

THE END OF SOVEREIGNTY:  
AN ESSAY IN  
CHRISTIAN POSTLIBERALISM

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“We are talking a great deal about liberalism, but very little about the possibility that by remaining within liberal discourse, we are unwittingly reinforcing our own marginalization.”



Something has changed. As the flurry of recent articles and books on liberalism and its discontents attests, the stability of the intellectual framework through which Catholics have for the past hundred years or so made sense of our place in modern society seems to have been lost. We find ourselves disoriented and look for stable ground, but discover on all sides simply more shifting sand. It is not an exaggeration, I think, to describe the situation as a crisis, and as is appropriate to such a moment, we are again asking fundamental questions surrounding the proper relationship between Church and State, between religious and secular pursuits, between morality and politics, and it seems that as far as potential answers go, just about everything is back on the table.

Nevertheless, in the discussion up to this point the categories of liberal discourse have largely remained intact. We find ourselves arguing often about the boundaries between Church and State, but far less often do we consider the possibility that it is these categories themselves that are our problem. We talk a great deal about protecting religious liberty, but very little about the possibility that the modern concept of religion itself (not to mention that of “liberty”) is integral to Christianity’s diminution. We ask whether capitalism is the best economic system, but we do not consider that perhaps the question itself presupposes a liberal understanding of the social order. We are talking a great deal about liberalism, but very little about the possibility that by remaining within liberal discourse, we are unwittingly reinforcing our own marginalization. Can we offer a critique of liberalism that remains bound by liberal concepts? As an answer, I would venture that if we do so remain within the liberal discourse of rights, laws, states, economics, etc., it is not merely that we will not be able to articulate a coherent opposition to liberal modernity. It is far worse than that. By remaining within liberal discourse, we are engaged in a massive yet obscured project of begging the question. Our criticism buttresses its object.

Within the metanarrative of progress that underwrites liberalism, Christians are cast as the losing side and, I am afraid, there is no amount of maneuvering that can change that. In fact, our role in the drama is precisely this maneuvering. We are cast to fight a rearguard action: we steadily lose ground, but nonetheless put up a stubborn resistance. In the liberal march to freedom, we are the ever-retreating but completely necessary tyrants, the enemies of human rights against whom the freedom fighters heroically contend, the defenders of dogma against whom the courageous scientists struggle, the stuffy prudes against whom the free-spirited youth must battle. We have all seen multiple versions of this movie—in fact, this is the plot of nearly all our cultural productions. If this is indeed our role in the cultural narrative, new tactics will not save us. Devising new ways to “turn back the clock” or new arguments within the dominant discourse of freedom and rights, of religion and the State, is simply to continue to play the part of the loser in a liberal script acted out on a set constructed of modern concepts. To view ourselves as the retreating good guys is simply our role.

Even when Catholics are at their most antiliberal, even when we dare to venture arguments in favor of Confessional States, we stay in character. Indeed, the allure of the Confessional State is a part of the pathos of that character and we are never more recognizable within the storyline than when we find ourselves defending the alliance of crown and altar against individual liberty and freedom of conscience. As a part of the twisting plot of the drama, the liberals have, of course, suspected us of being secretly integralists all along. The script is written, the parts are cast, the set is built, the play is being performed. We are trapped.

It seems to me that there is a way out, however. But it requires that we both deconstruct the modern drama and propose an alternative. We must develop a new narrative that supports an alternate set of categories that do not cast Christianity as a merely religious actor, but rather presupposes Christianity as the stage on which history itself is performed. We must come to understand our world through a larger narrative within which the liberal epoch is a diverting subplot. If we do so, Christians can come to view ourselves not as an embattled minority on the losing side of history, but as protagonists in a missionary insurgency.

The first part of this initiative is well underway: the deconstruction of liberalism and the narratives that support it is well advanced. Much less advanced is the articulation of an alternative. We can see that liberalism is wrong, but it is hard to see what a nonliberal, or rather postliberal, order could look like. Such imaginative work is a project of at least a generation, but I hope to have made a small contribution in my book *Before Church and State*.<sup>1</sup> In *Before Church and State*, I endeavored to show a nonliberal Christian order, in this case the order of St. Louis IX's France, while allowing the categories for understanding that order to emerge from it rather than from modernity. In the current essay, I will borrow parts of this work's argument in an attempt to articulate the beginnings of a postliberal vision.

In order for a postliberal theory to be compelling, it must be able to provide an account of liberalism as a historical phenomenon without accepting liberalism's account of itself. If liberalism's metanarrative is wrong, then we must show that

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1. Andrew Willard Jones, *Before Church and State: A Study of Social Order in the Sacramental Kingdom of St. Louis IX* (Steubenville: Emmaus Academic, 2017).

liberalism is actually a character in an entirely different story. This story must be able to move us from the Middle Ages to our current postmodern age in a compelling manner and with an internal consistency. A real critique of liberalism must be a deconstruction of its lexicon and the simultaneous construction of a new lexicon that is capable of getting the upper hand on liberal concepts. The construction of a postliberal lexicon and the telling of a postliberal story are intimately connected. The current essay is an attempt at the start of such an enterprise.

### 1. THE STATE

The most fundamental term in modern politics is clearly “the State.” But, what makes the State the State and not a club or a company or a gang or a church? What is the State? By “State” we ought to mean at least what turn-of-the-twentieth-century thinkers such as Max Weber meant: a State is an entity holding a monopoly on the legitimate use of force within a certain geographical area.<sup>2</sup> The State is the entity that decides when and how force is to be used; there is no beyond it among men and so ultimately conflicts terminate with its decision followed by its action. States are sovereign. Such sovereignty is conceptually ubiquitous. Manifested most clearly in law, it extends everywhere, and everyone acts within it as a legal *persona*.<sup>3</sup> As Ronald Dworkin famously began *Law’s Empire*: “We live in and by the law. It makes us what we are: citizens and employees and doctors and spouses and people who own things.”<sup>4</sup> Each of these *personae* has a particular battery of rights and obligations, and his actions as well as his interactions with other actors are always capable of being “registered” through these rights and obligations. This

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2. Max Weber, *The Theory of Social and Economic Organization* (New York: The Free Press, 1964), 154–56. See also Max Weber, “Politics as a Vocation,” in *The Vocation Lectures*, ed. David Owen and Tracy B. Strong and trans. Rodney Livingstone (Indianapolis: Hackett Publishing Company, 2004), 32–33.

3. I use the Latin *persona* in the classic Roman sense of a legal person, as an actor under the law. This is the sense in which a corporation is a *persona* made up of persons.

4. Ronald Dworkin, *Law’s Empire* (Cambridge: The Belknap Press of Harvard University Press, 1986), vii.

“registry” is the basis of the apparatus of the would-be ubiquitous force. Every actor in every one of his actions acts within the scope of sovereign force, within its matrix; his every action is potentially accounted for within the schema that it provides. When I walk down the sidewalk, I am a citizen who has the right to leave my house and to make use of this particular piece of property in precisely this manner. The sovereign power can look at me and see me within its registry, can make sense of me within its categorical framework, through its language. My actions are capable of being accounted for within the preexisting schema and so judged and if necessary restrained. Within the registry of the State every person is a legal persona of some sort and each and every thing is a piece of legally-defined property of some sort. This is the basis of sovereignty, and sovereignty is the foundation of modern politics.

Following Milbank, I would assert that such sovereignty emerges as a component of the modern assumption of a primordial violence.<sup>5</sup> As Carl Schmitt wrote: “What remains is the remarkable and, for many, certainly disquieting diagnosis that all genuine political theories presuppose man to be evil.”<sup>6</sup> Within this understanding, humans are engaged in interminable conflict with each other and with nature itself. The total violence of the State does not eliminate this fundamental war of all against all, but rather, in a manner of speaking, decisively wins it and so subdues the wills of the many under the will of the one. In the familiar Hobbesian form, the State’s violence is so over-awing and so predictable that the individual determines that it serves his self-interest better to make contracts with his fellow men than to engage with them, and so the State, in combat, and in this manner competition comes to replace open warfare.<sup>7</sup>

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5. John Milbank, *Theology and Social Theory: Beyond Secular Reason*, 2nd ed. (Oxford: Blackwell Publishing, 2006). My debt to Milbank is too great to enumerate adequately in footnotes. Anyone familiar with his work will recognize his thought throughout my own.

6. Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 2007), 61.

7. Hobbes’s analysis is adopted without qualification by such classical liberals as Ludwig von Mises. See his *Human Action*, 4th rev. ed. (San Francisco: Fox & Wilkes, 1996), 196, 280. Some liberal theorists posit Locke as a corrective to Hobbes with regard to the state of nature. But, I am at a loss as to

Conceptually, this works because the contract is a device that incorporates the adversarial interactions of individuals into the structure of the State.<sup>8</sup> As a legal construction, the contract becomes a part of the ubiquity of the sovereign State that enforces it and the contractual relationship becomes in effect an extension of the State apparatus. Through a contract, the State is invited into a human interaction and the actions of the contracting parties become imbued with its legitimate force. Hobbes understood this when he posited the sovereign as coming into being not through a contract, as he is often supposed to have done, but rather that contracts come into being only once a sovereign has emerged from the primordial conflict. Only one man's victory over other men makes the defeated men capable of making a binding deal,<sup>9</sup> and their "social contract" is with each other and not with the victor;<sup>10</sup> it is such horizontal contracts that trade open warfare for the "peaceful" warfare that persists within the bounds of the will of the hegemon.<sup>11</sup> The contractual relationship

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why the arbitrary assertion of the right to property as a preexisting universal that is not in need of derivation from a more fundamental state is a solution rather than just the denial of the problem, and this, it seems to me, is what Locke offers. Locke, like Hobbes, imagines individuals independently seeking the satisfaction of their desires and asserts that in this state of nature they do not kill or steal simply because they ought not to violate each other's property rights because to do so, ultimately, would be to violate God's property rights in view of the fact that he owns us. What is more, one acquires property rights because property is the fruit of the labor of one's body, which one owns. It seems to me that if one questions the transcendental status of seventeenth-century, middle-class British notions of property, things fall back to Hobbes's state of war pretty quickly. And even Locke has to admit that in his state of nature the "least difference is apt to end in war" (*Second Treatise of Government*, III.21). See D. C. Schindler, *Freedom from Reality: The Diabolical Character of Modern Liberty* (Notre Dame: University of Notre Dame Press, 2017), 73–77, 86–89.

8. Max Weber writes, "Every case of a rationally oriented exchange is the resolution of a previously open or latent conflict of interests by means of a compromise" (*The Theory of Social and Economic Organization*, 169).

9. Thomas Hobbes, *Leviathan*, II.17.2 (106). All citations from *Leviathan* are taken from Thomas Hobbes, *Leviathan: With Selected Variants from the Latin Edition of 1668*, ed. Edwin Curley (Indianapolis: Hackett Publishing Company, 1994). Hereafter the numbers in parenthesis are the page numbers in this edition.

10. *Ibid.*, II.18.4 (111–12); II.28.2 (203).

11. *Ibid.*, I.14. Hobbes astutely asks, if men in the state of nature could come together and enter into a contract to establish a common power, why

becomes possible only because the prior hegemonic relationship is solidly established. We need not here be dogmatic Hobbesians in order to capture the essential point that the making of contracts brings relationships necessarily within the sovereign registry of persons and things and so structures those relationships accordingly. With the forging of a contract, the wills of the contracting parties and the will of the enforcing State become one, at least externally, at least within the matrix of the sovereign registry.<sup>12</sup> It follows that if all peaceful person-to-person relationships are contractual, they are all instances of the State's subtle and often complicated sovereign will.<sup>13</sup> This is Hobbes's point.<sup>14</sup> Understanding this helps us to see the illusionary nature of the private/public divide within sovereignty. Through a contract's specific terms, mediated through the generalities of contract law, the parties' "private" arrangement becomes effectively legislated and therefore grounds for coercive State action. It becomes a political relationship.

In a liberal society, these contractual transactions can be rather complicated. For example, the answer to the question "what is a particular person allowed to do in a particular circumstance?" (which from a liberal perspective is another way

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do they need one? Why could they not enter into other contracts? Rather, Hobbes contends, contracts are mere words until a sovereign exists. Then, and only then, do they become in fact binding. *Ibid.*, II.17–18. See also Weber, *The Theory of Social and Economic Organization*, 132–34.

12. See Hobbes, *Leviathan*, II.24.7–10 (161–63).

13. For Ludwig von Mises, a "contractual" society seems to be little more than a society whose hegemonic State wills and so favors and defends contractual interaction between its subjects to a greater degree than does the hegemonic State of a "hegemonic" society, which wills and so favors relationships of subordination. The hegemonic will of this State must be distinct from the functioning of the unchanging "laws" of human action in order for Mises's assertions regarding what ought to be done to make sense, of course. Only if it sets the rules from above and is not itself a player in the game, is it free to insist upon legal structures that indifferently maximize efficiency and autonomy. Otherwise, whatever policies it happened to pursue would have to be understood as the inevitable consequence of the economic laws of human action and the best the economist could do would be to describe how it works (von Mises, *Human Action*, 195–98). See Jones, *Before Church and State*, 169.

