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## The Jurisprudential Legacy of Abraham Kuyper and Leo XIII

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Toward the end of the nineteenth century, two religiously committed dignitaries, acting independently of one another and indeed in two quite distinct communities within the Christian tradition, produced significant contributions to social, political, and legal thought. Their special influence within the respective religious communities from which they stemmed was, in itself, remarkable. Even more remarkable is the fact that aspects of their sociopolitical and jurisprudential theories are clearly echoed in distinct doctrines reflected in contemporary international law.

Abraham Kuyper (1837–1920), a Dutch Calvinist theologian, philosopher, and politician, played a decisive role in developing the doctrine of sphere sovereignty to denote the relationship of power that ought to prevail between social entities such as the body politic, church institutions, and cultural communities. Within the context of constitutional law, sphere sovereignty—properly defined—constitutes a feasible criterion for identifying instances of, for example, political totalitarianism; that is, interference of the repositories of governmental powers in the private lives of their subordinates and excessive control by governmental agencies of the internal affairs of institutions other than the State. In international law, sphere sovereignty finds expression in the principle of the self-determination of peoples.

In the context of political philosophy, the legacy of Pope Leo XIII (1878–1903) takes on a different—though not unrelated—nuance: Through the encyclical *Rerum Novarum* of 1891, he guided Scholastic thought in regard to the basic directive of the law (proclaiming human dignity to be the standard

of all law) and of the exercise of political power (emphasizing the obligation of the State to promote the common good). As far as contemporary norms of international law are concerned, the encyclical is of special importance as a prelude toward the development of economic and social rights as a distinct component of the human rights paradigm.

The common ground of the contributions of Kuyper and Leo XIII to political theory and international-law perceptions is their shared emphasis on the limitation of political power: in the case of Kuyper, by the distinct and equivalent enclave of competencies of non-State social entities, including peoples defined by cultural or ethnic distinction; and in the case of Leo XIII, by a certain ethically defined objective of law and governmental powers to preserve human dignity, to promote the common good, and, in particular, to care for the economically and socially deprived sections of the community.

This essay will seek to uncover, in Part 1, the analogies between the Kuyperian doctrine of sphere sovereignty on the one hand, and the current notions of the right to self-determination of peoples on the other, and, in Part 2, the influence that Pope Leo XIII might have had in introducing into the doctrine of human rights its “second generation” component of social and economic rights.

## ***Part 1: Sphere Sovereignty and the Self-Determination of Peoples***

The sphere sovereignty of a national or ethnic, religious or linguistic community denotes the inherent competence of members of that community:

- to establish institutions as a means of uniting their number and to facilitate the execution of their calling;
- to decide upon and organize the internal structures of such institutions; and
- to contrive and to proclaim rules of behavior and exercise authority for the sake of order within their own ranks.

## **Historical Perspective**

### **From Althusius to Kuyper**

The Dutch expression *souvereiniteit in eigen sfeer* was first used in 1862 by a Dutch politician, Guillaume Groen van Prinsterer (1801–1876), to desig-

nate the range of competencies of the Church over against those of the State.<sup>1</sup> The idea itself, however, preceded this descriptive phrase by approximately three hundred years. According to Herman Dooyeweerd, “the first modern formulation of the principle of internal sphere-sovereignty in the societal relationship” is to be found in a statement of the medieval Calvinistic jurist, Johannes Althusius (1557–1638).<sup>2</sup> Althusius proclaimed that all distinct social entities are governed by their own laws and that those laws differ in every instance according to the typical nature of the social institution concerned.<sup>3</sup>

In the three hundred years that separated Althusius and Groen van Prinsterer, the concept of the internal sovereign authority of social entities surfaced from time to time, mostly in the ranks of Lutheran political scientists and, by and large, was confined to Church-State relations. Georg Friedrich Puchta (1798–1846), for example, spoke of *die Selbstständigkeit* (independence) of the Church as “an institution alongside the State,”<sup>4</sup> and of the Church distinguishing itself “through the different nature of its essence.”<sup>5</sup> Although this clearly indicated sphere sovereignty in Church-State relations,<sup>6</sup> Puchta did not extend the principle to apply to other social entities.

Georg Beseler (1809–1888) insisted on “sovereign” legislative powers of local authorities,<sup>7</sup> which sovereignty he went on to define as “the power belonging to certain corporations to enact, in their own discretion, their own law (decrees, statutes, options) within the district governed by them or in any event in respect of their own affairs.”<sup>8</sup>

Friedrich Julius Stahl (1802–1861), the man who had a decisive influence on Groen van Prinsterer, again confined sovereign powers in the strict sense to State and Church only, proclaiming that these two institutions occupied places independent of one another,<sup>9</sup> that the Church was “an institution of an altogether different kind,”<sup>10</sup> and that “ecclesiastical authority ... is to be strictly distinguished from secular authority.”<sup>11</sup>

Groen van Prinsterer also referred to sphere sovereignty in the context of Church-State relations only. He often spoke of “the independence of the State over against the Church in consequence of its direct submission to God”<sup>12</sup> and defined the Church as a community of faith with its own characteristics, of which a confession was an indispensable ingredient.<sup>13</sup> In one of his earlier works he proclaimed: “The State is not subject to the Church, but together with the Church it is subject to God’s commandments.”<sup>14</sup>

Within Calvinist circles in the Netherlands, Abraham Kuyper must be singled out as the person who expanded the notion of sphere sovereignty beyond the enclave of Church-State relations to embrace the relationship between all social institutions. “In every community,” he said, “one finds many different

social entities, and each distinct social entity has within itself a supreme authority.” “And this supreme authority, now,” he went on to say, “we deliberately designate by the name of *sovereignty within its own sphere* to sharply and decidedly put the case that this supreme authority within every group has *nothing but God above itself*, and that the State cannot force itself between the two and cannot here on its own authority give any orders.”<sup>15</sup> In the context of Church-State relations, this meant, among other things, “nothing less and also nothing more than freedom for the development of faith.”<sup>16</sup> In the broader context of community relations, he defined and legitimized sphere sovereignty in compelling terms:

God established institutions of various kinds, and to each of these He awarded a certain measure of power. He thus divided the power that He had available for distribution. He did not give all his power to one single institution but gave to every one of these institutions the power that coincided with its nature and calling.<sup>17</sup>

## John Calvin and the Relationship Between Law and Religion

Since Van Prinsterer and Kuyper developed their political theory within the framework of Calvinistic thought, it is perhaps important to note that the social theory of John Calvin (1509–1564) was not explicitly founded on the principle of sphere sovereignty of the Church vis-à-vis the exercise of governmental and legislative powers by the repositories of political authority. Calvin’s jurisprudence represented a synthesis between the concept of natural law of Greek philosophy and certain biblical directives of the Old Testament.<sup>18</sup> Natural law, to him, signified norms of what the law ought to be—he spoke of the moral law—and he derived the substance of those norms from the Mosaic laws. Not all the laws of Moses, though, were seen by him as setting universal standards. Calvin classified all the laws of God promulgated by Moses into the categories of ceremonial, juridical, and moral laws.<sup>19</sup> Ceremonial laws were of temporary significance only and founded on the very special condition and circumstances pertaining to the Jews at the time of the promulgation of the laws.<sup>20</sup> Juridical laws, on the other hand, are of general application and founded on universal rules of equity (*aequitas*) and justice (*iustitia*): They may indeed have a variable substance according to the needs and circumstances of different political communities, but the principle of equity and jus-

tice embodied in those laws must at all times, in all places, and under all circumstances remain intact.<sup>21</sup> The moral law, “the true and eternal rule of righteousness,”<sup>22</sup> must be the scope, the rule, and the end of all juridical laws.<sup>23</sup>

In his *Commentaries on the Decalogue*,<sup>24</sup> Calvin extracted from the Ten Commandments juridical principles, which, in his opinion, ought to be embodied in every system of positive law—except, that is, the fourth and tenth commandments dealing, respectively, with observance of the Sabbath and with human desires.<sup>25</sup> Calvin argued that honoring of the Sabbath, as a particular ceremonial decree, had been abrogated by the coming of Jesus Christ;<sup>26</sup> and as to the tenth commandment, he maintained that the law concerns itself with external or outward acts only and not with a person’s inner desires.

The important point here is that the First Table of the Decalogue, which governs the relationships between God and the human person, was also seen by Calvin as embracing, in its juridical application, norms of the moral law that ought to be enforced by the State. Not only, therefore, was the State under a religiously based obligation to impose punishment for every kind of rebellion against parental power, and for manslaughter, infidelity, theft, or false testimony—as dictated by the relevant commandments (numbers five through nine) of the Second Table of the Decalogue, it was also charged with promoting the Christian faith, with placing a ban on idolatry, and with meeting out punishment for blasphemy and perjury. The first commandment in its juridical application, according to Calvin, involves a duty on the part of the State to sanction punishment for all forms of heresy!<sup>27</sup>

These Calvinistic sentiments were echoed in Article 36 of the *Belgic Confession of Faith*, which proclaims that God “has placed the sword in the hands of the government, to punish evil people and protect the good.” It then goes on to state:

And the government’s task is not limited to caring for and watching over the public domain but extends also to upholding the sacred ministry, with a view to removing and destroying all idolatry and false worship of the Antichrist; to promoting the kingdom of Jesus Christ; and to furthering the preaching of the Gospel everywhere, to the end that God may be honored and served by everyone, as He requires in his Word.<sup>28</sup>

## The Kuyperian Concept of Sphere Sovereignty

In 1898, Abraham Kuyper was invited to deliver a series of lectures on Calvinism at Princeton University in the United States.<sup>29</sup> In his Stone Lectures,

Kuyper praised the American constitutional guarantees pertaining to “freedom of public worship and the juxtaposition of Church and State.”<sup>30</sup> However, he had much to explain. If—as proclaimed by John Calvin—the State had to take upon itself the responsibility of separating religious truths from falsehood, was that not precisely the basis on which the persecution of the faithful during the early history of Christianity and of Protestants at the time of the Reformation could be legitimized? In the Stone Lectures, Kuyper emphasized the practice of the free exercise of religion in Calvinistic countries; and this empirical tradition, rather than the theoretical assumptions to be found in Calvin’s commentaries, represented the true spirit of Calvinism.<sup>31</sup> That empirical tradition was encapsulated in a doctrine proclaiming the sovereignty of social entities—including Church and State—within the enclave of their own internal sphere of functions.

