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Subsidiarity and a Free Society: The Subsidiary Role of the State in Catholic Social Teaching

Abstract

One of the key principles of Catholic social thought is known as the principle of subsidiarity. This tenet holds that nothing should be done by a larger and more complex organisation which can be done by a smaller and simpler organisation. Subsidiarity, understood in this sense, is opposed to forms of centralisation, bureaucratisation, and welfare assistance that deprive citizens of their own responsibility toward themselves, their families, and their societies. Rather, subsidiarity supports personal empowerment and responsibility as much as a proper balance between the public and private spheres, with the resulting recognition of the common good that is inherently achieved through the spontaneous interactions between free and responsible people. Hence, the subsidiarity principle is a bulwark of freedom and it conflicts with all forms of collectivism. It sets the limits for state action.

Subsidiarity and a Free Society: The Subsidiary Role of the State in Catholic Social Teaching

Augusto Zimmerman

“The Principle of Subsidiarity is opposed to all forms of collectivism.
It sets the limits for state action”.
–*Catechism of the Catholic Church*, par. 1885.

I. Introduction

Subsidiarity is among the most characteristic directives of the Catholic Church’s social doctrine. It has been present since the encyclical *Rerum Novarum* (1891) by Pope Leo XII. In general terms, the principle mandates that an obligation be imposed on higher governing orders to help or assist lower orders to flourish or accomplish what cannot do for themselves. Subsidiarity enhances the common good by securing the ‘dignity’ of self-directing agents that ought to be free from arbitrariness or undue manipulation by those who possess higher political or social powers. The principle stipulates that, in the use of its legitimate authority, the state ought to be limited by a practical view of the common good. Hence, subsidiarity is a principle that recognises the existence of certain aspects of human life that are naturally ordained by God, and that the state may not legitimately control or intervene.

II. Defining Subsidiarity

The word subsidiarity derives from the word subsidiary, which in turn has its roots in the Latin word *subsidium*. Subsidiarity means ‘help’ or ‘assistance,’ implying that a higher governing order has an obligation to help or assist individuals and lower social groups to flourish, not to swamp or absorb them. As such, the subsidiarity principle is among the most characteristic directives of the Catholic Church’s social doctrine. Indeed, subsidiarity not only has been present since Pope Leo XIII’s encyclical *Rerum Novarum* (1891), but it was enunciated by Pope Pius XI in 1931 as a core principle of Catholic social theory. In *Quadragesimo Anno*, Pius IX outlined the principle as follows:

Just as it is gravely wrong to withdraw from the individual and commit to the community at large what private enterprise and industry can accomplish, so, too, it is an injustice, a grave evil, and a disturbance of right order for a larger and greater organisation to arrogate to itself functions which can be performed efficiently by smaller and lower bodies. This is a fundamental principle of social philosophy, unshaken and unchangeable. Of its very nature the true aim of all social activity should be to help individual members of the social body, but never to destroy or absorb them.¹

¹ Pope Pius XI, *Quadragesimo Anno: Reconstructing the Social Order and Perfecting it Conformably to the Precepts of the Gospel in Commemoration of the Fortieth Anniversary of the Encyclical ‘Rerum Novarum’* (Australian Catholic Truth Society, 1931), 25. For a further discussion, see Robert K. Vischer, ‘Subsidiarity as a Principle of Governance: Beyond Devolution’ *Indiana Law Review* 34 (2001): 107–108. See also: Peter Widulski, “Bakke, Grutter, and the Principle of Subsidiarity” *Hastings Constitutional Law Quarterly* 32 (2005): 847.

The late Catholic political theorist Heinrich Rommen (1897-1967), discussing the relevant language of *Quadragesimo Anno*, explains that ‘the principle of subsidiarity applies . . . to the different natural or freely created communities in the social order. Social life is governed by the principles of autonomy, of hierarchy and intervention.’² With respect to the third principle, intervention, Rommen contends that ‘[t]he purpose of this intervention is the reconstruction of the order, the rehabilitation of the function, not the abolition of the part or the substitution of the state for the lower society.’³ The concept therefore, may be fairly described as a principle of competencies which derives its ontological traction from the fact that subsidiary function is an important aspect of the common good.

Subsidiarity is about providing moral and practical functions to the lower orders that are essential to a well-functioning community. It is also about placing rightful limits on governmental action. That being so, the opposite of subsidiarity is analogous to an organic state whereby a central government regulates and controls all aspects of our social life, thus hindering personal freedom and prosperity. Subsidiarity is a principle to which Benedict XVI returned time and again as he addressed a world that ever threatens to position the lone individual against the Leviathan state: ‘When those responsible for the public good attune themselves to the natural human desire for self-governance based on subsidiarity, they leave space for individual responsibility and initiative, but most importantly, they leave space for love (cf. *Rom* 13:8; *Deus Caritas Est*, 28), which always remains “the most excellent way” (cf. *1 Cor* 12:31).’⁴ In *Caritas et Veritate* (2009) Pope Benedict emphasised this particular view of subsidiarity as,

an expression of inalienable human freedom. Subsidiarity is first and foremost a form of assistance to the human person via the autonomy of intermediate bodies. Such assistance is offered when individual or groups are unable to accomplish something on their own, and it is always designed to achieve their emancipation, because it fosters freedom and participation through assumption of responsibility. Subsidiarity respects personal dignity by recognizing in the person a subject who is always capable of giving something to others. By considering reciprocity as the heart of what it is to be a human being, subsidiarity is the most effective antidote against any form of all-encompassing welfare state. It is able to take account both of the manifold articulation of plans – and therefore of the plurality of subjects – as well as the coordination of those plans. Hence the principle of subsidiarity is particularly well-suited to managing globalization and directing it towards authentic human development.⁵

III. Subsidiarity in the Writings of Thomas Aquinas

According to John Haldane, two ideas have come to be associated with the concept of natural law: ‘First, that of moral objectivity, as grounded in rationally discernible facts of nature, facts concerning what is good or evil for rational animals; and, second, that of ethical universality. Right or wrong in this account is not a matter of mere opinion or sentiment, nor

² Heinrich Rommen, *The State in Catholic Social Thought* (St. Louis/MO: Herder, 1947), 302-3.

³ *Ibid.*

⁴ Pope Benedict XVI, “Address of His Holiness Benedict XVI to the Participants in the 14th Session of the Pontifical Academic of Social Sciences”, Consistory Hall, Saturday, May 3, 2008, at http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/may/documents/hf_ben-xvi_spe_20080503_social-sciences_en.html

⁵ Pope Benedict XVI, Encyclical letter *Caritas in veritate* (2009) [57]

is it a relative or local matter like custom'.⁶ On the contrary, 'social customs and practices may be, and often are, judged by reference to universal moral norms such as those of 'natural justice'.⁷ These ideas 'can be found in the developed forms in various philosophical writings of the ancient Greeks, particularly those of Aristotle'.⁸

St Thomas Aquinas (1225-1274) provided a masterful integration of Christian theology and Aristotelian philosophy, which ultimately proved to be a catalyst for the birth of subsidiarity that, in time, would become a key principle of Catholic's social thought.⁹ As Haldane points out, '[a]nyone who knows anything about Aquinas knows that he effected an extraordinary synthesis between Aristotelian philosophy and Christian theology, and that he is honoured as one of the greatest thinkers of the Roman Catholic Church'.¹⁰ And yet, Aquinas was highly influenced by the philosophical writings of Aristotle not only in his understanding of natural law theory, but also his idea that human societies naturally progress from families, through villages to entire city-states. As noted by law professor Nicholas Aroney,

