

A Response to
Johan D. van der
Vyver’s “The
Jurisprudential
Legacy of
Abraham Kuyper
and Leo XIII”

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Johan van der Vyver provides a masterful survey of prospective philosophical bases for human rights, concluding that the Kuyperian paradigm of sphere sovereignty is “a particularly appealing alternative for addressing the plight of disadvantaged or suppressed sections of the population, cut[s] the range of governmental competencies ... down to size, and charge[s] the repositories of governmental powers to honor the codes of international law” to protect human rights. His extension of Abraham Kuyper’s sphere sovereignty as a levee against statist encroachment into spheres in which the State has no jurisdiction is as welcome as it is beneficial.

Throughout his analysis, he seeks to avoid the Scylla of positivism and the Charybdis of majoritarianism. Intent on avoiding the extremes of various forms of reductionism, he also subjects natural-law theory to appropriate criticism. He finds both Kuyperian sphere sovereignty and Leo XIII’s subsidiarity to be conceptually helpful, but sees superior explanatory force in the Kuyperian approach.

At one point, he confesses that “furtherance of moral virtues for the sake of morality as such does not fall within the scope of the State’s appropriate functions.” Notwithstanding, he does admit that governments should impose legal provisions in some situations. The resulting challenge is to formulate a rational basis to delineate the conditions under which the State should impose morality-laden statutes. Such a nexus cannot avoid the interface of law and morality—a philosophical stage that is not lacking in actors.

Strengths of the Paper

Van der Vyver decries reductionism and positivism. Accordingly, he notes the skewing of worldview resulting from a reductionistic analysis of law in which a single juridical variable becomes absolutized. Despite the fact that positivism bears some actual benefit as a criticism of unjustifiable claims of natural law, van der Vyver criticizes positivism for portraying law as little more than “a manifestation of the aspect singled out for special emphasis.” Van der Vyver’s discussion is also illuminating in its definition of the basic proposition of sphere sovereignty as the nonreduceability of “different modalities of concrete reality.” In fact, sphere sovereignty has great value as it opposes the encroachment of political totalitarianism.

Van der Vyver also believes that sphere sovereignty and *Rerum Novarum* are precursors to modern human rights paradigms. This claim, however, may depend on a specific formulation; that is, whether political power has an obligation “to respect or to promote” certain rights, and which rights those are—regardless of whether the foundation for law is based on natural law, positivism, sphere sovereignty, or *Rerum Novarum*.

A very helpful summary of the history of the natural-law/ethics intersection is provided. Several important points that criticize natural-law theory are included; for example, the notation of nonuniversal agreement as to the content of natural law, the association of natural law with untainted human reason, the tendency of natural law to reflect only the dominant culture’s values, and the dependence of natural rights on the “context of State-subject relations.”

Early on, van der Vyver claims that nothing “prevents a legislature or other law-creating authority from transforming ... moral principles into positive law.” Of course, this challenges several libertarian assumptions and may also benefit from other limiting definitions. While criticizing positivism for creating law with the stroke of the pen, the invention of morality by legal creation, even if by a competent law-creating agent, is also subject to criticism and in need of delimitation.

The essay contains interesting and helpful research from the Fuller–Hart debate and other studies as theoretical foundations for what follows. Hart’s distinction that “there are rules that have every moral qualification to be laws and yet are not laws” is, to some degree, more defensible than is often suspected. Hart, even though wearing the dreaded Scarlet P (positivist), perhaps honors the sphere sovereignty distinction between *ethos* and *nomos* better than third-generation rights schemes. Hart and positivism appreciate the noniden-

tity (nonreduceability) of the spheres of law and ethics. Indeed, "law and morality cannot be isolated from one another." The challenge, as recognized, is to find the correct interrelationship. It is at this juncture that van der Vyver finds sphere sovereignty to be of utility.

However, to merge law and morality, without proper delineations (such as those sometimes provided by positivists) may lead to "economic oughts" that fallaciously flow from "cultural is" claims. Hart himself has much commendable, for example, in maintaining that State-imposed "law should not be utilized for the purpose of upbuilding moral principles." Had that principle been observed, many of the later-documented abuses of human rights (e.g., in South Africa) might have been avoided.

The thrust of van der Vyver's early argument is to unencumber the law from positivism's allergic reaction to morality. He rightly understands that the law is tinged with morality and that, while morality may be distinguishable from law, still they are not separated by a Jeffersonian wall. He cites the inevitable conclusion (though it is not entirely clear if this is his conclusion) that "the furtherance of moral virtues for the sake of morality as such does not fall within the scope of the State's appropriate functions."

Van der Vyver's summary focuses on two key and abiding issues: "It is not the function of the State to enforce moral principles by means of legal coercion," but "The law ... ought to embody the morally based distinctives of the legal idea." The reconciliation of these "two seemingly conflicting propositions" is a worthwhile challenge. Libertarians and positivists affirm the former while denying the later; majoritarians and theonomists elevate the second over the prominence of the former. Harmony, since the principles are at least superficially opposed, is difficult to conjoin.

Van der Vyver asks accordingly: (1) Is it ever proper for the State to regulate moral matters; and (2) If so, when and to what degree? These are the concrete questions that van der Vyver seeks to answer by appealing to a modern doctrine of human rights, while simultaneously arguing that both Kuyper and Leo XIII are in essential agreement ("precursors") with that doctrine.

His analysis of the evolution of human rights into first, second, and third generations is illuminating. He claims that the "doctrine of human rights sets a particular limit to the exercise of political power." Certainly, that is in accord with the legacy of Leo XIII and Abraham Kuyper. It will, nonetheless, be questioned below whether these later generations of rights remain on the same platform as these earlier nineteenth-century models.

A good discussion of sphere sovereignty is included. The basic proposition of sphere sovereignty is that distinct aspects of reality are nonreduceable,

contra positivism. Sphere sovereignty and *Rerum Novarum* contain “shared emphasis on the limitation of political power.” That is a manifestation of sphere sovereignty that is sorely needed today and that will be greatly appreciated in the future.

