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JACQUES MARITAIN AND THE PROBLEM OF CHURCH AND STATE

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I. GOD AND CAESAR

OVER TWO DECADES, up to the publication in 1951 of his *Man and the State*, Jacques Maritain sought to develop a new theory of the relation between Church and state. He was aware of previous Church magisterial teaching and canonical regulation that taught or assumed the model of soul-body union—the Leonine model as I shall term it, since it was formally endorsed in recent times by Leo XIII, though it had been proposed for a very long time in theology approved by the papacy and had been assumed by general councils and in ecclesial policy:

The Almighty, therefore, has given the charge of the human race to two powers, the ecclesiastical and the civil, the one being set over divine, and the other over human, things. . . . There must, accordingly, exist between these two powers a certain orderly connection, which may be compared to the union of the soul and body in man.¹

The Church ideally stands as soul to the state as body, united to form a single Christian community just as the union of soul and body forms a single person. And as the soul and the body have their respective intellectual and corporeal ends that contribute to the good of the whole, but with the soul's ends being higher, so too Church and state each have their own areas of

¹ Leo XIII, *Immortale Dei* 13-14.

competence, spiritual and temporal, religious and human, over which each is sovereign, the spiritual good served by the Church being higher than the temporal good served by the state. Because the spiritual good served by the Church is a good of the whole soul-body union, but higher than that served by the state, the state, when Christian and ruled by the baptized, must be prepared to support the Church in spiritual matters, lending its coercive power to the Church, acting as the Church's agent and on her authority—just as in deliberate human actions that serve the intellectual purposes of the soul, the body operates at the direction of the soul.

Leo XIII taught that the state should recognize the truth of the Catholic faith. The state is governed, just as much as individuals are, by a duty under natural law to worship God in whatever way he directs and reveals:

Nature and reason, which command every individual devoutly to worship God in holiness, because we belong to Him and must return to Him, since from Him we came, bind also the civil community by a like law. For, men living together in society are under the power of God no less than individuals are, and society, no less than individuals, owes gratitude to God who gave it being and maintains it and whose ever-bounteous goodness enriches it with countless blessings. . . . So, too, is it a sin for the State not to have care for religion as a something beyond its scope, or as of no practical benefit; or out of many forms of religion to adopt that one which chimes in with the fancy; for we are bound absolutely to worship God in that way which He has shown to be His will.²

Having recognized revealed religious truth, the state should also give it the protection of the laws:

All who rule, therefore, would hold in honour the holy name of God, and one of their chief duties must be to favour religion, to protect it, to shield it under the credit and sanction of the laws, and neither to organize nor enact any measure that may compromise its safety.³

And elsewhere

² Ibid. 6.

³ Ibid. 6.

Therefore the law of Christ ought to prevail in human society and be the guide and teacher of public as well as of private life. Since this is so by divine decree, and no man may with impunity contravene it, it is an evil thing for any state where Christianity does not hold the place that belongs to it.⁴

In *Immortale Dei* Leo XIII celebrated the fact that once, in accordance with this teaching

the religion instituted by Jesus Christ, established firmly in befitting dignity, flourished everywhere, by the favour of princes and the legitimate protection of magistrates; and Church and state were happily united in concord and friendly interchange of good offices.⁵

But Leo XIII insisted that, though the state should legislate to protect the Catholic faith, the authority to legislate in matters of religion belongs to the Church, not to the state. The state must therefore legislate to support the Catholic faith as the Church's agent. For Leo XIII carefully distinguished the directive competences of Church and state, the two sovereign powers (*potestates*) with authority to legislate and punish. He excluded legal direction in matters of religion from the native competence of the state:

While one of the two powers [the state] has for its immediate and chief object care of the goods of this mortal life, the other [the Church] provides for goods that are heavenly and everlasting. Whatever, therefore, in things human is in any way of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls or to the worship of God, falls wholly within the power of the Church and is wholly subject to her judgment [*id est omne in potestate arbitrioque Ecclesiae*].⁶

So the authority behind any legal direction by the state in support of religious truth must be that of the Church.⁷

⁴ Leo XIII, *Tametsi Futura* 8.

⁵ Leo XIII, *Immortale Dei* 19-21.

⁶ *Ibid.* 13-14.

⁷ The soul-body model of Church-state relations, as understood within the Church's theological tradition up to and including the time of Leo XIII, centers on the doctrine that a Christian state should act as the Church's agent—her *bracchium saeculare*—in spiritual matters in which the Church alone has legislative competence, as the body acts at the soul's direction in intellectual matters.

Maritain referred to this model in his description of the relations between Church and state in the Middle Ages when, as he put it, “the political power of the Holy Empire and the kings was an instrument for the spiritual aims of the Church.”⁸

In Maritain’s view a soul-body union of Church and state was simply not feasible in the modern age, such that it could no longer be proposed, even as an ideal. He very carefully avoided any claim that the soul-body union model involved doctrinal error on the Church’s part, at least in regard to the period for which that model had been appropriate.⁹ Maritain sought to steer a middle course between, on the one hand, accusing the Church of error in her past teaching and, on the other, descending to a brute relativism of “that was then, this is now.”

Maritain intended to replace the Leonine ideal of soul-body union with a new religiously pluralistic ideal of Church-state relations. To steer his middle course between simply condemn-

Various ecumenical councils have instructed Christian rulers to act as the Church’s agents in support of the Catholic faith: these include Lateran IV, Constance (and, following and confirming Constance, Pope Martin V), and Trent. For specific references and discussion see Thomas Pink, “The Interpretation of *Dignitatis Humanae*: A Reply to Martin Rhonheimer,” *Nova et Vetera* (English edition) 11 (2013): 77-121, esp. 99-103.

Far from being viewed as outmoded by the late nineteenth century, this teaching that the Christian state should act as the Church’s agent or secular arm is maintained in the 1917 *Code of Canon Law*; see canon 2198 discussed below. Authorities cited in the Code for that canon come from the conciliar tradition just mentioned, specifically Martin V, *Inter Cunctas*, a. 32; and the Council of Trent, Session 25, *Decretum de Reformatione Generali*, chap. 20, in *Decrees of the Ecumenical Councils*, ed. Norman P. Tanner (Washington, D.C.: Georgetown University Press, 1990), 2:795.

For a classic theological defense of the model of soul-body union, still cited in theological manuals under Leo XIII, see Robert Bellarmine, *Tractatus de potestate summi pontificis in rebus temporalibus, adversus Gulielmum Barclay*, translated in *On Temporal and Spiritual Authority: Robert Bellarmine*, ed. Stefania Turtino (Indianapolis: Liberty Fund, 2012).

⁸ Jacques Maritain, *Man and the State* (Washington, D.C.: The Catholic University of America Press, 1998), chap. 6, “Church and State,” at 158.

⁹ In this Maritain was more careful, and more respectful of the magisterium, than Martin Rhonheimer, who openly accuses the preconciliar magisterium of error in teaching the state’s duty legislatively and coercively to support the Catholic faith and enforce ecclesiastical law; see his “Benedict XVI’s ‘Hermeneutic of Reform’ and Religious Freedom,” *Nova et Vetera* (English edition) 9 (2011): 1029-54.

ing the Leonine model and adopting brute relativism, and to preserve continuity on fundamentals with previous teaching, Maritain laid down certain immutable principles governing any ideal of relations between Church and state—principles that would be fundamental to Church teaching at all times. Basic to these immutable principles is the distinction between God and Caesar, between a spiritual good related to God and a temporal good served by purely human communities and associations. Basic too is the superiority of the spiritual good over the temporal. This distinction of the spiritual from the temporal and the superiority of the spiritual determines the proper immutable relation between the Church as serving the spiritual and the state as serving the temporal. The Church must have a corresponding superiority over the state, and the sphere of religion served by the Church must transcend state direction and authority. So the state always has to grant the Church freedom to pursue her mission. Any acceptable form of Church-state relation has to apply these constant principles.

Maritain then introduced the idea of a succession of what he termed distinct historical climates in which these immutable principles have been applied—but in different ways for each climate:

For there are in human history typical climates or constellations of existential conditions, which express given intelligible structures, both as concerns the social, political, and juridical dominant characteristics and the moral and ideological dominant characteristics in the temporal life of the human community, and which constitute frames of reference for the ways of applying in human existence the immutable principles that hold sway over the latter.¹⁰

Appropriate to each historical climate has been a distinct ideal mode of applying or realizing the immutable principles governing Church-state relations. Each mode of application counts as analogous to the others in that each mode, though importantly different from the others, has provided the proper way for its own period of realizing the immutable principles:

¹⁰ Maritain, *Man and the State*, 157.

