

## POPE JOHN PAUL II AND RELIGIOUS LIBERTY

*Gerard Bradley*<sup>†</sup>

Pope John Paul II will deservedly be remembered as one of the previous century's great champions of freedom. He championed the cause of all peoples oppressed by their governments, especially those nations enslaved behind the Iron Curtain.<sup>1</sup> He championed the cause of human rights, most especially the right of each person to immunity against certain wrongs—torture, intentional killing, and exploitation of various sorts.<sup>2</sup> John Paul II's encyclical *Veritatis Splendor* is justly regarded as a profound meditation on the deepest relation between human freedom and objective moral truth.<sup>3</sup>

Pope John Paul II was no less committed to the cause of religious freedom. He was (as we shall explore below) a leader during the Second Vatican Council's development of its document on religious freedom, *Dignitatis Humanae*.<sup>4</sup> He often spoke in favor of the individual freedom that the religious quest requires, and even presupposes.<sup>5</sup> But John Paul II did not really develop, along either philosophical or theological lines, the doctrines of *Dignitatis*

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<sup>†</sup> Professor of Law, University of Notre Dame. I wish to thank all those who contributed to the discussion of this Article at the Ave Maria Law Review Symposium at which I presented it, especially to Fr. Kevin Flannery, S.J. I thank also those who read this Article in manuscript form: John Finnis, Joseph Boyle, Patrick Lee, Robert George, and Germain Grisez.

1. See, e.g., GEORGE WEIGEL, WITNESS TO HOPE: THE BIOGRAPHY OF POPE JOHN PAUL II 296–97 (1999).

2. See, e.g., Pope John Paul II, *Evangelium Vitae* [*Encyclical Letter on the Value and Inviolability of Human Life*] ¶ 3 (1995) [hereinafter *Evangelium Vitae*] (stating that all that is “opposed to life itself, such as any type of murder, genocide, abortion, euthanasia” and any “mutilation, torments inflicted on body or mind, attempts to coerce the will itself” are all “infamies indeed”).

3. See Pope John Paul II, *Veritatis Splendor* [*Encyclical Letter Regarding Certain Fundamental Questions of the Church's Moral Teaching*] (1993) [hereinafter *Veritatis Splendor*]. In discussing the purpose for writing *Veritatis Splendor*, Pope John Paul II notes his concern for the practice of some in society, and even some within the Christian community itself, of “detaching human freedom from its essential and constitutive relationship to truth.” *Id.* ¶ 4.

4. See Second Vatican Council, *Dignitatis Humanae* [*Declaration on Religious Freedom*] (1965), reprinted in THE SIXTEEN DOCUMENTS OF VATICAN II 395 (Nat'l Catholic Welfare Conference trans., 1967) [hereinafter *Dignitatis Humanae*].

5. See *infra* Part I.

*Humanae* concerning the *civil right* of religious liberty, the whole complex of problems regarding religion and the state.<sup>6</sup> He was, moreover, almost silent about the most difficult question of meaning and interpretation in *Dignitatis Humanae*: whether it is ever morally licit for the state to affirm that Catholicism is *true*?

This Article explores that question in light of Pope John Paul II's thought, *Dignitatis Humanae*, and arguments based on sound reason. In Part I of this Article, I will introduce, as a background to the discussion at hand, the thought of Pope John Paul II on religious liberty, as expressed both in *Dignitatis Humanae* and in his own works. In Part II, I will demonstrate that in the official conciliar and post-conciliar teaching, there is an ambiguity with respect to the permissibility of official state recognition of Catholicism. In Part III, I will refine the central question of this Article further, distinguishing my position from one that would hold recognition of the faith by a state to be obligatory. Finally, in Part IV, I will introduce four common arguments that seek to prove that state recognition of Catholicism is incompatible with the contemporary Magisterium or with the Faith itself. I will then rebut each of these four arguments in turn, so as to show that, at least under certain circumstances, state recognition of the true faith is permissible and appropriate.

## I. BACKGROUND OF POPE JOHN PAUL II'S THOUGHT ON RELIGIOUS LIBERTY

In *Tertio Millennio Adveniente*, Pope John Paul II said: "The best preparation for the new millennium . . . can only be expressed in a renewed commitment *to apply*, as faithfully as possible, *the teachings of Vatican II to the life of every individual and of the whole Church.*"<sup>7</sup> The Pope had already made the Second Vatican Council ("Council") his personal compass: "Vatican II has always been, and especially during these years of my Pontificate, the constant reference point of my every pastoral action, in the conscious commitment to implement its directives concretely and faithfully . . . ."<sup>8</sup>

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6. See *infra* Part II.

7. Pope John Paul II, *Tertio Millennio Adveniente* [Apostolic Letter on the Coming of the Third Millennium] ¶ 20 (1994) [hereinafter *Tertio Millennio Adveniente*].

8. Pope John Paul II, *Fidei Depositum* [Apostolic Constitution on the Publication of the Catechism of the Catholic Church] (1992), reprinted in CATECHISM OF THE CATHOLIC CHURCH 1, 2 (2d ed. 1997) [hereinafter *Fidei Depositum*].

The core of Pope John Paul II's understanding of the Council is the Declaration on Religious Liberty, *Dignitatis Humanae*.<sup>9</sup> Before he became Pope, Bishop (and later, Archbishop) Karol Wojtyła attended all four of the Council's sessions.<sup>10</sup> He "participated vigorously" in the debate over the religious liberty document, making one oral and two written interventions.<sup>11</sup> Wojtyła believed, according to his sometimes collaborator and intellectual biographer Rocco Buttiglione, that the heart of the Council was the "acknowledgment of freedom of conscience as a natural and inalienable right of the human person."<sup>12</sup> Along with certain portions of the Constitution on the Church in the Modern World—*Gaudium et Spes*—John Paul II considered *Dignitatis Humanae* to be an interpretive key to the entire Council.<sup>13</sup>

This "key," however, was a fragile one. Wojtyła was concerned that the freedom of conscience recognized at the Council could, if "exercised improperly," lead people into a relativistic worldview that included religious indifferentism, wherein one religion is more or less as true (or useful or valid) as another.<sup>14</sup> In fact, by the end of the Council in 1965<sup>15</sup> the "demand" of a growing number of people to exercise "their own judgment" subject to no coercion was increasingly morphing into a demand for antinomian freedom from moral restraint.<sup>16</sup> The Council also called for dialogue with contemporary philosophies.<sup>17</sup> Wojtyła worried, though, about a "misunderstanding of philosophical pluralism within Catholicism."<sup>18</sup> He feared that "if certain living elements of classical philosophy did not survive, then there [would be] very little chance of maintaining the link with traditional affirmations of the faith."<sup>19</sup>

9. See WEIGEL, *supra* note 1, at 173.

10. *Id.* at 161.

11. *Id.* at 163.

12. ROCCO BUTTIGLIONE, KAROL WOJTYŁA: THE THOUGHT OF THE MAN WHO BECAME POPE JOHN PAUL II 177–78 (Paolo Guietti & Francesca Murphy trans., 1997).

13. Second Vatican Council, *Gaudium et Spes* [*Pastoral Constitution on the Church in the Modern World*] ¶ 76 (1965), reprinted in THE SIXTEEN DOCUMENTS OF VATICAN II 513, 597 (Nat'l Catholic Welfare Conference trans., 1967) [hereinafter *Gaudium et Spes*]; WEIGEL, *supra* note 1, at 562.

14. Thomas Guarino, *Karol Wojtyła: The Thought of the Man Who Became John Paul II*, FIRST THINGS, Apr. 1998, at 39, 40 (book review).

