

Church and Society

Adrianus H. van Luyn SDB:

Subsidiarity – a Building Block not only for Europe

The Euro and financial crisis have raised the fundamental question of how to shape the continuing integration of European states in the future. On the one hand, there are supporters of further communitisation, demanding the introduction of Eurobonds, transnational parties or more powers for Brussels. On the other, there are those who call for more plurality, insisting on a Europe of diversity, a Europe of the regions. While these different approaches certainly need to be discussed and debated, it must be pointed out that the process of European integration, and therefore the EU itself, are based on the principle of subsidiarity, which acts as a safeguard *sui generis* against trends of centralization and enforced conformity. For this very reason, it is a useful structural feature of future international relations.

The principle of subsidiarity was not invented by the Church. However, the Church was one of the first institutions that sought to implement it in social relations among individuals and communities. The principle was first substantially discussed in the encyclical *Quadragesimo anno* in 1931. Since then, it has been a fixed, indispensable component of the Church's social teaching. Pius XI describes the protection and primacy of the individual in society as follows: "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 organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them" (*Quadragesimo anno*, 1931, No. 79).

In the following discussion, I will first take a closer look at the importance of subsidiarity as a key principle of the Church's social teaching and then highlight its role in the context of the European Union and a future global society. In doing so, I will draw on my experience as Chairman of the Commission of the Bishops' Conferences of the European Community (lat.: *Commissio Episcopatum Communitatis Europensis*, COMECE), which is made up of representatives of national bishop's conferences and observes European policy-making from the perspective of Catholic social teaching from Brussels, where it is based.

Catholic Social Teaching – Ethics that can be shared by all Human Beings

In order to explain what subsidiarity means in practical terms, I will first need to refer briefly to the three other principles of the Church's social teaching: human dignity, the common good, solidarity. It is important to keep in mind that the Church does not consider its body of "social teaching" as a source for issuing dogmatic statements, because it does not presume to judge the way society is organized. Pope John Paul II described social teaching as follows: it is "not a 'third way' between liberal capitalism and Marxist collectivism", but "the accurate formulation of the results of a careful reflection on the complex realities of human existence, in society (...) in the light of faith and of the Church's tradition".¹ Moreover, the four principles of social teaching are not derived from dogmatic beliefs, but from ethics that can be shared by all human beings irrespective of their creed. Pope Benedict XVI emphasizes: "These principles are not truths of faith, even though they receive further light and confirmation from faith. They are inscribed in human nature itself and therefore they are common to all humanity."² This is exactly why Christians and the Church are called upon to invoke the principles of social teaching in their dialogue with civil society and commit themselves to help implementing them.

Dignity of the Human Person

The first principle and basis for the three other principles of social teaching is the inviolable dignity of the human person, who is endowed with consciousness and reason and bears responsibility for his/her actions. "...man's dignity demands that he act according to a knowing and free choice that is personally motivated and prompted from within, not under blind internal impulse nor by mere external pressure."³ The human being is an end in itself and must not be misused as a means to other ends. Human dignity is derived from first principles, it is absolute and non-negotiable. It is imprinted on human nature, it precedes any social order. It is inherent in human existence and takes precedence over any state legislation and political decision-making. Human dignity transcends politics, so that it can be called 'meta-political'. The rights originating from human dignity are not granted or legitimized by the state. Rather, government and politicians are obliged to respect human rights.

The fundamental values of human dignity are not called into question by anyone. Many national constitutions such as the Basic Law of the Federal Republic of Germany (Art. 1) recognize it as inviolable. The constitutional texts of the European Union also characterize human dignity as "inviolable and inalienable".⁴ The Charter of Fundamental Rights states: "Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and human solidarity."⁵

For the Church, human dignity arises from the fact that God created man "in his own image" (Gen. 1,27). The rights of individuals are based on this inalienable value and must be guaranteed by all state institutions. In its declaration *Dignitatis humanae*, Vatican Council II especially emphasizes freedom of conscience and religion.⁶ Based on these fundamental statements, COMECE concludes: "Human dignity is the core value of Christian social teaching, which must be respected and pursued in all human activity."

