Humanitarian Subsidiarity

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A New Principle?

By

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Cambridge
Scholars
Publishing

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This book first published 2017

Cambridge Scholars Publishing

Lady Stephenson Library, Newcastle upon Tyne, NE6 2PA, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN (10): 1-4438-1264-1
ISBN (13): 978-1-4438-1264-1

DEDICATION

When the second earthquake hit Nepal on the 12th of May 2015, a US marine helicopter carrying 13 people crashed in the lower Himalayas while rescuing survivors and carrying them for medical treatment. On board were 5 civilians, 6 United States Marines and 2 Nepalese Soldiers.

The US Marines who died that day were:

Capt Dustin R. Lukasiewicz

Capt Christopher L. Norgren,

Sgt Ward M. Johnson

Sgt Eric M. Seaman

Cpl Sara A. Medina

Lance Cpl Jacob A. Hug

From the Nepalese Armed Forces there was:

Tapendra Rawal

Basanta Titara.

I cannot claim to have known them well.

May they Rest in Peace.

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ACKNOWLEDGEMENTS

I would like to thank Pat Gibbons in the UCD Centre for Humanitarian Action for bringing the issue of humanitarian subsidiarity to my attention. I would also like to thank fellow members of the Steering Committee for the Irish Consultative Process to the World Humanitarian Summit. Also to Jacqueline Gallinetti, Alex Jacobs and Helen Richards for helpful and challenging comments on earlier drafts. All errors are of my own making.

FOREWORD

The world is changing. The nature of humanitarian action is changing. The scale of humanitarian need seems to be growing. The first World Humanitarian Summit (WHS) was held in 2016 with a clear understanding that there is a need to put disaster-affected populations at the centre of humanitarian action. Yet, despite the discourse, there has been little, in terms of practical outcomes, regarding how the international humanitarian aid architecture can change to make this abstract ideal a reality. Humanitarian principles have underpinned humanitarian aid for decades, and are highly valued and generally respected. Yet, with the changing context, as well as an increasingly people-centred approach to humanitarian aid, both instrumentally but also intrinsically, there is a strong case for the aid architecture to adopt a new humanitarian principle: subsidiarity, meaning *recognising that in humanitarian response, local populations can and should be best placed to make decisions and take action, and that the humanitarian system should be designed to support this in the first instance, and only to take action and make decisions at a higher level when this can be justified by a humanitarian imperative and the exigencies of the context.* Subsidiarity is a long-standing idea, linked in time to Catholic Social Theory, the politics of the European Union (EU), and the International Criminal Court (ICC). It is possible that it may be resisted as a principle of humanitarian aid because of these connotations. It may be rejected because it is a little-understood idea outside its particular uses. Elaborating what subsidiarity may mean for humanitarian aid requires little beyond a Catholic understanding of subsidiarity:

> A community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good.

The particular idiosyncrasies of humanitarian aid, as it is manifest in the global humanitarian architecture, including asymmetrical power relations and humanitarian exceptionalism, in an increasingly interconnected world, render the need for a new paradigm to underpin the approach more urgent. There is no reason to reject subsidiarity as a right-thinking approach to any

endeavour, as it respects and promotes human agency, but whether it is a concept that ought to have the weight of a humanitarian principle is more difficult to demonstrate.

INTRODUCTION

The discussion of humanitarian subsidiarity, whether as a principle or a concept, was peripheral to the discussions leading up to the WHS. Localisation of humanitarian response, which is central to the idea of humanitarian subsidiarity, contributed significantly to the consultations in the lead-up to the Summit, but gradually drifted from the Agenda—both in the Secretary General's report leading to the Summit and at the Summit itself. The only panel discussion that attempted to broach the issue was focused on quality and accountability—but in a superficial manner that talked in the abstract about adhering to the Core Humanitarian Standards. Prior to the Summit, the United Nations (UN) Secretary General's report on the humanitarian challenges facing the world today, *One Humanity: Shared Responsibility*, introduced the need to make aid "as local as possible, as international as necessary",[1] without truly embracing the agency of disaster-affected people themselves. There was a brief acknowledgment of the need to localise aid:

> where national and local capacities in an emergency situation cannot yet deliver to scale, rapid international assistance, including the delivery of goods and services, may be required. However, connecting with and reinforcing the capacity of local responders must still be central to efforts. From the outset, international actors should be looking for opportunities to shift tasks and leadership to local actors.[2]

Yet, there was little consideration of how this could be done or the challenges within the aid architecture to bringing genuine localisation to pass.