14. Hobbes, *Leviathan*, I.18.

of asking “what trades are possible to him”)<sup>15</sup> requires at least two pieces of information. We have to know the person’s legal persona and we have to know his relationship to the material of the circumstance, the property. There are a limited number of distinct, basic personae in a liberal *regime*. But, these basic identities are continuously being effectively modified through contracts that endow them with new practical rights or restrictions. Knowing the resultant complex contents of someone’s persona does not answer the question of what he is allowed to do because every action necessarily involves objects, even if only because it has to take place somewhere. I am allowed to do something on my own property that I am not allowed to do on someone else’s, even if we have identical legal personae. Therefore, the combination of persona and property constitutes somebody’s concrete rights, what actions he is actually allowed to perform in any given situation, what actions the State will facilitate and protect, and so what he is able to “trade” in the contract-making process. Two people, then, approach each other within the public registry with different rights. But, these differences are quantitative: it does not matter who the people really are as distinct persons and their rights are always in principle transferable either by themselves or by the State. Their interactions are therefore quantifiable both through contracts when they are in agreement and through lawsuits when they are in disagreement. Because real difference between the parties has been translated into a matter of quantity, the sovereign can see them clearly in all their complexity and their interactions within the registry are necessarily violence-free, being as they are manifestations of a single will.

Because real difference between persons is understood as the source of conflict (and so also economic friction), liberalism seeks to map onto all human interaction this sovereign matrix of abstract personae, properties, rights, and contracts, thus eliminating real, personal difference in the self-referential registry.<sup>16</sup> To “register” all relationships as contractual agreements between personae with fungible rights is to eliminate qualitative relationships in favor of quantitative transactions: collapsing the wills

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15. Von Mises, *Human Action*, 12, 97–98.

16. For Locke’s understanding of just this point, see Schindler, *Freedom from Reality*, 86–87, 179.



of persons into the single will of the now corporate sovereign, and so the primordial warfare is replaced with structured haggling and lawsuits that occur within the sovereign's idiom. The subjects' translation of their relations into this language is that submission of their wills to the sovereign power's that peace requires. As long as they move in its will, the relentless conflict is "peaceful."<sup>17</sup>

Within this State, so-called mediating institutions—institutions that stand between the individual and the State—simply add a layer of corporate personae to the ubiquitous order. A society might have "private" associations that the State affords rights within its schema of order, but the relationship between these associations and its members is necessarily governed by the State in relation to their relative rights: the local fraternal organization cannot force you to be a member. If you want to quit your job or your church, you can. You cannot, however, quit the State. It is categorically distinct from and above all other associations, without exception. Within liberalism, the civil power is the universal power, all others operate under its gaze and within its comprehension, and, as extensions of contractual relations, within its sovereign will.<sup>18</sup>

We must recognize that within such liberalism the "private" is a contingent category that operates within the public.<sup>19</sup> The private, like the moral or the religious, is constituted by the establishment of its boundaries.<sup>20</sup> To the State, private life

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17. Hobbes, *Leviathan*, II.17.13–14 (109). Max Weber deploys the term "peaceful conflict" to refer to such adversarial, but not outright violent relationships. This type of relationship becomes the basis for a consistent quantification of organization and action and so for its rationalization on the model of mathematics. See Weber, *The Theory of Social and Economic Organization*, 91–123, 132.

18. This understanding is already fully articulated in John Locke's *A Letter Concerning Toleration* (ed. Ian Shapiro [Yale University Press: New Haven, 2003]).

19. "We have come to recognize that the political is the total, and as a result we know that any decision about whether something is unpolitical is always a political decision" (Carl Schmitt, *Political Theology* [Chicago: The University of Chicago Press, 2005], 2).

20. See Hobbes, *Leviathan*, II.21.6, 18 (138, 143); II.22.3–5, 26–34 (146, 152–55); II.26.44 (189). For Rawls there is a certain public agreement about basic democratic values and proper ways of living and what is allowed privately is judged against these standards. But the "private" as some sort of absolute or

is always really a matter of public rights being exercised in a particular way. For example, nothing is more “private” than the relationship between spouses, and yet a husband and wife can at any point become public persona A and persona B litigating over the once-shared things of their private relationship. This fact was already mapped onto their union. Their “private” was fully accounted for within the public registry, similar to me walking down the sidewalk. Personal rights are the mechanism through which the private is bound within the public.<sup>21</sup> They are a form of property, demarcating “the boundaries of arbitrary use.”<sup>22</sup> Such liberal rights are passive and so they tend to trick us into thinking that the rights-bearer is the actor; when, in fact, it is the State who “does” rights. Rights are, in practice, liberties that are granted within the totalized legal regime. Indeed, rights do not articulate what the State cannot do, or must necessarily do; they indicate what the State will or will not do; they rely on the premise that the State could violate them or allow them to be violated by another citizen, that the practices that they protect operate within the State’s field of vision through categories that it fully comprehends.<sup>23</sup> Rights can be enumerated. The private is

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essential realm does not exist. Arguments about the protection of “privacy” are in liberal politics ultimately about the policy of the State and not about immutable principles. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 8–14.

21. “It is almost as if, starting from a certain point, every decisive political event were double-sided: the spaces, the liberties, and the rights won by individuals in their conflicts with central powers always simultaneously prepared a tacit but increasing inscription of individual lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves” (Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* [Stanford: Stanford University Press, 1998], 121–27). D. C. Schindler writes of Locke’s understanding: “We might say that law and freedom are simply flip sides of the same political phenomenon for Locke: law is the outside of freedom, and freedom is what lies inside law. The basic public articulation of freedom will thus turn out to be the enclosure of space, whether that be in the literal sense of designating property or in the broader sense of the determination of rights, which we could think of as the enclosure of political space” (*Freedom from Reality*, 68).

22. *Ibid.*, 141.

23. For the coincidence of absolutism and liberalism with regard to individual rights, see Milbank, *Theology and Social Theory*, 14–15. Schindler writes, “One has rights only with respect to real or potential competing claims. . . .

staked out by rights. This totalized public rationality is the liberal State's path to a type of freedom and peace.<sup>24</sup>

## 2. THE REAL

But this path is severely compromised. Indeed, the sovereign State is not nearly as strong as the above description may suggest. The husband and wife example reveals its weakness because a divorced couple can never really become persona A and persona B. Their history, their real relationship as actual differentiated persons forbids it. They might become enemies, indeed, but they can never not be bound together in some extra-legal relationship. Their retreat into the registry of legal personae and property is a fiction, a tactic in their power struggle, a bid to use the sovereign in their war. The utility of this tactic is, of course, part of the stability offered by the State, but it nevertheless reveals a gap in its extension. Only those engaged in real relationships that somehow fall outside the registry can use their legal personae tactically and the real contents of such real relationships between persons always fall outside the State's vision. The State cannot comprehend nor even see a conversation my wife and I had in our living room. If it were to look, if we were to bring lawsuits against each other, for example, all it would be able to see and so narrate is a story about contractually-bound, rights-bearing citizens engaged in legally allowed or forbidden activity. But, that is simply not what happened. These concepts never occurred to my wife and me, and to read them back onto the events of that evening is simply to lie, to opportunistically rewrite history in the language of liberalism in order to use the coercive apparatus of the State against each other.

All such real, personal rather than abstract and enregistered relationships constitute an ever-present mitigation of the State's sovereignty. For example, I have some sort of a real rela-

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Rights thus *require* opposition in principle to exist, and so to found social existence on rights is to define human relationships as fundamentally antagonistic" (*Freedom from Reality*, 183).

24. Von Mises writes simply, "Liberty and freedom are the conditions of man within a contractual society" (von Mises, *Human Action*, 282).

tionship with the local shopkeeper. I have no such relationships in the stock market. Because our relationship is in at least some measure qualitative and prior to the registry of personae and property, it is possible that I might come to blows with the shopkeeper or conspire with him against another or allow my loyalty to him and his shop to distort the price mechanism and so harm economic efficiency. It is inconceivable that I should act so with the stock market. When the State looks at an interaction with the shopkeeper it can see only parts of what really happened and so its sovereignty is not fully realized: what it controls is not what is really there. When it looks at a transaction on the stock market, on the other hand, it sees exactly what happened in its totality because the transaction was contained within the categories and procedures of the registry.<sup>25</sup> The first type of encounter is in some measure unpredictable and inefficient, and so the liberal drive to minimize such relationships in favor of rights and contracts, to replace communities with bureaucracies, to replace trades with jobs, to replace authorities with regulations, to replace people with systems, to make more and more of society operate merely in the registry and within the State's proper supervision.<sup>26</sup>

This drive is clearly present in our everyday lives. Not long ago I went with my boys' outdoor club on a field trip to a local museum. It was an official outing of the organization and

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25. Max Weber refers to such relationships as "associative," in contradistinction to "communal" relationships. He writes, "The purest case of associative relationships are: a) rational free market exchange, which constitutes a compromise of opposed but complementary interests; b) the pure voluntary association based on self-interest, a case of agreement as to a long-run course of action oriented purely to the promotion of specific ulterior interests, economic or other, of its members; c) the voluntary association of individuals motivated by an adherence to a set of common absolute values, for example, the rational sect, in so far as it does not cultivate emotional and affective interests, but seeks only to serve a 'cause.' This last case, to be sure, seldom occurs in anything approaching the pure type" (Weber, *The Theory of Social and Economic Organization*, 136–37).

26. As von Mises perfectly expresses the sentiment, "The employee is in the eyes of the employer merely a man who for a consideration in money helps him to make money. The employer pays for services rendered and the employee performs in order to earn wages. There is in this relation between employer and employee no question of favor or disfavor. The hired man does not owe the employer gratitude; he owes him a definite quantity of work of a definite kind and quality" (von Mises, *Human Action*, 634).

so even though I was driving my own children, there was a pile of paperwork that had to be filled out: permission slips, medical forms, car insurance verification, and so on. As I drove my own children in my own vehicle to a public museum that I could have visited on any given day, I was no longer simply their father living in the “private” realm of familial relationships. Rather, we had been “enregistered”; I was now, in a sense, a deputy of the liberal regime and our daytrip was an action that occurred within the State—with all its pieces duly accounted for. The State could now make sense of our roles and what we were up to—and so, we were now prepared to defend our actions in court. This is a particularly absurd example, no doubt, but the dynamic it reveals is increasingly common, even if often unnoticed: real qualitative relationships are steadily pushed aside or at least overlaid by enregistered quantitative relationships.

Take, for example, the way business contracts are made. In liberal theory, two persons make a private contract with whatever terms they see fit and the State is then obliged to enforce it. In reality, however, the possible terms of the deal are largely predetermined by the categories of the public registry and the established patterns of their interaction. Two businessmen might start out as two individual actors coming to a voluntary agreement, but by the time an agreement is actually signed, it has been adapted and bent to fit into the public regime’s registry of proper public relationships. This largely amounts to the assumption of ultimate conflict between the parties and so proper preparation within the deal itself for the eventual lawsuit. (A handshake deal gone wrong might end in a fistfight; a business contract deal gone wrong ends in a settlement negotiation.) In this way deals are shaped by contracts rather than contracts shaped by deals, and so the real relationships between “private” businessmen are increasingly coterminous with the universal “public” registry itself. As this phenomenon is extended, the theoretical ubiquity of State sovereignty is made increasingly a real ubiquity, as the dangerous and inefficient suprallegal realm that operated always beneath the public registry is transitioned into the registry itself.

Within the assumption of primordial conflict that underwrites liberalism, this movement is seen as a positive development. This is so because within liberalism sovereignty is an always contested constant. The question is merely a matter of

scale. From the conclusion of the first human-to-human encounter, the first encounter marked by fear and self-interest, and so an immediate and mutual pre-emptive war, a sovereign emerges.<sup>27</sup> He is the victor, and he has sway over the conquered, even if it be but one person. The victors of these original encounters then turn immediately on each other, and so ever-larger sovereignties emerge. The State is merely the up-to-this-point most successful combatant in a certain region. Externally, it remains engaged in the primordial war with similar-sized sovereignties, but more importantly internally its hegemony is everywhere and always being threatened by the lingering or emergent partial sovereignties of smaller conquerors with smaller domains, powers that would unseat it or carve out little kingdoms of their own.<sup>28</sup> The war never really ends and sovereignty is the prize.<sup>29</sup> As Foucault writes: “Isn’t power a sort of generalized war that assumes at particular moments the forms of peace and state? Peace would then be a form of war, and the state a means of waging it.”<sup>30</sup> Such a conclusion is unavoidable if we accept the now humdrum assumption that, as Pierre Bourdieu described it, “the gratuitous act is impossible.”<sup>31</sup> If a gift is impossible, if all “giving” is really

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27. Hobbes, *Leviathan*, I.13 (74–78), II.17.2–4.

28. As Michel Foucault remarks, “Humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare; humanity installs each of its violences in a system of rule and thus proceeds from domination to domination” (Michel Foucault, “Nietzsche, Genealogy, History,” in *The Foucault Reader*, ed. Paul Rabinow [New York: Vintage Books, 2010], 85).

