

Introduction to Modern Catholicism

RUSSELL HITTINGER

In his opening allocution to the Second Vatican Council on October 11, 1963, Pope John XXIII urged the bishops to heed what may be learned from history, "the teacher of life."¹ He recalled, for example, that previous councils were "often held to the accompaniment of the most serious difficulties and sufferings because of the undue interference of civil authorities." The more senior bishops assembled in 1962 could remember that at the papal conclave of 1903, the emperor of Austria effectively exercised the so-called *ius exclusivae*, the right of vetoing a papal candidate. The pope reminded the council that whatever the problems and challenges of the contemporary world, it is not true that in former times "everything was a full triumph for the Christian idea and life and for proper religious liberty."

All of the Catholic thinkers and writers in this volume were born and came of age prior to the Second Vatican Council and lived through different phases of the problematic history recalled by Pope John. Gioacchino Pecci, the future Pope Leo XIII, was the oldest of these Catholic "titans." He was born in 1810, as Napoleon's armies were reconstituting the political geography of Europe. The youngest is Karol Józef Wojtyła, who would become Pope John Paul II in 1978, exactly a century after Leo's election. Born in 1920, just two years after the end of World War I had swept away the last ruling families of Christendom (Hohenzollerns, Wittelsbachs, Romanovs, and Habsburgs), Wojtyła would live to see the political map drastically change yet again in 1939, 1945, and 1989. Remarkably, Pecci and Wojtyła's respective lives encompass nearly two centuries of lived experience, covering almost the entirety of what we would consider the "modern" situation of Catholicism.

These Catholic thinkers are notable for the contribution to the development of Catholic legal, political, and social thought and doctrine—"social teachings," as they are conventionally called, which have been one of the signal achievements of the church since the nineteenth century. This body of thought was not just the doctrinal work of popes and councils, but also the labor of scholars and activists, both clerical and lay. The Catholic mind was formed in a context of struggle with modern ideas and institutions. This conflict was often muddled, chaotic, and sometimes violent, but as so often happens in the history of ideas, it likewise provided the soil for creative advances in the areas of philosophy, theology, and jurisprudence. The problem of the state was the crucible in which the Catholic mind was sharpened. Its importance can be gauged by the fact that when John Paul II was elected pope in 1978, his thirteen predecessors had written some three hundred encyclicals, about half of which were devoted to problems relating to the nature, the ideologies, and the policies of the state.

Political society, of course, was not merely the preoccupation of Catholic thinkers, for the greatest, most sustained, and most troubling work of modernity is the state. If we ask a modern person who or what is sovereign, he or she would not say, "reason," "the individual," or "science," but instead, without hesitation, "the state." The states formed in the wake of the Napoleonic wars at the turn of the nineteenth century were the engines of science and military technology, colonialism, education, and law. Catholics certainly were not unique in having to reckon with the phenomenon of the state. In other respects, however, the Catholic Church had a different and more troubled relationship to the state. The church's enormous size and international scope, its public law and authority, its educational institutions, and, above all, its refusal to reconfigure itself into national churches, made conflict and rivalry with the modern state almost inevitable. State monopoly over law and, increasingly, education made canon law and the educational system of the church appear to be an *imperium in imperio*. Religious congregations and orders, with their vast properties, their ancient exemptions from taxation, and their legal privileges drawn from the solicitude of the Roman See and its concordats with temporal sovereigns, offended the new spirit of citizenship.

The rivalry, however, was never anything quite so simple as what is implied by the conventional rubric "church and state." Also at stake was the constitution of society as a spiritual and cultural order that has its own distinct forms of authority and modes of liberty. By the late nineteenth century, it was well understood that society is not a garment that can be divided between civil and ecclesiastical powers. Modern liberalism was

also shaped by concern for the liberty of civil society. How to protect and enhance the relationship between three spheres—church, state, and society—is the kernel of what would come to be called "the social question," one that would test the speculative and practical wisdom of Catholicism.

Our survey of Catholic legal, political, and social thought begins with the crisis of the nineteenth century. The demise of Catholic political Christendom after the revolutions of 1848 was the matrix for the problems that defined Catholic social thought, even to our own time. We then look at the magisterial effort of Pope Leo XIII to craft a new approach to the issues of church, state, and society. Of particular importance was his *ressourcement* of scholastic Thomism. The so-called Leonine revival of Thomism not only left a deep imprint upon systematic theology and seminary education but also had far-reaching effects upon the way Catholics thought about legal, social, and political issues. Jacques Maritain, John Courtney Murray, and Karol Wojtyła (the future John Paul II) are products of this Leonine revival. Undoubtedly, they appropriated the thought of St. Thomas in different ways, but the similarities are also quite evident. The case for human rights grounded in natural law, the development of the principle of subsidiarity, and the argument for the integrity and quasi-autonomy of civil prudence are the work of a refurbished Thomism. If Pope John XXIII had good reason in 1962 to celebrate a normalization of relationships between the Catholic Church and temporal authorities, the work of the council certainly did not tie together every loose end. Therefore, we shall need to consider some of the tensions that have arisen within Catholic legal, political, and social thought since the council. Liberation theologians have questioned whether the synthesis of scholastic anthropology and liberal constitutionalism adequately diagnoses the problems of the developing world, and whether it gives proper scope to the prophetic social and political message of the gospel. Within the world of the economically developed Western democracies, that same synthesis of Catholic thought and liberal constitutionalism has become problematical, particularly along the axis of "life" issues concerning human dignity and natural law.

THE NINETEENTH-CENTURY CRISIS

After the revolutions of 1848, the Spanish diplomat and political theorist Juan Donoso Cortés asserted, "We cannot know what is religiously affirmed about God without also knowing what is politically affirmed or denied about government."² No Catholic could have disagreed with the

proposition. Yet, on all sides, the best minds could arrive only at a negative consensus. Within the Catholic Church there was a broad and deep consensus that the church is not *in* the state. For their part, statesmen in the capitals and courts of Europe could agree that the state is not *in* the church. But it was far less clear how to formulate affirmative propositions about the relations between religious, political, and social authorities. Beginning with Leo XIII, Catholic theologians, philosophers, and jurists began to supply those missing propositions.

Their work, however, required an understanding of what had become dysfunctional in Catholic political Christendom. Such an understanding was not easily reached, among other reasons, because the political situation from which the church had to extricate itself was not simply the result of revolutionaries and new secular regimes overtly hostile to the church. It was also the handiwork of the church that clung for centuries to the altar-throne order. In *The Things That Are Not Caesar's* (1927), Jacques Maritain insisted that "it was five hundred years ago that we began to die."³ The problem began in the politico-ecclesiastical soil of a decadent papacy, weakened first by the great schism (1378–1417), and then by the turmoil of the Protestant Reformation (1517). To avoid schism, to create a political climate friendly to the church's reforms in the Council of Trent (1545–1563), and to facilitate the burgeoning Catholic mission in the New World, the papacy conceded patronal privileges to monarchs. These privileges became a crucial juridical ground for building modern states, and would have a remarkably long-lived career. They survived not only the revolutions of the eighteenth and nineteenth centuries but also the formation of totalitarian states of the twentieth.

Since the sixth century, the temporal estate of the church had depended upon lay patronage. Prominent laypeople donated properties to the church and thus acquired certain rights and responsibilities over those properties and their clerical occupants. The cluster of rights and privileges was called the *ius patronatus*, from the word *patronus*, the father of a trust. Most important was the *ius praesentandi*, the right to nominate or present the clerical candidate. By the ninth century, patrons asserted the right to receive feudal homage from their clerical vassals, in exchange for which the layman vested the bishop, priest, or abbot in his temporality, his ecclesiastical property. This infeudation of the church led to the investiture crisis of the eleventh century. Pope Gregory VII (1015–85) and his successors tried to forbid clerics and religious from giving homage, lest the ecclesiastical office be confused with the fief of a vassal. On the model of the monastery of Cluny, whose monastic charter included immunity from lay control, medieval popes built a church within a church, consisting

of religious houses and eventually religious orders, which enjoyed exemptions not only from lay control but also from the authority of local ordinaries. The Gregorian quest for a church independent of royal and lay supervision, autonomous in its own law, and answerable only to Rome was somewhat successful with respect to religious orders; but in its quotidian life, the church was not very effectively extracted from the tangle of patronal rights.

In the modern period, this patchwork of patronal rights came into the hands of royal families intent upon creating sovereign states. This new form of Catholic Christendom began in Spain.⁴ As Ferdinand and Isabella completed the final stage of the *reconquista*, the 1486 Bull of Granada conferred on them, "as a reward of their crusade," the right to nominate all major prelates as well as to hold in trust tithes and endowments in support of religion in Granada.⁵ An entire province of the church thus became a benefice of the crown. When the conquest was complete and the New World was discovered in 1492, Pope Alexander VI issued the bull *Inter caetera* (1493), conceding to the monarchs title to the lands discovered and still to be discovered in the Indies. The grant included the power on the monarchs to license clerics who wished to sail to the Indies. In effect, the monarchs became transatlantic apostolic vicars. In 1508, Pope Julius II's bull *Universalis ecclesiae* conceded a universal patronage over the church in America. After the Anjou-Bourbon house acceded to the Spanish throne in 1700, it won from Pope Benedict XIV in 1753 the patronal right throughout all of Spain. Thus came into existence what was called the *Patronato Real Universal*. Rome had never before conceded, nor had any Catholic prince before received, such a package of delegated authority. The key point, however, is that Madrid did not regard the authority as delegated, but rather interpreted Roman concessions as recognition of authority inherent in state sovereignty.

The development of the modern Gallican church in France paralleled the situation in the Spanish dominions. In 1516 Pope Leo X made a remarkable concession to the king of France, granting Francis I a universal right of nomination to French bishoprics and abbeys.⁶ Capitular elections were abolished, and the entire Gallican episcopacy, including some 800 abbeys and 280 priories, became the benefice of the king. Louis XIV astutely used the potentially schismatic Gallican Articles (1682) as a negotiating chip for another deal. Promising in 1690 not to enact the articles into law, Louis won from Pope Innocent XII regalian rights over four southern provinces theretofore exempt from the 1516 concordat. By vowing not to assert in legal theory what he was now entitled to do in practice, Louis XIV completed his hegemony over the church in France. The offices

and temporal estates of the church were in effect national property distributed by the king. They flowed from Versailles to a nobility no longer organically tied to (or even present to) the land, the diocese, the monastery; indeed, bishops were consecrated in the royal chapel at Versailles rather than in their own dioceses. When the Estates General met in early summer 1789, every one of the 118 bishops and 18 archbishops was a noble on the state's dole. The architects of the French Revolution of 1789 did not invent, but rather inherited, the principle that the church, as a visible and temporal society, was the property of the state.

