

## GOVERNMENTAL REPRESSION OF HERESY

THE question of the right of civil government to repress heretical opinions or modes of worship is a minor and peripheral aspect of the general problem of relationships between Church and state. However, I have chosen to deal with it for the initial reason that it is the neuralgic point on a contemporary controversy.<sup>1</sup> The controversy centers largely about a certain famous paragraph in an essay on *Immortale Dei* by the late Msgr. John A. Ryan. After stating that the provisions of our constitutional law are at present binding in conscience on Catholics, Msgr. Ryan goes on: "But constitutions can be changed, and non-Catholic sects may decline to such a point that the political proscription of them may become feasible and expedient."<sup>2</sup> In what follows he implies that at the moment when legal repression of heresy becomes possible and expedient it also becomes necessary in consequence of "the principles of eternal and unchangeable truth" held in the Catholic Church.

This statement, and others similar to it, have been widely understood to mean that the principle of civil intolerance is inherent in the Catholic doctrine of the Church and the state; that it is inhibited from operation only by lack of political power on the part of Catholics to enforce it; and that the limiting measure of its

<sup>1</sup> This essay has been considerably revised from the form of its original presentation. Nevertheless it remains what it originally was—a starting point of discussion. And since the purpose still is to provoke discussion, it seemed unnecessary to make an effort to avoid being provocative. For the same reason it seemed unnecessary to adorn the argument with scholarly apparatus. I should preface it with the Augustinian dictum: "Haec mihi videntur; fortasse fallor." And this sentence from John of Paris, *De potestate regia et papali*, from which I shall later quote, is even more in point: "Protestor autem quod nihil intendo dicere cum assertione aliqua nec contra fidem, bonos mores vel sanam doctrinam, persone vel status summi pontificis reverentiam. Et si aliquid huiusmodi occurrerit inter dicta vel dicenda principaliter vel incidenter, volo pro non dicto haberi, volens hanc protestationem currere et valere ut si eam specialiter resumerem super quodlibet dicendorum" (Proemium; edition by J. Leclercq, *Jean de Paris et l'ecclésiologie du XIIIe siècle*, Paris, 1942, p. 175).

<sup>2</sup> Ryan and Millar, *The State and the Church* (New York, 1922), p. 38.

operation is simply the necessity of avoiding the evil of serious social disturbance. In a word, with us civil intolerance in greater or less measure is "the principle," a matter of right and duty; and civil tolerance in greater or less measure is opportunism, a matter of political expediency. By divine right the Church is dogmatically intolerant in regard of her own doctrine and worship; and where she has the power, she must, also by necessity of divine right, enlist the coercive power of secular government in a program of civil intolerance towards heretical doctrines and worship.

This, briefly, is the "understanding" of Catholic doctrine that is widely entertained today, derived from popular presentations. What particularly scandalizes is the political part of the doctrine—the asserted right and duty of government to repress heresy. Men today are rightly sensitive to the problem of the limitation of governmental power by juridical vindication of human and civil rights. And in the climate of opinion generated by these preoccupations—preoccupations, be it noted, which the Church herself profoundly shares—statements of Catholic doctrine that lead to the understanding stated above cannot but generate suspicion, prejudice and hostility. These feelings are indeed widely active, and are a serious obstacle to the work of the Church. Obviously, if this result is simply part of the scandal always provoked in the world by the mystery of the Cross, one can only suffer it. However, one would like to be very sure about the precise relation between the mystery of the Cross and the right of a government to repress heresy. More precisely, one would like to be sure that this political empowerment of a secular ruler is somehow an inherently necessary prolongation, as it were, of the dogma that the Catholic Church is the one true Church. If it is a piece of eternal unchangeable truth, blessed be he who is not scandalized at it. But before pronouncing the benediction, one would like, I say, to be sure. It is not a question of adapting the truth to secularist susceptibilities; it is question of the truth itself—what is it?

#### SOCIETY, STATE, GOVERNMENT

Since the present question is a part, if only a peripheral part, of the problem of Church and State, it supposes for its solution a

whole political philosophy. The problem in fact centers, not about what the Church is (the relevant ecclesiology is clear and fixed), but about what the state is. And here things are not nearly so fixed and clear. Lengthy discussion would be in order, but it is impossible. Let me simply indicate the capital distinction that obtains between three concepts that are used constantly in the matter—those of society, state, and government. Failure to note exactly the differing content of each is a fertile source of confusion and of fallacious argument.

Briefly, the state is not society, nor is government the state. Society, in shortest definition, is man in the full flowering of all the social aspects of his nature. It is the prepolitical "matter" to which the state imparts a particular limited "form," a political form. "The state," as Rommen says, "is not society, but rather the public order as a living action in society,"<sup>3</sup> an action directed at a limited end, which is temporal and external (public)—what is called *felicitas politica*. Again, the government is not the state, but a part of the order which is the state, and a bearer of a portion of the action which is the state. I say, a portion of the action; for all the power vested in the state by reason of its end is not necessarily vested in the government. Between the state and the government there intervenes the constitution, which is the act of the people, defining the organization of the functions of the state (legislative, executive, judicial), and limiting their respective powers, under reservation to the people themselves, as persons or in various forms of association, of a desired measure of sovereignty.

These three terms therefore may not be used interchangeably; to identify society and state, and state and government is the essence of totalitarianism. Moreover, the distinction of meanings requires some care in the construction of arguments. One reads, for instance, in *Summi Pontificatus*: "In the recognition of the royal prerogatives of Christ and in the return of individuals and of society to the law of His truth and His love lies the only way to salvation."<sup>4</sup> This is most true. But it is not legitimate to argue

<sup>3</sup> H. Rommen, *The State in Catholic Thought* (St. Louis, 1945), p. 274.

<sup>4</sup> AAS, XXXI (1939), 420.

thus: *Society* can only be saved by a return to the law of Christ (supernatural faith in Him, the practice of charity, membership in the one true Church, etc., etc.); therefore the *state* has the function of promoting this return to faith, etc.; and therefore the *government* must act in this matter, e. g., by "exterminating" heretics. The premise is unconditionally true; the conclusions are fallacious. Nor would this manner of argument be valid: The good of *society*, even in the temporal aspects of its life, is impossible without the practice of the supernatural virtues—faith, mortification, charity, patience, magnanimity, etc.; therefore the *state* has an interest in these virtues; and therefore the *government* must concern itself with their observance. Again the premise is true, and the conclusions fallacious. Finally, it is fallacious to argue: What is "error," and what is "vice" always has a social reference and tends to the injury of *society*; therefore all error and all vice come under the cognizance of the *state*, and must be suppressed by the action of *government*.

The subject could be continued; I say this much only to insist that great conceptual accuracy, reflecting a grasp of political reality itself, is indispensably necessary in all this difficult matter. I need hardly add that the Church herself gives no sanction to the loose modes of argument cited. She does not, it is true, always feel it necessary to observe the strictest terminological propriety; even Leo XIII, for example, can use "state" in various senses, sometimes interchangeably with "government." And in older documents the contemporary terminology naturally does not appear. However, the supposition always is that her doctrine, where it bears on political realities, will be interpreted in terms of rationally certain categories of political thought, in order to receive its full and exact application. When Gelasius I, for instance, speaks of the *regalis potestas* as sharing the rule of *hic mundus* with the *auctoritas sacrata pontificum*, we have to give his Roman term its meaning in terms of a widely different political context.

In the same connection, it should be noted that the Popes often speak of the "state" or "society" or "government" as being subject to the law of Christ, bound to obey the teachings of Christ, to be ruled by the Gospel, etc.; such expressions are found, for instance,

in Pius XI's *Ubi Arcano* and *Quas Primas*, and are current elsewhere. The meaning is luminous in the light of the false doctrines of laicism that are condemned; but the precise extension of meaning is to be understood by us, as by the Church herself, *ex natura rei*: what is the law of Christ for the state, or government, or society, as determined by the action and end proper to each of these realities? No one, for instance, would contend that the state, or a government official in discharge of his public duty is subject, as a matter either of precept or of counsel, to the law of Christ as embodied in the prescriptions of Christian asceticism, in such wise that the fundamental law of abnegation and renunciation should become an integral element of governmental policy, as a means of leading the state to Christian humility.

As the law for man emerges from the nature of man, as elevated by grace, so the law for the state emerges from the nature of the state, which was not elevated by grace. As Pius XI said in *Non Abbiamo Bisogno*, speaking of the role of the state in education, the state has "duties and rights [which are] incontestable, as long as they remain within the proper competencies of the state; these competencies in their turn are clearly fixed by the finalities of the state, which are not of course simply material and corporal, but are of themselves necessarily contained within the limits of the natural, the terrestrial, the temporal."<sup>5</sup> One has to remember that Catholic doctrine is an organic body of truth, revealed and rationally known, and all parts of it are relevant to an understanding of any other; this principle is the premise of any utterances by the Church, which does not undertake to say everything in a sentence.

So, for instance, in the principle just cited, which is central in Catholic political philosophy, one does not understand the state's confinement to "the natural" in a laicist sense. And one is careful in one's conclusions, not, for instance, arguing thus: The state as a natural institution is ruled by the natural law; therefore it must enforce the natural indissolubility of marriage; therefore it may and must forbid use of the Pauline privilege; and then, seeing the conclusion to be absurd, assert that the first premise is false. The

<sup>5</sup> *AAS*, XXIII (1931), 303.

natural-law distinction between society and state would help here. By the natural law, the law of its being and action, the state organizes the society that is "there" (not some abstract society); but among the things that may be "there" is the marriage code of the Church, as a law binding on the Catholic people of which the state is the political form. Therefore by the law natural to its being, which commands that the state be the form of the society that is given, the state reckons with the marriage code that is *aliunde* obligatory on its citizens. If it fails to do so, it violates the law of Christ, if you will, but by violating the law of its own nature as a state. In a word, in all argument on this question, one must avoid conceiving the state in some Hegelian sense, as a suprapersonal entity with a personality of its own, floating above society; and one must likewise avoid conceiving government in a totalitarian sense, *à la* the enlightened despot, bearing in its bosom the total *jus politiae*. In all this matter good political thinking is as important as good theological thinking; of both the Church is our model.

#### DELIMITATION OF THE QUESTION

I should initially distinguish two general problems. First, there is the problem of the relation between the Church and human society; that is, between the Church (her doctrine, magisterium, laws, and means of sanctification) and the total "thing" which is society (the multitude of men, things, institutions, associations with their various "ideas" and ends, their independencies and interrelations). Secondly, there is the problem of Church and state in the narrow sense—that of the relations between ecclesiastical authority and civil authority. The two problems are not adequately distinct, of course; but they are not to be confused.

The first problem is that of the total mission of the Church, clergy and laity, in the temporal order. The second is that of the jurisdiction of the Church (Pope and bishops) in the temporal order in its relation to the jurisdiction of the state; it is the problem, in Leo's phrase, of the *ordinata colligatio* of the two powers by which men in society are ruled. I am not concerned with the first problem, nor with the second in its central aspects. My problem is very narrow, and concerns only the "right" of what is called a "Catholic

government" to repress by legal measures (supported, as legal measures always are supported, by coercive sanctions) the public expression of heretical opinions.<sup>6</sup> It is sometimes said that this is a right that a Catholic may not, absolutely speaking, deny. It is implied that the possession of this right by secular government is somehow a necessary consequence of an "orderly relationship" between the two powers, as this orderly relationship is "ideally" conceived; that it is somehow the necessary reflection in the political order of the dogma that the Catholic Church is the one true Church.

I would emphasize the word "necessary"; for we are here dealing with rights and duties—matters therefore of justice; and in all matters of justice "necessity" is the operative concept. The problem is that of the asserted right as a necessary empowerment of civil authority in a Catholic society, that government may indeed decline to exercise, but that it absolutely and necessarily speaking has, as an empowerment from law—the law in question being that of the orderly relationship of the two powers.

(I put the question this way because this is the way it has been put by others, though the more I think of it the less it seems to me a good and real way to put it. To speak of this or that highly particularized right that "the state" *in abstracto*, absolutely speaking, has, seems to me a risky business; I rather wonder what it means "to speak absolutely" in this matter? Would one say, for instance, that, absolutely speaking, the state has a right to educate? To speak absolutely, one could conceive a situation in which no such right would exist. The right comes into being in the hypothesis of necessity, therefore of duty; but absolutely speaking the hypothesis need not be verified. Absolutely speaking, parents and their resources might suffice. In accepting the given statement of the ques-

<sup>6</sup> The term "Catholic government" is figurative, an extrinsic denomination, that would better be avoided as likely to mislead. The theory and practice of government is simply rational, as philosophy is rational. And as the philosophical reason acquires no higher empowerments or more extensive scope by the fact of being enlisted as *ancilla theologiae*, neither does government by the fact of being enlisted as the ally of the Church, in the sense later to be explained.

tion I have an uneasy feeling that I am really getting into a mare's nest—the sort of mare's nest that the polemic against religious liberalism and its empty concept of “rights” tends to create.)

For all its narrowness, the question in hand raises the whole problem of the relations of government to supernatural religion, the empowerments of the state in regard of the things of the Church. This is not a problem to be discussed all by itself. No statement of the rights and duties of secular government in the field of supernatural religion can be made except on the basis of a prior statement of the rights of the Church in the field of political affairs. Whatever rights the government of a Catholic people may have in regard of the religion of the people, it has them only in consequence of the subordination of the end of the state to the end of the Church. The same subordination is the basis of a certain power of the Church in the temporal order. The two problems rise out of the same root; they are therefore analogous problems. And the solutions given them must assemble themselves into a harmonious body of doctrine. That is, the solution given to one problem must be symmetrical with the solution given to the other, and reveal the operation of the same set of principles. This is true *a priori*; otherwise one winds up with a mass of unrelated assertions. It has also been true historically. Always the prior problem has been that of the power of the Church in the temporal order (actually, the contemporary primacy of the political problem is most unfortunate). And the concrete solution given to the prior problem has always been reflected in the solution given to the secondary problem. Therefore my discussion must begin with the problem of the power of the Church in temporal affairs.

#### METHOD

By the same token, the discussion must proceed from an historical point of view. Nothing is more unhelpful than an abstract starting point. Such, for instance, is the positing of the generality, “Error has no rights.” As it stands the statement is meaningless; for rights are predicated only of persons (or of institutions). If it means anything, it means that error is error; but this is hardly a “principle” from which to draw any conclusions with regard to the powers of the state. Moreover, in this connection I



think it is important to take seriously the point made by Acton, that it was Protestant theory, not Catholic, that made a political duty of the persecution of religious error formally as religious error, apart from the formality of political dissent or danger to the state.<sup>7</sup> Catholic princes may have burnt altogether too many people, but not for the reason for which Calvin burnt Servetus, for the simple *crimen opinionis*, on a theory of abstract intolerance.

Our whole question then has to be viewed in historical perspective. The doctrine of the two powers has had a long history and has seen much development; and there is no reason to suppose that the development is entirely ended. Apart from a view of this development it is impossible for the theologian to succeed in his task, which is to vindicate the internal consistency of Catholic doctrine at any given moment, and to show forth the fact that the development has been truly organic, *in eodem scilicet dogmate, eodem sensu, eademque sententia*. In a matter in which the relativities of the political order have played so large a part it is not the theologian's task to defend as necessarily permanent and of divine origin every right that the Church or the state has asserted or exercised in particular periods of history. His task is the formulation of principles in such terms that they may be asserted as constantly valid, and their organization into a coherent system that will cover all contingencies because it is dependent on none.

This historical approach, for all its necessity, presents enormous difficulties. The problem of Church and state has always been a concrete one, rising in widely different social contexts in which the two powers have met each other and created a problem for each other. In substance always identical, the problem has had a manner of position conditioned by the relativities characteristic of any given historical situation. The quarrel of Gregory VII with Henry IV was not precisely that of Boniface VIII with Philip the Fair, nor of Pius V with Elizabeth, nor of Leo XIII with the Third Republic. The very terms of the problem have altered in certain respects; in its relation to the civil power the papacy of Gelasius I

<sup>7</sup> "The Protestant Theory of Persecution," in *History of Freedom and Other Essays* (London, 1922), pp. 165-70, *et alibi*.

was not entirely that of Pius IX, nor was the *regalis potestas* of the Emperor Anastasius the same as that of Napoleon. Moreover, the context of the problem has altered; "society" in medieval times was a different reality, and men had a different concept of it, than is the case today. It is one thing to dispute about the relations of the two powers within the one society, the medieval *respublica christiana*, and another to dispute about the relations of two societies, each perfect in its own order with its own sovereignty independent in its own order. Finally, it is one thing to define the relation of the Church to an absolute king like Louis XIV, and another to define her relation to the modern democratic state with its division of powers, representative government, bureaucratic organization, etc. Yet one must have a doctrine that covers all these contingencies, and is inspired by none of them; for insofar as it would be inspired by the particularities of a transitory situation it would not be a doctrine of the Church universal, part of her eternal and unchangeable deposit of truth.

