

## ***Human Rights and the Principle of Subsidiarity***

SUNNY MATHEW  
*Collegio Damasceno (Rome)*

---

### **Summary:**

§1. *Brief Introduction.* §2. *Human Rights and the Principle of Subsidiarity: Their Foundation.* §3. *Human Rights and the Principle of Subsidiarity: What Are They for?* §4. *Conclusion.*

---

### **§1. *Brief Introduction***

In his article “*In search of Absolutes: Human Dignity and Its Biblical Roots*”, G. P. FLETCHER has rightly pointed out that jurisprudential contradictions are the hallmark of the day. The last century has developed “interest-balancing” as the most preferred way of solving legal problems.<sup>1</sup> Interest balancing can perhaps be accepted in the positive law as a way out from the intricacies of *lacuna legis* and practical dilemmas. But is it possible to have recourse to the principle of interest balancing in dealing with the issues of human rights and subsidiarity? Our concern here in this paper is to search, whether there is any absolute in talking about the principle of subsidiarity and human rights or whether we can have recourse only to interest balancing as in the case of positive law. In short, is there any objective moral standard or foundation behind subsidiarity and human rights? As we know any crisis affecting their foundation will affect certainly the whole system and they will either stand erect or fall down together with the foundation. Absolute moral standards only can elicit absolute moral duties. If we claim that human rights and the principle of subsidiarity are absolute moral standards, they should have an absolute foundation too. Doubts about the universal standards constitute the most profound challenge to the concept of human rights and the principle of subsidiarity.<sup>2</sup> For instance

---

<sup>1</sup> FLETCHER, *In Search of Absolutes* = FLETCHER G. P., *In Search of Absolutes: Human Dignity and Its Biblical Roots*, in *Archiv für Rechts und Sozialphilosophie* Beiheft 101 (2004), 62. C. B. PULIDO defines interest balancing as the way to resolve the incompatibility between two *prima facie* opposing principles or norms. It does not give a prior articulation of all the legal principles; rather seeks to establish a precedence between the principles in the light of circumstances of the case and thus reaches at a legal solution. PULIDO C. B., *The Structure and the Limits of Balancing*, in *Archiv für Rechts und Sozialphilosophie* Beiheft 97 (2004), 79.

<sup>2</sup> The need for a strong foundation was the concern of a member of the commission for the drafting of the United Nations’ Universal Declaration of Human Rights, when he said, “We are unanimous about these rights on condition that no one asks why”. Cfr. THILS G., *Les droits de l’homme et perspectives chrétiennes*, Leuven 1981, 51. “This underlying vacuum as

there are some, like MACINTYRE, who hold that human rights do not need a complete moral philosophy by way of background and that human rights are rather special rights occurring in particular social and historical circumstances. Naturally he called into question the universality of human rights.<sup>3</sup> But then we will have to admit that being historical and social phenomena, human rights are limited to their formulations of law and devoid of such formulations, there is nothing as human right. J. COTTINGHAM observes that in spite of the power influence of human rights on moral and political thinking in the past few decades, they have “long been regarded by many as philosophical suspect – as lacking any adequate grounding or justification”.<sup>4</sup>

As we make a glance at the *iter* of the formulation of the principle of subsidiarity and human rights, one can observe quite divergent positions. While no one doubts about the need to respect human rights, such an all clean chit is not issued to the principle of subsidiarity, especially in its application in the Church. But both the principle of subsidiarity and human rights converge on two other important aspects: both of them have the biblical concept of human dignity as the starting point and both of them have the creation of an atmosphere conducive for the individuals to grow and flourish as their *raison d'être*. We first try to search very briefly how human dignity becomes the source of human rights and then we will pass on to see that the same is the categorical absolute from which springs the principle of subsidiarity. As we have already pointed out, if we can converge on this point, it is quite easy to affirm the inevitability of both human rights and subsidiarity. In the subsequent movement of this paper we will see how they converge on their endeavour to create freedom as the basic virtue.

## **§2. *Human Rights and the Principle of Subsidiarity: Their Foundation***

Although there is little doubt about the need for a set of norms that safeguard human rights, there has been discord as to the foundation of these rights. But unless there is a universal stratum on which we can base ourselves, the very talk about universal becomes non-universal. That means the moment one speaks of a universal principle, one proceeds with a presuppositional belief that there is a universal moral law binding all humanity – all persons, all nations and cultures. What is that presupposed stratum? There are critics who hold that rights can properly be understood only in terms of positive law. They see an incoherence in speaking about prior natural or human rights and view as fallacious any attempt to attribute their foundation to any metaphysical principle.<sup>5</sup> They would like to see

---

to the foundations of human rights also reveals a deficiency in the validity attached to them. Indeed, the crisis affecting the foundations of human rights can easily lead to a decline or erosion of their value”. KASPER W., *The Theological Foundations of Human Rights*, in *The Jurist* 50 (1990), 149.

<sup>3</sup> Cf. MACINTYRE A., *After Virtue. A Study in Moral Theory*, Notre Dame 1984, 67-69.

<sup>4</sup> COTTINGHAM J., *The Philosophical Status of Natural Rights*, in *Archiv für Rechts und Sozialphilosophie Beiheft* 42 (1990), 81.

<sup>5</sup> *Ibid.*, 81. Cf. STACKHOUSE M. L., *Sources and Prospects for Human Rights Ideas: A Christian Perspective*, in J. Halama (ed.), *The Idea of Human Rights: Tradition and Presence*, Praha 2003, 190-191. There are people who hold that it is better not to speak of human rights

human rights as the products of socio-cultural contexts and hold that to speak of the universality of human rights is only an act of cultural imperialism. If that is the truth, can we ever speak of the universality of human rights? After all, to speak of 'human' rights is to speak categorically, irrespective of social and cultural differences. Hence to speak of human rights and at the same time to limit it to positive law, amounts to defeating one's own position.

