

The Church-State Controversy on Religious Toleration

By

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One aspect of the discussion about the Catholic doctrine on the inter-relations of Church and State concerns that of the toleration of non-Catholic religions. One side of the Church-State controversy was engaged in contending rather forcefully that religious toleration is not consistent with Catholic doctrine. If one group of Catholic scholars argued strongly in favor of the contention that religious toleration is compatible with Catholic teaching, their opponents argued no less forcefully against that thesis. Usually people do not argue strongly in support of a contention which is not being denied and attacked with some measure of emphasis. In fact, this was the case in regard to the problem of tolerance.

I. The Conservative Catholic Position

The conservative Catholic position on the relation of Church and State had been capably presented in 1922 and restated in 1940 by John A. Ryan.¹ This position is derived from Ryan's commentary on Leo XIII's encyclical, *Immortale Dei*. In this encyclical Leo XIII declares that the state must not only have care for religion, but recognize the true religion. "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 teaching and practice - not such religion as they may have a preference for, but the religion

¹See John A. Ryan and Moorhouse F.X. Miller, *The State and the Church*, (New York: The Macmillan Co., 1922). The revised edition of this book appears as John A. Ryan and Francis J. Boland, *Catholic Principles of Politics*, (New York: The Macmillan Co., 1940). I use only the revised edition for reference.

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."² He further declares that "it is a sin in the State not to have care for religion, for we are bound absolutely to worship God in the way which He has shown to be His will."³ He concludes: "All who rule, therefore, should 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 under the credit and sanction of the laws, and neither to organize nor enact any measures that may compromise its safety."⁴ Defining the nature of the true religion, Leo says: "The only true religion is the one established by Jesus Christ Himself, and which He committed to His Church to protect and to propagate."⁵

In his commentary on *Immortale Dei*, Ryan asserted that if the State is under moral compulsion to profess and promote religion, it is obviously obliged to profess and promote only the religion that is true, for "no individual, no group of individuals, no society, no state is justified in supporting error or in according to error the same recognition as to truth." Ryan discussed the prohibition of heretical propaganda among Catholics as "a source of injury, a positive menace, to the religious welfare of true believers." Arguing that "against such an evil they [Catholics] have a right of protection by the Catholic State," he listed two reasons why this was the case. First, "this propaganda is harmful to the citizens and contrary to public welfare;" second, "it is not among the natural rights of the propagandists" because "rights are merely means to rational ends" and "no rational end is promoted by the dissemination of false doctrine." Ryan realized that "superficial champions of religious liberty" would be outraged by what he considered to be Catholic doctrine and that they "will promptly and indignantly denounce" it "as the essence of intolerance." However, although he admitted his views to be "intolerant," this did not mean that they were, therefore, "unreasonable."⁶

Actually when Ryan formulated what he took to be the Catholic position on religious tolerance he seemed to have implied, at least theoretically, civil intolerance. By his formulation he seemed to suggest that civil intolerance is logical in the light of the Catholic Church's claims to

²Leo XIII, *Immortale Dei*, ASS, 18 (1885). I have used the English edition by Etienne Gilson in *The Church Speaks to the Modern World. The Social Teaching of Leo XIII*, (New York: Image Books, 1957), p. 164.

³*Ibid.* Gilson presents a variant of the passage just quoted: "In like manner societies (*civitates*) cannot, without crime, act as though God did not exist, or cast off the care of religion as alien to them or useless, or out of several kinds of religion adopt whichever they prefer. On the contrary, societies are absolutely bound to the worship of God in the way which He has shown to be His will." *Ibid.*, p. 185.

⁴*Ibid.*

⁵*Ibid.*, p. 165.

⁶Ryan and Boland, *The Catholic Principles of Politics*, *op. cit.*, pp. 317-318.

be the one true Church. In fact, he claimed that anyone who accepts the unity of religious truth cannot deny the logic of his view of the Catholic Church's doctrine. Moreover, he argued:

If there is only one true religion, and if its possession is the most important good in life for States as well as individuals, then the public profession, protection, and promotion of this religion and the legal prohibition of all direct assaults upon it, become one of the most obvious and fundamental duties of the State. For it is the business of the state to safeguard and promote human welfare in all departments of life.⁷

Ryan believed that he had set forth the traditional and unchangeable doctrine of the Catholic church. The State is positively to profess, protect, and promote the one true religion and legally to prohibit attacks upon it. According to him this is Catholic doctrine, however rigorous its implications might be. Ryan immediately pointed out, however, that these propositions have "full applications only to the completely Catholic State - i.e., a political community that is either exclusively, or almost exclusively, made up of Catholics."⁸

Ryan went on to state the apparent logical implications of this doctrine for a state in which Catholics had formerly been numerically insignificant. In fact, although "all this is very true in logic and in theory, the event of its practical realization in any state or country is so remote in time and in probability that no practical man will let it disturb his equanimity or affect his attitude toward those who differ from him in religious faith."⁹ In other words, while this is precise in theory, in practice the non-Catholics have no grounds for fear (at least in the foreseeable future in the United States). In any event, according to Ryan, the principles of religious tolerance which he had set forth, are not to be abandoned simply to give way to the activities of non-Catholics. In summary, the traditional Catholic Church-State doctrine, according to Ryan's view, may be stated: doctrinal intolerance (one true religion) means civil intolerance in an overwhelmingly Catholic State; civil tolerance, not doctrinal acceptance, is justified on grounds of rational expediency; civil toleration is accepted because of "the positive provisions of religious liberty found in the constitutions of most modern States."¹⁰ The tolerance to which Catholics are bound in given situations is not to be gainsaid. In this regard Joseph Pohle had written:

If religious freedom has been accepted and sworn to as a fundamental law in a constitution, the obligation to show this tolerance is binding

⁷*Ibid.*, p. 319.

⁸*Ibid.*

⁹*Ibid.*, p. 320.

¹⁰*Ibid.*

in conscience. The principle of tolerance cannot be disregarded even by Catholic states without violation of oaths and loyalty, and without violent internal convulsions.¹¹

One of the basic arguments which conservatives used against progressive Catholics is summarized as follows: "Error has no rights." In connection with this Ryan said:

Error has not the same rights as truth. Since the profession and practice of error are contrary to human welfare, how can error have rights? How can the voluntary toleration of error be justified? As we have already pointed out, the man who defends the principle of toleration for all varieties of religious opinion, assume either that all religions are equally true or that the true cannot be distinguished from the false. On no other ground is it logically possible to accept the theory of indiscriminate and universal toleration.¹²

Ryan suggested in a footnote that the decision of the Supreme Court of the United States in the matter of polygamy should be considered:

In its decision sustaining the law for the suppression of polygamy in Utah, the United States Supreme Court thus characterized the propagation of the doctrine of polygamy. "The existence of such a propaganda is a blot on our civilization. The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. It is a contrary to the spirit of Christianity and of civilization which Christianity has produced in the Western world." *Late Corporation of the Church of Jesus Christ vs. United States*, 35 U.S.I.¹³

In other words, heretical propaganda endangers the community in a manner in which the practice of polygamy injures a community. Ryan argued that suppression of heresy, at least in a dominantly Catholic state, is like the suppression of polygamy in the United States, for in each case the welfare of the community requires "rational restraints."¹⁴ Both practices may be intolerant from the point of view of the one or group restricted; but neither is unreasonable, and each is therefore justified. It is at this point that the classic formula is employed: "Error has not the same rights as truth."¹⁵ The argument is stated briefly: Error has no rights. Therefore, error does not deserve legislation and those who propagate such error should be suppressed.

