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LIBERALISM, RATIONALITY AND THE SUBSIDIARITY PRINCIPLE:

A VINDICATION OF THE RULE-AND-EXEMPTION APPROACH FOR SOLVING CLASHES IN MULTICULTURAL SOCIETIES

by
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The fact that individuals in liberal and multicultural societies pursue their own goods as dictated by their own values inevitably gives rise to conflicts. This paper focuses on clashes that take place between the state and substate agents. In effect, the state proposes social norms that sometimes conflict with the social norms that are accepted and promoted by the individuals and their communities. The causes behind these clashes could be either that the communities advocate for illiberal social norms and therefore contradict the liberal framework, that the state has exceeded the powers commonly attributed to it by liberalism or that both the state and the community disagree on which social norms are actually supported by liberalism.

The objective of this paper is precisely to test a specific method to solve these clashes that are now becoming more frequent and sensitive, as liberal societies become more multicultural. More specifically, this paper advocates for a certain understanding of the rule-and-exemption approach that reveals itself as a just method to solve these conflicts. The rule-and-exemption approach is frequently proposed by multiculturalist philosophers as a convenient course of action in accommodating cultural minority groups into the mainstream society. This approach, however, allows for different interpretations and not all have been equally successful.

The example of the rule-and-exemption approach defended in this paper is constructed upon two elements: the elementary canons of rational thought and the subsidiarity principle. The elementary canons are those principles which we have overwhelming reasons to accept. They help us to classify clashes between those where a certain advocated social norm violates the basic canons and those where no social norm violates the canons. The subsidiarity principle, which preferentially grants authority to the substate agent, presents an inspiring understanding on how to solve these clashes. This paper argues that the acceptance of these two elements compels the philosopher to accept the rule-and-exemption approach.

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CHAPTER I

INTRODUCTION

This paper aims to demonstrate that the so-called “rule-and-exemption approach”, which I explain below, is vindicated as a method required by justice to solve clashes in liberal and multicultural societies. What I mean by “clash” is a disagreement between state and substate agents over who has the authority to determine which of a pair of mutually inconsistent social norms relevant to a certain kind of behaviour is in force. The reason why clashes happen is that, in liberal and multicultural societies, individuals have different conceptions of the good that moves them to develop different lifestyles, undertake different social practices and associate with one another in communities where people help each other towards their goals. Most of the times, our decisions and conceptions of the good influence on other people. This is clearly observed, for instance, in the influence parents exert on their children.

However, clashes rise not only between the individuals, but also between the state and the people. Liberalism is supposed to provide the proper framework in which people are free to choose and pursue what has been enumerated above; they are free to choose their conception of the good, to perform the social practices they wish, and to freely associate with whomever they desire. To protect this framework, the state has to promote certain values. However, multicultural and liberal societies nowadays find a terrible paradox: the freedom liberalism promotes permits people to choose conceptions of the good that may push them to reject the values promoted by the state to protect liberalism, either because these people actually hold illiberal values or because there is disagreement on which values are to be considered as liberal. As a consequence, some philosophers

have even claimed that such a paradox casts doubt on one of liberalism`s fundamental tenets: its commitment to permitting a diversity of views on the good life[1]. *What I argue in this paper is that the proper method to solve this paradox is precisely the rule-and-exemption approach.* As I will explain below, according to the anti-multiculturalist philosopher Brian Barry, this approach is precisely what characterizes multiculturalism. According to this approach, cultural minorities in liberal societies should be granted certain exemptions from the general rules of the mainstream society when they contravene the minority values.

My argument is structured in the following way. In Chapter II, I argue that, there are some *elementary principles of rational thought* that ought to be accepted (Premise 1). In Chapter III, I explain that two types of clashes (A and B) should be distinguished depending on whether they involve the elementary principles or not (Premise 2). In Chapter IV, I argue that, in clashes in which only one of the two parties is advocating for a norm consistent with the elementary principles of rational thought (clashes of type A), it is this party who has the relevant authority (Premise 3). In Chapter V, I claim that, in clashes in which elementary principles are not involved (type B), the *subsidiarity principle* determines which party has the relevant authority (Premise 4). In Chapter VI, I maintain that, if these four main premises are true, then the accepted method just is a valid example of the rule-and-exemption approach (Premise 5). Finally, I conclude that the rule-and-exemption approach is vindicated following the schema described in this paper.

[1] This is for instance what is claimed in SINGH, B. "Liberalism, Parental Rights, Pupils' Autonomy and Education". University of Sunderland. *Educational Studies, Vol. 24, No. 2.* 1998. Page 166. Singh studies clashes that rise between parents and the state about children education.

Under my reasoning, who is the winning party in the cases I am studying? My answer to this question is actually that "it depends". While this answer is perhaps vulnerable to accusations that it is too diplomatic, it is the most realistic one; claiming that, by principle, the state is always right or always wrong would take us to two extremes we want to avoid. As diplomatic or realistic as it might seem, my answer is for sure not disappointing, since the really interesting thing is the issue about what "it" depends on. To the question about who the winning party is, my answer is that it depends on the content of the conflict. Therefore, as I have mentioned above, there are two elements that are essential to my reasoning. Firstly, the elementary principles of rational thought constitute the element that compels us to divide clashes into two types. Secondly, a revised form of what political philosophers call *the subsidiarity principle* will support the idea that, when no elementary canons are violated (type-B clashes), it is the minor institutions and not the state who decide what to do. The combination of these two elements supports the use of the rule-and-exemption approach as the method required by justice to solve these clashes. Indeed, I argue that the approach I defend *just is* an instance of the rule-and-exemption approach.

CHAPTER II

THE ELEMENTARY CANONS OF RATIONAL THOUGHT

A. Characterization and justification

The elementary canons of rational thought constitute a pivotal notion upon which I am going to construct all my analysis to solve clashes between the state and substate parties. The objective of this section is to argue in favor of Premise 1: The elementary canons constitute the minimum of premises that should be accepted and respected by all. I beg the reader, however, not to expect to find here an exhaustive enumeration of all canons of rational thought, nor an exhaustive discussion of why a specific premise should be considered to belong to this group of elementary canons. Note that I may also refer to these canons as elementary principles or basic principles, with no change in meaning. Let me start with an example. In effect, there are premises such as premise P where almost everyone agrees on the truth of P, and there is just a minimal group who either have no attitude towards P or disagrees and proposes not-P. In addition, the reason why a much higher number of people undoubtedly propose P is that there is a considerable body of scientific data and philosophical reasons that support P. In this way, one can say that all premises accomplishing the characteristics of premise P belong to the same group: they have a considerable body of scientific data and philosophical reasons that support them in a way that would be almost incoherent to support not-P. This class of premises is what I call the elementary principles of rational thought, together with every premise that certainly derive from them. For instance, the premise “the Earth is round” could be taken to be an elementary canon of rational though, given the body of science and philosophy we have nowadays.

One can elucidate some of the characteristics of what I call basic principles from what has just been exposed. These principles are commonly shared and defended by almost all peoples, and they have a solid body of reasons that make them so widely accepted. Even if it has taken centuries for humanity to develop enough scientific and philosophical knowledge to guess the truth about these premises, we can say it is basic because it causes a little doubt nowadays.

Let me highlight an important idea here: I take the basic canons to be principles about *what to think, what to expect and how to act*. In the same way that the theoretical premise "the Earth is round" is well supported by reason, the practical or moral premise "one shall not murder" is also well supported by reason. Natural sciences cannot say anything about this truth, but philosophy can (moral philosophy in particular).

One could take the most basic principles of thought, together with basic argument forms such as modus ponens and others, to be the first principles upon which all others are founded. One point to be considered here is that the elementary canons are those principles that are well supported by science and philosophy and, as a consequence, they are widely recognized, independently of the most technical discussions philosophers could have about them in the theoretical background. In other words, one could always find a philosopher that argues against a specific basic canon, such as the philosophers that reject the non-contradiction principle. This is not a sufficient reason to reject that the non-contradiction principle is well supported by reason and, consequently, has to be widely recognized.

Therefore, there are some basic principles that could be characterized as the most basic ones. How do we pass from the most basic principles of rational thought to other

truths? I would say that it is mainly through science and philosophy. Sciences deal with empirical matters and philosophy with non-empirical ones. The scientific and philosophical methodologies are actually sustained by the most basic principles of rational thought. In this way, there is progress. Some truths, after a long debate, become well-stablished and well-demonstrated truths that are shared and recognized by the vast majority of human beings (at least among the human beings that received the education to understand them). We can clearly affirm that science has perfectly taught us that the Earth is round, and this is a premise that should be accepted by all human beings. In this way, science and philosophy, by their own nature, make human knowledge progress from the most basic principles of thought to new truths that, as long as they are well-founded, start belonging to this same group of basic principles. Therefore, the group of basic principles of rational thought increases as science and philosophy progress. We can affirm that "the Earth is round" is now part of the basic principles because rejecting this premise would necessarily imply rejecting human science, which would imply rejecting the most basic principles of rational thought.

Why these elementary canons ought to be accepted? This has been already explained in a way, but let us underline it here. Elementary canons ought to be accepted because there are overwhelming reasons to accept them. They are principles that count on scientific support and a certain degree of philosophical rigour. This is true to a point that a person who would not recognize these principles could be shown to be incoherent. This is the main argument in favor of these principles and it is precisely because of this that they are generally respected and promoted. I will now provide some other auxiliary arguments and considerations supporting the elementary canons. Firstly, and connected to what has just been said, whoever rejects elementary principles, runs into an absurdity

at a certain point, and absurdity is something we want to avoid. Secondly, elementary principles can only be rejected by radical sceptics, and scepticism is an attitude that cannot be supported in practice even if it is somehow maintained in theory. Finally, these principles constitute the essential foundations for living together peacefully.

Firstly, whoever insisted on denying such a truth would have to deny the scientific and philosophical truths we commonly accept nowadays, or they would even have to deny perfectly observed and tested facts. If one tried not to deny perfectly tested facts but denied the basic principles, then he could be easily proven to be incoherent at some point. And if one actually denied perfectly observed and tested facts, then he could be probably accused of absurdity. In the case of practical or moral elementary principles, the person who would reject them would not share the minimum standards to be part of our community. Let me put an example. If someone claimed that it is just fine to burn children for the sake of pleasure, either he would have to deny the minimum premises about morality we universally admit to, or he would be incoherent with his own claim. In either case, what we would all think about this man is that he *has a serious problem*, that something is wrong with him. He could not live with us in our own community; he would have to be locked up either in a prison or in a mental hospital.

Secondly, sceptics and all the people who hold doctrines and attitudes that can be reduced to a certain form of scepticism commonly deny basic truths, together with truths coming from science or philosophy. However, it is with great wisdom that Peirce wrote the following: “It has often been argued that absolute scepticism is self-contradictory; but this is a mistake: and even if it were not so, it would be no argument against the absolute sceptic, inasmuch as he does not admit that no contradictory propositions are true. Indeed, it would be impossible to move such a man, for his scepticism consists in considering

every argument and never deciding upon its validity; he would, therefore, act in this way in reference to the arguments brought against him. But then there are no such beings as absolute sceptics. Every exercise of the mind consists in inference, and so, though there are inanimate objects without beliefs, there may be no intelligent beings in that condition" (Peirce, 1869, p. 193). Aristotle explained that actually no man can be an absolute sceptic, because in his own arguments to reject the most basic truths he would be giving meaning to his words, and this implies the acceptance of these most basic truths. And if he did not give meaning to his words, then he would rather resemble a plant (Aristotle, 2018, Book IV). Note that I did not specify whether this group of basic principles includes a high or low number of premises, but it could be difficultly disputed that this group exists supported by an overwhelming number of reasons. These two claims by these two philosophers reflect how scepticism is a very difficult position to hold, particularly thinking about theoretical truths. What I would add to what these two philosophers have claimed, if I can add anything to what these two great philosophers have said, is that, if it is hard to hold the sceptical position in theory, it is impossible in practice. If you go to the judge due to a certain quarrel, you expect the magistrate to judge according to certain valid principles, well-supported by reason and widely recognized. This is essential for the objective of building a peaceful living-together, for which some basic principles are needed. No living-together can be built upon scepticism.

I have just introduced the idea of a peaceful living-together. Perhaps it is more interesting to think about a just living-together. Actually, the purpose of this paper is to think philosophically about a just method to solve clashes between the state and other agents. The idea of a peaceful living-together takes me to the following and final consideration. Moral and political philosophy over centuries have been throwing light on

certain principles that ought to be respected in order to develop a peaceful living-together where the well-being of all peoples is taken into consideration and protected. In other words, these principles constitute the basis for peace. Without a doubt, philosophers have very different ways of approaching to the human being and human society. However, this has not been an impediment for philosophy to assert in numerous ways the value of human life, for instance. Without a doubt, respect for human life should be taken as one of the basic canons. And it is obvious that no peaceful living-together can be built if there is no respect for human life.

This approach of mine based on basic principles is not far from that of Rawls'. When discussing when the political power could be legitimately exercised, he claimed: "Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason" (Rawls, 1993, p. 137). The basic canons I address here could be taken to consist precisely on these principles and ideals acceptable to common human reason. Coercive power could be legitimately used to impose the "essentials" that emerge from these principles, and this is precisely what I will argue throughout the lines below. Rawls hopes, and I do too, that, while no comprehensive doctrine of the good could be imposed, all "reasonable" comprehensive doctrines will agree on some essentials or basic principles (this is what he means by his notion of *overlapping consensus*). As I said at the beginning, one of the main characteristics of elementary principles, resulting from how overwhelmingly they are supported by reason, is that they are agreed on by almost all peoples. According to Rawls, the most basic principles in a liberal society shall be

freedom and equality of citizens, on the one hand, and a fair system of cooperation on the other (Wenar, 2017, sections 3.2-3).

The respect for human dignity, for instance, could be also taken to be a basic principle, as it also seems to count on this overlapping consensus, as Debes realizes: "To borrow a bit of lingo from John Rawls, human dignity is one of the clearest points of 'overlapping consensus' in Western culture today—and perhaps across all cultures" (Debes, 2018, par. 1). Perhaps the main difference between Rawls' conception of these principles and my own conception is a matter of nuance. Although both Rawls and I take agreement and common reason to be the grounds for basic principles, I would like to make more explicit how these principles ought to be backed by a serious body of science and philosophy. Of course, this connection is not absent in Rawls' approach, as he thinks that "publicly acceptable standards are those that rely on common sense, on facts generally known, and on the conclusions of science that are well established and not controversial" (Wenar, 2017, section 3.6).