Within his essay, van der Vyver provides a learned statement of the compatible views of Althusius (who “proclaimed that all distinct social entities are governed by their own laws”), Groen Van Prinsterer, and Kuyper (“The State cannot wriggle itself between the two [spheres] and cannot here on its own authority give any orders”). A tradition of political thought is discernible, and also, norms the interpretation of exponents within that research tradition. Kuyper affirms that God decreed divided power and “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.” Van der Vyver understands part of the genius of sphere sovereignty as the pursuit “to strike a balance between the living space of all social entities that exist and function within the body politic.” He summarizes, “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 a different type.” Moreover, he suggests that sphere sovereignty appears in various civil constitutions, ranging from Singapore to Italy to Ireland and to Eastern Europe. However, he thinks the notion of sphere sovereignty differs from the Roman Catholic idea of subsidiarity.

His paper contains a good criticism of the abuse of overregulation by the State. Van der Vyver also notes how the *Volkgeist* is not always preserved in the face of international norms. Though he does not draw the inference, in the end, Althusius’s view 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” may be closer to Leo XIII than to third-generation rights schemes.

I certainly agree with van der Vyver’s argument that the South African State exceeded its lawful jurisdiction as it legislated membership for private societies. Indeed, that may be a classic example of how the State should not be involved in private affairs. The remedy to State encroachment is probably not to legitimize State encroachment in economic and social rights.

Areas of Disagreement

Major: State As Guarantor of Economic Rights

Statement of the question: "Whether or not the law, in order to be valid law, must also reflect certain moral standards?" Or, "Whether incumbents of political power ought to enforce, by means of legal compulsion, the prevailing standards of praiseworthy behavior?" may be a better formulation of the issue. Hart maintained that civil law "should not be utilized for the purpose of upholding moral principles." This is the issue. Earlier theologians had a similar view of the State, but not negatively associated with positivism. Earlier Christian formulation held a limited view of the State, while not involving political agencies as the guarantors of economic rights.

The major issue is the role of the State. Van der Vyver summarizes its "dominant function" as "to establish and to maintain a legal order" within a physical territory. Following Herman Dooyeweerd's (HD) definition, van der Vyver infers from his definition above that *if* the State is the predestined "arbitrator of interindividual conflicts," then "The furtherance of moral virtues for the sake or morality as such does not fall within the scope of the State's appropriate functions." Van der Vyver seems to agree with Hart at this point (as do I) but later separates from this theme.

A different view is reflected in the concept of "economic rights." Van der Vyver introduces "political rights," and certain "entitlements" without first establishing the legal foundation (e.g., right to all medical care available), although he states his intention to leave the support of those rights to others. He believes that certain rights require "special protection" against State encroachment. In principle, that is granted; however, van der Vyver references a range of rights that may not be supportable by all theological paradigms, and also admits that such rights are undefined by natural law, and may thus be subjective.

As early as 1849, Benjamin M. Palmer cautioned against a particular view of government that, along with Gladstone and Thomas Arnold, permitted the State to have as its end, "the more general end of promoting, by all methods, the moral and intellectual improvement of men."¹ Palmer continued to denounce the view that the civil government should have as its object "the moral and intellectual improvement of mankind, in order to their reaching their greatest perfection, and enjoying their highest happiness."² His comments apply equally to maximalist states a century later. It is not only the

danger of Erastianism that was exposed but also an improper expansion of the State to assume the roles of moral, cultural, or intellectual improvement.

The more appropriate relation, according to Palmer, is that “the State and the Church are originally both independent and sovereign societies; having different ends in view, and hence not clashing, although the same persons may be under the jurisdiction of both. The office of the State is to provide for the *temporal* interests of man; that of the Church, for his *eternal* interests—the care of the one is confined to the *body*; that of the other is directed to the *soul*—the one looks upon offenses as *crimes*; the other takes cognizance of them as *vices* and as *sins*.”³

View of Rights

Van der Vyver says that the State bears a constitutional obligation “to respect or promote” certain social interests. The difference between “respect” and “promote” is fundamental and pregnant with ramification. He asserts that a “further category of rights” involves a “positive duty of the State to create the conditions and provide the amenities required for their meaningful exercise or enjoyment.”

A legitimate query arises: Is this the view of a biblical theology of the State? Is it the view, especially in its reference to “economic rights,” of Kuyper? Is it the view, especially in its reference to “economic rights,” of *Rerum Novarum*? Or is this a “third-generation” view and perhaps logically distinct from earlier generations?

Moreover, how does the criticism of lawgivers transforming cultural notions into positive law with the stroke of the pen differ from third-generation constitutions and United Nations Charters that create, *ex nihilo*, economic and lifestyle rights?

Van der Vyver admits that “the right to promote one’s cultural interests [second-generation right] ... 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.” He also suggests that there are no good reasons to retard the movement toward third-generation rights, which 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.” Notwithstanding such assertions, nevertheless, this may be more difficult than often admitted.

The theoretical basis for the "right to work, right to leisure, right to maintenance in old age and sickness, and to education" seems undetected prior to recent decades. Van der Vyver states that these began to be codified in constitutions beginning in 1917 and escalated as the century progresses. The following questions arise and must be addressed in other discussions:

- Does the fact of their growth entail the oughtness of it?
- What are the limits to utopia?
- Does this basis agree with a particular legal foundation?
- Is it consistent with Kuyper, Leo XIII, or Scripture?

"Protection against the powers of government" is not the same as modern "entitlements of the individual."

Recent commentators have begun to acknowledge the ubiquity of fairly novel rights claims. The rights mantra is heard in the demands that the State provide everything from disaster relief and healthcare to television monitoring and twelve weeks of family leave. While some of these problems may deserve attention, it is highly debatable that one agency or another *owes* solutions to every citizen in all areas. At present, rights claimants protest that they have rights to live and die, rights to privacy, and the right to invade the most private of sectors *via* condom distribution, the right to conceive and the right to abort, the right to a job if a college graduate, the right to have the government subsidize one's art, the "right to be born physically and mentally sound,"⁴ the "right of personal dignity and autonomy" (in *Roe v. Wade*), and the right to tax and to spend.

