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Recommended Citation

Rev. William F. Cahill (2016) "The State's Guarantee of Liberty - A Moral Evaluation," *The Catholic Lawyer*: Vol. 8 : No. 1 , Article 4.
Available at: <https://scholarship.law.stjohns.edu/tcl/vol8/iss1/4>

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THE STATE'S GUARANTEE OF LIBERTY—

A Moral Evaluation†

REV. WILLIAM F. CAHILL*

THE GUARANTEE to be evaluated may be described in a few words. The state pledges, by its internal law or by treaty, that it will protect persons within its jurisdiction against molestation in the exercise of their religious and ethical beliefs, and that this exercise, as such, will not deprive them of any benefit provided by the state's laws. The pledge is, of course, limited by operation of laws that safeguard the peace of the state and security of its residents.

Our evaluation will be made by inquiring into the moral object, intent and effects of the acts by which the state gives and implements the guarantee. If the state, or at least its chief organ, be an individual prince, no one but a Machiavellian will question this approach to our task. Certainly the man whose political power is absolute is still a man, obliged by his human nature and God's will to know the relation of his every concrete act to his ultimate end, and to choose in each such act means that will lead him to that end. When a prince pledges toleration, his act has a dual impact upon the moral order. As a concrete human act, it is either an act of sin or an act of virtue, according as it impedes or advances the prince's progress to moral perfection and salvation. But because his act makes law, it also affects his moral rights and the moral obligations of his subjects. His act has this second effect by expanding the subject matter of his rights and the content of his subjects' obligations. Assuming, of course, that the prince's pledge is a morally valid exercise of political power, his subjects are now obliged, though they were not before, to forbear the use of private or public force to coerce others in the exercise of their ethical and religious beliefs. The prince has a new moral right, which his subjects violate if they use the coercion he has forbidden.

† Paper read at the annual meeting of the Catholic Theological Society of America held in Ottawa in June 1961. Subsequently published in Vol. 16-1962 of the Proceedings of the Society.

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The state which is not, and whose principal organ is not, a physical person has no personal end of moral perfection and no destiny of personal fruition in God. Unlike their citizens, officials, stockholders, directors, members and leaders, the United States of America, the General Motors Corporation and the United Mine Workers are not destined to heaven or even to limbo nor, by the same token, are they in danger of hell. Having no human personality, the state which is a moral entity is not capable of those personal acts of knowing and willing which incur the guilt of sin, or perfect virtue, and achieve grace and merit. The pledge of toleration given by such a state has not the primary impact of fault or virtue in the moral order. Nevertheless, the state, like the corporation and the voluntary association, does effect the second impact upon the moral order — its impersonal acts alter the complex of rights and duties in which men live, by affecting the material subjected to those rights and duties. That material may be a line of social conduct, a period of labor, a check, an automobile, or a piece of real estate. General Motors can, by an act of sale, give me moral title to a car, so that it is my car and no one can take it from me without doing a moral wrong which violates my moral rights. There should be no difficulty in seeing that the United States can morally oblige me not to put my hand over the mouth of a canting Jehovah Witness, though I might have done so without moral fault if the law had not forbidden it. One supposes, of course, that the act of sale and the act of lawmaking have the qualities needed to make them effective in the objective order of morals.¹

¹ See Bortolotti, *Obligationis Status Veram Religionem Profitendi Praemissae et Limites*, 48 PE-

Our principal purpose in attempting a moral evaluation of the state's guarantee of toleration is to determine whether and when the state's act has the effect of creating moral rights and duties. This evaluation will, of course, be a necessary premise in any judgment upon the acts by which an individual man exercises his human faculties either alone or in conjunction with the powers he enjoys in his political system, to advance or impede, implement or violate, the pledge of his state to protect the exercise of belief. This paper will discuss the moral quality of the state's guarantee, without attempting the broader task of judging the conduct of individual persons.

The Moral Object of the Guarantee

The object of the guarantee is quite distinct from the object of the acts by which religious and ethical belief is exercised. The moral object of the believer's act is good or evil as his practical judgment, premised on his belief and implemented in his exercise of belief, is a true or a false reflection of the theological, ontological and moral orders. If that practical judgment is erroneous, representing as permissible or mandatory an act which is evil in its object, the objective moral order is violated no less than if the believer had acted contrary to a correct practical judgment. Human sacrifice is, in its object, murderous and blasphemous. To advocate atheism or free love, even when one is motivated by a horror of superstition and hypocrisy, is to attempt to turn the minds and wills of one's hearers away from God Himself, or from the kind of love God imposes mandatorily upon His human creatures.