15. Pope Paul VI, Closing Speech at the Second Vatican Council (Dec. 7, 1965), in *Introduction to THE SIXTEEN DOCUMENTS OF VATICAN II*, *supra* note 4.

16. See *Dignitatis Humanae*, *supra* note 4, ¶ 1.

17. Guarino, *supra* note 14, at 40.

18. *Id.*

19. *Id.*

These concerns underlie Pope John Paul II's abiding concern to persuade his untold number of hearers not only of the compatibility of true freedom with truth, but that apart from the truth there can be no real freedom. These are the themes of perhaps John Paul II's greatest papal writing, the 1993 encyclical letter, *Veritatis Splendor*—The Splendor of Truth.<sup>20</sup> John Paul II's most illuminating work on *religious* freedom took up the burden of *Veritatis Splendor*: religious liberty is best understood, most cogently justified, and exercised most capaciously only in relation to religious truth—which is, uniquely, Catholicism.<sup>21</sup>

John Paul II taught that a person fully knows himself or herself only in and through faith as a disciple of Jesus Christ, called to build the Kingdom and thus to achieve salvation by, first, adhering to the objective moral law and, second, discerning and faithfully carrying out his or her unique vocation.<sup>22</sup> This destiny transcends earthly things and requires that the person be free. “[I]n constantly reaffirming the transcendent dignity of the person, the Church’s method is always that of respect for freedom.”<sup>23</sup>

Why *free*? Because God, through Jesus, calls human beings to a response of faith by which they freely entrust themselves to the God revealed by Jesus.<sup>24</sup> Faith is thus comprised of two things: assent to revealed truths and personal adhesion to the Lord Jesus.<sup>25</sup> Neither of these two components of Catholic faith is effective save where the individual acts freely, for himself or herself. For no one can profess faith for another. This is theological faith.

We can see the sharp contrast to “religious belief” in *Dominus Iesus*: “[T]hat sum of experience and thought that constitutes the human treasury of wisdom and religious aspiration, which man in his search for truth has conceived and acted upon in his relationship to

20. *Veritatis Splendor*, *supra* note 3, ¶¶ 32–34.

21. *Id.* ¶¶ 84–87.

22. *Id.* ¶¶ 6–18.

23. Pope John Paul II, *Centesimus Annus* [*Encyclical Letter on the Hundredth Anniversary of Rerum Novarum*] ¶ 46 (1991) [hereinafter *Centesimus Annus*].

24. Congregatio pro Doctrina Fidei, *Declaratio de Iesu Christi atque Ecclesiae unicitate et universalitate salvifica* ¶ 7, in 92 ACTA APOSTOLICAE SEDIS 742, 747–48 (2000), translated in Congregation for the Doctrine of the Faith, *Declaration “Dominus Iesus” on the Unicity and Salvific Universality of Jesus Christ and the Church* ¶ 7 (2000), available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20000806\\_dominus-iesus\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20000806_dominus-iesus_en.html) [hereinafter *Dominus Iesus*].

25. *Id.*

God and the Absolute."<sup>26</sup> Religious belief is the experience of a continuing search for absolute truth, while still "lacking assent to God who reveals himself."<sup>27</sup>

This natural searching, too, must be free. "[E]ach individual has a right to be respected in his own journey in search of the truth," Pope John Paul II wrote.<sup>28</sup> He also stated that there is a prior "grave" moral obligation to search for the truth and to adhere to it once known.<sup>29</sup> "In Christ," however, "religion is no longer a 'blind search for God' but the *response of faith* to God who reveals himself . . . , a response made possible by that one Man" by Whom, and in Whom, "all creation responds to God."<sup>30</sup>

The picture presented thus far by John Paul II is that of natural humanity, reaching up to God, seeking the truth about God and God's will for us. This human reaching is limited in its fulfillment to the truths and rewards of natural religion. Natural religion includes the truths that there is a greater than human source of meaning and value, that this source is somehow responsible for the existence of contingent beings and matter, and that human beings are therefore dependent, in an important way, upon this source for their well-being, even for their existence.<sup>31</sup> John Paul II maintained that humanity naturally wants God, or wants to want God, and will seek God if not deterred or prevented by disorder.<sup>32</sup> Human beings are spiritually native fliers; they are hardwired to soar after things hidden beyond the skies.

Evangelization seeks to fulfill and perfect this natural urge by the light of revelation in Jesus. "Those who obey the promptings of the Spirit of truth are already on the way of salvation. But the Church, to whom this truth has been entrusted, must go out to meet their desire, so as to bring them the truth."<sup>33</sup> In this way revelation in and through Jesus perfects and fulfills religious liberty, understood as a good human effort.

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26. *Id.*

27. *Id.*

28. *Veritatis Splendor*, *supra* note 3, ¶ 34.

29. *Id.*

30. *Tertio Millennio Adveniente*, *supra* note 7, ¶ 6 (citation omitted).

31. *See id.* For a discussion of human beings' knowing through the light of natural reason that they are dependent upon God as a necessary being for their existence, see ST. THOMAS AQUINAS, *SUMMA THEOLOGICA*, Pt. I, Q. 2, Art. 3 (Fathers of the English Dominican Province trans., Christian Classics 1981) [hereinafter *SUMMA THEOLOGICA*].

32. *See generally id.* at ¶¶ 6–7.

33. *Dominus Iesus*, *supra* note 24, ¶ 22.

At the heart of Pope John Paul II's "Church-state" doctrine is, then, freedom—freedom of the individual seeking *and* of the Church preaching. He repeatedly affirmed the Council's teaching that:

It is only right . . . that at all times and in all places, the Church should have true freedom to preach the faith, to teach her social doctrine, to exercise her role freely among men, and also to pass moral judgment in those matters which regard public order when the fundamental rights of a person or the salvation of souls require it.<sup>34</sup>

Though nothing in what I have described—nor anything else in his papal writings and teachings, as far as I know—amends, changes, or modifies the *doctrines* of the Council, the late Pope's work constitutes an unsurpassable enrichment of that doctrine, indeed an irreplaceable explanation or meditation on it.

## II. OFFICIAL CONCILIAR AND POST-CONCILIAR TEACHING: AMBIGUITY ON STATE RECOGNITION

Pope John Paul II said very little about religious liberty as a *civil* right; that is, as a norm of action by public authority, its extent and limits within political society. The interpretive key here, too, is the Council. According to Weigel, the religious freedom debate at Vatican II was "stalled" at the level of "Church-state" theory when Karol Wojtyła intervened to chart a different course for it.<sup>35</sup> Wojtyła sought to navigate between, on the one hand, Catholic establishmentarianism (Spain) and totalitarian oppression (Poland), and at the same time he was determined to ground freedom in truth—not in skepticism or indifferentism.<sup>36</sup> This aspiration led Wojtyła to two conclusions. One was that the communist pretense that religion was "alienating" was nonsense.<sup>37</sup> The other was that "the state was incompetent in theology and had no business either authorizing or proscribing religious institutions."<sup>38</sup>

Perhaps understandingly, then, John Paul II said nothing during his pontificate overtly supportive of any sort of state establishment of

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34. *Gaudium et Spes*, *supra* note 13, ¶ 76.

35. WEIGEL, *supra* note 1, at 164.

36. *Id.* at 163–66.

37. *Id.* at 164.

