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## THE PRE-HISTORY OF SUBSIDIARITY IN LEO XIII

MICHAEL P. MORELAND<sup>†</sup>

*Christian Legal Thought* is a much-anticipated contribution from Patrick Brennan and William Brewbaker that brings the resources of the Christian intellectual tradition to bear on law and legal education. Among its many strengths, the book deftly combines Catholic and Protestant contributions and scholarly material with more widely accessible sources such as sermons and newspaper columns. But no project aiming at a crisp and manageably-sized presentation of Christianity's contribution to law could hope to offer a comprehensive treatment of particular themes. And so, in this brief essay, I seek to elaborate upon the treatment of the principle of subsidiarity in Catholic social thought.

Subsidiarity is mentioned a handful of times in *Christian Legal Thought*, most squarely with a lengthy quotation from Pius XI's articulation of the principle in *Quadragesimo Anno*.<sup>1</sup> In this proposed elaboration of subsidiarity, I wish to broaden the discussion of subsidiarity historically (back a few decades from *Quadragesimo Anno* to the pontificate of Leo XIII) and philosophically (most especially its relation to Leo XIII's revival of Thomism).<sup>2</sup>

Statements of the principle have historically been terse and straightforward even if the application of subsidiarity to particular legal questions has not. For example, the *Compendium of the Social Doctrine of the Church*, released in 2004 by the Pontifical Council for Justice and Peace, devotes only

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<sup>1</sup> POPE PIUS XI, *QUADRAGESIMO ANNO*, (1931) reprinted in *CHRISTIAN LEGAL THOUGHT: MATERIALS AND CASES* 479–80 (2017).

<sup>2</sup> Parts of this essay draw upon Michael P. Moreland, *Subsidiarity and the Safeguards of Federalism* (2009) (unpublished Ph.D. dissertation, Boston College) (on file with author).

two pages to the principle of subsidiarity.<sup>3</sup> The historical origins of subsidiarity are rooted in the Church's opposition to totalitarianism and various forms of collectivism<sup>4</sup> and a concomitant affirmation of human dignity.<sup>5</sup>

It is helpful to consider certain pitfalls posed by the current debate over subsidiarity. One obstacle in arriving at a precise understanding of subsidiarity is the tendency to view the principle as one of limited government alone.<sup>6</sup> As summarized by Robert Sirico of the libertarian Acton Institute, this view holds that:

The clear meaning of the subsidiarity principle is to limit the powers and responsibilities assumed by the higher orders of society. In nearly every occasion in which the principle has been invoked in the last one hundred years of official Catholic social teaching, it is in the context of limiting the uses of power.<sup>7</sup>

The U.S. Catholic bishops' 1986 letter on the economy, *Economic Justice for All*, expresses a similar view in some paragraphs of the document: "This principle [of subsidiarity] states that, in order to protect basic justice, government should undertake only those initiatives which exceed the capacity of individuals or private groups acting independently. Government should not replace or destroy smaller communities and individual initiative."<sup>8</sup>

While this "liberal" interpretation of subsidiarity is an important and enduring expression of the principle in the literature, other sources suggest a less "libertarian" aspect to

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<sup>3</sup> COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH ¶¶ 185–88, at 81–82 (2004). The Catechism of the Catholic Church states the principle as "a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions . . ." CATECHISM OF THE CATHOLIC CHURCH ¶ 1883 (2d ed. 1997).

<sup>4</sup> Louis Dupré, *The Common Good and the Open Society*, in CATHOLICISM AND LIBERALISM: CONTRIBUTIONS TO AMERICAN PUBLIC PHILOSOPHY 172, 191 (R. Bruce Douglass & David Hollenbach, S.J. eds., 1994).

<sup>5</sup> Joseph A. Komonchak, *Subsidiarity in the Church: The State of the Question*, 48 JURIST 298, 301–02 (1988).