The problem with Kuyper was that, once having grasped the notion of sphere sovereignty, he became so obsessed with the idea that he proclaimed all and sundry to be “circles” that could, vis-à-vis the State, lay claim to internal sovereign powers.<sup>32</sup> For example, he once singled out as components of society that “do not derive their impulse from the State,” the family, church, local population (of a town or city), trade, industry, science, and art.<sup>33</sup> These categories are not of a kind: The family and church are indeed social entities; a population is merely a collection of people without a distinct organizational structure; and trade, industry, science, and art are no more than aspects of society that could, of course, be exercised in particular organizations but do not constitute the organization as such.

### **Contemporary Concepts of Sphere Sovereignty**

The doctrine of sphere sovereignty, as currently defined, received its final touches through the philosophy of the cosmomic idea of Herman Dooyeweerd (1894–1977).<sup>34</sup> Dooyeweerd applied the concept of sphere sovereignty in two, quite distinct, branches of his general philosophy. It signifies, on the one hand, the unique and irreducible meaning of each one of the different modal aspects of reality, such as the aspects of discrete quantity (number), space, motion and energy, life, feeling, analytical thought, historical continuation, linguistic communication, social intercourse, economic scarcity, aesthetic harmony, juridical retribution, ethical love, and faith. Sphere sovereignty signifies, on the other hand, an internal enclave of distinct and sovereign competencies of social entities, such as the matrimonial union of husband and wife, the family of parent(s) and child, a commercial enterprise, a cultural organization, a sports club, the State, and a church institution.

## **Sphere Sovereignty of the Modal Aspects of Reality**

Sphere sovereignty of the modal aspects of reality does not exclude the mutual interaction—the universality within the distinct spheres—of those modalities. The law, for example, applies within a particular territorial region (the analogy of space), has its own history, regulates social relations, presupposes in its allocation of property rights a certain (economic) scarcity of the available objects, and seeks to uphold moral values. This universal symbiosis of the modal aspects of reality does not in any way detract from the irreducible and unique characteristic of each one of them, because each modal aspect carries within itself a kernel of meaning that only belongs to that particular modal aspect and that differentiates it from all others.

When discovering the interaction between the law and a particular a-juridical aspect of reality, legal and political philosophers have the tendency to focus on that relationship as though it constituted the alpha and the omega of all legal relationships. Tunnel vision of this kind is almost invariably attended by absolutization of the a-juridical modality that caught the attention of any particular theoretical analyst: The inherent meaning of the law as a distinct aspect of reality in its own right is disregarded and the law is defined as merely a manifestation of the aspect singled out for special emphasis. Portraying the law singly as an advent of history, or defining the law in sociological terms, or seeking to subordinate legal relationships to economic forces, or depicting the law as a bundle of morally defined values, are but a few of the distortions in legal philosophy based on the distinct relationships that do indeed exist between the juridical aspect of reality and the one being absolutized. However, those theories of law reveal a lack of understanding of the unique and irreducible meaning that causes the law to be the law; they have lost sight of the sphere sovereignty of different modalities of concrete reality.

## **Sphere Sovereignty of Community Structures**

Sphere sovereignty also designates an inner enclave of competencies of different structural social entities. Sphere sovereignty in this context indicates much more than simple Church-State relations. It indeed seeks to strike a balance between the living space of all social entities that exist and function within the body politic. Individuals—as we all know—have several group related affiliations and participate in all kinds of social institutions. Each one of those social structures have, and may be identified by, a certain leading function: Religious communities are essentially charged with fostering one's faith; the family circle is centered upon mutual love and affection founded on



biological ties; business enterprises are conditioned by the economic objective of making a profit; cultural organizations exist for the purpose of promoting all manifestations of the historical heritage of a people; educational institutions find their destiny in human society by enhancing the acquisition and development of scholarly knowledge; sports clubs function in the area of physical recreation, and so on. The doctrine of sphere sovereignty recognizes the existence and importance of all such group entities in human society but is equally adamant in its condemnation of every endeavor to afford to group interests a pertinence that would exceed the confines of its structural leading or qualifying function. Ethnicity, for example, is a distinctly cultural concept, and its relevance in human society should be kept in check with a view to its typically cultural designation. The same applies in principle to communities united by a common religious commitment. The possession and exercise of civil and political rights are not determined by either ethnic or religious qualities and ought, therefore, also not to be conditioned by such cultural or religious determinants. The doctrine of sphere sovereignty thus requires of every social entity to focus its activities on its characteristic function, and—negatively stated—not to indulge in, or obstruct the exercise of, functions that essentially belong to social entities of a different type.

### **Sphere Sovereignty and the Encaptic Intertwinement of Community Relations**

The doctrine of sphere sovereignty does not profess that different social entities can be isolated from one another. Sphere sovereignty goes hand in hand with, and is, in fact, based upon, the encaptic intertwining of fundamentally different social structures.<sup>35</sup> Herman Dooyeweerd classified the different manifestations of such intertwining into several categories.<sup>36</sup> He spoke of *unifying encapsis*, which occurs when one social entity takes over the functions of another (e.g., in the case of a Church-State—such as the Vatican—or an established Church); *unilateral foundation*, which designates that a particular social entity is founded upon another without the latter one presupposing the first (e.g., in the case of a family of parents and children, which presupposes the union between husband and wife); *correlative encapsis*, which occurs when different social entities mutually presuppose one another (e.g., in the case of a society founded upon agreement, which presupposes the contractual relationship between its members, and *vice versa*); and *territorial encapsis*, which occurs by virtue of the fact that different social entities function within the same territory. To these instances of social intertwining might be added the phenomenon of *personal encapsis*, which is

brought about when one and the same person is a member of different social entities.

The type of conflict situations that might arise from the complicated intertwinement of individuals and social entities, and between different social structures, are numerous and indeed difficult to resolve. For example, social entities such as a church—being in most Western jurisdictions a corporate body with legal personality—not only perform acts within the compass of their own sovereign sphere of religious activity but also operate within the juridical sphere of the State, for example, when they buy and sell, own property, or through their organs vicariously commit a tort; and the government of a State, on the other hand, might also act within the enclave of religious activity, for example, when it participates in religious observances. Furthermore, the same individual, who as a member of a particular denomination, is subject to the tenets of that Church would invariably, as a citizen, also be required to obey the decrees embodied in the national legal system of his country. Consider in this regard the predicament in relation to conscription of a conscientious objector: While his convictions direct him not to do military service, the laws of the country may compel him to serve in the armed forces. Nor could his problem be resolved, as some might suggest, by means of compartmentalization of a person's so-called capacities: The conscientious objector simply cannot in his capacity as citizen do military service and at the same time, in his capacity as member of a denomination that proscribes participation in activities associated with armed conflict, abstain from doing the same.

The encaptic intertwinement of social entities and the interests that might attend such intertwinement do not detract from the peculiarity in the structure, and the sovereignty within their own distinct spheres of competencies, of different kinds of social entities. A church, for example, remains a church and does not derive its authority in ecclesiastical matters from the State; and the State retains the essential characteristics of the body politic and exercises political power on account of its own sovereign competence.

## Constitutional Arrangements

The concept of sphere sovereignty finds expression in various forms in some of the constitutions of the world. Singapore confines the internal sovereignty of religious groups to managing their own religious affairs.<sup>37</sup> Ireland more generously proclaims the right of every religious denomination to manage its own affairs.<sup>38</sup> Italy affords independence and sovereignty, "each within its own ambit," to the State and the Roman Catholic Church only.<sup>39</sup> Romania

permits the organization of religious sects “in accordance with their own statutes” but “under the conditions of the law.”<sup>40</sup> In the Czech Republic, “[C]hurches and religious societies administer their own affairs, appoint their organs and their spiritual leaders, and establish religious orders and other church institutions, independently from organs of the State.”<sup>41</sup> Poland defines the relationship between State and Church and other religious organizations on the basis of “the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as ... the principle of cooperation for the individual and the common good.”<sup>42</sup>

There is, of course, more to sphere sovereignty than just that description. Against the Scholastic notion of subsidiarity, it stipulates that social entities of different kinds, including Church and State, do not derive their respective competencies from one another but are in each instance endowed with an internal enclave of domestic powers that emanate from the typical structure of the social entity concerned and as conditioned by the particular function that constitutes the special destiny of that social entity. Sphere sovereignty is also not on a par with the separation of Church and State. The doctrine of sphere sovereignty is, on the contrary, sensitive to, and is in fact based upon, the intertwining of different social entities, including Church and State, within human society.

## Sphere Sovereignty and Autonomy

Not every manifestation of authority being exercised within a social institution would qualify as a matter of sovereignty in the sense of sphere sovereignty. Sovereign powers relate to the *interrelationships* of structurally *different* kinds of social entities only. In the *intrarelations* of a social entity toward an assemblage of its own kind and constituting an integral component of itself, sovereignty would be out of the question. It is possible, of course, for such components of a community structure to be given authority to deal with matters falling within the domain of their domestic affairs. Such authority would then be a matter of delegated powers, emanating from the inner ties of a whole and its parts and being conditioned by a relationship of power and subordination, and constituted by a grant or concession of the superior social entity. To distinguish this kind of (delegated) authority from the sovereign powers as of right of a societal institution, the former might be called *autonomy*. Dooyeweerd distinguished autonomy and sphere sovereignty as follows:

But autonomy is not identical with sphere sovereignty of the different types of societal relationships. The fundamental difference between the two is that autonomy only occurs in the relation of a whole to its parts, whereas sphere sovereignty pertains to the relation between social structures of a different radical or genotype, which, in principle, lacks the character of a part-whole relation.<sup>43</sup>

The relationship between regional and local authorities of a State toward the central government, or between a particular congregation and the denomination of which it is part, would in this sense be a question of autonomy and not of sovereignty. That, perhaps, is the major fallacy of the Scholastic notion of subsidiarity: portraying the relationship between Church and State, being one of internal sphere sovereignty, as though it were a relationship of autonomy.