This form of Catholic political Christendom proved quite sturdy, lasting for nearly three hundred years. The church recognized the *de facto* reality of modern, state-making regimes, while demanding that they remain *de jure* within the fold of Catholicism. Except in the Papal States, Belgium, and in a handful of Protestant countries (such as the United States), virtually every baptized Catholic in the world lived under a regalistic regime at the time of the French Revolution. Impressively, its basic features managed to survive the first wave of revolutions in Europe and in Latin America. In Republican France, royal patronage was swiftly translated into terms of popular sovereignty. The church in all of its temporalities was the property of the state, and all her bishops and clergy were its civil servants. In the former Spanish dominions, the Patronato Real became the Patronato Nacional. Venezuela, for example, would go through twenty-six constitutions without abandoning its law of patronage.

At first reluctantly, but then abruptly, Rome began to separate itself from political Christendom in the decade before the First Vatican Council (1870). Its initial reluctance was due to the Congress of Vienna (1815), where Austria, Russia, Great Britain, and Prussia attempted to arrest the revolutions. Partisans of Catholic order were to be satisfied with the liberation of Pope Pius VII from French captivity, the restoration of the Papal States in Italy and the Bourbon monarchy in France. Thus began the secular and ecclesiastical policy of legitimism. The tangled and tattered relationship between Catholicism and the states was to be solved by obedience to properly constituted authority. No encyclical better exhibits the principles and the failure of Legitimism than Pope Gregory XVI's *Cum primum* (1832). The issue at hand was the 1830–32 Polish uprising against Tsar Nicholas I. A regalistic par excellence, Nicholas governed his dominions according to the slogan, "Orthodoxy, Autocracy, and Nationality." As part of the political settlement of the Congress of Vienna, Russia won the right of governing the former Kingdom of Poland, comprising the Duchy of Warsaw, bordered on the north and west by Prussian provinces and on the south by the eastern province of Galicia. The uprising was met with brutal

Russian repression, begun in Warsaw on November 29, 1830. The constitution was suspended, the universities were closed, and both Roman and Uniate churches were subjected to severe restrictions.

Gregory told the Polish bishops in *Cum primum* that he had no greater hope but that their provinces would be "restored to peace and the rule of legitimate authority." Reminding the bishops of the scriptural warrants for obedience to temporal authority, Gregory wrote:

"Let everyone," says the Apostle, "be subject to higher authorities, for there exists no authority except from God, and those who exist have been appointed by God. Therefore he who resists the authority resists the ordination of God (Rom. 13.1–2). . . . Similarly St. Peter (1 Pet. 2:13) teaches all the faithful: "Be subject to every human creature for God's sake, whether to the king as supreme, or to the governors sent through him . . . for (he says) such is the will of God, that by doing good you would silence the ignorance of foolish men." By observing these admonitions the first Christians, even during the persecutions, deserved well of the Roman emperors themselves and of the security of the state.⁷

The Polish bishops were surely puzzled, not to say appalled, by the suggestion that an eight-hundred-year-old church, with a tradition of fierce loyalty to Roman ecclesiastical authority, should abandon its self-government to a schismatic tsar on the model of the obedience owed by early Christians to the Roman emperors.

Undoubtedly, *Cum primum* represented the lowest point of the era of legitimism. However, it had the unintended effect of moving Catholic opinion in favor of a radical reckoning with the dysfunctional remnants of political Christendom. The doyen of the movement was Joseph de Maistre, whose *Du Pape* (1919) stands to nineteenth-century Catholic political theology as Rousseau's *Social Contract* stood to the eighteenth-century ideal of civic republicanism. Though he wrote for the broad project of the Restoration, his work would have nearly the opposite effect, for it was de Maistre who insisted that Gregory VII's work be completed in modern times. He remorselessly criticized the ecclesiology of national churches, taunting Gallicans to change the creed to read, "I believe in divided and independent Churches." He insisted that "nothing is accomplished" without overthrowing the "magic castle" of regalism (see chapter 1, this volume); he accused kings and princes of a "great rebellion."⁸ For de Maistre, Pope Gregory VII, who declared the freedom of the church, was "the genius," the man without whom "all was lost, humanly speaking."⁹

It was a most unlikely proposition to declare Gregory VII's policies of the eleventh century to be the model for the church's relations to the restored crowns of 1815. But Maistre struck a nerve in the Catholic imagination by characterizing the French Revolution as a judgment on the nations, specifically a rod of chastisement for the captivity of Catholic political culture to regalism. De Maistre died in 1821, spurned by Pope Pius VII and the Roman Curia, but predicating a great future for what he called "my greatest work." As the political-ecclesiastical controversy stumbled into one dead-end after another, and as the ideas of *Du Pape* were filtered through many different minds, a new generation became convinced that the state cannot co-govern the church.

Catholic opinion was divided on the question of whether the political and social instability of Europe was due chiefly to an excess of liberty or to an excess of authority. Catholic "liberals" such as Lamennais, Montalembert, and Lacordaire, took the position that the main problem was an excess of authority. The new states were neither Christian nor secular, but exploited the alliance of throne and altar to repress the church and society. Liberals urged that the church put its moral authority behind liberty. Catholic "conservatives," such as Louis de Bonald, Joseph de Maistre, and Donoso Cortés, emphasized the pole of authority. The mediation of this dispute would have to await the magisterial encyclicals of Leo XIII and the formation of Catholic social doctrine in subsequent decades. In the middle of the nineteenth century, however, liberals and conservatives could agree on one point. The *ius patronatus*, in every one of its guises, had to be uprooted and the church restored to the Gregorian ideal of liberty. Almost every major Catholic thinker of the era wrote a treatise or pamphlet on the recovery of the Gregorian reform.¹⁰

This drumbeat of opinion could have only one practical conclusion—some kind of separation of church and state. How this could be accomplished was not clear. Rome was hemmed in by concordats that allowed the states to set and effect ecclesiastical policies. With the exception of Belgium, whose 1832 constitution forbade any use by the government of patronal rights, the former Catholic powers were not interested in relinquishing their titles to supervise religion. Unlike the American constitution, which was unfettered by any history of patronal rights and in any case did not use "separation" as a juridical term of art, separation in the European context was consistent with state authority over ecclesiastical properties, seminaries, and courts. Popes had condemned the principle for that very reason. In his famous speeches at the Malines Congress in August 1863, the Catholic liberal Charles de Montalembert pointed out that separation "can very well be combined with terrible oppression."¹¹

The breakthrough did not occur in the serene atmosphere of theory or in the chambers of diplomats, but in Pope Pius IX's rather impulsive decision to issue the *Syllabus of Errors* (1864). Frustrated by the unraveling of the Restoration and by the loss of his dominions in Italy, save the city of Rome itself, Pius published a list of eighty erroneous propositions. The eightieth condemned proposition read: "The Roman Pontiff can, and ought to, reconcile himself, and come to terms with progress, liberalism and modern civilization." Public reaction to the *Syllabus* was as furious as the document itself. Though newspapers had fun mocking the pope's quixotic dismissal of modern civilization, political officials understood that something more serious was afoot. For the document contained several other propositions that, if acted upon, would amount to separation initiated from the side of the church. They carefully noted that seven propositions (§§28–30, 41, 49–51) denied that patronal rights inhere in state sovereignty, that four propositions (§§45–48) denied state monopoly in matters of education, and that four other propositions (§§29–30, 52–53) baldly reasserted the Gregorian position on the legal and economic autonomy of religious orders.

Their anxieties were confirmed four years later when Rome declined to invite nominally Catholic nations to send ambassadors (*oratores*) to the First Vatican Council. This broke with a conciliar custom dating not only to the Council of Trent (1545–63), but also to the Council of Nicea (325). Presiding at Nicea, the Emperor Constantine told the assembled bishops: "You, on the one hand, are certainly the bishops inside the Church. I, on the other, might then be the 'bishop' appointed by God of those outside."¹² So, too, in the West, the Catholic sovereign was a kind of *episcopus externus*. The secretary of state, Cardinal Antonelli, refused to extend the invitation on the ground that there could be no principle of selection between "good" and "bad" Catholic sovereigns. Privately, Antonelli said that "exclusively Catholic Governments had virtually ceased to exist."¹³

In France, Émile Ollivier declared in the Chamber of Deputies that the pope had in effect introduced the separation of church and state: "Yes, this is a new fact, a new deed indeed that the dis severance between the laical society and the religious society is put into effect by the pope's own hand."¹⁴ The ever-mischievous Ultramontane editor of *L'Univers*, Louis Veuillot, gleefully agreed—princes are now "outside the Church." Moreover, rumor had it that the Jesuits intended to use the First Vatican Council as the occasion to doctrinalize the *Syllabus*. It was in this light that Ollivier would make bold to judge that once deprived of these instruments, the state can be said to be separated from the church. Shrewdly, he went on to say, "Undoubtedly, Gentlemen, I know that Rome earnestly

wishes to separate itself from the State, but She does not want the State to separate itself from Her."¹⁵ Count Daru, the French foreign minister, sent a memorandum to Cardinal Antonelli, anxiously pointing out that "all this is nothing else than the consecration of the supreme authority of the Church over society."¹⁶

Perhaps unwittingly, Count Daru had stated the issue with unusual clarity. Can we imagine a church autonomous in its own sphere, capable of acting upon and through its own members—and thus indirectly upon the wider society—without being an agent of the state (the older confessional model) or requiring the mediation of the state (the newer regalist model)? Such a solution would mean, on the side of the church, deep revision of the idea that the state has a juridical-political power of *cura religionis*, care of religion. In an 1892 allocution, Leo XIII told his curial cardinals that the church's temporal mission would center upon "faith embodied in the conscience of peoples rather than restoration of medieval institutions."¹⁷ The much-disputed medieval doctrine of "indirect" ecclesiastical or papal power to suspend acts of states, much less to depose temporal authorities, was abandoned in favor of an "indirect" authority exercised through the teaching of faith and morals. On the part of the states, the solution would require not only jettisoning the idea that the modern state is a *sanctum* in the medieval sense of the term; it also pointed to the need for what the famous Catholic social theorist and politician Luigi Sturzo (1871–1959) termed a "rhythm of social duality."¹⁸ Society is neither a creature of the state nor the church. It is not a "depersonalized whole" capacitated to act only through the superstructure of ecclesiastical or civil administration.¹⁹

The politico-ecclesiastical crisis of the nineteenth century became a lodestar for Catholic social doctrine, the lesson that oriented the work of the next generation of thinkers. Gioacchino Pecci, of course, was a bishop at the council. After becoming Pope Leo XIII in 1878, he would devote his magisterium to understanding the triadic relationship between church, state, and society. Angelo Roncalli, the future Pope John XXIII (1881), Jacques Maritain (1882), Dorothy Day (1897), and John Courtney Murray (1904) were all born in the wake of the crisis. As we saw, John XXIII opened the Second Vatican Council with an admonition to the bishops to recall the lessons on that era. Maritain's first important work in social and political philosophy, *The Things That Are Not Caesar's*, emphasized the Gregorian ideal of church liberty ("Canossa will always remain the consolation of free minds") and examined the new situation of "indirect power" in terms of the moral and prophetic voice of the church acting through society.²⁰

No one studied the nineteenth-century crisis more carefully than John Courtney Murray, who invoked its lessons at a crucial stage in the debate over religious liberty at the Second Vatican Council. Bishop de Smedt, the *relator* of the group of bishops charged with formulating a position on the matter, invited Murray to present a summary of the issues disputed up to that point in the discussion. In the summer of 1964, he circulated a brief that was later published under the title "The Problem of Religious Freedom" (1964, 1993). Tracing the crisis through the *Syllabus of Errors* and the letters of Leo XIII, Murray showed why the church-state controversy was irresolvable on monistic grounds, namely the subordination of society to a single, undifferentiated citizenship superintended by the omnicompetent state. The crisis called for a recovery of "the Gregorian state of the question of public care of religion," as well as a new discernment of the "growing end" of the tradition."²¹

THE LEONINE SYNTHESIS

Murray's notion of a "growing end" presupposed, of course, a tradition. Pope Pius XI (1922–39) was the first pope to speak of social doctrine as a unified body of teachings that develop by way of clarity and application. He thought of himself as inheriting a "doctrine" (*doctrina*) "handed on" (*tradita*) from the time of Leo XIII. Significantly, he contended that the tradition is communicated not only in the magisterial work of the papal office, but also in the ordinary work of bishops and priests, in the research and writings of lay scholars, as well as in the policies of non-Catholic statesmen.²² Although it is doubtful that Leo deliberately launched a new doctrinal specialty per se, it cannot be doubted that his work gave a certain cachet to the idea. Indeed, the period from 1878 to 1939 could be called the era of Leonine synthesis. It reached its creative high-water mark in the 1930s between the two world wars, but its effects were consolidated at the Second Vatican Council (1962–65).