38. *Id.*

Catholicism. I call this his *reticence* on the matter of the state and religious truth. We see it in, for example, *Veritatis Splendor*, where the Pope wrote that:

[I]t is not difficult to discover at the bottom of these situations [of injustice] causes which are properly cultural, linked to particular ways of looking at man, society and the world. Indeed, at the heart of the issue of culture we find the *moral sense*, which is in turn rooted and fulfilled in the *religious sense*.<sup>39</sup>

Culture, too, must be free. According to the *Instruction on Christian Freedom*, “[i]t is not within the competence of the public authorities to determine culture. Their function is to promote and protect the cultural life of everyone, including that of minorities.”<sup>40</sup> For John Paul II, culture was the religious question writ large: “At the heart of every culture lies the attitude man takes to the greatest mystery: the mystery of God. Different cultures are basically different ways of facing the question of the meaning of personal existence.”<sup>41</sup> The Pope referred to this as the essential “subjectivity” of culture.<sup>42</sup> The definition of culture promulgated by the Congregation for the Doctrine of Faith during John Paul II’s pontificate aptly captures his own view: culture is “the specific mode of a truly human existence to which one gains access through the development of one’s intellectual capacities, moral virtues, abilities to relate with other human beings, and talents for creating things which are useful and beautiful.”<sup>43</sup> These and other papal expressions indicate that, for John Paul II, the “Church-state” problem was superseded by the relationship of faith to culture, with the state standing by as a kind of neutral umpire.

The *Catechism’s* treatment of religious liberty further illustrates the late Holy Father’s *reticence*. In *Dignitatis Humanae* the Council Fathers articulated an unconditional moral duty binding on all persons:

[I]n spreading religious faith and in introducing religious practices everyone ought at all times to refrain from any manner of action

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39. *Veritatis Splendor*, *supra* note 3, ¶ 98 (internal quotation marks omitted).

40. Congregation for the Doctrine of the Faith, *Instruction on Christian Freedom and Liberation* ¶ 93 (1986) [hereinafter *Instruction on Christian Freedom*].

41. *Centesimus Annus*, *supra* note 23, ¶ 24.

42. *Id.* ¶ 13.

43. *Instruction on Christian Freedom*, *supra* note 40, ¶ 92.

which might seem to carry a hint of coercion or of a kind of persuasion that would be dishonorable or unworthy, especially when dealing with poor or uneducated people.<sup>44</sup>

The *Catechism* makes no mention of this duty. The summary of *Dignitatis Humanae* spread through paragraphs 2104 through 2109 of the *Catechism* is rooted in the supposed antithesis between freedom and truth on the one side, and force and coercion on the other.<sup>45</sup> This focus causes the *Catechism* to treat *Dignitatis Humanae* as if it were almost wholly about the state and civil law; it is not, as the universal moral duty noted above shows. Every individual has a moral duty to refrain from all manner of unsavory proselytizing, and the state has a duty to promote religious liberty.<sup>46</sup> This leads to the conclusion that the state could use coercion to *preserve* religious liberty, even against those who claim to be exercising theirs, if that exercise comes in the form of unsavory proselytizing.

On perhaps the most difficult passage in *Dignitatis Humanae*—the scope and meaning of the “traditional doctrine” on the moral duty of men and societies to the true faith—the *Catechism* is equivocal: “The duty of offering God genuine worship concerns man both individually and socially. *This is* ‘the traditional Catholic teaching’” of which *Dignitatis Humanae* spoke.<sup>47</sup>

The Vatican Council states in *Dignitatis Humanae* that its teaching on religious freedom “leaves untouched” the “traditional Catholic doctrine on the moral duty of men and societies.”<sup>48</sup> (The Flannery translation of *Dignitatis Humanae* says “leaves intact.”)<sup>49</sup> The most straightforward reading of the passage poses the Council Fathers as disinterested analysts of the logical relation between two propositions, or two sets of propositions: the freshly articulated teaching of *Dignitatis Humanae* and the “traditional doctrine.” About this they say that these two matters do not intersect or, at least, that *Dignitatis Humanae* does not modify the tradition—whatever that is. A more generous interpretation suggests that the Fathers meant to *affirm* the traditional doctrine which, however, they did not

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44. *Dignitatis Humanae*, *supra* note 4, ¶ 4.

45. CATECHISM OF THE CATHOLIC CHURCH ¶¶ 2104–09 (2d ed. 1997).

46. *Dignitatis Humanae*, *supra* note 4, ¶ 4.

47. CATECHISM OF THE CATHOLIC CHURCH, *supra* note 45, ¶ 2105 (emphasis added).

48. *Dignitatis Humanae*, *supra* note 4, ¶ 1.

49. Second Vatican Council, *Dignitatis Humanae* [*Declaration on Religious Liberty*] ¶ 1 (1965), reprinted in DOCUMENTS OF VATICAN II 799, 800 (Austin P. Flannery ed., 1975).



in *Dignitatis Humanae* specify or even summarize. This silence may reflect disagreement and uncertainty among the Fathers as to what was that “traditional doctrine.”

The *Catechism* eliminates this ambiguity. The *Catechism* clearly means to define and affirm the traditional doctrine. The authors say that the “traditional doctrine” is the duty of offering “genuine worship,” and that it falls upon individuals and societies.<sup>50</sup> But the *Catechism’s* authors replaced one ambiguity with another. One possible meaning of “genuine worship” swings free from religious truth and “the one Church of Christ;” “genuine” here could mean “authentic,” “sincere,” or “uncoerced.” “Genuine worship” could also mean “true” worship, such as the Mass, precisely the liturgy of “the one Church of Christ.” As to which meaning is intended, the answer is: both and neither. The *Catechism’s* authors meant to equivocate. They employ a studied ambiguity.

Saying that the *Catechism* relies upon a studied ambiguity does not require one to suppose that its authors ducked their duty. Not at all. Theirs was not the job of advancing contentious interpretations of extant teaching, or of selecting from two or more disputed readings of an authoritative text or strand in the tradition.<sup>51</sup> Their responsibility was to compile and state what has been taught and what is taught by the Church.<sup>52</sup>

Thus we come to the question of this Article, with an uncertain *Catechism* and a reticent pontificate near at hand: Is state recognition of the true Faith incompatible with the teachings of *Dignitatis Humanae* or with sound reasoning?

In the balance of this Article I recite four arguments *in favor* of the proposition that it is unconditionally wrong for the state to recognize the Catholic Church as the true church, even where political circumstances, such as an overwhelmingly Catholic population in a democratic polity, would permit it. After stating each argument I try to show that none is sound as an interpretation of *Dignitatis Humanae* or as a matter of unrestricted moral reasoning. My judgment is that state recognition of the true Church *just as such* is contrary to neither authoritative Roman Catholic teaching—especially *Dignitatis Humanae*—nor sound reasoning. State recognition of the true Faith is, in other words, not necessarily wrong.

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50. CATECHISM OF THE CATHOLIC CHURCH, *supra* note 45, ¶ 2105.

51. See *Fidei Depositum*, *supra* note 8, at 4.

52. *Id.*

### III. REFINING THE QUESTION TO INCLUDE ONLY STATE RECOGNITION OF THE TRUTH OF CATHOLICISM

First, the inevitable refinements of the question. The question is *not* whether a civil law (constitutional or otherwise) stipulating that all religions are to be treated equally is unjust or immoral. That is basically what our First Amendment does.<sup>53</sup> It is certainly just, even if it is true that the state may in justice recognize the truth of one religion.