The *holistic* nature of human dignity and the fact that it applies to *each and every* human being is key for understanding the concept.

- Each human person is endowed with the same dignity, so that human rights also apply to all human beings. This is the reason why the EU Treaty as well as many constitutions prohibit any form of discrimination. Even though many

of us take these rights for granted, it must be pointed out that, globally, many people live below subsistence level and lose their dignity in actual fact through poverty, violence, war, lack of medical care etc. This is unacceptable, because dignity and human rights are valid across all borders of space and time.

- The holistic nature of human dignity means that it is indivisible. The individual must not be reduced to a function or a role, because a human being is more than a producer or consumer, a worker or patient, a student or professor. Human existence is more than just physical. It also has mental, social and political, cultural and moral, relational and spiritual dimensions. A human being is no merely self-referential individual, but is called upon to deliberately form relations with other individuals and communities. In his encyclical *Caritas in veritate*, Pope Benedict XVI calls "relationality...an essential element of the humanum" (No. 55). He further argues that: "The theme of development can be identified with the inclusion-in-relation of all individuals and peoples within the one community of the human family, built in solidarity on the basis of the fundamental values of justice and peace" (No. 54).

It is in the context of inter-personal relations that the freedom of the individual finds its proper place. Individual freedom is not absolute, but is limited by the freedom of others, who, having also been created in God's own image, are endowed with the same dignity and the same rights. Only a society that recognizes that all its members are equally valuable will be a society of mutual responsibility.⁸ If this responsibility is to be met, however, the meta-economic dimension of human dignity must be respected (see *Caritas in veritate* No. 41). This means that the economy, i.e. the economic activities of individuals, must never be an end in itself, but only means to an end.

The Common Good

Human dignity is closely related to the common good of society, because human beings are members of a community they have established. They rely on one another, depend on one another and are jointly responsible for creating a peaceful and just society, in which the best possible conditions exist for the full development of the individual.

The principle of the common good applies to all levels of civil society: to families, schools, associations, businesses, universities etc. Especially, however, it is the state with its institutions and authorities that is obliged to serve the common good. The state bears responsibility for ensuring that all citizens can freely determine how to live their own lives and that they are able to provide for themselves. Therefore, government must create structures of social justice that protect and support the vulnerable and marginalized in society. Since everyone is entitled to have their basic needs met, it must be guaranteed that all people in need can live at least at subsistence level. This is not incompatible with the principle that each individual is responsible for their own lives and tries to help and support their fellow human beings to the best of their abilities.

The common good is not the sum total of particular interests. It transcends individual concerns and cannot be equated with the interests of a societal or political group, either. It requires mediating between and balancing the interests of particular groups in society. Where necessary, sacrifices must be made – mostly by high-income groups – for the benefit of the vulnerable. The principle of the common good must not be limited to one's own people. At an international level, it includes alliances of nations of which one's own country is a member. Ultimately, it extends to the entire global human family. The common good transcends all boundaries, not only those of space, but also those of time. All human beings living on the earth today bear an inalienable responsibility for future generations and for the earth's sustainability.

Solidarity

The principle of solidarity originates from the common good. Solidarity is the preparedness to make a contribution, at all levels, to the realization of the common good. It is based on a caring concern for the needs and worries both of the fellow members of one's own society and of all human beings. It aims at helping to remove the deficiencies and inadequacies hurting others through personal commitment and by setting aside one's own interests. "The message of the Church's social doctrine regarding solidarity clearly shows that there exists an intimate bond between solidarity and the common good, between solidarity and the universal destination of goods, between solidarity and equality among men and peoples, between solidarity and peace in the world."⁹

Solidarity is an ethical "habitus", a virtue leading from an inner motivation to a firm determination to dedicate oneself to promoting the common good. This motivation is based on the awareness of one's own responsibility for the well-being of others, the community, as well as on the recognition of the mutual dependency of individuals and peoples. Since social structures need to be continuously assessed to see whether they are geared towards social justice and the common good, solidarity is also a dynamic and social principle. It requires every member of society to participate in the realization of the common good, with everyone contributing their own special abilities. An entire community, however, can also show solidarity by supporting the cause of a just political and economic order. This combination of individual and collective responsibility forms an important link within society.

