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PRINCIPLES FUNDAMENTAL OF THE CHURCH-STATE CONTROVERSY

JAMES A. O'DONOHUE*

THE PAST FIFTEEN OR TWENTY YEARS have witnessed much writing on the deeply controverted Church-State question.¹ The recent presidential campaign intensified the discussion,² and issues of the present moment, such as federal aid to education³ and repeal of the so-called birth control laws,⁴ keep it constantly in the forefront.

The subject of Church-State relations has been accurately described as one which is delicate, practical, complex and explosive. It is delicate because it touches two of man's deepest allegiances: his patriotism and his religion. It is practical because it is not restricted to the "ivory tower" of theological speculation but enters into the noisy "market-place" of politics and government. It is complex because any adequate understanding of the problem demands deep insights into Theology, Canon Law, History and Political Science. It is explosive because it is often discussed by individuals who have very strong feelings about the matter and who, not infrequently, begin their discussions from premises which are diametrically opposed.

Since the Church-State question is so intricate, it is essential that men in public life such as lawyers, legislators, and elected officials have some precise notions about the principles of Catholic doctrine which underlie this issue. It is the purpose of this article to present a brief consideration of the four basic principles of Christian theology which lie beneath the whole problem and which must be kept in the fore if

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¹ For a good listing of recent works on Church and State, see Barrett, *Church and State: A Bibliography*, 7 THEOLOGY DIGEST 185-90 (1959); and 8 THEOLOGY DIGEST 59-63 (1960).

² Lally, *If a Catholic is President; Questions and Answers*, CATHOLIC MESSENGER, June 2, 1960, 9-10.

³ Lawler, *Federal Aid and Freedom*, 75 COMMONWEAL 451-54 (1962); Drinan, *Should the State Aid Private Schools?*, 11 SOCIAL ORDER 241-50 (1961).

⁴ O'Gara, *Birth Control Laws Again*, 75 COMMONWEAL 450 (1962); Regan, *Connecticut Birth Control Laws and Public Morals*, 7 CATHOLIC LAWYER 5-10 (1961); Connery, *Religious Pluralism and Public Morality*, 100 AMERICA 597-99 (1959).

our thinking on this involved subject is to be incisive and accurate.⁵

It should be noted from the outset that the author does not intend to present anything which is original; he writes only to shed some light on the fundamentals in which this highly controversial issue finds its source.

Divine Origins of Church and State

Catholic theology teaches that man is governed by a twofold authority: the ecclesiastical community which we call the Church, and the political community which we call the State. Throughout the centuries, it has constantly proclaimed the sacred nature of each institution and it substantiates its claim by asserting that both Church and State find their ultimate origin in God Himself.

In the Christian tradition, man has always been presented as a creature of God endowed with intelligence and free will. Inasmuch as these faculties are of themselves spiritual, their powers and aspirations are almost limitless; inasmuch as they are encased in a human body however, their powers and aspirations are sorely restricted. To develop himself as a rational creature limited by matter, man has need of other men; he can come to full status and complete maturity only in fellowship with others who aid him to overcome the deficiencies imposed by the limited character of his body. It is precisely in this tendency to enter into contact with others for the purpose of devel-

⁵ One of the finest books in English on theology behind Church-State relations is LECLER, *THE TWO SOVEREIGNTIES* (1952). One might also consult *A Theological Consideration of the Relations between Church and State*, an address by Gustave Weigel, S.J., September 27, 1960, excerpts from which are printed in 73 *COMMONWEAL* 68-70 (1960).

oping himself that we find the origins of the political community which we call the State.⁶

These concepts were accurately set forth by Pope Leo XIII when he wrote: "Man's natural instinct moves him to live in civil society. Isolated, he cannot provide himself with the necessary requirements of life, nor procure the means of developing his mental and moral faculties. It is therefore divinely ordained that he should lead his life, be it domestic, social, or civil, in contact with his fellow men."⁷ The civil society therefore has its source in man's nature and as such has God for its author.