Recently, an editorial featured a criticism of the claims by poorer nations to have an elusive "right to development." This editorial spoke to the pervasive claim for rights in general, particularly noting how infested various United Nations bills and charters had become with "rights." The editorialist queried "Do all nations have a real right to material prosperity through development? And if they do, who is stopping them from developing?" What these people are really claiming with the "right to development" is for someone else to pay billions of dollars for their development. Certainly they may have a right to develop, but that hardly transfers responsibility to others to fund their development. In fact, most modern assertions of rights involve someone else's payment or loss.

An older Christian ethic disavows any basis for or claim to rights, except insofar as revealed by God's unchanging norms. Those that are legitimately derived from Scripture are "derived," "acquired," or "negative" rights.

However, the ever-multiplying species of affirmative rights claimed by *homo modernus* are seldom rooted in Scripture.

William Willimon has commented that, “The notion of ‘rights’ is not a biblical idea. It is a legacy of the European Enlightenment. The notion of rights has been helpful in forming liberal societies, that is, societies formed without reference to God. No one needs to feel grateful or to say ‘thank you’ in a society of rights.”⁵

The development of human thought shows that the vocabulary of rights did not begin to develop until post-Old Testament times, under the influence of Greco-Roman law. Even then, the concepts are severely limited (when compared with today’s second- and third-generation rights) and circumspectly defined. It is questionable whether the Latin language even has a word that is truly synonymous with the modern notion of rights. For example, sometime *rectus* (rectitude), *aequus* (equal), *aptus* (apt), or normally *ius* (justice, law) will be translated “right” Or, on another occasion, *vindicare* (to vindicate) or *restitutere* (to effect restitution) may be translated into English as “right.” In all these cases, such linguistic concepts are parallel to the Old Testament notion of rights *only* as prescribed by law and justice, or as negative rights. Some historians even contend that “rights” were not developed until the second millennium A.D. One wonders: If “rights” have always been so inherent in nature, why is it that earlier parents, closer to nature in antiquity, did not leave linguistic relics to a greater degree than the vocabulary suggests? One begins to sense that rights-ism has its origin in sources other than Scripture.

Classical literature does not support a modern notion of rights, rarely employing terminology that approaches the contemporary meaning. Earlier commentators even remarked at how elementary it was for “student[s] of Greek ethics ... [to] know that in its classical exponents there is as yet no word corresponding to either ‘rights’ or ‘duties’ in the modern sense. We have to wait another generation....”⁶ The earliest Greek literature uses the term *dikaïos* (normally translated “righteousness”) as early as Homer, but even there in its most original *loci* it carries the sense of adhering to rule or custom as a sign of civility, in contrast to the absence of manners. While classical cultures recognized *doing right*, there was a vast difference between doing and *having rights*. In early Greek, the only existing notion was one of following acceptable rules, and the good of the whole was elevated over the good of the few—a conceptual stumbling block that for centuries held the right-ists at bay. The eradication of the subservience of the individual to the greater community was an essential shift for the modern world.

One might naturally inquire, therefore, as to the origin of the modern idea of rights. If this notion did not arise during the two millennia of scriptural history, if rights is a post-scriptural phenomena, then where and when did it originate? The first thousand years of theology after Christ do not evidence any significant frequency of rights claims. While it is true that Greek philosophy and Roman law introduced precursors to concepts of autonomy, these earlier humanisms did not seem to spawn a proliferation of rights. Perhaps modern views of rights are passing fads.

Not until the obliteration of feudal economies and the rise of early market economies did rights begin to grow. James Hastings summarizes that "while ancient theories of the nature of justice ... are susceptible of translation into terms of rights, the problem of the ground of rights in explicit form is essentially a modern one. It was not until the question of the rights of the subject was definitely raised in sixteenth-century England"⁷ that the modern notion of rights began to reproduce.

Even up to the time of the Reformation, there were few first-generation rights, the expansive phenomena beginning to show its first real surge in the seventeenth century. It is in the age of social contract that one detects growth in rights. Hastings alleges that Grotius was "the first clearly to assign them [rights] a ground in man's social nature," if not the actual "discoverer of natural rights."⁸ Hastings locates the paradigm shift as first evident "when English tradition and temperament led to a revolt against social and political despotism in the time of Wyclif. By the middle of the seventeenth century, and still more by the eighteenth, the claims of rights, in both Old and New England, were already deeply tinged with individualistic theory...."⁹

John Locke added fuel to the rights flame and, with his social contract theory, aided and abetted in the imperialism of rights. Even under his constructions, however, one of the factors that delimited the expansion of first-generation rights was that this concept of rights was normally tied to physical property or business regulations.

Others have recognized a post-seventeenth-century faultline, as rights have more and more consumed the attention of guild philosophers.¹⁰ Medieval philosophers concerned themselves more with duties that men owed their lord, Church, or God, while during the seventeenth and eighteenth centuries, such legitimate questions gave way to a more person-centered preoccupation with natural rights and liberties. The shift is too significant to miss, especially as its fruit seems to have ripened in our own time. What was at first a freedom from interference was transubstantiated into an open list of positive benefits that are claimed. Such transubstantiation is deadening.

Cresting at the time of the French Revolution, the dawn of the infatuation with modern rights was codified in the motto of the revolutionaries' rallying cry: Liberty, Equality, and Fraternity. The newest member of that triumvirate was equality, a definite rights claim.¹¹ Jeremy Bentham was astute enough to diagnose the social compact view of rights as nothing more than the "anarchical fallacy," applying a tough-minded criticism of this "metaphysic on stilts." He analyzed: "Rights are the fruits of the law, and of the law alone. There are no rights without law—no rights contrary to the law—no rights anterior to the law."¹²

How Well Does This Human-Rights Doctrine Agree with Leo XIII and Abraham Kuyper?

These earlier views present a challenge to third-generation rights plans. Among the "positive obligation on the part of the State," van der Vyver enumerates "to provide services, facilities, or support that might be required for the meaningful enjoyment of those rights." Claims that such notions are legacies of *Rerum Novarum* or sphere sovereignty compel us to search to see where they advocate such claims. Instead, this may be a more modern tenet, not explicitly propagated either by Kuyper or Leo.

On what theoretical basis do we grant the legislature the authority to "transform moral principles into positive law?" Is it prudent or biblical to invest the "law-creating agent" with such power?

