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# The Principle of Subsidiarity and Institutional Predispositions: Do the European Parliament, the German Bundestag, and the Bavarian Landtag Define Subsidiarity Differently?

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## **Abstract**

The goal of this working paper is to organize and to clarify the multiple definitions currently being used to describe the principle of subsidiarity within the European context while at the same time highlighting the significance in variations between the “positive” and the “negative” interpretations of the term. To gain insights into how politicians define the principle of subsidiarity, a survey was distributed to members of the European Parliament, the German Bundestag, and the Bavarian Landtag. The results of this project are collected and analyzed in the following paper and show that many of the “crude assumptions” regarding institutional predispositions towards defining the principle of subsidiarity prevail among many of the surveyed politicians.

## **Table of Contents**

1. Introduction	3
2. The Vagaries of Subsidiarity	4
3. Methodology	12
4. Results and Analysis	16
5. Conclusions	37

## Introduction

Subsidiarity is the European Union's old Swiss Army knife: flexible enough to apply to most policy issues, pointed enough to command caution, dull enough to never do serious harm, and always in its pocket. As with many concepts that gain prominence in the European political vocabulary, it takes time and practice for complicated ideas to gain a functional definition. Although subsidiarity dates back to the 17<sup>th</sup> Century, since its inclusion in the Treaty of Maastricht (1992), this principle of governance has become a key concept for defining the relationships between the European Union (EU) and the member states. As subsidiarity has gained a more prominent role in European politics, it has also seen various interest groups effectively reform its meaning to suit their own needs or preferences.

Such flexibility may be a curse, however. A brief survey of academic work currently utilizing subsidiarity as a key concept reveals that subjects as disparate as the European Research Area, governmentalisation and culture, fiscal federalism, and sub-regional governance are all relevant to the broader discussion.<sup>1</sup> Furthermore, when reviewing the literature that discusses subsidiarity as a purely political principle, the word most likely to describe the term is "vague." Taken together, it becomes difficult to grasp what subsidiarity, in its contemporary iteration, actually means, what it is fundamentally used for, or what, if any, limitations constrain its political dispositions. Consequently, it seems that the European Union has embraced a principle of governance that is considered valuable strictly because it is a, "Euroconcept all can admire by giving it the meaning they want."<sup>2</sup>

This malleability of meaning and ease of applicability has not inhibited scholars from making broad generalizations regarding the principle of subsidiarity. When discussing this subject matter, Ian Cooper asserts, "that national parliaments will defend subsidiarity because in doing so they also defend their institutional prerogatives."<sup>3</sup> He elaborates by claiming: "This [statement] is based on the *crude assumption* that each institution will interpret subsidiarity in a way that most enhances its decision making authority. By this measure, national parliaments will favour a restrictive interpretation because they have the most to lose when powers are transferred to the EU level."<sup>4</sup> These assumptions, although commonsensical, have yet to face substantive, scientific analysis.

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<sup>1</sup>Sonia Morado-Foadi, "The Missing Piece of the Lisbon Jigsaw: Is the Open Method of Cooperation Effective in Relation to the European Research Area?" *European Law Journal*, Vol. 14, Issue 5 (September 2008): 635-654.; Clive Barnett, "Culture, Policy, and Subsidiarity in the European Union: From Identity to the Governmentalisation of Culture," *Political Geography*, 20 (2001): 405-426.; Jacques Pelkmans, "Assessing Subsidiarity," Paper presented at the conference "Subsidiarity and Economic Reform in Europe," European Commission, CPB Netherlands Bureau for Economic Policy Analysis and the Dutch Ministry of Economic Affairs, Brussels, Belgium, November 8-9, 2006.; Allesandro Colombo, "The 'Lombardy Model': Subsidiarity-Informed Regional Governance," *Social Policy and Administration*, Vol. 42, Issue 2 (April 2008): 177-196.

<sup>2</sup>Kees Van Kersbergen and Bertjan Verbeek, "The Politics of Subsidiarity in the European Union," *Journal of Common Market Studies*, Vol. 32, No. 2 (June 1994): 215-236. Quoting the *Economist* from July, 1992. pp. 220.

<sup>3</sup>Ian Cooper, "The Watchdogs of Subsidiarity: National Parliaments and the Logic of Arguing in the EU," *Journal of Common Market Studies* Vol. 44, No. 2 (2006) 281-304.

<sup>4</sup>*Ibid.*, 292-3. This quote comes from footnote 26 and the italics are mine, for emphasis.

To fully appreciate the principle of subsidiarity and its political consequences, it is necessary to unclutter the discussion. The goal of this working paper is twofold. First, it will outline many of the current definitions of the principle of subsidiarity. In so doing, it will not only collect in a single document all of these variations on the theme, but it will highlight where the major areas of concord and conflict reside within these interpretations. Second, it will test the “gross assumptions” held by many social scientists, politicians, and technocrats. If history is an indicator, then we know that subsidiarity can be easily manipulated; therefore, it is necessary to locate some common, conceptual ground. If no common ground exists, and as Cooper states, certain levels of governance are inclined to hold starkly divergent points of view on subsidiarity, then in the interest of the European constituencies, these discrepancies should be brought to light. Either way, an analysis of this subject matter will help to clarify what politicians really mean when they use the term subsidiarity.

To gain insights into the complex matters associated with the principle of subsidiarity, a survey has been distributed to members of the European Parliament, the German Bundestag, and the Bavarian Parliament. The purpose of this survey is to explore how acting politicians interpret the term subsidiarity and to observe any “institutional predispositions” that may determine how different groups of legislators define the concept. Following a literature review, the second portion of this paper will describe the methodology used to collect the data, followed by the final section which analyzes the results.

### **The Vagaries of Subsidiarity**

Because comprehensive examinations of subsidiarity already exist,<sup>5</sup> this section seeks only to briefly enumerate how scholars define the term, beginning with the most complicated explanations and working towards the simplest. Each framework originates from a different social scientific field of study, thus allowing this review to offer multiple perspectives of the same concept. In collecting these ideas, it will be possible to expose the internal conflicts that exist within the literature and to simplify the rhetoric surrounding subsidiarity.

During the following analysis, the term “center” will refer to what is commonly known as the central government and more specifically to Brussels and the EU supranational institutions. The term “sub-units” will indicate legitimate, lower-level governments such as the member-states’ national parliaments and sub-regional legislatures.

Andreas Føllesdal, the first scholar to be discussed, detects three different philosophical justifications for subsidiarity: liberty, justice, and efficiency. From two of these, liberty and justice, he distinguishes between two separate types of subsidiarity. According to this framework then, it is possible for him to detail *five* discrete versions of subsidiarity in total.

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<sup>5</sup>Andreas Føllesdal, “Subsidiarity,” *The Journal of Political Philosophy*, Vol. 6, No. 2 (June 1998): 118-120.; Ken Endo, “The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors,” *Hokkaido Law Review*, XLIV/6 (1994): 553-652.

**Table 1. Føllesdal’s Framework for Understanding Subsidiarity**

	<b>1<sup>st</sup> Principle</b>		
	<b>Liberty</b>	<b>Justice</b>	<b>Efficiency</b>
<b>Types of Subsidiarity</b>	<i>Althusian/Consociational</i>	<i>Catholic Personalism</i>	<i>Fiscal Federalism</i>
	<i>Confederal</i>	<i>Liberal Contractualism</i>	

Using liberty as a first principle, Føllesdal delineates the differences between the Althusian/consociational and the confederal types of subsidiarity. Both of these conceptualizations aim to protect the sub-units from centrist overreach, thus ensuring the liberty of the citizens by warding off the center’s propensity for intervention. Althusius developed his theory of subsidiarity based on the belief that, “communities and associations are both instrumentally and intrinsically important for supporting the needs of the individual.”<sup>6</sup> As a Calvinist syndic attempting to balance the political autonomy of his people with the wishes of his Lutheran Lord and the Catholic Emperor, Althusius defined sovereignty as residing within the sub-units who then, conditionally, offered the central government their assent to be ruled. If the actions of the center were ever deemed illegitimate, then according to Althusius, it was entirely within the rights of the sub-units to rebel or secede.<sup>7</sup>

Because Althusius focused on close associations such as guilds and communities, his was a territorial interpretation of subsidiarity which asserted that “the role of the state is not to regulate a political sphere separate from the social communities but to coordinate and secure their common purposes in symbiosis.”<sup>8</sup> Føllesdal recognizes in this definition the seeds of present day consociationalism, an organization of political groups that balances a pluralistic society by establishing a stable, pillarized government. While consociationalism and Althusian subsidiarity share much in spirit, they diverge in that consociationalism is a functional, not a territorial, organization of political units. In other words, according to consociational subsidiarity a functional group, for example Calvinists in 17<sup>th</sup> Century East Friesland, would not have to live in the same community or region to receive all of the benefits afforded them by Althusian subsidiarity; they need only to be similar in kind, not necessarily coterminous. As regards the European Union, territorial interpretations currently predominate, but there is no reason to believe that functional concerns could not become more relevant in the future.

Confederal subsidiarity asserts that in order to capably defend the interests of the local constituency, the sub-units should maintain the right to veto any legislation originating from the center. In contradistinction to Althusius, confederal subsidiarity focuses mainly on individuals and not associations. The threat of tyranny is of foremost importance; therefore, decentralization of power is necessary to keep individuals free by checking the powers of the center.

In both Althusian and confederal subsidiarity, liberty is defined as non-intervention, and the sub-units retain the right to exit the social contract at any time,

<sup>6</sup>Føllesdal 1998, 118.

<sup>7</sup>Ibid., 118-120.

<sup>8</sup>Ibid., 119.

either by force or by legislative measures.<sup>9</sup> This quality is indicative of a “proscriptive” subsidiarity; that is, one directed towards limiting the activities of the center while preserving the competences of the sub-units.<sup>10</sup>

According to Føllesdal, when subsidiarity originates from concerns of justice, it can be divided into a Catholic version based on personalism or a liberal contractualism meant to secure normative legitimacy for the state. The Catholic version of subsidiarity utilizes distinct definitions of the person (a social being striving to realize his or her innate potential) and the state (an institution that must abide by both natural and divine law) to inform its position.<sup>11</sup> In Pope Leo XIII’s encyclical, *Rerum Novarum*, the Church asserted that the state has the legitimate right to act in order to safeguard the public good and to eliminate the suffering of a class of people; however, in order to maintain a just society, the state must always maintain respect for the individual and the family. Although there are some similarities between Catholic and Althusian subsidiarity, the acceptance, and even the requirement, of government intervention is nowhere to be found in Althusius and may be seen as the Church’s first step towards supporting the welfare state—an important detail when considering European subsidiarity.<sup>12</sup>

On the other hand, the liberal contractualist position proposes that civil deliberation and democratic government will lead to a just organization of society. This version of subsidiarity envisions a reflective interaction taking place between the individual, whose character formation is altered as a result of engaging actively in political debate, and the institution, which becomes more representative and therefore more legitimate after considering the viewpoints of the sub-units’ constituencies.<sup>13</sup> In both characterizations stemming from concerns for justice, the central government has a valuable role to play in social aspects of life, and therefore, limited intervention into sub-unit affairs is occasionally warranted.

Finally, the philosophy of efficiency leads to a version of subsidiarity also known as fiscal federalism. Many practitioners of this type of subsidiarity use a “subsidiarity test,” or a cost-benefit analysis, meant to determine whether it is more efficient for a higher level of government to take over decision-making responsibilities within a certain policy sector.<sup>14</sup> Fiscal federalism considers externalities and economies of scale when judging whether to transfer a competence to the center, but generally, the belief is that given a heterogeneous society, local citizens will be better attuned to the needs of their community and should therefore make decisions. An added benefit gained from such decentralization is system competition between levels of government. When state and local governments compete, each attempting to adequately provide certain services, efficiency is enhanced and policy consumers receive greater benefits. Of the versions of

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<sup>9</sup>Ibid., 120-121.

<sup>10</sup>Ibid., 116. “The principle of subsidiarity can *proscribe* central action in the absence of comparative efficiency, thus protecting the sub-units from intervention by the central unit.” Føllesdal’s italics.

<sup>11</sup>Ibid., 123-124.

<sup>12</sup>Ibid., 123-124.

<sup>13</sup>Ibid., 125-126.

<sup>14</sup>Jacques Pelkmans, “An EU Subsidiarity Test is Indispensable,” *Intereconomics*, Vol. 41, No. 5 (2006): 249-254.

subsidiarity discussed so far, fiscal federalism might be considered the most “prescriptive;” that is, when it becomes clear that efficiency may be improved, this interpretation requires the central government to mandate policy to the sub-units.<sup>15</sup>

In each of these versions of subsidiarity, decentralizing decision-making processes lightens the legislative burden on the center and fosters a government that is “closer to the people.” Beyond these broad, and no doubt positive benefits, if put into practice, each of these interpretations would lead to a very different outcome for Europe. For example, one need only consider the stagnation and gridlock that would throttle the legislative process if, according to confederal subsidiarity, every sub-unit had absolute veto power. Consider also the ramifications if consociational subsidiarity were to gain discursive predominance. Could we imagine a Europe where a functional, non-territorial sub-group, such as Russian-passport holders or supporters of Sharia law, made efforts to exit the EU and the *acquis communautaire* based on claims of subsidiarity? For these reasons, it is essential to reach an accord regarding which type of subsidiarity should prevail within the European Union.

The second framework for analyzing the principle of subsidiarity comes from Neil MacCormick who approaches this subject from a philosophical and legalistic standpoint. Primary to MacCormick’s thesis is the concept of a democratic commonwealth, an archaic term unearthed and re-contextualized so as to interpret the post-sovereign world of the EU. As soon as the state admits to power sharing, or pooling sovereignty, the principle of subsidiarity becomes an appropriate means to answer certain questions: “Where [is it] best for the common good that a particular power be exercised, how far locally on a basis of local knowledge and understanding, how far centrally in a way that equalizes?”<sup>16</sup> In organizing his thoughts on subsidiarity and democracy, MacCormick uses a two-by-two matrix. The horizontal axis is divided into *individualistic* or *holistic* categories and describes whether or not the democratic focus is on the person or on the group. On the vertical axis, the variables are *instrumental* or *intrinsic*—something done to create pleasure or something that is good in and of itself.