Before the coming of Christ, the State provided for all man's needs: political, economic, and religious. When the Son of God became man, however, He revolutionized the order of things and established a separate society to take care of man's religious exigencies, and it is this which we call the Church.⁸ With the coming of the Second Person of the Blessed Trinity in

⁶ On Christian theology concerning the nature of the State one might consult the following: LATREILLE, *LA PENSÉE CATHOLIQUE SUR L'ÉTAT DEPUIS LES DERNIÈRES ANNÉES DU XIXE SIÈCLE, L'ECCLÉSIOLOGIE AU XIXE SIÈCLE* 281-95 (Paris 1960); MARITAIN, *MAN AND THE STATE* (1954); Scott, *The Philosophy and Theology of the State*, 6 *DOMINICAN STUDIES* 171-79 (1953); Martin, *The State: Its Elements*, 125 *AMERICAN ECCLESIASTICAL REVIEW* 177-95 (1953); ROMMEN, *THE STATE IN CATHOLIC THOUGHT* (1945); DEBRIEY, *LA CONCEPTION CATHOLIQUE DE L'ÉTAT* (Paris 1938).

⁷ Encyclical Letter of Leo XIII, *Immortale Dei* (1885). See *SOCIAL WELLSPRINGS: POPE LEO XIII* 66 (Husslein ed. 1940).

⁸ Much has been written in recent years on the nature of the Church. The layman would find the following helpful: HASSEVELDT, *THE CHURCH—A DIVINE MYSTERY* (1954); SUHARD, *GROWTH OR DECLINE* (1948); Encyclical Letter of Pius XII, *The Mystical Body of Christ* (1943).

human flesh, the separation between God and man occasioned by the fall of Adam was repaired. Through the great mysteries of His Death and Resurrection, Christ "bridged the gap" between God and man, and set Himself up as "the way" to the Father. The tangible continuation of this mediation is the Church, which has been so effectively described as "the permanent incarnation of the Son of God."⁹ Since the establishment of the Church, therefore, she, and not the State, is to be man's guide to heaven. "To the Church has God assigned the charge of seeing to and legislating for all that concerns religion."¹⁰

From what we have just seen above, we can conclude that it is a fundamental principle of Christian theology that man is subjected to a twofold authority, each of which finds its origin in God Himself. The political community flows from the very nature of man which God has created; and the ecclesiastical community flows from the very action of Christ who is the Son of God made man.

Distinction Between the Two Societies

One of the cryptic axioms frequently encountered in theological textbooks is *talis finis qualis societas*: societies are distinct from one another inasmuch as their purposes are distinct. God Himself has indeed established both Church and State, but He has assigned to each a purpose which is totally distinct from that of the other. The nature of these purposes was concisely described by Pope Leo XIII

⁹ Phrase employed by Moehler, *SYMBOLISM* 259 (London 1906).

¹⁰ Encyclical Letter of Leo XIII, *Immortale Dei* (1885); *SOCIAL WELLSPRINGS: POPE LEO XIII*, *supra* note 7, at 70.

when he wrote:

Whatever, therefore, in things human is of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls, or to the worship of God, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority.¹¹

Christian theology makes it clear that the State exists for the purpose of establishing man's temporal well-being while the Church exists for the purpose of establishing man's spiritual well-being. It insists also that the State exists to lead all men to material perfection, while the Church exists to lead all men to spiritual perfection which it defines as "intimate union with God through a sharing of the divine life."¹²

Since God has given each society its own purpose, He has also given it the power to achieve that purpose. It is precisely this innate ability to achieve its own end that we have in mind when we refer to Church and State as "perfect" societies. As a perfect society, each one is supreme in its own sphere of action and possesses within itself all the means that are essential for the achievement of its end. Again, since each society has its own purpose, each one possesses a certain independence

¹¹ Encyclical Letter of Leo XIII, *Immortale Dei* (1885); *SOCIAL WELLSPRINGS: POPE LEO XIII*, *supra* note 7, at 72.