Van der Vyver views *Rerum Novarum* as the Magna Carta of Catholic social teaching, and appreciates Leo XIII's contributions as the precursor of modern Roman Catholic social teaching. However, Leo's persistent anticentralist tendency also needs to be recognized. Van der Vyver and many others appreciate *Rerum Novarum* for its attempt to clarify the relationships between the poor and the wealthy in modern society. He also agrees with the rights of trade unions and other private associations—which, however, may be private and nongovernmental in nature.

Roman Catholic social teaching was prompt to speak against abuses by callous employers. Still, a distinction should be preserved between traditional Catholic appeals for private agencies to treat others morally as opposed to imposing an obligation on private sectors to ensure results or development by others. Van der Vyver asserts that the State has an obligation to "secure the economic and social rights." That may not be as clearly propagated as often assumed (or prudent) from Catholic social teaching. It is one thing to affirm

the State as the protector of the common good and to recognize that the wealthy have distinct advantages. It is another to encumber the State with the obligation to guarantee economic equality. Indeed, it may be imprudent.

The foundation of these norms may not be grounded in universal obligation as securely as once thought. For example, Franklin Roosevelt's catalogue of supposedly universal rights includes a number that are not immediately observable in nature, for example, "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." One wonders where this utopian social contract is found in nature. This illustrates the difficulty: *Once the State is assigned the role as guarantor of moral, social, or economic rights, it is difficult to ever prevent the new charter from expanding beyond the realistic capabilities of civil government.* Even Eleanor Roosevelt admitted that the obligation to assure those rights did not properly rest with the State. As recently as 1978, the Carter administration suspected that such insistence on "positive action imposed upon governments" prevented U.S. Senate support of such treaties.

Van der Vyver attempts to relate sphere sovereignty to local self-determination. However, when he calls upon sphere sovereignty to buttress the fact that "the State ought to afford leeway ... for non-State institutions to exercise their respective functions," that is one thing. It is another, though, to logically infer from the State's duty to "afford leeway" that sphere sovereignty demands the State to guarantee economic rights or that the State is obligated to "take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture...." Limiting this principle might alleviate this criticism.

Comparison to Catholic Teaching

Regardless of preconceptions, Roman Catholic teaching does not look to socialism or statism to secure the foundation of rights. Leo's *Rerum Novarum* equally condemned socialism (as had previous encyclicals such as *Quod Apostolic Muneris* in 1878)—based on biblical foundations, not the experience of history verified by the later twentieth century:

Socialists, working on the poor man's envy of the rich, endeavor to destroy private property, and maintain that individual possessions should become the common property of all, to be administered by the State or by municipal bodies.... But their proposals are so clearly futile for all practical purposes, that if they were carried out, the working man himself would be among the

first to suffer. Moreover, they are emphatically unjust, because they would rob the lawful possessor, bring the State into a sphere that is not its own, and cause complete confusion in the community.¹³

Elsewhere, *Rerum Novarum* castigates socialism for “exciting the envy of the poor toward the rich,” and calling for the abolition of private property. Besides “pervert[ing] the function of the State” in this, it also “actually injures workers.” *Rerum Novarum* argues that when private property is abolished, the prospects of workers worsens “Because in abolishing the freedom to dispose of wages they take away from them by this very act the hope and the opportunity of increasing their property.” This, Leo XIII called, “a remedy openly in conflict with justice.”

Since “man is older than the State,” there is “no reason to interpose provision by the State” in many areas. Moreover, for the State to “enter arbitrarily into the privacy of homes is a great and pernicious error.” *Rerum Novarum* saw private possessions as “clearly in accord with nature.” To remove such would effect “a harsh and odious enslavement of citizens.” In opposition to socialism, *Rerum Novarum* views private property as inviolate and basic. Neither ought “the lowest be made equal to the highest.”

While *Rerum Novarum* calls for a balance between the duties toward the poor and the duties of the wealthy, employers are called to this principal duty: “to give every worker what is justly due him.” In contrast to the extension of this call by *Centesimus Annus*, *Rerum Novarum* itself does not consistently urge a State-enforced wage. *Rerum Novarum* confesses that “no human devices can ever be found to supplant Christian charity”—not even international rights consortia. Despite the admission that “there will always be those differences in the condition of citizens,” the State is not called to obliterate the differences between “the highest and lowest of its members.”

While treating the essentiality of the family, *Rerum Novarum* calls for certain protections, but is far from advocating second- or third-generation rights—which *Centesimus Annus* later addresses. No right to a specific wage is defended, and “unwarranted governmental intervention” is rejected. Further, the rights and expectations of private associations differ with those of the State. Unions and private associations are encouraged to be just and targeted toward “moral and religious perfection.”

Rerum Novarum, which begins by alluding to the “lust for revolutionary change,”¹⁴ does not provide a philosophical foundation for a plethora of works—only those in a limited range. Later teaching may move toward expan-

sive definitions of rights, but this document—especially in its context of condemning socialism—does not.

In *Centesimus Annus*, John Paul II interpreted *Rerum Novarum*, *inter alia*, as granting a right to a just wage. It also “criticizes two social and economic systems: socialism and liberalism. The opening section, in which the right to private property is reaffirmed, is devoted to socialism. Liberalism is not the subject of a special section, but it is worth noting that criticisms of it are raised in the treatment of the duties of the State” (n. 32). The State cannot limit itself to “favoring one portion of the citizens,” namely, the rich and prosperous, nor can it “neglect the other,” which clearly represents the majority of society. Otherwise, there would be a violation of that law of justice that ordains that every person should receive his due.

When there is question of defending the rights of individuals, the defenseless and the poor have a claim to special consideration. The richer class has many ways of shielding itself and stands less in need of help from the State; whereas the mass of the poor have no resources of their own to fall back on, and must chiefly depend on the assistance of the State. It is for this reason that wage earners, since they mostly belong to the latter class, should be specially cared for and protected by the government (n. 33).

Centesimus Annus (n. 15) interprets:

Rerum Novarum is opposed to State control of the means of production, which would reduce every citizen to being a “cog” in the State machine. It is no less forceful in criticizing a concept of the State that completely excludes the economic sector from the State’s range of interest and action. There is certainly a legitimate sphere of autonomy in economic life that the State should not enter. The State, however, has the task of determining the juridical framework within which, economic affairs are to be conducted, and thus of safeguarding the prerequisites of a free economy, which presumes a certain equality between the parties, such that one party would not be so powerful as practically to reduce the other to subservience.