How could this be? There are many reasons why the state's jurisdiction may rightly be limited to a portion of what justice permits. Justice would permit the state to prohibit a range of assertedly victimless immoralities, such as gambling, fornication, and the sale of erotic literature. But, for sound reasons involving the difficulties of enforcement and popular opposition—and for better or for worse—most modern societies tolerate them instead. “Affirmative action” programs which take account of racial identity in, say, public hiring, are occasionally morally justifiable.<sup>54</sup> Prudent constitution writers could still judge that, given the tendencies of human nature and the prevalence of racial prejudice, it is better to stipulate that law be “color-blind” than to chance things by authorizing racial discrimination in, say, exceptional circumstances or for compelling reasons.<sup>55</sup> Better, they might conclude, to tolerate the occasional injustice (where race *could*, and perhaps *should*, be taken into account) than to open the sluice gates to abuse. Even if a state *could* justly recognize Catholicism to be true, a law which forbade recognizing any one religion as true could also be just. In all these instances morality would require that people adhere to the law, though the law could have been, morally speaking, different.

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53. U.S. CONST. amend. I, cl. 1.

54. See *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 320 (1978) (holding that “the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race”); see also *id.* at 316–18 (Powell, J., concurring in part) (describing an Affirmative Action program that is arguably morally justified).

55. Compare *id.* at 416–21 (Stevens, J., concurring in part and dissenting in part) (arguing that controlling statutory law, if not the Constitution itself, prohibits exclusion based on race), with *id.* at 355–56, 361 (Brennan, J., concurring in part and dissenting in part) (arguing that an “overriding statutory purpose could be found that would justify racial classifications,” but that purpose must be “important and articulated”) (citation omitted) (internal quotation marks omitted).

As a matter of historical fact, American Catholics who have objected to the First Amendment as unjust or immoral—or even as bad for the Catholic Church—have been very few.<sup>56</sup> More than a few Catholics have criticized American *culture* as inhospitable to the faith. Orestes Brownson said towards the end of his life that America’s “democratic” or anti-authority character made genuine Catholic faith all but impossible.<sup>57</sup> A few years ago Cardinal George in an *ad limina* address to Pope John Paul II on behalf of his province’s bishops said that ours was perilously close to a culture in which the Gospel and the demands of discipleship make no sense.<sup>58</sup> John Paul II, of course, criticized the “culture of death” and, less prominently but no less forcefully, a secularized culture.<sup>59</sup>

In the early 1950s John Courtney Murray carried on an extended debate with three fellow American Catholics: Monsignor Joseph Fenton, Rev. Francis Connell, C.Ss.R., and Rev. George Shea. Murray self-consciously promoted in these debates a “modern” view of what Catholics should hold about the relationship of church to state, a view which finds some expression in *Dignitatis Humanae*.<sup>60</sup> His interlocutors just as self-consciously sought to maintain a more “traditional” view. But the “traditionalist” Connell nonetheless said: “Catholics have no intention or desire of modifying the system prevailing under our Constitution, the system of allowing all our citizens full liberty of conscience, complete equality of all religious denominations before the law.”<sup>61</sup> Connell later in the exchange said that the American prohibition on showing special favor to any particular religion “is perfectly reasonable and in no way opposed to the law of Christ.”<sup>62</sup> The Third Plenary Council of the American Bishops (1884) said: “We consider the establishment of our country’s

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56. See Hans G. Kippenberg, *Paying the Words Extra: Religious Discourse in the Supreme Court of the United States*, 37 HIST. RELIGIONS 184, 186 (1997) (book review).

57. See Orestes A. Brownson, *The Democratic Principle*, BROWNSON’S Q. REV., Apr. 1873, reprinted in XVIII THE WORKS OF ORESTES A. BROWNSON 223 (Henry F. Brownson ed., 1966).

58. Francis Cardinal George, O.M.I., *Ad Limina* Address to Pope John Paul II (May 28, 2004) (transcript available at [http://www.archdiocese-chgo.org/cardinal/statement/stat\\_04/remarks\\_052804.shtm](http://www.archdiocese-chgo.org/cardinal/statement/stat_04/remarks_052804.shtm)).

59. *Evangelium Vitae*, *supra* note 2, at ¶ 12.

60. See John Courtney Murray, S.J., *The Problem of “The Religion of the State,”* 124 AM. ECCLESIASTICAL REV. 327–52 (1951).

61. Francis J. Connell, C.Ss.R., *The Theory of the “Lay State,”* 125 AM. ECCLESIASTICAL REV. 7, 18 (1951).

62. Francis J. Connell, C.Ss.R., *Reply to Father Murray*, 126 AM. ECCLESIASTICAL REV. 49, 57 (1952).

independence, the shaping of its liberties and laws, as a work of special Providence, its framers 'building better than they knew,' the Almighty's hand guiding them."<sup>63</sup>

I leave aside questions about the licitness of constitutional or other legal recognition of a particular religion (including Catholicism) as the "religion of state," or as the "faith of the people," or as part of the cultural heritage of a particular land. I take no position on the precise meaning of such locutions or of what proponents of them are really trying to say. None of these locutions, though, expresses a judgment about the *truth* of any particular faith. One could truly say that, for example, "Islam is the faith of the Iranian people" or that "Islam is the religion of the Saudi state" while believing Islam to be false. One would falsely say that "Catholicism is the faith of the Turkish people" even though Catholicism is the true religion. The proposal examined in these pages has to do with the state identifying one religion as uniquely *true*. Anyone who holds that Catholicism is *true* cannot support a declaration by any state that Islam, for example, is the true faith. The proposition (that Islam is true) is false. Supporting it would be to support a lie.

Another *caveat*: my question has to do with the non-coercive jurisdiction of the state, the common good in the wider sense expressed in *Dignitatis Humanae* which "consists in the entirety of those conditions of social life under which men enjoy the possibility of achieving their own perfection in a certain fulness of measure and also with some relative ease."<sup>64</sup> For what it is worth, I do not see how the coercive jurisdiction of the state—which *Dignitatis Humanae* says encompasses preservation of public peace, public morality, and the protection of the rights of others<sup>65</sup>—could include the matter of Catholicism's unique truth (as opposed, for instance, to the truths of natural religion such as those found in the Declaration of Independence). If there is an exercise of state coercion where Catholicism's truth is a necessary premise of its justification, then this caveat will have to be suspended.

The question at hand is this: In the preamble of a constitution may the people (presumably of an overwhelmingly Catholic polity) say something like, "We hereby profess and declare that our religion—the

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63. Third Plenary Council of Baltimore, *Litterae Patrum Concilii ad Clerum Populumque* [*Pastoral Letter of the Council to the Clergy and Laity of Their Charge*] ¶ 4 (1884), reprinted in ACTA ET DECRETA lxxviii, lxxxix (1886).

64. *Dignitatis Humanae*, *supra* note 4, ¶ 6.

65. *Id.* ¶ 7.

Catholic religion—is true and that the fullness of truth subsists only in the Catholic Church”? This is the solemn declaration of a politically organized people and, lastly, I stipulate that it does not provide any additional jurisdiction for the state to disadvantage non-Catholics or to provide special privileges or emoluments for adherents of the true Faith.

#### IV. RESPONSE TO ARGUMENTS OPPOSING STATE RECOGNITION OF CATHOLICISM AS TRUE

Here are four arguments *against* state recognition of Catholicism as the true religion:

1. Recognition of the true Faith would be an “act of faith” and the state is incapable of an “act of faith” (a first “incompetence” argument).
2. Recognition would require the state to act on the basis of information or belief which is revealed and not available to unaided reason. But the state would exceed its competence (its just bounds) if it acted on the basis of revelation (a second “incompetence” argument).
3. Recognition would exceed the bounds of the political common good, the justifying principle and outer limit of the state’s authority (a third “incompetence” argument).
4. Recognition would necessarily involve some measure of prohibited “coercion,” contrary to the teaching of the Council and to sound reason.