At the High Level Leaders' Roundtable 4: Humanitarian Financing—Investing in Humanity, 23 May, 2016, Irish President Michael D. Higgins highlighted the issue of subsidiarity, in different words:

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[1] *One Humanity, Shared Responsibility: Report of the Secretary General for the WHS* (2016). Available from: https://consultations2.worldhumanitariansummit.org/whs_sgreport [Accessed 3 August, 2016].
[2] *Ibid*.

> Our international humanitarian assistance must recognise, reinforce and complement the capabilities which already exist in crisis-hit countries. Our support must be flexible, empowering those most closely representative of the affected communities to make choices, and set parameters. Humanitarian assistance must enable long-term sustainable development and allow for the emergence of new development approaches and models.[3]

At High Level Roundtable 2: Changing People's Lives: From Delivering Aid to Ending Need, he reiterated the call to put people at the centre:

> It is my firm belief that we will only realise the goals of Agenda 2030, and in particular the goal of peaceful and inclusive societies, if we put people, especially the most vulnerable, front and centre in our deliberations and decision making. Ireland will promote humanitarian responses that are empowering, that put decisions into the hands of affected people; that helps to build strong communities; and that supports resilient and robust states.[4]

Aside from these references, there was general disappointment with the lack of focus on the issue of localisation. While humanitarian subsidiarity and localisation have been discussed in the abstract in the lead-up to, and at, the Summit, there has been limited in-depth exploration of what these terms mean in practice. Nor has sufficient effort been made to decouple humanitarian subsidiarity from other concepts or principles of subsidiarity when used in alternative spheres such as politics and religion. It is important to try and understand what subsidiarity can and should mean in the humanitarian context, so as to determine whether or not such a principle or concept should be adopted by the humanitarian community, in its many guises, in order to move forward from lip service in the localisation of aid to a more concrete and accountable practice.

According to the Irish Humanitarian Summit 2015, which aligns very closely with the language used by President Higgins:

> the concept of subsidiarity says that humanitarian actions should be a support to the efforts and capacities of affected people to help them cope in times of crisis and to assist them in their recovery in a manner that enhances their resilience to future shocks and stresses. Humanitarian actors

[3] Speech of the Irish President, Michael D. Higgins (2016). Available from: http://www.president.ie/en/media-library/speeches/high-level-leaders-roundtable-4-humanitarian-financing-investing-in-humanit [Accessed 10 July, 2016].
[4] Speech of the Irish President, Michael D. Higgins (2016). Available from: http://www.president.ie/en/media-library/speeches/changing-peoples-lives-from-delivering-aid-to-ending-need [Accessed 10 July, 2016].

> must respect the culture and capacities of affected people and recognise that the affected people are the central actors in their own survival and recovery. Subsidiarity serves as a constant reminder that humanitarian response, whether local or external, is best developed with and for affected people.[5]

This description remains purely conceptual and somewhat rhetorical, and recommends an approach that is often not borne out in the actual practice of humanitarian response—with limited quantifiable evidence to support the assumption in the final words.

This paper explores the potential uses of the principle or concept of subsidiarity as a means of, and a reason for, ordering decision-making in international humanitarian response, while attempting to unpick some of the key issues or objections that may exist. Though the concept of subsidiarity appears across divergent spheres such as human rights law, politics and religion, an attempt has never been made to sketch the reasons for, implications of, or usefulness in, its application relating to humanitarian response. This book only touches on the practical implications that may arise from adopting the principle or committing to the concept, by highlighting areas where such a principle/concept can have relevance, realising that the practical adoption remains subject to much discourse—as well as examination. The existing humanitarian principles, despite their broad recognition as valuable principles guiding humanitarian action, remain contested in both theory and practice, even within the humanitarian sector. It is not anticipated that a principle or concept of subsidiarity would or could be any different. Given that the existing humanitarian principles of humanity, impartiality, neutrality and independence have become defining elements of what humanitarian action ought to be, yet their application is not embraced by all, it would not be surprising if a further principle, or even a concept, of subsidiarity—with its political and religious connotations—was met with resistance.