B. Democratic recognition

Although I believe that the first premise for my main argument (elementary principles ought to be respected and promoted) has already been justified, these principles play such a relevant role in how I understand the rule-and-exemption approach that I believe I should add more on how they ought to be conceived. More concretely, there is an important question about the elementary principles that I think it is important to solve. Elementary principles seem easy to be accepted and implemented when determined. How are we going to determine the elementary principles though? Something about this has

already been said, but not all. In addition, there is another more puzzling question: Is there at least agreement on the basic canons? No, there is not. Actually, it would be more exactly to say that there is no agreement on all canons. We will soon see some cases of disagreement and there are many more. Obviously, no one wants to teach her children that 2 + 2 equals something different than 4. However, some people take it as an evident truth that eating meat goes against animal rights. These people are vegan and many of them even undertake an active fight against eating meat. If asked whether this is a principle that should be accepted by all, they would undoubtedly respond yes. But this is not that obvious for many other people; in fact, what it is rather obvious for many other people is that eating meat is fine. We see on the news with a certain frequency quarrels that take place at burger restaurants when disrupted by animal-rights activists[2]. This is a matter that causes conflict between groups of people and this could soon cause conflict between the state and citizens. It is not difficult to imagine that one of these quarrels in a restaurant will end up in a court trial: between two people, between the restaurant owner and the protesters… Vegans already started lobbying for more strict laws on behalf of animal protection or even banning burger restaurants. The state will have to make decisions soon on whether animal rights include a prohibition of eating meet. Perhaps the notion of animal rights could be taken to be an elementary principle such as "the Earth is round". But does this right necessarily entail that animals could not be used for human consumption? That is a more difficult question. What about "vegetable rights"? I suppose plants have rights too: one cannot go cutting trees for fun, for instance. But would this not entail that plants should not be used for human consumption?

[2] Read, for instance, KOVAC, A. "Animal Rights Protesters Disrupt Dinner Service at Montreal's Joe Beef Restaurant", *CTV News*. January 12, 2020.

I have heard sometimes that philosophers do well in asking questions, but poorly in responding to them. The questions are there and are important. It is not the mission of this paper to decide whether a specific premise should belong to the basic principles, but rather to propose a method in the light of reason to solve certain societal clashes. It has already been explained that elementary principles are elucidated from science and philosophy. As argued above, both science and philosophy are sustained by the most basic principles of thought and they are the best tools we have had until today to gain new knowledge about the world and about ourselves. It seems it is the world and our being, as well as our capacity to discover both, that directs what we should think and do. I admit there has to be certain universalism: if animals have rights, and they have them because they are animals, they should have them in all societies. It is not the case that African animals have rights and European not. This universalism does not need to be very vast in its extension: perhaps the universal truths are just two or three. But not to accept this small universalism would imply a radical form of relativism. And what I would say to radical relativists is the same as what I claimed for radical sceptics in the previous section: no society, no living-together can be constructed upon these attitudes. We could always arrive to minimal truths that anyone should accept. If a relativist told us that the truth of the premise "burning kids for pleasure is bad" depends on society or culture, we should ask him to leave our community.

Then, elementary principles are elucidated by science and philosophy. In the case of veganism, philosophy will have to determine whether animal rights prevent humans from consumption. The case of abortion is more contested nowadays. In my opinion, human rights are already well sustained by philosophy and, among all of them, the respect and protection of the human life is considered to be the most important one: without a

life, one could not enjoy any other right. The prevention from unjustly killing a human life is one of those basic principles most widely recognized. Could we arrive from this basic principle to another principle in favor or against abortion? First, it is the mission of science to determine whether the embryo (and/or the foetus) in the mother's uterus is already a human being. Then, if the embryo is a human being, philosophy should demonstrate that abortion is not an unjust killing to prevent us from taking abortion as morally wrong and this as belonging to the basic principles. Parallelly, if the foetus was demonstrated not to be a human being yet, then further philosophical discussion would be required to include any conclusion in the group of basic canons.

Consequently, the role of sciences and philosophy seems unquestionable in the elucidation of basic principles So, should scientists and philosophers be the ones to govern the country? Am I proposing a Platonic vision of the state? I know many people who would be very happy exchanging their current politicians with the professors at the philosophy department, but this is not my view. I believe my view on elucidation of basic principles has an important Platonic component, but it is not totally Platonic. There is a very important Aristotelian factor that I am going to discuss right now.

The problem is that even scientists and philosophers do not agree on many basic principles themselves. How could we really set who really knows all the basic principles and who would undertake such a determination? In addition, it would be very dangerous to give supreme power to one person, or to a restricted number of people, just because they are the most knowledgeable people. Moreover, as Aristotle would explain, ruling a country is not like healing an ill person. When healing, what you need is just a technical expert, a doctor, who knows the principles of medicine and can directly apply them to the patient. But ruling a country is ruling a community of free people, a community of equal

people. Moreover, politics is the domain of the matters of opinion. Yes, there are some matters that constitute basic principles, but these ones could just be few in number. There are many other matters not related to basic principles where different opinions are possible and reasonable. Therefore, democracy and the functions of politics (governing, convincing, representing people's interests, etc.) are still totally legitimate and necessary.

Consequently, it should be admitted that, while basic principles are determined by scientists and philosophers, they have to be accepted by the people. If science discovers that the human fetus is a human being and philosophy accepts that its life is inviolable, this should be explained to the people. This truth could not be simply imposed to me but explained, because governing a country is governing a community of free people. When I use the term "impose" or "impose a truth", I mean that the state uses means of violence to make people act according to this truth, particularly when the truth relates to practical and moral matters. Without a doubt, we do not expect all people to understand or to agree on all basic principles (the idea of clashes would be then nonsense), but this process of public recognition is totally necessary. And this is precisely the mission of democracy and its institutions.

I come closer to an Aristotelian view of politics here. Let us remember that, although the Greek philosopher appreciated his master's model of the philosopher-king, he considered it as an ideal model, and thought democracy[3] was actually the best model from the real, possible ones. Without a doubt, I do maintain an important Platonic factor: although the ruling should be done by democracy and its institutions, this democracy (and

[3] Translations about the term used by Aristotle to design the best among the real, possible political models differ. For instance, Fred Miller in the Stanford Encyclopedia of Philosophy uses the term "polity", while the term "democracy" is actually used as the corruption of polity. I directly use the term "democracy" for Aristotle's best, possible model because this is the term we commonly use today for that model.

the people in charge) is guided by the basic principles, which could be somehow compared to the Platonic Ideas. The mission of the members of Parliament is not to invent basic principles, but to *recognize* them, since the principles are already there, inscribed in the world and in human's nature, to use some poetic words. Everything that I have proposed up to this point concludes in this simple idea: democratic leaders should govern as they were, but they should be serious about *recognizing* the basic principles and guiding their people to also recognize and respect them. Unfortunately, this idea is rather ignored in the way we approach politics nowadays. When passing laws about abortion, for instance, politicians are guided just by some ideological impulses. What sciences and philosophy have to say is not what they pay attention to. The strength of a position seems to derive only from the level of consensus that backs it: whether more or less people support the position. The only foundation of a law is the fact that it has been voted by the majority in Parliament. Without a doubt, consensus is a key factor in democracy, but this does not oppose the idea that basic principles are the most important guidelines of truth. The strength of a personal position or a law does not come from consensus (even if consensus is needed) but from whether it is supported by basic principles. A law voted by a majority that goes against the basic principles is simply a political and a human failure. Therefore, the first and most important mission of democratic leaders is to recognize these principles, because no further good could be done without the guidelines of these canons. And the opposite is also true: a lot of good could be done if these canons were recognized and respected. I have already heard from a very high number of people that democracy as it is today is an obsolete or corrupt political system. Politicians are totally discredited in most of the countries. Perhaps all this would change if the

democratic institutions and their leaders accepted that their first function is the humble but honourable mission of recognizing the basic principles.

CHAPTER III

THE TWO TYPES OF CLASHES

According to Premise 2 of my argument, two types of clashes (A and B) should be distinguished depending on whether they involve the elementary principles or not. Let me recapitulate some important points. The main objective of this paper is to vindicate the rule-and-exemption approach as a coherent method to help us solve clashes between the state and substate parties in liberal and multicultural societies. Non-liberal societies solve these problems very easily, unfortunately: I am sadly thinking now about the violently repressed protests that took place in Iraq during the last months of 2019 and the beginning of 2020. Unfortunately, the rulers over there are far from using my method. They are probably far from using anything founded on philosophy and not on violence. Liberal societies are constructed under the idea of solving conflicts peacefully, leaving all parties as happy as possible. However, as it was explained at the beginning of this paper, clashes between the state and substate units require a solution based on significant philosophical thinking. And this is what this paper is doing.

Based on the recognition of basic principles that was supported above, I propose a division of the clashes that we are studying into two types. A type-A clash is a conflict where one (and only one) of the parties advocates for a social norm which is inconsistent with the elementary principles of rational thought. A type-B clash is a conflict where neither party advocates for a social norm which is inconsistent with the elementary principles of rational thought. Therefore, I am excluding from my study clashes where both parties advocate for a norm inconsistent with the elementary principles. This is the conception of type-A and type-B clashes with which I will work throughout the paper.

The efficiency of this division will be demonstrated in the paper for two reasons: it helps to propose a valid example of the rule-and-exemption approach and it reveals itself useful to solve real examples of clashes as it will be shown in subsequent sections. I will limit myself in this section to explain how this division responds to how we intuitively deal with conflicts in general and not just with the clashes studied here.

In any conflict where two parties struggle to attain two opposed and incompatible objectives, the solution will consist in declaring that one of the parties can proceed in the pursuit of its objective, as long as it is legitimate, while the other party has to give up and allow the first to act consequently. Sometimes conflicts arise from an action that was *clearly* not legitimate: when someone murders another person, this will generate a conflict between the murderer and the family of the person murdered. And this conflict will be taken to court. However, there are many other conflicts where the two objectives pursued by the two parties seem legitimate or the solution is not that straightforward. For instance, when a tree in my garden has grown so much that its leaves and branches are falling into my neighbour's garden (and that bothers my neighbour), this will probably result in a clash on whether the tree should be pruned and who should pay for the pruning. This is also clear in a dispute about child custody or guardianship. There are plenty of cases on child custody where the dispute takes place between, for instance, his mother and his aunt, the father's sister, when the father has died and the aunt thinks there are reasons not to leave the child with his mother. A trial takes place in which these reasons are exposed and the judge has to decide whether the mother or the aunt will take the custody.

The clashes studied here follow this general characterization. First, there are cases where either the state or the substate party has undertaken a *clearly* illegitimate action.

This is the case of the parents who commit some form of child abuse. The state has the responsibility here of taking the parents to court and applying the punishment.

Second, there are clashes where the two actions proposed seem legitimate. In these cases, a meticulous study must proceed in order to determine who the winning party should be. That depends, on the one hand, on what the subject of the conflict is, and, on the other hand, on who the disputing parties are and their relation to the matter. In the case of my tree in my neighbour's garden, the subject of the conflict is private property. Most penal codes agree on the fact that private property should be violated, neither by a person, nor by her belongings. But who my neighbour is is also very important: due to the fact that *he is the owner of his property,* it is he who has the right to ask for the pruning of the tree. The importance of who the parties are, or what is their status, is even clearer in the case of the quarrel about child custody. If such a quarrel takes place between the mother of this child and one of his aunts, the father's sister, then the conflict cannot be solved just by paying attention to the content (the custody) but also by considering who the parties in conflict are, or what their statuses are. All judges would concede the custody of the child to his mother, unless there are very serious reasons that demonstrate that the mother is unable of taking care of her child. In other words, all things being equal, we commonly accept that it is in fact significant whether one of the parties is actually the child's mother or not. And such a practice seems to agree with our intuitions about this case. According to our intuitions and to judicial practice, the special relation between a party and the element that is in contest means a factor of considerable weight in the solution of the case: my neighbour has a property relation towards his garden and the mother has a motherhood relation towards her child. This does not mean, of course, that my neighbour will have the right to do anything he wants when his property is involved

or that the mother will have the right to do anything she wants when her child is involved. But the weight of the special relation is not to be ignored.

So, what is the parallel for this second group of conflicts within the clashes that we are studying here, between the state and a substate agent? One example would be the case where a certain community is asking for more autonomy or special treatment, on grounds of ethnicity or nationality. This issue is not at all easy. In the cases of private property and parental custody, it was said that a meticulous study should be conducted on what is the content of the conflict and what is the relation of the parties to the content. This is exactly what will be done in this paper for clashes between the state and substate agents. In relation to the content of the conflict, it was already claimed that the elementary canons constitute the most basic element. In relation to the status of the parties, the subsidiarity principle will be used to justify that the authority should belong to the substate parties as long as there is no violation of the elementary canons. But let us not go too fast for now. The objective of this chapter is just to argue that the method proposed in this paper undertakes the humble mission of applying to the quarrels investigated here what is commonly accepted for everyday quarrels between individuals.

Therefore, we have distinguished, on the one hand, cases in which one of the parties clearly acts in an illegitimate manner or asks for something illegitimate. These cases are clear and straightforward because one of the parties has breached the elementary canons (murdering or child abusing, for instance). These are precisely type-A clashes, when considering clashes between the state and a substate agent. Nevertheless, there is a second group of conflicts where the solution is not as clear as for the ones within the first group, and this is precisely because there is no violation of basic principles. In the clashes

between the state and substate agents, the clashes with this shape constitute the type-B clashes. This classification will reveal to be not just useful, but also necessary.

CHAPTER IV

THE SOLUTION FOR CONFLICTS OF TYPE A

Clashes of type A are simple in the sense that they relate to the basic canons, and they are also simple because it is simple to decide who has the relevant authority: whoever argues in support of the basic canons. This is the Premise 3 I am going to defend in this section. Clashes of type B are more complex, because they relate to topics not clearly enlightened by basic canons. Instead, the authority will be assigned by analysing the status of the parties according to the so-called "subsidiarity principle," which I will explain and defend in Chapter V.

I have just said that clashes of type A are simple. I do not mean that the content of these conflicts is simple *in itself.* It is simple because it relates directly to the basic principles. Let us remember that basic principles are not necessarily basic in themselves either: they are basic now because, thanks to science and philosophy, they have been clearly derived from the most basic principles. The example introduced above was the one of parents who commit child abuse and the state institutions take them to court. "Children shall not be abused" can be accepted as a basic principle. Parents may perhaps propose abuse as an "educative punishment", but this would still violate the basic principle.

The justification for Premise 3 is not at all obscure. In type-A clashes, just one of the two parties is proposing a social norm coherent with elementary principles. If elementary principles are not to be violated, then the winning-party in these conflicts should be the party that does not violate these principles.