[Aquinas] recognised that what Aristotle said of city-states could be applied not only to cities but even more emphatically to political communities on the scale of provinces, kingdoms and (perhaps even) empires. ... [F]or Aquinas, the civil order was not the only 'perfect community' in Aristotle's sense: there was also the church in all of its many grades and jurisdictions, alongside the many different religious orders and fraternities of medieval Europe, some of them also organised into their own graded hierarchies. Reflecting on the complexity of the society surrounding him, Aquinas acknowledged the many and various purposes for which various associations and forms of human community exist and are formed, giving rise to a whole host of familial, geographical, professional, mercantile, scholarly and other specialised societies. All of these groups and groupings, from the smallest to the largest, have their place and their proper function, according to Aquinas, and each should to be allowed to make its unique and special contribution as a means to integral human fulfillment, without undue interference from any others, including the state.¹¹

The critical point for the birth of subsidiarity lay in a particular interpretation of Aristotle's political theory, and its adaptation to institutional pluralism – in particular a pluralistic view that human society naturally progresses from families, through to villages, and then the state.¹² It is often forgotten that nation states are, themselves, political associations. In Aristotle's conception, the *polis* is not only composed of households and villages, it is 'fundamentally comprised of individual citizens (*politai*), formed into a self-sufficing unity'¹³. A student of Plato's academy in Athens, Aristotle believed that humans are social

⁶ John Haldane, *Faithful Reason: Essays Catholic and Philosophical* (London/UK: Routledge, 2004), 130.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Nicholas Aroney, "Subsidiarity in the Writings of Aristotle and Aquinas", in *Global Perspectives on Subsidiarity*, eds. Michelle Evans and Augusto Zimmermann (Dordrecht: Springer, 2014), 15.

¹⁰ John Haldane, *Reasonable Faith* (London/UK: Routledge, 2010), 19.

¹¹ Aroney, "Subsidiarity in the Writings of Aristotle and Aquinas", 9.

¹² *Ibid.*, 9.

¹³ Aroney, "Subsidiarity in the Writings of Aristotle and Aquinas", p 14, quoting Aristotle (*Politics*, III.1). See H. Jaffa, 'Aristotle', in *History of Political Philosophy*, eds. L. Strauss and J. Cropsey (2nd ed., Chicago/IL: University of Chicago Press, 1972), 94-96, and compare Plato, *Republic*, II, 369a-c. On the composition of the *polis* in terms of households and villages as well as individuals, see William L. Newman, *Politics of Aristotle*,

beings (or ‘political animals’, as he put it) by nature, and that the family is an association established by nature for the supply of daily needs. However, when people aim at something bigger than the supply of their daily needs, they unite themselves in villages and eventually in the state.¹⁴ Aristotle conceived the state as a natural development of our social impulses. In this view, people exist as ‘social animals’. With no social organisation the individual is nothing, since progress in human life is only possible through ‘participation in a society of like-minded people’.¹⁵ Aristotle denied that the *polis* (i.e., the state) should properly replace or supplant the smaller associations of which it is ultimately composed. Because he opposed the ‘unification’ of the *polis*, the Platonic idea that the highest unity of the state is the highest good was automatically rejected. Instead, Aristotle noticed that a plurality of societies is ultimately desirable, and so the *polis* should not displace these smaller associations, including the household. The state, the village and the household are all species of a broader community, even though the state is uniquely the higher order of community and, of which, the lesser communities are but ‘parts’.¹⁶

The underlining assumption in such a philosophical thinking is a conception of the state as essentially a composition of citizens and smaller associations. These citizens are ultimately ruled by a unified form of government, notwithstanding the presence of intermediate groups contributing to the overall social-economic life of society.¹⁷ To be sure, Aristotle’s view was not subsidiary. He notoriously advocated the uniform education of children, as a function to be properly exercised by the state, not the household. What is more, much of his analysis of the *polis* treats it as being comprised of citizens who are not entirely free but considerably subordinated to the supreme authority of the state.¹⁸

Compared to Aristotle’s, Aquinas’s view of the state is much closer to a subsidiarity role. Aquinas is the paradigm Catholic theorist whose theological approach still underpins the official doctrine of the Church, especially on the doctrine of natural law. In Aquinas’s *Summa Theologica* one finds a penetrating discussion regarding the concept of law within a broader discussion of natural-law philosophy as well as the overall design of the Creator for the universe.¹⁹ According to Aquinas, the first and foremost principle of law is that ‘good is to be done and pursued, and evil is to be avoided. All other precepts are based on this’.²⁰ Whatever practical reason apprehends something to be ‘good’, this belongs to the precept that something must be done or at least to not be avoided.²¹ The opposite shall be true so that, in their essentials, the precepts of natural law are unchangeable.²² The validity of human law is therefore dependent on the levels of justice determined by the universal principle that ‘which is not just seems to be no law at all’. Because ‘the force of a law depends on the extent of its justice ... [i]n human affairs’, Aquinas stated,

... a thing is said to be just, from being right, according to the rule of reason. But the first rule of reason is the law of nature ... Consequently, every human law has just so

Vol. II (Hansebooks, 2016), 111 and 114; see also: William L. Newman, *Politics of Aristotle*, Vol. III (Hansebooks, 2016), 130, 132, and 208.

¹⁴ Edwin W. Patterson, *Jurisprudence: Men and Ideas of the Law* (Brooklyn/NY, The Foundation Press, 1953), 338–39.

¹⁵ J. H. Abraham, *Origins and Growth of Sociology* (London/UK: Penguin, 1973), 25.

¹⁶ Aristotle, *Politics*, I,2, 125B15-16, 27-30, 125a15-18.

¹⁷ Aroney, “Subsidiarity in the Writings of Aristotle and Aquinas”, 9.

¹⁸ *Ibid.*, 9.

¹⁹ Thomas Aquinas, *Summa Theologica*, I, II, Q 93, art 3.

²⁰ Patterson, *Jurisprudence: Men and Ideas of the Law*, 348.

²¹ Charles E. Rice, *50 Questions on the Natural Law in a Post-Christian Age* (San Francisco/CA: Ignatius Press, 1999), 52.

²² Aquinas, *Summa Theologica*, 72, I, II, Q 94, art 5.

much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of the law.²³

Aquinas is said to promote a synthesis of Aristotelian thought. This leads him to a theology of social development based on an account of the ‘smaller associations’, with each of these associations pursuing legitimate and self-sufficient ends. Aquinas sees the ‘smaller associations’ having their own proper degree of separateness and independence from one another. He also sees a considerable degree of integration and interdependence of such associations with the larger communities, particularly the state. There is an undeniable appreciation of intermediary groups and its grades and jurisdictions. Some of them are organised into their own graded hierarchies. These associations, from the smallest to the largest, must be allowed by the state to make unique and special contributions as a means to achieve human fulfilment. According to Aroney, ‘[t]his idea of a plurality of communities of a political, ecclesiastical, social and economic nature, themselves composed of smaller constituent communities, readily suggested the idea of an elective, corporate representation of the smaller community in the governing institutions of the larger.’²⁴ By proclaiming the supremacy of natural law over positive laws, some elements in Aquinas’s theory points to a classical liberal concept of limited government. As Professor Aroney points out, Aquinas favoured constitutional monarchical rule over authoritarian government:

He was acutely conscious of the propensity of kings to fall into tyranny, and he suggested several ways in which the authority of the king ought to be tempered, including the formation of compacts (*pacta*) which place constitutional limits on his power, mechanisms by which a tyrannical king can be deposed and systems of ‘mixed government’ which enable all to have a ‘share’ in ruling’.²⁵

Based on this view, it would be contrary to the character of good governance for the civil authority ‘to impede people from acting according to their responsibilities – except in emergencies’.²⁶ Aquinas reminds us that one of the hallmarks of political tyranny to completely undermine all forms of solidarity among the people, thus preventing them from joining in the various compacts and associations whereby the ties of friendship and trust can be established.²⁷ Therefore, as Aquinas put it, ‘once the king is established, the government of the kingdom must be so arranged that opportunity to tyrannize be removed. At the same time his power should be so tempered that he cannot easily fall into tyranny’.²⁸ For Aquinas, ‘man is bound to obey secular princes in so far as this is required by the order of justice. Wherefore if the prince’s authority is not just but usurped, or if he commands what is unjust, his subjects are not bound to obey him, except perhaps accidentally in order to avoid scandal or danger’.²⁹ Ultimately, Aquinas stated:

If it is a people’s right to provide itself with a king, and if that king tyrannically abuses the royal power, there is no injustice if the community deposes or checks him whom they have raised to the kingship, nor can it be charged with a breach of faith for abandoning a tyrant, even if the people had previously bound themselves to him in perpetuity; because, by not faithfully conducting himself in government as the royal

²³ Ibid., Q 95.