This work is structured as follows: it first investigates subsidiarity's different uses in social, political and international legal frameworks and proposes a general understanding of what subsidiarity, when removed from those specific contexts, could mean for humanitarian response. It then attempts to trace how subsidiarity could be relevant to the

[5] Recommendation from the Irish Humanitarian Consultative Process (2015), p. 9. Available from: http://cha.ucd.ie/wp-content/uploads/2015/06/Recommendations-from-the-Irish-Consultative-Process.pdf [Accessed 10 May, 2016].

particularities of international humanitarian response, and to open discussions on particular challenges to embracing a principle/concept of humanitarian subsidiarity, as well as challenges in adopting the principle/concept in practice. At this stage, the work only touches on some of the practical changes that may be required of the humanitarian architecture if a genuine commitment to subsidiarity were to be embraced. It must be acknowledged that, given the breadth and diversity of humanitarian aid, the mere adoption of a principle cannot detail how that principle is enacted in each situation, but provides a guide to how humanitarian actors and the humanitarian aid architecture ought to approach its work.

The Feinstein International Centre, as part of a wide-ranging project to understand perceptions of humanitarian aid, particularly in conflict settings, observed that:

> With respect to universality, humanitarian action is widely viewed as a northern enterprise that carries values and baggage sometimes at odds with those of civilians affected by conflict on the ground. Urgent steps are needed to make it more truly universal including recognizing the contribution of other humanitarian traditions and managing more effectively the tensions between "outsiders" and "insiders" so that the perceptions and needs of communities in crisis are given higher priority. Northern humanitarians also need to listen more, learning from the resourcefulness, resilience, and coping strategies of communities. Top-down, expatriate-driven approaches to humanitarianism need to give way to more inclusive, culturally-sensitive, and grounded approaches that are fully accountable to beneficiaries.[6]

This observation, coming ten years prior to the WHS, points toward a long-standing need to move from a top-down approach to a decentralised one. Evans and Zimmerman, conclude that:

> Subsidiarity is primarily a de-centralising principle, which aims to empower the individual by ensuring that decisions are made, and problems are resolved, closest to where they arise. In turn, decision-making and action taken by those directly affected allows for problems to be resolved

[6] A. Donini and L. Minear (2006) *Humanitarian Agenda 2015: Principles, Power, and Perceptions* Massachusetts: Feinstein International Centre, p. 3 Available from: http://fic.tufts.edu/assets/HA2015-Preliminary-Report-1.pdf [Accessed 20 August, 2016].

> more quickly, and more accurately than if a higher-level decision maker who is distanced from the problem, were to become involved.[7]

However, they also note that it is "somewhat of a chameleon due to its ability to adapt to, and to inform scholarship across many disciplines and in social, religious, philosophical and legal contexts."[8] It is this reality (of attempting to define subsidiarity within humanitarian aid) that this work seeks to address, in part, if not in detail. This is particularly important where subsidiarity is interpreted as recommending "the major UN agencies and multi-mandate INGOs move away from direct implementation towards a model of funding national and local responders",[9] which is not the case at all.

[7] M. Evans and A. Zimmerman, eds (2014) *Global Perspectives on Subsidiarity*. Netherlands: Springer Netherlands, p. 221.
[8] *Ibid*., p. 223.
[9] http://www.msf.org.uk/article/opinion-and-debate-let-it-go-let-it-go-or-give-it-up [Accessed 16 September, 2016].

PART 1:

SUBSIDIARITY IN CONTEXT

CHAPTER ONE

SUBSIDIARITY THROUGH THE AGES

Subsidiarity has been around as an approach to the ordering of life for a long, long time. It is a philosophical, political and practical approach to different ways of life. Children, as they grow towards adulthood, and begin to establish their independence, start to ask, "What right do you have to tell me what to do?" This opens a whole philosophical, political or religious discussion, depending on who the perceived oppressor is. Although it is not possible to determine an original source for the idea of subsidiarity, it is explored without being explicitly referenced in the thoughts of Aristotle and further developed by Thomas Aquinas, the Catholic theologian considered to be a revivalist of Aristotelian thought.