I think all these arguments are unsound.

##### A. *In Response to 1 (the “Act of Faith” Argument)*

The state is indeed incapable of *most* acts of faith. But the state is not incapable of the act—call it an “act of faith” if you wish—of affirming the truth of Catholicism. It is obvious that the state cannot make most acts of faith. The state is not going to be saved, it has no soul, it does not receive the Sacraments. The state is incapable of “faith” conceived as personal adhesion to the Lord; no matter how much one anthropomorphizes public authority, the state is never going to be a person (and thus able to *personally* adhere to anyone).

On the other hand, communities composed of multitudes make acts of faith. At least it makes sense to speak of the “faith of the Catholic Church”; in some contexts this speech refers beyond the billion or so living members of the Church and includes the “Church Triumphant” in Heaven and the “Church Suffering” in Purgatory. More than a few philosophical accounts of the state have invested it not only with sweeping, even “god-like” jurisdiction, but with anthropomorphic or even mystical qualities.

John Courtney Murray attributed this move to one of his interlocutors, Rev. George Shea, in the early 1950s. “[I]n what sense can the state, as a set of institutions, a function, an agency, make an act of divine faith or profess a religion?”<sup>66</sup> Murray posed the question in response to Shea’s description of the state as a “creature of God.”<sup>67</sup> Murray said that Shea’s choice of words made “plausible” the notion that the “state”—this “creature of God”—could make an “act of faith.”<sup>68</sup>

Shea did make an unfortunate argument about the state’s duty to worship God by virtue of its membership in a class—“creatures of God”—to which men and women also belonged.<sup>69</sup> It is perhaps further evidence of confusion that Shea repeatedly spoke of the state’s duty to engage in “appropriate acts of worship.”<sup>70</sup> And he went too far in saying that the state’s duty was to “accept[] Catholicism, its creed, code, cult.”<sup>71</sup> Of course, the *Catechism* says that the duty of offering “genuine worship” is an individual and a “social” duty, perhaps referring to the state.<sup>72</sup>

Murray was right to say that the state cannot make acts of faith of a certain sort. He was right to stress the “fictive” quality of saying that the state is a “person.”<sup>73</sup> And no doubt Shea was incautious of expression and often enough wrong. But Murray was ungenerous in ascribing to Shea “an hypostatized concept of the state.”<sup>74</sup> By “creature of God” Shea clearly meant that the state was part of God’s

66. Murray, *supra* note 60, at 344–45 n.14.

67. *Id.*; see also George W. Shea, *Catholic Doctrine and “The Religion of the State,”* 123 AM. ECCLESIASTICAL REV. 161, 166 (1950).

68. Murray, *supra* note 60, at 344–45 n.14.

69. See Shea, *supra* note 67, at 166.

70. See, e.g., *id.* at 166, 167, 170.

71. *Id.* at 167.

72. CATECHISM OF THE CATHOLIC CHURCH, *supra* note 45, ¶ 2105.

73. Murray, *supra* note 60, at 344–45 n.14.

74. *Id.* at 345.

plan, that government is morally legitimate and even necessary to mankind's well-being. Murray criticized Shea for failing to see that the institution of a state church would be an "act of reason, not of faith."<sup>75</sup> But Shea seems to have seen that well enough. He stressed that it was a duty of "natural law" that the state accept and profess the true Faith.<sup>76</sup>

The state *is* capable of affirming propositions. It does so all the time. Apart from countless propositions about what laws *imply*, lawmaking authorities often affirm the truth about disputed matters. Sometimes in statutes and sometimes in constitutions, whether as "findings" or as a preamble or merely precatory language, public authorities assert this or that proposition. There is nothing unusual about a legislative declaration that, for example, a human individual comes into being at conception; or about a whole national body politic declaring, for example, that "[a] well regulated Militia [is] necessary to the security of a free State;"<sup>77</sup> or that, as the early Congresses opined in territorial legislation, "[r]eligion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."<sup>78</sup>

It is true that such declarations usually are followed by some operative directives (for example, "and everyone shall at stated times come and perform their duty of . . ."). But there is nothing necessary about such compound draftsmanship. Legislative bodies, executive officers, courts, and grand juries often enough issue proclamations, resolutions, reports, and presentments simply, and solely, declaring what is the case. There is nothing mysterious or untoward in saying that the "state declares" (or even that the "mind of the lawmaker is . . .") where the acts and utterances of a collective body are at issue, any more than it is mysterious to speak that way of, say, the Second Vatican Council, whose documents speak the mind of the "Council," even where there were dissenting voices.<sup>79</sup>

State recognition of the true Faith is obviously *about* faith. But it scarcely follows that the judgment affirming the proposition (that Catholicism is true) is an act *of* faith. There is a substantial difference

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75. *Id.*

76. Shea, *supra* note 67, at 167, 173. For further discussion of this question, see *infra* Part IV.B.

77. U.S. CONST. amend. II.

78. Northwest Ordinance of 1787, § 14, art. III, *reprinted in* 1 U.S.C. LIII (2000) (ordinance of the Confederate Congress).

79. For a discussion of these documents, see *supra* Part I.

between *recognizing* the truth of any set of propositions—including propositions about God—and *professing* faith, or *making an act of* faith. The latter undertakings include more than recognition of certain truths; they include as well adhesion to and trust in the object of faith which the state can scarcely be imagined to make. Thus, the argument about whether the state can engage in acts *of* faith is really irrelevant to the question of whether the state is able to recognize the truths of the Faith. So far considered, there is no reason to doubt that the state is *able* to do what is necessary in order to recognize—affirm, declare—that Catholicism is true.

B. *In Response to 2 (the Revelation Argument)*

John Courtney Murray maintained that the state could rightly act only on the basis of the natural law; that is, on the basis of unaided human reason: “As the law for man emerges from the nature of man, as elevated by grace, so the law for the state emerges from the nature of the state, which was not elevated by grace.”<sup>80</sup> Murray here took over and supported the view of John of Paris that “[t]he limits of [the prince’s] direct power are set by natural law.”<sup>81</sup> And, in reply, Rev. Francis Connell subtly evaded the effect of Murray’s way of stating the question. For Murray, the division was between “nature” and “reason” on one side, and “grace” and “revelation” on the other.<sup>82</sup> Connell pointed out, however, that “the *temporal* is not identical with the *natural*,” and so “the fact that the primary object of the state is to promote the temporal happiness of the citizens offers no argument that the state is bound only by the natural law.”<sup>83</sup> Connell also asserted that certain matters that fell under the “natural law” jurisdiction of the state were also under the Church’s jurisdiction: “[I]f Jesus Christ has actually granted the Church authority over certain matters which civil rulers would possess by virtue of the natural law, it follows that civil rulers have a correlative obligation to obey the positive divine law in respect to these matters . . . .”<sup>84</sup> Connell cited as

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80. John Courtney Murray, S.J., *Governmental Repression of Heresy*, in THE CATHOLIC THEOLOGICAL SOCIETY OF AMERICA: PROCEEDINGS OF THE THIRD ANNUAL MEETING 26, 30 (1948).

81. *Id.* at 56.

82. *Id.* at 30, 57.

83. Connell, *supra* note 61, at 17.

84. *Id.* at 10.



examples the law of marriage impediments and the dissolution of certain valid marriages (the Pauline privilege).<sup>85</sup>

Connell is right about the main point. Insofar as a lawmaker believes that his duties require him to decide some matter, and insofar as he believes that some necessary premise of deciding what he is charged to decide can only be known by revelation, then the lawmaker must decide the matter by relying upon revelation. If a lawmaker believes that one can only know the *truth* of when people begin by virtue of Scripture<sup>86</sup> or because of some theological proposition taught by the Church,<sup>87</sup> then the lawmaker is obliged to act on that *truth*, wherever he or she has found it.