<sup>6</sup> See Christopher Wolfe, *Subsidiarity: The "Other" Ground of Limited Government*, in CATHOLICISM, LIBERALISM, AND COMMUNITARIANISM: THE CATHOLIC INTELLECTUAL TRADITION AND THE MORAL FOUNDATIONS OF DEMOCRACY, 81 (Kenneth L. Grasso, Gerard V. Bradley, & Robert P. Hunt eds., 1995).

<sup>7</sup> Robert A. Sirico, *Subsidiarity, Society, and Entitlements: Understanding and Application*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 549, 557 (1997).

<sup>8</sup> UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy* ¶ 124 (1986).

subsidiarity.<sup>9</sup> In the words of *Quadragesimo Anno*, “every social activity ought of its nature to furnish help to the members of the body social, and never destroy and absorb them.”<sup>10</sup> Joseph Komonchak notes that subsidiarity has both negative (libertarian) and positive (communitarian) aspects:

The principle of subsidiarity requires *positively* that all communities not only permit but enable and encourage individuals to exercise their own self-responsibility and that larger communities do the same for smaller ones . . . . It requires *negatively* that communities not deprive individuals and smaller communities of their right to exercise their self-responsibility. Intervention, in other words, is only appropriate as “helping people help themselves.”<sup>11</sup>

Part of the confusion over subsidiarity—but also, perhaps, an aspect of the principle’s richness—is its combination, then, of both “libertarian” and “communitarian” elements. Progress in our understanding and application of subsidiarity will require a careful assessment of these considerations and determining when intervention or assistance [*subsidium*] from a higher authority is needed and when devolution of responsibility is warranted. More precisely, we will need to determine when authority is properly located at a higher level and when authority is properly

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<sup>9</sup> I use the terms “liberal” and “libertarian” here cautiously, for there are important differences in the conception of personhood underlying classical liberalism—with its emphasis on individual autonomy—and subsidiarity. See Jean Bethke Elshtain, *Catholic Social Thought and Liberal America*, in CATHOLICISM AND LIBERALISM, *supra* note 4, at 151, 159–62 (describing Catholic social thought in general and subsidiarity in particular as “begin[ning] from a fundamentally different ontology from that assumed and required by individualism, on the one hand, and statist collectivism, on the other” and “refus[ing] stark alternatives between individualism and collectivism”). The terms “libertarian” and “communitarian” in the discussion to follow, then, are used in a broad sense (not, except by analogy, as designating a particular political philosophical position) and merely denote different aspects of subsidiarity as a principle favoring limited government but also government intervention where appropriate.

<sup>10</sup> POPE PIUS XI, *QUADRAGESIMO ANNO* ¶ 79 (1931).

<sup>11</sup> Komonchak, *supra* note 5, at 302 (emphasis in original); see also Dupré, *supra* note 4, at 191:

The principle of *subsidiarity* . . . prevents the common good from assuming an existence independent of private concerns, and thus turning into social ideology. Only a social system based on subsidiarity can avoid turning the state into either a mere legal sanction of individual interests (as in nineteenth-century liberalism) or into a personification of a common good in which individual interests are not adequately represented (as in the dictatorial states of the twentieth century).

recognized in the smaller community. This conclusion, in turn, will require a discussion of subsidiarity's political theoretical and "anthropological" dimensions, that is, its grounding in a conception of the person in society. Rather than as a principle only of economic efficiency or limited government, subsidiarity is best viewed as an aspect of Catholic social thought's emphasis on the human person adequately understood.<sup>12</sup> Subsidiarity, I aim to show, cannot be properly understood apart from an adequate appreciation of the Catholic theory of political authority, of the state, and of associational life.

### I. LEO XIII

Elected pope in 1878 at the age of sixty-seven, Leo XIII is widely acknowledged to be the progenitor of modern Catholic social teaching, even if a significant body of such social teaching preceded his pontificate.<sup>13</sup> Though he issued at least twelve documents that could be considered to comprise his social teaching,<sup>14</sup> Leo's 1891 encyclical *Rerum Novarum* is the most complete and enduring expression of his social theory. *Rerum Novarum* contains lengthy sections on topics that will recur in papal social encyclicals for the next century and that bear on subsidiarity, such as private property, the Church's hostility toward liberalism and socialism, the rights of workers, and the role of the Church in the social order. It is, however, Leo's

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<sup>12</sup> See Thomas C. Kohler, *Lessons from the Social Charter: State, Corporation, and the Meaning of Subsidiarity*, 43 U. TORONTO L.J. 607, 615 (1993) ("The principle [of subsidiarity] insists that the state and all other forms of community exist for the individual.").

