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Theological Comments on the Validity of the Principle of Subsidiarity in the Catholic Church

Abstract (Deutsch) – Der Artikel thematisiert die Diskussion um die Geltung des Subsidiaritätsprinzips auch als Strukturprinzip der katholischen Kirche. Ausgangspunkt ist die Grundlegung des Prinzips in der Enzyklika *Quadragesimo Anno* von Pius XI. 1931 und die Feststellung von Pius XII., dass das Prinzip auch in der Kirche gelte. Davon ausgehend wird die kontroverse Rezeptionsgeschichte in lehramtlichen Dokumenten sowie dessen Aufnahme in die Grundsätze für die Reform des CIC dargelegt. Die Diskussion wird um ekklesiologische und theologische Argumente für die Geltung des Subsidiaritätsprinzips als sozialem Prinzip innerhalb der Kirche und für deren hierarchische Strukturen ergänzt. Die hier vorgetragenen Argumente lassen eine strukturelle Reform der römisch-katholischen Kirche als unverzichtbar erscheinen.

Abstract (Français) – Cet article présente la discussion concernant la validité du principe de subsidiarité comme principe structural de l'Église Catholique. Son point de départ est le fondement de ce principe dans l'encyclique *Quadragesimo Anno* de Pie XI, en 1931, et la constatation que ce principe est valable aussi dans l'Église. À partir de là, l'auteur présente l'histoire de la réception controversée de ce principe dans les documents du Magistère ecclésial ainsi que sa répercussion sur le droit canonique. Des arguments ecclésiologiques et théologiques en faveur de la validité du principe de subsidiarité comme principe social, également valide dans l'Église pour ses structures hiérarchiques, nourrissent la réflexion. Ces arguments montrent la nécessité d'une réforme structurelle de l'Église Catholique Romaine.

“Every social activity is inherently subsidiary; it must serve to support the members of the social body and never destroy or absorb them. Truly luminous words! They apply to all degrees of social life, and also to the life of the Church, without prejudice to its hierarchical structure.” (Pius XII 1948, 144-145) Had Pope Benedict XVI presented this doctrine, he could have expected consent and obedience to it on the basis of the existing ecclesiastical legislation according to c. 750 § 2 CIC/1983, established by his predecessor in office in 1998 through the *motu proprio Ad tuendam fidem* (Johannes Paul II 1998, 457-461).

However, the statement did not come from Benedict XVI; its author is Pope Pius XII, who established the magisterial application of the subsidiarity principle in the Church with these words in his address to the College of Cardinals on 20 February 1946, following the social encyclical *Quadragesimo anno* of his predecessor Pope Pius XI. No one has objected to it – but this statement has not been met with consent and obedience, either. Instead, it has been questioned even by members of the Curia.

Since the mid-eighties of the last century the dispute that arose from this has been shaping the debate concerning the question of the validity of the principle of subsidiarity within the Church – a discussion in which nothing less than the future direction and shape of the Church seem to be at stake (cf. Kistner 2010). Some of the highest representatives of the Catholic Church have been involved in it, including Cardinals Hamer and Ratzinger and Walter Kasper, who was later appointed cardinal. Canon lawyers, dogmatic theologians and social ethicists have also participated in the debate.¹ The pros and cons of whether the principle of subsidiarity applies to the inner functioning of the Church have been hotly debated since then across theological disciplines throughout the world (s. Leys 1995).² The discussion was unleashed by a short passage in the final report of the Extraordinary Synod of Bishops in 1985, which, given the clear teaching by Pius XII, has caused considerable surprise. The document contains the following striking formulation: “It is recommended that a study be made to examine whether the principle of subsidiarity in use in human society can be applied to the Church, and to what degree and in what sense such an application can and should be made.” (Extraordinary Synod 1985)

Daniel Deckers has commented on this with an incredulous “I beg your pardon?” (Deckers 2005, 286) “Something that a pope had claimed in 1946 (namely that the subsidiarity principle should apply in the Church) is presented by the participants of the 1985 Synod of Bishops as a possibility – so this is how you can treat the teachings of the Magisterium if you wish? Or can’t one?” (ibid.) In any case, once the discussion has erupted, it cannot be stopped by the argument of authority, ‘but Pope Pius XII taught...’. It needs to be continued and it is still far from having reached an end – even if the debate on this issue has somewhat calmed down in recent times. The Magisterium of the Church urges theologians and theological discussion to engage with it.