C. E. MALDONADO identifies violence as the origin and principle of human rights and holds that it is systematic violence that gives rise to problems concerning human rights.<sup>6</sup> Marxian dialectical materialism too accepted human rights, but in the final analysis it said that human rights depend on the historical evolution of the society. Marxian view of reality as materialistic monism could not accept any reality other than matter. Human life being only "an epiphenomenon of underlying neurological processes",<sup>7</sup> what is important, as far as man is concerned, is not the aspect of being but that of becoming. A person is the product of participating in the social and collective work. But the later Marxians could understand the inherent contradictions in speaking of universal human rights and at the same time attributing their basis to the gratuity of the society and hence they tried to develop Marxist humanism side by side with sociocentrism.<sup>8</sup> It is enough to read the small novel of G. ORWELL entitled *Animal Farm* to understand how human rights were trampled upon under the Marxist regimes under the pretext of sociocentrism. As M. L. STACKHOUSE has noticed, apart from its success in challenging the family based feudalism of traditional political-

---

in theology, lest we run the risk of clericalism. Cfr. KIŠŠ I., *The Gospel and Human Rights*, in J. HALAMA (ed.), *The Idea of Human Rights: Tradition and Presence*, Praha 2003, 60-61.

<sup>6</sup> C. E. Maldonado holds that it is to counter violence that human rights exist. Then the "object of human rights is first the critique and then the gradual or total suppression of violence toward individuals and social groups, regardless of the reasons and the interests by which such violence originates or is justified. To say, however, that the object of human rights consists 'first' in denouncing the conditions that give rise to violence, and 'then' in the gradual or total suppression of those forms of violence is, evidently, an epistemological distinction, never a chronological one". MALDONADO, *Human Rights* = MALDONADO C. E., *Human Rights, Solidarity and Subsidiarity*, Washington 1997, 11-13.

<sup>7</sup> KOWALCZYK S., *The Possibilities of Christian-Marxist Dialogue on Human Rights*, in *Soundings* 67 (1984), 165-166.

<sup>8</sup> The 'Budapest School' founded by G. LUKACS and the PETŐFI Circle in Hungary and the 'Praxis School' of Yugoslavia are examples of such humanist movements in Marxism. All these schools originated in the late 1950's and gained momentum after the revelation of Stalin's atrocities by KRUSHCHEV in 1956. M. NAGY from Hungary advocated far reaching reforms such "as the abolition of prison camps, legal guarantees of personal freedom, and freedom for farmers to leave collective farms, tolerance toward the intelligentsia, development of light (consumer) industry, and a thorough democratization of the party as well as the state and the society". GRUENWALD O., *The Yugoslav Search for Man. Marxist Humanism in Contemporary Yugoslavia*, South Hadley 1983, 29. A. SCHAFF, L. KOLAKOWSKI, M. FRITZHAND and B. BACZKO were the leading Marxist humanists from Poland. The disappointment at the early (Stalinist) version of Marxism is the common leitmotiv in their writings. It is not simply accidental that most of the post communist countries are more determined to legislations on human rights and most of them have included the term 'dignity' in their new constitutions. Cfr. AUGENEDER S., *The Denial of Human Dignity from a Legal & Philosophical Point of View*, in *Archiv für Rechts und Sozialphilosophie Beiheft* 95 (2004), 195.

economies, Marxian approach has been utter failure and has “produced closed, bureaucratic, politically imperialistic societies which have little regard for religious, civil and political human rights”.<sup>9</sup>

Coming to the Judeo Christian anthropology, the person is understood as the substantial individual reality and consequently what is important is not the becoming but the being. Before becoming comes being. It is due to being that the exigencies of becoming arise. Thus person is the subject of all rights.<sup>10</sup> In this conception, all talk on rights and duties stems from the idea of man as created in the image and likeness of God. It entails that persons have the ability to reason and to choose and that they must have the chance to develop their fullest potentialities in society. Thus human rights become a gift and a task or a demand of God. It could be understood by revelation and reason with the consequence that no one has the excuse to violate human rights. Violating human rights would amount not only to violate the inherent dignity of man but also the will of God. That means human dignity and the ensuing rights have an absolute character and this is nothing but the participation in the absoluteness of God.<sup>11</sup> According to MARITAIN “the deepest layer of the human person’s dignity consists in its property of resembling God – not in a general way, but in a *proper* way. It is the *image of God*”.<sup>12</sup>

Luckily in the talk about human rights, this understanding gains more currency.<sup>13</sup> Up to the 20<sup>th</sup> century in almost all constitutions of the

<sup>9</sup> STACKHOUSE M. L., *Theology, History and Human Rights*, in *Soundings* 67 (1984), 208.

<sup>10</sup> This cannot be understood as selfish, anarchistic individualism and that is why in the social teachings of the Church, *bonum commune* occupies a central position. KOWALCZYK S., *The Possibilities of Christian-Marxist Dialogue on Human Rights*, 165-166. But as S. KOWALCZYK says, it is not a post war emphasis; even in the Encyclical «*Rerum Novarum*» of 1891, the key concept was *bonum commune*.

<sup>11</sup> WILLIAMS T. D., *Who Is My Neighbour: Personalism and the Foundations of Human Rights*, Washington D. C. 2005, 206.

<sup>12</sup> MARITAIN J., *The Person and the Common Good*, J. J. Fitzgerald (trans.), Notre Dame 1985, 42. But we have to remember that there is no place for self complacency or triumphalistic attitudes. “Certainly we cannot say that all of Judaism or of Christianity has supported human rights; it has been key minority traditions that have argued their case over long periods of time and become more widely accepted. Nor can we say that even these traditions have been faithful to the implications of their own heritage at all times, and the horror stories of our pasts also have to be told to mitigate any temptation to triumphalism”. STACKHOUSE M. L., *Sources and prospects for Human Rights Ideas: A Christian Perspective*, 190.