This is what makes exploration of Catholic tradition so difficult. All the theories of Church-state relationships cast up in the past were influenced by the facts of the problem as those facts existed at the time. In this matter fact has always had the primacy over theory. Political rulers acted, Popes acted; and then came the theologians—often politically partisan in their sympathies—to think out a theory. But their theories inevitably reflected the relativities of the time-conditioned problem that prompted the action about which they theorized. Obviously, the Popes acted on principle, derived from faith and reason; however, they always had to act, as it were, in an "impure" context, to solve a concrete problem. Consequently, the principles motivating their action transpired through a mixed medium to the reflective theological intelligence. Consequently, too, the theories of theologians reflect both permanent principles and also the facts of a given epoch.

Moreover, by a singular paradox that has often been pointed out, their theories tend to reflect the facts of a political and social situation already altered and gone. For instance, the theory of the direct power of the Pope in temporal matters reached its highest point of theological popularity just at the moment when the tem-

poral prerogatives of the papal monarchy, which it was designed to support, were already hardly more than a memory. Moreover, unlike institutions of the political order, which are in a continuous process of dissolution and reshaping, the theories of the School tend to be tenacious of life in the School. Bellarmine, for instance, learned this to his sorrow, when his theory of the indirect power almost was condemned by a Pope, and was actually condemned by curialist theologians, whose minds were still dominated by the ideas and the whole "mood" of the direct-power theory.

One must therefore consult history in this whole matter; apart from such consultation no perspective, no exact formulation of the doctrine of the Church universal in time and space, are possible. One must consequently argue from what Popes did as well as from what they said and understand what they said in the light of what they did. But such arguments from fact can be fallacious, especially one when attempts to draw from them general conclusions permanently valid in law. John of Paris pointed to the danger: "It is not proper to argue from such individual facts, which at times were occasioned by devotion to the Church or to some person, or by [desire to do] a favor, or by some cause other than a juridical duty."<sup>8</sup> Finally, all the facts of the past and all the actions of the papacy can be given their true meaning only in the light of the particular historical situation which the papacy happened to occupy, not only in relation to the civil power but more especially in relation to the whole of society at the time. To argue from their action to the perennially valid rights of the Church one must proceed with caution; there is, it has been said, "an abyss" between Innocent IV and the modern papacy, that is measured by all the social and political transformations that have occurred.

At this point I might say that one will rightly formulate the absolute, permanently valid laws governing the orderly relationship between the two powers and the *debita iuris* of each toward the other only if one conceives these laws in generalized form. Nor may it be said that this is "minimizing" Catholic doctrine, diminishing the exigencies of truth, making concessions to the "liberal spirit." I

<sup>8</sup> *De potestate regia et papali*, c. XIV, *op. cit.*, p. 219.

am not minimizing Catholic truth when, for instance, I identify in the Bull *Unam Sanctam* certain affirmations that savor of a certain time-conditioned conception of the papal *plenitudo potestatis* current in the particular medieval tradition of which Giles of Rome was at the time the spokesman; and when I go on to say that the doctrinal tendency of the *Unam Sanctam*, just so far as it reflects this transitional concept, is not moving in the main stream of Catholic tradition. This is not to diminish the truth but to define it.

Moreover, I do not see why more recent documents (*Immortale Dei*, for instance), just because they are more recent, should be immune from this kind of reverent theological scrutiny. Must one maintain, for instance, that *Mirari Vos* or *Quanta Cura* said the last, definitive, immutable word on the political problems which the so-called "modern liberties," for all their aberrations and false metaphysical premises, aimed at solving? Or that a somewhat *ad hoc* theologoumenon, such as the distinction between "thesis" and "hypothesis," supplies irrevocably and for all the time the categories in which we must continue to debate the problem of Church and state? For my own part, I incline to think that the usefulness of this particular distinction is increasingly outweighed by its tendency to mislead, and that its categories are too facile to admit of fruitful theological and political thought. If, for instance, on this basis one says that the thesis obtains in Spain, whereas only the hypothesis is verified in the United States, one steps off on the wrong foot into a morass of futile controversy, that centers on an irrelevance—whether the particular political form of the Spanish state is in any sense part of some Catholic "ideal." It may or may not be ideal for the Spanish people—that is their problem. But to predicate "Catholic thesis" or "Catholic ideal" of this particular mode of religio-political organization is, I say, at least misleading.

In fact, the often-used expression, "Catholic ideal of Church-State relationships," is such as to create uneasiness. If it is meant that there are certain broadly but clearly defined divine intentions in the matter, manifested by reason and revelation, the assertion stands. But if it is meant that any particular form of socio-religious organization, whether of the past, present or future, constitutes the Catholic ideal, it is false. It is doubly false if it im-

plies any nostalgic yearnings to reinstate medieval juridical and political conceptions. The divine intentions in regard of the relations between Church and state are indeed destined for realization in history, but not for realization in any "ideal" form, much less by any reversal of the historical process. There was a Christendom once; in fact, there have been several Christendoms, and a variety of "Catholic states." But all of them were highly imperfect, not ideal. In the providence of God and by the intelligent zeal of the Catholic citizen there may be a Christendom again; but it too will be imperfect, not ideal. And no one can foresee in detail its form. What was true and valid in the old will find place in the new, but the new will be new through all its texture.

The *vetera* in the case are well known: the distinction in origin, end and functions of the two powers and of the two societies over which they rule; the spiritual autonomy of the Church and the political autonomy of the state, each with sovereign jurisdiction in its own field; the primacy of the spiritual power as sovereign in the higher order of human life; and finally the harmony and collaboration that should mark the relations of the two powers and societies in the interests of the total good of man. These are the essential data. Historically, however, both in fact and theory, they have had formulations with divergent accents and systematizations with divergent tendencies; and each principle has seen a variety of concrete applications. It would be an enormous task to trace this history. What I shall do in what follows is simply to indicate in very brief outline three theories of the power of the Church in the temporal order—the theory of the direct power, and two variations of the theory of the indirect power (Bellarmine and John of Paris). The point is not to study each in the entirety of its premises and applications; I am interested chiefly in the status within each theory of a governmental right to repress heresy—in the harmony between the status accorded this right and the totality of each theory, its concept of the Church and of the state and of the society in which they meet. Thus seeing the governmental right in its whole setting, one may be the better able to judge its situation in Catholic tradition. At least I may be able to open up the question to its proper width.

## THE THEORY OF THE DIRECT POWER

The starting point of the theory of the direct power was its interpretation of the primacy of the spiritual power to mean that the temporal power is included in it as an emanation from it. In the words of Hugh of St. Victor, with whom, as Rivière says, "the political supremacy of the spiritual power was frankly incorporated into theology, "Primum a Deo sacerdotium institutum est, postea vero per sacerdotium, iubente Deo, regalis potestas ordinata."<sup>9</sup> Christ, who was both Priest and King, delegated to Peter and his successors a direct jurisdiction over temporal affairs as well as over spiritual affairs. In the famous evangelical metaphor, that has had such a tortuous history, the Church possesses and has dominion over "the two swords." However, the Pope ordinarily uses only the spiritual sword; by the will of Christ he is to delegate the ordinary use of the temporal sword to the prince, at the same time that he retains dominion over it. John of Salisbury put it thus: "Hunc ergo gladium de manu Ecclesiae accipit princeps, cum ipsa tamen gladium sanguinis omnino non habet. Habet tamen et istum; sed eo utitur per principis manum, cui coercendorum corporum contulit potestatem, spiritualium sibi in pontificibus auctoritate servata."<sup>10</sup> If, however, the prince is delinquent in his duty, the Pope recovers the use of the temporal sword *ratione peccati*; if the prince is recalcitrant, the Pope likewise recovers it to use for the superior interests of Christendom.

The error in this view lies in its violation of the autonomy of the state, in its misconception of the origin, nature, and scope of civil authority. The prince is conceived simply as *minister sacerdotii*; his political power is the direct instrument of the Church for the accomplishment of the spiritual purposes of the Church; the Pope (the head) uses the prince simply as one of his "arms." Of other defects in the theory, we need here say nothing. (I should perhaps point out that one need not see error in the *acts* of the medieval papacy that were an exercise of immediate temporal juris-

<sup>9</sup> Cited by J. Rivière, *Le problème de l'Église et l'État au temps de Philippe le Bel* (Louvain, 1926), p. 28.

<sup>10</sup> Cited by Rivière, *op. cit.*, p. 28.

diction, the most dramatic instance being the deposition of princes. These acts have adequate explanation. The error was in the *theory* that pretended on theological grounds to make this immediate temporal jurisdiction a permanent and necessary attribute of papal sovereignty. The Popes were on sound ground, having their feet in their own times; the theologians, thinking themselves to be on the footing of eternal principles, were actually in the air.)

It is clear that the right of the prince to repress heresy by penal measures is entirely coherent with this theory, as a necessary consequence of it, and of the concept of political sovereignty inherent in it. There is no doubt that the *Church* has the right to use coercive measures against heretics. She can inflict the spiritual punishment of excommunication, and add material punishments; for the protection of her own supernatural unity is her primordial duty, bearing with it all the necessary rights to act to that end. If, then, the prince is within the one body of the Church as *minister sacerdotii*, whose temporal power the spiritual power is free directly to use for its own spiritual ends, he may be charged with vindicating violations of the supernatural unity of the Church. He will then act with perfect right; for his right is the Church's own right, conferred on him by the Church. His power is none other than hers, simply brought into execution by him. In a word, in this theory, the prince has a direct religious power, as the Church has a direct temporal power.

I suggest that we are here at the origins of the theoretical justification of the "right" of Catholic governments to repress heresy. Before the age of Christendom no properly theoretical justification had been attempted. The first Christian emperors, as Sturzo and others have pointed out, had simply assumed power in the matter for political reasons—the need for the unification of the Roman world. There was in fact no other basis for political unity than religious unity; nor could the emperors, standing in an ancient tradition, conceive of any other. The Church was indeed unhappy over the idea of an empire sustained by the Church, but she gave practical acquiescence to the idea of a Church protected and defended by the Empire. Theory was at best floating. And the leading theorist, St. Augustine, was content to justify the coercive meas-

ures taken by the imperial power against the Donatists by what was in effect an argument *ab eventu*.<sup>11</sup> These measures worked unto good, both spiritual and temporal; therefore they were right. This exercise of imperial power became part of the Justinian code; and later in the West it fitted admirably with Charlemagne's concept of his own religious role. However, it remained for the peculiar "hierocratic" concept (as it is called) of the instrumentality of the temporal power in regard of the spiritual end of the "one body" within which it had a ministerial function, to give a footing in formal theory to the direct power of the prince in spiritual matters.

This footing is now untenable, but there were reasons why it was not questioned at the time. The chief one was the state of public law, as sustained by popular consent. The foundations of public law were the faith and law of the Church; and consequently the defense and vindication of the faith against heretics became a political duty, as a furtherance of the public good. The political and religious functions of the prince coincided, as the order of faith and the order of society likewise coincided, in virtue of a particular situation of fact that created special juridical exigencies. There were further reasons—the highly special situation of the emperor in relation to the Church, and the voluntary vassalage of inferior kings and princes to the Pope as suzerain, that bore with it special religious obligations. But these need not detain us.

One may therefore say that the medieval prince had a right legally to repress heresy. However, one is not then "speaking absolutely," but in a hypothesis—in the hierocratic hypothesis of the origin and end of political power, in the social hypothesis wherein heresy was treason and treason heresy, and in the political hypothesis wherein the unity and good of the state (if one may use the term "state" of Christendom or its units) was identically the unity and good of the Church. This governmental right was surrounded at the time by various contingencies of fact that gave rise

<sup>11</sup> St. Augustine of course appealed to the necessities of public order to justify the repression of the turbulent Circumcellions; his argument *ab eventu* regarded the rightness of imperial intervention *ad bonum animarum*: many Donatists were in fact converted; therefore this was a good way to convert them.



to a special juridical situation. It would be very risky therefore to generalize from the actions of the early Christian emperors, or the emperors in the "translated" empire, or the kings and princes of medieval Christendom, or of Renaissance and Reformation times for that matter, to certain absolute, permanent "rights" that are, as it were, *in thesi* the empowerments of something called "the state."

The direct-power theory, once widely held, is now an error; its concept of political power as having ministerial functions in the supernatural order is likewise an error; its concept of the *Ecclesia universalis* as a religio-political entity long since ceased to have basis in fact; the *crimen ecclesiasticum* is no longer also *crimen politicum*. In fact the whole political and social order has so altered, that appeal to this large segment of history with its particular juridical norms of political rights and duties will not serve to invest a governmental right to repress heresy with the qualification of "traditional." The right had its footing in contingencies; it was at best hypothesis.

#### BELLARMINE'S THEORY OF THE INDIRECT POWER

Long after its dissipation as a formal theory, the theory of the direct power seems to have survived in shreds of itself and also as a sort of "mood" or climate of opinion. Certain it is that when St. Robert Bellarmine proposed his theory of the indirect power it seemed to some theologians, like Francisco Pegna, to be "all that a heretic could desire," by reasons of its restrictions on the papal *plenitudo potestatis*.<sup>12</sup> And Sixtus V so far agreed with them that Bellarmine, the greatest modern defender of the rights of the Holy See, escaped the Index only by the sudden death of one of the great modern Popes.

With enormous learning and consummate polemical skill Bellarmine defended the traditional truths governing the relations between the two powers.<sup>13</sup> In addition he constructed a particular theolog-

<sup>12</sup> Cf. J. Brodrick, *Robert Bellarmine* (New York, 1928), I, 275.

<sup>13</sup> The following discussion of Bellarmine's theory is much too rapid; I have developed the subject somewhat in an article, "St. Robert Bellarmine on the Indirect Power," *Theological Studies*, IX (1948), 491-535.

ical theory of the indirect power of the Church in temporal affairs. It is not the only explanation of the indirect power. (The term, "indirect," seems at the moment to be the term used to designate the true nature of the Church's power *in temporalibus*; however, it has no dogmatic standing as a term, and there are those who question, not without reason, its appositeness to express the Catholic truth in the matter; however, its currency commands respect and it is convenient.) In its distinctive elements Bellarmine's theory has never been canonized. In fact, it has been seriously challenged by theologians of name.

In its own setting it was a splendid piece of theological argument. But it is no derogation of Bellarmine's greatness to say that, as a theory, it was transitional. It was born of a period of transition from medieval unity to all the modern fragmentations—in particular, politically speaking, from the age when men lived, or thought they lived, in "one society" that was both Church and what we call state, to an age in which they were to live, as we do, in two societies, one of them the nation-state and the other the Church, always universal, but lived in by divided peoples highly conscious of nationality. It may be questioned whether Bellarmine was fully aware of the newness of the situation, and of the new modalities inevitably necessary in the Church's relations with a political order now radically altered. Like anyone else, he was a man of his time. He wrote under the shadow of Pius V's "fatal anachronism," as it has been called—the excommunication of Elizabeth. And he did not in fact quite succeed in disengaging his thought from certain outworn categories inherited from the past, notably the categories of medieval unitarism and its concept of the *respublica christiana*.

In consequence, his theory of the indirect power, though it is a long step forward from the decadent fourteenth-century theology of an Alvarus Pelagius (d. 1352) or an Augustine of Ancona (d. 1328), or even from the newly vigorous thought of Francisco de Vittoria (d. 1546), was nevertheless a theory that, so to speak, looked backward. I mean that it was too much fashioned on a set of facts that had ceased to be facts, that could not have helped but cease to be facts, and hence had lost theological vitality. More concretely, his particular theory is not so much a theory of the two

powers or of Church and State, as a theory of the two powers within the "one society" that medieval Christendom knew. On the other hand, his theory was buttressed by a firm political philosophy of the political power as natural in its origin, end, and functions. And to this extent his theory looked forward into the age in which the state, as we know it, was coming of age. This is why I call his theory transitional.

Bellarmino's primary preoccupation was to present a purer notion of the entirely spiritual character of the Church's power, against the "temporalization" of it by the direct-power theory, and even by some of the ideas of Vittoria. At the same time, he was anxious to preserve in their fullness the prerogatives of the papacy, and rightly to insist, against Gallican and regalist theories with their laicist tendency, that the spiritual authority of the Church has a real reach into the temporal order of society, and that the conscience of the prince as prince, and not merely as private individual, is subject to it. Thirdly, he was impelled to develop, out of the Thomistic tradition, the natural-law concept of political power, as a weapon against both the extremist theories that he combated, the hierocratic and the regalist.

Bellarmino's description of the indirect power is, in brief, this: "(Intelligimus) potestatem pontificiam per se et proprie spiritualem esse, et ideo directe respicere, ut objectum suum primum, spiritualia negotia; sed indirecte, id est, per ordinem ad spiritualia, reductive, et per necessariam consequentiam, ut sic loquamur, respicere temporalia, ut objectum secundarium, ad quod non convertitur haec potestas spiritualis nisi in casu."<sup>14</sup> The phrase, "nisi in casu," refers to papal intervention *ratione peccati*, or on occasions when the good of the Church requires it. From Bellarmino's developments of his theory it results that his indirect power is a genuine and immediate jurisdiction over the temporal order; for it is the power immediately to produce juridical effects in the temporal order. So, for instance, the Pope can depose princes and set up others in their place; he can make and abrogate civil laws; he

<sup>14</sup> *Tractatus de potestate Summi Pontificis in rebus temporalibus adversus Gulielmum Barclaeum*, V (*Opera Omnia*, IV, 2, [Neapoli, 1856], 278).

can authoritatively summon to his tribunal as a temporal judge the case of two rulers at war, or other cases wherein the judge failed to act.

