

# Subsidiarity and Sphere Sovereignty: Christian Reflections on the Size, Shape and Scope of Government

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In the last century and a half, the shape of Christian political theory has been re-thought, both in Catholic and in Reformed<sup>1</sup> circles. Fears of excessive centralization have led to attempts to identify theologically grounded principles limiting the reach of "big government." In Catholicism, the principle of subsidiarity has been propounded, while the Dutch Reformed thinker, Abraham Kuyper, expounded a theory of sphere sovereignty. Are these ideas viable? Are they ways of saying the same things to different theological audiences? Do they contradict one another or complement one another? Or are they merely theological and political cul-de-sacs?

## I. SUBSIDIARITY

The principle of subsidiarity was enunciated by Pope Pius XI in the Papal Encyclical *Quadragesimo Anno*.<sup>2</sup> In that encyclical, Pius XI stated that "it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community."<sup>3</sup> Decisions should be taken at the lowest level possible which is compatible with good government.<sup>4</sup>

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1. Lutheran and Anabaptist theologies can also be regarded as Reformed, in the sense that they were developed out of the Reformation, but it is the Calvinists who have appropriated the title "Reformed" with a Capital R.

2. Promulgated on 15 May 1931.

3. *Quadragesimo Anno*, 79.

4. Paul Vallely, ed., *The New Politics: Catholic Social Teaching for the Twenty-First Century* (London: SCM, 1998), 8. The Anglican Archbishop of Canterbury, William Temple, advocates something similar in the Appendix to *Christianity and Social Order* (Baltimore, Md.: Penguin, 1942) and (London: Shephard-Walwyn, 1976), 104-05.

This principle has been incorporated into the legal order of the European Community. Article 5 of the Treaty establishing the European Community (TEC)<sup>5</sup> seeks to apply the principle of subsidiarity in the following way:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.<sup>6</sup>

Professor John Warwick Montgomery has been critical of the theology and the usefulness of the principle of subsidiarity in a short article in *Law & Justice* entitled "Subsidiarity as a Jurisprudential and Canonical Theory."<sup>7</sup> His theological critique is that Pope Pius XII<sup>8</sup> purported to derive the principle of subsidiarity from Ephesians 4:11-16 and 1 Corinthians 12, whereas Professor Montgomery contends that the texts do not bear the weight or the interpretation placed upon them. In short, concludes Montgomery: "The Papal development of subsidiarity is the product of a theological failing by no means limited to Roman Catholics: that of basing a teaching on single passages of Scripture taken out of context and without regard to the totality of biblical teaching ('the whole counsel of God')."<sup>9</sup>

In theological terms, Montgomery bases his rejection of subsidiarity on the following principle: "'all have sinned and come short of the glory of God' (Romans 3:23): [therefore] sin cannot be restricted to any subgroup of the human race or to any one party or level of human society."<sup>10</sup> He argues that "Subsidiarity tacitly assumes that the centrist, higher levels [of government] are more tainted with original sin than the democratic, lower levels. Not so. Every societal level must equally justify its actions in terms of the greater societal good, and none is in a pre-set subsidiarity relationship vis-à-vis the other."<sup>11</sup>

5. Formerly Article 3b before the Treaty was renumbered.

6. Article 5 TEC is supplemented by Protocol No. 30 to the Treaty on the application of the principles of subsidiarity and proportionality (1997). The principle of subsidiarity is also referred to in the Preamble to the Treaty of European Union, which declares the High Contracting Parties to have "resolved to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity."

7. John Warwick Montgomery, "Subsidiarity as a Jurisprudential and Canonical Theory," *Law & Justice* 148 (2002): 46-53.

8. In 1946 when he addressed the College of Cardinals on the subject.

9. Montgomery, "Subsidiarity as a Jurisprudential and Canonical Theory," 52.

10. *Ibid.*, 53.

11. *Ibid.*

In terms of its usefulness as a jurisprudential principle, Montgomery argues that subsidiarity has been over-hyped. It cannot, in fact, act as an effective restraint on "big government." "Subsidiarity . . . is no insurance policy against the growth of centralised authority, since it does not define what specific functions of a society are in fact best carried out at lower, rather than higher, levels."<sup>12</sup>

However, even if subsidiarity was effective in re-locating power downwards, its implementation would be undesirable. "The problem with subsidiarity is that it *does* . . . establish a mandatory structural order: one in which centralised or higher authority always has the burden of proof in justifying its actions. If that burden is not discharged, action automatically devolves upon the lower levels of the system. But logically . . . decisions should be made on whatever level they can be made most efficiently, without any built-in preference for "lower" or "higher." The issue is not which hierarchical level is more fundamental and therefore preferable as a locus for decision-making, but the achieving of maximum efficiency in carrying out the overarching purpose of the organisation or society."<sup>13</sup>

Montgomery's own view is that "neither centralization nor decentralization is a positive value in itself: the choice will depend in each individual instance on the purpose of the decision in relation to the overall goals of the society. . . . Decision-making [should] not automatically be set at a low level or at a high level: it [should] be at the level of 'optimum order' in terms of 'social well-being.'"<sup>14</sup>

#### A. The Theological Basis for Subsidiarity

Professor Montgomery's theological attack on subsidiarity rests on questionable assertions on his part. Firstly, subsidiarity may involve not an assumption that higher levels of government are more tainted with original sin than lower levels of government, but rather a presumption that higher levels of government have more potential for harm, and therefore require greater justification. Secondly, however it was justified when first propounded as a doctrine, subsidiarity can be theologically defended on the grounds of human dignity and autonomy. Thirdly, Professor Montgomery's own consideration of the totality of the biblical teaching is incomplete, and the nature of Old Testament Israel may provide a justification for subsidiarity or indeed a principle by which the localization of power is regarded not merely as a con-

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12. Ibid., 49.

13. Ibid., 51.

14. Ibid., 52.

straint on the achievement of *a priori* goals, but as a positive virtue in itself.

1. *Subsidiarity is concerned with the potential for harm, not the potential for sinfulness.* Montgomery accuses advocates of subsidiarity of tacitly assuming that higher levels of government are more tainted with original sin than lower levels. Montgomery's accusation necessarily involves the assertion that original sin, and its effects, are equally present at all levels of human society.

Such an assertion is not theologically uncontroversial. Montgomery does not engage with Lord Acton's famous dictum that "Power tends to corrupt, and absolute power corrupts absolutely."<sup>15</sup> The Christian realist, Reinhold Niebuhr wrote a book entitled *Moral Man and Immoral Society*. Even though Niebuhr's thesis would have been more accurately rendered *Not-so Moral Man and his even less moral Society*,<sup>16</sup> Niebuhr was expressing a view which appears to be supported by the empirical evidence, namely that while it may be possible to persuade a sinful man to act on occasions in a selfless way; it is much more difficult to persuade a sinful society to behave with genuine altruism, that is to say, genuine love for its neighbours as itself.<sup>17</sup>

Other theologians such as Hendrik Berkhof<sup>18</sup> and Walter Wink<sup>19</sup> identify the spiritual powers referred to by the Apostle Paul in his letters<sup>20</sup> as the energizing forces behind human beings and social structures. Their thesis is that the very power structures of our world were created by God but have been affected by the Fall and are in revolt and

15. According to the Concise Oxford Dictionary of Quotations, this famous quote originates from a letter from Lord Acton to Bishop Mandell Creighton dated 3 April 1887.

16. I first heard such a description of it from the lips of Richard Higginson at the Ridley Hall Conference on Globalisation, 21-23 June 2002.