During the forty years prior to the Synod of Bishops, the validity of the subsidiarity principle within the Church was hardly ever questioned. However,

¹ I will not provide an extensive discussion of the issue in this article. Daniel Deckers has already done this excellently. See Deckers 2005. Rather, I intend to add to the discussion some theological aspects that have not yet been treated.

² See also Kaufmann 1988, Komonchak 1988, Losada 1988, Leys 1998, Brown 2009.

an opposite view has been taken by the Roman canon lawyer Jean Beyer (1986-1988), who has stated both that Pope Pius XII considered the application of the subsidiarity principle within the Church to be only hypothetical, and that the Second Vatican Council did not use the term. But this thesis seems rather construed and does not convince. Conciliar and post-conciliar statements actually lead to the conclusion that until 1985 the highest ecclesiastical authority operated with the assumption of the validity of the subsidiarity principle within the Church.

Following the magisterial definition of the subsidiarity principle by Pope Pius XI in the social encyclical *Quadragesimo anno* in 1931 and the endorsement of its validity within the Church by Pope Pius XII, it was Pope Paul VI who presupposed the validity of the principle of subsidiarity in the Church as a matter of course for the reform of the Code of Canon Law. This was expressed in the fourth, fifth, sixth and seventh guiding principles for the revision of the Code of Canon Law, providing irrefutable evidence that the Pope and the cardinals wanted the new Code to be determined by this principle.³ Pope Paul VI also implicitly postulated the application of the subsidiarity principle within the Church in his speech to the participants of the Second Congress on Canon Law in Milan on 17 September 1973 (Paul VI 1973). Heribert Heinemann has offered an in-depth study of the canonical reception of the subsidiarity principle. He, too, considers the recommendation for discussion proposed by the Extraordinary Synod as “surprising” (Heinemann 1995, 21). Furthermore, as Pavel Miklušćak (1995) has convincingly demonstrated, the Second Vatican Council implicitly assumed the validity of the subsidiarity principle within the Church; what is more, it embraced the concern about its intra-ecclesial implementation. How come, then, that there is a renewed debate on foundational principles?

³ CIC, Introduction. The guiding principles state the following: “4. In order that the Supreme Legislator and the bishops may collaborate in the care of souls and may exercise the pastoral office in a more positive fashion, those faculties to dispense from general laws which until now have been extraordinary are to become ordinary with reservations to the supreme power of the universal Church or other higher authorities only in those areas which require an exception on account of the common good. 5. Careful attention is to be given to the greater application of the so-called principle of subsidiarity within the Church. It is a principle which is rooted in a higher one because the office of bishops with its attached powers is a reality of divine law. [...] 6. On account of the fundamental equality of all members of the Christian faithful and the diversity of offices and functions rooted in the hierarchical order of the Church, it is expedient that the rights of persons be appropriately defined and safeguarded. This brings it about that the exercise of authority appears more clearly as service that its use is more clearly reinforced, and that abuses are removed. 7. In order that such objectives may be appropriately implemented, it is necessary that particular attention be given to the organization of a procedure which envisions the protection of subjective rights. [...]”

Prior to the Extraordinary Synod of Bishops, at the Assembly of Cardinals, Cardinal Jérôme Hamer (1986) spoke out vehemently against an intra-ecclesial application of the subsidiarity principle and pointed out that the structures of the Church are not comparable to those of a society, since they must be attributed to divine right. He also noted that Pope Pius XII had spoken of a restricted validity of the principle that was without prejudice to the hierarchical structure of the Church (*senza pregiudizio della sua struttura gerarchica*).

The discussion sparked by him is of crucial importance in many ecclesiastical areas. It indirectly influences the further development of liturgy: especially the translation of liturgical texts and the question of inculturation – one just needs to remember the instruction *Liturgiam authenticam* of 28 March 2001 (Congregation for Divine Worship and the Discipline of the Sacraments 2001). The evaluation of theologies of the people, of liberation as the Latin American path of a poor church as a Church of the Poor, an adequate determination of the relationship between the local and the universal church, as well as the position taken on the issue of respect and recognition of human rights by and within the Church, are also affected by this debate.

