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The Obligation of Government Toward Humanity: The Role of the State in the Common Good

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DAVID N. WAGNER

INTRODUCTION ................................................................................... 2
I. JOHN FINNIS AND THE FOUNDATION OF A THEORY ......................... 2
II. EXPOSITION OF THE THEORY .......................................................... 5
   A. The Public Square ........................................................................... 7
   B. Religion as a Constitutional Right ................................................. 8
   C. History and Order .......................................................................... 9
   D. Freedom from Religious Coercion by Government or Others .......... 11
   E. Forms of Governance ..................................................................... 14
   F. The Modern State and Dignitatis Humaneae ................................. 15
      A Case Study ................................................................................ 17
   G. The State Declares a Religion To Be True ....................................... 20
III. THE TEACHING OF THE CHURCH .................................................. 23
   A. Syllabus Errorum .......................................................................... 23
   B. Immortale Dei .............................................................................. 26
   C. Libertas ....................................................................................... 31
   D. Pacem in Terris ........................................................................... 39
   E. Fides et Ratio ................................................................................ 44
CONCLUSION ....................................................................................... 57

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INTRODUCTION

What is the role of the state in man’s final end? This question provides the framework for exploration in my Church & State seminar. We begin the course with the Decalogue or Ten Commandments from the Books of Exodus and Deuteronomy as the first legislative document that informs the people how to live for the purposes of ordering their lives with the divine. It is also the point where civil and religious governance are united in the person of Moses as judge. While this document offers no form of government, it creates a foundation for order through behavior that comports with the will of God. Accretions of laws and regulations follow for centuries, but instead of being followed to worship the one true God, they were followed for worldly gain, inspiring the prophets to preach repentance and the turning of hearts back to God. It is only with the Incarnation that we see God expressing in the person of Jesus Christ the fulfillment of the whole of the Law, making it publicly known that simply obeying the laws is not enough when the goal of compliance is not the fulfillment of a code, but eternal life.

Once we enter the Christian era, God reveals that his kingdom is not of this world when Jesus tells the Pharisees to render unto Caesar what is Caesar’s. From that point forward, the Church has struggled mightily to develop the doctrine, which recognizes the divine nature of authority as it pertains to the relationship between the Church and the State.

I. JOHN FINNIS AND THE FOUNDATION OF A THEORY

In chronicling this struggle, we come to our current study, which explores the problem in the context of the modern state’s duty to its people vis-à-vis religion. I begin with John Finnis, who seeks to find the place of religion in political communities through philosophical and historical inquiry in his article, Religion and State: Some Main Issues and Sources. His method is founded upon the notion that the human person exists for a purpose, that there is a cause for his existence, and that this cause is a

2. Id.; see also Exodus 18:13 (“The next day Moses sat in judgment for the people . . . .”)
3. See John 1:14 (“And the Word became flesh and made his dwelling among us, and we saw his glory, the glory as of the Father’s only Son, full of grace and truth.”)
transcendent reality that has communicated to us a purpose in order to explain our existence, including the mystery of how we share meaning and intentions among ourselves as well as with the divine. This communication can be called “revelation,” but accepting it as such requires no act of faith or submission to dogmatic teachings of a church. His judgment, that there are revelatory communications, may draw upon theological arguments to show that the content of this revelation is in accord with reason but does not introduce the need to make an act of faith.

Finnis comes to a conclusion—disquieting for most modern political theorists and theologians of whatever stripe—that the state, without injustice or impropriety, may identify the true religious faith and community—a true religion—as the vehicle moving toward the final goal of human good and happiness. At first blush, this may seem to many (perhaps most) to be contrary to the foundations of the modern democratic state. This is because Finnis’ conclusion cuts against the historical, political, and legal development in the West from theocratic or monarchical constructions of governance toward a modern notion of “separation of church and state.” However, Finnis’ argument is that, in light of its obligation to maintain public order, the state must remove adherents of social groups whose beliefs adversely affect public morality as far as possible from political communities that acknowledge religious freedom. In so doing, the state is discriminating in its treatment of religions and, as a side effect, is making a decision about the content of a religion. This state duty to not only abstain from religious coercion but to prevent individuals and social groups from impinging on this right to be free from coercion on their religious beliefs and acts is not, in Finnis’ opinion, contrary to a thoroughly just positive determination that one religion is the true religion. Is this the position of the Church? Does the Church teach—and has the Church taught—that the state must publicly identify the true religion? The Church certainly teaches that the fullness of Christianity is found in the teachings of the Catholic Church founded by the Savior and built upon the rock that is Peter. In the exploration of this political and

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6. See id. at 107–09 (introducing major concepts within the article).
7. Id. at 109.
8. Id.
9. Id. at 127–30.
10. Id. at 126–28.
11. Id. at 117–30.
12. See Matthew 16:18 (depicting Jesus saying, “you are Peter, and upon this rock I will build My church”).
philosophical conclusion, I wanted to examine Finnis’ theory in the light and context of the Church’s struggle with her own place in the world.

A critical source for Finnis’ theory that provides the foundation for tying true religion to the political state is the Vatican II document *Dignitatis Humanae*. Mindful of this, I think it a fruitful exercise to review, compare, and contrast the history and development of the Church’s teaching on the relationship between church and state. The intent is to illuminate parallels between Finnis’ position and that of the Church. The method will be to shine a focused light upon Church doctrine as it has developed regarding the relationship between the Church and the state and to review the details of Finnis’ argument so as to reveal the superstructure of his argument concerning the obligation of a state to identify the true religion. I shall attempt to investigate this theory against a historical backdrop of church-state relations as these may be viewed through Catholic Church documents, focusing upon several significant Church documents, beginning with the *Syllabus Errorum* of Pius IX in 1864. Then I will cover both *Immortale Dei* and *Libertas*, promulgated by Pope Leo XIII in 1885 and 1888, respectively. *Pacem in Terris* of John XXIII will follow, and I will conclude with *Fides et Ratio*, John Paul II’s encyclical on faith and reason from September of 1998. My assumption in using these documents is that these teachings are a product of the Magisterium and owed certain deference. I do not intend here to explore the level of magisterial authority that these documents carry or how they are to be followed by the faithful, but rather emphasize simply that they come from


the teaching authority of the Church and offer the reader an avenue for finding truth.

II. EXPOSITION OF THE THEORY

The premise on which this theory—and nearly all of Finnis' work—is based is the notion that truth is available to all and that knowledge of truth does not rely upon revelation, but is accessible to each person through reason. This is hardly revolutionary or even controversial. In his Epistle to the Romans, St. Paul rebuked those who suppress the truth—for even without the Gospel, all are obliged to know God through his creation—declaring: "Ever since the creation of the world, his invisible attributes of eternal power and divinity have been able to be understood and perceived in what he has made. As a result, they have no excuse ..." Indeed, Finnis appears to seize upon this presumption (indirectly, for he does not cite the passage) and sets the foundation for his theory of religion and state not directly on Scripture, but on a "transcendent source of reality" upon which his arguments are to be made. This is so important that he qualifies his presentation at the outset as historical and factual, not theological. How can the intellectual inquiry into transcendent communication not be theological? Finnis contends that this source is accessible through empirical natural and social sciences.

Basing his theory on a non-theological, transcendent source of reality is the point at which many a modern philosopher will part ways with Finnis. More than that, many will reject anything he discovers using this method as flawed, considering it to be in opposition to the presumed philosophical axiom that Athens and Jerusalem can never meet. On the

19. See Religion and State, supra note 5, at 129.
22. Id.
23. Id.
24. As Strauss explains:

Philosophy has to grant that revelation is possible. But to grant that revelation is possible means ... to grant that the philosophic life is not necessarily, not evidently, the right life. Philosophy, the life devoted to the quest for evident knowledge available to man as man, would itself rest on an unevident, arbitrary, or blind decision. This would merely confirm the thesis of faith, that there is no possibility of consistency, of a consistent and thoroughly sincere life, without belief in revelation. The mere fact that philosophy and revelation cannot refute each other would constitute the refutation of philosophy by revelation.

LEO STRAUSS, NATURAL RIGHTS AND HISTORY 75 (1965).
contrary, however, I would maintain that philosophical and historical truth must include the reality of the divine to avoid nonsensical intellectual meanderings and looking at facts as truth in and of themselves. Finnis shares this position, holding that Jerusalem can remain safely in the realm of theology while we pursue a philosophical understanding of truth and divine causality. One must access faith. In other words, in his attempt to present an understanding of religion and state, Finnis makes theology not subordinate, but rather a discipline simply providing added clarity to philosophical inquiries. We will explore that position in due course, but we can situate the position of Finnis precipitously (and perhaps precariously) between these adverse methodologies which form—for their proponents—a pathway to a cogent philosophical anthropology.

Finnis does not simply presume upon the existence of a transcendent communication but argues forcefully for its philosophical legitimacy. His are truly philosophical arguments for the existence of God. I do not want to rehash the arguments here because they are tangential to our project, but we can say that Finnis' arguments bring him to the judgment that there is a transcendent reality commonly referred to as “God” and that God, this intelligent, transcendent reality, knowing that we ourselves are free and have intelligence, might share with us the meaning of the existence of our universe. This is “Revelation.”

We have a foundation, therefore, that is interdependently historical and philosophical, the former demonstrating concrete revelation in human affairs, and the latter explaining the existence and necessity of the transcendent and the divine. Moreover, the reasonableness of this communication from the divine to the human being allows for the revelation to take place beyond what is commonly understood as the “laws of nature” in a given time and place. This theoretical foundation

25. See id. at 109–11.
26. Id. at 109.
27. See id. at 109–10 (maintaining that it is not “beyond reason to expect that the course of human history might well include events, of communicative significance, going beyond or contrary to the laws that generally structure affairs”).
28. Id. at 108–10.
29. Because we are dealing here with imperfect human beings, a third dimension Finnis would have us consider is the credibility of the one who asserts the revelation and its content. Id. at 110. One who is morally flawed undermines the message, regardless of the skill with which the message is presented. Id. at 110–11. Credibility is also undermined if the prophet is authorized by his revelation to impose his message by force and to discipline those refusing to adopt his faith with “death or servitude.” Id. at 111 (citing THOMAS AQUINAS, SUMMA CONTRA GENTILES I, c. 6). Such coercion through the threat of death should be juxtaposed with those prophets who are themselves willing to die rather than to
expresses the actual foundation for the source of truth that does not require an act of faith, but simply an openness to divine communication.

A. The Public Square

In the name of separation of church and state and the relegation of religion to simply a private affair, a transcendent context or pole for discussions regarding the workings of the state has largely been snuffed out. This has been accomplished by considering discussions about the state to be an exercise in “reason” from which matters of faith should be excluded. A corollary to this is that religion has nothing of “reasoned” substance to add to the debate. In fact, religion is considered to be irrelevant since faith is a private matter—it is simply a choice.

Faith is a choice in the sense that one chooses between acting and not acting, between following or not following a divine call. The modern notion of choice, however, has been severed from the transcendent and turned into an expression of desire. This has been no more clearly stated than in the Supreme Court case of Planned Parenthood of Southeastern Pennsylvania v. Casey in which we are told that we have the right “to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”

The elemental flaw in this error stems from the focus on the self. One can use the psychological euphemism of self-respect or self-determination; it is, nonetheless, the expression of what Eric Voegelin referred to as the “Egophanic Revolt” in which the concentration on the self, the ego, eclipses the epiphany of God. Once this happens, everything that exists is defined by reference to the self instead of reference to the eternal.

Finnis takes this concept further and sees not only the rejection of the divine in opinions such as Casey, but also a failure to align oneself with the transcendent intelligence that is the prime cause of one’s own intelligence
and will.\textsuperscript{33} Truth, in that case, is not discovered through openness to the divine but is expressed in a distorted fashion through self-will. For Finnis, this amounts to an abandonment of genuine reason.\textsuperscript{34}

B. Religion as a Constitutional Right

The reduction of religion to a mere constitutional right disconnects it from its transcendent source and makes the truth that religion seeks to find end with the state. The current analysis of religion and state by Finnis stems from his magnum opus, \textit{Natural Law \& Natural Rights}.\textsuperscript{35} In this tome, Finnis tells us that of the basic goods in life, religion takes a primary place.\textsuperscript{36} His list of basic goods includes life, knowledge, aesthetic appreciation, play, friendship, practical reasonableness, and religion.\textsuperscript{37} Without delving into these goods in detail, it is important to note that Finnis views religion as a basic good for its own sake.\textsuperscript{38} The alternative view, he believes, reduces religion to nothing more than the \textit{Casey} version of defining the universe for oneself. Furthermore, not only is religion reduced and exiled from the realm of reason, but hostility ensues when religion is seen as a restriction on one’s “deep concerns” and desires. The distortion is complete when “deep concerns” are equated with one’s “conscience.”\textsuperscript{39} Genuine discourse on religion and state must instead include in the critical debate the affirming of God along with the common good through engagement of the practical reason.\textsuperscript{40}

It is difficult not to agree with Finnis that the strictly permissive notion of religion in the documents of the formation of a government leaves much to be desired. It is quite another premise to say that the government, in those documents, can identify the true religion. It certainly happens, however, even to this day. In 2005, the newly minted Iraqi Constitution in Section 1, Article 2 (after Article 1, which establishes the state) proclaims in no uncertain terms: “Islam is the official religion of the

\begin{thebibliography}{99}
\bibitem{} 33. \textit{Religion and State}, supra note 5, at 112.
\bibitem{} 34. \textit{Id.}
\bibitem{} 35. \textit{John Finnis, Natural Law \& Natural Rights} (1st ed. 1980).
\bibitem{} 36. \textit{Id.} at 85–86.
\bibitem{} 37. \textit{Id.} at 85–90.
\bibitem{} 38. \textit{Id.} at 89–90.
\bibitem{} 40. “Practical reason” is featured in \textit{Natural Law \& Natural Rights} as the concept which answers how we acquire knowledge of the basic goods. \textit{See, e.g., id.} at 100–03.
\end{thebibliography}
State and it is a fundamental source of legislation." 41 Immediately following this declaration, the text states that: "No law that contradicts the established provisions of Islam may be established." 42 The problem with this, Finnis might argue, is that Islam is not a religion that the state can reasonably proclaim as having no errors in terms of public order since conversion by force is called for. We will explore this shortly.

The Polish Constitution, ratified in 1997, takes a middle road which includes in the citizenry: “Both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources, equal in rights and obligations towards the common good.” 43 Accordingly, defining “universal values” and “the common good” becomes the duty of the government.