These are, it is said, acts of an indirect power; that is, the power is exercised only in view of a spiritual end. But the power itself is evidently a temporal power, whose direct and immediate effects are temporal; e. g., the deposition affects the prince directly and immediately. Moreover, these temporal effects are directly willed as a means to a spiritual end; the spiritual is reached through the temporal. And the temporal effects remain temporal; they do not become spiritual by being referred to a spiritual end. Nor is the temporal nature of the "sword" used by the Church altered by the motives of its use. In this connection, it should be noted that even the direct-power theory conceded to the Church the use of the temporal sword only *ratione peccati* or for spiritual ends.

It seems, therefore, that Bellarmine's indirect power is simply a direct power limited to exceptional use. The fact that conditions are put to its use (rather vague ones, at that) does not alter the fact that, when used, it is a direct jurisdiction over temporal affairs; it is a genuine political power. Its premises (the autonomy of each power, founded on the radical diversity of their origins and ends and the purely spiritual character of the Church's power) are different from those of the theory of the direct power; but in their essential conclusions the two theories present differences that are more apparent than real. The weak point in Bellarmine's theory is, as DeLubac has said, its "lack of logic": ". . . its premises should lead to conclusions of another order. At first sight, one feels the satisfaction of clarity; but reflection quickly reveals it as a bastard compromise, and an untenable one, between the theory of direct power and the theory of directive power."<sup>15</sup>

<sup>15</sup> "Le pouvoir de l'Église en matière temporelle," *Revue des sciences religieuses*, XII (1932), 335. The judgment is perhaps not phrased with all possible nicety. I do not think the alternatives here are "direct power" and "directive power." Moreover, Bellarmine was not striking a compromise between theories. As a polemist he undertook to defend as rightful what Popes had done in the past, and he fitted a theory to the facts, without adequately analyzing the facts. This, I think, is what gives his theory the appearance of a compromise.

Bellarmino did an enormously valuable work in laying to rest the theory of the direct power; his refutation of it is classic. Moreover, he contributed much to the clarification of the principles underlying the relationship between Church and state, notably by his cardinal emphasis on the purely spiritual character of the Church's sovereignty. The fact that he should have come to conclusions of another order than his premises is easily explained. For one thing, as Brodrick has said, he was not a great political thinker, in spite of his significant contribution to the systematizing of the ethical foundations of political society. Again, Bellarmine approached the problem of Church and state from the standpoint of the *respublica christiana* of the Middle Ages. It was a mistaken approach, that gave him a wrong assumption from which to project his particular theories, because this society no longer existed, and even while it did exist, it was not a divine ideal of what society should be, but simply a phase in historical and social development, that could not legitimately be made the premise of a validly permanent theological theory. The celebrated "dream of Origen," which in its medieval realization so enraptured the Christian mind, was a dream too fair to be easily forgotten by Popes and theologians; and they lingered over it, half persuading themselves that it was still a reality, long after nationalism and the rise of the "lay" State (the latter, a development in itself legitimate and inevitable) had tragically dissipated its glories and blessedly ended its concomitant miseries. Bellarmine's own hugging of the dream is perhaps most evident in his forcing of the "body-and-soul" metaphor, classic since Chrysostom and Gregory Nazianzen: As body and soul can be separate (in brutes and angels), so the two powers can be separate ("as of old in the days of the Apostles"); but as body and soul, when united, make one man, so the two powers, when united ("as is now the case"), make "one body";<sup>16</sup> "when princes are Christian and members of the Catholic Church, numbered among her sons, the two powers are so united and brought into harmony that they make one city, (*respublica*), one realm, one family, indeed one body."<sup>17</sup>

<sup>16</sup> *De Summo Pontifice*, V, 6 (*Opera Omnia*, I, 531-32).

<sup>17</sup> *De translatione Romani Imperii*, I, 12 (*Opera Omnia*, IV, 2, 80).

Bellarmino here is not so much defining principles as describing a fact—the medieval fact, that still imposed itself on his theories. And in the climate of thought engendered by this fact, he makes the subjection of the temporal to the spiritual power so complete that one may rightly say, with Moulart, that “the civil power loses its liberty and proper independence.”<sup>18</sup> It becomes, as in the medieval hypothesis and in the theory of the direct power, the direct instrument of the spiritual power, the *minister sacerdotii*, to be used *ad nutum pontificis* for the interests of the Church, and even to be set aside when useless or disobedient, in which case its temporal power reverts to the Pope, who wields it *casualiter*, as Innocent III would say.

For my part, therefore, I do not see that Bellarmine is much more successful at establishing in principle an *ordinata colligatio* between Church and state than were the theoreticians of the direct power. He vindicates, if you will, the orderly relationship that was proper to the medieval socio-political hypothesis. But this hypothesis in its distinctive aspects (the direct instrumentality of the civil power with regard to the spiritual ends of the Church, and the logically correlated assumption by the Church of a direct political power *in casu*) was the contingent creation of historical circumstances, and not an absolute divine intention.

This is a sketch, rather inadequate, of the background against which to project Bellarmine's ideas on the duties and rights of princes to guard the unity of the Church by repressive measures against heretics. He is very fierce on the subject (in a rather detached and conventional way, I think) in the one place where he explicitly deals with it.<sup>19</sup> Moreover, these pages are probably the most poorly reasoned that he ever wrote.<sup>20</sup> The factual situation

<sup>18</sup> F. J. Moulart, *L'Église et l'État* (3rd ed., Louvain-Paris, 1887), p. 197; he adds that Bellarmine's theory is “at bottom little different from the one supported by the partisans of the first system,” that of the direct power (p. 199).

<sup>19</sup> *De laicis*, XVII-XXII (*Opera Omnia*, II, 333-45); other references are incidental and in the same vein, e. g., *De Summo Pontifice*, V, 7, *op. cit.*, pp. 533, 534.

<sup>20</sup> Cf. the paralogism, “Heretics can rightly be excommunicated, as every-

that he had immediately in view was the Germany of Reformation times, and in particular the Diet of Spires (to which he refers), at which Charles V was obliged by the Lutheran princes not to enforce the ban on Luther, to respect his life, and to permit Lutheran propaganda until what time a General Council or a national assembly could settle the whole question. This religious liberty was to Bellarmine "a most pernicious error"; for "without doubt Christian princes are obliged not to allow their subjects freedom of belief, but to see to it that that faith is kept which the bishops and particularly the Pope teaches as the one to be believed."<sup>21</sup> This, he says, is what Theodosius, Valentinian, Martian and Constantine did; only Jovian, Valens and Julian the Apostate permitted religious freedom! Concretely, what the princes have to do, besides ordering all their subjects to keep the true faith, is to burn all heretical books, inflict temporal punishments on heretics, and put them to death.

This is good sixteenth-century stuff. And the arguments for it are all from the caesaropapist tradition of the Roman Empire and from the medieval concept of the *respublica christiana*. Heresy is an outrage to the "Church," i.e., the whole religio-political organization of society; and the prince is the "left arm" of the Church, whose function it is to do the coercing and the punishing. The special universe of discourse in which Bellarmine argues, and his suppositions, are evident in his conclusion from a few scattered texts of the New Testament: "From these the conclusion is that the commingling of heretics with Catholics is injurious to the

one admits; therefore also killed. And the consequence is proved, because excommunication is a greater punishment than temporal death" (*De laicis*, XXI, *op. cit.*, p. 341). This is to forget that excommunication and death are punishments of different orders; no illation *a minori* is valid. Again: "Finally it is a benefit for obstinate heretics that they are taken from this life; for the longer they live, the more errors they think up, the more people they pervert, and the greater damnation do they acquire for themselves" (*ibid.*, p. 342). But perhaps they might be converted and live? Furthermore, through a large part of Bellarmine's argument runs the appeal to *necessitas Ecclesiae*; he does not stop to inquire whether any necessity is a valid reason for invoking means of another order than the end of the Church. My impression is that he is repeating conventional arguments, without scrutiny of them.

<sup>21</sup> *Ibid.*, p. 334.

Church. . . . Therefore kings, who are the guardians (*nutricii*) of the Church (Isa. 49), ought not to permit this commingling."<sup>22</sup> The key concepts are those of "the Church," i.e., the *respublica christiana*, and of the function of kingship in the Church, so conceived. It is they that permit the illation, "Therefore. . . ." As is evident, both concepts are historically conditioned, contingent concepts that may justify a contingent conclusion (with that problem I am not concerned), but that certainly afford no ground for concluding to any permanent attributes or functions of political authority, any "rights of the state."

If Bellarmine's concepts are medieval and early Roman Empire, his mood, so to speak, is very Reformation. No one can fail to see running all through his argument the two Catholic assumptions proper to the time; The first is that all heretics, since they were baptized, are subjects of the Church; therefore they may be coerced (by the prince) to obedience to her faith and laws, or punished even by death for disobedience. The second is that all heretics are in bad faith, and are therefore all the more subject to coercion and punishment. There is an additional third assumption of a practical character; that, if coercion and punishments are faithfully applied, the result would be the restoration of religious unity. Perhaps I should add, too, the feudal assumption that is also visible in his argument, that kings on their entrance into "the Church" (Christendom) voluntarily dedicated their "sword" to the protection of the supernatural unity of the Church (the religious society) whose unity was in effect the unity of the commonwealth.

What is particularly striking about Bellarmine's argument is that it rests on appeal to the factual and juridical peculiarities of a special historical situation, which are contingent; but it makes no appeal to the principles of Bellarmine's own political philosophy, which are permanent. He uses his natural-law concept of the state in order to prove that the prince is not a judge in religious controversies, because his power is of the human, natural order, possessed for a temporal end, for whose achievement he has limited empowerments given to him by the people.<sup>23</sup> This is permanent

<sup>22</sup> *Loc. cit.*

<sup>23</sup> Cf. *De Verbo Dei*, IX (*Opera Omnia*, I, 111).



truth. But it plays no part in determining the role that the prince should play as "guardian of the Church." Here Bellarmine switches to an historical, concrete concept of political sovereignty, that rests on an hypothesis. The prince may not declare anyone a heretic, but he may burn him if he is one.

I do not say that the switch is illogical, in Bellarmine; for, if a heretic is also a traitor, and if the customs of a particular age regard the burning of traitors as a good idea, the prince has, if you will, a "right" to burn heretics. But it is a purely hypothetical right, at best. And one cannot argue from what princes in this hypothesis did, to what "the state" *in thesi* should or may do. If there is a thesis to be constructed, a theory of the rights and duties of "the state," possessed by it apart from any hypothesis, then the controlling principle must be Bellarmine's own principle, that as the rights of the "prince" (whether one understands the term to mean "state" or "government") derive from the natural law, so they are limited by the natural law. And as he is not empowered by natural law to decide what heresy is, so he has no empowerment to legislate against it. If he is to have such an empowerment, it must come to him from some hypothetical, contingent source—from some contingent necessity of public order, from some historically conditioned concept of heresy as political evil, from some hypothetical idea of political sovereignty as instrumental in the work of man's eternal salvation, and therefore an "arm" of the Church. In a word, the origins of the prince's right to repress heresy will not be in a philosophy of the state or in a theology of the Church, but in a situation of fact. Civil intolerance is not thesis but hypothesis.

I suggest then that, as in his doctrine on the power of the Church in temporal affairs, so also in his doctrine of the power of the prince in the affairs of the Church, Bellarmine brought back through the hall door the theory of the direct power that he had pitched out the kitchen window. He disposed of the hierocratic idea of the origin of political sovereignty *mediante papa*; but he did not dispose of the equally hierocratic idea of the prince as the instrument of the Church. The concreteness of his thought, which is elsewhere a virtue (as contrasted, for instance, with some nineteenth-century theorizing), here betrayed him. Ultimately, what

he did was to rationalize a situation of fact, with its contingent juridical exigencies. To this extent, he constructed no proper theoretical justification of the right of princes to repress heresy, and of their duty in this way to aid the Church. Insofar as he asserted this right and duty, he asserted it, paradoxically enough, in an order of ideas that was not his own; for it was the old order of ideas in which the theory of the direct power moved. In this part of his doctrine he was not thinking independently, in trueness to the premises that he had correctly discerned as essential to the Christian tradition as such. Illogically, and in consequence of being a man of his time, not yet liberated from the spell of medieval unitarism, he somewhat unconsciously here fell back on a particular (and absolutely speaking, a false) concept of political sovereignty, on a particular (and again, absolutely speaking, an imperfect) concept of the relations between the two powers, and on a particular (and historically conditioned) concept of society and its common good. On these relative and contingent premises the right of the prince to repress heresy does indeed stand. But in point of historical fact and political science these premises have fallen and fallen forever.

If I might in conclusion venture a general judgment on Bellarmine's doctrine, I should say that he did not fully and rigorously reckon with the central Christian datum in this whole matter—the distinction between the two powers and the two societies over which they rule. And he did not do so because, although his concept of the distinction of the two powers was utterly clear, he did not have a concept of the two distinct societies in which each possesses its independent sovereignty. His overarching concept, that qualified all his argument, was not strictly a universally traditional concept; it was derived from a particularist tradition — that of medieval unitarism. Moving in the universe of discourse established by the "one-society" theory, he was blocked off from following in full logic the exigencies of the basic principle that the civil power, as it has its own proper origin, so it has its own distinct and limited finality, as a limited organizing principle of a political society that has its own proper unity, distinct from the Church.

The whole problem of Church and state consists in fact in reconciling this autonomy of the state (and of government as an

organ of the state) as a purely temporal power, with the primacy of the Church, as the universally sovereign spiritual power. Broadly speaking, the reconciliation is only effected by making the power of each to be indirect in the sphere of the other. Bellarmine cast up one theory of the indirect power—one systematization of the data of revelation, one interpretation of the data of history. As formulated by him, and argued for, it has, I think, defects—in its orientations, manner of expression, argument—that can indeed be accounted for, and could possibly be remedied, but that cause real difficulties. However, there is another theory of the indirect power that seems to me to come closer to a permanently valid systematization of the data of revelation, and to afford a better premise for a statement of the reciprocal rights and duties of Church and State. In particular it seems to contain the materials for a genuine “thesis” in regard of the rights of civil government in the matter of religious error and dissent.

#### JOHN OF PARIS AND THE INDIRECT POWER

In order to sketch this second theory, I shall recur to the doctrine of John of Paris (d. 1306). Not indeed that his doctrine is in all respects beyond reproach, or that his synthesis of the indirect-power theory is entirely firm.<sup>24</sup> But his theory merits study as well in itself as by reason of the time at which it was put together. Moreover, it contains the seeds of a development that, as it has come to fruition in our own times (most notably in Pius XI's theory of Catholic Action), would seem to be guiding the thought and action of the contemporary Church in its relations with the state and society.

In the first decade of the fourteenth century there were projected into the troubled atmosphere of Europe three documents of outstanding importance: the Bull *Unam Sanctam* of Boniface VIII

<sup>24</sup>What I give here is not a critical study of John of Paris, that estimates his weaknesses; nor is it a strictly historical exposé but rather an interpretative one, that extends the virtualities of his thought. My point is simply to use him as an exponent of the rational political philosophy that is in the central tradition of Catholic thought on this problem, and the hinge on which a balanced solution turns. For a further study see my article, “John of Paris and the Indirect Power,” *Theological Studies*, X (June, 1949).

(1302), the *Tractatus de potestate regia et papali* of John of Paris (1302-1303), and Dante's *De monarchia* (date uncertain: 1302-1311). Each in its own way handled the crucial problem of the day—the situation of the civil power with respect to the spiritual power in the economy of a Christian world. Though factual in origin, through the political emergence of the “lay” state as a profane magnitude and the correlative emergence of a “lay” culture and a layman who was cultured, the problem was now more than practical; it demanded a solution in principle. (In this respect, the problem resembled the one we confront today.) Boniface VIII solved it in the perspectives of a social theory, based on metaphysical and religious grounds, that was about to collapse with the tragedy of Anagni; I mean the perspectives of medieval unitarism, wherein the dyarchy of Church and State found its resolution, and consequently Christendom found its unity, in a special concept of the papal *plenitudo potestatis*.