17. "As individuals, men believe that they ought to love and serve each other and establish justice between each other. As racial, economic and national groups they take for themselves, whatever their power can command." Reinhold Niebuhr, *Moral Man and Immoral Society* (London: SCM, 1963), 9. Niebuhr's reflection led him to conclusions which are consistent with the principle of subsidiarity: "If power remains in society, mankind will never escape the necessity of endowing those who possess it with the largest measure of ethical self-control. But that does not obviate the necessity of reducing power to a minimum, of bringing the remainder under the strongest measure of social control; and of destroying such types of it as are least amenable to social control. For there is no ethical force strong enough to place inner checks upon the use of power if its quantity is inordinate. 'The truth is,' declared James Madison, 'that all men having power ought to be distrusted.'" See Niebuhr, *Moral Man and Immoral Society*, 164.

18. Hendrik Berkhof, *Christ and the Powers*, trans. John H. Yoder (Scottsdale, Pa.: Herald Press, 1962).

19. Walter Wink, *Naming the Powers: The Language of Power in the New Testament*, vol. 1 (Philadelphia, Pa.: Fortress Press, 1984).

20. Ephesians 1:20-21; Colossians 1:16, 2:15; see also Romans 8:38.

rebellion against God their Creator. Demons can possess not only individuals but also the structures of society.<sup>21</sup>

However, even if Montgomery is right and the theological and empirical case for greater sinfulness at the higher levels cannot be made out, it remains for Montgomery to prove that advocates of subsidiarity do in fact make the tacit assumption of which he accuses them. Archbishop William Temple,<sup>22</sup> for one, would refute this allegation. Throughout his seminal work *Christianity and Social Order*, there is a clear recognition of the reality of Original Sin as it affects all people.<sup>23</sup> In fact he goes so far as to say, without qualification of rank or degree: "man is a self-centred creature. He can be trusted to abuse his freedom."<sup>24</sup>

It is one of the ironies of the human condition that God has graciously given government as an instrument to minimize the destructiveness of human sinfulness in the world, and yet the fact of government creates power and authority structures which human sinners are apt to misuse for their own sinful ends. The theological point subsidiarity makes is not necessarily that lower level power structures are less likely to be sinful than higher level ones, but that higher level power structures have greater potential for abuse and misuse, and therefore ought only to be created when it is necessary to do so. To put it another way, *all power structures may be equally tainted by sinfulness, but stronger power structures contain greater potential for harm if that sinful potential is realized. That is why there ought to be a presumption against the creation of such structures.*

It is notable, in drawing the comparisons between subsidiarity and sphere sovereignty, that part of the motivation behind the development of the latter theory by the Dutch Reformed theologian and politician Abraham Kuyper,<sup>25</sup> was his recognition that "... the sinfulness of mankind does less damage when many people share ruling authority"<sup>26</sup> and that governmental cliques have a tendency to conduct themselves as though omnipotent.<sup>27</sup>

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21. Richard Foster summarizes their ideas in *Money, Sex and Power* (London: Hodder & Stoughton, 1985), 180-83.

22. Although an Anglican Archbishop of Canterbury, William Temple drew heavily on Catholic Social Teaching for his political theology, as he acknowledges in *Christianity and Social Order*, 71.

23. Temple, *Christianity and Social Order*, 59-61.

24. *Ibid.*, 68.

25. Kuyper was prime minister of the Netherlands from 1901-05.

26. James E. McGoldrick, *Abraham Kuyper: God's Renaissance Man* (Darlington: Evangelical Press, 2000), 68.

27. Kuyper, *Anti-Revolutionaire Staatskunde*, Vol. I, 265.

2. *Subsidiarity can be defended on the grounds of human dignity.*<sup>28</sup>

Subsidiarity forms part of a corpus of thinking developed by the Catholic Church in the twentieth century, and is known as Catholic Social Teaching.<sup>29</sup> Catholic Social Teaching rests on a principle that Montgomery and other great Protestant thinkers, such as Francis Schaeffer, would also identify as foundational: human dignity.<sup>30</sup> Catholic Social Teaching derives the truth of human dignity from Genesis 1:27 "So God created man in his own image, in the image of God he created him; male and female he created them" (NIV). From that, it draws the conclusions that all human beings have inherent dignity because they are created in the image of God, and that because of their inherent worth, all human beings are possessed of intrinsic rights which no other human being can legitimately take away.<sup>31</sup> William Temple described the truth of human dignity in this way:

The dignity of man is that he is a child of God, capable of communion with God, the object of the Love of God—such love as is displayed on the Cross—and destined for eternal fellowship with God. His true value is not what he is worth in himself or to his earthly state, but what he is worth to God; and that worth is bestowed on him by the utterly gratuitous Love of God.

All his life should be conducted and ordered with this dignity in view. The State must not treat him as having value only so far as he serves its ends, as Totalitarian States do; the State exists for its citizens, not the citizens for the State. But neither must a man treat himself, or conduct his life, as if he were himself the centre of his own value; he is not his own end; his value is his worth to God and his end is "to glorify God and enjoy Him for ever."<sup>32</sup>

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28. This point is essentially a reprise of an argument developed more fully in my article, "Christian Perspectives on Society," which is an attempt to integrate Catholic Social Teaching and Protestant social insights into a coherent Christian whole in *Law & Justice* 145 (2000): 38.

29. Catholic Social Teaching, in capitals, refers to a set of principles developed primarily, but not exclusively, in a series of Papal Encyclicals. An accessible discussion of Catholic Social Teaching can be found in Valley, ed., *The New Politics*.

30. The title of one of Montgomery's books is *Human Rights & Human Dignity* (Edmonton, Canada: Canadian Institute for Law, Theology and Public Policy, 1995); see esp. 206-09.

31. Richard Neuhaus, "The Catholic Difference," in Charles Colson and Richard John Neuhaus, eds., *Evangelicals and Catholics Together* (London: Hodder & Stoughton, 1996), 177. But as Julian Rivers rightly points out in "A Bill of Rights for the United Kingdom?," in Paul Beaumont, ed., *Christian Perspectives on Law Reform* (Carlisle: Paternoster, 1998), 42, humanity has no rights against God.

32. William Temple, *Christianity and Social Order*, 63. See also David Hollenbach, who argued that the principle of human dignity as the foundation of all human rights derives, first, from its accessibility to all human beings, whether they are religious or not, by virtue of "the person's transcendence over the world of things," and secondly, as a matter of Christian faith, because of the belief that "all persons are created in the image of God, that they are redeemed by Jesus Christ, and that they are summoned by God to a destiny beyond history . . ." in his *Justice, Peace, and Human Rights: American Catholic Social Ethics in a Pluralistic Context* (New York: Crossroads, 1988), 95-96.

Having set out the truth of Human Dignity, Archbishop Temple drew out its implications:

The primary principle of Christian Ethics and Christian Politics must be respect for every person simply as a person. If each man and woman is a child of God, whom God loves and for whom Christ died, then there is in each a worth absolutely independent of all usefulness to society. The person is primary, not the society; the State exists for the citizen, not the citizen for the State. The first aim of social progress must be to give the fullest possible scope for the exercise of all powers and qualities which are distinctly personal; and of these the most fundamental is deliberate choice.

Consequently society must be so arranged as to give to every citizen the maximum opportunity for making deliberate choices and the best possible training for the use of that opportunity. In other words, one of our first considerations will be the widest possible extension of personal responsibility; it is the responsible exercise of deliberate choice which most fully expresses personality and best deserves the great name of freedom.<sup>33</sup>

Temple's political theology was not so naïve as to ignore the reality that human beings will, if given freedom, abuse it.<sup>34</sup> He therefore recognized the importance of law in order "to prevent the selfishness of A from destroying the freedom of B."<sup>35</sup> However, one of his critiques of political theories was that they tended to ignore the importance of the institutions of civil society and local government, which he describes as "intermediate groupings,"<sup>36</sup> and by which he meant everything from the family, to the Church or congregation, the Trade Union, the school, the university, the professional association, the city and the county.<sup>37</sup> He said this about the role of such "intermediate groupings":

Now actual liberty is the freedom which men enjoy in these various social units . . . . Liberty is actual in the various cultural and commercial and local associations that men form. In each of these a man can feel that he counts for something and that others depend on him as he on them. The State which would serve and guard Liberty will foster all such groupings, *giving them freedom to guide their own activities provided these fall within the general order of the communal life and do not injure the freedom of other similar associations*<sup>38</sup> (emphasis mine).