These specific examples aside, it would be worth exploring further what it means to “identify the true religion.” Can this be done outside of foundational governmental documents? Finnis does not address it, and we cannot explore it further here. However, a question must arise when we look at all the religious trappings that drape the history of the American founding—it is difficult not to see that the truth of religion was expressed in so many ways but has been categorized as “historical” or part of the tradition. 44 In any case, if we look to religion as simply a right among others (such as property rights) the transcendent source of truth is not accessed, and God is not affirmed. If the state is not affirming divine reality, is it not doing the opposite? If religion is good, does not the state have the obligation to affirm its direct source?

C. History and Order

An important component of the rational foundation underpinning a discussion of church and state (in addition to the fact that there is divine

42. Id.
44. Marsh v. Chambers, 463 U.S. 783, 792 (1983) (upholding the state practice of hiring chaplains and offering prayers in the legislature "[i]n light of the unambiguous and unbroken history of more than 200 years").
revelation that must be accounted for in the discussion) is the notion that since these communications originate with the divine and are to be received by human beings in time, the communications must necessarily be set in human history. The historical documents of the Old and New Testaments are the main source of that record of divine-human relation and communication. The Gospels of the four evangelists and the Acts of the Apostles, especially, offer concrete historical evidence of this communication through the person of Jesus Christ. There are many views as to why the Scriptures have lost public influence, not least of which is the oft-misunderstood concept of separation of church and state. Finnis, however, believes that these documents have lost much influence because scripture scholars have deconstructed them so as to eliminate their transcendent nature and leave them as references simply to the “Historical Jesus,” explicitly rejecting their divine component, which is seen most vividly through the performance of miracles. In rejecting miracles, Finnis contends, such scripture scholars—instead of accounting for revelation in philosophical debate—employ an irrational and philosophically unfounded departure from the inclusion of the Gospel testimony as historically valid.

I would argue that the documents have lost value not due simply to their dissection by scripture scholars, but because the proclamation of the truth of the Gospels has been relegated to Sunday sermons and televangelists. Since order in human affairs is a reflection of divine order, if we make no public accounting for a source of truth we must create that source ourselves. Principles that derive from our own image instead of absolute truth are necessarily flawed and cannot provide a foundation for others to engage society for the common good.

45. The “Quest for the Historical Jesus” is not a new project but received much attention (and much criticism) in recent years due to efforts by scholars. See, e.g., John Dominic Crossan, Jesus: A Revolutionary Biography (1994).

46. Religion and State, supra note 5, at 115–16.

47. Id. Finnis describes the deterioration in belief in the Gospel testimony as an almost concerted effort by scripture scholars to “poison the root of the tree.” Id. at 115. The denialability of the historicity of the Gospel is accomplished by insisting that everything in the Gospels is a post AD 70 retrojection, hence making all the testimony a creation of the Gospel authors. Id. This, it is argued, is a reasonable explication because human beings cannot predict the future and, since we find in the Gospels the foretelling of the fall of Jerusalem, the accounts preserved are no more than stories invented by the writers. Id. The syllogism is quite clever: Since the Gospels were written after AD 70 and claimed to predict the future, if Jesus had been divine, he could have done so. Id. at 115–16. But since he did not truly “predict” anything, he presumably couldn’t predict anything, and therefore he wasn’t divine. Id. at 116. This allows scholars to reject any historical use of the Gospels in any fashion beyond the possibility that he existed and that, at most, he was merely human.
D. Freedom from Religious Coercion by Government or Others

The intersection of religion and governance was never more clearly defined as in the first legislative document of this nature, the Decalogue.48 While the Ten Commandments are not a model for a governmental structure, the source of the law was never in question. Accretions that followed presented a distorted image of the truth in the Tablets, but the transcendent foundation remained. In the modern world, therefore, without Revelation as a foundational element in public discourse, and with atheism incorrectly understood as the governmental default position, we must explore how a nation’s laws and policies should affect religion.

Since the place of religion in modern political communities has been separated from the divine, Finnis describes the strengths and limitations of political expression at the intersection of the historical and the transcendent.49 The touch point is the concept of coercion.50 The United States Constitution expresses this intersection by protecting the “free exercise” of religion.”51 The European Convention expresses the right as “freedom of thought, conscience and religion.”52 The Second Vatican Council expressed it more fully in Dignitatis Humanae, emphasizing not the “rights” but “immunity from coercion in civil society,”53 and not only coercion from the government, but also from others whose actions cause conflicts that endanger public peace.54 The reasoning for this is twofold: the

49. See Religion and State, supra note 5, at 117.
50. Id.
51. U.S. CONST. amend. I.
53. Dignitatis Humanae, supra note 13, ¶ 1.
54. Id. ¶ 7. It is worthwhile to note paragraph 7 of Dignitatis Humanae, the Second Vatican Council’s Declaration on Religions Liberty, to which we will return often and which offers a much deeper understanding of the human person in community than any simply autonomous creature with “rights.” The Second Vatican Council provided that:

The right to religious freedom is exercised in human society: hence its exercise is subject to certain regulatory norms. In the use of all freedoms the moral principle of personal and social responsibility is to be observed. In the exercise of their rights, individual men and social groups are bound by the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare of all. Men are to deal with their fellows in justice and civility.

Furthermore, society has the right to defend itself against possible abuses committed on the pretext of freedom of religion. It is the special duty of government to provide this protection. However, government is not to act in an
first and primary premise is that, because God has made known to man through Jesus Christ how man must live and be saved, every man has the duty to seek the truth of God and to embrace it.\textsuperscript{55} In order to accomplish this, so goes the second premise, man must be free to do so—immune not only from political, but from psychological coercion as well.\textsuperscript{56}

The overall problem with coercion appears obvious to most, but the limits of what coercion can and cannot accomplish are not so clear. Finnis attempts to shed light on this by reflecting on the thought of Thomas Aquinas.\textsuperscript{57} It is the \textit{temporal} that the state has control over and through which it must act for the common good.\textsuperscript{58} The state does not have any authority over internal acts.\textsuperscript{59} The external acts must be controlled to the degree that they interfere with public peace and common good.\textsuperscript{60} Neither Finnis nor Thomas would make a sharp divide between external and internal, for every external act flows from one that is internal. In fact, Aquinas makes clear the distinction: external acts are the product of willed intentions.\textsuperscript{61} As such, the internal acts are inaccessible to political authorities.\textsuperscript{62} Furthermore, acts of disposition are similarly off-limits to government authorities.\textsuperscript{63} These acts are choices regarding one's state in life, such as whom to marry or whether to make a religious vow.\textsuperscript{64}

\textit{Id.}
\textsuperscript{55.}Id. \textit{¶} 2.
\textsuperscript{56.}Id.
\textsuperscript{57.}Religion and State, supra note 5, at 120–21.
\textsuperscript{58.}Id. at 119–20.
\textsuperscript{59.}Id.
\textsuperscript{60.}Id. at 120–22.
\textsuperscript{61.}Id. at 120 (citing Thomas Aquinas, Moral, Political and Legal Theory 241 (Oxford University Press ed., 1998)).
\textsuperscript{62.}Id.
\textsuperscript{63.}Id. at 121.
\textsuperscript{64.}Id.
Moreover, matters of faith and worship, which should be regarded in the same way, deal with each person individually. Dignitatis Humanae uses these arguments to support the primacy of one's duty to seek the truth and follow it. Seeking the truth cannot be accomplished under coercion or “psychological pressure,” which Finnis sets off in scare quotes to identify, I believe, the fact that such language is a modern term that really adds nothing to the notion of coercion and perhaps even blurs the line between what the law actually has access to. In any event, Finnis points out these traditional arguments, distinguishing the internal from the external, to reinforce the notion that, in defending the natural human right to religious liberty, the Vatican Council has operated under the assumption that “error has no rights.” There must, therefore, be no coercion; such would be to interfere with the seeking of truth. This means, significantly, that not simply is there an absence of a duty to proclaim a false religion, “there is no moral liberty” to do so.

The logic for the foundation used by Finnis here that error has no rights is not so clear. He seems to be saying that because the Council asserts that there are these two realms of authority, they are distinct, and there is a traditional foundation for the arguments and principles in support of the distinction, ipso facto, the “old thought” that error has no rights remains unchallenged and revelation can be used philosophically. While this basic idea is intuitively reasonable to accept, his method of arriving at it seems to jump simply from truth to truth without a clear link between them. He takes a theological truth and commends it to a philosophical

65. Id.
66. Dignitatis Humanae, supra note 13, ¶ 1 (“On their part, all men are bound to seek the truth, especially in what concerns God and His Church, and to embrace the truth they come to know, and to hold fast to it.”).
67. Religion and State, supra note 5, at 121.
68. Id.
69. Id. Finnis argues that this principle is supported by the use in philosophical arguments of both revelation and divinely guided ecclesiastical tradition. Id. at 121–22. If we render unto Caesar the external, the internal is left for religion to guide. Id. at 121. The support for using the arguments this way, as did Thomas Aquinas, is laid out by delineating the distinction in the jurisdiction between the Church and the world. The Church has maintained, as Finnis states, “[F]rom the earliest apostolic times onward the unbroken refusal to countenance any attempt to coerce someone to embrace the Christian faith against his or her own will.” Id. The corollary premise is that there is no history or worldly tradition in which the state has interfered successfully to change a teaching of the Church held in the experience of divinely guided tradition.
70. Id. at 122.
71. See id. at 121 (explaining the jurisdictional division between church and state).
argument. Nevertheless, this jump, if accepted, establishes an important new premise: there is no right to proclaim a false religion. 72 This premise leads Finnis to the conclusion that the state has the duty to restrict any proclamation of a false religion. 73 Equally important is that there is a right to be immune from coercion and the state must intervene to prevent such coercion. 74

E. Forms of Governance

A brief review of several governmental structures and how each of them deals with an understanding of freedom from coercion would be illustrative of the theoretical constructions we have made. Most would agree that since the state is responsible for the temporal good, it must take responsibility not for the salvation of the individual but instead for the complimentary duty of protecting the common good in society through maintenance of public order. 75 One could go further and say that in maintaining public order, the state provides a civic environment in which the soul can grow toward perfection, exercising freely its purpose to seek truth. How this responsibility is seen and taken by different polities depends on the source of authority upon which the government bases its laws. A favorable secularist view 76 permits religious acts because, although it may reject religion as irrational, it does recognize that religion is a part of society, of relationships, and that it constitutes the value structures of a large portion of the members of the given society. 77 Finnis sees this position as necessary for secularists because allowing this “freedom” of religious acts, for the reason that they are “activities” of society and that they are expressions of people’s “passions,” 78 also allows for the expression of rights established in Supreme Court decisions, such as those concerning consensual homosexual sodomy and elective abortions. 79

72. Id. at 122 (“[T]here is no moral liberty to proclaim a false religion.”).
73. Id. at 121–22.
74. Id.
75. Id. at 122.
76. Finnis, without giving examples, points out that there are many examples of secularists views, especially in the twentieth century, where religion barely received constitutional respect, if any tolerance at all. See id. at 123 (explaining the lack of respect secularists often have for religion).
77. Id. at 122–23.
78. Id. at 122.
Finnis notes, however, that such activities tend not to be acts of conscience but expressions of emotional desires that are “so often the subject of belated rational regret.”

At the other end of the spectrum from the avowed secular state, we find theocracies. Finnis looks at post-Reformation England and the modern Islamic State. After the formation of the Church of England in the sixteenth century, church and state became one, with the leaders of the church chosen by the state and the acts of worship determined in the political assembly. In Islam, there are two forms: the Sunni form, where the state appoints religious leaders, and the Shiite form in which the political community is subordinate and subject to the religious leaders.

The Catholic Church’s doctrine of religious liberty stands firmly between these political extremes, seen and expressed in the Second Vatican Council document *Dignitatis Humanae*, where we can see more clearly the Catholic Church’s position as “part of what it is to be central to civilization” as it takes on opponents on the Left, like American secularism and various forms of Communist oppression, and, on the Right, anti-Christian theocracies.

**F. The Modern State and Dignitatis Humanae**

Religious liberty is central to Catholic Church teaching. This does not mean that the Church has abandoned the position that there is one Church founded by Jesus Christ. Instead, it is a recognition that human beings are free and that they must come to the truth of their own volition. Finnis depends upon this notion for his ultimate conclusion, and it is in some sense the prime motivating factor in my exploration of his theory. It is important to pay close attention to the premises of his logical constructions. He relies upon the position of Joseph Boyle in order to

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81. Id.
82. Id.
83. Id.
84. Id. Finnis here presents a charge and perhaps a criticism that these instantiations of religion have not “convincingly been shown to be unfaithful to the core texts or traditions of Islam’s purported divine communication . . . .” Id.
86. Id. at 124.
87. See *Religion and State*, *supra* note 5, at 117 (citations omitted).
88. See *id.* at 121 (noting “[o]ne’s serious duty to pursue the truth about ultimates and to shape one’s life in line with what one judges one has discovered about them . . .”).
distinguish his own theory, so I would like to say a few words about Boyle’s analysis of *Dignitatis Humanae* to distinguish them from that of Finnis.

Boyle provides the grist for the mill in his formulation of the “duty” of the state toward religion. Simply put, he says that the negative duty not to coerce creates the positive duty not to favor or disfavor any religion, or, for that matter, to favor religion over irreligion. In other words, “coercion” equals “favoring.” This nudge of the Council’s teaching pushes it from prohibition of state action to something that the state must do. It may seem like two heads of the same coin, but a command not to favor is not considered by the Council; even less did the Council consider that such favor would have the unintended consequence of coercion. The need for the duty not to favor or disfavor any religion, in Boyle’s view, arises from

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89. *Id.* at 124–29.

90. Tomes have been written on the struggles with the Establishment Clause of the First Amendment. See *Lee v. Weisman*, 505 U.S. 577, 592–99 (1992) (discussing the risk of indirect coercion presented by prayer exercises in public schools); see also *Lynch v. Donnelly*, 465 U.S. 668, 687–94 (1984) (O’Connor, J., concurring) (discussing government “endorsement or disapproval” of religion as a direct infringement of the Establishment Clause); *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (providing the following criteria for determining whether government action unconstitutionally infringes on the Establishment Clause: the government’s action “must have a secular legislative purpose;” must not have the primary effect of either advancing or inhibiting religion; and must not “foster an excessive government entanglement with religion”) (emphasis added). None of these cases is as effective as *Dignitatis Humanae* in describing what the role of the government should be. The Supreme Court’s principles are derived from individual disputes and provide only a flawed framework for future disputes, not principles for governance.


> Political society is morally obliged to create the social space for people to fulfill their obligation to seek the truth in religious matters and live accordingly. *It cannot do this if political life is conducted as if a certain outcome of this inquiry—whether a particular type of belief or nonbelief—were correct;* for such political action skews public life in ways that hinder rather than facilitate this inquiry, and inevitably and unfairly coerces some to support actions whose rationales are incompatible with deep elements in their worldviews. Rather, political society must recognize that its proper actions cannot be based on any particular outcome of this morally mandatory inquiry, since the correctness of any such outcome is for individuals, families, and voluntary associations, not political societies, to determine.