Solidarity is rooted in the sphere of justice. Here, however, "justice" means more than just legality, more than the "suum cuique", more than what the law guarantees. The concept of justice cannot be captured by applying legal standards. It includes not just "civil rights" but also "human rights". In the Holy Scriptures, the term "sedaqah" demands that every human being must have the chance to develop their full potential, as a unique and holistic person, without having their human dignity restricted or violated.

In the EU Treaty, a distinction can be made between different types of solidarity:

- social justice within the social market economy,
- inter-generational solidarity,
- solidarity among the Member States,
- the solidarity of the European Union to the outside world: this includes global support for fair trade relations and sustainable development as well as the global commitment to fight poverty, protect human rights and the environment.

Subsidiarity

The principle of subsidiarity calls on all members of society to make a contribution – either individually or through organizations – to social, political and cultural life. The involvement in parties, associations or civil society organizations this requires is ensured by the principle of subsidiarity. Subsidiarity and solidarity are mutually dependent. They are the practical expressions of human dignity and the common good. The principle of subsidiarity provides a structure for society that helps prevent

the rise of the two extremes, individualism and collectivism. While solidarity emphasizes the bonds between the individual and society as well as the individual and collective responsibility for the community, subsidiarity is a standard by which social structures and political decisions can be measured. Subsidiarity means that the smaller social units within society are supposed to perform the functions they can handle without any higher-level interference. This also applies to individuals.

Whatever tasks individuals can accomplish on their own initiative must not be taken over by society. If the individual or the lower social level is not capable of assuming responsibility for matters they should handle themselves, the higher level is obliged to empower them to do so. Only if this turns out to be impossible, if, for example, the powers of the lower-level units are exceeded in trying to solve a given problem, is the higher level allowed to intervene on their behalf. Such an intervention, however, should not last longer than necessary and must always promote the common good.

The subsidiary structure of society does not only safeguard the rights and freedoms of the individual, but also grants sufficient autonomy and independence to the institutions of civil society. It is a bulwark against state bureaucracy and associated centralizing tendencies. The state's role is to guarantee those conditions that enable as many people as possible to get involved in and have a say in the way their community is organized. The state is supposed to stay away from those activities that can be better performed by other levels. The solidarity obligations resulting from the social life of human beings are also governed by the guiding principle of subsidiarity. Often, the complexity of social relations requires an entity that distributes responsibilities for implementing the principle of subsidiarity.

The subsidiary responsibility of the individual and social groups is not just a right, but also a duty that nobody must try to evade, at whatever level. Responsible involvement is also required, however, when it comes to implementing actions that higher-level units have adopted by virtue of their larger powers. These could be decisions taken by intergovernmental organizations on a globally or regionally relevant issue that can probably not be resolved at national level and therefore requires an international settlement in keeping with the common good.

Subsidiarity is never a static concept. Just as in the case of the principle of solidarity, the units of the social system must be assessed to see whether they are in conformity with the principle of subsidiarity or may have to be adjusted. Reforms may

be necessary from time to time, in order to enable the better implementation of the principles of human dignity and the common good. "Building a just and social civil order, wherein each person receives what is his or her due, is an essential task which every generation must take up anew."¹⁰

Subsidiarity in the European Union

In 2007, the European Union enshrined the principle of subsidiarity in the Treaty of Lisbon, so that "decisions shall be taken... as closely as possible to the citizen".¹¹ In the relations between the Member States and the Union, the smaller unit, subject to its capability, always takes precedence over the larger unit, the Union. The principle of subsidiarity is an open and flexible term, whose specific meaning must be constantly re-defined for each exercise of powers. Among the prerequisites for applying this principle in the EU are the structuring of the individual levels, the joint community functions and the commitment to the common good.

