

The Principle of Subsidiarity and the Governance of Schools¹

Bernard Cullen

It is not often that a piece of legislation, let alone an international treaty, gives particular prominence to a philosophical principle. This was the case, however, with the Maastricht Treaty (1992), which attributed special importance to the principle of subsidiarity. In the Preamble to the Treaty on European Union, the signatories resolved 'to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity'. As this constitutional aspiration indicates, the principle of subsidiarity is a philosophical principle concerned with the mechanisms of democratic decision-making. It was much emphasized by the supporters of the Treaty (principal among them its chief architect, the French President of the European Commission Jacques Delors), as they combated the widespread resistance to ratification of the Treaty, which resistance was itself based on a popular feeling that the European Union was becoming a centralizing super-state. "Save our pint" and much concern about the shape of bananas were some of the popular expressions of resistance (then as now) to 'interference from Brussels'. In this paper, I shall examine the principle of subsidiarity, including something of the history of the principle and how it has been applied to constitutional theory and practice within the European Union in recent years. Finally, I shall argue for the application of some of its insights to the issue of the governance of schools, with particular reference to Northern Ireland.

So what exactly is the principle of subsidiarity? Although it first came to the widespread attention of the public around the time of the Maastricht Treaty, it has a long history in Catholic social philosophy, with its lineage commonly traced back to the social teaching of Thomas Aquinas. While it is almost universally acknowledged that the principle is an ambiguous one, it is broadly concerned with the limits of the right and the duty of the public authority (however understood) to intervene in the social and economic affairs of individual citizens or groups of citizens. In the last century, against the background of bolshevism in the Soviet Union and fascism in Italy, the principle was taken up again and defined by Pope Pius XI in his encyclical letter *Quadragesimo Anno* (1931):

It is an injustice, a grave evil and a disturbance of right order, for a larger and higher association to arrogate to itself functions which can be performed efficiently by smaller and lower societies. This is a fundamental principle of social philosophy, unshaken and unchangeable. Of its very nature the true aim of all social activity should be to help members of the social body, but never to destroy or absorb them ... Let those in power, therefore, be convinced that the more faithfully this principle of subsidiary function be followed, and a graded hierarchical order exist between various associations, the greater will be both social authority and social efficiency, and the happier and more prosperous the condition of the commonwealth (paras 79-80, pp 34-5)

The principle of subsidiarity is based upon a particular view of the nature of the human person, the nature of the state and society and the relation between them, and the role of the individual citizen within the state. It addresses fundamental issues of democracy, and in the way in which I wish later to apply it, interesting issues of local democracy. In the philosophical tradition established by Aristotle, the human being is essentially a social person (*zoon politikon*), who achieves his or her perfection only in being enmeshed in a society. In the modern industrialized world, individuals all live within states. But in its mode of being, the state is accidental, not substantial. The state has no primary role in human existence; it exists only to help the persons who live within the territory to realize their potential as human beings. This is the meaning of the Latin word *subsidium*: aid, help

¹ In Gardner, J. and Leitch, R. (Eds) (2000) *Education 2020: A Millennium Vision: Issues and Ideas for the Future of Education in Northern Ireland*, pp124-135, Belfast: Blackstaff Press

or support. Normally, this aid is indirect: the state enables human flourishing by tending to the complex of conditions that enable the subordinate societies and the individuals to care for themselves. This complex of conditions is what has been traditionally referred to in Catholic social teaching as 'the common good'.

This theme was taken up again by Pope John XXIII in his encyclical letter *Mater et Magistra* (1961): the common good embraces: "... all those social conditions which favour the full development of human personality" (para 65). The encyclical *Pacem in Terris* (1963) explains more explicitly and concretely what is involved in the total of these conditions: "It is agreed that in our time the common good is chiefly guaranteed when personal rights and duties are maintained. The chief concern of civil authorities must therefore be to ensure that these rights are acknowledged, respected, co-ordinated with other rights, defended and promoted, so that in this way each one may more easily carry out his duties" (para 60).

The Catholic tradition recognizes that the principle of subsidiarity can have a positive as well as a negative emphasis. To emphasize the negative side, it enjoins the public authority not to intervene in the 'private' affairs of citizens unless it is necessary in order to safeguard the common good, however that is understood. On the other hand, the principle recognizes (especially as the twentieth century progressed) that in many instances in which good and conscientious citizens (for whatever reason) are unable to fend for themselves, the public authority has an obligation to assist human flourishing by the establishment of an appropriate infrastructure that will enable everyone to thrive. The encyclical *Pacem in Terris* offers (para 64, perhaps with one eye on the spreading attractions of communism in the Third World in the 1960s) an extensive list of physical and social benefits to be guaranteed by the state and to which every citizen is entitled: the list includes roads, transportation, communications networks, water supply, housing, health and education services, facilitation of the practice of religion, recreational facilities, social insurance schemes, and participation in cultural life. It can be seen that this list of benefits mirrors quite closely the United Nations International Covenant on Economic, Social and Cultural Rights (1966). However, it should be emphasized that the role of the state is seen as a strictly enabling one, supplementing and complementing private endeavour and providing the infrastructure upon which individuals can attain their full development. In principle, any individual or social good that can be attained by individuals or groups of individuals (so-called lesser societies) should be left outside the sphere of state intervention or control.