*Id.* (emphasis added).

92. See generally *Dignitatis Humanae*, *supra* note 13.
his conclusion that in order for the command of Dignitatis Humanae to seek truth in religious matters to be fulfilled, people must be free from any governmental position that there is a "correct" outcome to the inquiry. 93 Otherwise, the state does not create the "social space" for persons to carry out their mandate. 94 This is the case, Boyle claims, because seeking the truth can only be accomplished through individual and non-governmental societal efforts. 95 If this is true, we come back to our original question: what is the obligation of the government? Is doing nothing an adequate position for a government for the well being of its citizens? Finnis breaks with his colleague by asking two questions that lead to his ultimate conclusion. First, he asks, is it is possible that governmental policies can have a coercive effect on religious acts? 96 Second, does the favor resulting from such policies involve the government in making judgments about religion? 97

Boyle would hold that the state must, in its defense of public order, simply refrain from favoring a religion by intending to make a claim about the tenets of that religion, even if the very act of public defense presupposes the falsity of some part of what its adherents claim to believe. 98 This would suppress religious freedom, Boyle argues. 99 The inevitable conclusion, undergirded by a fully secularist understanding of religion, is that the negative duty to protect citizens from religious coercion ends the state involvement in the matter, and there can be no positive duty of the state toward true religion as true. 100 Finnis rejects this outright, and I find that Boyle’s argument leaves one seeking more from the state in terms of public recognition of religion as a vehicle for seeking truth.

A Case Study

In order to demonstrate the struggle for governmental neutrality, it will be valuable to look at the Equality Act recently passed by the British Parliament. 101 Section 52 of the British law begins, "[i]t is unlawful for a public authority exercising a function to do any act which constitutes

93. Boyle, supra note 91, at 22.
94. See id.
95. Id.
96. Religion and State, supra note 5, at 125.
97. Id.
99. See id.
100. Id.
101. Equality Act, 2006, c. 3 (Eng.).
discrimination.\(^{102}\) The rest of that section of the Act enumerates exemptions from the rule, most notably that of refusing entry visas to religious leaders whose actions violate the public good.\(^{103}\) Public officials are exempt, and the prohibition shall not apply to:

(g) a decision in connection with an application for entry clearance or for leave to enter or remain in the United Kingdom or anything done for the purposes of or in pursuance of a decision of that kind (whether or not the decision is taken in pursuance of a provision of immigration rules) if the decision is taken on the grounds—

(i) that a person holds an office or position in connection with a religion or belief or provides services in connection with a religion or belief,

(ii) that a religion or belief is not to be treated in the same way as certain other religions or beliefs, or

(iii) that the exclusion from the United Kingdom of a person to whom paragraph (i) applies is conducive to the public good . . . \(^{104}\)

Imagine a governmental decision that treats a religion differently when one of its functionaries proclaims that the British Government should submit to that religion and that all who do not believe and act upon this should be forced to do so. This would violate British law.\(^ {105}\) Another hypothetical could be a leader saying that those who speak disparagingly against them or their prophet should be converted or killed. In such scenarios, where someone is kept out of the country because acting upon his religious beliefs would disrupt public order, the government is clearly coercing a religious adherent for the public good. The common good is protected through the maintenance of public order. This seems to be a reasonable restriction considering the Council teaching to protect "the rights of others and public peace."\(^ {106}\) The implication, however, is that the government is necessarily making judgments about a particular religion, about its very content, and, if it is in violation of British law, that it must be considered false insofar as it violates the law. This is a powerful implication that forms the bulwark of Finnis' desire to show that whether it is a good idea or not, the state does and can make a positive determination that a religion, if not false, is true.\(^{107}\) Finnis pulls no punches in arriving at this conclusion:

\(^{102}\) Id. § 52(1).
\(^{103}\) Id. § 52(4)(f)(i).
\(^{104}\) Id. §§ 52(4)(g)(i)–(iii).
\(^{105}\) See id. § 52(1).
\(^{106}\) Religion and State, supra note 5, at 126.
\(^{107}\) Id.
For it is a very grave degradation of public order and the temporal common good that there has recently been imported into our polities religious intimidation, extending perceptibly into the operations of the media, the academy, the writing of lectures such as this, and many other institutions of national life. The exclusion or expulsion of those non-nationals who give open or covert or tacit support to the religious doctrines and practices of intimidation is in principle compatible, I suggest, with the true right to religious liberty.\textsuperscript{108}

Finnis further bolsters his position by citing a House of Lords case in which a claim against a state school that forbade certain forms of militant Islamic attire was dismissed.\textsuperscript{109} The Lords argued that:

where Islam . . . is socially influential even the option of wearing to school or university a distinctively Muslim form of attire is regularly and predictably the occasion and opportunity for intimidatory pressures, and . . . state governments and laws and other public institutions are accordingly entitled to exclude and forbid that sartorial exercise of religious liberty, in order to preserve public order including the religious liberty of others . . . \textsuperscript{110}

This reasoning by the House of Lords represents, in Finnis' eyes, a legitimate conclusion when a religion and its content are being treated differently from other religions. If we acknowledge religious liberty, those who endanger the public good must be removed or repelled from influencing and disturbing the community. Again, this is supported by the notion that the belief that adversaries must be converted or killed is a "standing incitement to violate the rights of others" and cannot be tolerated in an ordered society.\textsuperscript{111} This is difficult to swallow for many because the identification of a line between carrying out these beliefs and simply "believing" them is a difficult one to determine.

Obviously, this notion is not difficult to see if someone has been assaulted or killed, but incitement to violence by those who have influence over adherents of a religion is a real threat, and acting upon it is an exercise in preventive social and political medicine that encounters fierce resistance based upon the same principles that suppressed it in the first place. A rational response to such suppression is rarely encountered. Rather, a political upheaval or emotional appeal usually follows.

\textsuperscript{108} Id.
\textsuperscript{109} Religion and State, supra note 5, at 126 (citing R (Begum) v. Headteacher and Governors of Denbigh High School [2006] UKHL 15, [32], [59]–[65], [91], [98]).
\textsuperscript{110} Id. at 126–27 (citing R (Begum), [2006] UKHL 15) (emphasis added).
\textsuperscript{111} Id. at 127.
This is a side argument, but nonetheless one worth exploring briefly. The argument goes as follows: beliefs of religions that foment acts that violate the public good are just that—beliefs. Taking preemptive action against those who profess those beliefs simply entrenches them in their beliefs and, as is popularly said, “creates more terrorists.” In other words, if you eliminate those who want to carry out the violent beliefs but have not done so yet, removing them from society precipitously, you incur wrath and resentment, and you reinforce the resolve of others who have those beliefs and want to carry them out. It is the “hydra” argument—cutting off one head causes the growth of several more heads. The argument, however, falls flat in its suggestion that any action against evil simply creates more evil, that any attempt to correct or prevent error engenders error. This is patently false. The true result in the order of being is that such actions restore and protect the public good. It is not possible to tell people that they cannot exercise their faith, but that they can simply believe it. This would directly violate their religious liberty. Therefore, Finnis is trying to demonstrate that the act of believing that disrupts the public good can legitimately be rejected by a society through governmental action and that this discrimination would not violate religious liberty, but would rather enhance it. 112

G. The State Declares a Religion To Be True

Not only does Finnis contend that there is no reason that the state cannot make a judgment that a religion is true, but he argues that it has an obligation to do so. 113 It would in fact be unjust not to make such a determination. The argument has as its first premise that it is false to teach that no religion is true—a falsity that when believed is harmful to humanity. 114 Second, if state action causes people to believe that it holds no religion as true, it has the obligation to correct this impression. 115 The positive duty, then, is to “recognize and favour religion” as taught in the

112. Id. at 128. Finnis explains:

[T]he threat that some religious beliefs present to public order (essentially by authorizing or inciting intimidation), and present in the longer term to the constitutional order which enforces the right to religious liberty, may be such that it is necessary to explicitly withhold from those beliefs the advantages that parity with other religions, combined with the weight of numbers, would otherwise require.

Id.

113. Id. at 128.

114. Id.

115. Id.
Dignitatis Humanae.¹¹⁶ This, Finnis believes, is the only way to counteract the error that there is no true religion.¹¹⁷ By carrying out this duty, the state also identifies the truth in those religions that—while not the fullness of the true religion—still offer a medium for a fundamental truth: "there is a transcendent source of being, intelligibility and value."¹¹⁸

This brings us to Finnis' conclusion that the state must name the true religion.¹¹⁹ How did we get there? First, what are the concrete problems regarding the state and religion in modern polities? Governments make decisions that imply judgments about religion.¹²⁰ If a religion threatens public order, however, a judgment is made about the validity of the beliefs of that religion, and it is discriminated against.¹²¹ This is the gist of the British Equality Act with regard to immigration, and it can be applied to education.¹²² This is done not only for the sake of immediate public order but also for the permanence of order in the society that must protect religious liberty. The state is making judgments about religion.

Finnis considers that failing to make such judgments, choices, and comparisons would have the consequence that the state is expressing a teaching that no religion is true.¹²³ This, Finnis insists, is presumably unjust if done intentionally by the state.¹²⁴ "So," he concludes, "the discrimination should presumptively be made, with all due care for accuracy and procedural fairness."¹²⁵ If, therefore, the state is going to determine that a religion is the true religion, the state must not "hold out as true" a religion that is not the true religion—a negative obligation.¹²⁶ Furthermore, once determined, the state must not make participation or membership in the true religion mandatory for political office or for public benefits.¹²⁷ The state may, and must, however, disqualify those from office whose religious group teaches that which is a threat to public order.¹²⁸ Also, in identifying the true religion, the state must not encroach upon that

¹¹⁶. Id.
¹¹⁷. Id.
¹¹⁸. Id.
¹¹⁹. Id. at 128–30.
¹²⁰. Id. at 128.
¹²¹. Id. at 125–27.
¹²². See Equality Act, 2006, c. 3 (Eng.).
¹²³. Religion and State, supra note 5, at 128.
¹²⁴. Id. at 128–29.
¹²⁵. Id. at 129.
¹²⁶. Id.
¹²⁷. Id.
¹²⁸. Id.
religion in any way by appointing officials or making judgments on its ecclesial makeup.\textsuperscript{129}

Perhaps the most important point in Finnis' conclusion is that legislators must take into account the teachings of the true religion in as much as it affects the law and governance.\textsuperscript{130} This has a twofold foundation. First that the teachings of the true religion must be followed only to the extent they do not intend to offer particular answers to particular problems on which they have no competence, or as Finnis puts it, "[it cannot] depend upon premises which are essentially questions of present fact and prediction of consequences . . . ."\textsuperscript{131} This means not that moral teaching does not apply, but that legislators must be able to access it through philosophical inquiry. Theological reflection and divine revelation simply confirm, add more credence to, or make clearer those moral teachings. Furthermore, the true religion has an obligation to actively maintain that access to the philosophical and analytical tools for accessing the moral and, therefore, political teaching through education and scholarly enterprises.\textsuperscript{132} Finnis' final point summarizes his entire theory. He regards people declaring by name the identity of the true religion without an act of faith as entirely congruous with philosophical inquiry, with revelation, with divinely guided tradition, and with justice.\textsuperscript{133} This would not be something done haphazardly but would be integral to the constitutional foundation of the society. Needless to say, this could cause collateral damage, and Finnis acknowledges as much.\textsuperscript{134} Concern for this damage might make it imprudent to do so, but if it was done so that the adherents of the religion would have to continuously maintain the philosophical, moral, and historical connection to the polity, Finnis thinks it would be a workable solution.\textsuperscript{135} In some sense, this is a toned down conclusion for the more forceful premise that the state has the obligation to name the true religion. The questions jump out. Once established, does a society create a constitutional amendment to identify that religion? Does the indirect and assumed truth of religion count for anything more than culture and tradition? I think of the American founding, its Christian roots, the Christian symbolism that permeated the public identity of the nation—from

\begin{thebibliography}{10}
\bibitem{129} \textit{Id.}
\bibitem{130} \textit{Id.}
\bibitem{131} \textit{Id.}
\bibitem{132} \textit{Id.}
\bibitem{133} \textit{Id. at 130.}
\bibitem{134} \textit{Id.}
\bibitem{135} \textit{Id.}
\end{thebibliography}
the coining and printing of money to the ethical foundation of courts often expressed in images of the Ten Commandments. As we know, the United States Supreme Court has struggled with this in terms of its First Amendment jurisprudence.\(^{136}\) Nonetheless, few would deny the Christian complexion of the American founding, and it is a valid question if that reality could or should be memorialized in constitutional form.

III. THE TEACHING OF THE CHURCH

Finnis draws his reader’s thoughts to the not-so-subtle inference that the Catholic Church should be identified, in the ordered state, as the true religion. With such a determination supported by political-philosophical inquiry, the logical conclusion is that Revelation and Church tradition and history inform and direct human society on the level of the organized community. Theological expression assists but is not necessary. We will flesh this out by chronicling the development of doctrine on church-state relations in major Church documents since the middle of the nineteenth century. Our exposition will begin with the Syllabus Errorum (1864) of Pius IX and move into the documents of Leo XIII with Immortali Dei (1885) and then Libertas (1888), which was the most mature expression of Leo XIII’s thought in his macro-political-economic theory. We will then look at the Encyclical Pacem in Terris of John XXII and, finally, at Fides et Ratio of John Paul II.

A. Syllabus Errorum

The Syllabus contains what most people today would consider very difficult teachings. Reason, according to Pius, must not be understood to be self-sufficient as arbiter of truth or as the law that can provide for “the welfare of men and of nations.”\(^ {137}\) The teachings taken in and of themselves—and we will look at some of them in detail—seem to hinder Finnis’ philosophical theories which set aside, to a certain degree, theology and doctrine. Are they reconcilable? If the anathemas are observed in the context of the times and the continuity of the Church’s experience expressed through tradition, I believe it can be shown that Pius’ condemnations do support, to a large extent, the theory of Finnis. Where

\(^{136}\) Compare McCreary Cnty., v. ACLU of Ky., 545 U.S. 844 (2005) (holding that a display of the Ten Commandments on a courthouse was unconstitutional), with Van Orden v. Perry, 545 U.S. 677 (2005) (upholding as constitutional a monument with the Ten Commandments inscribed upon it located on the Texas State Capitol Grounds).