²⁴ Aroney, “Subsidiarity in the Writings of Aristotle and Aquinas”, 22.

²⁵ Thomas Aquinas, *De Regimine Principum* I.7.1-12 [41-52]; *Summa Theologica*, I-II, 95.4 and 105.1

²⁶ Aroney, “Subsidiarity in the Writings of Aristotle and Aquinas”, 25.

²⁷ Ibid., 23.

²⁸ Aquinas, *De Regimine Principum*, Bk I, Ch 2.

²⁹ Aquinas, *Summa Theologica*, II, II, Q 104, art 6.

office demands, he has brought it on himself if his subjects renounce their bargain with him.³⁰

Above all, the principles of good governance supported by Aquinas are: the supremacy of legislature over the judiciary; the independence of the judiciary from any form of political pressure; and the reliance of judges on fixed rules and principles. These, according to him, are institutional arrangements aiming at the protection of natural rights.³¹ Above all, wrote the American Catholic jurist, Charles Rice, ‘Aquinas’ analysis is a prescription for limited government, providing a rational basis on which to affirm that there are limits to what the state can rightly do. His insistence that the power of the human law be limited implies a [natural] right of the person not to be subjected to an unjust law’.³² In this political-philosophical perspective, Russell Kirk commented:

natural laws and natural rights and duties all are part of a divine plan for human destiny. They are the laws and rights and duties that arise from the enduring nature that God has given to human beings. The Christian believes that human nature does not change: the character of man in this world always will be what is now, to the end of time – a mixture of good and evil. Therefore these natural rights and duties always will endure. It is better for a man to die than to surrender his natural rights to ignore his natural duties. And this Christian concept of right and duties lie at the foundation of American society and government.³³

IV. Subsidiarity and the Common Good

In Catholic doctrine social justice is the demand that the common good be realised through societies, institutions, and groups. This social doctrine, wrote Pope John Paul II, ‘belongs to the field, not of ideology, but of theology and particularly of moral theology’.³⁴ In this context, ‘subsidiarity is a principle derivative of social justice, according to which each member of society is capacitated to perform its social role for the common good’.³⁵ Above all, this is a principle of non-absorption of lower societies by higher societies, and above all by the state. Instead, subsidiarity demands that when aid is given to individuals or societies, it be for the purpose of encouraging and strengthening them.

When naming subsidiarity in *Quadragesimo*, Pius described it as a ‘most weighty’ (*gravissimum*) principle of Catholic social doctrine. The Pope also declared it to be a ‘fixed’ (*fixum*) and ‘unshakable’ (*immutumque*) principle of the Church. As noted by Patrick McKinley Brennan, the Catholic Church regards subsidiarity ‘not as a “policy” or a mere political preference, but instead as one among the unchangeable ontological principles of the socio-political order’.³⁶ According to this eminent Catholic legal philosopher, subsidiarity enjoys both positive and negative aspects:

Negatively, it is a principle of non-absorption of lower societies by higher societies, above all by the state. This is the aspect of subsidiarity that is commonly invoked today,

³⁰ Aquinas, *De Regimine Principum*, Bk 1, Ch 6.

³¹ Patterson, *Jurisprudence: Men and Ideas of the Law*, 350.

³² Charles E. Rice, *50 Questions on the Natural Law: What It Is and Why We Need It* (San Francisco/CA: Ignatius Press, 1999), 85.

³³ Russell Kirk, *The American Cause* (Wilmington/DE: ISI Books, 2014), 27.

³⁴ Pope John Paul II, Encyclical letter *Sollicitudo rei socialis* (1987) [41] - emphasis original.

³⁵ Patrick McKinley Brennan, “Subsidiarity in the Tradition of Catholic Social Doctrine”, in *Global Perspectives on Subsidiarity*, Michelle Evans and Augusto Zimmermann (eds.) (Dordrecht: Springer, 2014), 37.

³⁶ *Ibid.* 31.

but it represents only half the story. Positively, subsidiarity is also the principle that when aid is given to a particular society, including by the state, it be for the purpose of encouraging and strengthening that society.³⁷

The way subsidiarity functions implies that the goal of achieving the common good does not confer the state any right or authority over what the human person or the communities (family, church, schools, etc.) can do by their own power. The idea creates no right for the state beyond its proper limits, emphasising that subsidiarity ‘is inherent in the nature of the common good’.³⁸ Basically, wrote the celebrated Austrian theologian and social theorist, Johannes Messner (1891-1984),

the common good principle and the subsidiarity principle are one ... The common good confers powers and at the same time limits them: it empowers them to do everything necessary for its actual realization, but *only* that. The common good principle and the principle of subsidiarity function are two sides of one and the same thing. Thus it was that Pius XI, when he coined the term “subsidiarity function” called it the “fundamental principle of social philosophy” ... while Leo XIII described the common good principle as “after God, the first and last law in society.”³⁹

More recently, in *Centesimus Annus* (1991) John Paul II stated that human nature ‘is not completely fulfilled in the State, but is realised in various intermediary groups, beginning with the family, including economic, social, political and cultural groups which stem from human nature itself and have their own autonomy’.⁴⁰ Subsidiarity means help or assistance, meaning that higher orders can intervene in the affairs of lower orders insofar as such an intervention generates ‘auxiliary aids’ and never ‘permanent substitutes’. John Paul II goes on to remind that the ‘malfunctions and defects’ of the so-called ‘Welfare State’ are the direct result of an ‘inadequate understanding of the tasks proper to the state’.⁴¹ And it is precisely for this reason, wrote John Paul II,

[that] the principle of subsidiarity must be respect[ed] [so that] 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, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good. ... In fact, it would appear that needs are best understood and satisfied by people who are closest to them and who act as neighbours to those in need.⁴²

In keeping with the spirit of the ethnological roots of the word, subsidiarity opposes centralising, bureaucratising forms of mass welfare assistance by the state, which deprive citizens of personal responsibility toward themselves, their families, and their societies. Subsidiarity thus recognises that the best way to achieve the common good is through the spontaneous interactions between free and responsible citizens. Subsidiarity, therefore, is a bulwark of limited government, advocating that ‘intermediate social entities can properly perform the functions that fall to them without being required to hand them over unjustly to

³⁷ Ibid. 35.

³⁸ Johannes Messner, *Social Ethics in the Natural Law Tradition* (St Louis/MO: Herder Books Co. 1965), 210.

³⁹ Ibid., 214.

⁴⁰ Pope John Paul II, Encyclical letter *Centesimus Annus* (1991) [13].

⁴¹ Ibid [48].

