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AN ALEXANDRIAN HERMENEUTIC, OR THEOLOGY IN A POLITICAL MODE: A STUDY OF JOHN HENRY NEWMAN'S POLITICAL PHILOSOPHY

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Table of Contents

ABSTRACT

After the First Vatican Council defined the dogma of papal infallibility in 1870, the liberal statesman William Gladstone (in 1874) accused British Catholics of a forfeiture of their mental freedom and a disloyalty to their Queen. John Henry Cardinal Newman responded to Gladstone with *A Letter Addressed to the Duke of Norfolk*, which by all accounts (Gladstone's included) capably defended British Catholic freedom and loyalty. The *Letter's* famous articulation of the rights of conscience has loomed large in 20th century Catholic thought. It is credited with laying the groundwork for the Second Vatican Council's new emphasis on the political rights of religious liberty and the apparent reconciliation of the church with modern political philosophy.

But the *Letter* contained a more profound teaching than 20th century scholarship has appreciated. The almost-unspoken conclusion of the *Letter* was an inversion of Gladstone's original accusation: partisans of liberal principles were the true forfeiters of mental freedom, and liberal principles were a betrayal of the non-liberal British constitution. The *Letter* pointed to without drawing such conclusions, since Newman desired not to scandalize his audience but to slowly move them back to firmer ground.

Therefore, the document most often cited as Newman's reconciliation with political liberalism is in fact an indictment thereof. This dissertation will argue that the failure to appreciate the teaching of the *Letter to the Duke of Norfolk* is the result of an insufficient political philosophy. John Henry Newman's thought was radically non-modern. Analyses which presuppose modern or liberal principles distort Newman's project. In fact, the failure to appreciate a "rupture" in the history of political philosophy inclines scholars to attribute a non-existent rupture or inconsistency in Newman's own thought. As a result, Newman's political reflection has been subject to a

distortion that has placed him alternatively on either side of a narrative of historical progress which he himself would have rejected.

The first chapter will work from principles enunciated by Leo Strauss and distinguish between classical natural right and modern natural rights, emphasizing the conscience as the locus where the modern rupture with the past is most evident. Modern philosophers like Hobbes and Locke retain the language of conscience, but only after subverting the pre-modern account of practical reasoning. Conscience remains, but with an inverted meaning.

The second chapter will summarize the contemporary readings of Newman's *Letter*, emphasizing their implicit acceptance of modern natural rights and a progressive philosophy of history. Against that narrative of progress, the second chapter will conclude with a provisional account of Newman's "Alexandrian hermeneutic," a sacramental or elliptical method of thought and speech derived originally from the Alexandrian Church Fathers. The Alexandrian approach to history revealed liberalism not chiefly as a political doctrine or social phenomenon, but as a sempiternal heresy.

Then, the dissertation will analyze Newman's relationship to three modern political doctrines: political rights of religious liberty; pluralism; and toleration. For all three, scholars have permitted the hegemony of modern natural rights to obscure Newman's suspicion of those principles as *principles* or solid foundations for political life.

The third chapter argues that the *Letter* grounded itself in non-modern natural right and cannot be reconciled with modern political principles. The "right of conscience" Newman advocated within the *Letter* was a selective and restricted right, not a foundational or universal guarantee. Central to Newman's political analysis of conscience was a battle between obedience

and self-will. Newman invoked only to ridicule the "freedom" or "liberty" of conscience. Conscience was an "authority" and a "law," and insofar as it was the "echo of the voice of God," it was never in a neutral or original position. The very attempt at founding politics on a set of inalienable rights was a result of self-will or pride.

Chapters four treats corporate "personality," a concept which appeared in the *Letter* but developed over a long period of Newman's Anglican and Catholic writings. Personality as a political concept allowed sacred biblical and ecclesiastical history to re-emerge as a hermeneutical framework for the interpretation of contemporary political events. It rejected pluralistic public reason and a progressive philosophy of history in order to re-assert appropriate Scriptural categories and the permanence of certain theologico-political issues.

Chapter five argues that the *Letter* was an instance of what Ernest Fortin called "theology in a political mode," in both content and style. Newman perceived that 19th century liberalism opposed orthodoxy by asserting (and asserting as "proven") an ideological distortion of a human experience. While Newman consistently advocated prudential toleration, he perceived that the modern doctrine of toleration was inimical to the life and personality of the Church. But to argue for prudential rather than doctrinaire toleration was at a certain point to argue for persecution—which could not be heard by moderns who made "free thought" and "private judgment" their watchwords. So one needed an "Alexandrian hermeneutic" not only to gently insinuate what could not be said aloud, but also to move men from a liberal account of history to a scriptural account. *The Letter to the Duke of Norfolk* was the culmination of a life's work in how to think and speak about the relationship between spiritual and political authority.