The expression "Leonine synthesis" is appropriate for two reasons. First, Leo had to reconcile Pius XI's *Quanta cura* (1864), and its appended *Syllabus of Errors*, with *Dei Filius* (1870), the dogmatic constitution of the Catholic faith adopted at the First Vatican Council. Whereas the *Syllabus* had pungently condemned errors of the Enlightenment, *Dei Filius* affirmed the integrity of reason and its harmony with the propositions of divine revelation to which faith assents. The council affirmed that God, "lord of sciences," is the same God who reveals sacred "mysteries." There is a "twofold order of knowledge," the council maintained, "distinct not only

as regards its source, but also as regards its object."²³ The church does not seek to hinder the advancement of knowledge in the sciences and arts to which natural reason can attain. Leo's many teaching letters represent an extended commentary on the problems listed in the *Syllabus*, but always through the optic of *Dei Filius*, distinguishing the negative and affirmative propositions, and pointing to the different modes of knowledge and wisdoms that apply to a disputed issue.

Second, we can speak of a Leonine synthesis in terms of his ambitious and relentless effort to revive Thomism, for which his encyclical *Aeterni Patris* (1879) is the *magna charta*. His interest in St. Thomas began at the ripe old age of ten, during his training at Viterbo, and continued at the Roman College, where, at the age of fourteen, he became the student assistant of the Jesuit neo-Thomist Luigi Taparelli. In time, he would meet Taparelli's neo-Thomist colleagues Matteo Liberatore and Joseph Kleutgen, who would work on the drafts of *Dei Filius* and *Aeterni Patris*. As bishop of Perugia, Pecci recruited a Thomistic faculty for his Accademia di S. Tommaso, which was an incubator for what became known as the Leonine revival. Once he became pope, Leo swiftly moved to place Thomists into key positions in the curia and in the Roman colleges.

There were practical reasons for Leo's bid to install Thomism as the preferred method for Catholic education. The suppression of the Society of Jesus in 1773 had destroyed an international system of education that was broadly scholastic in orientation. The Napoleonic ideal of the state as teacher (*l'État enseignant*) brought what remained of Catholic schools to the brink of extinction in Europe and South America. Bismarck's *Kulturkampf* was ignited by the issue of church schools. With the more centralized and independent situation of Catholicism after Vatican I, Leo saw the chance to rebuild education, beginning with seminaries. Moreover, the institutions would need a curriculum. Although *Dei Filius* had a scholastic ambience, it did not attempt to settle questions of which particular philosophical schools or theological methods ought to be adopted. For example, *Dei Filius* asserted that the existence of God "can be known with certainty from the consideration of created things"; yet, as Gerald McCool has pointed out, the document did not "specify any definite argument through which the existence and nature of God could be established," nor did it affirm "that purely natural knowledge of God had ever been achieved in fact."²⁴ Leo seized upon the opportunity to institutionalize Thomism, the only method, in his estimation, capable of protecting positive revelation against modern historicism and naturalism without, at the same time, evacuating the claims of natural reason. Thomism would clarify and unify the internal deposit of faith and doctrine, maintain proper analogies to the

discoveries of natural reason and the sciences, and would provide apologetics needed to defend the credibility of Catholicism. In his first encyclical, he made his intentions clear: We must "endeavor that not only a suitable and solid method of education may flourish but above all that this education be wholly in harmony with the Catholic faith in its literature and system of training, and chiefly in philosophy, upon which the direction of other sciences in great measure depends."²⁵

The institutional and systematic thrust of Leo's program would leave a deep imprint upon the Catholic mind, both clerical and lay, until the 1960s, when Thomistic scholasticism gradually lost its institutional monopoly in the seminaries and universities. The Catholic mind in the 1960s began to gravitate more toward the social sciences than philosophy, and toward personalism rather than the ontology of an Aristotelian natural science. In the area of social thought, however, neo-Thomism both preceded and outlasted Leo's broader institutional aims. In *Aeterni Patris*, he pointedly recommended the teachings of St. Thomas Aquinas for the "true meaning of liberty" and for the "divine origin of all authority."²⁶ On these topics, the timeless air of the thirteenth-century scholastic system would not suffice without interpretive bridgework. Middle axioms needed to be devised in order to make a thirteenth-century scholasticism speak to the new social situation. Thomas, after all, had no conception of a modern state or an industrialized economy. Nor in Thomas could there be found a ready-made doctrine of subsidiarity, justiciable natural rights, social justice, political parties, or a lay-based democracy.

The interpretive bridgework began among Leo's Jesuit teachers and colleagues. It is not at all surprising that the intellectual work in the social and political area started with Jesuits. The Jesuits had been expelled first from the Catholic courts in 1759–68 and had been restored only in 1814. They could not fail to be acutely conscious of the political riptides of modern Europe. Pope Pius IX fled the revolution in Rome in 1848, taking refuge in the Kingdom of Naples. There, in exile with the pope, Jesuits began publication of *Civiltà Cattolica* on April 6, 1850. The journal became a venue for Taparelli and Liberatore to mount an aggressive and polemical case for Thomism as the only adequate method for meeting the challenges of the era. Some of their contributions were systematic in nature, covering issues of anthropology, epistemology, and metaphysics. The more controversial pieces, however, dealt with social issues: the nature of the common good, the respective jurisdictions of church and state, the nature and scope of law, and the origin of human authority. No one had seen such a dialectical and polemical Thomism since the sixteenth century, when Baroque-era scholastics in Spain and Portugal—Robert Bellarmine,

Francisco de Vitoria, Bartolomé de Las Casas, Francisco Suarez, and Luis de Molina—used Thomas to counter the claims of absolute monarchs. The Jesuit *ressourcement* of sixteenth-century Thomistic political theory was pressed now against Rousseavians and physiocrats who laid the philosophical foundations for laicist republicanism.²⁷ Interestingly, in 1854 the Jesuit editors and writers of *Civiltà Cattolica* were expelled from the Kingdom of Naples for daring to assert that the natural law left the institutional form of politics somewhat indeterminate—a position that appeared dangerously subversive in an era of revolution.

At mid-century, neo-Thomists began to chart a middle course between the absolutist claims of monarchy and the absolutist claims of popular sovereignty. Above all, Leo and his neo-Thomist mentors and colleagues were interested in the problem of unity and plurality. In their view, the chief problem of the modern project was not the political “form” of republican or popular government. Thomists had always recognized that a human polity is amenable to plural, legitimate forms, and that such forms can either evolve by custom or change by acts of deliberate constitutional prudence. Thomas himself argued for the prudence of a mixed regime of monarchical, aristocratic, and popular elements, which he believed was embodied in the ancient Jewish state.²⁸ The problem, rather, lay in what the Jesuit neo-Thomists discerned to be a distinctively modern premise, namely, that unity is achieved only extrinsically by contracts, by the serendipitous outcomes of a market, or, more ominously, by the external application of law as the superior force of the state. Thomists argued that pluralities stem from intrinsic unities, beginning with human nature itself, and including matrimony, family, church, and body politic. The question was not whether there is social pluralism with distinctive modes of authority and freedom, but whether there is an ontological landscape internal to social forms. By nature and supernature, are there norms anterior to, and higher than, the laws imposed by civil law and contract? Indeed, from the nineteenth century to the present day, Catholic social thought has orbited around this issue. The great question of post-1789 Catholicism was whether the modern crisis is to be ameliorated by more or by less public freedom. Neo-Thomists reformulated this problem. It was first necessary, they argued, to understand the anthropological and social grounds of liberty and obligation.

These themes are evident in the great papal letters of Leo XIII, particularly *Rerum novarum* (1891), where Leo distinguished between the rights of obligations of individuals, families, voluntary associations, civil government, and Christian charity. But his work was not a finished product. He had relatively little to say about either the theory or practice of democratic government, and, until the end of his life, remained frustrated by

the problem of (Catholic) political parties.²⁹ While his economic theory represented a huge advance in comparison with the thought of his predecessors, it was not well developed in any descriptive or scientific sense. Moreover, while Leo brilliantly delineated the triad of church, state, and society, defending the liberties of church and society vis-à-vis the state, he did not follow through the implications for a fuller doctrine of religious liberty. Nonetheless, Leo imparted to the Catholic world an important precedent. On issues of revealed theology proper, the deposit of faith and tradition would be organized scholastically; but, regarding the “changeable ocean of human affairs,” which is to say, “in regard to purely human societies,” Leo permitted, even encouraged, new applications of traditional principles.³⁰ As Thomas had said, the natural law can change by addition, as human prudence discovers new applications beneficial to human life.³¹ Leo took inspiration from Luigi Taparelli, who coined the term “social justice,” advanced the first philosophically rigorous account of “subsidiarity,” and began the work of integrating natural rights with the older doctrine of natural law. Though inspired by the thought of Thomas, little of this could count as a seamless representation of Thomas’s own doctrines.