⁴² Ibid.

other social entities of a higher level, by which they would end up being absorbed and substituted, in the end seeing themselves denied their dignity and essential place'.⁴³

V. Solidarity, Subsidiarity, and the Common Good

The functions of morally upright associations exemplify the right of dominion and command within their respective spheres of autonomy. As Pius XI stated, subsidiarity functions as a concrete principle, not merely a formal principle. It has content, not just form: it 'declares a quite definite distribution of competencies based on the order of being and of ends.'⁴⁴ According to Brennan, 'although subsidiarity does not create a social ontology, it discerns and announces the one ordained by the common good. ... It is these genuine authorities, of course, that Leviathan in all of its successive instantiations wished to vaporize, and the principle of subsidiary function responds by observing that the vigor and vitality of such authorities are required by the common good'.⁴⁵ Thus Brennan also reminds us that the value of subsidiarity protects the *intrinsic*, and not merely instrumental, value of associating. Catholic social doctrine frequently refers to this as 'solidarity':

Solidarity highlights in a particular way the intrinsic social nature of the human person. ... Solidarity must be seen above all in its value as a moral virtue that determines the order of institutions. ... Solidarity is also an authentic moral virtue ... a firm and persevering determination to commit oneself to the common good. ... Solidarity rises to the rank of fundamental social virtue since it places itself in the sphere of justice. It is a virtue directed *par excellence* to the common good.⁴⁶

Like the 'lesser' communities from which they are built, 'greater' communities are also defined by the 'bonds of interdependence' – or duties – that arise from the human relationships that create them⁴⁷. Thus, as stated by Pius XI in *Quadragesimo Anno* (1931), while 'the principle [of subsidiarity] operates within a graduated order in which the larger and higher is superior in authority, and the state is supreme among all', the *measure* of duty at each level is defined by the 'bonds of interdependence' that defines its character as a community: 'For every social activity ought of its very nature to furnish help [*subsidium*] to the members of the body social'⁴⁸. Robert Cover's masterful exploration of the *Halakhic* (Jewish law) concept of *mitzvah*⁴⁹ is especially illuminating here:

When I am asked to reflect upon Judaism and human rights ... the first thought that comes to mind is that the categories are wrong. I do not mean, of course, that basic ideas of human dignity and worth are not powerfully expressed in the Jewish legal and literary traditions. Rather, I mean that because it is a legal tradition Judaism has its own categories for expressing through law the worth and dignity of

⁴³ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* (London/UK: Burns & Oates, 2005), 94.

⁴⁴ Messner, *Social Ethics in the Natural Law Tradition*, 210

⁴⁵ Brennan, "Subsidiarity in the Tradition of Catholic Social Doctrine", 40.

⁴⁶ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, 98-9 (emphasis and internal quotations omitted).

⁴⁷ *Ibid.*, 98.

⁴⁸ Pope Pius XI, *Quadragesimo Anno: Encyclical Letter on Reconstruction of Social Order* (May 15, 1931) [79] (emphasis added).

⁴⁹ There are three types of *mitzvot*: 1) *mitzvot d'oraita* (Aramaic: "from the Torah"); 2) *ormitzvot d'rabbanan* (Aramaic for "from the rabbis"); and 3) a *mitzvah* that arises from custom (a *minhag*). In common parlance, the term "mitzvah" can also refer to any good deed. See Halakha (הלכה) in *Judaism 101* at <http://www.jewfaq.org/halakhah.htm> (last accessed December 14, 2018).

each human being. And the categories are not closely analogous to “human rights.” The principal word in Jewish law, which occupies a place equivalent in evocative force to the American legal system’s “rights”, is the word “mitzvah” which literally means commandment but has a general meaning closer to “incumbent obligation.”⁵⁰

Due to these ‘bounds of interdependence’ among all human beings, the foundation of ‘lesser’ communities – families, tribes, unions, towns, cities, churches, etc. – are the crucibles in which the moral norms of the nations that coalesce around them are elaborated and refined. Because these moral norms organize the behavior of individuals and associations within these foundation communities, they must be viewed as an integral aspect of the original rights of self-governance with which any robust concept of subsidiarity – or of human rights – must be concerned. Recounting at length the ways in which the modern, central state has moved relentlessly to supplant the types of private charity that flourish in local communities with a state-controlled, welfare bureaucracy that grows at the expense of a dynamic exchange economy, Rev Robert Sirico explains that ‘the largest danger of all’ is the moral hazard associated with increasing dependence on the state.⁵¹

The incumbent obligations arising from these bonds of interdependence define the nature and character of these communities. From the most fundamental and personal of these bonds, we deduce the incumbent obligations of spouses, parents, children, and extended families. As we broaden the scope of social relationships from family to tribe; to neighborhood; to guild and voluntary association; to city, state, province, and nation-state, we can see quite clearly why, as Jonathan Chaplin explains, ‘the exercise of a subsidiary function is itself an act of solidarity’.⁵² According to Brennan,

Solidarity is never just one thing, but rather the varied ensemble of firm dispositions that serve the common good by a unity of action for the ends of particular, upright societies. The meaning of subsidiarity, and solidarity, in Catholic social doctrine turns on what we mean by society. Subsidiarity require that the sociality of human beings be preserved and harmonized, and no argument to benefits external to a particular society itself will prevail, unless there be moral reason to dissolve the society.⁵³

It follows that unless we have a clear understanding of the ‘incumbent obligations’ assigned to each of the more broadly-based (‘greater’) communities, it will be impossible to elaborate, much less to operationalize, the fuller conception of subsidiarity: ‘[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, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good’.⁵⁴ And yet, as Yves Simon points out, ‘[m]ere partnership does not do anything to put an end to the solitude of the partners,’⁵⁵ but in a true society, by contrast, ‘corporate unity is one of the

⁵⁰ Robert M. Cover, “Obligation: A Jewish Jurisprudence of the Social Order”, *Journal of Law & Religion* 5 (1987): 65.

⁵¹ Rev Robert A. Sirico, “Subsidiarity and the Reform of the Welfare of the Nation State”, in *Global Perspectives on Subsidiarity*, eds. Michelle Evans and Augusto Zimmermann (Dordrecht: Springer, 2014), 120

⁵² Jonathan Chaplin, “Subsidiarity and Social Pluralism”, in *Global Perspectives on Subsidiarity*, eds. Michelle Evans and Augusto Zimmermann (Dordrecht: Springer, 2014), 75.

⁵³ Brennan, “Subsidiarity in the Tradition of Catholic Social Doctrine”, 42.

⁵⁴ Pope John Paul II, *Centesimus Annus* (1991) [48].

⁵⁵ Yves R. Simon, *Philosophy of Democratic Government* (South Bend/IN: University of Notre Dame Press, 1993), 64

reasons for action. Someone leaving a partnership can export his share; the common good of a society, however, cannot be divided, only shared and participated'. In sum, societies are the perfecting opportunities for naturally social beings to cause good in others, including through the supernatural assistance of grace.

VI. Subsidiary Role of the State

Christians cannot discuss the proper role of the state without first acknowledging that every properly governing order is a divinely ordained structure with multiple tiers of governance that God established for the benefit of humanity. The reason for such a plurality is simply that God wishes everyone to be free.⁵⁶ Since such a plurality provides checks and balances against the abuse of governmental power,⁵⁷ tyranny occurs whenever the state goes outside its proper sphere by ignoring what can be done by the lesser circles of power. Emblematic of such an approach is the articulation of a political theory whereby societies are allowed to progress naturally from families through to villages, and, finally, to the state.