Therefore, there are clashes were the content shows who the winning party should be, because the content relates to the basic principles that must not be violated. As Brian Barry claims, there are clashes between state and parents in which "there is no way of arguing for [one of the opposing stances] that does not violate the most elementary canons of rational thought" (Barry, 2001, p. 248). I have actually borrowed the expression "elementary canons of rational thought" from Barry, although he does not specify what he means by that. The author makes this claim in the context of the discussion about creationism, and I think he is entirely right here. There is no way of arguing in favor of creationism without violating the most elementary canons of rational thought. There have been clashes between the state and parents because parents want creationism to be taught in school. Who is right in this conflict? The content of the conflict, and the fact that it is well supported by elementary principles, immediately shows that the state is right. Even if parents may have the right to tell their children that they believe in creationism for whatever reason (they should have freedom of speech in any case), the state should have its mechanisms to ensure that children receive the necessary education to know all that is needed about Big Bang theory, for instance, and evolution. In the previous section we have considered "the Earth is round" as an elementary principle of rational thought. That has also caused conflict, however, as there are people who still want to believe that the Earth is flat and teach that to their children. As "the Earth is round" is a scientific basic principle and that "basic principles are to be taught to children" could be accepted to be a moral basic principle, then the state should make sure to provide the corresponding education to all children. Consequently, the first kind of clashes involves the elementary principles of rational thought. Here no further discussion on who is right should be needed: we can directly affirm that it is right whoever supports the elementary principles.

In the two previous examples, the state was defending the basic canons while parents were acting against. As a result, the state is entitled to impose what is needed to make the elementary principles prevail: in these cases, that is to impose a specific curriculum. But there have been other cases where the situation is the other way around. Let us remember here how not long ago a number of states wanted to teach all white children that white people are superior to black people or, at least, a strict separation should be respected. There have been many brave parents who oppose such education. I will always recommend the reading of the novel *To Kill a Mockingbird*, based on a true story. In these cases, people should fight so that the state respects and promotes the elementary principles. Unfortunately, these cases have most of the time finished in situations of violence. Philosophy can teach us what is right and what is wrong, but it is the people, with their actions, who have worked, and sometimes sacrificed their lives, to make what is right prevail.

There is no way to defend any multicultural approach in cases where basic principles are violated, because the defence would itself violate the basic principles. By a "multicultural approach" here I mean an approach where the non-state entity is let free to follow the social norm it advocates. However, any social norm against these elementary principles, such as (outside the field of education) condemning children to death based on religious beliefs (Barry, 2001, p. 203), should not be accommodated but corrected. Again in relation to education, these elementary principles are very well stated by Gutmann: "Schooling that is publicly mandated and subsidized by democratic citizens may legitimately pursue civic purposes, which include the teaching of literacy, numeracy, veracity, toleration, and mutual respect" (Gutmann, 1999, p. 292). Although she does not present it as I do, we would both agree that these "civic purposes" could be considered to

belong to the fundamental canons that ought to be taught to all children. Therefore, the state has the legitimate power to impose the education of these civic purposes to all children. Consequently, I am holding even a stronger claim than that quoted from Gutmann: the state should impose these civic purposes not just in publicly mandated schools, but also in private ones because all children ought to be educated according to these civic purposes.

In this way, the extreme need we have of the basic principles constitutes the foundation of the state's authority to impose the compliance to these principles. Let us consider here that in liberal societies, the mission of the state is to ensure a framework where people can live peacefully and pursue their self-proposed good. The state imposes a *minimum* that ought to be accepted and respected by all, while people are let free beyond that minimum. The elementary principles of rational thought constitute precisely this minimum. Therefore, the state has the authority to *impose* the laws that relate to this minimum, to the basic principles. This is *the minimum* all citizens should respect and promote to build a really prosperous society. Note that I differentiate between *imposing* and *ruling*. Without a doubt, there are many more matters that need some ruling from the state, but this ruling is not equivalent to "imposing". I shall come back to this distinction in a subsequent chapter. But it is only in relation to the minimum, to the basic principles, that the state can really impose its directives. The understanding of this limit to the state's authority will be complete with the analysis of the subsidiarity principle in Chapter V.

However, my position could be interpreted as another form of what is commonly known as civic minimalism. It is important to mention this now to study whether critics to civic minimalism could also apply to my theory or not. I take as example here the famous discussion between Gilles, a civic minimalist philosopher, and Gutmann, a sharp

opponent. This discussion takes place within the context of parental rights over children's education: The question is whether parents have the right to reject curricula proposed by the state when it opposes in any way their own values, especially within the context of public schooling. Gilles bases his argumentation on the idea that the state cannot use its coercive power to promote some reasonable conceptions of the good at the expense of others by mandating the values children must be taught in school (Gilles, 1996, p. 939). Such an action would be contrary to the very essence of liberalism. Parental freedom to decide in matters related to education of their children is strictly enrooted in the freedom all adults enjoy to pursue their own ends in liberal societies (Gilles, 1996, p. 939). The following quote is an example of how this works: "Parents' educational messages to their children, whether delivered directly by parents in the home or indirectly through their agents in the school, should be treated as parental educative speech" (Gilles, 1996, p. 944). Moreover, Gilles believes that widely accepted liberal values will hardly reach agreement when translated into concrete, legally enforceable educational requirements. This is the reason why minimizing such requirements immediately translates into maximizing consensus (Gilles, 1996, p. 941). Such a perspective resembles my view in that only the really minimum that everyone could accept is what should be imposed, understanding "impose" as using coercive means to make people act according to certain practical or moral premises. In the case of education, the state could impose schools to teach certain curricula or to follow a certain educative method.

Gutmann criticizes civic minimalism. Before introducing the main points of her criticism, it should be said that the group of basic principles that I propose to be imposed does not need to be necessarily "minimal". It is true that it is the minimal number of premises that everyone should agree on, but it is not the minimal of premises that people

actually agree on. If this was the case, then it is true that this group of premises would be too minimal, and this is what civic minimalism supports. What I support is that there is a minimal group of premises that everyone should admit, but if someone does not, then that person does not have another option than abiding by the premise. In this way, actually this group of principles may not be few in number: let us remember that the number of basic principles increases as science and philosophy progress.

The first criticism from Gutmann follows the following argument. Civic minimalists accord no legitimacy to democratic decision making, but the constitutional amendment they would need to implement what their civic minimalism demands actually requires a democratic action. If it is not a democratic action that is required, civic minimalists should explain who is going to impose civic minimalism and how he will decide what the content of this civic minimalism is (Gutmann, 1999, p. 295). This criticism all together could not be applied to my reasoning, as I still accord an important role to democratic institutions. The canons are recognized and promoted by democratic leaders. There is no group of scientists that comes in and imposes a group of laws: These laws need to be accepted by the community of free people, and democracy remains to be the best tool for this communitarian acceptance.

Secondly, in Gutmann's view, civic minimalism is self-defeating: The main reason of convenience for civic minimalism is that it is just on a minimum that everyone will agree, but even civic minimalists do not agree on what the content of this minimum should be (Gutmann, 1999, p. 295). This does not affect my reasoning either, because I count on the fact that almost no premise counts on the agreement of all. And this is not an obstacle for imposing a certain premise, if it belongs to the basic principles. As has been argued above, the strength of a certain premise does not depend on the degree of

consensus, even if some consensus is always needed, but on the fact that it belongs to the group of basic canons. In fact, I think that the way Gutmann deals with the case of *Mozert v. Hawkins County Board of Education* is not pertinent enough (Gutmann, 1999, pp. 298-299). Gutmann opposes Gilles when she claims that the judge was right when rejecting the parents' request to exempt the reading of certain texts mandated by the school, and I agree with Gutmann here. Where we disagree is on the reasons why this is the case. Gutmann thinks that parents have no right to ask for exemptions on the basis of religion, while I believe they actually do have that right. In my view, the reason why the judge was fair in his sentence is because the parents' rejection of the relevant text was based on the fact that the boy in the text is cooking while the girl is reading a newspaper, and I consider that it goes against the basic principles of rational thought to reject something for that reason. Therefore, although my view could be called "minimalist" in certain way, it escapes from Gutmann's criticism against civic minimalism. In fact, the solutions I provide to clashes are not far from those of Gutmann, although we both depart from different philosophical premises.

If the first kind of conflicts involves elementary principles of rational thought, the second kind of clashes relates to the conflicts that do not refer to basic principles. When talking about elementary principles in the previous section, we have considered premise P, well supported by science and philosophy. But there are also clashes where the number of people that agree on premise Q does not out-number the people that argue for not-Q and this is because there is not enough scientific data or philosophical reasons to support Q or not-Q. These are clashes where no fundamental principle of rational thought is violated or, at least, that cannot be demonstrated yet. How conflicts of this second kind are to be solved is going to be explained in the next chapter.

CHAPTER V
THE SOLUTION FOR TYPE-B CLASHES

A. The subsidiarity principle

Up to this point, I have argued what should be done to solve cases that belong to the type-A clashes. The solution for these clashes is simple, in the sense that, due to the fact that they relate to the basic principles of rational thought, the winning party is the one who supports these principles. The resolution of the conflict thus depends only on the 'content' of the conflict, because the content clearly relates to basic principles. Who the parties are only matters to answer the question: who is advocating the social norm consistent with these principles? If it is the state who is acting according to the basic principles within a specific conflict, then the state is allowed to employ all its resources to protect the accomplishment of such principles, no matter whether the other parties are the parents of a child or the authorities of a religious sect.

Nevertheless, there are cases that are not so simple, because they relate to principles and fields that are not enlightened by the accepted basic principles, or at least their connection with basic principles has not yet been discovered. These are precisely the type-B clashes: both parties support stances that do not violate the basic canons. The state and the other party wish to undertake different policies or actions, sometimes incompatible with one another. No one could honestly argue that he has the ultimate truth of the matter in question, even if he has good reasons supporting his stance. There are subjects that disagreeing parties could argue for opposed premises and none of them could be charged of irrationality, not even of ignorance, because the subject might not be clearly solved yet. Or perhaps there is not a unique solution. Whether more or fewer hours of

maths or music should be taught at school does not seem to have a unique, straightforward solution, even if it could be hold as basic that all children receive some instruction in music and a lot of instruction in mathematics. But neither of these is an absolute truth, as the child who shows special skills and interests for music could be assumed to require more hours of music training and study. Whether a certain political community should have more or less autonomy and self-governing power does not seem to have a unique solution either, at least as long as the kind of power it demands does not violate the basic canons itself.

The objective of the present section is to justify Premise 4 of my main argument, which actually constitutes the solution for type-B clashes: in those clashes in which elementary principles are not involved, it is the substate party who has the relevant authority, according to the *subsidiarity principle.* In other words, I shall argue that the state should always let the substate party free to decide which action or policy to take. This may sound too strong and someone could raise the following critique: This would mean that in any case where the state is requiring something that isn't settled by the standards of rationality alone, it would be right to disobey. I will reply to this critique in Chapter VI. First, Premise 4 needs to be justified.

Then, type-B clashes are more complex because basic principles cannot really tell who the winning party should be. It was shown above that, when intuitively dealing with conflicts with these characteristics in everyday life, we usually evaluate the content of the conflict, on the one hand, and who the parties are, on the other. Who the parties are is relevant because they may hold a special relation with the element in dispute (property relation, motherhood relation, etc.). For clashes of type B, which are all clashes between the state and a substate agent, I argue that who the parties are is the determinant factor. I

argue that the substate agent holds such a *special relation* with the individual that it gives them the authority in these conflicts against the state. This does not mean the state has nothing to do there or that the state should remain totally passive, as we shall see in Chapter VI when discussing the rule-and-exemption approach.

Now in the present section, I answer to the following question in relation to Premise 4: Why should it be the substate party who has priority in these cases and not the state? My answer will be: this is precisely due to the subsidiarity principle. In other words, I hold a subsidiarist stance and my justification of Premise 4 will consist of a justification of the principle of subsidiarity.

The subsidiarity principle is at the basis of the political and law systems both in the European Union and in Canada. Let me quote here the exact wording use in the Treaty of the European Union: "In an area which does not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far 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"[4]. In other words, according to this principle, it is first the responsibility of the states to undertake that which falls under their competence. Consequently, this foundational principle in the EU gives priority to the states in the functions they can assume. When this principle is understood under the light of the praxis, in competences that originally belong to the state, the Union only takes over when certain strong conditions are met. The Union, according to this principle, should only act in a subsidiary manner: to assist the state members when they need it.

[4] Quoted from SOUDAN, Y. "Subsidiarity and Community in Europe". *Ethical Perspectives 5.* 1998. Page 179.

The parallelism between this understanding of the principle and the priority I concede to substate units over the state is evident. Actually, this principle has not only been used to describe the power distribution in federal or suprafederal structures and not even just to describe the power distribution between the state and other political substate political units as a mode of geographical decentralization, but also to describe how power should be distributed between all kinds of higher-level and lower-level power units. As Chaplin understands it, "[the subsidiarity principle applied to geographical power distribution] is only one specific application of a wider sense governing the distribution of functions between the state and any other communities, requiring that the state not assume tasks which other communities can perform adequately for themselves" (Chaplin, 1997, p. 118). These communities would constitute all the social bodies that today are conceived as "civil society". In his study of the genealogy of the principle, Chaplin exposes that from the beginning it was established as a normative principle not just to regulate these political relations, but to regulate all social relationships.

As we are only interested here in state and substate agents, we could formulate for our purposes the principle as the following: *The state shall not assume tasks that other substate agents can perform adequately*. Another formulation could be: *The state could only assume tasks assumed by substate agents when a sufficient reason proves that the agent is not performing them adequately anymore*.

Let us remember that clashes of type B talk about matters related to premises Q and not-Q, in which neither of the two premises can be demonstrated to derive from basic principles. As explained, basic principles constitute the sufficient reasons for the state to impose a premise. An obvious fact should be noticed here, which is that the absence of sufficient reasons does not imply the absence of reasons; the state may have very good

reasons to support Q, but not sufficient reasons to rule out not-Q. Applying the subsidiarity principle, in the clashes of the second kind, the state shall let the substate agent perform the task it can perform, with no intervention. In other words, the burden of justification falls on the state: In order to legitimately impose its coercive power, it is the state who needs to demonstrate that premise S, for instance, is supported by the basic principles and, consequently, it would not be reasonable to support not-S.