Thus the principles are absolute and immutable and supra-temporal. And the particular, concrete applications through which they are to be analogically realized, and which are called for by the various typical climates that replace each other in human history, change according to the specific patterns of civilization, the intelligible features of which it is imperative to recognize as peculiar to every given historical age.¹¹

In what Maritain termed the sacral period of the Middle Ages, when the Western state was a specifically Christian state, identified by a public religious allegiance, and so where full citizenship in the state depended on baptism, the ideal mode of application was indeed that of soul-body union, with the superiority of Church over state taking juridical form, so that in religious matters the state would act as the Church's agent or secular arm (*bracchium saeculare*). But we now lived in what Maritain termed the secular age, where the state is no longer confessional and where citizenship is no longer linked to a particular religion. In Maritain's view, this modern secularity was a positive development that allowed the distinction between the spiritual and the temporal to be fully established. It was an historical progression required by the fundamental distinction between God and Caesar:

The modern age is not a sacral, but a secular age. The order of terrestrial civilization and of temporal society has gained complete differentiation and full autonomy, which is something normal in itself, required by the Gospel's very distinction between God's and Caesar's domains.¹²

Since the identity of the state is no longer tied to any particular religious community, the secular age demands that the state no longer accord juridical privilege to any particular religion, even the true religion. The soul-body union model is no longer appropriate, even as an ideal:

The supreme, immutable principle of the superiority of the Kingdom of God over the earthly kingdoms can apply in other ways than in making the civil government the secular arm of the Church, in asking kings to expel heretics, or in using the rights of the spiritual sword to seize upon temporal affairs for

¹¹ Ibid.

¹² Ibid., 159.

the sake of some spiritual necessity (for instance in releasing the subjects of an apostate prince from their oath of allegiance). These things we can admire in the Middle Ages; they are a dead letter in our age.¹³

In the secular age, the superiority of Church over state must take moral rather than juridical form. The secular age involves a new form of Church-state cooperation, without legal privilege for the Church but with shared agreement on the rights of individuals—the rights belonging to individuals under natural law. These include an individual right to religious liberty against the state and other civic institutions, and full freedom for the Church and all other religious communities to pursue their own conceptions of religion, true or false. State law, especially when inspired by the moral example of the Church, will be consistent with natural law. But the Church will give only a moral example. The state will no longer be subject to ecclesial direction in spiritual matters.

In demanding only that the state grant the Church freedom rather than juridical privilege, Maritain anticipated *Dignitatis Humanae*—a declaration that owed much to Maritain. Indeed, at the Second Vatican Council on 21 September 1965, in the final debates before that declaration's passing in November, Maritain's friend and collaborator Charles Journet gave *Dignitatis Humanae* a highly Maritainian endorsement. He repeated core Maritainian claims, arguing that in the modern world under the influence of the gospel, the distinction between things spiritual and temporal, between God and Caesar, was more clearly established, leading to a new way of applying the principle of the subordination of the temporal to the spiritual:

From the time of Constantine the rulers of the Church often had recourse to the secular arm to defend the rights of the faithful and to preserve the temporal and political order of the said Christendom. But under the influence of the preaching of the Gospel, the distinction between temporal and spiritual things has gradually been made clearer, and is today obvious to all.

Therefore, and this is of the greatest moment, the doctrinal principle according to which matters temporal are subordinate to matters spiritual is in

¹³ Ibid., 62-63.

no way removed, but is applied in another way, that is by battling errors with the forces of light, not by force of arms.¹⁴

In this careful address Journet combines, in a very Maritainian way, a progressive understanding of the march from the sacral to the secular age (it is, supposedly, the very influence of the gospel that renders the state more secular, to enable a clearer distinction between the temporal and the spiritual) with a refusal to condemn the earlier ideal of soul-body union as doctrinally erroneous. Journet did not actually claim that the Leonine model was wrong even for the sacral age or that the Church was always mistaken in teaching it. The view he presents is instead that of Maritain: a past way of realizing the subordination of the temporal to the spiritual has been replaced, as a result of historical progress, by another appropriate to the more advanced present. Just like *Dignitatis Humanae* itself, Journet says nothing about whether in the sacral—and by implication more backward—past, when states were communities of the baptized, it had been wrong for the Church to use her jurisdiction over the baptized to turn baptized rulers into her religious agents.¹⁵

One figure who poses a serious problem for Maritain and Journet is the pope who in recent times taught the model of soul-body union most clearly and formally: Leo XIII. It is obvious why the teaching of that pope should be an embarrassment for Maritain's theory. Pope Leo's vigorous defense in *Immortale Dei* of the soul-body model as an ideal comes in 1885, long after the sacral period of the Middle Ages, and well

¹⁴ Charles Cardinal Journet, *Acta Conc. Vatican II*, vol. 4.1 (Vatican City, 1976), 425. For the importance of this address at the council in gathering support for the declaration, see *History of Vatican II*, ed. G. Alberigo (Leuven: Peeters, 2006), 5:102-3.

¹⁵ In his "Dignitatis Humanae—Not a Mere Question of Church Policy: A Response to Thomas Pink," *Nova et Vetera* (English edition) 12 (2014): 445-70, Rhonheimer seeks to show that the council fathers shared his own understanding of the declaration as a contradiction of previous magisterial teaching by citing (461-62) this specific address by Journet. But this is to misunderstand the Maritainian project, which was, unlike Rhonheimer, to avoid supposing the magisterium to have taught error. Journet's careful refusal, in an important and influential speech, to present the declaration as a contradiction of previous doctrine, does nothing to support Rhonheimer's reading of it.

into the age of the modern nonconfessional state—that is, the secular age. But according to Maritain’s theory, far from still ideal, soul-body union is the wrong model of Church-state relations for the secular age. On Maritain’s terms, in still presenting soul-body union as a modern ideal, Leo XIII must be teaching error. Maritain had hoped to use his theory of successive historical climates to ring-fence his theory from conflict with the magisterium—the Church’s previous commitment to soul-body union would be respected, though only as a feature of the sacral age. However, since clear magisterial defense of soul-body union as the continuing ideal occurs long after, well into the secular age, conflict is inescapable. Indeed Maritain was in conflict not only with papal teaching but also with canon law. A canon, 2198, insisting that the Christian state act as the Church’s secular arm to enforce her laws, with supportive citations of decrees to that effect from Constance and Trent, was included in a new Code of Canon Law introduced as late as 1917 and in force for much of the twentieth century.

Maritain was evasive about the Church’s continuing and unmistakably modern defense of the soul-body model. He sought to present Leo XIII as concerned fundamentally to teach the autonomy of the state.¹⁶ And indeed, Leo XIII did teach that autonomy for temporal matters where the state is sovereign, but in *Man and the State* Maritain is silent about Leo’s equal emphasis on soul-body union and the state’s proper subordination to the Church in spiritual matters. Maritain also attempted to claim that canon 2198’s talk of the state being required to act as the Church’s secular arm was really designed to secure the same legal protection for the Church from the state as was owing to any religious association.¹⁷ But the explicit reference in the canon to the state as the Church’s “secular arm” speaks the language of something very different: a principal-agent relation between Church and state. This is confirmed by the 1917 Code’s citations of Constance and

¹⁶ See, e.g., Maritain, *Man and the State*, 153.

¹⁷ See *ibid.*, 161 n. 17.

Trent, which call for the coercive enforcement by the state of Church laws generally, not mere legal recognition of the Church's rights as one voluntary association among many. Maritain's minimizing reading makes no sense of the texts, and clearly was not shared by others in the Church. For once the Church, with *Dignitatis Humanae*, finally gave up her extraordinarily persistent attempt to continue to apply the model of soul-body union, she gave up canon 2198 as well. That canon has no equivalent in the 1983 Code, and that is not surprising. The canon was phrased and referenced as it was in the 1917 Code precisely to express in law the Church's doctrinal commitment to soul-body union at least as an ideal—a commitment that until 1965 was as much a feature of ecclesial modernity and of the secular age as Vatican radio and papal photographs.

On Maritain's theory, it seems that Leo XIII was not only teaching error, but damaging error too. For on Maritain's view, the pope's teaching, when given in the secular age, could only tend to hold back clearer understanding of the distinction between God and Caesar—a distinction that Maritain thought to be best displayed by a fully secular state that refused juridically to privilege the Church. But of course that was not Leo XIII's view, and the distinction between God and Caesar was hardly downplayed by him. The clear distinction between God and Caesar, between spiritual and temporal authorities and their proper concerns, and the sovereignty of each in its proper sphere, was fundamental to Leo's teaching in *Immortale Dei*, as it had been to the Jesuit political theology of the Counter-Reformation (a decadent "baroque" age in Maritain's view, and openly despised by him) to which *Immortale Dei* clearly owed so much. For Leo XIII, a juridical superiority of Church over state in spiritual matters, far from endangering the distinction between Church and state, was important to its proper recognition. The subordination of state to Church in spiritual matters followed, in Leo's view, from a right understanding of the spiritual and its superiority. The soul-body model that Maritain dismissed as an imperfect and by now outmoded realization of the distinction between the spiritual and the

temporal was for Leo XIII dictated, at least as an ideal, by that very distinction, and was fundamental to proper respect for it.

Maritain's rejection of the soul-body model was motivated by something already clear in 1885, and even clearer by the mid-twentieth century. The Leonine ideal was becoming impossible to apply. No modern state would really be willing to serve as body to the Church's soul. Maritain concluded that the old ideal of Church-state relations must therefore be replaced by a new ideal. There must be a new way of rightly ordering relations between Church and state, a detachment of Church and state appropriate as an ideal to the secular age as a soul-body union of them had been to the sacral age. But we need not follow Maritain in drawing this conclusion, as there is another possibility. There may simply be no alternative ideal of the relation between Church and state—which is why the Church insisted on soul-body union so doggedly and so long.

