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## Liberalism, Catholic Integralism, and the Question of Religious Freedom

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# Liberalism, Catholic Integralism, and the Question of Religious Freedom

Xavier Focroulle Ménard\* & Anna Sut

*This Article investigates new Catholic integralism and its critique of liberalism and aims to answer whether a liberal idea of religious freedom is possible under an integralist regime. To do so, we first sketch the respective views of liberalism and Catholic integralism on each other, with an emphasis on integralism. For integralism, liberalism is not merely a political phenomenon, but a comprehensive worldview with hidden metaphysical and theological implications. Integralism views the function of political rule as ordering human beings to their final cause. We specifically delve in foundational Catholic principles to guide rulers when governing – prudence and subsidiarity – to establish how their application should influence freedom of religion within an integralist regime. We conclude that religious freedom might be possible under a soft integralist regime and that the answer remains unclear for hard integralist ones, as the ultimate answer lies with the Church.*

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## INTRODUCTION

Liberalism appears to be once again under siege. The most recent challenge comes from a modern variant of integralism that is especially popular among Catholic intellectuals. It bears noting that neither antiliberal thought or for that matter, integralism, is new. Critiques of liberalism have been around since the birth of liberalism itself.<sup>1</sup> As theorist Stephen Holmes observes in *Anatomy of Antiliberalism*, “The disparagement of liberalism is not a passing fashion of the last twentieth century. It is a recurring feature of Western political culture at least since the French Revolution.”<sup>2</sup> In a similar vein, integralism is not a novel concept. It dates back, at least to the writings of Saint Gregory the Great in the sixth century.<sup>3</sup> Some of its familiar modern dimensions has been articulated by the nineteenth-century monarchist and counter-revolutionary French political movement *Action Française*,<sup>4</sup> while more recent scholars have also used the label “integralist” to describe religious citizens who aim to live their comprehensive beliefs in the public realm

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1. STEPHEN HOLMES, *THE ANATOMY OF ANTILIBERALISM* (1st paperback ed. 1996); see also ISAAH BERLIN’S *COUNTER-ENLIGHTENMENT* (Joseph Mali & Robert Wokler eds., 2003).

2. HOLMES, *supra* note 1, at xi.

3. René Rémond, *Action Française*, in *THE COLUMBIA HISTORY OF TWENTIETH-CENTURY FRENCH THOUGHT* 7 (Lawrence D. Kritzman ed., 2006).

4. See, e.g., Gregory I, *Epistle III*, in MARTIN RHONHEIMER, *THE COMMON GOOD OF CONSTITUTIONAL DEMOCRACY: ESSAYS IN POLITICAL PHILOSOPHY AND ON CATHOLIC SOCIAL TEACHING* 360 (William F. Murphy Jr. ed., 2012); HENRI-XAVIER ARQUILLIÈRE, *L’AUGUSTINISME POLITIQUE. ESSAI SUR LA FORMATION DES THEORIES POLITIQUES DU MOYEN ÂGE* 40 (2d ed. 1955).

contrary to the liberal injunction on keeping religious beliefs as private preferences.<sup>5</sup>

Nonetheless there is something distinct about the modern variant of integralism which is the focus of our paper. For purposes of brevity, we will refer to it throughout as Catholic integralism. Contrary to previous critiques, Catholic integralism confronts liberalism not merely as a political phenomenon, but as a comprehensive worldview<sup>6</sup> with hidden metaphysical and theological implications.<sup>7</sup> Mirroring liberalism's rejection of Christianity, and in particular the Catholic Church of the Middle Ages,<sup>8</sup> at its inception, Catholic integralism likewise rejects the approach of liberalism in positing that politics are separate from any concern with the end of human life. Instead, it views the function of political rule as existing so as to order human beings to their final cause. In other words, it is the duty of the state to promote the good and the good life for its citizens. Since humans possess a temporal and an eternal end, integralism maintains that there must be two powers to rule over them, one temporal and one spiritual. In line with Catholic orthodoxy's subordination of one's temporal end to their eternal end, Catholic integralism thus posits that the temporal power must be subordinated to the spiritual power which in this case would be the Catholic Church.

Our goal in this paper is to hold a mirror to these two worldviews using the lens of religious freedom. We think this inquiry is important for several reasons. Liberals argue that there is no room for religious freedom in an integralist regime, for one, because of its belief that the state can properly use coercion, including religious coercion, in order to promote expressly Catholic ends.<sup>9</sup> Integralists on the other hand characterize liberalism as playing a con game in that it attempts to draw everyone to engage in a "dialogue within the (putatively) open and pluralistic market

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5. Mark Jensen, *The Integralist Objection to Political Liberalism*, 31 *SOC. THEORY & PRAC.* 157 (2005).

6. On the notion of comprehensive worldview/doctrine, see JOHN RAWLS, *POLITICAL LIBERALISM* (expanded ed. 2005) [hereinafter RAWLS, *POLITICAL LIBERALISM*].

7. D.C. Shindler, *What is Liberalism? An Attempt at a Theological and Metaphysical Response*, *NEW POLITY*, Aug. 2020.

8. PIERRE MANENT, *AN INTELLECTUAL HISTORY OF LIBERALISM* (Rebecca Balinski trans., Princeton Univ. Press 1995) (1987).

9. Micah Schwartzman & Jocelyn Wilson, *The Unreasonableness of Catholic Integralism*, 56 *SAN DIEGO L. REV.* 1039 (2019); Richard Schragger & Micah Schwartzman, *Religious Antiliberalism and the First Amendment*, 104 *MINN. L. REV.* 1341 (2020).

of religions, all the while that it has already, hiddenly, filled the terms of that dialogue with a liberal theory of religion.”<sup>10</sup> Many pluralistic liberal societies such as the United States or Canada, are, by definition, not exclusively Christian. Thus, the question of religious freedom is both a philosophical and practical concern of utmost importance. Moreover, it behooves anyone committed to upholding liberal ideals in a pluralist society such as the United States or Canada, to take these recent critiques of liberalism seriously. After all, revendication efforts to gain political power and enact integralist policies is not the province of Catholic integralists alone.<sup>11</sup> Indeed, today, Catholic integralism is only one among many external and internal challenges to liberalism, and particularly to liberal democracy as a political arrangement. Our inquiry thus should help bolster a defense of liberalism by unpacking both liberal and Catholic ideas of religious freedom—one of the cardinal tenets in a pluralistic society.

In this paper, we sketch an outline of Catholic integralism—its origins and doctrine—and zero in on the liberal critique of religious freedom in an integralist regime. To our mind, this is the first attempt to thoroughly explain Catholic integralism to a general audience. Our goal is to explore these views as they relate to the specific case of religious minorities. One of the most frequently asked questions of Catholic integralists is the plight of religious minorities or nonreligious citizens in an integralist state. Is there space for the liberal idea of religious freedom in an integralist state? The obvious answer is seemingly no. However, there has not been a closer examination of this question thus far in scholarly literature. Hence, in Part I, we hope to get the conversation started by looking at different definitions and emphases of the liberal idea of religious freedom. Ultimately, we argue that religious freedom *might* be possible, if only under a certain type of integralist state. What this means for integralists, on the one hand, is that it is important to clarify the practical dimensions of their propositions. What

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10. David L. Schindler, *Religious Freedom, Truth, and American Liberalism: Another Look at John Courtney Murray*, 21 COMMUNIO 696, 697 (1994).

11. See, e.g., ANDREW F. MARCH, *THE CALIPHATE OF MAN: POPULAR SOVEREIGNTY IN MODERN ISLAMIC THOUGHT* (2019); JOHN L. ESPOSITO & EMAD EL-DIN SHAHIN, *THE OXFORD HANDBOOK OF ISLAM AND POLITICS* (2013); ABDULLAHI AHMED AN-NA’IM, *ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI’A* (2008); JIANG QING, *A CONFUCIAN CONSTITUTIONAL ORDER: HOW CHINA’S ANCIENT PAST CAN SHAPE ITS POLITICAL FUTURE* (2013); Matthew Schmitz, *Confucian Integralism*, FIRST THINGS (May 2020), <https://www.firstthings.com/article/2020/05/confucian-integralism>.

interpretation of religious freedom do they endorse? For liberals, on the other hand, a key takeaway is that it is important to recognize and acknowledge that it is not as neutral as it presupposes. It is one among many other comprehensive doctrines available with its own assumptions. To that end, it may do well to develop more inclusive versions of itself as a recognition of the reality of pluralism.

Finally, the example of religious freedom in Part II shows how other traditions or comprehensive views have their own different, though equally valid, conceptions of terms such as freedom, dignity, and ultimately what it means to be human.<sup>12</sup> In particular, integralists offer a unique view of religious freedom to the liberal as they must grapple with *Dignitatis Humanae*, the Vatican II declaration on freedom of religion. With this alternative view, the extent to which religious freedom policy departs from that of under a liberal regime depends on the strength of the integralist regime. This evaluative exercise joins existing scholarly literature that attempts to address tensions between liberalism and some other comprehensive worldview, with the distinction that it also remains open to the possibility that understandings of both Catholic integralism and liberalism may, in the future, both be altered in the process.<sup>13</sup>

## I. TAKING LIBERALISM AND CATHOLIC INTEGRALISM SERIOUSLY

### A. Liberalism on Integralism

Conventional accounts of liberalism generally characterize it as a political philosophy of limited government, one which affirms a constellation of values that includes individual rights, liberty of conscience, toleration, a delineation of the public and private spheres, justice, equality, fairness, and the separation of church and state.<sup>14</sup> The liberal tradition features a rich and long array of thinkers ranging from John Locke, Adam Smith, and John Stuart Mill, to its most prominent theorist of the modern age, John Rawls. While it is worth noting that liberalism has many versions

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12. See, e.g., Frederick Mark Gedicks, *Christian Dignity and the Overlapping Consensus*, 46 BYU L. REV. 1245 (2021).

13. For an example of this type of scholarship, see Lucas Swaine, *Can Islam Transform Liberalism?*, 19 POL., RELIGION & IDEOLOGY 285 (2018).

14. See, e.g., LIBERALISM AND THE MORAL LIFE (Nancy L. Rosenblum ed., 1989); EDMUND FAWCETT, LIBERALISM: THE LIFE OF AN IDEA (2d ed. 2018).

and indeed is often a contested concept,<sup>15</sup> at the minimum, standard accounts posit that a limited and neutral state should allow people to pursue their diverse paths in life as a matter of due respect for their autonomy. In his book *A Theory of Justice*, Rawls characterized religious liberty as the most basic of the basic liberties.<sup>16</sup> As such, in a liberal state, all citizens enjoy equal respect regardless of their religious belief or affiliation. Part of the reason is pragmatic. The canonical liberal philosopher John Locke formulated his views on religion and religious toleration against the grim backdrop of the European religious wars when warring Christian sects sought to impose their doctrines on those they considered to be heretics. For Locke, religion is about the aspirations of the individual soul to salvation, and therefore the state has no authority to shape or control such aspirations.<sup>17</sup> As such, it cannot effectively compel inward belief, nor does it have the competence and wisdom to distinguish true from false belief.<sup>18</sup> Liberalism was thus historically a tool of managing diversity by removing any discussion of ends from the table. Given that there are a variety of religious beliefs, the state should absolve from any interference in order to prevent people from resorting to violence. In contemporary liberal thought, this means that the state must be neutral in how it treats religious and nonreligious citizens, and that there must be a clear divide between the public and private realms. According to Rawls, one of the most firmly held public convictions in a liberal society is that citizens have a basic interest in being able to freely endorse and pursue their own conceptions of the good.<sup>19</sup>

In recent scholarship, the most prominent liberal critic of integralism is legal scholar Micah Schwartzman. Writing within the context of church-state controversies in American constitutional law, Schwartzman and co-author Jocelyn Wilson laid out a thoroughly liberal opposition to Catholic integralism in their article *The Unreasonableness of Catholic Integralism*.<sup>20</sup> In their view,

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15. Duncan Bell, *What is Liberalism?*, 42 POL. THEORY 682 (2014); see also Gerald Gaus & Shane D. Courtland, *Liberalism*, STAN. ENCYC. PHIL. (Jan. 22, 2018), <https://plato.stanford.edu/archives/spr2018/entries/liberalism/>.

16. JOHN RAWLS, *A THEORY OF JUSTICE* (rev. ed. 2009).

17. We should note, however, that Locke himself did not extend toleration to Catholics and atheists. See JOHN LOCKE, *A LETTER CONCERNING TOLERATION* (1689).

18. *Id.*

19. RAWLS, *POLITICAL LIBERALISM*, *supra* note 6.

20. Schwartzman & Wilson, *supra* note 9.

integralism is incompatible with liberalism, and indeed even dangerous, because it rejects an understanding of reasonableness which lies at the center of liberal political philosophy. Reasonableness plays out in liberal thought in two dimensions: first, that people are said to be reasonable when they accept the idea of society as a fair system of social cooperation between free and equal citizens.<sup>21</sup> That means the system is not hierarchical or one characterized by domination; rather, people act in a relation of reciprocity and everyone is deemed to have the freedom and capacity “to form, to revise, and rationally to pursue a conception of the good.”<sup>22</sup> Schwartzman and Wilson emphasize that “[c]itizens are considered to be free in the sense that their political status does not turn on whether they maintain a particular conception of the good.”<sup>23</sup> This is related to the second dimension of reasonableness, that is, all are considered to be equal and free to subscribe to whatever conception of the good, and to be able to revise that conception as they see fit, without it affecting their basic rights and liberties.<sup>24</sup>

Schwartzman and Wilson thus argue that the liberal idea of reasonableness contains both epistemic and moral components that integralism rejects. For one, integralists view society not as a system of fair cooperation but as a system in which citizens engage in politics “as a form of existential, theological, and cultural warfare,”<sup>25</sup> until eventually the liberal state is superseded by an integralist one. In the meantime, politics is viewed pragmatically at most as a *modus vivendi*, until the aims of establishing an integralist order is achieved and the Catholic church is recognized as a religious and political authority. According to Schwartzman and Wilson, this is unreasonable because it excludes competing religious and ethical perspectives as having valid and independent claims.<sup>26</sup> This rejection of the idea of reasonable pluralism which characterizes modern liberal democracies is a repudiation of liberalism as a system of fair cooperation. Philosopher Kevin

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21. RAWLS, POLITICAL LIBERALISM, *supra* note 6, at 212–16; JOHN RAWLS, COLLECTED PAPERS 573–79 (Samuel Freeman ed., 1999) [hereinafter RAWLS, COLLECTED PAPERS].