\(^{137}\) Syllabus Errorum, supra note 14, ¶ 3.
Finnis argues that the state can identify the true religion, and in doing so can restrict the actions of religions that threaten public order, Pius would not only be supportive, but goes further: "[I]t is false that the civil liberty of every mode of worship, and the full power given to all of overtly and publicly manifesting their opinions and their ideas, of all kinds whatsoever, conduce more easily to corrupt the morals and minds of the people, and to the propagation of the pest of indifferentism." Pius is not necessarily speaking here about Islam and the teachings to kill those who will not convert, as Finnis suggested, but is discussing public expressions of the acceptance of immorality and speech that erodes the faith of believers. I think that Finnis would not reject this notion if damaging the faith of believers could be equated with disturbing the public order.

In this teaching, Pius is following the notion that the state has an obligation to encourage the good and identify what is true. He rejects, however, the civil notion of the separation of church and state: It cannot be held that "[i]n the present day, it is no longer expedient that the Catholic religion shall be held as the only religion of the State, to the exclusion of all other modes of worship," while likewise rejecting: "Whence it has been wisely provided by law, in some countries called Catholic, that persons coming to reside therein shall enjoy the public exercise of their own worship." In other words, he is rejecting freedom of religious worship. For Pius, rejecting these ideas was an attempt to quell religious strife resulting from new strands of philosophy becoming concrete in political conflict. Finnis, on the other hand, is concerned not with exposing error but with laying out the positive duties of the state regarding the identity of truth. It is fair to say that Finnis' theory is complimentary to the teaching of Pius. Finnis is the "half-full" portion, and Pius the "half-empty."

Pius focuses not only on issues affecting civil life directly but brings together his teachings on the relationship of faith and reason. Whereas Finnis absorbs revelation into philosophy without the need for theology, Pius' teaching, while not contrary, rejects rationalism and godless philosophy: It is anathema believing that "[h]uman reason, without any

138. Id. ¶ 79.
139. See Religion and State, supra note 5, at 125–26.
140. Syllabus Errorum, supra note 14, ¶ 77.
141. Id. ¶ 78.
142. This is not the place to explain the Magisterium, the magisterial teaching of Pius, and what level of assent Catholics must give to these teachings, but it should at least be said that they are not considered to be dogmatic teachings of the Church.
regard to God, is the sole arbiter of truth and falsehood, of good and evil; it is its own law to itself, and suffices by its natural force to secure the welfare of men and of nations."\(^{143}\) And again, it is anathema that "[a]ll the truths of religion are derived from the native strength of human reason; whence reason is the master rule by which man can and ought to arrive at the knowledge of all truths of every kind."\(^{144}\) Interestingly, even though Finnis wants to avoid theology, as we pointed out in the first section of this paper, he brings in "non-theological" revelation by offering two philosophical proofs for the existence of God\(^{145}\) and concludes that:

it is reasonable to hypothesize and anticipate that there might at some time be some projection, to us, of meaning and shareable purpose, from the infinitely greater intelligence and purposiveness needed to explain the existence of our universe including our own mysterious but commonplace sharing with each other of meaning and intentions.\(^{146}\)

This, he says, does not "consign us to theology."\(^{147}\) Revelation, therefore, comes into his theory by a side door, and Finnis' theory survives even the harshest anathemas of Pius IX, especially the directly relevant: it is anathema that "[p]hilosophy must be treated of without any account being taken of supernatural revelation."\(^{148}\)

Another conclusion of Finnis echoed in Pius IX's teaching is that the state cannot intrude upon the Church's authority to name bishops and

\(^{143}\) Syllabus Errorum, supra note 14, ¶ 3.

\(^{144}\) Id. ¶ 4.

\(^{145}\) Finnis rejects the notion that it is unreasonable to posit a divine being and once proven, it is also not unreasonable to argue that the divine being would communicate with human beings:

Many people assume, and some hold with argument and tenacity, that in an enquiry pursued intelligently and without bias any such transcendent source of reality and value is no more than, at most, a bare possibility. They treat as ungrounded and altogether improbable any anticipation or judgment that there has been or may well be some such communication—revelation—from such a source. But the question whether the existence and character of our universe give cogent reason for affirming the existence of such a transcendent explanation is a philosophical question, and one which cannot reasonably and philosophically be given an answer without considering, carefully and with openness, the arguments supporting such an affirmation. They are philosophical arguments, and stronger than many an argument, in many a field of philosophy, that is widely thought philosophically acceptable and warranted.

\(^{146}\) Id. at 108–09.

\(^{147}\) Id. at 109.

\(^{148}\) Syllabus Errorum, supra note 14, ¶ 14.
officials. Pius IX rejects the notion that "[t]he secular authority possesses, as inherent in itself, the right of presenting bishops, and may require of them that they take possession of their dioceses before having received canonical institution and the apostolic letters from the Holy See." Pius IX also rejects the position that "the secular government has the right of deposing bishops from their pastoral functions, and it is not bound to obey the Roman Pontiff in those things which relate to episcopal sees and the institution of bishops." It is not as difficult as we first suspected to reconcile Finnis' theory and the anathemas of Pius IX. Another way of putting the distinction between the two is this—as Pius calls out error, Finnis provides the remedy.

B. Immortale Dei

In 1885, Pope Leo XIII issued an encyclical, *Immortale Dei*, which took up the defense of the Church in the face of criticism that She is opposed to well regulated and progressively governed states and that, in any case, the Church has nothing to offer them for the advance their rightful aims. This document is an apologetic for the Church's participation and relevance in civil society. In his previous encyclical, *Aeterni Patris*, Leo XIII was on the offensive against error; in *Immortale Dei*, the crux is a defense against the counterattack that rejected the Church in favor of communistic and socialistic philosophies.

Leo XIII understood the nature of order and human existence and the structure of reality with God as Author of all. As creatures of God, man lives to return to God and human society exists to assist in that effort. Societal governance, therefore, gets its authority to act from God himself. Their obligation is not simply to act in a "moral" manner, but to explicitly assist man in attaining his final end. Furthermore, since religion is the means for man to achieve his end, the state must actively protect religion, not simply allow it to exist. As Leo XIII explained:

All who rule, therefore, would hold in honor the holy name of God, and one of their chief duties must be to favor religion, to protect it, to shield it

149. *Religion and State*, supra note 5, at 129.
151. Id. ¶ 51.
152. *Immortale Dei*, supra note 15.
under the credit and sanction of the laws, and neither to organize nor enact any measure that may compromise its safety. 154

This is the "negative duty" that Finnis would identify, and it protects individuals from religious coercion. 155 This is just the beginning for Leo XIII, however, since that "negative duty" is accompanied by the positive duty because it merely corroborates reality. He looks to his predecessor, who saw the same problem:

Gregory XVI in his encyclical letter Mirari Vos, dated August 15, 1832, inveighed with weighty words against the sophisms which even at his time were being publicly inculcated—namely, that no preference should be shown for any particular form of worship; that it is right for individuals to form their own personal judgments about religion… 156

Not only is there an obligation on the part of the state to protect and promote religion, but also to identify religions in a hierarchical fashion with the true religion over all:

Again, that it is not lawful for the State, any more than for the individual, either to disregard all religious duties or to hold in equal favour different kinds of religion; that the unrestrained freedom of thinking and of openly making known one's thoughts is not inherent in the rights of citizens, and is by no means to be reckoned worthy of favour and support. 157

This is a difficult teaching in light of our modern sensibilities and the notion of "freedom of speech" and the repugnance to the "establishment of religion" so constantly prominent in modern America. Would Finnis bristle at the prohibition from any open expression of "unrestrained freedom of thinking"? The answer appears to be no as it seems to be reconcilable with Finnis' notion of "public order."158 If a religions leader is preaching that infidels must be brought under submission by force or incur death, such speech threatens public order and the state could and must intervene. To prohibit thinking is difficult, but thinking without expression through word or deed is nothing. Therefore, once this thinking becomes public, it must be suppressed to protect others from religious coercion. Leo XIII's language may seem harsh, but applied to a genuine circumstance, it falls neatly into Finnis' theory—or, should we say, Finnis again maneuvers through Church teaching unscathed. Leo XIII goes a bit further than what

155. Religion and State, supra note 5, at 124.
156. Immortale Dei, supra note 15, ¶ 34.
157. Id. ¶ 35.
158. See Religion and State, supra note 5, at 122.
Finnis proposes, but I think in the examples that Finnis uses, Leo XIII’s notion identifying truth in religion would not sink Finnis’ theory:

Since, then, no one is allowed to be remiss in the service due to God, and since the chief duty of all men is to cling to religion in both its reaching and practice—not such religion as they may have a preference for, but the religion which God enjoins, and which certain and most clear marks show to be the only one true religion—it is a public crime to act as though there were no God. 159

Is irreligion a public crime? Would Finnis accept this? It does not look as if Finnis would go quite this far. I would argue that while human perfection entails the search for truth by a person, and that engaging in that search through religion is the most efficacious way to undergird a properly functioning society, it is a free search and must be treated as such. Finnis would find acts of religious speech that were oppressive to be worthy of state action, but he is not proposing a theocracy and compelled religiosity. Leo XIII, however, goes further:

And it is a part of this [erroneous] theory that all questions that concern religion are to be referred to private judgment; that every one is to be free to follow whatever religion he prefers, or none at all if he disapprove of all. From this the following consequences logically flow: that the judgment of each one’s conscience is independent of all law; that the most unrestrained opinions may be openly expressed as to the practice or omission of divine worship; and that every one has unbounded license to think whatever he chooses and to publish abroad whatever he thinks. 160

At first glance, Leo XIII comes off as an autocrat, but looking more closely, the actions questioned are the public manifestations of error and falsehood, which are coercive. Furthermore, we can see that neither is he agitating for a catholic theocracy. In the teaching, “it is a public crime to act as though there were no God,”161 Leo XIII’s focus is on the “act.” The act is a public manifestation, and he would consider that to be coercion against the religious. Leo XIII does not even reject the notion that people are free to express themselves but that it must be done in truth:

So, too, the liberty of thinking, and of publishing, whatsoever each one likes, without any hindrance, is not in itself an advantage over which society can wisely rejoice. On the contrary, it is the fountain-head and origin of many evils. Liberty is a power perfecting man, and hence should

159. *Immortale Dei*, supra note 15, ¶ 6 (emphasis added).
160. *Id.* ¶ 26.
161. *Id.* ¶ 6.
have truth and goodness for its object. But the character of goodness and
thrust cannot be changed at option. 162

"In itself" is a very important qualifier here that identifies liberty or
thinking critically as good while observing that there are limits that must be
observed. 163 But is it only the act? Some might accuse Leo XIII of
attempting mind control and inhibiting individual freedom even to think:

The Church of Christ is the true and sole teacher of virtue and guardian of
morals. She it is who preserves in their purity the principles from which
duties flow, and, by setting forth most urgent reasons for virtuous life, bids
us not only to turn away from wicked deeds, but even to curb all
movements of the mind that are opposed to reason, even though they be not
carried out in action. 164

This is another very difficult teaching. Here, however, he is speaking
of the duties of the Church. The state cannot control thinking, but—to be
sure—the Church identifies evil and sin in the minds and hearts of men.
Our Lord himself repeatedly called out those whose sin was hidden deep
inside, "You have heard that it was said, 'Do not commit adultery.' But I
say to you, everyone who looks at a woman with lust has already
committed adultery with her in his heart." 165 The Church's primary
function is the salvation of souls. The state does not have this duty, but as
part of the created order, it has the obligation to assist in this, for all men
were made for God. It is only natural that the institutions of men would, in
the end, serve this purpose as well.

It is important to remember that Finnis' theory does not expressly
limit the notion of "protection from coercion" to an understanding that
would affect or control only the government. 166 The preaching of

162. Id. ¶ 32 (emphasis added).
163. There is also an underlying theme here that comes from the teaching of St.
Augustine continued by St. Thomas and treated specifically by Leo XIII in Libertas.
Namely, that Augustine identified freedom with truth and slavery with falsehood. Entering
into error, committing sin, and turning away from God is necessarily a restriction on liberty.
The fullness of freedom and liberty is in following the will of God. Openness to the truth is
endangered when we follow error, and therefore this must be avoided. Leo XIII is taking
this one step further saying that these actions in the name of liberty are actually a move
away from freedom and must be curbed. See id. ¶ 32. In other words, if individuals are
falling into sinful thoughts about governance, rejecting divine authority, the state has an
obligation to reject such error and protect others from falling into the same error. The state
is not trying to protect against sin qua sin, but against the institutional corruption that comes
from individuals' derailments from truth and reality.
164. Id. (emphasis added).
166. See Religion and State, supra note 5, at 121.
irreligion, as well as active oppression, by individuals or religious groups perhaps fit even more snugly into Finnis’ theory that all must be first protected from coercion. Protection is not where his theory ends, however. As we have seen, Finnis’ goal is to identify the true religion and do so through philosophical inquiry. The most important aspect of that is the inclusion of revelation through historical and philosophical reflection.  

Leo XIII also considers revelation as the centerpiece to identifying the true religion and gives examples first from historical sources:

Now, it cannot be difficult to find out which is the true religion, if only it be sought with an earnest and unbiased mind; for proofs are abundant and striking. We have, for example, the fulfilment of prophecies, miracles in great numbers, the rapid spread of the faith in the midst of enemies and in face of overwhelming obstacles, the witness of the martyrs, and the like. From all these it is evident that the only true religion is the one established by Jesus Christ Himself, and which He committed to His Church to protect and to propagate.  

For both authors, reason cannot be divorced from the historical, nor from revelation. Finnis understands that separating reason from the equation or refusing to allow religious doctrine into the discussion is to fatally derail the investigation—“religion is contrasted with reason,” or “philosophy is neutral,” or religion is simply a right like any other used to “define oneself” are all methods to relegate religion to the realm of the “unreasonable.” It should also be noted that understanding the relationship between reason and religion is not the same as using theological arguments to prove religious truth. Finnis makes it clear that using the claims of religion, which can be shown historically and proven philosophically, is not the same as using dogmatic teachings of religion or fideism.  

