"SACRED AND INVIOLABLE": RERUM NOVARUM AND NATURAL RIGHTS

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LEO XIII'S Rerum novarum, whose centenary was observed in 1991, is the first in a long series of official documents by means of which the Roman Catholic Church has attempted to deal with what the 19th century called the "social question," that is, the scandal provoked by the impoverishment of large segments of the working class in a world that was daily becoming more opulent at its expense. It is also, in the opinion of many, the most theoretical and most elegant of these documents. Its great merit is to have defined the terms in which the moral problems spawned by the industrialization of Western society would henceforth be debated in Catholic circles. In it one finds a key to the understanding of the many statements that Rome has since issued on this subject, all of which stress their continuity with it, build upon it, seek to refine it, or extend its teaching into areas not touched upon by Leo himself. In retrospect, it can be said to have affixed a canonical seal of approval to what, in the wake of Luigi Taparelli d'Azeglio's landmark treatise on natural right, had emerged as an autonomous or semi-autonomous discipline now known as Catholic social ethics. Pius XI called it an "immortal document," the "Magna Carta" of the new theological discipline. Few papal pronouncements have had a more profound and lasting impact on Catholic life and thought.

On the assumption that the text of Rerum novarum is familiar or

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1 This article is a revised and enlarged version of a paper presented at the International Conference on Rerum novarum held at the Lateran University in Rome on May 6–9, 1991. An Italian translation of the original text, entitled "Rerum novarum and Modern Political Thought," is scheduled to appear in the proceedings of the conference.


3 In Centesimus annus (1991), Pope John Paul II refers to it as the Church's "social doctrine," "social teaching," or "social magisterium" (no. 2; cf. nos. 13, 54, 56).

4 Quadragesimo anno, nos. 147, 39. The paragraph numbers for this encyclical as well as for Rerum novarum are those of the English translation as it appears in Claudia Carlen, I.H.M., ed., The Papal Encyclicals, 5 vols. (Raleigh, N.C.: Pierian, 1990).
readily accessible to most people, I shall forgo any detailed analysis of its contents and focus instead on certain points that seem more problematic to us than they did to Leo and his collaborators or that call for further reflection in the light of what we have learned in the meantime about the origin and nature of modern social thought. My thesis is twofold. First, I shall claim that the encyclical represents an attempt to synthesize or fuse into a single whole elements derived from two independent and largely antithetical traditions, one rooted in a teleological and the other in a nonteleological view of nature. The first of these, represented preeminently in the Christian West by Aristotle and his medieval disciples, I shall refer to as the “premodern” tradition. The other, which originated with Machiavelli in the 16th century and achieved its most popular form in the political philosophy of John Locke a century and a half later, I shall refer to as the “modern” tradition. Secondly, I shall claim that the two components of the proposed synthesis coexist only in an uneasy tension with each other.

My argument rests on the premise that with the emergence of modern thought we came to a crossroad in the intellectual history of the West, one of those rare moments at which, through the agency of a handful of seminal thinkers, human consciousness underwent a radical transformation and the Western world was summoned to a fundamental change in direction. Implied in this statement is the view that modern thought is not a simple derivative of premodern thought but represents a decisive break with it, defines itself in opposition to it, and on the level of its highest principles remains profoundly at odds with it. This opposition became known in the second half of the 17th century as the “quarrel between the Ancients and the Moderns” and was still discussed under that name by its last great witnesses, Swift and Lessing, in the 18th century. At stake was nothing less than the issue as to which of the two “wisdoms,” that of the Ancients or that of the Moderns, was superior to the other. To this day, Swift’s *Gulliver’s Travels*, with its portrayal of the Ancients as giants and of the Moderns as dwarfs, stands as a towering monument to the memory of the epic battle in which those formidable adversaries were once locked for the minds and hearts of their contemporaries, to say nothing of future generations.5

Numerous attempts were later made to downplay the significance of that renowned quarrel by reducing it to a petty squabble between two rival groups who, lacking the necessary perspective, were blind to the

implications of their respective positions. The conventional wisdom of our day is that modern thought was already latent in premodern thought, that it was gradually deduced from it by a process of logical inference, and that in consequence one cannot legitimately speak of a hiatus or breach of continuity in the Western intellectual tradition from its inception in fifth-century Greece or thereabouts down to modern times. Far from heralding a break with the past, the modern development would be nothing but an effort to refurbish, update, or tailor to the needs of later ages the principles that first came to light at the dawn of the philosophic tradition. Thus, it became fashionable to read Locke, the father of capitalism, as a pious 17th-century Aristotelian and to interpret the American founding, despite its entanglement with Enlightenment rationalism, as a spiritual offspring of medieval theology.

This revisionist account of the evolution of Western thought was never accepted by everyone. Most of the modern popes resisted it, as is evident from even a superficial glance at the documents of the pre-Leonine period. By way of example, one has only to recall the eightieth and last of the "errors" condemned by Pius IX in the Syllabus of 1864, which is that "the Roman Pontiff can and ought to reconcile himself with progress, liberalism, and modern civilization." It has likewise been called into question by a number of eminent 20th-century scholars—Eric Voegelin, Leo Strauss, Karl Löwith, Michael Oakeshott, Jacob Klein, Hannah Arendt among them—who have argued that, regardless of where one's sympathies may ultimately lie, the safest and best way to make sense of the current intellectual scene is to analyze it in terms of the dichotomy between the premodern and modern modes of thought. Such, at any rate, is the perspective within which I propose to examine the teaching of Rerum novarum.

The great philosophic authority behind this view is Hegel, who was followed with a variety of modifications by numerous historians, among them R. W. and A. J. Carlyle; see their monumental History of Mediaeval Political Theory in the West 1, 2d ed. (Edinburgh/London: William Blackwood and Sons, 1927) 2: "There are no doubt profound differences between the ancient mode of thought and the modern; . . . but just as it is now recognized that modern civilization has grown out of the ancient, even so we think it will be found that modern political theory has arisen by a slow process of development out of the political theory of the ancient world—that, at least from the lawyers of the second century to the theorists of the French Revolution, the history of political thought is continuous, changing in form, modified in content, but still the same in its fundamental conceptions."


For a clear and penetrating statement of the problem, see Leo Strauss, "Progress or
It has often been remarked that the papacy was slow in speaking out against the injustices to which the industrial revolution and the triumph of capitalism had directly or indirectly given rise. Its intervention in this matter followed by many years the formation of a powerful social movement to which assorted nonreligious or antireligious theorists, historians, and men of letters had been lending their voices since the middle of the 19th century or earlier. There is even a touch of irony in the fact that, by the time Rome joined the debate, the condition of the modern worker had already begun to improve.

The delay, explained in part by the fact that the industrial revolution was less advanced in the traditionally Catholic countries of southern Europe than in the predominantly Protestant countries of northern Europe, may have been providential, for it gave the Church enough time to equip itself with the intellectual tools needed to tackle a problem of this magnitude. Only in the last quarter of the century, thanks to the revival of Thomism, to which Leo XIII had long been committed both as bishop of Perugia and as pope, would it be in a position to undertake such a task and bring it to a happy conclusion.

9 The trend is well illustrated not only by Marx and the other 19th-century socialists but, on a more popular level, by such widely read books as Victor Hugo's *Les Misérables* and Michelet's *Le Peuple*. Another work by Hugo, entitled "Ascension Humaine," casts the problem in the sharpest possible light by depicting a downtrodden and evanescent humanity rising to new heights, magnificently (and, one might add, blasphemously) accomplishing by its natural powers a deed that the Christian tradition reserved for Christ. Virtue was to be discovered by plunging into the depths of society and a new "religion of humanity" would soon replace Christianity as the instrument of mankind's salvation. See on this subject the account by R. Emmet Kennedy, Jr., "The French Revolution and the Genesis of a Religion of Man," in R. McInerny, ed., *Modernity and Religion* (Univ. of Notre Dame, forthcoming).

10 This is not to say that on a local level numerous efforts had not already been made to come to grips with the problem. For these earlier developments in France, see J. B. Duroselle, *Les débuts du catholicisme social en France (1822–1870)* (Paris: Presses Universitaires de France, 1951); R. Talmy, *Aux sources du catholicisme social: L'école de La Tour du Pin* (Tournai: Desclée, 1963).
The result was a far more probing analysis of the problems at hand than would have been possible at an earlier date.