¹² On the distinction between Church and State see De Bovis, *L'Église dans la société temporelle*, 79 *NOUVELLE REVUE THÉOLOGIQUE* 225-47 (1957); Vlastos, *Of Sovereignty in Church and State*, 62 *PHILOSOPHICAL REVIEW* 561-76 (1953); Murray, *For the Freedom and Transcendence of the Church*, 126 *AMERICAN ECCLESIASTICAL REVIEW* 28-48 (1952); Martin, *The Independence of the Church*, 122 *AMERICAN ECCLESIASTICAL REVIEW* 37-47 (1950).

from the other, and each one has its own proper competence. While these are assets, they are also, to a certain extent, liabilities because they imply a limitation which restricts the activity of each society to the achievement of the particular purpose assigned to it by the Author of Nature.

The distinction between Church and State is not a difficult concept to grasp and it finds perfect expression in these words of Pope Leo XIII:

The Almighty, therefore, has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, and the other over human, things. Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right.¹³

Necessity of Harmony Between Church and State

In spite of the fact that there is a profound distinction between the political society and the ecclesiastical society, Christian theology teaches that they are not and cannot be thought of as radically separated.

As we know, the Church is to occupy herself with the supernatural, while the State is to busy herself with the natural. Yet, when we reflect that the supernatural, as the very name indicates, is built upon the natural and that in the supernatural order the natural is elevated to a greater dignity, it becomes quite obvious that these two fields of operation, far from being totally disparate, are intimately related. Since this is so, Church and State, while

remaining distinct in regard to purpose, cannot ignore one another and cannot be completely separated from one another. There must be some complementary form of action or some type of harmony between them. Church and State are distinct; but in their very distinction there is an essential relationship and this should manifest itself in some harmonious form of existence. Such an arrangement is indispensable; and when it is achieved it will lend considerable aid to the ultimate well-being and prosperity of both.¹⁴

Throughout the history of the Christian era, this principle, which demands harmony between Church and State, has been concretized in many different forms. Before we proceed to an indication of what they were, it is extremely important to note that, even though the Church always insisted upon harmony between herself and the State, she has never canonized as ideal any precise system which a definite historical period has produced.

For many years after the conversion of the Roman Emperor, the desire for harmony between the two societies took the

¹³ Encyclical Letter of Leo XIII, *Immortale Dei* (1885); SOCIAL WELLSPRINGS: POPE LEO XIII, *supra* note 7, at 71.

¹⁴ These ideas are well expressed by Leo XIII in the Encyclical *Arcanum* (1880): "In such harmony is found not only the best line of action for each power, but also the most opportune and efficacious method of helping men in all that pertains to their life here, and to their hope of salvation hereafter. For, as We have shown in former Encyclical Letters, the intellect of man is greatly ennobled by the Christian faith, and made better able to shun and banish all error, while faith borrows in turn no little help from the intellect; and in like manner, when the civil power is on friendly terms with the sacred authority of the Church, there accrues to both a great increase of usefulness. The dignity of the one is exalted, and so long as religion is its guide it will never rule unjustly; while the other receives help of protection and defence for the public good of the faithful." Cf. SOCIAL WELLSPRINGS: POPE LEO XIII, *supra* note 7, at 42.

historical form known as Caesaro-papism.¹⁵ In their great zeal for the welfare of the Church, many of the Christian Emperors exceeded the limits of their power and exercised many functions which were within the competency of the Church alone. The "Caesar" appropriated to himself matters which belonged exclusively to the Church.¹⁶

In the Middle Ages, the attempts to achieve harmony resulted in a situation which has been described as a "union founded on custom." As Christopher Dawson has pointed out:

In the Middle Ages the ultimate social reality was not the national kingdom, but the common unity of the Christian people of which the State itself was but the temporal organ and the king the divinely appointed guardian and defender. Thus, to the medieval mind the distinction was not between Church and State as two perfect and independent societies, but rather between the two different authorities and hierarchies which respectively administered the spiritual and temporal affairs of this one society.¹⁷

¹⁵ On the phenomenon of Caesaro-papism see GREENSLADE, *CHURCH AND STATE FROM CONSTANTINE TO THEODOSIUS* (London 1954); Martin, *Caesaro-papism in Action*, 122 *AMERICAN ECCLESIASTICAL REVIEW* 121-31 (1950).