¹¹Joseph Pohle, "Toleration," *Catholic Encyclopedia*, vol. 14, as cited in Ryan and Boland, *Catholic Principles of Politics*, op. cit., p. 320.

¹²*Ibid.*, p. 318.

¹³*Ibid.*, p. 318 n. 6.

¹⁴*Ibid.*, p. 318.

¹⁵*Ibid.*

The conservative Catholic position on religious tolerance may now be restated in terms of the "thesis" and "hypothesis" language introduced in the chapter. *In thesi*, pure Catholic principles can be applied and only in these instances on religious freedom in which Roman Catholicism receives a preferential status. In principle, then, since by divine law Catholicism is the one true religion, it ought to be recognized the one true religion constitutionally and other religions should not be tolerated publicly. *In hypothesi*, pure Catholic principles cannot be applied "because of adverse circumstances - various less-than-ideal Church-state relations may be provisionally tolerated as lesser evils."¹⁶ In other words, religious tolerance is permitted as a lesser evil insofar as non-toleration produces more harm than good in the political society. For the conservative Catholic view, *in thesi*, a Catholic society is required as the basis for a Catholic state. Essentially the view has been that non-Catholic citizens in the political society are permitted to practice their own form of worship privately. Such persons are not, however, free to practice or propagate their views publicly. The reason given for such restriction is the welfare of the political society. Many renowned Catholic writers could be cited to set forth the conservative view at this point, but the testimony of Ryan is sufficient. He considered "the positive provisions for religious liberty found in the constitutions of most modern States."¹⁷ In connection with this, however, he considered what should happen in a State which having legitimately provided for religious tolerance found itself overwhelmingly Catholic.

Suppose that the constitutional obstacle to proscription of non-Catholics has been legitimately removed and they themselves have become numerically insignificant: what then would be the proper course of action for a Catholic State? Apparently, the latter State could logically tolerate only such religious activities as were confined to the members of the dissenting group. It could not permit them to carry on general propaganda nor accord their organization certain privileges that had formerly been extended to all religious corporations, for example, exemption from taxation.¹⁸

The conservative Catholic view emphasizes the political restraint of error for the sake of the common good i.e., the welfare of a society. Toleration of evil and error is justified only because obvious attempts to suppress them may entail still worse consequences. Hence, it becomes, in

¹⁶Thomas Love, *John Courtney Murray: Contemporary Church-State Theory*, (New York Doubleday, 1965), p. 97. Cf. Maurice M. Bevenot, "Thesis and Hypothesis," *Theological Studies*, XV (September 1954), pp. 440-446. Bevenot provides a short historical background to the first Catholic use of the term "thesis" and "hypothesis." He points out that the distinction between thesis and hypothesis entered the language of theology only in the nineteenth century, although the terminology had been current in the schools of rhetoric of the Greco-Roman world.

¹⁷Ryan and Boland, *Catholic Principles of Politics*, op. cit., p. 320.

¹⁸*Ibid.*

traditional terminology, expedient to permit what cannot be condoned. Etienne Gilson, a brilliant and highly respected Catholic thinker, took this position when discussing the notion of tolerance in the introduction to his edition of texts of the social teachings of Leo XIII. He said: "The only reason there is to tolerate evil is the care of the common good."¹⁹ For him what is to be condemned is "the tolerance born of a complete indifference to the true and the good."²⁰ Consequently, the Catholic Church never gives up its innate rights even though it may be necessary to acquiesce "to situations of fact," at least until a more opportune time.²¹ This political toleration presupposes a theological ethic which asserts that persons may not be coerced in conscience i.e., persons may not be coerced into the Catholic Church. Their freedom to remain non-Catholic is respected, but they may not be permitted to propagate their errors or to disregard the Catholic Church politically, in order not to endanger the common good.

The view of the conservative Catholic may be summarized as follows: (1) There is only one true religion i.e., the Church established by Christ; membership in this Church pertains to the highest good for man. (2) The Catholic Church alone must enjoy religious liberty; hence, the Catholic state is bound to help the Church and protect it from all attacks. (3) All other so-called religions are in error, and error does not have the same right as truth. Error must not be freely propagated. The consciences of individual persons are, of course, respected, but they are prohibited to gather publicly and to propagate error. (4) Thus, if the Catholics are in a great majority (e.g., in Spain or the Philippines) they are to oppose the external and public freedom of those holding different religious beliefs; on the other hand, if they are in the minority, religious freedom should be extended to them. It is rationally expedient to put up with the existing situation, until the minority becomes the overwhelming majority. The Roman Catholic Church simply waits for more favorable circumstances and always hopes that a time will come when it will be able to establish itself in a preferred status.

In 1944 Francis Connell, C.S.S.R., a renowned Catholic thinker came up with a view on church-state relations and religious toleration which was in accord with Ryan's. His article, "Freedom of Worship," was also a clear presentation of a conservative Catholic position and was believed to be "the only consistent stand that Catholics can take in view of their unchangeable tenets."²² He started with the fundamental Catholic doc-

¹⁹Gilson, ed., *The Church Speaks to the Modern World*, op. cit., p. 16.

²⁰*Ibid.*

²¹Cf. *Ibid.*, pp. 16-17.

²²Francis Connell, "Freedom of Worship: The Catholic Position," published as a pamphlet, (New York: The Paulist Press, 1944), p. 3.

trine that Jesus Christ established a religious society which He called His Church, in which all men should be members because it has for its unique aim and end the eternal salvation of souls. "By a special divine assistance, the Church would be preserved from error in its official teaching of religious doctrine." Consequently, Catholics are convinced that "the Catholic Church is the only organization authorized by God to teach religious truth and to conduct public religious worship." Similarly they hold that all creeds outside the Catholic Church are erroneous, and "that any religious organization which is separated from the Catholic Church lacks the approval and the authorization of God." They deny "the very existence of any other church" as "opposed to the command of Christ that all men should join His one Church."²³ From this doctrine he then set forth what he took to be the Catholic position relevant to religious liberty. He was convinced "that man has not an unqualified right to practice any religion he may choose."²⁴ It was in accord with this doctrine that Pope Pius IX, in his Syllabus of 1864, condemned the proposition: "Every man is free to embrace and to profess that religion which, guided by the light of reason, he judges true."²⁵

Connell tried to meet an obvious objection to the Catholic principle just enunciated, the right of conscience. He stated the objection in this way: "Every one has the right to do what his own conscience dictates as the proper thing to do; hence, a person who honestly believes a certain religion to be true has a perfect right to profess and practice it, whatever religion it may be." Connell argued that indeed a person "is allowed to act accordingly as far as his subjective dispositions are concerned." If the subjective dispositions of a person lead to error, such person might be said to be acting with an "invincibly erroneous conscience." However, Connell asserted simultaneously, the same person "has no real right to perform an action which is in fact sinful, - no matter how sincere he may be in judging it lawful." This is because "a genuine right is something objective, based on facts as they actually exist." He therefore concludes that the fact that a person "sincerely believes a certain religion to be true gives him no genuine right to accept that religion in opposition to God's command that all must embrace the one true religion." Likewise others are not obliged "to allow him the unrestricted practice of his religious beliefs." This Catholic attitude toward non-Catholic religious beliefs has to be called "doctrinal intolerance," but there is something more to be said here.²⁶

The central point which Connell wished to set forth is the second Catholic principle pertinent to freedom of worship. It is the principle of

²³*Ibid.*, pp. 3-4.