22. RAWLS, POLITICAL LIBERALISM, *supra* note 6, at 72.

23. Schwartzman & Wilson, *supra* note 9, at 1059.

24. RAWLS, POLITICAL LIBERALISM, *supra* note 6, at 223–27; RAWLS, COLLECTED PAPERS, *supra* note 21, at 581–89.

25. Schwartzman & Wilson, *supra* note 9, at 1061–62.

26. *Id.* at 1062.

Vallier makes a similar point, noting that the biggest difference between integralism and political liberalism is their divergent views on the rationality of moral disagreement.<sup>27</sup> Vallier suggests that Rawls was mistaken in assuming that political liberalism does not engage those who, like the integralists, seek to embody the whole truth in politics.<sup>28</sup> As a matter of fact, integralists do not believe in extending reciprocity to differences of moral opinion since it would seem self-evident that “the most fundamental questions should be settled by appealing to the most important truths,”<sup>29</sup> and this seems a rejection of political liberalism’s reasonableness requirement.

In addition, the very goal itself of integralism—that is to recognize the Catholic Church as a political authority and its corollary use of coercive powers in matters of religion—is simply incompatible with “the ideas of freedom and equality in the liberal conception of reasonableness”<sup>30</sup> because it would necessarily restrict the basic liberties, such as but not limited to the religious liberty of those who do not subscribe to the state-sanctioned faith. Schwartzman and Wilson discount a conversation between prominent integralist Adrian Vermeule and an unnamed colleague who asked, “[I]n a fully Catholic polity, the sort you would like to bring about, what would happen to me, a Jew?” Vermeule supposedly answered, “Nothing bad,”<sup>31</sup> assuring his colleague with a question-begging statement, as it does not give a standard of how to determine what is good or bad.<sup>32</sup> Hence, Schwartzman and Wilson conclude that if integralists are indeed committed to their principles, it will pose a danger and result in harmful consequences to the rights and standing of minorities.<sup>33</sup>

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27. Kevin Vallier, *Political Liberals vs. Integralists: Where the Conflict Really Lies*, RECONCILED (Oct. 30, 2020), <https://www.kevinvallier.com/reconciled/political-liberals-vs-integralists-where-the-conflict-really-lies/>.

28. *Id.*

29. RAWLS, POLITICAL LIBERALISM, *supra* note 6, at 216.

30. Schwartzman & Wilson, *supra* note 9, at 1062.

31. *Id.* at 1064 (citing Adrian Vermeule, *According to Truth*, THE JOSIAS (July 19, 2018), <https://thejosias.com/2018/07/19/according-to-truth>).

32. *Id.*

33. *Id.* at 1064–65.

### B. Integralism on Liberalism

The newfound interest for integralism among antiliberal and postliberal Catholic thinkers is a recent trend, but one with deep roots within an old tradition of thought. Out of the most prominent participants in the conversation on Catholic integralism, two stand out in particular: legal scholar Professor Adrian Vermeule<sup>34</sup> and Cistercian priest Pater Edmund Waldstein.<sup>35</sup> And very recently, Thomas Crean and Alan Fimister significantly added to the conversation in publishing *Integralism*,<sup>36</sup> a scholastic primer which now stands as the most developed work on the matter. The succinct scholastic introduction to classical political philosophy wastes no time addressing critiques or alternative views of politics, but rather starts from the teleological premise inherent to Catholic integralism: “Politics, like all moral philosophy, must be instructed by divine revelation. This is because, in contrast to speculative reason, the first principle in moral and practical philosophy is the final end: before deciding what to do, we must first know what to aim at.”<sup>37</sup>

This teleological setting is already radically at odds with the metaphysical and epistemological foundations of politics under the liberal paradigm. The contrast further develops when integralism is articulated as a comprehensive form of political organization, from its proper definition to its thought tradition and historical expressions. Unsurprisingly, being conceptualized in reaction to

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34. See Adrian Vermeule, *A Christian Strategy*, FIRST THINGS (Nov. 2017), <https://www.firstthings.com/article/2017/11/a-christian-strategy> [hereinafter Vermeule, *Christian Strategy*]; Adrian Vermeule, *Integration from Within*, AM. AFFS., Feb. 20, 2018 [hereinafter Vermeule, *Integration*].

35. See Edmund Waldstein, *Integralism and Gelasian Dyarchy*, THE JOSIAS (Mar. 3, 2016), <https://thejosias.com/2016/03/03/integralism-and-gelasian-dyarchy/> [hereinafter Waldstein, *Gelasian Dyarchy*]; Edmund Waldstein, *An Integralist Manifesto*, FIRST THINGS, Oct. 2017 [hereinafter Waldstein, *Integralist Manifesto*]; Edmund Waldstein, *What Is Integralism Today?*, CHURCH LIFE J. (Oct. 31, 2018), <https://churchlifejournal.nd.edu/articles/what-is-integralism-today/> [hereinafter Waldstein, *Integralism Today*]; Edmund Waldstein, *Integralism and the Logic of the Cross*, CHURCH LIFE J. (Mar. 19, 2019), <https://churchlifejournal.nd.edu/articles/integralism-and-the-logic-of-the-cross/> [hereinafter Waldstein, *Logic of the Cross*].

36. THOMAS CREAN & ALAN FIMISTER, *INTEGRALISM: A MANUAL OF POLITICAL PHILOSOPHY* (2020).

37. *Id.* at 9.

liberalism, modern Catholic integralism is at its core reactionary and antiliberal.<sup>38</sup>

### 1. *Defining Catholic integralism*

Catholic integralism holds that there are two powers, or authorities,<sup>39</sup> to rule humanity: a temporal power for which the state is responsible and a spiritual power for which the Church is responsible. Since political rule must order humans to their final end, politics are fully integrated with the end of human life. Catholicism teaches that human beings' temporal end is subordinate to their eternal end, so it follows that the temporal power of the state, or *regalis potestas*, must be subordinated to the spiritual power of the Church, or *auctoritas sacrata*. The world must, as a consequence, take shape under the action of the Church, whether directly or indirectly.

Integralism is premised on the idea that only Catholicism provides a satisfactory basis for the ordering of society, and it was the preferred structure of political organization throughout Church history until the Reformation. It also had support from some, if not all, of the popes in the nineteenth and twentieth centuries. In an integralist structure, the state is obligated to defend the interests of the Church because ethical values determine social conduct, and it is the Church which teaches morality authoritatively, founded on natural law tradition. Integralism effectively considers the political sphere as a subset of the religious sphere.<sup>40</sup> Further still, integralism advocates for an integrated cosmology, created by and understood through God, so that "family and school, play and work, art and communication, the order of social relationships and the civil order" are considered mutually dependent "integral parts of a whole."<sup>41</sup>

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38. Although the term "illiberal" is often used instead of "antiliberal," the term here is deliberate to illustrate the striking opposition between integralism and liberalism, as it will be herein further developed.

39. Please note that the term "power" is used by integralists in the classical sense, and not in the modern or postmodern sense, meaning that the term "authority" might convey the meaning better.

40. On this idea, see JOHN MILBANK, *THEOLOGY AND SOCIAL THEORY: BEYOND SECULAR REASON* (2d ed. 2006).

41. L. Brent Bozell, Jr., *Letter to Yourselves*, INCUDI REDDERE (1969), <https://incudireddere.wordpress.com/2018/05/08/letter-to-yourselves/>.

In other words, integralism adopts the Aristotelian view that politics is concerned with the highest good as the final end, or *telos*.<sup>42</sup> Since the final end of human beings requires the common good, shared by all members of the community without being divided or diminished, the political project thus aims at a *societas perfecta*, which is the “final judge of good and bad, of what is to be sought and of what is to be shunned.”<sup>43</sup> This is also found with Pope Saint Gelasius I, who expressed in his 494 letter *Famuli vestrae pietatis*, also known as *Duo sunt*,<sup>44</sup> the Gelasian doctrine of the spiritual and the temporal powers to Byzantine Emperor Anastasius I Dicorus in these words:

There are two, august Emperor, by which this world is chiefly ruled, namely, the sacred authority (*auctoritas sacrata*) of the priests and the royal power (*regalis potestas*). Of these, that of the priests is weightier, since they have to render an account for even the kings of men in the divine judgment. You are also aware, most clement son, that while you are permitted honorably to rule over human kind, yet in divine matters you bend your neck devotedly to the bishops and await from them the means of your salvation. In the reception and proper disposition of the heavenly sacraments you recognize that you should be subordinate rather than superior to the religious order, and that in these things you depend on their judgment rather than wish to bend them to your will. If the ministers of religion, recognizing the supremacy granted you from heaven in matters affecting the public order, obey your laws, lest otherwise they might obstruct the course of secular affairs by irrelevant considerations, with what readiness should you not yield them obedience to whom is assigned the dispensing of the sacred mysteries of religion?<sup>45</sup>

The Gelasian doctrine therefore holds that secular temporal power (*potestas*) is inferior to priestly spiritual authority (*auctoritas*),

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42. ARISTOTLE, *Nicomachean Ethics* bk. I, at 3–4; bk. VII, at 136–37 (Roger Crisp ed., trans., Cambridge Univ. Press rev. ed. 2000) (c. 384 B.C.E.).

43. Waldstein, *Gelasian Dyarchy*, *supra* note 35; see also THOMAS AQUINAS, *SUMMA THEOLOGIAE I-II*, question 90, art. 3 (Sandra K. Perry ed., Fathers of the English Dominican Province trans., Project Gutenberg 2006) (1485) [hereinafter AQUINAS, *SUMMA*].

44. See also ENCHIRIDION SYMBOLORUM: A COMPENDIUM OF CREEDS, DEFINITIONS AND DECLARATIONS OF THE CATHOLIC CHURCH (Heinrich Denzinger & Peter Hünermann eds., 43rd ed. 2012); *Gelasian Doctrine*, THE OXFORD DICTIONARY OF THE MIDDLE AGES (Robert E. Bjork ed., 2010).

45. Gelasius I, *Famuli Vestrae Pietatis*, in THE LETTERS OF GELASIUS I (492–496): PASTOR AND MICRO-MANAGER OF THE CHURCH OF ROME para. 2 (Bronwen Neil & Pauline Allen eds., 2014).

which is responsible for the eternal condition of all subjects, but “implies that the priestly authority is inferior to the secular authority in the secular domain.”<sup>46</sup>

In the integralist account of politics, there is no “Church and State,” since both powers are taking place within the one *societas perfecta*, the Church or the City of God. The end of the perfect society, sometimes also called the complete community, is “the complete sufficiency of life, that is, a fullness of happiness for those who belong to it” and it is complete because “it possesses within itself all the means necessary for achieving that end.”<sup>47</sup> Only the Catholic Church, in having beatitude as her end, “the vision of God in union with Christ and the saints,” qualifies for the perfect society.<sup>48</sup> Integralism sees not the Church and State as two perfect societies wielding power in their respective jurisdiction, but rather only the Church as *societas perfecta* in which the spiritual and the temporal powers are properly hierarchically arranged. It is within the Church, within the one perfect society, that the temporal society made up of the same members transpires. Christendom then, which “exists only by this very ordering of the temporal power to the Church’s spiritual power,” is materially co-extensive with the Church while simultaneously formally distinct from her.<sup>49</sup>

## 2. *Origins of Catholic integralist thought*

Waldstein argues that the roots of integralism reach back to counter-reformation political theology, and even further back to the medieval popes’ teachings on the development of the Gelasian dyarchy.<sup>50</sup> In other words, integralism is the interpretation that the Church has historically given to the dyarchy of powers, and ergo constitutes the only true one. While not all agree with this interpretation, it makes the convincing case that integralist tradition precedes modernity by almost a millennium.

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46. See *Medieval Period*, THE OXFORD ENCYCLOPEDIA OF THE BIBLE AND LAW (Brent A. Strawn ed., 2015).

47. CREAN & FIMISTER, *supra* note 36, at 16. On the absence of “Church and State,” see ANDREW WILLARD JONES, BEFORE CHURCH AND STATE: A STUDY OF SOCIAL ORDER IN THE SACRAMENTAL KINGDOM OF ST. LOUIS IX (2017) [hereinafter JONES, BEFORE CHURCH AND STATE].

48. CREAN & FIMISTER, *supra* note 36, at 20.

49. *Id.* at 21.