<sup>13</sup> For treatments of the pre-Leonine social tradition, see PAUL MISNER, *SOCIAL CATHOLICISM IN EUROPE: FROM THE ONSET OF INDUSTRIALIZATION TO THE FIRST WORLD WAR*, 149–52 (1991), and MICHAEL J. SCHUCK, *THAT THEY BE ONE: THE SOCIAL TEACHINGS OF THE PAPAL ENCYCLICALS 1740-1989*, at 31–33 (1991).

<sup>14</sup> In his collection *Social Wellsprings*, Joseph Husslein, S.J., includes *Inscrutabili* (Evils of Society), *Quod Apostolici Muneris* (The Socialists), *Arcanum* (Christian Marriage), *Diuturnum* (Civil Government), *Immortale Dei* (Christian Constitution of States), *In Plurimis* (Abolition of African Slavery), *Libertas Humana* (Human Liberty), *Sapientiae Christianae* (Chief Duties of Christian Citizens), *Laetitiae Sanctae* (Rosary and Social Question), *Annum Sacrum* (Consecration of Mankind to the Sacred Heart), and *Graves de Communi* (Christian Popular Action) in addition to *Rerum Novarum*. JOSEPH HUSSLEIN, S.J., *SOCIAL WELLSPRINGS: FOURTEEN EPOCHAL DOCUMENTS BY POPE LEO XIII* (Bruce Publishing Company 1940). For a discussion of Husslein's own important role in transmitting the papal social encyclicals to the American Catholic Church, see Stephen A. Werner, *Joseph Husslein, S.J., and the American Catholic Literary Revival: "A University in Print,"* 87 CATH. HIST. REV. 688, 696–97 (2001).

nascent expression of the principle of subsidiarity throughout *Rerum Novarum* that we will explore here. As noted by John Courtney Murray, further elaboration of the principle of subsidiarity and related concepts “are substantially in the line set by Leo XIII when he defined the relation of government to the social and economic order.”<sup>15</sup>

Leo ushered in the era of the “Leonine synthesis” in Catholic social doctrine, which “reached its creative high-water mark in the 1930s between the two world wars, but its effects were consolidated at the Second Vatican Council (1962–65).”<sup>16</sup> Leo’s writing on social matters was broadly influenced by the commitment to Thomism advanced in his 1879 encyclical *Aeterni Patris*.<sup>17</sup> This allegiance to Thomism was itself the product of a contingent philosophical history and the influence of a small circle of nineteenth century Jesuit Thomists, a history recounted in recent years by Alasdair MacIntyre and Gerald McCool.<sup>18</sup> Indeed, the Italian Jesuit Thomist Luigi Taparelli D’Azeglio is arguably the defining influence on the early formulation of what would become the principle of subsidiarity and on much else in Leo’s reappropriation of Thomism.<sup>19</sup>

#### A. *Rerum Novarum*

*Rerum Novarum*’s theory of what the tradition will later term “subsidiarity” is detailed amid the encyclical’s discussion of four topics: private property, the family, the role of the state, and the significance of associations. The encyclical begins with a

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<sup>15</sup> John Courtney Murray, S.J., *Leo XIII: Two Concepts of Government*, 14 THEOLOGICAL STUD. 551, 553 (1953).

<sup>16</sup> John Witte Jr. & Frank S. Alexander, THE TEACHINGS OF MODERN CHRISTIANITY ON LAW, POLITICS, AND HUMAN NATURE 3, 11 (2007).

<sup>17</sup> See generally POPE LEO XIII, ENCYCLICAL LETTER *AETERNI PATRIS* (1879).