Obviously, the principle is built on the assumption that it is preferable to concede power to lower-level units than to higher-level units. How is this justified? There are two arguments that could be provided, the first based on the individual's freedom and the second based on the individual's good. First, the free formation of communities with their specific social norms constitutes a necessary manifestation of the individuals' freedom; the individuals' freedom ought to be respected; therefore, the free formation of communities with their specific social norms ought to be respected. Second, the individual's good is the summit of society; the community's actions serve the individual's good in a significant way; therefore, the community's actions ought to be protected. The subsidiarity principle precisely describes the attitude of the state who respects and promotes the community's good and freedom. It is important to notice that the philosophers who support this principle do not support community at the expense of the individual. They actually support community because they take the individual in high esteem. This is for instance Mounier's view, a strong defender of this principle who famously said that "la personne n'est pas une cellule, même sociale, mais un sommet d'où partent tous les chemins du monde"[5]. No liberal could disagree on this, but may fail to

[5] Quoted from SOUDAN, Y. "Subsidiarity and Community in Europe". *Ethical Perspectives 5.* 1998. Page 186.

see the important connection between the individual and the community that subsidiarist philosophers defend.

In my second argument in support of subsidiarity, I said that "the community's actions serve the individual's good in a significant way". In effect, family or religious community seem to fulfil the individual's life in a way the state cannot do, at least for those individuals who choose to either develop or maintain their bounds with the family or the religious community. Arthur Brooks, who teaches the course on "Happiness" at Harvard Business School, exposed in a recently published article the three equations that lead to happiness according to all the research he has done for a number of years. According to one of these equations, happiness seems to be the result of the combination of the following factors: family, friends, faith and work (Brooks, 2020, par. 15-22). It is difficult to see how the state could provide a proper substitute of these, at least for the first three. It is not the intention here to claim that state action necessarily means an obstacle for these elements. However, family, friends, faith and many other factors seem to properly happen not at the level of the state but within the sphere of substate units. This is the reason why the state should respect and protect the action of substate units: family constitutes a substate unit, friendship and faith usually take place within a community, which is also a substate unit. In other words, the happiness that it is commonly pursued seems neither to be found thanks to the state, nor in the sphere of the individual alone, but inside the sphere of the individual within an intermediate or substate community. This is the reason why communities "serve" the individual in a special manner and why they ought to be protected and promoted. Leisure could be taken to be another factor, and both golf clubs for golf players and chess clubs for chess players seem to serve better to this factor than the state could do. It rather seems that the way in which the state could better

serve to this factor would be by cooperating and promoting golf and chess clubs, as long as there are people interested. In conclusion, the satisfaction of the individual seems to justify our interest in safeguarding substate agents in the performance of their proposed missions.

The first argument provided in favor of the subsidiarity principle is based on the free formation of communities, with their social norms, as a necessary manifestation of the freedom of individuals. In effect, the freedom of the communities to design their own social norms derives from the freedom of the individuals who compose them. There is somehow a parallelism between the community's and the individual's freedom. This parallelism is implicit in the reflections that different authors have made on the issue. Chaplin, for instance, argues that "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 or absorb them" (Chaplin, 1997, p. 118). In other words, the community's freedom could not be restricted by a higher unit in the same sense that the individual's freedom could not be restricted by a higher unit. Communities formed by these individuals to undertake certain actions enjoy a freedom grounded on the freedom of these individuals. This argument could be described in terms of the pursuit of particular and common goods: "The common good takes priority over the particular goods of persons or communities (I shall henceforth concentrate on the latter) but only in the sense that [the particular goods] need what is contained in the common good in order to attain their particular goods (…). The common good authorizes

the community no further than to the point at which persons or particular communities require its aid" (Chaplin, 1997, p. 118). Why is the pursuit of the common good only justified as far as it helps individuals and particular communities to attain their particular goods? Because the particular goods are the goods people freely self-proposed, as demanded by the freedom defended in liberalism. A "common good" enforced by the state and contrary to the particular goods would consist on an illegitimate restriction of freedom.

We could consider here some of the exemptions from law demanded by the Sikh community in the UK. Sikh culture requires its individuals to wear a turban and carry a *kirpan* (like a sword). However, the British law prevents people both from riding a motorcycle without a helmet (something incompatible with wearing a turban) and from walking down the street with knives or cutting blades. The first thing that should be analysed here is whether basic principles ask for an obligation to wear a helmet or an interdiction from wearing a knife. If it does not, then it seems difficult to argue that it serves the common good, while at the same time violating the particular good of many individuals and of a whole community. In the next section it will be commented how Brian Barry argues that there is a public stake in children's education, and there is certainly. But the recognition of this common good should be grounded on the affirmation of the particular goods of the individuals, and not on a source of conflict.

The subsidiarity principle implicitly recognizes a very strong connection between individuals and the communities they form (what I called before "special relation"), a stronger connection than the one individuals have with their state. Soudan argues that "we could say that the belonging to a natural community corresponds to a natural compulsion of the person, and is therefore a constraint spontaneously recognized and accepted, as the

place of expression of personal freedom" (Soudan, 1998, p. 178). In his opinion, the belonging to the state community is not anymore spontaneously recognized, and the fact that the state has to use its power to enforce participation is a symptom of this. This is the reason that makes him claim that the larger community should not be really called "community", but rather state's mass organization. Why is this the case? Perhaps it is due to the size that current states have, and the fact that they bind a huge number of people together, these people being very different from each other. This would mean that this issue may be solved if we created smaller states with homogeneous people, something perhaps similar to the ancient Greek city-state. In this paper, however, what we are studying precisely is the conflicts that arrive in current multicultural and liberal states.

Soudan uses the words "natural compulsion". By this, he means that "the individual was feeling this belonging as a part of himself, as one of his main characteristics, as something inseparable from his integrity, as a fundamental element of his humanity" (Soudan, 1998, p. 180). This is the reason why the good and freedom of the communities seem to be justified on grounds of the good and freedom of the individuals. Substate communities, as I refer to them, seem to be part of the individuals themselves, they seem to be more "theirs" than the state. This is the reason why, no basic principles being violated, it is reasonable to give priority to the substate communities. One could argue that a way could be created to provide the individual the benefits she gets thanks to the community circumventing the community. This person would need to argue how this could be done, as I cannot see it.

In the previous statements of the argument, one could have noticed how the idea of "adequacy" is present: The state could take over when the lesser communities can no longer adequately perform their functions. But, as Chaplin asks, "at what point does a

community's performance of its proper functions become inadequate?" (Chaplin, 1997, p. 122). Chaplin comments that in the literature there is a significant absence of a clear response to this question. My response is precisely that its performance becomes inadequate when the basic principles are violated.

Unfortunately, the justification for the subsidiarity principle, as I or others have formulated, is always subjected to different interpretations. For instance, the principle could be interpreted in a deontological or a consequentialist way. From a deontological view, one would argue that it is the community who is responsible of as many functions as possible because it is the community who has the obligation of doing them. For everything that has been said up to this point, it is clear that the interpretation taken in the arguments presented here is a consequentialist one: The principle ought to be taken because it serves to the interests of the individuals. However, there could be also many different consequentialist interpretations of the principle. I will bring to the discussion some of these interpretations to show through each one of them how I actually interpret the principle. Concretely, I will analyse the four interpretations criticized by Trevor Latimer to show in which way mine is different. The first argument talks about the idea that subsidiarity ensures a higher efficiency in the societal organization; the second argument relates to the presumption that subsidiarity protects us from excessive centralization; the third one expresses that subsidiarity ensures a more democratic system, and the final argument claims that subsidiarity benefits the liberty of the individuals.

I will not discuss Latimer's third argument. I think an appeal to democracy is not necessary to make a significant argumentation on why lower-level units benefit the individual, as I have done above. Therefore, this critique of Latimer cannot be directed to

me. I will briefly comment on his last argument now and then I will discuss the first two arguments in the next two sections.

According to the Latimer's last argument, subsidiarists rest on the idea that subsidiarity protects individual's freedom. I have rested myself on this idea too. In Latimer's view, this is an assumption that will be sometimes accomplished and sometimes not, depending on how these lower-level units are also governed. They could be actually governed in a way that scarcely permitted individual freedom (Latimer, 2018, pp. 300-301). I think, however, that a subsidiarist argument provided on the basis of freedom is still justified. I think that Latimer's counterargument does not really reject the fact that, as a principle, subsidiarity safeguards individual freedom. For instance, if the individuals of a certain village think that they need no state-run school because they can build their own school, with their own quality teachers and with a quality curriculum designed by themselves, why should the state take over? On the contrary, subsidiarity defends these villagers' right to freely associate and freely undertake their own schooling. Latimer's counterargument is actually blocked by the principle's clause that the state should take over when the substate unit is no longer adequately performing its functions. In my argumentation, I have been more concrete by saying that the state should take over when the basic principles are violated. Consequently, a lower-unit authority who violates individual freedom violates basic principles too and the state should take over. But this does not go against the subsidiarity principle. Instead, it is actually supported by the principle. In this way, the principle protects individual freedom from abuse by either the state and lower authorities.

B. An important clarification on subsidiarity: Clashes related to education

As I mentioned above, in his first criticism Latimer attacks a justification for the subsidiarity principle based on efficiency. I already said that my interpretation of the justification is a consequentialist one and, as a result, the notion of efficiency is important. However, this is a very sensitive notion, because it could be subject to different interpretations too and, in my view, not all interpretations are equally satisfying. Different interpretations on the notion of efficiency could derive in different solutions to given clashes. I have explained above that the preference for lower-level units that the subsidiarity principle supports is due to the importance of the *special relation* between the individual and its community. Therefore, when judging the efficiency of benefitting the individual by the parties in question, the special relation between the community and the individual shall be taken as a determinant factor, as long as the basic principles are not violated.

In my opinion, the misinterpretation of the notion of efficiency is the root of the general confusion around subsidiarity. This is manifested in what Chaplin claims: "Advocates of both centralization and decentralization currently invoke [the subsidiarity principle] with the same firmness of conviction. Its inclusion in the Maastricht Treaty, far from having generated clear guidelines on how to determine the proper balance between European and national competences has only served to highlight the competing interpretations which it can, apparently, bear" (Chaplin, 1997, p. 117).

I will provide an example of how the misinterpretation of efficiency is at the root of this confusion. Let us remember how the principle is used in the Treaty of the European Union: "In an area which does not fall within its exclusive competence, the Community

shall take action, in accordance with the principle of subsidiarity, only if and in so far 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". Then, the philosopher Andreas Follesdal provided this famous interpretation of the principle in the context of the European Union: "[The principle] regulates authority within a political order, directing that powers or tasks should rest with the lower-level sub-units of that order unless allocating them to a higher-level central unit would ensure higher comparative efficiency or effectiveness in achieving them"[6]. But where does the Treaty mention that tasks should be allocated to the higher-level central unit when it ensures "comparative efficiency or effectiveness in achieving them"? When referring to "comparative efficiency or effectiveness in achieving them", I think Follesdal is interpreting efficiency in a way that is misleading. As a matter of fact, neither in theory nor in practice does the Union take over whenever it is demonstrated that it can achieve tasks with greater "comparative efficiency" relative to the member nations. Actually, there are some tasks that belong to the States only and the Union could never take over. There are some other tasks that *primarily* belong to the State and the Union could only take over when it is demonstrated that the State is facing really serious impediments to undertake these tasks on its own. In other words, it is on the Union that the burden of justification falls in order to take over. It is not just that the Union can demonstrate that it can do better in economy than member states to take over: The Union needs to demonstrate that the state is facing *really serious* impediments, i. e. that the state is in a profound economic crisis. Of course, I do not mean that this decision of taking over

[6] Quoted from LATIMER, T. "Against Subsidiarity". *The Journal of Political Philosophy, Vol. 26, No. 3.* 2018. Page 282.

is not based on efficiency reasons. But efficiency is understood in a way that the Union never takes over before a *really serious* impediment from the State is demonstrated. Finally, it is true that there are some tasks that belong to the sphere of the Union, perhaps because of a better efficiency, but always as a free concession made by the Member States, signed in a treaty and ratified by their parliaments. It is the State themselves who claim "it is better to do this together rather than separately", but it is not the Union who takes over univocally.

It is not necessary to go deeper in this example, as the usage of the principle in the European Union is just a parallel of how it could be used (and it is already used) among other layers in society. What is relevant is to notice how fast one can misinterpret the idea of "efficiency" in the interpretation of the principle. If efficiency is interpreted in an erroneous way, perhaps it could be demonstrated that the Union, or the state in our case, should take over in almost all tasks. Such an interpretation misses an important notion in how efficiency should be really understood in subsidiarity: the notion of *special relation*. This is the problem in Latimer's criticism too: the efficiency-based interpretation of subsidiarity that he criticizes actually misses the notion of special relation. There are two frequent and negative consequences of an interpretation lacking the notion of special relation. One, the analysis under the efficiency perspective often results in a certain form of reductionism: for instance, efficiency only understood as "economic efficiency". Two, the centrality of the individual is lost to give way to the interests of the larger society. Latimer's criticism is an example of a reduction of efficiency to "economic efficiency" (he talks about administrative incapacity, functional redundancies, parochialism, and interjurisdictional externalities, etc.) (Latimer, 2018, p. 290). Latimer undergoes a long

discussion where he discusses why subsidiarity actually diminishes economic efficiency, in opposition to what thinkers like Tiebout or Oates would believe[7].

However, the deepest defences of the subsidiarity principle never refer to "economic efficiency", because they refer to efficiency in another way. It is not economy what they understand as defining efficiency. For instance, Chaplin claims that, "in the light of the background theory, it seems clear that the criterion of superior economic or administrative efficiency is neither necessary nor sufficient to justify state action. Thus, for example, to argue successfully that less total public expenditure would be required if a federal rather than a regional or local political authority provided welfare benefits (due to scale economies), would not in itself justify centralization" (Chaplin, 1997, p. 122). In effect, subsidiarity must be understood in a consequentialist way where the valuable end to be promoted is different from economy.

In my arguments in favor of the subsidiarity principle, I implicitly claimed that the justification relies on the "special relation" that is formed between the individual and the communities where she belongs. *Subsidiarity is more efficient only in the sense that it protects these "special relations" that are essential for the individual.* I will focus now on this idea of efficiency in terms of special relation and in a more concrete way. However, this time in order to do so, I am going to focus neither on economy nor on geographical decentralization. Instead, I wanted to focus on the topic of education, which is a topic that generates numerous conflicts between parents and the state. Within this topic, the importance of a right interpretation of efficiency based on special relation (child-parents, in this case) becomes patent. The common misinterpretation of the notion

[7] See LATIMER, T. "Against Subsidiarity". *The Journal of Political Philosophy, Vol. 26, No. 3.* 2018. Pages 294-297.

of efficiency in relation to education usually focuses on two factors different from special relation: how society needs its citizens to be educated and how we think children will be better prepared for their future life in society. If efficiency was to be understood in this way, then perhaps we could find that the state is the most appropriate agent to educate children. However, there is a lower-level community here, and a very significant one: a community with whom the child has very special relations. This community is the family and, more specifically, the parents, who take the decisions that concern the family members.