50. See Waldstein, *Gelasian Dyarchy*, *supra* note 35.

According to medieval scholar Walter Ullmann in his seminal study on the relation of lay and clerical power in the Middle Ages, “a unity of themes and a consistency of principles” for thinking about the Church and its political orientation were perceptible as early as late antiquity.<sup>51</sup> The Church as *corpus Christi* was not merely a spiritual body, “but also an organic, concrete and earthy society,” a body of dual nature—spiritual and physical.<sup>52</sup> The physical society needs to be governed; it requires a government to direct it in accordance with its purpose, or *telos*.<sup>53</sup> Only the clergy as ordained members could, however, govern the Church, and so the laity was excluded. Furthermore, Leo the Great designated himself the Vicar of Saint Peter giving official form to the idea that only the bishop of Rome was qualified to rule the Church on earth as Pope.<sup>54</sup>

Such understanding of the Church as a body of dual nature which can only be governed by the clergy and ruled by the Vicar of Saint Peter is already captured in the Gelasian dyarchy.<sup>55</sup> In these words, Ullmann explains the subordination of the states’ *regalis potestas* to the *auctoritas sacrata* of the Church intrinsic to the Gelasian doctrine:

Since the pope alone has the *principatus* over the Christian body, the emperor, according to Gelasius, must be directed by the *sacerdotium*. The secular power has not only no right to issue decrees fixing the faith, since the emperor is no bishop, but he also must carry out his government according to the directions given to him by the priesthood.<sup>56</sup>

In the Gelasian dyarchy, priesthood must direct royal power without fault. Informed by the parallel Roman institutions of the senate having *auctoritas* and the magistrate having *potestas*, Ullmann describes *auctoritas* as a normative creative faculty to shape things, different from *potestas* as the power, and possibly even the obligation, to execute the principles established by

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51. WALTER ULLMANN, *THE GROWTH OF PAPAL GOVERNMENT IN THE MIDDLE AGES* 1 (2d ed. 1962).

52. *Id.* at 2–3.

53. *Id.* at 2.

54. See *NICENE AND POST-NICENE FATHERS: LEO THE GREAT 115–205* (Charles Lett Feltoe trans., Philip Schaff & Henry Wallace eds., Cosimo 2007) (1895) (sermons 2.2, 3.2, 3.3, 3.4, 4.2, 4.3, 4.4, 5.4, 5.5, 16.6, 18.3, 24.6, & 51.1).

55. See ULLMANN, *supra* note 51, at 20–22.

56. *Id.* at 20.

*auctoritas*.<sup>57</sup> It was deemed important that the emperors submitted their governmental actions to the light of the ecclesiastical superiors as “they alone have *auctoritas* within a Christian body corporate.”<sup>58</sup>

Saint Gregory the Great acknowledged temporal power as particularly relevant for curbing sin when informed by the spiritual power. Pope Gregory I wrote that it is God’s will that the power he gives to the one who governs must be wielded for the good, “such that the earthly kingdom would be a service which subordinates itself to the heavenly kingdom.”<sup>59</sup> This dynamic between the powers of the dyarchy is *ratione peccati*, a consequence of sin: only in a fallen world wounded by sin are temporal matters a distraction from sacred matters,<sup>60</sup> so that spiritual power must be relieved from the burden of having to care for earthly matters.<sup>61</sup> This is thoroughly a dyarchical dynamic; it is not monarchical, and certainly not theocratical since it never advocates for the Church to rule the state. Saint Gregory the Great here is not teaching that temporal power is merely mediated through spiritual power; rather, he is teaching that temporal power is derived directly from God but can only have legitimacy by submitting itself to the spiritual power, which has care of the final end, to positively participate in the City of God.

Spiritual and temporal powers are, to use Pope Innocent III’s description, like the sun and the moon, two powerful luminaries, “a major one to dominate the day and a minor one to dominate the night.”<sup>62</sup> The *auctoritas sacrata* of the Church presides over the days of the souls and the *regalis potestas* of the state presides over the nights of the bodies, and just like the moon receives its light from the sun, the temporal power “derives from the Pontifical authority the splendour of its dignity.”<sup>63</sup> This is the correct order of things

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57. See *id.* at 21. Please note that Ullmann’s account of the *auctoritas-potestas* distinction has been criticized. See, e.g., Alan Cotrell, *Auctoritas and Potestas: A Reevaluation of the Correspondence of Gelasius I on Papal-Imperial Relations*, 55 *MEDIEVAL STUD.* 95 (1993).

58. See ULLMANN, *supra* note 51, at 22.

59. MARTIN RHONHEIMER, *THE COMMON GOOD OF CONSTITUTIONAL DEMOCRACY: ESSAYS IN POLITICAL PHILOSOPHY AND ON CATHOLIC SOCIAL TEACHING* 7 (William F. Murphy trans., 2013) (quoting GREGORY I, *EPISTLE III*, 65).

60. See, e.g., Innocent III, *Views of Pope Innocent III on the Plenitude of the “Plenitudo Protestatis”*, (1198–1204), in *CHURCH AND STATE THROUGH THE CENTURIES: A COLLECTION OF HISTORIC DOCUMENTS WITH COMMENTARIES* 64, 69–71 (Sidney Z. Ehler & John B. Morrall eds., 1954) (*Novit Ille*).

61. See Waldstein, *Gelasian Dyarchy*, *supra* note 35.

62. Innocent III, *supra* note 60, at 73 (*Sicut universitatis conditor*).

63. *Id.*

because human beings can attain two kinds of happiness, like Saint Thomas Aquinas writes, one in the natural world and one in the supernatural world,<sup>64</sup> and natural happiness is always ordered to supernatural happiness, ordained to a higher end which consists in the enjoyment of God.<sup>65</sup> The same applies to society:

[T]hrough virtuous living man is further ordained to a higher end, which consists in the enjoyment of God, as we have said above. Consequently, since society must have the same end as the individual man, it is not the ultimate end of an assembled multitude to live virtuously, but through virtuous living to attain to the possession of God.<sup>66</sup>

Saint Thomas Aquinas also rejects such understanding of the Gelasian dyarchy as theocratical since the temporal power receives its authority directly from God through the natural law, and not from spiritual authority.<sup>67</sup> Both spiritual power and temporal power are established from divine power. Thus, in matters which pertain to the salvation of the soul, the spiritual power of the Church must be obeyed before the temporal power of the state, but in matters which pertain to the civil good, the temporal power must be obeyed before the spiritual.<sup>68</sup> Aquinas's understanding is entirely consistent with Pope Leo XIII's full account of the orderly connection between the two powers in *Immortale Dei*.<sup>69</sup> The encyclical indeed provides:

The Almighty, therefore, has given the charge of the human race to two powers, the ecclesiastical and the civil, the one being set over divine, and the other over human, things. Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out

64. See AQUINAS, *SUMMA*, *supra* note 43, bk. I-II, question 62, art. 1.

65. See *id.*; THOMAS AQUINAS, *DE REGNO AD REGEM CYPRI* bk. I, ch. 15 (1267) [hereinafter AQUINAS, *DE REGNO*].

66. AQUINAS, *DE REGNO*, *supra* note 65, bk. I, ch. 15.

67. See THOMAS AQUINAS, *COMMENTARY ON THE SENTENCES* dist. 44, question 3, art. 4, in *AQUINAS: POLITICAL WRITINGS* (CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT) 277, 277-78 (R.W. Dyson ed., trans., 2002).

68. For a discussion on mixed matters, when they relate directly to both the spiritual and the temporal power, see CREAN & FIMISTER, *supra* note 36, at 217-19.

69. POPE LEO XIII, *IMMORTALE DEI* §§ 13-14 (Vatican 1885).

within which the action of each is brought into play by its own native right.<sup>70</sup>

Aquinas's understanding is equally consistent with Pope Boniface VIII's view of temporal power as rightfully instructed by spiritual power, explaining the need for the former to be subordinate to the latter, in his dogmatic bull *Unam sanctam*:

[The] spiritual power surpasses in dignity and in nobility any temporal power whatever, as spiritual things surpass the temporal. This we see very clearly also by the payment of tithes, by benedictions and consecrations, by the reception of power itself and by the very government of things. For truth bears witness that the spiritual power must institute the earthly power and judge if it be not good; thus with the Church and the ecclesiastical power is accomplished the prophecy of Jeremiah: *Behold, I have set thee today over nations and kings.*<sup>71</sup>

Since the temporal good of society is by nature subordinate to its eternal good, "the end to which the temporal ruler directs the multitude can only be pursued when it is subordinated to a higher goal which is eternal life," and thus the temporal power must be subordinated to the spiritual.<sup>72</sup> Subordination here refers to an orderly hierarchical alignment between the two powers, not the dictatorship of the spiritual over the temporal. Again, integralism is based on proper and orderly cooperation, not theocracy;<sup>73</sup> in other words, spiritual authority does not dictate temporal authority, it orients and informs it, but there is no contradiction nor fusion of the two.

### 3. Catholic integralism vis-à-vis modern liberalism

Although the idea of integralism long precedes the modern period, as we have seen, the concept itself is now de facto thoroughly antimodern and equally antiliberal. The articulation and use of the term *integralism* as understood today stems by direct

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70. *Id.* § 13.

71. BONIFACE VIII, *UNAM SANCTAM* (Vatican 1302). On the spiritual instituting the temporal, "spiritualis potestas terrenam potestatem instituere habet et iudicare, si bona non fuerit," we could equally understand *instituere* as instructing or teaching, meaning that the spiritual power remains higher insofar as it is the ultimate authority on interpreting natural law, which comes directly from God, as is the foundations of the temporal power. *Id.*

72. CREAN & FIMISTER, *supra* note 36, at 77-78.

73. For an example of perfect integrated cooperation between *auctoritas* and *potestas*, see generally JONES, *BEFORE CHURCH AND STATE*, *supra* note 47.

descent from the political and cultural changes following the Enlightenment and the French Revolution.<sup>74</sup> And so, Catholic integralism reached its classical form in the reaction against modern liberalism. In 1864, the Holy See under Pope Pius IX issued the *Syllabus of Errors*,<sup>75</sup> a large compilation of heresies in the philosophical and political realm condemned by the Church, denouncing many modern liberal ideas inherited from the Enlightenment. The *Syllabus of Errors* served as basis for the political program of Spanish party Partido Católico Nacional founded around 1890, also known as Partido Integrista Español.<sup>76</sup> It is nonetheless after Pope Saint Pius X condemned modernism in his 1907 encyclical *Pascendi Dominici Gregis*<sup>77</sup> that the term *integralism* was seriously accepted and popularized, as self-described “integral Catholics” of France started to organize themselves.

Italian priest Umberto Benigni founded in 1909 the *Sodalitium Pianum*, a secret solidity better known under the code name *La Sapinière*, which was the most important integralist organization fighting unorthodoxy to gain the support of Pope Saint Pius X.<sup>78</sup> At the same time, monarchist and counter-revolutionary French political movement *Action Française* led by Charles Maurras became political refuge for Catholics who, disillusioned by the Dreyfus Affair, expressed strong doubt about the compatibility of Catholicism with democracy.<sup>79</sup> For these integralists and Pope Saint Pius X, *Action Française* was a rampart of religion as well as the most fitting expression of the Church doctrine regarding society.<sup>80</sup> Integralism also penetrated both Portuguese and Brazilian politics.

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74. See Christopher van der Krogt, *Catholic Fundamentalism or Catholic Integralism?*, in *TO STRIVE AND NOT TO YIELD: ESSAYS IN HONOUR OF COLIN BROWN* 123, 125 (James Veitch ed., 1992).

75. Pius IX, *Syllabus Errorum*, in *QUANTA CURA* (1864), <https://www.papalencyclicals.net/pius09/p9syll.htm>.

76. See van der Krogt, *supra* note 74, at 125; See also FÉLIX SARDÁ Y SALVANY, *EL LIBERALISMO ES PECADO* (1884); JAVIER REAL CUESTA, *EL CARLISMO VASCO 1876-1900* (1985); BEGOÑA URIGÜEN, *ORÍGENES Y EVOLUCIÓN DE LA DERECHA ESPAÑOLA: EL NEO-CATOLICISMO* (1986); John N. Schumacher, *Integrism: A Study in Nineteenth-Century Spanish Politico-Religious Thought*, 48 *CATHOLIC HIST. REV.* 343 (1962).

77. PIUS X, *PASCENDI DOMINICI GREGIS* (1907).

78. See van der Krogt, *supra* note 76, at 125–26.

79. See René Rémond, *Action Française*, in *THE COLUMBIA HISTORY OF TWENTIETH-CENTURY FRENCH THOUGHT* 7, 8 (Lawrence D. Kritzman ed., 2006).

80. See van der Krogt, *supra* note 74, at 126. We should note here that the writings of the *Action Française* were condemned by Pope Pius XI on December 29, 1926. The condemnation was lifted by Pope Pius XII on July 5, 1939.

Founded in 1914 and particularly active during the First Portuguese Republic, integralist political party *Integralismo Lusitano* fought parliamentarism ardently, advocating for traditionalism, decentralization, national syndicalism, the Roman Catholic Church, and the monarchy.<sup>81</sup> Then in 1932, Plínio Salgado founded in Brazil the *Ação Integralista Brasileira*, denouncing materialism, liberalism, and Marxism, though focusing too heavily on nationalism and spiritualism to be properly considered part of the Catholic integralist movement.<sup>82</sup>

Integralism in its strict sense is therefore reactionary; it outrightly rejects the secularization accompanying modern liberalism, the former being inherent in the latter. On the contrary, integralism stands convinced that Catholicism provides the only satisfactory basis for the ordering of society, meaning that Church and state should effectively be integrated as to work harmoniously together.<sup>83</sup> In this view, religion “is not a merely a private concern for it determines the ethical values for all social conduct and the state has a duty to defend the interests of the Church.”<sup>84</sup> Integralism supports the very opposite of what modern liberalism offers through its secular Western states: states should as a consequence be subordinated to the teachings of Catholicism, and morality should form an integral part of politics.

In brief, Catholic integralism came to prominence in the nineteenth and twentieth centuries as a Catholic antiliberal and antimodernist theory of political organization, giving support to pontifical teachings against the separation of Church and state and demanding an explicit subordination of human social and political life to God through his Church.

#### 4. *The new integralist position on liberalism*

Gelasius’s letter established the Gelasian dualistic principle in which *auctoritas* lends justification to *potestas*, which in turn provides the executive strength for *auctoritas*, and in which both are

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81. See generally LEÃO RAMOS ASCENSÃO, *O INTEGRALISMO LUSITANO* (1943); DIAMANTINO P. MACHADO, *THE STRUCTURE OF PORTUGUESE SOCIETY: THE FAILURE OF FASCISM* (1991).