John of Paris (Jean Quidort, Joannes Dormiens) and Dante, each in his own way, between which was all the difference that separated French nationalism from Roman imperialism, represented a *via media* between the hierocratism of Boniface VIII and the regalism of Philip the Fair. For all their differences, John of Paris and Dante both sought to form a concept of the state (for it was the concept of the state that was in question) that would leave it at once properly independent of the pontifical power and properly subject to its direction. From another point of view, they sought to fashion a concept of the primacy of the Church that would leave the autonomy of the state intact. I am not here concerned with Dante; my point is that John of Paris, in spite of certain Gallican elements in his thought, which are readily separable from its substance, touched once more, and gave fuller statement to, the original doctrine of Gelasius I, the authentic Christian tradition, which had been obscured from sight by political realities and by the theory of “political Augustinism.”<sup>25</sup>

<sup>25</sup> The historian of this current of thought is H.-X. Arquillière, *L'Augustinisme politique* (Paris, 1934); for our purposes here the notable thing is its somewhat messianic concept of governmental power as a direct agent of supernatural redemption; this idea remains as a sort of permanent tempta-

John was less a jurist than a theologian, sensitive to the exigences of theological principles and aware too of the vital problems of his times. The burden of his treatise is speculative, not polemical, though he rudely and at length challenges the hierocrats (Giles of Rome, James of Viterbo, Henry of Cremona). He attempts a synthesis, not a *quodlibetum*. And in two chief respects his method is superior to that of the polemicists of his day. He has, first, a sense of history and its relativities, which keeps him from generalizing simply from facts, as did the polemicists: "Tamen ista argumenta," he says, speaking of the deposition of emperors by the popes, "sunt de facto et dicunt quid factum sit, sed non dicunt quid fieri debuit."<sup>26</sup> Secondly, to a firm grasp of principles in all their abstractness he joined a sense of the realities of the political world. His main source is St. Thomas; but he marks an advance over St. Thomas in that he brings squarely into the political problems raised by Philip the Fair the traditional ideas that St. Thomas had elaborated in the remoteness of the School.

Here is John's chief originality. St. Thomas had dissipated once for all the equivocation that lay at the root of "political Augustinism," which was the theoretical justification of the feudal dependence of kings and emperors on the Pope; I mean that St. Thomas developed the concept of the state as a natural institution. However, it remained to draw the political consequences of this doctrine, to establish on it the norms for Church-State collaboration, and to sharpen the concept of the indirectness of the power of the Church in temporal affairs. John's doctrine is neither an Averroistic or regalistic "separatism" of the two powers, nor their confusion, as in the unitarism of the hierocrats. It is a doctrine of their hierarchical organization within human society, in a unity of order, wherein the subordination of the temporal power is effected under full respect for its autonomy. In his respect for state autonomy John, therefore, is at once the heir of Gelasius I and the forerunner of Leo XIII. More developed than the ancient theory, less developed

tion of the Catholic spirit, in the "good Christian prince," or in theorists who tend to think that, if there is a good thing to be done, it is a good thing to get government to do it.

<sup>26</sup> *De potestate regia et papali*, c. XV, *op. cit.*, p. 221.

than the modern theory, his position is at once ancient and modern. He erects his system on two principles; (1) the *regnum* is a natural institution for human and temporal ends; (2) the unity of the Church is supernatural and its power exclusively spiritual. These are central Christian affirmations; but John was original in the following out with rigorous logic all their consequences.

He posits without attenuations, as did Gelasius I, the strictly dualistic doctrine of the two powers. He sees their dyarchy resolved, not in the papal power (as did the hierocrats) but in God, from whom both powers originate in different ways and for different ends, as respectively sovereign in their own spheres; here, too, he follows Gelasius. This common origin of the two powers necessitates their harmony, their pacific collaboration, under due respect for the unalterable nature of each. Unlike Dante, John emphasizes less the finalistic need of harmony—the need of the two powers to collaborate in view of the unity of the human personality. He is Gelasian and medieval in stressing the fact that both powers are *from God*. The fact that both are *for man* will be a later refinement, present in Leo XIII, luminously operative in Pius XII. Finally, with the aid of St. Thomas, John sets in relief the crucial point of doctrine that Gelasius had also touched—the principle of the primacy of the spiritual as a purely spiritual primacy. With these principles firmly in hand, John takes the step that St. Thomas had not taken; he derives, from principle and not from historical fact or contingent juridical situations, the norms of collaboration between the two powers. And at this point he formulates his concept of the indirectness of the power of the Church in temporal affairs. Before going into it, let me somewhat enlarge the foregoing sketch.

The initial pivot of John's doctrine is his concept of the *regnum*, the political regime, the royal government, as a determined political entity (in the ancient tradition he conceives of no other form of government than monarchy). He presents St. Thomas's natural-law concept of the state (*regnum*) as an exigence of nature, independent of grace or sin, unmodified in its essence by redemption. As a natural institution, political life and the royal authority governing it are of divine origin; the power of the prince is not mediated by the Church. Nor is its purpose to heal fallen man by subjecting him

to the influence of the redemption. It pursues a "lay" end determined by nature itself, the common temporal welfare. The prince is the one "cui commissa est cura summa regiminis in rebus *humanis*"; his office exists "ad vitae *humanae* necessitatem." The end of the state therefore is specifically "lay," not religious.

However, as a good Aristotelian, John contends that the *regnum* was instituted "ad hoc ut multitudo congregata vivat secundum virtutem." He recognizes, therefore, that the princely authority—legislative, judicial, coercive—has a moral function. And he retains the traditional ministerial concept of the civil power, at the same time that he purifies it; the prince is not *minister Ecclesiae*, but *minister Dei*. The finality of his power is determined by its origin; it is of the natural moral order. The ministry of the prince is the ministry of human justice and law. By its exercise he "directs the people to God," in that he directs them to temporal ends that are properly human and to a common temporal welfare that enshrines the human element of morality. The prince has no direct function with regard to man's transcendent destiny, his supernatural life as a member of the Church. The limits of his direct power are set by natural law; he is to ordain what the common good, the exigencies of a humanly virtuous life in common, demand. John's good Christian prince is as far removed from Charlemagne as he is from the modern impersonal "laicized" government. He is to be good, but as a secular prince; he is neither *episcopus externus* nor amoral policeman. His function is high indeed, but not messianic.

The second pivot of John's system is his doctrine of the exclusively spiritual character of the Church's sovereignty. The Church too is a *regnum*, but wholly and entirely a *regnum sacerdotale*, whose power extends to nothing that is not necessarily related to the priestly redemptive work of Christ, the dispensation of the sacraments, the preservation of the Church's own unity, etc. John comes to this traditional idea by untangling the confusions engendered in the Augustinian tradition with regard to the kingship of Christ and the transmission of His power to the Church. We need not go into his argumentation, but its conclusions were cardinal in thought. Over against the concept of the "Church" as an ecclesiastico-political organization, current among the hierocrats, he set the concept of the

Church as a visible kingdom indeed, but a purely spiritual one, whose spiritual jurisdiction entailed *de se* no temporal jurisdiction.

John, therefore, has clearly defined concepts of the "spiritual" (meaning what we would call the supernatural) and the "temporal"; these are distinct orders of reality, as distinct as the orders of nature and grace, faith and reason. In consequence, John's dualism of the two powers is as radical and unattenuated as was Gelasius's. And in determining the relations between the two powers he does not permit their differentiation to be blurred. Their relations are to be determined on theological principles—basically, those that govern the relations between nature and grace—and not by considerations of political reality, or by feudal concepts of social unity. As grace does not destroy nature, so the institution of the Church has not destroyed the spontaneously natural aspirations of man to a good political society; and this society is as autonomous as the social instinct that produces it. Again, as the harmony of nature and grace supposes their enduring distinction, so the harmony of the two powers is conditioned by the fidelity of each to its own nature and end; each obeys the one God and ministers to the one man, but each does so in its own order. Finally, as grace completes nature, not by invading the order of nature but by elevating it, so the spiritual and temporal powers complete one another, not so that one assumes the other's functions, but so that each favors the performance by the other of the other's own functions, the favoring being done by each *suo modo*. And in this reciprocal, dynamic relationship the spiritual power has the primacy.

It was in determining the meaning of this primacy of the spiritual that John of Paris did his great service. The principle was traditional, held by all; it was part of the Gelasian formula. But its sense had been falsified by the illegitimate illation made from it by the hierocrats. They had argued from a primacy in dignity to a primacy in causality: the spiritual power is the origin of the temporal power, they said. And from this "principle" they had further concluded that (in feudal terms) "reges sunt vassales Ecclesiae,"<sup>27</sup> the temporal power is the instrument of the Church, its

<sup>27</sup> The expression is used even by St. Thomas (*Quodl.* XII, q. 13, a. 19,



"arm." This further "principle" was occasionally pushed to extremes of papal absolutism. In any case, this theory of the causal dependence of political on ecclesiastical authority, and the consequent instrumentality of the "secular arm" with respect to the ends of the Church, was heavy with consequences. It opened the way to confusion of the two powers, and made inevitable exaggeration of the rights of intervention by each in the affairs of the other. As long as it prevailed, no *ordinata colligatio* of the two powers was possible; for their very orders are confused.

John of Paris attacked the root of the confusion by denouncing the vice in the illation from the order of dignity to the order of causality, and from the primacy of the spiritual to the instrumentality of the temporal. The illation is illegitimate in itself; and it is further disproved by the fact that both powers originate from God, as sovereign in distinct fields. At one stroke he thus restored to the state its true autonomy and to the Church its true primacy. The civil power is not the instrument of the Church for the ends of the Church; it has its own ends, determined by nature, which are proper ends, though not the highest ends, of man. The civil power is only subordinate to the spiritual power in that the whole order of the terrestrial ends of man is subordinate to the order of his transcendent, supernatural destiny, to which the Church guides him. However, this subordination is not that of the vassal or instrument, but of the free man; and the primacy of the spiritual is not a feudal overlordship, even inchoatively, but a spiritual reign, infinitely respectful of all human freedoms in the temporal order.

In describing this spiritual reign John distinguishes two moments of its exercise, the ordinary and the extraordinary. The pure spirituality of the reign is apparent in both; and in neither is there any question of the instrumentality of the civil power beneath the principal causality of the spiritual. The normal and ordinary exercise of the primacy of the spiritual consists in the divine right of the Church to teach princes and people to rule all their activity, including their political activity, by the norms of Christian justice.

ad 2m), who was certainly not a hierocrat in theory, but who here adverts to a situation of fact.

The Church does not teach the prince his politics; she teaches him the law that governs politics, and the fact that by justice in his political life man tends to his supernatural destiny. Her effort is to make the prince a Christian prince; and he will be such if he is "justitia animata et custos justii."

Evidently, there is here no question of the exercise of jurisdiction in the proper sense;<sup>28</sup> the power of the Church here used is magisterial: "princeps informationem de fide habet a papa et ecclesia." The action of the Church terminates at conscience and its Christian formation. It is the kind of action constantly envisaged by Pius XI in his whole theory of Catholic Action—an action that is purely spiritual in nature, but that indirectly may and should have effects in the temporal order, in that the Christian man, of formed conscience, is an agent of temporal effects, and in his temporal action must be obedient to the exigences of Christian justice and charity. In this sense, therefore, the power of the Church indirectly touches the temporal order.

The second exercise of the Church's power in the temporal order is called for by exceptional circumstances, *ratione peccati*. John, of course, admits this traditional doctrine, but defines it in conformity with the strict and limited exigences of the two relevant theological principles—the purely spiritual primacy of the Church, and the autonomy of the temporal order. First, the sin must already have been committed — a serious "ecclesiastical crime" that directly attacks the interests of the Church. Secondly, the manner of the Church's intervention is determined by the nature of her power; it will be a purely spiritual intervention, and not the assertion of a political power. That is, it will be directed always and only to conscience—the conscience of the prince or the conscience of his people.

The first intervention in the case of a prince will be by admonition; if it is fruitless, the Church has left only one direct weapon, the spiritual weapon of excommunication. She can then do nothing more against the incorrigible prince "nisi per accidens," in indirect fashion, by spiritual action on the people, whose effects would be

<sup>28</sup> Unless one holds the legitimate theory that the Church's magisterial power is an aspect of her jurisdiction.

felt in the temporal status of the prince. She can clarify the conscience of the people, declaring that they are no longer bound to obey the prince, and perhaps even excommunicating those who do obey him. The effect of this action will be the deposition of the prince—a temporal effect indeed, but one produced only indirectly, as a consequence in the temporal order of the exercise of the Church's purely spiritual power. In John's terminology, it is produced *per accidens*. No political power is asserted; the Church simply asserts her right to inflict spiritual penalties for *delicta ecclesiastica*—penalties, however, which may have repercussions in the temporal order.

In John of Paris, therefore, the indirect power is really indirect, and it is really a power. (I am not here concerned with the historical problem, whether John's theory adequately explains, not only the actions of Gregory VII, Innocent IV, Pius V, etc., but also the declarations they made in justification of their actions; I should maintain, however, that it is the basic explanation, necessarily to be invoked, unless one is prepared to maintain that at least in certain periods of history the Church possessed a directly political power.) First, the power is not merely "directive," in the sense (possibly) of Dante, for whom the Church was a sort of spiritual father to the state. A directive power is more properly an influence than a power; it is proper to an advisor, who has no authority beyond that of superior wisdom. But even the normal exercise of the Church's power to form conscience is genuinely authoritative, in a magisterial sense. And her power to intervene in temporal affairs *ratione peccati* appears as a genuine act of jurisdiction, not indeed *over* the temporal (over which the Church has no jurisdiction), but *in* the temporal, in the sense that the conscience to which the jurisdictional power of the Church addresses itself is engaged in the temporal, and is an agent in the temporal process. However, the jurisdiction is indirect in the purest sense; the temporal is not directly touched (as in Bellarmine's theory); only the spiritual (conscience) is directly touched. The effect in the temporal order is concomitant, consequent, an effect *per accidens*, by indirection, but a genuine effect wherein the spiritual power of the Church is genuinely felt in its temporal repercussions.

I should note here that John of Paris does not fall into the fallacy against which many canonists did not protect themselves, of arguing from the Church's right of intervention *ratione peccati* to a right of intervention *ad bonum Ecclesiae*, from a power to proscribe political action to a power to prescribe it. The fallacy is evident. In the former case, the temporal and spiritual are solidary, intrinsically related; hence the temporal can be reached through the spiritual. And since the action of the Church is negative, prohibitive, it can and does stop at the spiritual (conscience) and carry over into the temporal only indirectly. In the latter case, the nexus between spiritual and temporal may be loose indeed, to the point of being conjectural. In such cases the Church has no right to engage her full authority by an act of jurisdiction. Moreover, her action, being positive, the proposal of an ideal, would inevitably risk reaching the spiritual through the temporal, and thus be no longer indirect.

It is, however, interesting to note that in the one case where John speaks of the Pope "reprehending and punishing" a prince for failure to act in a matter affecting the interests of the Church, the failure in question was that of not enforcing the obligation of restitution in consequence of an usurious contract. John does not seem to have grasped the full problematic here, but he had the germ of an idea, that the action of the civil power *ad bonum Ecclesiae*—action that the Church may require *de jure*, by an act of power—is only indirect; it consists in enforcement within society of the demands of justice. The order of justice is not indeed directly the *bonum Ecclesiae*, which is in the supernatural order of grace; but it is an indirect contribution to the *bonum Ecclesiae*—a contribution which the state by reason of its own finality is obliged to make, and which the Church can therefore demand of it *de jure*. This concept is not explicit in John, but it is fully within the logic of his thought on the autonomy of the state. For the rest, he is content to regard the obligations of the state to the specific good of the Church as obligations of charity, subject to the prince's judgment on the expediency of their fulfilment. And in this sense he quotes his favorite authority, St. Bernard: "sic etiam gladii duo se mutuo iuvare tenentur ex communi caritate que membra ecclesiae unit."

This is an idea fundamental in this whole matter, that the orderly relationship and cooperation of Church and state is the product not so much of juridical norms as of the law of charity.

#### MODERN POLITICAL DEVELOPMENT AND THE INDIRECT POWER

For my part, I think that John of Paris indicates the true nature of the indirectness of the power of the Church in temporal affairs, and opens the way to a satisfactory solution of the problem of maintaining the primacy of the spiritual in face of the autonomy of the temporal, and vice versa. It is not indeed the leading solution in the textbooks today, nor was it in the days of John of Paris, when "tradition" was being invoked in favor of the direct-power theory. The fourteenth century had not yet shaken off the effects of "political Augustinism"; one of them was to blur the distinction between the two powers by attributing to the civil power an excessively religious function, making it a disciplinary agent for the restraint of concupiscence and an instrument of man's supernatural redemption. As the counterpiece of this exaggerated spiritualization of the temporal power there went a certain temporalization of the spiritual power. And with the distinction between the two powers thus blurred, the indirectness of each in the sphere of the other was necessarily obscured. As the documentation of the two great medieval quarrels shows (Gregory VII *vs.* Henry IV, and Boniface VIII *vs.* Philip the Fair), confusions in the minds of the curialist theologians engendered opposite confusions in the minds of the regalist lawyers and their Gallican successors. And the confusions became worse confounded with the rise of modern nationalism, state absolutism, caesaropapism in its renascent lay form, and the surging later movement of separatism and the secularization of society.