As I have argued elsewhere, human dignity matters because God has made us as autonomous moral agents.<sup>39</sup> God has given us the ability to choose. He has given to humanity the great gift of free will. We were

33. Temple, *Christianity and Social Order*, 67.

34. Ibid., 68.

35. Ibid.

36. I have adopted the term "social institutions" in preference, as shorthand for such bodies.

37. Temple, *Christianity and Social Order*, 70.

38. Ibid., 70-71. See also George Weigel, "Faith, Freedom, Responsibility," in *Evangelicals and Catholics Together*, eds. Colson and Neuhaus, 79.

39. D.H. McIlroy, "A Christian State?," *Law & Justice* 32 (1994): 120, 121. The problem is that we misuse our autonomy by behaving as if we have the right to determine the nature of morality for ourselves: i.e. we become *ego-nomous*.

made with the possibility of doing right or doing wrong. God even went so far as to enable us to choose him or to reject him. And whatever one's account of the interaction between the divine desire to save human beings and the divine gift of human free will, the message of the Bible is that our choice is "real." As Archbishop William Temple was wise enough to recognize, choice is an important part of human dignity.<sup>40</sup>

Centralization of decision-making amounts to a restriction or at worst a denial of choice by local groups of people. The further power is centralized upwards, the more the voice of each individual citizen is diluted. Theologically, this disempowerment can be regarded as a positive evil in its own right, whether the higher level of authority exercises its power benignly or not, because it deprives individuals and communities of the opportunity to live their lives as they see fit. Therefore, the localization<sup>41</sup> of decisionmaking is in and of itself a factor which contributes to optimum order and social well-being.<sup>42</sup>

The countervailing argument is, of course, that since people habitually misuse their freedom and seek to live their lives without God, and the seeking for independence from God is the essence of the original sin, there is no positive value in allowing it to continue at an individual level here and now. However, since some fallen human being has to take the decisions, surely, all other things being equal, it is preferable that the decisions are made by the one(s) most directly affected by them.

If the Christian conception of human dignity demands that people have the right to exercise as much control as possible over their own lives, then the Christian doctrine of original sin acknowledges that they will misuse that control and opt for morally dubious or unacceptable outcomes. Government is therefore necessary in order to restrain such sinful tendencies. However, because government itself is subject to the same sinful tendencies, it is right that it should be limited, by principles such as the Rule of Law and the Separation of Powers, in order that its potential for great harm might be constrained.

Catholic Social Teaching does this by adopting the premise that "The attainment of the common good is the sole reason for the existence of civil authorities."<sup>43</sup> In short, it is people and not government

40. Temple, *Christianity and Social Order*, 69.

41. I use the terms "localization" and "localizing" not in an exclusively geographical sense. It could equally refer to self-regulation by an industry or a profession.

42. This seems to me to have been entirely overlooked in Professor Montgomery's consideration of subsidiarity in his "Subsidiarity as a Jurisprudential and Canonical Theory."

43. *Pacem in Terris*, 54, quoted in Vallely, ed., *The New Politics* 9, 50. The notion of the common good in Catholic Social Teaching is spelled out in *Pacem in Terris* at 56. It is the idea of the promotion of the interests of all in society, which may require that special mea-



which is primary.<sup>44</sup> Government derives its justification and its authority from the positive and distinctive contribution which it can make to the lives of its citizens.<sup>45</sup> The biblical model for government is that of the shepherd, whose prime concern is for the welfare of his people (the sheep).<sup>46</sup>

3. *The Old Testament and subsidiarity.* Montgomery is right to urge advocates of subsidiarity to reflect adequately upon the teaching of the Bible as a whole, rather than taking isolated passages as proof-texts. However, the question of what to do with the Bible's ethical teaching, and how to relate it to contemporary situations is one which is controversial among theologians. There are those whose primary instinct is to consider the New Testament's social teaching, almost entirely to the exclusion of the extensive concern with social morality which characterizes much of that three-quarters of the Bible which is constituted by the Old Testament. At the other extreme there are those who regard the Old Testament theocracy as a blueprint to be applied and adopted in our world today, seemingly in defiance of Christ's dictum that his kingdom was not of this world. As I have argued at some length elsewhere,<sup>47</sup> neither of those approaches is near the mark.

Because the morality of the New Testament epistles is explicitly referable to the redeemed people of God indwelt by the Holy Spirit (in short, the Church), and because it is only the Old Testament which purports to give a comprehensive account of social morality, Dr. Michael Schluter is right in his estimation that it must be the Old Testament which is our primary source book for social ethics.<sup>48</sup> However, because it is fundamental to the Christian faith that Jesus Christ is Lord over both the Old Testament as well as the New Testament, and because Christ's own interpretation of the Old Testament was radical and surprising, any adequate *Christian* interpretation of the Old Testament law must be seen through the prism of the New Testament. Such

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asures are taken to favor the weak in order to ensure that they are not excluded. Such a conception can be traced back to the thought of Thomas Aquinas: *Summa Theologica*, I, II, 21, 4, reply 3.

44. A point William Temple makes repeatedly in the passages quoted above.

45. The Apostle Paul's teaching suggests that human government is part of the divine order of things: Romans 13:1 "Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God." See also Titus 3:1 and for other New Testament writers, Matthew 22:15-22 and 1 Peter 2:13-14.

46. Ezekiel 34.

47. In D.H. McIlroy, "The Relevance of the Old Testament Law for Today," Part I, *Law and Justice* 21 (2002): 148; and Part II, *Law and Justice* 21 (2003): 150.

48. A statement of position he set out at the start of his paper on "Risk, Reward and Responsibility" at the Ridley Hall Conference on Globalisation, 21-23 June 2002.

must be the appropriate theological methodology for approaching the Old Testament law.

Adopting such a methodology, Christopher Wright's distinctive contribution to the debate has been his clear assertion that the Mosaic theocracy is not intended to be regarded as a blueprint but rather as a paradigm.<sup>49</sup> Explaining his choice of term, he says:

A paradigm is something used as a model or example for other cases where a basic principle remains unchanged, though details differ. . . . A paradigm is not so much imitated as applied. It is assumed that cases will differ but, when necessary adjustments have been made, they will conform to the observable pattern of the paradigm. . . . We cannot simply transpose the social laws of an ancient people into the modern world and try to make them work as written. That would be tantamount to taking the paradigms of a grammar book as the only words one could use in that particular language. The paradigms are there, not to be the sum of possible communication ever after, but to be applied to the infinite complexities of the rest of the language.<sup>50</sup>

So, what principles can be discerned from the Old Testament material:<sup>51</sup> (1) *The equality* implicit in the creation of *all humanity* from one pair.<sup>52</sup> This, together with the democratic nature of the original Israelite constitution, in the sense that it was made with all the people equally,<sup>53</sup> and in the New Testament a radical equality within the church,<sup>54</sup> supports the deduction of democracy as a positive and godly system of government;<sup>55</sup> (2) *The principle of national diversity*<sup>56</sup>

49. Christopher Wright, *Living as the People of God* (Leicester: IVP, 1983), 88, where he in fact argues that the Old Testament law is relevant for the Christian in three ways: as a type, as a paradigm, and as an eschatological vision; although he concedes that not all of the Mosaic Law is relevant in all three ways.

50. Wright, *Living as the People of God*, 40-45, esp 43; see also 89, 162. On p. 101, he offers an illustration of how the idea of paradigm might be applied to the institution of the jubilee. On p. 44, he offers the necessary corrective to a focus on the Old Testament: ". . . Israel's social shape and characteristics, her institutions, laws and ideals . . . are not, of course, the exclusive paradigm for social ethics; the Christian brings this, as he does every other aspect of the Old Testament, into the light of the new age of fulfilment and the Kingdom of God inaugurated by Christ. He therefore sets his Old Testament social paradigm alongside the paradigm of the social life of the early church as well as the explicit social teaching of Jesus and the apostles. Only then is he beginning to formulate a wholly biblical social ethic."