82. RICARDO BENZAQUÉM DE ARAÚJO, *TOTALITARISMO E REVOLUÇÃO: O INTEGRALISMO DE PLÍNIO SALGADO* 30–71 (1988).

83. See Émile Poulat, *Intégrisme*, in 8 *ENCYCLOPAEDIA UNIVERSALIS* 1076–79 (1968); Émile Poulat, *La querelle de l’intégrisme en France*, 32 *SOCIAL COMPASS* 343, 346 (1985).

84. See van der Krogt, *supra* note 74, at 124.

independent in their own spheres of operation while working together in harmony. Such dyarchy has, however, historically been understood in a plurality of ways.<sup>85</sup> Waldstein notes three dominant theories of the Gelasian dyarchy among Catholics in modern—arguably postmodern—liberal secular states: Augustinian Radicalism, Whig Thomism, and integralism.<sup>86</sup> Stanley Hauerwas, Michael Baxter, John Milbank, William T. Cavanaugh, and Dorothy Day are all proponents of some form of Augustinian Radicalism, which holds that the Church's participation in the City of God is insolubly inconsistent with the Church's possession of coercive earthly authority when such authority is necessarily tainted with sin.<sup>87</sup> This view avoids coercion entirely and leaves Catholics only some type of Benedict Option.<sup>88</sup> Whig Thomism, which we will discuss later, finds harmony between Enlightenment liberalism and the political philosophy of Saint Thomas Aquinas and in effect sees no fundamental contradiction between liberal democracy and Catholicism.<sup>89</sup> It is generally endorsed by Fr. John Courtney Murray and Jacques Maritain,<sup>90</sup> followed by Michael Novak, George Weigel, and Richard John Neuhaus. These first two theories are rejected by Waldstein when compared to integralism, which he favors as “the only adequate understanding of Gelasian dyarchy.”<sup>91</sup> Integralism is the only Catholic approach to political organization

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85. Some critics suggest that the Catholic Church is politically opportunist. For a response explaining that the Church has aligned itself with all types of governments over time and in different places, see generally CARL SCHMITT, *ROMAN CATHOLICISM AND POLITICAL FORM* (G.L. Ulmen trans., 1996).

86. See Waldstein, *Gelasian Dyarchy*, *supra* note 35.

87. *Id.*

88. See ROD DREHER, *THE BENEDICT OPTION: A STRATEGY FOR CHRISTIANS IN A POST-CHRISTIAN NATION* (2017). The Benedict Option is a political strategy popularized by Rod Dreher whereby Christians should reject the mainstream culture that has forsaken the virtues, withdraw from it, embrace exile, and find or create communities in which virtuous life can flourish.

89. Michael Novak, *The Return of the Catholic Whig*, *FIRST THINGS* (Mar. 1990), <https://www.firstthings.com/article/1990/03/the-return-of-the-catholic-whig>; Jesse Russel, “Whig Thomism” and the Making of the Catholic Neoconservative Movement, 14 *POL. & RELIGION* 294 (2021).

90. *But see* Thomas Pink, *Jacques Maritain and the Problem of Church and State*, 79 *THOMIST* 1 (2015). Maritain's views on religious freedom are still founded within historical Catholic orthodoxy, all the while arguing for ways in which its determinations are no longer relevant in our secular age. In this sense, Maritain is a more complex case than Murray and is his own kind of Whig Thomist.

91. Waldstein, *Gelasian Dyarchy*, *supra* note 35.

that is consistent with both the magisterium of the popes of the High Middle Ages from Saint Gregory VII to Boniface VIII, and the popes' opposition to modern liberalism in the nineteenth and twentieth centuries.

Following the steps of his predecessors, the twentieth century integralists, Vermeule contends that integralism is the necessary alternative to liberalism, which should be properly understood as a world religion itself. In fact, liberalism is "one of the most successful religions in human history":

Liberalism has a soteriology, an eschatology, a clergy (or "clerisy"), and sacraments, centered on the confession and surrender of privilege, the redemption of declaring oneself an "ally," the overcoming of the dark past of prejudice and unreason—a past that is itself always in motion, so that the night of unreason may well suddenly come to mean what everyone believed last year. Liberalism "immanentizes the eschaton," as we know, and part of this process is to immanentize the threat of political damnation, by relentlessly pressing the claim that the only political alternatives to liberalism are sectarian strife, communism, or fascism—but especially fascism. Even at this late hour liberals still insist upon this false alternative, even as it visibly becomes less persuasive to polities around the world, which have realized that there are stable, peaceful, and non-tyrannical political regimes that are not liberal regimes.<sup>92</sup>

Liberalism advertises a false image of political neutrality, as it masks its "normative commitments in the guise of neutrality."<sup>93</sup> Everything but neutral, it constitutes a comprehensive theory which holds a common vision of the good life.

From this perspective, liberal agents with the most political effect are considered ascetic and highly motivated. Seen by liberal orthodoxy as intolerant and defiant of its Enlightenment principles, the Church becomes one of the greatest enemies of liberalism and, as such, must absolutely bend to its progressive demands, the boundaries of which are increasingly pushed further:

Yesterday the frontier was divorce, contraception, and abortion; then it became same-sex marriage; today it is transgenderism; tomorrow it may be polygamy, consensual adult incest, or who knows what. The uncertainty is itself the point. From the liberal

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92. See Vermeule, *Integration*, *supra* note 34 (footnotes omitted).

93. PATRICK J. DENEEN, *WHY LIBERALISM FAILED* 188 (2018).

standpoint, the essential thing is that the new issue provokes opposition from the forces of reaction, who may then be conquered in a public and dramatic fashion by the political mobilization of liberal forces.<sup>94</sup>

Such violent liberal intolerance is, according to Vermeule, not an anomaly and certainly not a self-undermining force, “but a fulfillment of its essential nature.”<sup>95</sup> For this, liberalism is at odds with the Church and Catholicism as a whole.

In a similar fashion to Vermeule, Waldstein places integralism in direct opposition to liberalism and reframes the debate between the two structures of political organization as “an argument over the proper response of the Church to the secularization of the modern world.”<sup>96</sup> Put differently, the debate is between two comprehensive doctrines: integralism views liberalism as a thought paradigm of which secularization is an inherent characteristic, and thus liberalism is really a “world religion” that has nothing to do with particular political affiliations.

In rejecting altogether the principles brought by the Enlightenment, integralism also cannot find an ally in modern conservatism. For modern conservatism is thoroughly liberal, holding “that political authority exists for the sake of the protection of individual rights, that one of the most important of those rights is the right of religious liberty, and that political authority should therefore not officially favor one religious confession more than others.”<sup>97</sup>

Not only does modern conservatism accept all the premises of the Enlightenment, but it also shares the Enlightenment’s values and established worldview, to the extent that modern conservatism is so deeply infused with classical liberalism that it would be better described as liberal conservatism.<sup>98</sup> For liberal conservatism, the most basic unit of society is the individual, not the family. In this view, the preferred structure of political organization remains the secular state as we know it today. This is precisely what Waldstein

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94. Vermeule, *Christian Strategy*, *supra* note 34, at 42. Because of the paradox of tolerance in liberal societies, liberalism can claim in the name of tolerance the right not to tolerate what is perceived as intolerant, that is, anything outside of the orthodox canons of liberalism, see KARL POPPER, *THE OPEN SOCIETY AND ITS ENEMIES: THE SPELL OF PLATO* (1963).

95. Vermeule, *Christian Strategy*, *supra* note 34, at 42.

96. Waldstein, *Integralism Today*, *supra* note 35.

97. *Id.*

98. See EAMONN BUTLER, *CLASSICAL LIBERALISM: A PRIMER* (2015).

objects to as Whig Thomism, referring “to various writers who agree with Lord Acton” that Saint Thomas Aquinas was the first Whig,<sup>99</sup> of which Fr. John Courtney Murray is the main proponent.<sup>100</sup> Placing the individual as the basis of political thought personalizes society<sup>101</sup> so that the political community fails to be ordered to the greatest temporal good of human beings: “The American Republic (at least by Murray’s time) does not see itself as ordering itself to the common good of earthly happiness, but rather to securing the God-given rights of its citizens. And that is precisely the problem.”<sup>102</sup>

The liberal “common good” is in reality the ability for each to pursue his or her own ends, a good ensured through the protection and promotion of individual rights.<sup>103</sup> Whig Thomists reconcile liberal secular states like the American Republic with Catholic teachings and, in particular, the Gelasian doctrine, because the primacy of the spiritual is realized “by a recognition on the part of the state of the authority of the individual consciences of its citizens, who are to form the state according to the dictates of those consciences through democratic processes.”<sup>104</sup> The end of these liberal secular states can be subordinated to the final end by enacting legislation consistent with the law of God.<sup>105</sup> For integralists like Waldstein, however, Catholicism makes clear that the greatest temporal good of human beings cannot be atomized because it is the common good of natural happiness. It follows that leaders must order the whole of society towards such common good, as Pope Leo XIII writes:

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99. See Novak, *supra* note 89.

100. See TRACEY ROWLAND, *CULTURE AND THE THOMIST TRADITION: AFTER VATICAN II* 16 (2003); see also John C. Murray, *Contemporary Orientations of Catholic Thought on Church and State in the Light of History*, 10 *THEOLOGICAL STUD.* 177 (1949) [hereinafter Murray, *Contemporary Orientations*]; John C. Murray, *The Issue of Church and State at Vatican Council II*, in *RELIGIOUS LIBERTY: CATHOLIC STRUGGLES WITH PLURALISM* 199 (J. Leon Hooper ed., 1993) [hereinafter Murray, *Issue of Church and State*].

101. See CHARLES DE KONINCK, *DE LA PRIMAUTE DU BIEN COMMUN CONTRE LES PERSONNALISTES* (1943).

102. See Waldstein, *Gelasian Dyarchy*, *supra* note 35.

103. See Xavier Focroulle Ménard, *Post-Liberalism as a Dialectical Christian Project*, *ATHWART* (Oct. 8, 2020), <https://www.athwart.org/post-liberalism-as-christian-dialectic/>; see also Francis Fukuyama, *Liberalism and Its Discontents*, *AM. PURPOSE* (Oct. 5, 2020), <https://www.americanpurpose.com/articles/liberalism-and-its-discontent>.

104. See Waldstein, *Gelasian Dyarchy*, *supra* note 35.

105. See MURRAY, *Contemporary Orientations*, *supra* note 100, at 189.

[A] society can neither exist nor be conceived in which there is no one to govern the wills of individuals, in such a way as to make, as it were, one will out of many, and to impel them rightly and orderly to the common good; therefore, God has willed that in a civil society there should be some to rule the multitude.<sup>106</sup>

Therefore it cannot be true, from the integralist perspective, that securing the greatest possible exercise of personal liberty for each person without harming the liberty of others forms a satisfactory base for political authority, like champions of liberalism John Stuart Mill and John Rawls contend.<sup>107</sup> Indeed, liberty is not an abstract self-sufficient good, and it is instead a faculty existing for the sake of something else, namely doing the good.<sup>108</sup> It is true nonetheless that the good of individual members of society will tend toward the common good of society because “[a]s a naturally social animal, man can only attain his proper good in society.”<sup>109</sup> Contrary to liberal doctrine, Catholic integralism holds the common good, which is never “diminished by being participated in by more than one person,”<sup>110</sup> superior to the private good of polity members. Here, integralism is heavily influenced by the writings of Aristotle and Aquinas: the common good is considered better and more divine than the good of one individual.<sup>111</sup> Since the common good constitutes greater participation in the divine good than any merely private good, those in charge of the common good must order it explicitly to God,<sup>112</sup> which is effectively realized by subordinating the state’s *regalis potestas* to the *auctoritas sacrata* of the Church.

Ultimately, this reveals how liberalism and Catholic integralism both posit a very different understanding of freedom, the latter based on a teleological construction that the former rejects. Waldstein locates the problem with the liberal understanding of

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106. LEO XIII, DIUTURNUM ILLUD § 11 (Vatican 1881).

107. JOHN STUART MILL, ON LIBERTY (1859); RAWLS, POLITICAL LIBERALISM, *supra* note 6, at 60–65.

108. CREAN & FIMISTER, *supra* note 36, at 73; JOHN PAUL II, MEMORY AND IDENTITY: CONVERSATIONS AT THE DAWN OF A MILLENNIUM (2005).

109. CREAN & FIMISTER, *supra* note 36, at 31.

110. *Id.* at 25.

111. *Id.* at 29; ARISTOTLE, *supra* note 42, bk. I, ch. 2; THOMAS AQUINAS, COMMENTARY ON THE NICOMACHEAN ETHICS bk. II, lectures 1–2.

112. *See also* LEO XIII, *supra* note 69.

freedom and equality as opposed to hierarchy and obedience,<sup>113</sup> whereas Catholicism teaches that true freedom and true equality depend precisely on hierarchy and obedience. As such, it cannot be accurate to posit liberalism as fixing real errors in Christendom and promoting “the precious Christian truths of the goodness of liberty and equality that Christendom had forgotten.”<sup>114</sup> Again, integralism sees the world as an integrated and harmonious, hierarchical, cosmological whole with an order of goods, an order of beings, and an order of rulers and subjects. In this whole, rational human beings are capable of understanding their good and pursuing it by their own will—attaining true freedom.<sup>115</sup> In the same way, having in common their humanity and sharing their specific nature, human beings are called to participate in the same common good—to achieve true equality.<sup>116</sup>

For integralism, the mere use of temporal power is just that, an exercise of power; it has no intrinsic value without proper direction. That is because the devil must be conquered by righteousness rather than power, as Saint Augustine writes: “Not that power is to be shunned as though it were something evil; but the order must be preserved, whereby righteousness is before it.”<sup>117</sup> Power is good therefore only when used for doing what is right, so power must always be subordinated to righteousness. The same logic of hierarchy and obedience applies to the idea of freedom in the sense that it can only truly be understood as freedom if ordered towards the good. Catholicism cannot share the liberal understanding of freedom as reduced to a set of rights, entitlements, and legal protections. On the contrary, the Christian idea embeds a purpose inherent in freedom itself: freedom is only freedom if it is exercised to pursue the final end, the *telos* of humanity determined by God. Or, as Saint Pope John Paul II put it beautifully, freedom is always for love.<sup>118</sup>

## II. THE QUESTION OF RELIGIOUS FREEDOM IN AN

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113. See, e.g., HELENA ROSENBLATT, *THE LOST HISTORY OF LIBERALISM: FROM ANCIENT ROME TO THE TWENTY-FIRST CENTURY* (2018); COREY ROBIN, *THE REACTIONARY MIND: CONSERVATISM FROM EDMUND BURKE TO DONALD TRUMP* (2d ed. 2017).

