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## THE PRINCIPLE OF SUBSIDIARITY AND CONTEMPORARY NATURAL LAW

Law always includes both the general and the particular. A dispute in a particular case must ultimately be decided in favor of one side or the other, and the decision must be made in accordance with some general principle of law. Thus, natural law must not only present general principles of universal validity, but it must also form the basis for a determination as to which of two disputants is right "according to nature." It is this concrete application that presents the most serious problem. Agreement may be readily forthcoming that one should abide by the norms of nature; but when it is a question of what ordering of society nature demands in a concrete case, agreement is more difficult to come by. It is clear to everyone, for instance, that human nature calls for freedom of the press; it is equally clear that that freedom should not be so exercised as to undermine the community which sustains it. Individual rights, in other words, do not exist in isolation; they presuppose a society and must be subordinated to the "common good."

The determination of the common good within a free democratic society may be based either on normative ethics or on purely sociological considerations. This sociological approach, which has become the democratic method *par excellence*, is predicated on an absolute equality of all men and confronts the typical Catholic natural law tradition with some crucial issues. Natural law is essentially normative ethics, which, because of its deontological nature, antecedes the formalistic concept of legal equality. Conversely, the concept of legal equality, at least in its practical application, does not and cannot presuppose any a priori value preference. Values are viewed solely as the product of cumulative desires or intentions voiced by the people. This, in turn, raises the problem as to whether the adherent of normative ethics can accept a sociological theory of natural law without abandoning his fundamental position concerning absolute moral norms or values. In the further pursuit of this problem the question arises whether there is such a thing as a rational connection between normative ethics and sociological natural law. In the following pages an attempt will be made to show that the "subsidiarity principle" can supply this rational connection, provided this principle itself is logically derived from and determined by the basic principles of natural law. Otherwise, it would be in itself "irrational" and, consequently, in no position to reconcile traditional normative ethics and modern democratic ideas of law.

### I. THE DEMOCRATIC DETERMINATION OF COMMON GOOD

Every state must be governed, even a democracy. To govern means to organize society, to give it a legal order binding upon all its members. It means also to express a social aim in legal form. In a democracy the governing power rests

ultimately with the people. Yet, since it is the task of government to establish and secure the order of peace, government must not become an irrational toy of the masses but must be clothed with authority and discharge the function of authority. Strictly speaking, then, the person in authority is responsible not to the people but to the common good, as his conscience may determine it. On the other hand, he still remains the representative of the people. There results a peculiar manifestation of the already mentioned polarity between the whole of society and the particular member: ruler and ruled are in a relation of polarity. On the one hand, the people obey the government; on the other, the government derives its aims from the people.

In order to understand this polarity in democratic society one has to remember an important distinction. The people's representative can discharge his responsibility to the common good according to two criteria: he may act from an ideological orientation or from a sociological orientation. In practice these two points of view may coincide. Actually, in a democracy, the ideological orientation is inconceivable without the sociological one. Still, for purposes of clarification, we should make a methodological separation.

A. *The Ideologically Oriented Politician.*—Ideological orientation need not coincide with denominational or even religious orientation. Anyone who posits absolute ideals in the sense of the material ethics of value is ideologically oriented.<sup>1</sup> And anyone who—in this respect unlike the value philosophers—believes that certain values are universally evident and universally binding, will, as the people's representative, seek to embody these values in legal obligations for society.

Such a politician finds himself in a very special relationship both with his constituents and with his opponents.

*With his constituents:* since the electorate has chosen him because of his ideological congeniality, he may take the liberty of shaping his policies according to his values. In other words, he may confidently presuppose that the people who elected him will stand by his system of values when embodied into law, even though their actual conduct may occasionally slip from the ideal norm. For instance, there are married people who by no means live up to the standard of indissoluble monogamy and yet would never advocate legalization of divorce. The ideology has such a strong grip on them that they would rather acknowledge the conflict between the ideal and their own weakness than recommend a legal change that would lower the ethical aspiration of the society.

Such an attitude is a sociological fact of the kind a representative elected by an ideologically motivated public may confidently take for granted. This is why, in his policy, he is able to abide by an absolute ethic. The obligation of any—even the democratic—ruler to guide the people according to his conscience does not present a problem, since the conscience of the elected rep-

1. "Ideological" in the best possible sense means "oriented towards ideals." By definition ideology is thought about values that is subject to absolutely valid norms. Not only every religious faith is an ideology, but also every philosophy and every explanation of human life according to eternal norms.

representative is bound by transcendent values and norms in the same way as that of his electorate.