Other critics, from Rousseau to Nietzsche, had attacked modern society for its smallmindedness, its bourgeois mediocrity, its lack of elevation, or its inability to produce human beings of noble character. *Rerum novarum* proceeds on different and more narrowly moral grounds. It criticizes contemporary Western society for its injustices and traces these injustices to their roots in the two great political systems of modern times, liberalism and socialism, both of which it subjects to a rigorous scrutiny guided in the main by the newly rediscovered Thomistic principles. It denounces with vigor the abuses to which liberalism and the economic system in which it finds its classic expression, capitalism, lend themselves, and it alerts its readers with even greater vigor to the threat to human freedom posed by the spread of socialism. Liberalism is rebuked for its excessive individualism; socialism, for its dangerous collectivism. The former exalts the individual at the expense of the community; the latter sacrifices him to the collectivity. Both systems are destructive of human dignity and detrimental to the health of society.

The bill of particulars in each case is too well known to warrant more than a brief reminder. Liberalism exploits the worker and treats him as chattel. It “grinds him down” with excessive labor, “stupefies” his mind, “wears out his body,” and repays him by robbing him of the fruit of his industry (no. 42). It imposes inhumane conditions on him and, by obliging him to bargain for his salary, leaves him entirely at the mercy of his employers. Its laissez-faire economics sanctions the unlimited acquisition of wealth, emancipates greed, and breeds flagrant inequalities. It deprives the poor of the necessities of life and multiplies the wealth of those who already have more than they need. It denies that labor and commodities have any intrinsic value and allows their price to be fixed exclusively by the free interplay of market forces or the law of supply and demand. It is insensitive to the workers’ spiritual needs. It destroys the structure of the home by condoning child labor or by making it necessary for both parents to work. And the list goes on.

Socialism, Leo’s *bête noire* and the only one of the morally defective systems to be dealt with in a separate section (nos. 4–15), is responsible for even greater evils. Its eagerness to find a cure for the cupidity stimulated by the free-enterprise system is laudable, but the proposed remedy, namely, the total suppression of private property, is worse than the disease itself. It throws open the door to “envy, mutual inductive, and discord.” It removes the necessary incentives to ingenuity and causes the fountains of wealth to dry up. With nothing that he can
call his own, the individual is left with a freedom that has no way of expressing itself and therefore remains purely abstract. Whereas capitalistic society reduces one social class, the workers, to a condition of slavery, the socialist regime produces "uniform wretchedness and meanness for all" (no. 15). It violates everyone's rights: those of lawful owners, those of workers, and those of parents, for whom it would substitute itself. To make matters worse, it is strictly utopian. Its "absurd egalitarianism" (absurda aequabilitas; no. 38) runs counter to the nature not only of the individual but of society, which requires for its proper functioning the services of human beings with diverse and unequal talents (no. 17). Whatever the socialists may think, these inequalities are both natural and necessary. Society would be worse off without them. Again the list goes on.

To its credit, the encyclical never forgets that, different as they may be from each other, liberalism and socialism thus understood have much in common, grounded as they are in a materialistic and mechanistic understanding of human existence. Both share the same animosity toward premodern thought, the same obsession with economic factors, the same "scientific" or nonteleological conception of the universe, and the same view of the human being as a being who sets for himself only such goals as are geared to the satisfaction of his bodily needs. Seen in this perspective, the two movements are not polar opposites. Socialism comes into being by way of a radicalization rather than a repudiation of the basic premises of modern liberalism.

The strength of Rerum novarum is that it boldly attacks this specifically modern view of life, not, as others had been doing, in a spirit of romantic sentimentality or traditionalist conservatism, but by means of theological and rationally defensible principles. It stresses man's natural sociability, defends private property without omitting to tell us that it must be used for the good of all, dwells on such long-forgotten themes as fair prices and just wages, underscores the importance of the family, encourages the formation of private trade unions as long as their goals do not conflict with those of the larger society, rejects the Marxist notion of class conflict, demands decent working conditions for laborers, reminds society of its special obligations toward the "lowly and the destitute" (no. 37), waxes eloquent when it evokes the peculiar dignity of human beings, urges respect for religion, and pleads for the moral regeneration of society through the cultivation of virtue and the pursuit of the common good.

In a nutshell, what the encyclical calls for is nothing short of a wholesale return to a premodern and by and large Thomistic understanding of the nature and goals of civil society, whose insights are
brought to bear on the new situation created by the rise of capitalism and the socialist reaction to it. That alone would be enough to set *Rerum novarum* apart as a document of unique theoretical and historical importance. One thing is certain: its publication marks the spectacular reentry of the Church into an arena from which it had been excluded as a major player by the great intellectual and political events of the Enlightenment and its aftermath.

The other side of the story, and it is no less fascinating than the first, is that in elaborating its program for the reform of society *Rerum novarum* resorts to a number of categories that are proper to modern thought and not easily squared with its basic Thomism. Two of these merit special consideration: the overwhelming emphasis on the naturalness of private property and the doctrine of natural rights.

**RERUM NOVARUM AND PRIVATE PROPERTY**

That the encyclical should be outspoken in its support of private property is understandable insofar as much of what it says was intended as a challenge to the growing power of the socialist movement, whose stated aim was to concentrate all property in the hands of the state. Yet the position that it takes is anything but a mere restatement of what the Catholic tradition had previously taught on this subject. While the Church had long been a strong advocate of private property, its defense of it was usually couched in rather more moderate terms. The prevailing view was the one expounded by Thomas Aquinas in the *Summa theologiae*, 2-2, q. 66, a. 2, which raises the question of whether it is lawful for someone to possess a thing as his own. The question receives an affirmative answer supported by three arguments taken from Aristotle's *Politics*. The first is that human beings bestow greater care upon things that belong to them individually than they do upon common things. Secondly, they are less confused than they tend to be when everyone is responsible for everything indiscriminately. Finally, they have a better chance of living at peace with one another if they know beforehand what belongs to whom. Simply put, private property is a good idea. Although not an absolute demand of natural right, it is entirely in accord with it and ought to be favored whenever possible.

The encyclical refers with approval to Thomas's article (no. 22) but proceeds to give the right of private property a much firmer grounding in nature. As was just noted, Thomas left it at saying that it is "lawful" and in practice necessary for human beings to possess certain things as their own: *licitum est quod homo propria possideat*. The encyclical for its part presents private property not only as superior to other possible arrangements and eminently desirable for that reason, but as a "stable
and perpetual” (no. 6), inviolable,\textsuperscript{11} and indeed “sacred” right (\textit{ius sanctum}; no. 46).\textsuperscript{12} This right has its source in nature itself. All the laws, the divine as well as the natural and the civil, sanction it (no. 11). Since it is not conferred by civil society, it cannot be taken away by it and must be protected by it. It matters little that the argument forms part of a critique of socialism’s “pernicious tendency” to invade people’s possessions in the name of some “absurd equality” (no. 38), for it is still rooted in what claims to be a universal principle.

Astonishingly, no one at the time seems to have noticed that this notion of private property as a natural and imprescriptible right had only recently been imported into Catholic theology, in all probability by the Jesuit Luigi Taparelli d’Azeglio, the biggest name in 19th-century Catholic social thought and, incidentally, the man who had been appointed rector of the Roman College when it reopened in 1824, the year Gioacchino Pecci, the future Leo XIII, enrolled there as a student at the age of fourteen.\textsuperscript{13} Prior to that time it was understood that according to natural law the earth originally belonged to everyone and that its subsequent division, dictated in large measure by reasons of expediency, was a matter of human or positive law. That older view is summarized as follows in Gratian’s \textit{Decretum}: “The division of property and slavery belong to the “right of nations” (\textit{ius gentium}); . . . . by the right of nature all things are common and everyone is free.”\textsuperscript{14} It is the view that Thomas himself sets forth in \textit{Summa theologiae}, 1-2, q. 95, a. 4, where in like manner the division of property is assigned, not to the natural law simply, but to the “right of nations,” defined as that part of the positive law (\textit{ius positivum}) whose principles are derived from the natural law as conclusions from premises.\textsuperscript{15}

\textsuperscript{11} No. 9 states explicitly that private property is a right that no one is ever allowed to violate: \textit{nec ullo modo . . . . violare cuiquam licet}. See also no. 15: \textit{privatae possessiones inviolate servandae [sunt]}.

\textsuperscript{12} For similar uses of \textit{sanctus} in its adjectival or adverbial form, cf. no. 20: \textit{res proletariorum, quo exiliior, hoc sanctior habenda}; no. 37: \textit{iura quidem . . . . sancte servanda sunt}.


\textsuperscript{14} \textit{Decretum}, D. I, cap. 7: “\textit{Iure gentium est distinctio possessionum et servitus; iure naturae est communis omnium possessio et omnium una libertas.”} The text is taken from Isidore, \textit{Etym. Libr.} 20.5.4.