SCHOLASTIC RENDITION OF A “NEW” CHRISTENDOM

The Leonine project came to fruition in the period framed by the two world wars. Indeed, it was during this time that most of the thinkers in this volume received their ecclesiastical and intellectual formation. It took a quarter of a century for the Leonine project to percolate in the institutions, producing such lay scholars such as Jacques Maritain, Yves Simon, and Heinrich Rommen, and priest scholars as Heinrich Pesch, Luigi Sturzo, and John Courtney Murray. However, two other things helped to propel the flowering of Catholic social, legal, and political thought after World War I. The first was the election to the papacy of Abrogio Damiano Achille Ratti (1922), who took the name Pope Pius XI. As a young cleric, Ratti had been trained by Leo’s Thomistic colleagues in Rome. Ratti was especially influenced by the writings of Luigi Taparelli, whose work on social justice, subsidiarity, and natural rights was funneled into the Pian encyclicals of the 1920s and 1930s. Indeed, Pius explicitly recommended Taparellian neo-Thomism in the encyclical *Divini illius* (1929).³² If anything, he was more insistent than Leo that Thomas’s social, legal, and political thought be interpreted and adapted to the modern situation. In *Studiorum ducem* (1923), he went so far as to claim that the second

part of Aquinas's *Summa Theologiae* "contains the foundations of a genuine 'League of Nations.'" ³³

Second, in the wake of World War I, it was imperative that legal, political, and social thought be deepened and sharpened because of the emergence of a new kind of regime. While Thomism had been revised in the baroque era to respond to the absolute monarchies, and revised once again with regard to the *étatisme* of laicist republican governments, Pius's pontificate witnessed the rise of totalitarian regimes in Russia and Germany. In the space of fourteen days in March 1937, Pius issued encyclicals against fascism in Germany, communism in the Soviet Union, and atheistic liberalism in Mexico. ³⁴

Totalitarianism prompted Catholic thinkers to support democratic government, to call for domestic and international authorities to be bound by justiciable natural or human rights, and more generally to develop what can be called a bottom-up model of legal, political, and social thought. ³⁵ In one sense, the bottom-up motif captures a negative moment in Catholic thought. However the Vatican might treat diplomatically with this or that government, Catholic opinion after World War I was adamantly antistatist. We should not be surprised that the Catholic social reformer Dorothy Day converted to Catholicism at this time, and began her active ministries not only on behalf of the poor and needy, but often in opposition to the powers that be in the state, society, and economy. And beyond the Catholic communion, disillusionment with the claims of state sovereignty was evident, for example, in T. S. Eliot's *Murder in the Cathedral* (1935), a morality play in which the absence of a cathartic moment of a repentant state is notable. The bottom-up perspective acquired another meaning, one supplied by Jacques Maritain. In *Integral Humanism* (1936), Maritain spoke of a "New Christendom" in which society is transformed by a church politically *in diaspora*. The church would be the leaven from below.

Jacques Maritain (1882–1973), the grandchild on his mother's side of Jules Favre, statesman and partisan of the Third Republic, was born in a family with impeccable republican credentials. It was all the more dramatic, then, that he converted to Catholicism and was baptized one year after the regime enacted the anticlerical separationist law of 1905. He soon found his way into the neo-Thomist movement spawned by *Aeterni Patris*. In 1919, he and his wife helped to organize Thomistic "circles" in Paris and Versailles. Although his first interests lay in philosophy of science, metaphysics, and epistemology, Maritain was thrown into legal, social, and political thought during the Action Française crisis. Founded in 1899 by Charles Maurras, Action Française rallied two seemingly opposite

strands of French politics: the older monarchists and the new hypernationalists of a more secular bent. Himself an agnostic, indeed a disciple of Auguste Comte, Maurras distinguished the legal nation (*pays légal*) and the real nation (*pays réel*). The merely "legal" nation, he contended, harbored Freemasons, Jews, Protestants, and revolutionaries who thwart national destiny. This movement for an "integral nationalism" initially held some appeal for Catholics, if for no other reason than that it provided relief from the brutal anticlerical laws and seizure of church property by the Third Republic in France. Even Maritain, the son of Protestant and a republican, not to mention the husband of a Russian Jew, flirted with the Maurrassian position.

Having so recently battled monarchical and republican forms of regalism, ecclesiastical authorities in Rome and in France were clear-sighted about the nature of Maurras's ideology. The Congregation of the Index condemned some of Maurras's writings in 1914. In a consistorial allocution of December 20, 1926, Pope Pius XI forbade Catholics to belong "to a school which puts the interests of political parties above religion and causes the latter to serve the former." Excommunications followed in 1927. The Roman condemnations brought Maritain out of his slumbers. Over the next decade he wrote *Things That Are Not Caesar's* (1927), *Freedom in the Modern World* (1933), and his masterwork, *Integral Humanism* (1936), the title of which suggested his effort to counter the integral nationalism of Maurras.

In the foreword to *Integral Humanism*, Maritain noted that while he took inspiration from the perennial philosophy of Aristotle and Thomas, he would make no "claim to engage St. Thomas himself in debates in which the majority of the problems present themselves in a new manner."³⁶ Citing as evidence Mussolini's boast in 1926, "everything in the State, nothing against the State, nothing outside the State,"³⁷ Maritain contended that political Christendom is dead and that any practical program guided by nostalgia for a sanctified political authority would only fuel new despotisms and totalitarianisms. In its place, he advanced the idea of a "new humanism" and a "new Christendom." Not by the imposition of political power, but rather, by the sanctification of ordinary life through the leaven of the gospel, the church should aim to reform society from below. The new Christendom should be personalist, pluralist, and peregrinal.³⁸ The human person is constituted in the borderland of ends that are distinct but never entirely separated. On one hand, the person possesses a natural dignity with its corresponding perfections, liberties, and duties; on the other hand, through the spiritual powers of intellect and will, and decisively by grace, the person is called to a transcendent order. The state, he argued, fulfills its

duty to God by a "minimal unity" that facilitates the development of the human person and his extraterritorial rights and privileges.³⁹ In the waning years of his life, as he looked back upon the development of Catholic thinking in the twentieth century, Maritain said that the project depended on discerning "the great reversal." "It is no longer the human which takes charge of defending the divine," he explained, "but the divine which offers itself to defend the human."⁴⁰

Maritain's lay-oriented personalism, his scathing critique of modern notions of state sovereignty and nationalism, his interest in plural social entities enjoying liberties and authority distinct from the state, and, above all, his defense of natural rights, which he called the "proper achievement" of the eighteenth century,⁴¹ not only anticipated but also increasingly began to influence the course of Catholic doctrine. Pope Pius XI not only gave papal cachet to the principle of subsidiarity, but also began to construct lists of human rights that must be honored across jurisdictions. Interestingly, Pius noted approvingly the effort of the U.S. Supreme Court to protect "prior rights" in the sphere of religion, family law, and education.⁴² It was, of course, after World War II that the international community began in earnest to adopt lists, charters, and declarations of human rights, but this process was well under way in Catholic thought two decades earlier as a way to reckon with totalitarian regimes.⁴³ The ever-increasing prominence of the rights paradigm is one example, along with the principle of subsidiarity, of what we have called the bottom-up perspective. Catholics are to participate in the polity not merely by obeying properly constituted authority, but also by claiming their rights according to natural law. Writing to the Mexican church, Pius gave a cautious approval to the tactic of civil resistance to unjust laws, describing the duty (*munus*) of Catholic Action as "the preparation of Catholics to make just use of their rights, and to defend them with all legitimate means according as the common good requires."⁴⁴

DEMOCRACY AND RIGHTS

In Catholic thought, rights theory developed more quickly than democratic theory. This was due, in part, to Pope Leo XIII, who admitted the principle that the forms of government are changeable, but stoutly defended the rights of nonstate associations. Leo feared that democracy's current "philological and philosophical significations" implied something more than popular government—namely, a kind of anarchical contest of political parties devolving into class warfare. He worried that "Christian

democracy" would drag episcopal authority and ecclesiastical institutions into a strife that was merely "political" in the pejorative sense of the term.⁴⁵ To make matters more difficult, since 1868, popes had maintained the policy of *non-expedit* (literally "it is not opportune") regarding Catholic participation in the Italian regime. Leo himself had reaffirmed the ban in 1895. It was not lifted until 1919, at which time was founded the non-denominational Partito Popolare Italiano inspired by Luigi Sturzo. Clarity about the issue of democracy was also retarded by Roman reliance upon concordats with governments, especially during the pontificate of Pius XI. The practical reason governing the proliferation of concordats was the abrupt change of political geography after World War I, whereupon dozens of concordats had lost their force and had to be renegotiated state-by-state.⁴⁶ Insofar as concordats protected church liberties from the top down, they usually had the effect of dampening Catholic action through political parties.

Two things changed the situation. First, since the death of Pope Leo XIII, neo-Thomists aggressively investigated and propounded a natural law ground of democracy. Some of the work had already been done by sixteenth-century Thomists under the rubric of the "translation theory" of authority. According to the translation theory, political authority is implicitly vested in the body politic, which, by custom or constitutional decree, translates what is held in common to specific offices and persons. Not as to its origin but rather as to its original mode of possession, political authority is democratic in nature, becoming in form a monarchical, aristocratic, democratic, or mixed regime. There are only hints of such a doctrine in Thomas, but the idea had strong credentials among modern scholastics. It was easy to mistake the scholastic theory of an aboriginal democracy of the body politic for modern theories that proposed that authority is a human construct either erected or dissolved by consent. For this reason, Pope Leo and his Jesuit colleagues kept the translation account at arm's length, neither ruling it in nor ruling it out. By the death of Pius XI in 1939, however, the translation theory had triumphed within most of the schools and eddies of neo-Thomism. The most elegant account of the theory is to be found in Yves Simon's *Philosophy of Democratic Government* (1951), where it is called the "transmission theory."⁴⁷ Pius XI certainly did nothing to discourage the proliferation of the theory. In 1930 and 1931 he made Robert Bellarmine a saint and a doctor of church. Bellarmine's *De Laicis* III.6 was widely cited as a scholastic proof-text for the translation account.⁴⁸

As Leo XIII himself had pointed out, it is difficult to give a fixed meaning to the word "democracy," or to say precisely what the word "democratic"

adds to the notions of republican or popular government, or to distinguish between majority rule as merely procedural or an absolute condition of a polity. Even its most ardent scholastic proponents understood that the translation theory did not imply the necessity of democracy as a concrete, historical form of government, for the theory was developed to place a limit on monarchy rather than to support a democratic regime per se. The word "democracy" is used but once in all of the letters of Pope John XXIII, and then only with qualification. Surprisingly, variations on the word "democracy" do not appear in any of the documents of the Second Vatican Council. All of this is difficult for Americans to understand because we equate the regime of limited government, natural rights, social liberties, and subsidiarity with democracy. Such was not evident to the broader Catholic world, for which democracy could imply (as it did for classical liberals) something antithetical to the bottom-up model of authority and liberty.