On the other hand, the act by which

RIODICA 298, 303-05 (Rome, 1959) [hereinafter cited as Bortolotti].

the state protects some murderers and some advocates of atheism and free love from punishment and molestation, does not have murder or atheism or free love for its object. The object of this act is to forbear punishing, or to save from molestation, a person whom the state is able, physically and morally, to punish or to leave open to molestation. This object is dissonant from the moral order if a moral principle or precept requires, unconditionally, that the state shall punish and shall refuse protection to all wrongdoers. It is submitted that the object of the state's guarantee of religious and ethical toleration is not evil per se nor by reason of divine precept.

The act of toleration differs, again, from an act which purports to give a moral right to teach error or to do evil.² A moral right is a faculty, valid in the realm of morals, to act in a certain way. When the act is external, the right imports a moral claim upon the aid or forbearance of others. The moral right and its concomitant claim are always premised upon the mind and will of God Who is author of the moral order. God Himself cannot command or authorize a man to act in violation of that moral human nature which, in its essential addiction to truth and goodness, is God's own image. The nature of man prevents his receiving from anyone a right to do evil. God Himself cannot give a moral right to teach falsehood or to do evil. The nature of the state's authority over human conduct, as a sharing in and a derivative from God's authority, prevents the state from conferring such a right.³

² See Boucher, *Liberte Morale*, DICTIONNAIRE DE THEOLOGIE CATHOLIQUE 9:col. 701 [hereinafter cited as Boucher].

³ See Pius XII, *Allocutio iis qui interfuerunt Conventui quinto nationali Italico Unionis Iureconsul-*

An act of toleration which purports to confer or protect a right to teach error or to do evil, has an object which is evil per se. Pope Leo XIII taught that a state guarantee of total religious liberty as a gift of nature is never morally right.⁴

Father John Courtney Murray points out that some of our American contemporaries advocate this kind of guarantee, and profess to find it imposed upon all Americans, as an "agreement on ultimates," by the federal constitution.⁵ The Protestant thesis asserts that the first amendment's religious liberty clause imports the doctrine that individual conscience is the absolute voice of God, not answerable to any external norm of good and evil. The secularist thesis similarly maintains that the clause has a dogmatic sense, and that the doctrine imposed by the clause is either absolute or agnostic moral and religious indifferentism. These doctrines are, in sum, that there are no moral or religious absolutes, or no knowable ones, because if there be any divine order for human life we cannot know it by scientifically empirical methods, and metaphysical reflection has no validity.⁶ Father Murray shows clearly that the clause, in our history and in our present social reality, has no such import. Rather, it is an "article of peace," a guarantee of free exercise which makes no doctrinaire

torum catholicorum, habita 6 Dec., 1953, ACTA APOSTOLICAE SEDIS 45:794, 798 [hereinafter cited as Pius XII, Allocutio]. For English translation see 52 CATHOLIC MIND 244 (1954).

⁴ Leo XIII, *Litt. Encycl. Libertas*, 20 Jun. 1888, GASPARRI, *CODICIS IURIS CANONICI FONTES* 3:295, 310; N. 600, § 30.

⁵ MURRAY, *WE HOLD THESE TRUTHS* 51 (New York, 1960) [hereinafter cited as MURRAY]. See also Father Murray's essay in *A Church-State Anthology* (Yanitelli ed.), 27 *THOUGHT* 6 (1952) and Father Gustave Weigel's, *The Church and the Democratic State*, 27 *THOUGHT* 161 (1952).

⁶ MURRAY 51.

assertion that total religious liberty is man's endowment, either by nature or by grace.⁷ The clause is not now, and never was, an "agreement on ultimates;" it is "an agreement on the good of man at the level of performance."⁸

Father Bortolotti has found it necessary to refute a distortion of Pope Leo's doctrine on the guarantee of religious liberty. In his study of the obligation of states to profess religious truth, he points out that there is no logical inconsistency between a state's profession of true religion and its simultaneous grant of entire freedom to propagate false religions and to exercise their public worship.⁹ He does not advocate such a grant. He holds that a state which professes Catholicism must protect the Church against the unjust aggressions of false propaganda, when the Church asks for such protection. But he expressly rejects the notion that the state's profession of Catholicism directly obliges it to refuse all toleration.¹⁰ This very wise man restricts his discussion of toleration to a single aspect of "this complex and rugged question," but he says enough to indicate that toleration which imports only an agreement on the good of man at the level of performance has not a moral object which is evil per se.