<sup>18</sup> See generally ALASDAIR MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY: ENCYCLOPAEDIA, GENEALOGY, AND TRADITION 72–73 (1990); GERALD A. MCCOOL, CATHOLIC THEOLOGY IN THE NINETEENTH CENTURY: THE QUEST FOR A UNITARY METHOD 2, 17 (1977).

<sup>19</sup> For an overview of the neo-Thomists of the period and their influence on Leo, see JOE HOLLAND, MODERN CATHOLIC SOCIAL TEACHING: THE POPES CONFRONT THE INDUSTRIAL AGE 1740–1958, at 119 (2003); MCCOOL, *supra* note 18; Thomas C. Behr, *Luigi Taparelli and the 19th-Century Neo-Thomistic “Revolution” in Natural Law and Catholic Social Sciences* (2000) (Ph.D. dissertation, SUNY Buffalo) [hereinafter Behr, “Revolution”]; Thomas C. Behr, *Luigi Taparelli D’Azeglio, S.J. (1793–1862) and the Development of Scholastic Natural-Law Thought as a Science of Society and Politics*, 6 J. MKTS. & MORALITY, 99 (2001) [hereinafter Behr, *Development*].

famous (and controversial) discussion of private property. In his eagerness to distance the Church from various forms of socialism, some argue that Leo implicitly adopted a modern, Lockean theory of private property that sits uneasily with the Church's historical teaching on private property.<sup>20</sup> Whatever the merits of that argument, themes advanced in the paragraphs of *Rerum Novarum* on private property will mark future discussions of subsidiarity and do not turn, for the most part, on the theory of private property advanced in the letter. Nonetheless, the early paragraphs of *Rerum Novarum* set the Church's social teaching down on one side or another of several contentious issues in modern political theory. Leo asserts the link between human nature and private property at paragraph six,<sup>21</sup> but this argument is part of a larger argument about human nature and the foundations of politics. Leo, then, stands in the long line of Catholic—and particularly Thomist—argument regarding natural law and moral knowledge.

The argument in paragraphs seven through seventeen begins with an assertion about the proper relation of the person to the state: "Man precedes the State [*respublica*], and possesses, prior to the formation of any State [*civitas*], the right of providing for the sustenance of his body."<sup>22</sup> This assertion about the person and the state leads Leo to conclude, by way of a historical argument, that private property is "pre-eminently in conformity with human nature."<sup>23</sup> Similarly, the family has "rights and duties which are prior to those of the community, and founded more immediately in nature."<sup>24</sup> This argument regarding private

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<sup>20</sup> See Ernest L. Fortin, A.A., "Sacred and Inviolable": *Rerum Novarum and Natural Rights*, 53 THEOLOGICAL STUD. 203, 204 (1992); B. Andrew Lustig, *Natural Law, Property, and Justice: The General Justification of Property in John Locke*, 19 J. RELIGIOUS ETHICS 119, 143–44 (1991); Paul J. Weithman, *Natural Law, Property, and Redistribution*, 21 J. RELIGIOUS ETHICS 165, 165–67 (1993); B. Andrew Lustig, *Property, Justice, and the Common Good: A Response to Paul J. Weithman*, 21 J. RELIGIOUS ETHICS 181, 183–84, 186 (1993).

<sup>21</sup> RERUM NOVARUM, *supra* note 14, ¶ 6.

<sup>22</sup> *Id.* ¶ 7.

<sup>23</sup> *Id.* ¶ 11.

<sup>24</sup> *Id.* ¶ 13. See also *id.* ¶ 12, in which Leo writes of "the family, the 'society' of a man's house—a society very small, one must admit, but none the less a true society, and one older than any State. Consequently, it has rights and duties peculiar to itself which are quite independent of the State."

property and the family builds to Leo's rejection of "the main tenet of socialism, community goods" as "directly contrary to the natural rights of mankind."<sup>25</sup>