\textsuperscript{15} See also \textit{ST} 2-2, q. 57, a. 2, ad 3. On 19th-century conceptions of private property among Catholic theologians, see the important article by L. de Sousbergehe, “Propriété ‘de droit naturel’: Thèse néo-scolastique et tradition scolastique,” \textit{Nouvelle Revue Théologique} 72/6 (June, 1950) 580–607.
A telltale sign of the encyclical’s departure from the Church’s long-standing teaching on this point is its failure to include any reference to the key notion of *ius gentium*. Since the latter had been given due prominence in the first and the third drafts, both of them prepared mainly by the Jesuit Matteo Liberatore, its omission from the final text cannot have been an oversight.\(^{16}\) Why was it left out? A plausible answer is supplied by Liberatore’s *Principles of Political Economy*, first published in 1889 and thus very close in time to *Rerum novarum*. From this work we learn that other contemporary theorists were turning Thomas’s categorization of the *ius gentium* as part of positive law into an argument against private property. If the latter is a creation of the civil authority to begin with, it can be abrogated by it. As his spirited response shows, Liberatore was confident that even on Thomas’s account of the *ius gentium* a strong case could be made for the naturalness of private property. Thomas’s *ius gentium* is not simply a matter of positive law. It stands “midway between natural right and civil right.” Its principles are deduced from strict natural-law principles and share in their necessity. The proof is that for Thomas these principles are binding quite apart from any human enactment.\(^{17}\)

All well and good, save that the Pope, who participated regularly and actively in the deliberations of the drafting committee, was not about to take any chances. It would not be at all surprising if the initiative to strike from the text any reference to the *ius gentium* had come from him. Not that Liberatore was any less committed than Leo to the defense of private property. Far from it, for he appears to be the one who injected the notion of the sacredness of property into the debate when, in the first draft, he wrote with breath-taking candor: *la proprietà privata è sacra*—“private property is sacred.”\(^{18}\)

What the encyclical and much of 19th-century Catholic theology took to be a teaching coeval with Christianity was in fact a startling innovation ultimately traceable to John Locke and propagated by his


\(^{18}\) Antonazzi, *L’Enciclica* 46, line 265. The notion of sacred rights already appears in Liberatore’s *Institutiones Philosophicae* 3: *Ethica et Ius Naturae*, 10th ed. (Rome, 1887), 166: *Qui viribus caret, is omni iure destitueretur, et sola praepotentia ius gigneret; cum contra quo magis imbellis est et sine viribus, eo sanctiora putari debeant iura quae possidet ac maiori veneratione colenda.*
numerous disciples throughout the 18th century and beyond. Locke himself stopped short of calling private property "sacred," although, in view of the preeminence accorded to it as the cornerstone of his political system, he might have. That honor fell to later writers and in particular to Adam Smith, a certified Lockean, who hailed the right of property as the "most sacred and inviolable" of rights. The expression caught on and was enshrined soon afterwards in Article XVII of the French Constituent Assembly's Declaration of the Rights of Man and Citizen (August 26, 1789), which states unequivocally that "Property being an inviolable and sacred right, no one can be deprived of it" save in cases of extreme public necessity. Seventy-five years later, J. S. Mill could still write: "The sacredness of property is connected, in my mind, with feelings of the greatest respect." It is to this emphatically modern tradition that, consciously or unconsciously, the encyclical owes its extraordinary doctrine of the sanctity of private property. To borrow an image from Sherlock Holmes, Locke or perhaps Adam Smith is the dog that should have barked but curiously did not bark in Rerum novarum. That everyone should have assumed that Taparelli and his intellectual progeny were merely echoing a time-honored Christian teaching shows how little was then known about ancient and medieval theories of property.

It would obviously be unfair to accuse Leo and his collaborators of deifying mammon by declaring private property intrinsically holy.

19 For a perceptive analysis of Locke's controverted theory of property, see in particular L. Strauss, Natural Right and History (Chicago: Univ. of Chicago, 1952) 234–46.

20 The Wealth of Nations 1.10.2: "The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable." The "sacred rights of property" are mentioned again in 1.11.2.

21 R. Schlatter notes that this statement was intended "as a weapon that would destroy feudal property and absolutism with one blow" (Private Property: The History of an Idea [London: Allen and Unwin, 1961] 222). See also the Déclaration passed by the National Convention, June 23, 1793: "Le peuple français, convaincu que l'oubli et le mépris des droits naturels de l'homme sont les seules causes des malheurs du monde, a résolu d'exposer dans une déclaration solennelle ces droits sacrés et inaliénables. . . .

ARTICLE 1: Le but de la société est le bonheur commun. Le gouvernement est institué pour garantir à l'homme la jouissance de ses droits naturels et imprescriptibles. ARTICLE 2: Ces droits sont l'égalité, la liberté, la sûreté, la propriété."

22 Morning Star, March 13, 1868. By that time, the notion that private property might be sacred had long been under attack from socialists. See, Proudhon's famous essay, Qu'est-ce que la propriété? (Paris, 1840), ch. 2: "Car, si la propriété est de droit naturel, . . . tout ce qui m'appartient en vertu de ce droit est aussi sacré que ma personne." Ch. 1 of the same work had begun by declaring that "Property is theft." The Fifth Letter of Schiller's On the Aesthetic Education of Man alludes in ironic fashion to the "sacred rights" of society.
What they meant and had every right to insist on is that workers should not be defrauded of their earnings through excessive taxation, unfair wages, the seizure of property by eminent domain without proper indemnification, and above all total expropriation through the abolition of private property. In their minds, "sacred" was synonymous with "inviolable," the term with which it is often coupled and by which it is translated in the official Italian version of the encyclical.²³ Yet this alone would not make its application to material objects other than those reserved for the cult any less incongruous were it not for the interesting historical background of the new usage. It so happens that the tandem "sacred" and "inviolable" is indigenous to another context where its significance is more easily grasped, namely, that of the notion of sacred kingship as it had developed in the West from the Hellenistic period onward, eventually reaching its culmination in the 17th-century theory of the divine right of kings. If the king is the anointed of God, if he rules by right of hereditary succession, if that right is indefeasible, if he is entitled to the total submission of his subjects, and if his actions are not to be judged by anyone save God, it makes some sense to refer to his person as sacred and inviolable. Any attempt on his life, challenge to his prerogatives, or resistance to his rule even in the name of religion becomes a sacrilege.²⁴

The same tandem shows up among other places in The Federalist Papers 69 (Hamilton), which states expressly: "The person of the king of Great Britain is sacred and inviolable; there is no constitutional tribunal to which he is amenable; no punishment to which he can be subjected without involving the crisis of a national revolution."²⁵

²³ See the text in Antonazzi, L'Enciclica 227: "[L']inviolabilità del diritto di proprietà è indispensabile per la soluzione pratica ed efficace della questione operaia." Leo's earlier encyclical, Quod apostolici muneris (1878), where the subject of private property is already taken up, speaks of its "inviolability" but not of its "sacredness": ius proprietatis oc dominii, ab ipsa natura prefectum, intactum cuilibet et inviolatum esse [Ecclesia] iubet (Acta Sanctae Sedis 11 [Rome, 1916] 377).


²⁵ See also, toward the end of the same paper: "The President of the United States would be an officer elected by the people for four years; the king of Great Britain is a perpetual and hereditary prince. The one would be amenable to personal punishment and disgrace; the person of the other is sacred and inviolable."—The remote origins of
phasis added). Such a view becomes doubly interesting when we recall that it is the one Locke attacks in the First Treatise of Civil Government and to which he goes on to oppose his own teaching, that of the Second Treatise, where private property is characterized, if not literally at least in equivalent terms, as sacred. One can say that in the course of the 17th and 18th centuries the divine right of kings was replaced by the sacred right of capitalists. The wonder in all of this is that the drafters of Rerum novarum should have been so eager to adopt a terminology of which, as sworn opponents of modern liberalism, they had ample reason to be wary.

Further confirmation of the Lockean ancestry of the encyclical’s view of private property is to be found in its endorsement of the concept of labor as the sole source of property (nos. 8–10). In Locke’s words, which the encyclical echoes almost textually, it is by mixing one’s labor with an object that one gains possession of it. To my knowledge, this hierocratic conception of political rule are to be sought in the Old Testament custom of anointing kings, beginning with Saul (1 Sam 10:1); see also 1 Sam 26:9; 2 Sam 1:14. The terms sacer and sanctus seem to have made their appearance in connection with these matters in the course of the twelfth century for the purpose of securing the independence of the Empire from the papacy; see F. Kern, Kingship 66-67. The theory of sacred kingship suffered a severe setback in the second half of the 13th century with the rediscovery of Aristotle’s Politics and its account of the natural foundations of political rule. It was later revived in England as a means of consolidating the authority of the British crown after the break with Rome.