Following this framework, certain philosophical positions become evident. In the individualistic/instrumental block observers would find Benthamites searching for the greatest utility, in the holistic/instrumental section one can discern Rousseau’s concern for the general will, and in the holistic/intrinsic portion, it is possible to see Aristotle’s belief that the common good is itself created during the process of deliberation.<sup>17</sup> MacCormick does not weigh these concepts against one another but attempts to illustrate the level of complexity found in democratic institutions. Using this same matrix, subsidiarity can be similarly disaggregated.

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<sup>15</sup>Føllesdal 1998, 116.

<sup>16</sup>Neil MacCormick, “Democracy, Subsidiarity, and Citizenship in the ‘European Commonwealth.’” *Law and Philosophy*, Vol. 16, No. 4 (Jul. 1997): 331-356.

<sup>17</sup>*Ibid.*, 348-50.



**Table 2. MacCormick’s Varieties of Subsidiarity**

	<b>Individualistic</b>	<b>Holistic</b>
<b>Instrumental</b>	Market Subsidiarity (Economy-oriented)	Rational Legislative Subsidiarity (Politically-oriented)
<b>Intrinsic</b>	Communal Subsidiarity (Civil Society-oriented)	Comprehensive Subsidiarity (Transparency-orient.)

MacCormick defines four types of subsidiarity. In the individualistic/instrumental quadrant he locates *market subsidiarity*, a concept that organizes the economy efficiently and increases society’s prosperity.<sup>18</sup> As in the case of fiscal federalism, this version of subsidiarity is based generally on questions of efficiency, but in MacCormick’s typology, the individual’s freedom to make independent choices is more important than analyzing when the government should subsume certain market activities. In this interpretation, the individual is the “lowest” political level and should therefore be free to make decisions without governmental interference.

The next type, what MacCormick describes as *communal subsidiarity*, shares many similarities with Catholic personalism. In both versions, individuals are seen as social beings with connections to their families, to their churches, and to their local organizations. Such relations are necessary for encouraging personal self-realization and individual fulfillment. Therefore, when determining which level of government predominates, the center should defer to the decision-making powers of these associations lest it interferes with their natural, socializing functions.<sup>19</sup>

MacCormick locates *rational legislative subsidiarity* in the holistic/instrumental quadrant of his model. The ultimate goal for institutions adhering to this type of subsidiarity is to insure that collective judgments are widely satisfactory to their constituency and that they provide, “legal conditions for the fair conduct of commercial and industrial activity, without partisan distortion.”<sup>20</sup> MacCormick’s rational legislative subsidiarity creates a link between the market and communal concepts. Each concerns a specific social sphere, but the politically-oriented subsidiarity must always measure its decisions based on considerations originating in the other two realms, making sure not to impinge unfairly on them.

In the final quadrant, MacCormick labels the holistic/intrinsic form of subsidiarity *comprehensive*. While the first three types are sector-oriented, comprehensive subsidiarity acts as a macro-level understanding of the term focused on the public sphere as a necessary element for communication in an open society. By adding this concept to the matrix, he incorporates transparency, an essential quality if

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<sup>18</sup>Ibid., 350.

<sup>19</sup>Ibid., 351.

<sup>20</sup>Ibid., 352.

the various segments within society are to constructively deliberate over where decision-making powers should rest. In a polity built on multiple levels of governance, comprehensive subsidiarity is necessary to ensure legitimacy because transparency guards against corruption and democracy demands inclusivity.

MacCormick's matrix does indeed illustrate the complexities of the term subsidiarity; however, within these complications exist the nuances which must be uncovered for the principle to gain a functional definition. Moving from a typology based on five definitions to one that uses four, certain similarities and differences are revealed. Because Føllesdal qualifies his definitions of subsidiarity with the attributes of prescriptive-ness and proscriptive-ness, he necessarily includes opposition and tension within his framework—some types of subsidiarity favor the center and others support the sub-groups. MacCormick, on the other hand, outlines a series of concepts that function symbiotically because each represents a different sector within the overall society. While all four have specific orientations, MacCormick has couched each in the language of democracy, thus making them philosophically compatible.

In the next simplification, subsidiarity will be characterized as a set of three competing political ideologies: Christian democratic, German federalist, and British Conservative. These draw more from history and politics than from philosophy or law and will resemble the modern versions of subsidiarity most contemporary observers are accustomed to discussing. John Peterson, in a moment of prescience, titled his 1994 paper "Subsidiarity: A Definition to Suit Any Vision?"<sup>21</sup> His introductory paragraph foresees some of the potential problems that arise when a term can mean everything to everybody. "Of course, the recent proliferation of interpretations has a downside, too. It has acted to *confuse* and *obfuscate* a concept which has the potential to guide clear-sighted, enlightened decisions about the future of European governance."<sup>22</sup> In a similar vein, Van Kersbergen and Verbeek, also publishing in 1994, point out that, "both defendants of more authority at the Community level, like France and Germany, and opponents of such a development," roundly supported the inclusion of the principle of subsidiarity into the Maastricht Treaty.<sup>23</sup> This appears to be a political paradox—as the discussion turns to the actual and the pragmatic, the vagueness of the concept becomes even more pronounced.

The Christian democratic variety of subsidiarity pays close attention to the small, autonomous social groups that participate in a pluralistic society. The role of the government in this system is only to provide for the public good and to establish legal order, not to subvert or overwhelm the social groups' position within society.<sup>24</sup> Furthermore, because of the variable role played by the state, this ideology is characterized by Peterson and by Van Kersberg and Verbeek as "dynamic." When the situation calls for action, it is the state's duty to protect its citizens; however, as soon as the problem has been rectified, it is equally incumbent upon the state to remove itself from the social arena. "Subsidiarity can thus be characterized as a theory that can be launched to justify both public intervention and the withdrawal of state

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<sup>21</sup>John Peterson, "Subsidiarity: A Definition to Suit Any Vision?" *Parliamentary Affairs*, Vol. 47, No. 1 (1994): 116-132.

<sup>22</sup>Ibid., 116. My italics.

<sup>23</sup>Van Kersbergen, Kees and Bertjan Verbeek 1994, 220.

<sup>24</sup>Peterson 1994, 118.

activity. In this specific sense, it is a dynamic and historically sensitive, yet open-ended, social and political theory.”<sup>25</sup>

The German federalist ideology of subsidiarity, on the other hand, is considered static. It calls for an ordered, constitutional division of powers between each level of government and pays particular attention to protecting the lower levels from centrist intervention. While it is true that a minority of observers in the past has perceived subsidiarity as a stepping stone towards European federalism,<sup>26</sup> and to be clear, such a rigid delineation of jurisdictions is a template for federalism, the contemporary consensus is that the addition of subsidiarity to the Maastricht Treaty was a crafty circumvention of the f-word.<sup>27</sup> Therefore, such a rigid version of subsidiarity, what Peterson calls a “total concept,” is highly unlikely to gain acceptance among a broad section of either the European public or its politicians.

The third political ideology that informs subsidiarity is the stance taken by the British Conservatives. Using Føllesdal’s terminology, this is a proscriptive definition that aims primarily at curbing *any* move towards centralizing power in Brussels. A highly defensive stance at odds with any understanding of integration that goes beyond issues of the Single Market, the British Conservative view could rightly be described as Eurosceptic.

Within these three currents of thought reside multiple contradictory interpretations of subsidiarity and its application to the EU. On one hand, the Conservatives use this principle as a blocking mechanism to stymie any political or social integration. On the other hand, for the Christian democrats, “the principle is intimately associated with the idea of socially embedding a market economy. In other words, Christian democrats already possess a well-defined theory on how to add a social dimension to Europe through the application of subsidiarity.”<sup>28</sup> These two versions are located at extreme poles, using the same concept to justify positions that are diametrically opposed to one another. Add to the discussion the German federalists, those philosophically willing to conflate subsidiarity with federalism, and one truly understands the nature of Peterson’s “confusion and obfuscation.” It is no wonder that De Búrca refers to subsidiarity as a, “cloudy and ambiguous concept which is readily open to instrumental use.”<sup>29</sup>

Given that a tripartite understanding of subsidiarity offers no more clarity than the more complex frameworks, maybe it is best to divide the principle in half. Given

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<sup>25</sup>Van Kersbergen and Verbeek 1994, 223.

<sup>26</sup>Pedro Schwartz, “Is the Principle of Subsidiarity a Solution?” in François Goguel et al., *A Europe for Europeans* (London: The Bruges Group, 1990), 16-17.; Robert P. Inman and Daniel L. Rubinfeld, “Subsidiarity and the European Union,” NBER Working Paper No. 6556, (May, 1998).; Desmond Dinan, *Ever Closer Union: An Introduction to European Integration* (London: Macmillan, 1999).

<sup>27</sup>Kees Van Kersbergen and Bertjan Verbeek, “Subsidiarity as a Principle of Governance in the European Union,” *Comparative European Politics*, Vol. 2 (2004): 142-162. “To equate subsidiarity with federalism and to view the post-Maastricht development in terms of democratic federalism...therefore misses the important point that the adoption of the subsidiarity principle meant a narrow escape *from* federalism.” pp. 151.

<sup>28</sup>Van Kersbergen and Verbeek 1994, 230.

<sup>29</sup>Grainne De Búrca, “The Principle of Subsidiarity and the Court of Justice as an Institutional Actor,” *Journal of Common Market Studies*, Vol. 36, No. 2 (June 1998): 217-235.

two choices, perhaps some greater understanding will be accessible. One of the most concise definitions of the term comes from Andrew Cox who interprets subsidiarity in a dualistic fashion. Cox defines a *liberal* viewpoint that places the onus on the center to prove that it has a legitimate reason to intervene. This view is very similar to that taken by the British Conservatives who attempt to maintain state sovereignty and to limit the role of the EU within the jurisdictions of the member states. He interprets this standpoint as being, “fundamentally opposed to the creation of a supranational federal EC structure,” that it, “seeks to use the concept of subsidiarity to limit the role of the EC,” and that this understanding could, “lead to the rejection of the very thing subsidiarity hopes to achieve.”<sup>30</sup> Although Cox never enunciates what he believes subsidiarity “hopes to achieve,” it is clear that he does not believe that the framers of the Maastricht Treaty intended to include this principle as a means to discontinue the integration process or to hamstring the EU.

For Cox, the *supranational* viewpoint contends that the center should set the political agenda. In this framework, it is assumed that the Commission and the other supranational institutions have superior legislative and executive capabilities and that sub-units, or member states, must prove that they can manage a certain sector better than the central government in order to retain competence in that area.<sup>31</sup> Very clearly, the principle of subsidiarity using this dichotomy becomes a highly contentious term.

The scientific benefits gained from this type of binary relationship derive from the fact that each version originates from a very clear philosophical origin. The liberal version, or what Endo refers to as *negative subsidiarity*, asserts that power rests primarily with the member states; it, “refers to the *limitation* of competences of the larger organisation in relation to the smaller entity.”<sup>32</sup> The supranational position, or *positive subsidiarity*, believes that the center acts as a catalyst for integration and given certain circumstances it has the obligation to intervene into the sub-units affairs.<sup>33</sup> The proscriptive versus the prescriptive characterizations that Føllesdal used in his framework have become the key to unlocking the term.

Going forward, this analysis will use Endo’s dichotomy of positive and negative subsidiarity as shorthand for defining whether a politician is oriented more towards the supranational stance (positive) or favors protecting the member states from excessive interventions (negative). These terms are inclusive in that many of the previous definitions may be described as either primarily positive or primarily negative. Althusian and confederal subsidiarity each depend heavily on veto power or exit strategies. Clearly, these belong to a negative interpretation of subsidiarity. Catholic personalism, Christian democrats, and some fiscal federalists believe it is the right and the obligation of the state to protect its citizens, even if this requires intervention. These perspectives are grounded in positive subsidiarity.

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<sup>30</sup>Andrew Cox, “Derogation, Subsidiarity and the Single Market: The Case of Energy Exploration and Extraction under the EC Utilities Procurement Rules,” *Journal of Common Market Studies*, Vol. 32, No. 2 (June 1994): 127-147.

<sup>31</sup>*Ibid.*, 136.

<sup>32</sup>Ken Endo, “Subsidiarity and its Enemies: To What Extent is Sovereignty Contested in the Mixed Commonwealth of Europe?” European University Institute, Robert Schuman Centre for Advanced Studies, European Forum Series, RSC No. 2001/24 (2001): 1-42. Quote comes from page 6 and the italics are Endo’s own.

<sup>33</sup>*Ibid.*, 6.

Given the ambiguous nature of the term subsidiarity, it is unwise to make absolute judgments about dividing the groups mentioned above into either strictly positive or negative camps. For example, while this binary system generalizes that Christian democrats and fiscal federalists support positive subsidiarity, it would not be surprising to find a faction within each of these groups that supported either populist, nationalistic rhetoric aimed at protecting their nation-state or an economic approach based on flexibility that might allow for an escape from the Single Market.<sup>34</sup> Such a system of classification is not meant to reduce this complex principle to a simple dichotomy, but it is an attempt to cut through the verbiage in hopes of gaining some clarity.

Furthermore, this terminology is not meant to prejudice the reader. That is, it is not meant to connote that the supranational, European Union-oriented position is “good,” or positive, and the national, member state-oriented position is “bad,” or negative. This simplified understanding of subsidiarity was extremely helpful when developing the survey questions and attempting to quantify the parliamentarian’s responses. In the following sections, the methodology used to collect this data will be explained, and this dichotomous definition of subsidiarity will be put to practicable use.

## **Methodology**

This project began as a study of the European Parliament. The original goal was to discover which variables could best explain how and why certain politicians supported various positions on subsidiarity. Nine member states were chosen, and each of their Members of European Parliament (MEPs) were presented with a 10 question, online survey.<sup>35</sup> Unfortunately, the response rate was not high enough to draw even the most cursory conclusions. Several factors could have played a part in this. The survey was first distributed in November, 2009 and was available until January, 2010; however, with the Lisbon Treaty coming to force in December and the installation of a new Commission, the timing for such a survey may have been inauspicious. Furthermore, the online survey was presented in English which may have posed an obstacle to some MEPs. Nevertheless, the 30 responses were not enough.