Moreover, *Centesimus Annus* (but not *Rerum Novarum*) affirms:

Furthermore, society and the State must ensure wage levels adequate for the maintenance of the worker and his family, including a certain amount for savings. This requires a continuous effort to improve workers’ training and capability so that their work will be more skilled and productive, as well as careful controls and adequate legislative measures to block shameful forms

of exploitation, especially to the disadvantage of the most vulnerable workers, of immigrants, and of those on the margins of society. The role of trade unions in negotiating minimum salaries and working conditions is decisive in this area.

Van der Vyver may be closer to *Centesimus Annus* than to *Rerum Novarum*. *Centesimus Annus* asserted (n. 34):

It is a strict duty of justice and truth not to allow fundamental human needs to remain unsatisfied, and not to allow those burdened by such needs to perish. It is also necessary to help these needy people to acquire expertise, to enter the circle of exchange, and to develop their skills in order to make the best use of their capacities and resources. Even prior to the logic of a fair exchange of goods and the forms of justice appropriate to it, there exists something that is due to the person because he is a person, by reason of his lofty dignity. Inseparable from that required 'something' is the possibility to survive and, at the same time, to make an active contribution to the common good of humanity.

That van der Vyver may be closer to *Centesimus Annus* than to *Rerum Novarum* is further seen from this portion of *Centesimus Annus* (n. 48):

Another task of the State is that of overseeing and directing the exercise of human rights in the economic sector. However, primary responsibility in this area belongs not to the State but to individuals and to the various groups and associations that make up society. The State could not directly ensure the right to work for all its citizens unless it controlled every aspect of economic life and restricted the free initiative of individuals. This does not mean, however, that the State has no competence in this domain, as was claimed by those who argued against any rules in the economic sphere. Rather, the State has a duty to sustain business activities by creating conditions that will ensure job opportunities, by stimulating those activities where they are lacking or by supporting them in moments of crisis.

The State has the further right to intervene when particular monopolies create delays or obstacles to development. In addition to the tasks of harmonizing and guiding development, in exceptional circumstances the State can also exercise a substitute function, when social sectors or business systems are too weak or are just getting under way and are not equal to the task at hand. Such supplementary interventions, that are justified by urgent reasons touching the common good, must be as brief as possible so as to avoid removing permanently from society and business systems the functions that are properly theirs, and so as to avoid enlarging excessively the sphere of State intervention to the detriment of both economic and civil freedom.

The most recent *Catechism of the Catholic Church* lends some limited support to the claim that the State is positively obligated to ensure economic rights. Notwithstanding, it may be a more limited concept than that suggested by van der Vyver. While Roman Catholic social teaching does appeal to the State to care for the common good, it rarely specifies that such good extends as far as third-generation rights.

The *Catechism* enunciates seven specifics (only one of which would be difficult to sustain from either Scripture or tradition, that is, the fifth item, "the right to medical care, assistance for the aged, and family benefits," although this is at least culturally relativized) by which the State is morally obligated to protect and support the family. The seven specifics, assigned as duties for the political community to ensure, are:

- (1) the freedom to establish a family, have children, and bring them up in keeping with the family's own moral and religious convictions;
- (2) the protection of the stability of the marriage bond and the institution of the family;
- (3) the freedom to profess one's faith, to hand it on, and to raise one's children in it, with the necessary means and institutions;
- (4) the right to private property, to free enterprise, to obtain work and housing, the right to emigrate;
- (5) in keeping with the country's institutions, the right to medical care, assistance for the aged, and family benefits;
- (6) the protection of security and health, especially with respect to dangers like drugs, pornography, alcoholism, et cetera; and
- (7) the freedom to form associations with other families and so to have representation before civil authority.¹⁵

The dignity and propriety of human work is upheld,¹⁶ as well as the need to love the poor.¹⁷ The implications of the eighth commandment for the State include

sure guarantees of individual freedom and private property, as well as a stable currency and efficient public services. Hence, the principal task of the State is to guarantee this security, so that those who work and produce can enjoy the fruits of their labors and thus feel encouraged to work efficiently and honestly.... Another task of the State is that of overseeing and directing the exercise of human rights in the economic sector. However, primary responsibility in this area belongs not to the State but to individuals and to various groups and associations that make up society.¹⁸

Comparison to Kuyper

On several occasions, Kuyper sought to distinguish his views from surrounding foundations for rights, especially as reinforced by the civil government. As early as 1869, he denounced a “striving for a false uniformity,” along with “the leveling principle of modern life, the demand for one people and one language,”¹⁹ as contradictory of divine principles of order. Thus, his early “Uniformity: The Curse of Modern Life” is difficult to draft as a buttress for uniform rights, unless derived from God. In that piece, he decried uniform constitutions for all European States, denounced uniform patterns for all education, and cautioned against “rendering all developmental growth impossible”²⁰ by severing politics from the Christian faith. Hence, even Kuyper’s sphere sovereignty must be distinguished from modern bases for rights—civil, economic, or otherwise.²¹

In his discussion of the role of labor over a century ago, Kuyper admitted that legislatures were not able to ensure economic rights, even if they thought they had the authority. At the same time, his writing strongly militated against expecting competent law authorities to usher in utopia: “The very fact that the market of goods is cosmopolitan, and that therefore conditions in other countries influence our situation, makes this improbable. Besides, preventing *all* misery and alleviating *all* poverty is a problem that has always escaped solution.”²² Instead of State-centered moral reform, he called for private “moral forces” to spread the message to the masses that they need to be “content with little” and to “cultivate submissiveness and patience in distress and difficulties.” Indeed, according to Kuyper, such moral expectation-adjustment would bring about more tranquility than State-sponsored legislation: “If these moral forces enable you to teach the larger part of our nation to be content with little and in condition also to catch the luster of a higher ideal, you have achieved more than if you artificially raise wages ten or fifteen percent. For if people lack moral fiber, an overriding discontent will result only in another demand that wages be raised another ten percent.”²³ Kuyper believed that moral forces such as love, graciousness, and liberality might have more efficacy.

