

The principle of subsidiarity and freedom of education

The mention of what we have called the "principle of subsidiarity" appeared at the end of the 19th century in the encyclicals that developed the social and political thought of the Catholic Church of Pope Leo XIII¹. The idea has continued to be developed up to the present day, as each Pope up to Benedict the XVI has drafted "social encyclicals". The idea of subsidiarity was old, but its modern formulation incontestably comes from magisterial teaching based on two sources, on the one hand, theology revealed as such, the proper religious aspect, and on the other hand, philosophy, shared with non-believers and finding its roots in Greco-Latin thought.² It is the latter aspect that interests us here.

The expression "principle of subsidiarity" was then passed down into current language and can be found in many legal documents, in particular in European treaties. However, the analysis of this concept shows slippages in meaning that must be identified in order to maintain the integrity of its founding idea. We will investigate what direct impact the proper understanding of subsidiarity can have on freedom of education.

Two encyclicals that are important to the Church's social doctrine, among many other documents, mention the idea of subsidiarity and formulate the "principle": *Quadragesimo Anno* by Pious XI (1931) and *Pacem in Terris* by John XXIII (1963).³

In the text by Pious XI, we can identify what may seem like a description: he does not mention a "principle of subsidiarity" as such, but a reality: first off, society is composed of individuals, and what intervenes (Government, public authorities, administrations, etc.) only does so **to help** the latter: *"As history abundantly proves, it is true that on account of changed conditions many things which were done by small associations in former times cannot be done now save by large associations. Still, that most weighty principle, which cannot be set aside or changed, remains fixed and unshaken in social philosophy: Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organisations can do.*

For every social activity ought of its very nature to furnish help [subsidium afferre] to the members of the body social, and never destroy and absorb them.

*The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly. Thereby the State will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands. Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of **the principle of "subsidiary function" [hoc subsidiarii officii principio]**, the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State.*

Thus, the principle of subsidiarity took shape as a principle stemming from the reality of society.

¹ In particular *Rerum Novarum*, dated May 15, 1891

² On a historical analysis of the concept, see Chantal Delsol, *L'Etat subsidiaire*, Archives Karéline éditions, Paris, 2010.

³ On the Church's social doctrine and the principle of subsidiarity, see the Vatican documents *Compendium of the Social Gospel of the Church*, especially Ch. 8, paragraph 5, (2004), and the *Lexicon of ambiguous and controversial terms on family, life, and ethical issues* (2005).

As this was founded on the free and responsible action of individuals, the latter create the common good, which is to say the good of each and every person, as the documents of the Church's social doctrine continuously remind us. This creation of the common good cannot be achieved without the responsible action of every individual. The Government must respect this reality by helping promote individual liberty, supporting it, and not taking its place. It should be noted that these texts do not give details on concrete application, but leave it to political leaders to decide this in the face of new circumstances. Thus, the principle of subsidiarity is not a new principle, but it allows better understanding of how societies should adapt to change. Societies demand continuous discernment, upon which the shared principles of moral and political philosophy can shed light.

In recalling the well-understood necessity for human rights, John XXIII (*Pacem in Terris*) also emphasises the reality of subsidiarity: "139 - *The common good of individual States is something that cannot be determined without reference to the human person, and the same is true of the common good of all States taken together. Hence the public authority of the world community must likewise have as its special aim the recognition, respect, safeguarding and promotion of the rights of the human person. This can be done by direct action, if need be, or by the creation throughout the world of the sort of conditions in which rulers of individual States can more easily carry out their specific functions.*

The principle of subsidiarity

140. - *The principle of subsidiarity must govern the relations between public authorities and individuals, families and intermediate societies."*

The Church's teaching has remained highly consistent for almost one hundred fifty years. "Subsidiarity", and here the choice of the Latin word is very important, designates the action of the person who assists, who does not work "in place of", but who "creates the conditions for". This is neither a government conception (in which the Government is the primary reality in society), nor a liberal conception without the moral goal of the good (in which the Government serves the interests of the individuals). The Latin word *subsidiarius*⁴ aptly expresses the instrumental competence of the public authorities regardless of who they are.