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<sup>34</sup>For an example of how economists may hold conflicting conceptualizations of subsidiarity please see Wolf Schäfter, “Harmonisation and Centralisation Versus Subsidiarity: Which Should Apply Where?” *Brugel, Intereconomics* Sept./Oct. 2006. In this article, Schäfter takes a highly positive view of subsidiarity when he states: “Accordingly, it is for the Commission to actively press for the necessary market liberalisation measures in the member states, even in the face of national resistance—something it has been seen to have done, pointing the way forward, in recent years” (p. 246). However, in his closing remarks, he states: “In addition, the principle of subsidiarity can be strengthened by the institutional anchoring of exit options for EU states and regions by legalising secession and opting out...In extreme cases even a legalised withdrawal from the EU should be made possible” (p. 249). This shows that even in a single person may exhibit both varieties of subsidiarity.

<sup>35</sup>Germany, Austria, Italy, Spain, Denmark, Belgium, Poland, Lithuania, and the Czech Republic were selected because, as a group, they represented various cross-cutting variables such as Unitary, Federal, or Devolving states, Large, Intermediate, and Small member states, and Original, Intermediate, or New member state. These were the variables that were to be tested.

When this problem became an evident stumbling block, the survey was translated into German and sent to each of the members of the Bundestag and the Bavarian Parliament. The survey was available to these institutions from December, 2009 until January, 2010 and the response rate was similar to that of the European Parliament—26 members of the Bundestag and 32 members of the Landtag answered the survey. In total, the survey had produced 88 respondents. At least one MEP from every polled member state responded, and with the exception of Die Linke in the Bavarian Parliament, every major political party was represented in the Bundestag and the Landtag.

The survey included three major types of questions. The first set of questions asked about the administration and possible benefits to be gained from subsidiarity, the second set was used to give each respondent a “subsidiarity score” between –5 and 5 points, and the third set of questions was meant to produce a “support for the European Union” score ranging from –4 to 9 points. The goal was to locate each respondent on a coordinate system where the x-axis represented a “subsidiarity scale” and the y-axis measured support for the EU; after plotting all of the points, the results were meant to show the relationship between these two variables.

The survey used filter questions which made it possible to gain a deeper understanding of the respondents’ positions. The score for the subsidiarity scale was generated by combining responses to four questions. Question 2 (Q2) was the first opportunity to position the respondents on the x-axis, the subsidiarity scale. Any score left of the origin indicates a negative view of subsidiarity, that is, one favoring a defensive stance focused on protecting states’ rights. Conversely, a score to the right of the origin means that the respondent holds a positive view of subsidiarity—one that supports interventions from the center given the proper conditions and circumstances.

**Table 3. Question 2**

<b>Q2: Which of the following best describes your specific position on subsidiarity?</b>
a) It is necessary and useful as a tool to defend states’ rights against over-centralization.
b) It is necessary and useful as a tool for stimulating deeper European integration.
c) It is necessary and useful as a tool to defend the European status quo; that is, you neither favor devolving more power back to the states, nor do you support major steps towards deeper integration.
d) None of these

Answering (a) to Q2 would place this survey participant in the negative half of the coordinate system, answering (b) would place them on the positive side, and answering (c) would give them no score. In this model, the origin represents the status quo, not an absence of opinion, so any score of zero simply means that the respondent prefers the current political configuration to a more extreme alternative. In effect, this creates a third typology, which will be labeled “mixed subsidiarity.” Those respondents who are not strongly oriented to the negative or the positive but support the existing division of powers would fall into this category.<sup>36</sup>

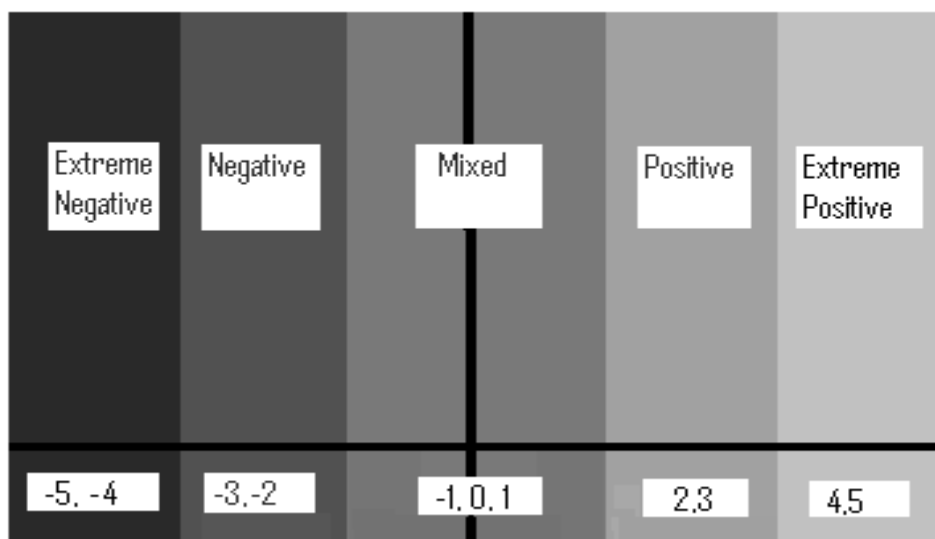
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<sup>36</sup>This practice of acknowledging both the positive and negative versions of subsidiarity is found in EU documents, and can therefore be understood as the “status quo.” In the current environment, neither extreme version has gained absolute predominance. The European Parliament Fact Sheet on Subsidiarity states: “The subsidiarity principle pursues two opposing aims. On the one hand, it allows the Community to act if a problem cannot be adequately settled by the Member States

The answer selected for Q2 determines which one of the next four possible questions (Q2a, Q2b, Q2c, Q2d) followed next. Question 2a, directed at those respondents in the negative half of the subsidiarity scale, attempts to determine the intensity of their negative views by asking the parliamentarians about their preferred level of veto power. Because the strongest proponents of negative subsidiarity believe in full veto power, respondents holding this view would earn the most negative score. On the other hand, if the parliamentarian selects the answer to Q2a that asserts: “States should have the opportunity to voice their concerns regarding pending regulations, but this need not be formally institutionalized,” then they would be on the negative side of the scale but with a score closer to the origin.

The goal of this set of four questions was to determine the extremity of the respondents’ positions by giving them multiple chances to substantiate their views. Using this process, a subsidiarity score was derived for each parliamentarian.

**Graph 1. Subsidiarity Scale Sub-Divisions**



The set of questions regarding support for the European Union situates the respondent on the y-axis. Drawing from the literature on Euroscepticism, this analysis utilized the Kopecky and Mudde two-by-two model for characterizing a respondent’s position towards the EU. This model is preferable to Taggart and Szczerbiak’s dichotomy of *hard* versus *soft* Euroscepticism because it offers greater variation.<sup>37</sup> The Kopecky and Mudde scheme uses two variables, *support for European*

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on their own. On the other, it seeks to uphold the authority of the Member States in those areas that cannot be dealt with more effectively by Community action.” If a respondent to the survey sees subsidiarity as having both qualities, then she will be labeled “mixed.” European Parliament, “1.2.2 Subsidiarity,” European Parliament Fact Sheets, [http://www.europarl.europa.eu/factsheets/1\\_2\\_2\\_en.htm](http://www.europarl.europa.eu/factsheets/1_2_2_en.htm).

<sup>37</sup>Paul Taggart, “Touchstone of Dissent: Euroscepticism in Contemporary Western European Party Systems,” *European Journal of Political Research* 33 (1998): 363-388.; Paul Taggart and Aleks Szczerbiak, “Europeanisation, Euroscepticism and Party Systems: Party-based Euroscepticism in the Candidate States of Central and Eastern Europe,” in *Pan-European Perspectives on Party Politics*, eds. Paul Lewis and Paul Webb (Netherlands: Koninklijke Brill NV: 2003), 23-41.

integration and support for the EU as a specific set of institutions, which enables it to differentiate between multiple types of Eurosceptic parties. Their typology also includes those people who support the EU, continental integration, or both—a significant classification for the current undertaking.<sup>38</sup>

**Table 4. Kopecky and Mudde Model for Euroscepticism**

		<i>Support for European Integration</i>	
		<i>Europhile</i>	<i>Europhobe</i>
<i>Support for the EU As a Set of Institutions</i>	<i>EU-Optimist</i>	Euroenthusiast	Europragmatist
	<i>EU-Pessimist</i>	Eurosceptic	Euroreject

Because Kopecky and Mudde use a two-by-two model, translating its variables to a linear relationship required one major adjustment. To solve this problem, Europragmatists and Eurosceptics were given equivalent scores. By weighting them equally, this working paper avoided having to arbitrarily make one “higher” or “lower” than the other on the y-axis. Once the respondents are situated in the model, it is possible to color code and differentiate between these two groups in order to observe any relevant distinctions.

**Table 5. Question 8**

<b>Q8: Which of the following options best describes your feelings towards European integration:</b>
a) I support the European Union in its current form as well as the key ideas associated with integration, e.g. cooperation on the basis of pooled sovereignty and integrated liberal market integration.
b) I support the European Union in its current form because of pragmatic reasons, but I am not necessarily committed to the ideas associated with integrations, per se.
c) I do not support the European Union as it is currently constituted, but I am in favor of integration as a concept.
d) I neither support the current form of the European Union, nor the ideas associated with integration.
e) None of these answers describes my position.

If the respondent answered (a) to Q8, then she would receive a score of 5 points. If she answered either (b), (c), or (e) then she was given no points, and if she answered (d) she was given –1 point. In this way, Q8 divided all of the respondents into 3 groups: those who fully support the EU and integration, those who fully reject the EU and integration, and those who have some reservations regarding either integration *per se* or the institutions of the EU.

Respondents who answered (a) to Q8 were then asked about their level of commitment to integration. Do they support integration along political, economic and social lines? If the answer was yes to all three, then they were given an additional 4 points, making the maximum possible combined score 9 points. Someone who strongly supports increasing political integration in order to compliment deeper economic integration but is not supportive of European social integration would receive an additional 3 points. A parliamentarian who favored slight political reform and the completion of the Single Market would receive 2 points, and if a respondent

<sup>38</sup> Petr Kopecky and Cas Mudde. “The Two Sides of Euroscepticism: Party Positions on European Integration in East Central Europe,” *European Union Politics*, Vol. 3 (2002): 297-326.

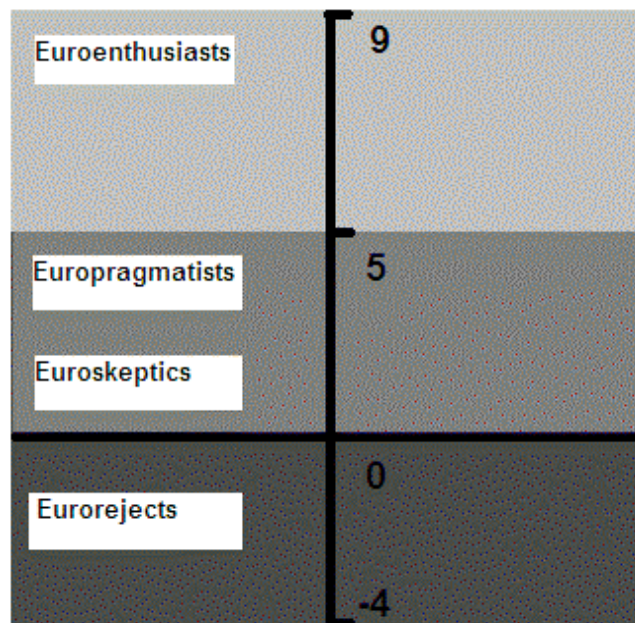


was in favor of the current level of integration, then they received only 1 extra point, for a total score of 6 points.

The Europragmatists and Eurosceptics received their own follow-up question regarding levels of future integration as well, and depending on how supportive they were, their total scores could range from 0 to 4. Parliamentarians who supported political, economic, and social reform were given more points than those who only supported reform in one or two sectors. Using this scoring system allowed the model to incorporate many of the diverse positions held by European parliamentarians including those who favor integration based on social and political issues, but not economic ones, and those who only support loose economic integration grounded firmly in the interests of the member states. As in the subsidiarity scale, scores closest to the origin were supporters of the status quo.

The Eurorejects could score between -1 to -4 depending on how far they wanted to distance themselves from the EU. Those who proposed immediate secession were given the most negative score, while those who only supported extensive opt-outs were closer to the origin.

**Graph 2. Kopecky and Mudde Identities and the Support for the European Union Scale**



## Results and Analysis

This section will analyze each set of survey questions individually. The first group of questions asked the politicians about their feelings toward the administration of subsidiarity and the possible benefits associated with its implementation. These questions reflect general attitudes and uncover areas of consensus and disagreement among the surveyed parliamentarians. The second set of questions develops the subsidiarity scale. This is the heart of the analysis and should clarify the distinctions between the positive and negative perspectives; furthermore, from this data, institutional predispositions towards the definition of subsidiarity should become apparent. The third set of questions regarding support for the EU will be used

primarily as a means to complete the biaxial model and to visualize the relationships between this variable and the subsidiarity scale.

### *Response Rates*

Because this survey was a not a random sampling of parliamentarians, it is necessary to compare the qualities of those who responded with those of the greater institution in order to determine whether or not the survey was representative.

**Table 6. Member State Respondents from the European Parliament**

	<b>% of EP</b>	<b>% of Respondents</b>	<b>Difference</b>
<b>Germany</b>	14%	40%	+26%
<b>Italy</b>	10%	10%	0%
<b>Spain</b>	7%	10%	+3%
<b>Poland</b>	7%	7%	0%
<b>Belgium</b>	3%	3%	0%
<b>Czech Republic</b>	3%	3%	0%
<b>Austria</b>	2%	17%	+14%
<b>Denmark</b>	2%	7%	+5%
<b>Lithuania</b>	2%	3%	+2%

Dividing the survey data into member states makes it possible to see how parliamentarians from each country were represented during this project. Germany, although having 14% of the seats in the EP, represented 40% of the respondents to the subsidiarity survey. This is a substantial disparity that may be explained by the fact that the current project is being conducted at a German research institute. Likewise, Austrian MEP's were over-represented by fourteen percentage points. Italy, Poland, Belgium, and the Czech Republic showed no variation between their response rates to the survey and their percentage of seats in the EP, and the respondents from Spain, Denmark, and Lithuania were each within five percentage points. Although the survey results will be skewed to the German speaking countries, in most cases the responses aligned closely to their actual percentages in the EP.