The Leonine ideal of soul-body union is certainly not now realizable. And, as Maritain himself very clearly realized, one reason may be that the juridical conditions for a soul-body union of Church and state are no longer met, nor likely to be. States no longer exist as communities of the baptized, that is, as political communities that publicly link their identity, at least in aspiration, to baptism and so to a Christian allegiance. But if baptism and the Christian allegiance that it brings are no longer professed by the state publicly, as part of its political identity, how can state officials still be in a position to put their public office at the Church's disposal?

This does not, however, prevent soul-body union from remaining the sole available ideal for Church-state relations, even under modern conditions, just as Leo XIII clearly taught it to be. The credibility of an ideal does not depend on its continued practicability. Sometimes none of the practicable options is ideal. The Leonine case for soul-body union as an ideal has to do not with what is currently politically feasible, which may only be various levels of the bad, but with what political arrangements, where Church-state relations are concerned, could best ensure the good. Now we can agree with Maritain that a basic condition of acceptable relations between

Church and state is respect for religion as a genuine good in its own right and as a good that transcends the authority of the state. As we shall see, *Dignitatis Humanae* bases the right to religious liberty against the state on respect for religion as such a transcendent good. And Leo XIII based his own teaching on the limits to state authority in matters of religion on respect for religion as such a good.

The issue between Leo XIII and Maritain comes then to this: Does political secularization—the detachment of the state from any particular religion and so from the Church—now provide the best means to ensuring that religion is respected as a transcendent good, as Maritain supposed? Or are things instead as Leo XIII supposed: does soul-body union still provide the best means to ensuring that religion is so respected—perhaps because such a Church-state union, or at least something approximating to it, provides in the long term the only possible such means? If Leo XIII turns out to have been right, then we are left with a bleak conclusion. In so far as soul-body union, or even anything at all like it, is now impossible, so too, at the political level, is the respect for religion as a good that *Dignitatis Humanae* demands along with previous Catholic tradition.

The problem for Maritain is that political secularization has not taken the benign form that he predicted. Fundamental to Catholic political theology, just as Maritain supposed, is indeed the distinction between God and Caesar, between the spiritual and the temporal, and the superiority of the spiritual over the temporal. With these principles comes the clear doctrinal consequence, taught both by *Immortale Dei* and by *Dignitatis Humanae*, that religion is a distinctive good that transcends the coercive authority of the state. Maritain and Journet thought that political secularization enabled a better realization of these principles than does the soul-body model. A fully secular state would lead to a better understanding of, and clearer respect for, the distinction between the spiritual and the temporal, between what is proper to the state and what is proper to the Church. But in fact with political secularization the very reverse has happened. The modern state and the political theory that pro-

vides its ideology are altogether abandoning the very distinction between the spiritual and the temporal. Journet confidently claimed in September 1965 that with political secularization and the detachment of state from Church “the distinction between temporal and spiritual things has gradually been made clearer, and is today obvious to all.” But as we will now see, that claim was not obviously true in 1965, and half a century later it is even less true now.

Moreover, Leo XIII’s theology is proving more credible than Maritain’s. Leo’s theology does what Maritain’s fails to do, which is convincingly to explain just why political secularization has failed to take the benign form that Maritain predicted. It is no accident that secularization has been destructive of the fundamental distinction between spiritual and temporal. Other things being equal, that distinction was indeed always going to be better preserved by religious establishment. What has followed political secularization is very much what Leonine doctrine implied might follow, and not at all what Maritain and Journet so confidently predicted.

II. NATURAL LAW, LIBERTY, AND THE GOOD OF RELIGION

Dignitatis Humanae asserts an individual right to liberty of religion against the state and other civic associations. This right to liberty is based on the dignity of the human person as bearing the image of God, and so as capable of reason and equipped with a power of freedom, giving people the capacity to determine for themselves which of a number of actions to perform. The liberty also involves a conception of religion as a very distinctive kind of good, so distinctive as to be removed from the coercive authority of the state. But these ideas of the human person and of religion as a distinctive good were not novel in 1965. They were already part of the preconciliar Catholic tradition and had been magisterially endorsed by Leo XIII. They are basic to the traditional distinction between God and Caesar, the spiritual and the temporal. If modern secular thought is abandoning that distinction, this is because it is rejecting the

traditionally Catholic views of the person and of religion on which the distinction depends.

A) The Power of Freedom and the Dignity of the Person

Dignitatis Humanae bases the right to liberty of religion on our possession of freedom as a power, a capacity to determine for ourselves what we do through the exercise of control. The act of faith by which we respond to divine revelation is not something passive and outside our control. Though faith is a gift of divine grace, whether we respond in faith or not is also up to us. This link between our possession of freedom as a power and our possession of a right not to be coerced is central to the Catholic tradition. Freedom as a power was long seen as an essential basis of freedom as a right. Normative freedom was consistently viewed as based on metaphysical freedom.

In fact freedom as a power to determine for ourselves how we act has a dual significance within the Catholic natural-law tradition. Freedom as a power is the basis of our right to liberty, that is, of our right not to be coerced. But it is equally the basis of our liability to be coerced. It is both a normative block to coercion and a normative enabler of it. The right to liberty and the liability to coercion—to direction by law backed up by the threat of just punishment to motivate compliance—are both made possible by the fact that as humans we bear the image of God and are capable of freedom and so too of the rationality which that freedom presupposes.

Freedom as a power leaves it up to us what actions we perform, and thereby gives us a capacity to determine for ourselves what we do. This capacity was understood within the Scholastic tradition as basing a right to liberty, which the tradition clearly understood as a right to determine for ourselves what we do. Only because we have the *capacity* to determine things for ourselves can we also have the *right* to determine things for ourselves:

If, however, we are speaking of the natural law of dominion, it is then true that liberty is a matter of natural law, in a positive, not merely a negative sense, since

nature itself confers upon man the true dominion of his liberty [*dominium libertatis*]. . . . For liberty rather than slavery is of natural right, for this reason, namely, that nature has made men free in a positive sense (so to speak) with an intrinsic right to liberty, whereas it has not made them slaves in this positive sense, strictly speaking.¹⁸

In Scholastic philosophy the term *dominium* can mean the power to determine for ourselves what we do by exercising actual control over how we act. Aquinas uses *dominium* in just this sense.¹⁹ But it can also be used, as Suarez uses it in the phrase *dominium libertatis*, to mean the right to exercise that power without being subject to coercion. We find the same shifting use of expressions in modern English to denote either freedom as a power or freedom as a right. And “freedom” itself is not the only term involved. The phrase “It is up to me” may assert a power of control over what I do, as in “It is up to me whether I raise my hand or lower it.” But it may also be used to assert a right against someone seeking illicitly to command or to coerce me: “Don’t try and tell me what to do. It is up to me what I do.”

This right to liberty meant for Suarez that no other private human individual has any natural right to coerce me—to issue directives that I am to follow, and that threaten me with punishment or sanction if disregarded. Licit coercion requires special justification. The one coercing must be a public authority with jurisdiction over me, a jurisdiction that extends to the kind of activity he is seeking to direct. So our power of freedom protects us against coercion, not unconditionally, but in those cases where the authority to coerce is lacking.

Where that authority exists, however, and possesses the required jurisdiction, the power of freedom not only ceases normatively to block coercion, but actually enables it. My freedom then permits me to be subject to legal direction, the whole point of which is to guide the proper exercise of

¹⁸ Francisco Suarez, *De legibus ac legislatore Deo*, lib. 2, c. 14, §16 (*Opera Omnia*, vol. 5, ed. Charles Berton [Paris: Louis Vives, 1856], 141).

¹⁹ See, for example, Thomas Aquinas, *STh* I-II, q. 21, a. 2 (*Summa Theologiae* [Turin: Marietti, 1950], 2:122).

freedom; it also permits me to be fairly threatened with punishment for my breach of that direction—a breach that would be my fault, as a misuse of my freedom or control over what I do, so that the breach is my moral responsibility and therefore fairly punishable.