While recognizing that it is “important” for laborers to “be able to buy good quality and quantity with the money they earn,”²⁴ Kuyper’s earlier views were not identical to modern notions of economic rights. In answer to the question “whether the government may directly interfere in this area,” Kuyper stated that it is “beyond doubt that the government does *not* have this right, at least not in the absolute sense. State and society are not identical. The government is not the only sovereign.... Only in one instance can [the] government

intervene: When two or more of these spheres collide at their common borders and a great imbalance between their respective powers makes it likely that the more powerful entity would suffer from hypertrophy and the other would be inequitably suppressed."²⁵

Kuyper's idea of sphere sovereignty limited law agencies to regulating contracts, rather than ensuring economic rights, lest direct intervention travel a "road that will leave every sphere of society at the mercy of the magistrate."²⁶ That Kuyper advocated a circumscribed State can be seen when he says that the government of a nation (much less an international organization) "has no jurisdiction to stipulate how labor matters must be regulated, even when it comes to the form of contract." Kuyper's original formulations, while calling for Christian virtues and justice, do not advocate the same ideas as third-generation rights. A minimalist State may provide at most a scaffolding that represents real laborers and is limited to giving nonbinding advice.²⁷

In his 1874 article "Calvinism: Source and Stronghold of Our Constitutional Liberties," Kuyper echoed Groen van Prinsterer by identifying the seedbed of the rights of man in the French Revolution. Rights were torn from their Reformation root and grafted "onto the wild stem of self-sufficiency and human wisdom."²⁸

The practical barrier to limiting the State (from assuming "unlimited rule, disposing over persons their lives, their rights, their conscience, even their faith")²⁹ was sphere sovereignty. Admittedly, sphere sovereignty could not guarantee equality of outcome or economic rights, but it could provide a sufficient foundation for freedom, for the scaffolding if not the mansion. Kuyper expressed it Christocentrically: "But here is the glorious principle of Freedom! This perfect Sovereignty of the *sinless* Messiah at the same time directly denies and challenges all absolute Sovereignty among sinful men on earth, and does so by dividing life into *separate spheres*, each with its own sovereignty."³⁰

While sphere sovereignty could advance stability in society, it could not—apart from specific religious matrixes—usher in an eschatological level of equality. Indeed, two mutually conflicting principles—the Revolution and the Reformation—warred for dominance:

Thus, two credos stand squarely against each other. He who lives from, and consistently within, the orbit of Revelation confesses that all Sovereignty rests in God and can therefore proceed only from Him; that the Sovereignty of God has been conferred absolute and undivided upon the man-Messiah; and that therefore human freedom is safe under this Son of Man anointed as

Sovereign because, along with the State, every other sphere of life recognizes an authority derived from Him—that is possesses sovereignty in its own sphere. On the other hand, those who deny special revelation insist on an absolute separation between the question of sovereignty and the question of faith. Consequently, they assert that there is no other authority conceivable than that of the State; they strive to embody this high sovereignty ever more perfectly in the supreme State; and they cannot grant to the other spheres a more generous freedom than that which the State permits them out of its weakness or confers out of its supremacy.³¹

The elevation of rights to a level of *summa* carries with it dangers that are infrequently examined. The elevation of any juridical aspect of reality, as van der Vyver points out initially, must be approved only with caution. Notions such as self-determination, economic rights, and even democracy are not above philosophical criticism.

Democracy must be seen in the same light. It is healthy for societies to have a proper amount of democracy. However, the *demos* itself is neither infallible nor ultimate. Carl Henry observed, “Not even political democracy is to be viewed as the political extension of the kingdom of God. Without the moral conviction, cognitive cohesion, and spiritual dynamic that Christian participation offers, political democracy tends, in fact, to decline toward chaos . . . even a democratic society must question its autonomous assumptions and respect those of the new society.”³²

A democracy led by immoral, atheistic, and oppressive citizens is not a good government. Russell Kirk analyzed: “The pure democrat is the practical atheist; ignoring the divine nature of law and the divine establishment of spiritual hierarchy.”³³ Majority rule ought not be deified. To do so, is potentially to divinize an godly majority.

Like his Reformed predecessors, Groen Van Prinsterer—Kuyper’s mentor—consistently warned against viewing pure democracy as a political panacea. Self-determination alone is unable to deliver righteousness if founded upon the will of an unregenerate people. Groen said, “Whence it follows that there neither is, nor can be, any fundamental law that is binding upon the body of the People, not even the Social Contract itself.”³⁴ He called the systems of Rousseau and Hobbes “monstrous,” looking to government as possessing a “provisional mandate, subject to cancellation or modification at the people’s pleasure.” Thus, Groen cautioned against the danger of unbridled majority rule, reminding that freedom is founded only in submission to the law and not in submission to the “detestable despotism of the majority.” “If freedom means

unconditional obedience to the good pleasure of men, then freedom is a fiction,"³⁵ he said.

Even earlier, Richard Baxter, for example, had sensed the possible incongruity between advocating pure democracy and an honoring of God's sovereignty. In opposition to the Ranters, Seekers, Levellers, and other sects of the seventeenth century, he warned that pure democracy would invariably lead to heresy (as well as to political disaster): "That the major[ity] vote of the people should ordinarily be just and good is next to an impossibility.... All this stir of the Republicans is but to make the seed of the Serpent to be the sovereign rulers of the earth.... The greatest heresy of all was that ... all [men] had a spark of the divine in them, and so, that all men were equal."³⁶ Modern-rights movements rooted in little more than the will of the majority are subject to similar criticisms.

An unbridled capitalism can bear the same danger. If the acquisition of wealth is not constrained by the moral or benevolent use of it, tyranny can result. Capitalism undergirded by a Christian *ethos* has often resulted in a rise in productivity, as well as an increase in charity. However, capitalism alone does not guarantee a good society—even if it is compatible with the depravity taught in Scripture. Capitalism might prevent certain abuses, but it is unable by itself to saturate a commonwealth with Christian justice and equity. William Bennett recently wrote: "The theological dimension is needed both for interpreting and solving present-day problems in human society.... If there is not ultimate truth to guide and direct political activity, then ideas and convictions can easily be manipulated for reasons of power. As history demonstrates, a democracy without values turns into open or thinly disguised totalitarianism."³⁷ The divinization of an economic theory of production and growth can neither explain instances of political righteousness, nor can it usher in the eschaton.