Political Restraint of the Union Level

The European common good finds expression in solidarity on the one hand and subsidiarity on the other. The resulting tension between the two is very useful, because solidarity and subsidiarity can always be re-adjusted. The principle of subsidiarity is not applied in the Union in the case of matters of exclusive EU competence, "conferred upon it by the Member States in the Treaties to attain the objectives set out therein" (Art. 5, par. 2 of the Treaty of Lisbon). In the other policy fields that remain under the jurisdiction of the Member States, the Union "shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level" (Art. 5, par. 3 of the Treaty of Lisbon). This regulation contains both a "negative" ("only if" and "insofar") and a "positive" ("better") criterion. Both criteria always need to be clearly distinguished and verified. Aspects that must be verified include, for example, the question whether a planned action has transnational dimensions that exceed national competences, whether the individual Member States have sufficient financial and material resources for solving problems, whether potential Union-level action would be legitimized by European interests and whether such a pan-European approach would produce a better result than

individual action by the Member States. As part of this review, the gains from better integration resulting from Union action must be weighed against the corresponding loss of powers of the Member States and the question as to the European "added value" must be answered. The Treaty explicitly emphasizes "proportionality" as an important criterion: "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties" (Art. 5, par. 4 of the Treaty of Lisbon).

Consequently, the concept of subsidiarity cannot be grasped by a uniform, generally valid and therefore fixed interpretation. This is why a differentiated interpretation of what the principle of subsidiarity demands is necessary in order to resolve the inherent conflict between solidarity and subsidiarity. We need to distinguish, for example, between conservative and progressive subsidiarity:

- Conservative subsidiarity gives the Member States maximum leeway, by reducing to a minimum the primacy and blocking effect of Union law.
- Progressive subsidiarity does not assign the exercise of concurrent jurisdiction shared by the Union and the Member States to just one decision-making level. It assumes that all levels complement each other and cooperate with a view to achieving objectives efficiently. The focus will shift then from subsidiarity to solidarity or orientation towards the common good, but will shift back again to subsidiarity whenever national legislation enhances or adds to an EU directive, which is a minimum standard regulation. This leeway for legal differentiation enjoyed by the Member States always produces a dynamic process and mainly exists in the fields of environmental, social and health policies.

When planning their policies, all EU bodies are obliged to give due consideration to the principle of subsidiarity. Assessment criteria for compliance with this principle can be developed. Mainly, however, it falls to the national parliaments to make sure that subsidiary principles are observed in accordance with Art. 5, par. 3 of the Treaty of Lisbon. They are considered to be the guardians of the EU's system of power-sharing: "ex ante" through a right of scrutiny, which has a preventive effect, and "ex post" through the right of bringing cases before the European Court of Justice. In actual practice, legislative acts proposed by the EU bodies are forwarded to the national parliaments.¹² Quantitative and qualitative criteria are used to show that the proposed legislation is compatible with the principle of subsidiarity.¹³ For this

purpose, the EU Commission also holds comprehensive hearings (Art. 2 of the Treaty of Lisbon). Where appropriate, the national parliaments can explain, in a reasoned opinion addressed to the Commission or its President, to the Council or to the European Parliament, why, in their view, the draft legislation violates the principle of subsidiarity (Art. 6 of the Treaty of Lisbon). The EU bodies consider this opinion and may either adhere to the bill, amend it or withdraw it. Every year, the Commission submits a report on the application of the principle of subsidiarity to the Council, the EU Parliament and the national parliaments.

Loyal Cooperation

The fact that the principles of solidarity and subsidiarity do not just entail rights but also duties can be inferred from Article 4 of the EU Treaty: "Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives" (Art. 4, par. 3 of the Treaty of Lisbon).

This article refers to three graded levels of obligations or duties.