The next table shows how well the MEP respondents corresponded to the party group fractions in the EP. When the data is organized in this manner, they show that the Socialists (the Group of the Progressive Alliance of Socialists and Democrats in the European Parliament) were under-represented by 12% and the Greens (the Group of the Greens/Free Alliance) were over-represented by 10%. Each of the other party groups were within +/- 5% with the exception of the ECR (European Conservatives and Reformists), the only party group to register no respondents to the survey. Because the majority of ECR representatives come from the British Conservative party, and the survey was not distributed to these MEPs, this lack of participation is not surprising. However, Polish MEPs represent the second largest bloc within the ECR, and while these representatives did have the opportunity to make their positions clear, no Polish ECR parliamentarians participated in the survey.

**Table 7. Party Group Respondents from the European Parliament**

	<b>% of EP</b>	<b>% of Respondents</b>	<b>Difference</b>
<b>EPP</b>	36%	33%	-3%
<b>Socialists</b>	25%	13%	-12%
<b>ALDE</b>	12%	17%	+5%
<b>Greens</b>	7%	17%	+10%
<b>ECR</b>	7%	0%	-7%
<b>United Left</b>	5%	10%	+5%
<b>Free/Dem</b>	4%	7%	+3%
<b>NI</b>	4%	3%	-1%

It is important to remember that only thirty MEPs responded to the survey. With only a few exceptions, the respondents fit closely to their institutional representaton. Where there are larger differentials between the respondents and the EP, these are not so extreme as to discount the findings of the entire survey. Of course, a larger sample size would make the findings more robust, but using the data on hand, it is fair to say that most member states and party groups were represented sufficiently for this project.

The next two tables show similar data for party affiliations in the German Bundestag and the Bavarian Landtag, the state parliament for Bavaria. The Social Democrat Party is over-represented in the Bundestag while at the same time the coalition between the Christian Democrats and the Christian Social Union is under-represented. The other three party parties are within +/- 3% of their institutional. The sample size for the Bundestag included 26 respondents.

**Table 8. Party Group Respondents for the German Bundestag**

	<b>% of BT</b>	<b>% of Respondents</b>	<b>Difference</b>
<b>CDU/CSU</b>	38%	27%	-11%
<b>SPD</b>	23%	35%	+12%
<b>FDP</b>	15%	15%	0%
<b>The Left</b>	12%	15%	+3%
<b>The Greens</b>	11%	8%	-3%

In Table 9, it is clear that the Christian Social Union was highly under-represented in the Bavarian Landtag. The four other major parties were therefore slightly over-represented, ranging between +3% and +5%. When taking the two German parliaments together, in both cases, the CDU/CSU participated less than the other major parties and this non-response skews the data slightly. Because this coalition holds so many seats in both of these legislatures, it is unfortunate that their members did not play a larger role in the current project; however, the rest of the parties were adequately represented.

**Table 9. Party Group Respondents for the Bavarian Landtag**

	<b>% of LT</b>	<b>% of Respondents</b>	<b>Difference</b>
<b>CSU</b>	49%	34%	<b>-16%</b>
<b>The Greens</b>	10%	13%	<b>+3%</b>
<b>FDP</b>	9%	13%	<b>+4%</b>
<b>Independent (FW)</b>	11%	16%	<b>+5%</b>
<b>SPD</b>	21%	25%	<b>+4%</b>
<b>Unaligned</b>	1%	0%	<b>-1%</b>

### *Administration and Benefits*

While the first section of this paper discussed many different variations of how scholars define subsidiarity, it did not mention one of the other, potentially more troublesome, dichotomies. As outlined by Granier de Búrca, even within the text of the Treaty, there are two competing versions of subsidiarity. On the one hand, there exists in Article 3b, a “narrow and legalistic” conceptualization that also includes the principle of proportionality and concerns mainly “comparative efficiency” within the legislative process.<sup>39</sup> On the other hand, the famous, “decisions are taken as closely as possible to the citizen” clause found in the Preamble and Article A is mainly a political conceptualization that strips away technocratic jargon and re-defines subsidiarity in predominantly democratic terms.

The first question of the survey presented the parliamentarians with the definition of subsidiarity as found in Article 3b of the Treaty on European Union (TEU)<sup>40</sup> and asked them if this principle was, “a necessary and important component of the European political system.” On this point, there was overwhelming consensus. In the European Parliament, 93% either agreed or strongly agreed with this statement, in the Bundestag 88% either agreed or strongly agreed, and in the Landtag 97% agreed or strongly agreed. Of the 88 respondents, only one disagreed that subsidiarity was necessary and important (a Landtag member) and 4 people neither agreed nor disagreed. This result supports the assumption that subsidiarity is considered a guiding principle for European politicians as well as parliamentarians on lower levels of government. That legislators would gravitate towards the “legalistic” understanding of the term should come as no surprise.

Later in the survey, the respondents were asked to answer a question regarding the more “politically” oriented version of subsidiarity found in the Preamble. Question 9 stated: “The principle of subsidiarity, as defined by taking decisions ‘as

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<sup>39</sup>De Búrca 1998, 218-220.

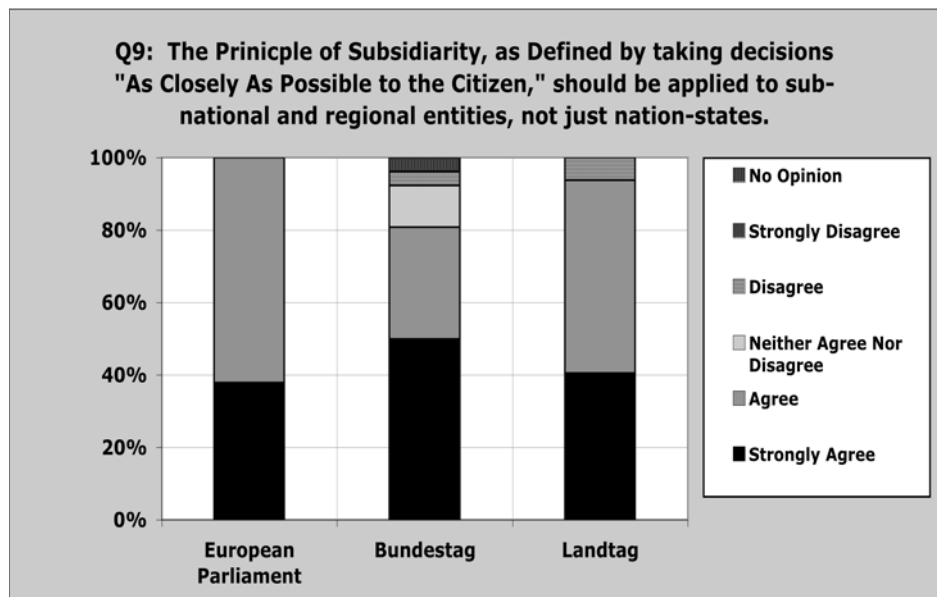
<sup>40</sup>“In areas which do not fall within its executive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of scale or effects of the proposed action, be better achieved by the Community.” The full text of the Treaty on European Union can be found here: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html>.

closely as possible to the citizen' should be equally applied to sub-national and regional entities, not just nation-states.”

Again, of those who responded to the survey, there exists a clear consensus regarding the affirmative application of subsidiarity to sub-national and regional entities. Upon first glance, this result is astonishing. Does this mean that the survey respondents would support the Lega Nord in its secession efforts? Would these parliamentarians also encourage Transylvania to form a separate Hungarian parliament within the borders of Romania? What about the Basques and the ETA? Agreeing on the legal foundations set forth in Article 3b is understandable, but to support subsidiarity as a means to embolden regional and sub-national political actors is a much more sensitive issue.

Føllesdal mentions this potential for draining powers from the member states and redistributing them to the regions,<sup>41</sup> and Van Kersbergen and Verbeek also caution that subsidiarity could develop into, “an instrument of sub-national actors to challenge the national center.”<sup>42</sup> When evaluating their predictions in a later article, the duo state that the Lega Nord, Scottish, and Welsh nationalist parties have all utilized the principle of subsidiarity, but that for the most part regional actors were, “confronted with the dominant interpretation according to which the principle of subsidiarity exclusively controls relations between Member States and the EU’s institutions.”<sup>43</sup>

**Graph 3. Question 9 Results**



After viewing the results for Q9, it is relevant to ask if this relationship between the member states and the EU concerning subsidiarity remains the dominant

<sup>41</sup>Føllesdal 1998, 114.

<sup>42</sup>Van Kersbergen and Verbeek 1994, 228.

<sup>43</sup>Van Kersbergen and Verbeek 2004, 155. Referencing Jackie Jones, “The Committee of the Regions, Subsidiarity and a Warning,” *European Law Review*, Vol. 22, No. 4 (1997): 312-326.

interpretation. Parliamentarians from three different levels of government support applying the principle of subsidiarity to sub-national levels of governance.

One explanation for this result may be the “Boy Who Cried Wolf”-Theory. As the literature shows, many academics have already warned politicians about the increasing relative strength of regional actors; however, no sub-national has yet made a consequential effort to strengthen its political position vis-à-vis the state. For this reason, perhaps the politicians feel safe in supporting the “as closely to the citizen” clause because A) to do otherwise would be politically untenable and B) there is no impending challenge from a regional actor threatening to upset the status quo. As soon as the wolf appears however, the responses to this question can be expected to change.

A second explanation is based on institutional logic. That is, it is incumbent upon the European Parliament to either agree or strongly agree with this version of subsidiarity because it is part of the Treaty that they are sworn to uphold. As for the Landtag, it also makes sense for these politicians to support the “closest to the citizen” ideal because, in very real terms, they are a “sub-national and regional” entity. In the Bundestag, the respondents show the greatest level of variation. About 20% either disagree or have no opinion on this topic. As will be seen in later discussions, the Bundestag appears to be caught in the middle on many issues. It must support the German federal states, but, as an ally of the EU, its representatives must also support the Treaty. Regardless of the reasoning behind these responses, the overwhelmingly positive consensus exhibited by the respondents was unexpected.

When asked if subsidiarity is a tool for increasing transparency and decreasing the democratic deficit, the parliamentarians were also in agreement. In the EP, 70% either agreed or strongly agreed with this statement, in the Bundestag 77% percent agreed or strongly agreed, and in the Bavarian Landtag, about 66% responded favorably. Across all levels of government, the majority of politicians believe that subsidiarity can increase the democratic standing of the EU.

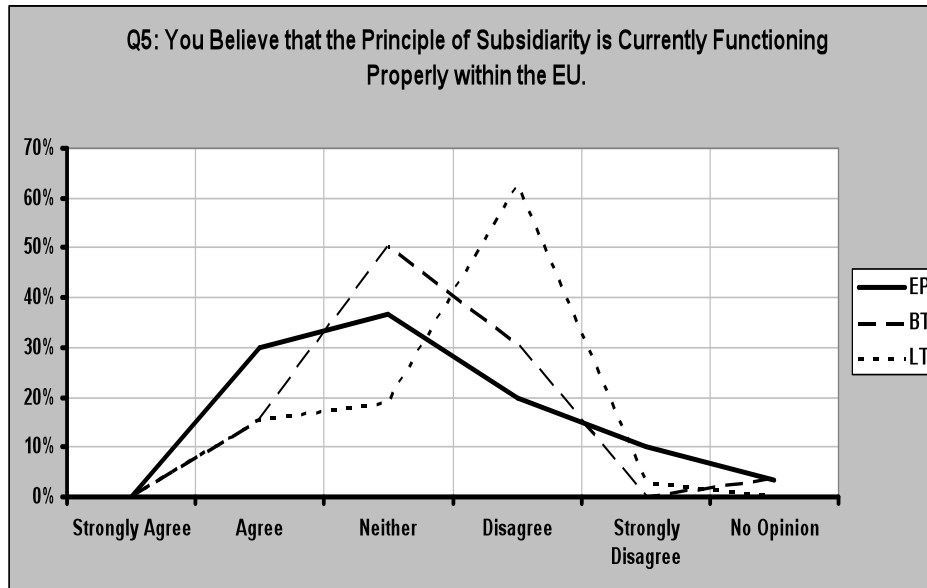
However, when asked to respond to the statement: “You believe that the principle of subsidiarity is currently functioning properly within the EU,” the results were not as consensual. In the EP, 30% agreed, but 30% disagreed or strongly disagreed, and 37% neither agreed nor disagreed. The Bundestag saw 16% agree, 31% disagree, and 50% neither agree nor disagree. And in the Bavarian Parliament, 16% agreed, 63% disagreed, and 19% neither agreed nor disagreed.

Graph 4 illustrates that the EP perceives subsidiarity to be functioning much better than do the other two institutions. Conversely, the members of the Landtag seem to view the application of subsidiarity in a generally negative light. The Bundestag, again, is somewhere in the middle, with most of their respondents remaining non-committal.

If all of the surveys are combined, it appears that only 20% of the respondents believe that the principle of subsidiarity is functioning properly. In other words, there is something approaching a negative consensus regarding the implementation of subsidiarity. Considering Questions 5 and 6 in tandem, it is possible to recognize that a foundation is being laid on which to construct a more democratic, more transparent

European Union; however, the tool that many view as being appropriate for shaping this development has yet to be properly actualized.

**Graph 4. Question 5 Results**



The Lisbon Treaty will have an effect on solidifying the implementation of subsidiarity. Although the Early Warning Mechanism (EWM), whereby member state parliaments have six weeks to offer a “reasoned response” to proposed legislation regarding its compliance with the principle of subsidiarity, was tested on a preliminary basis prior to December 2009, now that this process is encoded in the Treaty, its true capacity as a connective tissue between the member state legislatures and the Commission may be realized.<sup>44</sup> With time, the review and revision of European directives (only as a check on their adherence to subsidiarity) by state parliaments may be the key to realizing the transparency and democracy gains achievable from a fully refined and institutionalized conceptualization of subsidiarity.