It has already been argued that the lower-level unit should be given priority in matters outside the scope of basic principles. But is this general method of mine applicable to the topic of education as a particular case? At the very beginning of this paper, I mentioned the tribunal cases about child custody. In these cases, who is the parent of the child is an extremely relevant question. The parent has to act very badly, or to be highly negligent, to lose the custody of his child. Actually, a concretization of the subsidiarity principle is generally accepted here: the state can only take over if parents *seriously* fail in accomplishing their functions. Here, the burden of justification falls on the state. Parents have the authority to decide the education of their children because they have a special relationship with them. However, as it is going to be explained now, when the importance of special relations in efficiency is ignored, then the role of parents as primary educators becomes irrelevant and the possibility that the state takes over becomes greater, simply when it is demonstrated to be more efficient according to a misinterpreted notion of efficiency.

Disagreements concerning the instruction of mathematics can serve as an example here. Specific knowledge on numeracy undoubtedly belongs to the fundamental canons

that ought to be taught to all children. Few would dispute the fact that children would suffer a clear disadvantage if they were not numerate: both for their critical thinking and their everyday living. However, parents and school boards disagree on how many hours of maths and how many notions should be taught. Some think that mathematics is the most critical subject, and some others prefer to give more weight to the instruction on humanities, arts, and music. There is not a sufficient body of scientific data or philosophical reasons to claim that one stance in this debate is right and the other is wrong. Without a doubt, the state needs to promote particular curricula with specific instruction in maths. However, parents and school boards could disagree with this education. As no fundamental canon of rational thought is violated here, and this disagreement belongs to the type-B clashes, parents should be let free to decide which kind of education they desire for their children. The reason why it is parents who have the last word in this kind of disagreements and not the state is the fact that parents have this special relation with their children.

Nevertheless, Brian Barry would reject this argument. He gives less weight to the fact that parents have the special relationship, and, as a consequence, he pays more attention to a misinterpreted efficiency that confers more power to the state to control a child's education. Let us now analyze his argument in detail. According to Barry, there is a fundamental and general rule concerning the education of children in a liberal democracy and this rule should always be respected: all children need to reach specific standards in education. If this is not the case, society could never be liberal. Let us call this rule “B1”.

However, the author does not limit himself to argue that all children should receive quality education: He also argues that there is a public stake in education, and

therefore the state should do everything it could to ensure that children receive this education. Let us call this claim "B2". The author gives two sets of reasons why this is the case. The reasons he provides in the first moment are, on the one hand, that children are not in a position to protect their interests, so they are vulnerable to neglect and abuse and, on the other hand, that the main principle in a liberal society (adults are capable of managing their affairs) depends on the presumption that children are going to be brought up in such a way that they actually will be able to manage their affairs (Barry, 2001, p. 200). In a second moment, the author explains that there is a "public stake in education at large" both due to societal (citizens should be concerned about the features of their society and its future) and paternalistic reasons (it is about the interests of the children themselves) (Barry, 2001, p. 209). As a consequence, and according to the author's view, "there are good reasons for activism in relation to education" (Barry, 2001, p. 210). Barry is addressing the state's activism here.

I agree with Barry both on B1 and B2 and none of these premises supposes a danger to my argument. There are important reasons why there is such a public stake in education and, therefore, why the state should have an active role. In effect, children should be defended against any abuse committed by their parents: "the state must be prepared to step in to protect their interests" (Barry, 2001, p. 210). Children are not the property of their parents: they have their own rights that should be protected against those parents who think they can do whatever they want with their children. Being aware of the fact that children are not the property of parents helps to reject positions other philosophers have maintained arguing that controlling their children's education should be part of the rights parents have as adults in liberal societies. This is for instance what Gilles defends: "that the deference we extend to parental educational choices should

approach (though not necessarily equal) the deference we give to the self-regarding choices of adult individual" (Gilles, 1996, p. 939). Education is not part of parents' right to speech either (Gilles, 1996, p. 944). Parental authority concerning education is a parental duty rather than a parental right. If parents have to take care of their children, that is because it is for the good of their children, and not because that is part of their rights to choose as adult individuals. Let us remember here that the individual is the summit of society and community-related goods shall serve the good of the individual. Family and parental interests should be subjected to the child interests, and not the other way around. When I talk about child interests, I mean what the child needs, and not necessarily what she desires.

Therefore, no essential disagreement between Barry and myself arises from his first two premises B1 and B2. However, there is still a third premise that is strongly related to a certain notion of efficiency.

Barry does not really spend much time reflecting on the fact that most people believe parents have a special relationship with their children and that this status confers them a special role and mission. Instead of reflecting on this, he presents the discussion in terms of who is "more efficient" in the education of children: either parents or public schools. If one focuses on the argument presented within the discussion on nurture and education (Barry, 2001, p. 211), it seems that, in the author's view, public schools *do better* in education while parents do better at what he calls "general nurture" or "child-rearing outside the sphere of education" than "even a relatively well-run state institution." Public schools "do better" or are more efficient than parents, but he explains how he understands efficiency in education: instruction in functional education (education to be critical people) and education for life (education understood as "wisdom"). I will refer to

this interpretation of efficiency as BE (Barry's Efficiency). Therefore, here we have Barry's premise B3: public schools and other state institutions are more efficient in educating children, where efficiency is understood as BE. As children ought to be well educated (B1), there is a public stake in education (B2) and public schools are actually more efficient in education (B3), Barry concludes that the state should have more power in imposing curricula, or deciding the educational system, even if this rises disagreement with parents. In his view, it does not really matter whether parents are primary educators, or not, because even if they are, they should delegate this function to the state, who has proved to be more efficient.

Barry would reject the subsidiarist principle because he does not think that the burden of justification falls on the state and that the state can only take over when parents commit serious violations. As soon as it is demonstrated that the state is more efficient in promoting the ends contained in BE, then the state must take over. Subsidiarists support an asymmetry in favor of the lower-level units (in this case, the state only takes over when parents commit serious violations) that Barry rejects. BE is based on a symmetry: whoever educates better according to the ends in BE automatically gets the authority over the children education. Only efficiency grounded on special relations could provide the justification for the asymmetry that subsidiarity supports. The notion of efficiency in education, based on special relationship, could be formulated like this: *children benefit more when their parents take care of their education, as long as they do not violate the basic principles.* Let me call this formulation EES (Efficiency in Education according to Subsidiarity). Now the question is: Is efficiency understood in terms of special relations generally more appropriate, and distinctly more appropriate in the case of education as a special case for subsidiarity?

I think it is worthwhile to reflect here a bit more on the quotation from Mill that Barry approvingly brings: “It is one of the most sacred duties of the parents, after summoning a human being into the world, to give to that being an education fitting him to perform his part well in life towards others and towards himself” (Barry, 2001, p. 210). Furthermore, Barry adds that, according to Mill, if the parent failed to discharge this obligation, it was the job of the state to see that it was fulfilled. Nevertheless, it is essential to underline that Mill is attributing this obligation firstly to the parents and just to the state in a second place, whenever it can be demonstrated that parents failed to perform this obligation. The asymmetry supported by subsidiarists seem to be supported by Mill too. Intuitively, one can recognize the unique role parents have and why their special relation is appropriate in education: they are able to influence all dimensions in the child’s life, parents share a real living with their children and parents educate under the premises of love, which is the most crucial element in education (this perhaps could be the topic in a future paper). Therefore, it is parents who have to take care of children’s education, not just because it is their duty, but because it is in the interest of the child.

I think Melissa Moschella presents a compelling argument to demonstrate this. In effect, Moschella presents a vision close to mine, where both the subsidiarity principle and the notion of special relationship are of major importance. This philosopher gives reasons why the special relationship between the child and their parents benefits highly the child in their education. Then, she argues that this special relation means an “authority relation” and, as this relation is a personal relation, it is also non-transferable.

The philosopher argues that parental relation is essential in education because of two benefits children receive from their parents: the benefit of being loved uniquely and the benefit of knowing one’s biological parents as a source of insight into one’s own

identity (Moschella, 2016, p. 39). The significance of this special relation is also underlined in a very interesting quotation from Aristotle that the philosopher presents: "parents love their children as being a part of themselves, and children their parents as being something originating from them" (Moschella, 2016, p. 26). Moschella interprets this notion of children being "part" of their parents as an emphasis of the permanent and identity-constituting link that children have with their parents (Moschella, 2016, p. 28), where identity refers to the child's identity.

Then, it can be easily recognized that interpersonal ties give rise to the particular obligations (think, for instance, on the particular obligations we have to our friends), and this obligation becomes an obligation of authority "when the fulfilment of those obligations requires the exercise of authority" (Moschella, 2016, p. 29). In other words, "the bonds between parents and children in themselves give rise to parents' direct and weighty special obligations to care for and educate their children; and if, as everyone recognizes, caring for children requires making decisions on their behalf and thus exercising authority over them, then it follows that parental authority is natural and original" (Moschella, 2016, p. 23).

Moreover, Moschella argues that these special obligations become "personal obligations" when they have to be delivered by unique and irreplaceable individuals, in which "personal" should be understood as "non-transferable" (Moschella, 2016, p. 33). Of course, this does not mean that parents could not ask the state for help. But it does imply two important points: first, parents shall never disregard their responsibility as educators; second, the state helps the parents in a mission that is primarily *theirs* and because, thanks to the authority they have, they agree that the state can help. And this is precisely the true meaning of the state acting in a *subsidiary* way. In other words, the state

must not take over if parents do not violate the basic principles. The state bears the burden of justification in order to take over, in order to, for instance, design certain educational curricula not in agreement with parents.

Consequently, parents have the authority in the education of their children *because they are the parents*. This is the reason why the identity of the party, in this case the parents, is so important. Education is founded on parenthood because is founded on the interests of the child himself. Therefore, my interpretation of efficiency as EES asserts the importance of special relations with the community (family, in this case) and provides sufficient justification for the subsidiarity principle. Obviously, this reasoning does not mean that parental power should not be "limited by the legitimate claims of those over whom the power is exercised" (Barry, 2001, p. 202). Nevertheless, it has been shown that both BE and B3 should be rejected.

Perhaps parents totally agree with the state and actually ask the state for help in their children's education. That is legitimate and supposes no problem. This is why the state should still propose an educational system (how to articulate this will be further explained in Chapter VI). And obviously, if parents were violating basic principles in the education of their children, the state should use its coercive power to protect children from these parents and provide them with a proper education.

To conclude this section, it should be recognized that, even if we all agree on the fact that children education is highly important in society, both for the interests of the child and of society at large, it is extremely difficult (not to say impossible) for everyone to agree on how this education should look, due to the simple reason that in any society there are numerous conceptions of the good. We may all want to direct children towards

their excellences, but if our conception of the good differs, then the direction will be different too. Rawls himself explains that "a modern democratic society is characterised not simply by a pluralism of comprehensive religious philosophical and moral doctrines, but a pluralism of incompatible, yet reasonable comprehensive doctrines" (Singh, 1998, p. 165). As a consequence, clashes between the state and parents, within the context of education, are bound to happen. Even in an ideal liberal society, the state and individual parents will disagree on what is to be taught or how it should be taught. I maintain here that, when clashes between parents and the state refer to unclear and unresolved topics, parents should be let free to decide, as they are the ones with the special, personal relation. Parents have the moral authority and obligation of educating their children according to their true conception of the good, and this to the point that they would be morally required to fight against the state if they honestly believed that the state is committing some abuse against their children.

C. What, then, is the role of the state?

As I mentioned above, there is a second justification, and the last one in our study, for the subsidiarity principle that Latimer criticizes too. Again, I am using these justifications and its critics to further explain my interpretation and my own justification of the principle. This last justification, which I shall tackle in this section, discusses the issue of centralization and fragmentation. I will take advantage of this discussion to comment on this compelling question: according to the theory I here expose, what is the role of the state? Let me offer some considerations about this question before getting into Latimer's critique. The following considerations revolve around two important ideas:

one, that the role of a liberal state should be limited just to providing a framework of basic principles; two, that leaving a wide space for freedom to individuals and communities may result in some degree of imperfection from their side that the state shall tolerate.

Everything that Barry claimed about the parents' high risk of committing certain abuse towards their children[8], could be claimed about the state's risk of abusing the children in the country. The reasons for these risks should not be sought either in the nature of parents or in the nature of the state, but instead in the vulnerability of the children themselves. Granting this, it should still be maintained that parents have an essential role in educating their children and that there is a public stake in education as there is a public stake in many other fields, especially when it is a human being and its dignity (and its environment) what is at stake. So how can we rightly understand the cooperation between parents and the state? Perhaps a parallelism between the state's role in protecting children and its role in protecting workers could help. The state has the duty of establishing a framework where the dignity of the employees is going to be respected. However, it would be illiberal if the state took the place of the employer, told him how to do his job, and even wrote and signed the contracts for him. In this same way, the state has the duty of establishing the right framework for education, but it cannot take the place of the parents. Better: the state can only take the place of the parents whenever they are violating the basic framework (this is the first kind of clashes as explained). Barry does not recognize this in the case of education, but he does in other cases. Obviously, the public stake in education, together with his attachment to his own conception of efficiency, makes him treat differently the case of education from the other cases. But as such a

[8] For instance, see BARRY B. *Culture and Equality: An Egalitarian Critique of Multiculturalism.* Polity Press 2001. Page 202.

conception has already been rejected in this paper, the consequence is then that education is not that different from other cases, such as the protection of workers.

Actually, Barry accepts that communities could have a different evaluation of reality than what we may have[9]. In these cases, we may disagree. However, we shall tolerate the difference and, furthermore, the state shall not act to disrupt the evaluation of reality made by these communities. It shall not, I would say, as long as these communities do not violate the basic principles.

Thus, the state needs to perfectly demonstrate that such a violation is taking place. As Moschella explains, "coercive and direct intervention on behalf of the child is justified only in cases of abuse and neglect" (Moschella, 2016, p. 48). Being this explicit about this way of proceeding is the only way to ensure that people in power do not illegitimately impose any doctrine beyond the basic principles. Moreover, in order to safeguard the liberal premises of the state, a certain degree of imperfection at the level of parental authority should be tolerated in education: "preservation of the common good requires tolerating a great deal of imperfection in the exercise of parental authority" (Moschella, 2016, p. 48). In effect, holding that the state can take parents over in their role as educators only when parents violate basic principles, implies that in some families, children will be educated worse than if they had been educated by the state- for instance, in terms of literacy or numeracy. This is the 'deal of imperfection' that must be tolerated. But the subsidiarist position still holds that the parental special relation and authority is what benefit children the most. In addition, even if this results in a worse education for some

[9] See, for instance, his argument in defense of priestly ordination restricted to men in BARRY B. *Culture and Equality: An Egalitarian Critique of Multiculturalism.* Polity Press 2001. Page 174. His key point is that this conception of priestly ordination is not a case of job discrimination because the idea that sacraments have efficacy only if administered by a man constitutes an important belief for the people concerned.

children, the subsidiarist position would result in an overall better education for the majority of children. Moreover, there are some practical reasons that encourage us to accept the subsidiarity principle. It is very difficult for the state to judge and monitor when the education provided is better or worse, in cases where there is no a clear violation of basic principles. Sometimes it is difficult because the educational matter in question is not in itself clear; other times, it is difficult because the state has not the means to monitor in an efficient way and without violating the sphere of freedom and privacy of the individuals. Then, the efficient solution is to let the parents decide, and this is precisely the subsidiarist solution.