The apprehension is that the state is not the only 'community'; there are also the family, the church, and numerous other social orders and fraternities.⁵⁸ This plurality consists of different spheres of government, each of them having its own limits of responsibility and jurisdiction. When applied in the context of a federal system, for example, 'subsidiarity provides that functions should, where practical, be vested in the lowest level of government to ensure that their exercise is as close to the people as possible and reflects community preferences and local conditions'.⁵⁹ In other words, one should leave to the federal government only what the local government cannot do in a better or similar way.

Of course, subsidiarity is not a blanket call to strengthen the local power. There might be things that only the central government can do. However, every government has only limited responsibilities and we should expect it to accomplish only limited tasks. Besides, as we know so very well from history, power tends to corrupt and, as Lord Acton famously stated, '[p]ower tends to corrupt, and absolutely power corrupts absolutely'.⁶⁰ Thus a government that disperses power is better than one that gathers power into the hands of just a few. Accordingly, subsidiarity is focused on the auxiliary role of government, implying that the orders with greatest proximity to the citizen should be prioritized. Implicit in the idea is the assumption that the local power can perform its activities and services just as efficiently as a more distant tier of government, if not more so. As noted by law professor Anne Twomey,

⁵⁶ There is a profound difference between authentic freedom and license to do whatever one pleases. When life is subject to no personal restraint, freedom becomes a mere licence to do as one pleases. Ultimately, freedom conceived as a mere license leads to anarchy, and anarchy manifests itself in political tyranny. *See*: John H. Halliwell, *The Moral Foundations of Democracy* (Indianapolis/IN: Liberty Fund, 2007), 102. Such a distinction was acknowledged by John Locke. In Lockean terminology, by 'liberty' one means those personal freedoms that every individual ought to possess in accordance with objective and universal principles of the natural law. 'License', by contrast, Locke refers to the "freedoms" or licences that people actually ought to not possess because they are anti-social or licentious – such behaviours must be lawfully constrained by every legitimate government. *See*: Randy E Barnett, *The Structure of Liberty: Justice and The Rule of Law* (New York/NY: Oxford University Press, 1998), 2.

⁵⁷ Geoffrey de Q Walker, *Ten Advantages of a Federal Constitution* (Sydney/NSW: Centre for Independent Studies, 2001) 37.

⁵⁸ Aroney, "Subsidiarity in the Writings of Aristotle and Aquinas", p 13.

⁵⁹ Anne Twomey, "Reforming Australia's Federal System" *Federal Law Review* 36 (2008): 59.

⁶⁰ Lord Acton (John Emerich Edward Dalberg), "Letter to Archbishop Mandell Creighton" April 5, 1887, <https://history.hanover.edu/courses/excerpts/165acton.html>

subsidiarity provides that functions should, where practical, be vested in the lowest level of government to ensure that their exercise is as close to the people as possible and reflects community preferences and local conditions ... The principle of subsidiarity places the onus on those who seek to place a function with a higher level of government to make the case for it.⁶¹

VII. Government Responsibilities

Catholic social teaching sees social justice as a primary reason for the existence of civil government. Justice has been traditionally defined as rendering to each one what is due according to a right standard. This definition has been epitomised in the Latin motto *sum cuique*, which was popularised by Cicero (106-143 BC) in *De Nature Deorum* (“*iustitia suum cuique distribuit*” – *justice renders to everyone his due*) and later codified in the *Corpus Juris Civilis* – a collection of fundamental works in jurisprudence, issued from 529 to 534 by order of Justinian I, Eastern Roman Emperor. Cicero believed that real justice transcends human expediency because it derives from ‘the same Law, eternal and unchangeable’ enacted by God, who is ‘its designer, expounder and enactor’ and ‘the universal ruler and governor of all things’.⁶² Accordingly, the right standard for justice is found to be derived from principles of the natural law, which is based on the character of a just and benevolent Creator. This basic standard insists, among other things, that the innocent shall be protected from evildoers—rapists, murderers, child molesters, thieves, sex traffickers, dishonest tax collectors, adulterers, etc. In this context, Cicero famously declared:

The most foolish notion of all is the belief that everything is just which is found in the customs or laws of nations. Would that be true, even if those laws had been enacted by tyrants? ... [or if a law is imposed] that a dictator might put to death with impunity any citizen he wished, even without a trial. For Justice is one; it binds all human society, and is based on one Law, which is right reason applied to command and prohibition ... If the principles of justice were found on the decrees of people, the edicts of principles, or the decisions of judges, then justice would sanction robbery and adultery and forgery of wills, in case these acts were approved by the votes or decrees of the populace.⁶³

The state, as such, has only a limited power. Its ultimate mandate is to preserve the freedom of the lower social orders (the family, church, etc.) to more properly exercise their roles. Of course, trusting too much in what the state can do may result in abuse of power. The moral costs of statism, or excessive governmental intervention, are perhaps in no other field more visible than in the field of family policy. Although the family serves as a primary means of acculturation and transmission of values from generation to generation, family ties in today’s societies are so weak that fewer people think they ought to help their family members. As a result, people in distress no longer expect to obtain much help this way.⁶⁴ Rather than addressing these problems, public policy seems to have further destabilised the family with disastrous consequences.⁶⁵

⁶¹ Ibid., 59.

⁶² Marcus Tullius Cicero, *De Legibus*, 1.6.18-19. Quoted from Augusto Zimmermann, *Western Legal Theory: History, Concepts and Perspectives* (Chatswood/NSW: LexisNexis Butterworths, 2013), 7.

⁶³ Ibid., I.15.42 and I.16.43–4.

⁶⁴ H.B. Acton, *The Morals of Markets and Related Essays* (Indianapolis/IN: Liberty Fund, 1993), 81–2.

⁶⁵ Sirico, “Subsidiarity and the Reform of the Welfare of the Nation State”, p 116.

The last few decades have seen the dramatic proliferation of laws allowing the unilateral dissolution of the marriage contract. By making divorce easily available and purely personal, the state has ultimately transformed marriage into a legal absurdity that denies the doctrine of accountability and holds no inducements to personal misconduct. Since we are all sinners by nature, these inducements inevitably provide a strong temptation for selfish and unethical behaviour. Whenever and wherever the family breaks down, of course, the state must step in as a substitute for the dysfunctional family. Hence the gradual increase of the state's jurisdiction over the family and its individual members.⁶⁶

In Australia, the divorce rates started to climb from the mid-1960s and rose very sharply following the introduction of the *Family Law Act 1975* (Cth) that introduced “no-fault” divorce. There are tremendous social costs all around when marriages break up. First, divorce increases economic vulnerability of adults and children, reducing many of them to poverty and deprivation.⁶⁷ As noted by Dr Matthew Bambling, a relationship expert and senior lecturer in medicine at the University of Queensland, although divorce is a primary source of poverty in Australia, easily available divorce also means that ‘people may be required to rely in greater part on the social welfare system, [and] there is the potential for court costs borne through the government-funded system’.⁶⁸ These family breakdowns presently cost the Australian economy more than \$14 billion a year, with each Australian taxpayer paying about \$1,100 a year to support families in crisis.⁶⁹ Above all, writes law professor Patrick Parkinson, ‘fragile families lead to broken hearts. They also threaten the wellbeing of the community as a whole. Turning this around will require a herculean effort, but we cannot afford not to make the attempt’.⁷⁰

By allowing the marriage contract to be easily breached without proper legal consequences, the state undermined the value we traditionally place on marriage to the detriment of society as a whole. And yet, it is relevant also to consider how the philosophy of state interventionism appears to create a profound distortion of the natural order of liberty, which ultimately affects both private initiative and individual responsibility. This is one of the reasons as to why the *Catechism of the Catholic Church* explicitly determines that ‘respect for subsidiarity’ must set ‘the limits for state intervention.’⁷¹ Ultimately, wrote John Paul II in *Centesimus Annus* (1991), ‘the malfunctions and defects in the Social Assistance State are the result of an inadequate understanding of the tasks proper to the State.’⁷² This understanding was reinforced by Benedict XVI in his first papal encyclical, *Deus Caritas Est* (2005):

⁶⁶ See: Christopher Brohier and Augusto Zimmermann, “Avoiding Unnecessary Divorce and Restoring Justice in Marital Separation”, *The Western Australian Jurist* 6 (2015): 173-194.