It might be difficult at first glance to see the relevance of this discussion of private property, the family, and socialism to subsidiarity, but Leo lays the groundwork for such an argument with his claim that it is "impossible to reduce civil society to one dead level."<sup>26</sup> This argument will, however, turn not toward a discussion of levels of civil society and the apportionment of responsibility among them—as one would expect were subsidiarity the principal subject—but instead to the topic of natural differences among human capacities and the inequality that results. The next several paragraphs of the encyclical take up the appropriate response to the plight of the poor and the responsibility of the state and civil society to alleviate the condition of the poor, all while taking care not to frame the discussion in terms of class struggle.<sup>27</sup>

This aspect of social harmony is on display, for example, in paragraph nineteen, where Leo writes that "[j]ust as the symmetry of the human frame is the result of the suitable arrangement of the different parts of the body, so in a State is it ordained by nature that these two classes [the 'wealthy' and 'working men'] should dwell in harmony and agreement."<sup>28</sup> But lest this assertion of irreducible harmony among the classes in society lead to neglect of the poor, Leo moves to a set of exhortations regarding the church's charitable work. "The Church . . . intervenes directly in behalf of the poor," he writes, "by setting on foot and maintaining many associations which she knows to be efficient for the relief of poverty."<sup>29</sup>

One of the principal questions posed by the contemporary debate over subsidiarity—when is intervention by a higher level of civil authority in the affairs of a local community warranted?—is expressly addressed only once in *Rerum Novarum*, in

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<sup>25</sup> *Id.* ¶ 15.

<sup>26</sup> *Id.* ¶ 17.

<sup>27</sup> *Id.* ¶¶ 19–30.

<sup>28</sup> *Id.* ¶ 19.

<sup>29</sup> *Id.* ¶ 29. The Church's own charitable work is a theme running throughout papal social teaching, even where the tradition is at pains to emphasize the responsibility of the state and the wider society. See POPE BENEDICT XVI, *DEUS CARITAS EST* ¶¶ 31–39 (2005).



paragraph thirty-six.<sup>30</sup> Paragraphs thirty-one and following treat the proper role of the state,<sup>31</sup> and paragraph thirty-five asserts that the state “must not absorb the individual or the family; both should be allowed free and untrammelled action so far as is consistent with the common good and the interests of others.”<sup>32</sup> Paragraph thirty-six then proceeds to ask *when* the state must intervene.<sup>33</sup> The clearest requirement for such intervention, according to Leo, is where it is necessary for “peace and good order.”<sup>34</sup> But Leo goes on to argue that “[t]he limits [of the intervention of public authority] must be determined by the nature of the occasion which calls for the law’s interference—the principle being that the law must not undertake more, nor proceed further, than is required for the remedy of the evil or the removal of the mischief.”<sup>35</sup>

The paragraphs of *Rerum Novarum* that arguably bear most directly on subsidiarity are Leo’s short but suggestive discussion of civil society and associations at paragraph fifty-one and following:

These lesser societies and the larger society differ in many respects, because their immediate purpose and aim is different. Civil society exists for the common good, and hence is concerned with the interests of all in general, albeit with individual interests also in their due place and degree. . . . Private societies, then, although they exist within the body politic, and are severally part of the commonwealth, cannot nevertheless be absolutely, and as such, prohibited by public authority. For, to enter into a “society” of this kind is the natural right of man; and the State has for its office to protect natural rights, not to destroy them; and, if it forbid its citizens to form associations, it contradicts the very principle of its own existence, for both they and it exist in virtue of the like principle, namely, the natural tendency of man to dwell in society.<sup>36</sup>

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<sup>30</sup> RERUM NOVARUM, *supra* note 14, ¶ 36.

<sup>31</sup> *Id.* ¶¶ 31–38.

<sup>32</sup> *Id.* ¶ 35.

<sup>33</sup> *Id.* ¶ 36.

<sup>34</sup> *Id.* The examples of what constitutes “peace and good order” illustrate that Leo has in mind more than mere avoidance of civil war or warding off the Hobbesian state, as when he writes “that all things should be carried on in accordance with God’s laws and those of nature” and “that the discipline of family life should be observed and that religion should be obeyed.” *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* ¶ 51.