51. In the following discussion, I am heavily indebted to Julian Rivers for ideas I first heard expressed in a lecture on Christian Constitutionalism given as part of a Christian Law School at Corpus Christi College, Oxford in November 2000, and which are now contained in his articles "The new world order?," *The Cambridge Papers* 8, no. 4 (1999): 1; and "Multiculturalism," *The Cambridge Papers* 10, no. 4 (2001): 1.

52. Genesis 3:20 ("when Adam delved and Eve span, who was then the gentleman?").

53. Exodus 19; Deuteronomy 5:3; 29.

54. Galatians 3:26-28.

55. The Bible's teaching does not give any *direct* mandate for democracy. It is not possible to argue from the Bible that all non-democratic forms of government are *ipso facto* illegitimate. On the contrary, reading Romans 13 in the context in which it was probably

marked by a hostility to the superstate from Genesis to Revelation.<sup>57</sup> Isaiah and Daniel taught that every oppressive human empire will be brought down by God through human agency until He establishes His universal kingdom of righteousness and peace.<sup>58</sup> (3) *Government should be small-scale*. The organization of Israel shows a careful concern to disperse political, economic, and military power. There was no central government as originally envisaged. Israel was not to have a king, because of the centralization of power that he represented.<sup>59</sup> Military arrangements were defensive, with obligations of mutual defense; economic production was localized; law enforcement was principally local, although Moses seems to have arranged a hierarchy of courts in the interests of justice.<sup>60</sup>

## B. The Usefulness of the Principle of Subsidiarity

1. *Subsidiarity in its present conception*. At first sight, therefore, a holistic appraisal of the Bible's teaching would tend to support the concept of subsidiarity as presently formulated.<sup>61</sup> However, the problem with subsidiarity is that in its present conception, it is in fact vulnerable to the criticisms about vagueness and lack of effectiveness which Montgomery makes against it.<sup>62</sup> His analysis of its weaknesses as a jurisprudential principle hits the mark. But in order to understand why this is so, it is necessary to grasp the place of subsidiarity within the framework of European legal norms.

Subsidiarity does not have the status of a primary goal within the European legal order. Rather it is a restraining principle. This is simi-

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written, Paul's unequivocal teaching is that even the most tyrannous, idolatrous government may nonetheless be preferable to anarchy. The theological argument for democracy has to be constructed *indirectly*, via those passages in both the Old and the New Testaments which testify to the fundamental equality of worth of all human beings. If all are equally valuable, then it is but a short step to say that all deserve an equal say in who governs them and for what aims.

56. Rivers, "The New World Order?," and "Multiculturalism."

57. In particular, the story of the Tower of Babel in Genesis 11:1-9 is intended as a salutary warning. In Revelation 17, the world-empire of Babylon is finally destroyed. See also Ezekiel 31; Jeremiah 50:17-18.

58. Isaiah chapters 13-27 should be read as a unit expressing the triumph of God's kingdom over the nations; see J.A. Motyer, *The Prophecy of Isaiah* (Leicester: JVP, 1993), 131-34; Daniel 2.

59. 1 Samuel 8. And "when, a king was eventually appointed, the law sought to limit the size of the royal household and its wealth"; Paul Mills, "The Divine Economy," *The Cambridge Papers* 9, no. 4 (2000): 2.

60. Deuteronomy 1:9-18.

61. Even though Montgomery may be correct about the quality of Pope Pius XII's biblical exegesis, the theological conclusions can be, as the Court of Appeal would put it, "affirmed on other grounds."

62. See Montgomery, "Subsidiarity as a Jurisprudential and Canonical Theory," 48-50.

lar to the arrangement under the Financial Services and Markets Act 2000, under which the Financial Services Authority is given four regulatory objectives by s.2(2) FISMA 2000. Those objectives are market confidence, public awareness, the protection of consumers and the reduction of financial crime. In pursuit of those objectives, the Financial Services Authority must have regard to seven restraining principles set out in s.2(3) FISMA 2000, which include minimizing the adverse effects on competition resulting from its actions, and the need to use its resources in the most efficient and economic way.

The European Community's goals are spelled out in Article 2 of the Treaty establishing the European Community:

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities . . . to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

Within the European Union Treaty, subsidiarity is allowed to operate only insofar as it does not impede "the process of creating an ever closer union among the peoples of Europe." Moreover, subsidiarity as currently applied relates exclusively to the distribution of competencies between EC and national governments of its Member States.

The problem for subsidiarity within the European legal framework is that once you adopt an ever-closer union and the long list of objectives in Article 2 TEC as your primary goals, subsidiarity as a restraining principle becomes the legal equivalent of a wooden brake on a runaway train careening down a hill.<sup>63</sup>

2. *Subsidiarity as a "bias to the local."* If, contrary to Montgomery's thesis, localizing<sup>64</sup> decision-making as far as is possible or appropriate is a positive virtue, then either subsidiarity needs to be replaced by a new, clearer principle which carries more legal weight and theological conviction or it needs to be re-formulated.

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63. As Gerald Barling QC, Helen Davies, and Jemima Stratford put it: "In order to challenge a Community measure on the basis of subsidiarity, an applicant would have to establish that the objectives of the measure . . . could be attained just as well through action by the Member States. Since most measures adopted by the Community have a number of different objectives, it will often be the case that at least one of the objectives could be better attained by Community action such as to justify the measure. . . . the possibilities for review on the basis of subsidiarity would appear limited at present," in their *Practioners' Handbook of EC Law* (London: The Bar Council, 1998), para. 5.6.8.3.

64. For the use of this term, see n. 42.

In *The New Politics*, a series of reflections on Catholic Social Teaching, Julie Clague writes: "democracy is subsidiarity in action: social decisions are taken at the lowest possible level."<sup>65</sup> Her contention is that if subsidiarity is applied faithfully then as many decisions as possible should be taken by individuals. The State must not interfere save when it is necessary to preserve the rights and freedoms of others. The vision for the State must therefore be a liberal one, where there is the maximum degree of tolerance consistent with maintaining the social fabric.<sup>66</sup> In accordance with keeping decisions as close as possible to the people, any interferences with individual decision-making must be limited to those which have been sanctioned by the people through the democratic process.

Julie Clague is both right and wrong. She is right in identifying the localizing of decision-making as a desirable theological principle. She is mistaken, however, if she believes that the current conception of subsidiarity achieves that objective. As identified above, one of the major problems with the current conception of subsidiarity is that the decision about what objectives are to be pursued is taken without reference to it, with the consequence that its practical effect is limited.

There is also a further dimension to subsidiarity which could be developed. In its present conception, subsidiarity is applied solely to determining at which level within the political structure, power ought to be exercised. But Archbishop William Temple's reflection on the importance of the "intermediate groupings" in which we find our identity and significance would suggest that there are theological implications of the division of power and decisionmaking responsibilities between the political structures of government and the other institutions of civil society. Either subsidiarity itself needs to be expanded to address such questions, or we need another theological principle.

## II. SPHERE SOVEREIGNTY

The idea of sphere sovereignty is just such a principle. Abraham Kuyper argued that although the State derives its authority from God, other areas of human life, such as the family, trade and the church, also

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65. Julie Clague, "The Gospel of Life," in Vallely, ed., *The New Politics*, 130.