Pope Pius XII taught that the practice of toleration — the forbearance of the state to impede violations of religious truth and moral law, when the means of impeding those things are at hand — is not an evil in se, because God Who holds the world in His hand does not violate His own holiness by such forbearance. Nor, said

the Pope, has God given to any human power a command, absolute and universal, to impede all trespasses upon the truths of faith or upon good morals.¹¹

Our thesis, that the state's guarantee of toleration is not evil in its moral object, is clearly implied in these conclusions of Pope Pius XII: "The duty to repress moral and religious deviations cannot be, therefore, an ultimate norm of action. This (duty) must be subordinated to higher and moral general norms . . ."¹² But the duty to repress evil would be an ultimate norm of action, and would be subject to no higher norm, if the act of tolerating evil by giving to evildoers legal protections and immunities were wrongful in its very object.

The Pope, in developing these conclusions, refers to the parable of the wheat and the cockle¹³ as one of many scriptural passages which show that toleration of evil is not evil in its object. This parable seems particularly apposite to our problem. The parable teaches that an immunity from punishment or molestation can be conferred upon evildoers by an authority which imposes upon other men a moral duty not to molest the wrongdoers and to leave them in the enjoyment of the common goods of human life. If the parable does not teach this, then one would have to say that the servants who found the cockle were morally free to disobey their master, to gather the cockle though in doing so they uprooted the wheat. The parable was addressed directly to the Apostles, and seems quite clearly to be intended as a norm of action for the Church. If the Church, whose very mission is the preservation of truth and the salvation of souls, may follow the

⁷ MURRAY 57-63.

⁸ MURRAY 54.

⁹ Bortolotti 317.

¹⁰ Bortolotti 318.

¹¹ Pius XII, *Allocutio* 799.

¹² *Ibid.*

¹³ MATT. 13:24-30.

householder as an exemplar of prudence, why may not the state also imitate him?

It may seem to some that the guarantees we have described are broader than those Pope Pius contemplated in his allocution, and that our vindication of the broader guarantees is not warranted by our premises. The subject of the Pope's address was a treaty which would assure to all citizens of a number of associated states the guarantee of freedom to exercise their beliefs in the territory of any of the member states. He answered negatively this specific question: Is it absolutely wrong for a Catholic state, as a member of the association, to adhere to the treaty which will give this guarantee for exercise in its territory of any and all religious beliefs admitted by the other associated states?¹⁴

The Pope's remarks do not advert to the question of an internal law of a Catholic state which would give the same guarantee to its citizens as the treaty would give to aliens sojourning within its borders. But the direct moral object of the treaty and of the law are the same. Clearly, if the treaty is not evil, either in se or by divine precept, then the law is not evil in its object.

Again, the Pope speaks explicitly only of immunity of friendly aliens from coercion by the laws of the state which is their host. He does not mention a guarantee that the host state's laws will protect the aliens from molestation by private persons. But to grant to either aliens or citizens an immunity from legal action, without protecting them from molestation by those who are not state agents, would be an absurd and provocative invitation to violence and disorder. So the Pope's moral

judgment, or at least its premises, seems to support the conclusion that the broader guarantee here described is not wrongful in its moral object.

I believe we should at this point show, at least summarily, that traditional Catholic theology does not insist that state toleration is an evil in se or by reason of divine precept. For this purpose, it may suffice to point out some of the teachings of St. Thomas on the duty of states to impede error and evil.

The premise which underlies all of St. Thomas' doctrine on this matter is that human authority, because it derives from the power of God, should imitate God in the use of power. Particularly, human authority should learn of God to tolerate evil. God, though almighty and supremely good, permits evil happenings which He could prevent, lest through the removal of them greater goods should be lost or greater evils should follow.¹⁵

Jews and pagans who have never accepted the Christian Faith should not be coerced in any way to profess it.¹⁶ Thomas sees a positive good resulting from toleration of the Jewish ritual. The beliefs of the Jews reflect the historical and prophetic background of the Christian Faith. Their ritual is a witness, more effective because an unfriendly witness, to the truth of Christianity, and it teaches Christians some of the truths of their own Faith.¹⁷

On the contrary, there is no affirmative good resulting to the Church from the toleration of heretics which can offset the grave harm threatened by the dissidents' intent to corrupt the faith of the members

¹⁵ SUMMA THEOLOGICA 2-2, 10, 11, c. [hereinafter cited as SUMMA, with indication of Part, Question, Article, place in the Article.]

¹⁶ SUMMA, 2-2, 10, 8, ad 2.

