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SUBSIDIARITY

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Subsidiarity

Elements in Philosophy of Law

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Abstract: 'Subsidiarity' is vague and contested, yet popular in scholarship about international law due to its role in the European Union (EU). Which conceptions of subsidiarity are more justifiable, and how might they contribute to international law? A principle of subsidiarity concerns how to establish, allocate, or use authority within a social or legal order, stating a rebuttable presumption for the local. Various historical patterns, practices, principles, and justifications offer different recommendations. Seven normative theories vary in how immunity-protecting or person-promoting they are. The latter appear more justifiable and withstand criticism often raised against subsidiarity. Some conceptions of person-promoting subsidiarity serve as a structuring principle for international law and fulfil several criteria of a general principle of law. It can harmonize domestic and international law but is not sufficient to reduce fragmentation among sectors with different objectives. This title is also available as Open Access on Cambridge Core.

Keywords: subsidiarity, international law, European Union, European Court of Human Rights, general principle of law

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