¹⁶ In Charlemagne's letter sent in 796 to Pope Leo III, we get some insight into the Emperor's Caesaro-papism. He regards it his right and duty not only to lend material support to the Church, but also to "strengthen within it the knowledge of the Catholic Faith." This activity would have extensive possibilities for interference in the internal government of the Church. Text published in EHLER & MORRALL, *CHURCH AND STATE THROUGH THE CENTURIES* 72 (Westminster 1954).

¹⁷ Dawson, *Church and State in the Middle Ages*, a paper read at the Summer School of Catholic Studies, held at Cambridge in 1935 and published in the symposium *CHURCH AND STATE* 57 (London 1936).

This is the period of "Consecrational Christendom"¹⁸ which may be described as a political unity of Christians alone in which civic rights are granted to no one else. At least in the beginning, the nature of the times lead to the formation of such a specific system. In those days, the Church was considered to be the sole source of belief in authority, the sole source of moral stability, and the sole source of unity which would prevent the dissolution of the Empire.¹⁹

Since the rise of the nations, the medieval system of union has passed into oblivion and in its place there has arisen the phenomenon known as laicism or secularism.²⁰ In the past four hundred years this has taken many forms but for all practical purposes these can be reduced to two: regalism and liberal separation. Regalism affirms the absolutism of the State's sovereignty in every realm, religious as well as secular, and, in many cases, has been tantamount to persecution of the Church. Liberal separation, while in no way recognizing the Church's sovereignty, allows her to exercise that freedom which the common law might give to any legitimate association. The secular spirit of the modern world permits very few approaches to harmony. The only attempt which has been made with any measurable amount of success in recent years has been the so-

¹⁸ Journet, 1 *THE CHURCH OF THE WORD INCARNATE* 222-62 (1954).

¹⁹ For further information on the medieval system of union see ULLMANN, *MEDIAEVAL PAPALISM* (London 1949); Ladner, *Aspects of Medieval Thoughts on Church and Politics*, 9 *REVIEW OF POLITICS* 403-22 (1947); CLAYTON, *INNOCENT III AND HIS TIMES* (1941); BALDWIN, *THE MEDIAEVAL PAPACY IN ACTION* (1940); HULL, *MEDIAEVAL THEORIES OF THE PAPACY* (London 1934).

²⁰ On laicism and its various forms see Dawson, *The Historic Origins of Liberalism*, *REVIEW*

called concordatory system.²¹

Superiority of The Church

Most men of good will are ready to agree in substance with the three principles which have been enunciated thus far. If they admit the existence of God and the divinity of Christ, they will not hesitate to concede the divine origins of both societies; if they are cognizant of the specific purpose of each, they will readily acknowledge the distinction between them; and if they are willing to recognize the interrelation and interdependence between the natural and the supernatural, they will also appreciate the need for harmony. However, even the best disposed among them will balk when he comes face to face with this final principle: when there is a conflict of jurisdiction between Church and State, the will of the Church, as the superior society, will take precedence over the will of the State.

Since nature and supernature are intimately connected, and since the same individuals are often subject to both societies, Church and State are destined to come into conflict with one another on many occasions. It does not take much imagination to envisage the discord which can arise in controversial matters, such as marriage and education, in which each society finds a certain competence. In the

OF POLITICS READER (1959); Vialatoux & Latreille, *Christianity and Laicity*, 2 CROSS CURRENTS 15-36 (1952); Connell, *The Theory of The Lay State*, 125 AMERICAN ECCLESIASTICAL REVIEW 7-18 (1951); HUGHES, THE CHURCH AND THE LIBERAL SOCIETY (1944); Lecler, *L'idée de séparation entre l'Église et l'État*, 205 ETUDES 664-94 (1930).