26 On the individual’s absolute right to property, see, e.g., Second Treatise of Civil Government, no. 138: “The supreme power cannot take from any man part of his property without his own consent,” for the preservation of property is “the end of government and that for which men enter into society... Men, therefore, in society having property, they have such right to the goods which by the law of the community are theirs, that nobody hath a right to take their substance or any part of it from them without their own consent; without this, they have no property at all.”

27 The parallel is suggested by Locke himself, who alludes at least twice to the “sacred” character of the monarch who rules by divine right. Thus, Second Treatise, no. 205: “In some countries, the person of the prince by the law is sacred; and so whatever he commands or does, his person is still free from all question of violence, not liable to force, or any judicial censure or condemnation.” First Treatise, no. 107: “This designation of the person our author is more than ordinarily obliged to take care of, because he, affirming that the ‘assignment of civil power is by divine institution’, hath made the conveyance as well as the power itself sacred; so that no consideration, no act or art of man, can divert it from that person to whom, by this divine right, it is assigned; no necessity or contrivance can substitute another person in his room.”

28 Second Treatise, no. 27: “Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby made
nobody prior to the 17th century had claimed that labor was of itself a title to property, let alone the only title to it. All that was ever said is that the laborer deserves a just wage or a material reward commensurate with his efforts. Nor, unlike the encyclical, did anyone divorce completely “just ownership” (iusta possessio) from “just use” (iustus usus). The commonly accepted view was that in strictest justice wealth or property belongs to the person who has the wisdom and moral rectitude necessary to insure its proper use and make it serve the common good. True, well-ordered societies will usually allow actual proprietors to keep as their own all legally acquired goods regardless of the use that they make of them. If they do so, however, it is not because private property is a perfectly just solution to the problem at hand but because under normal circumstances it is the practically best solution to that problem. Any other course of action invariably results in either chaos or greater injustices. There are natural limits to what even the wisest of rulers can accomplish in this regard. Not only the

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30 Cf. Rerum novarum, no. 22: “It is one thing to have a right to the possession of wealth and another to have a right to use wealth as one wills. Private ownership, as we have seen, is the natural right of man, and to exercise that right, especially as members of society, is not only lawful but absolutely necessary. . . . But if the question be asked: How must one’s possessions be used? the Church replies without hesitation. . . . ‘Man should not consider his material possessions as his own, but as common to all, so as to share them without hesitation when others are in need.’ For the distinction between ownership and use, cf. Aristotle, Politics 1.6a26 ff.: “Property ought to be in a certain sense common, but, generally speaking, private. . . . Clearly, it is better for property to be owned privately but made common as to its use.”
profound analyses of Plato’s *Republic* and Aristotle’s *Ethics* but some of the most painful experiences of our own century are there to remind us of the dangers involved in any fanatical attempt to impose standards of absolute justice on society at large.

A well-known passage from Xenophon’s *Education of Cyrus*, 1.3.16, will clarify the point. Say that a big man owns a coat that is too small for him and that his neighbor, a small man, owns a coat that is too large for him. Reason would seem to dictate that they exchange coats, but should they refuse, the law will most often respect their wishes, if only to avoid the innumerable disputes in which it would otherwise become embroiled. On the level of everyday life, such a practice has much to recommend it. Still, there is nothing sacrosanct about it. In order to recognize and, circumstances permitting, redress some of the graver injustices imbedded in a particular political structure or legal system, one needs a more truly natural criterion. Because it pays insufficient attention to this higher criterion, the encyclical ends up by being more conservative than it has to be. Its final teaching is that, since ownership is not only distinct from use but independent of it, it cannot be forfeited through misuse or for any other motive. Not only is the worker entitled to an adequate salary, he has a “true and perfect right” to dispose of it as he sees fit: *ius verum perfectumque .... non modo exiendae mercedis sed et collocandae uti velit* (no. 5).

To many a thoughtful reader, this virtual absolutization of the right of private property has always smacked of something like *fin-de-siècle* capitalism or come across as a one-sided response to the anxieties stirred up among the upper classes by the rising tide of socialism, in which Leo could see nothing but a worldwide conspiracy to destroy the Catholic Church.\(^{31}\) The Pope’s position was not only hard to defend theoretically, except on Lockean terms, it had its practical shortcomings as well. By adopting it, the Church was again laying itself open to criticism. Just as it had once been assailed for its support of the Old Regime against the bourgeoisie, so now it would be accused of allying itself with the bourgeoisie against the “proletariat,” the term by which

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Rerum novarum, along with much of the 19th century, designates the new working class.

There is no denying that Leo's primary concern was with the modern laborer, whose lot he was eager to improve, but neither is it possible to deny that his proclamation of the sacredness of private property benefited the rich as much as if not more than it did the poor. To that extent at least, the mentality that informs the encyclical is not far removed from the one that Anatole France so effectively satirized when he spoke of the "majesty of the laws, which forbid rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread."\(^{32}\) It is unlikely that France wrote this with *Rerum novarum* in mind, even though he was not above poking gentle fun at papal documents. What he was thinking of is not the Pope but the French Revolution and the bourgeois society to which it had given birth. He knew that for most of his contemporaries property meant everything: "In any civilized state, wealth is a sacred thing; in democracies it is the only sacred thing."\(^{33}\) He was well aware of the modern arguments in favor of private property: "The poor live from the wealth of the rich; that is why this wealth is sacred. Do not touch it; that would be an act of wanton cruelty."\(^{34}\) And he had a keen sense of the transformation that the overthrow of the old aristocracy had effected in his country: "Money has become honorable. It is our sole nobility, the most oppressive, the most insolent, and the most powerful of them all."\(^{35}\) Truly, the sacred right of property had superseded the divine right of kings. The fact was undeniable. By the end of the 19th century, even the papacy was ready to acknowledge it.

*Quadragesimo anno* made a valiant attempt to redress the balance by insisting more than *Rerum novarum* had done on the social purposes of property. It corrected some of the inaccuracies that had crept into Leo's text, such as the assertion that labor is the only source of property. It introduced a few new elements into the discussion, most notably the now famous "principle of subsidiarity" and the Taparellian notion of "social justice,"\(^{36}\) which Leo had rejected because of its non-Thomistic pedigree. It likewise protested vehemently against the accusation—the "calumny"—that the Church had "taken the side of the

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\(^{32}\) *The Red Lily*, chap. 7.

\(^{33}\) *Penguin Island*, bk. 6, chap. 2

\(^{34}\) *Ibid.*, bk. 2, chap. 4.

\(^{35}\) *Le Mannequin d'osier*, chap. 5.

\(^{36}\) Taparelli's *Saggio teoretico di dritto naturale* 1, bk. 2, chap. 3, entitled: "Nozioni del diritto e della giustizia sociale." Taparelli is for all practical purposes the inventor of that celebrated if somewhat vague notion. One can say without undue simplification that social justice is the object of what was being considered more and more as a separate discipline, namely, social ethics.
rich against the non-owning workers. " But while it reinforced *Rerum novarum*’s defense of workers by stressing their “sacred rights” (*iura sacra;* no. 28), it did not alter its basic position on private property. On the contrary, it enshrined it by repeating Leo’s statement to the effect that the division of property is a “sacred right”; it adopted Leo’s sharp distinction between “ownership” and “use”; and, like Leo, it transferred “use” from the sphere of justice and legislation to that of Christian charity. It thus left us once again with a juxtaposition rather than a bona fide integration of two originally antithetical views, one that takes its bearings from the notion of duty and the other from the notion of rights. The roots of the tension generated by this

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37 *Quadragesimo anno* no. 44. O. von Nell-Breuning, who drafted the new encyclical, attributes this “calumny” to bad translations or false interpretations of *Rerum novarum* and wonders why these were never challenged: “*Rerum novarum:* A General Appraisal,” *Social Justice Review* 82 (May–June 1991) 76 (trans. from Nell-Breuning’s *Sozialelehre der Kirche*, 3d ed. [Vienna: Europa, 1983]). This may not be the whole story, however. Nell-Breuning himself admits that, like much of the teaching of *Rerum novarum*, “the doctrine of private property bears unmistakable traces of the then prevailing spirit of the age.” See also Nell-Breuning’s more detailed commentary on *Quadragesimo anno*’s doctrine of private property in his *Reorganization of Social Economy* (New York: Bruce, 1936) 91–121. For the opposition to some aspects of Leo’s teaching on the part of La Tour du Pin and other members of the French Oeuvre des Cercles, cf. Talmy, *Aux sources du catholicisme social* (Tournai: Desclée, 1963) 103–50. Much useful information regarding these matters is to be found in G. Jarlot, S.J., *Doctrine pontificale et histoire*, vol. 1 (Rome: Gregorian Univ., 1964) 202–25; vol. 2 (1973) 247–79.