- Obligations to act and refrain from acting that Member States have vis-à-vis the Union: the loyalty to the Union which Member States are expected to show is more clearly specified by the principle of cooperation. In a "positive" sense, this means supporting the Union in the fulfillment of its tasks, in a "negative" sense, it means

refraining from taking any action that may hinder the attainment of the Union's objectives. Member States are also obliged to show mutual respect and consideration and to honor the commitments they have made. Member States, therefore, are expected to ensure that EU legislation is legally implemented without delay or hindrance and administratively executed.
- Obligations of the Union vis-à-vis Member States: the Union, its bodies and institutions are obliged to cooperate loyally with Member States. This

cooperation is, by its very nature, mutual and requires the Union to give due consideration to national interests and to accept constitutional norms that play a key role in shaping national identities.

- Obligations of Member States to one another: EU Member States are obliged to cooperate with each other in a spirit of solidarity and loyalty, and demonstrate mutual respect and consideration. This is mainly relevant for the internal market where unnecessary barriers are to be removed. It should be noted that, in the interaction among states, some legislation that has a purely national purpose can have implications for all other countries as well.

The obligation of EU member countries to interact in a spirit of solidarity is more than a general constitutional principle. The effort of bringing it to life must never stop. It includes the commitment to mutual assistance, support in times of crisis and in emergency situations, and support in the efforts to achieve social and economic convergence. The Euro and financial crisis should be seen as an opportunity to revive the idea of solidarity, actively implement it and use it as an alternative approach to growing renationalisation trends. Only solidarity that can be experienced by the individual human being can be an antidote to crude populism, an ideology along the lines of "my own country comes first".

Subsidiary Relations to the World

The European Union's Lisbon Treaty suggests that the two complementary principles of solidarity and subsidiarity are necessary for the respect for human rights and the realization of the common good. However, they are limited to the internal structures of the EU. This is quite natural, but also regrettable because the EU Treaties also refer to other levels and relations for which the Union bears special responsibility in terms of solidarity and subsidiarity. The Preamble of the 2004 Constitutional Treaty mentions "responsibilities...with regard to future generations and the earth". The Lisbon Treaty also mentions "solidarity between generations" (Art. 3, par. 3) and highlights international responsibility. Art. 3, par. 5 states: "In its relations with the wider world (...) it shall contribute to (...) solidarity and mutual respect among peoples". And the Charter of Fundamental Rights, which was adopted in 2000 and codifies human rights within the EU, declares: "Enjoyment of these rights entails

responsibilities and duties with regard to other persons, to the human community and to future generations."¹⁵

Today, the EU provides development assistance in the spirit of solidarity and subsidiarity. The Schumann Declaration of 1950 already anticipated this, expressing the assumption that Europe, given its history and the view it has of its own role in the world, is obliged to provide assistance to other continents, especially Africa. The financial resources that the EU makes available for this purpose are not only used to help fund disaster control efforts in an acute emergency, but also support development funds for African, Latin American and East European countries. This is also part of an effort to honor commitments the EU made in a multilateral context. In the early 1970s, there had been appeals for Western industrial nations to commit themselves, as part of the development decades declared by the UN, to making available 0,7 % of their GDP to development aid. Until today, only four EU countries have achieved this target, others have not even achieved half of it. The current situation seems equally worrying. After the millennium, the heads of state and government adopted the so-called "Millenium Declaration 2000", in which they set themselves the target of reducing global poverty by half by the year 2015. Even if several countries have made considerable progress, achieving this objective seems rather unlikely today. This reflects the responsibility the EU has for promoting the global common good. Missing the development targets serves as another reminder and as an appeal that solidarity and subsidiarity need to be understood as a progressive-dynamic principle that constantly needs to be re-invented. The Union should commit itself to the cause of promoting new forms of global solidarity and subsidiarity and, by doing so, make a contribution to the global common good.