29. For a sophisticated restatement of Hobbes’s basic scheme of sovereignty in this regard, see Carl Schmitt, *The Concept of the Political*, 39–53. For a treatment of Locke’s version of nearly the same dynamic, see Schindler, *Freedom from Reality*, 115–24.

30. Foucault, “Truth and Power,” in *The Foucault Reader*, 65. The postmodernists work, of course, always in Nietzsche’s shadow: “Here we must beware of superficiality and get to the bottom of the matter, resisting all sentimental weakness: life itself is essentially appropriation, injury, overpowering of what is alien and weaker; suppression, hardness, imposition of one’s own forms, incorporation and at least, at its mildest, exploitation. . . . Life simply is will to power” (Friedrich Nietzsche, *Beyond Good and Evil*, trans. Walter Kaufmann [New York: Vintage Books, 1966], 203).

31. Pierre Bourdieu, *Practical Reason: On the Theory of Action* (Stanford: Stanford University Press, 1998), 76.

a concealed form of taking, then Hobbes's logic of sovereignty is, it seems, unavoidable: to the extent that men are not in fact warring, to that very extent they are living under a sovereign of some form, but each such sovereign is being constantly put to the test, constantly either growing in strength or else being displaced by another.<sup>32</sup>

In modern liberalism, therefore, any realm not regulated by the force of the State (recall that the rights-governed realm of the "private," the realm of "contractual" relations, is regulated by the State<sup>33</sup>) is understood as an area regulated by the domination of lesser powers. This statement might seem rash, but a little reflection bears it out. For von Mises, if humans are not engaged in contractual relations, they are necessarily engaged in hegemonic relations—those are the only two options—and contractual relations occur only under the hegemony of the State. Von Mises writes, "There are two different kinds of social cooperation: cooperation by virtue of contract and coordination, and cooperation by virtue of command and subordination or hegemony." He goes on to explain how men stay in hegemonic bonds (the contemporary family and State no less than the hegemonic bonds of the past such as slavery or serfdom) only because the alternative is worse than the subjugation. This remains true in the contractual societies of the modern West for which "the state as

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32. See, for example, Hobbes, *Leviathan*, II.29 (210–19). Also see Hobbes's discussion of vainglorious men and the threat they pose to sovereignty (*ibid.*, II.27.13–18 [194–95]). Hobbes is frequently misunderstood as giving a normative reading of politics, as asserting what ought to be done. In the first instance, he is not doing so. Rather, he is describing how commonwealths, to the extent that they exist, practically work. He approaches the existent commonwealths as one might approach a building, desiring to understand how it stands, how the materials work together. With this knowledge, he might build better, indeed, but buildings pre-date his science and his science is not needed for their existence. Rather men are in their nature builders. See *ibid.*, II.30.5 (220–21).

33. In his discussion of the material needs (the nourishment) of a commonwealth, Hobbes writes, "The distribution of the materials of this nourishment is the constitution of mine, and thine, and his; that is to say, in one word, propriety; and belonged in all kinds of Commonwealth to the sovereign power. For where there is no Commonwealth, there is, as hath been already shown, a perpetual war of every man against his neighbour; and therefore everything is his that getteth it and keepeth it by force; which is neither propriety nor community, but uncertainty" (*ibid.*, II.24.5 [160]).

an apparatus of compulsion and coercion is by necessity a hegemonic organization.”<sup>34</sup> For left-liberals and postmodernists, the fields of interpersonal relationships, of family, of church, of language itself are merely the battlefields on which would-be despots maneuver within the space left by the bigger sovereignties’ lack of completeness,<sup>35</sup> and in this way the home of the housewife becomes the “comfortable concentration camp” of the *Feminine Mystique* and a conversation between friends becomes a subtle conflict.<sup>36</sup> What postmodernism has revealed is that of which Hobbes had already tried to convince us: power is not merely the work of positive political structures, but penetrates into every aspect of human interaction.<sup>37</sup> As he famously asserted, “I put for a

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34. Von Mises, *Human Action*, 195–98.

35. “An event, consequently, is not a decision, a treaty, a reign, or a battle, but the reversal of a relationship of forces, the usurpation of power, the appropriation of a vocabulary turned against those who had once used it, a feeble domination that poisons itself as it grows lax, the entry of a masked ‘other’” (Michel Foucault, “Nietzsche, Genealogy, History,” in *The Foucault Reader*, 88).

36. Betty Friedan, *The Feminine Mystique* (New York: W. W. Norton and Company, 1997), 337–72. Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge* (Minneapolis: University of Minnesota Press, 1984), 10–11.

37. See, for example, Hobbes, *Leviathan*, I.8.15 (41), I.10 (50–57). Michel Foucault writes, “I don’t want to say that the state isn’t important; what I want to say is that relations of power, and hence the analysis that must be made of them, necessarily extend beyond the limits of the state. In two senses: first of all because the state, for all the omnipotence of its apparatuses, is far from being able to occupy the whole field of actual power relations, and further because the state can only operate on the basis of other, already existing power relations. The state is superstructural in relation to a whole series of power networks that invest the body, sexuality, the family, kinship, knowledge, technology and so forth” (“Truth and Power,” in *The Foucault Reader*, 64). Carl Schmitt writes, “Power proves nothing in law for the banal reason that Jean-Jacques Rousseau, in agreement with the spirit of his time, formulated as follows: Force is a physical power; the pistol that the robber holds is also a symbol of power. The connection of actual power with the legally highest power is the fundamental problem of the concept of sovereignty. All the difficulties reside here” (*Political Theology*, 17). The postmodernists can dodge these “difficulties” by denying the special significance of positive law or by denying that the power of such law is held by one actor exclusively. Rather, positive law is just another field of action, just another space of negotiation and struggle within overlapping economies of power. Such a position is only an apparent dissolution of the concept of sovereignty. In actuality, it is a return to a Hobbesian notion of sovereignty at the expense of a legitimist/Divine Right notion. Schmitt himself makes this move: “Every religious, moral, economic,



general inclination of all mankind, a perpetual and restless desire of power after power, that ceaseth only in death.”<sup>38</sup> According to this view, driven by fear, people are engaged in a constant and often obscured struggle over the control of power structures that subsist as much in culture, custom, habit, sex, entertainment, or philosophy as they do in politics.<sup>39</sup>

The project of late liberalism, then, is to press the victory of the liberal State and the particular idiom of sovereign order that it speaks across these battlefields. The commons must be enclosed, the hold of the Church broken, standard education provided, commercialization extended, family structures or gender roles eliminated. In short, the registry of rights-bearing personae and their property must be extended into these realms through its ever-increasing complexification.<sup>40</sup> This is what liberalism calls progress.<sup>41</sup> This progress is the steady elimination of

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ethical, or other antithesis transforms into a political one if it is sufficiently strong to group human beings effectively according to friend and enemy” (*The Concept of the Political*, 37).

38. Hobbes, *Leviathan*, I.11.2 (58).

39. Milbank writes, “The neo-Nietzscheans cannot, in consequence, wriggle out of the implication that, while nihilism may be ‘the Truth,’ it is at the same time the truth whose practical expression must be fascism” (*Theology and Social Theory*, 279). And postmodern genealogy is merely “a new ‘joyful’ nihilistic form of positivism which explains every cultural meaning-complex as a particular strategy or ruse of power. No universals are ascribed to human society save one: that it is always a field of warfare” (*ibid.*, 282).

40. This is ultimately what Max Weber’s “rationalization” amounts to: only competitive, abstract, and quantified relationships are rational. F. A. Hayek writes, “The liberal argument is in favor of making the best possible use of the forces of competition as a means of co-ordinating human efforts, not an argument for leaving things just as they are. It is based on the conviction that, where effective competition can be created, it is a better way of guiding individual efforts than any other” (*The Road to Serfdom*, 41). The classic and still extremely useful study on the extension of the logic of liberalism into all aspects of social life is Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 2001).

41. Von Mises writes, “What is called human civilization has up to now been a progress from cooperation by virtue of hegemonic bonds to cooperation by virtue of contractual bonds. But while many races and peoples were arrested at an early stage of this movement, others kept advancing. . . . The legal guarantees effectively protecting the individual against expropriation and confiscation were the foundations upon which the unprecedented economic progress of the West came into flower. These laws were not an outgrowth of

power structures from which rival notions of justice can be sustained and so conflict emerge.<sup>42</sup> For example, categories such as “family” that once mediated between the shared life within the home and the registry are undermined as they become “derived” from associations of personae,<sup>43</sup> and the family’s rights, the temporary concessions it wrests from the encroaching State, become the bars of its cage.<sup>44</sup> Humanity is in this way progressively freed from the rival hegemony of the family through its absorption into the liberal hegemonic registry.<sup>45</sup>

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chance, historical accidents, and geographical environment. They were the product of reason” (*Human Action*, 500). Lyotard remarks, “the temporary contract is in practice supplanting permanent institutions in the professional, emotional, sexual, cultural, family, and international domains, as well as in political affairs. This evolution is of course ambiguous: the temporary contract is favored by the system due to its greater flexibility, lower cost, and the creative turmoil of its accompanying motivations—all of these factors contribute to increased operativity” (*The Postmodern Condition*, 66).

42. For Hobbes, it is impossible for a subject to accuse his sovereign of injustice because by definition all the actions of the sovereign are the actions of the subject himself and these actions are the very content of justice, justice being just another name for experienced power. Accusations of injustice against the sovereign, therefore, are always a consequence of an alternative sovereignty making a bid for power. Injustice is a workable concept only within war. Hobbes, therefore, understood full well that “the actions of men proceed from their opinions, and in the well-governing of opinions consisteth the well-governing of men’s actions,” and that “the most sudden and rough bustling in of a new truth that can be does never break the peace, but only sometimes awake the war. For those men that are so remissly governed that they dare take up arms to defend or introduce an opinion are still in war, and their condition not peace, but only a cessation of arms for fear of one another; and they live, as it were, in the precincts of battle continually.” For Hobbes the sovereign is identified by locating the source of mine and thine, of right and wrong, of honor and praise. *Leviathan*, II.18.6–16 (112–15).

43. For a classic example, see Locke, *Second Treatise of Government*, ch. 6–7.

44. See Agamben, *Homo Sacer*, 121.

45. Von Mises writes simply, “Liberty and freedom are the conditions of man within a contractual society” (*Human Action*, 282). Paul Rabinow writes of a theme in Michel Foucault: “The power of the state to produce an increasingly totalizing web of control is intertwined with and dependent on its ability to produce an increasing specification of individuality” (*The Foucault Reader*, 22). Lyotard writes, “The State resorts to the narrative of freedom every time it assumes direct control over the training of the ‘people,’ under the name of the ‘nation,’ in order to point them down the path of progress” (*The Postmodern Condition*, 32). Jean Baudrillard articulates a similar rationality for the constant war of late modernity: “the two adversaries are fundamentally in solidarity

## 3. SOVEREIGNTY

Liberalism's conquest, however, cannot be merely external. That is not how power works.<sup>46</sup> As the most sophisticated liberals understand, people must be educated into liberty, they must be enlightened.<sup>47</sup> John Stuart Mill, for example, understood that oppression was as, if not more, likely to come from popular opinion and social pressure as it was from political action. Liberty, therefore, required a liberation of the individual from his fellow men in both regards and this was only possible if society cultivated in its "private" intercourse as much as in its politics the far from intuitive ethic that "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection."<sup>48</sup> We can see, then, that the family, for example, will truly only lose its rival hegemony when people begin to actually see it as an association of personae and not as something integral to their very personhood and so something capable of truly common goods. They must begin to actually see the world through liberal lenses.<sup>49</sup> They must begin to live in the registry.

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against something else, unnamed, never spoken, but whose objective outcome in war, with the equal complicity of the two adversaries, is total liquidation. Tribal, communitarian, precapitalist structures, every form of exchange, of language, of symbolic organization, that is what must be abolished, that is the object of murder in war—and war itself, in its immense, spectacular death apparatus, is nothing but the medium of this process of the terrorist rationalization of the social" (*Simulacra and Simulation*, trans. Sheila Faria Glaser [Ann Arbor: University of Michigan Press, 1994], 37).

46. Michel Foucault writes, "What makes power hold good, what makes it accepted, is simply the fact that it doesn't only weigh on us as a force that says no, but that it traverses and produces things, it induces pleasure, forms knowledge, produces discourse. It needs to be considered as a productive network which runs through the whole social body, much more than as a negative instance whose function is repression" ("Truth and Power," in *The Foucault Reader*, 61).

47. See Immanuel Kant, "An Answer to the Question: What is Enlightenment," in *What is Enlightenment?: Eighteenth-Century Answers and Twentieth-Century Questions*, ed. James Schmidt (Berkeley: University of California Press, 1996), 58–64. See Hobbes, *Leviathan*, II.30.5–6 (220–2210).