38 *Quadragesimo anno* no. 28; Latin text in *Acta Apostolicae Sedis* 23 (1931) 185. The text notes that this whole matter had by then become the object of a new branch of legal science, one that was unknown to previous ages: *Ex hoc autem continenti atque indefesso labore nova iuris discipline sectio superiori aetate prorsus ignota est, quae sacra opificum iura ab hominis christianique dignitate profluentia fortiter tuetur.*

39 Cf. *Rerum novarum* no. 22, which *Quadragesimo anno* correctly interprets as follows: “In order to place definite limits on the controversies that have arisen over ownership and its inherent duties, there must be first laid down as a foundation a principle established by Leo XIII: the right of property is distinct from its use. That justice called commutative commands sacred respect for the division of possessions and forbids invasion of others’ rights through the exceeding of the limits of one’s own property; but the duty of owners to use their property only in a right way does not come under this type of justice, but under other virtues, obligations of which ‘cannot be enforced by legal action’. Therefore they are in error who assert that ownership and its right use are limited by the same boundaries; and it is much further still from the truth to hold that a right to property is destroyed or lost by reason of abuse or non-use” (no. 47, emphasis added). Cf. Denzinger, *Enchiridion Symbolorum* no. 2255 [DS 3727]. Nell-Breuning later stated expressly that the intention of the new encyclical was not to modify Leo’s teaching but merely to complement it by means of a greater emphasis on the social function of property. For his overall assessment of the situation, see “*Rerum novarum:* A General Appraisal” 72–77. Cf. also on this matter the useful bibliographical references assembled by M. Habiger, O.S.B., *Papal Teaching on Private Property, 1891–1981* (Lanham: Univ. Press of America, 1990) 90 ff.
juxtaposition will come into sharper focus if we take a closer look at Rerum novarum's stand on the issue of rights versus duties.

NATURAL RIGHT AND NATURAL RIGHTS

Leo's teaching on private property forms part and parcel of a larger view of civil society in which the notion of "natural rights" comes close to playing a dominant role. The encyclical states clearly and loudly that these rights are inherent in each human being (in hominibus insunt singulis; no. 12) and that they are "inviolable." Since they are given to us by nature, they antedate civil society and exist independently of it (minime [pendent] a republica; no. 12). Human beings are endowed with them prior to their entry into that society and retain them once they have become members of it. The encyclical takes it for granted that human beings first existed in a prepolitical state and that civil society later came into being as a means of protecting the rights they enjoyed in that state:

Nature must have given the human being a stable and ever present source to which he might look for a constant supply of goods that nothing save nature with its abundant fruits can provide. There is no need here to bring in civil society. The human being precedes civil society and, prior to the formation of any civil society, must have by nature the right to sustain his life and care for his body (no. 7).

Never before had this notion of natural rights figured so prominently and so massively in a pontifical document. The phenomenon is the more remarkable as natural rights are totally foreign to the literature of the premodern period. The Bible certainly knows nothing of them. If it is famous for anything, it is for promulgating a set of commandments or, as one might say, a Bill of Duties rather than a Bill of Rights. The term "rights" (iura) does not appear even once in the Vulgate, for centuries the standard version of the Bible in the West. Ius in the singular occurs approximately thirty times, but always to designate some legally sanctioned arrangement. Genesis 23:4 speaks in this sense of a ius sepulchri, or right of burial, apropos of Abraham, who negotiates with the Hittites the purchase of a tomb for Sarah. No attempt is made to define the nature of this or any other right. Since the Hebrew Bible has no word for "nature" and in any event does not engage in philosophic speculation, it can scarcely be expected to furnish us with a full-blown theory of "natural" rights.

Neither can the natural-rights doctrine be said to play a significant role in medieval thought. Thomas Aquinas, to refer once again to the

40 Cf. note 11, above.
authority from whom the encyclical purportedly draws the bulk of its theological inspiration, either had never heard of them or did not deem it necessary to incorporate them into his scheme. According to Busa's exhaustive *Index Thomisticus*, the word *iura* occurs a total of fifty-four times in Thomas’s voluminous corpus, but never in the sense of natural rights. In all cases, the reference is to canonical or civil rights, or to the ancient as distinguished from the new codes of law, or to the laws governing warfare and the like.41

What is true of Thomas holds for the rest of the Middle Ages both before and after him. There is little textual support for the view, defended most energetically by the distinguished French legal historian Michel Villey, that the father of the rights theory as we know it is William of Ockham. For Villey, everything hinges on the distinction between objective right (“the right thing,” “one’s due,” Ulpian’s *suum ius cuique tribuere*) and subjective right, by which is meant a moral power or faculty (*facultas*) inhering in individual humans beings. The difference that sets the two notions apart becomes plain when we recall that “right” in the first sense does not necessarily work to the advantage of the individual whose right it is. In Rome, the right of a parricide was to be stuffed in a bag filled with vipers and thrown into the Tiber.42 Ockham, the villain of Villey’s story, is the man who would have consummated the break with the premodern tradition by accrediting the notion of subjective rights or rights that individuals possess as opposed to rights by which, so to speak, they are possessed. His is the work that marks the “Copernican moment” in the history of legal science.43 Others, such as Richard Tuck and Brian Tierney, have lately argued against Villey that subjective rights or rights understood as faculties are older than Ockham, that they are essentially a twelfth-century invention bequeathed to us by the canon and civil lawyers of that period.44

41 It should not surprise us that the best book on “natural rights” in Thomas, F. Rousseau’s *La croissance solidaire des droits de l’homme* (Paris: Desclée/Montreal: Bel- larmin, 1982) is unable to come up with a single Thomistic text in which such rights are mentioned.


The doctrine of individual rights was not a late medieval aberration from an earlier tradition of objective right or of natural moral law. Still less was it a seventeenth-century invention of Suarez or Hobbes or Locke. Rather, it was a characteristic product of the great age of creative jurisprudence that, in the twelfth and thirteenth centuries, established the foundations of the Western legal tradition.45

Tierney's point is well taken. The surge of interest in legal theory, stimulated by the need to resolve one of the most pressing problems of the Middle Ages, that of the relationship between the spiritual and the temporal authorities, seemed to dictate an approach to moral matters that focused to an unprecedented degree on rights and duties. Yet it is doubtful whether the definition of rights as faculties suffices by itself to separate the modern from the ancient concepts of right. From the absence of any explicit distinction between objective and subjective right in their works,46 one cannot infer that the Greek philosophers would have objected to the designation of rights as powers or faculties, for such they must somehow be if by reason of them human beings have the ability to do or refrain from doing certain things. The crucial issue concerns the status of these rights, which must be either natural or legal.

If the texts cited by Tuck, Tierney, and Villey prove anything, it is that rights as the Middle Ages understood them were subordinated to an antecedent law that circumscribes and relativizes them. For Ockham, a "right" was a "lawful power," *licita potestas*.47 For his contemporary Johannes Monachus, it was a "virtuous power," *virtuosa potestas*.48 As the adjectives used to qualify them indicate, these rights were by no means unconditional. They were contingent on the performance of prior duties and hence forfeitable. Anyone who failed to abide by the law that guaranteed them could be deprived of everything to which he was previously entitled: his freedom, his property, and in extreme cases his life. Not so with rights in the modern sense, which are variously described as absolute, inviolable, imprescriptible, unconditional, inalienable, or sacred. In Hobbes's version of that doctrine, which, whatever else may be said about it, has the merit of consistency, a

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45 Tierney, "Villey, Ockham" 31.
46 To illustrate: it is unclear whether, in defending himself against his accusers, Socrates is exercising a right or fulfilling a duty. All he says is that it is right or just (*dikaios*) for him to do so (Apol. 18a).
criminal who has been justly sentenced to death retains his right of self-preservation and may kill his hangman if he has the opportunity to do so.\(^4\)

It may be objected that, since rights are already implied in the notion of duty—if I have a duty to do something, I must have the right to do it—there is no point in opposing them to each other. What they represent would be nothing other than the two sides of a single coin. Thus, as Tierney observes, the precept “Honor thy father and thy mother” is not only a commandment; it also means that parents have a subjective right to the respect of their children.\(^5\) Fine, but this leaves open the question as to which of the two comes first and is to be given the right of way in the event of a conflict between them. It is often when they sound most alike that premodern and modern writers are furthest apart. A case in point is the notion of self-preservation, which for the medievales is first and foremost a duty—one is forbidden to commit suicide or do anything that would impair one’s health—and for the moderns a right. The point is well made by Godfrey of Fontaines, who writes:

