INTRODUCTION

The concept of subsidiarity might effect EC relations with member states (EC subsidiarity) as well as central and lower government relations (domestic subsidiarity). In Germany and The Netherlands for instance, lower governments often claim competence referring to principles of subsidiarity as stated in domestic legislation. In the mean time member states argue EC subsidiarity (Article 5, formerly Article 3B EC Treaty).
Quite remarkable in these matters is the role of a 16th century town clerk.

1 ALTHUSIAN SUBSIDIARITY

In modern discussions on EC subsidiarity as stated in Article 5 (ex Article 3B) EC Treaty more and more the ideas of the 16th century German law-philosopher Althusius (1557-1638) occur. Basically Althusius (Johannes Althaus) has been a rather well-known writer in protestant countries only, especially in calvinist protestant countries, notably Scotland, Switzerland and (mostly) northern parts of Germany and Holland. Nowadays he seems to be well-known in Brussels as well.

In his opus magnum called the Politica methodice digesta et exemplis sacris et profanis illustrata (originally dating back to 1603, with reprints in 1610 and 1614) he stated that sovereignty is not given to the state only, but also to social organisations like churches and universities. A community (consociatio) is formed by a social contract and thus men become community members (symbiotici). In this way entities like church, state perhaps even music and sport clubs but also regional and local governments are communitarized and socialized. It is like an inside state federal-

---

1 I myself used a modern reprint from the third edition of 1614 with an instructive introduction by C.J. Friedrich (Harvard Political Classics [2-1932]).
ization, all ruled, of course, by a Godgiven law of nature (*ius naturale*).

In his *Politica* Althusius not only deals with the state but also with all other groups and social institutions. The famous calvinist right of resistance (*vindicae*) against tyrannical regimes (especially against the Spanish inquisition of course) is defended likewise. The state is, after all, just another social institution among many others. This *vindicae contra tyrannos* was not only reminded by Dutch calvinists during the Eighty Years War against Spain (1568-1648) but also during the Second World War against Nazi-Germany. Ironically this *vindicae* might be of Spanish origin, as Reibstein \(^2\) shows us. As we know now, also the French philosopher Philippe de Mornay (1549-1623) advocated such rights of rebellion\(^3\). He was a Huguenot and as such a calvinist too, politically strongly concerned in the Dutch rebellion against Spain.

However, one could easily say that Althusius was a sincere decentralist *avant la lettre*. He loved and magnified the apparent insignificance of the small town of Emden (a far corner of northern Germany). There he stayed town clerk (*syndicus Emdanae*) whilst he could have been a Leyden professor. He claimed a strong position to regional and local, decentralized governments and other small entities.

Contemporary subsidiarity implies that decisions are made as close as possible to the civilians and their entities: i.e. no unbridled centralisation as De Moor-Van Vugt\(^4\) puts it. Thus Article 5 EC Treaty comprehends a political intention *contra* unbridled centralisation and *pro* an autonomy of member states\(^5\).

Also in domestic law such subsidiarity occurs. Again it expresses the idea of no unbridled centralization, but decentralization as much as possible. Article 117 of the Dutch Local Government Act (LGA) and Article 115 of the Dutch Regional Government Act (RGA) imply the principle of decentralization and indeed do recognize a local and regional autonomy.

It is indeed, I think, a *two step subsidiarity*: primo from EU to member state (Article 5 EC Treaty) and secundo from central government to local and regional governments (Article 117 LGA and 115 RGA).

---

\(^1\) E. Reibstein, *Johannes Althusius als Fortsetzer der Schule von Salamanca* (1955), *passim*.


\(^4\) Ibidem.