

Principle of Subsidiarity and Self-determination

Self-determination is a collective “people's right” to govern their affairs. This may not equate to a right to nationhood, but at a minimum ensures the right of a people to preserve its language and heritage. The concept dates back to the US Declaration of Independence 1776, the UN Charter 1945, UN resolution 1514 on decolonization and international human rights law.

Subsidiarity as a principle means that powers should be exercised at the lowest level of government at which they can efficiently be exercised. Some countries adopt this principle through **devolution of power** (it means a transfer of **political** power, rather than only administrative and fiscal powers).

In the context of the European Union, “subsidiarity” makes reference to the regulation of the Union’s **non-exclusive powers**. Therefore, the EU cannot intervene when an issue can be dealt with effectively by Member States. Conversely, the EU’s intervention is justified when Member States are unable to achieve the proposed objectives, so the **added value** will be provided when the action is taken at the Union level. Thus subsidiarity is a helpful concept when we speak about shared powers.

Subsidiarity is also mentioned as a theoretical foundation of federalism. In this sense, it does not refer only to efficiency, but means more broadly that people’s problems are better addressed by the level of government closest to them. Subsidiarity is mentioned in the constitutions of Switzerland and Italy (federal constitution and non-federal).

Therefore in the case of self-determination the emphasis is placed on collective rights and possibly demands for **recognition** of those rights, while in the second case it is placed on **efficiency** or **added value** (no explicit link with an ethnic/cultural identity or other common features that a people might possess). Therefore, we can consider the following when we speak about subsidiarity and self-determination:

1. What is understood by ethnic groups as a right to self-determination - can be rather subjective and demands to self-determination may refer to different levels of autonomy among different ethnic groups
2. Self-determination, if we mean the right of people to develop their political, social, cultural and economic institutions, does not naturally lead to efficiency.
3. What is understood by efficient exercise of power may also be different depending on the context. Which functions should be allocated to the lowest level of government where they can be exercised effectively and which should rather stay at the central level? Can it change over time (therefore subsidiarity may result in less or more political autonomy)?
4. There is no decision mechanism prescribed by the principle of subsidiarity about the appropriate level where certain decisions should be taken. A question to ask, for instance, is whether subsidiarity can lead to centralization (rather than decentralization), if certain decisions are better managed at the central level.
5. Following from above, who decides which issues should be better dealt on the central vs regional level? Perhaps a Constitutional Court to resolve potential disputes between the center and the federal states, but what about more local level (local government competences)?
6. Self-determination, unlike subsidiarity, implies that a people have a say over which issues will fall under their jurisdiction – it ultimately depends on their common will (it may or may not satisfy subsidiarity, which does not take collective will into account)
7. When subsidiarity and self-determination meet. The federal constitution (possibly a constitution, rather than ordinary law) provide a legal framework to fulfill the measure of self-determination, which is acceptable to ethnic minorities. Subsidiarity will allow this to happen in practice, in the form of devolution of power.

This may be, for example, when certain powers are assigned to the state/local government level, others are shared and some others are reserved for the centre.

8. Another question we could ask regarding subsidiarity is what would be the “level closer to the people”, decisions should be taken at state, municipality or community level? So subsidiarity may be quite a broad concept in this sense.

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P.Craig, *Subsidiarity, a Political and Legal Analysis*, Legal Research Paper Series, University of Oxford, April 2012

T. Waters, *A World Elsewhere: Succession, Subsidiarity and Self-Determination as European Values*, 2016

D. Weinstock, *Cities Subsidiarity and Federalism*, In Felming&Levy (ed.), *Federalism and Subsidiarity*, New York: New York University Press, 2014

M. Friesen, *Subsidiarity and Federalism: An Old Concept with Contemporary Relevance for Political Society*, 2003