## Sphere Sovereignty and Subsidiarity

Traditionally, the typical Roman Catholic perception of religious freedom was founded on the Scholastic doctrine of subsidiarity, which, in turn, emanated from the dualistic division of reality into the realms of nature and grace. In the natural order of things, the State was regarded as the *societas perfecta*, while the Church constituted the perfect society in the supranatural sphere of grace; and whereas in the realm of nature the Church was seen to be subordinate to the State, so, again, was the State perceived to be subordinate to the Church in the realm of grace.<sup>44</sup>

The notion of sphere sovereignty did occasionally crop up—perhaps inadvertently—in Catholic social theories. It is interesting to observe, for example, that while Pope Leo XIII in the encyclical *Rerum Novarum* defined the relationship between the State and trade unions on the basis of subsidiarity—noting, for example, that private societies, including workmen’s associations, “exist within the State, and are each part of the State”<sup>45</sup>—he afforded to Christian or Catholic trade unions greater powers of self-determination that seemingly come close to the notion of internal sphere sovereignty. Referring to the analogy of ecclesiastical institutions—[t]he administration of the State ... have no rights over them”<sup>46</sup>—he said of Catholic workmen’s societies: “Let the State watch over these societies of citizens united together in the exercise of their rights; but let it not thrust itself into their peculiar concerns and their organization; for things move and live by the soul within them, and they may be killed by the grasp of a hand from without.”<sup>47</sup>

Today, there is seemingly also a shift in Roman Catholic social theory toward recognizing a greater measure of sovereignty of Church and State. Ronald Minnerath said it in so many words. According to him, Church-State relationships ought to be based on (a) the autonomy of each of the two parties, and (b) cooperation in areas of common interest.<sup>48</sup> He went on to explain: “Recognition of the autonomy of Church and State requires that each shall be sovereign and independent in its own sphere.”<sup>49</sup>

## Sphere Sovereignty and the Self-Determination of Peoples

Dooyeweerd confined the social institutions that would qualify for sphere sovereignty to two, rather limited, categories, called *communities*<sup>50</sup>—*natural communities*, which, as such, are based upon biotic ties and which he restricted to the institutions of marriage, the family embracing parents and children, and the cognate family in the broader sense of kinship<sup>51</sup>—and *organized communities*, which owe their existence to a historical power formation, whose existence is durable regardless of the entry into or exit from the organization of individual members, and which are necessarily structured upon an internal relationship of authority and subordination.<sup>52</sup> A people as defined in international law for purposes of the right to self-determination would not comply with the requirements postulated by Dooyeweerd as a *sine qua non* for being a “community” with internal sphere sovereignty.

Kuyper, on the other hand, would have no difficulty in attributing to ethnic, religious, or cultural communities the attributes of a “circle” with sphere sovereignty. Those communities, too, constitute a certain collective entity, or a “people,”<sup>53</sup> centered upon a distinct, leading function. Yorum Dinstein noted that peoplehood comprises two elements: an objective component, designated by the factual contingencies upon which the unity of the group depends; and a subjective component, constituted by a certain state of mind—the consciousness of belonging, and perhaps the will to be associated with the group.<sup>54</sup>

In terms of the doctrine of sphere sovereignty, the State ought to afford leeway within its territorial boundaries for non-State institutions to exercise their respective functions and should not allocate to itself the competence of performing such functions in competition with, or to the exclusion of, the appropriate (non-State) social institutions. In the vernacular of contemporary international law, sphere sovereignty demands of the State to respect and to guarantee the right to self-determination of all national or ethnic, religious, and linguistic communities under its political jurisdiction.

## International Law Directives

That, exactly, is what the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1992 mandates in positive language when it proclaims:

States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions, and customs, except where specific practices are in violation of national law and contrary to international standards.<sup>55</sup>

The national-law limitation is to be conditioned by the international-standards criterion: It presupposes municipal regulation that remains within the confines of international standards and does not place undue restrictions upon the sphere sovereignty of minorities.

The right to self-determination of peoples,<sup>56</sup> alongside the equality of nations, large and small, has been recognized as a basic norm of international law.<sup>57</sup> In terms of Article 27 of the *International Covenant on Civil and Political Rights*, 1966,<sup>58</sup> self-determination, as currently perceived, entails the following principle:

In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.<sup>59</sup>

Governments, through their respective constitutional and legal systems, ought to secure the interests of distinct sections of the population that constitute minorities under their jurisdiction. The *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*<sup>60</sup> clearly spells out that obligation: Protect and encourage conditions for the promotion of the concerned group identities of minorities under the jurisdiction of the duty-bound State;<sup>61</sup> afford to minorities the special competence to participate effectively in decisions pertinent to the group to which they belong;<sup>62</sup> do not discriminate in any way against any person on the basis of his or her group identity,<sup>63</sup> and, in fact, take action to secure their equal treatment by and before the law,<sup>64</sup> and so on.

The Council of Europe's *Framework Convention for the Protection of National Minorities*, 1995,<sup>65</sup> spelled out minority rights in much the same vein: It guarantees equality before the law and equal protection of the laws.<sup>66</sup>

States parties promise to provide “the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely, their religion, language, traditions, and cultural heritage.”<sup>67</sup> States parties recognize the right of persons belonging to a national minority “to manifest his or her religion or belief and to establish religious institutions, organizations, and associations”;<sup>68</sup> and the *Framework Convention* guarantees the use of minority languages, in private and in public, orally and in writing.<sup>69</sup>

## Self-Determination and Secession

There is a marked tendency today for peoples with a strongly felt group identity to seek political self-control—either within the existing political structures of a plural community (political participation by means of a group’s representation in the agencies of government) or through the establishment of a distinct and exclusive sovereignty (secession from the existing State). This tendency is particularly noticeable among sections of a population that share a common religion, cultural heritage, or ethnic identity. Failure of national systems to provide protection to sectional interests of minorities as demanded by the principle of self-determination must be seen as an important contributing cause of the secessionist drive. The contemporary welfare State furthermore tends, in violation of the above directive, to extend the scope of political power to regulate the private lives of individuals and the internal sphere of activities of institutions other than the State.

It is important to note that the right of peoples to self-determination does not include a right to secession;<sup>70</sup> not even in instances where the powers that be act in breach of a minority’s legitimate expectations. After all, the establishment of a new State by means of secession applies to a particular territory,<sup>71</sup> while the right to self-determination belongs to a people. Statehood essentially depends on a territorially defined foundation.<sup>72</sup>

The right to self-determination also differs from a right to secession in that the former constitutes a collective right, while legitimate secession may be exercised (in limited circumstances only) as an institutional group right. A collective human right is afforded to individual persons belonging to a certain category, such as children, women, or ethnic, religious, and cultural minorities.<sup>73</sup> The right of national minorities to peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience, and religion<sup>74</sup> thus belongs to every member of the group and can be exercised separately or jointly with any other member(s) of the group. An institutional

group right, on the other hand, vests in a social institution as such and can only be exercised by that collective entity through the agency of its authorized representative organs. The right of a church to internal sphere sovereignty is, in that sense, an institutional group right.<sup>75</sup> So, too, is the right to secession of persons territorially united as a nation.<sup>76</sup>

International instruments proclaiming the right to self-determination almost invariably also postulate inviolability of the territorial integrity of existing States,<sup>77</sup> and reconciling the two principles in question necessarily means that self-determination must be taken to denote something less than secession. The United Nations' 1993 World Conference on Human Rights said it all when the right of peoples to "freely determine their political status and freely pursue their economic, social, and cultural development" was expressly made conditional upon the following proviso:

This [definition of self-determination] shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principles of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind.<sup>78</sup>

Self-determination of peoples is thus a matter of sphere sovereignty in regard to sectional interests of such groups and not of political sovereignty in the sense of national independence.

There are many compelling reasons why the destruction of existing political communities harboring a plural society should be avoided at all costs:

- A multiplicity of economically nonviable States will further contribute to a decline of the living standards in the world community.
- The perception that people sharing a common language, culture, or religion would necessarily also be politically compatible is clearly a myth, and disillusionment after the event might provoke profound resentment and further conflict.
- Movement of people within plural societies across territorial divides has greatly destroyed ethnic, cultural, or religious homogeneity in regions where it might have existed in earlier times, and consequently, demarcation of borders that would be inclusive of the sectional demography that secessionists seek to establish is, in most cases, quite impossible.



- Affording political relevance to ethnic, cultural, or religious affiliation not only carries within itself the potential of repression of minority groups within the nation but also affords no political standing whatsoever to persons who, on account of mixed parentage or marriage, cannot be identified with any particular faction of the group-conscious community, or to those who—for whatever reason—do not wish to be identified under any particular ethnic, religious, or cultural label.

In consequence of the above, an ethnically, culturally, or religiously defined State will more often than not create its own “minorities problem,” which—because of the ethnic, cultural, or religious incentive for the establishment of the secession State—would almost invariably result in profound discrimination against those who do not belong, or worse still, a strategy of “ethnic cleansing.”

## ***Part 2: Rerum Novarum and Economic and Social Human Rights***

Pope Leo XIII became head of the Roman Catholic Church at a time when the Church was battling to come to terms with the disruption of established social patterns through the influence of the Enlightenment, industrialization, and the French Revolution. Robert Traer pointed out that “the modern teaching [of the Roman Catholic human rights tradition] begins with the pontificate of Leo XIII.”<sup>79</sup>

In many respects, Leo XIII followed the conservative approach of his predecessor, Pope Pius IX. He claimed that the evils of his time had to be attributed to the fact that the “holy and vulnerable authority of the Church has been despised and set aside.”<sup>80</sup> According to him, the “confused philosophical foundation” of philosophies of the nineteenth century called for a return to the teachings of Saint Thomas Aquinas.<sup>81</sup> Liberalism, said he, was censurable, because it “denied all objective standards of truth and placed the individual beyond the reach of all authority,” whereas “the true liberty of human society does not exist in every man doing what he pleases, for this would simply end in turmoil and confusion. But rather in this: that through the injunction of the civil law all may more easily conform to the prescriptions of the eternal law.”<sup>82</sup> Practical issues that caught his attention included the question of religion in public education,<sup>83</sup> naturalism as the basis of Freemasonry,<sup>84</sup> and the reconciliation of French Catholics with their republican form of government.<sup>85</sup>

It was, however, through *Rerum Novarum*<sup>86</sup>—depicted by some as the *Magna Carta* of Catholic social teaching<sup>87</sup>—that Leo XIII gained a place in the history of political thought. The legacy of that encyclical includes its influence on the development of the so-called second generation of human rights.