48. John Stuart Mill, *On Liberty*, ed. Elizabeth Rapaport (Indianapolis: Hackett Publishing Company, 1978), 9.

49. See Patrick Deneen, *Why Liberalism Failed* (New Haven: Yale University Press, 2018), 31–34. Kierkegaard remarks on the consequences of ab-

From a Christian perspective, we can see that the dynamic of this education is one of descent wherein the presupposition of man as fundamentally at war with his fellow man becomes progressively fulfilled. The anticipated conflict shapes the actual relations between men in the direction of its realization. Take greed, for example. The presupposition that men are greedy leads to the creation of an apparatus that provides a “peaceful” and profitable path to greedy behavior, which, in turn, leads people deeper into the vice of greed, which demonstrates the need for the juridical apparatus and the desirability of its penetration ever deeper into the world of real relations. Because people are greedy, my sons’ outdoor club must protect itself from lawsuits through the extension of the apparatus that facilitates people’s greed, and this, in turn, reinforces the notion that such lawsuits are somehow legitimate. One of the fathers’ grasping lawsuit against the club becomes literally “nothing personal.” He becomes merely a plaintiff suing an insurance company over a contract violation.

This is how the actual sovereignty of the State is extended to more closely align with its theoretical sovereignty. The universal yet fictitious registry of all people and all things becomes real not only through the positive extension of the juridical State,

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straction’s assault on real relationships, writing: “A father no longer curses his son in anger, using all his parental authority, nor does a son defy his father, a conflict which might end in the inwardness of forgiveness; on the contrary, their relationship is irreproachable, for it is really in the process of ceasing to exist, since they are no longer related to one another within the relationship; in fact, it has become a problem in which the two partners observe each other as in a game, instead of having any relation to each other, and they note down each other’s remarks instead of showing firm devotion. More and more people renounce the quiet and modest tasks of life, that are so important and pleasing to God, in order to achieve something greater; in order to think over the relationships of life in a higher relationship till in the end the whole generation has become a representation” (Soren Kierkegaard, *The Present Age: On the Death of Rebellion* [New York: HarperCollins Publishers, 2010], 16). Along similar lines, Schindler writes, “But insofar as contracts, without any sense of a transcendent good that is actual as their foundation, remain a function of the individual wills that constitute them, they are in reality an accidental coincidence of private interests and only present the appearance of social bonds. Forming a relationship, in this case, becomes identical with fixing the boundaries that keep us separate: good fences make good neighbors. . . . The more fully freedom is exercised in this way, the more deeply one is driven into an isolation from both the world and other people” (Schindler, *Freedom from Reality*, 125).

but more fundamentally through the “private” conforming of the real to it. This is how real power works. Take our homes. The State can see them only as property; any meaning that connects us as persons to a certain place is necessarily invisible to it. As we increasingly treat our homes as mere property, however, the State’s vision comes to penetrate more deeply into the reality of things. As we become more liberal, more of our real lives fall under the State’s gaze and so its sovereignty is extended. This is how the liberal panopticon is formed.<sup>50</sup> The distinction that matters in understanding the power of the State is not, therefore, that between the so-called public sector and the so-called private sector. Such a distinction is meaningful only from a pragmatic, managerial perspective, for policy debates. The distinction that matters fundamentally is between those aspects of our real lives that fall within the registry merely and those which do not; which aspects of our lives have been conformed to the will of the sovereign and which have not. What is more, we can see that theorists have tended to locate sovereignty in the wrong place. Sovereignty is not so much an attribute of the sovereign entity that stands over and against its subjects. Sovereignty is as much in the citizen’s soul. To ask what the sovereign can do, to ask how much power it has, must be to ask what kinds of persons the subjects have become, to what extent have they become incorporated into the sovereign.<sup>51</sup>

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50. See Foucault, “Panopticism,” in *The Foucault Reader*, 206–13.

51. Carl Schmitt quotes Jean Bodin: “Of Leviathan, that is, the devil, whose might on earth cannot be resisted by anyone, as it is stated in the Book of Job, it is reported that he is not satisfied with the body alone but lays snares for the soul too, and this is why it is not possible to enter into agreements with him. This holds true for those who believe that they possess in their power the secret spirits” (*The Leviathan in the State Theory of Thomas Hobbes* [Chicago: University of Chicago Press, 2008], 23). Hobbes’s entire theory, of course, rests on this assumption. The subjects’ submission to the sovereign is part of the very definition of sovereignty. Sovereignty is a corporate concept. In their conformity to the sovereign, the subjects become the sovereign and their every action is a sovereign action. Conflict is merely a situation where submission is not total, which means a situation of rival, corporate sovereigns. See, for example, Hobbes, *Leviathan*, II.30 (219–33); “Review and Conclusion,” 7 (491). Locke has his own version of this situation in his notion of tacit consent, which ultimately means “that every inhabitant of a commonwealth is taken for all intents and purposes always already to have wholly surrendered his natural liberty” (Schindler, *Freedom from Reality*, 105).

Understanding this dynamic complicates what we mean by a liberal order because it introduces a temporal dynamism that is at odds with liberalism's claim to timeless rationality. This dynamism allows for the possibility of a society that might have a liberal order of positive law, a universal registry, which floats far above the world of real human interactions: in this scenario, while the positive law might understand two neighbors as *persona A* and *persona B*, they need not understand each other that way. They might still see each other first as friends, and it might never occur to them that their relationship is somehow managed by the State or market—like my wife and I in our living room the other night. The registry of all people and all things exists, but it is distant and simple, and everyone knows that it is not reality itself but a fallback position in the unfortunate event of irreconcilable conflict. This is a sort of illiberal liberalism in which the registry has minimal penetration into real relations that remain, by and large, peaceful. (The American republic at the time of its founding may be an example of such a society.) But, the same order of positive law can, in a more advanced liberal society, become nearly coterminous with the world of real relations. In such a society “neighbors” can become merely a word to signify two *personae* who happen to own adjacent properties and whose relationship is mediated by the State; qualitative differentiation is replaced by quantitative sameness and calling the police on one's neighbor becomes something we do as a matter of course. As people become more liberal, they interact increasingly through contract, bringing the coercion of the State into their relations (as is witnessed by the ever-increasing number of lawsuits), merging their lives into the corporate sovereign. This is a sort of essential liberalism in which, through vice, human nature has in practice come to approximate what liberal theory always supposed it to be, and so the sovereignty of law comes to structure, through its penetration of the real, the very soul.<sup>52</sup>

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52. Foucault, perhaps more than any other recent scholar, has articulated the profound dynamism between the exterior structures of power and their interior counterparts. We don't have to agree with his ultimately demonic vision of man in order to appreciate the power of his insights: “In short, this power is exercised rather than possessed; it is not the ‘privilege,’ acquired or preserved, of the dominant class, but the overall effect of its strategic positions—an effect that is manifested and sometimes extended by the position of those who are

Seeing in liberalism such a temporal dynamism helps us understand that the positive constitution of a liberal society is simply not enough information to come to an understanding of its politics. We must see the extent of its descent into vice as directly related to the real extent of the State and so of its actual sovereignty. The liberal State in the abstract is always conceptually and potentially ubiquitous—the “private” operates always within its “public”—but its actuality is variable as liberalism advances. The logic of liberalism, however, points in the direction of its maximum realization. This is an important point. Because the positive law and the life of real persons are not always coterminous does not mean that they are detached from each other and so capable of sustained operation under different suppositions. Far from it, as we will see below. Rather, the point here is that the dynamic between the registry and real life is a temporal dynamic that has a direction to it: liberalism takes time.

We can see, I think, that actual coercive State action is the point of contact between the registry of quantitative relations and the unregistered world of qualitative relations. As liberalism advances, as the registry and the real converge, such action diminishes as the so-called “peace” of constant, structured conflict becomes realized: as more and more relationships become primarily adversarial and quantitative, actual physical violence, public and private, recedes in favor of contract and conformity. At its hypothetical terminus, the registry would be reality itself: persons would be their personae, places and things would be merely property, and physical violence would become impossible within the constant conflict and relentless sameness of the now actually

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dominated. Furthermore, this power is not exercised simply as an obligation or a prohibition on those who ‘do not have it’; it invests them, is transmitted by them and through them; it exerts pressure on them, just as they themselves, in their struggle against it, resist the grip it has on them. This means that these relations go right down into the depths of society; that they are not localized in the relations between the state and its citizens or on the frontier between classes and that they do not merely reproduce, at the level of individuals, bodies, gestures, and behavior, the general form of the law or government. . . . The history or this ‘microphysics’ of the punitive power would then be a genealogy or an element in a genealogy of the modern ‘soul’” (“The Body of the Condemned,” in *The Foucault Reader*, 174, 176–77). On liberalism’s self-fulfilling nature, see Deneen, *Why Liberalism Failed*, esp. 15–16, 51.

ubiquitous sovereign will.<sup>53</sup> And in such a way, the accuracy of Hobbes's diagnosis and the reality of his cure would come fully into being simultaneously, at the end of a single integral process, of a history: total sovereignty and total conflict are inseparable. In the end, man is totally violent and totally subdued by an even-greater violence.<sup>54</sup> From within this closed registry, the sovereign will increasingly fade from view and the "law" is mistaken for a self-sufficient, disinterested ruler.<sup>55</sup> This is the ironic "pacifism" of liberalism, rooted in the "rule of law." It is remarkable, on this score, how initially incomprehensible many citizens of late liberal societies find the assertion of the Weberian truism that everything the State does is ultimately coercive. As liberalism advances, this assertion becomes stranger and stranger, more and more remote from

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53. See Foucault, "Right of Death and Power over Life," in *The Foucault Reader*, 266.

54. Here we find an alternative solution to the problem of the unity of the "subjective technologies" and the "political techniques" of power that Agamben finds raised but not answered in Foucault and that he attempts to answer through the notion of "bare life" (Agamben, *Homo Sacer*, 6). Within Christian thought, external servitude and internal servitude achieve unity in vice and the unjust laws that both produce it and flow from it. Slavery to sin is always joined with slavery to other men. And so, through forgoing an arbitrary moral relativism and through introducing temporality and contingency to the existence of sovereignty, we can respond to Foucault's exhortation to think beyond sovereignty, while not surrendering the concept entirely. Sovereignty so understood is not an essential category of sociological analysis, but rather a dynamic feature of distinctly modern civilization. See Foucault, "Truth and Power," in *The Foucault Reader*, 62–64. See also Milbank, *Theology and Social Theory*, 273.

55. On liberalism's attempt to hide sovereignty, see Schmitt, *Political Theology*, 21–48. Max Weber contrasts what he calls "rational" legitimacy based on laws with "traditional" or "charismatic" legitimacy. "In the case of legal authority, obedience is owed to the legally established impersonal order. It extends to the persons exercising the authority of office under it only by virtue of the formal legality of their commands and only within the scope of authority of the office." For Weber, such order is perfected in bureaucracy. The effectiveness of bureaucracy is predicated on its knowledge and impassioned rationality. These traits reach their limit in the perfectly juridical order. The ideal bureaucrat is for Weber essentially capable of neither love nor hatred. He is professional and rational, a mechanism. To move completely within this order is to become blind to the real, human basis of its power. Weber, however, acknowledges that this never completely occurs, that submission to legitimacy always contains some traditional or charismatic aspects. See Weber, *The Theory of Social and Economic Organization*, 228–40, 382.



the phenomena of total submission, a submission as interior as it is exterior.

There are several important implications to this understanding. One is the absurdity of the notion of legitimate violence. Within the logic of sovereignty, legal violence cannot exist. Rather, at the point of State violence, it is precisely the legal order, the registry, that we have gone beyond. At the point of violence, the subject has returned to a state of war with his now merely would-be sovereign.<sup>56</sup> Hobbes understands this, which is why he asserts that a man can never surrender his right to defense of life and limb, even to the sovereign.<sup>57</sup> This is so because when the police arrive at the door, the sovereignty vanishes and the primordial war commences. We also see here how Schmitt's contention that sovereignty be defined as the ability to suspend the legal order is defensible and can be extended not only to large-scale declarations of martial law or civil war, but to all mundane police action.<sup>58</sup> However, we have to recognize that such "sovereignty" remains such only to the spectators of police action or to the citizens that have successfully driven their enemies out of the "peace" of the sovereign registry and back into the chaos, who have successfully aligned the sovereign power with their own interests against their foes, kicking them out of the political body. Actual coercion shows the limits of the sovereign power because real violence is always ultimately the action of one real man, one person, against another. The citizen, now criminal, is then revealed to be other than his persona after all; in combat he is revealed to have no rights but the primordial right to all things, which is the right of a rival sovereign. This is why he can kill and why he can be killed.<sup>59</sup> In an identical way, the State is revealed to be made up of men with guns: the sovereign returns

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56. Hobbes, *Leviathan*, II.18. 5–6 (112). This is why for Schmitt the political is ultimately identical with the Hobbesian state of nature. The political occurs always beyond the law. See Schmitt, *The Concept of the Political*. See also the note of Leo Strauss to this effect on page 105.

57. Hobbes, *Leviathan*, I.14.29–30 (87); II.21.17; II.28.2 (203).

58. Schmitt, *Political Theology*, 6–15. Hobbes, however, already knew that sovereignty was ultimately found wherever will emerged out from under the formalities of law.