<sup>13</sup> It is interesting to note that human dignity is one of the key concepts in the ‘Universal Declaration on the Human Genome and Human Rights’ approved by UNESCO on 11 November 1997. Reference to human dignity is made fifteen times in the document of which four are in the Preamble. It clearly says that ‘genetic diversity of humanity must not give rise to any interpretation of social or political nature which could call into question the inherent dignity ... of all members of the human family’. Human dignity is the starting point for the whole discussion and that is clear from articles 1 and 2. Article 1 reads: “the human genome underlines the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity ...”. Article 2 a: “Every one has a right to respect for their dignity and for their rights regardless of their genetic characteristics”. 2 b: “That dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their uniqueness and diversity”. Article 6 forbids any discrimination based on genetic characteristics, because such an attitude would be detrimental to and infringe on ‘human rights, fundamental freedoms and human dignity’. Perhaps a most striking example

world it was written “all citizens are equal” and on the basis of certain criteria, the governments could restrict citizenship and thus the rights. But from the late 19<sup>th</sup> century the emphasis shifted from citizenship to personhood. We do not forget that such a change was brought in, for the first time, in the *Déclaration des Droits de l’Homme et du Citoyen* in 1789 in France after the Revolution. The *Déclaration* stated: “Men are born and remain free and equal in respect of rights”. But it got the force of a constitutional provision only in 1946 when it was affirmed in the Preamble of the French Constitution.<sup>14</sup> It was Abraham Lincoln who first argued for such a change in conception in the United States. The 1789 American Constitution was based on the concept of the equality of citizens. But in 1863 he argued that the new republic was “conceived in liberty and dedicated to the proposition that all men are created equal”.<sup>15</sup>

One can observe a paradigm shift in the change from the rights of the citizens to the rights of the persons. Citizenship as the basis for the rights can support the Marxian view that the members of the community enjoy certain rights because the state grants them such rights. But rights based on human nature and personhood make untenable such a position and it becomes an imperative to accept that, it is that aspect which makes human and person that determines the rights and not citizenship. Rights are no longer the gratuitous gift of the state or the society, rather they are the

---

for the importance of human dignity can be seen in the German Constitution. Its first article reads: “Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller Staatlichen Gewalt”. Many other countries have included the notion of human dignity in their constitutions. See Constitution of Belgium, art. 23; Constitution of Switzerland, art. 119; Constitution of Ireland, Preamble; Czech Republic Constitution, Preamble; Constitution of Spain, art. 10; Constitution of Sweden, art. 2; Constitution of Poland, Preamble; Constitution of Russia, art. 21; Constitution of South Africa, section 7.1 and 10; Constitution of Mexico art. 3.1; Constitution of Israel, art. 1; Constitution of Brazil, art. 1. Cfr. ADORNO R., *The Paradoxical Notion of Human Dignity*, in *Rivista Internazionale di Filosofia del Diritto* 2/78 (2001), 154. The Constitution of India does not mention the word as such. But the “Protection of Human Rights Act, 1993”, by which the Indian Government constituted the National Human Rights Commission, defines human rights as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. Cfr. CHATHANATT J., *Human Rights: A Historical Overview*, in *Vidyajyoti Journal of Theological Reflection* 65/2 (2001), 112. For a selection of legal texts with explicit reference to human dignity, see KNOX J. and M. Broberg, *Dignity, Ethics and Law*, Copenhagen 1999.

<sup>14</sup> Cfr. BROWNLIE I. (ed.), *Basic Documents on Human Rights*, Oxford 1971, 8.

<sup>15</sup> FLETCHER, *In Search of Absolutes*, 65. In fact, A. Lincoln was alluding to the Virginia Declaration of Independence in 1776 which had already declared: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are life, liberty and the pursuit of happiness”. According to A. Lincoln, the founding of America occurred not with the 1789 Constitution, but with the 1776 Virginia Declaration of Independence. But this basic equality of all was enshrined in the Constitution only in 1868 with the XIV Amendment. In Germany such a change occurred (“Alle Menschen sind vor dem Gesetz gleich”, Article 3) only in 1949 as against the Weimar Constitution of 1919 which stated that “Alle Deutschen sind vor dem Gesetz gleich”. Cfr. GAUR A., *Human Rights: Dimensions and Challenges*, in *Archiv für Rechts und Sozialphilosophie Beiheft* 88 (2001), 48. Article 14 of the Indian Constitution (1949) says on fundamental rights: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

inalienable properties of the personhood itself which the state and the society are supposed to respect.<sup>16</sup>

The Preamble of the United Nations Charter says that the people look forward to “(...) reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small (...)”.<sup>17</sup> So human rights are no longer a matter of belonging to a particular state or community, but something antecedent to it and originate from the very nature and dignity of the human being. They are no more the result of particular social systems or the gratuitous gift of the society, but have an ontological character in so far as they are based on the inalienable foundation of ‘being’. Consequently there is no need to invent new human rights; it is enough to explain what is already there in the nature of man. As human rights are consequents of the transcendent dignity of man as person, they can never be abrogated or derogated.<sup>18</sup>

As we have already pointed out, the *iter* of the formulation of the principle of subsidiarity is quite different. Whereas it received a rather welcoming attitude in the first part of the 20<sup>th</sup> century, the second part of the same century was rather hostile to it. There were doubts, in particular, as to its validity in the Church.<sup>19</sup> From the theoretical point of view, it seems that

<sup>16</sup> FLETCHER, *In Search of Absolutes*, 65. Cfr. WETLESEN J., *Inherent Dignity as a Ground of Human Rights: A Dialogical Approach*, in *Archiv für Rechts und Sozialphilosophie Beiheft* 41 (1990), 100.

<sup>17</sup> United Nations Charter (San Francisco: 26 June 1945); in BROWNLIE I. (ed.), *Basic Documents on Human Rights*, 93.