Subsidiarity – a Global Prospect

In view of the challenges societies are facing today, Europe, with its policy of integration, seems to be pursuing a path that the rest of the world has yet to follow. Globalization, the economic and debt crisis, climate change, issues of bioethics, peace and worldwide development are challenges that absolutely require nations and peoples to pool their resources and join forces. Such a merging process cannot simply be accomplished through multilateral coordination. As the problems that need to be resolved surpass the powers vested in individual countries, certain national competences must be transferred to a higher level. A global authority, legitimized to

adopt globally binding decisions, becomes more and more indispensable for making the common good a reality not just at the regional or national level, but at the global level.¹⁶ Transferring sovereign rights, however, should go hand in hand with the establishment of subsidiary structures. Just as the EU is not an exclusively supranational entity, but becomes politically effective only through the principle of subsidiarity, the envisaged global authority also needs subsidiary elements. In his encyclical *Pacem in terris*, Pope John XXIII already advocated the establishment of a universal authority based on subsidiarity.¹⁷ Benedict XVI develops this idea further, declaring: " Such an authority would need to be regulated by law, to observe consistently the principles of subsidiarity and solidarity, to seek to establish the common good and to make a commitment to securing authentic integral human development inspired by the values of charity in truth."¹⁸ It is the principle of subsidiarity that would set apart such a universal public authority from a mere global state. This latter would always be likely to amass power, unchecked by anyone, assimilating all areas of life without respecting national or cultural identities. Subsidiarity, built into a future global authority, however, guarantees the various stakeholders the freedom they need to make their individual contributions to the global common good.

Obviously, the unification of Europe cannot be used as an exact blueprint for the coming together of the nations on our planet. But the EU, because of its experiences and achievements, has an obligation to get involved in the dialogue on the design and development of global regulatory structures and thereby make a contribution to the universal common good and the advancement of international law.

Notes

- 1 Encyclical *Sollicitudo rei socialis*, 1987, No. 41.
- 2 Pope Benedict XVI (30 March 2006), Address to the participants of a congress organized by the "Group of the European People's Party and the European Democratic Party" of the European Parliament "Standing up for the Protection and Promotion of Human Dignity", in: L'Osservatore Romano, German, No.15-16/2006, 11.
- 3 Pastoral Constitution *Gaudium et Spes*, 1965, No. 17.
- 4 Preamble of the Treaty on a Constitution for Europe (EU Constitutional Treaty), 2014
- 5 Preamble of the Charter of Fundamental Rights of the European Union, 2000.
- 6 See *Dignitatis humanae*, Declaration on religious freedom, 1965, especially No. 2.
- 7 COMECE, Global governance, our Responsibility to make Globalization an Opportunity for all, Brussels 2001, p. 21.
- 8 See the three major Jewish philosophers of the last century: Hans Jonas and the principle of "responsibility"; Martin Buber and the principle of "dialogue"; Emmanuel Levinas and the principle of "alterity".
- 9 Compendium of the Social Doctrine of the Church, 2006, No. 194.
- 10 Encyclical *Deus Caritas est*, 2005, No. 28.
- 11 Preamble of the Treaty of Lisbon, 2007.
- 12 See Protocol (No.1) of the Treaty of Lisbon, On the Role of National Parliaments in the European Union, Art. 2.
- 13 See Protocol, On the Application of the Principles of Subsidiarity and Proportionality, Art. 5.
- 14 In the Treaty of Lisbon, unlike in earlier EU texts, relations among EU bodies are no longer mentioned.
- 15 Preamble of the Charter of Fundamental Rights of the European Union, 2000.
- 16 See Pontifical Council for Justice and Peace: Towards reforming the international financial and monetary systems in the context of global public authority, Rome 2011, p. 27.

17 See Encyclical *Pacem in terris*, 1963, No. 133-139.

18 Encyclical *Caritas in veritate*, 2009, No. 167.

Note on the Author

Adrianus H. van Luyn was Bishop of Rotterdam from 1994 until 2011. From 2008 until 2011, he was Chairman of the Bishops' Conference of the Netherlands and, from 2006 until 2012, President of COMECE.