Leo immediately qualifies this assertion of associational rights with the claim that “[t]here are occasions, doubtless, when it is fitting that the law should intervene to prevent certain associations, as when men join together for purposes which are evidently bad, unlawful, or dangerous to the State.”<sup>37</sup>

With this spare statement of the limits of state intervention, Leo laid the groundwork for the elaboration of subsidiarity in later papal documents. Reconstructing Leo’s discussion of subsidiarity in *Rerum Novarum*, we can identify three main themes running through the paragraphs of *Rerum Novarum* that bear on subsidiarity: (1) a rejection of socialism and an inchoate preference for the limited state; (2) a defense of private property; and (3) an extended treatment of the role of the family. We can already see in this, the first and perhaps most important document in the papal social tradition, subsidiarity being invoked as an aspect of the Church’s rejection of totalitarianism, which, in turn, was originally an argument directed toward socialism and its rejection of private property rights. Following the criticism of socialism by way of a defense of private property, the encyclical then turns to a treatment of civil society and the role of the state. In summary, Leo’s argument is that (1) differences and inequalities are based on differing capacities, which gives rise to the condition of the poor; (2) assistance to the poor requires the intervention of the state, just as the state otherwise intervenes appropriately for peace and good order; and (3) associations of workers and, more generally, public and private societies are a means of complementing the role of the state.

#### B. *Aeterni Patris* and *Immortale Dei*

Though *Rerum Novarum* is, by a considerable margin, the document from the reign of Leo with which most are familiar, it is important to note the setting of *Rerum Novarum* among the other major encyclicals of Leo’s pontificate. Two warrant particular attention here: Leo’s 1879 encyclical on Christian philosophy, *Aeterni Patris*, and his 1885 letter on the Christian constitution of states, *Immortale Dei*.

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<sup>37</sup> *Id.* ¶ 52.

Reading *Rerum Novarum* apart from *Aeterni Patris*, it is difficult to appreciate the place of Leo's (and his successors') social teaching within the Catholic intellectual tradition generally and the Thomist tradition more specifically. Even if it is difficult to trace each turn in twentieth century social teaching to its Thomist roots, Thomism is both a methodological and substantive component of Catholic social teaching, including the principle of subsidiarity.<sup>38</sup> Methodologically, the Thomism of *Aeterni Patris* supplied a resource for criticism of modern rationalism, as argued by Alasdair MacIntyre:

*Aeterni Patris* summoned its readers to renewal of an understanding of intellectual enquiry as the continuation of a specific type of tradition, that which achieved definitive expression in the writings of Aquinas, one the appropriation of which could not only provide the resources for radical criticism of the conception of rationality dominant in nineteenth-century modernity . . . but also preserve and justify the canonical status of the Bible as distinct from, yet hegemonic over, all secular enquiry.<sup>39</sup>

Substantively, the legacy of Thomism is apparent in the prevalence of natural law theory in Catholic social teaching. In contrast to, for example, the resort to scriptural metaphors often encountered in Protestant social ethics (such as the American Social Gospel Movement of the early twentieth century), Catholic social teaching has frequently relied on philosophical forms of argument that do not presuppose the principles of Christian revelation.

The previous discussion of *Rerum Novarum* may mislead the reader into believing that document was an encyclical on church and state. To be clear, *Rerum Novarum* was not a document on church and state in the juridical sense but rather was addressed to social (and not merely economic) matters, particularly the family and the relationship of capital and labor. A shorter and more explicit statement of Leo's views on church and state is to be found six years before *Rerum Novarum* in his encyclical

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<sup>38</sup> For a recent attempt to recover the relevance of Aquinas to subsidiarity, see Nicholas Aroney, *Subsidiarity, Federalism, and the Best Constitution: Thomas Aquinas on City, Province and Empire*, 26 LAW & PHIL. 161 (2007).

<sup>39</sup> MACINTYRE, *supra* note 18, at 25.