66. On the other hand, Christians should have a much fuller view of the social fabric and of the institutions of civil society than liberals. The actors in the public square are not just the autonomous individual and the state but include realities such as families, churches, trade unions, and so on; see George Weigel, "Faith, Freedom, Responsibility" in Colson and Neuhaus, eds., *Evangelicals and Catholics Together* (London: Hodder & Stoughton, 1996), 79.

have God-ordained spheres within which authority is properly vested and exercised otherwise than on the basis of the State's say-so.<sup>67</sup>

In each of these spheres, sphere sovereignty must be acknowledged, and those who exercise it must defend that sovereignty with tooth and nail. Adjacent, in part subordinate to these, there is the Official Sovereignty of Law and Justice, represented by the State. Although this Official Sovereignty has certain proper powers to protect formally the mutual relations of the other spheres, and thereby make possible orderly human society, it may never present itself as having a sovereignty from which the sovereignty of the other spheres were merely derived. This is never the case. The sovereign authorities of the family, of the church, etc., are derived as directly from God as is the sovereign authority of the government.<sup>68</sup>

Herman Dooyeweerd, who developed Kuyper's thought, traced the origin of the idea of sphere sovereignty back to the jurist John Althusius (1557-1638), who proclaimed that all distinct social entities are governed by their own laws, and that those laws differ in every instance according to the typical nature of the social institution concerned.<sup>69</sup> In short, there are areas of human life, spheres of human activity, which are and were divinely designed to be "laws unto themselves."<sup>70</sup>

The Government does not create the other sphere sovereignties, but must limit itself to recognizing them, and where in public they ask for support or where they conflict, to regulate between them, in order to promote their growth or avoid conflict. No more.<sup>71</sup>

Therefore, although "there is not an inch in the entire domain of our human life of which Christ, who is sovereign of all, does not proclaim 'Mine!,'" <sup>72</sup> under Kuyper's theory of sphere sovereignty, those in authority in the other spheres are not answerable to government but only directly to God. Even before the Reformation, William of Ockham was articulating similar ideas, rejecting ascending and descending theories of authority,<sup>73</sup> insisting instead on the validity of independent secular

67. Frederick Nymeyer, "A Great Netherlander who had one answer to the problem of 'Liberty' destroying liberty, namely Sphere Sovereignty," *Progressive Calvinism* (February 1956); available online at [www.visi.com/~contra\\_m/pc/1956/2-2great.html](http://www.visi.com/~contra_m/pc/1956/2-2great.html).

68. Abraham Kuyper, *Anti-Revolutionnaire Staatskunde*, vol. I, 265 ff. Translation taken from Nymeyer, "A Great Netherlander."

69. Althusius, *Politica Methodiae Digesta*, 3rd ed. (1614), 1.19 at 7.

70. Kuyper, *Het Calvinisme: Zes Stone-Lezingen in October 1898 te Princeton, N.J. Gehouden* 79. The Stone Lectures were given by Kuyper at Princeton University in 1898, and published as *Lectures in Calvinism* (Amsterdam: Hoocker and Wormser Ltd., 1898).

71. Translation taken from Nymeyer, "A Great Netherlander."

72. Abraham Kuyper, *Souvereiniteit in Eigen Kring* (Amsterdam: J.H.Kruyt, 188), 35; translated into English as an Appendix to Wayne A. Kobes, "Sphere Sovereignty and the University: Theological Foundations of Abraham Kuyper's View of the University and its Role in Society," unpublished Ph.D. diss., Florida State University, 1993, 281-302.

73. The ascending theory of authority was the idea that all authority resided with the community, and was granted upwards to priests and kings. The descending theory of authority was the idea that the pope, as representative of Christ on earth, had supreme jurisdiction in all matters, although his temporal powers were usually delegated to others. See Julian Riv-

and ecclesiastical spheres of politics.<sup>74</sup> One could even trace such ideas back to Jesus' declaration: "Give to Caesar what is Caesar's, and to God what is God's."<sup>75</sup> But if Kuyper's ideas are to be viable, it is necessary to consider what he means by the State, and the other sovereign spheres.

1. *Which spheres are sovereign?*<sup>2</sup> One of the major problems with Kuyper's theory of sphere sovereignty, is identifying which spheres are properly sovereign. Are they natural social realities or social constructs? Although his lists differed at various times, six major sovereign spheres probably emerge from Kuyper's scheme: The Family, Church, Science and Art, Economic Life, Social Organizations and the State.<sup>76</sup> Van der Vyver critiques such an elaborate division:

The problem with Kuyper was that, once having grasped the notion of sphere sovereignty, he became so obsessed with the idea that he proclaimed all and sundry to be "circles" that could, vis-à-vis the state, lay claim to internal sovereign powers. For example, he once singled out as components of society that "do not derive their impulse from the state," the family, church, local population (of a town or city), trade, industry, science, and art. These categories are not of a kind: the family and church are indeed social entities; a population is merely a collection of people without a distinct organizational structure; and trade, industry, science and art are no more than aspects of society that could of course be exercised in particular organizations but do not constitute the organization as such.<sup>77</sup>

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ers, "Liberal Constitutionalism and Christian Political Thought," in Paul Beaumont, ed., *Christian Perspectives on the Limits of Law* (Carlisle, Pa.: Paternoster, 2002), 18.

74. Ockham's political ideas are discussed by Rivers in his "Liberal Constitutionalism," 17-20. Although it is tempting, with the benefit of hindsight, to regard William of Ockham as the true interpreter of "the two swords" theory; he himself would have rejected such an analysis. His own biblical exegesis led him to the conclusion that the two swords referred to in Luke 22:38 were meant to be taken literally, and that allegorical interpretation of them was too uncertain to lead to definitive results; see McGrade, *Short Discourse*, Bk 5, chs. 3-6, 133-42.

75. Matthew 22:21. However, it has been a matter of fierce debate among commentators whether Jesus was seeking, at this point, to establish separate religious and secular spheres, or merely to declare that, although everything belongs to God, Caesar has a temporal authority in certain limited areas.

76. Nymeyer, "A Great Netherlander." Irving Hexham identifies four main groups of spheres: "(1) the sphere of social relationships where individuals meet and interact with each other. This [is] the sphere of personality; (2) the corporate sphere, which includes all groupings of men in a corporate sense. [This] includes the university, trade unions, employers, organizations, companies, etc.; (3) the domestic sphere, which deals with family issues and includes marriage, 'domestic peace,' education, and personal property; and finally (4) the communal sphere, which includes all groupings of men in communal relationships. This [Kuyper] takes to mean streets, villages, towns, cities, etc." "Christian Politics According to Abraham Kuyper," *Crux* 19, no. 2 (1983): 2-7. Another list is included in the quote from Johan D van der Vyver immediately below.

77. Johan D van der Vyver, "Sphere Sovereignty of Religious Institutions: A Contemporary Calvinistic Theory of Church-State Relations," 8. Available online.

2. *Kuyper's definition of the State.* Although it is clear that Kuyper's intention was to free the major institutions of society from domination by the State, Kuyper does not define expressly what he means by "the State." This lack of definition of the State within Kuyper's thought creates a difficulty in understanding Kuyper's ideas. At times, his list of spheres appears to separate out local government and distinguish it from the State.<sup>78</sup> At other times, all branches of government seem to be subsumed under the heading of "the State." Although it is clear that "Kuyper favoured the division of political powers among national, provincial and local governments,"<sup>79</sup> it is not clear whether he regarded this as an instance of sphere sovereignty in operation or another political principle.

After Kuyper, Herman Dooyeweerd distinguished between sphere sovereignty, on the one hand, which regulated the inter-relationships of structurally different kinds of social entities; and autonomy, which describes the intra-relations of a social entity, and would be the apt word to describe the relationship between local/regional authorities and central government.<sup>80</sup>

If Dooyeweerd's reading of Kuyper is correct, then sphere sovereignty is concerned with the relationship between government and other social institutions; leaving subsidiarity alone to regulate the relationship between differing levels of government.

3. *The role of the state in relation to the other sovereign spheres.* If sphere sovereignty is not applicable to the relationships between different levels of government, then what does it say about the role of government *per se*? In relation to the other sovereign spheres, the State has a three-fold role: (1) the recognition of the sovereign spheres, (2) support of the sovereign spheres, and (3) resolution of conflict between the sovereign spheres.