Each one is obliged by the right of nature to sustain his life, which cannot be done without exterior goods; therefore also by the right of nature (iure naturae) each has dominion and a certain right (ius) in the common exterior goods of this world, which right also cannot be renounced.\(^6\)

All of this is to say that premodern Christian ethics was primarily an ethics of duty and not an ethics of rights. Its great representatives wrote books on law, *De Legibus*, or on duties, *De Officiis*, and stressed

\(^4\) Cf. Hobbes, *Leviathan*, chap. 21: “Therefore, if the sovereign command a man, though justly condemned, . . . not to resist those that assault him, . . . yet has that man the liberty to disobey.” And chap. 28: “For by that which has been said before, no man is supposed bound by covenant not to resist violence, and consequently it cannot be intended that he gave any right to another to lay violent hands upon his person. In the making of a commonwealth, every man gives away the right of defending another, but not of defending himself.” For a clear statement of the traditional position on this subject, see Thomas Aquinas, *ST* 2-2, q. 69, a. 4: “It is not permissible for a justly condemned man to defend himself.” Thomas adds that, while the condemned party is not allowed to kill his executioner, he is not morally obliged to stay in jail and may escape should the occasion present itself.

\(^5\) Tierney, “Villey, Ockham” 20. A third possibility, which would have occurred more naturally to a medieval thinker, is that it is objectively right for children to respect their parents. The same could be said of Tierney’s second example, to the effect that the natural-law precept “Thou shall not steal” implies that others have a natural right to acquire property. Again, this is not quite the same thing as saying that it is right for some people to acquire and own property.

\(^6\) Quodlibet 8. q. 11, *Philosophes Belges* 4 (Louvain: Institut Supérieur de Philosophie, 1921) 105.
one's obligations toward God and neighbor. The notion of natural rights was according to all appearances unknown to them. Not so with the moderns, who come out resolutely on the side of rights. The pivotal text on this score is the programmatic statement of Leviathan, chap. 14, where, breaking with a two-thousand-year-old tradition, Hobbes begins with rights and boldly asserts their priority over duties:

The right of nature, which writers commonly call ius naturale, is the liberty each man has to use his own power as he will himself for the preservation of his own nature—that is to say, of his own life—and consequently of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto.

From this fundamental right of self-preservation Hobbes goes on to infer the various "natural laws" to which human beings would do well to bind themselves if, once civil society has come into being, they wish to enjoy any measure of freedom. To repeat, what distinguishes the new notion from the old is not the understanding of rights as powers but the concentration on rights rather than duties or law as the absolute moral phenomenon.

I do not wish to imply that Hobbes's revolutionary view of morality is the one that Rerum novarum was trying to pass off as authentic Christian doctrine. On the contrary, the encyclical is at pains to Christianize the rights theory by inserting it into a properly moral framework. It does this in the only way possible, by reversing Hobbes's procedure. Just as Hobbes derives the law of nature from a fundamental right of nature, namely, the right of self-preservation, so the encyclical attempts to derive natural rights from a fundamental law of nature. Its clearest statement to this effect is the one that presents self-preservation as a duty from which stems the right to procure the necessities of life for oneself and one's family (no. 44). The concern evinced for the family in this context and elsewhere is already a clear sign of the encyclical's desire to work within a premodern framework. No such concern is present in modern liberalism, which has two main themes: the atomic individual possessed of prepolitical rights, and the contractual society into which he "enters" for the protection of these rights.

Numerous other features of the text point in the same direction. By often speaking of rights in conjunction with duties, the encyclical in-

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52 "Duty," like "rights," has no exact equivalent in Greek. It is the word commonly used to render the Latin officium, which in Cicero combines the meanings of two Greek words, katorthóma ("that which has been done rightly," "right action") and kathèkon ("the fitting"); cf. Cicero, De Officiis, 1.3.8.
dicates that it has no intention of separating the two, let alone opposing them to each other. Duties are both stressed and properly listed (e.g. no. 19). The law that imposes them is even referred to as “most sacred” (sanctissima; no. 13). We are further reminded that some of these duties, such as the observance of the day of the Lord, have God as their object and must therefore be “religiously” (sænete) observed (no. 40).

The trouble is that the encyclical speaks in the same way of rights, which, as we have seen, it likewise labels “sacred,” and to which in other instances it seems to accord a certain priority over duties. It mentions rights roughly twice as often as it does duties and usually ahead of duties when the two appear together. Elsewhere, it asserts that rights become “stronger” (validiora) when considered in connection with duties, thereby implying that they are already strong apart from any relation to duties (no. 12). It calls self-preservation a duty in one place and a natural right in another, again without specifying whether it is first a duty and then a right or vice versa (nos. 7 and 44). On one occasion, what the Bible expresses in the form of a commandment it inexplicably translates into the language of rights. Thus, the injunction to “increase and multiply” (Genesis 1:28) becomes the “natural and primeval right to marry” (ius coniugii naturale ac primigenium; no. 12). In a text devoted to moral matters, details of this sort are not without significance. Wittingly or unwittingly, the message conveyed is that at the very least rights are to be placed on more or less the same footing as duties. It is not an unimportant message.

One runs into similar ambiguities when one tries to combine prepolitical rights with the notion of the common good. The modern rights doctrine in its original and still most powerful form amounts to nothing less than a proclamation of the sovereignty of the monadic individual. The common good, on the other hand, presupposes the subordination of the individual to the community to the extent that, lacking self-sufficiency, he is dependent on it for the attainment of his end or perfection. If in some respects he transcends civil society, it is not qua individual but qua member of another society, called by Augustine the “city of God,” whose good surpasses that of any temporal society. Thomas Aquinas’s often repeated dictum still holds: the good of the whole takes precedence over the good of the part.

Leo had good reason to decry the individualism of the age, but in the long run his case against it was bound to be weakened by his acqui-

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53 Cf. note 12, above.
54 Cf. nos. 2, 12, and 58: iura et officia. In no. 25, officia precedes iura.
escence, however cautious, in the principle that anchors modern individualism at its deepest level, the inviolability of natural rights. What we are left with is a diluted version of rights as well as a diluted version of the common good, which will soon be conceived as nothing more than the sum of the conditions required to insure the free exercise of one's individual rights. The common good ceases to be the proper (albeit not the private) good of the individual members of society, as Thomas thought it was and as it must be if it is to be truly common; it becomes an alien good, for which there is no natural inclination to sacrifice oneself. The logical outcome is the characteristically modern phenomenon known since Rousseau as the "bourgeois," the man who lives for himself in the midst of people on whom he depends for his well-being and in whom he must therefore pretend to be interested—in other words, the man who distinguishes his own good from the common good, as opposed to the citizen, who identifies the two.\(^{55}\)

The difference between the two positions comes out most clearly when one considers the encyclical's assertion that the individual is "older" (senior) than civil society and endowed by nature with the right to life and the protection of his body "prior to his entry into any civil society."\(^{56}\) Such is not the view put forward by Thomas, who saw no reason to disagree with Aristotle's statement that civil society is prior to the individual.\(^{57}\) For him, there was never a moment when the human being was not subject to a higher authority and hence in principle a member of a community governed by that higher authority. The Garden of Eden bears no similarity whatsoever to what the early modern political theorists called the "state of nature," by which they meant essentially the Hobbesian "war of every man against every man" or, in Locke's polite reformulation of the same doctrine, a state in which every individual, having the "executive power of the law of nature," was free to take the law in his own hands and do whatever he person-

\(^{55}\) For a penetrating analysis of this remarkable phenomenon, see A. Bloom, Introduction to J. J. Rousseau, Emile or On Education (New York: Basic, 1979) 5.

\(^{56}\) Rerum novarum no. 7: est enim homo, quam respublica, senior. Cf. no. 12, where antiquior is substituted for senior without any apparent change of meaning. See, for a strong statement of the same position, Liberatore, Principles of Political Economy 130: "[T]he right of property arises in us as an individual and domestic right, and therefore as substantially prior to civil society and independent of it; just as the human person and the family are prior to civil society and independent of it. The State has authority over the rights that come from itself. It has no authority over rights that come from nature—rights that precede the State in history and in reason."

ally deemed necessary to insure his self-preservation. The original natural rights theory is of a piece with this teaching and unintelligible without it.