Following this line, Singh is even willing to admit that "the liberal state must, if it is to be consistent with its own principles, tolerate parental religious convictions that conflict with its teaching of civic virtues" (Singh, 1998, p. 166). The problem, in my view, is that many values could be defended under the flag of liberalism and civic virtues. For instance, we have witnessed how some politicians have defended that homosexuality is morally right and some others have defended the contrary, all under the flag of liberalism. These politicians obtain sooner, or later, the control of the state. Politicians could politically promote any of the two positions, as citizens can, but once in state cannot impose their believes if none of them is sufficiently backed by science and philosophy. Particularly in relation to this topic, we have witnessed how the people in power have censored other people who had spoken contrary to what they believe. This is unfortunate because, as long as no basic principles is violated, censorship is an abuse of power.

It should not be forgotten that the state is run by state people: These are people who have a personal conception of the good, certain interests, their own scale of values, an agenda, etc. If these people are not aware of the limits assigned to the state in the

present method (just basic principles shall be imposed), the risk for these people to incur in abuse of power is high. Rawls shares the same opinion, as Singh explains: "[According to Rawls,] a just society does not seek to promote any specific conception of the good but provides instead a neutral framework of basic rights and liberties within which individuals can pursue their own values and life-plans (…). Rawls rejects a state-endorsed general conception of the good for, as he argues, any comprehensive view of the good life would require oppressive state power to maintain it" (Singh, 1998, pp. 167-168). Rawls' insight perfectly agrees with my view. According to the method proposed here, the state could never impose a comprehensive view of the good life, but just the basic principles that enable people and communities to develop their own conception of the good life. These basic principles precisely guarantee the neutral framework of basic rights and liberties.

Now, let us go back to the fourth interpretation of the principle that Latimer criticizes, which is highly related to this idea of limiting the power of the state. I do claim that the subsidiarity principle provides a convenient solution against the risk of excessive centralization; this one is another acceptable justification for the principle. However, Latimer "demystifies" this fear against excess centralization, so I will proceed to analyse his criticism in detail. In relation to this issue, Latimer thinks that this justification for the subsidiarity principle is usually interpreted in two ways, and he takes the two to be erroneous[10]. Firstly, the subsidiarity's presumption is interpreted as analogous to the presumption of innocence in criminal law: in the same way that the mistake of clearing the guilty is preferable to the mistake of punishing the innocent, the mistake of excess fragmentation is preferable to the mistake of excess centralization. According to this

[10] The argument discussed here can be found in LATIMER, T. "Against Subsidiarity". *The Journal of Political Philosophy, Vol. 26, No. 3.* 2018. Pages 289-291.

interpretation, excess centralization is taken to be *especially bad*. In Latimer's opinion, this judgment is frequently the result of unjustifiably equating excess centralization with absolutism or tyranny. It should be responded here that, although excess centralization does not necessarily lead to absolutism or tyranny, this danger is real and should not be ignored. If a lower-level unit commits some evil, this evil is lower too, as it cannot go beyond the unit power capacity, and there will be a higher-level unit that could impede this evil. If it is the state who commits evil, it has more power, this evil will probably have a greater scope and with a lower capacity of prevention. Latimer also reminds us here of the evil that can be performed by lower-level units. Again however, it has been argued that the state has all the powers to intervene as soon as the lower-level unit is violating the basic principles. Finally, Latimer thinks that there are other available measures to prevent the dangers of excess centralization, different than the subsidiarity principle, such as democratic accountability or separation of powers. Nevertheless, we shall not forget that the subsidiarity principle was not proposed here as a remedy to excess centralization. The subsidiarity principle should be implemented *first and foremost because it benefits individuals and communities*, although I take the idea of remedy to excess centralization as a valid, auxiliary argument in support of the principle.

According to Latimer, there is a second common interpretation of the justification of subsidiarity in terms of protection against excess centralization, which is not justified either, in his opinion: that excess centralization is more likely to occur than excess fragmentation. I agree with Latimer on this point: that the likelihood of these two evils is difficult to determine, so I do not accept this interpretation of the justification. Instead I accept the first one: that excess of centralization is especially bad, for everything that has just been exposed. In my opinion, liberalism in itself, and not just subsidiarity, implies a

preference for excess fragmentation over excess centralization. This is precisely the reason why I take subsidiarity to better fit liberalism. The essence of liberalism is precisely the idea of providing just a framework of rights and liberties so that people can pursue their own conception of the good. This is fragmentation precisely. Society would be much less fragmented if all citizens pursued the same conception of the good. However, liberalism accepts such fragmentation as a welcomed consequence of human freedom.

In any case, it is true that *excess fragmentation* is to be prevented. How could unity be preserved and promoted in a society where citizens pursue different conceptions of the good? Will Kymlicka replies to this by proposing a *multicultural citizenship*. By this model, minority communities with different cultures and conceptions of the good could be accommodated into the mainstream society thanks to minority-group rights[11]. Citizenship becomes a heterogeneous concept in which everyone fits because, if your values were not recognized in the original legislation of a certain country, specific rights could be granted to accommodate your values. Barry rejects this idea. He thinks that multicultural citizenship, which emerges from the politics of difference, works against the politics of solidarity, which is the true unifying element in society: Politics of difference make people look out for the interests of the group, while politics of solidarity make people watch over the interests of the whole society (Barry, 2001, pp. 299-304). What is truly cohesive of citizenship is its homogenous nature: even if people have different conceptions of the good, they all have the same rights and duties towards the others. What is really important for citizenship is *civic nationalism* (Barry, 2001, pp. 77-

[11] See, for instance, KYMLICKA, W. "Multicultural Citizenship: A Liberal Theory of Minority Rights". *Oxford Scholarship*. 2003. Page 12.

80), which is something like an awareness of "we are all in this together". I would like to maintain a stance somehow in the middle ground between these two philosophers. I could perhaps call it *ethical citizenship*. A truly ethical approach recognizes that there are some principles that are inviolable while there are some others that depend on the subject (due to culture or whatever other factor). A notion of citizenship enlightened by ethics precisely recognizes the inviolability of the first principles and the relativity of the second ones. Consequently, a certain dimension in citizenship shall be unmodifiable as Barry suggests, precisely in what touches the basic principles of rational thought. In all other matters, citizenship could admit variations, or exemptions, as Kymlicka suggests, and this is the factor that will make me argue in favor of the rule-and-exemption approach in a subsequent chapter.

Both Chaplin and Soudan would probably accept my approach. Chaplin argues that "higher communities must allow space for the independent flourishing of lesser communities because the latter, as much as the former, are necessary for the flourishing of persons" (Chaplin, 1997, p. 119). Chaplin maintains that the subsidiarity principle is precisely what guarantees such space for lesser communities, what prevents the state from the usage of the oppressive power that Rawls denounces. The state "will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them" (Chaplin, 1997, p. 120). Of course, Chaplin recognizes the three functions of the state in relation to lesser communities: enabling, intervening and substituting activities. However, the intervening activities of the state are only justified due to "some obvious deficiency or distortion" and the substituting activities are only justified "in exceptional circumstances, when a particular community is chronically deficient and

incapable of performing basic functions, such substitution is justified, temporarily if possible" (Chaplin, 1997, p. 121).

Soudan explains that subsidiarity is, for philosophers such as Mounier or Delors, "an appreciation of the connection between the individual and the community, in addition to a petition against the totalitarian oppression of the political apparatus [and] against modern individualism" (Soudan, 1998, p. 180). Soudan does not take the state to be a community, "but an agency able to exercise the monopoly of violence, for the preservation of peace, which is reduced to the enforcement of the contracts" (Soudan, 1998, p. 181). On the contrary, using some Levinas' philosophical conceptions, Soudan conceives "the community as this "demeure", which is mine, but in which I am welcomed by others, and that I can never possess. It is the community which gives to the self its own identity, from which he will be able to come into full existence" (Soudan, 1998, p. 183). In the context of the subsidiarity principle, Mounier "affirmed that the European project was also a question of an ethic of the person, of the society, of the human adventure. He placed this ethics against a triumphant nationalism on the one hand and an exacerbated individualism on the other" (Soudan, 1998, p. 179). It is this ethical project that I would like to recover with the notions of the basic principles and ethical citizenship.

However, Chaplin still goes a little bit further and I would like to go further with him. Chaplin states the following: "the state has a duty to offer lesser communities such help as is needed in order for the latter adequately to realize their distinctive ends. In doing so, the state itself realizes its own end as well, namely guardianship of the common good of the whole society" (Chaplin, 1997, p. 120). If lesser communities provide so much good for the individuals, it seems reasonable for the state, who also looks after the individual, to provide some help to the communities who may need it, usually in terms of

subsidies. This is especially true for those functions that the lesser communities may undertake for the benefit of society at large and that the state would have to perform itself if that was not done by the communities. In other words, although it may seem little reasonable for the state to provide subsidies for the construction of churches and mosques, it seems highly reasonable for the state to provide subsidies when religious communities set up schools or hospitals. These are functions that result in the service of society at large: citizens must be well educated and in good health. Even if it is true that it is mostly members of these communities who will benefit from these schools and hospitals, they still need education and health as members of society, no matter who provides for these needs. Moreover, even if most members of these communities could benefit from these schools and hospitals, that should not be because these institutions only admit members from their own communities. That would be an unjust discrimination violating the basic principles. Any citizen, as long as she accomplishes the requirements as any other (such as tuition fee payment, for instance), should be admitted into these institutions. So, also for this reason these institutions benefit society at large. I may not go as far as saying that the state is obliged by justice to subsidize these institutions. Nevertheless, if the state had originally a program of subsidization for schools and hospitals in general, then it would be unjust to deny such subsidization to religious schools and hospitals just for being religious or for having some traits different than public institutions. For instance, some political parties in Europe argue that subsidization that is being provided to semi-private, religious schools should be denied whenever these schools are sex-differentiated, as that does not fit in their standards of education. However, this is not a sufficient reason to deny the subsidization that is being provided to semi-private schools in general, if this reason does not violate the basic principles. And, as it has not been demonstrated that sex-

differentiated schools imply unjust discrimination, then it has not been demonstrated that such a practice violates the basic principles.

This is actually a point of agreement with Gutmann. The content she considers as part of the "democratic education" that should be instilled to all citizens is very similar to what I would consider as basic principles of rational thought. We both argue that schools could receive public subsidy as long as there is a certain public mandated content and there is some method of public oversight to make sure this content is being implemented (Gutmann, 1999, pp. 296-297). However, I specify that it is only the basic principles that can be mandated from the state. And the implementation of these principles shall be overseen not just for public or semi-private schools, but also for private schools. What this implies is that there is no real difference among schools to be eligible for subsidies, as long as they respect the basic principles. And if a school did not respect the basic principles, then it would not be a matter of subsidizing or not, but rather a matter of shutting down the school. The difference between public and private schools should not really be a matter of subsidy, but rather a matter of who runs the school: either community or the state. Gutmann adds that only public school shall receive complete public subsidy. I agree that that seems reasonable.

To this point, I believe I have provided enough justification why, for clashes of type B, clashes in which no party is proposing something contrary to the basic canons, it is the substate party who has the relevant authority, according to the subsidiarity principle, together with its main implications for a just political system. Now it is time to see how all that has been exposed constitutes a defence of the rule-and-exemption approach.

CHAPTER VI
THE RULE-AND-EXEMPTION APPROACH

A. Articulation and justification

To this point, I have justified the importance of two elements in order to propose a fair solution to clashes between the state and substate parties: the notion of the basic principles, on the one hand, and the subsidiarity principle for the second group of conflicts, on the other hand. Let us remember here the formulation of the subsidiarity principle as stated before: “The state shall not assume tasks that other substate agents can perform adequately”. Another formulation could be: “The state could only assume tasks originally assumed by substate agents when a sufficient reason proves that the agent is not performing them adequately anymore”. In the present section, I argue in favor of Premise 5: if the subsidiarity principle is to be accepted, together with the basic canons, then the accepted method just is a valid example of the rule-and-exemption approach.

Although the idea of a “rule-and-exemption approach” is present in many philosophers, the wording I use here is taken from Barry. As an anti-multiculturalist philosopher, Barry criticizes what he calls the multiculturalists' 'rule-and-exemption approach.' In effect, the author schematizes the general multiculturalist stance towards the accommodation of difference with this approach. In his view, how multiculturalists try to accommodate the demands of cultural minorities is by accepting exemptions to a given rule. The author provides many examples and cases in which this approach is tested. At the same time he reveals the issues that come with it. One of these cases, for instance, is the helmet rule to ride a motorcycle in the UK when applied to the Sikh community. The problem here is the fact that Sikh culture requires its members to wear a turban, and,

as a consequence, they cannot wear a helmet. According to Barry, a typical multiculturalist approach would be happy to accept an exemption for the Sikh community to the requirement to wear a helmet when riding a motorcycle. In this way, they argue, the Sikh culture can be better accommodated in mainstream society.

Why is the method proposed in this paper an example of the rule-and-exemption approach? Let me underline two points to answer this question. First, I take as a matter of fact that society needs state regulation in the domains belonging to the public sphere, even in those that give rise to conflicts with substate agents. The public sphere is the sphere where there is public stake or interest, as commonly accepted by the citizens, in opposition to the private sphere. For instance, in Western culture, work conditions or education are commonly taken to be domains belonging to the public sphere, while religion belongs to the private sphere. As it was just claimed, it is a matter of fact that the society needs the state to dictate *rules* regulating public-sphere domains, even if they generate conflict with substate agents. Second, and as it has been previously studied, the subsidiarity principle required the state to recognize and respect the authority of substate agents, even in those cases in which there is a conflict between these two parties. These two points seem to constitute a paradox. However, the paradox is overcome thanks to a right understanding of the subsidiarity principle. The principle does not necessarily prevent the state from dictating rules. Nevertheless, what the principle surely requires is that the state grants an *exemption* to the substate agent whenever the content of its rule clashes with the content of the substate agent's own regulations.