⁶⁷ See, for example, P J Smock, W D Manning and S Gupta, “The Effect of Marriage and Divorce on Women’s Economic Well-Being”, *American Sociological Review* 64, no.6, (1999): 794. See also: R Finie, “Women, Men and the Economic Consequences of Divorce: Evidence from Canadian Longitudinal Data”, *Canadian Review of Sociology and Anthropology* 30, no.2 (1993): 205; T A Mauldin, “Women Who Remain Above the Poverty Level in Divorce: Implications for Family Policy” *Family Relations* 39, no.2 (1990), 141.

⁶⁸ Lauren Wilson and Lisa Cornish, ‘Divorce is Costing the Australian Economy \$14 Billion a Year’, *The Australian*, July 6, 2014, at <<http://www.theaustralian.com.au/news/divorce-is-costing-the-australian-economy-14-billion-a-year/story-e6frg6n6-1226979027353?nk=1db67301adc56c5b7c22cb13b14ae7a5>>.

⁶⁹ Ibid.

⁷⁰ Patrick Parkinson, ‘Another Inconvenient Truth: Fragile Families and the Looming Financial Crisis for the Welfare State’, *Sydney Law School Legal Studies*, Research Paper Number 12, 5 February 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992740>.

⁷¹ See: Peter Widulski, “Bakke, Grutter, and the Principle of Subsidiarity”, *Hastings Constitutional Law Quarterly* 32 (2005): 855.

⁷² Pope John Paul II, *Centesimus Annus* (1991) [48].

There is no ordering of the State so just that it can eliminate the need for a service of love. Whoever wants to eliminate love is preparing to eliminate man as such. There will always be suffering which cries out for consolation and help. There will always be loneliness. There will always be situations of material need where help in the form of concrete love of neighbor is indispensable. The State which would provide everything, absorbing everything into itself, would ultimately become a mere bureaucracy incapable of guaranteeing the very thing which the suffering person – every person – needs: namely, loving personal concern.⁷³

The state is made not only of people but of societies formed by them. This plurality of orders consist of different realms of governance, each having its proper limits of responsibility and jurisdiction. The first form of government is personal self-government, which is based on the autonomy of people guided by the natural law of liberty. The family is the next instance of government naturally instituted by God. The family is the first government in the life of the child. Finally, there is the state as a political society ordained by God to maintain a right and just environment where freedom and justice can flourish. In this context, St Paul wrote in his Epistle to the Romans that the civil authority must be a cause of fear not to those who do good, but rather to those who practice evil: ‘For government is God's servant working for your good. But if you do what is wrong, you should be afraid. The government does not bear the sword for no reason. It is God's servant, an avenger to execute God's anger on anyone who does what is wrong.’ (Romans 13:4)

The Catholic Church sees government as an institution established by God (Genesis 9:6; Romans 13). God ordained the state to practice justice. As long as government serves the ultimate purpose for which it was established, St Peter instructs: ‘*Submit you for the Lord's sake to every authority instituted among men, whether to the king, as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right*’. (1 Peter 2:13–14). Accordingly, subsidiarity is about establishing the limits for state action, with all the most recent Popes manifesting their clear opposition to excessive governmental intervention. Benedict XVI, for example, was deeply concerned about the moral consequences of an all-powerful state ‘which regulates and controls everything’. Subsidiarity, Benedict stated,

insofar as it encourages men and women to enter freely into life-giving relationships with those to whom they are most closely connected and upon whom they most immediately depend, and demands of higher authorities respect for these relationships – manifests a "vertical" dimension pointing towards the Creator of the social order (cf. *Rom* 12:16, 18). A society that honours the principle of subsidiarity liberates people from a sense of despondency and hopelessness, granting them the freedom to engage with one another in the spheres of commerce, politics and culture (cf. *Quadragesimo Anno*, 80). When those responsible for the public good attune themselves to the natural human desire for self-governance based on subsidiarity, they leave space for individual responsibility and initiative, but most importantly, they leave space for love (cf. *Rom* 13:8; *Deus Caritas Est*, 28), which always remains "the most excellent way" (cf. *1 Cor* 12:31).⁷⁴

⁷³ Pope Benedict XVI, *Deus Caritas Est* (2005) [28(b)].

⁷⁴ Pope Benedict XVI, “Address of His Holiness Benedict XVI to the Participants in the 14th Session of the Pontifical Academy of Social Sciences”, Consistory Hall, Vatican State, May 3, 2008, http://w2.vatican.va/content/benedict-xvi/en/speeches/2008/may/documents/hf_ben-xvi_spe_20080503_social-sciences.html

By constantly interfering in the autonomy of peoples and societies, the state lacks the capacity to fulfil their most essential functions properly. It will soon be sapped of its own strength or, alternatively, become totalitarian as it succumbs to the temptation to intervene not to restore the socio-political order, but to colonise it.⁷⁵ Jacques Maritain (1882-1973), arguably the most influential Thomist of the twentieth-century, once observed that the state is made up not only of people, ‘but particular societies formed by them, and a pluralist body politic would allow to these societies the greatest autonomy possible and would diversify its own internal structure in what is typically required by their nature’.⁷⁶ In this context, the principle of subsidiarity falsifies the proposition so disastrously implemented by the French revolutionaries of 1789: ‘It is of necessity that no partial society should exist in the state’.⁷⁷ On the contrary, ‘societies are the perfecting opportunities for naturally social beings to cause good in others, including through the supernatural assistance of grace’.⁷⁸ As stressed by Benedict XVI in *Deus Caritas Est* (2005):

We do not need a State which regulates and controls everything, but a State which, in accordance with the principle of subsidiarity, generously acknowledges and supports initiatives arising from the different social forces and combines spontaneity with closeness to those in need. The Church is one of those living forces: she is alive with the love enkindled by the Spirit of Christ. This love do not simply offer people material help, but refreshment and care for their souls, something which often is even more necessary than material support.⁷⁹

Statism can offer no promise of salvation, except through the hope that a powerful state will perfect both the social environment and us. Statism appear therefore to assume that ultimate salvation can only be achieved collectively. Such a utopian belief in humanity’s perfectibility, and the perfectibility of the social environment, is based on a profound misconception of human nature. By contrast, Catholic social theory emphasizes that every person is worthy of inalienable rights and responsibilities. This is a theme to which Benedict XVI returned time and again as he addressed a world that ever threatened the lonely individual against the all-powerful state.

VIII. Consequences of Excessive State Intervention

Subsidiarity must be understood as a principle of authentic help or assistance. Since it means help or assistance, subsidiarity sets the proper limits for state action, implying that higher orders can intervene in the affairs of lower orders only as auxiliary aids and never as permanent substitutes. Subsidiarity indicates that state intervention in the internal decision-making of private associations is legitimate only insofar as it is designed to protect the rights that the members of the association *have given themselves* to participate in its self-governance. Because communities are natural outgrowths of human activity, they, like the individuals who form them, possess, by ‘nature’, original rights of self-governance. That being so, subsidiarity as a principle cannot be unduly limited by a spatial metaphor or a general norm of decentralization. Rather, as noted by Chaplin, it should be understood as a

⁷⁵ Brennan, “Subsidiarity in the Tradition of Catholic Social Doctrine”, 40.