The principle has clear applicability to a wide range of issues of social organization. For example, a centrally planned (or so-called command) economy determining prices, wages, production and investment quotas and the like, violates the principle of subsidiarity, for the public authority would thus be making decisions that should more properly be the concern of individuals or private groups. On the other hand, a regime of central economic planning that determines monetary and fiscal policy, complete with anti-monopoly regulations and the like, which undoubtedly determines the general economic environment within which individuals and groups can flourish, is clearly consistent with subsidiarity.

It is generally acknowledged by commentators that the principle of subsidiarity has been operational within the Common Market since the time of the Treaty of Rome (1960) that established it, guiding judgements as to which matters of public policy were best left to the constituent member states and which could only or could best be decided by pan-EU legislation. With the development of the Single European Market, however, and the shared concern that no member state or states should be permitted to gain unfair competitive advantage by means of divergent national legislation, the view became accepted that an increasing proportion of legislation – for example, legislation governing environmental protection, food safety, and employment practices – should be Community-wide legislation binding on all member states. Hence the growing need to separate out as clearly as possible those matters upon which the Council of Ministers should legitimately and reasonably legislate from those matters that could safely be left to be decided upon at a national or more local level of authority.

The principle of subsidiarity was, therefore, formalized in the Maastricht Treaty as a guiding principle of the EU's political and legal framework: "In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the

member states and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community” (article 3B). In other words, unless there is a compelling argument that given desirable objectives cannot be achieved by actions within the several member states, the Community will not intervene. Subsidiarity here means that decisions are to be taken at the lowest effective level of government, local, regional, state, national or European, thereby bringing decision-making as close as possible to the citizens who will be affected. Interestingly, the field of education policy is one in which the Treaty explicitly forswears any harmonization of national laws, confining Community activity to encouraging and supporting cooperation between member states (article 126).

The principle of subsidiarity addresses the age-old issue of the tension between the freedom of the private individual and the public demands of the wider community. In the modern constitutional state, individual citizens use their own free initiative to form themselves into social, cultural, economic, educational, religious or other kinds of associations, large and small. (For an outline and evaluation of Hegel’s discussion of the pivotal role of these ‘mediating’ groups in the modern state, see Cullen (1988).) The proper role of these associations is distinguished from that of the state authority by application of the principle of subsidiarity, according to which the state should not control or regulate all aspects of individual and social life, but is obliged to enable groups at levels below the state to achieve their democratically expressed ambitions. The lesser groups should be assisted to achieve their legitimate objectives in their own fashion, rather than have one single straitjacket imposed on all. This presumption in favour of non-intervention is based upon a fundamental respect for the dignity or the worth of each individual citizen, very much along the lines of human rights theory. But it is easily recognized that an individual acting alone can in most cases do little: in the realms of health, education, transport infrastructure, etc., substantial achievements are only possible when individuals band together. In this process of banding together, there are inevitable compromises between the wishes of individuals and what become the collective wishes or aspirations of groups.

The wishes of some groups, and the impact of acting on those wishes, will be purely local. Some group decisions will impact upon many others who are not local. In thinking about the application of the principle of subsidiarity in this way, it can be used to determine which decisions are most fruitfully to be made by the mechanisms of local democracy and which are rather to be made by a more widely based collective (be it a state or a trans-national body). In the United States, for example, there is a strong tradition of very local democracy. The citizens of a township will typically vote on whether they wish to raise a specific local tax for the precise purpose of repairing the potholes in a local road. They sometimes vote not to. If the state of those local roads has little or no impact on others living outside the locality, this seems an appropriate level of decision-making: as close as possible to the citizens affected by the decision. Such a very local approach makes much less sense when the roads in question are used by a lot of travellers just passing through. And for this reason, interstate freeways, designed to facilitate travel through many localities and across great distances, are federally planned and financed out of federal taxes.