Differently and more cogently expressed, the state of nature is not a fresh or updated version of the biblical account of human beginnings, it is a substitute for it. If anything, its implications are profoundly atheistic. Leo XIII may have had no choice but to fall back on the rights theory as a bulwark against the inroads of socialism, since there was little on the intellectual horizon that could have served his purpose equally well, but the strategy had its drawbacks. There are better ways of guarding against modern totalitarianism, its deification of the state, and its threat to freedom. After all, Aristotle and Thomas were not totalitarians. They never talked of civil society as if it were not subject to the higher norm of reason, nature, or the natural law. Individual human beings and civil societies, they thought, were to be judged not by what they are absolutely but by what constitutes their good, their end, or their perfection.

One could go a step further and argue that, paradoxically, modern liberalism, the regime that prides itself on its ability to secure for each human being as much freedom as is compatible with everyone else's freedom, paves the way for a new kind of tyranny, the tyranny of each individual over every other individual. Such is the situation that is apt to develop, for example, when in the name of sacred rights known criminals are granted the same immunities as all decent citizens. The anomaly is precisely the one that the older tradition was careful to avoid. To quote Thomas himself, no human being is ordered to another human being as to his end: *creatura rationalis, quantum est de se, non ordinatur ut ad finem ad aliam, ut homo ad hominem. Si hoc fiat, non erit nisi inquantum homo propter peccatum irrationalibus creaturis comparatur.*

58 John Locke, *Second Treatise of Government*, no. 13. The fact that, unlike Hobbes, Locke begins by speaking of a "law" rather than of a "right" does not separate him from Hobbes on this point, for in the state of nature this law is to be interpreted in accordance with the dictates of a fundamental passion, the desire for self-preservation. Not without reason does Locke refer to his teaching as "very strange" or novel (nos. 9 and 13). For a statement of the premodern position, according to which the meting out of sanctions is the prerogative of rulers and not a right to be exercised by private individuals, cf. Thomas Aquinas, *ST* 2-2; q. 64, a. 3: "[T]he execution of a criminal is licit insofar as it is ordered to the welfare of the whole community. Hence it is reserved for the one to whom the care of preserving the community has been entrusted. . . . Now the care of the common good is entrusted to rulers invested with public authority. Therefore, only they, and no private persons, are permitted to put a criminal to death."

59 *II Sent.*, d. 44, q. 1, a. 3, c.
I began by suggesting that the teaching and the language of *Rerum novarum* stem from two distinct traditions, one premodern and the other modern. The first is teleological and stresses duties. It holds that human beings are naturally political and directed to some preestablished end in the attainment of which they find their perfection or happiness. The second is nonteleological and stresses rights. It denies that there is any supreme good to which human beings are ordered by nature and views them from the standpoint of their beginning or the passions by which most of them are habitually moved, namely, the desire for security, comfort, pleasure, and the various amenities of life. For the same reason, it denies that they are natural parts of a larger whole whose common good is superior to the private good of its individual parts. In the course of the discussion, I pointed to some of the difficulties involved in any attempt to blend the two approaches. At this juncture, two alternatives come to sight. The combination can take the form of an eclectic compromise that remains on the plane of the original positions and splits the difference between them, or it can take the form of a genuine synthesis, effected on the basis of a principle that transcends the plane of the original positions. Can the encyclical be said to have achieved a genuine synthesis?

The challenge that it faced was rendered particularly acute by the radical heterogeneity of the positions whose amalgamation was being sought. The heart of the modern project was from the beginning and has remained ever since its so-called "realism." Its originators had concluded on the basis of experience that premodern ethical and political thought had failed because it made impossibly high demands on people. It studied human nature in the light of its noblest possibilities and was thus compelled to speak about an ideal that is seldom if ever achieved among human beings. In a word, it was utopian or, to use Descartes's image, quixotic.  

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60 See on this point L. Strauss, *Natural Right and History* (Chicago: Univ. of Chicago, 1952) 177–86.

61 *Discourse on Method*, Part I: "Thus it happens that those who regulate their behavior by the examples they find in books are apt to fall into the extravagances of the knights of romances and undertake projects which it is beyond their ability to complete or hope for things beyond their destiny. . . . I compared the ethical writings of the ancient pagans to very superb and magnificent palaces built only on mud and sand: they laud the virtues and make them appear more desirable than anything else in the world; but they give no adequate criterion of virtue, and often what they call by such a name is nothing but cruelty, apathy, parricide, pride or despair." See in a similar vein Francis Bacon, *The Advancement of Learning*, bk. 2, ca. fin.: "As for the philosophers, they make imaginary laws for imaginary commonwealths, and their discourses are as the stars, which give
The best way to remedy the situation, it was decided, was to lower the standards of human behavior in order to increase their effectiveness or propose an ideal that was more easily attainable because less exacting. This led in due course to a recasting of all basic moral principles in terms of rights. Most people would rather be informed of their rights than reminded of their duties. Edmund Burke knew whereof he spoke when he said, "The little catechism of the rights of men is soon learned; and the inferences are in the passions." 62

The beauty of the new scheme is that it supposedly made it possible for everyone to enjoy the benefits of virtue without having to acquire it, that is, without undergoing a painful conversion from a premoral concern with worldly goods to a concern for the goodness of the soul. The intelligent pursuit of one's selfish interest would do more for the well-being of society than any concerted attempt to promote the common good. Mandeville, another bona fide Lockean, captured the spirit of the new enterprise as well as anyone else when, in The Fable of the Bees: Private Vices, Publick Benefits (1705), he argued that the day bees started worrying about moral virtue the hive would be ruined and that it would recover its prosperity only when each one returned to its vices. This, to a higher degree than it perhaps imagined, is the position that the encyclical would synthesize with its basic Thomistic outlook.

Syntheses, it has been aptly said, produce miracles. The miracle in this case consisted in using the categories of modern thought to restore something like the lofty morality they were originally calculated to replace. That miracle has yet to be attested. Catholics heard more about rights from Leo than they had from any other pope, and, thanks in large part to him, they were destined to hear more and more about them as time went on. Yet opinion continues to be divided as to whether this new emphasis has led to the spiritual renewal that Leo hoped to foster. Suffice it to say that in recent years the Church has had its hands full trying to resist the changes that are being urged upon it by some of its members in the name of the very rights it now little light because they are so high." The argument was first made by Machiavelli, who writes in chap. 15 of The Prince, the manifesto of the new movement and a book that Descartes held in high esteem (see his précis of it in a letter of September, 1646, to Elizabeth of Bohemia), "[H]ow we live is so far removed from how we ought to live that he who abandons what is done for what ought to be done will rather learn to bring about his own ruin than his preservation." Spinoza, a disciple of Machiavelli in more ways than one, was of the same opinion, convinced as he was that the older philosophers had all made the mistake of conceiving of human beings "not as they are but as they themselves would like them to be" (Political Treatise, chap. 1, Intro.).

62 Thoughts on French Affairs, in The Writings and Speeches of Edmund Burke (Boston: Little, Brown, 1891) 4.342.
promotes. In the best instance, the rights for which Leo pleaded had to do with the freedom to worship God and fulfill the rest of one's God-given duties. Once these rights were granted independent status, however, it was only a matter of time before they were parlayed into a moral argument to criticize the law rather than to justify one's observance of it.

This brings me to my last question, which is whether the drafters of the encyclical—Liberatore, Zigliara, Mazzella, Boccali, Pope Leo himself, and others—were fully aware of their dependence on modern modes of thought. The simplest answer is Yes. The Pope may have felt that the time had come to abandon the intransigence of his immediate predecessors and temper their inflexible principles with a more flexible policy, even if this meant adopting a terminology that is neither native nor congenial to the older Catholic tradition. Without capitulating to modernity, Catholics had to develop attitudes that were appropriate to living in the modern world. After all, there was much to be said for liberal or constitutional democracy, which, of the two viable alternatives on the contemporary horizon, is the one that came closest to what Christianity had always recommended. Moreover, something could be done to correct its defects, whereas the defects of socialism were seemingly irremediable. Then, too, it was always possible to live in one's time without sharing the principles of that time. This much was evident from the examples of Swift and Lessing, not to mention others.

There is nonetheless reason to suspect that Leo and his mentors were invincibly blind to the theoretical implications of some of their statements. The 19th century is unfortunately not the most auspicious period in the history of Catholic theology. University life had been severely disrupted by the French Revolution and the Napoleonic wars. The leading centers of theological learning were shut down at the end of the 18th century and remained closed for at least three decades. The Roman College was not reopened until 1824; Louvain, until 1830. Their reorganization would take a minimum of two generations, for the core of new teachers needed for this gigantic undertaking would first have to be trained before they could train others. As for the French universities, they were stripped of their theological faculties and never regained them. The slack was eventually taken up by the new "Instituts Catholiques," but not until the last decades of the century. More importantly, an age-old tradition had been broken, and we know from past experience that the restoration of a lost tradition is an uncommonly difficult task.