⁷⁶ Jacques Maritain, ‘Integral Humanism’ (1935) in O. Bird (ed.), *Integral Humanism, Freedom in the Modern World, and a Letter of Independence – The Collected Works of Jacques Maritain*, - Vol.11, (South Bend/IN: University of Notre Dame Press, 1996), p 256.

⁷⁷ Brennan, “Subsidiarity in the Tradition of Catholic Social Doctrine”, 43.

⁷⁸ Ibid.

⁷⁹ Pope Benedict XVI, *Deus Caritas Est* (2005) [28(b)].

natural outgrowth of the social and cultural pluralism that arises when ‘lesser communities originate from the inclinations of human nature’.⁸⁰

This is about identifying the moral (and practical) functions to be exercised by the lower orders, which are essential to the well-functioning of a free society of responsible individuals. Unfortunately, however, many people are inclined today to look on government aid as a ‘right’ and thus to regard themselves as entitled to every form of state assistance. This prevents them from contemplating their own self-worth and, accordingly, from making attempts to preserve their own self-respect. After describing the moral implications of the ‘modern central state’, Fr Robert Sirico commented:

The welfare state pursues its tasks in terms of a moral code increasingly alien from traditional Christian tenets. For example, the very concept of a welfare ‘entitlement’ runs contrary to the scriptural understanding of aiding the poor: helping others is a moral duty that springs from spiritual commitment and is not essentially exercised through coercion or government mandates. The modern, central state has proven itself incapable of distinguishing between the deserving and the underserving poor, and between aid that fosters independence and moral development from that which reinforces a dependency mindset and moral nihilism.⁸¹

The principle of subsidiarity postulates that it is not just an administrative inconvenience, but a ‘grave evil’, to deny people the dignity and authority given to them directly by God. Although government aid can do some good for those who might need a temporary boost, to get back on their feet (effectively a Band-Aid for a broken bone), such an assistance should not eliminate the more pressing moral (and spiritual) needs that lie at the heart of every dysfunctional behaviour. Sometimes what the recipient of government aid needs is actually a strong message of work and sobriety. To a great extent, writes Dr Nancy R. Pearcey,

Government aid can actually make things worse. By handing out welfare checks impersonally to all who qualify, without addressing the underlying behavioural problems, the government in essence ‘rewards’ antisocial and dysfunctional patterns. And any behaviour the government rewards will generally tend to increase. As one perceptive nineteenth century critic noted, government assistance is a ‘might solvent to sunder the ties of kinship, to quench the affections of family, to suppress in the poor themselves the instinct of self-reliance and self-respect – to convert them into paupers.’⁸²

Ultimately, Catholic social doctrine teaches very clearly that the malfunctions and defects in the Welfare State are the result of an inadequate understanding of the tasks proper to the state. In *Centesimus Annus* (1991) one finds the important reminder that human nature ‘is not completely fulfilled in the State, but is realised in various intermediary groups, beginning with the family, including economic, social, political and cultural groups which stem from human nature itself and have their own autonomy’.⁸³ The encyclical goes on to observe that the ‘malfunctions and defects’ of the Welfare State are the direct result of an ‘inadequate

⁸⁰ Chaplin, “Subsidiarity and Social Pluralism”, 71.

⁸¹ Sirico, “Subsidiarity and the Reform of the Welfare of the Nation State”, 123.

⁸² Nancy R. Pearcey, *Total Truth: Liberating Christianity from its Cultural Captivity* (Wheaton/IL: Crossway, 2004) p 61.

⁸³ Pope John Paul II, *Centesimus Annus* (1991) [13].

understanding of the tasks proper to the state.⁸⁴ In that encyclical letter, John Paul II concluded:

[T]he principle of subsidiarity must be respect[ed] [so that] 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, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good. ... In fact, it would appear that needs are best understood and satisfied by people who are closest to them and who act as neighbours to those in need.⁸⁵

But consider however how excessive state intervention stymies people's ability to provide financial assistance. When assets are taken from them via excessive levels of taxation, it leaves very little to donate to private charity. Inseparable from 'any form of all-encompassing welfare state' is a regime of high taxation welfare that diminishes the sphere of free services by which people can engage in spontaneous activities, thus corroding the culture of civility that sustains a truly compassionate society. The inevitable result is that an 'all-encompassing state' acquires greater financial power to invest solely in the activities that only the small elite who controls the state machinery deem worthy to support. According to John Gray:

If, because of the confiscation of higher incomes, there are important social and cultural activities that can no longer be sustained privately, such as provision for high culture and the arts, then once again the state assumes responsibility for such activities through a program of subsidy. Inevitably, the state comes to exercise ever-increasing degree of control over them. The consequence of redistributionist policy, accordingly, is the curtailment of private initiative in many spheres of social life, the destruction of the man of independent means, and the weakening of civil society.⁸⁶

In contrast to this, subsidiarity is premised on empowering the citizens with decision-making carried out as close to them as is viable⁸⁷ or, in simpler words, at a 'grassroots level.'⁸⁸ Subsidiarity presupposes that 'intermediate social entities can properly perform the functions that fall to them without being required to hand them over unjustly to other social entities of a higher level, by which they would end up being absorbed and substituted, in the end seeing themselves denied their dignity and essential place'.⁸⁹ Thus a hierarchy of social orders is established, consisting first of the human person as a self-governing entity endowed by God with inalienable rights to life and liberty. This person is then followed by the family, the local community, the Church, and, finally, the state. But due to its subsidiary role, however, the state should not allow other God-ordained institutions (family, church, etc.) the freedom to perform their roles properly.

In this sense, socialism provides a prime example of the willingness to deny the ultimate sovereignty of God, and place absolute sovereignty in the hands of a few. Socialism offers no salvation except through the hope that an all-powerful state can perfect us and our

⁸⁴ Ibid [48].

⁸⁵ Ibid.

⁸⁶ John Gray, "Introduction", in *The Ethics of Redistribution* [1952] ed., Bertrand de Jouvenel, (Indianapolis/IN: Liberty Fund, 1990), xiv.

⁸⁷ John Warwick Montgomery, "Subsidiarity as a Jurisprudential and Canonical Theory", *Law and Justice: The Christian Law Review* (2002) 148: 48.

⁸⁸ Ibid.

⁸⁹ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, 94.

social environment. While Catholic teaching emphasizes that every person has worth and responsibility before God, socialism argues that salvation can only be achieved collectively and ultimately by means of an all-powerful state. Contrary to such a teaching, the Catholic doctrine stresses the value of human dignity, including personal freedom, and the limits of the state action.

IX. The Duty to Obey Human Authority

Finally, there is also the important question of obedience to human authority. The duty to obey authority does not require that we should stray from our ultimate responsibility towards God; for we are required to obey God even when our reform efforts through political channels fail. For example, when St Peter and St John were ordered by the Sanhedrin to stop preaching about Christ, they replied: ‘Judge for yourselves whether it is right in God’s sight to obey man rather than God’ (Acts 4:19). Based on this historical account, Pope John XXIII stated in *Pacem in Terris* (1963):

Since the right to command is required by the moral order and has its source in God, it follows that, if civil authorities pass laws or command anything opposed to the moral order and consequently contrary to the will of God, neither the laws made nor the authorizations granted can be binding on the consciences of the citizens, since God has more right to be obeyed than men.⁹⁰

Christ commanded his followers to be the ‘Salt and Light’ of the world. And yet, as Christ himself put it, salt preserves but if salt loses its saltiness it is worthless (Luke 14:34). This comment to be ‘salt and light’ is normally called the ‘Great Commission’, meaning that Christians have the moral duty to serve their fellow humans in every sphere of life, including law and politics.⁹¹ Think, for instance, of the great British politician, William Wilberforce (1759-1833). ‘God Almighty’, wrote Wilberforce, ‘has set before me two Great Objects: the suppression of the Slave Trade and the Reformation of Manners’.⁹² According to his biographer, Eric Metaxas:

Wilberforce wasn’t just ‘religious’ but actually had a personal relationship with God. He seems to have been motivated by love—love of God and the love of his fellow man—more than by a simple sense of right and wrong or justice and injustice. This is probably the single most important factor in what he was able to do.⁹³

We can only imagine how the world would be if Christians had not fulfilled their ‘Great Commission’, if they had “privatised” their faith and made no impact on the life of their

⁹⁰ Pope John XXIII, *Pacem in Terris* (1963) [51].