Nevertheless, I think that a certain progress, not rectilinear but real, is discernible in the clarification of the essential datum in this matter—the distinction between the two powers and the two societies. The distinction has been clarified in political fact, as political society has evolved to maturity. It has also been clarified in political theory; the state as a perfect society in its own right, as exhibited in contemporary political philosophy, is a different thing from Bellarmine's *potestas civilis* as a function in the one "mystical

body," the *respublica christiana*. We now see that both in fact and theory the state is a rational structure and a lay process, the living action of maintaining and promoting public order in society, for ends that are temporal and limited (not necessarily coextensive with the ends of human society as such), and with an authority that is likewise limited. I am not referring to the sheer fact that today the state is so largely laicized; laicization is deplorable. Rather I mean that we have a sharper idea of the lay and limited finality of the state; "lay" and "laicized" are not the same thing. Furthermore, the advance of democratic practice and theory has occasioned a great development in our idea of the processes of state—our idea of government and the science of government. We now see the citizen, in the full panoply of his human and civil rights as the responsible agent of the political process, actively participating in it, through organized channels of consent to, or dissent from, its aims and actions. The result has been a new concept of the technique, so to speak, whereby the spiritual and moral forces in society may influence and direct the living action that is the state.

The general term of all this development in the political order has been the "adult" state,<sup>29</sup> conscious of the autonomy proper to its adulthood, not merely impatient of any political tutelage exercised from without by the Church, but rightfully free from such external tutelage because the means for its self-direction to right spiritual and moral ends exist within the political order itself—I mean the whole range of democratic institutions. The political mood is the mood of freedom—the idea that freedom is the citizen's highest right, that freedom is the highest political end, and that the function of the state itself, which is the function of ordering, is the ordering of freedoms into an *ordo legalis*, and the maintainance of the processes of freedom whereby order itself is kept alive and active, and developed to meet the developing needs of society.

<sup>29</sup> The term "adult" may be unfortunate, as implying an excessive personification of the state. The intrusion of personal images in this matter, in consequence of the (in itself) legitimate idea of the state as "moral person" has contributed no little bit to the blurring of concepts and the fallacy of argument. The confusions are similar to those engendered by any tendency to regard Church and state as societies in a univocal sense.

All this political development is a good in itself, in spite of all the aberrations accompanying it. And it, together with enormous economic and social development, has had consequences for the problem of Church and state. The initial consequence has been to render this problem relatively unimportant; not Church and state, but Church and human society in the whole range of its institutional organization, which is more than political, is the problem of the day. However, in regard of the narrower problem the general consequence of the political movement forward has been, paradoxically, to bring us back to the ancient doctrine of Gelasius I and its radical dualism of the two powers in two societies. The two-society theory of Gelasius is now better understood because it is fact as well as theory; it is more fully supported by reason and political experience; the clouding obscurity cast over it by the medieval one-society theory, that lingered so long, has now been dissipated.<sup>30</sup>

However, the Gelasian theory itself, in its political aspect, has also seen an important development. This is not the Roman world; today religious unity does not make political unity, either in fact or in theory. The time has come to an end in which the spiritual, in Journet's phrase, entered into the very definition of the temporal, when supernatural faith defined citizenship and the right to rule and the public order. Political unity is now a particular order of unity in its own right, and it has its own foundations, which are not necessarily a unity in supernatural faith. Citizenship and all the rights of the citizen rest on purely political grounds. And the state is not necessarily worse, as a state, for the absence of religious unity in the society it organizes. In consequence, religious unity is not *per se, in thesi* a political end, since it is not *per se, in thesi* necessary to the state as the living action that is public order.

<sup>30</sup> Perhaps I should have noted that the "one-society" theory is simply a generalization now become a commonplace, that has all the value of a generalization (valid in fact) and all the dangers of a commonplace (e. g., too rigid application as a canon of interpretation). Prof. A. P. d'Entrèves says of it: "It is the clearest summary of the particular manner in which medieval Christianity interpreted and gave practical expression to the distinction between the things which are Caesar's and those that are God's" (*The Medieval Contribution to Political Thought*, Oxford, 1939, p. 12).

Political experience has established this, as a fact (ethical theory surmised it); and in formulating the laws of politics experience, as St. Thomas indicated, is the school of rationality.

All these facts of political life are reflected in the contemporary doctrine of the Church, in itself and especially as it transpires in her action. Three preoccupations, all of them inspired by doctrine and not by expediency, seem to preside over the action of the Church in our world. The first is a concern to preserve and display the intimately and solely spiritual character of her mission, even as it touches the temporal order. Never has there been greater insistence that the ends of the Church are not political, and that the action of the Church is not and cannot be political action. The second is a corresponding concern to show the completest respect for the autonomy of the temporal order. Political society, Pius XII wrote when he was Secretary of State, has "its own proper ends, which terminate in time, and which it realizes with sovereign power in its own sphere. You will take care not to confuse these temporal ends with those of the Church. . . ." <sup>31</sup> Moreover, "this competence of the state," he goes on, "is limited to the natural order." This principle limits the power of the State—not simply its power to act, but also its power to collaborate with the Church—at the same time that it founds the duty of the state to collaborate, always within the terms of its own finality, with the Church for the larger good of the society within which both state and Church are operative forces.

Here enters the third and dominant preoccupation of the Church—that of permeating with her doctrine and life-giving energies all the dimensions of human society, all its forms of sociality, all its institutions, the whole life of man in all its social expressions. It is not, as *Quadragesimo Anno* makes clear, that faith and grace determine the structures and processes of civil society; these are determined by reason, in the light of the lessons of experience, whence comes practical wisdom. What the Church aims to do is to animate from within these rational structures and processes with her own

<sup>31</sup> Letter to M. Eugène Duthoit, president of the Semaines Sociales de France, in *L'Action Catholique, Traduction française des documents pontificaux* (1922-1933), Paris, 1934, p. 505.



spiritual energies in order that they may be rational in act and achievement as in design. She does not aim to alter the finality of the state, but to enable the state to achieve its own finality as determined by its nature. The state, the letter just quoted says, "would mutilate itself and render itself unequal to its task in the measure that it would either live apart from the Church or (what is worse) oppose the action of the Church, and refuse to benefit from the plenitude of grace and truth with which the divine Savior fills his Spouse." Divine grace and truth do not aim to make the state a sort of religious community, but a rational political community according to its nature.

Never then has the authority of the Church in temporal matters been asserted in such universal and deeply probing fashion than today, precisely for the reason that the authority asserted is a purely spiritual authority that enters no political claims. And never too has the collaboration of the state been more insistently demanded, precisely for the reason that the collaboration demanded is purely political, confined to the areas of the state's own competence. In other words, never has the distinction between the two societies been more sharply drawn, and the indirectness of the power of each in the affairs of the other more clearly accented. The action of the Church is purely spiritual, but it indirectly has effects in the temporal order; the action of the state is purely political, but it indirectly has effects in the spiritual order. Moreover, in both cases the success of the action pivots on the principle of freedom—the free obedience of the Christian conscience to the magisterial and jurisdictional authority of the Church, and the free participation of the citizen, as a Christian, in the direction of the institutions of temporal life. Through the free citizen, who freely consents to her doctrine and law, and who likewise by his free consent directs the processes of the City, the Church indirectly touches the life of the City. Through him too the processes of the City are so directed that they indirectly aid the supernatural mission of the Church.

Finally, I should add that all this is not hypothesis—the simple product of a factual state of affairs in which the Church is somehow shorn of power, compelled in expediency to make only minimal demands, etc. On the contrary, it is thesis—the full development,

by theological reflection and political experience, of the central datum of the distinction of the two powers and their hierarchic collaboration for the total good of man and human society. Anything less than this is hypothesis—a conditional state of affairs, arguing immaturity either in Catholicism or in politics.

Now, I am inclined to see a striking testimony to the fact that the doctrine systematized (incompletely, if you will, and with some fragility) by John of Paris is the traditional doctrine of the Church in the further fact that it is so perfectly adapted to our contemporary situation. Today a mixed doctrine, unpurified of contingent elements surviving from historical situations, could not possibly find application; its archaisms would defeat it instantly. But the true doctrine of the Church is never archaic; it is a thesis for any hypothesis. John of Paris asserted the ancient tradition, in its Thomistic development, at a turning point in political history, when the empire was dissolving and the nation-state with all its energies for good and evil was emerging as the operative political unit. Had his concept of the primacy of the spiritual prevailed, perhaps the spiritual might have retained its primacy—who knows? (The question is “iffy”; in point of fact the concept could not then prevail because there was no way of making it prevail. The institutional organization of both Church and state had not progressed to the point where the “correction and direction” of civil society and its governing power could be effected from within the temporal order itself, but by purely spiritual action. In other words, the thesis in those days was pure thesis; it could not be applied because the hypothesis of its application was lacking.<sup>32</sup> The hypothesis is not merely a

<sup>32</sup> It will perhaps have been noted that I am using the terms “thesis” and “hypothesis” in different meanings; this is deliberate and likewise inevitable. At their first appearance, within the narrow problematic created by Liberalism, and as a polemic resort for disarming unjust criticism of the Syllabus, they doubtless had a determinable meaning. But as strictly theological terms, to be used in determining the structure of Catholic doctrine apart from polemic considerations, they are largely useless because of their essential ambiguity. And so far from disarming unjust criticism nowadays, they positively encourage it. My immediate point in this context is that if (as is ordinarily said) the thesis may only be applied in a religious hypothesis (that of a “Catholic society”), so also a political hypothesis (that of a politically immature so-

"Catholic society" of any kind, but a society with rational political institutions so developed within its structure, and with Catholic faith and intelligence so developed in its citizenry, that the primacy of the spiritual can be reconciled with the autonomy of the temporal in truly thetic fashion—in terms of a truly indirect action of the Church on the temporal processes of the state, and in terms of a truly indirect aid by the state to the spiritual mission of the Church. In any other kind of Catholic society — a society of "nominal" Catholics, for instance, or a state that is governed simply from the top down—what could be applied is not pure thesis but some conditioned modification of it.)

At all events, shall we not think it providential that the ancient tradition, in fuller political and theological development, is today controlling, at another turning-point in history, when a new agent and bearer of the political process has appeared—a new form, as it were, of the "Christian prince"—who truly creates the hypothesis for the application of the pure thesis. I mean the self-conscious and socially conscious human individual, the democratic man, who is both citizen and Christian in the fullest sense, and who accepts his civic and Christian responsibility to see to it that society lives according to virtue, and lives freely, and lives in such a way as to aid and further the mission of the Church.

At this point, therefore, as a conclusion from this (too brief) survey of modern political developments, and the corresponding development of the doctrine of the Church as displayed in her action even more prominently than in her teaching, I want to suggest that the thesis of the indirect power has emerged into fuller clarity and is seen to have the form, not of Bellarmine's theory, but of the more ancient theory sketched, for instance, by John of Paris. The question then is, what is the thesis with regard to Church-state relationships that arises from this concept of the indirect power?

ciety) may induce the application of what is not strictly thesis but itself largely hypothesis. And the theological danger is that of making this latter hypothesis thesis. At which juncture one might say with Hamlet, "Something too much of that." I agree; we have had rather too much of the thesis-hypothesis dichotomy.

Before going in to the question, let me here for clarity's sake sharply distinguish the two concepts of the indirect power. Both rest on the basic principle that there is a hierarchy of ends in human life, a hierarchy of orders of human life directed to those ends, and a hierarchy of powers governing these orders, the ecclesiastical and the civil. Both, too, proceed from the principle of the primacy of the spiritual end, therefore of the spiritual order, therefore of the spiritual power. On the other hand, both admit the principle of the relative autonomy of the temporal end and order of human life (the state) and consequently the sovereignty of the civil power in that order. Therefore both admit that the power of the Church in the temporal order can only be indirect (to say that it is an *indirect* power is the same as saying that it is a *spiritual* power, competent to judge, direct and correct only the spiritual life of man, unto the end which is eternal life). Where the two theories differ is in their concept of the indirectness of the power; and this difference derives from a more basic one, concerning the understanding of the spiritual character of the Church's primacy, and, what is correlative, the autonomy of the temporal order and the situation of the temporal power in that order.

The first theory sees the indirectness in the fact that, as the Church's empowerment to act derives from her supernatural end, so her action is sufficiently indirect if it is taken only *in ordine ad finem supernaturalem*. The second theory likewise asserts the necessity of the Church's acting only for a supernatural end (in fact, even the theory of the direct power asserted this); but it then goes further to assert that the power of the Church, being solely a spiritual power, can directly produce only spiritual effects, and hence, even when acting for a supernatural end, can reach to temporal effects only indirectly, inasmuch as they may result from, or be consequent on, her spiritual action. Specifically, therefore, the difference between the two theories regards the manner in which temporal effects may depend on the action of the Church. In the first theory the dependence may be direct (as in Bellarmine's examples); in the second theory the dependence can be only indirect. In neither theory is there any limitation to the sheer scope of the primacy of the spiritual power; it extends to all that howsoever

touches the supernatural end of man. But in the second theory there is a limitation of the manner of exercise of the primacy of the spiritual—a limitation put by the fact that the Church's power is purely spiritual and the temporal power is autonomous. The assertion is that the Church has indeed a right to produce effects in the temporal order in virtue of her higher finality, but a right to produce them only indirectly. From this second theory therefore there is further excluded that instrumentality of the temporal power in regard to the spiritual ends of the Church that is in the logic of the first theory. The power of the state or the political processes in general are not means to be used, even *casu*, by the Church towards her own specific ends. There remains indeed the subordination of the state (the whole order of temporal life) to the Church in the order of ends; but this subordination of state to Church in the order of ends does not entail a subordination of civil government to ecclesiastical government as means to end or as instrument to principal cause; whereas this latter subordination is in the logic of the first theory (as it is in the letter of the direct-power theory).

#### THE STATE'S COOPERATION WITH THE CHURCH

The question then is, what is the thesis with regard to Church-state relationships that arises from this second concept of the indirect power? My concern, of course, cannot be with the total thesis. I am looking at the problem of the *ordinata colligatio* only from the standpoint of the state, and its duties and rights as consequent on this *ordinata colligatio*. The question therefore concerns the aid and assistance that the state owes, and by necessity of nature is required to give, to the Church.

The first assertion is a general one: the state aids the Church only the exercise of its own native power, which is human in its origins, temporal in its finality, limited in its competence (as Pius XI and Pius XII have said) to the natural, secular, temporal order of human life. In the full Catholic thesis civil government has not the same reach that it had in the ancient hypotheses; the civil power is not somehow a function *in* the Church, to be used by the Church for her own ends. As a power that comes ultimately from God it is indeed an ally of the other power that comes from God.

But it comes from God through human nature, *ex iure naturali et ex iure gentium*; and the scope of its functioning as an ally of the spiritual power is limited by the conditions of its immediate origin from human nature. It cannot act outside of the lines of its own finality; and even when it acts in alliance with the Church it acts only for its own ends and by its own means. It has no power to act otherwise, and not even the Church can endow it with more power than it has by nature. Thus acting for its own ends, which are human ends, it aids the Church indirectly; for in the hierarchic structure of the ends of human life, the achievement in adequate measure of these lower ends is the condition and occasion of the Church's achievement of her higher ends. (I say, condition and occasion, not means; for no proportion of means to end exists between man's *felicitas politica* and his eternal destiny; the reason is the very excellence of this destiny.)

There follows therefore the second assertion, that the major assistance, aid and favor that the state owes to the Church (one might better say, to the human person under respect of his eternal destiny), consists in the full performance of its own political duty of creating, or assisting in the creation of, those conditions in society—political, social, economic, cultural—which will favor the ends of human personality, the peaceful enjoyment of all its rights, the unobstructed performance of all its duties, the full development of all its powers. There is here a material task, the promotion of prosperity, the equitable distribution of the material things that are the support of human dignity. There is also a moral task, the effective guarantee of the juridical order. This organization of society according to the demands of justice is the state's first, most proper and necessary contribution *ad bonum Ecclesiae*—an indirect contribution, but one apart from which the end of the Church is impossible, or too difficult, of attainment.

This is not of course the aid to the Church that is primarily in view in the ordinary treatise *de iure publico*, which is content to argue the problem of Church and state in a nineteenth-century polemical state of the question, pretty much divorced from the larger problems of society that are the setting of the narrower juridical problem of Church and state in the canonical sense. Never-

theless, this is by far the most crucially important form of aid to the Church that the state must give; the historic nineteenth-century failure in this regard has created what is today the Church's most pressing problem. How vast and necessary this contribution is will be evident on the most casual perusal of the great modern encyclicals. Nothing is clearer than the Pope's insistence that the conscientious exercise by the state of its direct power over temporal life is the essential exercise of its indirect power and duty to favor and assist the ends of the Church.