²¹ A concordat is a pact made between Church and State for the purpose of regulating matters of common interest. A good source of information on concordats is WAGNON, CONCORDATS ET DROIT INTERNATIONAL (Gembloux 1935).

face of all types of intense opposition, Catholic theology has been adamant in presenting the solution for such difficult situations; it declares categorically that the Church, as the superior society, takes precedence over the State which must concede to her wishes in the particular issue under discussion.²²

The Catholic theologian experiences no great difficulty in justifying this principle because he finds the Church's claims for superiority well-grounded. To his mind, the Church is superior because both her nature and her purpose are superior. In contradistinction to the State, the Church is concerned with man's spiritual values and she exists to lead him to eternal salvation.²³ Since spiritual values are of greater worth than material values and since eternal salvation is more important than temporal happiness, it is easy to see that the society concerned with the spiritual and the eternal takes precedence over the society concerned with the material and the temporal.

If, at least in times of conflict, the Church is to have the last word, and if the

²² "[I]n such questions as are, though in different ways, of common right and authority, the power to which secular matters have been entrusted should happily and becomingly depend on the other power which has in its charge the interests of heaven." Encyclical Letter of Leo XIII, *Arcanum* (1880); cf. SOCIAL WELLSPRINGS: POPE LEO XIII 42 (Husslein ed. 1940).

²³ This reasoning is expressed in the famous letter of Pope Symmachus (d. 514) to the Emperor Anastasius: "Let us compare the Imperial dignity to that of the head of the Church. There is this capital difference between them, that one has the care of earthly things and the other of divine things. Emperor, thou art there to administer human affairs, whilst it is for the Pontiff to dispense to thee the Divine mysteries. The latter's dignity is surely equal, not to say superior to thine." Cf. LECLER, THE TWO SOVEREIGNTIES 52 (1952).

Church is the superior society, it is logical to conclude that she has some power over the State. The problem therefore arises: what type of power does she have and how much of it can she exercise? In the history of the Church several theories have been proposed as solutions to this difficulty. It must be noted, however, that none of them has ever been accepted as the exclusive teaching of the Christian Church.

In the Middle Ages it was taught by some that the Church had a "direct power" over the State.²⁴ The proponents of this theory argued that Christ, Who is Priest and King, gave to Peter and his successors the totality of His power. By reason of this fact, and by divine right, the Pope possesses all jurisdiction not merely over spiritual matters but also over temporal matters. Those who held the "direct power" theory were quick to add, however, that in practice the Pope usually employs only the spiritual power, since it is Christ's will that he should delegate the habitual exercise of the temporal power to the civil rulers. Nevertheless, they would teach that in serious situations, such as during the vacancy of the Empire or when the higher interests of Christianity were at stake, the Pope could also exercise temporal power.

It must be remembered that the theory of "direct power" was never accepted as the official teaching of the Church. It arose and can be justified by reason of the particular historical circumstances of Consecrational Christendom. Only bad faith could present such concepts as the

²⁴ Notably James of Viterbo, O.S.A. (d. 1308) in his *de regimine Christiano* and Giles of Rome, O.S.A. (d. 1316) in his *de ecclesiastica potestate* and his *de regimine principum*. Further information may be obtained in HULL, *MEDIEVAL THEORIES OF THE PAPACY* (London 1934).

standard and universal teaching of the Church in the medieval period.²⁵

In modern times, theologians and canonists are wont to describe the power of the Church over the State as "indirect." The proponents of this doctrine may be divided into two schools: those who follow the thought of St. Robert Bellarmine,²⁶ and those who follow the thought of John of Paris.²⁷ According to the former, the Church, by reason of the superiority of her end, possesses a "certain jurisdiction" over temporal things; only by way of exception, however, can she actively intervene in civil affairs. According to the latter, the Church's jurisdiction is purely spiritual; she does have the power to interfere in temporal matters whenever she sees a moral evil there; this intervention is usually done only by means of her teaching power and even if it entails the use of her coercive power, this should not extend beyond spiritual censures.

²⁵ In this connection, it is interesting to note the following statement from Pope Pius IX: "This right [deposition of Kings] has in fact, in exceptional circumstances been exercised by the Popes. Its source was not the Infallibility, but the authority of the Pope. The latter, according to the public law then in force and by the consent of the Christian nations, who recognized the Pope as the supreme Judge of Christendom, extended to judging, even in the temporal field, both Princes and States. Now the present situation is altogether different. Bad faith alone can confuse things and epochs so diverse." This is an excerpt from an address given on July 20, 1871 to a delegation from the *Accademia di Religione cattolica*. Cf. LECLER, *op. cit. supra* note 23, at 63.