This dual significance possessed by freedom as a power goes far back in the Catholic tradition. An important and much-cited example from the canonical tradition comes from the Fourth Council of Toledo, meeting in 633 in Visigothic Spain. This provincial council forbade the coercion of unbaptized Jews into the faith. This ban on coercion was based on the fact that the act of faith occurs through free will (*libera arbitrii facultate*). But this involvement of free will only blocks coercion because the unbaptized have not yet been incorporated in the Church—the authority with the jurisdiction to coerce the act of faith. In the case of the unbaptized, their capacity for free will does block their coercion. But once someone is baptized, free will then underpins obligation and its just enforcement; as the council insists, coercive enforcement of the obligation to faith in the baptized is perfectly legitimate.²⁰

B) *The Distinctiveness of Religion*

Where religion is concerned, according to the Second Vatican Council and, as we shall see, earlier Catholic teaching as well, the state and other natural-law-based institutions lack the required authority to coerce. Religion falls outside the jurisdiction of the state. The freedom of the act of faith, the fact

²⁰ See Toledo IV, canon 56 in *Corpus iuris canonici*, ed. E. Friedberg (Leipzig: Bernhard Tauchnitz, 1881), 1:161-62. Toledo IV is a basis of canon 14 of Trent's decree on baptism, condemning those, such as Erasmus, who opposed the coercion of the heretical or apostate baptized back into the faith. For citation of Toledo IV at Trent in support of canon 14, see *Concilium Tridentinum diariorum, actorum, epistularum, tractatum*, ed. Societas Goerresiana, vol. 5, ed. S. Ehes, (Freiburg im Breisgau: Herder, 1911), 855 and 864. Toledo IV is also cited by *Dignitatis Humanae* to show that the Church has never coerced the unbaptized into the faith. For discussion of Toledo IV in relation both to Trent and to Vatican II, see Pink, "The Interpretation of *Dignitatis Humanae*," 77-121.

that what religiously we believe and practice lies within our control, gives us a right not to be coerced religiously that holds against the authority of the state. We have a distinctively political right to religious liberty, just as *Dignitatis Humanae* teaches. It needs to be established, however, why this is so.

The Catholic natural-law tradition has always understood religion to be an essential component of our natural happiness, enabling us to flourish as human beings. The good of religion is distinctive in that it involves our being related, by our human nature, to a being, God, who both transcends our nature and is represented by it. Not only has God created us as human beings, he has created us to bear his image. The image of God is borne by us through our intellectual nature, in our reason and in our freedom.

The fact that humanity bears the image of God allows for two forms of religion. The first is natural religion, a worship and love of God as creator whose existence is known to us by reason through created things. The communal practice of natural religion is a distinctive and vital part of natural human flourishing. As rational monotheism, it is obligatory under natural law, and obligatory because essential to the purely natural happiness and justice that is served, at the level of the community, by the authority of the state. The second form of religion is supernatural. It involves our being raised, through divine grace, to a level of happiness that transcends the capacity of human nature, to enjoy the beatific vision of God. This supernatural life, though beyond our natural capacity, is still consistent with our human nature (which we retain) and is so consistent only because at the natural level we already bear the image of God.

Because the supernatural life transcends our natural capacities, the offer of such a life is entirely gratuitous and not at all due to human nature. Hence the availability and content of religion in supernatural form is not part of natural law. Natural law dictates rational monotheism, but whether we are to be directed supernaturally to God and if so, how, depends not on reason but on revelation. Natural law simply requires that we believe and follow whatever revelation, if any, is

eventually afforded to us. It leaves open the nature of that revelation, and even whether any such revelation is ever delivered. The supernatural life itself must therefore depend on a further law: a divinely given law that does not come with human reason but is revealed, and that is not natural but positive, being imposed on us by divine decree in addition to the natural law that comes with our humanity. This further divine law has in fact been given to us, through Christ, as the law of the New Covenant.

Because supernatural religion transcends natural law, supernatural religion transcends the authority of the coercive institution that serves natural law, namely, the state. Supernatural religion is directed by another authority that is based on and serves the revealed law of the New Covenant, just as state authority is based on and serves the natural law. This is the authority of the Church, an authority that, though wielded by humans, is not itself human, for it is based on a law that is not natural to humanity but divine.²¹ So Suarez argued long before the Second Vatican Council. The state has no authority to restrict Jewish or Moslem worship on the basis of its false and nonsalvific nature, because any error involved in such worship is at the level of the supernatural and so is not the concern of the state:

The reason is that these [non-Christian] rites are not intrinsically bad in terms of natural law; so the temporal power of a ruler does not extend in itself to forbidding them.²²

The only authority with the competence to legislate and punish in matters of supernatural religion, therefore, is the revealed authority of the Church. The state has no jurisdiction in this matter:

²¹ Thus the 1917 *Code of Canon Law* uses “human authority” to refer to natural-law-based authority, such as that of the state, in contrast to the divine-law-based authority of the Church. See canon 2214 §1: “The Church has the native and proper right, independent of any human authority, to coerce the delinquent among those subject to her with both spiritual and temporal penalties.”

²² Suarez, *De fide*, disp. 18, sect. 4, §10 (*Opera Omnia*, 12:451).

Punishment of crimes only belongs to civil magistrates in so far as those crimes are contrary to political ends, public peace and human justice, but coercion with respect to those deeds which are opposed to religion and to the salvation of the soul is essentially a function of spiritual power [the power of the Church], so that the authority to make use of temporal penalties for the purposes of such correction must have been allotted in particular to this spiritual power.²³

But what of natural religion? It might be thought that natural religion at least, as essential to natural happiness and required by natural law, would fall like other natural goods within the jurisdiction of the state. Just as the state has the authority to regulate goods such as education or transport, so too the state has the authority to regulate religion at the natural level at least. This, however, was not the view finally taken within the Catholic tradition.

The Catholic view is that natural religion would indeed have fallen within the jurisdiction of the state had some form of supernatural religion not been revealed. But the coming of Christ decisively changed the situation, by changing the orientation of divine worship and so of religion generally from a natural to a supernatural end. As the Second Vatican Council put it, Christ is he “in whom people find the fullness of religious life [*plenitudinem vitae religiosae*].”²⁴

This view of religion was first magisterially taught by Leo XIII. In a passage of *Immortale Dei* already cited, Leo XIII declared that religion as such—as concerned with the sacred and with divine worship and not only as concerned with supernatural salvation—is outside the authority of the state:

While one of the two powers has for its immediate and chief object care of the goods of this mortal life, the other provides for goods that are heavenly and everlasting. Whatever, therefore, in things human is *in any way of a sacred character* [*quoque modo sacrum*], whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls *or to the*

²³ Suarez, *Defensio fidei catholicae adversus anglicanae sectae errores*, lib. 3, c. 23, §19 (*Opera Omnia*, 24:320-21).

²⁴ *Nostra Aetate* 2 (Tanner, ed., *Decrees of the Ecumenical Councils*, 2:969).

worship of God, falls wholly within the power of the Church and is wholly subject to her judgment.²⁵

A view of religion as now removed from state authority can already be found in Suarez, though with some ambivalence. In some passages Suarez adhered to what we might term a static view, according to which the state retains a continuing authority over natural religion. Thus in his treatise *De fide* Suarez taught that the state retains the authority to enforce rational monotheism on its subjects.²⁶ But in his account of canon law, in the fourth book of *De legibus*, Suarez moved toward a dynamic view, according to which Christianity removed authority over religion generally from the state and gave it to the Church, and did so because of a reorientation of religion toward the supernatural:

As regards this area [of religion], civil authority is more limited now within the Church, than it was before the Christian religion; for once the care of religion was oriented towards the virtue and happiness of the commonwealth, as we noted above from St Thomas; but now religion itself and spiritual salvation and spiritual happiness are the priority, and the rest for their sake; and therefore while once the care of religion either belonged to the authority of the ruler, or was joined with that authority in one and the same person, or was subordinated to the authority of the ruler: now however the care of religion is specially given to the shepherds of the Church.²⁷

Unsurprisingly, given Leo XIII's already clear teaching, we find the dynamic view stated, with equal clarity, by Maritain:

Here we are confronted with the basic distinction, stated by Christ himself, between the things that are God's and the things which are Caesar's. From the advent of Christianity on, religion has been taken out of the hands of the State; the terrestrial and national frameworks in which the spiritual was confined have been shattered; its universality together with its freedom have been manifested in full bloom.²⁸

²⁵ Leo XIII, *Immortale Dei* 13-14 (emphases added).

²⁶ Suarez, *De fide*, disp. 18, sect. 4, §§7-8 (*Opera Omnia*, 12:450-51).

²⁷ Suarez, *De legibus*, lib. 4, c. 11, §10 (*Opera Omnia*, 5:372).

²⁸ Maritain, *Man and the State*, 152.

So when the Second Vatican Council denies the state's authority to direct religious belief and practice, it does so on a very traditional theological ground: that religion, just as religion, now transcends the ends served by the coercive authority of the state.

Furthermore, those private and public acts of religion by which people relate themselves to God from the sincerity of their hearts, of their nature transcend the earthly and temporal levels of reality. So the state, whose peculiar purpose it is to provide for the temporal common good, should certainly recognise and promote the religious life of its citizens. With equal certainty it exceeds the limits of its authority if it takes upon itself to direct or prevent religious activity.²⁹

It is noteworthy that the soul-body union model assumes the state's incompetence to direct spiritual matters on its own authority. This incompetence is built into the conception of the state as an earthly body unfit to meddle on its own account in matters spiritual that are the soul's concern. The state's giving of coercive and juridical support to the true religion was the state's duty standing as body to the Church's soul, not undertaken on the state's own authority. The state's duty attached to it only as agent of the Church, acting on the Church's authority.³⁰ As we saw in Leo XIII, the state should

²⁹ *Dignitatis Humanae* 3 (Tanner, ed., *Decrees of the Ecumenical Councils*, 2:1004).