Leo XIII too identifies reason as complimentary, and, where Finnis presents philosophy as clarified and supported by theology, Leo XIII sees reason as complimentary and supporting of religious truth in society: “Such, then, as We have briefly pointed out, is the Christian organization of civil society; not rashly or fancifully shaped out, but educed from the

167. Id. at 114 (“Our reflections will go soundly if they treat affirming God as within the full reach of the critically disciplined reasoning we call philosophy, and treat affirming the political common good (including politically acknowledged human rights) as within the full reach of critically disciplined practical reason at its highest: political philosophy.”).  
169. Religion and State, supra note 5, at 111 (citation omitted).  
170. See id. at 114.
highest and truest principles, confirmed by natural reason itself,"\textsuperscript{171} and, again, "[n]ow, natural reason itself proves convincingly that [erroneous] concepts of the government of a State are wholly at variance with the truth. Nature itself bears witness that all power, of every kind, has its origin from God, who is its chief and most august source."\textsuperscript{172} Truth is not relative, and this reality is identified in Leo XIII's understanding of the structure of mankind. Although he does not attribute the authority of the state to God directly, reason educed from true principles is the foundation for Finnis' conclusion that the state can identify the true religion.\textsuperscript{173}

C. Libertas

\textit{Libertas,}\textsuperscript{174} dealing in a multivalent way with human freedom, is the last relevant encyclical of Pope Leo XIII before the famous \textit{Rerum Novarum}. \textit{Libertas}, however, focused not on systems of government, but on the human person, his individual salvation, and, consequently, the participation of the state in that salvation. I say multivalent because, from the beginning, Leo XIII recognizes that there is the initial freedom to act followed by true freedom experienced when following the will of God.\textsuperscript{175}

In his earlier writings, he had emphasized truth and reality, whereas here he

\textsuperscript{171.} \textit{Immortale Dei, supra note 15, ¶ 16.}

\textsuperscript{172.} \textit{id.} ¶ 30.

\textsuperscript{173.} Does Finnis simply promote the remedy of a revelation-based legalized identity of the true religion? Is that the solution to what Leo XIII is lamenting as a turn from the divine and collapse into error? Or does Finnis in different words insist that revelation be brought into the "non-religious" conversation, a conversation which Leo XIII seemingly rejects by pointing out all the ways that truth is suppressed:

The authority of God is passed over in silence, just as if there were no God; or as if He cared nothing for human society; or as if men, whether in their individual capacity or bound together in social relations, owed nothing to God; or as if there could be a government of which the whole origin and power and authority did not reside in God Himself. Thus, as is evident, a State becomes nothing but a multitude which is its own master and ruler. And since the people is declared to contain within itself the spring-head of all rights and of all power, it follows that the State does not consider itself bound by any kind of duty toward God. Moreover, it believes that it is not obliged to make public profession of any religion; or to inquire which of the very many religions is the only one true; or to prefer one religion to all the rest; or to show to any form of religion special favour; but, on the contrary, is bound to grant equal rights to every creed, so that public order may not be disturbed by any particular form of religious belief.

\textit{id.} ¶ 25.

\textsuperscript{174.} \textit{Libertas, supra note 16.}

\textsuperscript{175.} \textit{id.} ¶ 1.
begins reinforcing the notion that each person has a free will to choose good or evil.\footnote{176}

This greater emphasis on the distinction between the freedom to act and true freedom, which comes from following the will of God, enables Leo XIII to address how natural law is connected to eternal law, making it perfect and engendering freedom. It also provides Leo XIII the opportunity to explain how human law has no such direct connection to truth but must be so connected by men: “The precepts, therefore, of the natural law, contained bodily in the laws of men, have not merely the force of human law, but they possess that higher and more august sanction which belongs to the law of nature and the eternal law.”\footnote{177} Due to this distinction, the obligation of those who govern society is not only the negative duty to protect individuals from threats to public order, but also the positive duty to protect the state itself from error, with the goal of turning men toward the good. Leo XIII insists:

[W]ithin the sphere of this kind of laws the duty of the civil legislator is, mainly, to keep the community in obedience by the adoption of a common discipline and by putting restraint upon refractory and viciously inclined men, so that, deterred from evil, they may turn to what is good, or at any rate may avoid causing trouble and disturbance to the State.\footnote{178}

We again see that the alignment of Finnis’ theory to Church teaching is remarkably close. Finnis argues not that the state’s purpose is to turn men toward the good, but that, in protecting citizens from coercion and identifying the true religion, the goal is the common good.\footnote{179} Finnis argues that:

Taking common good in its widest extension, it is for the common good of the members of a political community that they find the truth about divine creation and redemption, live in accordance with that truth, and so enter

\footnote{176. Id. Leo XIII makes this distinction between the possible choices by stating: But the manner in which [liberty] is exercised is of the greatest moment, inasmuch as on the use that is made of liberty the highest good and the greatest evil alike depend. Man, indeed, is free to obey his reason, to seek moral good, and to strive unswervingly after his last end. Yet he is free also to turn aside to all other things; and, in pursuing the empty semblance of good, to disturb rightful order and to fall headlong into the destruction which he has voluntarily chosen.}

\footnote{177. Id. ¶ 9.}

\footnote{178. Id.}

\footnote{179. Religion and State, supra note 5, at 122.}
and remain for ever in the altogether fulfilling fellowship of the divine family extending from this world into eternity. 180

Here, the use corresponds neatly with Finnis' use of common good and protection from the evil of coercion. Using the different categories enables Finnis to argue against the need for faith-based acceptance of divine revelation and theology to make his point. 181

Leo XIII uses Thomistic philosophy to describe how the human intellect works. In doing so, he contends that reason directs the will. 182 Reason informs judgment. Therefore, reason is the source of truth. Reason then, instantiated in society, is law. 183 Furthermore, since reason has its source in truth, which is God, natural law is the same as eternal law implanted in the rational creature which, when assisted by grace, strengthens and orders the human will. 184 Finnis avoids the teaching of "grace" and would consider it a part of religious faith that is unnecessary for the philosophical inquiry into the true religion. 185 Leo XIII's approach is theological, for grace is a purely theological concept. Instead, for Finnis, it is the historical and philosophical acceptance of the reasonableness of revelation that informs the reason. The conclusions, nevertheless, are similar. Leo XIII sees that human law must manifest the eternal law. When it doesn't, chaos arises out of an individualistic notion of "everyone for himself!" Leo XIII concludes:

180. *Id.*

181. *Id.* It is worth mentioning that it is not beyond Finnis' analysis to use church teaching but identify it as philosophical reasoning. He makes this very presumption regarding *Dignitatis Humanae* when he argues that the use of natural law reflects the constitutional use of positive law in that there is no assumption of atheism. *Id.*

182. *See Libertas, supra* note 16, ¶ 7 ("[T]he reason prescribes to the will what it should seek after or shun . . . ").

183. *Id.* Leo XIII explains:

This ordination of reason is called law. In man's free will, therefore, or in the moral necessity of our voluntary acts being in accordance with reason, lies the very root of the necessity of law. Nothing more foolish can be uttered or conceived than the notion that, because man is free by nature, he is therefore exempt from law. Were this the case, it would follow that to become free we must be deprived of reason; whereas the truth is that we are bound to submit to law precisely because we are free by our very nature. For, law is the guide of man's actions; it turns him toward good by its rewards, and deters him from evil by its punishments.

*Id.*

184. *Id.* ¶ 8.

Therefore, the true liberty of human society does not consist in every man doing what he pleases, for this would simply end in turmoil and confusion, and bring on the overthrow of the State; but rather in this, that through the injunctions of the civil law all may more easily conform to the prescriptions of the eternal law. 186

For Leo XIII, the goal is the eternal law. For Finnis, the goal is public order, and the common good that ensues is, in fact, directed toward eternal life. 187 What is complimentary is that while the final goal for Leo XIII is salvation, the final goal for Finnis is public order and the avoidance of error. Finnis posits:

First, then, the main strands of my reflections entail that the state’s government and law cannot justly teach that no religion is true[.]. For such a teaching would be false, and false on a matter closely affecting a basic aspect of human wellbeing. And if a state does not teach that but its arrangements give rise, as a side-effect, to widespread belief that the state’s government has adopted them because it holds that no religion is true, the government has a significant duty to do what it reasonably can [sic] rebut that inference. 188

Finnis pulls up short of giving the state a role in the eternal life of the human soul because he cannot do it exclusively within philosophical inquiry. It would require theological analysis, and he is reluctant to add anything that could make his work appear as disguised religious faith. For Leo XIII, it is not difficult to come to a supernatural conclusion using philosophy and reason when the truth of salvation is about all of human society and God’s creation, and all together it serves eternal life. The only reason I can see for Finnis’ hesitation is that he does not want to venture into the territory of the immortal soul. Finnis would undoubtedly argue that such is the realm of the Church proper and has nothing directly to do with the state. But if the state is directing its citizens to the true religion, is that not the same as providing assistance to one’s salvation? If you prevent less-than-true religions from coercing citizens, are you not creating an

186. Libertas, supra note 16, ¶ 10.
187. Religion and State, supra note 5, at 122. Finnis is explicit about the purpose of securing public order:

Taking common good in its widest extension, it is for the common good of the members of a political community that they find the truth about divine creation and redemption, live in accordance with that truth, and so enter and remain for ever in the altogether fulfilling fellowship of the divine family extending from this world into eternity.

Id.
188. Id. at 128.
environment in which you are assisted in your quest for salvation? Leo XIII would certainly say so.189 I believe Finnis would too, but would do so using different language, the language of the common good, which “might include salvation.”190

Finnis argues for the obligation, and, therefore, the authority of the state to identify the true religion by name because the human being was created to engage in the search for truth.191 This foundational principle employed in his theory comes from the Dignitatis Humanae.192 Let’s revisit the two main arguments, as they are critical to the Finnis theory. First, “everyone has a moral obligation to seek the truth about religious matters, and adhere to whatever truth one finds.”193 Second, “one cannot live up to that obligation in a manner appropriate to one’s nature as a rational and responsible person unless one has immunity from external coercion as well as psychological freedom.”194 If everyone has the obligation to seek the truth, the state must provide the environment in which to seek it. Finnis identifies these points in the Dignitatis Humanae as a philosophical argument.195 This conclusion is supported by the notion that it is not unreasonable to use Church teaching in philosophical inquiry that is not, in the strictest sense, faith-grounded. Nonetheless, it seems that Finnis presents an argument that continues to follow Church teaching closely.

The notion of human liberty in Finnis’ theory (that is precisely the teaching of Dignitatis Humanae) is the obligation to seek the truth and protection from coercion. Finnis does not see any coercion in identifying the true religion. Nor does Leo XIII see any curtailment of freedom by insisting on the Church’s understanding of true liberty in the eternal law:

If when men discuss the question of liberty they were careful to grasp its true and legitimate meaning, such as reason and reasoning have just explained, they would never venture to affix such a calumny on the Church as to assert that she is the foe of individual and public liberty.196

189. See Libertas, supra note 16, ¶ 21 ("[Y]et, in [professing one true religion], [the state] ought not to diminish, but rather to increase, man's capability of attaining to the supreme good in which his everlasting happiness consists . . . ").
190. Religion and State, supra note 5, at 122.
191. Id. at 130.
192. Id. at 117.
193. Id. (discussing the Dignitatis Humanae) (internal quotation marks omitted).
194. Id. (internal quotation marks omitted).
195. Id. at 117–18.
Leo XIII identifies hostility to any authority as the reason some will not follow the truth.\textsuperscript{197} Finnis would, I believe, agree with this. In his criticism of Ronald Dworkin, Finnis identifies as error the thought that no authority can decide anything for one:

Or again [the discussion of religion and state derails] if, as Ronald Dworkin says, \textit{the} basis of the First Amendment's guarantee of religious freedom is simply that "no one can regard himself as a free and equal member of an organized venture that claims authority to decide for him what he thinks self-respect requires him to decide for himself."\textsuperscript{198}

Hostility to authority, therefore, makes it impossible to have a common foundation on which to base a meaningful discussion. Leo XIII considers the derailment a result of "liberals" following the footsteps of Lucifer, but the result itself about the impossibility to proceed in truth is identical.\textsuperscript{199}

Finnis sees the First Amendment's prohibition on the "establishment of religion" as problematic and does not delve into it.\textsuperscript{200} Leo XIII, on the other hand, rejects the notion of a separation between church and state as absurd.\textsuperscript{201} How can a society, which gets its authority from God by nature, not provide the environment for individuals to live according to the laws of God?\textsuperscript{202} Leo XIII writes that it is impossible for there to be a controversy

\begin{itemize}
\item \textsuperscript{197} See id. ¶ 14 ("But many there are who follow in the footsteps of Lucifer, and adopt as their own his rebellious cry, 'I will not serve'; and consequently substitute for true liberty what is sheer and most foolish license.").
\item \textsuperscript{198} Religion and State, supra note 5, at 112 (emphasis added) (citation omitted).
\item \textsuperscript{199} Libertas, supra note 16, ¶ 14.
\item \textsuperscript{200} Religion and State, supra note 5, at 128.
\item \textsuperscript{201} Libertas, supra note 16, ¶ 18.
\item \textsuperscript{202} There is so much in this paragraph I am tempted to reprint it \textit{in toto}. I will resist that but provide a rich excerpt that summarizes Leo XIII's forceful argument that the Church cannot be seen as a reality conflicting with the state:

There are others . . . who affirm that the morality of individuals is to be guided by the divine law, but not the morality of the State, for that in public affairs the commands of God may be passed over, and may be entirely disregarded in the framing of laws. Hence follows the fatal theory of the need of separation between Church and State. . . . Nature herself proclaims the necessity of the State providing means and opportunities whereby the community may be enabled to live properly, that is to say, according to the laws of God. For, since God is the source of all goodness and justice, it is absolutely ridiculous that the State should pay no attention to these laws . . . . Besides, those who are in authority owe it to the commonwealth not only to provide for its external well-being and the conveniences of life, but still more to consult the welfare of men's souls in the wisdom of their legislation. . . . And, what is still more important, and what We have more than once pointed out, although the civil authority has not the same proximate end as the spiritual, nor proceeds on the same lines, nevertheless in the
\end{itemize}
because church and state are complimentary and part of a whole which is the created society of mankind:

From this teaching, as from its source and principle, flows that fatal principle of the separation of Church and State; whereas it is, on the contrary, clear that the two powers, though dissimilar in functions and unequal in degree, ought nevertheless to live in concord, by harmony in their action and the faithful discharge of their respective duties.203

For Leo XIII, state and church are like body and soul—one cannot exist without the other. Finnis makes no such dramatic analogies, but, instead, recognizes the obligation to search for truth with the state providing the temporal door through which one can exercise that duty.

Leo XIII's arguments compellingly foreshadow a philosophical theory supporting Church teaching. In this passage, Leo XIII rejects freedom that would support a state position that there was no true religion:

This kind of liberty, if considered in relation to the State, clearly implies that there is no reason why the State should offer any homage to God, or should desire any public recognition of Him; that no one form of worship is to be preferred to another, but that all stand on an equal footing, no account being taken of the religion of the people, even if they profess the Catholic faith. But, to justify this, it must needs be taken as true that the State has no duties toward God, or that such duties, if they exist, can be abandoned with impunity, both of which assertions are manifestly false. For it cannot be doubted but that, by the will of God, men are united in civil society; whether its component parts be considered; or its form, which implies authority; or the object of its existence; or the abundance of the vast services which it renders to man.204

It is a simple, yet powerful argument—in order to conclude that the state must be separated from the Church, one must accept the false premise that the state has no obligation to God. This is impossible. God created society so that man could be assisted in the journey of his own salvation. Eden was the same. Eve was created to help Adam. Simple. Even stronger support for Finnis' theory that the state must identify the true religion is Leo XIII's argument that the state exists for the welfare of its exercise of their separate powers they must occasionally meet. . . . This harmony has been not inaptingly compared to that which exists between the body and the soul for the well-being of both one and the other, the separation of which brings irrementible harm to the body, since it extinguishes its very life.