By the time of World War II, the question was not the bottom-up model, consisting of justiciable human rights, constitutionally limited government, and the liberties of nongovernmental societies. Rather, the question was whether democracy should be accredited (even contingently) as a more desirable form of government. A month after the invasion of Poland, Pope Pius XII rehearsed all of these principles, and declared that the state is a kind of instrument (*quasi instrumentum*), rather than an end, facilitating the "natural perfection of man."⁴⁹ In his Christmas message of 1942, he insisted that the purpose of a juridical order "is not to dominate but to serve, to help the development and increase of society's vitality in the rich multiplicity of its ends." In particular, he mentioned the need to protect "fundamental personal rights," including "one's corporeal, intellectual and moral life and especially the right to religious formation and education [and] the right to worship God in private and public life."⁵⁰ As John Courtney Murray pointed out a decade later, the constitutional issue of religious liberty was virtually settled not only with respect to the explicit statements of Pius XII, but in view of the "juridical" nature of the state. The juridical state coordinates and facilitates rather than exemplifies the perfections and actions of society. Not being an end in itself, the state cannot be sacralized nor directly assigned juridical care of religious institutions.⁵¹ Involving as it does a very sharp distinction between the state and the body politic, the instrumental state is markedly different from the ancient conception of the *civitas* in which the offices of polity (for example, the Roman *cursus honorum*) express the very fabric of the social order. It is different, too, from the classical modern notion of the sovereign state, for which the offices of state are the organs of the body politic rather than mere instruments of an order that might have ontological grounding in

their absence. In twentieth-century Catholic thought, one detects a steady deterioration of any ontological density to the state. Catholic thought increasingly tended to favor social order grounded in natural law and the transpolitical order represented by international organizations. Perhaps for this reason, a certain notion of political democracy would become more attractive.

In his Christmas address of 1944, sometimes translated as "True and False Democracy," Pope Pius XII took up the role of democracy in the postwar reordering of the world. He began on a practical note. Given the disaster and carnage of World War II, people have "awakened from a long torpor," and "rightly adopt in relation to the state an attitude that questions, criticizes, and distrusts."⁵² A democratic form of government, he conceded, appears "as a postulate of nature imposed by reason itself."⁵³ But what is democracy? In the broad sense of term, it can be realized in monarchies as well as republics. Whatever the particular institutional form, democracy is indispensable insofar as it vests "efficient guarantees in the people itself." This is a defensive notion of democracy, one that emphasizes that the people are capacitated to put brakes on "unchecked and unlimited" state power.⁵⁴ Pius attempted to integrate two things that, until that time, were usually discussed as opposites.

On one hand, government requires a certain inorganic, even mechanical element of "checks"—an instrumental language, which Maritain insisted desubstantiates the apparatus of the state. The state is not itself a *societas perfecta* in the classical sense of term, but a "rational and juridical machine" that assists the perfections consisting in the very sociality of the body politic.⁵⁵ On this view, the state is not a thing or a substance, much less a large person imparting a soul to otherwise unorganized matter. Hence, we find three different notions of democracy, none of which is particularly strong in the institutional sense of the term: (1) democracy as a proto-institutional notion of political authority vested in the entire people; (2) democracy as a political regime containing popular elements; and (3) democracy in the defensive sense of popular checks upon government.

Society, on the other hand, is not a mere instrument. It consists of plural and intrinsic forms, not "masses" to be aggregated. Here, then, we find a distinctively modern conception of external "juridical" order distinct from, and subordinate to, a richer social ontology. This might help us to understand why the principle of subsidiarity, which has figured ever more prominently in Catholic thought since the 1930s, is not adequately represented as a question of scale (lowest possible level), and even less of devolution. Devolution, of course, implies that the state possesses powers that are recirculated to "lower" organs from the top down. At the level of public

policy, subsidiarity sometimes is invoked on cost-benefit grounds to suggest that private agents and groups can accomplish public ends more efficiently. This, however, is not the principle of subsidiarity. Rather, subsidiarity presupposes that there are plural authorities and agents having their "proper" (not necessarily, lowest) duties and rights with regard to the common good. Pius XII noted that "every social activity is for its nature subsidiarity; it must serve as a support to the members of the social body and never destroy or absorb them."⁵⁶ As we said, the idea came from Taparelli, who used the term *ipotattico*, taken from the Greek *hypotaxis*, meaning the rules governing the order of clauses within a sentence. Rendered in Latin as *sub sedeo*, subsidiarity evokes the concept of auxiliary troops in the Roman legion which "sat below," ready and duty-bound to render service. Hence, it describes the right (*dritto ipotattico*) of social groups, each enjoying its own proper mode of action. While sometimes identified with the word *subsidium* (help, assistance), the point of subsidiarity is a normative structure of plural social forms, not a trickling down of power or aid.⁵⁷ To be sure, subsidiarity is often described and deployed in a defensive sense—as to what the state may *not* do or try to accomplish. But the principle is not so much a theory about state institutions, or about checks and balances, as it is an account of the pluralism in society. Once we distinguish subsidiarity from the similar but misleading notions of distribution, devolution, and aid, it is easier to grasp why it was introduced as an aspect of social justice. For Pius XII, social justice is that kind of order that ensues when each person is capacitated to "exercise his social *munus*," to contribute to the common good according to his proper office and role.⁵⁸ This may or may not require the giving of aid, the correction of a deficiency, or the removal of barriers to the performance of social duties, but what it always entails is respect for a pluriform social order.

Pope John XXIII's famous encyclical *Pacem in terris* (1963), issued at the outset of the Second Vatican Council, is a compendium of twentieth-century Catholic social, legal, and political thought. The "laws which govern man's relation with the State," he began, are not the same "as those which regulate the blind, elemental forces of the universe."⁵⁹ The natural moral law sets certain nonnegotiable norms for domestic and international political order. Of capital importance is the creation of a public order based on three pillars. The first is that "a clear and precisely worded charter of fundamental human rights be formulated and incorporated into the State's general constitution." This can be called the antityrannical pillar, for the state is meant to serve human dignity, not the citizen the state. Second, constitutions must clearly delineate the offices, competencies, and scope of state authority, including a separation of powers. This is

the antidespotic pillar, insuring checks on any unilateral projection of state power. Third, the state must respect the social diversity of functions. This represents the antimonist or subsidiarity principle. The principal role of the state is to "recognize, respect, coordinate, safeguard and promote citizens' rights and duties."⁶⁰

Together, the three pillars reflect what Maritain called the "instrumental" and Murray called the "juridical" nature of the state. The proposition that the state is a facilitator rather than the substance of the common good would be evident three years later in the Second Vatican Council's pastoral constitution, *Gaudium et spes* (1965). "The political community exists, consequently, for the sake of the common good, in which it finds its full justification and significance, and the source of its inherent legitimacy. Indeed, the common good embraces the sum of those conditions of the social life whereby men, families and associations more adequately and readily may attain their own perfection."⁶¹

Pacem in terris is striking for its lengthy and detailed enumeration of rights (§§11–27). In the 1960s, international human rights covenants began to distinguish civil and political rights on one hand and social, economic, and cultural rights on the other.⁶² Pope John's encyclical, issued three years before the 1966 United Nations covenants on point, ranges over both categories. Some represent inalienable rights (right to life, right to pursue truth), others represent entitlements congruent with human dignity (health care, disability insurance), while still others represent political rights (access to the political process, juridical security). It is important to understand that this was not some sudden outbreak of rights talk. Of the twenty-five discrete rights mentioned in the encyclical, all but three are drawn from the teaching letters of previous popes.

But the bishops gathered at the Second Vatican Council noted that the pope gave a rather prominent venue, near the beginning of the list, to the right "to worship God in accordance with the right dictates of his own conscience."⁶³ Put in just this way, it betokened nothing especially novel, for such a moral right, carefully qualified, had already been enshrined in papal letters. However, when put in the context of the rest of the encyclical, particularly the three pillars of public order, it took on the complexion of a civil or constitutional right that ought to be part of the positive law. This really did represent what Murray termed the "growing end" of a tradition.

When *Pacem in terris* was issued, neither the original nor the revised schema of the council provided for an independent document on religious liberty. In hindsight, it seems truly remarkable that the topic was buried as a subsection ("freedom of cult") in an early draft of a document on ecumenism. There it remained when Pope John XXIII died in June

1963. It was not until the next year, after some three hundred and eighty amendments, that a draft was presented as a potentially independent document, and only in the fall of 1965 did it emerge a document that resembled what became known as *Dignitatis humanae*. There was nothing simple or smooth in the legislative history of *Dignitatis*; almost every sentence of its drafts was picked over until its final adoption on December 7, 1965. Some bishops objected that it confused civil toleration with a natural right. However, the great majority of bishops supported the declaration,⁶⁴ not only because of the recent papal statement in *Pacem in terris*, but also because they agreed with Murray's appeal to the "growing end" of the tradition. In the sixth and final schema Bishop de Smedt allowed a motion to insert the phrase, "in treating this religious freedom the synod intends to develop the teachings of more recent popes," in order to make clear that the council did not intend to recount and contextualize the entirety of the church's history on the issue but rather to track the trajectory of teachings from Pope Leo XIII onward.⁶⁵ Yet, even supporters of the document were divided over such details as the canonical and diplomatic implications for concordats, as well as the more substantive question of whether its emphasis ought to be biblical, philosophical, historical, or constitutional.⁶⁶

Dignitatis is divided into two parts. The first part, "Religious Liberty Generally Considered" (§§2–8), elaborates the proposition that "the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature" (§2).⁶⁷ The dignity of man as a knower, inclined and duty-bound to pursue, to know, and to abide by the truth establishes the ground for a right that has both personal and public aspects. Appealing to St. Thomas's discussion of divine authority over the *actus interior*, the interior act of human judgment and conscience, *Dignitatis* maintains that "no merely human power can either command or prohibit acts of this kind."⁶⁸ Coercion of conscience, then, violates human dignity and divine right: "Injury therefore is done to the human person and to the very order established by God for human life, if the free exercise of religion is denied in society, provided just public order is observed." The truly groundbreaking argument, however, did not concern the idea of rightful immunity from coercion of interior acts, for this issue was never in serious dispute. *Dignitatis* also contends that the right includes civil protection of external and corporate acts of religion, including not only worship (§3) but also teaching, writing, and forming religious societies for charitable, social, and cultural purposes (§4). The external dimension of the right can be limited in accord with "limits set by due public order." In this regard, Bishop Karol Wojtyła made a crucial intervention, proposing that

when the state limits liberty it do so only "in conformity with the objective moral order" (§7). This was intended to prevent "public order" from being an excuse to criminalize otherwise innocent religious acts, or severely to limit such acts because they incidentally conflict with mere public policy. Yet, *Dignitatis* goes even further in providing that so long as government refrains from directing religious activity, it must "recognize and promote the religious life of its citizens" (§3). The proactive stance, of course, touches upon the historically controversial issue of religious schools (§5), but the principal point is that religious liberty should take its place within the entire galaxy of human rights—marriage, education, life, and health—as goods to be fostered and to be protected according to the citizens' equality before the law (§6).

