

## The principle of subsidiarity and higher private and free education

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The principle of subsidiarity is a principle, originally formulated and developed in the Catholic Church, first by the German theologian Oswald von Nell-Breuning,<sup>1</sup> then taken over by Pope Pius XI in his encyclical *Quadragesimo anno*, and later espoused by numerous secular and ecclesiastic groups and communities. Broadly speaking, it is a principle that governs the structure, authority and freedom of communities that stand in some relation of subordination to each other, and implies that a higher level community or authority should only act if the same goals cannot or ought not be achieved at a lower level. The principle of subsidiarity can be interpreted in many different ways according to the sense, in which the term “higher level” is used, and according to the grounds on which the non-interference and the letting problems or cases be settled at a “lower level” occurs:

1. Pope Pius XI speaks in 1931, not without risk of being misinterpreted, of “the supreme authority of the state” that ought not to do what “subordinate groups” can achieve on their own, and presents the principle under a rather pragmatic point of view stating that otherwise the state would “dissipate its efforts”.<sup>2</sup>
2. In a similarly pragmatic perspective the principle of subsidiarity has assumed another character when it has been formulated as an economic principle that should prevent the (financially and economically superior) state to run businesses that can be done better by private enterprises, or when the state is being encouraged not to finance entirely projects that can be supported and financed on a lower level. In this regard, the principle of subsidiarity can also be defined in terms of securing that state capital is not squandered and wasted on projects that can be financed privately. This meaning of the principle of subsidiarity is defined in Article 5 of the Treaty on European Union.<sup>3</sup> There, the principle is closely bound up with the principle of proportionality that entails a kind of economizing program and requires that any

action by the Union should not go beyond what is necessary to achieve the objectives of the Treaties.

3. More interesting philosophically speaking and more relevant to our context are interpretations that link the principle of subsidiarity to the spheres of human rights and authority. In this third understanding, the principle of subsidiarity forbids that the lesser authority be not respected or circumvented by the higher authority. In the Catholic Church, for example, problems in a parish should be solved by the Pastor, as long as his rightful authority is exercised within the principles of justice and Church law, and not by an archbishop. Or, the Supreme Court should not settle cases that rightfully belong, at least in the first instance, to a lower court to settle.
4. The principle of subsidiarity has no doubt also some application in the field of education. Inasmuch as the state may claim a certain supreme right to decree administrative and legal structures and plans of studies for primary education, in order to safeguard a certain level of education offered to everyone on its territory, or to maintain certain standards for state recognized secondary and University education, the state has a certain superior authority. In this regard, the principle of subsidiarity would be applied when the state delegates some of its own responsibilities and rights to smaller communities, entrusting them, for example, with developing their own standards of learning.
5. The state obviously also has an obligation and right to establish state schools, funded by the state and under the administrative authority of ministers of education. Here as well the principle of subsidiarity applies, but in another sense: the state can and ought to delegate in part to private educational institutions and schools the providing of primary, secondary, and higher education, just as it should delegate to private or church-run hospitals and centers of health care part of its own responsibilities in the area of health rights. As these schools and hospitals perform duties and tasks which otherwise the state ought to perform, the state also ought to support financially private schools and free universities, such that they can better assist the state in the overall goal of furthering education and often are doing so better than state schools.<sup>4</sup> Subsidiarity would then mean a healthy awareness of the limits of the state's providing the best education for its citizens and its permission, encouragement and support for private and free schools.
6. At this point, however, we see that the state's respect for private or church-affiliated education does NOT entirely fall under the principle of subsidiarity. For, even though the state is the largest community on whose territory other communities exist, it is by

no means *eo ipso* the highest and first authority in the field of education. In order to understand this, one has to overcome false ideas about the hierarchy of communities, such as those suggested by Plato and Aristotle, according to whom the state by its mere seize that comprises all other communities is considered the highest community with the highest authority.<sup>5</sup> That states do not possess supreme authority is not only the case because there are moral norms of natural law and truths which are independent of the state and which the state must never dare to violate.<sup>6</sup> (Neither the state nor any other human community have any right to deny those truths or to enforce false and immoral contents of education, as this happened under many totalitarian regimes and keeps happening in unheard of proportions in today's Western World.)

7. Rather, there are also higher communities than the state and higher authorities than that of the state. This likewise applies to education. First and foremost, the education of children belongs to the parents and only secondarily to the state. There is therefore a higher and more original parental right to decide over the contents and kind of education their children ought to receive. (Moreover, when we speak of the University education of adults or continued education, the educandus/da himself or herself have a right to choose – within the limits over which the state has the described authority – which education he or she desires to have, and at which private or public school.) For this reason, the state's respecting individual or parental rights in education is not applying the principle of subsidiarity as if states were to allow parents or adults to share in the states own primary educational authority. On the contrary, parental rights over education of their children precede state rights. Therefore, it is parents who delegate their original authority over the education of their children to the state, rather than vice versa, and it is also the parents who can decide to educate their children in a private school or at home.<sup>7</sup> Besides, in specifically religious education, the religious authority has a far superior right to determine the contents of the education of its ministers and of its faithful at large than the state and the state enters into conflict with the objective hierarchy of communities and authorities when it thinks or acts otherwise.<sup>8</sup>

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<sup>1</sup> In his paper *Das Subsidiaritätsprinzip als wirtschaftliches Ordnungsprinzip*, in: *Wirtschaftliche Entwicklung und soziale Ordnung. Degenfeld-Festschrift*, pub. von Lagler and J. Messner. (Vienna 1952, pp. 81-92).

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<sup>2</sup> *Quadragesimo anno*:

80. 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," the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State.

<sup>3</sup> That ensures that constant checks are made to verify that action at Union level is justified in light of the possibilities available at national, regional or local levels.

<sup>4</sup> Inasmuch, then, as the state possesses the described legitimate authority over the field of education, the state, can, as it were, delegate some of its own authority and duty to private schools, the Church or religious or other communities that run private schools.

<sup>5</sup> See Dietrich von Hildebrand's profound analysis of true and false criteria for the hierarchy of communities in his *Metaphysik der Gemeinschaft. Untersuchungen über Wesen und Wert der Gemeinschaft*, 3., vom Verf. durchgesehene Aufl., Dietrich von Hildebrand, *Gesammelte Werke IV* (Regensburg: J. Habel, 1975).

<sup>6</sup> As it happens in the most unbelievable totalitarian ways in China's forced abortion laws and in the United States Obama care at present which seeks to force doctors and nurses to provide procedures and to perform acts which are against their consciences and violate the right to life and other fundamental human rights.

<sup>7</sup> Hence, states must not prescribe any rules to families as to the education of their children, as long as the exercise of their parental authority in the educational field does not violate human rights of the children and the basic educational requirements are met.

<sup>8</sup> Regarding this, then, the relationship between states and private educational institutions does not fall under the principle of subsidiarity and it is by no means the state that is the superior authority over education, but on the contrary: On the one hand, the parents and teachers when they follow their authentic consciences, on the other hand communities such as the Church possess a superior authority and responsibility in the field of education than the state.