*With his opponents:* the ideologically motivated democratic politician must, of course, aim at an effective and harmonious legal order. This means that he cannot overlook the opposition. Nevertheless, he will insist on legislation reflecting his own and his constituents' ethical convictions. For instance, he will advocate the legal punishment of homosexuality, even though a considerable opposition motivated by ethical indifference would press for the elimination of such punishment. The ideologically motivated politician, in dealing with his opponents, will insist on the criterion of his ethical principles as long as laws derived therefrom can still be expected to maintain an effective and harmonious legal order. This is not dictatorial, since these laws are enacted and enforced only by democratic procedures.

The ideologically oriented politician, in allowing each individual or group scope for autonomous development within the framework of the common good, must, it would seem, define that framework in terms of his ideological commitment. Thus, ideologically motivated political parties cannot consider the position of another party as having the same validity as their own. For instance, a Catholic party cannot possibly regard the program of the Socialist Party, running counter as it does to principles of natural law and ethics to which Catholics are committed, as enjoying equal status with its own program. As long as we adhere to the purely ideological orientation which we have adopted for methodological purposes, we can no more than tolerate erroneous doctrines. We can never accord them the character of law. It would seem, then, that Christian and natural law thinking are inconsistent with the presuppositions of "formal democracy." In a formal democracy, what counts is not absolute and objective truth, but only the free subjective expression of personal opinion. Thus, truth and untruth are supposed to enjoy the same right. Each weighs in the scales only insofar as it represents free speech. Whoever is oriented toward ideological concepts, i.e., absolutely valid norms, must reject formal democracy, since he puts objective truth and eternal norms above all expressions of opinion.

Where the ideological orientation involved is Catholic, or inspired by Catholicism, the rigor of this view as regards the opposition is mitigated by the tenets of the ideology itself. The dignity of the individual is axiomatic in the Catholic conception of natural law. A corollary to this is the inviolability of the individual conscience. Thus, Catholicism, even though it insists on objective ethical norms, teaches that it is the duty of the individual to follow the norms laid down by his own conscience, even if they conflict with those objective norms. In other words, even a mistaken conscience — assuming that the mistake is innocent — remains the ethical norm for the actions of its bearer. The legal consequences of this view are quite different from those of an ideology such as Communism, which strives to force the individual conscience itself into subservience to the collectivity.

At any rate, a legislative policy based on the absolute norms of natural law or of the Catholic faith is, with respect to error, but a policy of toleration. Hence, it can never acknowledge a formally equal right of the opposition.

This is not to say, however, that the ideologically oriented party (e.g., a typical Catholic party) cannot, consistently with its adherence to absolute legal norms, go beyond mere toleration and concede a formal legal equality to the opposition. It might well define the common good not primarily with a view to absolute norms but rather with a view to the equal distribution of civil rights. This leads to a sociological conception of the common good which we had earlier excluded for methodological purposes, but which we will now take up.

B. *The Sociologically Oriented Politician.*—To say that a politician approaches his task from the standpoint of sociology is not to say that he is merely serving the egotistical concerns of his constituents. He, too, follows his conscience, according to which he seeks ultimately that which serves the common good. For no reasonable person will maintain that the party representatives gather merely as puppets of the voters to pursue party interests in the framework of a parliamentary lottery game; rather, they aim, through their own views and votes, to foster a genuine public order which creates peace for the entire community.

The sociologically motivated representative, however, derives the criteria of this order not from absolute norms, but from the latently or explicitly manifested will of the whole of society. In other words, he forms his conscience as popular representative in accordance with the empirical collective consciousness. Though he may in some cases represent a very high ethic, it is still only the ethic of the collectivity.

Let us emphasize that the sociologically oriented democrat derives his sociological inferences from the whole of society rather than from his own following of voters only, for otherwise his policy would no longer aim at the common good. Although the ideologically oriented politician is theoretically not subject to the accusation of pure party politics, because his political motive is not the will of the voters but his universal ethical principles, the sociologically oriented politician has, from a formal democratic point of view, an advantage here. His guiding principle is always in accord with the consensus of the members of society, with the "collective conscience." Such a consensus is found in every ordered commonwealth, for any such commonwealth is based on the assumption that the members wish to maintain a common life and, at least to that extent, are willing to pursue a common goal. Hence, the requirement of the unity of the whole is considered, as it were, an absolute "norm." When this norm is violated or undermined, even the sociologically oriented ruler considers it his duty to resort to repression.