³⁰ There are those who oppose this implication that in legislating for religion the state can only act as agent to the Church as principal. They often appeal to past teaching by the popes that divine providence itself had given the state the duty to legislate and coerce on behalf of the Catholic faith. Thus Pope Leo the Great informed the Emperor Leo that "you ought unhesitatingly to consider that the kingly power has been conferred on you not for the governance of the world alone but more especially for the guardianship of the Church" (*Letter* 156). This is supposed to establish that the state has a native right and duty, under its own authority, to legislate and coerce on behalf of the Catholic faith. The state is not acting just as the Church's agent, under the Church's authority. (My thanks to John Lamont for pressing this objection.)

But these past papal claims about a providential role and duty given to the state are in no way inconsistent with the principal-agent model—which is why they are so often repeated or referred to in expositions of that very model, such as in Bellarmine's *Tractatus* (see, for example, chapter 18, on the prince's duty to protect the true religion), or in Leo XIII's *Immortale Dei* itself (see §6 for repetition of such teaching on the state's duty). Crucially, such papal claims say nothing about *how* providence gives

acknowledge revealed truth when presented with it, as is its duty under natural law, just as this is a natural-law duty on private individuals. But the authority to direct and coerce in matters religious still belongs to the Church. It no more belongs to the state than it belongs to private individuals.³¹

the state this duty—whether through some authority in religious matters native to the state, or through the authority of the Church and the providential establishment, via baptism, of a principal-agent or soul-body relation between Church and state.

Leo XIII's *Immortale Dei* clearly teaches that the principal-agent model applies; and this is entirely consistent with the state's lacking the duty, and even the right, to coerce on behalf of the faith, under those (unideal) circumstances where the state is not acting as the Church's agent. Likewise, Bellarmine makes it particularly clear that the duty to protect the true faith belongs to the state in the context of a soul-body union of Church and state, where the state is said to protect the Church as the Church's *servant* (see *Tractatus*, chapter 18 [Turtino, ed., *On Temporal and Spiritual Authority*, 85]).

If the state is to act as the Church's agent, baptismal obligations must of course take political and not merely private form. But this is the clear implication of canon 2198 of the 1917 *Code*, which, like all canonical obligation, presupposes baptism, but puts requirements specifically on the state. See also Bellarmine: "In fact, since kings *through baptism* have subjected themselves to the spiritual authority of the Pontiff, *they are considered to have subjected also their kingdoms and their political authority to the same spiritual authority*; that is, they wanted to be directed and corrected by the Pontiff if they have strayed in any way from the path to salvation in temporal matters" (*Tractatus*, c. 16 [Turtino, ed., *On Temporal and Spiritual Authority*, 266 (emphases added)]).

³¹ In his "*Dignitatis Humanae*—Not a Mere Question of Church Policy: A Response to Thomas Pink," Martin Rhonheimer accuses me of a contradiction. He argues that if, as Leo XIII teaches, there is a natural law duty on the state to acknowledge religious truth when God communicates it to us, "this means that the state has also a genuine right to enforce this truth" (468). So, he alleges, it would follow that the state does, after all, have an authority under natural law to legislate in matters of revealed religion—which, however, Leo XIII and I deny.

But what Rhonheimer alleges to follow, simply does not follow. Just because some person or group or institution has a duty to recognize a given truth, it does not follow that on the same basis it need have any authority of its own to enforce that truth and coerce on its behalf. This does not follow for private individuals, nor for institutions— not even when, unlike a private individual, that institution has a coercive authority of its own in other matters.

Unsurprisingly, given his unwarranted inference from a native duty on the state to recognize religious truth to a native authority to enforce it, Rhonheimer is led to conclude that in my work on religious liberty, "Professor Pink's error lies in construing Leo XIII's doctrine on Church-state relations as a fully coherent doctrine, which it is not" (*ibid.*, 469). Leo XIII's doctrine is, however, entirely coherent.

So the existence of a right to religious liberty against the state is based on a very distinctive view of religion, namely, that religion as such lies outside the jurisdiction of the state. This view of religious liberty was not a novelty of the Second Vatican Council, but was an already established part of prior Catholic tradition. It is tied to a view of Church and state as fundamentally different kinds of authority, one being divine and the other human, serving fundamentally distinct kinds of good. The difference between these two kinds of authority, and the goods they serve, depends in turn on a very specific metaphysics of the natural and the supernatural. It depends, in particular, on a theory of the human person as metaphysically free, and free in particular in respect of his religious belief, and as oriented towards God both naturally, as bearing his image, and supernaturally, through an offer of the beatific vision made through Christian revelation. This view of liberty of religion is hardly secular in its intellectual content. It is not surprising, then, that a process of political secularization should have been accompanied not, as Maritain and Journet fondly hoped, by any renewed allegiance to this view of religious liberty but by its increasing rejection.

III. THE SECULARIZATION OF RELIGIOUS LIBERTY

Political secularization involves the detachment of the state from any particular religion. This process has not left the issue of religious liberty untouched. Political secularization has been accompanied by a corresponding secularization of conceptions of religious liberty. In particular the secularized state's own conception of religious liberty, and of religion, has become detached from that held by any particular religion, and especially from that held by Catholicism. This secularization of religious liberty has proceeded at two levels.

First, the metaphysical distinctiveness of the person has increasingly been denied, especially as regards one element fundamental to the idea of humanity as bearing the image of God, namely, our possession of freedom as a metaphysical power to determine for ourselves what we do and decide. This

has important implications for the very idea of freedom as a right. The very basis in human nature of the general right to liberty is eroded. Second, religion has ceased to be regarded as a distinctive part of human life and flourishing, let alone as possessing the supernatural orientation accorded it in Catholic Christianity. This erodes the basis in human nature of the right to religious liberty in particular, at least as that right has been conceived in the Catholic tradition.

A) The Denial of Freedom as a Power

The English-language tradition in ethics and political philosophy has long distanced itself from any commitment to the existence of a distinctive power of freedom. Either the very existence of the power is straightforwardly denied, as it was by Thomas Hobbes,³² or at least the ethical significance of the power is denied, so that rights and obligations are given some other basis. The sidelining of metaphysical freedom was initially resisted by the continental liberal tradition: commitment to the reality of a human power of freedom remained an important feature of the ethical and political theory of Rousseau and Kant. But by now even contemporary liberalism that explicitly celebrates Rousseau and Kant as antecedents have largely abandoned any such metaphysical commitment. Modern liberalism quite generally no longer bases the right to liberty on our possession of freedom as a power.

Modern liberalism is no particular ally of ordinary intuition in this. It is natural for us to base freedom as right on freedom as a capacity or power. We immediately understand the right to liberty as a right to determine for ourselves what we do. But if the right is understood in these terms, it is hard to see how we could have freedom as a right without freedom as a power. How could we have a right to determine things for ourselves if

³² For discussion of Hobbes's highly innovative theory of liberty and his opposition to Scholastic conceptions of freedom both as a power and as a right, see Thomas Pink, "Thomas Hobbes and the Ethics of Freedom," *Inquiry* 54 (2011): 541-64; and idem, "Hobbes on Liberty, Action and Free Will," in *The Oxford Handbook of Hobbes*, ed. Kinch Hoekstra and Al Martinich (Oxford: Oxford University Press, forthcoming).

it is impossible for us to have even the capacity to determine things for ourselves—if the right is one we must always lack the capacity to exercise? Nevertheless, because skepticism about the power or capacity is so general, modern political philosophy avoids basing the right on the power. Instead, modern political philosophy either refuses to base the right to liberty on a theory of human nature at all—the theory of our right must be political, not metaphysical—or else it seeks to base the right simply on our capacity for reason.³³ The capacity for reason is supposedly less problematic metaphysically than the power of freedom because reason on its own has nothing to do with any power on our part to determine alternatives but simply involves a capacity on our part to be moved by justifications. Unfortunately, in a theory of the right to liberty, the capacity for reason cannot substitute for the old appeal to freedom as a power over alternatives.

Freedom as a power over alternatives does offer a plausible basis for a right to liberty understood as a right not to be coerced, as we can see in considering the nature of such a power and its point. The power, as traditionally conceived, is a capacity to determine for ourselves how we decide and act. It is a power of free will. Now the point of making decisions about what to do is, fairly obviously, to ensure that we end up doing and attaining what is good and avoiding what is bad. Without that concern to attain the good, there would be no point in bothering to deliberate and decide at all, as opposed to blindly plumping. The exercise of freedom as a power over alternatives shares, as a power of decision or will, the function of the decisions it determines: to attain the good. The point of having power over alternatives, then, is to make alternative options that are good available to us.

But good alternatives are of course what coercion seeks to deny us. The one coercing, unless immediately applying chains,

³³ For the refusal to base the right to liberty on metaphysics, see John Rawls, *Political Liberalism* (New York: Columbia University Press, 2011). For the appeal to the human capacity for reason, see Philip Pettit, *A Theory of Freedom* (Cambridge: Polity, 2001).

or making threats that are unusually terrifying, does not actually remove freedom as a power. It usually remains within our control to act other than as we are directed. Coercion serves to remove not alternatives as such, but alternatives that are good. Essential to coercion, and to the pressure that it applies, is the threat of sanction, which works by making all options but one, the option directed, worse. That is why our possession of freedom as a power was long seen as creating a presumptive normative block to coercion. If we possess a nature the point of which is to put alternative goods within our power, there must be some justification for the deliberate removal of those goods.