¹⁷ *Ibid.*

¹⁴ Pius XII, *Allocutio* 797.

of the Church.¹⁸

Thomas adverts to the etymology of the term heresy. It derives from the Greek word for choice and imports that every man shall and may choose whatever teaching he thinks best.¹⁹ A heretic is a Christian who rejects a doctrine of Christ and chooses in its stead a doctrine which pleases him, for reasons of profit, power or prestige,²⁰ or because the doctrine appeals to his carnal fancy.²¹

It is the intent of heretics to corrupt the Christian Faith.²² Certainly the Church must excommunicate them, lest they succeed in that intent, and the Church may permit the state to put them to death, for the same defensive purpose.²³ The threat of death is not made against them in order to bring the heretics to salvation, for no one can be forced into union with Christ. Death is inflicted, and justly, to punish men who have broken the pledge they made to hold the Faith when they accepted it, and the threat of death is made in order to compel performance of that pledge by those whose stand in the Faith is weakened by the carnal attractions that draw men to heresy.²⁴

Yet Thomas teaches that there are reasons sufficient for the Church to save even the most pertinacious heretics from death and other harms of the temporal order. The most cogent reason is to avoid a schism in the Church, caused by those who sympathize with the heretics.²⁵ The Church has, in fact, permitted the Pelagians and

other heretics to practice their beliefs in order, as Thomas says, to avoid scandal. The scandal might be suffered by true believers, by reason of the quarreling that intolerance would cause, or it might be suffered by the heretics and other unbelievers whose gradual and sincere conversion might be jeopardized by the refusal of toleration.²⁶ One should note that this toleration in temporal matters does not import relaxation of excommunication of heretics.

Thomas says that the "perfidious apostates," those who once held the Christian Faith but now reject all faith in God, are in far worse case as regards salvation than the pagans, Jews or even heretics.²⁷ He considers the menace offered to the Christian community by apostate rulers,²⁸ but he does not exclude apostates from the toleration he declares may be given to unbelievers generally.²⁹

In all this, Thomas does not consider directly the rights and duties of the state in respect of tolerating or repressing unbelief. His remarks on the death sentence for heretics imply that this can be justly inflicted by the state, but all the evils and goods he balances in this discussion are things which affect the Church or the salvation of individuals. Yet he must have intended that the state, as a human authority, should learn of God to tolerate evil for the sake of securing a greater good or forfending a greater evil. And he must be taken to imply that goods and evils which affect the temporal common weal, which is the charge of the state, should be weighed in the balance with the spiritual

¹⁸ SUMMA, 2-2, 11, 3, ad 2.

¹⁹ SUMMA, 2-2, 11, 1, arg. 1.

²⁰ SUMMA, 2-2, 11, 1, arg. 2 and c.

²¹ SUMMA, 2-2, 11, 1, ad 3.

²² SUMMA, 2-2, 11, 3, ad 2.

²³ SUMMA, 2-2, 11, 3, ad 3.

²⁴ SUMMA, 2-2, 10, 8, tot. art.

²⁵ SUMMA, 2-2, 10, 8, ad 1.

²⁶ SUMMA, 2-2, 10, 11, c.

²⁷ SUMMA, 2-2, 12, 1, c.

²⁸ SUMMA, 2-2, 12, 2, tot. art.

²⁹ SUMMA, 2-2, 10, 11, tot. art.

goods and evils he enumerates as objects of the Church's immediate concern.

Vitoria, the great theologian and jurist, considers the application of St. Thomas' doctrine by a Christian prince who rules unbelievers. He argues that when the prince has undertaken to rule the pagans upon a stipulation that he will permit them to retain their ritual, then he cannot coerce them in these matters, "for in this they are not his subjects, since he has no power but what they gave him."³⁰ Vitoria insists that no Christian prince has power to impose higher taxes or diminish the liberties of his pagan subjects in comparison to his Christian subjects, for he has no more power over one than over the other. The Christian must rule a pagan country so that its material resources are conserved and increased, and not despoiled,³¹ nor should he deny the right of coinage if the prosperity of the country demands it.³²

The Moral Intent of the Guarantee

Every human act, precisely because it is human, proceeds from a deliberate will. The will always takes its direction from a final purpose or end. The end is so called because it is the first in the series of causes that bring a man to act. It is first for the reason that if the man who is about to act knows that the end cannot be achieved, he will not act.³³

Though the will-act of a moral person has not the psychological process which we call intent in the act of a physical person,

yet the moral person's act has intent analogically and juridically. A corporation can give a deed which is absolute on its face, but the deed will operate in law as a trust or a mortgage if the court finds that the corporation intended the transfer in trust or to secure a debt. The legal and moral rights of the corporation and of its grantee, and even those of third persons, are different in each of the three cases.

Similarly, the acts of democratic and other corporate governments may be said to have intents which have effect in the juridical and moral orders. We are all familiar with the effect of a legislature's intent upon the rights and duties of persons subject to its laws.

We should remember that the law's intent is the intent of the law — the intent of the state or its lawmaking organ, expressed or implied in the official action by which the law is made. One cannot attribute to the state or to its law every purpose for which individuals have advocated the law or voted for it, or now execute it or take advantage of it. A law may be unexceptionable in its legal intent, though many or even most of the citizens or officials of the state support it or employ it for evil purposes. The existence of such evil private intents may very well raise a proper question concerning the moral value of the law's effects, but that is a question quite distinct from the question of the law's intent which concerns us here.