The principle of subsidiarity first of all describes the primacy of the individual over the community, and secondly the priority of the smaller unit over the bigger one. Formally, it is a social and not a theological principle. However, it is not just a principle of order that one is free to make use of or not, at one's own discretion. For reasons of justice, it is not possible to renounce a subsidiary structure for society. The principle of subsidiarity originates as a social principle from natural law and is formulated with respect to civil society, articulated by Pope Pius XI in the following wording in 1931: "Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them." (QA 79)

Critiques of the applicability of the subsidiarity principle within the Church are based mainly on the position that the Church is a social entity *sui generis* and is not comparable with other social structures. This is why the principle of subsidiarity is supposed not to be valid and applicable within the Church. Furthermore, it is claimed that the subsidiarity principle is a guiding principle from social philosophy and not a theological principle of faith. Concerning the question of the truth of faith, of which the Church is considered to be a part, the principle of subsidiarity cannot therefore claim validity.

On the other hand, it is argued that the mysterious nature of the Church does not annul its social character and that the subsidiarity principle can therefore

claim validity in the Church. This is substantiated with reference to the incarnational structure of the Church.

With regard to the argument that through the principle of subsidiarity the Church can and wants to set a norm for actions within society but not for the faith of its members, it should be noted that faith also, understood as *fides qua creditur*, represents an act of believers from whom the Church is composed. The faithful actions of believers may therefore not be withdrawn *a priori* from the scope of the subsidiarity principle.

However, it seems to me that this argument has hardly been considered so far. This may be because the discussion has focused entirely on defining the relationship between the local and the universal Church. However, it is important for determining the relation between the shared priesthood of all believers and the ministerial priesthood. I will return to this issue at the end of the article.

In any case, the question of the validity of the subsidiarity principle within the Church is theologically charged. It has to be addressed both ecclesiology and theologically.

The Dogmatic Constitution of the Second Vatican Council on the Church, *Lumen gentium*, in its eighth chapter defines the Church as a complex reality that coalesces from a divine and a human element. According to *Lumen gentium*, the Church should always be understood as a mystery and as a social reality at the same time. The mysterious character and the social character of the Church cannot be separated from one another. This, however, allows the possibility of discussing whether the Church should be considered as a social entity *sui generis*, implying that subsidiarity as the character of its social constitution might damage the Church as a mystery. In that case, its subsidiarity character would need to be overridden by the Church as a mystery, for which the argument that the Church has a social structure *sui generis* is used. Or, this character should at least be limited in its claim to validity, which is contained in the statement: “without prejudice to its hierarchical structure”. But why should it be the case that the subsidiarity principle does not correspond to, or even contradicts, the Church as a mystery?

The principle that the mysterious nature of the Church does not cancel its social character, which was put forward programmatically by Walter Kasper, points in the right direction (Kasper 1987). Yet, it is insufficient for justifying the unrestricted application of the subsidiarity principle within the Church, because the mysterious nature of the Church is not exhausted by its social character. This is also why the question of the correlation between the internal theological principle and the external socio-philosophical principle of the complex reality of the Church needs to be clarified. How can a church that is structured in a subsidiary way serve the Holy Spirit in building up its body? This is the question to be asked following the analogy of *Lumen Gentium* 8. Or maybe

even more pointedly: can a church that is not structured by subsidiarity serve the Holy Spirit to build up its body? It could also be the case that a non-subsidiary organization of the social frame of the Church could cause harm to her being a mystery. The necessity of the application of the subsidiarity principle within the Church, in other words, could be proven by demonstrating the inadequacy of a church not structured by subsidiarity. This would require as a further step the need to argue theologically for the necessity of the principle of subsidiarity within the Church.

The following characteristics of a church that is structured by subsidiarity can be listed by way of example:

1. A church that is structured by subsidiarity in its corporate form respects, recognizes and protects the dignity of the human person. This also applies to matters of faith.
2. A church that is structured by subsidiarity in its corporate form, respects, recognizes and protects the dignity of each respective smaller unit. This also applies to matters of liturgical self-organization, of pastoral matters and issues of law.
3. A church that is structured by subsidiarity in its corporate form, respects, recognizes and protects the hierarchical principle present within it. This is a consistent requirement because subsidiarity presupposes hierarchy.