59. See Hobbes, *Leviathan*, II.28.23 (208).

to the field. All State violence is, therefore, combat at the peripheries of the city, in the realm of the un-enregistered real, the realm of enemies.<sup>60</sup> Paradoxically, sovereignty is both expressed in its over-awing violence and is compromised whenever such violence emerges.<sup>61</sup> Similarly, violence between citizens exposes them as other than their personae, exposes them as real persons capable of asserting notions of justice and of the common good at odds with that of the registry. Hence the logic of the seemingly ironic coincidence of support for the expansion of the coercive State and often hysterical support for the taboo on private violence: a fistfight in the parking lot or a tussle on the playground exposes the gap between the registry and the real. Someone who has come to live largely in the world constructed by liberalism often finds glimpses of this gap to be profoundly disturbing.

#### 4. LAW

In opposition to such liberalism, Christianity asserts a metaphysics of peace and abundance, which finds perfect expression in the mystery of the Trinity. The persons of the Trinity are completely differentiated, each defined by the other's alterity: the Father is

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60. Giorgio Agamben writes, "What is at issue in the sovereign exception is not so much the control or neutralization of an excess as the creation and definition of the very space in which the juridico-political order can have validity" (*Homo Sacer*, 19). See also his lengthy discussion of the preservation of the Hobbesian state of war within the city and the formation of "bare life" as the true basis of sovereign power (see *ibid.*, 105–07). Schmitt writes, "In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition" (*Political Theology*, 15). And again: "The specific political distinction to which political actions and motives can be reduced is that between friend and enemy. . . . The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend enemy grouping" (*The Concept of the Political*, 26, 29).

61. As Agamben puts it: "The sovereign is the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence" (*Homo Sacer*, 32). And: "The state of nature is, in truth, a state of exception, in which the city appears for an instant (which is at the same time a chronological interval and a nontemporal moment) *tamquam dissolta*. The foundation is thus not an event achieved once and for all but is continually operative in the civil state in the form of the sovereign decision" (*ibid.*, 109).

only the Father because he is the Father of the Son; the Son is the Son and not the Father because he is the Son of the Father. Their peace, however, is perfect. Through a distant analogy, a father and a son in a human family live together in similar differentiation. This differentiation is the foundation of their real peace. Rather than based on contracts, the parent-child relationship remains largely based on things like duties, self-sacrifice, obedience, gifts, and ultimately love, all things that rely upon a fundamental inequality, a real qualitative difference, between persons. It is in this difference that they form a family at peace, a truly “common good,” a good that can only be had when it is had together. In fact, they are fully father or son only within this peace.<sup>62</sup> The parent-child relationship retains an ever-diminishing but seemingly irrepressible presence within late liberalism because ultimately liberalism cannot find a way to fully enregister children, to finally either denounce parenthood as oppression and “liberate” humanity from its sway or else make children simply property. Of course, both of these approaches are actively pursued. The State’s steady encroachment on the prerogatives of parents accompanied by the steady propaganda of adolescent liberation from parental closed-mindedness is a fixture of liberalism. Pro-abortion ideology, of course, (if it has a pretense toward any coherence whatsoever) rests on property rights, in this case one’s ownership of one’s own body: the child is either trespassing or is merely a piece of the mother. In an extension of this simple reasoning, Murray Rothbard proposed a solution to the “child problem” through maintaining that parents directly own their children and that they can sell them or starve them to death.<sup>63</sup> These strategies, however, seem incapable of penetrating in a definitive manner real instances of familial love. This resilient parent-child relationship demonstrates the incompleteness of the liberal project. The family relationship remains, at least for a time and at least in some part, somehow outside or beyond the liberal order; it demonstrates the reality of human relations incapable of quantification and registration, making manifest in our everyday lives the gap between the registry and the real, which makes it

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62. Jones, *Before Church and State*, 174.

63. Murray Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998 [first published 1982]), 102–04.

a threat to liberalism and so the object of its aggression. Like a fistfight in the parking lot, many residents of late liberalism find meaningful familial hierarchy disturbing.

Nevertheless, such relationships allow us to see that the gap between the registry and the real that I identified earlier in fact opens in two directions. When real persons love each other, their real relationship fades from the sovereign's view. When real persons hate or envy each other, liberalism would have them deploy the sovereign as a weapon and so the hate is compounded by a lie, the lie that the enregistered legal abstractions that facilitate their use of sovereign power against each other actually constitute their relationship. In this bid for expansion, the sovereign here too loses sight of the real relationship. In the realm of this "gap" there occurs a more fundamental contest than liberalism is capable of understanding, the contest over whether society is falling into greater vice (violence) and so greater statism, or ascending into greater virtue (peace) and so freedom. The closing of the gap happens only as people lose sight of each other as persons and see in each other only enregistered personae and property. Love works against this, exposing ever more of the loving personalities as an infinite depth of suprapolitical order emerges. Hatred, on the other hand, seeks to conform the real to the sovereign as a power tactic, a conformation that becomes real as personal hatred and envy transition to impersonal greed or lust for power, which we begin to call rational self-interest or the profit motive. Liberal sovereignty subsists in the impersonal, a field that can never ultimately close the gap between itself and the real,<sup>64</sup> but through hatred and greed directed into the registry, we get ever closer.

Familial-type relationships, which are an anomaly in liberalism, are, I think, the foundational norm in a truly Christian social vision. Indeed, we should not have too much trouble imagining such relationships extending beyond the immediate family in ever-bigger circles, involving more and more of the people with whom an individual interacts—even to the point of encompassing an entire society. Imagining such a thing is not the same as imagining a society without conflict: fathers and sons argue all the time. Rather, it is imagining a society in which their conflict does not fit, in which it is a tear in the so-

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64. See Schindler, *Freedom from Reality*, 226–33.

cial fabric rather than the threads that make it up.<sup>65</sup> By turning liberalism on its head, this vision can comprehend our contemporary politics but is not bound by its Hobbesian constraints. Entering into this “imaginary” world is to enter into the world of the Middle Ages.

This medieval framework has been implicit in my description of liberalism thus far, but we can at this point make it explicit and allow it to move us beyond liberalism. Thomas Aquinas writes: “the exterior principle that inclines us toward evil is the devil. On the other hand, the exterior principle that moves us toward the good is God, who both instructs with law and assists us with grace.”<sup>66</sup> Law is an exterior principle of human action. This is of crucial importance because such exterior principles are, in a sense, secondary in human actions. Interior principles, that is habits, virtues and vices, are primary. Thomas’s entire legal theory rests on this distinction and on the manner in which law interacts with habit, on the movement from the exterior to the interior, a dynamic we have already seen at work in our above treatment of liberalism.

Laws are “propositions of practical reason ordered toward actions.”<sup>67</sup> And, all practical reasoning is ultimately directed toward the end of man, which is happiness. However, Thomas tells us, in practical matters man is a part of a complete community *intrinsically* and it is the happiness of this community that is the ultimate end of action, which Thomas calls the common good. Therefore, every true law, which is another way of saying every true proposition of practical reason, is directed ultimately toward this common good, social happiness.<sup>68</sup> Because of this, laws must be shared within a community with the implication that we reason as members of a community. Our practical reason takes place embedded in a community, or we might say, following MacIntyre, a tradition.<sup>69</sup> Answering the question “What ought I

65. Jones, *Before Church and State*, 167–74.

66. Thomas Aquinas, *Summa theologiae* I-II, q. 90 (hereafter cited as *ST*).

67. *Ibid.*, I-II, q. 90, a. 1 ad 2.

68. *Ibid.*, I-II, q. 90, a. 2.

69. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988).

to do?" involves intrinsically the reason of the community—its ordering of means toward the common end. This is ultimately what Thomas means when he tells us that human law is the determination of the natural law and that such determination or specification is a necessary and intrinsic aspect of all law if it is to be acted upon.<sup>70</sup>

Table manners offer a simple example.<sup>71</sup> As children are taught to chew with our mouths closed. Why? Because to chew with our mouths closed is to show respect to our parents, to honor our fathers and mothers. The natural moral law is followed through its relative determination in this particular society through chewing with our mouths closed. What would the law mean without such specifications?<sup>72</sup> How would one go about honoring one's parents if we did not share with our parents a matrix of positive actions that made such abstract commands concrete? In practice, in fact, we normally abstract the general law from the particular laws. This means that good particular laws expose us to true natural moral law, whereas unjust laws expose us to a distorted natural law.<sup>73</sup>

A related consequence of the social nature of law has to do with the formation of habits. Laws create habits. The purpose of all law, Thomas tells us, is to make men good.<sup>74</sup> Human law is aimed at instructing men who are not yet perfect, in guiding them into the wisdom and prudence that will enable them to fulfill the highest levels of the natural moral law through sim-

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70. *ST I-II*, q. 91, a. 3; *ibid.*, I-II, q. 95, a. 2; *ibid.*, III, q. 61, a. 3 ad 2.

71. Thomas Aquinas, *Commentary on Aristotle's Nicomachean Ethics*, trans. C. I. Litzinger (Notre Dame: Dumb Ox Books, 1993), 2148–54 (hereafter cited as *On Ethics* and citations are to paragraph numbers).

72. Thomas Aquinas, *On the Virtues in General*, a. 6, resp. 1, in *Disputed Questions on Virtue*, trans. Jeffrey Hause and Claudia Eisen Murphy (Indianapolis: Hackett Publishing Company, 2010), 31 (hereafter cited as *DQV*).

73. See Thomas Aquinas, *Commentary on the Letter of Saint Paul to the Romans*, trans. F. R. Larcher (Lander, WY: The Aquinas Institute, 2012), VII.2 (hereafter cited as *On Romans*).

74. *ST I-II*, q. 92, a. 1. Thomas Aquinas, *Commentary on Aristotle's Politics*, trans. Richard J. Regan (Indianapolis: Jackett Publishing Company, 2007)], I.2 (18) (hereafter cited as *On Politics*).

ply being themselves in their various circumstances.<sup>75</sup> Prudent people create good human law, and it is the mechanism through which the less prudent can participate in their prudence, and in doing so can have both their desires disposed toward the objects of the virtues and their intellects shaped to recognize the truly good; in other words, to become prudent themselves.<sup>76</sup> As they grow into prudence and all the particular virtues it brings with it, they become freed from the law; not, of course, because they can break it, but because it has been internalized into a second nature; it has become who they are.<sup>77</sup> It becomes second nature for the child to eat not only with his mouth closed externally, but, in a proper family, to do so as an aspect of what it means to be a respectful son or daughter, internally. Their prudence allows them to be, in a word, polite; or, in a more general sense, just.<sup>78</sup>

This prudence, though, is culturally bound. The prudent man of one society is not the same as the prudent man of another;<sup>79</sup> he has been shaped by his society's laws;<sup>80</sup> he has become a good citizen of his particular city, as Thomas, following Aristotle, would say.<sup>81</sup> We become the mature people we are through such "shaping."<sup>82</sup> Indeed, as we move through life most of our action is habitual. This is a fact that modern phenomenology has helped us see dramatically, but it is already present in Aristotle and Thomas.<sup>83</sup> We are initiated into a linguistic community through an education that is at first external but which is steadily internalized to constitute simultaneously the subjects

75. Aquinas, *On the Virtues in General*, a. 6 (DQV, 27–30).

76. Thomas Aquinas, *On Kingship*, I.9 (378), II.1 (387), in *Opuscula I: Treatises* (Steubenville: Emmaus Academic, 2018) (hereafter cited as *On Kingship*).

77. Aquinas, *On the Virtues in General*, a. 9, reply (DQV, 50).

78. *Ibid.*, a. 12, resp., 23–26 (DQV, 84–85).

79. *ST I-II*, q. 94, a. 4. Aquinas, *On the Virtues in General*, a. 10, 4 (DQV, 60).

80. *On Politics*, I.2 (24).

81. *ST I-II*, q. 92, a. 1. See also the distinction between legal justice and virtue in general: *On Ethics*, 909–12.

82. *ST I-II*, q. 94, a. 3. Aquinas, *On the Virtues in General*, a. 8, reply (DQV, 41); *On Fraternal Correction*, a. 1, opp.cons. (DQV, 187); *On the Cardinal Virtues*, a. 1, reply (DQV, 227); *On Ethics*, 925.

83. See *ST I-II*, q. 97, a. 2–3.

that we are and the world of objects that we encounter.<sup>84</sup> The exterior world appears to us through our habits,<sup>85</sup> and law is fundamentally the mechanism through which habits are transferred from one person to another, the way in which groups of people come to inhabit the same world.<sup>86</sup> Thomas concurs with Aristotle that it is our ability to speak that most clearly demonstrates that we are social by nature because it is through language that we can share what is just and unjust, what is right and what is wrong, as well as what is useful and what is harmful.<sup>87</sup> Developing the habit of our language and the habits of our laws, most generally understood, are the same development.<sup>88</sup> In a proper society, law leads to virtue, and to be a good citizen is to be a good man and to be, in turn, a good legislator.<sup>89</sup> Virtuous citizens move

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84. Aquinas, *On the Virtues in General*, a. 9, resp. 9 (DQV, 51). See in this regard Rowan Williams, *The Edge of Words: God and the Habits of Language* (London: Bloomsbury, 2014), esp. ch. 3.