⁹¹ The Great Commission is a command for Christians to work for the discipleship of nations (Matt 28: 18-20). Such an evangelism is a fundamental part of Christian theology.

⁹² Quoted from John White, ‘Christian Responsibility to Reform Society: The Example of William Wilberforce and the Clapham Sect’ *Evangelical Review of Theology* 32, no. 2 (2008): 168. ‘In practice’, writes David Burmeier, ‘Wilberforce did not view “two objects” as separate goals to be attained. Instead, he realized that both were closed related, and that achieving one without the other would be problematic, and potentially difficult. Essentially, he understood that a society untouched by Christian goodwill and morality would have no problem continuing to support a system involving the trade of human beings for forced labor. And since his own personal motivation was a primarily moral one, he was convinced “that England’s destiny lay safest in the hands of men of clear Christian principle”.’ – David Burmeier, “Two Great Objects: Wilberforce’s Dualistic Strategy for the Abolition of the Slave Trade” *Journal of Historical Studies* 22 (2004), 51-2.

⁹³ Eric Metaxas, *7 Men and the Secret of their Greatness* (Nashville/TN: Thomas Nelson, 2013), 53.

communities. From a Christian perspective all this seems quite natural because the Bible commands believers to love others as they love themselves. Christians are called to love even their enemies and to pray for those who persecute them (Matthew 5:44). This command of unconditional love is ‘a critical foundation of our modern understanding of human dignity and human rights’.⁹⁴ In *Render Unto Caesar* (2008) the Catholic Archbishop of Philadelphia, Charles J. Chaput, commented that:

For Christians, love is a small word that relentlessly unpacks into a lot of other words: *truth, repentance, forgiveness, mercy, charity, courage, justice*. These are action words, all of them, including *truth*, because in accepting Jesus Christ, the Gospel says that we will know the truth, and the truth *will make us free* (John 8:32)—not comfortable; not respected; but *free* in the real sense of the word: able to see and do what’s right. This freedom is meant to be used in the service of others. Working for justice is an obligation of Christian freedom.⁹⁵

In our democratic societies, we must hold human authority legally accountable via our active participation in government—voting, petitioning, running for political office if necessary, or even serving in non-elected positions where we may be able to influence those in power (Proverbs 29:2). The Catholic Church’s *Congregation for the Doctrine of the Faith* succinctly explains this fundamental aspect of the Christian faith in the following excerpt from a doctrinal note:

The social doctrine of the Church is not an intrusion into the government of individual countries. It is a question of the lay Catholic’s duty to be morally coherent, found within one’s conscience, which is one and indivisible. There cannot be two parallel lives in their existence; on the one hand, the so-called ‘spiritual life,’ with its values and demands; and on the other, the so-called ‘secular’ life, that is, life in a family, at work, in social responsibilities, in the responsibilities of public life and in culture. The branch, engrafted to the vine which is Christ, bears its fruit in every sphere of existence and activity. In fact, every area of the faithful’s lives, as different as they are, enters into the plan of God, who desires that these very areas be the ‘places in time’ where the love of Christ is revealed and realised for both the glory of the Father and service of others. Every activity, every situation, every precise responsibility—as, for example, skill and solidarity in work, love and dedication in the family and the education of children, service to society and public life and the promotion of truth in the area of culture—are the occasions ordained by Providence for a ‘continu[ous] exercise of faith, hope and Charity’ ... Living and acting in conformity with one’s own conscience on questions of politics is not slavish acceptance of positions alien to politics or some kind of confessionalism, but rather the way in which Christians offer their concrete contribution so that, through political life, society will become more just and more consistent with the dignity of the human person.⁹⁶

X. Final Considerations

⁹⁴ John Witte, Jr., “Introduction”, in *Christianity and Law: An Introduction*, eds. John Witte, Jr and Frank S Alexander (Cambridge/UK: Cambridge University Press, 2008), 4.

⁹⁵ Charles J. Chaput, *Render Unto Caesar: Serving the Nation by Living Our Catholic Beliefs in Political Life* (New York/NY: Image Books, 2008), 38.

⁹⁶ Congregation for the Doctrine of the Faith, *On the Participation of Catholics in Political Life: Doctrinal Note* (Vatican City: Catholic Truth Society, 2003), 13.

The *Social Doctrine of the Church* encourages the development of a fitting pluralistic democracy promoted by intermediate bodies that are capable of contributing to the attainment of the common good. In its legitimate authority, the state ought to be limited by a practical view of the common good.⁹⁷ When a nation embraces subsidiarity, the state is limited both in its purpose and its mode of operation and, accordingly, subsidiarity will be a principle of governance by which the power of the state is limited enough so as to preserve the freedom of citizens and the lower social orders. Subsidiarity therefore recognises certain aspects of human life that are naturally ordained by God; that the state cannot not legitimately control. In this context, ‘State intervention should be characterized by genuine solidarity, which as such must never be separated from subsidiarity’.⁹⁸ These are matters associated with principles that must apply to every conduct, which are matters associated with truly inviolable rights enjoyed by people and suitably protected by legally-enforceable constraints on power of various kinds.⁹⁹

In Catholic social theory, subsidiarity is premised on the affirmation that ‘intermediate social entities can properly perform the functions that fall to them without being required to hand them over unjustly to other social entities of a higher level, by which they would end up being absorbed and substituted, in the end seeing themselves denied their dignity and essential place.’¹⁰⁰ Understood in this sense, concludes the *Pontifical Council for Justice and Peace*, ‘[s]ubsidiarity ... entails a corresponding series of *negative* implications that require the State to refrain from anything that would de facto restrict the existential space of the small essential cells of society. Their initiative, freedom and responsibility must not be supplanted.’¹⁰¹ A hierarchy of social orders is therefore established, consisting first of the human person as a self-governing entity and endowed by God with natural rights to life and liberty, followed by the family, the local community, the Church and, finally, the state. And since an entity of a higher order must be limited in favour of matters being resolved at the lowest possible level, assistance by such an order should morally elevate the recipient of aid and not reinforce an attitude of dependence that offers little incentive for self-responsibility and discipline.¹⁰²

⁹⁷ John Finnis, ‘Is Natural Law Theory Compatible with Limited Government?’, in Robert P. George (ed.), *Natural Law, Liberalism, and Morality* (New York/NY: Oxford University Press, 1996), 5

⁹⁸ *Compendium*, above n.42, 181.

⁹⁹ Nicholas Aroney and Bradley Miller, ‘Finnis on Liberty’, in *Jurisprudence of Liberty*, eds. Suri Ratnapala and Gabriël A Moens (2nd ed, Chatswood/NSW: LexisNexis Butterworths, 2011), 269.

¹⁰⁰ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, 94.

¹⁰¹ *Ibid.*, p 94.

¹⁰² Joseph Santamaria, ‘The Primacy of the Family and the Subsidiary Role of the State’ *The Australian Family* 27, no.3 (2006): 6.