When posed with a question regarding which institution should be the primary agency for monitoring compliance with the principle of subsidiarity, the respondents tended to agree that the European Parliament should be the first choice, followed by the National Parliaments and the European Court of Justice. However, there was variable support for the other options which included the Council of Regions and an independent advisory board created especially for overseeing subsidiarity. The EWM would solidify these top two choices as “subsidiarity watchdogs” by bringing the member states into the legislative conversation, although only in an advisory capacity, and allowing the EP, now able to extend its influence via the expansion of the codecision process, to check the Commission if and when it begins to drift into unsanctioned policy areas.

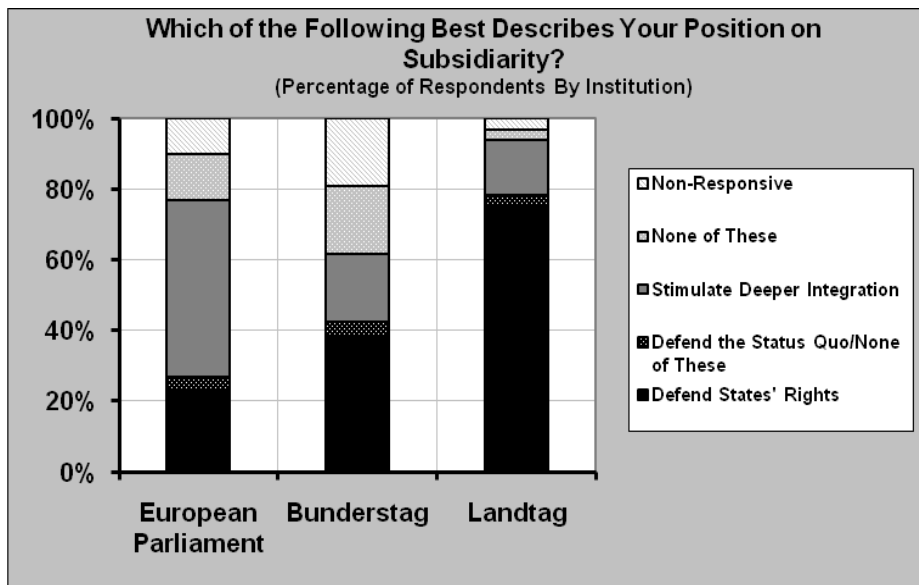
<sup>44</sup>Ian Cooper, “The Subsidiarity Early Warning Mechanism: Making It Work,” *Intereconomics*, Vol. 41, No. 5 (2006): 254-257.

After being tallied, the responses from the first set of questions illustrate that most of the respondents viewed subsidiarity, whether it be the narrow/legalistic or the broad/political version, as integral to the political functioning of the European Union. Furthermore, they believe that this principle will increase transparency and reduce the democratic deficit. This would be quite a feat *if*, in the eyes of these politicians, the EU could manage to successfully incorporate this principle into the legislative process. Lacking this development, it appears that an unenthusiastic view of subsidiarity's practicability prevails. Anecdotally, the data show that on many key topics, the parliamentarians have similar stances. This, however, is not the case, when these same politicians are placed into the subsidiarity scale.

*The Subsidiarity Scale*

This section will use the previously discussed definitions of positive and negative subsidiarity in order to illustrate where different respondents fall along the x-axis of this model. As stated, the subsidiarity score ranges from -5 to 5 and was derived by aggregating the responses to four separate questions. The text for Question 2 can be found in Table 3. This question was meant to divide the respondents into three groups: those who felt subsidiarity was a tool to defend states' rights (negative), those who felt that subsidiarity was useful for stimulating integration (positive) and those who favored that status quo; that is, they neither favored devolving power back to the states, nor supported steps to increase integration (mixed).

**Graph 5. Results for Question 2 By Institution**



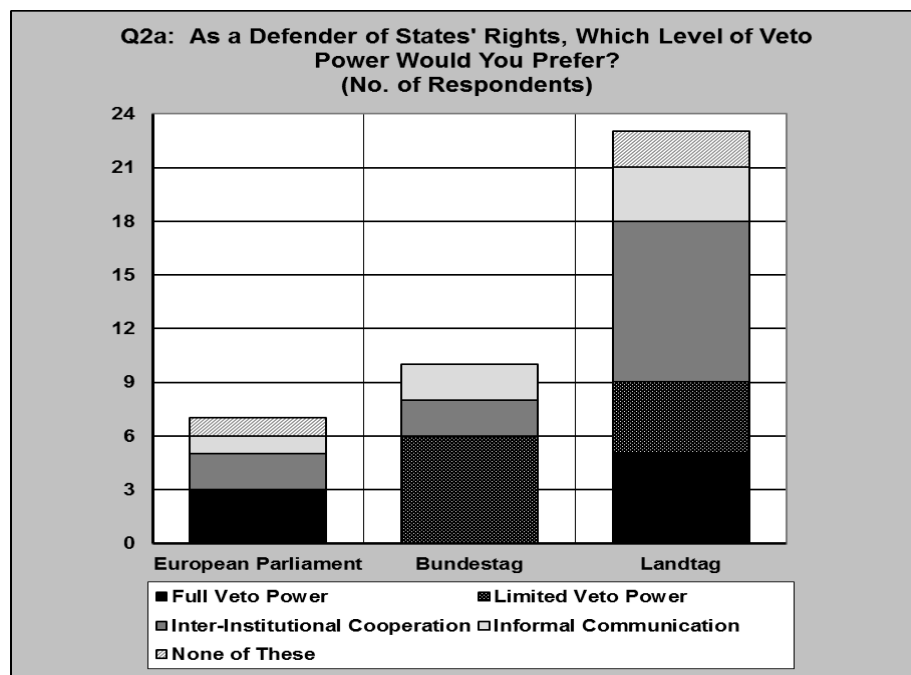
The responses to this question align with Cooper's previous assumptions. The Bavarian Parliament (Landtag) is strongly in favor of defending states' rights. Conversely, the European Parliament perceives subsidiarity as an engine for integration. While almost 75% of those respondents from the Landtag view subsidiarity as a means to protect their sub-national interests, less than 25% of MEPs take this viewpoint. On the other hand, half of the MEPs believe that subsidiarity can aid in future integration and only 15% of Landtag respondents agree with this



position. When looking at this graph, the two separate definitions of subsidiarity become apparent. The principle of subsidiarity is being understood in two distinctly different ways.

In the next question, the parliamentarians were asked to choose their most preferred level of veto power. The responses to this question are in Graph 6. This graph primarily illustrates that the Landtag has many more proponents of negative subsidiarity than the other two institutions. However, it is interesting that of the seven MEP’s who support negative subsidiarity, three do so “extremely” and agree with full veto power for member states; on the other hand, no respondent from the Bundestag chose this option. In the Landtag, only about one-fifth of the parliamentarians proposed full veto power. The majority favored the two less extreme options, preferring institutional cooperation and informal communication between the legislatures. Together, these questions seem to indicate that the term “states’ rights” may have elicited a robust initial response from a large group of the Landtag’s respondents, but when pressed, their stance was not overly negative.

**Graph 6. Levels of Veto Power**

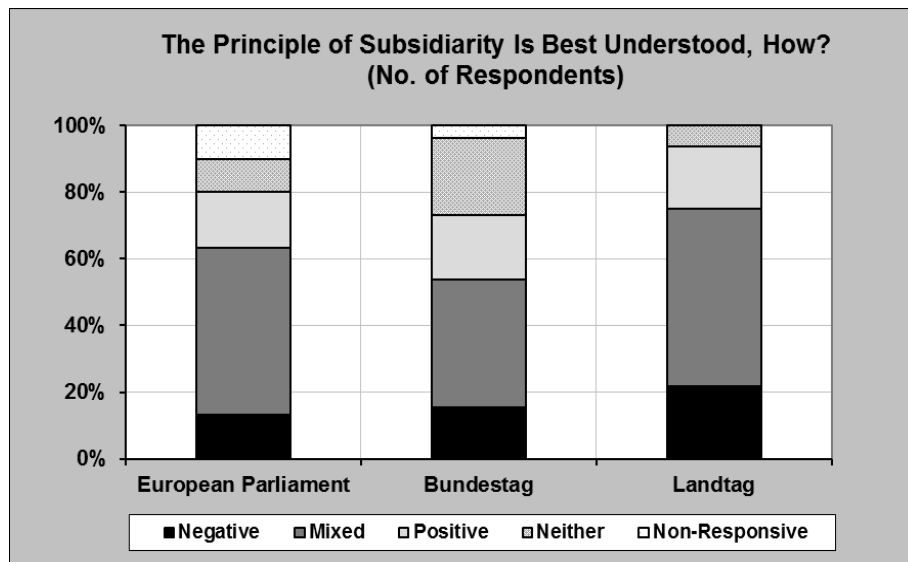


Of those respondents who believe that subsidiarity can stimulate greater integration (Q2), when asked a follow up question, 52% selected the option that stated: “Subsidiarity institutionalizes legal jurisdictions which are necessary for a functioning European political system based on multiple levels of decision making.” This result indicates two separate points. First, even those people who locate themselves on the positive side of the subsidiarity scale acknowledge that the European system has multiple levels of decision making, thereby admitting the importance of power sharing. This is important because it appears to soften the position. Second, they do not support positive subsidiarity because they believe that Brussels should manage all member state policies; instead, they see it as a way to

clarify *when* it is appropriate for Brussels to act. This is the key point for understanding positive subsidiarity. It does not mean that the EU should *always* act, but it accepts that supranational institutions have the legitimate right to do so, at the appropriate time. Just as the supporters of negative subsidiarity preferred a lighter touch when it came to veto power, the supporters of positive subsidiarity do not aim to run roughshod over the rights of the member states.

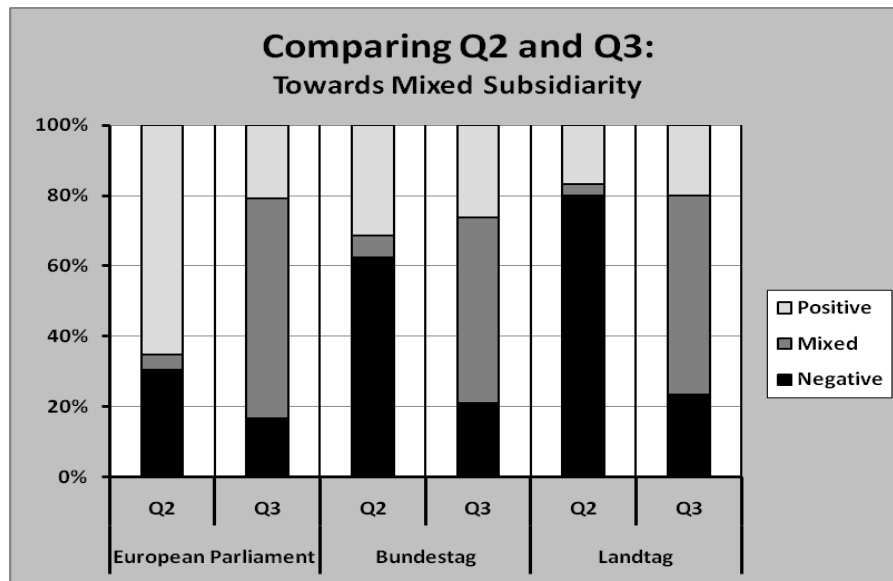
In Question 3, the parliamentarians were asked how the principle of subsidiarity is best understood: negatively, as a means to maintain states’ rights and avoid interference from Brussels; positively, as a justification for intervention when external costs become too heavy, when minority rights are threatened, or where efficiency is concerned; or mixed, a framework that allows limited interventions as a way to ensure minority rights and systemic efficiency but does not allow absolute state veto power. Graph 9 illustrates the results.

**Graph 7. Results for Question 3**



What is most surprising about this graph is that the Landtag has a higher number of “mixed” responses than either the EP or the Bundestag. In both Q2 and Q3, the survey presented an option referring to states’ rights. In Q2, 75% of the Landtag chose the negative subsidiarity option. However, in Q3 only 22% percent selected that option, while 53% chose the mixed view. In fact, 19% of the Landtag selected the option for *positive subsidiarity* in Q3, slightly higher again than in Q2. The other institutions present similar dissonance. Graph 10 provides a comparison of the results between these two questions.

**Graph 8. Comparing the Results from Question 2 to Question 3**

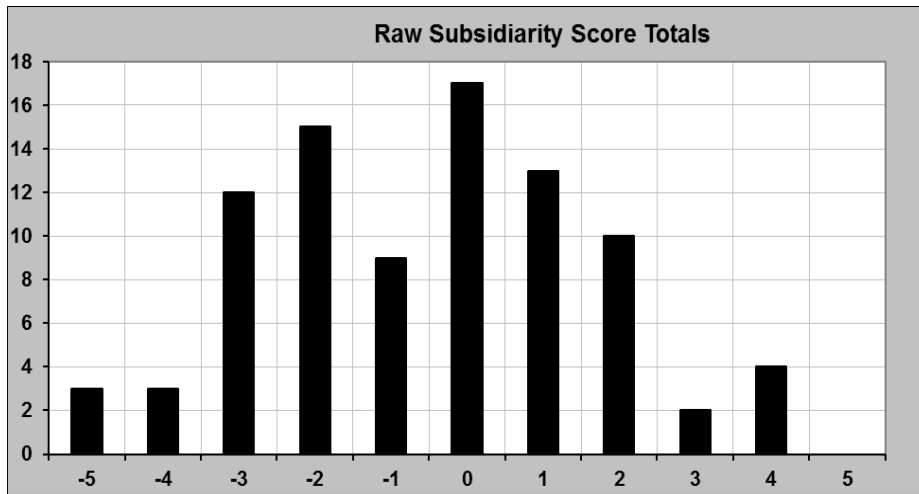


Graph 8 has been simplified by including only those who selected either a positive, negative, or mixed position. What it illustrates is a clear move towards mixed subsidiarity. The number of Bundestag respondents favoring negative subsidiarity has dropped by over 50% and shifted towards the mixed category. The Landtag has also undergone a dramatic reversal, its supporters of negative subsidiarity falling by almost 60%. Likewise, a similar shift from positive to mixed subsidiarity is visible in the EP. This comparison supports the observation from Q2 which recognized that both positive and negative supporters of subsidiarity tended to be moderate in those beliefs. When allowed to choose directly, the majority selected the mixed option.