85. Aquinas, *On the Virtues in General*, a. 3, reply (DQV, 13); *On Charity*, a. 4, resp. 12 (DQV, 116); a. 12, reply (DQV, 172–73); *On the Cardinal Virtues*, a. 2, reply (DQV, 237); *On Romans*, VIII.1.616.

86. *ST I-II*, q. 100, a. 1; *I-II*, q. 100, a. 8 ad 3. See *On Kingship*, I.9 (379). For a discussion of how in its essence law is indistinguishable from any other example of instruction, see *On Ethics*, 2158.

87. *On Kingship*, I.1 (359–60); *On Politics*, I.2 (21). Of course, even the Eternal Law is a spoken Word (*ST I-II*, q. 93, a. 1). On the relationship between language and the inculcation of cultures and of rules, see Charles Taylor, *The Language Animal: The Full Shape of the Human Linguistic Capacity* (Cambridge, MA: The Belknap Press of Harvard University Press, 2016), 27–34, 44–45, 48, 59–64, 90–93, 148, 184.

88. In this direction, Milbank writes, “All personal relations embody an ‘indirect’ moment insofar as they are mediated by language, which is the residuum of previous social encounters. In this way, historical characters (persons) are only constituted through a plot, but, at the same time this plot-structure is nothing but the outcome of the totality of interactions between person and person, and person and nature. . . . This form of ‘dramatic’ or ‘emplotted’ personalism would help to press de Lubac and von Balthasar’s perspectives in the direction of a social and political theology. It disallows both ‘persons’ outside the performance of social roles, and ‘lawful’ social processes surplus to the contingency of narrative plots” (*Theology and Social Theory*, 237).

89. *ST I-II*, q. 92, a. 1. The coherence of such a just society is crucial for understanding how it is that practical reason is capable of discerning what ought to be done in keeping with the Eternal Law. Thomas writes of the conditions under an unjust ruler: “Everything is uncertain when there is a departure from justice. Nobody will be able firmly to state, this thing is such



together toward the common good as friends, sharing the habits that govern their everyday life, while their relative prudence, externalized as hierarchical instruction (law), steadily creates new good citizens and governs the problem of novelties or the initiation of new projects.<sup>90</sup> This is peace,<sup>91</sup> simply, in which, Thomas tells us, the whole multitude is the primary legislator.<sup>92</sup> This is the sort of regime, I think, that Thomas imagines would have existed had man not fallen.

This reading of Thomas is buttressed when we consider his treatment of law after the Fall. Thomas tells us that after sin the natural law was increasingly in practice blotted out from our hearts because of our vicious customs and habits, because of our false human laws.<sup>93</sup> Collectively, we sank ever lower in a downward spiral as our vice produced corrupt law that formed people into ever-deeper vice.<sup>94</sup> This was a process that took time and that was social. As our wills became deformed so too did

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and such, when it depends upon the will of another, not to say his caprice" (*On Kingship*, I.1) (365). See *On Ethics*, 926.

90. *On Kingship*, II.3 (390–91). *ST* II-II, q. 104 a. 1, resp. See *On Romans* II.4.229–31.

91. *On Kingship*, I.2 (362).

92. *ST* I-II, q. 90, a. 3, resp.

93. The universal principles of the natural law cannot be entirely erased from the hearts of men. "However, it is erased with respect to particular actions insofar as reason is impeded from applying a universal principle to a particular action because of sensual desire or some other passion." These so-called secondary precepts of the natural law "can be erased from the hearts of men, either because of bad arguments, in the same way that errors occur in speculative matters with respect to necessary conclusions, or because of depraved customs and corrupt habits—in the way that as the Apostle points out in Romans, theft or even vices contrary to nature are not thought of as sins by some people" (*ST* I-II, q. 94, a. 6; I-II, q. 98, a. 6 ad 1). *On Politics*, I.1 (12). See Gregory M. Reichberg, "Contextualizing Theoretical Reason: Thomas Aquinas and Postmodernity," in *Postmodernism and Christian Philosophy*, ed. Roman T. Ciapalo (Mishawaka, IN: American Maritain Association, 1997), 183–203. See also Thomas Hibbs, "The Fearful Thoughts of Mortals: Aquinas on Conflict, Self-Knowledge, and the Virtues of Practical Reasoning," in *Intractable Disputes about the Natural Law: Alasdair MacIntyre and Critics*, ed. Lawrence S. Cunningham (Notre Dame: Notre Dame University Press, 2009), 273–312. Randall Smith, "What the Old Law Reveals about the Natural Law According to Thomas Aquinas," *The Thomist* 75 (January 2011): 95–139.

94. Aquinas, *On the Cardinal Virtues*, a. 2, reply (*DQV*, 237). *On Romans* I.7.139.

our intellects.<sup>95</sup> Reason itself lay in tatters<sup>96</sup> as the natural moral law was increasingly replaced with what Thomas calls the law of the stimulate to sin, with concupiscence, with sensuality and an animal-like pursuit of pleasure and avoidance of pain.<sup>97</sup> Indeed, “the law of nature was destroyed by the law of concupiscence.”<sup>98</sup> The most general precepts of the natural law, to love God and to love our neighbor, became increasingly distorted into idolatry and injustice.<sup>99</sup> This was the state of nature, the Age of the Natural Law, as Thomas following the bulk of the tradition simply calls it.<sup>100</sup>

In this situation, law, even proper law, takes on a coercive character. In charity, a boy obeys his father because he loves him and wants to become the man his father wants him to be,<sup>101</sup> and the father instructs the child only toward the common good. Once sin enters, however, the boy would often rather avoid the discomfort of consciously chewing with his mouth closed. Lacking a proper love for his father, he would rather seek the pleasure of smacking away. And so, the father’s law must carry penalties in order to be effective. Fear of punishment becomes the first step toward the internalization of law, toward virtue and wisdom, and therefore toward freedom from the law.<sup>102</sup> But this now coercive law could lead to true virtue only if it was, in fact, a specification of right reason, if it was made and enforced by a truly prudent legislator. As humanity descended after the Fall, such prudence

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95. *ST* I-II, q. 109, a. 4, resp; II-II, q. 22, a. 1 ad 1. *On Romans*, III.3.311. Thomas Aquinas, *On Evil*, trans. Richard Regan (Oxford: Oxford University Press, 2003), q. 4, a. 2 ad 2 (208).

96. *ST* III, q. 61, a. 3 ad 2.

97. *Ibid.*, I-II, q. 91, a. 6. *On Romans* I.7.137; IV.1.335; VII.3.586.

98. Aquinas, *In duo praecepta caritatis*, prol., quoted in Smith, “What the Old Law Reveals,” 110.

99. *ST* II-II, q. 85, a. 1; *ibid.*, III, q. 1, a. 5, resp. *On Romans*, II.3.216. Aquinas, *4 Sent*, D1, q. 1, a. 5, qa. 1, rep. 2 ad 4.

100. See *On Romans* V.4; VI.3.497. *ST* I-II, q. 100, a. 3 ad 1; *ibid.*, I-II, q. 94, a. 2.

101. “Charity is the form, mover, and root of the virtues” (Aquinas, *On Charity*, a. 3, reply [DQV, 113]). *On Romans*, I.1.21; VIII.3.641.

102. *ST* I-II, q. 95, a. 1. Thomas Aquinas, *Summa Contra Gentiles* (London: Burns, Oates & Washbourne, 1924), 3.116 (hereafter cited as *SCG*).

became harder to come by.<sup>103</sup> Rather, people were initiated into more-or-less unjust regimes and becoming a good citizen was more like becoming a good thief and less like becoming a good man.<sup>104</sup> Indeed, “through the wickedness of tyrants, subjects fall away from the perfection of virtue.”<sup>105</sup>

## 5. PEACE

Here we find ourselves perhaps back to Hobbes. He, of course, imagines man totally depraved, as completely dominated by the law of the stimulate to sin, by the law of sensuality. There is nothing left of Aquinas’s natural perception of, nor desire for, the truly good. Aquinas can be seen to posit a Hobbesian picture of sorts as a limit concept,<sup>106</sup> but for him humanity could never actually attain such fallenness. For Aquinas, man’s nature retains its fundamental orientations and the most basic principles of the natural law can never be effaced.<sup>107</sup> This is why humans, no matter how fallen, are still capable of sin, while a dog is not.<sup>108</sup> Man becomes beast-like, perhaps, but he cannot actually become a beast, as Hobbes seems to present him. For Aquinas, the love of God and the love of neighbor become obscured and so the love of self comes to dominate.<sup>109</sup> For liberals, the love of self is all there ever was. This, then, is the decisive difference between the two approaches. Is violence a disordered peace or is peace a mere tactic of violence? Are all wars fought for peace or is peace a continuation of war?<sup>110</sup> Do we have an ontology of violence or one of

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103. See *ST I-II*, q. 105, a. 1 ad 2.

104. *Ibid.*, I-II, q. 92, a. 1; *ibid.*, I-II, q. 55, a. 3 ad. 1; *ibid.*, II-II, q. 23, a. 7, resp. *On Kingship*, I.1 (361).

105. *On Kingship*, I.3 (366). *On Ethics*, 926.

106. For example, *On Kingship*, I.3 (366). *On Politics*, I.2.22–23.

107. Aquinas, *On the Virtues in General*, a. 8 (*DQV*, 39–42). *ST I-II*, q. 93, a. 6 ad 2.

108. *Ibid.*, I-II, q. 85, a. 2.

109. *Ibid.*, I-II, q. 100, a. 5 ad 1. Aquinas, *On Charity*, a. 7, resp. 10 (*DQV*, 138); Thomas Aquinas, *On Hope*, a. 1, resp. 9 (*DQV*, 209).

110. Augustine, *City of God*, XIX.11–12. *ST II-II*, q. 29, a. 2.

peace? These are Milbank's two "transcendental codes" through which the data of history can be made sense of.<sup>111</sup>

As we have seen, for Hobbes the inevitable consequence of man's condition is the construction of sovereign states through the submission of men's wills to the will of the stronger, who becomes ultimately the man-made god, Leviathan. Such submission is Aquinas's very definition of slavery.<sup>112</sup> But there is here a limited sympathy between Hobbes and Thomas because for Aquinas the Fall does, in fact, lead to slavery.<sup>113</sup> The descent into vice, which is slavery to sin, is simultaneously a fall into slavery to other men, and even more ominously to the demons who dominate them through their idols, their man-made gods.<sup>114</sup> This is a consequence of the function of human law. Indeed, for Thomas, man under the natural law finds himself in an ironic and tragic situation. The laws that members of a vicious society would need in order to move themselves into virtue become increasingly beyond their ability to create precisely to the extent that they need them more. The worse they get, the more they need true and proper human law, and yet at the same rate, the more they become both incapable of making it and less inclined to do so. To the contrary, they tend to fashion false law, accelerating their decline through the extension of tyranny. Because of this, by the time of Abraham, "men had fallen into idolatry and into the most shameful vices."<sup>115</sup> This decline culminates, of course, in slavery under Egypt's god-king, a rather good example

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111. Milbank, *Theology and Social Theory*, 291, 297, 309.

112. *On Romans*, I.1.21; VIII.3.639; Thomas Aquinas, *Commentary on the Letter of St. Paul to Titus* (Steubenville: Emmaus Academic, 2012), 4 (hereafter cited as *To Titus*).

113. *On Romans*, VI.4.508–09.

114. Vice makes men increasingly incapable of being ruled by law, which pertains only to rational animals. Nonrational animals are ruled by instincts and by external commands, which are merely circumstances that their instincts navigate. Law, on the other hand, is participatory prudence and provides true principles for rational acting. As man descends into sensuality, he becomes a slave to his vices and even true law is transformed into mere violence, the mere imposition of the will of a master upon his slave. *ST I-II*, q. 93, a. 5; *ibid.*, I, q. 109, a. 2 ad 2. *On Kingship*, I.9 (380), II.1 (387). *SCG* 3.114. *On Romans*, V.4.428.

115. *ST I-II*, q. 98, a. 6, resp. *To Titus*, 8.

of Hobbes's Leviathan. And yet, the two ontologies and the states of nature they propose, while making sense of the same data and with certain similarities, are, in fact, fundamentally opposed. For Thomas, our slavery is a deprivation and is ultimately parasitical on our real, fundamentally good relations. For Hobbes and his postmodern heirs, of course, such real relations are dissolved into the fundamental conflict. Foucault is not wrong, therefore, because he sees relations of power penetrating every aspect of our linguistic and social selves. Thomas sees this. He is wrong to see these "laws" and the habits they engender as essentially exploitative, as always competitive with other economies of power, and his late liberal followers are wrong to see every constellation of power, at whatever scale, as battling for some type of sovereignty: all fathers seek power, perhaps, but not all fathers seek to become pharaoh, to "lord it over" their sons as a god.