The state and its lawmakers have certain responsibilities to fulfill, come what may. Among them is the protection of people from the first moment of their existence and the promotion of marriage as a two-in-one-flesh communion of persons. These duties are the anchors or the touchstones; *how* those exercising public authority acquire what they need to know to carry out these duties is secondary, contingent. If justice *requires* that the lawmaker resort to knowledge unavailable to reason alone, then it cannot be unjust for the lawmaker to go beyond natural law.

For example, one norm of justice is: every person is entitled to equal protection of the laws against homicide. To legislate justly therefore requires a *correct* judgment about who really is a person (even though honest mistakes on this question, due in past centuries to a defective understanding of the science of reproduction, could lead to injustices for which no one was morally culpable). To legislate

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85. *Id.* at 91. Connell also mentions polygamy and divorce in this part of his response to Murray. He says that they are examples of concessions the “lay” state would have to make to those who believed polygamy to be divinely sanctioned. *Id.* at 16. Maybe so. But they are really very different matters than marriage impediments and do not illustrate the same point. Even the most secular state imaginable has to care about what people within its borders *believe* to be divine mandates. A state run by the village atheist will assess these matters, though, under the heading of “facts” about the popular culture and not as truths about anything.

86. For example, the baby leapt in Elizabeth’s womb, *Luke* 1:41, which can be used to argue that an unborn child is fully human.

87. For example:

From the moment of conception, the life of every human being is to be respected in an absolute way because man is the only creature on earth that God has “wished for himself” and the spiritual soul of each man is “immediately created” by God; his whole being bears the image of the Creator.

Congregation for the Doctrine of the Faith, *Donum Vitae* [*Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation*] § 5 (1987) (footnotes omitted).

in this case on the basis of unaided reason alone is, by hypothesis, to knowingly support a grave injustice. And that is not to be done.

In any event, whether lawmakers may or must go beyond unaided reason in the discharge of their tasks does not affect the question at hand: state recognition of Catholicism as true. Connell pointed out to Murray that one could affirm the truth of the Church's claimed authority as God's chosen vessel of revelation on the basis of *reason*.<sup>88</sup> He recognized that the "truths of faith, the motive of faith and the act of faith . . . are supernatural."<sup>89</sup> But he also asserted—correctly—that "the preamble of faith, the motives of credibility and the judgment of credibility (and credentiy) . . . are natural."<sup>90</sup>

C. *In Response to 3 (the Bounds of Political Common Good Argument)*

*Dignitatis Humanae* avoids all expressions that smack of mystification or "hypostatization" of the state. Nothing in that document's description of the state likens it to "God's creatures."<sup>91</sup> The central concern of the document is to mark an all-important *limit* upon the state's jurisdiction. *Dignitatis Humanae's* larger account of political society and its distinctive common good shows them to be subsidiary and instrumental, limited to the important but circumscribed role of *assisting* persons to achieve *their* perfection.<sup>92</sup> The state, as the administrative arm of the political society, works within the limited scope of the political common good.

*Dignitatis Humanae* affirms the truth that "religious acts"—at least those "whereby men, in private and in public and out of a sense of personal conviction, direct their lives to God"—*transcend* "the order of terrestrial and temporal affairs."<sup>93</sup> It is obviously true that neither the state nor any other external observer can unfailingly read what is in another's heart. The state is mainly concerned with regulating external behavior. Is it, then, the teaching of *Dignitatis Humanae* that state affirmation of Catholicism's truth is wrong because the truth of the matter is beyond the just bounds of political society?

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88. Connell, *supra* note 62, at 54.

89. *Id.* at 53.

90. *Id.*

91. See *Dignitatis Humanae*, *supra* note 4.

92. *Id.* ¶ 6.

93. *Id.* ¶ 3.

No. In *Dignitatis Humanae*, the Council Fathers either affirm or leave “untouched” what they describe as “traditional Catholic doctrine.”<sup>94</sup> Fr. Brian Harrison has argued, forcefully and based on abundant evidence, that the “traditional” teaching was that “the civic community as such . . . has a duty to honour God, and to recognise as uniquely true the religion entrusted by Christ to the Catholic Church.”<sup>95</sup> In paragraph 13 of *Dignitatis Humanae*, moreover, the Council Fathers declared that the “freedom of the Church is the fundamental principle in what concerns the relations between the Church and governments and the whole civil order.”<sup>96</sup> They advance two grounds for this judgment. One is the Church’s “character as a society of [men] who have the right to live in society in accordance with the precepts of Christian faith,”<sup>97</sup> as would (I suppose) other such “societies.” The other ground is this:

In human society and in the face of government the Church claims freedom for herself in her character as a spiritual authority, *established by Christ the Lord, upon which there rests, by divine mandate, the duty of going out into the whole world and preaching the Gospel to every creature.*<sup>98</sup>

This freedom is described just above in the text of *Dignitatis Humanae* as the “full measure of freedom,” the “sacred freedom,” “sacred” because purchased by Christ with His Blood.<sup>99</sup>

Paragraph 6 of *Dignitatis Humanae* may reinforce this reading of paragraph 13. In paragraph 6, the Council Fathers recognize that “peculiar circumstances” might result in “special civil recognition” of “one religious community in the constitutional order of society.”<sup>100</sup> Even here, however, the text refers back to the individual and corporate religious liberty which must in every case be respected.<sup>101</sup> Now, the language of *Dignitatis Humanae* here is entirely generic; the language could bear an interpretation (or contemplates an application) where Islam or Hinduism or some other non-Catholic

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94. *Id.* ¶ 1.

95. BRIAN W. HARRISON, RELIGIOUS LIBERTY AND CONTRACEPTION 60 (1988).

96. *Dignitatis Humanae*, *supra* note 4, ¶ 13.

97. *Id.*

98. *Id.* (emphasis added).

99. *Id.*

100. *Id.* ¶ 6.

101. *Id.*

faith has been established. It seems more likely, however, that the Council Fathers here took the “internal” point of view, and that their attention was directed principally to Catholic populations which have made a special place in their constitutional schemes for the true Faith. Even in such cases, the state must respect the rights of non-Catholics to immunity from coercion.

For purposes of a conference several years ago, my colleague John Finnis compiled a list of interventions by Council Fathers on the document that became *Dignitatis Humanae*.<sup>102</sup> From those, it is clear that the Council Fathers wished to make as clear as possible that, though the immunity from coercion attached to all religious exercise, the *true* and the *false* were not, thereby, erased from the mind of the legislator.<sup>103</sup> According to Harrison’s account, several influential Fathers were concerned that “the Declaration should ‘set out the particular right of the Church to diffuse the truth—a right which she alone possesses.’”<sup>104</sup> To this, Bishop De Smedt, the *relator*, said that this concern was already sufficiently covered within the text.<sup>105</sup>

Is recognition of Catholicism as uniquely true beyond the scope of the political common good? To answer that question one must have an account of the limits of political society. Here my judgment is that *Dignitatis Humanae* specifies the political common good soundly: “[T]he common welfare of society consists in the entirety of those conditions of social life under which men enjoy the possibility of achieving their own perfection in a certain fulness of measure and also with some relative ease . . . .”<sup>106</sup> The first way of putting the question is practical and contingent: is it the case that state recognition of the true religion *never* promotes the opportunity of people to achieve their perfection with some ease and with greater fullness? Or to put the question another way: is it invariably the case that, given the scope of political *society*, recognizing the true Faith does no good or that it always does more harm than good?