Even the well-intentioned efforts to usher in eschatological norms need to avoid confusing the eschaton with the present fallen universe, lest we try to inaugurate coercively the kingdom of God prematurely (Voegelin spoke of it as "immanentizing the eschaton"). Perhaps a more durable approach is contained in Helmut Thielicke's thesis:

From the standpoint of salvation history the State is an emergency measure for the interim between the Fall and the Last Judgment. Hence it is not to be absolutized but subordinated to the relativization by the divine purpose ... there should be no more than a minimal State. This means concretely that we should commit to the State, not everything we can, but only what we

must. In other words, of all the tasks involved in the distribution of powers the most important is that the machinery of State leave some of its powers to the responsibility and initiative of free citizens and of relatively free institutions, that is, those which have large powers of self-direction.³⁸

Like the government, the eschaton has its place. But the eschaton must be kept in its proper place; it cannot become either the end or the determiner of all issues. Richard John Neuhaus warned about the danger of the idolatrous illusion that confuses a political program with the kingdom of God. Those who seek first the kingdom of God, according to Neuhaus, “will never be entirely at home with any social program or ideology that is, of necessity, short of the Kingdom.... What we see now as a Kingdom sign may be repudiated by the future.”³⁹

The Scripture speaks of the civil governor as a *diakonos* (Rom. 13), a minister of God—not a regulator of morals and economics. Another term is *leitourgos* (a public functionary). Wolfhart Pannenberg maintains that liturgy is “done by some, for all”—a distinction that stresses the functional aspect of the liturgist. In Roman society, a liturgist was a civil servant, subservient to a definite charter. More than three centuries ago, this truism was stated: “[W]e can plainly see that it was *ministers*, not *masters* of the state that Moses appointed.”⁴⁰

Likewise, Lord Acton testified: “The State can never do what it likes in its own sphere. It is bound by all kinds of law ... to say all societies must get permission of government to exist, which also implies a certain inspection or control, is to take State absolutism as the starting point in politics, and freedom—or rather, liberties, as concessions and compromises of absolutism. Whereas, the presumption is in all cases against the State. It has no business where it cannot prove its case. It has no admittance except on business evidently its own.”⁴¹

Conclusion

Does the view of human rights, particularly that the State should positively guarantee economic and social rights, flow from or agree with the writings of Leo XIII and Abraham Kuyper? Leo XIII called for government to provide for the common good, and traditional Roman Catholic social teaching strictly opposes totalitarianism. Van der Vyver agrees thus far. However, Leo XIII in *Rerum Novarum* may not have called for second-generation rights, much less, third-generation rights. If the test of legacy is concurrence, van der Vyver’s

views may be substantially different from Leo XIII's legacy. Several of the citations below, however, show that van der Vyver's approach is remarkably similar to Pope John Paul II in his 1991 encyclical *Centesimus Annus*.

Numerous comments (from other encyclicals) by Leo XIII indicate that Catholic teaching was not expecting socialistic plans to ensure international rights. Leo's 1878 encyclical *Quod Apostolici Muneris* spoke of the socialistic ideas of the day as a "deadly plague" and condemned communism and nihilism as "barbarous." Far from being enamored with common outcomes of estate, it described the abolition of private property as "lured by greed." Leo denounced as erroneous and contrary to reason the "new species of impiety" that imagined that "States have been constituted without any count at all of God or of the order established by Him." This encyclical, exhibiting a strain of antimodernism as severe as Kuyper's, denounced humanistic approaches to government that founded the State on "the multitude" and "cast out" supernatural truths on political matters.

It also asserted that "a licentious sort of liberty attributed to man" appeared to be a new right but in reality was "foretold with apostolic foresight" and as a "pest of socialism" had previously established its beachhead. Moreover, with classic lenses, Leo repudiated that "nature has made all men equal," denying that human equality consisted of equal material States.⁴² Rather, he thought that "inequality of rights and of power proceeds from the very Author of nature." Even in the eschaton, he suggested, ranks of choirs and angels will persist; thus, Leo XIII saw "various orders in civil society, differing in dignity, rights, and power" (in Church, family, or State) as unproblematic. He also warned against laborers and artisans becoming susceptible to the Socialist seduction.

A few years later and a decade before *Rerum Novarum*, Leo XIII spoke of the "most bitter war waged against the divinity of authority" in his "On the Origin of Civil Power." While he thought that mutual rights are properly ensured by the effect of Christianity, he also affirmed that "necessity itself compels that some should hold preeminence" lest society tend toward anarchy. Especially critical of overdemocratizing movements and the notion that "All power comes from the people," he permitted self-determination to extend to a nation's choice of governmental form but did not suggest that international consortia could determine that for others. Once again, Leo affirmed socialistic approaches as "hideous deformities" and called "popular authority, together with an unbridled license which many regard as the only true liberty," "a false philosophy—a new right."

As to a principled basis for cooperation between Roman Catholics and Calvinists, Kuyper rested that on a common eschatological horizon, without calling for abolition of distinctives in the present. He said,

Our Roman Catholic countrymen confess with us: 'when he will come again to judge the living and the dead.' The Maranatha-event is certainly alive among them. What is more, the same background of convictions and facts lie behind that Maranatha for them as well. They, as we, acknowledge that all authority and power on earth flows from God and is rooted in the reality of creation. They confess along with us that the Lord God has revealed his will also for the political life of nations in an extraordinary ways, and that both the ruler and the ruled are consequently bound to the will of God.... They testify with you that this divinely anointed King now sits at the right hand of God, controls the destiny of peoples and States from the throne of his majesty, and one day, at the end of history, will come again to summon all nations and all humanity before his judgment seat."⁴³

In conclusion, if there is no transcendent truth, in obedience to which, a person achieves his full identity, then there is no sure principle for guaranteeing just relations between people. Their self-interest as a class, group, or nation will inevitably set them in opposition to one another. *If one does not acknowledge transcendent truth, then the force of power takes over, and each person tends to make full use of the means at his disposal to impose his own interests or opinion, with no regard for the rights of others. People are then respected only to the extent that they can be exploited for selfish ends.* The root of modern totalitarianism is to be found in the denial of the transcendent dignity of the human person who, as the visible image of the invisible God is, therefore, by his very nature the subject of rights that no one may violate—no individual, group, class, nation, or State. Not even the majority of a social body may violate these rights, by going against the minority, by isolating, oppressing, or exploiting it, or by attempting to annihilate it.