In contrast, what features would characterize a church that is not structured in a subsidiary way?

1. In such a church, the practice of the faith and the understanding of faith (*sensus fidelium*) of the faithful would have no constitutive significance. In this understanding, the church would rest in itself in institutional self-sufficiency.
2. In such a church, there would be no need for dioceses, since the dioceses would not derive from divine law if the universal Church preceded the local churches ontologically and temporally (cf. *Congregation for the doctrine of the faith* 1993). The universal Church would be more interior to the local churches than these could be to themselves. The Head of the universal Church could exert his power immediately, directly and always in each single local church. The bishops would be the civil servants of the Pope's administration (cf. Bier 2001, 376).
3. A church that is not structured by subsidiarity could ultimately no longer be represented hierarchically, since there would only be one level in it: the one that could be derived from divine right.

The principle of subsidiarity respects, recognizes and thus protects the practice of faith, a balanced relationship between unity and diversity, as well as the hierarchical

framework within the Church. It equally includes a prohibition on the presumption of competence (cf. Lutterbacher-Manieri/ Neuhold 2006, 76), a corollary in need of clear specification because of its momentous implications for the supreme authority within the Church. This prohibition on the presumption of competence has been infringed not infrequently in recent years by Popes John Paul II and Benedict XVI. I make this point with the reservation that it is still being debated whether such a thing can even be said. Daniel Decker evaluates the pontificate of the penultimate Pope in the following way: “Looking back on the pontificate of John Paul II it becomes clear that centralization and not respect for subsidiarity was the signature *per se* of this pontificate.” (Deckers 2005, 285) As a curial cardinal and later pope, Benedict XVI had already prepared to conclusively “end all abusive interpretations of a *communio ecclesiology*” (ibid., 291) with the declaration *Communio notio* of 1992, for which he was responsible as Prefect of the Congregation for the Doctrine of the Faith. This document defined the ontological and temporal priority of the Universal Church and in that way “corrected” the ecclesiology of Vatican II (LG 23) by asserting the contrary. The subsidiarity principle applies – when it is reformulated as a prohibition on the presumption of competence – directly to the overstretching of the papal claim to power. One can also formulate this as follows: the application of the subsidiarity principle in the Church is viewed by influential forces within the Church through the lens of church politics as a threat to the unity of the Church. That is why it is all the more important to prove that the principle of subsidiarity as a social principle corresponds to the inner principle of the Church.

Since it is a principle of social philosophy and not theology, it cannot immediately claim internal ecclesial validity. But it can do so if it can be related to the “theological principle” of the Church and if it can be said that the mystery of the Church is adequately expressed in a corporate form that is structured by subsidiarity, so that it is nevertheless necessary and appropriate in order to represent the mystery of the Church. This now needs to be shown regarding the three features that were identified for a church which is structured by subsidiarity.

1. The statement that a church which is structured by subsidiarity respects, recognizes and protects the dignity of the human person points to the fact that the Church cannot force the faithful to believe. The Church is a community that can only be followed freely, as Joseph Klein already proposed in his inaugural lecture in Bonn in 1946. (s. Klein 1947) Faith cannot be a matter of compulsion (s. c. 748 § 2 CIC/1983; s. Böhnke 2006). A church committed to the principle of subsidiarity recognizes religious freedom as a right corresponding to human dignity, renouncing coercion in matters of faith. The community respects, recognizes and protects the faith of the individual. Just like the promise of God’s faithfulness, human rights are something that has been given to the