The sociologically motivated approach in democratic politics is more congenial to modern thinking, which has come to doubt a universally valid concept of man. In postwar years, it is true, there has been much talk of a revival of natural law. Looking closer, however, one finds that this has involved, apart from the Christian proponents of the idea, not a natural law in the sense of the traditional principles of ethics but a law reflecting sociological findings. Once one grants that disappointing experience has caused people to distrust each other's concepts of man and of society, one must conclude that the sociological orientation has a better chance to create an effective and harmonious public order.

A second glance will reveal that sociologically derived principles are "ethical"

only in the sense that they constitute *de facto* the normative system of the members of the state. The state as a legal structure is first conceived apart from substantively defined norms. In the Christian view of natural law, on the other hand, the concept of the state is filled with indispensable ethical substance. According to the Christian tradition of natural law, law can be distinguished from morality, but not separated from it. In other words, nothing can be law that contradicts the absolute ethical norms. A state that is oriented only to the normative choices of its members, i.e., a sociologically oriented state, is merely borrowing its ethical substance rather than embodying it a priori as an integral element. Thus, along the lines of my book<sup>2</sup> I should like to emphasize that the prevailing idea of the state as a legal structure today is no longer an ethical idea, even though the members of the state may all be convinced they cannot get along without some common ethical commitment. For whether we can attribute an ethical commitment to society as such depends on the source, not the content, of the ethical standards to which society gives effect.

If contemporary constitutions of various countries sanction unshakable ethical concepts such as human dignity, they do so because the sociological analysis of the people indicates that such values are still in fact held by the members. A sociologically oriented commonwealth may actually adhere to a very high ethical standard, but it cannot properly be called the ethical commitment of a society as long as it derives its substance from sociological findings alone.<sup>3</sup> Nobody familiar with the relevant modern literature will deny that the sociological perspective today prevails in legal philosophy, i.e., in the basic construction of the concept of law.<sup>4</sup>

Viewed from the sociological point of view, natural law thus is defined as *the normative system emerging from the valuations of the members of society*.

The advocates of sociological natural law do not like to be regarded as positivists. They declare that the legislative will, according to their view, is not unlimited but bound to adhere to the freely expressed valuations of the members of society.

## II. THE CRUCIAL DECISION FACED BY THE TRADITIONAL NATURAL LAW DOCTRINE: EQUAL RIGHTS OR MERE TOLERATION?

The sociological theory of natural law operates, in the main, with empirically ascertainable facts rather than with absolute ethical values or norms which in turn presuppose definite epistemological or moral commitments. These facts are sociological realities, and in order to grasp these realities untrammelled by any bias or prejudice, one must concede that every man has exactly the same right

2. *FORMEN UND GRENSEN DES SUBSIDIERITÄTSPRINZIPS* (Heidelberg, 1956).

3. On this point see *Erziehung im Mittelpunkt der Diskussion weltanschaulicher Fronten*, 10 *NEUE ORDNUNG* 288 ff. (1956).

4. Cf. A. F. Utz, *Die Krise im modernen Naturrechtsdenken*, 5 *NEUE ORDNUNG* 201-219 (1951); *Naturrecht im Widerstreit zum positiven Gesetz*, 5 *NEUE ORDNUNG*, 313-329 (1951). Also M. E. SCHMITT, *RECHT UND VERNUNFT* (Heidelberg, 1955).

as the next man to think, say, write, or vote. This equality is at the basis of modern democracy under the rule of law. Of course, even this democratic equality finds its ultimate limitation in the concept of the common good. But the democratic concept of the common good is by no means determined a priori in the sense of a transcendental value: it is determined by the factual intent of a historically given society and, hence, is nothing other than a sociological fact itself.