114. See Waldstein, *Logic of the Cross*, *supra* note 35.

115. See *John* 8:32.

116. See *id.*; *John* 15:14–15.

117. NICENE AND POST-NICENE FATHERS: ST. AUGUSTINE, *ON THE HOLY TRINITY* bk. XIII, ch. 13, § 17 (Arthur West Haddan trans., Philip Schaff ed., Cosimo 2007) (1887).

118. JOHN PAUL II, *supra* note 108.

## INTEGRALIST STATE

We must now turn to answer the practical question at the center of this Article: What is the scope of religious freedom in an integralist regime? As of this moment, no integralist state in its new articulation has managed to successfully establish itself. And as a consequence, no final answers by way of examples can be determined. We are, in some sense, navigating in the dark. Answering our practical question requires painting a speculative picture of how behavior, and quite possibly speech, with regard to religious life, practices, services, and education would be regulated by various states authorities under integralism. To do so, we address in Part A the integralist understanding of freedom of religion as defined and protected in *Dignitatis Humanae*. Such a picture is best described as a spectrum with degrees of integralism, from what we are calling soft to hard integralism,<sup>119</sup> which we develop in section II.B. Whether a given integralist regime is soft or hard will depend on the concept of religious freedom it has officially adopted and on how, in turn, its scope is determined by the principles of prudence and subsidiarity. In this spectrum, soft integralism looks to the Catholic natural law tradition to inform state policies and actions without actively enforcing positive laws that restrict individuals in their liberal freedom for prudential and subsidiarity reasons. On the other hand, hard integralism pushes, for those very reasons, a state entirely subordinated in all matters relevant to the Church, actively enforcing its whole corpus of laws and letting all other positions fall between in varying moderation.

A. *Religious Freedom and Dignitatis Humanae*

If freedom is ordered towards the *telos* of human beings, what does Catholic integralism entail for the liberal notion of freedom of religion, particularly in these times of plurality of faiths within liberal secular Western states? Such a question is of outmost relevance since the Second Vatican Council released in 1965 its declaration on religious freedom, *Dignitatis Humanae*.<sup>120</sup> In this document, the Church officially declared that the right to religious freedom stems from the dignity of the human person itself, so that

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119. The spectrum was first suggested with these labels in Edward Feser, *A Clarification on Integralism*, EDWARD FESER (June 7, 2019), <https://edwardfeser.blogspot.com/2019/06/a-clarification-on-integralism.html>.

120. PAUL VI, *DIGNITATIS HUMANAЕ* (1965).

all human beings should be immune from coercion to act in a manner contrary to their beliefs. Thus, freedom of religion must be constitutionally recognized as a civil right by the state and protected as long as just public order is observed.<sup>121</sup> Although *Dignitatis Humanae* itself is careful to characterize the document as a development in doctrine and not a change,<sup>122</sup> it has generally been read as the Church's abrogation of previous teachings in which freedom of religion was condemned, most notably Pope Pius IX's *Syllabus of Errors*,<sup>123</sup> and marks the Church's official agreement with the liberal idea of religious liberty.<sup>124</sup> Martin Rhonheimer in particular provides the most sophisticated defense of such a reading of *Dignitatis Humanae*, claiming that it does indeed contradict previous Church teaching though its teaching on the political is revisable, for it merely consists in an application of subsidiary principles of natural law.<sup>125</sup>

In the decades following 1965, the official narrative on the internal efforts within the Church to align itself with the liberal tradition preceding Vatican II gave support to this progressive reading of the Catholic declaration on religious freedom. Within Catholic circles, this reading took part in the project known as "Whig Thomism," a project aiming to find intellectual harmony between the traditional political philosophy of Aquinas and the Whig (or classical) strand of Enlightenment liberalism. Starting with Jacques Maritain trying to reconcile natural law Thomism with the natural rights of the United Nations's *Universal Declaration on Human Rights* of 1948, the Whig Thomist movement took shape with John Courtney Murray's defense of the American polity<sup>126</sup> and crystallized with the scholarly developments brought by Michael

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121. See *id.* ¶ 2.

122. See *id.* ¶ 1.

123. See Pius IX, *supra* note 75, ¶¶ 77–79.

124. See, e.g., EBERHARD SCHOCKENHOFF, ERLÖSTE FREIHEIT: WORAUF ES IM CHRISTENTUM ANKOMMT 15, 42–45 (2012); Anna Su, *Catholic Constitutionalism from the Americanist Controversy to Dignitatis Humanae*, 91 NOTRE DAME L. REV. 1445 (2016).

125. Martin Rhonheimer, *Benedict XVI's "Hermeneutic of Reform" and Religious Freedom*, 9 NOVA ET VETERA 1029 (2011); Martin Rhonheimer, *Dignitatis Humanae – Not a Mere Question of Church Policy: A Response to Thomas Pink*, 12 NOVA ET VETERA 445 (2014).

126. ROWLAND, *supra* note 100, at 21.

Novak,<sup>127</sup> George Weigel,<sup>128</sup> and Richard John Neuhaus.<sup>129</sup> Roughly fifteen years before Vatican II, Murray defended the American view of religious freedom as compatible with the Church's position that puts the spiritual above the temporal in these words:

What the First Amendment fundamentally declares, as the constitutional will of the American people, is the "lay" character of the state, its non-competence in the field of religion, the restriction of its competence to the secular and temporal.

There is here a unique historical realization of the "lay" state—unique because this lay state is not laicized or laicizing, on the Continental model. This lay state does not pretend to be The Whole—an absolutely autonomous, all-embracing religio-political magnitude with its own quasi-religious content—such, for instance, as the Third Republic was in the minds of the small knot of men who shaped it. On the contrary, there is in the First Amendment a recognition of the primacy of the spiritual—a recognition that is again unique, in that it is a recognition of the primacy of the spiritual life of the human person, as a value supreme over any values incorporated in the state.<sup>130</sup>

Framed this way, the Gelasian dyarchy of the temporal subordinated to the spiritual is not between the Church and the State, *auctoritas sacrata* and *regalis potestas*, but between the State and the human person, *civis idem et christianus*.<sup>131</sup>

It is of no surprise then that in the year following the Church's declaration on religious freedom, Murray read it as affirming the American concept of negative freedom of religion, a "freedom from" any State-imposed religion upon citizens.<sup>132</sup> For Murray, the spiritual remains prime in accordance with Catholic doctrine when the State protects its citizens' individual consciences. This way, Catholics are in turn free to participate in the democratic process guided by their consciences, in voting for representatives to enact

127. Novak, *supra* note 89.

128. GEORGE WEIGEL, *SOUL OF THE WORLD* 103 (1996).

129. Richard John Neuhaus, *A New Order of Religious Freedom*, *FIRST THINGS* (Feb. 1992), <https://www.firstthings.com/article/1992/02/a-new-order-of-religious-freedom>. More recently, Whig Thomism has also been labelled as "David French-ism." See Sohrab Ahmari, *Against David French-Isim*, *FIRST THINGS* (May 29, 2019), <https://www.firstthings.com/web-exclusives/2019/05/against-david-french-ism>.

130. Murray, *Contemporary Orientations*, *supra* note 100, at 21.

131. *See id.*

132. *See* John C. Murray, *The Declaration on Religious Freedom*, in *VATICAN II: AN INTERFAITH APPRAISAL* 565, 565–76 (John H. Miller ed., 1966) [hereinafter Murray, *Declaration*].

laws in accordance with the natural law, and generally molding the end of the State towards the final end. Murray acknowledges the existence in *Dignitatis Humanae* of notions and ideas completely at odds with this “personalist”<sup>133</sup> reading of religious freedom and society at large, for instance “the prominence given to man’s moral obligation to search for the truth, as somehow the ultimate foundation of the right to religious freedom.”<sup>134</sup> Murray understands these notions and ideas to have been added to address pastoral concerns, or even by Conciliar Fathers who misunderstood the proper idea of religious freedom.<sup>135</sup> Yet, this Whig Thomist position defended by Murray has always been challenged throughout the years, even before Vatican II.<sup>136</sup> The liberal neutrality in particular has been targeted by David L. Schindler as a problematic fiction: a negative concept of religious freedom is not neutral, but instead conceals the liberal “definite truth about the nature of religion,”<sup>137</sup> which is a secular liberal theory of religion at odds with Catholicism.<sup>138</sup> So while Murray has generally been the major interpreter of conciliar Catholicism,<sup>139</sup> much like the liberal view is fragmented with multiple ideas of freedom of religion, Catholic views on religious freedom are just as diverse. Many of these views have long predated liberalism.

### 1. Integralists on *Dignitatis Humanae*: Change in policy, not doctrine

Despite multiple readings of *Dignitatis Humanae* which could be compatible with integralism,<sup>140</sup> the integralist’s preferred

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133. Murray, *Issue of Church and State*, *supra* note 100. *But see* DE KONINCK, *supra* note 101.

134. Murray, *Declaration*, *supra* note 132, at 570.

135. *Id.*

136. See Francis J. Connell, *The Theory of the “Lay State”*, 125 AM. ECCLESIASTICAL REV. 7 (1951).

137. Schindler, *supra* note 10, at 697; *see also id.* at 719–21.

138. *See id.* at 721–41.

139. *See, e.g.*, Joseph A. Komonchak, *Vatican II and the Encounter between Catholicism and Liberalism*, in CATHOLICISM AND LIBERALISM: CONTRIBUTIONS TO AMERICAN PUBLIC PHILOSOPHY 76 (R.B. Douglas & David Hollenbach eds., 1994).

140. *See, e.g.*, John R.T. Lamont, *Catholic Teaching on Religion and the State*, 96 NEW BLACKFRIARS 674 (2015); ARNOLD T. GUMINSKI & BRIAN W. HARRISON, RELIGIOUS FREEDOM: DID VATICAN II CONTRADICT TRADITIONAL CATHOLIC DOCTRINE? A DEBATE 87 (2013); THOMAS STORCK, FOUNDATIONS OF A CATHOLIC SOCIAL ORDER 28–29 (1998); Basile Valuet, *Le Droit à la liberté religieuse dans la Tradition de l’Église* 520–21 (2005) (reading of *Dignitatis Humanae* in continuity with previous teaching, with an emphasis on the exception of public order to explain the practical change in the enforcement of Catholic fidelity); Brian Mullady,

interpretation is offered by Professor Thomas Pink who recently corrected the common misreading.<sup>141</sup> Avoiding the pitfalls flowing from the “hermeneutic of discontinuity and rupture” leading to a misunderstanding of the Second Vatican Council,<sup>142</sup> Pink instead argues that there is in *Dignitatis Humanae* a continuity of principles, but discontinuity of Church policy toward the state. Pink admits that *Dignitatis Humanae* opposes and forbids religious coercion by the state or any other civic institution, and in doing so rejects forms of religious coercion that it historically favored and even required. This is precisely because in Catholic doctrine the state never had, and never should have, authority to coerce in matters of revealed religion. Such authority to coercively direct religious belief and practice, promulgating binding laws and enforcing them through sanctions, always remained with the Church.<sup>143</sup> Just before the final vote on *Dignitatis Humanae*, in September 1965, the drafting commission clearly expressed in an interpretative declaration that the coercive jurisdiction over religion belongs to the Church and not the state:

For the schema [the declaration’s draft] rests on the traditional doctrine of a distinction between two orders of human life, that is sacred and profane, civil and religious. In modern times Leo XIII has wonderfully expounded and developed this doctrine, teaching more clearly than ever before that there are two societies, and so two legal orders, and two coercive authorities (*potestates*), each divinely established but in a different way, that is by natural law and by the positive law of Christ. As the nature of religious liberty rests on this distinction of orders, so the distinction

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*Religious Freedom: Homogeneous or Heterogeneous Development?*, THOMIST 58, 93 (1994) (showing distinction between freedom as an act of the intellect (searching for truth) and freedom as an act of the will in morals (concrete actions)); MATTHIAS GAUDRON, CATECHISM OF THE CRISIS 70–72 (2009) (rejecting *Dignitatis Humanae* because it contradicts previous teaching, which is the position taken by the Society of Saint Pius X).

141. See Thomas Pink, *The Right to Religious Liberty and the Coercion of Belief: A Note on Dignitatis Humanae*, in REASON, MORALITY, AND LAW: THE PHILOSOPHY OF JOHN FINNIS (John Keown & Robert P. George eds., 2013) [hereinafter Pink, *Religious Liberty*]; Thomas Pink, *The Interpretation of Dignitatis Humanae: A Reply to Martin Rhonheimer*, 11 NOVA ET VETERA 1 (2013); CREAN & FIMISTER, *supra* note 36, at 107–08 (making clear that Pink’s approach is their favorite at note 14).

142. Benedict XVI, *Expergiscere homo: Address to the College of Cardinals and the Roman Curia*, 95 ACTA APOSTOLICÆ SEDIS 40 (2005).