An example could help here. The principle does not prevent the state from dictating rules about the educational system. However, as the principle concedes the relevant authority to the substate agent, whenever state rules on education clash with the

substate agent regulations, then the substate agent regulations shall prevail. This would precisely consist of an exemption to the state rules. At the same time, following what was argued in the previous parts, we shall also keep in mind that exemptions should not be granted whenever the substate agents' regulations violate the basic principles, because it is in these cases where it is demonstrated that the substate agent is not *adequately* performing its function, as stated in the subsidiarity principle itself.

Therefore, a method based on the subsidiarity principle and the basic canons is an example of the rule-and-exemption approach. If justice requires basic canons to be accepted (reformulation of Premise 1), if according to justice the relevant authority belongs to the party supporting the basic canons in clashes of type A (reformulation of Premise 3) and if justice requires the use of the subsidiarity principle in clashes of type B (reformulation of Premise 4), then justice requires us to accept this form of the rule-and-exemption approach. Premise 2 is the assertion of the two types of clashes. In other words, if Premises 1-4 are true, the rule-and-exemption approach is vindicated, because the subsidiarity principle constitutes a valid example (which means a just or fair example) of this approach.

According to Barry, however, the rule-and-exemption approach presents numerous issues and a specific dose of absurdity. I will discuss here his two arguments that I find most challenging. The first one relates to a dilemma the rule-and-exemption approach presents in Barry's view; the second deals with the possible reasons behind exemptions.

Therefore, the rule-and-exemption approach presents a dilemma, according to Barry: Either the reasons for imposing a rule such as a requirement to wear a helmet are

so significant that no exemption should be admitted or the reasons behind the rule are not that strong. If preserving the security and integrity of motorcycle riders is so essential to impose a rule, then there is no reason to accept an exemption on the grounds of culture or any other grounds. Nevertheless, if the reasons for the rule are not that strong and therefore it can be overridden by inevitable reasons, then it does not seem reasonable to have the general rule at all. For instance, in this specific case, the author is inclined to dismiss the general requirement to wear a helmet. Of course, it should be granted to Barry that there are cases where, rather than granting exemptions, we may discover that reasons behind the rule are not strong enough and therefore the rule should be eliminated.

However, it should be defended that there are other cases in which *both the rule and the exemptions are justified*. Actually, Barry accepts this in certain cases. For instance, Barry accepts the rule-and-exemption approach in the case of the exemption for the Sikh to wear a helmet when working in construction. Accommodating their culture is not the reason for this though. Rather, the rule is important to be maintained, as it would cause a significant disruption within the Sikh community, since many members of the Sikh community work in construction and they would end up otherwise without employment (Barry, 2001, p. 62). Barry accepts that not granting such an exemption would result in terrible economic consequences for the lives of the Sikh people. This is the "significant disruption". Therefore, Barry accepts that there are cases where both the rule and the exemption are justified. According to my approach, this must be true in many more cases, because, as soon as a community supports a social norm that clashes with the social norm supported by the state, the state should let the community be free to follow the social norm it proposes itself (if no basic principles are violated). And that, which is good for the community, is good for the individual, as it was agued when discussing the

subsidiarity principle. Consequently, the true disruption would come if this method was violated. Sikh people should be let free to work in construction with a turban and not a helmet because this is the social norm proposed by their community (of course, as long as these people want to abide by this norm).

Then, why is it the case that *both the rule and the exemptions are justified* in some situations? This is the important idea: it is a fact that we need state regulation and nothing in the subsidiarity principle prevents it. It should be considered that the domains that fall within the public sphere are "larger" than the specific conflicts they may give rise to. For instance, education as a public domain that needs regulation is larger than the conflicts that may rise concerning very specific points of the overall regulations. In addition, the conflict will rise against a certain sector of society (i.e., a certain number of people), but the state regulates for the society at large. For instance, a certain law concerning education can clash against a certain religious community (i. e. against the members of this community) but this law may be needed for the rest of the people. In this way, a religious school could be granted an exemption concerning a certain point in the public educational curricula, but public educational curricula are still needed for all the other schools and for all the other points that rise no conflict. In other words, the state needs to command on and pass laws for lots of matters. The rule-and-exemption approach constitutes the perfect equilibrium between this "active role" of the state and the apparently "passive role" attributed to the state by the subsidiarity principle.

In other words, disagreements between the educational regulations designed by members of Parliament (because it is needed) and the educational desires of minority groups are bound happen. Consequently, these laws should have enough "flexibility", if we could speak like that, to leave space for the freedom to dissent. This is the reason why

the rule-and-exemption approach fits perfectly into dealing with plural conceptions on education. As children should be well educated, we should accept no exemption when concerning clashes with parents of type A: clashes in which parents are violating the most basic principles of rational thought. However, there is a good number of clashes of type B: differences of thought and practice should be admitted in these cases. If a general law about the educational system is designed but this law generates some significant discontent, the solution cannot be to just leave the matter in no-law's land, since the educational system needs regulation. However, the law could include an "exemption" for those who disagree without attempting against the basic principles.

I am going to make up an example that can illustrate this perfectly: the example of veganism in education. Imagine a society in which veganism becomes a highly extended attitude. In such a society, vegans would probably become the majority in parliament. Following the general rule of educating children well, vegans may have good reasons to wish all children to be educated as vegans and pass laws accordingly. However, vegan members of parliament should grant an exemption for parents who wish to teach their children that eating meat is ethical, due to the fact that veganism is not proved to be one of those basic principles that the state has the authority to impose. This admission will be an exemption to the general rule of providing children a proper education, where "a proper education" is understood by the majority in that parliament as a "vegan education". In other words, if vegans legitimately reach parliament, they are in their right to propose vegan education among children (this would be the "general rule" in this case). However, if such an education produces conflict with some parents, these vegan parliamentary members should admit an exemption in the education of these parents' children, because this conflict belongs to the second class of conflicts stated above. In

effect, even if there may be good reasons to be vegan, it has not been rationally demonstrated yet that not being vegan is morally inadmissible. In other words, it has not been totally demonstrated that parents who teach their children to eat meat are doing wrong. Consequently, the state can promote a vegan education if that is what it wants, but it should grant an exemption to parents who wish to educate children differently. In this way, the rule-and-exemption approach is the right strategy to use in order to admit the necessary tolerance not to commit any abuse towards people that think differently.

There is, however, a second argument maintained by Barry against the rule-and-exemption approach. These are some of the question he raises: Do all the reasons adduced by minority groups and individuals constitute grounds for exemption? If not, under which criteria can we distinguish whether a reason shall constitute a ground or not? If a Muslim female soldier can ask for an exemption to wear a *hijab* while wearing the military uniform because it is part of her religion, then it seems another soldier could argue for an exemption to wear a New York Yankees hat because he would claim it as part of his culture. However, this seems wrong.

In response to this quandary, it should be admitted nevertheless that not all reasons constituting grounds either for rules or for exemptions have equal strength. Actually, the strength of these reasons could vary a lot and it is the mission of the democratic institutions to make such a discrimination. Firstly, the stronger the reasons behind a rule, the less room there will be for exemptions to the rule. The strongest reasons there could be behind a rule are precisely the basic principles: when the rule concerns basic principles, no exemption could be admitted. Of course, it could be found that the reasons behind a rule are actually not strong enough to justify the rule and the rule should be actually eliminated. In a way, such a rule would allow so many exemptions that would no longer

make sense. Secondly, the stronger the reasons behind an exemption, the greater the need and the right for such an exemption. How strong the reasons for an exemption are should be undoubtedly studied under the light of the elementary canons of rational thought.

Continuing the example I have used above, there is no doubt that the state needs to provide some regulation about how the military uniform is to be taken. Military uniform typically includes the prohibition on wearing on the head anything different from the military hat. However, it should be firstly recognized that the reasons behind this rule are not sufficiently strong enough not to permit exemptions. Secondly, our intuitions would surely agree that, when applying for an exemption either to wear a *hijab* or to wear a New York Yankees hat, the reasons behind do not have equal strength. And this is to a point that it should be accepted that the reasons behind wearing a *hijab* actually constitute ground for exemptions while the reasons behind wearing the hat do not. I think Lebanese law concerning military uniform is a good example of this: people from all sects compose the Lebanese army and Muslim women wear their *hijab* while wearing the same uniform as the others, and no one sees this as illogical. The *hijab* responds to a community's sophisticated system of valuation and belief while the hat does not. At the same time, there is no problem in imagining that if New York Yankees fans started to develop a well-constituted community with a sophisticated system of valuation and belief in the future, which included an obligation to wear the hat, then the reasons for accepting the hat as an exemption in military uniform could become stronger. Without a doubt, all this reasoning is being made under the assumption that neither the *hijab* nor the hat violates basic principles, because exemptions could be absolutely not admitted if this was the case.

This discussion brings us to consider a particular set of cases of special interest. These are the cases related to *arbitrary regulation*. What I call cases of *arbitrary*

regulation are those cases that need certain regulation from the state but how the state regulates is ultimately somehow arbitrary. It seems obvious that the state has certain responsibility in regulating matters that have to do with the security of its people. Consequently, it seems reasonable for the state to dictate certain speed limits. How would this case work in the approach presented here? Which should be the exact speed limit does not seem to involve any basic principle, therefore a conflict that could rise concerning speed limits would belong to type-B clashes. Then, the state has the power to propose a certain regulation (which in this case would be a certain speed limit), but people could apply for an exemption if they disagree. Of course, as it was argued above, the strength of the reasons behind an exemption should be studied. For instance, imagine the case of group of people 1 and group of people 2, where both groups ask for an exemption consisting on a higher speed limit to enter into a curve, where the current speed limit is 50km/h. The state dictated such a rule (speed limit of 50km/h at that curve) because cars driving faster could skid off the road, putting in risk the own's and the other people's life. It should be recognized that there is no equal strength in the reasons for exemption advocated by group of people 1 and group of people 2 if the reasons claimed by group of people 1 are that they have bought a new car model that was demonstrated to drive at that curve at 80 km/h without incurring in risk and the reasons claimed by group of people 2 are just that they "enjoy driving fast". An exemption could be probably granted to group of people 1 but not to group of people 2. And, of course, no exemption could be granted if the exemption or the reasons supporting an exemption violated the basic principles. For instance, no exemption could be granted if people of group 2 were advocating for a speed that could be demonstrated to put their own's and the other's lives at high risk because they enjoyed driving really fast. The basic principle violated here could be stated as

"everyone has right to life". If you are driving at an excessive speed, you are attempting to people's rights to life, and the state cannot allow that. How to determine what the "excessive speed is"? In a way, this seems arbitrary to a certain point. However, in the present argumentation I have tried to reduce arbitrariness to its minimum by saying that the only speed limit that could be strictly imposed is the one that is certainly demonstrated to violate the basic principle. Of course, even the action of driving a car means in itself a certain risk for the people around. But such a risk is minimum if one drives at a convenient speed. Without a doubt, the strict law cannot be based on the prohibition of what constitutes a "minimum risk", because everyone should be simply obliged to stay at home as a result. The strict law, the one that admits no exemption, should derive from the that risk that cannot be tolerated anymore, which means the risk that is demonstrated to clearly violate the principle on people's right to life.

This case is useful for underlining some of the ideas that have been argued before. First, reasons behind an exemption have different degrees of strength: without a doubt, it is not the same to demand an exemption to the speed limit because it is well demonstrated that your car's model could enter the curve at a higher speed without risk than to demand the exemption simply because you enjoy driving fast. Second, all the process of demanding an exemption and evaluating the reasons and the circumstances ought to be done through the legitimate institutions. *This implies that it is not legitimate to simply disobey a law because you do not agree with it.* Third, basic principles continue to be the highest maxims: speed limits and exemptions ultimately depend on the basic principle that "everyone has right to life", which should not be violated. Actually, different speed limits to different people depending on their circumstances is already recognized in some cases. For instance, it is very common to find different speed limits in the same road for

trucks and cars: it is more difficult for trucks to slow down, so they shall not drive at very high speeds. This "accommodation" of a law to different circumstances could be understood and explained by different schemas, and it is perfectly explained as a case of rule-and-exemption approach.

In the following section, I will respond to some significant critiques that could be proposed against the rule-and-exemption approach supported here.

B. Responding to Possible Criticism: Cases Concerning Women

It has been argued above that a political conception based on the subsidiarity principle constitutes a valid example of the rule-and-exemption approach. I have also explained that I understand here "a valid example" as a just or fair example, in other words, as an example of the rule-and-exemption approach required by justice. Is this really the case? According to Barry, this rule-and-exemption approach is the method proposed by multiculturalists, and many philosophers argue that multiculturalism is contrary to justice. Is really the approach proposed in this paper a multiculturalist one? Multiculturalism is actually a vast label that contains very different perspectives. My method might seem multiculturalist in some aspects and anti-multiculturalist in some others. *Stricto sensu*, culture has never been at the center of my discussion. In effect, I have focused on clashes between the state and substate agents. These parties could be cultural groups, but also unions, associations, families and even individuals themselves. Differences in values could be due to cultural differences or to any other kind of differences. Of course, culture could be taken in a broad enough sense to say that all conflicts result from cultural differences, or to say that a specific culture is what always

constitutes the cohesive element of a given community. In any case, I defend an approach which could be called multiculturalist at least in part, so it is interesting to study the critics usually directed to multiculturalist philosophers. This is what I will do in the present section: I will analyse why anti-multiculturalist philosophers argue that multiculturalism undermines justice and I will show why my method does not commit such mistakes. In my opinion, the most relevant group of critics to multiculturalism refers to cases involving the dignity of women. This is the reason why I will focus on these cases in the present section, although I will not limit myself to them.

In effect, it is not at all rare to find sharp criticism of multiculturalism among feminist philosophers: Susan Okin is one of the most significant philosophers here. The main aspect in multiculturalism is the defense of group rights, which was developed as a reaction against the assimilationist way of dealing with cultural minorities that was previously on trend. Will Kymlicka is perhaps the most famous philosopher supporting this stance. According to his analysis, communities organize institutionally and this is what constitutes a 'societal culture'. The societal culture is actually what provides meaning to the choices made by the members of the community. This is why societal cultures are essential for the individuals, and they are to be actively preserved when they constitute the culture of a minority group within a larger society with a different culture. This is the basis of the group rights defense supported by Kymlicka. This philosopher, however, does not defend all kinds of group rights and does not support all groups in the same manner. Minority groups within the liberal mainstream society ought to have a liberal internal organisation too. This is the reason why Kymlicka is willing to concede "external protections" to a certain group against interference from other groups, while rejecting rights that concede "internal restrictions" (Kymlicka, 2003, p. 53). These

restrictions would be the group rights that translate into power for the community leaders to "restrict" the community members' autonomy. Kymlicka's approach seems to agree with mine: the protection of the individual's autonomy could be considered as a basic principle, so the state should do nothing to help communities in their restrictions of autonomy, but should fight against them.