## Historical Perspective

The doctrine of human rights has its roots in the political turmoil in England of the seventeenth century. Responding to the despotic rule of the Stuart Kings, which was terminated by the Glorious Revolution of 1688, John Locke (1632–1704) sought to define the purposes of government as the basis for the limitation of the powers vested in political authority.

### Natural and Civil Rights

In his celebrated work, *Two Treatises of Civil Government*, John Locke likened the function of government to the legal institution of a trust: A government is established (by means of a social contract) for the sole objective of protecting—as trustee—the natural rights of its subjects—the trust purpose. Should the monarch fail to comply with the trust purpose, he would, according to the rules of law pertaining to trusts, forfeit the office of trustee and leave the subjects free to enter into a new trust agreement (the *pactum subiectionis*) with another trustee. That, said he, explains the Glorious Revolution. The dynasty of Stuart, through its rule of repression, had failed to execute the purpose of government (protection of the natural rights of its subjects), thereby forfeiting the office of trustee. The Glorious Revolution simply served to inform King James II (1685–1688), the last of the Stuart Kings, that this has indeed happened. Thereby the people of England resumed the power to enter into a new trust agreement with another monarch—which they did by offering the throne of England to the Dutch Prince of Orange and his spouse (William III and Mary).

Natural rights comprise those basic entitlements of the individual that were thought to be natural concomitants of being human. Jacques Maritain referred to those rights as *rights of the human person as such* (as against the rights of the civic person and the rights of the social person, and more particularly, of the working person) and included in this category the right to existence, to personal liberty, to pursue the perfection of a rational and moral human life, and to eternal life.<sup>88</sup> Early exponents of the idea of natural rights sought to identify those rights by contemplating the condition of an individual person in

a stateless society (the state of nature). By eliminating all considerations that might be conditioned by a person's station in life as a member of the body politic, philosophers attempted to penetrate the true essence of the human being and sought to translate that vital modality of being human into rights talk.

An interesting contemporary variety of such efforts to discover the natural rights of human persons by penetrating the essence of their being, is to be found in the scriptural philosophy of the Potchefstroom philosopher, H. G. Stoker (1899–1993):<sup>89</sup> Stoker believed that the essential nature of the *homo sapiens* had remained unaffected by the fall of man; and if one were to uncover those rights that belong to the human person *an sich*—rights that are tied up in the being or humanness of a person—one should, hypothetically, eliminate sin and its correlative influence from one's thought. Using this method, Stoker concluded that every person has the *ontic right*—a term denoting the most basic right of the human person—to fulfil his special and personal (God-given) calling in life; and he opposed all laws and social institutions that would obstruct the realization of this ontic right.

Human rights were originally perceived as natural rights of every individual, and, as such, those rights had a distinct anthropological quality; that is to say, basic human rights and fundamental freedoms were determined by the author's perception of the nature and essential characteristics of the human person. With a view to the conditions that prevailed in the state of nature, John Locke thus postulated, on the basis of the equality of all persons,<sup>90</sup> the entitlement as a matter of the natural right of every individual to control his own life, to follow the dictates of his own will, and to lay claim, as his property, to all objects seized by him and to which he had applied his own labor (life, liberty, and estate).<sup>91</sup>

It is evident though, that the rights and freedoms requiring special protection against the powers of government cannot be confined to those that are “natural” in the above sense. The anthropological method of defining human rights, by its very nature, did not address the real problem of affording protection to citizens within and as part of the body politic and in their relationship toward the repositories of political power. The natural rights of the human person, in a word, had to be amplified by other basic rights that are significant within the context of State-subject relations. The special contribution regarding the theory of human rights of the French legal philosopher, Jean-Jacques Rousseau (1712–1778), was exactly his emphasis on the notion of civil rights.

Whereas Locke maintained that upon entering into a political society (by means of a *pactum unionis*), the individual retains his natural rights, the pro-

tection of which was then allocated to the government (by means of a *pactum subiectionis*), Rousseau entertained the view that the individual, when entering into the social contract, actually forfeits his natural individuality and his natural rights, in exchange for becoming a part of the body politic, and for acquiring the civil rights of liberty, equality, life, and property.<sup>92</sup> And, whereas the anthropological approach was adhered to for the purpose of identifying natural rights of the human person, the assistance of political science was required to identify those rights and freedoms that are pertinent within the confines of a person's citizenship. After all, one's notion of basic rights within the civilian environment would depend on one's perception of the State and State authority and would be further conditioned by a clear choice between different constitutional alternatives. Here, there is more scope for variability than is the case under the anthropological approach.

Rousseau confined the natural rights, based on the singularity of persons in the state of nature, to life, liberty, and equality.<sup>93</sup> Those natural rights—as we have seen—are then converted into the civil rights to liberty, equality, life, and property. Legal philosophies of the seventeenth and eighteenth centuries produced many variations on this theme.

Christian Wolff (1679–1754), for example, postulated the natural right of every person to comply with those duties that contribute toward the perfection of his own personality, such as the right to one's own security and a right to a means for securing a pleasant and happy life.<sup>94</sup> Sir William Blackstone (1723–1780) singled out as basic rights of a person, along with certain “subordinate rights,” the right to individual security, personal freedom, and private ownership.<sup>95</sup> Immanuel Kant (1724–1804) referred to a human right in the singular and called it “intrinsic freedom” (*innere Freiheit*). Such freedom entails, according to Kant, independence of the will within the confines of the highest ethical command (the Categorical Imperative), which requires every person to act in such a way that the volition of his act (*Willkür*) may coexist alongside the equal volition of all other persons under a general law of freedom. In other words, all persons should be at liberty to do whatever they please, provided they allow others to act likewise.<sup>96</sup> Johann Gottlieb Fichte (1762–1814) mimicked Wolff's idea of a right to do one's moral duty, and since he identified the ethical norm with the dictates of reason, he reduced the most fundamental freedom of the individual to the right of every person to act according to reason. It is one's moral duty to comply with the commands of reason, and one has the basic right to carry out that duty.<sup>97</sup>

In the first phase of its development, the doctrine of human rights remained focused on what later became known as civil and political rights. Those rights

can indeed more accurately be depicted as the natural and civil rights of the individual, but under the influence of nineteenth-century positivism, the notion of “natural” law and “natural” rights lost much of its earlier appeal.

These civil and political rights (in the sense, really, of natural and civil rights) have certain distinct characteristics. Their emphasis remained confined to *entitlements of the individual*, and they took on the form of *Abwehrrechte*; that is, rights and freedoms pertinent to safeguarding the citizen’s basic liberties vis-à-vis governmental authority<sup>98</sup> and *requiring of the State little more than to permit or endure those entitlements*.<sup>99</sup>

### **Economic and Social Rights**

In the second (twentieth century) phase of its development, the notion of human rights was expanded to also include economic and social rights. The original manifestation of this second generation of human rights is commonly attributed to the Constitution of Mexico of 1917.<sup>100</sup> Economic and social rights were subsequently also included in the U.S.S.R. Constitution of 1924<sup>101</sup> as the right to work<sup>102</sup> and to leisure,<sup>103</sup> to maintenance in old age and sickness,<sup>104</sup> to education,<sup>105</sup> and to freedom of association.<sup>106</sup> Economic and social rights were later also incorporated, as (nonenforceable) “Directive Principles of State Policy,” in the post-war constitution of India<sup>107</sup> and indeed as enforceable rights in the enterprising *Basic Law of the Federal Republic of Germany*.<sup>108</sup> In the arena of international law, the notion of such rights found its way into the *Universal Declaration of Human Rights* of 1948<sup>109</sup> and constituted the subject matter of the *International Covenant on Economic, Social, and Cultural Rights* of 1966.<sup>110</sup>

The special attributes of economic and social rights include the following general characteristics:

- Economic and social rights, in the sense of *Leistungsrechte*, in many instances include a positive obligation on the part of the State to provide services, facilities, or support that might be required for the meaningful enjoyment of those rights.<sup>111</sup>
- The emphasis of second-generation rights is no longer on the individual, but reflects a decidedly “social nuance” by safeguarding the rights of the individual within the confines of certain a-political group entities, for instance as a worker, school attending child, or member of an ethnic variety.<sup>112</sup>
- The provisions associated with economic, social, and cultural rights are often not immediately enforceable but may make

allowance, as a matter of State policy, for progressive implementation with a view to the available means at the disposal of the State to provide the services, facilities, or support required for their meaningful enjoyment.<sup>113</sup>

The distinctive characteristics of, respectively, civil and political rights and economic and social rights are not absolute, and allowance must be made for exceptions on either side. For example, freedom of religion may be seen as a basic natural right of the individual (the right, in the language of Jacques Maritain,<sup>114</sup> to seek eternal life) but at the same time constitutes a right that may be exercised within the confines of a religious social entity and, in that sense, comes within the definition of second-generation rights. The right to promote one's cultural interests is a second-generation right but does not entail any obligation on the part of the State to provide services, facilities, or support in the same way as the right to work, the right to education, or the right to health care would require. There is also no good reason why cultural rights should be kept on hold in a system of progressive implementation.