²⁴*Ibid.*, p. 6.

²⁵Denzinger, "Enchiridion," n. 1715, (Pius IX, Syllabus of Errors). I have used the English edition by Anne Fremantle in *The Papal Encyclicals in their Historical Context*, (New York: The New American Library, 1956), p. 145.

²⁶Connell, "Freedom of Worship: The Catholic Position," *op. cit.*, pp. 6-8.

personal tolerance.²⁷ Connell based its application on Christ's commandment: "Thou shalt love thy neighbor as thy self" (*Mk* 12:31). Thus the duty of supernatural love toward all men without exception, irrespective of their religious belief or unbelief, binds all Catholics to respect others in the practice of their religious beliefs. Connell maintained, however, that this does not imply that unrestricted freedom is to be allowed by Catholics to the religious activities of non-Catholics. He also posed a question which, when answered, was to call forth another principle that regulates the conduct of a Catholic government toward the non-Catholic in its domain. The question may be put in this way: In a Catholic country, does the civil ruler have the right to restrict or prevent denominational activities hostile to the Catholic religion? Further, is he justified in repressing religious propaganda detrimental to his belief, and that of most of the people? His answer is yes. Nevertheless, Connell adds:

Even in a predominantly Catholic country, circumstances may render it more advisable for the government to grant non-Catholics the same measure of freedom of worship as is enjoyed by Catholics. Such a course is justifiable when it is foreseen that a policy of complete toleration will prove greater good than will repressive measures against anti-Catholic activities. This is generally the case when a considerable number of the citizens are non-Catholics, though relatively they may be a small minority. In such circumstances a policy of restriction might lead some non-Catholics to enter the Catholic Church, not through conviction, but merely to obtain greater liberty or to gain political favor. This would be a grave spiritual evil which the civil rulers would justly wish to avert.²⁸

In connection with this Connell recalls the words of Pope Leo XIII on the principles that should guide Catholic governments. The Pope wrote:

The Church, indeed, deems it unlawful to place the various forms of divine worship on the same footing as the true religion, but does not on that account condemn those rulers who, for the sake of securing some great good or of hindering some great evil patiently allow custom or usage to be a kind of sanctions for each form of religion having its place in the state. And in fact the Church is willing to take earnest heed that no one shall be forced to embrace the Catholic faith against his will, for, as St. Augustine wisely reminds us, "Man cannot believe otherwise than of his own free will."²⁹

²⁷*Cf. Ibid.*, pp. 8-9.

²⁸*Ibid.*, pp. 11-12. This position of Connell seems to be at variance with that of Ryan. Essentially Ryan's view has been that non-Catholic citizens in political society in which Catholics predominate are permitted to practice their own form of worship only privately. Such persons are not, however, free to practice or propagate their views publicly. The reason for such restriction is the welfare of the political society. On the contrary, Connell argues that non-Catholics, whether in a majority or in a minority, may well be given the same measure of freedom of worship as that of the Catholics.

²⁹Leo XIII, *Immortale Dei*, ASS, 18 (1885), in Gilson, ed., *The Church Speaks to the Modern World*, op. cit., p. 178.

2. The Progressive Catholics' Objection to Traditional View

In 1948 and 1949, Murray, the spokesman for a progressive Catholic view, strongly objected to the conservative Catholic position on religious tolerance just set forth. He criticized it on the ground that the conservative view had confused the spiritual and temporal powers by reducing the latter to the status of an instrument of the former. He charged the conservatives with a failure in seeing that it is necessary to distinguish the two societies and their jurisdictions, so that spiritual authority is defined and limited by its pure spirituality, and that the autonomy of temporal power and governmental means is defined in accord with natural law. He was especially dissatisfied with the view that non-Catholics were prevented from enjoying a civil freedom to publicize their views simply because this would be harmful to the spiritual welfare of Catholic citizens. He said:

It may be that in a Catholic society heretical propaganda "does spiritual harm." Granted; nevertheless this is not the kind of harm that secular government, as the agent of public order, is bound by its office to ward off from its citizens. The protection of her members in the possession of their faith is the task of the Church; it is a spiritual, not a political task. And if the Church is too weak to perform this task successfully, she does not by that fact acquire a juridical right to invoke the coercive strength of secular government.³⁰

Murray argued that the Church alone has the prerogative to perform her own task – "the salvation of souls, the preservation and growth of her children in faith and grace, the maintenance of the integrity of her doctrine, the protection of her unity as the Body of Christ, the dispensation of the sacraments, the practice of supernatural virtue, the observance of the disciplinary code to which her subjects are bound, etc."³¹ This does not mean that the Church has no right to intervene in temporal affairs. In Murray's view, the Church is competent in view of its indirect power in temporal matters, but only in directing and correcting consciences.³² This spiritual power of the Church may never properly employ the gov-

³⁰Murray, John Courtney, "Governmental Repression of Heresy, *Proceedings of the Third Annual Convention of the Catholic Theological Society of America*. (Boston, June 1949), III, pp. 90-92.

³¹*Ibid.*, p. 76.

³²Cf. *Ibid.*, pp. 59-60. After study of the indirect power theory of John of Paris, Murray suggested that it is more accurate to say that the Church "indirectly has a power" in the temporal order than it is to say the Church as an "indirect power," since the *Magisterium* of the Church is an authoritative spiritual power directly affecting the spiritual order and this spiritual order only indirectly has effects in temporal matters. Cf. Murray, "Contemporary Orientations of Catholic Thought on Church and State in the light of History," *Theological Studies*, X (June 1949), p. 205. Murray added: "John of Paris therefore interprets the classic right of the Middle Ages, not in terms of a direct authority over the princely power as such, but in terms of the Church's moral jurisdiction over conscience: 'It is apparent that the ecclesiastical censure in its entirety is spiritual, consisting in excommunication, suspension, interdict; beyond this the Church has no power, except indirectly and *per accidens*.'" *Ibid.*, p. 208.

ernment as a "secular arm" to perform its task. Granted that heretical propaganda of other religious sects may cause spiritual harm to Catholic citizens, he insisted that the Church does not have the right to call for the government to do a task which is not within its proper interest. He then held that Ryan's representation of *Immortale Dei* goes beyond the text itself.