I think the answer is this: In light of the educative function of the law and the epistemic authority that the state in modern societies possesses, the answer would have to be, “no.” The *prima facie*

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102. John Finnis, *Dignitatis Humanae*: Some Observations and Further Data (Nov. 12, 1998) (unpublished manuscript, on file with the Ave Maria Law Review).

103. *Id.* at 1–2.

104. HARRISON, *supra* note 95, at 115.

105. *Id.* at 115–16.

106. *Dignitatis Humanae*, *supra* note 4, ¶ 6.

answer would be that, sometimes at least, state recognition could be a useful aid to a person's search for religious truth.

The state's jurisdiction is wider than its coercive authority; its means extend beyond the mere use of coercion. As its non-coercive means expand, the state's proper ends expand with them. The state engages in non-coercive actions directing persons towards their perfection, steering them away from vice, encouraging them to do what is morally required (but which the state cannot command or prohibit), assisting the non-political institutions of civil society (including the Church) to contribute as it might to the common good and also to the perfection of its members. *Dignitatis Humanae* teaches that, because men's religious acts "transcend" temporal affairs, "[g]overnment therefore ought indeed to take account of the religious life of the citizenry and show it favor, since the function of government is to make provision for the common welfare."<sup>107</sup> Thus, government must understand and act on the understanding that religion is not only free and transcendent, but also earth-bound so that it is possible and necessary for government to promote it, *so long as coercion is avoided*. "However, it would clearly transgress the limits set to its power, were it to presume to command or inhibit acts that are religious."<sup>108</sup>

We are invited by the definition of the common good found in *Dignitatis Humanae* to view political society as more than the provider of certain material benefits and protections. We are invited to view it as a mutual-aid arrangement, more ambitious in scope. Now, the "perfection" of persons lies beyond the ken of political life, even beyond this world entirely. But it does not follow that the "conditions" which contribute to that perfection lie beyond the eschaton. They do not. In fact, the prudent lawmaker charged with maintaining conditions conducive to persons' achievement of their perfection, in "a certain fulness of measure and also with some relative ease,"<sup>109</sup> would benefit by *knowing* contours of that perfection which lie outside this life. The lawmaker *qua* lawmaker may be better off (other things being equal) for knowing the truth about religion.

Someone might object that sound reasoning confirms what *Dignitatis Humanae* teaches: "[G]overnment is to see to it that equality of citizens before the law . . . is never violated, whether

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107. *Id.* ¶ 3.

108. *Id.*

109. *Id.* ¶ 6.

openly or covertly, for religious reasons. Nor is there to be discrimination among citizens.”<sup>110</sup> This principle of non-discrimination on the basis of religion is sound. Now the objector might add: To say that religion is no basis for legal discrimination is to say that religion is irrelevant to political and legal affairs. Is this not to say that the truth about religion is not part of the common good of political society?

There are two main problems with this objection, one conceptual and the other logical. Once these flaws are drawn out, it becomes clear that the objection is question-begging. The conceptual problem is a misunderstanding of what it means to say that the state may not discriminate on the basis of religion (or race or ethnicity, for that matter). To say so is *not* to make a claim about the scope of the polity’s concerns. We have already seen that a just law might prohibit discrimination altogether on the basis of race, for example, even though occasionally such discrimination might be morally acceptable. The same is surely true of religion. In fact, *just* laws do discriminate on religious grounds; in placing children for adoption,<sup>111</sup> in crafting exemptions for churches and their auxiliaries from employment non-discrimination laws,<sup>112</sup> in making appointments of chaplains in the military,<sup>113</sup> public authorities properly write into laws certain allowances, privileges, and preferences on the basis of religion. Of course, these practices do not imply or entail state agreement that any religion is *true*. Instead, they indicate the true meaning of any claim about the injustice of discrimination on grounds of religion (or race or ethnicity). These matters are not entirely beyond the scope of the political common good, but they are *irrelevant* to most legitimate state purposes. To say that religion (or race or ethnicity) is wholly beyond the ken of the political common good would be to say that it—religion (or race or ethnicity)—is *never* relevant to *any* legitimate state purpose. One would have to do the work in the aggregate to show that.

Let me explain. The salient distinction is that between mentally *bracketing* the truth of Catholicism for certain (many or most or almost all) purposes, and declaring the question of religious truth to be beyond the ken of political authority. Almost all of our civil rights

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110. *Id.*

111. *See, e.g.*, MASS. GEN. LAWS ch. 210, § 5B (2007) (“[T]he court may grant a petition for adoption of the child only to a person or persons of the religious designation so requested . . .”).

112. 42 U.S.C. § 2000e-1 (2000).

113. 10 U.S.C. § 3073 (2000).

and responsibilities—ranging from voting to jury service to promotion in the military to giving eye exams for driver’s licenses to admission to public works or receipt of public welfare to paying taxes—do not depend for their meaning or for their exercise or for anyone’s civil entitlement to them upon the correctness of anyone’s opinions on matters of justice, religion, or anything else. Most such rights and responsibilities also swing free from one’s character; that one is excitable, slothful, lustful, or homosexual rarely is relevant to any action by public authority, but perhaps not always is irrelevant.

It is common for one and the same decision maker—let us call him the “legislator” in this discussion—to shift around and about mentally, putting the truth of sundry matters aside for many purposes, zeroing in, however, upon the precise question of the truth of some matter for a particular, even singular purpose. A legislator might today put aside his judgment of the raciness of a magazine, because today the question is whether magazines of that description ought to be subject to police seizure. The legislator might today answer: “No. So long as material is not obscene, it is to be treated the same for purposes of police action.” Tomorrow the same legislator might rely precisely upon his judgment that certain magazines are “racy.” For tomorrow he may vote for a law saying that such magazines shall not be purchased for public school libraries, but may be for public libraries’ “adult” sections.

The *logical* problem with the objection is failing to realize that even the aggregate argument—painstakingly cataloging all the state’s legitimate purposes and showing the irrelevance of the truth of Catholicism to each—cannot succeed unless one shows that it is *never*, or that it *cannot be*, a service to persons striving for perfection to live where the state recognizes the true Faith. But if it *is* a service to such persons, then recognizing Catholicism as true is highly relevant. The objection is, therefore, question-begging.

#### D. *In Response to 4 (the Coercion Argument)*

Does a right of immunity from coercion in religious matters imply that the state must not recognize religious truth? There is one instance where it would. It is the case we have excluded by hypothesis from this paper: where the state recognizes Catholicism as true *in order* to act on that recognition in some *additional* way which abridges conscience, say by requiring everyone to attend Mass.

There are two more cases of “coercion” worth mentioning at this point, though neither involves what could fairly be called state “recognition” of the true Faith. Let’s stipulate that some state that recognized Catholicism as true punished someone for not *expressing* support of a public policy (say, for arbitrary treatment of opposition politicians or for torture of insurgents in an overseas colony), which that person conscientiously opposed on religious grounds.<sup>114</sup> Another case of “coercion” would be where public authority effectively penalizes dissidents by directing certain privileges, emoluments, or other benefits to those who play ball with the regime.<sup>115</sup> In either case, the dissident would be “coerced” into violating his conscience in one of two ways: either by falsely expressing support for that which he truly opposes, or by allowing himself to be seduced into backing an unworthy policy. The first involves a lie; the second involves corruption of one’s conscientious deliberations. Attacking a person’s conscience in either matter is wrong, and the wrongness of it could well be described as “coercion.” But in neither case does the “coercion” result from state recognition of Catholicism as true. These things happen in all kinds of regimes, including atheistic communist ones.<sup>116</sup>

People ought to embrace the true Faith because they believe that it is true, not because of threats or inducements of any kind, and not because they think that it is their patriotic duty or because it will somehow help the state to achieve its objectives. If we stipulate (as I have) that no benefits or disabilities attach to Catholics where the state recognizes their faith to be true—and if Church authorities and the conscientious layperson retain a critical stance towards state actions—then the state’s recognition of Catholicism is not, I submit, “coercive” in any useful sense.