### The Right to Development

During the last quarter-century a new category of rights has emerged that is commonly referred to as third-generation rights and was first conceptualized during the 1970s by Karel Vasak, who, at the time, was director of the International Institute of Human Rights in Strasbourg, France.<sup>115</sup> Those rights include the right to peace, the right to development of disadvantaged sections of a political community or, in the international context, of developing countries, the right to nature conservation and to a clean and healthy environment, the right to share in the common heritage of humankind, and so on.<sup>116</sup>

The basic and general attributes of the third-generation rights include the following characteristics:

- The emphasis of third-generation rights is no longer on the individual but beneficiaries of these rights are collectively perceived, either in the sense of humanity as a whole, a particular political community, or a distinct section of the population within the body politic.
- The beneficiaries of human rights protection of the third-generation kind are not confined to *personae in esse* but also include future generations.

- Third-generation rights in most instances cannot be adequately protected within the confines of municipal bills of rights, and their effective implementation consequently requires international cooperation on the global or regional scale (for instance, pollution cannot in all instances be contained within national borders).

## **The Significance of the Encyclical *Rerum Novarum***

### **The Origin of Economic and Social Rights**

The question as to who originated the second generation of economic and social rights has been a matter of debate, the end of which is not yet in sight. Some analysts attributed their origin to the Soviet Constitution of 1924—which led to the blemishing in some circles of that category of human entitlements as “red rights,” an invention of the Communists and intimately tied up with a political system of socialism.

However, the one component of the Four Freedoms alluded to by President Franklin Delano Roosevelt in his 1941 State of the Nation Address—“freedom from want”<sup>117</sup>—has also in retrospect come to be hailed in the United States as an enterprising contribution toward the unfolding of economic and social rights. Indeed, the President, in translating the concept into “world terms,” defined freedom from want as “economic understandings that will secure to every nation a healthy peacetime life for its inhabitants everywhere in the world.”<sup>118</sup> In his 1944 State of the Nation Address, President Roosevelt elaborated on the theme by proclaiming that “true individual freedom cannot exist without economic security and independence,” and he articulated an impressive list of rights that clearly belong to this forgotten category: the right to a useful and remunerative job; the right to earn enough to provide adequate food, clothing, and recreation; the right of every farmer to raise and sell his products; the right of every businessman to trade in an atmosphere of freedom from unfair competition and domination by monopolies; the right of every family to a decent home; the right to adequate medical care; the right to protection from economic fears of old age, sickness, accident, and unemployment; and the right to a good education.<sup>119</sup> One is also reminded that the President’s wife, Eleanor Roosevelt, chaired the Commission responsible for the drafting of the *Universal Declaration of Human Rights* with its list of economic and social rights: the right to social security;<sup>120</sup> the right to work, to

free choice of employment, to just and favorable working conditions, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration, to form and join trade unions;<sup>121</sup> the right to rest and to leisure;<sup>122</sup> the right to an adequate standard of living for the well-being of oneself and one's family;<sup>123</sup> and the right to education.<sup>124</sup>

It might be noted in passing that the United States never came to honor these commitments of its president. In the debate in the General Assembly of the United Nations that preceded the adoption of the *Universal Declaration of Human Rights*, Eleanor Roosevelt stated that the United States government did not consider the economic, social, and cultural rights enunciated in the Declaration as implying "an obligation on governments to assure the enjoyment of those rights by direct governmental action."<sup>125</sup> It is submitted that a reservation to that effect to the *International Covenant on Economic, Social, and Cultural Rights* (as proposed by President Jimmy Carter in 1978 when he commended the Covenant to the American Senate for ratification)<sup>126</sup> would defeat the objective of the Covenant, and that the obligations of positive action imposed upon governments by the essential demands of economic, social, and cultural rights is clearly an important consideration that thus far precluded the Senate from ratifying the Covenant.

It has come to be generally accepted that the first practical manifestation of the economic and social rights is to be found in the Mexican Constitution of 1917.<sup>127</sup> *Rerum Novarum* preceded the enactment of that Constitution by twenty-six years.

### ***Rerum Novarum***

In *Rerum Novarum*, Pope Leo XIII sought to clarify "the relative rights and mutual duties of the wealthy and the poor, of capital and labor."<sup>128</sup> He was inspired to do so by "elements of conflict" of his time, including "the growth of industry, and the surprising discoveries of science; the changed relations of masters and workmen; the enormous fortunes of individuals, and the poverty of the masses; the increasing self-reliance of the closer mutual combination of the working population; and, finally, a general moral deterioration."<sup>129</sup>

Conditions of human dignity<sup>130</sup>—the standard of all law—include the right to acquire private property, the right to enjoy days of rest, the right to earn a just wage,<sup>131</sup> the right to use one's earned wages to purchase and to own property, the right to reasonable working conditions,<sup>132</sup> and the right to adequate food, clothing, and shelter:



Justice, therefore, demands that the interests of the poorer population be carefully watched over by the Administration, so that they who contribute so largely to the advantage of the community may themselves share in the benefits they create—that being housed, clothed, and enabled to support life, they may find their existence less hard and more endurable.<sup>133</sup>

These rights involve the concomitant duty of employers to recognize and protect the entitlements that they entail; and to hold employers to that duty, the workers have the further right to organize labor unions to defend their just claims. Trade union rights of the workers are said to be a particular manifestation of freedom of association, which, in turn, derives from the nature of all human persons as self-determining and social beings.

The obligation to secure the economic and social rights enunciated in the encyclical also extends to the State as protector of the common good. The common good encapsulates the poor and the powerless members of society, and the protection of their rights therefore also comes within the confines of governmental obligations: “To the State the interests of all are equal, whether high or low. The poor are members of the national economy equally with the rich...”<sup>134</sup> In arguing the case for the special protection of the poor, Leo XIII proclaimed:

The richer population have many ways of protecting themselves, and stand less in need of help from the State; those who are badly off have no resources of their own to fall back upon, and must chiefly rely upon the assistance of the State.<sup>135</sup>

## **Significance of Economic and Social Rights**

The legitimacy of economic and social rights remained the Cinderella of Western human rights concerns. What is at stake here is the different perceptions of human rights that seem to prevail in the North and the South. Westerners tended thus far to afford special prominence to civil and political rights—at the expense of economic and social rights. On the one hand, civil and political rights are the ones that were initially identified by Western political philosophers. They are the rights that were known when the United States was established and that found their way into the American Bill of Rights. Economic and social rights, on the other hand, traditionally received special emphasis in Socialist countries and—to add to Western skepticism—are often referred to as “red rights.” Many human rights lawyers and politicians of the

West are even known to have denied the claim of economic and social values to the very title and status of rights.<sup>136</sup>

But this sword cuts both ways. The South often uses the poor state of their economies and the lamentable social conditions in which large sections of their communities are forced to live as an excuse for a bad track record in the area of civil and political rights. The claim is sometimes articulated in catching slogans: *Human rights begin in the kitchen*, people would say, *and not in the courtroom*; or, *What is the use of the right to vote while one has no food to eat?* or, *Why all the fuss over freedom of the press while large sections of the community cannot read or write?* or, again, *I would rather have a roof over my head than a seat in Congress*. Poverty and social deprivation—rebuts the North—is no justification for totalitarian practices and repressive government; and, as was asserted by Thomas Axworthy: "... dictatorships should not be able to have it both ways: If they wish to suppress freedom, they should, at a minimum, pay the price of doing so without international assistance."<sup>137</sup>

The 1993 United Nations World Conference on Human Rights that was held in Vienna, Austria, addressed this problem by proclaiming the universality, indivisibility, and interdependence of all human rights. The Vienna Final Act thus proclaims:

All human rights are universal, indivisible, interdependent, and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional peculiarities and various historical, cultural, and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic, and cultural systems, to promote and protect all human rights.<sup>138</sup>

The additional guarantees sought in Vienna was for all States to ratify the *International Covenant on Economic, Social, and Cultural Rights* and to do so without reservation; for upgrading the status and enhance the resources of the United Nations Committee on Economic, Social, and Cultural Rights; for perhaps adding an Optional Protocol to the existing Covenant that would make allowance for an individual complaints procedure; and for finding ways and means to secure the development of the South to a level where a cross-section of the world's impoverished communities could achieve the level of economic prosperity, social sophistication, and cultural achievement associated with human dignity, comfortable living, and personal security.

The concerns of Leo XIII for the rights of the worker preceded the emergence of these controversies by more than half a century. His concerns were also not inspired by a commitment to the human rights ideology as such. Skepticism in regard to human rights within the Roman Catholic Church—and certainly also in the Dutch Reformed communion from which Abraham Kuyper stemmed—predominated at the time, based on the humanistic foundation of the original human rights theories. A firm commitment by Catholicism to human rights principles only emerged from the Second Vatican Council (1962–1965),<sup>139</sup> and protagonists of the doctrine of human rights in Calvinist circles within the Dutch tradition are still today only few and far between.

*Rerum Novarum* must be seen in the context of its time. It was negatively linked to the rise of socialism during the second half of the nineteenth century. The Roman Catholic Church had taken a strong stand against socialism; and since socialism was associated by its proponents with the interests of the workers, condemnation of the political system championed by the Marxists could be taken to denote a lack of care for the workers as supposedly the beneficiaries of communism. *Rerum Novarum* was intended to counter that assumption: Although the Church rejected socialism, this did not mean that it was unconcerned for the workers. The encyclical, on the contrary, bears evidence of the Church's (positive) perception of the rights and interests of the worker.

### ***Rerum Novarum* and the Mexican Constitution**

It is perhaps no coincidence that the first legally binding proclamation of economic and social rights is to be found in the 1917 Constitution of Mexico. Mexico has been a country that upheld a strong alliance with Roman Catholicism, and it is reasonable to assume that *Rerum Novarum*, at least to some degree, informed the enumeration of economic and social rights in the Constitution of that country. The Constitution regulates many of the issues raised in the encyclical:<sup>140</sup> reasonable working hours and a day of rest; adequate wages to satisfy the normal needs of life, education, and lawful pleasures of the workman; equal pay for equal jobs and minimum wages; the employers' duty to furnish workers in certain occupations with comfortable and sanitary accommodation, to provide social security, and to secure healthy and safe working conditions; trade union rights and the right to strike and to lock-outs; provisions for the settlement of labor disputes, and so on.