143. See Pink, *Religious Liberty*, *supra* note 141, at 427.

provides a means to preserving it against the confusions which history has frequently produced.<sup>144</sup>

When *Dignitatis Humanae* condemns state coercion of religion as inconsistent with human nature and dignity, it is as an exercise of power lacking jurisdiction, and not as a mere exercise of power over religion.<sup>145</sup> The basis for the legislative authority of the Church is baptism. It is through baptism that the Church receives and exercises jurisdiction over its members, and it is also through baptism that one becomes subject to the law and obligations of the Church.<sup>146</sup> To this day, the Church still teaches its possession of a coercive jurisdiction in respect of belief as well as external practice over the baptized, as expressed in the 1983 Code of Canon Law<sup>147</sup> at canon 1311 and further clarified by canon 204 § 1:

The Church has the innate and proper right to coerce offending members of the Christian faithful with penal sanctions. (Canon 1311.)

The Christian faithful are those who, inasmuch as they have been incorporated in Christ through baptism, have been constituted as the people of God. (Canon 204 § 1.)

To be sure, the Church has always opposed the use of coercion to evangelize the unbaptized.<sup>148</sup> Such interpretations consequently imply that the state cannot, even as the secular arm of the Church, limit the public profession of non-Catholic religions by the unbaptized, except insofar as the public order is being disturbed. Nonetheless, nothing prevents the state in *Dignitatis Humanae* from discharging its duty to profess Catholicism, as this is not infringing on the conscience of the unbaptized.<sup>149</sup>

Pink also argues that *Dignitatis Humanae* does not constitute a change in doctrinal teaching about the respective authority of the state and the Church, nor a departure from nineteenth-century papal teaching, and certainly not an official acceptance of the liberal idea of religious freedom. The document makes explicit that it is

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144. VATICAN COUNCIL, ACTA SYNODALIA SACROSANCTI CONCILII OECUMENICI VATICANI II vol. IV, pt. I (1976).

145. Thomas Pink, *Integralism, Political Philosophy, and the State*, PUB. DISCOURSE (May 9, 2020), <https://www.thepublicdiscourse.com/2020/05/63226>.

146. See Pink, *Religious Liberty*, *supra* note 141, at 428–30.

147. CODEX IURIS CANONICI (1983) [hereinafter CIC].

148. See Pink, *Religious Liberty*, *supra* note 141, at 435–37; see also PAUL VI, *supra* note 120, ¶¶ 10–11.

149. See Pink, *Religious Liberty*, *supra* note 141, at 431.

only treating of “immunity from coercion in civil society[]” and leaving completely untouched traditional teaching on duties toward the Church, and thus by implication the rights of the Church itself.<sup>150</sup> What it does constitute however is a change in the Church’s policy on the use of her own authority. Catholicism has a long history of using the state as her minister, the secular arm to coerce on behalf of the Catholic faith, to which it now puts an end.<sup>151</sup> With *Dignitatis Humanae*, the Church now declares that it no longer authorizes the temporal power to act as its minister. This is no small change, albeit not doctrinal, because for the first time since late antiquity, “the state is no longer directed to act as the Church’s agent to enforce and defend her jurisdiction.”<sup>152</sup> The Church then keeps its right to discourage heresy, apostasy, and schism by punishments entirely to itself.<sup>153</sup>

This integralist interpretation of *Dignitatis Humanae* was opposed by Thomas Storck on the basis that the state has a duty to profess religious and to legislate in favor of religious truth derived from a sovereign authority of its own to legislate in matters of religion, over both the baptized and the unbaptized.<sup>154</sup> The declaration on freedom of religion itself teaches that states are entitled to legitimately restrict religious exercise to protect the common good and just public order.<sup>155</sup> For Storck, modern political circumstances were the motivation for the declaration; in 1965, as secularization increases, religious error has become less of a threat to public order than when Pope Pius IX condemned the public exercise of non-Catholic religions in Catholic states a hundred years earlier.<sup>156</sup> With the disappearance of traditionally Catholic societies, just public order no longer warrants restrictions on non-Catholic worship and their proselytizing activities.<sup>157</sup> In response, Pink swiftly clarifies that any restriction on religious exercise for the

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150. PAUL VI, *supra* note 120, ¶ 1.

151. See Pink, *Religious Liberty*, *supra* note 141, at 431–33.

152. Thomas Pink, *Conscience and Coercion: Vatican II’s Teaching on Religious Freedom Changed Policy, Not Doctrine*, FIRST THINGS (Aug. 2012), <https://www.firstthings.com/article/2012/08/conscience-and-coercion> [hereinafter Pink, *Conscience and Coercion*].

153. See *id.*

154. Thomas Storck, *Recent Discussions of Religious Liberty*, THE JOSIAS (June 3, 2021), <https://thejosias.com/2021/06/03/recent-discussions-of-religious-liberty/>.

155. PAUL VI, *supra* note 120, ¶¶ 2, 7.

156. See PIUS IX, *supra* note 75, ¶ 78.

157. THOMAS STORCK, FOUNDATIONS OF A CATHOLIC POLITICAL ORDER 28–29 (1998).

common good and public order is a prudential decision of the temporal power, and not the expression of a sovereign right to legislate on religious matters.<sup>158</sup> That the temporal power may prudentially limit religious exercise of the baptized and the unbaptized to protect just public order does not entail jurisdiction; only the Church is and always has been the sovereign over religion.<sup>159</sup> With *Dignitatis Humanae* taking away their mandate as ministers of the Church, states' power when legislating on all religious exercise has been drastically reduced, and is only allowed to protect just public order as informed by the common good and natural law.

In Pink's reading, only confessional Catholic states are truly likely to "recognize the kind of right to religious liberty taught in *Dignitatis Humanae*."<sup>160</sup> The declaration teaches that we have a right to religious liberty that the state cannot infringe because religion is a good that transcends the civil order:

The religious acts whereby men, in private and in public and out of a sense of personal conviction, direct their lives to God transcend by their very nature the order of terrestrial and temporal affairs. Government 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. However, it would clearly transgress the limits set to its power, were it to presume to command or inhibit acts that are religious.<sup>161</sup>

The claim, therefore, is that the nature of religion altogether transcends the authority of the state because it exists as a supernatural good.<sup>162</sup> In this view, the right to religious freedom is more than merely a set of rights, entitlement, and legal protections

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158. Thomas Pink, *On Dignitatis Humanae—A Reply to Thomas Storck*, THE JOSIAS (Oct. 28, 2021), <https://thejosias.com/2021/10/28/on-dignitatis-humanae-a-reply-to-thomas-storck/> [hereinafter Pink, *On Dignitatis Humanae*].

159. To this effect, Pink cites in *On Dignitatis Humanae* a number of *relationes* explaining that the dyarchical view of Church and state relations shared by Francisco Suárez and Pope Leo XIII was the bedrock of the declaration on religious freedom at Vatican II. This integralist interpretation defended by Pink has recently received some support from Roger W. Nutt & Michael R. De Salvo, *The Debate Over Dignitatis Humanae at Vatican II: The Contribution of Charles Cardinal Journet*, 85 THOMIST 175 (2021).

160. See Thomas Pink, *In Defence of Catholic Integralism*, PUB. DISCOURSE (Aug. 12, 2018), <https://www.thepublicdiscourse.com/2018/08/39362/> [hereinafter Pink, *In Defence*].

161. PAUL VI, *supra* note 120, ¶ 3.

162. See Pink, *Religious Liberty*, *supra* note 141, at 438.

with regards to religion. It is the ultimate right, and simultaneously a duty for humans “to seek the truth in matters religious in order that [they] may with prudence form for [themselves] right and true judgments of conscience,” that is, freedom of religion is the freedom for the discovery of God.<sup>163</sup> Hence, in an integralist state, it could be envisioned that the Church decides to make greater use of its authority to coercively intervene to direct the baptized toward God, the Beatific Vision.<sup>164</sup> By rejecting the use of the state as the secular arm of the Church, the message from *Dignitatis Humanae* remains nevertheless clear: under the current circumstances, the common good prudentially demands religious toleration.

## 2. *The integralist guidelines of Crean and Fimister’s manual*

Given this interpretation of religious freedom, what would it look like in a soft or hard integralist state? Thanks to Thomas Crean and Alan Fimister’s recent primer *Integralism*,<sup>165</sup> we are not navigating in complete darkness when thinking about integralist regimes. In their scholastic manual of political philosophy, the two theologians provide some guidelines to properly establish a thoroughgoing hard integralist state. While they primarily focus on principles, the guidelines – which for many remain too theoretical, with little practical application<sup>166</sup> – deserve a careful review for integralist reflection. The authors understand the idea of integralism as primarily defined in the ecclesiastical context “in two different but related ways”:

Firstly, it is used to denote an uncompromising adherence to the Social Kingship of Christ, that is, an insistence upon the moral duty of men and societies toward the true religion and toward the one Church of Christ. Secondly, it is applied to the tendency to see Scholasticism, and more specifically Thomism, no less than the imperishable Patristic Age, as a completed and indispensable stage in Catholic thought which must be assimilated and

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163. See PAUL VI, *supra* note 120, ¶ 3.

164. See Pink, *Religious Liberty*, *supra* note 141, at 438–41.

165. CREAN & FIMISTER, *supra* note 36.

166. See, e.g., Francisco Eduardo Plaza, *An Apologia for Catholic Democracy in Response to Integralism*, REALITY J. (July 3, 2020), <https://realityjournal.org/2020/07/03/book-review-integralism>.

appropriated as one's own by any authentically ecclesiastical writer of a later age.<sup>167</sup>

This is consistent with our presentation of integralism thus far: the domains of the "sacred" and of the "secular" can never be hermetically sealed for they are inherently integrated. Per Aquinas, not only must all temporal rulers be subject to the authority of the Catholic Church, but state law and policies must demonstrate such necessary integration.<sup>168</sup> When legislating, civil and canon law "should work in concord, while safeguarding the superior rights of the Church: since heavenly beatitude is a greater good than earthly happiness, the temporal power must cede to the spiritual where the latter judges that its goal would otherwise be impeded."<sup>169</sup> The temporal power can never forbid something which the spiritual commands or counsels, nor can it command something the Church forbids, and both are bound by natural law.<sup>170</sup> There are, however, no prescriptions on the proper form of political organization, for instance monarchic or democratic, because "[i]n any given society the spiritual power cannot annul the law that determines the manner in which temporal power is obtained, unless that law be perverse."<sup>171</sup> It will be up to the families to create "a constitutional order to which they will themselves be subject . . ."<sup>172</sup>

For Crean and Fimister, the practical implications are numerous and require strict observation for all matters of social life, including marriage and the family, the economy and business activities, and culture and education, to name a few. Many of these implications relate to religious freedom. Among the most immediate to the family is the preoccupation for the education of children. The parents, by begetting their children to a natural life, receive from God the power and responsibility to raise them to the level of complete adulthood through bodily training, intellectual instruction, and formation in virtue.<sup>173</sup> It would be a great injustice therefore to prevent parents from accomplishing such tasks and to

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167. CREAN & FIMISTER, *supra* note 36, at 5–6.

168. *See id.* at 78–79; AQUINAS, DE REGNO, *supra* note 65.

169. CREAN & FIMISTER, *supra* note 36, at 218.

170. *Id.* at 91.

171. *Id.* at 101.

172. *Id.*

173. *See id.* at 50–51.

remove children from their home, even if they are unbaptized.<sup>174</sup> As we will discuss in greater detail later, any potential integralist regime must follow prevailing Church teaching, including the principle of subsidiarity in governance, which posits that the family is the best community to take care of children and ensure their well-being.<sup>175</sup>

Hard integralists however recognize that, in extreme circumstances, “the authorities of the Church may take a baptised child even from its parental home if its religious education cannot otherwise be secured.”<sup>176</sup> While further clarification is needed as to what constitutes “extreme circumstances,” parents turned atheists or who converted to another religion would be more likely to see this principle applied to them, albeit rarely. This provides a meager source of consolation for liberals who would likely point to the sordid Mortara affair as the paradigmatic worst-case scenario.<sup>177</sup> In 1858, Edgardo Mortara, a six-year old Jewish boy who had been secretly baptized as a gravely ill infant by a Catholic housemaid, was forcibly removed from his family to be educated by Pope Pius IX himself on the grounds that a baptized Catholic child should have a Catholic upbringing which his Jewish family would have been unable to provide.<sup>178</sup> To put it mildly, not all agree that the baptism of Edgardo Mortara was licit.<sup>179</sup> Baptism cannot justify the abduction of a child from his parents for mere dissent on religious views, even if lawful and valid. Aquinas teaches that no one should “infringe the order of the natural law, in virtue of which a child is under the care of its father, in order to rescue it from the danger of eternal death.”<sup>180</sup> Any reading of *Dignitatis Humanae* makes it clear that baptism alone is an insufficient basis for state intervention into the right of parents, notwithstanding their dissenting religious views, to raise their own children. The abduction in the Mortara

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174. *Id.* at 51–52.

175. *Id.* at 51.

176. *Id.* at 52.

177. See, e.g., Schwartzman & Wilson, *supra* note 6, at 1039–40.

178. Romanus Cessario, *Non Possumus*, FIRST THINGS (Feb. 2018), <https://www.firstthings.com/article/2018/02/non-possumus>.

179. See Matthew A. Tapie, *Spiritualis Uterus: The Question of Forced Baptism and Thomas Aquinas’s Defense of Jewish Parental Rights*, 35 BULL. MEDIEVAL CANON L. 289 (2018); CIC, *supra* note 147, canon 868, § 2: “An infant of Catholic parents or even of non-Catholic parents is baptized licitly in danger of death even against the will of the parents”; see also BENEDICT XIV, POSTREMO MENSE (Vatican 1747).

180. AQUINAS, SUMMA, *supra* note 43, at III, question 68, art. 10.

affair was neither prudent nor respectful of the principle of subsidiarity, as we discuss in detail later.