The appropriate level of democratic decision-making depends on the issue in question and specifically the way in which the issue impacts upon people. For example, it was agreed a long time ago by the member states of the European Community that environmental pollution recognizes no state boundaries, and that therefore environmental legislation should be a decision of the entire Community, binding on all Community citizens. But the principle of subsidiarity recognizes that many issues of policy should be matters for decision by each ‘sovereign’ member state, so as to reflect as accurately as possible the wishes of the citizens of that state. By extension, the issue in question could be for each region within states to decide, or for each local council area; or it could reasonably be decided (and most accurately reflect the democratic wishes of the citizens affected) by testing the preferences of a quite small locality, however that locality is to be delineated. Apart from the US example quoted above, France, for example, has a tradition of elected assemblies for local communes; while England has a tradition of parish councils.

It can be seen that the debate within the EU, and specifically at this time within the United Kingdom, about adoption of the euro as a common currency superseding national currencies, is a debate about the most appropriate application to the issue of monetary policy of the principle of subsidiarity. This debate is a good illustration of the fact that the principle in itself cannot solve all disputes about the most appropriate level of sovereignty and democratic decision-making. In this

regard it is no different from other philosophical principles. What it can do is establish a principled context within which the policy issue can be discussed and the dispute resolved. The debate on the adoption of the euro or the retention of sterling also illustrates well that such disputes about the application of subsidiarity very often involve an emotional attachment to the exercise of power, whether that exercise is real or illusory, rather than the dispassionate and rational weighing up of the balance of advantages and disadvantages for the generality of citizens affected.

The principle of subsidiarity is based on the principle (or assumption) that individual citizens *prima facie* (i.e. unless the contrary can be demonstrated) know best what is good for them. There are, of course, many uncontroversial exceptions to the principle of the primacy of individual choice: everything from the legal requirement to drive round Belfast City Hall in one direction only to the whole panoply of planning laws and regulations. In each such case, Parliament has agreed on behalf of the citizens that there are indeed good reasons for overriding the wishes of the individual.

The area of education is a special category of decision-making by citizens, insofar as parents conventionally decide on behalf of their children (in the case of primary and secondary schooling). Notwithstanding the emerging acknowledgement of children's rights in recent years, the principle of the primacy of parental choice is well embedded in European culture and is fairly uncontroversial. The principle is frequently overridden by representatives of the state (i.e., the citizenry as a collective). For example, children are commonly removed from their neglectful or cruel parents and taken into state 'care' by statutorily authorized social workers. There was also the recent case in which the conscientious wish of the parents to allow their Siamese twin children to die was overridden by the High Court, which ordered surgery to separate them. But the fact that this case prompted such widespread moral head-scratching only goes to demonstrate the strength of the general presumption in favour of parental choice in the disposition of their children.

Whatever else can be said about them, schools are powerful ideological forces in any society. Even with the most conscientious and actively involved parents, experiences in the classroom are likely to have lasting effects on the attitudes and preferences of most children. For this reason, the governance of schools (i.e., the issue of who runs the school, appoints the teachers, decides on the school's mission, ethos, and so on) is often fiercely contested, not least in Northern Ireland ever since its foundation. For the same sorts of reasons, the governance of schools in Northern Ireland is dominated by the main Christian denominations. To a considerable extent, this arrangement could be said to reflect accurately the principle of subsidiarity: to the extent that (until very recently, at least) the vast majority of parents in Northern Ireland proclaimed their allegiance, at least nominally, to one or other of those main Christian churches.

A brief topography might be helpful. So-called state schools are administered by the five education and library boards that together cover Northern Ireland. The boards of governors of most of these schools include, as well as representatives of parents, teachers, and the wider community, representatives of the 'transferors': viz., the Protestant denominations that 'owned' many (but by no means all) of the schools before they were transferred into state ownership. The other very large group of schools, covering roughly half of all the schoolchildren in Northern Ireland, is administered by the Council for Catholic Maintained Schools (CCMS). The boards of governors of these schools all include clerical representatives of CCMS, usually based in the local parish, one of whom typically chairs the board. As well as these two big battalions, there is a small 'voluntary' sector, consisting principally of some of the Province's grammar schools. Finally, there is a tiny but growing sector of 'integrated schools', administered by the Northern Ireland Council for Integrated Education, which in order to qualify for public funding are required by statute to include minimum percentages of Protestant and Catholic pupils and staff.

It is worth examining whether the structure of school governance in Northern Ireland outlined above adequately reflects the current diversity of parental wishes. It is undeniably the case, as we emerge from a generation of murderous civil conflict, that large swathes of the working-class population have chosen to live and raise their families in communities characterized by one or other of the traditional religious affiliations, viz., Protestant or Catholic. That is certainly an understandable and indeed reasonable choice. However, largely because of this widespread territorial segregation, many thousands of parents find themselves locked into a system of school governance that they did not explicitly choose, namely one in which religious authorities have a great deal of power to influence the ethos of a school, the appointment of its staff, and all its

activities. It could be argued that the preponderance of parents would indeed choose to be subject to such a system if they were asked, but there is a good deal of evidence (for example, dramatically declining church attendance) to suggest that a sizable minority of parents, at least, would prefer not to be subject to the prevailing carve-up of school governance in Northern Ireland, simply by dint of where they choose to live. Especially with the new devolved institutions, there is now both an opportunity and a responsibility to test parental wishes on this issue, by a judicious application of the principle of subsidiarity.