It is true that Thomas Aquinas was beginning to attract attention
after close to two centuries of virtual neglect, but relatively little was
known about him. Upon his arrival in Rome in 1846, the year that
followed his conversion to Roman Catholicism, John Henry Newman,
whom Leo XIII would elevate to the rank of cardinal thirty-three years
later (in 1879), could complain in a letter to an English friend about
the “prevalent depreciation of St. Thomas” in Italy. 63 Another letter to
the same correspondent paints a gloomy picture of Catholic intellec-
tual life in that country. A person with whom he was living had just
informed him that

we should find very little theology here, and a talk we had yesterday with one
of the Jesuit fathers shows we shall find little philosophy. It arose from our
talking of the Greek studies of the Propaganda and asking whether the youths
learned Aristotle. “O no—he said—Aristotle is in no favor here—no, not in
Rome—not St. Thomas. I have read Aristotle and St. Thomas and owe a great
deal to them, but they are out of favor here and throughout Italy. St. Thomas
is a great saint—people don’t dare to speak against him—they profess to
reverence him and put him aside.” I asked what philosophy they did adopt. He
said none. “Odds and ends—whatever seems to them best—like St. Clement’s
Stromata. They have no philosophy. Facts are the great things, and nothing
else. Exegesis but not doctrine.” He went on to say that many privately were
sorry for this, many Jesuits, he said; but no one dared oppose the fashion. 64

The picture had brightened somewhat in the forty-five years that sep­
arate Newman’s stay in Rome from the publication of Rerum novarum.
There was greater sympathy for Thomas in Italy and Germany, and
the opposition to Thomism in influential traditionalist circles had
abated. Yet, even as late as 1879, the year of Aeterni patris, the en­
cyclical that established Thomas as the Church’s foremost authority in
matters of philosophy and theology, Thomism was far from having won
universal approval among Catholics. Reservations about its Aristote­
lian component persisted among traditionalists, as well they might,
given traditionalism’s historicist premises, and the Thomistic school
itself was torn by divisions between Suarezians, whom Leo disliked,
and non-Suarezians. The other crucial factor to be taken into account
is the pervasive influence of modern liberalism, especially in the form
that it took in the philosophy of John Locke, the dominant political
theorist of the modern age.

A prime example of the syncretism to which the confluence of these
variegated streams of thought could lead is Taparelli d’Azeglio, whose

11.303.
64 Ibid. 279.
Saggio teoretico di diritto naturale became the prototype of the manuals of Catholic moral theology that followed one upon the other throughout the ensuing century. In a letter to his Jesuit Provincial, Taparelli admits that he knew next to nothing about natural right when he began to write on it at the age of fifty, and, moreover, that whatever thoughts he did have came mainly from Locke and the other modern authors on whom he had been weaned. This is what prompts L. de Sousberghè to write:

As we can see from his letters, Taparelli became an innovator without any conscious intention of modifying the tradition and simply by applying a Christian good sense, freed from all tradition, to the modern philosophy of his age. He thus excerpted from the heritage of the eighteenth century (where he no longer even recognizes the elements of Scholastic origin) whatever he deems capable of being assimilated by Christian teaching. 65

Although one of Thomism’s most ardent promoters, 66 Taparelli made surprisingly little use of Thomas in his own works. Recent studies have shown that his immediate authority was Christian Wolff, whose eclectic but on the whole conservative views had gained enormous popularity among Catholics in Germany, Austria, and Italy during the second half of the 18th century. Wolff’s appeal to neo-Thomists was all the greater as he himself claimed to have borrowed more from Thomas than from Leibniz, the other great source on whom

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65 “Propriété ‘de droit naturel’ ” (n. 15 above) 594. On Taparelli in general, see R. Jacquin, Taparelli (Paris: Lethielleux, 1943) and, for a rapid overview, M. Prélot, “Taparelli d’Azeglio et la renaissance du droit naturel au XIXe siècle,” Annales de Philosophie Politique 3 (1959) 191–203. Because of the inauspicious moment at which it appeared, Jacquin’s brilliant study never received the recognition that it deserves. Nor for that matter has Taparelli himself, who was held in highest esteem well into this century. In footnote 33 to his encyclical on The Christian Education of Youth (Divini Illius Magistri, 1929) Pius XI speaks of his Saggio as “a work never sufficiently praised and recommended to university students.” In an allocution pronounced by the same Pope on Dec. 18, 1927, and referred to in the encyclical, Taparelli is all but placed on a par with Thomas Aquinas: “Ma oltre le opere dell’Aquinato, altre ve ne sono che hanno non meno eccellenza e freschezza di dottrina, che possono essere studiate e consultate in ogni tempo. Una di queste opere è certamente il Saggio teoretico di diritto naturale del P. Taparelli d’Azeglio.” Cf. Jacquin, Taparelli 159 and 343 n. 7. Jacquin adds that he personally heard Pius XI praise Taparelli in similar terms on the occasion of a papal audience held at Castel Gandolfo in August, 1936 (ibid. 157).

Little wonder that Leo's theologians, some of whom had been disciples and colleagues of Taparelli, should have had so much trouble separating the wheat from the chaff or distinguishing between what was or was not compatible with standard Catholic doctrine.

To sum up, the problem with Rerum novarum is that it lives in two worlds between which it cannot choose and which it is unable to harmonize completely. The surprising fact is not that it fell short of its stated goal, assuming that it did, but that its authors were able to accomplish so much with the somewhat meager resources at their disposal. Nothing that I have said, more for the sake of clarity than by way of criticism, should diminish our admiration for their work.

The enterprise was a daunting one. It has never been easy to explain how Christianity, the only essentially nonpolitical religion known to history, should relate to the ambient world. Since, unlike the Hebrew Scriptures, the New Testament does not supply us with a detailed code of laws by which to live—as Cardinal Caetani is made to say in Ignazio Silone's The Story of a Humble Christian, "You can't govern with the Pater Noster"—Catholic theology has no choice but to look to philosophy for guidance in this matter. In the Middle Ages, Aristotle became its best ally. Needless to say, our own world is very different from that of our medieval forebears. Specifically, the intellectual forces of which it is the product may not be as easily reconcilable with the moral teachings of the Bible as was Aristotelian philosophy. Still, it is the

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67 Cf. M. Thomann, "Christian Wolff et le droit subjectif," Archives de Philosophie du Droit 9 (1964) 163. For further details and the appropriate bibliographical information, see Thomann's introductions to Wolff's Jus Naturae and Jus Gentium, Gesammelte Werke, Abt. 2, 17 (Hildesheim: Georg Olms, 1972) xii—xxiii; 25 (1969) xlvi—li; and 26 (1969) v—xlii. Taparelli's dependence on Wolff was first pointed out by Thomann in the above-mentioned article, "Christian Wolff et le droit subjectif" 174. The dependence is especially noticeable in regard to the twin pillars on which social ethics as a more or less autonomous discipline may be said to rest: the priority of the individual to civil society and the emphasis on prepolitical rights. The complete title of Taparelli's main work, Theoretical Essay on Natural Right Based on Facts, reflects the influence of Wolff, whose ambition was to combine two rival methods of scientific inquiry, the rational or deductive and the empirical or inductive. Whatever Taparelli's intention may have been, his own method is far more deductive than inductive. The "facts" with which he is concerned are not those of modern experimental science. They are roughly synonymous with common sense or prescientific knowledge, i.e. with such knowledge as is likely to be part of universal human consciousness. Wolff's influence on Taparelli appears to have been reinforced by Wolff's follower, Burlamaqui, whose immensely popular manual on natural right Taparelli had begun by using before writing his own. On Burlamaqui and Wolff, cf. M. Thomann, Introduction to Wolff's Jus Naturae, Gesammelte Werke 2.17, xxxvi—xxxvii, with reference to P. Meylan, Jean Barbeyrac et les débuts de l'enseignement du droit dans l'ancienne académie de Lausanne (Lausanne, 1937).
only world in which we have been made to live. The task of Christian leaders is to understand it and find new ways of causing the light of the gospel to shine within it. *Rerum novarum*’s pioneering achievement is to have convinced them of the urgency of that task and made them aware of the nature of the obstacles that stand in the way of its realization. True fidelity to its spirit requires that anyone who would follow in its footsteps do what its authors wanted to do and probably would have done had they had access to the vastly more adequate, albeit still largely untapped, resources that have since become available to us.