It is not necessary to imagine a case in which the legal guarantee of religious liberty was given with morally evil intent. Pius IX describes the enactments of the Mexican revolutionary regime of the 1850's.³⁴ He says that freedom of expres-

³⁰ VITORIA, *De La Templanza*, Fragment, IX Conclusion, OBRAS DE FRANCISCO DE VITORIA 1053-54 (Madrid, 1960) [hereinafter cited as VITORIA, with reference to textual division and to this edition's pagination].

³¹ VITORIA, X and XI Conclusions, 1054-55.

³² VITORIA, XII Conclusion, 1055.

³³ SUMMA, 1-2, 1, 3, c.

³⁴ Pius IX, *Allocutio, Numquam fore* 15 Dec. 1856, GASPARRI. C.I.C. FONTES 2: 913; N. 522, § 4.

sion was guaranteed by law for three purposes: to corrupt the people's minds and morals, to further indifferentism, and to root out the Catholic religion. Aside from any explicit declaration of the "legislative intent," his judgment is supported by the fact that the same set of laws expressly forbade anyone to assume any religious obligation, by contract, promise or vow. It was from this allocution on the Mexican laws that the Syllabus of 1864 drew its seventy-ninth proposition, which we will discuss later.³⁵

When, in fact, a state guarantee of freedom to exercise religious and moral belief is endowed of an evil intent, that intent certainly affects the law's impact upon the moral order. And the moral impact of a law whose intent alone is evil differs from the impact of a law whose very object is evil. A law whose object is to establish a right to do moral wrong is an attempt to do the impossible, as has been shown in the previous section. Such a law is a nullity in the moral order — it cannot create moral rights or obligations in anyone. This kind of law is exemplified in the Mexican enactment forbidding the assumption of religious obligations. On the other hand, a law whose object is not evil in se but whose intent is to accomplish moral evil, such as the perversion of men's consciences in the Mexican example, does not, for that reason alone, fail to create moral rights and duties.

For example, I do not think that a firstborn son would do his brothers and sisters an injustice by taking his father's entire estate under a rule of primogeniture, simply because the rule had been introduced into the law with evil intent. Suppose

that the rule were made as part of a scheme of family law whose design was to encourage the use of contraception. The object of the rule — to pass the estate to the firstborn son — is not evil in se, and the rule may, in given social circumstances, have an actual effect in which good outweighs evil.

In the area of toleration, however, I believe it is very difficult to postulate a concrete situation in which the law's intent to accomplish an evil purpose would not cause the object of the law to be so formulated that the object itself would be evil, or would not cause the law's operation to yield effects which would, on balance, weigh well on the side of evil. Certainly the Mexican government's intent to destroy religion inspired it to embrace the legislative object of conferring an unlimited right to express erroneous opinions. As to the effects of the government's conduct, even a century later any serious student of Mexican life must conclude that religious belief in that people has been weakened more by the law's attitude of contempt for religion than by its actual persecutions.

It hardly needs to be said that the principles governing formal and material cooperation must be applied in evaluating the acts of citizens and officials of a state where toleration is proposed or has been enacted for an evil purpose.

The Moral Effects of the Guarantee

In the circumstances of the politically free and mature nations of our time, one is not likely to encounter laws of toleration which can be categorized as evil in their object or in their juridical intent. The moral impact of these guarantees must be evaluated chiefly from their moral effects. The test here may be put as a question:

³⁵ Pius IX, *Syllabus Errorum* (a. 1864), GASPARRI, C.I.C. FONTES 2: 1009; N. 543, § X.

Is the legal guarantee justified in the interest of a higher and broader good? That last phrase, "justified in the interest of a higher and broader good," is the language of Pius XII.³⁶ He was at pains to follow it immediately with a declaration that the question of justification for a law or a treaty guaranteeing toleration is a question of fact, to be decided in the concrete case.