Church, as Pope Paul VI already stated: “That is why everything that is arranged for securing order and peace in the community of Christians – like canon law on the ‘*forum externum*’ – stems ultimately from the Spirit and therefore does not create a disadvantage for the freedom and dignity of the human person, but rather strengthens and defends them.” (Paul VI 1973, 465)⁴ This is based on the axiom that the human being as a person is an end in him/herself. “The human being is not a person due to the fact that he and she are social, but they are social because each is a person.” (ibid.)⁵ According to the words of the Pope, any social order and authority “which is intended to guarantee this order” (ibid.)⁶ is to serve the human being as an end in himself or herself. The theological reason for this is that the God who has revealed himself in Jesus Christ as unconditionally prevenient love committed to humans (1 John 4:8,16) presupposes the freedom of the human being towards whom this love is directed. For it is only in the free consent of the human being that the divine love reaches its goal. Because God, who is unconditional love, wants people to share this love (Richard of St. Victor), God respects the freedom of the human being unconditionally. The complex reality of the Church therefore must be understood as an exchange (*commercium*) between divine and human freedom, as an interplay of freedoms (s. Böhnke 2013). If God unconditionally respects the freedom of humans, then ecclesial authority should do the same, at least when they claim the authority of God for their actions. The Church can be certain of God’s faithfulness, understood as the absoluteness of divine love throughout time, in the Holy Spirit. Trust in the faithfulness of God towards humans allows ecclesial authorities to refrain from coercion in matters of faith and practice. Instead, with the Holy Spirit, the interplay between freedoms in a dialogical and missionary way. Through the systematic development of legal protection in Canon Law, as it has been demanded in the sixth and seventh guiding principles for the reform of the Codex, the principle of subsidiarity needs to be given legal validity within the Church; God’s faithfulness to humans can thus be adequately represented as: “*Gloria Dei vivens homo*” (Irenaeus of Lyon).

2. A church with a subsidiary structure respects, recognizes and protects the dignity of each smaller unit. This implies recognizing, respecting and protecting the free initiative of the faithful, who join together for individual projects or in new societies, as well as recognizing the particular churches in which and from

⁴ Orig. ital. „Quindi, anche tutto ciò che viene imposto per garantire l’ordine e la pace nella Comunità dei cristiani – ecco il Diritto canonico in foro esterno – procede, in ultima analisi, dallo Spirito e perciò non reca pregiudizio alla libertà e alla dignità della persona umana, anzi l’avvalora e la difende.“ http://www.vatican.va/holy_father/paul_vi/speeches/1973/sepember/documents/hf_p-vi_spe_19730917_diritto-canonico_it.html (19.01.2014)

⁵ „L’uomo non è persona per il fatto che è sociale, bensì è sociale perché è persona.“

⁶ „un ordine, e un’autorità destinata a garantirlo“

which the Catholic Church is made up (s. cc. 215 and 216 CIC/1983). The right relationship between unity and diversity is safeguarded in the Church by prohibiting the presumption of competence at the higher level by renouncing the use of direct power over the smaller unit. Thus, the church respects the right to self-organization as the competence of the smaller unit.

The statements of the Second Vatican Council on the relationship between the particular church (= local church) and the universal Church have defined this balance in accordance with the principle of subsidiarity by refraining from awarding the Bishop of Rome immediate power within and over the particular churches. The Council pronounces this prohibition of the presumption of competence by assuming the ultimate competence for regulating the exercise of direct episcopal power to lie in the particular churches, in keeping with the principle of subsidiarity according to *Lumen gentium* 27: "Bishops, as vicars and ambassadors of Christ, govern the particular churches entrusted to them by their counsel, exhortations, example, and even by their authority and sacred power, which indeed they use only for the edification of their flock in truth and holiness, remembering that he who is greater should become the lesser and he who is the chief become as the servant (see Luke 22:26-27). This power, which they personally exercise in Christ's name, is proper, ordinary and immediate, although its exercise is ultimately regulated by the supreme authority of the Church, and can be circumscribed by certain limits, for the advantage of the Church or of the faithful. In virtue of this power, bishops have the sacred right and the duty before the Lord to make laws for their subjects, to pass judgment on them and to moderate everything pertaining to the ordering of worship and the apostolate."⁷ This balance between unity and diversity in the Church that was carefully elaborated by the Council stands in a certain tension with the teaching of the First Vatican Council on the immediacy of papal power in and over the particular churches. The usual way to seek to mitigate this tension has been to refer to the joint statement of the bishops of Germany, endorsed by Pius IX, on the jurisdiction of the Pope and the bishops, which had been given in response to the circular dispatched by Chancellor von Bismarck on the interpretation of the Constitution *Pastor aeternus* of the First Vatican Council (DH 3112-3117). According to this document, the Pope has the highest, ordinary and immediate authority over the whole Church, which is not restricted to "certain exceptional cases" but should only be used in emergency situations. In addition, the Pope is deemed not to possess the authority to amend the constitution of the Church. "The power of that divine institution upon which the papacy is based, also includes the episcopate; it also has its rights and obligations by virtue of the

⁷ S. also Nell-Breuning 1986, 155f., who writes about competence-competence in this context.

ordering made by God himself, which the Pope has neither the right nor the power to change” (DH 3115). The joint declaration of the bishops of Germany thus includes a double prohibition against the presumption of competence. It concerns the exercise of papal power in the particular churches outside emergency situations as well as the framework in which the papal primacy of jurisdiction is set by divine right.