Neither Aristotle nor Aquinas expressed the principle of subsidiarity in precise terms. However, Aristotle considered subsidiarity from a narrow political perspective, while Aquinas addressed it from a social or relations viewpoint, and it was from this view that the Catholic Social Teaching understanding evolved. According to Nicholas Aroney:

> From Aristotle, Aquinas developed the idea that human societies naturally progress from families, through villages to entire city-states, but he recognised that what Aristotle said of city-states could be applied not only to cities but even more emphatically to political communities on the scale of provinces, kingdoms and (perhaps even) empires.[1]

Aroney continues:

> Reflecting on the complexity of the society surrounding him, Aquinas acknowledged the many and various purposes for which various associations and forms of human community exist and are formed, giving rise to a whole host of familial, geographical, professional, mercantile,

[1] N. Aroney (2014) "Subsidiarity in the Writings of Aristotle and Aquinas," in M. Evans and A. Zimmerman, eds *Global Perspectives on Subsidiarity*. Netherlands: Springer Netherlands, p. 9.

> scholarly and other specialised societies. All of these groups and groupings, from the smallest to the largest, have their place and their proper function, according to Aquinas, and each should to be allowed to make its unique and special contribution as a means to integral human fulfilment, without undue interference from any others, including the state.[2]

The role of the state, as defined in Thomist thought, is that it provides the essential conditions under which the common good can be secured, but a vital role is reserved to individuals, families and other associations in making "good choices and actions on the basis of their own deliberation and judgements."[3]

Abraham Kuyper, a Dutch theologian, developed the concept of sphere sovereignty, recognising that individuals operate in different spheres of life: social, economic, religious, and that each sphere ought to be sovereign in some respects. An individual may operate in different spheres at once as "a member of a church, a citizen of the state, and a participant in any number of social spheres". According to Kent A. Van Til:

> Kuyper developed the idea of "sphere-sovereignty" to express [the seeking to create space for intermediate entities between the state and the individual]. While the two principles [subsidiarity and sphere-sovereignty] are parallel, there are differences regarding the nature of each sphere, their interrelationships, and the role of the institutional church. Nevertheless, the combined strengths of these principles are instructive for those seeking to witness to Christian faith in all areas of contemporary, pluralistic societies.[4]

Social pluralism recognises that there are more than concentric spheres of interest or sovereignty, as different groups of people have a range of interests that overlap, beneath national government, and sometimes overlapping with national government. Subsidiarity is considered important in that a plurality of individuals and social groups is necessary for a healthy society, needing freedom and autonomy to develop as distinct groups, to avoid totalitarian or autocratic stifling control that inhibits social development.

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[2] *Ibid*., p. 25.
[3] J. Finnis (1998) *Aquinas: Moral, Political, and Legal Theory*. Oxford: Oxford University Press, p. 236.
[4] Kent A. Van Til (2008) "Subsidiarity and Sphere-Sovereignty: A Match Made in … ?" *Theological Studies* 69, p. 610.

The concept of subsidiarity in relation to Catholic Social Doctrine, EU political discourse and the challenges for the international legal order in the ICC, are discussed in detail below. Subsidiarity is also discussed as a solution to a more integrated global order, with some relevance to the humanitarian aid architecture as a global endeavour—increasingly considered as such by many, who feel that an ordered solution is needed to address the ills of the world.

However, Andreas Føllesdal outlines the challenges to using subsidiarity as a means of ordering and restricting the global order, as it requires the consent of all states, which:

> seem[s] incompatible with a plausible commitment underlying several conceptions of subsidiarity: that political authority must be justified in terms of the effects on individuals' best interests, as units of ultimate moral concern in the global order.[5]

Ultimately, the question reverts to "who should be authorized to use the Principle of Subsidiarity to allocate authority or when making policies?" as there are:

> potential drawbacks with either allocating authority over subsidiarity decisions with the member units or with the centre. Member units may use their veto to bargain for unfair shares of joint benefits … placing authority with central bodies creates risks of undue centralization well known from federal arrangements—at the risk of their long term stability.[6]

The question of "who authorises" will arise later in relation to humanitarian subsidiarity, as it does in all other spheres, with particular resonance where power is asymmetrical *vis-à-vis* global institutions and disaster-affected populations in the poorest parts of the world.