Nor can this motivation of governmental repression of heresy claim support in Catholic political philosophy; government has no more duty, and therefore right, thus directly to protect me in the undisturbed possession of my faith in the one true Church than the Church has duty or right to protect me in the undisturbed possession of my material property. I do not look to government for my religious welfare, but only for my religious freedom to seek my eternal welfare in the Church.³³

Murray also argued that "if the temporal power is distinct from the spiritual power, sovereign in a limited order distinct from the spiritual order, it cannot be that the distinctions asserted should vanish to permit the temporal power to become attached to the Church as her 'secular arm,' to minister to needs that are not secular but spiritual."³⁴ He accused Ryan of this "*fundamental simplisme*" in his argumentation.³⁵ He blamed Ryan for asserting that political authority has the obligation to proscribe the propagation of false religious doctrine among Catholics. Such an assertion, Murray argues, implies that the proper jurisdiction of the spiritual authority – the protection, preservation and development of matters pertaining to the spiritual end of man – is either given to the temporal authority or that the spiritual authority employs the temporal authority to serve its higher end. He claimed that either of these suppositions would betray the indirect power of the Church, since "the protection of the religious unity of society, by suppression of error and dissent, is not among the political functions of government."³⁶ "The primacy of the spiritual end does not annul the distinction of the powers," or between the end of the Church and the end of the State.³⁷ Therefore, according to Murray, the Church cannot demand of the State what is not required by the State's own nature.

Murray basically objected to the contention that civil intolerance is a logical implication of the Church's claim to be the one true Church. He

³³Murray, *Proceedings*, *op. cit.*, II, n. 39, p. 91.

³⁴*Ibid.*, p. 93.

³⁵*Ibid.*, p. 91.

³⁶*Ibid.*, p. 90. Murray continued: "Religious unity is indeed a value for society and for this reason the state protects the freedom of the Church to achieve and maintain it. But this is the Church's mission and in it secular government has no direct share." (*Ibid.*) Murray refutes on principle any view which allows either in practice or in theory the concept of government as the "secular arm" of the Church. Cf. *Ibid.*, p. 93.

³⁷*Ibid.*, p. 75.

claimed that the proper function of the Church is not to supervise or overrule the proper domain of the political philosophy of the State. He further argued that the true religion has no right to require the State government to suppress heresy or the propagation of religious error to maintain civil order. "The problem is not one of logical deduction from singly theological premises; it is governed by the principles of political philosophy."³⁸ In other words, from the theological premise that there is only one true religion there follows no deductive juridico-political conclusion that this true religion is to be professed, protected and promoted. Such a theological premise does not yield a legislative conclusion to prohibit other religions to publicize their views.

There are other objections which Murray raised from Ryan's commentary on Leo XIII's *Immortale Dei*. Essentially they have been mentioned already, but there is a need to raise them once more in order to indicate their different emphases. Besides Ryan's "illegitimate illation from the social values of the true religion to a governmental right to proscribe false ones," an illation which involves a confusion of "society" and "state," there is Ryan's "transposition into a parallelism of what is only an analogy – the relation of religion to the good of the individual and to the good of the State." Murray is in accord with Ryan that "the one true religion" is of utmost importance for individuals and States. Their basic disagreement lies in the divergent concepts of the State. Moreover, in Ryan "there is the sweeping assertion, startling to a political scientist, that 'it is the business of the State to safeguard and promote human welfare in all departments of life'."³⁹ According to Murray, the State has no such business, "for the duties of the State, as simply the living action which is public order, are limited to the order that is natural, secular, temporal."⁴⁰ It is to be noted here that Murray wished to distinguish the proper spheres of theology and political philosophy, emphasizing that no philosophy of the State may become a theological doctrine, nor, conversely, that there can be any "logical deduction from singly theological premises" for political philosophy.⁴¹

He argued that "State" and "government" as revealed in his notion of a desanctified State, are simply limited to instrumental agencies for human welfare. In view of all these he castigated Ryan's position as suffering from "loose argument."⁴² With sarcasm, he asked of the State favored by Ryan: "Does this mean that Leviathan is a splendid beast, provided only that he be a Catholic Leviathan?"⁴³

³⁸*Ibid.*, p. 91 n. 39.

³⁹*Ibid.*

⁴⁰*Ibid.*, p. 90.

⁴¹*Ibid.*, p. 91 n. 39.

⁴²*Ibid.*

⁴³*Ibid.*

Murray also tried to anticipate a criticism flowing from the possibility "of a spiritually weak Church, wherein the people are alienated from the clergy and indifferent in their faith and neglectful of other duties, situated in a politically and economically underdeveloped society, wherein organized anticlerical and anti-religious forces strive for control of government."⁴⁴ Maintaining that even such a possibility would not allow for the sort of State action favored by Ryan, Murray argued:

But it would seem obvious that this situation is not the premise from which to generalize to a thesis. Nor may one predicate a right of recourse to the "secular arm" in this situation on the ground that, apart from such recourse, the Church will be helpless before her enemies. I would not admit the argument as valid, but even if it were valid, to argue thus would be too much like the erection of a lack of faith into a juridical principle, genetic of rights. Once Caesar has guaranteed the *libertas ecclesiae*, it would seem that all further recourse ought to be to God, not to a program, however mitigated, of civil intolerance.⁴⁵

At this point Murray criticized the conservative Catholics' argument that error has no rights. "There is the argument that error is intolerable simply because it is error and has no rights."⁴⁶ In fact, however, "nothing is more unhelpful than an abstract starting point" in attempting to speak of the relationships of Church and State, which are always historically concrete.⁴⁷ Murray blamed the abstract formula, "error has no rights," as a "meaningless statement" or at most a tautology, since "error is error."⁴⁸ For him the formula "is hardly a principle from which to draw any conclusions with regard to the powers of the State," because "rights are predicated only of persons (or of institutions)."⁴⁹ This reasoning is important for the defense of his constructive formulation and for refuting the position of the conservative Catholic on this matter. Ryan asserted that a denial to his claim, "error has no rights," is tantamount to fomenting religious indifferentism and relativism.⁵⁰ On the contrary, Murray says that "the whole question of tolerance toward men of other faiths has nothing to do with relativism and indifferentism in matters of faith."⁵¹ Thus for him, "the question is not the defense of error but of the erring

⁴⁴*Ibid.*, p. 93.

⁴⁵*Ibid.*

⁴⁶*Ibid.*, p. 91 n. 39.

⁴⁷*Ibid.*, p. 33.

⁴⁸*Ibid.*

⁴⁹*Ibid.*

⁵⁰Cf. Ryan and Boland, *Catholic Principles of Politics*, *op. cit.*, pp. 317-18.