When confronted with the demands of sociological natural law, the traditional natural law philosopher tries to reconcile his own position with that of sociological natural law by simply asserting that the dominant social philosophy of our time is a hard fact of reality which cannot be spirited away by wishful thinking. He must simply accept it as a fact, even though he probably does not approve of it. He "tolerates" it. For him, the sole rational way of reconciling his absolute position and the sociological position is an attitude of toleration: he tolerates the "folly" of others, and in doing so believes he has chosen the lesser of two evils. Of course, there are several modern social or legal phenomena, such as divorce, which he may "tolerate" without morally approving of them. But the apostle of modern democracy, like the representative of a sociological theory of natural law, fears and certainly abhors the notion of mere tolerance. He is convinced that should the representatives of normative ethics ever come to political power, they would use the legal order to enforce, albeit gradually, absolute moral norms or standards. For him this would be dictatorship. Even Christian ethics introduced and enforced by legal means is for the democratic man plain dictatorship, although not perhaps a repugnant form of dictatorship in that it is not an outright trampling on the dignity of the human person.

The spokesman of normative ethics, it seems, will have to alter somewhat his basic attitude if he intends to cope effectively with the social ethics and sociological ideas underlying a modern free democracy. He will have to face up to the fundamental truth that modern society, divided as it is by many conflicting philosophies and convictions, would necessarily fall prey to one kind of dictatorship or another unless it initially agreed upon one fundamental "rule of the game" valid for all times: (1) equality before the law, (2) complete abandonment of any attempt to force all people into accepting one single philosophical conviction, and (3) an insistence on a minimum rather than a maximum of enforceable ethical standards consonant with sociological actuality. In lieu of force the whole of social activities should be freed for the greatest possible unfolding of all cultural potentialities in their utmost flexibility. Realizing that the sociological reality is here to stay, the representative of normative ethics will also have to change his attitude of toleration to an attitude of intelligent acceptance of the sociological natural law, even though in conscience he may not always be persuaded that it is at all times "good law." The functional and dynamic nature of modern society must be preserved:

The preservation of true sociological ethics is to be accomplished in many spheres of human activities, unhampered by collective or public interference. To be sure, some evil might possibly be condoned by this concession, but it should always be remembered that by the same token it is also the good

which through this sociological approach is granted a unique opportunity to inspire the individual in the realization of the highest values inherent in human existence. In this fashion it might also become possible basically to reconstruct society from within itself in accordance with the absolute principles of normative ethics.<sup>5</sup>

On such terms a Catholic might wholeheartedly and in good faith partake of all social activities; and although he might have to make some sacrifices, he will have to abandon all legal means by which he could perhaps enforce his own ethical standards should he gain political ascendancy. It is through strenuous and heroic personal effort that he might regain that decisive social influence which he has virtually surrendered by renouncing all political or legal force.

The basic issue inherent in a sociological approach to natural law, therefore, confronts the representative of normative ethics with the far-reaching decision of whether he is willing, in the interest of avoiding any form of dictatorship, to accept as valid the legal order of modern democratic society without specific reference to an absolute philosophy. Obviously, he can give his full approval only if the whole social structure itself is not victimized by collectivist or collectively enforced social ethics.

### III. THE SUBSIDIARITY PRINCIPLE AS A RELATIONAL LINK BETWEEN NORMATIVE ETHICS AND SOCIOLOGICAL NATURAL LAW

Recent Catholic social teachings have developed a sociological principle capable of demonstrating the feasible integration of normative ethics and sociological natural law, namely, the subsidiarity principle. Much controversy has been caused by this principle, in that some people have tried to justify it on purely philosophical grounds, while others have accepted it merely on the authority of the Church. The subsidiarity principle has to be considered in its particular historical context. For only then can its philosophical justification be fully understood—a justification, incidentally, which goes far beyond the original ecclesiastical declarations.

A. *The History of the Subsidiarity Principle.*—Pope Pius XI, in his encyclical letter *Quadragesimo Anno*, refers to the many and complex tasks which gradually have become the concern of the modern state when trying to cope with certain sociological problems. The Holy Father observes with great sorrow the effects of that kind of individualistic thinking which has led to the breakdown of certain basic sociological structures more fundamental even than the state itself. This breakdown, unfortunately, on occasion necessitates intervention of the state.