Actually, this is a traditional emphasis. As now, so for instance in the Middle Ages, the Popes in speaking to the state did nothing but recall to it its own duties. The traditional demand on the state has been that it should be good as a state. However, the state has changed, amid the immense alterations in society and its organization. And this change has not been without influence on the duties of the state. The progressive differentiation of the political community from the religious community, and its consequent growth in autonomy through the perfection of institutions for its own self-direction, have brought about a stricter delimitation of its powers and a more thetic, less hypothetic concept of its proper indirect contribution to the specific good of the Church. In particular, its once hypothetical instrumentality in regard of the Church's ends is now ended with the end of its supporting hypothesis. At the same time, and paradoxically, the narrowing of the state's scope has widened its contribution to the good of the Church, in proportion as the differentiation of the temporal from the spiritual has been accompanied by an increase in the complexity of the temporal and a consequent greater bearing on the spiritual. The spiritual problem of our times is in fact centered in the temporal order. And the modern "welfare-state," simply by serving human welfare, would serve the Church better than Justinian or Charlemagne ever did.

Lest there be some misunderstanding, a special point should be mentioned here; it is the state's relation to the family—to the problems of marriage and education. The subject is large, and I shall say only this—that this relation too is governed by the natural law, as it determines the nature and end of the state. I mean

that the natural law, the inherent rational law of the state's own being and action, decrees that the state should have simply a service-character in regard of the family as a form of social life (the same service-character that it also has in regard of other autogenous forms of sociality that it organizes). It is not within the limited competence of the state (or of government) to fix and appoint the full statute of family life, understanding by this the laws governing the marriage contract, domestic morality, the parent-child relationship, the rights of parents in the matter of education. From the standpoint of the state, as in this respect an organizing and not a creative force, the constitution of the family is something "given"; it is "there," in society. And it is for the state to recognize and respect it, to use in a minimal way its powers of regulation in the interests of public order and the general welfare, and for the rest to assist with its resources the full development of the family in accord with the family's own laws of life.

Therefore when, as is the case, the laws of the family derive from positive divine or ecclesiastical law, as well as from natural law, it is the duty of the state to invest these laws too with the formal legality that it has the power to confer, and to do its part to create the conditions for their full observance by the family. But this duty derives formally from the natural law, the law of the state's own nature as servant of the family. Specifically in the matter of education, the duty of the state is to respect, and give effective assurance of exercise to, the parental right in its full amplitude, which includes the right of the Church to educate. From the standpoint of the state, as the dynamic organization of an order of rights that is found in society pre-existent to the state, the duty of the state to recognize the Church's right to educate derives from the fact that the Church stands *in loco parentis* to her children and educates *titulo maternitatis*, as *Divini Illius Magistri* has it. Of the other and more basic source of the right of the Church to educate—her divine commission to teach all truth—the state, as the living action that is public order, directly "knows nothing" (to use the phrase of Durandus, quoted by Bellarmine).<sup>33</sup> This right

<sup>33</sup> Cf. *De Summo Pontifice*, V, 5, *op. cit.*, p. 531.



is directed to her children and to men in general inasmuch as they are called by God to an eternal destiny to which the Church is the one way. But the rights which the state as the order of political life recognizes, organizes and supports are the rights of its citizens; and it is through the citizen as citizen, not as child of God destined to participation in His eternal beatitude, that the right of the Church to educate enters the City. The state has no more right to divorce the child from his supernatural parent, the Church, than from his natural parents; equally, it has the obligation to recognize the right of the supernatural parent as higher than its own because this is the hierarchy of rights recognized by the child and the natural parents.

I say this much because I think that in working out the *ordinata colligatio* of Church and state it is important to have in view at every instant the nature of the state, and not drift off into some Hegelian idea of it as an entity over and above its citizens, to which suprapersonal entity the Church somehow addresses itself directly. The Church has no authority or rights over "the state" save insofar as the citizens of a state are subject to her higher spiritual sovereignty; the fact of this subjection of the citizen to a sovereignty other than its own makes that sovereignty a factor which the state, by the law of its being, is bound to reckon with. This, I take it, is the meaning of Leo XIII when (in contrast to medieval theorists) he consistently puts as the root of the *ordinata colligatio* of Church and State the fact that "utriusque est in eosdem imperium."<sup>34</sup> This line of argument is also in accord with Pius XII's juridical concept of democracy, as completing Leo XIII's predominantly ethical view of the state as such.

So far I have been speaking of the indirect aid which the state gives to the Church simply by being what the law of its being destines it to be—the living action that is public order, tending to the genuinely human, temporal common good of the society and the citizens that it organizes, and in particular obeying that law of its being which decrees that it should be a servant and a service

<sup>34</sup> *Libertas*, in *Leonis Papae XIII Allocutiones, Epistolae, Constitutiones* (Paris: Desclée, 1893), III, 108; *Immortale Dei*, *ibid.*, II, 167.

to its citizens, individually and in their natural and free forms of social life, especially the family. The Church has a right to demand that the state, as a human entity and process, should thus conform its action to its own nature and finality. The right derives from the primacy of the Church's own finality, which requires the *ordo legalis* and the *felicitas politica* as conditions of its attainment. However, the right also supposes as its correlate a necessity or duty on the part of the state—a necessity, be it noted, which is not imposed on the state, as it were, from without; rather it is an immanent necessity, arising from within, deriving from the nature of the state.

I think it is important to keep in view throughout this whole argument this principle of the intrinsic correlation of the rights of the Church and the immanent necessities of the state. The Church has no right to demand of the state what the state is not required by its nature to give (I am speaking in the first instance of juridical rights and duties; the question of *officia caritatis* is on another level). In other words, in the absence of a necessity incumbent on the state, there is no right resident in the Church. I say this to discard the idea that in the matter of the state's aid and defense of the Church the principle of *necessitas Ecclesiae* is the single, unilateral, controlling principle. It is as illegitimate to make a *raison d'Église* by itself controlling of the action of the state as it is to make a *raison d'État* controlling of the action of the Church (as, for instance, in the *regium placet*). The distinction of the two powers forbids both procedures; and the former is not legitimated by appeal to the superior finality of the Church. The primacy of the spiritual *end* does not annul the distinction of the *powers*. The necessity of the Church can oblige the state to act only when the action in question is likewise demanded by a *necessitas status*. This is the same as saying that the Church can oblige the state (just as she can oblige the individual man) to be only what it (or he) *is*.

In concluding this brief assertion with regard to the state's indirect aid to the Church by full discharge of its own duties as a state, I should add that this aid is a form of cooperation with the Church. In this cooperation, the state operates to its own ends,

which are valid human ends in their own right; but the operation is truly cooperation because these ends are supporting of, subordinate to, *ordinatione obiectiva et negativa* directed at, the higher end of the Church, which is man's eternal salvation, towards which alone the Church herself operates. As is evident, to this indirect contribution by the state to the end of the Church there corresponds the Church's indirect contribution to the end of the state, by the discharge of her spiritual mission. Her mission is the regeneration of man and the reconstitution of the unity of mankind, through the grace of Christ and His truth (which embraces the total truth about man in his social as well as personal life). Indirectly this spiritual mission redounds to the temporal good of the state, as the temporal mission of the state redounds to the spiritual good of the Church; for through the energies of man regenerated and through the solidarity of mankind gathered into spiritual unity there follows by consequence the reformation of the institutions of his temporal life.

#### *The Freedom of the Church*

The next question then concerns the state's cooperation with the Church in the Church's proper task—the salvation of souls, the preservation and growth of her children in faith and grace, the maintenance of the integrity of her doctrine, the protection of her unity as the Body of Christ, the dispensation of the sacraments, the practice of supernatural virtue, the observance of the disciplinary code to which her subjects are bound, etc. Here again the state's contribution is indirect. It is not as if the state somehow were to share in this mission, undertaking to coerce (for the state can only coerce) men unto faith and regeneration and into unity and grace. The state, as the living action which is public order, acts here simply in its own way, by guaranteeing the freedom of the Church to pursue in her own way the higher end that is hers.

Historically, the concept of *libertas Ecclesiae* has been variable, in the various social and political contexts through which the Church has passed. However, there is a basic constant element. As the human person is free in society when his intrinsic dignity as the image of God is recognized and all his inalienable rights are juridically guaranteed immunity from inhibition and provided with the

due conditions of their exercise, so also the Church is free in society when her intrinsic dignity, her unique juridical personality as the visible and only Church of Christ is recognized, and her independently sovereign powers to teach, rule and sanctify are guaranteed immunity from inhibition and provided with the due conditions of their exercise. The basic right of the Church, as of the human person, is the right to be recognized for what she *is*: this is a right that she can no more renounce than the human person can abdicate his essential dignity. Further to pursue the analogy, as the human person presents his basic right for recognition, not only by other men but also by organized society, so too the Church does the same. And apart from this social recognition, given place in the juridical order of the state, the Church like the individual has not her full and true freedom.

Beyond this the parallelism fails, in two particular respects. First, the human person seeks freedom in society as an end in itself, in the sense that this freedom is the end of civil society, which exists in order that all the human empowerments of man may find full development and fruition. However, the freedom of the Church as an institution—freedom therefore for the workings of her institutional processes—is sought rather as a means to an end. As an institution the Church is not an end in herself but a means to the ultimate end of man, his eternal happiness. And she seeks her own institutional freedom in order that her children may be properly free to pursue and achieve this ultimate end. Unlike the human person, the Church as a juridical institution, a society, is not destined to immortality; and all her institutional processes of teaching, rule and sanctification operate only to serve the destiny of man who is immortal. In respect to society and the state, the *libertas Ecclesiae* does indeed receive a certain primacy of emphasis; there is a certain insistence that the Church herself, as an organized juridical institution, be recognized as being “there,” with a whole set of immunities and empowerments; but the reason is that, as even a sociologist would admit, it is only at the interior of a free institution that the human person can be assured of personal freedom. The freedom of the Church is the necessary armature of the spiritual freedom of man.

The second failure of the parallelism derives from the diverse manners in which the human person and the Church enter the political community, the state as the (limited) form and living order of society. The juridical statute of the human person directly, necessarily and *per se* enters the constitution of the state and is an essential, natural part of public order, *ordo legalis*, which is the state. (By juridical statute I mean the right of the human person to recognition of his intrinsic dignity, and the whole appanage of rights and freedoms, immunities and empowerments that flow from it, as proper to a man and a citizen, situated within the limited order of the political community as a natural, rational institution. This statute asserts the rights of man vis-à-vis his fellows, organized society in all its groupings, and political authority in all its forms; it includes the rights, not only of man as an individual but of man in all his forms of sociality, whether necessary and native, e. g., the family, or of free and positive institution, e. g., the Church. The juridical statute of the human person in this sense is by very definition the statute of the state, and it necessarily determines the limitations and functions of government. For, as the state is the creation of the human person—of the exigencies of his nature and the free choices of his will—as a means to his human perfection, so the statute of the human person is the foundation of its order and the rule of its action. And the enforcement of this statute is directly and necessarily a primal function of government.

The case is not the same as regards the legal statute of the Church as an institution (meaning her right to recognition of her intrinsic dignity, her unique juridical personalty, and all her native immunities and empowerments). The Church does not stand in the same relation to the state as does the human person (or even the family), nor does she enter into relation with the state in the same way. The Church is not an intrinsic exigence of the human person as the state is; nor are her institutional rights a prolongation, as it were, of human rights. The statute of the Church does not rest on reason and natural law but on faith and positive divine law. Consequently, the statute of the Church does not enter into the constitution of the state directly, necessarily and *per se*; it is not part of the definition of public order, the order of justice,

that would have its own consistency even if there were no Church. The Church, unlike the human person, enters into relationship with the state only indirectly. The relationship is established through the members of society, the citizens, that the state organizes.

The political order of the state is not the total order of human life; the citizens recognize other orders and higher loyalties, expressed in institutions, forms of sociality, that the state does not create and may not destroy. Concretely, the citizen is not only citizen but also child of God, member of the Church, subject to her sovereignty and in need of her action. And it is this fact—the relationship of the citizen, who is also a man with an eternal destiny, to the Church which is the medium for the realization of his eternal destiny—that makes necessary for the state a relationship with the Church. It is, I say, a necessary relationship, from the very nature of the state. The state is the organization, the political form, of materials that it did not create; it organizes what is “there” in the society of which it is the political form. And among the things that it finds there is the Church, a society to which its citizens belong, and a spiritual power to which its citizens are subject. It finds the Church indirectly, through the citizen. In Leo XIII’s genial phrase, embodying a concept that was his specific doctrinal contribution to the clarification and development of Catholic tradition, “*utriusque est in eosdem imperium.*” The *auctoritas sacrata pontificum* does not come directly into real, existential relationship with the *regalis potestas*, but only indirectly, inasmuch as the two powers have a common subject, or (what is the same thing) inasmuch as the one man is a member of two societies, two orders and forms of social life, each with its own independence, each with its own sovereignty. This phrase of Leo’s embodies the root of the whole matter.

The matter was indeed not always conceived to have this root. In the medieval universe of discourse, the root of the matter was not the unity of the human person as requiring an orderly relationship between the two powers to which he was subject, but rather the unity of the social body, the *Ecclesia universalis* which was the *respublica christiana*, as requiring the subordination of the *regnum* to the *sacerdotium* because it was the inferior function within the

one body. These are quite different perspectives, within which doctrine necessarily receives different formulations. The medieval Church did not enter indirectly into relationships with the state because the citizens of the state were likewise children of the Church; rather the Pope entered directly into relationships with the emperor or king because the emperor or king was within the one body as subject to its one head and entrusted with a subordinate power to preserve the unity of the body. In the medieval concept the root of the matter was paradoxically at the summit of the matter. Whereas Leonine thought grows, so to speak, from the bottom up, the thought of medieval unitarism grows from the top down. The medieval starting point is the Church, and its perspectives are social; the modern starting point is man, and its perspectives are those of the human person. Medieval doctrine had a heavy theological accent; in modern doctrine the accent is more nicely distributed to cover also the political. Medieval man entered the state (what state there was) to become a "citizen," through the Church and his membership in the Church; modern man is a citizen with full civic rights whether he is a member of the Church or not.

But if he is a member of the Church, the Church by that very fact becomes a reality for the state to reckon with. And not otherwise does it become for the state a reality, unless one is going to adopt some quasi-Hegelian concept of the state (by an exaggeration, say, of the concept of the state as "moral person") that would permit "the state" as a sort of suprapersonal entity, to "find the true religion" with the aid of some sort of "soul" of its own. In point of fact as well as in good political theory, the state finds the true Church only inasmuch as it finds its citizens believing her to be the true Church.

In the perspectives therefore of Leo XIII's juridical approach to the matter (which indeed he may not have always maintained in the polemical part of his doctrine directed against Liberalism), the Church does not come to the state directly, from above, but indirectly, from below. And her recognition for what she is is imposed on the state by natural law, the law of the state's own being, which requires, as I said, that the state recognize the proper char-

acter of all the forms of sociality in which man freely or by necessity of natural or divine law finds himself. In the present matter this law means, first and negatively, that the state or the government is forbidden to define the Church, to settle by its own authority what her juridical statute in society shall be. This is beyond the competence of the state (and this step beyond its competence was the essential vice of the Liberal state as Continental Europe knew it).<sup>35</sup>

The Church alone is competent to define herself—what she is, what her powers in the spiritual order are, what are her immunities and freedoms. And it is for the state simply to accept this defi-

<sup>35</sup> This is one of the important respects in which separation of Church and state in the United States differs from the Continental separations. There is hardly a point of comparison between the First Amendment to the U. S. Constitution and, for instance, the first article of the French Law of Separation of 1905, in what regards context, history, theory, or further articulation in law. Without going into the matter, it might be said that the First Amendment simply declares the U. S. government incompetent to legislate in religious matters; in consequence, in American law the Catholic Church is literally ignored, at the same time that, in American society, the Church is free to be what she is. On the contrary, in the French law, as has been said, "The State pretends to ignore the Church; in reality it never took more cognizance of her." The French government assigned her an explicit juridical statute articulated in forty-four articles, whose general effect was to reduce her to the explicit status of an *association cultuelle*, or a union of them, chartered by the State as corporations of private law, and most minutely regulated. The U. S. First Amendment embodies simply a theory of government and a practical policy of neutrality, generally benevolent, towards religion in a religiously divided country (in which, incidentally, the Church was hardly "there" at the time the First Amendment was ratified; there were less than 30,000 Catholics in the U. S.). The French law embodies a theory of religion and a program of legal persecution of Catholicism, in spite of its historic status in French society. The U. S. First Amendment is quite defensible in terms of a natural-law concept of the state; the French law violates that concept. One might perhaps say that the American law exaggerates the distinction between Church and state by its governmental self-abnegation in all that concerns religion; whereas the French law denies that distinction by government's intrusion of itself into the field of religion. Perhaps the basic differences derive from the Anglo-Saxon rational tradition of politics as contrasted with the irrational French tradition, or Italian or Spanish tradition for that matter.



dition and give it juridical status in the human *ordo legalis*. (So, analogously, the state accepts the definition of the human person from the human person and of the family from the family; so too, in more distant analogy, it gives formal legality to various forms of association spontaneously organized by free human initiative, not by governmental action.) Moreover, the state accepts this definition of the Church not directly from above, from the official magisterium of the Church, but indirectly from below, from its citizens, who are directly subject to this magisterium. As merely the living action which is public order, and not a human person, the state can make no act of faith; it can only register, as it were, the act of faith as made by its citizens, and recognize its object, the Church, whose claims are valid within the state because they are acknowledged by citizens of the state.