Consider another example by Crean and Fimister: integralism requires parents to educate their children while following both natural and human law. The temporal power may legitimately intervene to protect children from their parents in cases of grave physical and psychological neglect or harm, for example by starvation or torture.<sup>181</sup> This could mean that the parents would be deprived of their children, temporarily or permanently. The temporal power may likewise intervene in the same manner, if for example, the parents cause grave psychological neglect or harm in “instructing [their children] in theft or idolatry, or sexual perversion.”<sup>182</sup> On their face, idolatry and sexual pervasion would include many lifestyles, values and behaviors which, in modern liberal societies, are being taught to children by parents informed by their religion, other than Catholicism, or even by their atheism.<sup>183</sup> In a hard integralist regime, the temporal power should found educational institutions and establish schools to help parents in the education of children. In doing so however, they “may not lawfully establish secular schools, since this would imbue the future citizens with irreligion.”<sup>184</sup> While the temporal power cannot forbid the construction of private schools, not all religions would benefit from the protection of its public expression in schools and elsewhere. Moreover, it cannot tax parents to pay for schools their children cannot consciously attend. Because education is viewed to bear directly on the matter of public interest, it is the duty of the Church “to watch over the moral and religious instruction imparted” in all schools, even Catholic, and to require that “the teachers of scandalous life be removed” by the temporal power.<sup>185</sup> In any case, the ruler cannot forbid parents to instruct their children in religions which are not excluded by natural law.<sup>186</sup>

As mentioned, not all non-Catholic religions will be allowed public expression, or even mere association, under a hard integralist regime. Above all, rulers holding *regalis potestas* must

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181. See CREAN & FIMISTER, *supra* note 36, at 111.

182. See *id.*

183. In the case of atheism, the liberal approach would be to categorize the protected freedom not in terms of religion, but in terms of conscience.

184. CREAN & FIMISTER, *supra* note 36, at 112.

185. *Id.* at 52, 111.

186. See *id.* at 119.

“forbid crimes directly contrary to the honour of God, such as blasphemy and the public proclamation and propagation of false doctrines about the divine nature,” even outside Christendom.<sup>187</sup> For example, this includes “doctrines that God is evil, or bodily, or subject to necessity or to change, or that He is not one, and all forms of cult which are based on these doctrines,” and all other things that reason itself knows to be false or blasphemous.<sup>188</sup> Unless they involve elements that are contrary to natural law, monotheistic cults may not be forbidden by the temporal power. It is possible that these cults include false doctrines, yet they cannot be forbidden if they are known to be false only by revelation.<sup>189</sup> This was authoritatively taught in *Nostra aetate*, the Vatican II declaration on the relation of the Church with non-Christian religions, listing what was holy and true about Hinduism, Buddhism, Islam, and Judaism.<sup>190</sup> Under natural law and human law alone, no ruler can forbid the plurality of acceptable religions, and monotheism as known by natural reason may be recognized in the civil law.

Thus, when a society moves toward Christendom, human law is made to correspond ever more perfectly to natural law, for example “those who are not monotheists, or who deny the immortality of the human soul, or who live in concubinage” may be forbidden “from becoming representatives of the people, or judges, or from voting.”<sup>191</sup> Within Christendom, not only must the ruler keep his realm free from doctrines which reason itself knows to be gravely contrary to the truth, but also “from all heresies and other opinions solemnly condemned by the Church.”<sup>192</sup> Among other policies, idolaters, atheists, all the unbaptized as well as adherents of heretical and schismatic bodies must generally be excluded from legislative positions, and higher executive and judicial offices.<sup>193</sup> Only the baptized will be recognized with official citizenship, in contrast to the unbaptized who will receive certain civil rights and when applicable, particular law. This is the case for Jewish polity members most specifically, for their closeness to Christianity in rites and scriptures: the ruler must protect the

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187. *Id.* at 106.

188. *Id.* at 106–07.

189. *See id.* at 107.

190. PAUL VI, *Nostra aetate* (Vatican 1965).

191. CREAN & FIMISTER, *supra* note 36, at 114.

192. *Id.* at 116.

193. *See id.* at 117.

freedom of worship of Jews.<sup>194</sup> What Crean and Fimister suggest inside of Christendom aligns with natural law integralism rather than with confessional integralism. The idea is not to impose Catholicism on the members of the polity, nor to forbid everything not Catholic, but to restrict what goes against the natural law.

*B. The Spectrum: From Hard to Soft Integralism*

It appears quite clearly from Crean and Fimister that religious freedom protected under hard integralist regimes is at odds with liberal notions. This is not surprising, since this type of integralism has been the target of liberal critics, such as Schwartzman and Wilson.<sup>195</sup> Freedom to worship of Jewish members of the polity is defined narrowly, and it also excludes worship that is deemed detrimental to public order. But we suggest that this is not a difference in kind, but rather in degree. It can be plausibly argued that this is no different from contemporary liberal regimes that ban religious gatherings on the grounds of public order.<sup>196</sup> In any case, Crean and Fimister do not explicitly prohibit any form of public worship. To the contrary, they argue in favor of tolerating other non-Christian or non-Jewish public monotheistic worship as they may bring truth and benefit to the polity.<sup>197</sup> This is also consistent with *Nostra aetate*, which explains how Hinduism, Buddhism, Islam and Judaism hold important truths providing “answers to the unsolved riddles of the human condition[.]”<sup>198</sup> As stated earlier, natural law integralism is not confessional: it merely prohibits what goes against the natural law itself, like child sacrifice and ritual prostitution, and tolerates the exercise of religions which can be disproved by revelation only.

Our argument is that integralism comes in degrees of intensity, that is, on a spectrum. Many are sympathetic to the integralist theory of the Gelasian dyarchy while not subscribing to the new integralists practical prescriptions and uses of *regalis potestas* when

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194. *See id.* at 118.

195. Schwartzman & Wilson, *supra* note 9.

196. *See, e.g., Covid/Europe: And Religious Freedom?*, EUR. CTR. FOR L. & JUST. <https://eclj.org/religious-freedom/coe/limitations-portees-a-la-liberte-de-culte-en-europe-au-nom-de-la-lutte-contre-la-covid-19> (last updated Dec. 7, 2020).

197. CREAN & FIMISTER, *supra* note 36, at 119. Contrast this with the historical Scholastic views of religious freedom, Gregory M. Reichberg, *Scholastic Arguments for and Against Religious Freedom*, 84 THOMIST 1 (2020).

198. PAUL VI, *supra* note 190.

enacting policies, as well as legislating and enforcing law.<sup>199</sup> In the words of Michael Handby, many of these sympathizers worry that new integralism fails to grapple with “the difficulty of escaping the mystical disaster of modernity that reduces Christianity from a *mystique* to a *politique*.”<sup>200</sup> All the more this applies to freedom of religion issues because, unlike some other liberal freedoms and rights, the Church authoritatively protects it in *Dignitatis Humanae*. The practical approach of the integralist state in protecting religious freedom will be governed by two important principles of Catholic thought when ruling for the common good: the virtue of prudence and the principle of subsidiarity. While both guiding principles merit much greater attention than will be possible to give them here, there are a few fundamental reflections on each which are crucial to grasp the scope of the integralist spectrum. The way these two principles are understood by the ruler and used to guide common-good governance will impact whether religious freedom under an integralist regime can be reconciled with or approximate the liberal notion. Hence, what may be prohibited under a hard integralist regime can be deemed permissible under a soft one.

### 1. Prudence as a guiding principle

Prudence, thought of as “right reason applied to action” by Aquinas,<sup>201</sup> is defined in the Catechism of the Catholic Church as “the virtue that disposes practical reason to discern our true good in every circumstance and to choose the right means of achieving it[.]”<sup>202</sup> It further adds that prudence is the *auriga virtutum*, the charioteer of the virtues, because

it guides the other virtues by setting rule and measure. It is prudence that immediately guides the judgment of conscience. The prudent

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199. “We are all integralists, and that is a very good thing.” Andrew Willard Jones, *What States Can't Do*, NEW POLITY (July 24, 2020), <https://newpolity.com/blog/what-states-cant-do> [hereinafter Jones, *States*]. We should note that Jones’s criticism of new integralism goes further than practical implications and entirely rejects the modern understanding of the state, government, politics and sovereignty, rejecting both Carl Schmitt and liberalism. See Andrew Willard Jones, *The End of Sovereignty: An Essay in Christian Postliberalism*, 45 COMMUNIO 408 (2018) [hereinafter Jones, *Sovereignty*]; Andrew Willard Jones & Marc Barnes, *The Decision against Carl Schmitt*, 2 New Polity 43 (2021).

200. See Michael Handby, *For and Against Integralism*, FIRST THINGS (Mar. 2020), <https://www.firstthings.com/article/2020/03/for-and-against-integralism>.

201. AQUINAS, SUMMA, *supra* note 43, bk. II-II, question 47, art. 2.

202. JOHN PAUL II, CATECHISM OF THE CATHOLIC CHURCH art. 1806 (1992) [hereinafter CCC].

man determines and directs his conduct in accordance with this judgment. With the help of this virtue we apply moral principles to particular cases without error and overcome doubts about the good to achieve and the evil to avoid.<sup>203</sup>

Prudence, as a consequence of being the supreme virtue to guide all others, is of utmost importance to the ruler who must wield the *regalis potestas* morally, with the aim to foster virtue among the polity. To be sure, prudence in government is not exclusively a Catholic insight, having effectively been applied by rulers throughout the ages and significantly discussed by scholars,<sup>204</sup> and conservative minds in particular.<sup>205</sup> Nevertheless, when it comes to legislating and then enforcing the law, prudence in Catholicism is given a much more important guiding role. “The purpose of human law is to lead men to virtue, not suddenly, but gradually,” Aquinas states.<sup>206</sup> This entails that human law does not need to repress all vices, but must first look to eradicate the more grievous vices from which the majority can abstain; human law after all “is framed for a number of human beings, the majority of whom are not perfect in virtue.”<sup>207</sup> Human law which attempts to legislate perfection only instills in the polity, incapable of attaining such standard, despicement and contempt for the whole corpus of law, defeating its very purpose. Hostile to the law, “those men, from contempt, break into evils worse still”<sup>208</sup> and so, to avoid this, a certain toleration of error and vice is required prudentially, not for its own sake, but for the common good.

Even hard integralists such as Crean and Fimister themselves recognize the value of political prudence in ruling for the common good, leading at times to the toleration of error and vice if it is to

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203. *Id.* art. 1806.

204. See generally JOHN UHR, PRUDENTIAL PUBLIC LEADERSHIP: PROMOTING ETHICS IN PUBLIC POLICY AND ADMINISTRATION (2015). For other applications in public administration, see Herbert J. Storing, *The Crucial Link: Public Administration, Responsibility, and the Public Interest*, 24 PUB. ADMIN. REV. 39 (1964); John C. Koritansky, *Prudence and the Practice of Government*, 6 S. REV. PUB. ADMIN. 111 (1982); J. Patrick Dobel, *Political Prudence and the Ethics of Leadership*, 58 PUB. ADMIN. REV. 74 (1998).

205. See, e.g., RUSSELL KIRK, THE POLITICS OF PRUDENCE (1993); GREG WEINER, OLD WHIGS: BURKE, LINCOLN, AND THE POLITICS OF PRUDENCE (2019); GARY ROSEN, AMERICAN COMPACT: JAMES MADISON AND THE PROBLEM OF FOUNDING (1999).

206. AQUINAS, SUMMA, *supra* note 43, bk. I-II, question 96, art. 2.

207. *Id.*

208. *Id.*

obtain a greater good or prevent a greater evil.<sup>209</sup> For instance, they cite approvingly Leo XIII in his 1888 encyclical *Libertas*<sup>210</sup> on the nature of human liberty:

[W]hile not conceding any right to anything save what is true and honest, [the Church] does not forbid public authority to tolerate what is at variance with truth and justice, for the sake of avoiding some greater evil, or of obtaining or preserving some greater good. God Himself in His providence, though infinitely good and powerful, permits evil to exist in the world, partly that greater good may not be impeded, and partly that greater evil may not ensue. In the government of States it is not forbidden to imitate the Ruler of the world . . . .<sup>211</sup>

But, to judge aright, we must acknowledge that, the more a State is driven to tolerate evil, the further is it from perfection; and that the tolerance of evil which is dictated by political prudence should be strictly confined to the limits which its justifying cause, the public welfare, requires.<sup>212</sup>

Based on this principle, Crean and Fimister note that it may not be feasible for a baptized temporal ruler to “incorporate his realm within Christendom” if he foresees the attempt to cause greater harm than good.<sup>213</sup> Natural law integralism in particular understands prudence as fundamental to guide political action and legislation, since “it belongs to prudence to govern and command.”<sup>214</sup> Aquinas asserts the existence of a special kind called “regnative prudence” that is a virtue proper to the ruler which constitutes prudence in its most perfect sense.<sup>215</sup>

Another example of political prudence is in Pink’s interpretation of *Dignitatis Humanae* in which the Church authoritatively takes back the power from the state to act as its minister in enforcing and defending her jurisdiction over spiritual matters.<sup>216</sup> As discussed previously, regardless of one’s interpretation of the Vatican II declaration on religious freedom, this shows that political prudence warrants at least some religious

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209. CREAN & FIMISTER, *supra* note 36, at 110.

210. LEO XIII, *LIBERTAS* (Vatican 1888).

211. *Id.* § 33.

212. *Id.* § 34.