Admittedly, the prime task of all social reform is to revive the mediary sociological structures, and the guiding maxim of all sociological reconstruction is the following: "it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community." (No. 79).<sup>6</sup> Hence, "it is an injustice and at the same time a grave evil and disturbance of

5. A. F. UTZ, *SOZIALETHIK* 60 ff. (Heidelberg, 1958).

6. *On Reconstructing the Social Order*, in *THE CHURCH AND THE RECONSTRUCTION OF THE MODERN WORLD* 247 (Image Book ed., New York, 1957).



right order to assign to a greater and higher association what lesser and subordinate organizations can do." This is so, because "every social activity ought of its very nature to furnish help to the members of the body social and never destroy and absorb them." This organic and structural action which actually works up from the individual to the whole of society, from the lesser groupings to the larger comprehensive groups, is called "the principle of subsidiary function," the *subsidiarii officii principium*. Hence, the designation "subsidiarity principle."

This subsidiarity principle contains two fundamental ideas. One is *The Principle of Noninterference*, that is, noninterference on the part of society with the rights of the individual or with the activities of the lesser social groupings, especially when the individual or the lesser groupings are perfectly capable of coping with their own specific problems and assigned tasks. Thus, the subsidiarity principle not only includes but actually stresses the notion of "private actions" as distinguished from "social actions." The second is *The Principle of Assistance*, that is, assistance by the state rendered when the individual or the smaller groupings find themselves incapable of resolving the various tasks originally assigned them.

The emphasis is always on the notion of mere "assistance," that is, on the idea of limited interference in terms of assistance. It is assumed that the state or society as a whole must render assistance if such assistance is needed. But there is also a presumption that the individual and the lesser groupings are themselves autonomous. Hence, the Holy Father states that any unwarranted or premature interference with or intrusion into the autonomous activities of the individual or the lesser groupings constitutes an injustice and is detrimental to the social order. And finally, the subsidiarity principle encompasses the moral obligation on the part of the individual or the lesser groupings to achieve whatever is within their powers before asking assistance from a larger group. Compliance with this moral duty is made the structural foundation of any order. It is clear that the subsidiarity principle as it has been formulated in the encyclical *Quadragesimo Anno* is primarily a principle constraining and delimiting social and political interference with the fundamental rights of the individual and the lesser groupings.

It follows that the subsidiarity principle is ultimately a principle imposing restraints upon all collectivist activities by limiting them to absolutely necessary minimum interference. Defined affirmatively it is a principle of personal autonomy and personal moral responsibility. And as the individual holds a preferred position over the social, so also the lesser groups have the right and even the duty of being autonomous. Thus, the subsidiarity principle is closely related to the degree of official interference or intercession of the state or society. Hence, it may also be formulated as "the greatest possible freedom and the least possible state authority."

The encyclical also calls the subsidiarity principle "that most weighty principle, which cannot be set aside or changed and remains fixed and unshaken in social philosophy." It is in the final analysis a fundamental structural norm which underlies all true social existence. It is for this reason that the Holy Father states it is also binding upon the Church. In sum, the subsidiarity principle, as it has

been formulated and stated by the Church, is substantially a restrictive norm, a practical rule intended to prevent excesses of political authority, including all forms of dictatorship or totalitarianism. By its very nature it presupposes the intellectual and cultural structure of a modern society which substantially rejects the normative ethics of traditional Christianity.

Political authority of a type advocated in the Middle Ages is out of the question for modern society. The old means and standards of orderly interference are no longer available in modern times, and the only feasible substitute is the transfer of emphasis to the many constituent members of society by way of an effective distribution of authority. This is the sociological-historical as well as ideological background of the subsidiarity principle.<sup>7</sup>

Here we are close to the sociological origin of the law: every individual or individual grouping has a vast amount of initiative, and authority itself is practically reduced to a function of coordinating the freedoms of all.

B. *The Subsidiarity Principle in Systematic Legal Philosophy.*—The subsidiarity principle, being a fundamental principle of social existence, according to the Church, cannot be made subservient to any temporal utilitarian end. It must be grounded in a true social philosophy. Philosophers disagree as to where this basic foundation is to be found, although two fundamental explanations may be discerned.

One is based on a purely atomistic conception of individual rights; the other relies upon an organic conception of society. The atomistic theory has the advantage of inferring the subsidiarity principle immediately and directly from individual rights. Hence, it considers individual freedom an a priori principle, and it has no great difficulty in postulating a sociological legal order. The organic theory, on the other hand, encounters greater difficulties in that it starts with the notion of a basic social norm, namely, the concept of the common good, and tries to apply it step by step to the subsidiarity principle. Its point of departure is not a system of individual rights or perhaps the "free self-assertion of the individual," but a common objective or end which is binding on all. It is worthy of note that this also is the basic position assumed by normative ethics.