⁵¹Murray, "Current Theology: On Religious Freedom," *Theological Studies* X (1949), p. 413. Murray is commenting here upon the view of Erik von Kuhnelt-Leddihn, a German scholar and layman who contributed an article on Religious Freedom in their local journal. Cf. Kuhnelt-Leddihn, "Katholische Toleranz?" *Wort und Wahrheit*, (1949), pp. 342-353.

man."⁵² For "one does not find 'error' and 'truth' somehow disembodied, but only citizens or institutions who are uttering what they conceive to be true, even though it may be error."⁵³ The objection just considered to the maxim, "error has no rights," was shared by Eric D'Arcy. According to him, the dictum, "error has no rights," when taken literally, contains a logical fallacy; it is an example of category mistake. According to D'Arcy, the predicate "having rights" is properly attributed only to persons.⁵⁴

D'Arcy, moreover, argued that a person has a right to freedom of conscience, even though he may err in conscience. For him fidelity to one's personal moral obligation is a necessary means to attain an end. This means one is obliged to follow his conscience: "An erroneous conscience is binding in exactly the same way as is a correct one, and an action will have in fact whatever goodness or evil conscience attributes to it."⁵⁵ This does not, of course, imperil the fact that "objectively, one always has the duty to accept and respect whatever is true and morally sound; and on objective grounds there is no such duty to respect something which is at odds with the truth or the moral law."⁵⁶

The conservative Catholic argument is briefly presented thus: Error has no rights; therefore error does not deserve legislation by the State. Those who propagate such error should be suppressed. Murray refutes the premise of the argument as a logical fallacy. He also objects to the juridical conclusion which would attempt to legislate the suppression of error. He was actually against what was implicit in the argument, namely, the Catholic State and its special concern for the welfare of Catholic citizens. He claims that this is the basis for the conservative Catholics' insistence in this matter. For this reason Murray calls the "thesis-hypothesis" argument set up by the conservative into question. Murray asks:

Does a somewhat *ad hoc* theologoumenon, such as the distinction between "thesis" and "hypothesis," supplies irrevocably and for all time the categories in which we must continue to debate the problem of Church and State? For my part, I incline to think that the usefulness of this particular distinction is increasingly outweighed by its tendency to mislead, and that its categories are too facile to admit of fruitful theological and political thought.⁵⁷

⁵²Ibid. p. 419. Here Murray is commenting upon the view of Max Pribilla, "Dogmatische Intoleranz und burgerliche Toleranz," *Stimmen der Zeit*, CXLIV (April 1949), pp. 36-37.

⁵³Murray, "Contemporary Orientations of Catholic Thought on Church and State in the Light of History," *op. cit.*, p. 229.

⁵⁴Eric D'Arcy, *Conscience and its Rights to Freedom*, (New York: Sheed and Ward, 1960), pp. 249, 251.

⁵⁵Ibid., p. 254.

⁵⁶Ibid., p. 255.

⁵⁷Murray, *Proceedings*, III, *op. cit.*, p. 37. Murray continued to argue: "If, for instance, on this basis one says that the thesis obtains in Spain, whereas only the hypothesis is verified

Murray mentions an actual situation in the past in which a particular institutionalization of Church-State relations, i.e. union, was considered an "ideal" and was called "thesis." He criticizes Bellarmine in this regard.

He [Bellarmine] seems to have identified the principle (the primacy of the spiritual) itself with the contingent modes of its applications. As is visible in his thought, this confusion of the absolute (principle) and the relative (contingent conditions) was simply the reflection of the tendency of the medieval mind to regard as absolute what was only relative – the hypothesis of "one society," "one body," one *republica christiana* that was both Church and State, within which the "temporal" was only a "power," a subordinate function in the whole, not the focus of an independently organized, autonomous body in its own right, within its own developed institutions and processes for achieving its own ends.⁵⁸

Murray accused the conservative Catholic of the tendency to absolutize that which is only relative. For him the union of Church and State in a juridical form cannot be considered the "ideal," "since the institution of the State-Church was an adaptation to a particular context," and "it does not represent a permanent and unalterable exigence of Catholic principles, to be realized in any and all historical situations."⁵⁹ On the contrary he strongly asserted the primacy of the spiritual as the absolute principle which ought to be given a specific content in each particular set of circumstances. The thesis refers to the principle while the hypothesis is labeled as the application of the principle in historical contexts.

The primacy of the spiritual – the power of the Church to judge, direct, and correct, the political life of society in all that touches the spiritual order – is an absolute principle. But it, and the subordination of the temporal that it entails, must be given a specific content; in fact, it has historically been given such a content by specific actions of the papacy. Here a problem of development arises: how much of this content is itself as absolute as the principle, and how much is relative?⁶⁰

Murray's criticism of the thesis-hypothesis distinction is clear. However, he may not have been aware of a certain inconsistency in his argument. He was against the use of the thesis-hypothesis distinction employed by

in the United States, one steps off on the wrong foot into a morass of futile controversy, that centers on an irrelevance – whether the particular political form of the Spanish state is in any sense part of some Catholic 'ideal.' It may or it may not be ideal for the Spanish people – that is their problem. But to predicate 'Catholic thesis' or 'Catholic ideal' of this particular mode of religio-political organization is, I say, at least misleading." (*Ibid.*)

"Murray, "St. Robert Bellarmine on the Indirect Power," *Theological Studies*, IX, (1948), p. 533.

"Murray, "The Problem of State Religion," *TS*, XII (1951), p. 161.

"Murray, "St. Robert Bellarmine on the Indirect Power," *op. cit.*, pp. 532-533.

the conservatives in the Church-State problem; yet he also tried to use the same distinction in refuting their claim. In other words, the "thesis" of the conservative was for him a "hypothesis," and the conservatives' "hypothesis" resembles the true "thesis." In fact, Murray's renewed approach to the problem in 1948-49 and also in 1951 even though it does not retract his earlier repudiation of the use of thesis-hypothesis, seems to presuppose it when he speaks in terms of principles and their applications to concrete historical situations.⁶¹

Murray maintained that the properly limited finality of the State is determined by its own nature and that purely spiritual power of the Church must respect the autonomy of the temporal order. The respect for the autonomy of the secular, however, provides great support for the autonomy of the spiritual.

In other words, never has the distinction between the two societies been more sharply drawn, and the indirectness of the power of each in the affairs of the other more clearly accented. The action of the Church is spiritual, but it indirectly has effects in the temporal order: the action of the state is purely political, but it indirectly has effects in the spiritual order. Moreover, in both cases the success of the action pivots on the principle of freedom – the free obedience of the Christian conscience to the magisterial and jurisdictional authority of the Church, and the free participation of the citizen as a Christian, in the direction of the institutions of temporal life. Through the free citizen, who freely consents to her doctrine and law, and who likewise by his free consent directs the processes of the City, the Church indirectly touches the life of the City. Through him too the processes of the City are so directed that they indirectly aid the supernatural mission of the Church.

Finally, I should add that all this is not hypothesis – the simple product of a factual state of affairs in which the Church is somehow short of power, compelled in expediency to make only minimal demands, etc. On the contrary, it is thesis – the full development, by theological reflection and political experience, of the central datum of the distinction of the two powers and their hierarchic collaboration for the total good of man, and human society. Anything less than this is hypothesis – a conditional state of affairs, arguing immaturity either in Catholicism or in politics.⁶²

From what has been said, Murray's use of the term "thesis" seems to have a twofold reference. First, there is a need to recognize and respect the autonomy of the spiritual order with a corresponding respect for the autonomy of the temporal order; second, there is a need to provide the spiritual power of the Church with political means to become effective,

⁶¹Cf. Murray, "The Problem of State Religion," *op. cit.*, pp. 159-60, 165.