With regard to the third of those functions, the State has a necessary role to deal with boundary conflicts, or to put it more colloquially, "turf wars" between the spheres.<sup>81</sup> "The state must prevent the

78. See van der Vyver's list of the spheres set out above, and Irving Hexham's list, in n. 77.

79. McGoldrick, *Abraham Kuyper: God's Renaissance Man*, 178.

80. Herman Dooyeweerd, *A New Critique of Theoretical Thought*, trans. David H. Freeman and H. de Jongste (Philadelphia, Pa.: Presbyterian and Reformed Publishing Co., 1984), 221-22. See also van der Vyver, "Sphere Sovereignty of Religious Institutions," 10.

81. Herman Dooyeweerd developed a highly complex theory to account for the various possible interactions between the spheres; see Dooyeweerd, *Verkenningen in de Wjsbegeerte, de Sociologie en de Rechtsgeschiedenis* (1962), 102-03. These intertwinements are explored by van der Vyver in "Sphere Sovereignty of Religious Institutions," 17.



spheres from infringing upon one another, and it may use compulsion when necessary to maintain order.”<sup>82</sup> As Kuyper himself explains:

The cogwheels of all these spheres engage each other, and precisely through that interaction emerges the rich, multifaceted multiformity of human life. Hence also rises the danger that one sphere in life may encroach on its neighbour like a sticky wheel that shears off one cog after another until the whole operation is disrupted. Hence also the *raison d'être* for the special sphere of authority that emerged in the State. It must provide for sound mutual interaction among the various spheres, insofar as they are externally manifest, and keep them within just limits.<sup>83</sup>

However, sphere sovereignty was not the sole political virtue which Kuyper espoused. As a politician, he was in favor of economic intervention and government action to promote social justice.<sup>84</sup> He believed that it was the rôle of government to protect the powerless within each of the spheres.<sup>85</sup>

This has created a division among his followers.<sup>86</sup> Some, (“the Absolutists”) see Kuyper as having been inconsistent, preaching the truth of sphere sovereignty but then failing to practice it.<sup>87</sup> For them, the three-fold list is exhaustive of the responsibilities and justification for the State.<sup>88</sup> Others (“the Moderates”) argue that families and churches have far greater powers and responsibilities than we are apt to attribute to them, but that government must provide some sort of safety net.<sup>89</sup>

The difficulty with the Absolutists’ position is that either they do not mean what they say, or the kind of social arrangement which they are envisaging is one without the necessary checks-and-balances to make it tolerable. For example, do they really mean that parents have the right to do exactly what they like to their children without any intervention by the State on any grounds? Do they really mean that it is

82. Kuyper, *Sphere Sovereignty*, New Church Speech, 20 October 1880. See McGoldrick, “Abraham Kuyper: God’s Renaissance Man,” 191. See also Hexham, “Christian Politics According to Abraham Kuyper.”

83. Kuyper, *Sphere Sovereignty*.

84. His thoughts and actions in this regard are discussed by McGoldrick in his biography of Kuyper: *Abraham Kuyper: God’s Renaissance Man*, 73-86.

85. Abraham Kuyper, *Lectures on Calvinism*, 124-25; Rivers, “Liberal Constitutionalism and Christian Political Thought,” 25.

86. A division discussed by Irving Hexham in “Christian Politics according to Abraham Kuyper.”

87. “The *true* followers of Kuyper have seized and promoted the idea of Kuyper regarding sphere sovereignty. They teach it as one of his great and wonderful ideas. The pseudo-followers of Kuyper teach his interventionist ideas. It must be admitted that the pseudo-followers can quote interventionist ideas of Kuyper. But they are not, we believe, the *real* followers of the *real* Kuyper. The trouble is that Kuyper himself failed to observe *complete* consistency.” See Nymeyer, “A Great Netherlander.”

88. Outside of its minimalist functions of national defense and enforcement of the criminal law.

89. For example, Jerry Zandra, “Think Locally, Act Locally,” Acton Institute for the Study of Religion and Liberty.

none of the business of the State to intervene to stop parents from starving their children to death, beating them to a pulp or sexually abusing them? Do they really mean that the State has nothing to say about ritual prostitution, female circumcision, and child sacrifice? Do they really mean that it is none of the business of the State to intervene to stop prejudiced bosses hiring only middle-class W.A.S.P. men? Do they really mean that it is none of the business of the State to regulate the content of advertising, or the weights-and-measures used in the marketplace? Apparently so, in some instances, if Frederick Nymeyer is to be believed:

Sovereignty implies independence; independence implies freedom of choice; freedom of choice unavoidably involves discrimination. By his idea of sphere sovereignty Kuyper authorises discrimination; by sphere sovereignty he denies the right of government to prohibit discrimination in any sphere.<sup>90</sup>

If this is a correct understanding of Kuyper's thought, then sphere sovereignty ceases to be a Christian vision for the arrangement of society and instead becomes a theological defense of the *patria potestas*, the unfettered power of life and death (*ius vitae necisque*) which the Roman *paterfamilias* enjoyed over his family and his slaves.<sup>91</sup> It is highly significant that the first Christian emperor, Constantine, abolished the *ius vitae necisque* over children,<sup>92</sup> while Mosaic law contains provisions which make the stoning of rebellious sons conditional upon the accusation of *both* parents, vindicated and executed by the community as a whole.<sup>93</sup>

If the Absolutists do mean what they say, then their vision of society is one that must fail the desirability test. If they don't mean what they say, then they need to explain on what basis they carve out exceptions to the absolute sphere sovereignty they value so highly.

One possible escape route would be to multiply entities, to create further spheres or sub-spheres, such as children or different racial groups,<sup>94</sup> in which case the issues identified above would create bound-

90. Nymeyer, "A Great Netherlander."

91. Barry Nicholas, *An Introduction to Roman Law*, 3rd ed. (Oxford: Clarendon, 1962), 65-68.

92. L.B. Curzon, *Roman Law* (Plymouth: Macdonald & Evans, 1966), 33.

93. Deuteronomy 21:18-21. Commenting on these verses, Christopher Wright identifies the following principles as being in view: "The law is a limitation on the extent of family law. That is, the father did not have the right of life and death over his own children; such a serious matter had to be brought before the whole community, under civil law. The law therefore recognises a valid role for the civil law in domestic, family matters when they are serious enough to be a threat to the rest of the community." See Wright, *Living as the People of God*, 167.

94. It should be noted that Kuyper's ideas were abused in precisely this way by Boers in South Africa, to provide a theological justification for apartheid. See McGoldrick, *Abraham Kuyper: God's Renaissance Man*, 228-29.

ary conflicts upon which the State could then adjudicate.<sup>95</sup> But taking such a step undermines the whole basis of sphere sovereignty itself. If boundary conflicts are everywhere then no sphere is truly autonomous. Furthermore, Ockham's razor would block such an escape route if there are simpler alternatives available.

In relation to the religious/church sphere, van der Vyver offers an alternative solution. He concedes that

Persons engaged in government have the right and an obligation to scrutinize the conduct of their subjects, including those engaged in religion, from the perspective of the state's sovereign enclave of functions, identifying for example behaviour that disrupts the legal order and if needs be to inflict punishment upon perpetrators of criminal acts. Unbecoming conduct should not escape the power of the sword simply because it was committed in the name of religion.<sup>96</sup>

The problem with van der Vyver's formulation is that it drives a coach and horses through the idea of sphere sovereignty. A Rastafarian asserts that the smoking of cannabis is a religious activity for him. Is this unbecoming conduct which should not escape the power of the sword or an act within the sovereign sphere of religion?<sup>97</sup> If cannabis has been outlawed by the State on just grounds, it must follow that it is illegal. A parent asserts that her Christian beliefs require her to smack her child as a form of discipline. Is this criminal behavior which disrupts the legal order or an act within the sovereign sphere of the family and or religion?<sup>98</sup> If corporal punishment has been outlawed by the State on just grounds, it must follow that it is illegal, whatever the motivation behind it. Perhaps more controversial still is the effect on religious organizations if the State bans discrimination on the grounds of religion or sexual orientation.<sup>99</sup>

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95. This is the approach adopted by Irving Hexham, a moderate interpreter of Kuyper, based on Kuyper's *Stone Lectures* at Princeton University: "The State itself has three duties to perform. They are: (1) to draw a boundary between the different social spheres to avoid social conflict. . . . (2) to defend individuals and weak elements within each sphere. In saying this, Kuyper appears to envisage a subdivision of each social sphere into further spheres. Within the domestic sphere, for example, there is a separate sphere of education, which must not be confused with the sphere of marriage, or vice versa; (3) to coerce all the separate spheres of society to support the State and uphold its legitimate functions. Thus, each sphere has an obligation to render whatever dues necessary for the maintenance of the overall unity of society as protected by the State." Kuyper, *Lectures on Calvinism*, 124-25.