Id. 203. ld. ¶ 38.
204. Id. ¶ 21.
citizens. In carrying out this duty, it must "increase man's capability of attaining to the supreme good," which is everlasting happiness.\(^{205}\)

It is necessary to speak about freedom of speech. As Finnis has argued, speech that incites people to violence against others cannot stand since it is oppressive and coercive. Leo XIII's language is much stronger, saying simply that there is no such right "if it be not used in moderation, and if it pass beyond the bounds . . . of all true liberty."\(^{206}\) If this is true, then it supports Finnis' example of curtailing the speech of the one preaching death to infidels when they won't convert.\(^{207}\) If you think of this preacher coercing others to follow his teaching, a teaching that threatens public order, it becomes evident how such a leader is precisely the person whom Leo XIII says must be silenced. Consider this description of religious oppression:

The excesses of an unbridled intellect, which unfailingly end in the oppression of the untutored multitude, are no less rightly controlled by the authority of the law than are the injuries inflicted by violence upon the weak. And this all the more surely, because by far the greater part of the community is either absolutely unable, or able only with great difficulty, to escape from illusions and deceitful subtleties, especially such as flatter the passions. If unbridled license of speech and of writing be granted to all, nothing will remain sacred and inviolate; even the highest and truest mandates of natures, justly held to be the common and noblest heritage of the human race, will not be spared.\(^{208}\)

The human race depends upon controlling those who control others through flattery and oppression. Does Finnis disagree? If the leaders of a religion that taught its followers to kill the infidels were left to their devices, the danger would be apparent. Intellectually, there are those who

\(^{205}\) Id. ¶ 21. He further states explicitly the duty to identify the one true religion:

Wherefore, civil society must acknowledge God as its Founder and Parent, and must obey and reverence His power and authority. Justice therefore forbids, and reason itself forbids, the State to be godless; or to adopt a line of action which would end in godlessness—namely, to treat the various religions (as they call them) alike, and to bestow upon them promiscuously equal rights and privileges. Since, then, the profession of one religion is necessary in the State, that religion must be professed which alone is true, and which can be recognized without difficulty . . . . This religion, therefore, the rulers of the State must preserve and protect, if they would provide—as they should do—with prudence and usefulness for the good of the community.

Id.

\(^{206}\) Id. ¶ 23.

\(^{207}\) Religion and State, supra note 5, at 125-26.

\(^{208}\) Libertas, supra note 16, ¶ 23.
"poison the root of the tree" by rejecting revelation in religion itself, making religion an empty shell no longer capable of being involved in human affairs: "A religion that remained at peace with such incoherence would drop below the horizon of philosophy, and could not claim the adherence of any earnestly enquiring mind. It would fail to live up to the demands of public reason." Finnis sees the problem as fatal both in action and in mind—in action because the "infidels," namely Christians, would be wiped out, and in mind because true religion would be weakened while the pathway to truth would be obscured by intellectual manipulation.

D. *Pacem in Terris*

As we arrive upon the tumultuous scene of the late mid-twentieth century before the Second Vatican Council, Pope John XXIII takes a decidedly different approach in dealing with church-state relations. Gone are the vitriolic attacks or various forms of political and philosophical error, replaced by a softer critique focused less on intellectual aberrations and more on a full understanding of authority. The language used by the Pope is less dramatic and caustic and reflects a style more akin to what we expect and are comfortable with today. Because of this, there are remarkable similarities between this Pope's arguments and that of Finnis. For Finnis, public or political authority is constitutional, and the duty of the government is derived from those who they must serve, not from its source. For all the popes and the consistent teaching of the Church,

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210. *Id.* at 116.
211. In the following paragraph, Leo XIII is not only explicit about free speech, but specifies that teachers must be prevented from teaching these erroneous notions of freedom: "[I]t is plainly the duty of all who teach to banish error from the mind, and by sure safeguards to close the entry to all false convictions. From this it follows, as is evident, that the liberty of which We have been speaking is greatly opposed to reason, and tends absolutely to pervert men's minds, in as much as it claims for itself the right of teaching whatever it pleases—a liberty which the State cannot grant without failing in its duty. *Libertas*, supra note 16, ¶ 24.
212. Finnis does not identify the source exactly (because I think he would consider the authority divine), but rather the "system," which—if it is fair—can properly carry out its duties and presumably identify the true religion. "These questions can be answered well by considering first a society in which adherents of sound philosophy, both political/moral and religious, have procedurally fair and constitutional authority to settle the laws and their execution." *Religion and State*, supra note 5, at 116. He goes even further and gives the
human society cannot function without legal authority, and that authority comes from God.\textsuperscript{213} Moreover, the state participates in the authority of God, as it is part of the order of being. John XXIII looks to his predecessor, Pius XII, to find the words to express this concept, along with the assertion that this order is not arrived at simply by religious faith, but is made clear by “right reason”:

The absolute order of living beings, and the very purpose of man—an autonomous being, the subject of duties and inviolable rights, and the origin and purpose of human society—have a direct bearing upon the State as a necessary community endowed with authority. Divest it of this authority, and it is nothing, it is lifeless. But right reason, and above all Christian faith, make it clear that such an order can have no other origin but in God, a personal God, our Creator. Hence it is from Him that State officials derive their dignity, for they share to some extent in the authority of God Himself.\textsuperscript{214}

This teaching parallels the theory of Finnis. As we have said, Finnis sees the relationship between the state and religion as the former providing the latter with an ordered, temporal environment that in turn allows for religion to accomplish its ends of eternal life.\textsuperscript{215} Finnis is not talking about the United States Constitution the place of a “civilizational core” but still does not identify its source of authority when he posits:

Philosophically assessed, without the philosophically unsound presupposition of atheism or agnosticism about creation and revelation, the natural law thesis articulated in \textit{Dignitatis Humanae}, like its positive law antecedents in the U.S. Constitution and the European Convention on Human Rights, constitutes a sound and true civilizational core. It is a centering pole between unsound secularist and theocratic alternatives.

\textit{Id.} at 122.

\textsuperscript{213} As recognized by Pope John XXIII:

Human society can be neither well-ordered nor prosperous without the presence of those who, invested with legal authority, preserve its institutions and do all that is necessary to sponsor actively the interests of all its members. And they derive their authority from God, for, as St. Paul teaches, “there is no power but from God.”

\textit{Pacem in Terris}, supra note 17, ¶ 46.

\textsuperscript{214} \textit{Id.} ¶ 47 (quoting Pius XII) (alteration in original) (internal quotation marks omitted).

\textsuperscript{215} \textit{Religion and State}, supra note 5, at 122. Finnis further argues that:

[\textit{I}]t is for the common good of the members of a political community that they find the truth about divine creation and redemption, live in accordance with that truth, and so enter and remain for ever in the altogether fulfilling fellowship of the divine family extending from this world into eternity.

\textit{Id.}
“sharing” in the authority of God, but the effect is the same without using the language of theology.

In his theory, Finnis contrasts those who kill in the name of the divine and offer “carnally seductive incentives” with those who are willing to give their lives.\(^{216}\) John XXIII detects the same falsehood and goes further to identify it as the opposite of true liberty:

[A] regime which governs solely or mainly by means of threats and intimidation or promises of reward, provides men with no effective incentive to work for the common good. And even if it did, it would certainly be offensive to the dignity of free and rational human beings.\(^{217}\)

In the Pontiff’s words, true liberty comes from following one’s conscience. For Finnis, the state provides the freedom for religion’s liberty. In order to provide this, does the state control how men must think? It would seem that Finnis would answer a qualified “no.”\(^{218}\) If one believes that others must be killed for his faith, however, even speaking this can be silenced, as it threatens public order. Therefore, in some sense, the state is binding men in their thoughts when they become words or deeds. Finnis looks to Thomas Aquinas to support his assertion:

Aquinas himself is very clear (at the level of principle) that the coercive jurisdiction of temporal political authority extends only to external and inter-personal acts—acts which implicate the community’s peace and justice. . . . [E]xternal acts are of course, as Aquinas explains better than anyone, behavior shaped by and putting into action the internal acts which we call intending and choosing . . . .\(^{219}\)

By controlling the external, the state directs the internal. John XXIII speaks the same in the language of conscience saying, “representatives of the State have no power to bind men in conscience, unless their own authority is tied to God’s authority, and is a participation in it.”\(^{220}\) For the

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\(^{216}\) Id. at 111. Finnis notes that:

Apostles who are willing to kill or otherwise coerce, or to offer carnally seductive incentives (“the women that thy right hand possesses”), in support of their testimony and of the Prophet’s message, should be contrasted with apostles who make no such threats but are willing to be killed rather than renounce their testimony or message at the demand of ruthless persons.

\(^{217}\) Pacem in Terris, supra note 17, ¶ 48.

\(^{218}\) See Religion and State, supra note 5, at 121–22.

\(^{219}\) Religion and State, supra note 5, at 120.

\(^{220}\) Pacem in Terris, supra note 17, ¶ 49.
Pope, the state authority is a part of divine authority. \(^{221}\) Finnis avoids this as he avoids theology, but one cannot avoid the conclusion that in Finnis’ theory, the worlds of theology and philosophy—of religion and state—are not simply overlapping. Public order serves the common good, which is salvation itself. \(^{222}\) For the Holy Father, there would be no purpose for government if it were not to participate in salvation. He says simply, “[t]he attainment of the common good is the sole reason for the existence of civil authorities.” \(^{223}\)

Finally, Pope John XXIII’s encyclical addresses the issue of philosophy. The next few citations are lengthy, but I believe that meaningful reflection on them will underscore dramatically the obligation of the state and the individual member of a society with regard to truth and religious liberty. In the following passage, the Holy Father recognizes that there is value in philosophy (Finnis would approve!) and that philosophizing, if done properly, employing reason and avoiding error, can contribute to man’s salvation:

Again it is perfectly legitimate to make a clear distinction between a false philosophy of the nature, origin and purpose of men and the world, and economic, social, cultural, and political undertakings, even when such undertakings draw their origin and inspiration from that philosophy. True, the philosophic formula does not change once it has been set down in precise terms, but the undertakings clearly cannot avoid being influenced to a certain extent by the changing conditions in which they have to operate. Besides, who can deny the possible existence of good and commendable elements in these undertakings, elements which do indeed conform to the dictates of right reason, and are an expression of man’s lawful aspirations? \(^{224}\)

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\(^{221}\) See id. ¶ 51 (“Governmental authority, therefore, is a postulate of the moral order and derives from God. Consequently, laws and decrees passed in contravention of the moral order, and hence of the divine will, can have no binding force in conscience, since ‘it is right to obey God rather than men.’”) (citation omitted).

\(^{222}\) See Religion and State, supra note 5, at 122. Finnis then states:

But the state is responsible only for temporal common good, and correspondingly the coercive jurisdiction of state government and law has as its defining objective not the widest common good which might include salvation itself, but what the Council calls a (or the) “basic component of the common good,” namely public order.

Id. (emphasis added).

\(^{223}\) Pacem in Terris, supra note 17, ¶ 54.

\(^{224}\) Id. ¶ 159.
Finnis, in contrast, sees that individuals, as members of the Church and citizens of a polity, following their religious beliefs and participating in politics, will draw on the truth of liberty:

Just as the Catholic Church’s doctrine of religious liberty is pointedly aimed, in one direction against secularist (say American) devaluation of the earnest search for truth about religion and life and secularist (say Communist) repression of religion, and in the other direction against anti-philosophical and anti-Christian (not to mention anti-Semitic) theocratism, so too that Church’s members, in their political and day-to-day involvement with issues very fundamental to the legal protection of life and freedom, find themselves allied, variously, with each of those ends of the spectrum against the other. That is part of what it is to be central to civilization.225

Finnis also points to the conclusion that adherents must always act according to their faith:

[I]t must be accepted that individual voters and legislators can rightly and should take into account the firm moral teachings of a religion if it is the true religion, so far as its teachings are relevant to issues of law and government. This duty extends only so far as the teachings do not depend upon premises which are essentially questions of present fact and prediction of consequences, for on such questions religious authorities cannot reasonably be supposed to have any special competence, or authority to teach with any decisive effect. In saying that voters and other bearers of public authority have this liberty and responsibility, I assume that the true religion itself holds out its moral teaching as a matter of public reason, i.e. as accessible and acceptable by a purely philosophical enquiry and only clarified and/or made more certain by divine revelation or the theological-doctrinal appropriation of that revelation.226

How would John XXIII see it? Exactly the same way as Finnis, with Catholics following the teaching of the Church, which would also be the true religion:

As far as Catholics are concerned, the decision rests primarily with those who take a leading part in the life of the community, and in these specific fields. They must, however, act in accordance with the principles of the natural law, and observe the Church’s social teaching and the directives of ecclesiastical authority. For it must not be forgotten that the Church has the right and duty not only to safeguard her teaching on faith and morals, but also to exercise her authority over her sons by intervening in their external

225. Religion and State, supra note 5, at 124.
226. Id. at 129 (emphasis added).
affairs whenever a judgment has to be made concerning the practical application of this teaching.\footnote{Pacem in Terris, supra note 17, \S 160.} The only fly in this ointment for Finnis would be the “directives of the ecclesiastical authorities.” He could overcome this, however, if the “direction” were understood not simply in the form of a submission to authority. He might see it as a teaching based upon the history and tradition of the Church and included in the discussion as a premise or argument understood as “philosophical.” This gives it rational validity and allows for its incorporation into a theory of church-state relations. More likely, however, he would see it as actions by leaders in the community done in harmony with their faith and ultimately with the true religion.

E. \textit{Fides et Ratio}

We move on now to the explicitly philosophical, and perhaps most complete, treatment of our topic in John Paul II’s \textit{Fides et Ratio}. It will serve our investigation if we first lay out, in summary fashion, the teaching of \textit{Fides et Ratio}. With a grasp of John Paul II’s treatment of philosophy and reason and their relationship to faith, we can contrast it with the arguments and theory of Finnis to arrive at a conclusion about the orthodoxy of Finnis’ positions on church-state relations vis-à-vis the overlapping duties and obligations of the Church and the state toward each other and toward individual persons. I apologize if this seems, at times, needlessly theoretical and will try to keep tangents to a minimum, but it is necessary to explicate a proper understanding of human nature which, in turn, is the foundation for the structure and role of the community, also known as the government, in the lives of the citizenry with regard to religion.