When these two questions are closely compared, the data reveal interesting details. For example, only ten respondents selected the negative option in both questions, only one person chose the mixed option in both questions and only six parliamentarians consistently chose the positive option. In the vast majority, as can be seen from the strong response to the “mixed” option in Q3, their initial position moved towards the middle. Of the 88 people who answered the survey, only nine crossed signs, meaning that in one question they supported a negative version and in the next they supported the positive. In eight of those cases, the respondents went from negative to positive. Four of these crossed-signs came from the Landtag, three from the Bundestag, and two from the EP.

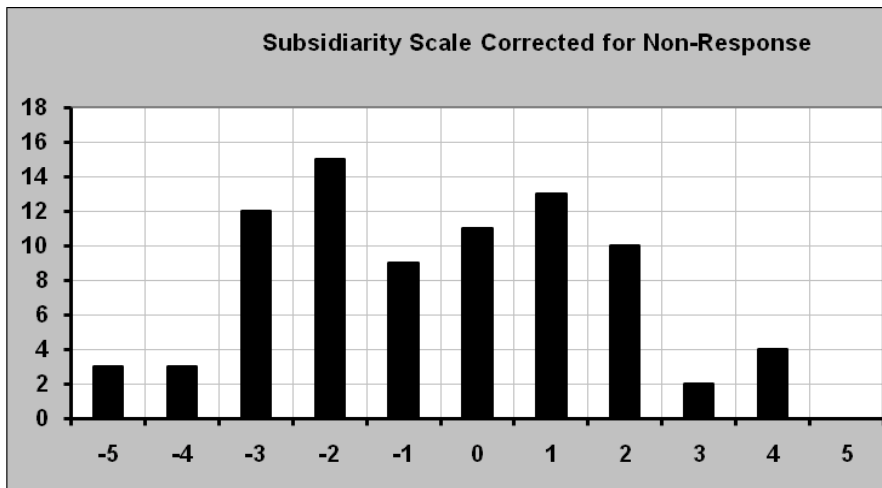
Asking the same type of question in several ways makes the aggregate subsidiarity score less dependent on a knee-jerk reaction to key-words such as “states rights” or “integration.” Multiple responses from the politicians allowed this analysis to cut through some of the rhetorical noise. This was especially important considering that the model uses a zero value on the x-axis, not as a place holder, but as a legitimate response. After reviewing all four of the questions used to compile the subsidiarity score, it became necessary to distinguish between those people who left a question blank and those people who chose an option that reflected a mixed position on subsidiarity. Graph 9 illustrates the raw subsidiarity scores before taking non-responsive surveys into account.

**Graph 9. Raw Subsidiarity Scores**



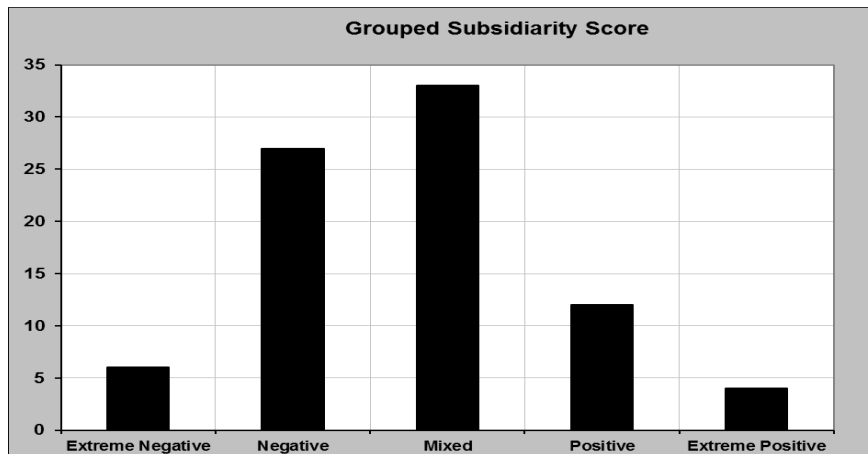
The Gaussian siren-song is hard to resist when first encountering this data. However, it is important to control for false zeros. To be considered “non-responsive,” the respondent had to leave both Q2 and Q3 blank. This occurred in only six out of the 88 responses. Given the already small sample size, it was judged more important to gain an accurate model at the expense of only six respondents rather than skewing the data because of non-response. Graph 10 demonstrates the aggregated subsidiarity scores after correcting for the false-zeros.

**Graph 10. Final Subsidiarity Scores**



From these corrected data, the parliamentarians were next grouped into one of the five categories on the subsidiarity scale. The resultant graph is skewed to the left, indicating that the respondents generally tend to favor a negative view of subsidiarity. Unlike the other categories that only aggregate two possible scores, the mixed group counts three; that is, scores of -1, 0, and 1 are each included in this portion of the graph.

**Graph 11. Grouping the Subsidiarity Scores**

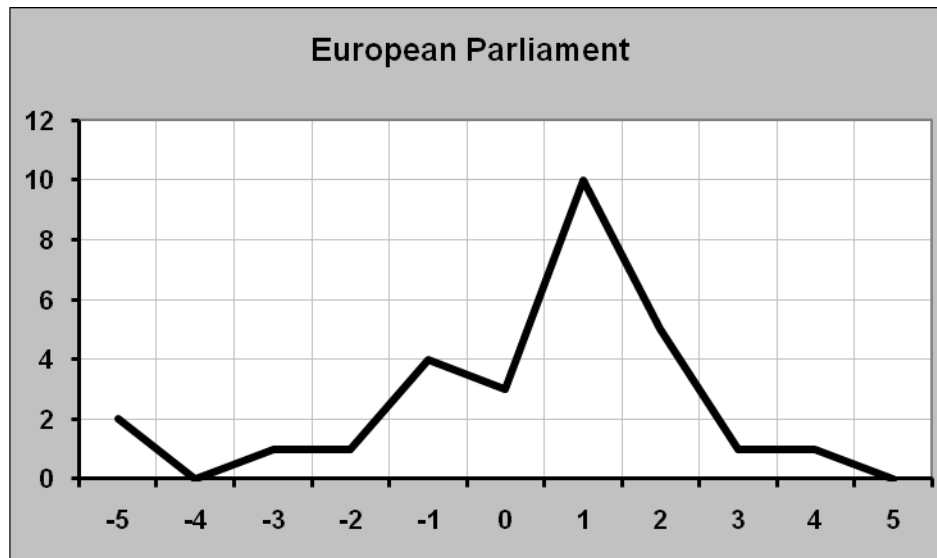


Does this choice skew the data by artificially increasing the number of respondents in the center of the model? This, of course, was not the intention, but it is a justifiable question. As stated earlier, there were nine politicians who crossed signs. In each case, these respondents had a subsidiarity score of either -1 or 1. The mixed group allows the model to account for the small sub-set of respondents that appears to hold both views simultaneously—a strong sign of mixed subsidiarity. Indeed, these crossed signs represent 27% of the mixed group.

The mixed group does deserve more attention, however. Using Graph 10 to take a closer look at the scores between -1 and 1, the data show that the mixed group actually trends to the positive. This indicates that those on the positive side of the subsidiarity scale skew to the center while those on the negative side, although moderate, are firmly entrenched in the middle portion of the negative half (-2,-3).

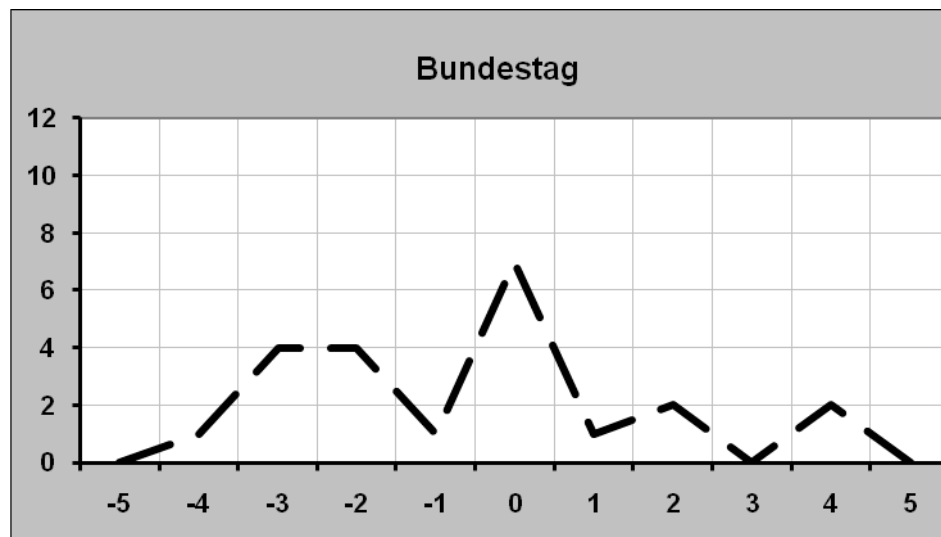
When taken as a single group, the survey results reveal that a negative version of subsidiarity currently prevails among the survey respondents. If the subsidiarity scale data are disaggregated into single institutions however, the granularity is increased, and the true nature of the divide between the positive and negative versions of subsidiarity becomes apparent. Each parliament displays their own distinct curve, and each has its own singular subsidiarity peak.

**Graph 12. Subsidiarity Scores for the European Parliament**



Graph 12 shows that the European Parliament peaks on the positive side of the subsidiarity scale. Its highest value is a score of 1 and its second highest is at 2. Because the mixed group includes scores of 1, this information was previously hidden. When fitting this data to the five-part grouping, the EP would be considered predominantly mixed; however, Graph 12 clearly indicates that the EP curve is skewed to the right. This data aligns with the previously cited document published by the EP which recognizes both versions of subsidiarity but affirms a slightly positive orientation.

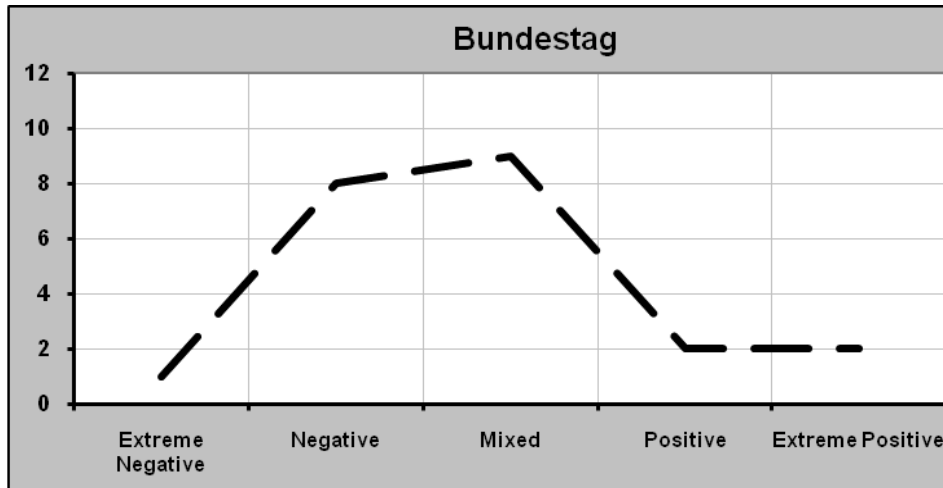
**Graph 13. Subsidiarity Scores for the Bundestag**



The subsidiarity scores for the Bundestag can best be described as lumpy. The peak at point 0 indicates that a group within the Bundestag holds a mixed view; however, the negative side of the graph is much heavier than the positive. This can be more easily illustrated when these data are grouped into the subsidiarity categories. The result is a much flatter curve than the EP's—the highest point has only nine

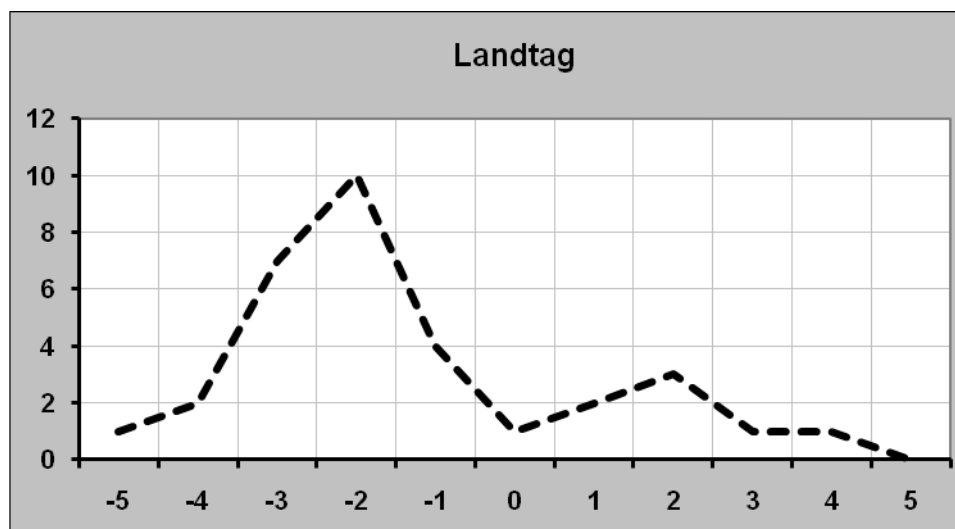
respondents. Additionally, although Graph 13 seems to indicate moderation and a mixed position, Graph 14 is skewed to the left and reconciles the positive half to near irrelevance.