In all of these contexts, subsidiarity has a common interpretation, yet particular manifestations. The two main facets of subsidiarity are that "high-level" institutions should be subsidiary to—meaning supportive of—lower-level institutions; and that whatever decisions or actions can be carried out at a lower level should be carried out at the lowest level possible. When applied to governance, subsidiarity aims to empower

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[5] A. Føllesdal, A. (2014) "Subsidiarity and the Global Order," *University of Oslo Faculty of Law Legal Studies, Research Paper Series, No. 2012-34*, p. 11.
[6] *Ibid*., p. 6.

citizens, enhance democracy and support human flourishing. Subsidiarity is a decentralising concept. For some, these are objective moral positions. For others, they are practical statements of functionality. These different perspectives raise the question of whether subsidiarity in humanitarian response ought to be viewed as substantive or practical.

CHAPTER TWO

SUBSIDIARITY AND CATHOLIC SOCIAL TEACHING

Catholic social teaching considers subsidiarity as a fundamental social value with direct implications for politics, but with a moral aim of respecting the autonomy of the human person in the face of state sovereignty and power. Pope Pius XI stated, in his encyclical, "Quadragesimo Anno", that subsidiarity

> is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry.[1]

The Catechism of the Catholic Church elaborates this, stating that:

> a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good.[2]

The Catechism states: "higher levels of government should intercede only when a more local structure cannot or will not do what is necessary to meet the needs of individuals or society",[3] providing a requirement for a justification for when it is reasonable—morally—for the higher level entity to intervene at a lower level. The Catechism does not determine how

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[1] Pope Pius XI (1931) *Quadragesimo Anno*. Available from: http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno.html [Accessed 8 June, 2016].
[2] Catechism of the Catholic Church (1993). Available from: http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c2a1.htm [Accessed 8 June, 2016].
[3] *Ibid*.

or who should make an assessment of the rightness of such decision-making in the temporal sphere. There are two aspects to this interpretation of subsidiarity—ability and willingness, to meet the needs of individuals or society—but only two. A justification for invading the autonomy and dignity of lower levels of society can only be made based on necessity of individuals and/or society as a whole—often viewed in Catholic teaching as linked to the "good", when the lower level cannot address an issue or refuses to do so—reflective of an approach to subsidiarity in the ICC, as described below.

The Catholic view is that the principle of subsidiarity is a moral issue and that to "withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry" is objectively wrong, and should not be subject to other teleological considerations. Pope Pius XI's encyclical, which forms the backbone of Catholic Social Thought, states that:

> 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.[4]

The language of evil, when related to the ordering of society, will likely sit uncomfortably with many in the humanitarian system led by international and multi-national bodies, in which structural establishments do not take on such characteristics, and would rather be described in terms of their functionality. It is important to understand, however, that the objective wrongness is linked to an interpretation of the dignity and autonomy of the human person as an "acting person" able to make decisions and take action for him/herself. One theologian, Ronald L Conte Jr, outlines a general understanding of subsidiarity:

> every rightly ordered community has different groupings and levels into which it is organized: the family, the extended family, schools, sports teams and leagues, private organizations, recreational organizations, religious organizations, businesses, business associations, all the different

[4] Pope Pius XI (1931) *Quadragesimo Anno*. Available from: http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno.html [Accessed 8 June, 2016].