*Immortale Dei*. There one finds the initial articulations in modern Catholic social thought of a broadly Thomist understanding of the state and society:

Man's natural instinct moves him to live in civil society, for he cannot, if dwelling apart, provide himself with the necessary requirements of life, nor procure the means of developing his mental and moral faculties. Hence, it is divinely ordained that he should lead his life—be it family, or civil—with his fellow men, amongst whom alone his several wants can be adequately supplied. But, as no society can hold together unless some one be over all, directing all to strive earnestly for the common good, every body politic must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its Author.<sup>40</sup>

*Immortale Dei's* purpose, however, was not to contribute to an overall Catholic theory of the state and the relationship among social forms, as would be most relevant to a treatment of subsidiarity. Instead, and as noted by John Courtney Murray in his seminal articles on Leo's doctrine of church and state, the predominant concern in *Immortale Dei* and related encyclicals was the problem of religious freedom—religious freedom in the modern state, the role of conscience with respect to the state, and the church's role in the modern state.<sup>41</sup>

## II. LUIGI TAPARELLI D'AZEGLIO

Luigi Taparelli (1793–1862) taught the future Leo XIII at the Collegio Romano in the 1820s and was a decisive influence on Leonine social doctrine and on Leo's adoption of Thomism.<sup>42</sup> Appreciation of Taparelli's significance is hindered in the Anglophone world by the lack of any English translations of his work and only passing attention to Taparelli in the work of historians of nineteenth century theology such as Gerald McCool.

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<sup>40</sup> Pope Leo XIII, *IMMORTALE DEI* ¶ 3 (1885).

<sup>41</sup> John Courtney Murray, S.J., *Leo XIII on Church and State: The General Structure of the Controversy*, 14 *THEOLOGICAL STUD.* 1 (1953); John Courtney Murray, S.J., *Leo XIII: Separation of Church and State*, 14 *THEOLOGICAL STUD.* 145 (1953); Murray, *supra* note 15, at 551; John Courtney Murray, S.J., *Leo XIII: Two Concepts of Government: II. Government and the Order of Culture*, 15 *THEOLOGICAL STUD.* 1 (1954).

<sup>42</sup> In much of the following discussion, I am indebted to Thomas C. Behr's *Luigi Taparelli and the Nineteenth-Century Neo-Scholastic 'Revolution' in Natural Law and Catholic Social Sciences*. See generally Behr, "Revolution," *supra* note 19.

In Heinrich Rommen's minor classic *The State in Catholic Thought*, for example, Taparelli is mentioned only three times, two of which are citations to his opposition to universal suffrage.<sup>43</sup> From the important recent dissertation and subsequent writings of historian Thomas Behr, however, we can begin to understand the influence of Taparelli on the initial stages of modern Catholic social teaching.

Taparelli was an important part of the nineteenth century Thomist revival that culminated in *Aeterni Patris*. He was also a regular contributor to the Jesuit periodical *Civiltà Cattolica* for several years and is credited with developing the concept of "social justice."<sup>44</sup> Taparelli's most significant work was *Theoretical Treatise on Natural Right Based on Fact* [*Saggio teoretico di diritto naturale appoggiato sul fatto*], which he compiled in response to the lack of any textbook on natural law that was free, in his view, from misleading doctrines.<sup>45</sup> As summarized by Thomas Behr, "His thoroughly Thomistic intention was to merge a deductive, theoretical approach with an inductive historico-sociological approach in a dialectical method that would form the basis of a modern science of society and politics."<sup>46</sup>

Taparelli's most important contribution to Catholic social doctrine was his development of the basic framework for later discussions of the principle of subsidiarity. As Behr argues, Taparelli used a series of metaphors derived from grammar to illustrate the concept of "Hypotactic Right," "[t]he natural and just relationships between the myriad of associations that human beings tend to form, ranging from the family to the State and

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<sup>43</sup> HEINRICH A. ROMMEN, *THE STATE IN CATHOLIC THOUGHT* 110, 437, 458 (1945). In his book *Social Catholicism in Europe: From the Onset of Industrialization to the First World War*, Paul Misner covers Taparelli's contribution to Leonine social doctrine in two pages, though Misner calls attention to the influence of Taparelli and to the Jesuit periodical *Civiltà Cattolica* with which Taparelli was closely associated. See MISNER, *supra* note 13.