Now, a slippage of meaning can be found very clearly in the "*Treaty on European Union dated February 7, 1992*", the so-called *Treaty of Maastricht*, Article 3B, "*The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive 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 the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.*"⁵

The principle of reality (the reality of individuals and civil society) is transformed into a legal

⁴ *subsidiarius, a, um (subsidiium)*, that which forms the reserve / *subsidiarii, orum, m*, reserve troops.

subsidiior, ari (subsidiium), int, to form a reserve.

subsidiium, ii, n (subsido), 1. reserve line (in the battle order) / reserve, reserve troops / 2. [from which] support, reinforcement, help, *integros subsidio adducere*: to bring fresh troops as reinforcements / 3. [fig.] help, support, backing, assistance / means of solving, resources, weapon, *subsidia ad omnes casus comparare*: to create the resources to meet any eventuality, resources for any eventuality / 4. place of refuge, asylum. Félix Gaffiot, *Dictionnaire abrégé Latin-Français illustré* (Abridged Illustrated Latin-French Dictionary).

⁵ <http://www.vie-publique.fr/decouverte-institutions/union-europeenne/fonctionnement/france-ue/qu-est-ce-que-principe-subsidiarite.html/>

principle that organises the competencies of the European Community **starting with itself**, from the top down, one could say. This is no longer about helping individuals and legitimate intermediary groups, but about creating a legal superstructure that finds the limits of its power in defining its competencies by itself and within itself. In other words, there are no longer any real limits. In fact, the principle of modern democratic Governments is to make decisions through parliaments, based on the idea of the **absolute** sovereignty of the people, which may in fact hide the absolute sovereignty of the structures intended to represent them. What happens with Jacobin States could be reproduced with Europe, if it builds itself as a superstructure producing laws and regulations through its own sovereign power.

This transformation of meaning is consistent with a certain evolution in contemporary law: the action of legal authorities is no longer founded upon the nature of things, but rather, their competence is sovereignly attributed. If positive law has no other foundation than itself, it can determine a principle of subsidiarity that no longer has anything to do with its philosophical origin. Determining the legal principle of subsidiarity necessarily requires explicit mention of the principle of reality that transcends social life: the dignity of the human individual and respect for individual autonomy of decision. This calls for a certain amount of argumentative work. Without this ultimate foundation, there is a great risk of defining a principle of subsidiarity void of objective content other than the "general will" expressed by legal structures that are increasingly restrictive in all areas, to force individual actors to respect it.

To articulate a real principle of subsidiarity and its legal expression is certainly no easy task in the concrete world of institutions, but in any case, the second may not be substituted for the first; it must be a consequence of it.

Now we can see the direct influence of a poor conception of the principle of subsidiarity on free higher education. Must the freedom of university research and the freedom to organise teaching be defined essentially by legal structures or recognised based on a reality that they do not determine and which is imposed on them? If the latter is true, then autonomy and freedom (of association, of creation, of the constitution of teams, of research themes, etc.) must be guaranteed for institutions of higher education, especially by its corollary, which is to allow free education to develop itself outside of the exclusive field of public structures and by the same fact, to have a private status.

The Europe that is being built currently faces these fundamental challenges, since, beyond the strictly confessional aspects as Pope Benedict XVI highlighted at the World Youth Days in Madrid,⁶ the university *"has always been, and is always called to be, the "house" where one seeks the truth proper to the human person. [...] The University thus embodies an ideal which must not be attenuated or compromised, whether by ideologies closed to reasoned dialogue or by servitude to a purely utilitarian and economic conception which would view man solely as a consumer."*

To ask this does not mean that freedom of education has no limits and need not obey the moral and ethical rules of which the public authorities are the guarantors. But being the guarantor does not mean imposing, managing public educational administrations as a monopoly considered to be the sole source of law. On this point, countries such as Germany or Belgium could show France some practical procedures that respect true subsidiarity. We can still hope that Europe does not build itself on the French model, in this area and in many others.

⁶ Meeting with young university professors at El Escorial, 20 August 2011