However, Okin is not happy with that and she believes that we should still remain sceptical even of those multiculturalist approaches that only support liberal groups (Okin, 1999, p. 11). How is this possible? Okin thinks that multiculturalists like Kymlicka make two big mistakes: one, to treat cultural groups as monoliths; and two, to pay no attention to the private sphere (Okin, 1999, p. 12). According to the first mistake, multiculturalism worries only about differences between communities and not about differences within a community (and in her view, the sharpest difference is that between men and women). According to the second mistake, multiculturalists tend to care only about possible injustices committed from authority to members, within a community, without realizing that the biggest injustices are frequently committed within the private sphere and, more concretely, within the family. In Okin's opinion, these injustices are founded precisely on cultural practices. Consequently, she thinks that multiculturalism and the protection of cultural rights is not the right approach to solve the real injustices that take place in society, which are the ones related to gender discrimination. Actually, "they may well exacerbate the problem" (Okin, 1999, p. 22). Could Okin's criticism be applied to my method?

Let us study first the most basic feminist critiques towards multiculturalism. I have just mentioned the two "multiculturalist mistakes": taking cultural groups as monoliths and disregarding the private sphere. I shall bring back here two important points I have

already argued for: first, the good of the individual must be always defended above everything, and the good of the community must be defended only as long as it supports that of its individuals; second, whenever basic principles are violated, the state should use all its powers to intervene. Consequently, if the interests of the community actually went against its people, specifically in cases in which basic principles are being violated, then the subsidiarity principle applies its clause that the state should take over. I totally assert that there are differences within communities and that injustice could be made within the private sphere. And no exemption shall be admitted in these cases: the state should do all that is possible to protect these people who are being treated unjustly or whose interests and views differ in some way from the community's. And I would respond Okin not to treat cultural groups in a monolithic way either.

Marie Macey criticizes multiculturalism too when defending feminism. In her opinion, multiculturalism reinforces both the "us" within a community and the "them" towards other communities (Macey, 2009, p. 58). While she stays neutral about the former, she strongly rejects the latter and so do I. However, I have argued that there is a way to reinforce the "us" within a community while also reinforcing the "us" towards the society at large, which also includes people from other communities. This can be done by paying attention to the concept of *ethical citizenship* I developed before. According to this concept, it is undeniable that we, citizens in a certain state, have differences and associate in different communities. However, we all share the basic principles, which are in addition democratically recognized. In my opinion, this approach is actually the most realistic one to take. We cannot say that we all share the same culture, as we are talking about multicultural societies; however, we could say that we all share the same basic principles, or at least that is what should happen, because the basic principles are precisely

those that everyone should accept. And if someone does not accept them, as I have been arguing till this point, the state should analyse what to do to help this person to accept them. The basic principles, with the truths they support about the world and about human dignity, should be enough to bring people together. Yes, each one of us belongs to different families and communities, but each one can also recognize that she belongs to a larger society with other people who deserve the treatment demanded by the basic principles. "We are all in this together", as Barry would like to say, because we all share the same basic principles. It is true that I participate in my family and my community affairs; but precisely *by* participating in these affairs, I am participating in the larger society. Being Christian, Muslim or atheist does not prevent me from being an ethical citizen in my nation, because Christians, Muslims and atheists we should all share the same basic principles.

Defending basic principles is therefore a crucial matter. This is the only coherent way to avoid the problems stated by Macey: that giving power to communities implies giving powers to its leaders and spokespeople, who do not necessarily watch over the interests of all their people, women in particular (Macey, 2009, pp. 60-61). Many communities are hierarchically organized, and there are no sufficient reasons to say that hierarchies are bad in themselves. Nevertheless, the state should take over the powers of these hierarchies if the rights of their members are being violated. Okin provides examples of how using culture as the basis for exemption brings significant problems, such as the example of the Iraqi people in the US who defended their marriage practices in terms of culture (Okin, 1999, p. 18). These practices (marriage of under-age girls without consent) clearly violate basic principles. Barry argues that "culture is no excuse" (Barry, 2001, pp. 252-258) and so do I, but I add: culture is no excuse when basic

principles are violated. However, if someone holds a practice not against basic principles, then this practice should be permitted, not because of culture, but because it does not violate basic principles, even if we do not share such a practice.

I take the idea that women have the same dignity as men to be a basic principle. Therefore, practices such as clitoridectomy, polygamy, marriage of children, marriage without consent, unequal divorce conditions or marriage by rape violate this basic principle and probably many others. Allowing men to marry multiple women but not allowing women to marry multiple men seems to violate the basic principle of equal dignity. Consequently, the exemption of the anti-polygamy law conceded to immigrants in France is not justified[12]. I commented on the case of abortion before in this essay and I will underline this treatment now. I argued before that, in the case of abortion, what should be studied is whether it is a human person that is being unjustly killed. This is the first and most important question, and not whether abortion constitutes women's right or not. This is precisely because, if it was to be demonstrated that a human life is being unjustly eliminated, then it would violate a basic principle, and it could constitute a women's right under no circumstances.

The case of women wearing the *hijab* is a sensitive issue and it raises some questions[13]. I said before that equal dignity for men and women ought to be taken as a basic principle. However, Muslim women wear the *hijab* but Muslim men do not. Does this fact violate the basic principle? Sikh men wear turbans while Sikh women do not, and this does not raise further concern. It could be argued that the Muslim *hijab* is actually

[12] See OKIN, S. M. "Is Multiculturalism Bad for Women?" *Princeton University Press.* August 1999. Page 9.
[13] See OKIN, S. M. "Is Multiculturalism Bad for Women?" *Princeton University Press.* August 1999. Page 9. AND MACEY, M. "Multiculturalism, Religion and Women. Doing Harm by Doing Good?". *Palgrave Macmillan*. 2009. Page 42.

a sign of the inferiority for women in Islam and this is the reason why it violates the basic principle of equal dignity. There is no possible doubt that a practice that clearly implies inferiority for women would violate the basic principle. But is *hijab* a sign of inferiority? People disagree and, according to my experiences when talking about this with Muslim Middle Eastern women, many of them would reject such a premise. Many Muslim women wear the *hijab* as a free choice. They see it as a form of respect towards God, towards their present or future husband and towards themselves. Many of these women actually feel sad for how Western women dress. One should take into consideration here that manifestations of respect actually vary from one culture to another. For instance, not very long ago it was typical for servants to make a genuflection in front of their lords. Doing this towards our boss nowadays would be seen as humiliating, but this does not mean that that was seen as humiliating at that time. Actually, in past epochs that was seen as a very common sign of respect. In other words, I think the *hijab* case brings up the problem of how to judge others' cultures from one's own culture. Many Muslim women do not take the *hijab* to be humiliating, as Christian nuns do not take the vail in that way either. In addition, there is the commonly accepted principle, in liberal societies, that people can dress as they want as long as it does not harm others. For all this, one could claim that the *hijab* is not a practice that violates a basic principle.

This case connects with some interesting questions proposed by Susan Bickford (Bickford, 2000, p. 712). For instance, to what point is it relevant in these cases whether the people involved actually *freely want* to do what they do, even if with that they suffer some form of injustice? Shall we ask the people involved, such as women, what they think about these practices? Bickford is aware that this is actually problematic, because women, such as Muslim women, actually think very different things. First of all, Bickford

reminds us something important: “Okin's respondents have aided in showing how much hard work is necessary in order to know something about a culture, and how much that work requires conscientious dialogue within and between cultures” (Bickford, 2000, p. 712). In effect, before undertaking judgment, one should do a great effort to understand cultures from within. Moreover, it should be underlined the importance of the prevention from imposing anything that has not been sufficiently demonstrated to violate the basic principles, in order to avoid the dangers of unjustifiably imposing one’s own values to other cultures. What is more, I would add that the state should refrain itself from intervening in cases where people are voluntarily suffering some degradation when such degradation does not *seriously* violate basic principles. In other words, even if it could be demonstrated that the *hijab* has a humiliating component, the state should not forbid its usage until it is not demonstrated that it *seriously* violates basic principles, because many Muslim women actually choose to wear it. For these reasons, the interdiction from the French state against wearing the *hijab* in certain public places does not seem justified. The state should make sure, as much as it can, that the Muslim women who do not want to abide by the *hijab* tradition are free not to wear it.

The strong opposition presented by certain advocators of French secularism to see women wearing *hijab* or people wearing religious items in general, reminds me of an interesting consideration offered by Scanlon on “The Difficulty of Tolerance”. Scanlon argues that the spirit of liberal tolerance is a matter of accepting that other people are our “fellow citizens” and they have the same right in shaping society as we do, no matter how much we disagree with their values (Scanlon, 2003, pp. 193-198). This idea connects very well with what has been previously said about *ethical citizenship*. We are all citizens in the same society, even if the others do things that I would never do myself. Perhaps one

would never accept to wear a *hijab*, or perhaps French secularism would prefer not to see women with the *hijab*. However, these women are our fellow citizens, they are members of society too, and forbidding the use of the *hijab* would be of much harm for them. The same could not be argued for clitoridectomy. I take clitoridectomy to undoubtedly constitute a violation of basic principles, not just to the principle of equal dignity, but also to other principles such as the principle against mutilation for no medical reasons. Then, the state should forbid clitoridectomy, even if it is performed with the woman's consent.

I hope my readers will recognize that individuals (and women) shall be well protected under my premises, as Okin and Macey desire. Macey rejects Spinner-Halev and Kukathas' claims that the individual's right of exit is enough (Macey, 2009, pp. 128, 138), because, among other reasons, many women live under certain circumstances that make of the right of exit a very problematic and difficult thing. In this sense, Barry's proposal is more sophisticated: voluntariness or the accessibility to the right of exit is not enough to evaluate the rightness of a certain community, but the costs suffer by the individual when making use of the right of exit should also be evaluated (Barry, 2001, pp. 146-155). I have also argued that voluntariness or the right of exit is not enough, but that the state should intervene if violations of the basic principles are being made. This gives more powers to the state than what Kymlicka accepted, as he thought that, even if internal restrictions are to be avoided, the state should admit a high dose of tolerance towards them and never use violence against them but rather persuasion (Kymlicka, 2003, p. 108).

To conclude, I will respond to some of the last appealing critics raised by Macey. First, the support of cultures could not be taken to be the cause of the evil acts performed by its members (Macey, 2009, p. 61). It cannot be taken either to be the cause for the

tension that young people in these cultural minorities suffer from the differences between their parents' and larger society cultures, which sometimes degenerate in terrorism (Macey, 2009, p. 140). Second, I do agree that there are some values that need to be shared by all in order to avoid social fragmentation (Macey, 2009, p. 151), and these are precisely the basic principles in my method. Third, Macey, and Barry too (Barry, 2001, pp. 292-299), claim that we should be concerned how multiculturalism is imposed from the top down (Macey, 2009, p. 155). I think we should be concerned about all impositions that are done from the top down, and this is precisely why I propose the method described in this paper. I shall notice here that I have actually moved from the multiculturalist concern, about assimilation, to a concern for letting people act freely as they want in matters not related to the basic principles. Finally, both Macey (2009, p. 154) and Barry (2001, pp. 205-317) argue that the multiculturalist concerns ignore more significant sources of inequality. This is not my intention and, while I believe that my method means an inspiring move towards equality, there are many other dimensions of equality the state should take care of, no matter how challenging this might be. With this, I hope to have demonstrated how my method escapes critics commonly raised against multiculturalism.

CHAPTER VII

CONCLUSION

In liberal and multicultural societies, conflicts seem to be inevitable. The essence of liberalism consists in providing just a framework of principles and values where individuals can freely pursue their self-proposed goods. These self-proposed goods, however, can be very different from each other and even in opposition to each other. In addition, the good that one pursues influences on his way of shaping society, so individuals within a same society shape it in different and sometimes opposing ways. Conflicts are the unavoidable consequence of these phenomena. These clashes may arise between communities or between individuals, but they can also rise between any substate agent and the state itself. This is due to two reasons: first, the goods substate agents proposed to themselves could have an illiberal character, and therefore they would conflict with the state liberal framework; second, liberalism is such a wide concept that there is dispute on which are the exact values that liberalism promotes and, as a consequence, rulers could propose some liberal values under the flag of liberalism that conflict with the values that substate agents also take to be liberal.

These conflicts between the state and substate parties have been the object of study in this paper. There is no doubt society needs an urgent solution in agreement with justice for these clashes. Without a doubt, the state has the duty of designing social norms and regulations that help people to promote their good and freedom according to the liberal framework. However, what should we do when some people (or communities) dissent from the social norms and regulations proposed by the state? The rule-and-exemption approach has been a typical method proposed by multiculturalist philosophers to answer

this question: exemptions to statal rules should be granted to accommodate minority groups' demands. However, this approach could take different forms and not all of them have been equally successful.

This paper has studied a method that reveals itself as a valid example of the rule-and-exemption approach and, therefore, the approach has been vindicated. Apart from accepting the two facts just stated (we need state regulation and conflicts are bound to happen), this method is constructed upon two indispensable elements: the elementary canons of rational thought and the subsidiarity principle. There is somehow a relation of interdependence between these two elements. First, it was argued that basic canons ought to be accepted and, consequently, the authority is given to the party who proposes a social norm according to these basic canons, when facing clashes in which the other party is actually proposing another social norm contrary to the canons (these are what have been called "type-A clashes"). Second, it was defended that the substate agents have the authority to self-propose their own social norms, according to the subsidiarity principle, even if they conflict with those of the state, as long as the substate agent's social norms do not violate the basic canons (these are type-B clashes). A valid example of the rule-and-exemption approach is actually what results from the right articulation of these facts and premises.

Without a doubt, the mission of this paper was not to resolve the endless questions and cases that emerge from this subject matter. The objective was rather to philosophically provide some light about how we shall deal with these conflicts. It is easy to understand how further study is needed to determine, for instance, which are exactly the basic canons that are to be accepted. This is not an obstacle, however, to accept that *there are* basic principles and that the mission of the people in power is to rule

accordingly. Moreover, it could be claimed that the objective of this paper was to propose a method to solve conflicts peacefully and according to justice, avoiding the state over-regulation that now takes place in my countries.

Finally, I would like to underline a concept that has come along few times throughout the paper which merits a paper on its own: the concept of ethical citizenship. This is the name offered to how citizenship is understood according to the present approach. Different citizens could be treated differently, as long as they all respect some basic and universal ethical principles. Neither excess of centralization nor excess of fragmentation are to be feared: Ethical citizenship accepts that citizens are different and shape society differently; however, social unity does not suffer from these differences, because citizens accept that there is a unifying factor stronger than their differences: their common recognition of the basic principles.

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