It is, on the other hand, also true that the Constitution of 1917 marked the end of the revolution that had ravaged the country since 1910 and was specially noted for restricting—and indeed denying—the privileged status of the

dominant (Catholic) religion. It authorized the governmental authorities to intervene in matters of religion, prohibited establishment as well as the outlawing of any religion, declared marriages to be “a civil contract,” denied all Churches the status of juristic personality, subjected ministers of religion to laws regulating their profession, prohibited the clergy from criticizing the foundational laws of the country and excluded them from the right to vote or to hold public office, and so on.<sup>141</sup>

It is more likely that *Rerum Novarum* might, indirectly, have had an influence on the Four Freedoms speech of President Franklin Roosevelt. The President certainly entertained good relations with a group of Catholic dignitaries—among them the Right Reverend John A. Ryan (1869–1945), whose dedication to the cause of social justice was decisively influenced by the encyclical of Pope Leo XIII.<sup>142</sup> Father Ryan came out in full support of the New Deal policy of President Roosevelt and was invited by the President to give the benediction at his 1937 inaugural.<sup>143</sup> He referred on that occasion to the untiring pursuit of the President of “his magnificent vision of social peace and social justice”;<sup>144</sup> and subsequently, President Roosevelt recognized the contribution to social doctrine of Father Ryan in the following words:

With voice and pen, you have pleaded the cause of social justice and the right of the individual to happiness through economic security, a living wage, and an opportunity to share in the things that enrich and ennoble human life.<sup>145</sup>

And so, a line can be drawn from *Rerum Novarum*, via Ryan (and other devoted Catholics), to Franklin Roosevelt; and from there further on to Eleanor Roosevelt, the *Universal Declaration of Human Rights*, and eventually the *International Covenant on Economic, Social, and Cultural Rights*.

## Concluding Remarks

The constitutional history of almost all the countries of the world—the United States not excluded—bears testimony of the truism that power corrupts. The golden threat that through the ages permeated the history of political thought is therefore, understandably, a search to find feasible means for the regulation, curtailment, and control of governmental powers. Over time, many laudable arrangements toward that end have been devised:

- the principle of democracy, which affords to the subjects of State authority, the competence to designate periodically the persons to be entrusted with the legislative and executive powers of government;
- the separation of powers, which seeks to avoid the concentration of the legislative, executive, and judicial functions of State authority in the hands of the same persons or institutions;
- the devolution of State authority between central, regional, and local institutions in a federal system of government;
- open governmental and popular accountability, secured in part by a free and independent press;
- the protection of basic human rights and fundamental freedoms against State action and legislative curtailments, and charging the repositories of the instruments of government with a positive duty to provide to its subjects the services, facilities, and support required for their comfortable, safe, and healthy livelihood, in a bill-of-rights regime;
- the doctrine of sphere sovereignty, which demarcates and protects against governmental interference, a private enclave of individual freedoms, and an internal sphere of competencies of non-State institutions.

The legacy of Kuyper and Leo XIII in devising norms which, over time, came to be accommodated within the broader confines of human rights thinking, must not be underestimated. Although neither Kuyper nor Leo XIII associated themselves with the anthropocentric premise of the theory of human rights that was current during their time, they nevertheless contributed toward the development of an alternative theoretical base for, and the further exposition of the substantive components of, the values that have come to be associated with the promotion and protection of human rights. Perhaps the major contribution of Kuyper and Leo XIII was the decidedly Christian foundation of their humanitarian concerns.

The doctrine of sphere sovereignty primarily owed its origin and early development to the struggle for religious freedom. Over time, it developed into an elaborate, theoretical justification for the similar internal freedom of all social institutions. The viability of its appeal has been proven by the parallel development, based on almost exactly the same line of reasoning that gave it birth, of the right of peoples to self-determination.

*Rerum Novarum* owes its origin to the compassionate anxieties of Pope Leo XIII over the many hardships suffered by the less-privileged sections of a political community, particularly the working class. Those anxieties were, in due course, translated into the paradigm of human rights concerns, manifesting itself as the second generation of economic and social rights and a concomitant obligation of governments to apply their available resources for the reconstruction and development of impoverished communities.

State interference in the internal affairs of religious and other non-State institutions within the body politic, and the denial by political authorities of living space for national, ethnic, religious, or linguistic minorities within a political community, are as common today as they were at the turn of the nineteenth century. The radical divide between the haves and the have-nots in society is also as evident today as it was a hundred years ago. The voices of Kuyper and of Leo XIII must therefore not be silenced. Their message has remained pertinent and critical; the principles for which they stood are yet to be fully realized.

## Notes

1. G. Groen van Prinsterer, *Ter Nagedachtenis van Stahl*, 30–31 (1862).
2. Herman Dooyeweerd, *A New Critique of Theoretical Thought*, trans. David H. Freeman and H. de Jongste, 663 (1984); and see also Dooyeweerd, *De Strijd om het Souvereiniteitsbegrip in de Moderne Rechts- en Staatsleer*, 7–8 (1950).
3. Johannes Althusius, *Politica Methodiae Digesta*, l.19. (at 7) (3d ed., 1614): “Propriae leges sunt cujusque consociationis peculiariae, quibus illa regitur. Atque hae in singulis speciebus consociationis illae atque diversae sunt, prout natura cujusque postulat.”
4. G. F. Puchta, *Cursus der Institutionen*, l.1.14. (at 31) (6th ed. by A. E. Rudorff, 1865).
5. “... durch die Ungleichartigkeit ihres Wesens.” *Ibid.*, at 1.2.25. (at 65).
6. J. D. Dengerink, “Critisch-Historisch Onderzoek naar de Sociologische Ontwikkeling der Beginsel der ‘Sovereiniteit in Eigen Kring’,” in *de 19e en 20e Eeuw*, 60 (1948).
7. G. Beseler, *System der Gemeinen Deutschen Privatrechts*, l.1.17 (at 49) (4th ed., 1885). Beseler claims that the *ius particulare* of local and regional authorities does not originate from the central legislature or from custom, but stems “in dem zur Rechtszeugung befugten Willen (der Autonomie) einer Corporation, welche

sich ähnlich, wie die Gesetzgebung es thut, in einem bestimmten, die Rechtsregel constituierenden Act offenbar.”

8. “... die gewissen Corporationen zustehende Befugnis, sich innerhalb des von ihnen beherrschten Kreises oder doch für ihre besonderen Angelegenheiten nach freiem Ermessen ihr eigenes Recht (Willküren, Statute, Beliebungen) zu setzen.” *Ibid.*, at 1.2.1.1.B26. (at 76–77).
9. F. J. Stahl, *Der Protestantismus als Politisches Prinzip*, 16 and 18 (2e Aufl., 1853).
10. “... eine Institution ganz anderer Art.” F. J. Stahl, *Die Kirchenverfassung nach Lehre und Recht der Protestanten*, 72 (2e Aufl., 1862).
11. “... das Kirchenregiment ... vom weltlichen Regiment strenge zu sondern [ist].” *Ibid.*, at 13; and see also *id.*, at 8, 47, and 184.
12. G. Groen van Prinsterer, *Ongeloof en Revolutie* (bewerkt door H. Smitskamp), 130, n. 21 (1845/46): “... de zelfstandigheid van den staat tegenover de kerk ten gevolge van eigen onmiddellijke onderwerping aan God.” This footnote was added to the original text in 1868.
13. G. Groen van Prinsterer, *Het Recht der Hervormde Gezindheid*, 45 and 68 (1849); and see also *Ter Nagedachtenis van Stahl*, *supra* n. 1, at 15, where he spoke of the *eigenaardige werkring* (the peculiar sphere of activity) of the church.
14. G. Groen van Prinsterer, *Handboek der Geschiedenis van het Vaderland*, 679 (3e druk, 1872): “De staat is niet aan de kerk, maar, met de kerk, aan de geboden Gods ondergeschikt.” Groen van Prinsterer added that the State needed to exercise a measure of control over the Church. It was only after he subsequently abandoned this idea of “a measure of control” that his theory regarding Church-State relations reached maturity. In the present context, see also Groen van Prinsterer, *Proeve over de Middelen Waardoor de Waarheid Wordt Gekend en Gestaaft*, 91 (2e druk, 1858): “Onderwerping van overheden en onderdanen, niet aan de geestelijkheid, maar aan de goddelijke wet, is de beste waarborg tegen verdrukking.” (“Subjection of persons in authority and their subordinates, not to the clergy, but to the law of God, is the best guarantee against repression.”) See also Groen van Prinsterer, *Narede van Vijffarigen Strijd*, 14 (1855).
15. A. Kuyper, *Het Calvinisme: Zes Stone-Lezingen in October 1898 te Princeton*, N.J. Gehouden, at 79; and see also *ibid.*, at 82, and Kuyper, *Ons Program* (met Bijlagen), 301 (1879).
16. Kuyper, *Ons Program*, *supra* n. 15, at 193.
17. *Ibid.*, at 198: “God riep instellingen van allerlei orde in het leven, en aan elk van die schonk Hij een zekere mate van macht. Hij heeft alzoo de macht, die Hij uit te

reiken hat, verdeelt. Hij gaf niet aan een enkele instelling al zijn macht, maar aan elk dier instellingen die macht, die met haar aard en roeping overeenkwam.”