The idea of a capacity for reason does not have the same normative implications. The function of that capacity is not to provide us with alternative goods, but to enable us to respond to justifications. Coercion does not threaten or work against such a capacity, but simply addresses it. Coercive threats work precisely by providing us with further justifications for acting as directed—justifications rooted in the desirability of avoiding threatened sanctions.

The removal of metaphysical freedom from ethical and political theory is not likely, in the long run, to enhance or reinforce commitment to the right to liberty. A right to choose or to determine things for oneself that has no adequate basis in any received theory of human nature is likely to become vulnerable, at least when it comes into conflict with other values. When states feel pressure to override liberty rights in the name of general welfare or utility, they may find the temptation to succumb becoming harder to resist. This is an issue that is hardly specific to religion but concerns the future of a properly liberal society more generally.

B) The Denial of Religion as a Distinctive and Transcendent Good

Fundamental to the distinction between God and Caesar is the thought that religion is under the authority of the Church, not the state. But why should religion, in particular, transcend the authority of the state?

The issue is not whether we have some right to liberty in relation to religion. Natural goods generally, such as education or movement and the like, involve rights to liberty. The authority of the state to direct and regulate natural goods is not unlimited. But just because education and transport or motion are natural goods, they fall within the general jurisdiction of the state, and so the state can regulate them, with due respect for liberty, for the general good. State regulation will attend to the nature of the goods regulated and to criteria of better or worse that come with them as distinctive forms of good. Sufficiently defective forms of education or transport may be restricted, or they may be denied forms of state support given to less defective versions. We have a general right to liberty in respect of where we go. But that does not remove human travel and transport from being subject to fairly extensive state regulation and direction. We may be called upon by the state to sacrifice some liberty of movement if movement itself would be better enabled, or if some other good, such as efficient commerce, might benefit thereby.

Even if certain state decisions regulating movement might seem unwarranted or wrong, they would not usually be criticized as wrong on the grounds that they are an intrusion of the state into an area of human life transcending its authority. But that is the Catholic position in relation to religion. Not only do we have a right to religious liberty against the state. We have that right because religion, just as religion, transcends the authority of the state.

There is another question the answer to which, at least considered from the secular point of view of today, is far from obvious. This is whether religion is a distinctive kind of good at all. If it is, then we must be able to explain why religion is a good in its own right and what might make some forms of religion better or worse than others as forms of religion. Within the Catholic tradition there is a clear answer to this question, an answer based on natural law and its accompanying metaphysics.

We can know that God exists as our creator and that we exist as his creation and as bearing his image through our rationality and freedom. From this arises the intelligibility, as a

distinctive and essential part of human happiness, of the activity of worshipping God and loving him. Good religion involves rational monotheism, which includes loving and honoring God with public and communal forms of worship worthy of the divine, and worthy too of our dignity as bearing the image of the divine. Bad or defective religion involves various kinds of failure to meet these demands.

Because religion is a distinctive good, there may be forms of deficiency or badness that are specific to religion. They need not involve wider forms of badness, such as violations of just public order that fall within the temporal concern of the state. Defective religion may of course involve some such direct assault on public order, such as murder through forms of human sacrifice. But religion may be defective just as religion, such as through a defective conception of the object of worship. Religion defective in this way may involve polytheism, the denial of the oneness of the divine; or pantheism, the denial of divine transcendence of the created world; or materialism about the divinity, the denial of God's purely spiritual nature.

We have seen that because religion is a natural good, it might be thought to fall within the jurisdiction of the state, exactly as do other natural goods. On this view, at least at the level of natural religion, the state might properly seek to support good religion over bad. The state might favor rational monotheism just as it favors the better forms of education and transport, especially when having to balance various forms of religion against other goods. Overt state approval and recognition might definitely be given to monotheism, and to the worthier forms of monotheism at that. Such positive support or approval would be refused to polytheism or pantheism, even if basic liberty for them were not denied, and in state decisions about balancing goods, such forms of religion, being defective at the natural level, would consequently lose out.

The Catholic view, magisterially taught by Leo XIII and by the Second Vatican Council, is that such direction of worship and the sacred as such—direction of a specifically religious good, by criteria specific to religion—is not the state's concern. And what makes this true, as we have seen, is the reorientation

through Christ of religion as such, including the naturally required worship of God, to a supernatural end in which the state has no directive competence.

This may be compared to the form a secular political theory might take, taking *secular* to mean a theory uncommitted to any supernatural revelation. It seems that unless the truth of supernatural revelation is accepted, there is simply no reason for denying the state the same authority over religion as over other natural goods. Just as a natural-law-based state might on its own authority regulate and discriminate in favor of better forms of transport and better forms of education, so it might on its own authority discriminate in favor of better forms of religion—better being understood of course by the wholly natural criteria specific to religion of a rational metaphysics and a rationally available moral law. So the case put by *Dignitatis Humanae* for religion's entirely transcending state authority is unfortunately available only to the already supernaturally converted—something with important implications, as we shall see, for the basic coherence of Maritain's political theology.

Of course in our culture secularity does not mean simply lack of commitment to revelation and the supernatural. It means a lack of commitment to natural religion as well. It involves what, by the standards of Catholic natural-law theory, are very serious and fundamental forms of irrationality. Not only is human freedom denied, but in some cases human reason is denied too, at least as traditionally conceived. And it is in particular denied that we have a creator who is spiritual and intellectual, and whose image we bear. This makes of course the very existence of religion as a distinctive form of good highly problematic in itself, ruling out any criteria of goodness specific to religion that might inform legal direction and state policy. This of course is why the attitude of the modern state to religion is so profoundly different from that endorsed by Leo XIII or by *Dignitatis Humanae*. It is not just that the secular state refuses to recognize that religion lies outside its authority. It seeks to direct religion, but without recognizing religion even as a distinctive natural good, assimilating it instead to other more general categories. Religion may be understood as one among many forms of

subjectively fulfilling personal commitment, like a sport or a hobby.³⁴ Or religion might be assimilated to a form of group identity, along with expressions of ethnic and cultural identity generally.

The effects of denying religion as a distinctive good on state policy towards religion are significant. The state may in some cases still mimic respect for the limits to its authority taught by *Immortale Dei* and *Dignitatis Humanae*. The state will not on its own authority seek to discriminate in public policy against polytheism or pantheism. But that is not because it sees these as forms of religion that, though defective as religion, lie beyond its authority. Rather, the state is likely to hold back on the basis of quite a different ideology. It will see these forms of religion just as varieties of personal commitment, or of cultural or group identity, and then base its noninterference on that stock-in-trade of modern liberal theory: the state's duty to show equal respect to citizens.

On the other hand, because religion is not regarded as a distinctive good in its own right, but is just another case of a wider range of goods that clearly are legitimately subject to state direction and regulation, the state will in more fundamental respects disregard the limits to its authority set by *Immortale Dei* and *Dignitatis Humanae*. Religion will be assimilated to other natural goods that do clearly fall within the general jurisdiction of the state, such as sports and hobbies or modes of collective cultural affirmation. Moreover the state need not recognize churches and other religious bodies as different from any purely civic collective, like clubs or cultural unions. The very distinction traditionally made by the "two realms" theory between Church and state—between authority in spiritual form and authority in temporal form—will disappear along with the disappearance of religion as a distinctive good.

³⁴ Or, to similar effect, wider forms of personal commitment may be redefined as "religion properly understood." See Ronald Dworkin, *Religion without God* (Cambridge, Mass.: Harvard University Press, 2013), where religion is reduced to a form of commitment to value.

There can still be a right to liberty of religion, but this will be no different from a general right to be left free to pursue personal values or commitments, or no different from a general right to respect for personal or group identity. The modern liberal requirement that the state show equal respect to all its citizens may protect much religious belief and practice from state interference. If religion is just one among many forms of identity or commitment it may even receive some government support. There need be no rigid refusal of state support for religion as such. But if religion no longer transcends the directive competence of the state as something distinctive, it may also be subject to government interference. The exemption of religious institutions from various forms of equality legislation regarding gender or sexual orientation may no longer be made, any more than it can be relied on for societies or clubs. The state may perfectly well eventually interfere with religious instruction, or even in the nature of religious ministry, in the name of defending an equal respect for all.

These are not mere possibilities for the future. The secularization of religious liberty is already well underway. Hence we read in the work of a contemporary political and legal philosopher:

If religion really is only a sub-set of a broader class of beliefs, identities or practices, which should be treated on a par with them, then large areas of existing law (which carve out special protections or special prohibitions for religion) become normatively indefensible. Fortunately, normative philosophers, by contrast to legal scholars, are not beholden to constitutional coherence. So they can bite the bullet and argue that the special treatment afforded religion qua religion in the law has lost any normative purchase in contemporary society. This would allow them to explain away constitutional tenets such as the special ban on state aid to religion and the ministerial exception as archaic remnants of the discredited 'two-realm' theory. Instead, they would start from the idea that the liberal state must be decidedly post-secular and take account of the deep pluralism of values, ideas and identities, both religious and non-religious, in contemporary societies.³⁵

³⁵ Cecile Laborde, "Equal Liberty, Non-Establishment and Religious Freedom," *Legal Theory* (forthcoming).