<sup>18</sup> But we need to explain and formulate these rights as principles; because, “Protecting human dignity even requires affirmative state action and generates the principles that private parties can be guilty of violating the Constitution by depriving other private persons of their dignity”. FLETCHER, *In Search of Absolutes*, 64.

<sup>19</sup> In 1981 J. J. Kelly wrote an article “The Silence about Subsidiarity” in which he lamented the nine year old silence from the part of the magisterium on the principle of subsidiarity. KELLEY J. J., *The Silence about Subsidiarity*, in *America* 145 (1981), 382-383. Nine years before, that is in 1972, Pope Paul VI, in his allocution on 23 June 1972, expressed his dissatisfaction that many of the conciliar reforms were being misunderstood, the principle of subsidiarity being one among them. After he aired his reservations at “subsidiarity which is intended to be autonomy”, the period that followed was of absolute silence about the principle of subsidiarity. “Le reazioni negative a cui abbiamo accennato sembrano altresì aver di mira la dissoluzione del magistero ecclesiastico : sia equivocando sul pluralismo, concepito come libera interpretazione delle dottrine e coesistenza indisturbata di opposte concezioni; sulla sussidiarietà, intesa come autonomia; sulla chiesa locale, voluta quasi staccata e libera e autosufficiente; sia prescindendo dalla dottrina, sancita dalle definizioni pontificie e conciliari”. *Acta Apostolicæ Sedis* 64 (1972), 498-499. In short, the nine year old silence in 1981 continued till 2008 when Pope Benedict XVI on 3 May affirmed once again the need for the application of the principle of subsidiarity in the society as well as the Church. Cfr. BENEDICT XVI, *Allocution to the Participants of the Plenary Assembly of Pontifical Academy of Social Sciences*, in *L'Osservatore Romano* 4 May 2008, 1. As far as my knowledge goes, Pope John Paul II has only once made a passing reference to its need in the secular society. “Je ne peux que me réjouir de voir invoqué, de plus en plus, le fecond principe de subsidiarité. Lancé par mon predecessor Pie XI dans sa célèbre encyclique Quadragesimo anno en 1931, ce principe est l'un des piliers de toute la doctrine sociale de l'Église. Il est une invitation politique d'une communauté donnée, par exemple régional, national, européen, en ne tranférant aux niveaux superieurs que cells auxquelles les niveaux inférieurs ne sont pas en mesure de faire face pour le service du bien commun”. JOHN PAUL II, *Ai partecipanti alla*

the difficulty is not with the principle as such but with the foundational stratum on which one finds its basis. As I have indicated earlier, the principle holds good or falls down together with its foundation.

At the same time in the secular field one sees more importance being granted to this principle. For example the fourth of the five principles adopted by the *Treaty of European Union* signed in Maastricht on 7 February 1992, accepted the principle of subsidiarity as one of the basic principles by which the European Union should be governed.<sup>20</sup>

Often the efforts to bring out the correct meaning of what is meant by subsidiarity end up in circumlocution and misunderstandings. There are people who mix the concept with decentralization and thus unconsciously venture at aborting the very uniqueness and individuality of the concept. The notion of subsidiarity escapes a delimited definition; because the notions and questions connected with it are often vague and ambiguous. The difficulty of going for a correct definition of the principle is very well reflected in the words of J. A. KOMONCHAK.

While the magisterial references to the principle are reasonably clear, the same cannot be said about the efforts of commentators and scholars of the Church's social teaching to explicate the meaning of subsidiarity or to draw out its implications in civil society. The differences here are often fundamental, concerned with questions about the relationship between the individual person and society or state, the notion of basic human rights, the idea of the common good, etc. It is not rare for these differences to be imported, sometimes unconsciously, into the discussions about subsidiarity in the Church.<sup>21</sup>

In many of the scholars, what we see is only a very limited understanding of this principle. In line with those who hold that it is only a sociological principle, *The New Catholic Encyclopaedia* defines the principle of subsidiarity as "the limits of the right and duty of the public authority to intervene in social and economic affairs".<sup>22</sup> Our enquiry will show that this definition is far from satisfactory. Perhaps a classic expression of the principle can be seen in *Quadragesimo anno* of Pope Pius XI, which has ever since been quoted in whatsoever discussion on subsidiarity. It is to be noted that the pope does not try to give a definition; he is content with a rather detailed explanation of what it means.

(...) 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

---

*conferenza dei Presidenti dei Parlamentari dell'unione Europea* 23 Settembre 2000, in *Insegnamenti di Giovanni Paolo II*, vol. 23/2 (2000), 451.

<sup>20</sup> "The principle of *subsidiarity*, through which it is intended to harmonize intervention of the Community in the specific area of each of the States which comprise it and also coordinate their mutual action in order to avoid possible and frequent conflicts". MOLINERO M. R., *The Principle of Subsidiarity and European Union*, in *Archiv für Rechts und Sozialphilosophie Beiheft* 59 (1995), 197.

<sup>21</sup> KOMONCHAK J. A., *Subsidiarity and the Church: The State of the Question*, in *The Jurist* 48 (1988), 301.

<sup>22</sup> MULACHY R. E., *Subsidiarity*, in *New Catholic Encyclopaedia*, vol. 13, 1967, 762.

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.<sup>23</sup>

This description apparently situates the principle in a two way direction: allowing the individuals or communities to do for themselves what they can do and helping them whenever they fall short of. It is the acceptance of the simple fact that allowing or enabling individuals or lower organs of society to do with authenticity and integrity all they can do, according to their own initiative, inventiveness and socio-cultural context, is a matter of justice towards them. In normal usage, it may sound that the word is coined from 'subsidiary' with an implication of being subordinate or secondary in importance. But the actual root of the word is the Latin "*subsidium*", meaning help or support. Hence the concept means that the existence of the larger social bodies is justified only in relation to the *subsidium* they offer to the smaller and less powerful bodies. In other words, larger social bodies exist in order to offer *subsidium* or help to the smaller ones and not to supplant them. Society exercises this function positively by doing whatever it can and by providing whatever facilities the individuals and the smaller organizations need to attain their individual and collective goals and negatively by restricting its own interference only to necessary situations and thus leaving individuals and groups to act in accordance with their own judgement and in full freedom.