The second part of *Dignitatis Humanae* considers "religious freedom in the light of revelation" (§§9–15), informed by the church's understanding of her own liberty. "In human society and in the face of government the Church claims freedom for herself in her character as a spiritual authority" (§13). The church's liberty is derived both from Christ (*principium fundamentale*), directly from divine mandate, and from her character as a society among men. Hence, the document speaks of a *concordia* but not a conflation of the two titles to freedom. In the civil sphere, Catholics enjoy no more (nor fewer) rights than any other citizens.⁶⁹ As citizens of the church, in their "pilgrimage through the twists and turn of human history," Catholics are under the obligation to preach the gospel as taught by the apostles and espoused by the church (§12). Society is not to be Christianized by the imposition of state law, but from below, by teaching and sanctifying. This principle was highlighted in the conciliar document, *Gaudium et spes*, where the laity's role is "to impress the divine law on the affairs of the earthly city."⁷⁰ Sacralization of society and culture is the business of society, not of the state. As for its indirect bearing upon the political order, the council emphasized the role of the laity rather than the clergy. In the Revised Code of Canon Law (1983), clergy are strictly forbidden to assume public offices "which entail a participation in the exercise of civil power."⁷¹

POSTCONCILIAR THEMES AND TENSIONS

At the conclusion of the ninth session of the Second Vatican Council in December 1965, three important documents were sent to Pope Paul VI for his signature: the declaration *Dignitatis humanae* on religious liberty, the decree *Ad Gentes* on missionary activity, and the pastoral constitution *Gaudium et spes*. As a triptych, these documents summarized, clarified,

deepened, and extended more than a century of Catholic social, legal, and political thought and doctrine. Pope Paul VI was a disciple of Jacques Maritain, whom he wished to make a cardinal, and he certainly understood that the triptych of documents reflected Maritain's understanding of a "New Christendom," personalist, pluralist, and peregrinal in nature. Moreover, although *Dignitatis* became the occasion for a spirited and sometimes acrimonious debate, as a whole, the conciliar documents were produced in a remarkable atmosphere of unanimity. The new spirit of *aggiornamento* also gave impetus to studies and applications of the social sciences; theology was to be marked by a more biblical, historical, and practical sensibility. Social thought promised to outlast, if not improve upon the scholastic methods which shaped the revival initiated in the last century before by Pope Leo XIII.

Even so, certain tensions and loose ends in the council's work were soon evident. One problem was the enormity of the tasks of social justice, which dwarfed in scale and complexity the problems addressed by Leo XIII in *Rerum novarum* (1891) and by Pius XI in *Quadragesimo anno* (1934). The uneven pace of social, economic, and political development in different regions of the world made it difficult to access, and to make prudential recommendations for whether and where top-down and bottom-up models of authority ought to be emphasized. Particularly in the developing world of Africa, Asia, and South America, social and political turbulence as well as economic depravity made doubtful the conditions for realizing the three pillars of order spelled out in John XXIII's *Pacem in terris* (justiciable human rights, the juridical and limited state, and subsidiarity). These pillars of order represent a long and hard-won set of lessons drawn from European and North American experience. It was there, of course, that the modern state, economies, sciences, technologies, revolutions, and ideologies were not only created but also reconsidered in searching ways after the two world wars. Naturally, Catholic understanding of *this* "modernity" would be easier than crafting a social theory adequate to the contingencies of the non-Western and the developing world. Like their secular counterparts, conservative and progressive Catholic theorists often debate the weight which ought to attach to political, juridical, and economic rights such as those delineated in Pope John Paul II's *Centesimus annus* (1991) versus the cultural and developmental rights spelled out in an encyclical like *Sollicitudo rei socialis* (1987). This kind of debate, however, usually misses the most salient point, which is that the church's own history provided the occasion to work out, by trial and error, a nuanced account of the political and juridical track, while the social theory for the developing world would have to be a work in progress. Given

the rapid expansion of Catholicism in Africa and Asia, it is reasonable to expect that in the future more of Catholic social thought and doctrine will be shaped by the problems and crises in that part of the world.

At the time of the election of Pope John Paul II in 1978, problems began to appear not in the Third World but in the West—interestingly, along the perimeter of issues that otherwise represented some of the Second Vatican Council's greatest accomplishments. These included clarification of the triadic relationship of church, state, and society, the appropriation of the principled understanding of the juridical state, the principled argument for religious liberty, the cross-fertilization of Catholic anthropology with the argument for universal human rights based on human dignity, and evangelization from below, indirectly shaping society without resort to a traditional Constantinian armature.

A few months after his election, John Paul II went to the Conference of Latin American Bishops at Puebla, Mexico. Latin America could hardly be regarded as a backwater of the Catholic intellectual world. It was for the Latin American situation that Spanish and Portuguese Thomists had made their first "modern" arguments about natural rights during the sixteenth century. In many ways relevant to the history of social, legal, and political thought and doctrine, Latin America paralleled the European experience—in the problem of state establishments and patronal rights that so bedeviled modern Catholicism, in the revolutions and process of state formation during the nineteenth century, and in the proliferation during the twentieth-century of right-wing and left-wing ideologies. From the time of Pope Leo XIII onward, several encyclicals were devoted to problems in that region, especially in Mexico. Although Latin America did not suffer the devastation of the two world wars or (aside from a few exceptions) the grip of totalitarian regimes, it did share many of the crises that formed the problematic context for Catholic social thought in Europe.

From one point of view, the Second Vatican Council provided an impetus in some ways tailor-made for the Latin American thinkers: the bottom-up model of evangelization and social change (for the Latin thinkers, "the view from below"), the emphasis on lay action and on the solidarity of the body politic rather than the apparatus of the state, and the decided preference for a pastoral and biblically informed language rather than a more abstract scholasticism all favored something like a liberation theology. Indeed, Pope John Paul II and the liberationists shared a commitment to a biblical and eschatological mode of discourse. Why, then, did Latin American liberation theology cause such controversy?

In part, and indeed in very serious part, the problem was theological and ecclesiological. Liberation theologians, even the more moderate such

as Gustavo Gutiérrez (see chapter 6), engaged a scriptural exegesis strongly tintured with Marxian themes of social conflict, class analysis, and a “preferential option for the poor” that was exclusionary in nature—exclusionary, that is, not only with regard to the scope of justice and the common good in the civil sphere, but also with regard to the meaning of ecclesial solidarity and the eschatological kingdom inaugurated by Christ. Though the “base communities” (*comunidades eclesiais de base*) emerged before the Second Vatican Council, and, indeed, before any controversy over liberation theology had broken out, by the late 1960s some of these communities seemed a strange and, in Rome’s view, alarming amalgam of political, ecclesial, and revolutionary praxis. Rome eventually conceded, with qualifications, the importance of the base communities and the principle of a “preferential option for the poor.” Some liberation theologians, Gutiérrez in particular, moderated their rhetoric about class warfare and violence and clarified their scriptural exegesis. Putting to one side the politics of Roman disciplinary authority, which so preoccupies and intrigues American observers, there are aspects of the Latin challenge that are likely to outlast the controversy of the 1970s and 1980s. At the nub of the issue is their suspicion of, and in the early phase of the movement, a rejection of the so-called distinction of planes. This called into question the sinews and arteries of the scholastic-informed social theory that was nearly two centuries in the making.

For Gutiérrez and other Latin thinkers, the distinction of planes usually meant, in the first place, the sharp distinction between sacred and secular, and correlatively between grace and nature. One may doubt that, on Thomistic grounds, sacred-and-secular accurately represent grace-and-nature. For nature is created and thus cannot exactly correspond to what moderns mean by “secular,” that is, a sphere emptied of any theological referents. Moreover, the desacralized state never meant for neo-Thomists a desacralized human nature stripped of the dignities of creaturehood. The Catholic natural rights tradition, including the right declared in *Dignitatis humanae*, depended upon Thomas’s definition of natural law as the creature’s participation in the eternal law. This constituted the metaphysical ground for inalienable rights. Nevertheless, it is true that gratuity of grace, in distinction to the order of creation, is a signature position of Thomism.

As we have seen, neo-Thomists introduced analogous distinctions for the purpose of social, legal, and political thought. Most important is the distinction between the state, civil society, and the church. While the triadic relationship is subject to certain contingent variations, it is grounded

in anthropological, moral, and theological principles. Maritain’s “New Christendom” envisaged a fixity of spheres allowing a distinction between a “civic person” and a baptized member of a “kingly people”—each overlapping in a social sphere irreducible to either state of ecclesiastical government.⁷² In essence, this is John Courtney Murray’s position; and, insofar as it entered into social doctrine via papal letters and conciliar decrees, it was more than a mere social theory.

But there is one other distinction that perhaps comes closer to the discontent of the Latin American liberationist theologians. In grafting Thomistic principles to modern constitutionalism, the neo-Thomists brought in tow a distinctly liberal commitment to distinguishing law and politics. The purpose of the rule of law is not the grand task of doing justice (in general); its more specific purpose is to police the political. On this view, it is crucial to protect the boundary between law and ordinary politics. This purpose is institutionally embodied in the division of state powers, a point underscored by John XXIII, who insisted that it is “in keeping with human nature” to distinguish precisely the judicial from the executive and legislative functions.⁷³ In *Centesimus annus* (1991), John Paul II equated the “rule of law” with such a division of “powers.”⁷⁴ Both popes discuss it in terms of checking political actions detrimental to rights. On the other hand, a strict distinction between law and politics is also embodied in the habits of the political and legal culture. In a liberal polity, one must think not only of the justice to be done but also the kinds of justice that can be accomplished in view of the rule of law. Latin American liberation theologians challenged this admittedly narrow conception of how the political and juridical orders stand to the problem of justice. Especially in the context of chronic poverty and despotic regimes, they called for a broader conception of a politics of emancipatory praxis. The rule of law too easily freezes the injustices embedded in the social, political, and economic spheres. Rather than constitute a defensive measure against the wiles of the state, the rule of law insures that political power cannot reach social injustice.

Their challenge was not merely a dispute with Maritain. It ran against the deeper historical grain of Catholic social, legal, and political thought. As we discussed earlier, Catholicism in Europe stumbled out of the nineteenth century with a visceral reaction against nationalism, modern notions of state sovereignty, and puppet churches. By the middle of the twentieth century, there existed a broad and deep consensus that the church should avoid what may be called “regime politics.” This is why Catholic social theorists and the Second Vatican Council itself moved so decisively in favor of a liberal model of limited government and human

rights—a kind of all-purpose regime the essentials of which need not be debated. The two world wars and the shadow of totalitarianism had sobered both the church and the democracies, making plausible a convergence of perspective, based on the pillars surveyed and recommended by John XXIII. Considering their respective strengths, Catholic thought was ahead of the curve of the ontology of human rights and subsidiarity, while the secular democracies bore the heritage of a practical, constitutional wisdom. The more thoughtful Catholic thinkers were not in doubt that this entailed a weakening and diffusion of political passion; but this was the price to be paid for curbing *l'intégrisme* of the right and the left. The political order would not be the site of a sudden and profound conversion of culture. Writing “in homage to the people of France” in 1944, Maritain urged a cessation of the regime politics that for two centuries had been the national sport of France. There will be “no recovery of Paradise by revolution,” he said, but rather a slow progress by “the carrying over of the structures of conscience and the structures of human life to better states.”⁷⁵ A deep politicization of church-state relations, which meant a more radical understanding of church and politics as facets of an emergent and visible “kingdom,” is just what European and North American Catholicism attempted to defuse. Even if the liberationists had made no disputable claims in scriptural exegesis or ecclesiology, their hermeneutic of suspicion regarding the rule of law would have triggered problems not only with Rome, but also with the broader consensus of Catholic social thought in the West. For reasons that we shall now consider, it is likely that at least part of their critique will resurface in the future evolution of Catholic social thought.