In the Code of Canon Law, this balance has been maintained. However, it has been weakened by the fact that what should have been stated in the main clause in c. 333 CIC/1983 is found only in the relative clause. In § 1 the text states: “By virtue of his office, the Roman Pontiff not only possesses power over the universal Church but also obtains the primacy of ordinary power over all particular churches and groups of them. Moreover, this primacy strengthens and protects the proper, ordinary, and immediate power which bishops possess in the particular churches entrusted to their care.” It was left to the Congregation for the Doctrine of the Faith in its letter on some aspects of the Church understood as *communio* (Congregation for the Doctrine of the Faith 1992, n. 9) to upset the equilibrium between unity and diversity in the Church with lasting effects by affirming the ontological and temporal priority of the universal Church over the particular churches. Walter Kasper refuted this thesis of the Congregation for the Doctrine of the Faith with good theological reasons (s. Kasper 1989/2000; s. Kehl 2003); it leads to assigning to the Pope a power that is not only supreme, complete and regular, but also immediate within and over the particular churches, which he could exercise *at all times* and not only in emergencies that endanger the common good of the Church. The intra-ecclesial validity of the principle of subsidiarity is thus overridden in this field of application, and the balance between unity and diversity in the constitution of the Church is threatened. The letter of the Congregation states: “Therefore, *we must* view the office of the Successor of Peter not only as a ‘global’ service that reaches each particular church from ‘the outside,’ but as one already belonging to the essence of each particular church ‘from the inside’.” The office of the primate is therefore equipped by nature with true episcopal power – not only the highest, full and universal power, but also immediate power – over all, both over the pastors as [well as; MB] over all of the faithful.” The Congregation for the Doctrine of the Faith thus goes beyond the statement of the Second Vatican Council in *Lumen gentium* 22, where it is stated: “In virtue of his office, that is as Vicar of Christ and pastor of the whole Church, the Roman Pontiff has full, supreme and universal power over the Church. And he is always free to exercise this power.”

In a discussion at the prestigious ‘Essener Gespräche’ on subsidiarity, Norbert Lüdecke has sharpened the formulation of the issue. With reference to the case

of the previous Bishop of Limburg, Franz Kamphaus⁸, he asked his colleague Alfred Hierold: “You have explained that the primacy of jurisdiction does not subject the particular churches to the immediate control of the Pope. A papal intervention could only be legitimate according to the subsidiarity principle if normal governance has failed. Since much becomes clear when we discuss specific cases, my question is: has the Pope violated the principle of subsidiarity; that is, has he acted illegitimately in the Kamphaus case? If so, how is it possible to bring this criterion of legitimacy to function effectively in the Roman Catholic Church against the indisputable legality of the intervention of the primate? If not, in what did Bishop Kamphaus fail?” (Lüdecke 2003, 52f) Alfred Hierold replied that as far as he knew, he could not detect any failure on the side of Bishop Kamphaus. “In this respect, one could say that the intervention of the Pope, although legal – since he has full authority – was not legitimate.” (Hierold 2003, 55) Although Hierold qualifies his statement below with the remark that it should not be about his own but the Pope’s assessment of the legitimacy of his actions, this should probably be understood more as indicative of the problem, since Hierold had previously rejected the thesis of the direct subjugation of the particular churches by the papal primacy of jurisdiction, while noting that there are no dioceses exempt from this requirement.