18. See, for example, *Institutio Christianae Religionis* (1568), trans. John Allen (1813), 4.20.16. “Now, as it is certain that the law of God, which we call the moral law, is no other than a declaration of natural law, and of that conscience which has been engraved by God on the minds of men, the whole rule of this inquiry, of which we now speak, is prescribed in it.”
19. *Ibid.*, 4.20.4.
20. *Ibid.* See also 4.20.16.
21. *Ibid.*, 4.20.4 and 15. See Jochen Bohn, *Der Mensch im calvinistischen Staat*, 61 (1995).
22. *Institutio Christianae Religionis*, *supra* n. 18, at 4.20.4.
23. *Ibid.*, 4.20.16.
24. See *ibid.*, particularly, 2.8.
25. *Ibid.*, 2.8.6.
26. *Ibid.*, 2.8.31; see also Calvin’s *Tracts and Treatises on the Doctrine and Worship of the Church*, trans. Henry Beveridge, 61–62 (1949).
27. See his letter of September 9, 1553, to Antistes Sulzer of Basel, reprinted in 14 *Ioannis Calvinii Opera Quae Supersunt omnia*, 1793 (at 614); and for a German translation of the letter, see Rudolf Schwarz, *Johannes Calvin’s Lebenswerke in seiner Briefen*, 2, 655 (1962).
28. *Ecclesiarum Belgicarum Confessio*, art. 36 (1516): “... Horum autem officium est, ut non modo curam gerant et pro conservanda politia excubent, verum etiam ut sacrum tueantur Ministerium, omnemque idololatriam, et adulterinum Dei cultum submoveant et evertant: regnum Antichristi diruant, Christi vero regnum promoveant, operamque dent, ut verbum Evangelii ubique praedicetur, quo Deus ab unoquoque, prout verbo suo exigit, honoretur et calatur.”
29. Kuyper, *supra* n. 15.
30. *Ibid.*, 87.
31. *Ibid.*, 87–90.
32. See J. Dengerink, *supra* n. 6, 112–13 (1948); J. D. van der Vyver, *Die Juridiese Funksie van Staat en Kerk: ’n Kritiese Analise van die Beginsel van Soewereiniteit in Eie Kring*, 32–34 (1972).



33. Kuuyper, *Ons Program*, *supra* n. 15, 30: "... die zijn impuls niet van den Staat ontvangt." See also *Lectures on Calvinism*, *supra* n. 15, 79, where he mentioned the family, business, science, art: "en zooveel meer, maatschappelijke kringen vormen, die niet aan den Staat hun aanzijn danken, noch ook aan de hoogheid van den Staat hun levenswet ontleenen, maar gehoorzamen aan een hoog gezag in eigen boezem, dat evenals de Staatssoevereiniteit heerscht bij de gratie Gods." ("... and as many others that constitute community circles, which do not derive the law that gives them life from the state, but answer to a supreme authority in their own enclave, which—like State sovereignty—governs by the grace of God.") *Souvereiniteit in Eigen Kring. Rede ter Inwijding van de Vrije Universiteit* (3e druk) 11 (1930), where he, in the same context, mentioned ethical, matrimonial, and community life, each with its own domain and sovereignty; or then again, the personal, domestic, scientific, community, and ecclesiastical life, each with its own *levenswet* (law that gives it life).
34. See, in general, Dooyeweerd, *New Critique*, *supra* n. 2, at 169–70; Dooyeweerd, *Het Souvereiniteitsbegrip*, *supra* n. 2, at 51; and see also Dooyeweerd, *Verkenningen in de Wijsbegeerte, De Sociologie en de Rechtsgeschiedenis*, 80 (1962); J. Dengerink, *supra* n. 6, 11; G. Spykman, "Sphere Sovereignty in Calvin and Calvinist Tradition," in *Exploring the Tradition of John Calvin*, ed. David Holwerda (1976), 163; J. D. van der Vyver, *supra* n. 32, 76–78, 91–99; J. D. van der Vyver, "Sovereignty and Human Rights in Constitutional and International Law," *Emory International Law Review* 5 (1991): 321, 342–55; J. D. van der Vyver, "Legal Dimensions of Religious Human Rights: Constitutional Texts," in *Religious Human Rights in Global Perspective: Legal Perspectives*, eds. Johan D. van der Vyver and John Witte Jr., (1996): ix, at xli–xliv.
35. Dooyeweerd, *Verkenningen*, *supra* n. 34, 102–3, defining *encapsis* as "an intertwinement of intrinsically different structures."
36. *Ibid.*, 102–3. See also Dooyeweerd, *A Christian Theory of Social Institutions*, trans. M. Verbrugge, ed. John Witte Jr. (1986), 67–68.
37. Art. 15(3), Constitution of the Republic of Singapore (1963).
38. Art. 44.2.5, Constitution of Ireland (1937).
39. Art. 7, Constitution of Italy (1948).
40. Art. 29(3), Constitution of Romania (1991).
41. Art. 16(2), Charter of Fundamental Rights and Freedoms of the Czech Republic (1992).
42. Art. 25(3), Constitution of the Republic of Poland (1997).
43. Dooyeweerd, *New Critique*, *supra* n. 2, 221–22.

44. See *ibid.*, 220–22.
45. *Rerum Novarum*, 1891: Encyclical of Leo XIII on the Rights and Duties of Capital and Labour, n. 55 (reprinted in Henry George, *The Conditions of Labor*, 163–95 (1934).
46. *Ibid.*, n. 57.
47. *Ibid.*, n. 59.
48. R. Minnerath, “The Doctrine of the Catholic Church,” in *Proceedings of the Third World Conference on Religious Liberty* 49, 51 (IRLA, 1989).
49. *Ibid.*
50. A community consists of “any more or less durable societal relationship which has the character of a whole joining its members into a social unity, irrespective of the degree of intensity of the communal bond.” Dooyeweerd, *New Critique*, *supra* n. 2, 177.
51. *Ibid.*, 179.
52. *Ibid.*, 78–82.
53. “People” is here used in the sense of a community united through a common history and certain ethnic, cultural, and linguistic ties (in German *das Volk*) in contradistinction to “nation,” which denotes the subjects of a particular territorially defined political entity (the State) (in German, *die Nation*). See Yoram Dinstein, “Collective Human Rights of Peoples and Minorities,” *International Law Quarterly* 25 (1972): 103ff.
54. *Ibid.*, 103.
55. G.A. Res. 47/136 of December 18, 1992, Art. 4.2; see also Art. 5.1., *Framework Convention for the Protection of National Minorities*, 1995, 34 I.L.M. 351 (1995).
56. See in general, Felix Ermacora, “The Protection of Minorities Before the United Nations,” in *Recueil des Cours*, 4, (1983), 243.
57. Art. 1 of the Charter of the United Nations, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, 1976 Y.B.U.N. 1043; and see also Arts. 15 and 73.
58. G.A. Res. 2200 (XXI), 999 U.N.T.S. 171, 6 I.L.M. 368 (1967).
59. See also Art 2.1., *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, *supra* n. 55.
60. *supra* n. 55.
61. *Ibid.*, Arts. 1.1. and 4.2.
62. *Ibid.*, Art. 2.3.

63. *Ibid.*, Art. 3.
64. *Ibid.*, Art. 4.1.
65. 34 I.L.M. 351 (1995).
66. *Ibid.*, Art. 4.1.
67. *Ibid.*, Art. 5.1.
68. *Ibid.*, Art. 8.
69. *Ibid.*, Art. 10.1; and see also the *European Charter for Regional Minority Languages*, 1992.
70. See Vernen van Dyke, *Human Rights, the United States, and World Community*, 88 (1970); N. Berman, "Sovereignty in Abeyance: Self-Determination and International Law," *Wisconsin International Law Journal* 7 (1988): 51, 87; R. Emerson "Self-Determination," *American Journal of International Law* 66 (1971) 459, 464–65.
71. See Yoram Dinstein, *supra* n. 53, 109 (1976): note that peoples seeking secession must be located in a well-defined territorial area in which it forms a majority.
72. According to Hermann Mosler, "[S]tates are constituted by a people, living in a territory and organized by a government which exercises territorial and personal jurisdiction." H. Mosler, "Subjects of International Law," in *Encyclopedia of Public International Law*, vol. 7, ed. R. Bernhardt (1984), 442, 449. Karl Doehring defined a state in international law as "an entity having exclusive jurisdiction with regard to its territory and personal jurisdiction in view of its nationals." K. Doehring, "State," in *Encyclopedia of Public International Law*, vol. 10, ed. R. Bernhardt (1987), 423. Herman Dooyeweerd defined the foundational function of a state in terms of "an internal monopolistic organization of the power of the sword over a particular cultural area within territorial boundaries." Dooyeweerd, *supra* n. 2, 414. He further maintained that the leading or qualifying function of the state finds expression in a public legal relationship that unifies the government, the people and the territory constituting the political community into a politico-juridical whole. *Ibid.*, 433ff.
73. Yoram Dinstein defined "collective human rights" as those "afforded to human beings communally; that is to say, in conjunction with one another as a group—a people or a minority." See Dinstein, *supra* n. 53, 102–3.
74. See the *European Framework Convention for the Protection of National Minorities*, *supra* n. 65, Art. 7.
75. See J. D. van der Vyver, "Constitutional Options for Post-Apartheid South Africa," *Emory University Law Journal* 40 (1991): 825–28.

76. See above, n. 53.
77. See, for example, Art. IV (territorial integrity) and Art. VIII (equal rights and self-determination of peoples) of the *Final Act of the Conference on Security and Cooperation in Europe*, 14 I.L.M. 1292 (1975).
78. *Vienna Declaration and Programme of Action*, Art. 2, U.N. Doc A/Conf.157/23, 32 I.L.M. 1661 (1993).
79. R. Traer, "Faith in Human Rights," 34 (1991).
80. *Inscrutabili*, 1878.
81. *Aeterni Patris*, 1879.
82. *Libertas Praestantissimum*, 1888.
83. *Nobellissima Gallorum Gens*, 1884.
84. *Humanum Genus*, 1884.
85. *Immortale Dei*, 1885; see also the encyclical *Sapientiae Christianae*, 1890, and *Au Milieu des Sollicitudes*, 1892.
86. *Supra* n. 45.
87. See George G. Higgins and William Bole, *Organized Labor and the Church*, 193 (1993).
88. J. Maritain, *Les Droits de l'Homme et la Loi Naturelle*, 110–13 (1942).
89. See H. G. Stoker, *Die Aard en Rol van die Reg: 'n Wysgerige Besinning* (1970); and see also J. D. van der Vyver, "Stoker se Denke aangaande die Reg en Geregtigheid," *Koers* 59 (1994): 403.
90. J. Locke, *Two Treatises of Civil Government*, ed. W. S. Carpenter (1990), 2.2.7, referring to the state of nature as "that state of perfect equality."
91. *Ibid.*, 2.9.123 and 2.15.173.
92. Rousseau reduced the terms of the social contract by which the State is created to one central provision: "[L]’alienation totale de chaque associé avec tous ses droits † toute la communauté." ("... the complete alienation by each associate member of all his rights to the entire community.") J. J. Rousseau, *Du Contrat Social; ou, Principes du Droit Politique*, 1.6 (1762). It should be noted that the natural rights of the individual to life, liberty, and equality take on a different form within the body politic; and the right to private ownership, which constituted one of the evils which, according to Rousseau, would inevitably lead to the destruction of the state of nature, now becomes a "sacred" right of the citizen.
93. The opening lines of *The Social Contract* thus proclaims: "L’homme est né libre, et partout il est dans les fers." ("Man is born free, and everywhere he is in chains").