If the Latin American liberation theologians were intent upon a less abstract conception of politics and justice, the Northern Atlantic states moved in the opposite direction, toward an increasingly more restrictive understanding of what can count as “public reason.” It is not quite right to think of the problem as a liberal versus neoliberal dispute over the size of government and the degree of state involvement in the economic sector, for Catholic social, legal, and political thought and the actual practices and policies of Western democracies admit of considerable variation on these issues. It consists rather in the tension between the dignitarian concept of human rights and the rule of law, the first and second pillars of order proposed by John XXIII in *Pacem in terris*. Catholic thinkers assumed that the first is organically related to the second. The rule of law is supposed to protect inalienable human rights from the transgressions of society and of the state. However, Catholic thought did not reckon seriously enough with

the possibility that the rule of law could also mean state neutrality on the ontological grounds of rights, that the state is not entitled to adopt what John Paul II calls a “correct anthropology.” Nor did it anticipate the more radical and perplexing position that immunity from a “correct anthropology” is itself a justiciable natural right.

From the outset, the pillars of justiciable natural rights and the rule of law stood in some tension. Rendering justiciable the ever-increasing lists of human rights will necessarily test the jurisprudential institutions of relatively healthy polities. Moreover, architects of the postwar human rights declarations and covenants, such as the 1948 Universal Declaration of Human Rights, diligently circumvented the question of how the rights are to be grounded. The philosopher-diplomat Charles Malik, a Lebanese Catholic who had something more than an amateur’s knowledge of Catholic social thought, guided drafts of the Universal Declaration through the shoals of philosophical disagreements. In order to reach a “practical agreement among men who are theoretically opposed to one another,”⁷⁶ Maritain vigorously defended the rationale of this tactic. “A genuine democracy,” he wrote, “cannot impose on its citizens or demand from them, as a condition for their belonging to the city, any philosophic or any religious creed.”⁷⁷ For Maritain—and, generally, for the Catholic tradition—neither a contingent dissensus about philosophical groundings nor the principle prohibiting imposition of dogmas ruled out a fairly substantial practical agreement about human dignity and about those rights virtually convertible with the idea of dignity. Interestingly, Maritain considered the right to life a relatively unproblematic inalienable right.⁷⁸ Twenty-five years later, this position seemed to be upended, particularly, but not only, by the adoption of abortion rights.

In *Evangelium vitae* (1995), Pope John Paul II tells the story as one of “betrayal,” a word used six times in the document. The constitutional democracies refused to live up to their end of the bargain. The modern idea of the juridical state never promised that the state can be an agent that sanctifies men or perfects the entirety of their moral virtue. It did, however, promise (it was their “boast,” he adds) to protect fundamental human rights, especially life. Speaking ominously of a “conspiracy” against human rights, he accuses states of having reversed “the long historical process leading to the discovery of human rights.”⁷⁹ States are poisoning the “culture of rights,” even violating the “principles of their own constitutions.”⁸⁰ The pope was especially baffled by the fact that abortion and euthanasia should become legal not only by the inadvertence or timidity of legislatures, but also by recognition of such acts as human rights.⁸¹ John Paul II cited Acts 5:29 (“we

must obey God rather than men") no fewer than eight times to drive home this point. He has also made striking use of Exodus 1:17. Recounting the story of the Egyptian midwives who defied Pharaoh because, as the scripture notes, "they feared God," the pope urged resistance to the temporal powers' usurpation of God's authority over life and death.⁸² The language is reminiscent of papal letters during the church-state crisis of the nineteenth century.

It would be an exaggeration to suggest that Catholic social, legal, and political doctrine and the Western democracies are divided on every issue of importance. Regarding the death penalty, limits on justifiable war, and a mixed economy that includes economic entitlements, there is little difference of opinion between Catholic social doctrine and Western democracies (the United States notwithstanding). Even so, there is a serious difference of perspective with respect to the nature and scope of public reason. In *Centesimus annus*, Pope John Paul II observed, "Authentic democracy is possible only in a State ruled by law, and on the basis of a correct conception of the human person."⁸³ It might be argued that, for historically contingent reasons, politics do not have consensus about the anthropological groundings, and in any event the correction of that deficiency will have to be achieved, as Maritain and Murray put it, indirectly, through evangelization and education of society itself. This is not an entirely satisfying answer, for as John Paul goes on to note in *Centesimus*, those who are "convinced that they know the truth and firmly adhere to it are considered unreliable from a democratic point of view."⁸⁴ If, indeed, the state is required in principle to exclude moral and anthropological truths from politics, if even a convergence of opinion achieved in the social sphere is denied access to law on the ground that the state may not, in a way consistent with the principle of equality, endorse any particular moral anthropology, then the scaffolding of Catholic social thought slowly erected since the nineteenth century is *practically* thrown into question. Here, then, is a mirrored reversal of the challenge posed by the liberation thinkers, who complained that the liberal-democratic model is far too restrictive for purposes of social justice.

Such are some of the important tensions and themes of Catholic social, legal, and social thought since the Second Vatican Council. Above all, they call to our attention a continuity of problems stretching back to the pontificate of Leo XIII. The church-state issue; the nature and scope of the social contract; the ontological structure of social forms; the kind of justice achievable in the civil community; and the relative weighting of philosophical, historical, and theological methods for formulating social and moral theory, are all questions that have undergone historical permutation yet retained a

distinctly familiar structure. Jacques Maritain contended that every epoch of Catholicism has its own "historic sky." The continuity of problems suggests that the "modern" period has not been eclipsed, but continues to test the mettle of the Catholic mind in troubling and interesting ways.

NOTES

1. *Gaudet Mater* (October 11, 1962), *Sacrosanctum Oecumenicum Concilium Vatican II, Constitutiones, Decreta, Declarationes* (Vatican City: Libreria Editrice Vaticana, 1993), 858.
2. Letter to Cardinal Fornari, "Errors of Our Times" (June 19, 1852), in Juan Donoso Cortés, *Selected Works*, trans. and ed. Jeffrey P. Johnson (Westport, Conn.: Greenwood Press, 2000), 110.
3. Jacques Maritain, *The Things That Are Not Caesar's*, trans. J. F. Scanlan (London: Sheed & Ward, 1930), 74.
4. For the legal structure and history the *Patronato Real*, one can rely on studies by W. Eugene Shiels, *King and Church: The Rise and Fall of the Patronato Real* (Chicago: Loyola University Press, 1961), containing important legal instruments in the original languages and English translation, and J. Lloyd Mecham, *Church and State in Latin America: A History of Politico-Ecclesiastical Relations* (Chapel Hill: University of North Carolina Press, 1966).
5. *Orthodoxe fidei* (November 13, 1486); original in Shiels, *King and Church*, 277–282.
6. Concordat of Bologna (1516), in *Church and State Through the Centuries: A Collection of Historic Documents with Commentaries*, trans. and ed. Sidney Z. Ehler and John B. Morrall (Westminster, Md.: Newman Press, 1954), 134–144.
7. *Cum primum* (June 9, 1832), §1, 3, in *Acta Gregorii Papae XVI*, ed. Antonius Bernasconi (Rome: S. C. de Propaganda Fide, 1901–1904), 1:143–144. Hereinafter and for similar collections, citations are to the section (§) where applicable, *Acta* volume, and page.
8. Joseph de Maistre, *The Pope*, translation of the 1819 edition of *Du Pape* by Aeneas M. Dawson (London: C. Dolman, 1850), III.4, 277.
9. *Id.*, II.12 at 199, III.2 at 255.
10. Notable works in this genre include Félicité Robert de Lamennais's notes on the history of the Gregorian reform, *Tradition de l'église sur l'institution des évêques* (1814); Dom Guéranger, *Affaire de la Légende De Saint Grégoire VII*, in *Institutions liturgiques*, vol. II, chap. XXI (1841); Henri Lacordaire, *Éloge Funèbre de Daniel O'Connell* (February 10, 1848); John Henry Newman, *Present Position of Catholics in England* (1851); Wilhelm Emmanuel von Ketteler, *Freedom, Authority, and the Church* (1862), XXV; Donoso Cortés, "Errors of Our Times"; and Antonio Rosmini, *Delle cinque piaghe della Santa Chiesa* (1832, 1848), a scholarly but passionate compendium of arguments against the *ius patronatus*.

11. Charles de Montalembert, Malines Address (August 20, 1863), in J. F. Maclear, *Church and State in the Modern Age: A Documentary History* (New York: Oxford University Press, 1995), 162.
12. Eusebius's *Vita* 3.12.3, 4.24.
13. Lord Odo Russell to Earl of C. (March 7, 1870), in *The Roman Question, Extracts from the Despatches of Odo Russell from Rome, 1858–1870*, ed. Noel Blakiston (London: Chapman and Hall, 1962), 404.
14. Speech in Chamber of Deputies on July 10, 1868, in Émile Ollivier, *L'Église et l'État au Concile du Vatican*, 3d ed. (Paris: Garnier Frères, 1877), 1:400.
15. *Ibid.*
16. Ministre des Affaires Etrangères à M le marquis de Banneville (February 20, 1870), appendix II in Ollivier, *L'Église et l'État*, 1:551–556.
17. *Onorare le ceneri* (March 1, 1892), *Acta XII*, 384–386.
18. Luigi Stuzo, *Church and State* (New York: Longmans, Green, 1939), 563.
19. *Ibid.*, 385.
20. Maritain, *The Things That Are Not Caesar's*, 16.
21. John Courtney Murray, "The Problem of Religious Freedom," in *Religious Liberty: Catholic Struggles with Pluralism*, ed. J. Leon Hooper, S.J. (Louisville, Ky.: Westminster John Knox Press, 1993), 165, 188.
22. Pius XI, *Quadragesimo anno* (May 15, 1931) §§18–21, *Acta Apostolicae Sedis: Commentarium officiale* (Vatican City: Typis Polyglottis Vaticanis, 1909–) (hereafter AAS) 23, 182–184. On the emergence of the term *doctrina*, see Mary Elsbernd, "Papal Statements on Rights: A Historical Contextual Study of Encyclical Teaching From Pius VI–Pius XI (1791–1939)" (Ph.D. diss., Catholic University of Louvain, 1985), 587 n. 1.
23. *Dei Filius* (April 24, 1870), chap. IV, in *Decrees of the Ecumenical Councils*, ed. Norman P. Tanner (Washington, D.C.: Georgetown University Press, 1990).
24. *Dei Filius*, chap. 2; Gerald A. McCool, S.J., *Catholic Theology in the Nineteenth Century* (New York: Seabury, 1977), 219.
25. *Inscrutabile Dei* (April 21, 1878) §13, *Acta Leonis* 1:53–54.
26. *Aeterni Patris* (August 4, 1879) §29, *Acta Leonis* 1:280.
27. Walter T. Odell, "The Political Theory of Civiltà Cattolica From 1850 to 1870" (Ph.D. diss., Georgetown University, 1969).
28. *Summa theologiae* I–II, 105.1.
29. See his letter *Graves de communi* (January 18, 1901), on Christian democracy. Leo worried that Catholic associations would become politicized in the fashion of socialist parties.
30. *Au Milieu* (February 16, 1892), §17, *Acta Leonis* 12:31.
31. *Summa theologiae* I–II, 94.5.
32. On the issue of subsidiarity and education, he recommends Taparelli's *Saggio teoretico di Diritto Naturale (A Theoretical Treatise on Natural Right, Based on Fact)* (1840–43), "a work never sufficiently praised and recommended to university students," *Divini illius* (December 31, 1929), AAS 22:65.
33. *Studiorum ducem* (June 29, 1923), §20, AAS 15:319.