Although the atomistic theory has many followers among Catholic thinkers, it appears that the organic theory is the only tenable position. The latter not only integrates intelligibly and intelligently the absolute norms on the one hand and a sociological approach to natural law on the other, but it also indicates the limits within which a sociological natural law can be accepted as valid.

C. *Subsidiarity in the Individualistic Conception of Individual Rights.*—According to the tenets of individualism, a doctrine rooted in nominalism and naïve empiricism, society is a fiction. The individual person, striving for his own well-being and happiness, is the only social reality. Since he cannot accomplish his end by himself, he unites with his fellows. This union, however, is never more than the response to a physical necessity; it is in no way essential to the complete human personality.

7. "See A. F. Utz, *Die Geistesgeschichtlichen Grundlagen des Subsidiaritätsprinzips*, in *DAS SUBSIDIARITÄTSPRINZIP* 5-17 (ed. A. F. Utz, Heidelberg, 1953).

If we thus regard society as a *mutuality* between man and man for the achievement of the *respective* goals of each, rather than a *commonality* for the achievement of a *common* goal, our basis for assistance to individuals or groups will be inadequate. Reciprocity, like private property, plays an important role in the functioning of society. But seen as an absolute value it is misleading.

Within this framework of reciprocity subsidiarity is strictly a principle of non-interference by government in the private sphere: everyone looks out for himself, everyone reserves his individual sphere, everyone demands a maximum of freedom. Society and its authority are merely means to an end, an ethereal construct established for the maintenance of equilibrium among the many demands for freedom.

The corollary to this idea that government exists only because individual efforts are inadequate to attain individual ends is that the particular occasions for governmental intervention are limited by the same inadequacy. Government must, in other words, make its presence felt only when individual resources have been exhausted.

Since a purely individualist concept of the subsidiarity principle is totally devoid of all objectivity and objective values, the approach to a sociological natural law is necessary. But natural law thus conceived is that law which coincides with the actual will of the organic community and its component members. Obviously, such an explanation of the subsidiarity principle is inadequate. The Christian can never concede that the state is nothing more than a coordinator of several freedoms. Admittedly, Pope Pius XI's encyclical letter stresses the negative aspect of the subsidiarity principle by rejecting the overbearance of political authority. But at the same time it emphasizes that the common good, adapted to man's intrinsic nature, constitutes the fundamental norm underlying every intrusion by the state. It is thus that we revert once more to an ethics of absolute norms. The road which leads to the fullest unfolding of all members of a given society and, therefore, to the sociological foundation of all law, still has its point of departure in normative ethics. The organic conception of society, as we shall note presently, merely has ancillary though important functions.

Catholic authors, in the main, reject a purely individualistic interpretation of the subsidiarity principle, although some writers conceive individual rights as the foremost problem, with the common good furnishing merely an a posteriori limitation to the exercise of these rights. Such an approach is inconsistent, because these individual rights are either contained a priori in the common good or they have nothing to do with the notion of the common good. This, in turn, confronts us with the following alternative: either radical individualism or an organically conceived society. As far as our own particular problem is concerned, this means, however, that a sociological natural law can logically be defended only from the point of view of an individualistic or from a collectivist interpretation of society. In the final analysis there can be no compromise between the two. For one cannot first profess individualism and subsequently call upon higher transpersonal norms. And since individualism must be rejected for basic philosophical reasons, we must resort to an organic conception of society.

D. *The Principle of Subsidiarity in the Organism of Society.*—Since man is

a social animal, there cannot be an ethic which is not in some way both a personal and a social ethic. Man's dependence on society is not merely the need of a physical instrument for the attainment of a purpose. For his personal fulfillment he must function as part of a whole. This concept of "functioning as part of a whole" justifies the symbol of an organism. However, since man, even as a functioning part, remains a person, the symbol is only partially valid. Man fits into the organic conception only to the extent that his goals are common goals. Thus, the symbol of polarity may be more apropos: the individual influences society, and society influences the individual. Whatever symbol of social life we may select, we must remember that the whole is more than the sum of the parts, and the parts are more than components of the whole. Society has an impact on the individual, and the individual on society. But the two are not identical, nor is one wholly subordinated to the other. The organic conception of society, then, must be understood as looking to a polarity between society and individual.