It is important to distinguish cases like those described above from common and morally unobjectionable cases in which the government enlists the coercive but non-expressive support of citizens for policies that they oppose for deep philosophical or religious reasons. This type of coercion is not only usually fair to the objectors, but it would often be unfair to those who support projects

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114. This seems to have been true in Franco’s Spain. See STANLEY G. PAYNE, *THE FRANCO REGIME 1936–1975*, at 200–28 (1987).

115. This seems to have been true in Spain as well. See *id.*

116. See, e.g., Henri Chambre, S.J., *Christianity and Communism*, in 96 *TWENTIETH CENTURY ENCYCLOPEDIA OF CATHOLICISM* 7, 36–48 (Henri Daniel-Rops ed., R.F. Trevett trans., 1st ed. 1960).



undertaken for the common good to exempt those who conscientiously oppose the same projects from doing their fair share—leaving aside the issue of “coercing” expressed support for them.

People in America are free to join peace churches if they wish.<sup>117</sup> But they all are compelled to pay taxes, a substantial portion of which supports the defense establishment.<sup>118</sup> This compulsion is not wrong. People in America are free to opt-out of the industrial economy, as the Amish do.<sup>119</sup> But it is not unfair to compel the Amish to pay taxes to support certain industries, or to underwrite the common good in legal institutions which supervise the modern economy and settle disputes within it. Some Christians forswear reliance upon the government court system altogether.<sup>120</sup> These people believe that religion requires them first to try to settle disputes fraternally and, if that fails, to turn the other cheek.<sup>121</sup> But making all these persons pay for government institutions, including mechanisms for dispute settlement, is not unfair. It is not unfair to make them serve as jurors or referees, either, though doing so might prove to be counterproductive. People in America are free to reject scientific medicine, as Christian Scientists do.<sup>122</sup> But it is not unfair to make them pay Medicare and Medicaid taxes.

These examples all indicate that it is not unfair to make people pay their fair share to underwrite what is *objectively* in the common good. To argue otherwise is to give everyone, really, the opportunity to be a free-rider. Even if those who took the opportunity acted in good faith, free-riding is usually still unfair to those who pay the bills.

It is also important to point out that the proper discharge by public authority of its responsibility for the common good inevitably “handicaps” the offerings available in the religious marketplace. The

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117. See U.S. CONST. amend. I.

118. *E.g.*, *United States v. Lee*, 455 U.S. 252, 260 (1982) (holding that “[b]ecause the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax”); *Browne v. United States*, 176 F.3d 25, 26 (2d Cir. 1999) (citing *Lee*, 455 U.S. at 260) (stating that defendants are required to comply with tax laws despite religious-based disagreement with the allocation of certain funds); *Adams v. Comm’r*, 170 F.3d 173, 180 (3d Cir. 1999) (pointing out that “tax exemptions are a matter of legislative grace” and that no such exemption has been allotted those who oppose war on religious terms).

119. Donald B. Kraybill, *Negotiating with Caesar*, in *THE AMISH AND THE STATE* 3, 11–12 (Donald B. Kraybill ed., 2d ed. 2003).

120. See *id.* at 12.

121. See *id.*

122. See *State v. Buswell*, 58 N.W. 728, 730–31 (Neb. 1894).

state can not help making some options for choice in religious matters much less plausible than others. No thoroughgoing “neutrality” on religion is possible. Even a state that dutifully seeks to promote religious freedom in accord with *Dignitatis Humanae* implicitly stamps many religious options as false or unworthy. Thus, any religion that teaches that coercion serves the cause of religion, for instance, would be exposed to state coercion in the interest of religious freedom. From this unequal distribution of coercion, many citizens would infer that the affected religion is, if not quite false, at least substandard, undesirable, and a bit dangerous. All religions that teach that state and church ought to merge or that one be subordinated to the other would also be widely seen as *incorrect*. Thus, all forms of Erastianism;<sup>123</sup> all religions favoring “establishments” going beyond recognition of the true Faith; all faiths that hold that one should passably receive enlightenment or divine graces and that human decision, choice, and will block genuine religious experience; all faiths that endorse manipulative conversion or retention techniques (all cults); all faiths that seek to steer others clear of certain religions by unfair and malicious propaganda—all these, and many other beliefs and/or belief systems, will inevitably be stamped as *incorrect* by any state fully committed to religious liberty.

Where a constitutional norm precluding state recognition of any faith as true is in place, those exercising public authority must not say or imply that one religion or religious opinion is as good as another. To do so would be to endorse indifferentism as correct. It would also hinder a person’s search for the truth if the state said or implied or supplied grounds from which persons inferred that the “truth” was relative, or subjective, or that there was no such “truth” at all. Where these currents are in the cultural air—and more so where they are dominant in media and education and in the marketplace—*corrective* action by the government may be necessary to re-establish the right terms of the religious quest.

A state fully committed to religious liberty necessarily “skews” public life considerably in favor of some outcomes and against many others. This does not amount to “coercion” in any sense contemplated by *Dignitatis Humanae*, for if it were otherwise, *Dignitatis Humanae* would be incoherent and thus impossible to

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123. OUR SUNDAY VISITOR’S CATHOLIC ENCYCLOPEDIA 384 (Peter M. J. Stravinsky ed., rev. ed. 1998) (defining Erastianism as a “sixteenth-century heresy which held the state to be the lawful superior of the Church, even in ecclesiastical affairs”).

follow. To be sure, this fact of inevitable “handicapping” does not establish that state recognition of Catholicism as uniquely true is appropriate. It does, however, provide helpful clues as to what counts as “coercion” within the meaning of that document.

Now, it is certainly true that the voluntariness with which one discovers, comes to understand, believe, and practice one’s religious convictions is essential to the realization of the value of religion. The stark alternatives are conformism, servility, and empty or religiously ineffective performances. It does not follow, however, that voluntariness supplies the *entire* value or benefit which religion has to offer. Holding *false* beliefs and practicing *false* religion diminish the value of those beliefs and practices to adherents *no matter how freely they have come to embrace them*. Knowing the *truth* about God, and really being in harmony with God, have relative value *even where adherents to the true Faith* have not come to it as freely, one might say, as have adherents of false faiths. Thus, even if we say that state recognition of Catholicism “hinders”—that is, diminishes—the freedom with which persons seek and adhere to religious truth, it does not follow that they are worse off. Because the truth about God is partly constitutive of the value of religion, those attracted to Catholicism because the state says it is true may still be better off.

#### CONCLUSION

State recognition of Catholicism as true is most properly viewed as an exercise of the state’s *effective* role in modern societies as teacher, and reflective of its laws’ *practical* educative effect. State recognition of Catholicism as true is an exercise of the state’s (and the law’s) power as an epistemic authority. No such recognition is morally required, and in most cases recognition would be not only politically imprudent but also morally wrong, and it would do much more harm than good. But is such recognition necessarily—that is, always and everywhere—wrong? No. I think that the four arguments examined here in favor of that view do not succeed.