This distinction makes all the difference. For Hobbes, the regime of the divine Mosaic law is simply more sovereignty, simply more external domination, albeit with God as king.<sup>116</sup> For Thomas, however, the Old Law was the first step in the restoration of man to liberty. Thomas tells us that the totality of the natural law, the entire life in accordance with reason and so with virtue, was contained within the precepts of the Old Law.<sup>117</sup> The precepts of the Old Law "prohibited all the sins that are contrary to reason."<sup>118</sup> In order for this to happen, the law had to be instantiated in a human law appropriate for this particular people in this particular time and place.<sup>119</sup> And so, Aquinas explains, God gave Israel, through its human leaders, a highly specified determination of the natural law in the Mosaic law,<sup>120</sup> both in its ceremonial precepts, which specified the portion of

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116. Hobbes, *Leviathan*, III.35.

117. *On Romans*, VII.3.583–85.

118. *STI-II*, q. 98, a. 1; *ibid.*, q. 99, a. 1–3. *SCG* 3.129.

119. Thomas Aquinas, *Commentary on the Letter of Saint Paul to the Hebrews* (Lander, WY: Aquinas Institute, 2012), 330 (hereafter cited as *On Hebrews*).

120. *STI-II*, q. 99, a. 4; *ibid.*, I-II, q. 100, a. 11. In response to what advantage the Jews have, Thomas writes, "the chief advantage is that *the words of God were committed to them*, as to his friends" (*On Romans* III.1.250).

the natural law that had to do with the love of God,<sup>121</sup> and in its judicial precepts, which specified that portion of the natural law that had to do with the love of neighbor.<sup>122</sup> When Thomas offers us examples of “natural” government, it is, therefore, often to Israel that he reaches, and in his treatment of the Old Law he makes extensive use of Aristotle’s *Politics* and within it he situates the *Summa*’s consideration of the best regime, pointing out Israel as an example.<sup>123</sup>

However, the Old Law was inadequate.<sup>124</sup> It remained a law of fear, a law focused on outward actions, induced through the threat of punishment. It was a necessary stage, like the boy who first obeys out of fear, but it could not in and of itself induce men to true virtue, the end of law.<sup>125</sup> This is the work only of grace, the content of the second phase of the Divine Law, the New Law.<sup>126</sup> The New Law is first and foremost the very grace of the Holy Spirit through which the law itself can be fulfilled.<sup>127</sup> Again, Thomas tells us: law instructs and grace assists. So the New Law, the perfect law, is ultimately no law at all, but is rather the fulfillment of the law, the end of law.<sup>128</sup> But, as the Old Law left nothing behind when it took all of the natural moral law into itself, so the New Law leaves nothing behind.<sup>129</sup> The entire movement from the Age of Nature through the Age of Law through the Age of Grace is contained within it.<sup>130</sup>

This means that the Old Law was perfected in the New Law, with the exteriorized precepts becoming perfected in the interiorized law of Charity in the same manner in which a boy

121. *ST I-II*, q. 99, a. 3 ad 2; *ibid.*, III, q. 61, a. 3 ad 2. *SCG* 3.117.

122. *ST I-II*, q. 100, a. 5; *ibid.*, I-II, q. 101, a. 1; *ibid.*, I-II, q. 104, a. 1.

123. *Ibid.*, I-II, q. 105, a. 1–4. Jones, *Before Church and State*, 412.

124. *ST I-II*, q. 98, a. 1 ad 3; *Ibid.*, q. 106, a. 3. *On Romans*, III.2.298; VIII.1.610–11. *On Hebrews*, 97.

125. *On Romans*, VIII.3.642–43. *On Hebrews*, 145.

126. *ST I-II*, q. 91, a. 5.

127. *Ibid.*, I-II, q. 106, a. 1.

128. “Therefore the end of all legislation is that man love God” (*SCG* 3.116).

129. See *ST I-II*, q. 100, a. 2.

130. *On Romans*, VIII.1.602–04.

is perfected in becoming a man, with all that he was, without remainder, “growing up” into manhood.<sup>131</sup> The total content of the Natural Law was, therefore, perfected within the New Law. And so, Thomas follows the bulk of the medieval legal tradition in seeing the Natural Law ultimately as fully within the Divine Law.<sup>132</sup> As Gratian’s *Decretum* states simply, “Natural Law is what is contained in the Law and the Gospel.”<sup>133</sup> The love of God and the love of one’s neighbor as oneself, the first general precepts of the Natural Law,<sup>134</sup> are, of course, Christ’s summation of the content of the Divine Law.<sup>135</sup> From within this line of thought, then, after sin, the grace and instruction that is required to know and live the Natural Law to its own proper end is available as the New Law.

Through grace and the teaching of the Gospel, men became better capable of the prudence necessary to craft law, to craft the language and culture necessary to lift each other in mutual love to their common good.<sup>136</sup> This was why the New Law contained so few specific precepts. Through grace, men were restored as legislators.<sup>137</sup> Virtuous men could discern what was just and what was opportune for the common good and act accord-

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131. *ST I-II*, q. 99, a. 6; *Ibid.*, q. 106, a. 3. *On Romans III.4.321*. *On Hebrews*, 434.

132. Thomas often uses “divine law” when we would expect him to use “natural law” or “moral law.” For example, Aquinas, *On the Virtues in General*, a. 4, resp. 1 (*DQV*, 20).

133. Dist. 1 in Gratian, *The Treatise on Laws*, trans. Augustine Thompson (Washington, DC: The Catholic University of America Press, 1993), 3.

134. Of course, the first precept of the Natural Law is that good ought to be done and evil avoided. This basic law is manifest in humans qua humans, however, in the love of God, the love of neighbor, and the love of self, under which all the natural moral law can be grouped. Because the love of self did not seem to suffer the same deficiencies after the Fall, it is the love of God and love of neighbor that are specified most concretely in the divine law and in human law. *ST I-II*, q. 100, a. 3 ad 1; *ibid.*, I-II, q. 94, a. 2. *On Virtues in General*, a. 8, reply (*DQV*, 41). Aquinas, *On Charity*, a. 7, resp. 10 (*DQV*, 138); Aquinas, *On Hope*, a. 1, resp. 9 (*DQV*, 209).

135. Mt 22:37–40.

136. *SCG* 3.117.

137. Thomas Aquinas, *Commentary on the Second Letter of Saint Paul to Timothy* (Aquinas Institute), 13, <https://aquinas.cc/240/242/~1>.

ingly.<sup>138</sup> As important, however, was that the same grace flowing into the community enabled its members to participate in this prudence: the mandates of the rulers became law and not mere commands only as the people came to share in virtue, as they became sons rather than servants. Through the New Law it became again possible to achieve at least the beginnings of true peace:<sup>139</sup> peace with oneself, peace with one's neighbor, and peace with God.<sup>140</sup> These prelates of the New Law, Thomas tells us, were of two types: spiritual and temporal.<sup>141</sup> In peace, the spiritual power was the conduit through which grace and the teaching of the Gospel flowed into society. The temporal power provided organization and direction to the grace-filled community as it satisfied the necessities of life. In true peace, of course, the specified law of charity would be interiorized, and so even the threat of the sword would be out of place.<sup>142</sup> In the ideal of true peace, both the spiritual and temporal powers were essential but neither the spiritual nor the temporal sword would function.<sup>143</sup>

But this ideal was never fully met, of course. Rather, the entire course of salvation history was present within the New Law.<sup>144</sup> It carried within it the mechanism, we might say, to lift people from the Age of Nature, unbelievers or those in mortal sin, through the Age of Law, the period of obedience through fear, to that of Grace, where we find true virtue.<sup>145</sup> The spiritual and temporal powers operated side by side up and down this lad-

138. *ST II-II*, q. 86, a. 4, resp; *ibid.*, II-II, q. 147, a. 3, resp. *On Hebrews*, 339.

139. *On Romans*, VI.2.480; VIII.1.618. *To Titus*, 9.

140. Of course, peace *in via* is always an approach to true peace and not its realization, which is found only in glory. Thomas Aquinas, *Commentary on the Gospel of John: Chapters 1–21*, trans. Fabian Larcher and James A. Weisheipl, vol. 3 (Washington, DC: The Catholic University of America Press, 2010), 88–90.

141. *ST I-II*, q. 108, a. 1; a. 2; a. 3 ad 3. Thomas Aquinas, *Commentary on the First Letter of Saint Paul to Timothy* (Aquinas Institute), 1–2, <https://aquinas.cc/236/238/1> (hereafter cited as *On I Timothy*).

142. *ST I-II*, q. 96, a. 3 ad 2.

143. *Ibid.*, I-II, q. 96, a. 5, resp. Jones, *Before Church and State*, 421.

144. *On Romans*, III.4.315.

145. *ST I-II*, q. 106, a. 2; I-II, q. 108, a. 1 ad 1. *On Romans*, V.6.463.



der of ascent. Against the violence of sin, the temporal power was that authority that used force, and the spiritual power was that authority that invited the sinner back to the realm of true peace, that preached penance and offered mercy and so a return to grace through the sacraments.<sup>146</sup> The temporal power sought to build a society of virtue, but the spiritual power was necessary for the achievement of this object because, as we have seen, true virtue was not possible without grace.<sup>147</sup> Yet, the fruit of grace, charity, required temporal preparation in virtue.<sup>148</sup> What is more, the end of human society was not simply the life of virtue, but rather, through it, to achieve the vision of God, which was perfect peace.<sup>149</sup> This required the grace of the sacraments and the knowledge of divine revelation, both given through the spiritual power.<sup>150</sup> The temporal and the spiritual were therefore united in a single endeavor that was rooted in the united kingship and priesthood of Christ himself.<sup>151</sup>

Their endeavor was to reestablish societies of true peace.<sup>152</sup> Such societies were fundamentally distinct communities of friends who moved together deeper into their shared love of God and each other within shared worlds of habit, of discourses

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146. *ST* II-II, q. 29, a. 3 ad 3; I-II, q. 92, a. 2 ad 4; I-II, q. 95, a. 1; I-II, q. 92, a. 1 ad 1-2; I-II, q. 93, a. 6; I-II, q. 99, a. 6, resp. and ad 1; I-II, q. 101, a. 3, resp. *On Fraternal Correction*, a. 1, resp. 2-7 (*DQV*, 187-88). *On Romans*, VI.3.498.

147. *On Kingship* 1.14. *On Fraternal Correction*, a. 1, resp. 13 (*DQV*, 190). Of course, what level of virtue is possible without grace is a topic of debate among Thomists. I am inclined to follow Jacob W. Wood in my reading of Aquinas. However, even if one wanted to allow for the possibility of a greater degree of virtue without grace, it is undeniable that in actual practice the New Law was instituted to both heal and elevate nature, enabling or at least assisting its recipients to achieve true virtue. See Jacob W. Wood, "Rebuilding the City of God: Locating the Politics of Virtue within the Politics of Sin and Grace," *Nova et Vetera*, English ed., 16, no. 4 (2018): 1389-90.

148. *On I Timothy*, 14-16.

149. *ST* I-II, q. 109, a. 2, resp.; a. 4, resp.; a. 6, resp.; a. 9, sc; a. 10, sc; II-II, q. 29, a. 4, sc. Aquinas, *On the Virtues in General*, a. 9, reply (*DQV*, 48-49); *On Romans*, I.4.70.

150. *On Kingship*, II.3 (390). *On I Timothy*, 7.

151. Jones, *Before Church and State*, 427-29.

152. "The chief concern of the ruler of a multitude, therefore, is to procure the unity of peace" (*On Kingship*, I.1 [362]).

of right and wrong, just and unjust, within their differentiated specifications of the Gospel, we might say. Such a condition was known simply as *the Peace*. Within such communities, the construction of virtue was first a project of these discourses, of participatory prudence, wherein the more advanced guided the less advanced deeper into the peace; it was second, in the case of sin, a matter of fraternal correction, correction that presupposed these discourses and friendships,<sup>153</sup> and it was only in the third place, in the case of sustained, disruptive sin, a matter of positive law carrying coercive sanctions.<sup>154</sup> This endeavor was intrinsically as spiritual as it was temporal, made possible only through the coordination of law and grace, of the Old and the New, we might say—which cannot be separated into sealed off compartments or organized into some sort of juridical constitution of relative powers or checks and balances. The Old and the New are one Divine Law, and the temporal and spiritual powers formed one government that was decidedly not a State, and that moved communities from the imperfect to the perfect.<sup>155</sup>

## 6. POLITICS

What this all means is that from a Thomistic perspective the perfected Church *can* be understood as *not* “political.” However, this can be so *not* because “politics” operates outside of it in a parallel, self-sufficient realm, but rather because to the extent that a people is converted, “politics” is absorbed into the Church and fulfilled in the law of Charity, thereby ceasing to be “politics,” in the modern sense, at all.<sup>156</sup> The perfect Church is not political only because it is the fulfillment of politics, because politics is brought up into it and perfected beyond itself.<sup>157</sup> As John Milbank has remarked,

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153. *On Ethics*, 2147; *On I Timothy*, 23.

154. *ST I-II*, q. 95, a. 1; q. 106, a. 4; *On Kingship*, II.4 (392–94). *On Fraternal Correction*, a. 1, resp., 2, 17 (*DQV*, 187, 191); a. 2, resp., 6–7 (*DQV*, 199–200). *On Romans*, II.3.217; II.3.229–31.