IV. MAGISTERIAL TEACHING AND ITS THEOLOGY

Maritain and Journet presented political secularization as something progressive—as implied, ultimately, by the very distinction between spiritual and temporal:

The modern age is not a sacral, but a secular age. The order of terrestrial civilization and of temporal society has gained complete differentiation and full autonomy, which is something normal in itself, required by the Gospel's very distinction between God's and Caesar's domains.

The Leonine ideal of soul-body union, though conceded to be strictly consistent with the distinction between spiritual and temporal, was criticized by Maritain and Journet as realizing the distinction only imperfectly, and as associated with a merely partial understanding of it. With political secularization, supposedly, “the distinction between temporal and spiritual things has gradually been made clearer, and is today obvious to all.” But the Maritainian view of political secularization has not been confirmed by history. Political secularization has been associated not with better understanding of the distinction between spiritual and temporal, but with that distinction's intellectual and political erosion.

Maritain hoped that religion's character as a distinctive and transcendent good would be respected even by states that did not publicly recognize and endorse the traditionally Catholic doctrines of the natural and the supernatural that explained that character. But Maritain's hope has not been fulfilled. This should not indeed be a surprise. It is clear that the Maritainian project was doomed from the start, for the very idea of religion as a distinctive good that transcends the authority of the state depends on the availability and truth of religion in supernatural form, a form that reorients religion as a whole towards an end transcending the natural happiness that is the state's concern. As Maritain himself admitted, it was the revelation of Christ that removed religion from the directive competence of the state:

From the advent of Christianity on, religion has been taken out of the hands of the State; the terrestrial and national frameworks in which the spiritual was confined have been shattered.

Religion will only be publicly acknowledged as a good transcending state authority by those states that also publicly acknowledge the supernatural end, that is, the truth of religion in supernatural form. But that requires the very state recognition of revealed truth that the Leonine model of soul-body union defended as an ideal and that political secularization now discourages. As states detach themselves from any public recognition of revealed truth, so we should expect those same states increasingly to view religion as falling as much within the jurisdiction of the state as any other area of human life. And the policy of modern states, liberal states included, moves steadily in that direction.

Political secularization has also been associated, as we have seen, with a denial of religion as a distinctive kind of natural good. This too should not be surprising. The Leonine model of soul-body union in fact predicted such a development, as a possibility at least.

In a fallen world we cannot reliably attain the natural end without the help of divine grace. Grace is required not just to sanctify but to heal. We need grace not only as *gratia sanctificans* to raise us to a supernatural level but, even before that, as *gratia sanans* to repair the damage done to human nature by the Fall. Without such grace we can no longer reliably attain a complete conception of the content of the natural law, let alone reliably adhere to it.³⁶ Reliably to understand and attain even the natural good we now need the special help of divine grace—the grace provided to a fallen world by the Church and her sacraments. Thus one of the reasons there should be Church-state union, as Leo XIII magisterially taught, is that the state needs to be civilized at the level of nature, through being informed by a higher and supernatural authority,

³⁶ See for example Thomas Aquinas, *STh* I-II, q. 109, a. 2: “Utrum homo possit velle et facere bonum absque gratia” (Whether man can will or do good without grace).

namely, by the soul of the Church. In *Immortale Dei* Church-state union is celebrated by Leo XIII as providing just such a civilizing influence. The encyclical begins:

Though the Catholic Church, that imperishable handiwork of merciful God, by her very nature has as her purpose the saving of souls and the securing of happiness in heaven; yet, in regard to things temporal, she is the source of benefits as manifold and great as if the chief end of her existence were to ensure the prospering of our earthly life.³⁷

These benefits come about through the establishment and juridical favoring of Christianity, and so especially Catholicism, as the religion of the state:

And, lastly, the abundant benefits with which the Christian religion, of its very nature, endows even the mortal life of man are acquired for the community and civil society. And this to such an extent that it may be said in sober truth: "The condition of the commonwealth depends on the religion with which God is worshipped; and between one and the other there exists an intimate and abiding connection." . . . There was once a time when states were governed by the philosophy of the Gospel. Then it was that the power and divine virtue of Christian wisdom had diffused itself throughout the laws, institutions, and morals of the people, permeating all ranks and relations of civil society. Then, too, the religion instituted by Jesus Christ, established firmly in befitting dignity, flourished everywhere, by the favour of princes and the legitimate protection of magistrates; and Church and state were happily united in concord and friendly interchange of good offices. The state, thus constituted, bore fruits important beyond all expectation, whose remembrance is still, and always will be, in renown, witnessed to as they are by countless proofs which can never be blotted out or ever obscured by any craft of any enemies.³⁸

³⁷ Leo XIII, *Immortale Dei* 1

³⁸ *Ibid.* 19-21. This teaching does not imply that all forms of state establishment of Catholicism have been benign, for not all have corresponded to Leo XIII's ideal. One form, especially common since the Reformation, and highly problematic in its effects on Church and state alike, clearly has not. This is *ancien regime* Gallicanism or various kinds of "state" or "national" Catholicism. This form of establishment is highly damaging insofar as it reduces the Church to acting as, in effect, an agent of the state, rather than the state acting in specifically spiritual matters as genuinely the agent of the Church. This form of establishment is obviously not Leo XIII's model, but its opposite.

A central magisterial teaching of Leo XIII is that the state as body should be informed by the Church as soul, not only to serve the supernatural end, but to serve the natural end as well.³⁹

In so far as political secularization detaches the body of the state from the soul provided by the Church, it limits the transmission not only of sanctifying grace but healing grace as well, and diminishes that civilizing influence. In particular, political secularization is likely to diminish the grasp of the natural law at the level of the state itself, as we are now witnessing in matters concerning the defense of life and marriage. As Pius IX already observed:

Where religion has been removed from civil society, and the doctrine and authority of divine revelation repudiated, the genuine notion itself of justice and human right is darkened and lost.⁴⁰

Leo XIII developed the point. United to the soul that is the Church and under the Church's direction, the state must help the Church to bring us to our supernatural end, because

³⁹ The magisterium has long taught that in a fallen world the natural good served by the state depends on the state's adherence to and support for the Catholic faith: for some further examples of such teaching see, for example, Gregory XVI, *Mirari Vos* 14 and 20; Pius XI, *Ubi Arcano Dei Consilio* 48. But if the state serves the natural good, and the natural good depends on the Catholic faith of its people, does that not show that the state must have a native authority to legislate on behalf of the Catholic faith? (My thanks again to John Lamont for pressing this point.)

The supposed conclusion does not follow. The natural good served by a state can often depend on matters outside that state's jurisdiction, in which case the state must support or cooperate with whatever other authority does have the required jurisdiction. The natural happiness of the population may depend on the international economy, which is largely outside the jurisdiction of any particular state; this is why states have to cooperate in economic matters with other states. Similarly, in a fallen world, the natural happiness of a people will depend on the provision of healing grace through the Church, and so on religious arrangements over which, as Leo XIII clearly teaches, the state has no jurisdiction of its own. If it is to attain its natural end, the state as body must therefore recognize the spiritual authority of the Church as soul, and subject itself to that.

⁴⁰ Pius IX, *Quanta Cura* 4.

otherwise the state will likely fail in bringing us even to our natural end:

Therefore the law of Christ ought to prevail in human society and be the guide and teacher of public as well as of private life. Since this is so by divine decree, and no man may with impunity contravene it, it is an evil thing for any state where Christianity does not hold the place that belongs to it. When Jesus Christ is absent, human reason fails, being bereft of its chief protection and light, and the very end is lost sight of, for which, under God's providence, human society has been built up. This end is the obtaining by the members of society of natural good through the aid of civil unity, though always in harmony with the perfect and eternal good which is above nature. But when men's minds are clouded, both rulers and ruled go astray, for they have no safe line to follow nor end to aim at.⁴¹

Not only is political secularization imperiling public understanding of natural justice and right, it is eroding public recognition of the very distinction between the spiritual and temporal. As we have seen, the idea of religion as a distinctive natural good requires respect for natural law and, in particular, an understanding of human nature as bearing the image of God as its creator. That basic understanding is no longer common property; indeed, it has effectively disappeared from political life.

Why should a state that fails to acknowledge supernatural revelation, and that is increasingly detached from much of the content of natural law and especially the content most concerned with our nature as bearing the image of God, continue to respect religion as a distinctive good? Or as Leo XIII might have put it: why should a body detached from the soul continue to understand and respect those higher ends with which the soul is concerned?

Leonine soul-body theology fully distinguishes between God and Caesar, and respects the state's autonomy in temporal matters as opposed to spiritual. But the body is not to interfere in matters spiritual, disregarding the direction and authority of the soul—direction that in a fallen world would be necessary. This is why Leo XIII thought that soul-body union, far from

⁴¹ Leo XIII, *Tametsi futura* 8.

endangering a proper understanding of the distinction between God and Caesar, between the spiritual and the temporal, is required to ensure respect for that very distinction. Assurance of the state's respect for the distinction between God and Caesar only comes from the state's public recognition as true of a divine revelation which teaches that very distinction and with it the nature of religion as now a transcendent good—a distinctive form of good transcending the authority of the state—and from the influence on the political community of grace and instruction provided by the Church as the state's directive soul in matters spiritual.