M. R. MOLINERO gives six diverse interpretations to the principle of subsidiarity in connection with its application to the European Union.<sup>24</sup> All

<sup>23</sup> PIUS XI, *Quadragesimo Anno*, n. 79 in *Acta Apostolicæ Sedis* 23 (1931), 203. For English trans. IHM C. C., *The Papal Encyclicals 1903-1939*, United States 1981, 428.

<sup>24</sup>1. "The simplest interpretation is that this is a principle limiting competences, which equally opposes both unlimited autarchy and interventionism. 2. Another interpretation indicates at it is a principle linked to the principle of solidarity, but totally different from it, inasmuch as it affirms the full independence of the lower-level political organizations from the State - *autonomy* - to fulfil functions that fall to them; subsidiarity implies only aid, subsidy. 3. Then a more radical interpretation. There is absolute differentiation of the areas of action. All the political organizations that exist within the State have full right to self government and self-regulation: *autarchy*. The higher political organizations, such as the State, and where pertinent, the European Community, should never interfere. These have only supplementary competence, and that when requested. 4. This interpretation defines and qualifies the action of the State and, when such is the case, of the European Community. It is not a restriction, and far from a refusal or an invitation not to intervene. Subsidiarity has a positive meaning. Thus, any interpretation that reduces subsidiarity to a purely supplementary activity, as is the intention of economic liberalism, is excluded. It is not the marking of a limit, but rather the *qualifying* of an activity. 5. The principle of subsidiarity not only does not contradict the positive action of the State, and, when such is the case, of the European Community, in order to achieve the welfare of the respective political communities, but rather, subsidiarity is required by the higher principle of *common good*: that is, the principle of common good and the principle of subsidiarity are fully compatible, since both have the same goal to achieve, which is social welfare. Neither does it entail a contradiction of the principle of *solidarity*, it rather complements this. It is not merely an invitation to give aid, since what it implies is a true obligation to do so. Hence it is of great importance in the face of a possible neglecting of functions, or of a passive attitude, or of 'silence' on the part of the State, or, when such is the case, of the European Community. 6. It is a genuine juridical principle, of a constitutional nature, of the division and definition of areas of competence, which is intended to juridically

of them are correct in that they emphasise one or another important aspect of this principle. But their principal drawback is that they do not situate themselves on a metaphysical foundation. In other words they forget the source of this important principle from which spring all other duties and responsibilities. Devoid of a concrete and convincing foundation, these interpretations, although true, stand in vacuum. It is precisely here that J. A. KOMONCHAK makes an important contribution. He enumerates some nine elements of the principle of subsidiarity.<sup>25</sup>

1. The priority of the person as the origin and purpose of society: *civitas propter cives, non cives propter civitatem*.
2. At the same time, the human person is naturally social, only able to achieve self-realization in and through social relationships – what is sometimes called “the principle of solidarity”.
3. Social relationships and communities exist to provide help (*subsidium*) to individuals in their free but obligatory assumption of responsibility for their own self-realization. This “subsidiary” function of society is not a matter, save in exceptional circumstances, of substituting or supplying for individual self-responsibility, but of providing the sets of conditions necessary for personal self-realization.
4. Larger, “higher” communities exist to perform the same subsidiary roles toward smaller, “lower” communities.
5. The principle of subsidiarity requires *positively* that all communities not only permit but enable and encourage individuals to exercise their own self-responsibility and that the larger communities do the same for smaller ones.
6. It requires *negatively* that communities not deprive individuals and smaller communities of their right to exercise their self-responsibility. Intervention, in other words, is only appropriate as “helping people help themselves”.
7. Subsidiarity, therefore, serves as the principle to regulate competencies between individuals and communities and between the smaller and larger communities.
8. It is a formal principle, needing determination in virtue of the nature of a community and of particular circumstances.
9. Because it is grounded in the metaphysics of the person, it applies to the life of every society.

As J. A. KOMONCHAK notes, it is very risky to bring together the multifarious meanings of the principle of subsidiarity into a definition and reduce it to the level of a statement. It is a very complex reality encompassing the manifold relationship among various levels in the administrative structure of any society and the relationship among the civil

---

coordinate the functions corresponding to lower-level political entities and those corresponding to the State, and, where pertinent, to the European Community. Does it add anything to the idea of common good which enables it to be considered as an independent principle? This is precisely the case; it is a general principle for the division of competence and the marking of areas of competence, and also of responsibility. It is based on a pluralist conception of social, political and economic organization, and also on a gradual or graded conception of political structure”. MOLINERO M. R., *The Principle of Subsidiarity and European Union*, 199-200.

<sup>25</sup> Cfr. KOMONCHAK J. A., *Subsidiarity and the Church: The State of the Question*, 301-302.

society, social organisation and institutions, private as well as public. But it is clear that the whole argument begins and ends with the dignity of the person as the absolute. C. E. MALDONADO also categorically asserts that subsidiarity is a formal principle whose metaphysical ground is the person and that it is by way of analogy and as a second movement that he develops its application to the low versus large scale communities.<sup>26</sup>

Commenting on the theme of discussion for the plenary session of the Pontifical Academy for Social Sciences, on 3 May 2008, Pope BENEDICT XVI said: “In choosing the theme *Pursuing the Common Good: How Solidarity and Subsidiarity Can Work Together*, you have decided to examine the interrelationships between four fundamental principles of Catholic social teaching: the dignity of the human person, the common good, subsidiarity and solidarity”.<sup>27</sup> It is important to notice that the pope posits the principles of subsidiarity and solidarity against the background of the human person and common good. The very concept of the principle of subsidiarity is based on the dignity of human person and the right of each and every individual to strive for his or her personal perfection.