Notes

1. Benjamin M. Palmer, "Church and State," *The Southern Presbyterian Review* 3 (October 1849): 226.
2. Ibid.
3. Ibid., 214.

4. Ruth Hubbard and Elijah Wald, *Exploding the Gene Myth* (Boston: Beacon Press, 1993), 26.
5. William H. Willimon, "The Effusiveness of Christian Charity," *Theology Today* (April 1992): 79–80.
6. James Hastings, *Encyclopedia of Religion and Ethics*, vol. 10, 771.
7. *Ibid.*, 772.
8. *Ibid.*, 774.
9. *Ibid.*, 771.
10. Cf. *The Encyclopedia of Philosophy*, vol. 7 (New York: Macmillan, 1967), 195.
11. More than one critic has identified the French Revolution as a paradigm shift in viewing rights. Guillaume Groen van Prinsterer, for example, analyzed culture in terms of being either Reformation-oriented or Revolution-oriented. A telltale sign of a Revolution-orientation is its location of rights within the nature of man.
12. *Encyclopedia of Religion and Ethics*, vol. 10, 773.
13. *Ibid.*, 156. Later in 1931, Pius XI reiterated the Roman Catholic condemnation of socialism, especially as it attempted to ensure utopian outcomes (*Quadragesimo Anno*). *Rerum Novarum* preferred that societal reform be spawned by the Church, the family, or private associations.
14. Accordingly, the title was changed. Encyclicals are known by their first words. *Rerum Novarum cupidus* ... (The unseemly lust for change ...) was a put-down, well-understood as such by Latinists of the time, of which Leo XIII was a paragon. In *Rerum*, Leo lumped George as a "Socialist," and treated him anonymously as an "upholder of obsolete notions," and one of "a few dissidents," a "mere utopianist whose ideas were rejected by the common opinion of the human race." "The thoughts of Henry George ... were reduced to their utmost simplicity and rejected out of hand" (Molony, 91–92). "Unnamed (in Cardinal Zigliara's draft), ... both McGlynn and Henry George were given fuller treatment and their opinions, summed up as 'the discordant voices of a few utopians,' were rejected out of hand as contrary to common sense, the natural law and, finally, the divine law itself" (Molony, 79). According to G. R. Geiger (362), "The doctrines attacked are labeled 'socialistic,' but they are essentially those of George.... There was so flagrant a disregard of any attempt to discriminate between conceptions which were diametrically opposed (that many interpreted *Rerum*) as a direct attack upon that (George's) work." Geiger cites Henry Cardinal Manning and Archbishop Michael Corrigan to that effect. The tone of *Rerum* was also tailored to George and McGlynn. The first draft of this encyclical, by the Jesuit Matteo Liberatore, was "The Worker Question." Its focus was on the condition of labor. As it evolved

through six drafts, under Leo's supervision, it became an attack on critics of private property in land; it virtually blamed the poverty of labor on the critics of poverty, all lumped as "Socialists." A major influence was the team of Cardinal Camillo Mazzella and Cardinal Zigliara, the same pair who had recommended excommunicating Dr. Edward McGlynn, and putting George's works on *The Index* of forbidden books (Molony, 57).

15. CCC, nn. 533–34.
16. Ibid., nn. 583–84.
17. Ibid., nn. 587–98.
18. Ibid., n. 584.
19. James D. Bratt, ed., *Abraham Kuyper: A Centennial Reader* (Grand Rapids: Eerdmans, 1998), 34.
20. Ibid., 40.
21. Kuyper was also quick to repudiate the revolutionary triumvirate: liberty, equality, and fraternity—spying in it a revolutionary philosophy as did Groen van Prinsterer. Cf. Bratt, *Abraham Kuyper: A Centennial Reader*, 221.
22. Ibid., 233.
23. Ibid., 234.
24. Ibid., 236. In this same context, he also criticized unsuitable inheritance laws that diminished family estates.
25. Ibid., 241.
26. Ibid., 242.
27. Ibid., 247. Kuyper describes it: "The government would do no more than lay the first brick and determine the general design." Thus, his view authorized freedom to develop, if not a State-guaranteed "right."
28. Ibid., 313.
29. Ibid., 466.
30. Ibid., 467.
31. Ibid., 468.
32. Carl F. H. Henry, "Reflections on the Kingdom of God," *Journal of the Evangelical Theological Society* 35, no. 1 (March 1992): 47–48.
33. Kirk, *The Conservative Mind*, (Chicago: Regnery, 1953), 137.

34. William Groen Van Prinsterer, *Lectures on Unbelief and Revolution* (Ontario: Paideia Press, 1989), 207.
35. *Ibid.*, 212.
36. As cited in Christopher Hill's *The Century of Revolution* (Edinburgh: Thomas Nelson, 1961), 167.
37. William J. Bennett, *The De-Valuing of America* (New York: Summit Books, 1992), 208.
38. *Ibid.*, 255.
39. Richard John Neuhaus, "Wolfhart Pannenberg: Profile of a Theologian," in *Theology and the Kingdom of God*, ed. Wolfhart Pannenberg (Philadelphia: Westminster, 1977), 31.
40. Baruch Spinoza, *Tractatus Logico-Politicus* (1670; reprint Leiden: E. J. Brill, 1989), 258. Italics added.
41. J. Rufus Fears, *Selected Writings of Lord Acton*, vol. 3, *Essays in Religion, Politics, and Morality* (Indianapolis: Liberty Fund, 1988), 509.
42. Further, he affirmed: "The Church, with much greater wisdom and good sense, recognizes that inequality among men, who are born with different powers of body and mind, inequality in actual possession, also, and holds that the right of property and of ownership." His encyclical also advocated private and ecclesiastical care of the poor, instead of State welfare.
43. Bratt, *Abraham Kuyper: A Centennial Reader*, 218.