The problem indicated in this particular case can probably not be resolved canonically but only ecclesialogically, as part of a pneumatological ecclesiology; it assumes the presence of God, given as a gift by the Spirit, in the foundational practices of the Church, above all in the celebration of the Eucharist. It is the Spirit of God presupposed in the promise of God’s faithfulness to humans, solicited and freely granted, who unites the Church and ‘makes’ it the Church. The Spirit founds the ecclesial nature of the particular churches as well as the universal church. Both of these are based simultaneously on the same source, God’s faithfulness to the human race. The ecclesial nature of the particular church does not originate from the fact that it experiences the universal Church as more inward to itself than itself. Ecclesiality is an attribute that belongs to the particular church and to the universal Church alike, with equal originality. It is precisely because of this that the unity of the particular churches among

⁸ In 1998 Pope John Paul II forced the German Bishops to withdraw from the consultation programme for pregnant women who are considering an abortion. According to German law it is necessary for these women to have such a consultation, and also the doctors so that they will not be prosecuted if they perform an abortion. The Pope argued that by participating in this programme the Church would become partly responsible for the abortion. Bishop Kamphaus, who was Bishop of Limburg from 1982 to 2007, resisted this instruction from the Pope for some time, but in 2002 he was forced to obey the papal instruction. Kamphaus had argued that by participating in this programme, the Church could contribute to saving the lives of many unborn children.

themselves and also the unity of the particular churches within the Church as a whole can be justified as original and not just as derived secondarily. This is why the one and only Catholic Church comes into being in and from particular churches (LG 23).

The Roman model of limiting the application of the principle of subsidiarity in the relationship between particular churches and the universal Church for the benefit of the universal Church by stating fixed points that have to be adhered to has no future. How would it be possible to regulate a church constitution that is based on divine right by drawing on divine law, or actually devalidating it, by appealing to c. 333 CIC? And yet, Pope John Paul II in his Post-synodal Apostolic Exhortation *Pastores Gregis* of 16 October 2003, following the Tenth Ordinary General Assembly, tried to do exactly that, without having said a word previously about the intra-ecclesial validity of the principle of subsidiarity. This text, which reflects the official church position in the magisterial discussion, should be quoted in this context:

“The Second Vatican Council teaches that, ‘as successors of the Apostles, the Bishops in the Dioceses entrusted to them possess per se all ordinary, proper and immediate power needed for the exercise of their pastoral office (munus pastorale), with no prejudice whatsoever to the power which, by virtue of his office, the Roman Pontiff possesses of reserving cases to himself or to some other authority’. In the Synod Hall the question was raised whether the relationship between the Bishop and the Church’s supreme authority could be treated in the light of the principle of subsidiarity, especially with regard to relations between individual Bishops and the Roman Curia. Hope was expressed that this relationship, in accordance with an ecclesiology of communion, could be characterized by respect for the competence of each and thus contributes to a greater decentralization. It was also asked that a study be made of the possibility of applying this principle to the life of the Church, without prejudice however to the fact that a constitutive principle for the exercise of episcopal authority is the hierarchical communion of the individual Bishops with the Roman Pontiff and the College of Bishops. As we know, the principle of subsidiarity was formulated by my venerable predecessor Pope Pius XI with reference to civil society. The Second Vatican Council, while never employing the term ‘subsidiarity’, did encourage a sharing between Church structures and opened the way for new reflection on the theology of the episcopate, and this is bearing fruit in the concrete application of the principle of collegiality to ecclesial communion. All the same, the Synod Fathers considered that, as far as the exercise of episcopal authority is concerned, the concept of subsidiarity has proved ambiguous, and they called for a deeper theological investigation of the nature of episcopal authority in the light of the principle of communion. In the Synodal Assembly there was considerable discussion of the principle of communion. This is an organic communion inspired by the image of the Body of Christ which the Apostle Paul uses in order to emphasize the functions of complementarity and