To affirm that man is prior to the state is to accept that at the centre of all system comes man with all his right and obligations beginning with his right to live which is the fundamental of all other rights and from which springs all other responsibilities. From this basic proposition follow two other most important principles. What the state as well as the society does must be for the full realization of the person and never to substitute him. The state can never dispose human beings or deprive him of his fundamental right to live, this being the first of all other rights. The second important principle is that the person himself cannot but respect this fundamental and transcendental dignity. He himself is subject to certain ethical limits.

### ***§3. Human Rights and the Principle of Subsidiarity: What Are They for?***

We have seen that there is an inseparable relationship between human life and dignity of the person which forms the basis for all other rights and obligations and that it is the same dignity which demands the application of the principle of subsidiarity. But what are they standing for? Human rights and the principle of subsidiarity are not ends in themselves; they are means ‘for’.

R. NOZICK gives the example of a hypothetical experience machine and he concludes that human life cannot be reduced to a mere search for pleasure and that human beings act because they want ‘to be alive’. They are alive in and through their action. “Intersubjectively, the human being is nothing more or less than one’s own actions”.<sup>28</sup> Action is the means of authentic self realization and self determination in this authenticity of being

<sup>26</sup> MALDONADO, *Human Rights*, 75.

<sup>27</sup> BENEDICT XVI, *Allocution to the Participants of the Plenary Assembly of Pontifical Academy of Social Sciences*, *L’Osservatore Romano* 4 May 2008, 1.

<sup>28</sup> MALDONADO, *Human Rights*, 21.

a person is much more than any amount of pleasure an individual aspires for.<sup>29</sup>

“Human good requires not only that one *receive* and *experience* benefits or desirable states; it requires that one *do* certain things, that one should *act*, with integrity and authenticity; if one can obtain the desirable objects and experiences through one’s own action, so much the better. Only in actions (in the broad sense that includes the investigation and contemplation of truth) does one fully participate in human goods. No one can spend all his time, in all his associations, leading and taking initiatives; but one who is never more than a cog in big wheels turned by others is denied participation in one important aspect of human well-being”.<sup>30</sup>

It is by his own action that man attains his self perfection – “*Omne agens agendo perficitur*”. According to NELL-BREUNING, God himself respects this principle. Although human salvation is the grace of God, man is not absolutely passive in the attainment of this salvation. Only when man does his part, God acts on his own to complete what man himself cannot. This is an ordinary experience in any family too. The duty of the parents is not to walk for the child but to help the child walk for himself.<sup>31</sup>

This is the area where human rights and the principle of subsidiarity show their concern: creation of freedom. They try to create as much freedom for the individuals so that each human being can ‘act’ in his/her own way. In one of its judgements, the American supreme court decreed: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe and of the mystery of human life”.<sup>32</sup> So respect for human rights indicates respect for a person’s dignity and that is nothing but the respect for the inherent right to be and to act independently. Freedom of action is the generic field in which various forms of freedom such as of thought, speech, movement, education, family status, religious adherence, association, work, etc. converge. The same is the view of R. M. GOLDIE when he says that in talking about human rights one must remember in mind that the nature of personal being and the value of personal being are closely related, and that the nature and value consist in the creation of autonomous persons.<sup>33</sup>

<sup>29</sup> “Suppose you could be plugged into an ‘experience machine’ which, by stimulating your brain while you lay floating in a tank, would afford you all the experiences you choose, with all the variety (if any) you could want: but you must plug in for a lifetime or not at all. On reflection, is not clear, first, that you would not choose a lifetime ‘thrills’ or ‘pleasurable tingles’ or other experiences of that type? For, ... one wants to *do* certain things (not just have the experience of doing them); one wants to *be* a certain sort of person, through one’s own authentic, free self-determination and self-realization; one wants to *live* in the active sense oneself, making a real world through that real pursuit of values that inevitably involves making one’s personality in and through one’s free commitment to those values”. NOZICK R., *Anarchy, State and Utopia*, New York 1974, 42-45. Cfr. FINNIS J., *Natural Law and Natural Rights*, Oxford 1980, 95.

<sup>30</sup> FINNIS J., *Natural Law and Natural Rights*, 147.

<sup>31</sup> NELL-BREUNING O., *Zur Sozialreform: Erwägungen zum Subsidiaritätsprinzip*, in *Stimmen der Zeit* 157 (1955), 3.

<sup>32</sup> BENESTAD J. B. (ed.), *Human Rights, Virtue and the Common Good*, Lanham 1996, 23.

<sup>33</sup> R. M. Goldie identifies five points as the key principles of human rights: “(1). The nature of personal being and the value of personal being are closely interconnected. (2) The Fact that

Thus although its formulations and expressions may differ, the underlying truth is the same: human life is worth living and it has its inherent dignity and therefore it must have the proper ambience to live in its physical as well as spiritual integrity. This is nothing but the recognition of the principle that human being is an end in itself and that it could not be considered a means for something else.<sup>34</sup> All are born free and by nature nobody is subjected to anyone else. Aquinas formulated this principle theologically: no man with a rational nature is ordained to another person as an end, but to God alone.<sup>35</sup> Therefore if we want to make a statement of purpose of human rights, it should necessarily be a statement of the ability or possibility of living out the personal life in its integral form. It should speak of the possibilities for human beings to make a life for themselves. It should entail not only the equal opportunity shared by all for an independent living depending on specific means but also a choice of the kind of life one would aspire to lead within the limits of personal responsibility.