John Paul II understands his purpose in writing \textit{Fides et Ratio} as, first and foremost, to fulfill his duty as a bishop to bear witness to the truth.\footnote{See Fides et Ratio, supra note 18, \S 6.} Second and more directly, it is to reflect upon truth and its relationship to faith.\footnote{Id.} Remember that, for Finnis, providing an environment conducive to the search for truth is a civil duty of government. Unlike his predecessors, John Paul II engages, explicitly and intentionally, philosophical truth and understanding without spending too much time on criticisms of specific philosophical systems. In fact, he takes a different approach from previous pontiffs and—while critical of philosophies that

\begin{thebibliography}{9}
\bibitem{Pacem in Terris} Pacem in Terris, supra note 17, \S 160.
\bibitem{Fides et Ratio} See Fides et Ratio, supra note 18, \S 6.
\bibitem{Id} Id.
\end{thebibliography}
claim to contain the whole truth of reality—insists that these philosophical systems should be “respected in [their] wholeness,” but that they must also remain at the service of philosophical inquiry instead of succumbing to “philosophical pride.”

The Church has an explicit duty toward humanity in the search for divine truth. In accomplishing this, believers participate in humanity’s shared struggle toward the truth—a truth that every person desires to find. Although it is not fully accessible in this life, inching closer to it makes each person more fully human, until we see God “face to face” with complete understanding of the fullness of truth. Accessing that truth is aided tremendously by philosophy, “one of [the] noblest of human tasks.” In describing philosophy as a noble task, John Paul II connects this intellectual duty and the accompanying systems of thought to the foundation of the human community as one of the basic building blocks: “One example of [philosophy’s powerful influence] is the basic form of philosophical knowledge which is evident to this day in the postulates which inspire national and international legal systems in regulating the life of society.” Philosophy is a task that inspires a polity. The task is energized by human wonderment, which is not only the basis for legal systems, but also provides a core of principles understood as “right reason.” This core assists the faithful in deepening their understanding of faith and of the truth. Once faith is deepened, the yearning for truth increases, and human reason develops further this desire through countless fields of knowledge. The modern limitation of reason, however, is its “one-sided concern to investigate human subjectivity,” which has “forgotten” that the human being is called toward transcendent truth, the same search for truth for which the Church is obligated to assist all humanity.

Even without going into direct comparisons just yet, we need to keep in the back of our mind Finnis’ conclusion that the state can and must, pragmatic concerns aside, identify the true religion. The foundation for this conclusion is the innate human ability for using reason to grasp the truths of religion without the need for acts of faith. Reason can be a foundation

230. Id. ¶ 4.
231. 1 Corinthians 13:12.
233. Id. ¶ 3.
234. Id.
235. Id. ¶¶ 3–4.
236. Id. ¶ 5.
for finding truth without religious faith, but with the truth of divine communication included.\textsuperscript{237}

In the Pope’s view, reason is wounded by the inclination to turn away from God and is, therefore, subject to human caprice.\textsuperscript{238} It becomes “distorted and inclined to falsehood.”\textsuperscript{239} Once hijacked, reason focuses no longer upon the innate human desire to search for truth, but on the limitations of reason and, therefore, on the ability to know the truth.\textsuperscript{240} This is the seedbed for relativism and the error that any philosophical position is as valid as any other.\textsuperscript{241} There is no place for a theory where truths are contradictory.\textsuperscript{242} We can see here, early on, that the Pope is moving toward the differentiation of truth from error in specific philosophical systems, a distinction made so explicit by his predecessors. Moreover, he is setting the stage for a battle in which the wounded nature of reason is cured by and perfected in faith.

The view that reason is wounded is taken from Paul’s letter to the Romans\textsuperscript{243} and the conciliar documents, \textit{Dei Filius} of the First Vatican Council and \textit{Dei Verbum} of the Second Vatican Council.\textsuperscript{244} In this study, I will not explore these documents, but the principle that the Holy Father takes from them is important. Reason can discover God.\textsuperscript{245} Faith provides knowledge superior to this, however, because it “expresses a truth based upon the very fact of God who reveals himself . . . .”\textsuperscript{246} Faith is neither reason nor philosophy, nor the product of philosophical inquiry.\textsuperscript{247} Philosophy is limited to natural reason, depends upon sense perception, and—most importantly—proceeds solely through the workings of the intellect.\textsuperscript{248} This Church teaching is reflected in Finnis’ theory in that his

\textsuperscript{237} \textit{Religion and State}, supra note 5, at 108–09.
\textsuperscript{238} \textit{Fides et Ratio}, supra note 18, ¶ 5.
\textsuperscript{239} Id. ¶ 22.
\textsuperscript{240} Id. ¶ 5.
\textsuperscript{241} Id.
\textsuperscript{242} Id. (“[T]he assumption that all positions are equally valid . . . betray[s] this lack of confidence [in truth], denying truth its exclusive character and assuming that truth reveals itself equally in different doctrines, even if they contradict one another.”).
\textsuperscript{243} \textit{Romans} 1:18–30.
\textsuperscript{244} \textit{Fides et Ratio}, supra note 18, ¶ 8.
\textsuperscript{245} Id.
\textsuperscript{246} Id. ¶ 8.
\textsuperscript{247} Id. ¶¶ 8–9.
\textsuperscript{248} Id. ¶ 9.
method requires that his conclusions be reached through reason alone. Does he, however, arrive at his destination without veering from the teaching of the Magisterium? It is precisely this limited capacity of reason that Finnis seems to rely upon to move from intellect to truth without religious faith. The question is whether the limitation he recognizes and embraces is enough to navigate the error-infested waters of philosophy.

The key for Finnis becomes the acceptance of Revelation, accessible through the tradition and history of the Church and validated through the social sciences and the application of reason to those sciences. I believe that John Paul II would still find this an incomplete analysis because mankind cannot fully understand itself without understanding mystery—mystery that can be penetrated only through faith. In support of this, the Pope cites the Vatican II document Gaudium et Spes and the need to find ultimate truth through Revelation: “[O]nly in the mystery of the incarnate Word does the mystery of man take on light.” He continues, “Faith alone makes it possible to penetrate the mystery in a way that allows us to understand it coherently.” Are these positions really at odds? I think it is possible to reconcile them if a distinction is made between recognizing and accepting a mystery of revelation as taught by the Church and penetrating a mystery in faith. Finnis is concerned with a foundation of man’s search for truth—arrived at through the aggregate experience of the Church—in order to lay an obligation on the state. The Pope, rather, sees faith as an obedient response to God through which man has access to the Father “acknowledged in his divinity, transcendence and supreme freedom.” The Holy Father’s foremost concern is man’s salvation and his assent to the “divine testimony” of revelation through faith. For Finnis, this assent is made possible through fulfillment of the duty the state owes its citizens to identify truth and to provide the order necessary for man to engage the personal search for that truth. With this explanation, I

249. See Religion and State, supra note 5, at 107 (“These reflections will be philosophical and historical or factual, not theological.”).
250. Id. at 108–09.
253. Id. ¶ 13.
254. Id.
255. Id.
256. Id.
257. Religion and State, supra note 5, at 117–18.
do not see these positions as contradictory understandings of reason. Rather, for John Paul II, God guarantees the truth, which is ultimately Jesus Christ himself, accepted in faith as a gift, and “urges reason to be open to it and to embrace its profound meaning.” That meaning, I believe, is precisely what Finnis is trying to embrace through his philosophical acceptance of Revelation. Furthermore, John Paul II does not foreclose reason completely from the penetration of mystery; it is just that Revelation is necessary to “lead the search.”

In order to translate this acceptance of Revelation into a philosophical understanding of human freedom and truth, Finnis has seized upon the theme of “error has no rights,” making it impossible for genuine religious liberty to be exercised where truth is relative. The Pope identifies freedom not with a pluralistic notion of religious liberty, but with the act of faith itself. It is only in the true freedom of will and intellect, in their spiritual nature, that man can embrace and give himself to God. Consequently—and critical for an understanding of Finnis—decisions and acts made against truth are, by their very nature, acts against freedom: “For how could it be an exercise of true freedom to refuse to be open to the very reality which enables our self-realization?” For Finnis, this supports his foundation that man was made to seek truth, and the state’s refusal to be open to that truth is an obstacle to that for which man was made. The Holy

258. John Paul II explains:

From all that I have said to this point it emerges that men and women are on a journey of discovery which is humanly unstoppable—a search for the truth and a search for a person to whom they might entrust themselves. Christian faith comes to meet them, offering the concrete possibility of reaching the goal which they seek. Moving beyond the stage of simple believing, Christian faith immerses human beings in the order of grace, which enables them to share in the mystery of Christ, which in turn offers them a true and coherent knowledge of the Triune God. In Jesus Christ, who is the Truth, faith recognizes the ultimate appeal to humanity, an appeal made in order that what we experience as desire and nostalgia may come to its fulfilment [sic].

Fides et Ratio, supra note 18, ¶ 33.

259. Id. ¶ 13.

260. Id. In the following section of Fides et Ratio, John Paul II identifies the transformation of creation associated with the reality of revelation in human affairs, saying, “Revelation therefore introduces into our history a universal and ultimate truth which stirs the human mind to ceaseless effort; indeed, it impels reason continually to extend the range of its knowledge until it senses that it has done all in its power, leaving no stone unturned.” Id. ¶ 14.

261. Religion and State, supra note 5, at 121–22.


263. Id. ¶ 13.
Father is, of course, speaking of a personal refusal to accept truth, but the refusal of the community to identify truth or, worse, to obscure it, is no less a denial of truth—and a limitation upon man’s ability to exercise his true freedom. Nonetheless, in the eyes of the Church, the fullness of truth is only attained through faith. The Pope expresses the Church’s understanding with the teaching that “[m]en and women can accomplish no more important act in their lives than the act of faith; it is here that freedom reaches the certainty of truth and chooses to live in that truth.”

It is important to keep in mind the inherent woundedness of reason, as understood by John Paul II. The accessibility of the truth of Revelation is limited to faith, which is an expression of love. It cannot be reached by philosophical persuasion. This brings the Pope to an initial conclusion: “[T]he truth made known to us by Revelation is neither the product nor the consummation of an argument devised by human reason.” Nevertheless, there is an “indissoluble unity” between faith and reason, and all the intellectual gains made by philosophy in observing and analyzing humanity are raised to the fullness of truth by faith in order to make known that in divine actions it is the God of Israel who reveals Himself, making it impossible to understand fully revelation without belief in the revealer: “Thus the world and the events of history cannot be understood in depth without professing faith in the God who is at work in them. Faith sharpens the inner eye, opening the mind to discover in the flux of events the workings of Providence.”

John Paul II laid out rules that reason must follow in order to maintain its correlation with truth: (1) reason must first acknowledge that “human knowledge is a journey which allows no rest;” (2) reason must realize that “such a path is not for the proud who think that everything is the fruit of personal conquest;” and (3) that reason is “grounded in the ‘fear of God’ whose transcendent sovereignty and provident love [is seen] in the governance of the world . . ..” It is difficult to see how Finnis’ use of reason violates any of these principles. Finnis puts no cap on the search for truth. He refuses (as does the Pontiff) to see truth as relative, but sees mankind’s search for that truth as a vocation that does not end with a particular discovery. It is the foundation of truth that allows for this
journey that never ends.\textsuperscript{270} As to the notion of personal conquest, Finnis' theory does not address the issue much beyond the notion that man exists to search for truth. He does address, however, self-understandings which abandon reason and transcendent truth for the "good of self-determination or of self-respect" in the name of "defin[ing] one's own concept of existence" or the right to "decide for oneself" as a member of an organization as opposed to having any authority decide for him.\textsuperscript{271} The fallacy here is obvious: if you submit to no authority, what is it that binds you to the organization? The answer is nothing, of course. This is an exercise not only in pride but in violation of the third rule—namely, that God governs the world.\textsuperscript{272} For this third principle, we are reminded that Finnis is not so concerned with the source of the state's authority. It is not incongruous, however, with Finnis' acceptance of Revelation into his philosophical method that to do so is to recognize God's authority over all. The source of authority is never addressed specifically in Finnis' theory, but God's transcendent sovereignty and provident love do not conflict with the philosophical acceptance of revelation and, therefore, a divine creator.\textsuperscript{273}

Once reason is accepted in this fashion, according to these three rules, reason can be seen to achieve true results, but without faith, one cannot see the meaning of that truth.\textsuperscript{274} Faith cures what sin obscures.\textsuperscript{275} Not even greatness of mind can overcome the reality of sin in humankind: "If human beings with their intelligence fail to recognize God as Creator of all, it is not because they lack the means to do so, but because their free will and

\begin{itemize}
\item \textsuperscript{270} \textit{Id.} ¶ 2. One could argue that, while the fullness of truth is known when we see God "face to face," that does not end our existence, but sets it on an eternal path of glory. \textit{See id.}
\item \textsuperscript{271} \textit{Religion and State, supra note 5, at 112 (quoting Planned Parenthood v. Casey, 505 U.S. 833, 851 (1992)).}
\item \textsuperscript{272} \textit{Fides et Ratio, supra note 18, ¶ 18.}
\item \textsuperscript{273} \textit{Religion and State, supra note 5, at 116.}
\item \textsuperscript{274} \textit{Fides et Ratio, supra note 18, ¶ 20.}
\item \textsuperscript{275} \textit{See id. ¶ 22.}
\end{itemize}

\textit{Id.}
their sinfulness place an impediment in the way." The Holy Father explains further:

For the Old Testament, then, faith liberates reason in so far as it allows reason to attain correctly what it seeks to know and to place it within the ultimate order of things, in which everything acquires true meaning. In brief, human beings attain truth by way of reason because, enlightened by faith, they discover the deeper meaning of all things and most especially of their own existence. Rightly, therefore, the sacred author identifies the fear of God as the beginning of true knowledge: "The fear of the Lord is the beginning of knowledge." 

A distinction that John Paul II makes, using biblical language, is between the wisdom of the world and the wisdom of God revealed in Christ, which—in the eyes of the world—is foolish. Reason also needed to be redeemed by the coming of Christ since the "habitual patterns of thought" of the human mind had, through the sin of Adam, been rendered incapable of expressing that true wisdom in its fullness. That limitation manifests itself in the inability of human wisdom to see that there is strength in weakness and to grasp that death could be the source of life. Difficult concepts, to be sure, but can these truths be accepted without faith? Finnis seems to argue that not only is it reasonable but that, in recognizing that the world is put together in an orderly fashion and with the need to posit a free and intelligent reality—surpassing our own intelligence and freedom—which directs this orderliness, we must philosophically "cast about for historical evidence of . . . transcendent revelation." For Finnis, doing so does not require the employment of theology. Instead, it is a matter of common sense: "The judgment that certain events are best understood as instances of a transcendently revelatory communication is one that builds on the philosophically (and common-sensically) grounded affirmation of the existence of a creator, and on historically warranted affirmations that certain words were spoken and deeds done with certain intentions." 