Again, as the state has no power to define the Church, so it has no power to impose the definition of the Church, once accepted from its citizens, on those of its citizens who do not freely, by their own act of faith, accept this definition. This again would be beyond its competence. Here there is obviously a difference between the relation of government to the statute of the human person and its relation to the statute of the Church. Government is under the necessity of enforcing respect for the rights of man as necessarily incorporated in the legal structure of the state; and its coercive power is available to punish violations of these rights. But it may not similarly undertake to enforce the statute of the Church—to impose her faith by law, to coerce men into obedience to the laws that she makes for her subjects, or to sanction derelictions in Christian duty or denials of Christian faith. If, for instance, there are individuals or groups within society that deny the exclusive right of the Church, as the true Church of Christ, to preach the Gospel, and undertake to preach a gospel of their own, the state has no empowerment from the only source from which its empowerments come (the natural law) to forbid them, provided the tenets of their gospel are not incompatible with the order of justice and the manner of their preaching is not in prudent judgment a threat to the public peace.

The judgment of the Church herself will be that these religious

groups have no right, in terms of positive divine law, to preach the gospel; and she will condemn their tenets as false, and forbid her children to hear and accept them. However, this judgment of the Church is not so binding on the state that its coercive governmental power is under the necessity of enforcing this judgment on those of its citizens who do not themselves accept it. This would be to carry the state beyond its competence, which is political, and does not extend to the silencing of false prophets simply because their prophecy is false.<sup>36</sup> It will indeed be false prophecy, if it contradicts the teaching of the Church; but here government is no judge. And if it may not judge religious controversies, it may not pre-judge them, by forbidding them. The relevant question here is, not whether what these groups say is true or false, or whether they say it *iure divino* or *iure nullo*. In fact, the relevant question does not concern the "rights" of these groups at all; it concerns the duties of the state, and its limitations, as these are imposed by the law of its own being, which commands that the state be the order of what is "there." Theologically, in the judgment of the Church, non-Catholic sects are not "there" *iure divino*; politically, from the standpoint of the state, there they are. And government has neither right nor duty to "exterminate" them; for they are composed of citizens, who have their own loyalties to what is beyond government.

<sup>36</sup> To say that government has a right to silence false prophets simply because their prophecy is false seems to me as doctrinaire as to say (with the rationalists) that government has no right to silence any prophet because every man has a right to be a prophet. It is no good to counter a bad religious philosophy with a bad political philosophy. The danger of a polemic against religious Liberalism and its rationalist premise is that, as in any polemic, one can somehow slip into the adversary's state of the question, and start thinking in somewhat rationalist categories—categories divorced from reality. Both of the above arguments are touched with unreality, the reality in the case being what government *is*—neither the executive branch of the Holy Office, nor the amorphous atheist monster of Liberal theory. I do not think that a case can be made out, in terms of the traditional realism of Catholic political philosophy (or from papal documents) for any right of government to silence religious error on the formal grounds that it is error. By the same token it cannot be shown that such maxims (of rationalistic tone) as, "Error has no rights," or, "No man has a right to be wrong," etc., are operative political principles.

These loyalties may be illusory in themselves, but they are realities for government inasmuch as they are the loyalties of citizens, to which government is obliged to give place in the public order; for the order of the state is by definition the order of all that is "there" in society, immune from governmental creation or destruction.

Here of course I am getting into the famous problem of the "secular arm." But before going on with it let me add two further remarks on the subject with which this section has been dealing—the *libertas Ecclesiae*. The first is that, historically, the guarantee of the Church's spiritual primacy, full freedom and unique juridical personality has taken a variety of forms, more or less juridical, and juridical in different ways—from the *union coutumière* of the two powers in medieval Christendom, to the concordatary arrangements of more recent times, which themselves reveal a variety of content and have been predicated on altering theories. (Modern concordatary jurisprudence and law manifest the Church's increasing recognition of the factual and juridical autonomy of the modern state.) The position of the Church as "the religion of the state" has historically assumed various modalities and has had a varying range of implication, in dependence on the form of the state of which the Church was the religion, and the kind of society of which the state was the political form. Its modalities and implications in some future "new Christendom" on the democratic model, spontaneously arisen through the inner transformation of man, would be difficult to predict. Perhaps the appellation, "religion of the state," may fit badly. But one expects that the new wine would hardly tolerate confinement in certain of the old skins.

Secondly, I should remark that the liberty of the Church is itself a necessity of the state. The reason is that her liberty is the condition of her collaboration with the state by the full deployment throughout the whole social body, in all its structures and processes, of her spiritual energies in all their transforming power. And without this collaboration from the Church the state will be unable adequately to achieve even its own limited temporal end—justice, peace, and prosperity. The reason for this lies in the need that human nature in the present order has for grace in order to be

even human, in an integral sense. This truth, I take it, has been the leading motif in the Church's message to the world since Leo XIII in *Inscrutabili* (1878) shifted the accent from angry and sorrowful lament over the evils of society (Gregory XVI and Pius IX) to the hopeful energizing theme of the Church as "the nurse, patroness and mother" of human society.<sup>37</sup> The condemnation of error by the *magistra veritatis* has not indeed ceased; but it has been, as it were, an undertone to the dominant note—the Church's offer of collaboration as *coexecutrix novi ordinis* with the state, whose need of this collaboration has been insistently emphasized.

#### THE SECULAR ARM

I come now to the narrow and special problem with which I started; the whole preceding exposition has had the purpose of setting it in some manner of historical and theological perspective. It is the problem of the Church's right to use the coercive power of secular government to protect her children from spiritual dangers to their faith, to punish heresy, to defend her own unity and unicity as the one Church of Christ. To this right of the Church there would correspond a duty of the state to be, in the famous phrase that has had a lengthy history, the "secular arm" of the Church; and to this duty would correspond a right of the civil power to strike at the Church's proper enemy, dogmatic error, the *peccatum opinionis*, and its divulgation in society.

The history of the *brachium saeculare*, as a theory and in its exercise, has been very lengthy and complicated, and I do not presume to deal with it adequately. Historically, the repression of heresy by government has taken many forms, from the sanguinary excesses of the Spanish Inquisition, the earlier "extermination" of the heretic (his being put beyond the boundaries of the *regnum* and its laws) and its later form, the *ius emigrationis*, up to the milder, more simply legal repression expressed, for instance, in the inhibition of the propaganda of non-Catholic sects. However, in all its forms the practice presents the same problem of principle—the

<sup>37</sup> See the text in Husslein, *Social Wellsprings* (Milwaukee, 1940), I, 5.

principle implied in the statement that secular government is the arm of the Church, whose coercive power is available against the denial of her faith or the rupture of her unity.

I should grant that this theory of the secular arm is coherent with the theory of the direct power of the Church in temporal matters, and that it can find place too in the Bellarminian theory of the indirect power, with whose inconsistency it is consistent. More in particular, I should grant that it is coherent with two special concepts of the political power of government. The first would conceive political power ("the prince" of the older writers) as a simple instrument to be used by the spiritual power, as principal cause, for the protection of religious faith and unity as an end of the Church. The second would conceive political power as a secondary principal cause, operating under the command of the Church, for the protection of religious faith and unity as an end of the state. Historically, both these concepts of political power have been in effect, in a particular hypothesis. It was not the general, indeterminate hypothesis of a "Catholic society" or "Catholic state," but the specially qualified hypothesis of medieval Christendom and of the "Catholic states" (and *mutatis mutandis* of the Protestant states) that continued to embody medieval conceptions. The hypothesis has been given the qualification, "sacral."

Its distinguishing characteristic, that came about in virtue of an understandable historical process and not in virtue of the inherent exigencies of Catholic doctrine as such, was that the Catholic faith was constituent of citizenship and the unity of the Church was an integral element of the common good, because it was in reality and in law the foundation of political unity. The spiritual was not simply the inspiration of the temporal and the norm for the political, social and cultural values pursued by it; the spiritual was part of the very definition of the temporal. The dogmatic maxim, "Extra Ecclesiam nulla salus," had as a reflection the political maxim, "Extra Ecclesiam nullum ius." Not only were *imperium* and *sacerdotium* coextensive, but they were also united as two integral parts of one society, one family, one body, and distinct only as functions within that one body.

In this highly special, historically conditioned hypothesis the

prince, who was not really head of a body politic (for there was only one body, the mystical body of which the Pope was single head), naturally had the status of the secular arm of the *Ecclesia universalis*, the total religio-political entity. And there was no incongruity in his power being used by the Church as a pure instrument for her purposes, e. g., the extermination of heretics. Moreover, the prince himself had the duty of acting on his own responsibility, but under the command of the Church (theoretically, though he frequently went off quite on his own, as Charlemagne, Henry IV, Frederick II, Philip II, etc.), unto the same end; for in the hypothesis it was a political end. As political unity was absorbed in religious unity, so the heretic came under the cognizance of political authority, after the judgment of the Church that he was a heretic. As he attacked the faith of the Church, so he attacked the foundations of public order. Consequently, the two swords, acting in concert within the one society, slew him. (To slay the heretic in those days was the socially acceptable means of stilling his propaganda as well as punishing his crime.)

The question then is whether this special hypothesis, which validated the theory of the secular arm, is still valid. Quite obviously, it is not. As a social and juridical state of affairs, it is part of yesterday's seven thousand years. And on the principle of the irreversibility of history it will not return, even if, by the grace of God, religious unity were to return. The hypothesis rested, not on the dogma of the Catholic Church as the one true Church, which is unalterable by time, but on a particular concept of the state and of the functions of civil government, which was time-conditioned. Today, of course, as in the sixteenth century, and in the thirteenth, and in the fifth, it is unalterably true that heresy ought not to *be*; it is not endowed by any divine or natural law with the right to exist. But the question is whether a secular government, denominated Catholic, is bound by any divine-positive or natural law unto the duty, and consequently empowered with a right to suppress it. I suggest that the answer is no.

The reason might indeed be an appeal to the Augustinian argument, now in reverse; I mean an appeal to expediency. Political experience has taught men that the worst way to cope with dissidence

is by legal suppression of it. Experience too has, I think, taught the Church that any attempt to establish or maintain religious unity by governmental coercion of dissenters does more harm than good to the Church. (I have in view the universal Church; the proportion of good and evil in a limited national or local context is not by itself decisive in this matter.) This is the more true in that this governmental tutelage of religion rarely has behind it only the pure inspiration of the Gospel; the sufficiently ghastly experiences of the sixteenth and seventeenth centuries, in which religion was enlisted in the services of nationalistic passion, are here in point. Moreover, there is the further fact that non-Catholic sects have today acquired in sheer point of fact a *ius civitatis* within the international community; and this is a fact with which the state, that cannot overlook social facts, must cope. However, this whole line of argument might seem to leave the Catholic position still touched with a repugnant flavor of opportunism, as if secular government were somehow still the arm of the Church, detached from her for the moment, or at least shortened by sheer force of circumstances, unable to strike but not unwilling, shorn only of power and not of right. My point, however, is that government is not the arm of the Church.

Obversely, one might construct on grounds of expediency a case for restrictions on religious liberty. A Spanish writer recently put his ultimately operative argument thus: "If there were among us religious liberty for Protestants, it is certain that world Jewry and Masonry would put into play all its enormous financial, diplomatic and political resources to flood Spain with waves of propaganda of all kinds, even the most vile kinds, against the Church, against the Catholic history of our country, against our dearest ideals and most indisputable glories. They would unleash campaigns against the Catholic instruction and education of our youth. They would contrive plots to gain positions of influence in the administration of the state, especially in the field of culture, from whence to undermine our institutions and water down our Catholic social spirit, with a view to rendering it homogeneous and similar in tone to

the materialist and pagan Anglo-Saxon and Masonic spirit."<sup>38</sup> If religious freedom for Protestants in Spain demonstrably were the leak in dyke through which the alleged forces would inundate the helpless Spanish people with all the evils in the Anglo-Saxon world, one might have a *raison d'État*, a case built on expediency, for denial of this freedom. I do not presume to pronounce on the hypothesis; I should merely say that the conclusion from it has nothing in particular to do with "the Catholic thesis" or "the Catholic ideal." It might be that in this allegedly perilous situation, government might come into possession of some emergency powers. However, there is nothing here that can be put forward as normative for all conceivable types of Catholic societies and the states which would be their political forms. The argument has not its roots in the serene order of theological doctrine and political philosophy in which the Catholic thesis would be conceived.

Actually, I think that in the Catholic thesis in its present state of development the ancient "right" of secular government to exterminate heretical opinions has no status. When I say development, I mean development in the political aspect of the thesis, the concept of the state, in its distinction from the Church, its autonomy, the manner (not the fact) of its subordination to the Church, the technique (i. e., popular participation in government) whereby it is directed to serve in its proper way the ends of the human person and of the Church, and finally the clarified idea of the functions of the state as an organizing force in society along with other organizing forces which it harmonizes into the order that is called the "perfect society."

In denying to this governmental right to repress heresy a status within the Catholic thesis, I am not, of course, implying that what is called "separation" of Church and state is today somehow the thesis. (I understand the canonical essence of "separation" to lie in the denial or ignoring by the state of the unique juridical personality of the Church, and the consequent denial or ignoring of

<sup>38</sup> E. Guerrero, "El problema de la libertad religiosa," *Razon y Fe*, Noviembre, 1948, p. 534.



the fact that there exists, in an order higher than that of the state, an external spiritual authority that has an independent sovereignty over its subjects in all that concerns their spiritual and moral life, even as citizens or rulers.) On the contrary, I am saying that the *ordinata colligatio* of Church and state, which requires from the state recognition of the Church for what she is, does not by any inherent consequence entail the imposition by the state of disabilities or restrictions on non-Catholic sects. In a word, civil intolerance is not the logically necessary consequence of *libertas Ecclesiae*.

The distinction of the two powers as each sovereign in distinct and autonomous societies, which today has been clarified in theory as well as in fact, makes it clear that neither in theory nor in fact is the religious unity of society the thetical foundation of the political unity of the state. Consequently, the protection of the religious unity of society, by suppression of error and dissent, is not among the political functions of government. Religious unity is indeed a value for society, and for this reason the state protects the full freedom of the Church to achieve and maintain it. But this is the Church's mission, and in it secular government has no direct share. Nor may it be used as an instrument to this end; for in that case it would be acting outside the lines of its own finality. It would be acting for an end that is not necessary for it, and consequently out of its line of duty; for the duties of the state, as simply the living action which is public order, are limited to the order that is natural, secular, temporal. It is not competent positively to act in regard of all the values that are good for society; in regard of many of them—among which is religious unity—its competence is restricted to the task of guaranteeing to the proper institutions—in our case, the Church—the full freedom required for their promotion.

It may be that in a Catholic society heretical propaganda "does spiritual harm." Granted; nevertheless this is not the kind of harm that secular government, as the agent of public order, is bound by its office to ward off from its citizens. The protection of her

members in the possession of their faith is the task of the Church; it is a spiritual, not a political task.<sup>39</sup> And if the Church is too weak

<sup>39</sup> Here is the fundamental *simplisme* in the argumentation of Msgr. Ryan in the essay (cited *supra*, note 2) that has managed to supplant in the contemporary Protestant mind two thousand years of complex thought on this most complex problem. His reason for a governmental right to suppress the propagation of religious error is that it "could become a source of injury, a positive menace to the religious welfare of true believers" (p. 36). This statement goes beyond the text of *Immortale Dei*, on which the author is commenting. Nor can this motivation of governmental repression of heresy claim support in Catholic political philosophy; government has no more duty, and therefore right, thus directly to protect me in the undisturbed possession of my faith in the one true Church than the Church has duty or right to protect me in the undisturbed possession of my material property. My faith is indeed my highest welfare, but in another order than the welfare which comes under direct governmental protection. "Against such an evil (as injury to faith)," the author goes on, "they (citizens) have a right of protection by the Catholic state." Yes, but only a right to demand the protection of the freedom of the Church, that she may protect their faith. I do not look to government for my religious welfare, but only for my religious freedom to seek my eternal welfare in the Church. When government has juridically fortified the freedom of the Church, in the sense already explained, it has done all I have any right to ask. And all, I think, that Leo XIII asks, if he is rightly read in the context of his chosen problematic—the Liberal invasion of traditionally Catholic nations. There are other defects in the thought of the essay. There is the suggestion that civil intolerance is "logical" in the light of the Church's claim to be the one true Church; but the problem is not one of logical deduction from singly theological premises; it is governed by the principles of political philosophy. There is too the transposition into a parallelism of what is only an analogy—the relation of religion to the good of the individual and to the good of the state. There is the argument that error is intolerable simple because it is error and has no rights. There is the illegitimate illation from the social value of the true religion to a governmental right to proscribe false ones (involving a confusion of "society" with "state"). There is the sweeping assertion, startling to a political scientist, that "it is the business of the State to safeguard and promote human welfare in all departments of life." Does this mean that Leviathan is a splendid beast, provided only that he be a Catholic Leviathan? And does it not matter carefully to state, in terms of political rationality, just how, by what means, and to what extent the state and its organs of government should undertake to safeguard and promote this or that particular aspect of human welfare? If I may say it under all respect to the memory of a great champion of the Church and her social doctrine, this is exactly the kind of loose argument that is not

to perform this task successfully, she does not by that fact acquire a juridical right to invoke the coercive strength of secular government. If, for example, her faithful fail in their duty of adequate financial support of her institutions and functions (I am not speaking of schools, hospitals, etc., which directly serve the public welfare, and hence have a claim to public support, but of directly ministerial functions such as the dispensation of the sacraments, which requires a clergy, churches, etc.), she does not by that fact acquire a juridical right to use the taxing power of government to supply the deficit. This might be the easier means to acquire the funds; but the expediency of the means does not create a right to its use. Similarly, if the full and free exercise of her prophetic and pastoral offices are not sufficient to protect her flock from the dangers created by "ravening wolves" (I relapse for a moment into the terminology beloved of the sixteenth century), the Church does not by that fact acquire a juridical right to demand that government, as a secular arm, stretch forth its power to slay the wolves, or even to strike them publicly dumb. (I am supposing that the wolves "raven" simply against the tenets of supernatural faith, not against the natural foundations of public order, which is quite a different case.)