96. See van der Vyver, "Sphere Sovereignty of Religious Institutions," 24.

97. It would be tolerated in a cannabis café in Amsterdam, but illegal and criminal in the U.K. See *R v. Paul Simon Taylor* [2002] 1 CAR 37, 519; [2002] Crim LR 314.

98. It would be criminal activity in Sweden, but legal, in the context of the home in the U.K., although Christian parents have so far lost their legal battle to have their children disciplined in this way at school. See *Williamson and others v. Secretary of State for Education and Employment* [2002] EWCA Civ 1820.

99. This issue forms the subject matter of Simon Calvert and Colin Hart's article, "EU Employment Law and Religious Organisations," *Law & Justice* 148 (2002): 4. The issue crystallizes in the following terms. In favor of non-interference: "The Labour Party has a

If neither the creation of further spheres/sub-spheres, nor the application of a generalized test of public morality irrespective of the sphere in question is the solution, are there any other alternatives?

4. *Sphere authority and exceptional intervention by the State.* Perhaps the source of difficulty is the word "sovereignty" itself. Sovereignty is very much a *leitmotif* of Calvinist theology, which reasons from God's sovereignty as a first theological principle. The sovereignty of God must be, *ex hypothesi*, absolute and unbounded.<sup>100</sup> In applying the term to human institutions, the tendency is to seek to apply the term in the same way, giving each institution absolute and unbounded rights within its own sphere.<sup>101</sup> Yet the theological point which the doctrine of the sovereignty of God is making is precisely the opposite—all human authorities are accountable to God.

McGoldrick, in my view wisely and rightly, prefers to translate Kuyper's idea as *sphere authority*.<sup>102</sup> Whereas "sovereignty" implies a lack of accountability, "authority" confers the same sense of power rightly exercised, but without the same connotation. This accords with Kuyper's own belief that it was legitimate for the State to intervene to defend the powerless within each sovereign sphere.<sup>103</sup>

Kuyper's understanding was that God "did not give all his power to one single institution but gave to every one of these institutions the power that coincided with its nature and calling."<sup>104</sup> In other words, power is divided among social institutions, and given to different institutions because of their differing *tela*.<sup>105</sup> The *telos* of parenting is the

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policy of employing only Labour Party members. For there to be freedom of association in any meaningful sense, organisations like the Labour party must be free to have such employment policies. They must be free to discriminate in employment against those who do not share their beliefs. This extends to behaviour. . . . Deciding to reject an applicant because they are opposed to the very foundation of the organisation is not unfair discrimination, it is common sense." In favor of governmental intervention: "If an employer could decline to employ Muslims or Jews on the basis that the 'ethos' of the business is Christian, this would subvert the whole purpose of a prohibition on discrimination."

100. At least, this must be true of the Christian God as revealed in the Bible. Tom Wright has argued forcefully that the lordship of Christ is the heart of the Apostle Paul's message in his letters in Tom Wright, *What Saint Paul Really Said* (Oxford: Lion, 1997), 88-89, 148-49, 153-54.

101. At least, vis-à-vis other spheres. There can be no insulation from accountability to God for the exercise of that sovereignty.

102. McGoldrick, *Abraham Kuyper: God's Renaissance Man*.

103. Rivers "Liberal Constitutionalism and Christian Political Thought." See also n. 85. It is possible, *pace* Hexham, to regard the intervention of the State in favor of the powerless as a legitimate function of government without positing the existence of sub-spheres in order to justify it.

104. Kuyper, *Ons Program (Met Bijlagen)* (1879), 198.

105. *Tela* is the plural of the Greek word *telos*. *Telos* has a rich cluster of meanings in that it connotes ends, goals, purposes.

raising of children; the *telos* of schools and universities is the education of students; the *telos* of commerce is the provision of goods to supply human needs;<sup>106</sup> the *telos* of science is discovery and the advance of knowledge; the *telos* of art is the production and appreciation of beauty; the *telos* of the State is the common good.

The strength and attractiveness of Kuyper's thesis is that it creates space for social institutions within the body politic. It therefore avoids the exclusivity of the individual-State antithesis which is the danger of modern rights-talk. However, its corresponding weakness is that it achieves that gain at the possible expense of a loss of space for public morality and common goals within the body politic. What is required is a test which will indicate at what level it is appropriate for public morality and social goals to be invoked in justification for governmental intervention.

The State has delegated authority from God. They are to "hold no terror for those who do right, but for those who do wrong."<sup>107</sup> The State must have a reserve power to intervene when the authorities in other spheres are *manifestly abusing their power*.<sup>108</sup> William of Ockham foresaw this. In his thought, he stressed the distinction between the regular and exceptional (*causaliter*) exercise of authority. While regular authority may rest in one pair of hands, exceptionally another authority may intervene to correct its flagrant abuse.<sup>109</sup>

How would such a conception work in practice? Parents have authority over their children. That authority is given to them for a purpose. The purpose is to raise their children. They are to be allowed to do so as they see fit, within reason. There is, however, a difference between a wholesome discipline and beating a child to within an inch of his/her life. The State has no mandate to stop the former and every justification for intervening to prevent or punish the latter because it is a manifest abuse of power.

One of the difficulties with this approach, however, is that the grounds for State exercise of its "reserve power" may vary from sphere to sphere. In part, that is because the legitimate interest of the State varies from sphere to sphere; and in part that it is because, as van der Vyver rightly notes, not all of Kuyper's spheres are of the same nature.

106. And not necessarily, the generation of profit.

107. Romans 13:3 (NIV).

108. Kuyper himself acknowledged the need for such an exception within his own theory. He said: "Furthermore, since personal life can be suppressed by the group in which one lives, the state must protect the individual from the tyranny of his own circle," *Sphere Sovereignty*, New Church Speech, 20 October 1880. But if that is an appropriate intervention, why is it wrong for the State to intervene if the tyranny is that of a sphere, not against another sphere, but against individuals outside it?

109. Rivers, "Liberal Constitutionalism and Christian Political Thought," 20.

It is because the State has no role in the matter of salvation that it must not use its power to enforce the dogmas of any particular church-body.<sup>110</sup> But because it has a role in safeguarding the welfare of its nation, the State has a greater responsibility to ensure that all are housed, fed, clothed, and given the greatest possible opportunity to secure employment.

It may be that it would be appropriate to adopt different tests for intervention in the affairs of the different spheres. For example, the State might be required to justify intervention in the Church and Family Spheres on the basis of *détournement de pouvoir*.<sup>111</sup> In the case of *Buyt*,<sup>112</sup> *détournement de pouvoir* was explained in the following terms: "an act can be challenged for *détournement de pouvoir* if a public body uses its powers towards ends different from those for which the powers were granted to it."<sup>113</sup> The State would bear the burden of proving that what was occurring was so far from being a legitimate exercise of parental power or religious devotion that it amounted to a flagrant misuse of sphere authority.