²⁶ For further information on Cardinal Bellarmine (d. 1621) see Murray, *St. Robert Bellarmine on The Indirect Power*, 9 THEOLOGICAL STUDIES 491-35 (1948); De La Briere, *Le pouvoir indirect du Pape*, 14 LA DOCUMENTATION CATHOLIQUE, 598-605 (1925).

²⁷ For further information on John of Paris (d. 1306) see Murray, *Contemporary Orientations of Catholic Thought on Church and State*

At the present time, one is free to follow either the theory of Bellarmine or that of John of Paris. It must be remembered that neither school of thought has been canonized as the Church's official teaching.²⁸ To the minds of some, Bellarmine's theory makes the Church's power over the State something more than a mere repercussion of a purely spiritual action and, for that reason, seems to lead to the same conclusions as the theory of "direct power," even though it departs from different premises.²⁹ To the minds of others, the theory of John of Paris is more in conformity with the nature and mission of the Church inasmuch as it does not deny the Church's right to concern herself with political matters when moral issues are at stake, but limits the exercise of this right to acts which are, properly speaking, spiritual.³⁰

in the Light of History, 10 THEOLOGICAL STUDIES 177-234 (1949); LECLERCQ, JEAN DE PARIS ET L'ECCLÉSIOLOGIE DU XIIIÈ SIÈCLE (Paris 1942).

²⁸ A prolonged and interesting discussion on this point was held in the AMERICAN ECCLESIASTICAL REVIEW and THEOLOGICAL STUDIES between the years 1945 and 1955. The exchange of views took place between Rev. J. Courtney, S.J., and Rt. Rev. J. C. Fenton.

²⁹ St. Francis de Sales made the following comment on Cardinal Bellarmine's theory: "I have not found to my taste certain writings by a holy and most excellent Prelate in which he has touched upon the indirect power of the Pope over princes, not that I have formed my judgment as to whether things are, or are not, as he says, but because, in this age, in which we have so many external enemies, I do not think that we ought to cause any commotion inside the body of the Church. . . . If Kings and princes are going to have a bad impression of their spiritual father, as one whose wish is to catch them unawares and to mulct them of the authority in which God, the Sovereign Father, Prince and King of all, has given them a share, what will be the effect other than to alienate their affections to a dangerous extent." Text published in LECLER, *op. cit. supra* note 23, at 77.

³⁰ Among those who would be inclined to follow

Conclusion

It has been the purpose of this article to set forth the four fundamental principles of Christian theology which must serve as a point of departure if one is to formulate a true and workable doctrine on Church-State relations. As we have noted above, no attempt has been made to offer anything new or original. What we have seen, however, can lead us to formulate the conclusions which follow below.

First of all, inasmuch as legitimate civil authority, or the State, finds its origins in God Himself, all must regard it as something sacred and extend to it that respect and obedience which its sacredness demands. Secondly, since both Church and State have been given precise purposes by God, each is limited to operate within the restrictions of its own field; one must not violate the competency of the other. Thirdly, even though it is basic Catholic doctrine that Church and State must work out some harmonious form of existence, no practical solution presented by any period of history has been authoritatively defined as the model for all times and localities. Finally, although the Church teaches that she possesses a certain primacy over the State, neither the theory of Robert Bellarmine nor that of John of Paris has been officially and categorically imposed.

When the lawyer, legislator, or elected public official has mastered these principles and conclusions, his insights into the complexity of the Church-State issue cannot be but deepened and matured.

the theory of John of Paris we might mention: LECLER, *op. cit. supra* note 23; Murray, *supra* note 27; De Lubac, *Le pouvoir de l'Église en matière temporelle*, 12 REVUE DES SCIENCES RELIGIEUSES 32-54 (1932); RIVIÈRE, LE PROBLÈME DE L'ÉGLISE ET DE L'ÉTAT AU TEMPS DE PHILIPPE LE BEL (Louvain 1926).