> types of governmental organizations, as well as neighbourhoods, towns, cities, states or provinces, nations, groups of nations, and finally the whole human race. The principle of subsidiarity requires decisions and actions to be taken by the more local or the lower level of society, when the decision affects only that smaller group, or if the action needed can be effective at that level. But if such a decision or action substantially affects the larger community, they have a right to participate in the decision. Or if the action needed can only be effective when enacted by the larger community, then the very same principle requires the higher level or larger social unit to intervene. People have a right to participate in the decisions that affect their lives, and persons who are largely unaffected do not have such a right. People have a duty to act to help their neighbour, when the neighbour cannot help himself, and the larger social group has a duty to act when the lower level or smaller group does not suffice to solve a problem or address a need.[5]

Under this interpretation of subsidiarity, Aroney outlines the smaller and lower bodies in Roman Catholic Social Teaching:

> They are pre-eminently such institutions as the family, and all manner of private associations, such as sporting clubs and recreational societies, craft guilds and professional bodies, business corporations, employer's groups and trade unions. They may include local communities, such as neighbourhoods and villages, and they can include religious associations, like local churches and other spiritual communities. All of these kinds of association themselves may be organised into graduated orders or hierarchies, such as where a set of political communities is governed at municipal, provincial and national levels, or a church is organised on a parochial, diocesan and metropolitan scale. Being smaller or larger, lower or higher, a part or the whole, is a relative term of comparison. But the prioritisation is more complex than this might suggest, for although the state might be regarded in certain important ways as superior to the other groupings, it also in a sense follows them in time and priority.[6]

For the international humanitarian aid architecture, working with local actors such as those outlined above, is considered increasingly important, effective and relevant.

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[5] Available from: https://ronconte.wordpress.com/2015/10/31/an-explanation-of-the-principle-of-subsidiarity/ [Accessed 8 June, 2016].

[6] N. Aroney (2014) "Subsidiarity in the Writings of Aristotle and Aquinas," in M. Evans and A. Zimmerman, eds *Global Perspectives on Subsidiarity*. Netherlands: Springer Netherlands, p. 11.

For the evolving discourse on human rights, development and humanitarian action, it is increasingly accepted—in the discourse possibly more so than the act—that individuals, families and communities are not mere recipients of overseas development assistance, and that top-down approaches to development, particularly in the form of overseas interventions, have been less than successful in fostering development. Equally, it is increasingly accepted that disaster-affected communities are more than passive recipients of assistance, and that their involvement in determining, designing and participating in humanitarian assistance is both of consequential and deontological importance. When the discussion of humanitarian response is focused on an understanding of human dignity, then consideration moves from a merely utilitarian one (bad/good/better) to one of how the denial of human dignity through a systems-functioning opens up the discourse to a moral and ethical narrative.

A humanitarian principle of subsidiarity, if it is to respect human dignity in a fuller sense, may also be bound to an equivalent interpretation of subsidiarity in its own sphere. If the humanitarian systems consider human dignity to mean more than people merely being passive recipients of beneficent aid, but being autonomous individuals, who live in community, whose dignity is bound in being able to enact this autonomy through playing a role in the decisions that affect their lives, then a principle of subsidiarity can have meaning when interpreted through a Catholic Social Doctrine lens. This means considering the extent to which individuals and their communities affected by disaster should play a role in this decision-making—both individually and through existing social, civil society and political arrangements. Only when ability or willingness is lacking should the higher level take action and decisions, otherwise it should act as a subsidiary and a support to the lower levels.

Fundamentally, Catholic Social Teaching on subsidiarity is not built on a religious dogma or ecclesiastical politics, but rather on an interpretation of what it means to be human, bound in dignity. Pope Pius' goal for subsidiarity was the full development of the human person within a system in which the person can flourish. His view was formed by witnessing the dehumanisation of the poorest in society at the height of the Industrial Revolution, where human existence had been absorbed into a system of working that treated the person merely as an instrument of industrial productivity. Pope Benedict XVI linked subsidiarity with solidarity and emphasized in "*Caritas in Veritate*" that:

> Subsidiarity respects personal dignity by recognizing in the person a subject who is always capable of giving something to others.[7]

This is very closely aligned with social justice and human rights thinking of today, and a precursor to the rights-based approach to development—and humanitarian assistance—that dominates the present day narrative. It can be considered that humanitarian subsidiarity provides a bridge to connect needs and rights-based approaches, without predetermining a preponderance of one over the other, and that subsidiarity provides a possible practical principle to addressing humanitarian need, while acting as a moral principle in addressing human rights and their source in dignity and autonomy.

[7] Pope Benedict XVI (2009) *Caritas in Veritate.* Available from: http://w2.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html [Accessed 10 June, 2016].