Government indeed may not itself become a wolf. To speak less figuratively, it is under the necessity of guaranteeing what I called the juridical statute of the Church and of assuring the juridical conditions for the Church's free and full exercise of her prophetic and pastoral office. But once it has afforded the Church this extrinsic strength, so to speak, it has stretched its arm as far as it is under any necessity, and therefore possessed of any right, to stretch it. In this sense it must protect the flock; but the extermination of wolves, literally or juridically, is no part of its necessary duty.

needed in this whole difficult matter. Finally, it should be clear that, when one undertakes to predict what the constitutional provisions for religious liberty would be if the United States ever were to grow into religious unity, one is certainly not interpreting Leo XIII but indulging in some dubious theological and political crystal gazing. No one who knows the history of Church-state relationships and the part that experience has played in them would venture on such predictions.

I should perhaps recognize in this connection that the problem of a spiritually weak Church, wherein the people are alienated from the clergy and indifferent in their faith and neglectful of their duties, situated in a politically and economically underdeveloped society, wherein organized anticlerical and antireligious forces strive for control of government, is indeed a very difficult problem. But it would seem obvious that this situation is not the premise from which to generalize to a thesis. Nor may one predicate a right of recourse to the "secular arm" in this situation on the ground that, apart from such recourse, the Church will be "helpless before her enemies." I would not admit the argument as valid, but even if it were valid, to argue thus would be too much like the erection of a lack of faith into a juridical principle, genetic of rights. Once Caesar has guaranteed the *libertas Ecclesiae*, it would seem that all further recourse ought to be to God, not to a program, however mitigated, of civil intolerance.

One must reckon fully with the fact that, if the political thesis on the natural origin and secular finality of the state is a principle of limitation put to the action of the state, it is likewise a principle of autonomy. If it is maintained that government may not make a duty or function of what lies outside the sphere of its competence (which is political, not religious), it must likewise be maintained that no such duty or function may be imposed upon it by the Church. If it be asserted that the temporal power is distinct from the spiritual power, sovereign in a limited order distinct from the spiritual order, it cannot be that the distinctions asserted should suddenly vanish to permit the temporal power to become attached to the Church as her "secular arm," to minister to needs that are not secular but spiritual. I do not refer here to the enormous dangers, to whose reality history bears witness, involved in the assumption by secular government of a spiritual tutelage over its citizens (falsely regarded as its "children"), in order to protect them from "spiritual harm." This would be, if you will, an argument from expediency—a valid argument at that, and one, I should say, almost strong enough by itself completely to outlaw (as it has already shrunk the former dimensions of) the theory of the secular arm as a part of the Catholic doctrine of the orderly relationship

between Church and state. I say, "almost strong enough," in order to meet the possible argument: "Abusus non tollit usum." The further step, to the idea that the use itself would be an abuse, depends on an argument from principle. And here I think the decisive principle is that of the distinction of the two powers and the two societies, and the ordered hierarchic freedoms of each, as this distinction and these freedoms have been progressively clarified and made more exigent by the two interrelated movements of which I spoke—the movement of the Church toward more purely spiritual assertions of her primacy, and the movement of political society toward more rational assertions of its autonomy.<sup>40</sup> Say,

<sup>40</sup> It is interesting to note in this connection the description of the present situation in Portugal given in an interview to the London *Tablet* by the Cardinal Patriarch of Lisbon: "The State," he said, "through this instrument [the 1940 Concordat] recognizes the Church as she is, and guarantees her religious and moral mission. While the State as such can have no religious and moral views, the Church on her side can have no political views. . . . We respect the powers that be, and collaborate with them when they deal with the education of the Portuguese, but we do not support them with our authority as if they were our ally or our source of inspiration. . . . The *Estado Novo* merely facilitates the conditions under which the Church carries out her mission. It neither impedes nor imposes. It allows families, with the Church, to deal with what is their essential domain—religious and moral training. Even in the official schools parents control religious teaching. The Concordat, a creation of the *Estado Novo*, is based on principles of equity and justice. It guarantees religious peace" (*The Tablet*, London, October 2, 1948, p. 215). In a word, Cardinal Cerejeira characterizes the Portuguese state as "essentially a secular State by constitutional act." The realizations and orientations visible in this situation are, it seems to me, rather exactly on the tetic lines that I have tried to describe. Cardinal Cerejeira does indeed speak of the regime as one of separation of Church and state; however, his standard of comparison was doubtless some of the historical "unions" and their contingent peculiarities. An expert in the matter, viewing the situation from the juridical and not the historical angle, calls it "an impropriety of language" to speak of separation of Church and state in Portugal. To deny that the canonical orderly relationship obtains is "to confuse accessory modalities with what is essential to the system. . . . The traditional thesis requires recognition by the state of the Church and her institutions in the public law of the land; and this requires harmony between civil legislation and the legislation of the Church in matters touching the spiritual." (This canonico-civil legislation is binding only on Catholics; so, for instance, article 24 of the Portuguese

if you will, that behind these movements there has been on the one hand rebellion and on the other hand accommodation. This is true, but it is only part of the truth; for the more profound dynamisms have been of the high order of theology and political philosophy, operating towards a clearer idea of what, in the divine intentions as manifest by reason and revelation, the *ordinata colligatio* of Church and state should be. And it is on an estimate of these dynamisms that the question turns.

#### CONCLUSION

Some objections may be raised to the proposition that a governmental right to repress heterodox religious opinions and worship enjoys no permanently valid status within the Catholic doctrine on the orderly relation of Church and state, because it is not an exigence of any of the pertinent theological or political principles. Four questions may be asked. Is this Liberalism? As least, is

Concordat forbids divorce only to those who have contracted a Catholic marriage. This provision illustrates what I meant by saying that the state organizes what is "there" in society.) From this point of view the regime "derives from the most authentic concept of the alliance and cooperation" of the two powers. Among the "complementary and contingent problems" which "receive variable solutions according to circumstances of fact and right," are mentioned the civil register (of marriages), the budget of cults, ecclesiastical privileges and the *ius patronatus*, the title "religion of the state." (Yves de la Brière, "Le Concordat du Portugal," *Construire*, 1941, pp. 243-44; *Construire* was the wartime substitute for the Jesuit periodical, *Études*.) What I have done in this essay is to suggest that governmental repression of heterodox religious opinion and practice is likewise among the accidental modalities of the relationship between Church and state. It has had a place in certain historical situations, by reason of prevailing political conceptions, but it is not essential to, or in any necessary sense consequent upon, the traditional thesis with regard to the orderly relation of Church and state. And to represent it, as Msgr. Ryan did, as somehow connected with "the eternal and unchangeable truth" is to misrepresent the truth. To add a concrete touch, I would say that a Spanish government, for instance, may or may not have a right to repress Protestantism in the high interests of *Hispanidad*—that is not my problem; but if it has such a right, it is derived from the relation between *Hispanidad* and the Spanish people, not from the relation between Church and state as thetically conceived in terms of political reason and divine revelation.

it Catholic Liberalism? Is it in conflict with the classic arguments in the matter? And the general question: is it inconsistent with Catholic tradition, particularly as embodied in papal documents? I should answer no to all four questions. But in an essay already grown too long it is impossible to develop this negative answer. Only a few brief remarks are in place.

First, it should be clear that no part of my argument rests on any part of the rationalist premise of Liberalism (the absolute autonomy of reason), or on its consequent false metaphysics of freedom, its individualistic, eighteenth-century concept of "rights," its atomistic concept of society, its concept of the juridical omnipotence of the state, or on any other element of its religious and political philosophy. The argument moves in a completely different order of ideas. There can be no question here of raising the horrid spectre of *liberalismo*.

Secondly, from the description given of *libertas Ecclesiae* as the Church's indefeasible right it should be evident that there is no summoning of the still more shadowy spectre of Catholic Liberalism from the grave to which its muzzy, rather frightened ineffectualities condemned it.

Thirdly, as regards theological arguments, there is really only one that can come in question—the argument from the concept of the Church as a "perfect society" to the concept of government as the "secular arm" to which the Church has the right of recourse in her necessities. I would note, first, that this argument is readily open to fallacious use—the classic fallacy being its use to prove that the Church has the *ius gladii*. The root of the fallacy lies in assuming that the perfect-society concept is analytic, a priori, an abstract carry-all that may be used as the premise of deductive argument: "Because the Church is a perfect society, she has this and that power." Whereas the concept is a posteriori, in the case of the Church as in the case of the state; one comes at it from inspection of the end of each society and the ensemble of powers that each has, as validated by reason or revelation respectively, to achieve its end. The deductive procedure is therefore invalid. One has to ask: Has the Church, as a perfect society of the supernatural order, only analogous to the society of the natural order that is the state,

the right to use, or to command the use, of this particular means of a lower order than that of her own end, in order to achieve her end? And before the answer can be given, it has further to be considered that the state itself is a perfect society, with its own finality, outside of which it cannot act (any more than the Church can act outside of hers), and with its own autonomy, that forbids the use of its powers as instruments to ends that are not its own (as analogously, the powers of the Church cannot be used to ends that are not her own). In the light of this latter consideration it is seen, as I have said, that *necessitas Ecclesiae* is by itself inoperative to produce an *officium status* in the absence of a correlative *necessitas status*. And precisely there was the point of insertion of my argument—that governmental coercive action toward the preservation of religious unity or of individual religious faith is not, *in thesi*, in point of theological or political principle, a *necessitas status*, even in the hypothesis of what is called a Catholic society. Correlatively, I argued that the secular-arm theory, as involving a governmental right to repress heresy, was the product of a political hypothesis of manifold content indeed, but essentially involving some defect in the perfection of the state as a society in its own right. (I need not here go over again the other classic argument, from the primacy of the Church over the state in the order of human ends to the subordination of the civil power, as an instrumental means, to the principal causality of the ecclesiastical power; for this argument has already been dealt with, and the criticism to be made of it is essentially that made of the perfect-society argument.)

The fourth question, concerning the tradition of the Church, would require the most extensive answer, not possible here. I have deliberately chosen not to approach my narrow problem after the fashion of a *Wirklichkeits theologie*, by an inspection of relevant papal texts. For one thing this would be an enormously lengthy procedure. LoGrasso, for instance, assembles well over a hundred papal documents, together with a variety of statements by Doctors of the Church, bishops and theologians, in a compendium that represents only a minor fraction of the magisterial and theological literature on the problem (*Ecclesia et Status, De mutuis officiis et iuribus fontes selecti*, Roma, 1939). Given the actuality of the



problem, there is indeed great need for a book (in English) that would translate, situate historically, and explain the content and bearing of each of these pronouncements. However, my undertaking was the more modest one of sketching a theory, certainly not before consultation of the pertinent papal documents, under some use of the historical approach, with some attention to the political problem of the state, and after some diagnosis of the phases of doctrinal development and some consideration of the contemporary position of the Church-State problem. It would remain to confront this theory with the monuments of tradition. Unable to do this here, I can only say that I think it would stand the confrontation, if only each monument were itself squarely confronted to see and distinguish the Catholic tradition—*quod semper, quod ubique, quod ab omnibus* — from the contingent modalities of its application, which have always been historically dependent on political conceptions, which evolve, and on social situations, which alter. Insofar as anything I have said is not *id quod traditum est*, I say at the end as I said in the beginning, “Volo (id) pro non dicto haberi.”

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### **Discussion of Governmental Repression of Heresy**

FATHER MURRAY has presented in great detail a problem of vast importance and of vital significance at the present day—the problem of the relation between Church and State, as intended by Jesus Christ. For the painstaking research and the diligent study that were surely needed in the preparation of this paper, the members of the Theological Society owe him a deep debt of gratitude. His analysis of St. Robert Bellarmine's theory of the “indirect power” of the Church over temporal matters is particularly worthy of the attention of theologians, and the interpretation he offers of the true meaning of this debatable phrase is indeed thought-provoking.

Nevertheless, I believe that Father Murray has not sufficiently considered another doctrine—the Kingship of Jesus Christ. Even granted that the State (even a so-called “Catholic State”) has no

right to repress heresy by reason of its relations with the Church, the question still remains: "Has the State such a right by virtue of its subordination to the kingly power of Christ?" For if state and government, prior to any duties they may owe the Church of Christ, have duties toward Christ Himself, may it not be that governmental regulations are justifiable for the purpose of protecting the citizens from influences that might draw them away from the loyalty they owe to the faith of Christ?

It is difficult to reconcile the view that the state (including the government, if we follow Father Murray's distinction) is bound merely by the natural law, and has no obligations toward the positive law of Christ, with statements made by the Sovereign Pontiffs, particularly Pope Pius XI in the Encyclical *Quas Primas*:

Nor is there any difference in this matter between individuals and societies, both domestic and civil, for men joined in society are no less under the power of Christ than individuals. . . . Therefore, let the rulers of nations not refuse to fulfil by themselves and through their people the public duty of reverence and homage to the rule of Christ (AAS. 17 [1925] 601).

I believe that these words definitely exclude the idea that obedience to the law of Christ means merely obedience to the natural law; for the Pope in this passage was speaking of Christ as Man; and the law of Christ as Man is certainly a positive, supernatural law, superadded to the natural law. It should be noted that the Pontiff, citing Pope Leo XIII, asserted that his statement applied to the unbaptized, and not only to those who are subject to the authority of the Church by reason of baptism.

According to Father Murray's view, the statement of Pope Leo XIII in his Encyclical on the constitution of the Christian state, that it is not lawful to grant false religions the same rights as the true religion (DB, 1874) would no longer hold. Indeed, it would seem to follow that if a nation is in tranquil and unanimous possession of a false religion, and it is prudently judged by the rulers that the coming of Catholic missionaries would be a threat to the public peace—as might well be the case, since it would stir up controversy and endanger the unity of the people—the government

would have the *objective* right to prevent Catholic missionary activity.

Father Murray's opinion would seem to multiply difficulties in the matter of marriage. For, if, as he says, the government should recognize the claim of the Catholic Church to grant a Pauline privilege (even though it apparently contains an exception to the natural law), the government (even in a Catholic country) should likewise recognize the claim of the Mormon Church to permit polygamy to its members. For both claims appeal to a divinely granted exception.

I do not assert that the state has the right to repress religious error merely because it is error; but I believe the State has the right of repression and limitation (although often it is not expedient to use it) when error is doing harm to the spiritual interests of the Catholic citizens. For the spiritual welfare of the citizens (which in the present order is supernatural) pertains to their *temporal* well-being. Hence, just as the State can prohibit people from preaching the doctrine of free love, so it can prohibit them from preaching, to the detriment of the Catholic citizens, the doctrine that Christ is not present in the Holy Eucharist.

And so, I believe that a study of the doctrine of Christ's kingly power and of its practical bearing on civil rulers is needed before a person can make a final judgment regarding the right of civil rulers to restrict heretical propaganda that is likely to cause spiritual harm to the citizens. Certainly, the view that such power may not lawfully be exercised by those who rule a nation that is essentially Catholic is out of harmony with the traditional belief and attitude of the Church for many centuries. I, for one, shall continue to hold the traditional view, which I believe was upheld by Pope Pius XI, when he said:

Our Lord's regal office invests the human authority of princes and rulers with a religious significance; it ennobles the citizen's duty of obedience. . . . If princes and magistrates duly elected are filled with the persuasion that they rule, not by their own right but by the mandate and in the place of the Divine King, they will exercise their authority piously and wisely. . . . The result will be order, peace and tranquility, for there will be no longer any cause of discontent. Men will see in their king or

in their rulers men like themselves, perhaps unworthy or open to criticism, but they will not on that account refuse obedience if they see reflected in them the authority of Christ, God and Man (AAS, 17 [1925], 601).

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