mutual help between the different members of the one body (cf. 1 Cor 12:12-31). If recourse to the principle of communion is to be made correctly and effectively, *certain points of reference* [author's italics] must always be kept in mind. Account will first have to be made of the fact that within his particular Church the Diocesan Bishop possesses all ordinary, proper and immediate power needed for carrying out his pastoral ministry. He therefore has a proper sphere for the independent exercise of this authority, a sphere recognized and protected by universal law. On the other hand, the Bishop's power coexists with the supreme power of the Roman Pontiff, which is itself episcopal, ordinary and immediate over all the individual Churches and their groupings, and over all the pastors and faithful. Another firmly established point to be kept in mind is that the unity of the Church is grounded in the unity of the episcopate, which, in order to be one, requires that there be a Head of the College. Analogously, the Church, in order to be one, calls for a Church that is Head of the Churches, the Church of Rome, whose Bishop, the Successor of Peter, is the Head of the College. Consequently, 'for each particular Church to be *fully Church* [author's italics], that is, the particular presence of the universal Church, with all its essential elements, and hence constituted after the model of the universal Church, there must be present in it, as a proper element, the supreme authority of the Church [...] The primacy of the Bishop of Rome and the Episcopal College are proper elements of the universal Church that are <not derived from the particularity of the Churches>, but are nevertheless interior to each particular Church [...] The ministry of the Successor of Peter as something interior to each particular Church is a necessary expression of that fundamental mutual interiority between universal Church and particular Church'." (John Paul II 2004, n. 56)

This doctrine put forth by the Pope hardly needs comment. It presents the ultimate consequence of the doctrine of the ontological and temporal priority of the universal Church to the particular churches by denying that the particular churches can be 'fully' Church and that, regarding their ecclesiality, they appear to be dependent on the universal Church: only s/he who is Roman can be fully Catholic! That is the doctrine. The selective perception of the Magisterial tradition is likely to be its consequence.

3. The subsidiarity principle presumes a hierarchy in the structures – otherwise it would be pointless. At the same time it specifies that this hierarchy should only be exercised in a subsidiary way for reasons of justice. There is an inherent appeal against centralized totalitarianism in the principle of the responsibility of the individual without which no society can function. Only in the event of complete failure does the principle allow the higher unit to intervene and thus protect the common good of the Church.

Also the Church – and not only the state – depends on presuppositions that they themselves cannot guarantee: its presupposition is the community of the faithful with Christ in the Spirit. What is meant by this is what *Lumen*

gentium 14 addressed with the expression, “*Spiritum Christi habere*”. ‘*Habere*’ is not to be understood in the sense of ‘having money,’ that is, ‘to possess something,’ but in the sense of ‘having friends,’ in other words, ‘of having the feeling of belonging to or being connected to someone’. Harald Weinrich has recently called attention to this basic meaning of ‘have’ (s. Weinrich 2012). Out of respect for belonging to Christ in the Spirit based on baptism, which ‘makes’ people Christians by freeing them from the fear of death and thereby allowing a life of Christian freedom, the responsibility of the individual in the Church gains a higher, unsurpassable value for theological reasons. The ‘sin against the Holy Spirit,’ which publicly negates belonging to Christ, is the only failure, in my opinion, that would justify the intervention of the higher authority.

On the other hand, the principle of subsidiarity requires hierarchical structures. However, the reality of these structures in the Church is complex because two hierarchies interact with each other, as the International Theological Commission has stated with great clarity: “For the flourishing of the life of the Church, the body of Christ, the common priesthood of the faithful and the service or hierarchical office can only complement each other and be ‘assigned to each other’, so that from the perspective of the ultimate purpose of the Christian life and its fulfilment the primacy [primauté] belongs to the common priesthood, even if from the perspective [...] of the visible organizational order of the Church and of the effectiveness of the sacraments the ministerial office has priority [priorité].” (Internationale Theologenkommission 1987, 60f)

The ‘eschatological hierarchy’, by which the purpose of the Christian life is determined (one could also speak of the common good of the Church), is related to a ‘ministerial hierarchy’ in a way that absolute primacy (primauté) is granted to the ultimate purpose, and a relative priority (priorité) to those who facilitate the achievement of this purpose. The theological adequacy of the intra-ecclesial validity of the principle of subsidiarity according to the “‘hierarchy’ of truths of Catholic doctrine” (UR 11) can hardly be expressed in a better way.

It would be desirable for the Church to take these insights from its ecclesiology and its constitutional law seriously and thus to give the principle of subsidiarity – which has never been denied in its validity by the supreme power – effective validity. Pope Francis might return to the position of his predecessors in office that was abandoned by John Paul II and Benedict XVI, namely the position of Pius XII, John XXIII and Paul VI. Yet this is easier said than done, since it implies nothing less than a structural reform of the Roman Catholic Church.

Translated by Angela Ilić and Geoffrey Turner

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