⁶²Murray, *Proceedings*, III, *op. cit.*, pp. 66-67.

i.e., the Christian citizen with rights of self-government in a democratic State. Yet he also takes the "thesis" to mean eternal and unchangeable principles: "I am supposing that the 'thesis' is independent of political forms and therefore applicable to any of them."⁸³ He believes that this view suits the Catholic doctrine by which the theologian undertakes "to explore, under the guidance of the Church, the possibilities of a vital adaptation of Church-State doctrine to the constitutional structure, the political institutions, and the ethos of freedom characteristic of the democratic state."⁸⁴ For Murray "true doctrine" and "thesis" are the same. "The true doctrine of the Church is never archaic; it is thesis for any hypothesis."⁸⁵

According to conservative Catholics, the thesis-hypothesis distinction was employed to demonstrate that Catholic doctrine was in fact never archaic and hence relevant to all situations of fact (hypothesis). They admit, however, that one relation has been termed "ideal." It is particularly against this belief that Murray was adamant. He claimed that Catholic doctrine (a thesis for hypothesis) is applicable to any form because it is dependent on none; he maintained that the "thesis" essentially is the result of the harmony between spiritual and political powers which takes place in a human person who is both a citizen and a Christian.

Murray's position here raised a difficult problem. If the working arrangements of modern Church-State relations is what he considers a thesis, one that is required by the Catholic doctrine of Church-State relations, then, how can this be a thesis which is "a thesis for any hypothesis," "independent of all political forms and therefore applicable in any form" applicable in pre-modern times? How was it applicable to a State such as the medieval State or to many societies that in the world today outside of the areas favored by Murray's approved arrangements? To this question Murray answered:

In point of fact the concept could not then prevail because there was no way of making it prevail. The institutional organization of both Church and State had not progressed to the point where the "correction and direction" of civil society and its governing power could be effected from within the temporal order itself, but by purely spiritual action. In other words, the thesis in those days was pure thesis; it could not be applied because the hypothesis of its application was lacking. The hypothesis is not merely a "Catholic society" of any kind, but a society with rational political institutions so developed within its structure, and with Catholic faith and intelligence so developed in its citizenry, that the primacy of the spiritual can be reconciled with the autonomy of the temporal in truly thetic fashion – in terms of a truly

⁸³Murray, "Current Theology: On Religious Freedom," *op. cit.*, p. 424.

⁸⁴Murray, "The Problem of State Religion," *op. cit.*, p. 163.

⁸⁵Murray, *Proceedings*, III, *op. cit.*, p. 67.

indirect action of the Church on the temporal processes of the State, and in terms of a truly indirect aid by the State to the spiritual mission of the Church. In any other kind of Catholic society – a society of “nominal” Catholics, for instance, or a State that is governed simply from the top down – what could be applied is not pure thesis but some conditioned modification for it.⁶⁶

Murray, however, accepted that he deliberately and inevitably used different meanings for the terms “thesis” and “hypothesis.” He believed that such usage of the terms was meaningful against nineteenth-century Liberalism and “for disarming unjust criticism of the Syllabus.”⁶⁷ He admits, however, that “as strictly theological terms, to be used in determining the structure of Catholic doctrine apart from polemic considerations, they are largely useless because of their essential ambiguity.”⁶⁸ In an attempt to defend his own usage of the terms, he argues:

My immediate point in the context is that if (as is ordinarily said) the thesis may only be applied in a religious hypothesis (that of a “Catholic society”), so also a political hypothesis (that of a politically immature society) may induce the application of what is not strictly thesis but itself largely hypothesis. And the theological danger is that of making this latter hypothesis thesis.⁶⁹

3. The Conservative Catholics’ Defense of Their Traditional View

On March 2, 1953, Cardinal Ottaviani delivered a discourse on the occasion of the anniversary of Pope Pius XII’s elevation to the Pontificate at the Lateran University in Rome. The discourse was published in *The American Ecclesiastical Review* in an article entitled “Church and State: Some Present Problems in the Light of the Teachings of Pope Pius XII.”⁷⁰ At the very outset of his discourse he alluded to his alarm at the fact that some Catholics in the course of discussing the question of Church-State relations deny some of the Church’s divine prerogatives and powers. “Our astonishment grows into bewilderment and finally turns to sadness, when the attempt to take the spiritual arms of justice and truth from the hands of this good Mother, the Church, is made by the Church’s own children, and even those children who live in interconfessional States, coming into continual contact with dissident brethren, and who thus ought to recognize more than others their debt of gratitude towards this Mother who has always used her rights to defend, to watch over, and to safeguard her own

⁶⁶*Ibid.* pp. 67-68. This text is enclosed within parentheses in the body of the article.

⁶⁷*Ibid.*, p. 67 n. 32.

⁶⁸*Ibid.*

⁶⁹*Ibid.*

⁷⁰Cf. Alfredo Cardinal Ottaviani, “Church and State: Some Present Problems in the Light of the Teachings of Pope Pius XII,” *The American Ecclesiastical Review*, CCXXVIII (1953), p. 322.

faithful."⁷¹ He also expressed discontent with those people who conceived the idea that the Church of God is constituted like the State. Against this the Cardinal affirmed that the Divine Founder did not wish the Church to be a State, but "He constituted it as a perfect society, equipped with all the powers inherent in that juridical condition, so that it might carry out its mission in every State without opposition between the two societies of which, Christ is, though in different ways, the Author and the Support."⁷² This view finds confirmation in Pius XII's teaching in the encyclical *Mystici Corporis* in these terms:

For this reason We deplore and condemn the pernicious error of those who conjure up from their fancies an imaginary Church, a kind of society that finds its origin and growth in charity, to which they somewhat contemptuously oppose another, which they call juridical. But this distinction, which they introduce, is baseless. For they fail to understand that the same reason that led our divine Redeemer to give to the community of men He founded the constitution of a society, perfect of its kind, containing all the juridical and social elements, namely that He might perpetuate on earth the saving work of Redemption, was also the reason He wished it to be enriched with the Heavenly gifts of the Consoling Spirit.⁷³

In the same discourse, Cardinal Ottaviani essentially dealt with the question of a Catholic State and of its implications with reference to non-Catholic "sects." He set forth the principles that should guide the Catholic State and affirmed that when the State is "Catholic," that is, when it is almost totally or in its absolute majority composed of Catholic citizens, it is the duty of those who govern "to protect against everything that would undermine the religious unity of a people who unanimously know themselves to be in secure possession of religious truth."⁷⁴ On this point there are numerous documents in which Pope Pius XII reaffirms the principles enunciated by his predecessors, particularly by Leo XIII. The Cardinal, for example, referred to *Immortale Dei*, which condemned religious indifference in the State. The rulers cannot "choose whatever they wish from different categories because, they are obliged to follow, in the matter of divine worship, those laws and those means by which God Himself has shown that He wills to be honored, *"quo coli se Deus ipse demonstravit velle."*⁷⁵ He also mentioned the encyclical *Libertas*. "Justice and reason

⁷¹*Ibid.*, p. 321.