Kant would say that the aim of law is the preservation of freedom. For him, strictly speaking, there is only one innate right, the right to freedom or liberty. This is the only one original right that can be properly said to be belonging to every human being by virtue of his being a member of the human family and without which one would be reduced to the level of mere beasts. But this freedom should not be construed as the arbitrary will of doing whatever one wants but as a right to lawful liberty which takes into account the right to freedom of others and which reflects on one's own rational will.<sup>36</sup> Any violence against this right 'to be' and 'to act' is dehumanising and C. E. MALDONADO goes to the extent of saying that violence is the source of human rights. It is because there is violence, that we speak of human rights. Fighting for each one's 'space' is the negative and

---

persons have value entails the fact that they have human rights. (3) Human rights, like the capacities of human beings are interdependent; as they are realized, human beings become autonomous persons. (4) Human beings who are disabled (in the broadest sense) or disadvantaged may have limited capacities for achieving autonomous personal well-being within the context of the social order, but the interdependency of capacities and this entails that they be recognised as persons deserving the protection of all human rights insofar as they are able to exercise them within the context of responsible personal life. (5) This is a human right to wholeness – often expressed as a right to personal development and dignity". GOLDIE R. M. (ed.), *Image of Man in Human Rights Legislations*, Rome 1985, 229.

<sup>34</sup> "Though expressed in widely varying ways, in conventions, declarations, constitutions, scholarly works etc., human rights are based upon identical fundamental conceptions. Most fundamental is the idea of human rights as presuppositions of a human life worth living, in whatever minimal sense. No life can be worthwhile without enforceable guarantees, against the state and others, to physical integrity, freedom of thought and action, and minimal means of subsistence". KAPTEIN H., *The Morals of Post-Modern Human Rights*, in *Archiv für Rechts und Sozialphilosophie* Beiheft 51 (1993), 155.

<sup>35</sup> "*Secundem ordinem finis, nihil homine existit, nisi solus Deus, in quo solo perfecta beatitudo hominis consistit*". THOMAS AQUINAS, *Commentary on the Sentences of Peter Lombard*, 2. 44. 1. 3.

<sup>36</sup> SWEET W., *Kant, Rights and the General Will*, in *Indian Philosophical Quarterly* 31/1-4 (2004), 336-340.

making life possible and the enlargement of these possibilities are the positive expressions of human rights.<sup>37</sup>

A careful study would reveal that the same is the aim of the principle of subsidiarity. The only difference is that human rights are concerned with individual person in all its concreteness versus society; whereas the principle of subsidiarity seeks to establish the same kind of freedom for all the structures of human life. According to NELL-BREUNING, the function of subsidiarity is to safeguard the “autonomy and responsibility characteristic of the human individual vis-à-vis society”. But subsidiarity does not limit itself to the creation of freedom in individual life, but tends to encompass all structures of the society. The principle applied in both the movements is the same, but the sphere of activity is broader.<sup>38</sup> It is in this sense that Pope PIUS XI has first developed the principle of subsidiarity. His argument was first based on the person principle and then analogously he moved to argue for the same kind of freedom for the lower organizations. In the view of C. E. MALDONADO, the first objective of the principle of subsidiarity is to care for the person’s development in and through social relationships with the implication that social relations must be devised in such a way that they provide the necessary conditions of the development of the individuals. It is by way of analogy and second movement, as it is pointed out earlier, he applies the principle of subsidiarity to various organisations and communities.<sup>39</sup> That means the first and foremost duty of the principle of subsidiarity is to create free individuals who can act authentically on their own. Of course it is an injustice from the part of the society and the higher social organizations not to leave space for individuals and lower organisms to flourish on their own initiative and naturally it is a question of basic human right.

According to F. KLÜBER, subsidiarity operates at two levels. In the primary level the principle of subsidiarity regulates the activities of the person and of the society with a view to the full development of the person. To constitute the individual as a free and morally responsible person is the first and foremost priority of the society. It is for such a development of the individual that the society offers *subsidium*. This help is never to supplant individual initiatives, rather to educe and enhance them. The principle of

---

<sup>37</sup> “Violence has become a reality for the individual, for large human groups and for whole communities. It becomes ever more anonymous, but at the same time increasingly systematised. In such a situation the individual has become perfectly superfluous and accidental: ‘use-it-and-toss-it-away’. In this situation such large structures and organisations as army, company, Church or political party are taken as ends in themselves; the individuals can disappear provided the structure perdures. Violence therefore means the total or virtual elimination of individuals and is imposed, despite themselves, on entire peoples, societies and cultures. ... It is in such circumstances that human rights have taken on an importance never before known in the history of mankind. To say that violence is the principle of human rights is equivalent to saying that it is because there is a violent regime – whether political, social, military or psychological – that problems of human rights exist. The meaning of human rights consists in first criticizing, and then gradually or totally suppressing the state of violence against human dignity which impedes the full affirmation of human life and reduces it merely to striving for survival”. MALDONADO, *Human Rights*, 35 and 20.

<sup>38</sup> Cited in MALDONADO, *Human Rights*, 71.

<sup>39</sup> *Ibid.*, 75.

subsidiarity acts as “help that facilitates self-help” (*Hilfe zur Selbsthilfe*). The second function of this principle is the mediation and regulation of the social function of the agencies dedicated to the development of the person. Just as one speaks of the subsidiary function of the society in relation to the person, in the similar way one can speak of a variety of agencies. Some are immediate to the individuals and therefore have more influence too on the latter. Just as the individuals have the priority in action, the lower organisms immediate to the individuals have the same priority in relation to the large and mediate organisms or associations. The higher and less immediate social agencies’ intervention is regulated by the principle of subsidiarity that their intervention is justified only when, and to the extent that, “lesser” or more immediate agencies are not able to discharge their functions unassisted. The priority of action remains with the “lesser”, more immediate agencies. As the low level structures and associations are more immediate to the actual living situation of human beings, they have the first right to be at the service of human beings and they have every right to be free from all other coercions.