**Graph 14. Grouped Subsidiarity Scores for the Bundestag**



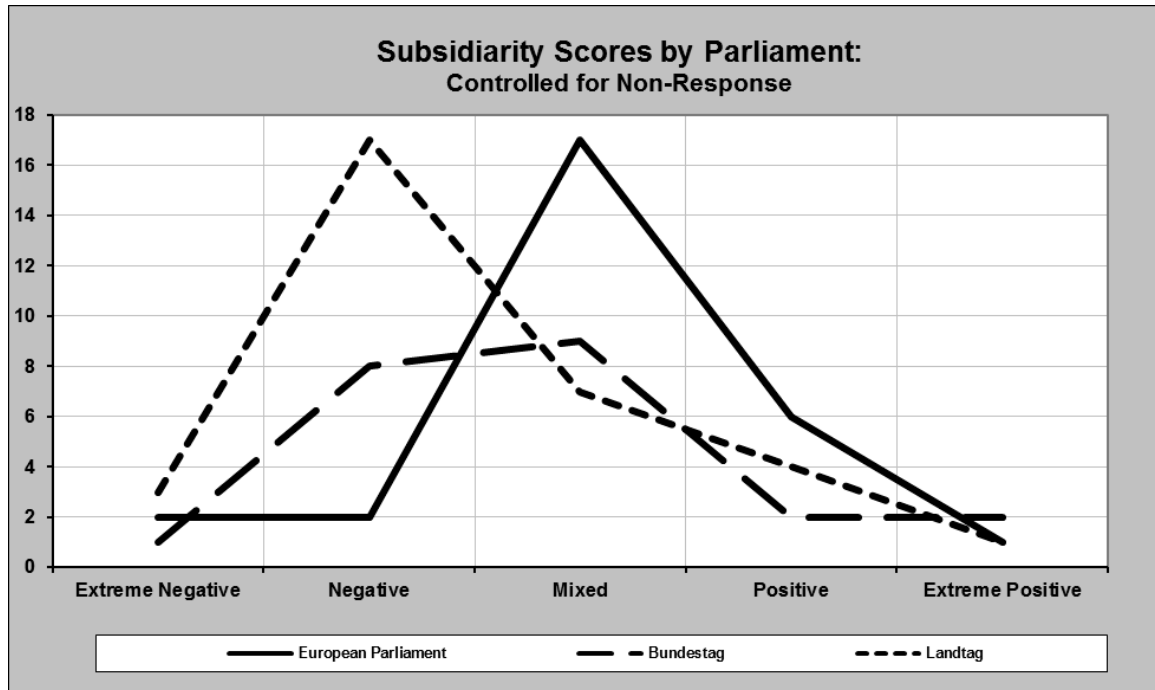
The subsidiarity scores for the Landtag tell a much different story than in either of the other institutions. Here the graph peaks at -2 and the second most common score is -3. Of greater interest is the precipitous drop-off between -2 and zero. Even the results from Q3 where the majority of respondents selected the option for mixed subsidiarity could not offset the generally negative interpretations held by the Landtag revealed in the rest of the survey. These representatives are located resolutely in the negative half of the scale.

**Graph 15. Subsidiarity Scores for the Landtag**



The differences between these parliaments' positions on subsidiarity are unambiguous. When the data are grouped into the five subsidiarity scale categories, it appears that each parliament has its own distinct subsidiarity peak and tends to interpret this principle in its own separate way.

**Graph 16. Subsidiarity Scores for Each Parliament**



Therefore, while many observers have assumed this to be the case, this analysis has made explicit the occurrence of “institutional predispositions” towards the principle of subsidiarity. The European Parliament is predominantly mixed but skews to the positive, the Bundestag has generally weaker views on subsidiarity and skews slightly to the negative, and the Landtag is strongly negative. In the analysis of the first set of questions, the parliamentarians tended to hold similar opinions regarding general perceptions of subsidiarity. This is not the case with the second group of questions. Adding the third set of questions that measured support for the European Union will complete the model.

### *Support for the European Union*

Using the British Conservatives as a point of departure, this analysis recognized that party’s manipulation of the term subsidiarity as an opportunity to better understand *who* takes *what* position when instrumentalizing this concept. If a party devoted so fully to the protection of national interests and the concurrent obstruction of European integration could embrace this principle of governance, then what does this say about subsidiarity? The variable “support for the European Union” was selected because it offered an intuitive connection to the subsidiarity scale; parliamentarians favoring negative subsidiarity might also be relatively Eurosceptic while supporters of deeper integration may instead support a positive interpretation of the principle. Constructing the following model was meant to test this hypothesis.

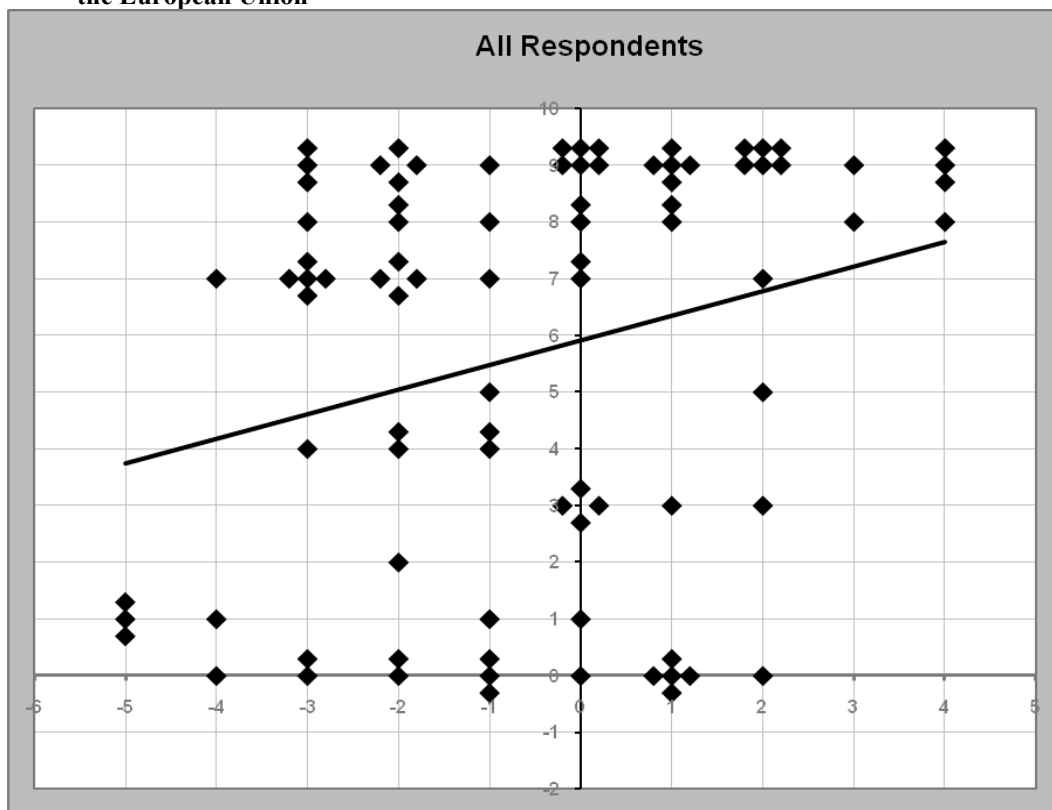


As discussed in the second section, the “support for the EU score” was based on two questions. The first defined the parliamentarian as one of the four Kopecky/Mudde identities—Euroenthusiast, Europragmatist, Eurosceptic, or Euroreject. The follow-up question then asked about preferred for levels of integration. In the end, the respondents were given a score between -4 and 9. Graph 17 illustrates the results.

Because multiple respondents ended up with the same scores, it was necessary to use the actual point, say (-2,7), as an organizational center around which to locate all of this score’s respondents. Because of this, there are clusters around each relevant score. For example, at the (0,9) and (2,9) locations, there are six points, and around the (1,9) and (-3, 7) locations, there are five points. This method was judged to be the least biased way to visualize the data.

Three things stand out about Graph 17. First, it is divided along the y-axis between the top half north of point 6, and the bottom half, south of point 6. In terms of the scoring system for the y-axis, anyone having more than four points is considered a Euroenthusiast, and anyone with less than four points is either a Eurosceptic or a Europragmatist. This division among the data is quite clear. Sixty percent of the respondents located themselves above the point 6 watermark, making the graph generally top heavy, favoring the Euroenthusiasts.

**Graph 17. All Respondents Modeled for Subsidiarity Score as Related to Support for the European Union**

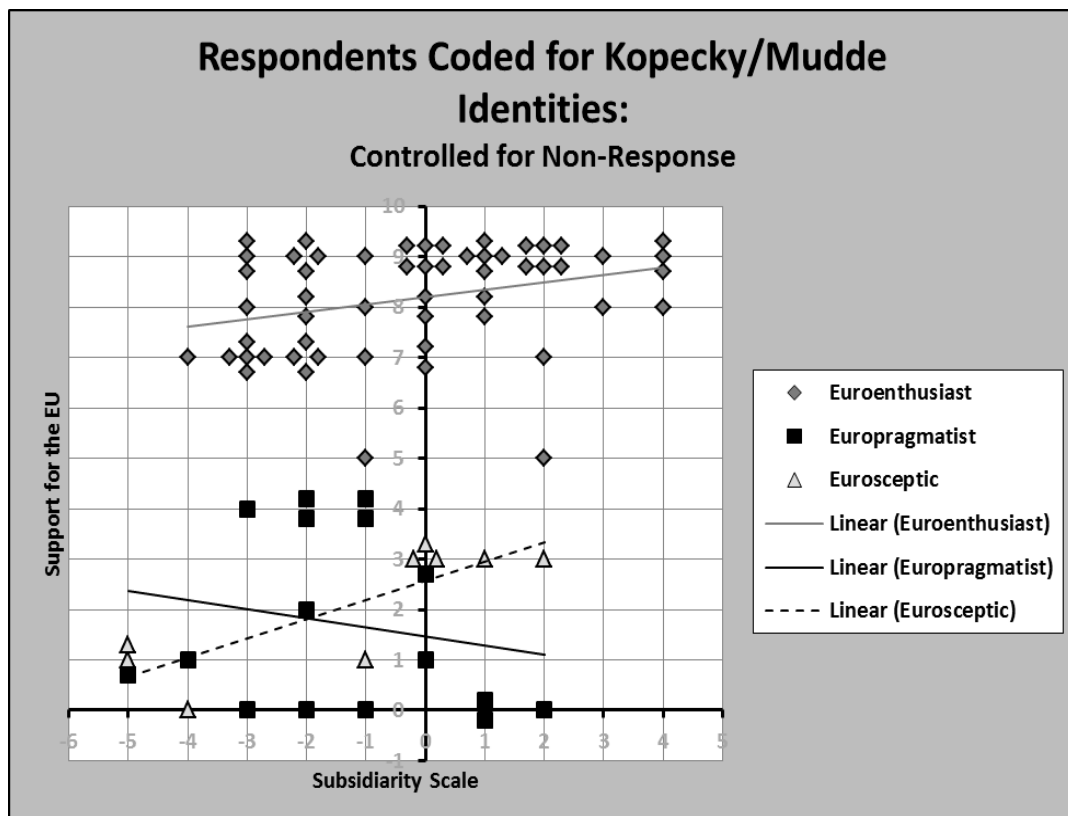


This pertains directly to the second point; the trend line fit to this data is slightly positive, which means that the stronger the support for the EU, the more positive the parliamentarians' stance on the question of subsidiarity. This finding supports the hypothesis. Furthermore, those with the most negative subsidiarity score also have very low support for the EU scores. The positive relationship prevails in the model even though no respondent scored a 5 on the subsidiarity scale. In fact, the trend line is upward sloping even though there is a wide dispersion of subsidiarity scores among those scoring 8's and 9's in their support for the EU score. There are significant clusters in the negative subsidiarity/Euroenthusiast portion of the model  $[(-3,7);(-2,7);(-2,9)]$ . Again, this model reiterates what most of the literature has stated before: the principle of subsidiarity can be used to suit any vision of the European Union.

Finally, the third insight to be gained from this graph is that no respondent located themselves within the Euroreject portion of the model. It is presumed that one who rejects both the EU and integration would be less likely to engage in a survey of this type. In any case, this paper can make no remarks concerning Eurorejects and subsidiarity because no parliamentarian having this characteristic completed the survey

The data can be re-organized to distinguish between the Eurosceptics and Europragmatists. After correcting for non-response, fifty-five respondents identified themselves as Euroenthusiasts, sixteen as Europragmatists, and nine as Eurosceptics.

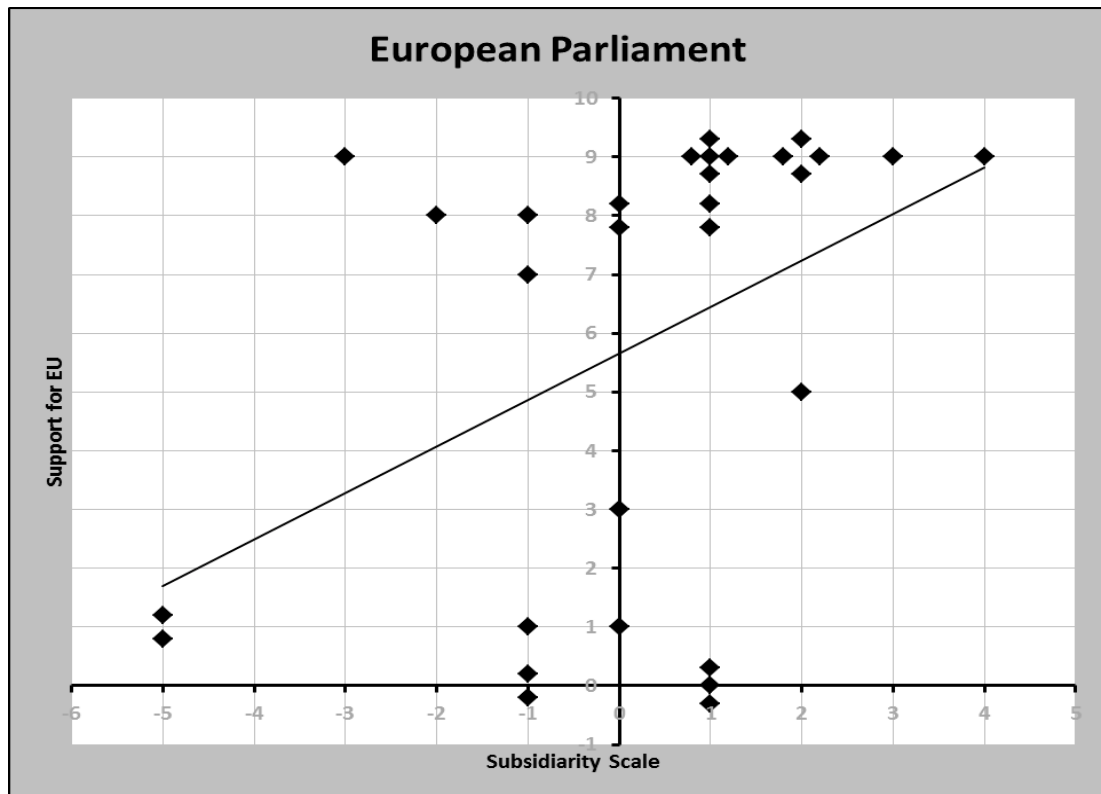
**Graph 18. Distinguishing Between Europragmatists and Eurosceptics**



The Euroenthusiasts are all found above the five level of the y-axis and trend slightly positively. Surprisingly, the Eurosceptics, those who approve of integration but do not support the EU as a set of institutions, also show a positive relationship, one stronger in fact than the Euroenthusiasts. Despite this fact, three of the six respondents with a subsidiarity score of either -4 or -5 were Eurosceptics. The Europragmatists display a negative relationship meaning that the greater the intensity of support for negative subsidiarity, the higher the support for the European Union. This finding validates the Kopecky and Mudde terminology. Only the most pragmatic nationalist could hold this viewpoint; that is, one who needs and understands the benefits gained from the EU but simultaneously asserts the states' right to sovereignty aptly characterizes a most *realpolitik* politician.