This conception makes it possible for us to postulate at once the dignity of the individual and a unified goal, a common good. Men stand in relation not only to each other as individuals, but also to society as such. At the same time, the formulation of goals for the whole society must take into account the diversity of the individual members.

Here for the first time we can perceive the universal and positive meaning of subsidiarity: The role of society is to allow, and if need be to assist (*subsidium praebere*), each individual to exercise that function which is his part within the whole. This is the formulation of subsidiarity that follows from the nature of society and does not presuppose in any way a system of private property. On the contrary, private property stands only as a particular application of subsidiarity, where it is demonstrated that in the concrete instance the common good of a group, given the personalities of the individuals that make it up, can best be attained when the distribution of goods is effected by means of individual rights.

*The subsidiarity principle thus is nothing but a formula for the solidarity of the social whole with the several members of society.* The core of this solidarity is the common good as a superior and yet all-inclusive good.

Although the character of the common good is personal — for it is the good of the respective persons who make up the community — it takes precedence over the individual in his individual capacity. In this sense law, defined as "an ordering for peace, made effective through a power of enforcement," has not only a function of distributing certain private rights derived from other sources, but also an educative function with regard to the common good. This educative function is essential to any view of law that looks beyond the model proposed by the pure theory of law and sees society as more than a fiction or a working hypothesis.

Since a human being is a free individual with both the capacity and the right to assume autonomous responsibility for the discharge of his function as a part of the whole, subsidiarity also calls for a *dispersal of responsibility* to the extent to which this promotes the common good. With this in mind, we may formulate

the principle of subsidiarity in these terms: *Any aspiration of an individual within the framework of the common good — whether for his own or another's benefit — should be accorded liberty, protection and, if need be, eventual support from society as a whole.*

This positive formulation leads to the negative formulation found in *Quadragesimo Anno*: Public authority should not impinge on the normal functioning of individuals and groups in society, but should limit itself to stepping in when this normal functioning cannot adequately guarantee the common good. This formulation declares war on all totalitarian aspirations of the state. In this negative, defensive sense, subsidiarity is thus a principle of individual rights against the state.

Both the positive and the negative aspects of the principle of subsidiarity flow from the idea of the common good. The state *should* help where the common good is at stake (positive aspect), and it *may* interfere with its law *only* where without such interference the common good cannot be guaranteed (negative aspect).

The concept of subsidiarity as thus far developed should commend itself to all thinkers who look upon society as a reality rather than a fiction and acknowledge a true common good in which the welfare of the respective individuals who make up the society is included. The application of this principle, however, is a matter of no small difficulty.

No matter how lofty our thinking about natural law may be, we have to keep in mind existing realities. If in actual fact the members of society no longer accept the principle of normative ethics for society and, at the same time, the ideological realization of natural law involves the danger of dictatorship, then, according to the subsidiarity principle, one must construct the legal order on the basis of individual liberties. In other words, one must *designate as natural law whatever corresponds to the freely arrived at valuations of the members of society.*

We have already seen how little absolute norms determine social order today. In addition, democracies generally do not govern according to absolute a priori criteria but according to the result of the ballot. The basis of democracy is essentially the equal weight of all particular votes. Thus, there is no question of truth, but only of majority. Accordingly, one must see to it that every party and every ideological movement has the same chance. A Christian politician cannot claim a special privilege for himself. When his party is in power, it must not resort to any further degree of legal intervention than it would concede to any other party in power. In determining the concrete substance of the common good, individual civil liberties must always be taken into account.

Here we return to the negative aspect of subsidiarity. Every opportunity of dictatorship (including the dictatorship of the "good people") must be avoided. In the present situation, *the common good consists primarily in the highest possible safeguard of the liberty of all*, so that the content of law, i.e., that which is to be enacted under the authority of the law, should always be determined from below on the basis of sociological conditions.

Still, we must insist on one indispensable and inviolable rule of the game, if we are to agree to this sociological determination of the content of law.

Democratic collective ethic recognizes but one absolute position in its conceptual structure: the unity of the state. Everything else, everything outside of the necessity of peaceful common existence, must remain variable. Hence, the state's legal authority in a democracy must confine itself to a minimum in order not to hamstring the dynamic of society's life and thought. In the field of material life, where the need for general and common regulations appears more and more urgent, it is relatively easy to establish collective measures, although even in this field the merely subsidiary character of the state must be remembered.