For John Paul II, would this understanding correspond with being "fools on Christ's account"? The two could be reconciled if Finnis' idea

276. Id. ¶ 19.
277. Id. ¶ 20 (citation omitted).
278. Id. ¶ 23.
279. Id. ¶¶ 22–23.
280. Id. ¶ 23.
282. Id.
283. 1 Corinthians 4:10.
of accepting Revelation were seen as corresponding with John Paul II’s point that the wisdom of the cross is lost on the world unless reason yields to this wisdom and accepts the “universality of the truth which it bears.”

For the Holy Father, however, this correlation does not seem possible. Philosophy is still limited to perceptions from sensory data of this world. In the following sentence, he appears to foreclose such an understanding:

Of itself, philosophy is able to recognize the human being’s ceaselessly self-transcendent orientation towards the truth; and, with the assistance of faith, it is capable of accepting the “foolishness” of the Cross as the authentic critique of those who delude themselves that they possess the truth, when in fact they run it aground on the shoals of a system of their own devising.

In Finnis’ favor, the Pope does not declare that philosophy can accept the foolishness of the cross only with the assistance of faith. In the following sentence, John Paul II speaks of the preaching of Christ crucified as “the reef upon which the link between faith and philosophy can break up.” A reef that, once overcome, enables the two to join forces on the “boundless ocean of truth.” The reef is not so much a border as it is a meeting place. This is really the crux of Finnis’ theory. Reason can make the journey to the reef by itself, accepting the truth of Revelation without the necessity of faith. My question to that is—why would you want to? Simply acquiring intellectual acceptance of truth lacks personal engagement with the divine. This is why this search should always be looking for more than meets the eye. If for example, Revelation teaches us that God became man, is that knowledge accessible to reason without an assent of faith? The Holy Father provides no visible means to do that. Nor does he say that it is impossible. The point of unity in Finnis’ theory and the teaching of John Paul II would have to be an almost identical understanding of the same point with different words. Where the Pope argues that reason is enlightened when it yields to the foolishness of the cross, Finnis would have to see the same reality in the philosophical


285. *See id.* ¶ 9 (“[P]hilosophical knowledge ... depends upon sense perception and experience and ... advances by the light of the intellect alone.”).

286. *Id.* ¶ 23.

287. *Id.*

288. *Id.*

289. *Id.*


291. *Id.*
acceptance of Revelation. This is a tall order. Sin, however, is a wound.292 In the state of grace, men act without sin, enabling them to “share in the mystery of Christ, which in turn offers them a true and coherent knowledge of the Triune God.”293 Could John Paul II or any of the popes, allowing for the possibility of such an accession by reason without any past, present, or future realization of it, take such a perspective? In other words, could a cleansed form of reason accomplish what the wounded reason cannot? Reason is wounded in the thinking of John Paul II, but this woundedness is a “natural limitation.”294 How he understands this nature of reason would determine how he would look upon the theory of Finnis, but it is difficult to see, at this point in the analysis, how it could be reconciled. Nevertheless, let us press on to a deeper understanding of truth.

The innate desire to know the truth is foundational for John Paul II, and no less important for Finnis. Human beings want to know the truth, to reject falsehood, and to “discover for ourselves, beyond mere opinions, how things really are.”295 More than that, this desire is a duty, or as John Paul II put it: “a prior moral obligation . . . to seek the truth and to adhere to it once it is known.”296 This is a personal duty. Human beings, however, live not in a vacuum, but in a community—it is in that community that language, culture, and fundamental truths are formed and believed.297 They are believed, in fact, without personal experience or verification.298 Belief in them is, instead, based upon a personal relationship with other members of the community that is trusting and intimate.299 It is a “dynamic relationship of faithful self-giving with others.”300 It is knowledge through belief.301 The fullness of truth is found, then, in the encounter with Jesus Christ.302 For John Paul II, this is nowhere more evident than in the lives of the martyrs, who clung to truth in the face of suffering and violent

292. Fides et Ratio, supra note 18, ¶ 22. (explaining how Adam and Eve’s “primal disobedience . . . wounded reason”).
293. Id. ¶ 33.
294. Id. ¶ 28.
295. Id. ¶ 25.
298. Id.
299. Id. ¶ 32.
300. Id.
301. Id.
302. Id.
This is not lost on Finnis. He distinguishes those who are willing to give their lives for the truth instead of those who are willing to take life for their religion.\(^\text{304}\) Moreover, Finnis recognizes the truth that is found in communities.\(^\text{305}\) That interpersonal sharing is reflective, he hypothesizes, that there is a greater meaning and sharing, with the infinitely greater intelligence referred to as “God.”\(^\text{306}\) This sharing would be the result of a communication or “revelation” from God, which explains our own ability to share with each other as well as our purpose for existing.\(^\text{307}\) Could we, therefore, reconcile the revelation of faith and the revelation gained through reason, in that they both come to us through the sharing with us of the other’s experience and tradition and of that relationship itself with the Creator? Does Finnis posit a non-faith-based relationship with God that can lead us to truth? If Jesus Christ is “the way and the truth and the life,”\(^\text{308}\) and reason can discern this reality, is this not a reasonable accession to truth since it is mediated by the Savior who is accepted as such through reason? This is the point that Finnis seems to want to make. It seems like the way one would understand prelapsarian man’s relationship with the Creator. But is that ordered society the gauge for the plight of postlapsarian man and an understanding of his relationship with God in light of the Fall and the need for salvation through Christ? I am inclined to conclude that Finnis’ view is that of Eden but that—for the current state of man, beyond an intellectual exercise—it has limited pragmatic value, indeed. He himself concedes that acting upon this model would probably be impractical and imprudent with unintended consequences and side effects.\(^\text{309}\) Is that all there is? Holding off on such a judgment for now will allow us to seek a less dismissive alternate conclusion.

The Holy Father speaks of those who “sought in various ways to transform faith and its contents, even the mystery of the death and resurrection of Jesus, into dialectical structures which could be grasped by reason.”\(^\text{310}\) Is Finnis guilty of such idealism? I think not. For Finnis, faith remains a reality that is complimentary to reason. He has no intention of providing a substitute for reason but seeks a mutually beneficial

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303. Id.
304. Religion and State, supra note 5, at 111.
305. Id. at 108–09.
306. Id.
307. See id.
309. Religion and State, supra note 5, at 130.
310. Fides et Ratio, supra note 18, ¶ 46.
understanding of truth. Does Finnis reduce philosophy to one of many equally situated fields of human knowing? Marginalize it in favor of rationalization? Certainly not, for Finnis is interested not in comparative disciplines but in a serious search for the truth. Does Finnis search for a utilitarian solution to the problem of understanding human existence? On the contrary, he sees his search for truth altogether lacking in pragmatism. Does Finnis propose a philosophical inquiry that is not proved in the light of reason? Quite the opposite, it is the light of reason that informs his philosophy. Does Finnis’ theory reject Revelation? This appears to be a nonsensical question, given the focus of this investigation, but it is a question that we can formulate from John Paul II’s understanding of how philosophy is constituted:

At the deepest level, the autonomy which philosophy enjoys is rooted in the fact that reason is by its nature oriented to truth and is equipped moreover with the means necessary to arrive at truth. A philosophy conscious of this as its “constitutive status” cannot but respect the demands and the data of revealed truth.311

There is a “right” understanding of what has been revealed, and this can be grasped by philosophy.312 The Church, however, must reflect upon philosophies in the light of faith and discern whether they contradict Christian doctrine.313 Faith is, therefore, making demands of philosophy. It is not restrictive, per se, explains the Pope, because “[t]his discernment, however, should not be seen as primarily negative, as if the Magisterium intended to abolish or limit any possible mediation.”314 Both this statement and the Pope’s words about “constitutive status”315 seem to allow for Finnis’ theory as a “possible mediation”316 of truth, since he “respect[s] the demands and the data of revealed truth.”317 The Church, however, is always leery and wants to maintain the distinction between faith and philosophy, especially considering rationalism: “Against all forms of rationalism, then, there was a need to affirm the distinction between the mysteries of faith and the findings of philosophy, and the transcendence and precedence of the mysteries of faith over the findings of

311. Fides et Ratio, supra note 18, ¶ 49.
312. See id.
313. Id. ¶ 50.
314. Id. ¶ 51.
315. Id. ¶ 49.
316. Id. ¶ 51.
317. Id. ¶ 49.
philosophy . . .” 318 This is not the end of the story because the story of Revelation is the story of truth. Faith and reason are peas in a pod—to split them apart would be to deny truth itself:

Even if faith is superior to reason there can never be a true divergence between faith and reason, since the same God who reveals the mysteries and bestows the gift of faith has also placed in the human spirit the light of reason. This God could not deny himself, nor could the truth ever contradict the truth. 319

Even with this elevation of philosophy, protected from fideism, John Paul II hesitates to give philosophy equal billing with theology and faith. He posits: “Revelation clearly proposes certain truths which might never have been discovered by reason unaided, although they are not of themselves inaccessible to reason.” 320 I emphasize the final clause because, while he does not emphasize it, John Paul II always seems to leave open the possibility that reason can surpass even its wounded state and find the fullness of truth.

Another way of looking at it, however, is by asking whether—in finding truth by accepting the data of revelation through reason—you are also accepting, at that point, the truth of the Revealer in faith. I do believe that Finnis desires that his theory be accessible to those without faith, but that does not mean that finding truth through reason alone concludes the journey. As the Holy Father said, it is always a journey with the goal that is truth that is Christ. 321 If you find that truth, have you not found the fullness of what God has revealed in faith and reason? Finnis might not contend that this is true but neither could he disagree with it. His goal is to make the truth even more accessible to all through philosophical inquiry.

What is the goal of philosophy anyway? How does this goal fit with the philosophizing of Finnis? The lack of ontological content is the crisis that the Pope sees in the contemporary philosophical world. 322 Philosophy must do three things to become reconciled with truth. It must first recover its heritage of wisdom: “To be consonant with the word of God, philosophy

318. Id. ¶ 53.
319. Id. (citation omitted) (internal quotation marks omitted).
320. Id. ¶ 76 (emphasis added).
321. See id. ¶ 12.
322. Id. ¶ 83. The Pope remarks:

If I insist so strongly on the metaphysical element, it is because I am convinced that it is the path to be taken in order to move beyond the crisis pervading large sectors of philosophy at the moment, and thus to correct certain mistaken modes of behaviour now widespread in our society.

Id.
needs first of all to recover its *sapiential dimension* as a search for the ultimate and overarching meaning of life.*323* Secondly, philosophy must “verify the human capacity to know the truth, to come to a knowledge which can reach objective truth.”324 Lastly, philosophy must maintain its ability to focus on the ontological with “the need for a philosophy of genuinely metaphysical range, capable, that is, of transcending empirical data in order to attain something absolute, ultimate and foundational in its search for truth.”325 I do not see how the theory put forth by Finnis violates any of these newly formulated principles of a true philosophical inquiry. Based upon this and the rest of my analysis and assessment of Finnis’ philosophical method, I would now have to conclude that his version of philosophical inquiry follows the understanding of the Holy Father and, therefore, the teaching of the Magisterium.

CONCLUSION

We have explored the relationship of church and state by examining John Finnis’ theory and method for the state to identify the true religion. We have done so in the light of Church teaching of the last century and a half, beginning with the *Syllabus Errorum* of Pius IX and working systematically through *Immortale Dei* and *Libertas*, two relevant encyclicals of Leo XIII which reflect on the true meaning of human freedom. In Leo XIII’s work, we find that true freedom comes from God, as does the authority of the state. Obedience to legitimate authority, like obedience to God, is the method or pathway to truth and salvation. The state, therefore, has the obligation to protect its citizens from evil and assist them in their quest for the good. Finnis’ theory tracks the Pope’s teaching with his description of the state as obliged to engender common good and protect from coercion. *Libertas* also supports Finnis’ idea of restrictions on speech that endanger the state. *Pacem in Terris* gives us a proper understanding of authority—order comes from the divine, human beings were made for order, and the state exists with authority to engender that order for the origin and purpose of mankind—namely, to seek God. We finally looked at John Paul II’s encyclical *Fides et Ratio*, in which we explored philosophical method as understood by the Pope and employed by Finnis. What, then, shall we conclude about this investigation into this penetrating study of John Finnis on the relationship between religion and

323. *Id.* ¶ 81 (emphasis original).
324. *Id.* ¶ 82.
325. *Id.* ¶ 83 (emphasis original).
state? We discovered that, although there are many distinctions, there are not many differences, and we arrived at a conclusion that Finnis’ theory has validity and reflects what we might call “prelapsarian order” of reality. Whether it could ever be actualized is another story, a story which Finnis himself considers problematic in terms of practical application.

One observation regarding methodology worth noting is that Finnis treats theology as simply an expression that, at a certain point, philosophy gives way to (“consign[s] us to”). It is difficult to see, therefore, how he speaks of these methodologies as overlapping. Furthermore, is his purpose to use religious truth in philosophy without religious dogma? Is religious and philosophical truth synonymous? In some sense, he does keep “Jerusalem” at bay but includes it through a back door. Would it not be more profitable to include Revelation as Revelation instead of including it as a transcendent communication that is reasonable based upon the natural sciences? That being said, Finnis does provide fruitful groundwork for further study into the tension of the relationship between theology and philosophy and offers some concrete consequences of the harmonizing of the two fields of study leading man to truth. John Paul II, with all of his distinctions and qualifications, also saw the effect of harmonizing the two. The Pontiff writes, “[f]or all their difference of method and content, both disciplines point to that ‘path of life’ . . . which, as faith tells us, leads in the end to the full and lasting joy of the contemplation of the Triune God.”

The popes, in the end, are concerned about man’s salvation. Finnis has the same concern—it is, in fact, the very reason for his investigations. He does not look, however, directly to the divine, save through a mirror darkly. Instead, he is attentive to the obligations of temporal and legal authority in light of the truth of the transcendent acquired through philosophical inquiry, engaging the truth of Revelation and embracing the truth that perfects reason and directs man in his search for his ultimate good. An authentic awareness of this in governance is necessary for the maintenance of the common good in its fullest sense, which is the obligation of government toward humanity.

327. Fides et Ratio, supra note 18, ¶ 15 (internal citation omitted).