In the process of decision he describes, the very first consideration is that of "the harmful consequences of toleration." In his statements that toleration needs to be justified, and that in doing so its harmful effects may never be passed over, I think we may see implied two judgments which serve to guide this discussion. Toleration, since it needs the justification of a higher and greater good, is certainly not a good in se. For the same reason, and because attention must always be given to toleration's harmful effects, it must be that harmful effects are produced by toleration in the strict sense of being caused thereby, and not merely in the broad sense in which effects are attributed to an act which only occasions them. These two judgments, I believe, hark back to the seventy-ninth proposition of the Syllabus of Errors. Pius IX said that civil liberty of worship for everyone, and full civil authorization given all men openly and publicly to set forth all opinions and ideas, tend readily to the corruption of the minds and morals of peoples, and to the spread of the plague of indifferentism.³⁷ A century after the Sylla-

bus, civil liberty of belief still serves the purpose of dogmatic indifferentism. The recent pastoral letter of the Bishops of Italy describes the thesis of the atheistic humanists and shows clearly how that thesis is implemented in their country. Religious principle and practice are purely private matters — the life and activity of civil society has no place for them. Therefore the humanist educators, sociologists and politicians protest and contest every application of religious values in public affairs, and try to eliminate every juridical basis for such application.³⁸

I believe, therefore, that it would be inadmissible for a Catholic, in discussing civil toleration, to accept the premise that the guarantee of freedom in the practice of all religious and ethical beliefs is a good in itself, or that the guarantee is only a remote and relative, rather than proximate and absolute, occasion of evil. To accept such a proposition might import a departure from papal teaching and from a prime premise of all Catholic thought on the problem of toleration. No servant of Christ's household, though he forbears to root out the cockle of error, can blink the fact that cockle allowed to grow in a wheat field harms the wheat. Alternatively, a Catholic's acceptance of such a premise would seem to involve him, conscious or not, in dishonesty, moral or intellectual.

I advert to this aspect of our problem, not because I know any Catholic writer who has accepted the objectionable premise, but because some secular writers and their readers seem to have taken the impression that the Church, or the late Pope,

³⁶ Pius XII, *Allocutio* 799.

³⁷ Pius IX, *loc. cit. supra* note 35: "Enimvero falsum est, civilem cuiusque cultus libertatem, itemque plenam potestatem omnibus attributam quaslibet opiniones cogitationesque palam publiceque manifestandi conducere ad populorum mores animosque facilius corrumpendos ac indifferentismi pestem propagandam."

³⁸ The text of the letter, titled *L'Atteggiamento della Chiesa di Fronte al Fenomeno del Laicismo*, and dated 25 March 1960, is offered in 7 *MONITOR ECCLESIASTICUS* 577 (Rome, 1960).

or some Catholic publicists, have come to view toleration as a good in itself.

What Father Murray has said about the consent given by Catholics to the first amendment as an "article of peace,"³⁹ states well the Catholic moral evaluation of any guarantee that falls within the description set out at the beginning of this paper. Guarantees of this sort have their origins in moral principle and impose moral obligations when, in the concrete case, they are for the common good.

An enactment of the sort described is for the common good when, in the particular case examined,⁴⁰ the law of toleration brings to the community good effects greater and higher than the good lost through the erroneous propaganda and evil practice which the law permits. According to Pope Pius XII, the weight of the good effect, as against that of the evil, may be so great that the state has no duty, and even no right, to deny toleration.⁴¹

One should note that the good effects which can justify the act of toleration despite the evil the act occasions are the effects of the act of toleration itself; there is no question of seeking to throw into the moral balance any good effect which erroneous teaching or evil conduct may produce.

What sort of good effects can free the state of any duty to impede evil, or even deprive it of any right to do so? Pope Pius mentioned those goods directly pertinent to the supranational community to whose formation the treaty he examined was directed. He spoke of peace and the realization of the human faith in a higher com-

munity of men, willed by their Creator, rooted in their common origin, nature and last end.⁴² Surely, the achievement of peace and union within the existing national states is a great good in respect of those states. Indeed, in the given circumstances of a national state, the achievement and consolidation of these goods may require toleration as necessarily as in the international community, or perhaps more so.

St. Thomas dignified as "secundum se bonum" the public peace of a country. The peace has that dignity — it is not merely useful — because many more men will use it for good purposes than for evil. It gives security against evils far worse than those perpetrated under its protection, so that it does not become evil when some use it for evil purposes.⁴³

Of course peace in its most proper sense is in the individual whose heart is at one with itself. Peace in the larger sense — the union of wills among a number of men — is properly called concord, and civil peace is of this kind.⁴⁴ But even peace in this larger sense is the product of charity, in which we love our neighbors as ourselves, desiring what they desire.⁴⁵

Men's faith in the human community, national or supranational, cannot be realized without charity to their fellows. Against any good achieved by state action repressing the exercise of erroneous belief, must be weighed the effect of this repression upon that charity without which the peace and unity of the community cannot flourish. Even when an evildoer acts from conviction, it is difficult for those who use his action as a premise for punishing him

³⁹ MURRAY 63.

⁴⁰ Pius XII, *Allocutio* 798: "in determinate circostanze."

⁴¹ *Id.* at 798-99.

⁴² *Id.* at 795.

⁴³ SUMMA, 2-2, 123, 5, ad 3.

⁴⁴ SUMMA, 2-2, 29, 1, c.