- Ibid., 1.1. In his *Discourse on the Origin of Inequality* he speaks of life and liberty as “des dons essentiels de la nature, ... dont il est permis ‡ chacun de jouir ...” *Discours sur l’Origine et des Fondaments de l’Inégalité Parmi des Hommes Suivi de la Reine Fantasque*, 114 (1755): “the essential gifts of nature ... which everyone is permitted to enjoy.”
94. Wolff said: “Ius connatum dicitur quod obligatione connata oritur.” C. Wolff, *Ius Naturae Methodo Scientifica Pertractum*, 1.1.23 (1740–49). For a summary of *iura connata*, see also Wolff, *Institutiones Iuris Naturae et Gentium*, par. 95 (1754).
  95. Blackstone described the absolute rights of the human person as those rights “which are such as appertain and belong to particular men, merely as individuals or single persons”; and further as “such as would belong to their person merely in a state of nature, and which every man is entitled to enjoy, whether out of society or in it.” W. Blackstone, *Commentaries on the Laws of England in Four Books*, 1, 123 (7th ed. 1775).
  96. Kant defined *das angeborene Recht (innere Freiheit)* as “dasjenige Recht ... welches unabhängig von allem rechtlichen Akt jedermann von Natur zukommt,” and again as “dieses einzige ursprüngliche, jedem Menschen kraft seiner Menschheit zustehende Recht,” I. Kant, *Metaphysik der Sitten*, ed. K. Vorländer (1907), 43.
  97. Fichte described the basic right to do one’s moral duty as follows: “[I]ch habe ein Recht frei zu seyn und meine Pflicht zu thun, hei(t nur: nichts darf, niemand hat ein Recht, mich daran zu hindern.” J. Fichte, *Beitrag zur Berichtigung der Urtheile des Publicums über die Französische Revolution*, 59–60, in *Sämmtliche Werke*.
  98. Francois Venter in that sense described *Abwehrrechte* as “the first line of defense of the liberty of the citizen as against the authority of the government.” Venter, “The Western Concept of Rights and Liberties in the South African Constitution,” *Comparative & International Law Journal of South Africa* 19 (1986): 99, 105.
  99. S. Marks depicted those rights as “freedom from” rather than “rights to.” “Emerging Human Rights: A New Generation for the 1980s,” *Rutgers Law Review* 33 (1981): 435, 438.
  100. Art. 123 of the Mexican Constitution contains an impressive list of economic and social rights, subdivided into thirty-one principles plus fourteen distinct provisions. See “Mexican Constitution,” reprinted in *Constitutions That Made History*, ed. Albert P. Blaustein and Jay A. Sigler (1988), 283.
  101. See A. J. Peaslee, *Constitutions of Nations*, 2d. ed., vol. 3, (1956), 480, 483, citing the corresponding sections in the U.S.S.R. Constitution of 5 December 1936.

102. Art. 118.
103. Art. 119.
104. Art. 120.
105. Art. 121.
106. Art. 126.
107. Constitution of India, Arts. 36–51 (1947). The “cultural and economic rights” afforded enforceable protection in terms of Arts. 29–30 of the Indian Constitution amount in essence to equal protection and nondiscrimination provisions.
108. See in particular Art. 7 GG (rights in respect of education), Art. 9.3. and 9.4. GG (freedom of association in the context of labor relations), and Art. 12 GG (right to choose one’s trade, occupation, or profession).
109. G.A. Res. 217 A (III) of 10 December 1948, notably Arts. 22–27.
110. G.A. Res. 2200 A (XXI) of 16 December 1966.
111. Konrad Hesse, *Grundzüge des Verfassungsrecht der Bundesrepublik Deutschland*, 80 (1985); M. Lepa, *Der Inhalt der Grundrechte*, 17 (1985). Theo van Boven depicted the basic characteristics of economic, social, and cultural rights as follows: “These rights are to be realized through or by means of the State. In this case the State acts as the promoter and protector of economic and social well-being.” T. van Boven, “Distinguishing Criteria of Human Rights,” in *The International Dimension of Human Rights*, vol. 1, ed. K. Vasak (1982), 43, 49.
112. Louis Henkin noted that the *International Covenant on Civil and Political Rights, 1966* “is drafted in terms of individual rights,” while the *International Covenant on Economic, Social and Cultural Rights, 1966* “speaks only to the State.” Henkin, “Introduction,” in *The International Bill of Rights: The Convention on Civil and Political Rights*, vol. 1, ed. L. Henkin (1981), 10. This shift in emphasis is not necessarily of any substantive significance. For instance, Art. 6 of the *Covenant on Civil and Political Rights* may be formulated either way: that is, as it stands: “Every human being has the inherent right to life”; or, in the language of the *Covenant on Economic, Social and Cultural Rights*: “The States Parties to the Present Covenant undertake to ensure the inherent right to life of every human being.”
113. Paul Sieghart thus proclaimed that “most of the rights described in the ICES [International Covenant on Economic, Social, and Cultural Rights] are said to depend for their realization on the progressive economic development of a country ...” P. Sieghart, “The International Law of Human Rights,” 25 (1983); and see also P. Sieghart, “The Lawful Rights of Mankind,” 73 (1985); L. Sohn, “The New International Law Protection of the Rights of Individuals Rather Than States,”

- American University Law Review* 1 (1982-1983): 39–43; D. M. Trubek, “Economic, Social, and Cultural Rights in the Third World: Human Rights Law and Human Needs Programs,” in *Human Rights Law: Legal and Political Issues*, ed. T. Meron (1984), 205, 213–17.
114. See *supra* n. 88.
115. S. Marks *supra* n. 99, at 441; and see K. Vasak, “Le Droit International des Droits de l’Homme,” in 140 *Recueil des Cours* 333, at 344–45 (1974, IV); “Le Droit International des Droits de l’Homme,” in *Institut International des Droits de l’Homme, Résumé des Cours*, 2 (Sixième Session d’Enseignement, 1975); Vasak, “A Thirty-Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights,” in *Unesco Courier* 29 (Nov. 1977). See also Sohn *supra* n. 113, at 61; P. Alston, “A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law,” *Netherlands International Law Review* 29 (1982): 307, 310–11; J. Donnelly, “In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development,” *Cal. W. International Law Journal* 15 (1985): 473, 491–92.
116. See Sohn, *supra* n. 113, at 48–62; Shestack, “The Jurisprudence of Human Rights,” in *Human Rights Law: Legal and Political Issues*, *supra* n. 113, 69, at 99–101; R. Lillich, *International Human Rights: Problems of Law, Policy and Practice*, 179–85 (1991).
117. See 87 *Congressional Record* 1, 46–47 (1941).
118. *Ibid.*
119. See 90 *Congressional Record* 1, 57 (1944).
120. *Universal Declaration of Human Rights*, *supra* n. 109, Art. 22.
121. *Ibid.*, Art. 23.
122. *Ibid.*, Art. 24.
123. *Ibid.*, Art. 25.
124. *Ibid.*, Art. 26.
125. See R. Lillich, *supra* n. 116, at 102.
126. *Message of the President Transmitting Four Treaties Pertaining to Human Rights*, S Exec. Doc. no. 95-C, D, E & F, 95th Congress, 2nd Session iii–iv (1978).
127. *Supra* n. 100.
128. *Rerum Novarum*, 1891, *supra* n. 45, n. 3.
129. *Ibid.*, n. 1.

130. "Religion teaches the rich man and the employer," wrote Leo XIII, "that their work-people are not their slaves; that they must respect in every man his dignity as a man and as a Christian; that labor is nothing to be ashamed of, if we listen to right reason and to Christian philosophy, but is an honorable employment, enabling a man to sustain his life in an upright and credible way; and that it is shameful and inhuman to treat men like chattel to make money by, or to look upon them merely as so much muscle and physical power." *Rerum Novarum*, *supra* n. 45, n. 21; and see also n. 43: "No man may outrage with impunity that human dignity which God Himself treats with *reverence*...."
131. "[T]he remuneration must be enough," said Leo XIII, "to support the wage-earner in reasonable and frugal comfort." *Ibid.*, n. 49; and see also n. 50.
132. Working hours must be regulated with a view, *inter alia*, to the strenuous or hazardous nature of the prevailing working conditions, and with due regards to the special needs of women and children. *Ibid.*, n. 45.
133. *Ibid.*, n. 37.
134. *Ibid.*, n. 36.
135. *Ibid.*, n. 40.
136. See Frank Newman and David Weissbrodt, *International Human Rights: Law, Policy, and Process*, 65–66 (1996).
137. T. Axworthy, "Democracy and Development: Luxury or Necessity?" in *Human Rights in the Twenty-First Century: A Global Challenge*, eds. Kathleen E. Mahoney and Paul Mahoney (1993), 721, 726–27.
138. *Vienna Declaration and Programme of Action*, 25 June 1993, at Part I, par. 5. UN Doc. A/CONF.157/23, 32 I.L.M. 1661 (1993).
139. See Johan D. van der Vyver, "Introduction: Legal Dimensions of Religious Human Rights: Constitutional Texts," in *Religious Human Rights in Global Perspective*, *supra* n. 34, xi, at xl.
140. See the 1917 Mexican Constitution, *supra* n. 100, Art. 123.
141. *Ibid.*, Art. 130.
142. See Francis L. Broderick, *Right Reverend New Dealer John A. Ryan*, 19–21 (1963).
143. *Ibid.*, 229–30.
144. *Ibid.*
145. *Ibid.*, 245.