*The most reticent subsidiarity, however, must be observed by the democratic state in the field of culture and education.* An attempt to create, in these fields, a collective ethic would result in that type of ethical collectivism which has been so sharply condemned by the depth psychologists (e.g., Jung and Neumann). Matters concerning interior formation cannot be regimented. An elaborate collective ethic in this field would deny the manifold varieties of expressing human individuality and would suffocate personality in an artificially bred superstructure. Moreover, anyone who still acknowledges an absolute ethic binding upon society as a whole must react most strongly against an officially decreed education that tries to dilute values which to him are sacred and precious. Hence, we must reject a collective ethic that bases education on a formalistic freedom of conscience and rejects all eternal norms. This should not be taken as a denial of democracy's need for a general ethic that is derived from the collective consciousness of the people. It is precisely on the basis of this "ethic" that the state must set up the framework for the aims of public education and social pedagogy, aims which would serve as norms for the operating educational authorities and would constitute the minimum that is expected of public educational institutions.

But we must always remember that the collective ethic, like any merely external institution, cannot embrace more than the minimal requirements of moral life. In view of this, it would seem reasonable to demand that public education be resorted to only when no private group in society is in a position, even with financial help from the state, to satisfy the pedagogical needs of the community. Always and everywhere precedence should be given to the free forces of society.

The spiritual strength of modern democracy is in the free sphere of social culture. An uppermost concern to a democracy, particularly a sociologically oriented democracy, must be to preserve this cultural freedom and to stimulate free cultural activity. This should be the main pedagogical function of law in a democratic state.

Only when freedom has been given full rein can the affirmative nature of the subsidiarity principle realize itself. St. Thomas Aquinas, in his own time, could still visualize an exclusively Christian society where all members of the society as well as their government were by their single faith committed to the same moral end. Under such conditions the legal order had a high moral significance. Without running any risks, the subject could see in his sovereign a guarantor of a true social order, and this precisely because the sovereign, guided by his faith, observed the eternal norms. In our own time, where the spiritual unity of a common faith no longer exists, there is no such guarantee by the sovereign. Hence, the moral aspect of the common good as well as its realization must be left to

the untrammelled and spontaneous initiative of the individual members of the society.

If today many members of society seek to escape from their autonomous responsibility by appealing to the state, even in matters of education, this is a disturbing symptom of the spiritual poverty of our civilization. What they are seeking is a collective ethic to relieve the individual from his responsibility. That, according to Jung's and Neumann's analysis,<sup>8</sup> is the straight road toward an ethical collectivism which not long ago led men, without qualms and even in good faith, to commit crimes against human dignity.

It is certain that the state must be concerned about the failure of individual man in the sphere of society, since that failure threatens the entire community and its existence. Not only children but also adults are failing.

Should we be mentally nationalized to such an extent that we cannot find, in the sphere of society, the free energies that could undertake the task of educating both children and adults? Surely that hour has not come yet! And we will avoid its coming if with justified optimism we render to the spontaneous forces of society that amount of free play which was once their due. This is the only application of the principle of subsidiarity and the corresponding concept of natural law that befits the common good of a democracy.

To sum up: modern society is incapable of deciding according to absolute norms, because it no longer acknowledges or understands such norms. There is no longer any authority in the state that can guarantee a legal order corresponding to absolute ethical principles. Thus, there remains only a sociological determination of what ought to be law. But in return it must be insisted that everything pertaining to culture and morality<sup>9</sup> is to be free from interference in the autonomous sphere of society, in order to avoid the emergence of a collectivist or dictatorial ethic. This is enjoined by the negative aspect of the subsidiarity principle.

ARTHUR UTZ

8. Without identifying myself in any way with the social ethics of depth psychology, I consider its objections against collectivist ethic worthy of every attention. A critical presentation of the social ethic of depth psychology is contained in my *SOZIALETHIK* (Verlag Kerle, Heidelberg, 1958).

9. We will not deal any further with economic freedom at this time. Since economic freedom constitutes the material basis for cultural and moral freedom in society, it must be included in the latter requirement—to the extent to which it does not counteract the material common welfare.