⁷²*Ibid.*, p. 322.

⁷³Pius XII, *Mystici Corporis*, 29 June 1943, AAS, 35 (1943). The English translation entitled "On the Mystical Body of Christ," is from *The Papal Encyclical in their Historical Context*, pp. 274, as cited in Ottaviani, "Church and State: Some Present Problems. . ." *op. cit.*, p. 322.

⁷⁴*Ibid.*, p. 327. Unanimous means "being of one mind." The translation is mine.

⁷⁵Leo XIII, *Immortale Dei*, ASS, 18 (1885), in Gilson, ed., *The Church Speaks to the Modern World*, p. 164, as cited in Ottaviani, "Church and State: Some Present Problems. . ." *op. cit.*, p. 327.

forbid a State to be atheistic or to be what comes to the same thing as being atheistic, to have the same attitude towards various so called 'religions' and indifferently to grant the same rights to all of them."⁷⁶ According to the Cardinal, Leo XIII appealed for the use of proper judgments especially in rendering justice to what is good and true as opposed to evil and error. Moreover, "reason rejects the notion that, in order to defer to the wishes of a small minority, the rights, the faith, and the conscience of almost all the people should be harmed, and that these people should be betrayed by permitting the enemies of their faith to bring division within it, with all the consequences of religious discord."⁷⁷

With reference to other "cults," the Cardinal asserted that tolerance could be observed, even in the case of a Catholic State, when there were very serious reasons for it. He says that the Church, too, recognizes the fact that some who govern Catholic countries may find it necessary, for very serious reasons, to grant tolerance to other cults. But, coming to concrete applications, the Cardinal, nevertheless, says that "tolerance is not the same thing as freedom to propagandize in such a way as to foment religious discord and to disturb the secure possession of truth and of religious practice in countries such as Italy, Spain, and others."⁷⁸

Cardinal Ottaviani tried to answer a difficult question proposed to him. In a Catholic country why is the idea of confessional State upheld i.e., why is there a duty of rendering exclusive protection for the Catholic religion whereas, in a country where Catholics constitute a minority, a claim for the rights to tolerance or to the equality of cults is made? It looks as if one maintains two different standards or norms of action according to what is expedient. Against this Ottaviani argues that those "who perceive themselves to be in sure possession of the truth and of justice are not to compromise" and that it is right that "they demand full respect for their rights." On the other hand, "those who do not perceive themselves secure in the possession of truth cannot claim to hold the field alone, without giving a share to the man who claims respect for his own rights."⁷⁹ With regard to the second question, he argues:

The concept of equality of cults and of tolerance is a product of free-thinking and of the multiplicity of religious professions. It is a logical consequence of the opinions of those men who hold, on the matter of religion, that there is no place for dogmas and that only the conscience of individual persons may give the criterion and standard for the

⁷⁶Cf. Leo XIII, *Libertas praestantissimum*, 20 June 1888, *Acta Leonis XIII*, 8 (1888). The English translation entitled "On Human Liberty" is from *The Church Speaks to the Modern World*, p. 71, as cited in Ottaviani, "Church and State: Some Present Problems. . . " *op. cit.*, p. 328.

⁷⁷*Ibid.*, p. 328.

⁷⁸Ottaviani, *Doveri dello Stato verso la Religione*, (Roma: Libreria Ateneo Lateranense, 1953), p. 31.

⁷⁹Ottaviani, "Church and State: Some Present Problems. . . " *op. cit.*, p. 329.

profession of faith and the exercise of worship. In that case, in those countries where such theories flourish, what wonder is it that the Catholic Church seeks to have an opportunity to carry out its divine mission and strives to have recognized those rights which it can claim as a logical consequence of the principles inherent in the legislation of those countries?⁸⁰

The Cardinal asserted that the Church "would prefer to speak and to advance its claim in the name of God," but, "the exclusiveness of its mission is not recognized among those peoples." That is why the Catholic Church "is content to advance its claims in the name of that tolerance, of that equality, and of those common guarantees by which the legislation of the counties in question is inspired."⁸¹ When there is failure to observe the rights of God, Ottaviani maintains that the Church would then appeal to consider the rights of men. Such action of the Church has in fact been demonstrated in early Christianity and even today where religious rights are denied by nations governed by totalitarianism. It is in this regard that Pope Pius XII, "in the face of the persecutions to which all Christians are subjected, and Catholics first of all, appealed to the rights of man, to tolerance, to freedom of conscience, just when there has been made so hateful a shamle of these rights."⁸²

The Cardinal also tried to respond to another objection. It is concerned with the contention that error has no rights. The Cardinal is aware that such a dictum can be misleading. "As a matter of fact all agree today that this axiom is misleading, not because we want to recognize any rights as belonging to error, but simply because we agree on this fundamental truth, that neither error nor truth, which are abstractions, are the objects of rights, are capable of having rights, that is of engendering mutual duties between person and person."⁸³ The Cardinal argues, however, that the "fundamental truth consists rather in this: that the rights in question have as their subjects those individuals who find themselves in possession of the truth; and that other individuals cannot demand the same rights by title of the error they possess."⁸⁴ He maintains that God Himself is the first subject of these rights in the encyclicals that were cited. Consequently "only they who obey His commands and who possess His truth and His justice have true rights."⁸⁵

On December 6, 1953, nine months after Cardinal Ottaviani gave his Lateran discourse, Pope Pius XII delivered an allocution to the National Convention of the *Unione dei Giuristi Cattolici Italiani*, gathered for an

⁸⁰*Ibid.*, pp. 329-330.

⁸¹*Ibid.*, p. 330.

⁸²*Ibid.*

⁸³*Ibid.*, pp. 330-331.

⁸⁴*Ibid.*, p. 331.

⁸⁵*Ibid.*

audience at the Vatican. The allocution is known from its opening words as the *Ci riesce*. It has been competently analyzed and explained by Msgr. Joseph C. Fenton in an issue of *The American Ecclesiastical Review*.⁸⁶ In it the Holy Father gives the principles for Catholic statesman involved in legislative action relative to the international community.

