, and these in turn help to higher societies.⁶³ “[W]e are made unto the image of God not only because the individual person possesses the excellence of a rational

⁵⁹ Hittinger, Russell. 2003. *The First Grace: Rediscovering the Natural Law in a Post-Christian World*. Wilmington: ISI. 271

⁶⁰ Hittinger, *First grace*, supra note <>, at 272.

⁶¹ Hittinger, *Coherence*, supra note <>, at 92.

⁶² Simon, Yves. 1993. *Philosophy of democratic government*. Notre Dame: Notre Dame Press. 64

⁶³ For a beautiful phenomenology of association, see Rao, Blindfold, supra note <>, at Ch. 2. Available via http://www.romanforum.org/wp-content/uploads/rem_02.pdf

nature, but also because we must cause good in others.”⁶⁴ When men and women aim to unite to do this, a society -- a reality distinct in dignity -- results, and this is what the principle of subsidiarity protects as a matter of social justice and the common good.

Social justice is the virtue whereby all persons (not just the state) refer the ensemble of their relations to the common good. This is why subsidiarity is not merely an issue of commutation or distribution, but rather manifests itself in the arranging of things in such wise that the operations of a heterogeneous whole are harmonized with regard to the common good.⁶⁵

Social justice and subsidiarity require that the sociality of society be preserved and harmonized, and no argument to benefits external to a particular society itself will prevail, unless there be moral reason to dissolve the society.

In sum, the principle of subsidiarity falsifies the proposition advanced by Rousseau and implemented by the revolutionaries: “It is of necessity that no partial society should exist in the state.”⁶⁶ Quite the contrary, societies are the perfecting opportunities for naturally social beings to cause good in others, including through the supernatural assistance of grace. Pope John Paul II stressed this in *Centesimus annus* (1991)⁶⁷, his encyclical celebrating the hundredth anniversary of *Rerum Novarum*, and Pope Benedict XVI (r. 2004-) pursued the demands of subsidiary function in his first encyclical, *Deus Caritas Est* (2005):

We do not need a State which regulates and controls everything, but a state which, in accordance with the principle of subsidiarity, generously acknowledges and supports initiatives arising from the difference social forces and combines spontaneity with closeness to those in need. The Church is one of those living forces: she is alive with the love enkindled by the Spirit of Christ. This love do not simply offer people material help, but refreshment and care for their souls⁶⁸

Subsidiarity is a principle to which Pope Benedict has returned time and again as he addresses a world that ever threatens to pinion the lone individual against the Leviathan state: “When those responsible for the public good attune themselves to the natural human desire for self-governance based on subsidiarity, they leave space for individual responsibility and initiative, but most importantly, they leave space

⁶⁴ Hittinger, *Coherence*, supra note <>, at 86.

⁶⁵ Hittinger, *Coherence*, supra note <>, at 115.

⁶⁶ Jean-Jacques Rousseau, *The Social Contract*, Bk. II, Ch. 3

⁶⁷ Pope John Paul II, *Centesimus Annus*, supra note <>, at Nos. 48-49.

⁶⁸ Pope Benedict XVI. 2005. Encyclical letter *Deus caritas est*. No. 28b. Available via http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est_en.html

for love (cf. Rom 13:8; *Deus Caritas Est*, 28), which always remains ‘the most excellent way’ (cf. 1 Cor 12:31).”⁶⁹

Conclusion

The organic web of Christendom -- structured and enlivened by the as-yet-unnamed principle of subsidiary function -- was succeeded by nation-states that, acting out their pretensions to absolute sovereignty, eviscerated societies internal to themselves and to the Church yet lacked, at the same stroke, any principal for coordinating global community. Taparelli addressed the former problem, as we have seen, but also the latter, each thanks to the principle of subsidiary function. With respect to the latter problem, Taparelli saw the inevitable trajectory of the then-emergent global community, and grasped, moreover, why, from the properly universalist perspective of Christianity, such development was in many respects desirable. He also foresaw, however, some of the untenable consequences of a world assembly of nation states shaped and ratified without benefit of the Church exercising her true social role.

The recent popes, including Benedict XVI, have emphasized subsidiarity’s place in rightly ordering *global* community.⁷⁰ The *Catechism of the Catholic Church* (1991) affirms that place by way of crescendo: “The principle of subsidiarity is opposed to all forms of collectivism. It sets limits for state intervention. It aims at harmonizing the relationships between individuals and societies. It tends toward the establishment of true international order.”⁷¹ The outstanding question is why -- or even *whether* -- one can reasonably expect a political culture that has shelved an understanding of man’s intrinsic sociality and, furthermore, treats the Church on the model of the Boy Scouts, that is, as just another group, to structure itself according to the requirements of the common good. The pope who introduced subsidiarity into Catholic social doctrine also taught, as had his predecessors, that the social order cannot but fail if the divine right of the Church and of Christ the King is not recognized.⁷² It is no insult to the Boy Scouts to observe that they cannot accomplish the work of the Church -- Christ-continued in the world -- for the benefit

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http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/may/documents/hf_ben-xvi_spe_20080503_social-sciences_en.html

⁷⁰ Pope Benedict XVI. 2009. Encyclical letter *Caritas in veritate* Nos. 57-58. Available via

http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate_en.html

⁷¹ Catechism of the Catholic Church. 1991. No. 1885. Available via http://www.vatican.va/archive/ENG0015/_INDEX.HTM

⁷² Pope Pius XI, 1922. Encyclical letter *Ubi Arcano* Nos. 32-49 Available via http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19221223_ubi-arcano-dei-consilio_en.html

of all of political society, threatened as it is by totalitarianism and relativism. Meanwhile, “[a]lthough the world knows it not, the most primordial law of ruling is service, which is always the signature of the divine. Not sovereignty as the moderns understand it, but rather a gift communicated for the good of another.”⁷³

⁷³ Hittinger, *Pluralism*, supra note <>, at 401.