In relation to the other spheres, it might be safe to allow the State to intervene when the actions of a business were *Wednesbury* unreasonable, i.e. so unreasonable that no reasonable business could ever have reached them,<sup>114</sup> or even on the basis of the *Bolam* test, i.e. that the actions taken fell below every standard adopted by any responsible body of opinion in the sphere in question.<sup>115</sup> It will be readily appreciated that these latter tests afford a far greater opportunity for judges or other state officials to substitute their own views for those in authority in the spheres under examination.

What is required is a test for the exercise or exclusion of governmental power which preserves and enforces sufficient public morality for a society to maintain its cohesion, while at the same time allowing people, qua family members, workers and business owners, students and teachers, worshippers and clergy, artists and scientists, to order their lives as far as possible in the way in which they see fit.

Such was Kuyper's approach to the economic sphere. "He said that the state must protect economic freedom and interfere only if it becomes anti-social."<sup>116</sup> Perhaps the conception of *sphere authority* set

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110. McGoldrick, *Abraham Kuyper: God's Renaissance Man*, 71.

111. This is a term derived from French and European administrative law.

112. 02.04.1982.

113. "Un acte peut être attaqué pour détournement de pouvoir si une autorité publique utilise ses pouvoirs à des fins différentes de celles pour lesquelles ils lui ont été attribués."

114. *Associated Pictures Houses v. Wednesbury Corporation*, [1948] 1 KB 223.

115. *Bolam v. Friern Hospital Management Committee*, [1957] 1 WKR 582.

116. McGoldrick, *Abraham Kuyper: God's Renaissance Man*, 80.

out above will provide a tentative basis upon which to create a coherent account of the various autonomies that are to be cherished in society.

At this point, the conception of sphere authority outlined above could be accused of having altered Kuyper's original idea of sphere sovereignty beyond all recognition. In particular, the challenge could be brought that sphere authority has sacrificed the heart of Kuyper's thought in that once again the State has been placed as an intermediary between the sovereign spheres and their accountability to God.

This is not necessarily so. All spheres of authority have been established by God, but amongst those spheres, God has appointed government to do good and to punish wrong.<sup>117</sup> Those delegated functions given by God to government are to be exercised by the enforcement of public morality to the limited extent necessary in order to preserve social cohesion and to achieve important social goals. The spheres of authority are therefore fully accountable to God alone, and have only a limited accountability to the State. The State itself is recognized as being accountable to God for the discharge of its functions; and it is the task of the Church to challenge, exhort and encourage the State to fulfil its divine mandate.

### III. A SYNTHESIS OF SUBSIDIARITY AND SPHERE SOVEREIGNTY

Because of their different theological origins, the ideas of subsidiarity and sphere sovereignty tend to be seen as equivalent with one another.<sup>118</sup> However, if the two ideas of subsidiarity and sphere sovereignty occupy a similar theological space, they are different in the way in which they function. While sphere sovereignty claims to give a substantive account of the rightful location of power, subsidiarity operates as a procedural principle, to be weighed against other principles in determining at what level power should properly be exercised.

There is also an important difference between their present conceptions. The principle of subsidiarity, within the paradigm of a centralized nation state, operates on the basis that all power is derived from that state, although it ought to be devolved, preferably downwards, as far as possible.<sup>119</sup> As applied within the context of the European Community, it means that the nation states should be left free to take independent action on all matters which do not compromise the pursuit of the community's objectives. The central idea of sphere sov-

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117. Romans 13:4.

118. Jerry Zandstra, among others, makes this identification in "Think Locally, Act Locally," a paper available online at the Acton Institute for the Study of Religion & Liberty website: [www.acton.org/ppolicy/comment/archives/010926.html](http://www.acton.org/ppolicy/comment/archives/010926.html).

119. Although in its theological origins, subsidiarity has the idea that the power of the state is subsidiary to the people, and is to be exercised in the service of the common good.

ereignty is that different social entities have "an internal enclave of domestic powers that emanate from the typical structure of the social entity concerned and . . . conditioned by the particular function that constitutes the special destiny of that social entity."<sup>120</sup>

Therefore, as presently applied, subsidiarity is concerned with the relationship between national, supra-national, and local government. Sphere sovereignty has been typically understood as concerned with the relationship between government and the other institutions of society. There is space for both, and indeed both are required in order to provide a comprehensive Christian theology of how power and authority ought to be divided in human society.

However, a more complete account of the valid division of power and authority can be achieved by re-thinking the concepts: adopting a broader vision of the role of subsidiarity, and embracing the idea of sphere authority in place of sphere sovereignty.<sup>121</sup> Subsidiarity as a principle is not necessarily limited to intra-governmental relationships. As described by Pius XI, it is equally applicable to relationships between government and other social institutions. Should not families, churches, the professions, sports clubs, and schools be able to regulate their own affairs as far as possible?

The ideas of subsidiarity and sphere sovereignty could operate together in a more promising fashion if subsidiarity were allowed to develop in the re-formulated form outlined above, to encompass not just the question of the right relationship between different levels of government but also the right relationship between government as such and other social institutions. There are signs that Catholic thinking could be moving in such a direction. Johan van der Vyver quotes Pope Leo XIII's encyclical *Rerum Novarum* as an example, in which the pope acknowledges the right of Christian or Catholic trade unions to regulate their own internal affairs free from interference by the State.<sup>122</sup> More recently, he cites Ronald Minnerath (Vatican Representative Professor in the University of Strasbourg) who declared "Recognition of the autonomy of church and state requires that each *shall be sovereign and independent in its own sphere*."<sup>123</sup>

Sphere authority recognizes that even in relation to the spheres of authority which it did not create, the State does not bear the sword for

120. van der Vyver, "Sphere Sovereignty of Religious Institutions," 10.

121. Although conflicts of jurisdiction can only ever been regulated, not eliminated.

122. *Rerum Novarum*, 1891: Encyclical of Leo XIII on the Rights and Duties of Capital and Labour, para. 55 (reprinted in Henry George, *The Conditions of Labour*, [1934]), 163-95.

123. R. Minnerath, "The Doctrine of the Catholic Church," in *Proceedings of the Third World Conference on Religious Liberty* (IRLA, 1989), 49 at 51.



nothing.<sup>124</sup> Where those with legitimate authority in the church, the family, and the other social institutions are manifestly abusing that power then, exceptionally, the State is justified in intervening to protect the victims of those abuses.<sup>125</sup>

Subsidiarity needs to be accompanied by a substantive account of who should be exercising power over what within a society in order to be able to operate effectively. A theory of sphere authority may go some way towards offering such an account, but itself requires a conception of public morality and public interest sufficient to both permit and limit occasional and exceptional intervention by the states within the different spheres of authority.

If the Christian vision of society is one of maximum possible liberty compatible with maintenance of social order, and a preservation of the authority of the institutions of the family and the church, then it is right that government should bear the burden of proof on the question of interference (which is what a broader conception of subsidiarity would achieve) but it is also right that there should be bounded spheres of authority in which government could only intervene if the authority in that sphere was being manifestly abused (which requires a conception of sphere authority).

Both subsidiarity and sphere authority need to be taken together in order to achieve what the founders of the British Movement for Christian Democracy describe as empowerment. In their Westminster Declaration, they expressed their Christian social vision in six principles, one of which, empowerment, is that: "Different kinds of authority are found in different areas of society. It is wrong to assign to larger organizations what can be adequately done by smaller and more local organizations. All authority is given to enable service for the common good."<sup>126</sup> Only when we have a vision for the common good that goes beyond the economic, and power structures which empower individuals, local communities and social institutions, will we have government which serves the people rather than enslaving them.

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124. Romans 13:4.

125. This may be actively or passively, as for example, by providing courts to which the victims can address their complaints.

126. The other five principles were: Social Justice, Wise Stewardship, Respect for Life, Active Compassion, and Reconciliation. The principles were adopted at the first national rally of the Movement for Christian Democracy, November 1990. The full text of the Westminster Declaration is available online at the MCD website at [www.mcdpolitics.org](http://www.mcdpolitics.org).