It is interesting to note that the Second Vatican Council's official *Declaration on Christian Education* (1965) emphasized the obligation upon the state to facilitate the realization of parents' wishes in this regard:

[Civil] society exists to arrange for the temporal necessities of the common good. Part of its duty is to promote the education of the young in several ways: namely, by overseeing the duties and rights of parents and of others who have a role in education, and by providing them with assistance; by implementing the principle of subsidiarity and completing the task of education, with attention to parental wishes, whenever the efforts of parents and of other groups are insufficient (Abbott 1966, 642).

The Declaration goes on to spell out some of the practical implications of this obligation:

Parents, who have the first and the inalienable duty and right to educate their children, should enjoy true freedom in their choice of schools. Consequently, public authority, which has the obligation to oversee and defend the liberties of citizens, ought to see to it, out of a concern for distributive justice, that public subsidies are allocated in such a way that, when selecting schools for their children, parents are genuinely free to follow their consciences ... [The state itself] should look after the health of students and, in general, promote the whole school enterprise. But it must keep in mind the principle of subsidiarity, so that no kind of school monopoly arises. For such a monopoly would militate against the native rights of the human person, the development and spread of culture itself, the peaceful association of citizens, and the pluralism which exists today in very many societies (Abbott 1966, 644).

Northern Ireland today aspires to be a pluralist society. The debate about whether or not such a genuinely pluralist society could better be fostered by the progressive desegregation of schooling in the region is beyond the scope of this paper. But I wish to make a modest proposal, in line with the principle of subsidiarity, that if implemented would have the great merit of being seen to match the realities of school governance more accurately to the stated democratic wishes of parents, by means of a form of proportional representation. The unit of effective decision-making can be greatly varied, since most cities and towns in these islands are divided into electoral wards, which can be banded together in any reasonable way that will produce a finely-tuned account of local wishes. The same opportunities exist for taking the pulse of local communities in most states in the developed world.

Take as an example Catholic West Belfast, a community of almost 100,000 inhabitants that can be easily delineated on a map, due to well-established sectarian demarcation lines. That sprawling community can, of course, be broken down into many constituent sections, which is important for the implementation of the proposal. Currently, the parents living within that area have access only to schools that come under the CCMS umbrella, unless they make the considerable effort to send their children to a school located outside the area (with all the attendant dangers that this all too frequently entails). My proposal is that the government should offer the adult citizens of that area (and many others) a local plebiscite, asking them whether they wish to continue with the current monopoly situation of school governance, or whether they would prefer to have local democratic control over the management of their schools. In the latter case, the school would be administered by the education and library board and governed by a locally-elected board, just like hundreds of other schools in Northern Ireland but without the involvement of any 'transferors'.

The outcome of such a plebiscite, which could easily be repeated throughout Northern Ireland, is impossible to predict. It is reasonable to speculate, however, that a majority of citizens would vote in favour of the status quo, since that system has a good track record in many respects. But it is also reasonable to anticipate, given the well-documented shifts in attitudes to church authorities

throughout the United Kingdom and further afield in recent years, that a significant minority would wish to move away from the current clerical monopoly and opt for a system of local democratic school governance, irrespective of the church they may or may not attend. This would entail a shift in public funding for the local schools and a certain amount of administrative upheaval, but a genuinely democratic government, attentive to the express wishes of its citizens, would be expected to implement the shift in governance and the attendant funding, in proportion to the results of the plebiscite. To express the outcome schematically, if 20% of the relevant local electorate voted for a shift to local democratic management and there are ten primary schools (of roughly the same size) in the area, then government would be expected to amend the governance regime for two of those schools, after proper consultation, to reflect the shift in democratic wishes. The fact that, by this stage, almost all schools in the region have been built out of public funds makes the question of 'ownership' of school property scarcely relevant. Of course, experience indicates that vested interests seldom relinquish power without a struggle. (See, in this regard, McCavera (1993) and McKelvey (1993).) And there is always the danger that the governance of a school will be taken over by a well-organized local clique. But that, after all, is one of the perennial dangers of democracy; and, on balance, if we are the democrats most of us claim to be, it is the kind of risk we have to take if we are ever to mature into a more self-confident society.