34. *Mit brennender Sorge* (March 14, 1937), *Divine Redemptoris* (March 19, 1937), and *Firmissimam constantiam* (March 28, 1937).
35. The phrase "from below upwards" was used by Pius XII in the 1945 "Allocution to the Sacred Roman Rota," AAS 37:256–262, originally to affirm the proto-democratic nature of the body politic according to translation theory (see chapter 2, this volume). Maritain was struck by how it summarized his own work and added it to his 1968 revision of his book *Integral Humanism* (see the following note), n. 10 at 251.
36. Jacques Maritain, *Integral Humanism, Freedom in the Modern World, and A Letter on Independence*, ed. Otto Bird, in *The Collected Works of Jacques Maritain* (Notre Dame, Ind.: University of Notre Dame Press, 1996), 11:150–151.
37. *Ibid.*, 331.
38. *Ibid.*, 237–239.
39. *Ibid.*, 261–266.
40. Jacques Maritain, *Peasant of the Garonne: An Old Man Questions Himself About the Present Time*, trans. Michael Cuddihy and Elizabeth Hughes (Toronto: Macmillan, 1969), 12.
41. Jacques Maritain, *Man and the State* (Washington, D.C.: Catholic University of America Press, 1998), 94.
42. *Divini illius Magistri* §37, citing *Pierce v. Society of Sisters* (1925), 268 U.S., at 534–535.
43. See, e.g., *Divini Redemptoris* (1937), §27; AAS 29:78–79. On the emergence of lists of such rights in papal letters, see Elsbernd, "Papal Statements," 617–622.
44. Originally issued in Spanish, *Nos es muy conocida*, but in the Roman typical edition, *Firmissimam constantiam* (March 28, 1937), §28; AAS 29:196–197. Pius begins to describe rights also in terms of *munera*, perhaps best translated "gifts of service." The word *munus* highlights the inherently social nature of an office, role, or obligation in which rights are grounded. For a survey of relation between rights and *munera* in modern Catholic thought, see Russell Hittinger, "Social Roles and Ruling Virtues," *Annales theologici* 16 (2002): 385–408.
45. *Graves de communi* (1901), *Acta Leonis* 21:3–20.
46. Thomas P. Neill, "The Concordats of Pope Pius XI: Their Role in Adapting Church Relationship to the State" (Ph.D. diss., University of Notre Dame, 1939).
47. Yves R. Simon, *Philosophy of Democratic Government* (Chicago: University of Chicago Press, 1951), chap. 3.
48. This is so, although Bellarmine frequently stressed the historical and theological importance of monarchy, which is not ruled out by translation theory. Among American Catholics, the idea of a democratic Bellarmine reached mythic proportions with the publication of Gaillard Hunt's "Cardinal Bellarmine and the Virginia Bill of Rights," *Catholic Historical Review* (October 1917): 276–289. The legend that the Virginia Bill of Rights relied on Bellarmine

- was debunked by David S. Schaff, "The Bellarmine-Jefferson Legend and the Declaration of Independence," *Papers of the American Society of Church History* 8 (1928): 239–276. On the other hand, there can be no doubt that American Catholics were ahead of the Europeans in using various neo-Thomisms in support of democratic government. See, e.g., Archbishop John Ireland's "The Catholic Church and Civil Society," delivered at the Third Plenary Council of Baltimore (November 10, 1884), in J. Ireland, *The Church and Modern Society: Lectures and Addresses* (Chicago: D. H. McBride, 1896). Anticipating the work of John Courtney Murray, Ireland weaves together Thomas, Bellarmine, and the recent letters of Leo XIII to establish that scholastic theory provides a superior philosophical foundation for democratic institutions.
49. *Summi Pontificatus* (October 20, 1939) §59, AAS 31:433. The notion of an "instrumental" state was popularized several years later by Jacques Maritain in *Man and the State*, 13.
 50. *Con sempre nuova* (December 24, 1942), AAS 35:19. The inalienable right of religious consciences was presented by Pius XI, invariably in response to totalitarian regimes: *Mit brennender Sorge*, §31, AAS 29:160; *Non abbiamo bisogno* (June 29, 1931), §§40–41, AAS 23:301–302; *Firmissimam constantiam* (1937), §26, AAS 29:196. Neither of the Pian statements suggested an all-purpose right of conscience, but rather religious conscience.
 51. John Courtney Murray, "The Declaration on Religious Freedom: A Moment in Its Legislative History," in *Religious Liberty: An End and a Beginning* (New York: Macmillan, 1966), 13.
 52. *Benignitas et humanitas* (December 24, 1944), AAS 37:11–12.
 53. *Ibid.*, 13.
 54. *Ibid.*, 17.
 55. Maritain, *Man and the State*, 19.
 56. *La elevatezza e la nobilit * (February 20, 1946), AAS 38:144.
 57. The history and philosophy of subsidiarity are covered with unusual clarity by Thomas C. Behr, "Luigi Taparelli D'Azeglio, S.J. (1793–1862) and the Development of Scholastic Natural-Law Thought as a Science of Society and Politics," *Journal of Markets & Morality* 6 (Spring 2003): 99–115.
 58. *Divini redemptoris* (March 19, 1937), §51, AAS 29:92.
 59. *Pacem in terris* (April 11, 1963), §6, AAS 55:258.
 60. *Ibid.*, §§75–77, AAS 55:278ff.
 61. *Gaudium et spes* (December 7, 1965), §74.
 62. U.N. International Covenant on Civil and Political Rights and U.N. International Covenant on Economic, Social and Cultural Rights, both adopted in 1966.
 63. *Pacem in terris*, §14, AAS 55:260, quoting Leo XIII's *Libertas praetantissimum*, *Acta* 8 (June 20, 1888), 237ff.
 64. *Declaratio*, which differs from a *constitutio* and a *decretum*. Constitutions and decrees have binding force upon the whole church. A declaration, on the

- other hand, is reserved for matters and persons who are not under the public law of the church. Hence, the document on non-Christian religions (*Nostra aetate*, 1965) is called a *declaratio*.
65. The discussion of development on November 19, 1965, is contained in *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani Secundi* IV, part VI, *Congregatio Generalis CLXIV* (Vatican City: Typis Polyglottis Vaticanis, 1978). The phrase on "recent popes" is in *Dignitatis humanae*, §1, and the trail of citations to the popes is at §2, n. 2. For Murray's argument, see *Religious Liberty*, 167–174.
 66. J r me Hamer, "Historique du texte de la D claration," *La libert  religieuse, Unam Sanctam*, ed. J. Hamer and Y. Congar (Paris:  ditions du Cerf, 1967), 60:53–110. A table of votes on schemata at each stage is at pages 106–108.
 67. *Gaudium et spes*, §16, where conscience is said to be a *sacrarium*, a holy place: "For man has in his heart a law inscribed by God. His dignity lies in observing this law, and by it he will be judged. His conscience is man's most secret core, and his sanctuary. There he is alone with God [*in quo solus est cum Deo*] whose voice echoes in his depths."
 68. DH §3 n. 3, citing *Summa theologiae* I–II, q. 91, a. 1.
 69. DH has almost nothing to say about "establishment" in the American sense of the term. It rules out, of course, any species of regalism and of the *cuius regio* doctrine, which marked establishment in the Catholic countries into the nineteenth century. DH §1 states that the document concerns religious liberty, and "therefore leaves untouched traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ." In §6 we find a passing reference to "circumstances where one religion is given "special civil recognition" (presumably, concordatory countries), which adds that "the rights of other citizens and religious communities should be "recognized and made effective in practice." On the silence of *DH* regarding establishment and disestablishment, see Russell Hittinger, "Dignitatis Humanae, Religious Liberty, and Ecclesiastical Self-Government," in *The First Grace* (Wilmington, Del.: ISI Books, 2003), 215–241.
 70. *Gaudium et spes*, §43, and the parallel text at *Lumen gentium* §31.
 71. *Codex Iuris Canonici* (1983), can. 285, §3.
 72. Jacques Maritain, *Christianity and Democracy* (New York: Arno, 1980), 31, 46.
 73. *Pacem in terris*, §68, AAS 55:276.
 74. *Centesimus annus* (May 1, 1991), §44, AAS 83:848. He attributes this idea to Leo XIII, but in papal letters it surfaces for the first time in John XXIII's *Pacem in terris*. The premise that a division of powers is the rule of law, of course, was asserted in article 16 of the Declaration of the Rights of Man and Citizen (August 26, 1789).
 75. *Ibid.*, 30.
 76. Jacques Maritain, *Man and the State*, 76.
 77. *Ibid.*, 110.

78. Ibid., 101.
 79. *Evangelium vitae* (March 25, 1995), §12, AAS 87:414; §18, 420.
 80. Ibid., §4, 405.
 81. Ibid.
 82. Ibid., §73, 486.
 83. *Centesimus annus* (1991), §46, AAS 83:850.
 84. Ibid.

[CHAPTER 1]

Pope Leo XIII (1810–1903)

COMMENTARY

RUSSELL HITTINGER

Having barely survived surgery for the removal of a diseased cyst, the ninety-year-old Leo XIII welcomed 350,000 pilgrims to Rome for the Jubilee of 1900. Measured against the past century, the event was a success by virtue of the fact that it took place at all. The jubilees of 1800 and 1850 had been cancelled because the popes were either kidnapped or in exile. Pius IX refused to call a jubilee in 1875 to protest the capture of Rome by the armies of the House of Savoy.

With this history in mind, Pope Leo wrote two encyclicals to put the troubled century into perspective. In *Tametsi futura*, he characterized his pontificate as “difficult and anxious.”¹ What “experience constantly shows,” he contemplated, is that “all our life on earth is the truthful and exact image of a pilgrimage.”² In *Annum sacrum*, Leo dedicated the human race to the Sacred Heart of Jesus:

When the Church, in the days immediately succeeding her institution, was oppressed beneath the yoke of the Caesars, a young Emperor saw in the heavens a cross, which became at once the happy omen and cause of the glorious victory that soon followed. And now, today, behold another blessed and heavenly token is offered to our sight—the most Sacred Heart of Jesus, with a cross rising from it and shining forth with dazzling splendor amidst flames of love. In that Sacred Heart all our hopes should be placed, and from it the salvation of men is to be confidently besought.³

Coming just a few years before the tattered monarchies of Europe committed cultural and military suicide in the trenches of World War I, Leo’s