The *Ci riesce* is concerned with the *casus moralis* based on legislative enactments which regulate the conduct of sovereign States united into a juridical community to attain definite juridical ends. The Holy Father, foreseeing the difficulties involved in such a community, asserts that the difficulties must be resolved by the principle that one must work "within the limits of what is possible and licit, to promote whatever facilitates union and renders it more effective; to hold back whatever disturbs it; sometimes to put up with something that it cannot correct but which, on the other hand, must not be allowed to ruin the community of peoples because of a higher good expected from this [community]."⁸⁷ The serious problem here is, how can such a community be formed knowing that some sovereign States adhere to different professions of faith and possess different standards of morality? In this regard the Holy Father teaches that "the international community should draw up some definite rule on these subjects which will be valid for all the territories of the individual sovereign member States."⁸⁸ He points out that

within its own territory and for its own citizens, each State will regulate religious and moral affairs by its own laws. Nevertheless, throughout the whole territory of the community of States, the citizens of every member-State will be allowed the exercise of their own ethical and religious beliefs and practices, in so far as these do not contravene the penal laws of the State in which they are residing.⁸⁹

The main problem which the *Ci riesce* tries to solve can be formulated thus: Can the jurist, the statesman, and the Catholic State enter or remain within a community of peoples inevitably diverse from their own tradition? In other words, "would it be morally licit for the government of a Catholic State to bring that state into a constituted, juridical, international community of sovereign states or to allow the Catholic State to remain within such a community" if the community has issued an authoritative decree for all its members not in accord with Catholic principles?⁹⁰ The *Ci riesce* did not give a simple 'yes' or 'no' answer to the practical problem raised. However, the Holy Father urged the statesman to recog-

⁸⁶Cf. Fenton, "The Teachings of the *Ci Riesce*," *The American Ecclesiastical Review* CXXX (February 1954), pp. 114-123.

⁸⁷*Ibid.*, p. 115.

⁸⁸*Ibid.*

⁸⁹*Ibid.*

⁹⁰*Ibid.*, p. 116.

nize and accept certain moral principles which serve to guide him in making a decision. Msgr. Fenton reduced these principles to two:

- (1) What is not in accord with truth or with the standard of morality has, objectively, no right to exist, no right to be taught, no right to be done. Or, to put it in another way, "no human authority, no State, no community of States, whatever their religious character may be, can give a positive command or a positive authorization to teach or to do what would be opposed to religious truth or moral good."
- (2) Sometimes, in the interest of a higher or more extensive good, the State can legitimately refrain from hindering or impeding, by coercive civil law or directives, what is objectively opposed to the truth and to moral good.⁹¹

The *Ci riesce* does not deny the duty of repressing and hindering religious and moral deviations, yet it also admits the limitation of such duty. The duty of repressing moral and religious error cannot be an ultimate norm of action and, therefore, must subordinate itself to higher norms. "There are higher and more general norms to which this duty must be subordinated, and these higher standards are to be found in the consideration of the purpose of the State, of the Church, and now, of the international community of sovereign States."⁹² Fenton, rephrasing the principle set forth by the Holy Father, wrote: "Under certain circumstances, that is, when there is a question of achieving a higher good or of avoiding a more serious evil, these higher standards render it permissible, and sometimes even preferable, not to impede an error or evil which the State would be able to hinder or to repress."⁹³ From the principles enunciated, we could gather the answer to the problem under consideration.

As long as the regulation of the international and juridical community of sovereign States would not order its member-States positively to authorize or approve (or, of course, to command) what is objectively opposed to religious truth or moral good, but would only bring these States to tolerate or not to impede some of the deviations, acceptance of the regulation and of the international community itself would be theoretically possible for a Catholic State.⁹⁴

The *Ci riesce* indicated that the correct judgment of the man faced with the situation of directing a Catholic State is described as an act which St. Thomas Aquinas called *prudencia regnativa*.⁹⁵ This means that the statesman should be guided with what is morally right and good in a

⁹¹*Ibid.*, pp. 116-117.

⁹²*Ibid.*, p. 117.

⁹³*Ibid.*

⁹⁴*Ibid.*, pp. 117-188.

⁹⁵*Cf. Summa Theologica*, II-II, q. 50, a.1.

definite situation. He should not be content with merely applying theoretical possibilities. The *Ci riesce* urged the Catholic statesman to "permit himself," in the course of forming a decision, "to be guided by a comparison between the evil consequences that stem from toleration and those from which the community of States will be preserved through the acceptance of the formula of toleration."⁹⁶ Furthermore, the *Ci riesce* recommended a very important practical direction needed for the solution of an actual problem. The Catholic statesman, in making a decision, "must seek the judgment of the Church, or, in other words, have recourse to the Holy See itself, if their decision is to be morally correct."⁹⁷ This means that the Sovereign Pontiff alone, in his capacity as pastor of the universal Church, has the authority to define things that concern faith and morals. More asserted that "the supreme norm which has guided the activity of the Church in these affairs, and which must likewise guide the conduct of its children, is the common good, the common good of the State and the people directly concerned, and, ultimately, the common good of the universal Church, and, obviously, of the community of the sovereign States as a whole."⁹⁸

At the end of the allocution the Holy Father underlined a truth which had been questioned in recent years. He insisted that, in the words of Fenton, "the Church in principle or as a thesis cannot approve the complete separation between the two powers (Church and State)." This is because such thesis is based on "the truth of the divine law itself."⁹⁹ On the other hand, "the hypothesis, the correlative to which the thesis is immediately referred, takes in actually existent conditions which influence adversely the attitude of any given civil society with reference to the one true Church of Jesus Christ."¹⁰⁰ Thus a separation of Church and State may sometimes be permitted but only in a limited manner.

Fenton concluded his explanation of the *Ci riesce* by mentioning that in the past Catholic theologians had already discussed the relations of Church and State. A good part of their discussion anticipates the teachings of the *Ci riesce*. Fenton summarized some of the papal teachings confirmatory of previous discussions as follows:

- (1) The allocution employs the term "*Stato cattolico*." Indeed the concept of the Catholic State is one of the key notions used in this document. The term is applied to modern States, to civil societies which will have relations with a still uncompleted

⁹⁶Fenton, "The Teachings of the *Ci riesce*," *op. cit.*, p. 118.

⁹⁷*Ibid.*, p. 119.

⁹⁸*Ibid.*, p. 120.

⁹⁹*Ibid.*

¹⁰⁰*Ibid.*; Cf. Ferdinand Moulart, *L'Eglise et l'etat*, 4th edition (Louvain and Paris: P. Lecoffre, 1895), pp 262-412; Ottaviani, *Institutiones Iuris Publici Ecclesiastici*, 3rd edition (Rome: Vatican Press, 1948), II, pp. 88-100.

juridical international community of sovereign States. Hence, it would seem ideal to maintain in the future that this term is inept or that it has no clear meaning, or that it can legitimately refer only to civil societies or kingdoms of times past.

- (2) The allocution asserts that what does not correspond to the truth and to the moral standards has, objectively, no right to exist, to be taught, or to be done. As a result we can expect that, in the future, there will be no objections raised against the teaching or the terminology of writers who hold that, in itself, error has no rights.
- (3) It is certainly no longer feasible to reprove the teaching that, objectively, a complete separation of Church and State is an evil. Likewise it would appear that henceforth the legitimacy of the explanation of relations between Church and State is an evil. Likewise it would appear that henceforth the legitimacy of the explanation of relations between Church and State in terms of thesis and hypothesis will be acknowledged.¹⁰¹ □

¹⁰¹Fenton, "The Teachings of *Ci riesce*," *op. cit.*, pp. 122-123.