There is every legitimacy in such a society for the existence of the state and exercise of power. But that is “to create the framework, the preconditions, so that individuals and groups can develop themselves”.<sup>40</sup> Individual aspirations, whether it is for the personal benefit or for that of others, if they are within the spectrum of the common good, have to be greeted with freedom and liberty and if needed the society is duty bound to give all protection. J. FINNIS is unequivocal in saying that unless the individuals are permitted to act on their own, with integrity and authenticity, it will not be possible to attain self perfection. Only in self motivated acts, can a human being express himself perfectly as he is.<sup>41</sup> Therefore all other systems in the society must be devised in such a way that they help the individuals act on their own and find their fulfilment.

...the proper function of association is to help the participants in the association to help themselves through the individual initiatives, or

<sup>40</sup> LEYS A., *Structuring Communion: The Importance of the Principle of Subsidiarity*, in *The Jurist* 58 (1998), 85. Modern threats to human life are much more intricate that unless with the strong intervention of the government, it is not at all possible to overcome the tyrannies that oppress individuals. This understanding is reflected in the words of R. M. Goldie: “Realization of human freedom is a far more complex matter than simply leaving at alone to flourish. This is, in part, related to the fact that people are experiencing more and more a kind of tyranny from many other elements of collective life – from economic and corporate structures; developments in science and technology, religious, cultural and social values and institutions; and even from very powerful individuals. In some ways, this tyranny seems to be coming from within those human creations which, ironically have been developed to help achieve human well-being”. GOLDIE R. M. (ed.), *Image of Man in Human Rights Legislations*, 219.

<sup>41</sup> W. Bertrams presents this as a metaphysical principle. “Hoc principium potius est *metaphysicum*: Est socialis ipsa natura humana, et ideo natura humana etiam ontice, immo primarie ontice, exigit «spatium» in quo se evolvere possit; quod spatium societate constituitur, quatenus ipsum esse sociale, i. e. ordo relationum intentionalium inter personas, quo personae unionem constituunt, verum bonum, veram perfectionem constituit praebendo homini tamquam personae verum auxilium seu subsidium. Hoc sensu societas subsidium pro homine est primarie natura sua metaphysica; societas natura sua metaphysica ita naturae metaphysicae hominis convenit et congruit”. BERTRAMS W. *De Principio subsidiaritatis in iure canonico*, *Periodica* 46 (1957), 16.

more precisely, to constitute themselves through the individual initiatives of choosing commitments (including commitments to friendship and other forms of association) and of realizing these commitments through personal inventiveness and effort in projects (many of which will, of course, be co-operative in execution and even communal in purpose). And since in large associations the process of decision-making is more remote from the initiative of those many members who will carry out the decision, the same principle requires that larger associations should not assume functions which can be performed efficiently by smaller associations.<sup>42</sup>

But he is quick to point out that the principle should not be much tied down with the concept of efficiency. Being a matter of justice and one's right, it goes well beyond the concept of efficiency and it is closely related to liberty.<sup>43</sup>

It is therefore a fundamental aspect of general justice that common enterprises should be regarded, and practically conducted, not as ends in themselves but as means of assistance, as ways of helping individuals to 'help themselves' or, more precisely, to constitute themselves. And in all those fields of activity, including economic activity, where individuals, or families, or other relatively small groups, can help themselves by their own private efforts and initiatives without thereby injuring (either by act or omission) the common good, they are entitled in justice to be allowed to do so, and it is unjust to require them to sacrifice their private initiative by demanding that they participate instead in a public enterprise; it remains unjust even if the material dividend they receive from the public enterprise is as great as or even somewhat greater than the material product of their own private efforts would have been. The principle of subsidiarity is a principle of justice.<sup>44</sup>

#### **§4. Conclusion**

I. KIŠŠ claims that the greatest achievement of human kind in the 20<sup>th</sup> century is not atomic energy or victories in the space, but its own humanization as symbolized by the Universal Declaration of Human rights and the subsequent related documents.<sup>45</sup> The struggle for human rights and respect for the principle of subsidiarity are not new phenomena. Was not human rights the core issue in the exodus of Moses and the Israelites and later in the teachings of the prophets? When JETHRO advised MOSES<sup>46</sup> to share the authority on the people of God with the "able men", and to

---

<sup>42</sup> FINNIS J., *Natural Law and Natural Rights*, 146-147.

<sup>43</sup> *Ibid.*, 159.

<sup>44</sup> *Ibid.*, 169.

<sup>45</sup> Geneva Convention on Refugees in 1951, The Charter of Rights of Children (1959), International Bill of Human Rights (1966), The Final Document of the Helsinki Conference on Security and Cooperation in Europe, Declaration on Elimination of Discrimination against Women (1967), The Vienna Declaration (1993) etc. Cfr. KIŠŠ I., "The Gospel and Human Rights", 58-59; CHATHANATT J., *Human Rights: A Historical Overview*, 118-121.

<sup>46</sup> Ex. 18: 13-23.

authorise them to decide on minor cases for themselves, was it not an invitation to act on the basis of the principle of subsidiarity? It was not an alien issue for the New Testament writers as well. The election of seven deacons in Acts 6 is a telling New Testament example for the application of the principle of subsidiarity in the life of the apostolic Church. When St. Paul said “There is neither Jew, nor Greek, slave nor free, male nor female”, he was certainly pleading for the cause of human rights. All men of all times were conscious of them, because they are facts of natural law. But the precise contribution of 20<sup>th</sup> century is that it has codified and enshrined these principles of natural law in legal documents and thereby attached juridical sanctions for their violations. It is the biblical image of man created in the image and likeness of God and the ensuing dignity of man that form the foundation of human rights. They, human rights and the principle of subsidiarity, together try to create an atmosphere of freedom conducive for the children of God to live as *theomorphous*.

SUNNY MATHEW