<sup>44</sup> See Behr, *Development*, *supra* note 19, at 99; see also Walter T. Odell, *The Political Theory of Civiltà Cattolica from 1850 to 1870* (1969) (Ph.D. dissertation, Georgetown University).

<sup>45</sup> See Behr, *Development*, *supra* note 18, at 101. Pius XI cites and commends *Saggio teoretico di diritto naturale* in a footnote to his encyclical *Divini Illius Magistri* as "a work never sufficiently praised and recommended to university students." POPE PIUS XI, *DIVINI ILLIUS MAGISTRI* ¶ 50 n.33 (1929).

<sup>46</sup> Behr, *Development*, *supra* note 19, at 102–03.

beyond.”<sup>47</sup> Behr explains that Taparelli borrowed the term “hypotactic” from the rules of Greek grammar governing “the modalities of coordination between clauses, specifically, the arrangement of inferior clauses within the functioning of the whole sentence.”<sup>48</sup> “Hypotactic Right” [*dritto ipotattico*], then, “convey[s] the rights of social groupings, within their just relationships, organized toward the common good.”<sup>49</sup> Behr concludes:

The principles [Taparelli] elaborates in this regard have found their place, though indirectly and imperfectly, in Catholic social doctrine, known as the “principle of subsidiarity,” first explicitly used by Pius XI in the social encyclical, *Quadragesimo Anno*. Indeed, the Greek *hypo taxis* can be rendered directly into Latin as *sub sedeo*. The Latin expression *subsidia* applied, then, not just to mean “help” but in the first instance to auxiliary troops within the Roman legion, as they “sat below” ready in reserve to support the battle. The “help” in this context is from the bottom up, not from the top down, as the inferior and mediating groups all participate in achieving the common good of the more perfect association. While Taparelli uses the legion as an analogy for society in various contexts, the rights and obligations derived from the laws of subsidiarity vary according to a host of historical considerations and competing rights and obligations.<sup>50</sup>

As the principle of subsidiarity came to be expressed in the social thought of Pius XI and later popes, we will see that some of the original inspiration for the principle in Taparelli’s and Leo’s Thomism came to be forgotten or neglected. For example, Taparelli’s articulation of Hypotactic Right is clearly not a principle of devolution, as the principle of subsidiarity is so often understood in later Catholic social teaching. Rather, the principle of subsidiarity is, at least as originally articulated in the nineteenth century Thomists, a principle of right social ordering toward the common good. The variation among the “rights and obligations derived from the laws of subsidiarity” does, however, indeed depend on contingent historical circumstances when we would seek to employ subsidiarity in navigating particular policy questions.

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<sup>47</sup> *Id.* at 104.

<sup>48</sup> *Id.* at 105.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

The papal social tradition broadly and the teaching on the principle of subsidiarity specifically have, of course, developed significantly since *Rerum Novarum*. In the pertinent sections anticipating subsidiarity in *Rerum Novarum*, Leo worked within the scholastic framework to advance a social theory that began with the family and private property and then built up to the initial formulation of a doctrine of the state. As formulated by Johannes Messner, the principle of subsidiarity “obliges the state authority to take heed of the common good, preferably by means of subordinate authorities, namely, those of member societies in an organization of the state community based on the federative and corporative principles.”<sup>51</sup>

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<sup>51</sup> JOHANNES MESSNER, *SOCIAL ETHICS: NATURAL LAW IN THE WESTERN WORLD* 214 (J.J. Doherty trans., 1949). Messner goes on to note that this relation between subsidiarity and the common good has important implications for the theory of the state:

The principle of subsidiarity function, however, certainly does not signify a weak state standing without authority face to face with a pluralistic society. On the contrary, the more strongly the character of society develops in its federative and corporative branches, both regional and occupational, in conjunction with a plurality of free associations based on economic group interests, the more clearly does the common good principle call for a state with strong authority which will enable it, in a *pluralistic* society with diversified competencies and interests, to carry out its essential functions: namely, to care for the common good and the general interest.