Dignitatis Humanae addresses the directive role of the state in matters of religion in a context where the state is clearly no longer a political community of the baptized, and is, therefore, no longer capable of acting as an agent of the Church. Since the state is no longer functioning as the Church's agent, it must lack any authority, even the borrowed authority of the Church, to direct in matters of religion. So, since the state is no longer acting as the Church's agent, our free will gives us a moral right not to be coerced in matters of religion by the state, exactly as *Dignitatis Humanae* teaches, and as Leo XIII's earlier magisterial teaching already implied.⁴² The ending of soul-body union between Church and state is probably irreversible, at least within any political and social future conceivable under modern conditions. The state will therefore continue to function detached from any agency relationship to the Church. This, then, is the basis on which *Dignitatis Humanae* addresses the legitimacy of state intervention in religious matters. The declaration provides the framework for understanding the legitimacy of state activity in the religious sphere for the foreseeable future. The declaration binds to the extent that it expresses for our time what Catholic tradition, as magisterially taught by Leo XIII, already implied for state authority once political secularization is assumed and the state has ceased to act as an agent of the Church.

⁴² For the development in more detail of this argument see Pink, "The Interpretation of *Dignitatis Humanae*," 77-121.

What *Dignitatis Humanae* does not explicitly address is the legitimacy (at least under past circumstances) and still less the point of a union between Church as principal in matters spiritual and a publicly Christian state as her agent. In other words, the declaration does not explicitly address Leo XIII's magisterial teaching on the desirability of a soul-body union of Church and state. This is because the declaration does not address what was central to that teaching: the authority that the Church's mission gives her over the baptized. Central to the Church's instrumental use of the Christian state as her agent in spiritual matters are the obligations to the Church, at least under past conditions, of such a state's baptized rulers and officials. In treating soul-body union as an ideal, the Church has taught that, because of the nature of her mission, baptismal obligations may take political form and may include an obligation on state officials to act as the Church's secular arm.⁴³ The credibility of soul-body union as a Christian ideal depends on the truth of that past teaching about people's possible obligations under baptism to the Church. But *Dignitatis Humanae* does not specify what people's obligations to the Church may come to—except, and this is of crucial importance, expressly to declare that it leaves *integer* or untouched traditional Catholic teaching about those obligations.⁴⁴ In leaving intact all that past teaching, *Dignitatis Humanae* therefore leaves intact the Leonine model too. The declaration simply develops what follows from traditional Catholic teaching for state authority if the Leonine ideal cannot in fact be realized

⁴³ For that teaching, see again, canon 2198 of the 1917 *Code*; the highly authoritative magisterial tradition, involving a number of general councils, that preceded that canon and that was cited by the 1917 *Code* in its support; and also Bellarmine's theological treatment of such political obligations, based on and citing the same magisterial tradition, in the *Tractatus*.

⁴⁴ "Indeed, since people's demand for religious liberty in carrying out their duty to worship God concerns freedom from compulsion in civil society, it leaves unchanged [*integram*] the traditional catholic teaching on the moral obligation of individuals and societies towards the true religion and the one Church of Christ" (*Dignitatis Humanae* 1 [Tanner, ed., *Decrees of the Ecumenical Councils*, 2:1002]).

and the state is no longer acting on Church authority as her religious agent.

Should we follow Maritain, and no doubt many of the fathers of the Second Vatican Council, and still view political secularization as a progressive phenomenon, so that a juridical separation of Church and state is a positive good and the new ideal for Church-state relations? Or should we see political secularization as highly problematic, but as also, at least in our time, unavoidable, so presenting the regrettable but practically inescapable modern context within which the Church must now pursue her mission? This has to do not with what *Dignitatis Humanae* directly teaches—which is the current wrongfulness of state and civic involvement in the direction of religion—but how we should incorporate that teaching in a wider political theology.

When considering this question, there are two things to be remembered. First, the Leonine model of soul-body union as a continuing ideal, even under conditions of modernity—the very conditions under which Leo XIII was still defending the model—is clear magisterial teaching, as Maritain's progressive theology is not. Moreover, it is teaching that the magisterium has not formally and explicitly contradicted. Leo XIII's theology has therefore a continuing claim on Catholic belief. Second, as we have seen, the political secularization that Maritain viewed as the work of the gospel has instead proved spiritually destructive. In particular it has proved incapable of meeting that basic condition (understood by Maritain himself to be basic) of any ideal of Church-state relations, namely, the ensuring of continued recognition by the state of the identity of religion as a distinctive and transcendent good. This is a failure that the Leonine model and its theology was well able to predict. Soul-body union may not now be feasible, but the Leonine soul-body theology still applies to our situation, explaining the modern state's failure to respect and even understand the distinction between spiritual and temporal. The state flails about in matters spiritual, uncomprehending of their true nature, like a body barreling about detached from its intellectual soul.

Magisterial teaching has sometimes been linked at the time of its appearance to a received or official theology from which that teaching had subsequently to be detached. The received theology linked to the teaching was not itself magisterially taught but still profoundly shaped and governed the initial interpretation of that teaching, both by adherents to that teaching and opponents of it. Indeed, one effect of the linked theology may have been to fuel opposition to the teaching. The teaching was not properly understood because it was commonly read, by all parties, through the received theology—a theology that, because in fact problematic, seriously damaged the teaching's credibility. In such cases the process by which the teaching was finally accepted will have involved, as an essential stage, its detachment from the faulty theology that was blocking its acceptance.

One such example is Boniface VIII's *Unam Sanctam* and its still binding magisterial teaching on papal primacy and the necessity for salvation of the recognition of that primacy. At the time of its promulgation that document was closely associated with a political theology that was hierocratic, asserting a direct and supreme papal temporal authority over the earth.⁴⁵ This theology was not formally and explicitly taught by *Unam Sanctam* itself but was read into it by papalist theologians of the school of Aegidius Romanus and also by their opponents, such as theologians supportive of Philip the Fair of France. This hierocratic theology helps explain much of the (literally) violent opposition to Boniface VIII. The hierocratic theory also remained a theology official enough in Rome still to cause problems with ecclesiastical authority for later Catholic theologians who too openly rejected it. Even as late as 1590, the eminent Cardinal Bellarmine narrowly escaped official condemnation, from Sixtus V, for denying the hierocratic conception of Church and state. Bellarmine was saved from being placed on

⁴⁵ On the hierocratic theory see Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge: Cambridge University Press, 1963)

the Index by the pope's death.⁴⁶ But this hierocratic theology, though for a time officially favored, was never formally adopted by the magisterium and was eventually rejected by it. The hierocratic theory is quite incompatible with the sovereignty and autonomy of the state in temporal matters that Bellarmine and Suarez each defended, and that Leo XIII taught in *Immortale Dei*.

Maritain's progressive view of political secularization is a theology that bears a similarly problematic relation to *Dignitatis Humanae*. It is a theology of Church and state that has long informed much interpretation of the Second Vatican Council's declaration, by supporters and opponents alike. But it is also a theology from which the strictly magisterial content of *Dignitatis Humanae* has urgently to be detached. Such detachment is both urgent and necessary first because Maritain's theology is hard to reconcile with the previous magisterium. Despite his determined attempts to avoid the issue, his theology is clearly opposed to the teaching of Leo XIII. Because of that fact, Maritain's framing interpretation has helped generate the widespread view that *Dignitatis Humanae* indeed cannot be reconciled with the previous papal magisterium, but contradicts it. If *Dignitatis Humanae* is read as actual magisterial endorsement of the view that political secularization is indeed a progressive ideal and a requirement of the gospel, then that certainly implies a rupture within the magisterium. For that is what Leo XIII very clearly and deliberately denied.

This appearance of rupture is very serious because it tends to discredit the Second Vatican Council itself and to block its reception. This is because of a second and very compelling reason for detaching *Dignitatis Humanae* from Maritain's theology. The theology, with its sunny optimism about political secularization and its consequences, is by now quite unbelievable. It is increasingly obvious that the secular state will never be respectful of the Church's mission on the terms required by *Immortale Dei* and *Dignitatis Humanae* alike. The

⁴⁶ See Stefania Tutino, *Empire of Souls: Robert Bellarmine and the Christian Commonwealth* (Oxford: Oxford University Press, 2010), 67-70.

more the state is secular, the less the possibility of a shared vision of religion as a distinctive good transcending state authority, a vision that leaves a politically undisputed public space for the Church's mission. Without that shared understanding of the good of religion, an understanding that depends on some form of political recognition of the truth of revealed religion, there can be no mutually acceptable articles of peace between Church and state.⁴⁷

⁴⁷ My thanks for comments to the faculty and students of Mundelein Seminary, where an initial version of this paper was given at an October 2013 joint lecture on "*Dignitatis Humanae* at 50: The Future of Religious Freedom"; to my fellow lecturer Fr. Thomas Joseph White, O.P.; and to Professor Matthew Levering, who organized the event. My thanks also to referees for *The Thomist* for their comments.