⁴⁵ SUMMA, 2-2, 29, 3, c.

or depriving him of some share in the common goods of life to wish him well. On the other hand, it is almost impossible for him under the limitations of human psychology, to desire the welfare and happiness of his just oppressors.

Pope Pius notes some human tendencies which work against peace and union on the supranational level. These have the same effect within nations, and the effect is intensified where the population is diversified by racial, cultural and religious differences. There is the tendency to assimilate or to remove, even by force, those who differ from the group, and there is a contrary tendency in each group to close and segregate itself, refusing to give anything of itself to outsiders.⁴⁶

The Pope states a fundamental principle for dealing with these tendencies. Within the limits of the possible and lawful, everything that makes union more easy and efficacious must be done. All that disturbs concord must be restrained. Sometimes what cannot be corrected must be borne, more than that, it must not be permitted to wreck the community, for the community serves a higher good.⁴⁷

His Holiness remarked that the real difficulty lies in applying that principle. We owe much to Father Murray for his excellent exposition of how the authors of the federal constitution made that application in a country whose population was fragmented by deep religious differences.⁴⁸

The Pope did not speak of another good effect of legal guarantees of toleration which has engaged the attention of many Catholics in recent years. This is toleration's effect of attracting men to explore

and embrace the truth in religion and ethics, by bringing to their attention the appeal of truth itself to the human mind, and its value as a guide to human happiness. By abhorring to use coercion in matters of religious and ethical belief, it is said that the state gives honor to three truths whose recognition is invaluable to human happiness. The truth itself has power to engage the assent of honest minds. Goodness itself attracts men's free allegiance. God's grace is the only outside influence properly effective within the citadel of man's mind and will.

The state's effective acknowledgment of these truths is a good in itself. The state's employment of toleration is still not a good in itself, but it is justified as a means of making this profession, provided that this and other good effects outweigh toleration's tendency to confirm men in error or evil doing. The scale which weighs toleration's effects will indicate even greater justification when the state's profession of these truths causes individual men to recognize and embrace the opportunities and duties which nature and grace offer and impose.

We should note that ours is not the first generation of Catholics to perceive these good effects of toleration and to value them highly. Vitoria, following St. Thomas and Aristotle, held that a Christian prince should repress human sacrifices and other immoral practices which formed part of the religious ritual of pagan people under his rule.⁴⁹ He pointed out, however, that though such repression is good in its object, one must judge it by its effects in the concrete. He felt that to compel men by severe penalties to abjure immediately and entirely the customs of their ancestors was an

⁴⁶ Pius XII, *Allocutio* 796.

⁴⁷ *Id.* at 797.

⁴⁸ MURRAY 57-63.

⁴⁹ VITORIA, I and II Conclusions, 1041-47.

insufferable oppression.⁵⁰ Further, the good object of the law would not save it from giving great scandal if it actually or seemingly compelled men by force to become Christians. Vitoria regarded as one of the glories of Christianity, and a weighty argument for its truth, the fact that Christians have always approached infidels with arguments of reason and the evidence of miracles rather than with force, and have never compelled them to become Christians.⁵¹ If one could be sure that coercion would make sincere Christians, a coercive law might be justified, but Vitoria believed that repressive laws are much more likely to arouse hatred for the true religion and thus work against the common good which all law should promote.⁵²

In his book on man and the state, Maritain insists that a modern democratic society inspired by Christianity must not infringe the right of each citizen to dissent from the faith held by his fellows, even if he be utterly alone in his dissent.⁵³ Cardinal Lercaro's famous lecture demonstrated that the Catholic doctrine of toleration has not changed in principle, though its historical applications have varied. The variance, as the Cardinal indicates, is proportioned to the presence or absence of good faith in unbelievers. When one rejects the truth he knows, there is nothing in his act which demands respect or motivates tolerance. When, by the circumstances of history, dissent has become hereditary and is therefore generally maintained in good faith, tolerance is demanded by the duty to respect the human personality of the dissenter, by the respect due to the nature of truth which

excludes its acceptance by force, and by respect for the action of God in the souls of men.⁵⁴ Assuming the same historical postulate of good faith, Father Enda McDonagh of Maynooth shows that tolerance is a necessary characteristic of the sincere proponent of religious truth. Intolerance in a Catholic so gravely and obviously violates the virtues of justice, charity and humility, that it obscures the evidence of the true faith and confirms men in dissent.⁵⁵

Father Bortolotti⁵⁶ and Father Hayoit⁵⁷ have given us explicit treatments of the state's duty to profess philosophical and religious truth. Of civil toleration, Father Bortolotti says only that it is not incompatible with the state's profession of truth. On reading Father Hayoit's later article,⁵⁸ one wonders if it may be suggested that civil toleration is an apt means by which the state, in pursuit of its teaching mission, may profess the truths concerning man's personal dignity and the workings of truth and grace that have been cited by Cardinal Lercaro. Alternatively or concomitantly, is civil toleration to be urged as an exercise of the law's role in the moral improvement of its subjects? Good law, says St. Thomas, leads men to virtue, at least gradually.⁵⁹

Conclusions

When this paper was proposed, I was

⁵⁰ *Id.* at 1056, First Consideration.