213. CREAN & FIMISTER, *supra* note 36, at 114.

214. AQUINAS, *SUMMA*, *supra* note 43, bk. II-II, question 50, art. 1.

215. *Id.*

216. See Pink, *Religious Liberty*, *supra* note 141.

toleration. Using political prudence as a guiding principle should land well with proponents of liberalism, as it relates to two core liberal ideas: one about the distribution of information and the other about the possibility of social consensus. Prudence in authority and governance indeed helps to avoid unintended consequences that could follow from certain policy decisions being imposed by the authority upon its people.<sup>217</sup> Most important, especially for religious freedom issues in pluralistic societies, political prudence takes into account that members of a society may disagree about the final end of human beings as well as what constitutes the common good towards which law should direct, and will rebel against any contrary prescription.<sup>218</sup> Thus, prudence echoes the pragmatic justification underlying liberalism's development in the first place as a "tool for resolving conflicts in diverse societies, one that sought to lower the temperature of politics by taking questions of final ends off the table and moving them into the sphere of private life."<sup>219</sup>

## 2. *Subsidiarity as a guiding principle*

The other guiding principle for the integralist strength of a state is subsidiarity. Coming from the Latin *subsidium* which means "support" or "assistance" or even "help," historian Andrew Willard Jones defines this principle first as the assertion that human beings are led by others into virtue most efficaciously at the most personal level possible.<sup>220</sup> The common good, that is, perfecting polity members into social virtue, is thus best realized when problems are dealt with at the lowest social level possible. Subsidiarity is really a principle of justice, and as a consequence, in the social hierarchy, a "higher" power ought not to usurp what is proper to a "lower" power and should only intervene when these smaller levels fail.<sup>221</sup> In the encyclical *Quadragesimo anno*, Pope Pius XI wrote:

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217. See, e.g., Frédéric Bastiat, *Ce qu'on voit et ce qu'on ne voit pas*, in ŒUVRES COMPLETES 336 (Paris Librairie de Guillaumin et Cie. 1854); Friedrich A. Hayek, *The Use of Knowledge in Society*, 35 AM. ECON. REV. 519 (1945).

218. Such insight is foundational to liberal thought in JOHN LOCKE, A LETTER CONCERNING TOLERATION (1689).

219. Fukuyama, *supra* note 103.

220. Jones, *States*, *supra* note 199.

221. John Finnis, *Subsidiarity's Roots and History: Some Observations*, 61 AM. J. JURIS. 133, 133-34; Jones, *States*, *supra* note 199.

[I]t is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.<sup>222</sup>

Pope Pius XI predicted that the temporal powers most observant of this principle of “subsidiary function,” in keeping proper order among organizations, will benefit from a stronger and more effective social authority, resulting in a happier and more prosperous state.<sup>223</sup> He explained in *Divini redemptoris* how the underlying end to the subsidiarity principle—to support, or help—entails that “it is impossible to care for the social organism and the good of society as a unit unless each single part and each individual member . . . is supplied with all that is necessary for the exercise of his social functions.”<sup>224</sup>

The principle of subsidiarity mandates that society works “as a whole, pursued in tranquility and order,” where the lower powers most effectively fulfill their ends with the help of the higher powers that always act in support of the lower powers’ internal life; for society is then attaining true social justice.<sup>225</sup> The archetypal relationship of subsidiarity is the one between parent and child, affirms Jones.<sup>226</sup> The relationship is so profoundly intimate, “ordered first and foremost by love and characterized by inequality,” that a boy is most efficaciously led into virtue by his father, or a daughter by her mother.<sup>227</sup> Essentially, politics is most powerful at the lowest level possible: between a parent and a child, that is, consisting in “the act of aiding a person in the development of virtue in and through a real power difference.”<sup>228</sup> There is no law better at leading a person into virtue than that of a just father, and this is not because he has the most coercive power, for as a “singular man” he in fact possesses the least, explains Jones, but

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222. PIUS XI, QUADRAGESIMO ANNO § 79 (1931).

223. *Id.* § 80.

224. PIUS XI, DIVINI REDEMPTORIS § 51 (1937).

225. *Id.*

226. Jones, *States*, *supra* note 199.

227. *Id.*

228. Marc Barnes & Andrew Willard Jones, *Localism Beyond Libertarianism: A Response to Susannah Black*, NEW POLITY (Sept. 2, 2020), <https://newpolity.com/blog/localism-beyond-libertarianism>.

rather because he has moral authority, all rooted in parental love.<sup>229</sup> Pope Benedict XVI emphasized subsidiarity as creating fertile conditions for love:

[S]ubsidiarity – insofar as it encourages men and women to enter freely into life-giving relationships with those to whom they are most closely connected and upon whom they most immediately depend, and demands of higher authorities respect for these relationships – manifests a “vertical” dimension pointing towards the Creator of the social order . . . . When those responsible for the public good attune themselves to the natural human desire for self-governance based on subsidiarity, they leave space for individual responsibility and initiative, but most importantly, they leave space for *love* . . . which always remains “the most excellent way[.]”<sup>230</sup>

As such, the Church defends the subsidiary function of the state towards the family, the higher power in assistance of the lower, and since “society and the State exist for the family,” it follows that “the priority of the family over society and over the State must be affirmed.”<sup>231</sup>

The temporal powers, meaning all “rulers” exercising some temporal authority, should be guided by the subsidiarity principle to their proper social ordering, that is, in accordance to the ideal hierarchy of organizations within society.<sup>232</sup> Temporal authority, or *regalis potestas*, is therefore the whole of all power and law at every level of society, in all organizations.<sup>233</sup> The ideal hierarchy functions so that a continuum of decreasing positive goods and increasing negative action takes place from the family to the national state. Lower powers have little remedial power yet provide the most positive goods, while states provide few positive political goods but great remedial power.<sup>234</sup> Crean and Fimister write that temporal rulers of higher associations “must not take to themselves tasks that can be accomplished by lower ones.”<sup>235</sup>

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229. Jones, *States*, *supra* note 199.

230. Benedict XVI, His Holiness Pope, Address to the 14th Session of the Pontifical Academy of Social Sciences (May 3, 2008) (emphasis in original) (citations omitted).

231. PONTIFICAL COUNCIL FOR JUST. & PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH § 214 (2004).

232. See Xavier Focroulle Ménard, *The Legal Pluralism of True Integralism*, NEW POLITY (Sept. 15, 2020), <https://newpolity.com/blog/legal-pluralism>.

233. *Id.*

234. Jones, *States*, *supra* note 199.

235. CREAN & FIMISTER, *supra* note 36, at 112.

Subsidiarity indeed opposes the intervention of a higher power in “the justly ordered affairs of a lower level” when there is no need for remedial action, as this would be an usurpation of moral authority – which is always tyranny – and thus a great injustice. It also opposes bullying, another great injustice, where a hierarchy of families, organizations, and societies encroach in a neighboring hierarchy of the same level, effectively usurping the position of the higher power that unites the two hierarchies in society’s grand ideal ordered hierarchy.<sup>236</sup>

Authorities that limit their actions to securing the goods only they can provide and fulfill their duty of remedial actions in levels below them, while not attempting to provide the goods or remedial actions of other levels, whether they are below, above, or parallel to them, participate in social justice. This is how the common good is achieved. This approach seems to be at the very source of liberal principles,<sup>237</sup> per the Catechism of the Catholic Church:

Socialization also presents dangers. Excessive intervention by the state can threaten personal freedom and initiative. The teaching of the Church has elaborated the principle of *subsidiarity*, according to which “a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good.”<sup>238</sup>

The principle of subsidiarity is opposed to all forms of collectivism. It sets limits for state intervention. It aims at harmonizing the relationships between individuals and societies. It tends toward the establishment of true international order.<sup>239</sup>

The principle of subsidiarity should resonate with proponents of liberalism because it protects the maximum freedom within each level of authority, and generates diversity among the lower levels,

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236. Jones, *States*, *supra* note 199.

237. On this particular point, see generally N. W. BARBER, *THE PRINCIPLES OF CONSTITUTIONALISM* 188 (2018); Nicholas Aroney, *Subsidiarity in the Writings of Aristotle and Aquinas*, in *GLOBAL PERSPECTIVES ON SUBSIDIARITY* 9 (Michelle Evans & Augusto Zimmermann eds., 2014); Pierpaolo Donati, *What Does “Subsidiarity” Mean? The Relational Perspective*, 12 *J. MKTS. & MORALITY* 211 (2009). See also Maria Cahill, *Sovereignty, Liberalism and the Intelligibility of Attraction to Subsidiarity*, 61 *AM. J. JURIS.* 109 (2016).

238. CCC, *supra* note 202, art. 1883.

239. *Id.* art. 1885.

as each organization and each community is entirely free to operate within its jurisdiction.<sup>240</sup> Any repression of this freedom by another authority is an injustice and is prohibited. As Jones writes, “[s]ubsidiarity demands humility and tolerance and allows for profound diversity,” striking the right balance between simultaneously pursuing the common good and protecting real and recognizable freedom.<sup>241</sup>

The end goal of new integralism is to turn modern liberal states into integralist states that are part of Christendom. Of course, this would imply the enactment of laws and policies drastically different from current ones, because modern liberal states would need to legislate and rule according to natural law principles. But, according to Jones and Barnes, this is worrying because modern liberal states see the family as derivative of their sovereignty only and they fundamentally reject the principle of subsidiarity—they will cause great impediment to realizing Catholic integralism.<sup>242</sup> The modern liberal state itself is too inclined to generate injustices and cannot be the right model of organization on which to build an integralist regime. A careful reading of Jones suggests that legitimate Catholic rule requires finding the right balance between overemphasizing the state and becoming authoritarian and deemphasizing the state to the point of anarchism. Jones is optimistic that subsidiarity “can help to overcome both anarchist and authoritarian temptations.”<sup>243</sup>

### *3. Religious freedom under soft and hard integralism*

Given these guiding principles and the Church’s policy change with regard to secular states in *Dignitatis Humanae*, we can see that an approximation of religious freedom similar to what we see under some liberal regimes is possible or at least plausible under a soft integralist regime.

Under soft integralism, the Catholic natural law tradition informs state policies and actions without actively enforcing positive laws that restrict individuals in their liberal freedom, for prudential and subsidiarity reasons. They might have a state

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240. Cahill, *supra* note 237, at 129–32; see also BENEDICT XVI, *CARITAS IN VERITATE* §§ 57–58 (2009); JOHN PAUL II, *CENTESIMUS ANNUS* §§ 15, 48 (1991).

241. Jones, *States*, *supra* note 199.

242. *Id.*; see also Jones, *Sovereignty*, *supra* note 199, at 433–42 (discussing children, contracts and how the family is central to, but also a problem for, modern sovereignty).

243. Jones & Barnes, *supra* note 228.

mandatory day off on Sundays for instance, and holidays around Christian events. They might have laws to abolish the death penalty, prohibit usury and protect the environment, still within the liberal framework. The status of religious freedom under soft integralism can be analogized to already existing variants in Europe and South America, and in many concordat regimes established by the Holy See generally, where state religions are given preferential status in the form of public symbols or financial subsidies and religious minorities are still allowed to practice their religion, albeit with some restrictions on their public expression. Liberals, of course, might object and insist that the current regimes in Europe are philosophically or morally committed to the equal citizenship of religious minorities, unlike in a Catholic integralist regime. Perhaps it may very well be so as a matter of philosophy, but in practice, the two regimes would be functionally similar insofar as majoritarian religious preferences are essentially upheld.<sup>244</sup>

As for religious freedom under a hard integralist regime, the state is entirely subordinated in all matters relevant to the Church, actively enforcing as minister its whole corpus of laws, and all enacted laws and policies are in accordance with natural law. Rulers also claim that all this is dictated by prudential and subsidiarity reasons but settle on different conclusions than soft integralists. Hard integralism holds that all laws must conform to the natural law; the Code of Canon Law should apply to matrimonial law and to criminal law, for instance. In this regime, the *auctoritas sacrata* and the *regalis potestas* each have their own jurisdictions, the spiritual and the temporal matters respectively, and only work together on matters that are of both, like marriage and divorce. But in all matters of faith, concrete and determinate laws and policies are difficult to envision because the state has no power to legislate anymore; per Pink's view, the declaration of freedom of religion *Dignitatis Humanae* took away the jurisdiction of the *regalis potestas*, the state, to act as the enforcing minister of the *auctoritas sacrata*, the Church. It remains therefore unclear what the status of religious freedom would look like under a hard integralist regime, since, to legislate for religious ends, such state would first be required to obtain the authorization of the Church, or at minimum its tacit acquiescence. Of course, one could expect a

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244. See, e.g., Liav Orgad, *Forced to Be Free: The Limits of European Tolerance*, 34 HARV. HUM. RTS. J. 1 (2021).

status similar to what is minimally described by Crean and Fimister, as explained.<sup>245</sup> Nevertheless, we cannot know with certainty what the Church would decide to do if a professed and virtuous Catholic state, led by prudent rulers, or conversely a tyrannical Christian state, asked for the authorization of the Church to act as its minister in religious matters. In any case, the future of integralism and how it defines, considers and protects freedom of religion ultimately lies with the Holy See and the Vatican generally. For the Church, this too will be a decision requiring lots of prudence and an application of the principle of subsidiarity.

#### CONCLUSION

The recent rise of Catholic integralism as a formidable intellectual challenge to liberalism has prompted debates and discussions on its scope and implications. Through an examination of the development of Catholic integralist thought, especially of the divergent voices within it on the question of religious freedom, we argue that there are some interpretations of integralism that can support freedom for religious minorities in an integralist state. The foregoing exercise, however, is not simply intended to come up with this justification, but rather as an illustration of the malleability of these worldviews despite remaining tensions. Ultimately, serious engagement with powerful ideas can advance both and, for its partisans especially, a liberalism that is more inclusive and authentic.

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245. For a recent position from the Church on religious freedom, see International Theological Commission, *Religious Freedom for the Good of All: Theological Approaches and Contemporary Challenges* (Vatican 2019), [https://www.vatican.va/roman\\_curia/congregations/cfaith/cti\\_documents/rc\\_cti\\_20190426\\_liberta-religiosa\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20190426_liberta-religiosa_en.html).