155. *ST I-II*, q. 107, a. 1; q. 107, a. 2. See Milbank, *Theology and Social Theory*, 233–35.

156. See *On I Timothy*, 12–13.

157. Jones, *Before Church and State*, 435–36.

“for law to be law as just law, it must point beyond itself.”<sup>158</sup> This is precisely the move that both Hobbes and Locke adamantly refuse. For them, the Kingdom of God is not anticipated on earth.<sup>159</sup> For them, grace is not efficacious here and now, but holds out only a promise for the next life. For these founding fathers of liberalism, the New Law is not a lived law at all. It is a sort of anti-law, a sort of promise of the ultimate undoing of law. For Thomas, on the other hand, it is the fulfillment of all law, a fulfillment that begins in time but achieves completion only in glory. This is the difference the ontology of peace makes. Through it, the data of history takes a different shape.

When Thomas looked out upon society, he saw something profoundly different from the liberal vision. In his world, peace was constituted by radically-differentiated persons in real, noncombative relations, in friendships. Society was ordered in realized rather than abstract justice, among persons rather than legal personae. This order was based on the real charitable relation, for example, between a husband and his wife and not, as in the liberal order, on their “registration” in a universal matrix of quantitative sameness. As we have seen, such real relations between persons exist within liberalism as anomalies to the extent that liberalism is not fully realized. In Thomas’s world, however, such relations were the content of proper order itself. It was they that constituted the peace, and it was this real peace that the coercive apparatus of society was charged to maintain and to extend.<sup>160</sup>

Conflict ripped the social fabric here or there, but not everywhere. The sword was, accordingly, deployed justly only

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158. Milbank, *Beyond Secular Order: The Representation of Being and the Representation of the People*, vol. 1 (Chichester, UK / Hoboken, NJ: Wiley-Blackwell, 2014), 233. See also Milbank, *Theology and Social Theory*, 402–13.

159. The primary thesis of the fourth part of Hobbes’s *Leviathan* is that the kingdom of God is not of this world, that it is not even anticipated in history, but will be restored only after the general resurrection. He understood full well that efficacious grace would challenge directly all earthly power. Rather, “all governments which men are bound to obey are simple and absolute” (*Leviathan*, III.42.82 [374]). Locke shares his understanding. The thesis of his *Letter Concerning Toleration* rests on the presupposition that heaven and earth are absolutely divided and separate, and his reasoning for why Catholics cannot be tolerated is precisely that they believe grace has something to do with earthly dominion (*A Letter Concerning Toleration*, 244–45).

160. *On Kingship*, II.4 (393).

in response to real, sustained conflict. Those who wielded the sword did so, therefore, not within a universal “registry” of all people and all things. No such registry existed. Rather, the temporal power approached and engaged a society constituted by actual prior relationships. These relationships bound the scope of the sword. Coercion’s field of action was necessarily limited to the actual conflict at hand: it had no standing, prior claim to action across the whole social field. In fact, most of the social field, constituted by habitual discourses and practices of differentiated relationships, remained invisible to it. Because the peace between persons was real, the temporal power literally could not know what that peace was, what the law was, we might say, until it was called in to defend it. In this way, the sword was not ubiquitous, not omniscient, and most certainly not omnipotent—neither in theory nor in practice. It was not sovereign. The temporal power was not a medieval State.<sup>161</sup>

Take, for example, a case from St. Louis IX’s Parlement: The peasants of a certain village went every spring to a nearby wood to cut down dead trees for firewood. One year the local noble stopped them on the way home and forcibly took their laden carts. They protested, saying, “We have always taken firewood from this forest.” “Indeed,” responded the knight, “but you have always taken only one cartload. This year you have two.” Parlement held an inquest and ruled that in the previous forty years the peasants had loaded one cart and sometimes two. The knight was wrong and violated the peace through his actions and he was ordered to pay amends.<sup>162</sup> A conflict had shattered the peace, and the conflict was not resolved by appeal to abstract rights or laws but to the particulars of time and place before the conflict had erupted, to the real relationships between real persons—which is to say, to the lived reality of the peace. In order for the temporal power to act, the king had first to determine what this peace in this situation had actually been. He had to enter into a particular world over which he did not rule and previously could not even see and act as a judge.

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161. See *ST I-II*, q. 97, a. 2–3.

162. Jones, *Before Church and State*, 191.

Consider scarcity, a concept at the heart of liberal economic theory. Scarcity exists in actuality only when two persons are in fact attempting to possess something that cannot be possessed by both. The liberal notion that scarcity is universal is based on the axiomatic situation of everyone wanting more of everything at the expense of everyone else in every possible situation.<sup>163</sup> The people of the Middle Ages, however, dealt with actual scarcity, not such abstract scarcity. The peace was the field on which individual instances of actual scarcity emerged and were played out to resolution. Within these worlds, instances of actual scarcity (and so, conflict) were exceptions: peace itself was a condition of abundance.<sup>164</sup>

Whenever there was a situation in which peace had broken down, where scarcity led to conflict, the temporal power sought to determine and maintain the peace. In this process, rights made an appearance. But these rights only emerged once a conflict had, in fact, occurred. There was no universal “registry” of law and rights within which conflict and cooperation could function. Rather, all conflicts were eligible for an ad hoc “rights” solution. These rights were temporary juridical or contractual solutions to real conflict.<sup>165</sup> They created little, finite, and self-referential registries, we might say. The firewood-collecting peasants in the above example did not have a right to the wood until the conflict had actually occurred and had been adjudicated, and the right had force only for as long as the conflict lingered in the real relations of the parties. Such rights were literally forgotten as peace was restored in these real relationships between particular persons, as they or their children or grandchildren transitioned from being enemies to being once again friends, as they returned, we might say, to self-governance in virtue, the end of the juridical. Rights necessarily faded away along with the scarcity that had called them into being. Such rights were formed and forgotten and formed again as generations moved through life in the space of the peace. This is why they had “markets” but no “the market,” why they had “courts,” but no “justice system.”

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163. *On Kingship*, I.8 (376).

164. Jones, *Before Church and State*, 191.

165. *Ibid.*, 190.

If conflict was a tear in the social fabric, the temporal sword was a tailor who sought to patch it. It is not that positive laws, contracts, and rights did not exist. They clearly did. But they were these patches, these compromises. They were disconnected and, unlike with the modern registry, if the whole universe of positive laws, rights, obligations, and personae were added up they would come nowhere close to covering the social field. What we are seeing is a world without even theoretical sovereignty because it is a world not premised on a ubiquitous violence.<sup>166</sup>

This order, the peace, was Christian at its very core. Indeed, the real peace was premised on the reality of grace and its social efficacy. As we have seen in Aquinas's theory, it is only because grace is real, only because the preaching of the clergy and the sacraments that they distributed had real social significance, that the movement into virtue that underwrote this order was both conceivable and possible. The formation of true peace requires revelation and grace, the healing and elevation of our nature. The spiritual power and the temporal power were, in their difference, integral to a single dynamic Christian social order that was directed toward a corporate ascent to God, to the steady construction of virtue. The dynamic of the two swords was understood not through discourses of Church and State, but rather through those of the New and Old Testaments, or of grace and law. As long as mankind was struggling in its ascent to God, which is to say, as long as this world endures, Christian society will have two swords—but, both are in the Church. What is more, the temporal sword was always ordered toward the spiritual.<sup>167</sup> Law is fulfilled in grace and so the regime of coercive law necessarily recedes as the law of charity advances, as virtue is achieved and friendship deepens.

#### CONCLUSION

We can see from within the ontology of peace how liberalism with its descent into vice and so the extension of the rule of law

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166. *Ibid.*, ch. 7.

167. *On Kingship*, II.3 (391), II.4 (392).

is merely an inversion of this orientation.<sup>168</sup> It starts with an assumption of violence and works toward its fulfillment, toward the totalizing of vice, the prerequisite of totalized coercive law. The medievals did the opposite. They began in a good world saturated with vice and moved through law toward virtue and so law's fulfillment in charity.<sup>169</sup> To the medieval, progress was real. It was ontological: our nature was healed and elevated.

Now, liberal modernity will, of course, have none of this charity talk because modernity's ontology of violence denies the existence of grace, or at least its efficacy in history.<sup>170</sup> Ontological ascent or descent, true progress or regress, is simply not a concept of liberal thought. And so, it denies the dynamic, hierarchical understanding of the temporal order. Seeing instead either a flat, positivist order of essentially inert things wherein history is reduced to "one damn *thing* after another" or a historicist temporal order wherein difference is recognized and then promptly relativized to a more fundamental sameness and so history is similarly reduced to "one damn *everything* after another." In either case real, actual changes in human relationships are denied in favor of the eternal registry of the liberal State and progress is nothing other than the extension of the reach of this registry, the conquest of all lesser sovereignties, which is essentially a problem of technology. The liberal and so technocratic society "progresses" precisely to the extent that the State's sovereignty conquers all aspects of our real lives. Such a dynamic has no use for the spiritual power, for the preaching of the truth nor for the flow of grace. In fact, such things disrupt this society's self-realization.<sup>171</sup> The extra-legal real relations of peace that emerge through faith and charity cannot be allowed to disrupt the advance of the registry of conflict.<sup>172</sup> And so, such spiritual, now called religious things

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168. *On I Timothy*, 64; Aquinas, *Commentary on the Second Letter of Saint Paul to Timothy*, 14.

169. *On Romans*, V.6.450.

170. Schindler writes, "In short, the precondition for the emergence of the modern concept of freedom is not the denial of God, but the denial of his actual self-revelation in history. Modern liberty, at its core, is a rejection specifically of the incarnation, God's coming *in the flesh*" (*Freedom from Reality*, 127).

171. Hobbes, *Leviathan*, III.42.109 (387).

172. *On Kingship*, I.3 (365).

are put into a box called the private, where they are held captive and steadily starved out of existence.

What we are seeing is that the society of ascent (the City of God, we ought to call it) moves past this society of descent (the City of Man, we ought to call it) through the shared realm of positive law and a merely earthly peace.<sup>173</sup> Paradoxically, the two cities share this space of our earthly passage, but without compromising their fundamental opposition.<sup>174</sup> This is so, of course, because these two societies are everywhere and always intermingled, and each of us is in different respects or at different times citizens of both.<sup>175</sup> The destination of the first city is eternal peace through charity and so it realizes the movement of human law past itself to the eternal peace of heaven.<sup>176</sup> This is the movement of increasing the scope of real charitable relations, of friendships and families in our lives, at the expense of merely legal or adversarial ones. The destination of the other society is a sort of eternal human law found within a totalized earthly peace. This is a movement of increasing the reach of law at the expense of charitable relations, a movement that happens, as we have seen, as much in our souls as it does in the courthouses. To the first, the realm of law is the truly temporal realm, governed by the temporal power, a dynamic realm that moves past itself through the efficacy of spiritual power. To the second, the spiritual power, grace, is denied and the temporal power absolutized producing the stasis of total violence, which it calls peace, which is the emergence of the all-powerful Leviathan, a symbol for the devil as the medieval Scripture commentaries point out.<sup>177</sup> If liberal modernity is viewed with such a Thomistic and Augustinian vision, we can see that the City of Man is fully comprehended within the vision of the City of God, but not vice versa. The City of Man cannot see the City of God, but the City of God can most certainly see it.

It is at this point that we can hopefully see how Christianity proposes an alternative lexicon and a powerful and distinct

173. Augustine, *City of God*, 19.17; See *On I Timothy*, 59.

174. See, for example, Augustine, *City of God*, 17.54.

175. *Ibid.*, 17.49.

176. *Ibid.*, 22.30.

177. See, for example, Hobbes, *Leviathan*, III.39 (314–16).



narrative, a gripping drama that makes sense of the relationship between law and grace and that is capable of providing both an account of a truly nonliberal order of ascending peace and an account of liberalism itself. Within this drama it is liberalism that takes on a derivative role in a profoundly Christian discourse.

This, it seems to me, is a narrative vantage point from which to glimpse a postliberal future, but without falling for the traps that liberal discourse sets for us. For example, the Catholic temptation toward confessional states. Through this narrative, we can see, I think, that we can take a staunchly antiliberal position while simultaneously maintaining that a confessional state is nothing short of a monstrosity wherein religion becomes yet another rhetoric of power, through which sovereignty extends finally to all aspects of our humanity. But we can do so only by first seeing the world of positive law for what it is and accepting the corporate ascent to God as the true drama of history. We can come to oppose a confessional state not because the political has its proper realm untouched by grace, but for precisely the opposite reason,<sup>178</sup> because the progressive Christianization of society is the progressive undoing of sovereignty itself. I think Thomas would agree that countering liberalism is not a matter of getting the Constitution right. It is a matter of changing our world. It is a matter of seeing our relationships as what is real and of developing them in charity through the spiritual power. It is a matter of wresting away from the sovereign more and more of our soul through the pursuit of virtue, and so reducing its power by opening up worlds of peace that it cannot even see. □

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178. See Milbank, *Theology and Social Theory*, 229–31, 326.