⁵¹ *Id.* at 1056, Second Consideration.

⁵² *Id.* at 1056, Third Consideration.

⁵³ MARITAIN, *L'HOMME ET L'ETAT* 170-71 (Paris, 1953).

⁵⁴ Lercaro, *Tolleranza ed intolleranza religiosa*, 69 *IL DIRITTO ECCLESIASTICO* 97-112 (Milan, Aprile-Guigno 1958). See English reprint in 7 *CATHOLIC LAWYER* 125 (1961).

⁵⁵ McDonagh, *Tolerance*, 12 *THE FURROW* 49-55 (Maynooth, Jan. 1961).

⁵⁶ Bortolotti, *loc. cit. supra* note 1.

⁵⁷ Hayoit, *L'Etat a-t-il une mission doctrinale?* 11 *REVUE DIOCESAINE DE TOURNAI* 196-212 (Fev. 1956).

⁵⁸ Hayoit, *La doctrine catholique de la tolerance civile*, 15 *REVUE DIOCESAINE DE TOURNAI* 83-89 (Fev. 1960).

⁵⁹ *SUMMA*, 1-2, 96, 2, ad 2.

asked to offer in it an opinion regarding the direction and scope of recent developments in Catholic thought on toleration. Elements of that opinion have been expressed in the course of the paper. They are summarized here.

There has been no real development in the view that civil toleration is not evil in its moral object, although the truth of that proposition has been clarified, especially by Pope Pius XII's discourse. Our generation cannot claim to have discovered the true significance of the seventy-ninth proposition of the Syllabus of Pius IX, for that was clearly set out in Father Boucher's D.T.C. article on moral liberty, which was written in the early twenties.⁶⁰

There has been offered in recent years only one practical occasion for discussing guarantees of toleration loaded with doctrinaire intent. That was afforded by the litigation in the United States Supreme Court of problems related chiefly to religious schools. Father Murray, following Father Parsons,⁶¹ has exonerated our founding fathers from the allegation that they perpetrated an atrocity of that kind in the first amendment.

Most significant, I believe, has been Pope Pius XII's lucid exposition of the demands of peace and the development of the world community as affirmative goods of very high order which must, in present circumstances, be secured through guarantees of toleration.

The kind of writing that Cardinal Lercaro, Father McDonagh and Father Hayoit have given us will produce, I am sure, excellent effects. It will help to deepen the charity of Catholics toward men who dif-

fer from them on matters of religious or ethical principle. At the same time, this writing and its impact upon the Catholic community will do much to spread among non-catholics a better understanding of truth in general and of Catholic doctrine, and it will inspire and strengthen in them a great good will toward their Catholic fellow citizens.

There is much force in the axiom that men in society need truth more than they need bread, yet from this it does not follow that the law of the state can be as effective in meeting the one need as in providing for the other. I doubt seriously the effectiveness of the state and its coercive laws to explain and gain acceptance for the subtle truths in which salvation has its root. Any direct effort in this direction is better left to the personal influence of good men inspired by the Cardinal of Bologna and the Professor of Maynooth. State guarantees of religious and ethical liberty will do well if they keep the peace and avoid scandal, as the guarantees of Irish law certainly did during the regime of the Free State and seem to have done for over twenty years since they were written into the Constitution of the Republic of Ireland.⁶² If we may judge from recent attacks upon them and upon Father McDonagh's defense of them,⁶³ it is to be doubted that they are, in themselves, effective to teach high principles.

⁶² The guarantees are contained in the Constitution of Ireland, Art. 44, 2, 1° and 3°. They were carried over from the law of the Free State, in which regime their effect gave satisfaction to all religious groups. See the debates on this Article, June 4 and 9, 1937, in *Dail Eireann Parliamentary Debates, Official Report*, 17: col. 1888-95; 18: col. 229-35 (Dublin, 1937), and see BLANCHARD, *LE DROIT ECCLESIASTIQUE CONTEMPORAIN D'IRLANDE* (Paris, 1958).

⁶³ See II *THE FURROW* 768 (Maynooth, Nov. 1960).

⁶⁰ Boucher, *loc. cit. supra* note 2.

⁶¹ PARSONS, *THE FIRST FREEDOM* (New York, 1948).