The next series of graphs will visualize the relationship between these variables and the three parliaments.

**Graph 19. The Relationship Between Subsidiarity and Support for the European Union in the European Parliament**

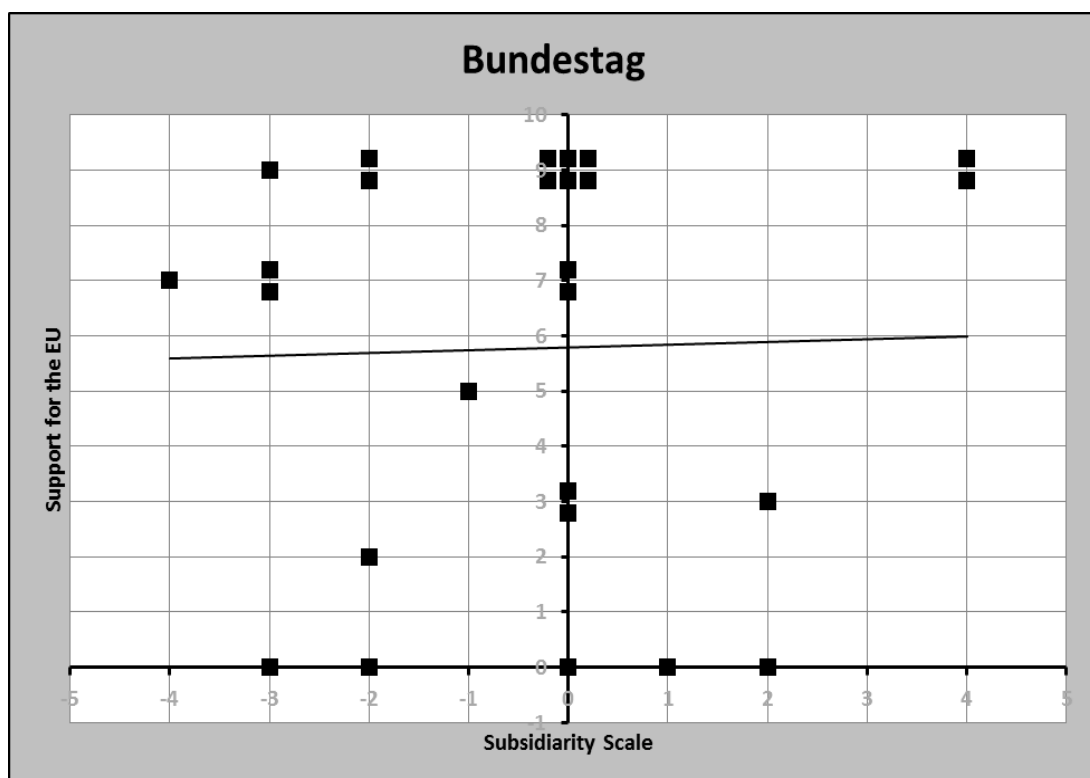


The first institution to be analyzed will be the European Parliament. Graph 19 illustrates two main points. First, the European Parliamentarians that responded to the survey show a very strong, positive relationship between these two variables. Second, the EP has a very wide variation in opinions. In fact, this institution holds the most

extreme positions in both variables—the most positive and negative positions on subsidiarity as well as the most positive and negative opinions on the European Union. When judging this data against the hypothesis, it confirms that in the EP, positive positions on subsidiarity correlate with supporting the EU as an institution and a set of ideas.

The next graph situates the respondents from the Bundestag within the model. This graph supports much of the previous analysis regarding the parliamentarians from Berlin and their uncertain stance on questions of subsidiarity. The trend line indicates that there is almost no relation between these two variables for the Bundestag. Those who have 0 scores on the y-axis could have almost any subsidiarity score, ranging from -3 to 2. Likewise, the distribution of subsidiarity scores for Euroenthusiasts ranges from -4 to 4. Given the small sample size, it is difficult to draw conclusions regarding the Bundestag, but from the responses to this survey, it appears that further study is necessary in order to understand the Federal Parliament’s relationship to subsidiarity.

**Graph 20. The Relationship Between Subsidiarity and Support for the European Union in the German Bundestag**

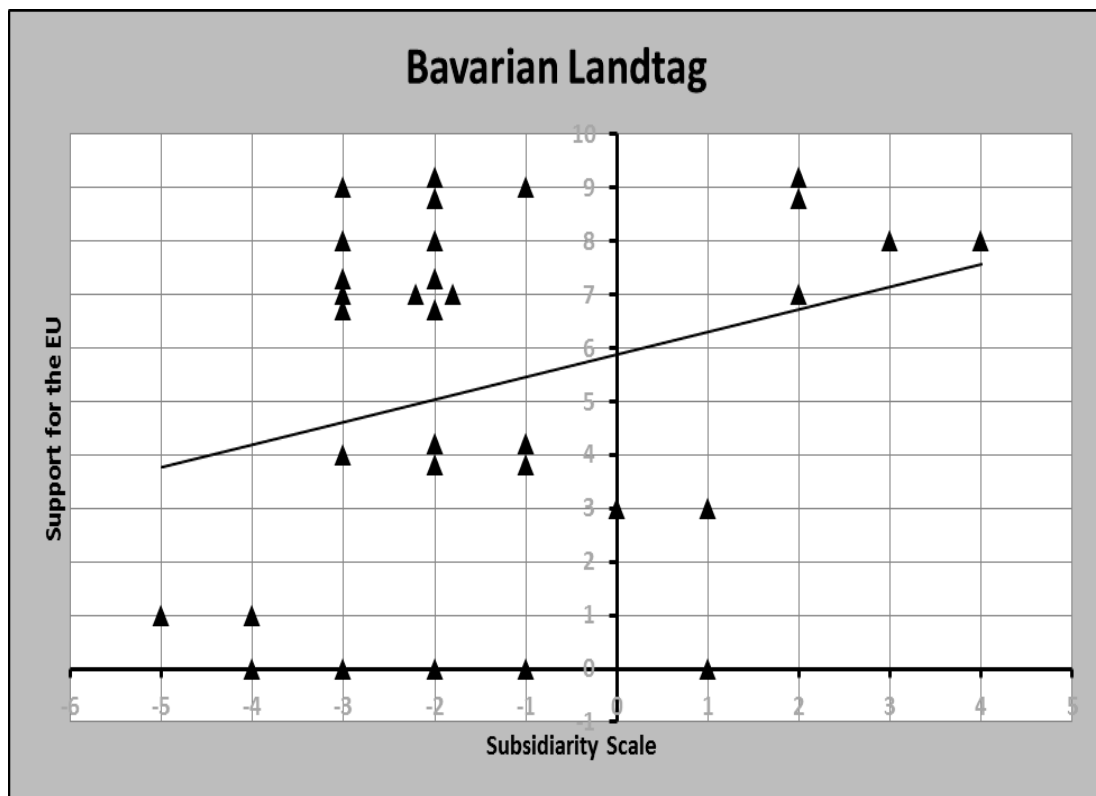


In the analysis up to this point, the data have shown that the respondents from the Landtag have a staunchly negative position on subsidiarity. When the second axis is added to the model, the results are consistent with the previous findings; furthermore, they support the hypothesis that there is a relationship between positive subsidiarity and support for the EU, or conversely, negative subsidiarity and opposition to the European Union.

The trend line in Graph 21 indicates a positive relationship between these two variables within the Landtag. As in the other two institutional graphs, the majority of the respondents are located in the top half of the model which means that even in the regional parliament, politicians exhibit relatively Euroenthusiast tendencies. Furthermore, the negative half of the subsidiarity scale is home to many more respondents than the positive side. This only adds further evidence to the claim that the Landtag is largely an institution which holds to a negative view of subsidiarity.

From these three graphs, it is possible to ascertain distinct pictures for each parliament. The EP is highly distributed across all sectors of the model, but its politicians tend to reveal a positive relationship between subsidiarity and support for the EU. This same relationship can be found in the Landtag, but the graph looks much different because of the heavy majority of the respondents who support negative subsidiarity. And finally, the Bundestag demonstrates almost no relationship between these two variables, making it difficult to draw many conclusions regarding this institution.

**Graph 21. The Relationship Between Subsidiarity and Support for the European Union in the Bavarian Landtag**



## Conclusions

This discussion of subsidiarity has analyzed the definitions that legal scholars, political scientists, and philosophers use to understand the term. It has also attempted to bring to the forefront one of the main ideological differences between these definitions; that is, this analysis has shown the importance of distinguishing between a positive and a negative version of subsidiarity. This difference is crucial. If politicians leading multiple different levels of government use the same term towards different ends, then the ultimate losers will be the citizens caught in the cross-fire of misunderstanding.

Ian Cooper supposes that an institutional logic among parliaments will prevail. He assumes that the national legislatures will define the principle in a way that strengthens their position vis-à-vis the supranational institutions. Cooper uses the terms “restrictive” and “permissive” as distinguishing characteristics that describe particular stances toward subsidiarity—expressions this paper has labeled negative and positive subsidiarity, respectively. However, in discussing these terms, Cooper describes his own characterizations as “crude,” while concurrently stowing his brief discussion of this critical point in a footnote. This paper has not only contextualized and elaborated on these terms by placing them within the spectrum of multiple other definitions of subsidiarity, but it has also tested the assumptions made by Cooper. The results to those tests support what many have, to this point, taken for granted.

The conclusions gained from this survey ultimately confirm Cooper’s hypothesis. When situated within the subsidiarity scale, institutional predispositions indeed occur. The curve for the EP is distinctly different from the curve for the Bundestag, which in turn looks very little like the curve for the Bavarian Landtag. The major difference between Cooper’s suppositions and the results of this survey was that instead of the national parliament holding the most negative interpretation of subsidiarity, it was the regional parliament that did so.

When discussing the EWM and the logic of arguing, Cooper proposes that inter-institutional discourse over issues of subsidiarity will eventually lead to a convergence in the definition of the term. This analysis agrees with Cooper’s interpretation of the discursive future of subsidiarity. The data collected during this survey indeed show a shift to the mixed version of subsidiarity. As Van Kersbergen and Verbeek note, subsidiarity was introduced into EU parlance by Christian democrats holding a staunchly positive view and hoping to expand the powers of the supranational institutions.<sup>45</sup> Only over time has the negative view of the definition become ascendant, and this was mainly due to popular backlash against the Maastricht Treaty. With the introduction of the Lisbon Treaty and the EWM, the opportunity for member state parliaments to review proposed legislation for breaches of subsidiarity should make the legislative process more open and transparent. This, according to the survey respondents, is widely considered one of the benefits to be gained from subsidiarity. Furthermore, with such openness, there is no reason for the national parliaments to retreat into a defensive stance; they may in fact shift further towards a mixed interpretation of subsidiarity. Graph 16 portrays this intermediate step, a Bundestag curve located somewhere between the EP and the Landtag.

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<sup>45</sup>Van Kersbergen and Verbeek 1994, 217-219.

Regional governments, such as the Landtag, adhere more closely to Cooper's assumptions about restrictive/negative interpretations of subsidiarity. This working paper has shown clear data to support this point. Is it possible that with time, the Landtag's point of view will also converge with the mixed version of subsidiarity? Will there be a Europeanization of subsidiarity in that the dominant interpretation will emanate from Brussels and then spread to the lower levels of governance within the multi-tiered system? To support such an idea is to refuse the historical record. The principle of subsidiarity has proven to be very supple over the years. To think that all parties will find and adhere to a single definition may be too much to ask. Furthermore, what would the Landtag have to gain from such convergence? In many ways, by unequivocally accepting the EU's rights to intervention, it may actually forfeit its claims to be included into the deliberative process. Therefore, it is doubtful that a complete convergence will come to pass, but the process appears to be occurring slowly at the European and Bundestag levels.

In conclusion, this working paper has revealed that on many points there is a convergence of opinion regarding the institutional characteristics necessary to make the principle of subsidiarity a functional concept. However, it has also shown that there are institutional predispositions towards interpreting this term that may make meaningful communication about this subject difficult. If regional parliaments such as the Bavarian Landtag maintain a predominately negative stance towards subsidiarity, they will continue their efforts to preserve their own power at the expense of deeper integration. This is an outcome at odds with the narratives of integration and multi-level governance. A resolution must be found which encourages sub-regional governments to feel as though subsidiarity is a means towards developing partnerships and not simply a tool for absorbing local competences. By explicating the dual definition of subsidiarity, it should make members of each institution better able to understand where the actual conflict resides. In fact, they are closer to a common definition than one might think. Many of the parliamentarians who support negative versions of subsidiarity also recognize that a mixed version is appropriate at times, just as the majority of those respondents on the positive side of the subsidiarity scale identify strongly with the mixed category. This shows that room exists for advanced dialogue, and that those who use subsidiarity solely as a blocking mechanism or a means to delay the integration process are in the fringe minority. Given time and the institutional stream-lining expected to take place with the signing of the Lisbon Treaty, the principle of subsidiarity may in fact undergo another discursive re-definition. Instead of being a tool for the Christian democrats to direct the EU towards supranationalism or a mechanism for the British Conservatives to confound Brussels, perhaps the new interpretation of subsidiarity will be based on the mixed view—one that attempts to use the principle's flexibility as means to bridge those two extremes and to satisfy the political needs of the European citizen by finding the appropriate decision-making instrument for each specific policy proposal.

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