If (as Ernest Fortin has argued) the weakness of mid-20th century Catholic political thought resulted from an unawareness of the homogenizing tendency in the secular rights discourse,

Newman showed himself perceptive of that issue and offered the best possible solution: an Alexandrian style of thinking and speaking which could once again treat rights, pluralism, and toleration as important matters for political prudence, not self-evident theoretical, doctrinaire foundations.

INTRODUCTION

On the morning of Monday, May 12th, 1878, John Henry Newman awoke in the rooms of 48 Via Sistina in Rome. He had been sick with a cold and cough since his arrival in the eternal city nearly two weeks earlier and was soon to be bedridden until the end of the month. But on the 12th, he was well enough to complete the task for which he had left his Oratory in Birmingham: to receive notice of his elevation to Cardinal by Pope Leo XIII. Quitting his rooms, Newman made his way to apartments lent to him in the Palazzo della Pigna to receive the *biglietto* announcing the Pope's decision. By 11 o'clock, the rooms were full of English and American Catholics, church dignitaries, and well-wishers gathered to witness the ceremony. Soon after midday, the messenger from the Vatican's Secretary of State arrived. Newman received the *biglietto*, broke the seal, and handed it to the Bishop of Clifton, Dr. Clifford, to read. Upon hearing of the pope's decision to award him the red hat, Newman gave what has become known as his "biglietto speech."

This brief encomium of a life made two claims: (1) Newman had suffered many vicissitudes, and (2) amid the turbulence, his life was unified by opposition to a single principle. "For thirty, forty, fifty years I have resisted to the best of my powers the spirit of liberalism in religion."[1] Liberalism in religion insisted "that there [was] no positive truth in religion" and that therefore "all [were] to be tolerated, as all are matters of opinion."[2] Religion was a "private luxury,"[3] a "sentiment and a taste,"[4] but not a "bond" or "framework" of society.[5] Against this

[1] John Henry Newman, "Biglietto Speech," *Addresses to Cardinal Newman with His Replies*, ed. W. P. Neville (London: Longmans, Green, and Co., 1905), 64.
[2] Ibid.
[3] Ibid., 66.
[4] Ibid., 64.
[5] Ibid. "Instead, society was to be firmly founded on a "universal and thoroughly secular education."

innovation in thought and society, Newman had organized his life. The abbreviated anti-liberalism of the biglietto was elaborated in 1850's *Certain Difficulties Felt by Anglicans in Catholic Teaching*, 1864's *Apologia Pro Vita Sua*, and 1875's sequel to *Certain Difficulties,* the *Letter Addressed to the Duke of Norfolk.* Anti-liberalism united the two major periods in Newman's life: the Anglican Oxford Movement with the Roman Catholic Church.[6] Apparent discontinuities like the Anglican Newman's preference for establishment and the Catholic Newman's support of dis-establishment were beside the point.[7] A deeper unity was found in a common resistance to the liberal reduction of religion to a private taste that could make no claims to truth or corporate (that is, political) reality.

Newman asserted a consistency that his subsequent interpreters have missed. The result has been a scholarly paradox. The insistent anti-liberal has been taken to be "dangerously liberal"[8] by anti-liberals. By liberals themselves, Newman has become a "positive enthusiast"[9] for the "the secular, neutral, tolerant State."[10] When Newman's anti-liberalism has been taken seriously, the lifelong opponent of revolution[11] has been made into "a zealot whose true intellectual counterparts were Marx and Nietzsche"[12] who presaged "how terrorism might subvert liberal society."[13] Or the liberalism and anti-liberalism have been squared by denying that Newman was consistent. Either

[6] Newman's famous 1845 conversion from the Anglican Church (where he held such a prominent role as a leader of the Oxford Movement) to the Roman Catholic Church will be discussed in full below.
[7] Subsequent scholarship has made much of contrasting the "theocratic" Anglican Newman with the tolerant Catholic Newman. See pp. 88ff for a summary of the scholarship and the inadequacy of this juxtaposition.
[8] Alvin Ryan, "The Development of Newman's Political Thought," *Review of Politics*, 7 no. 2 (April 1945): pp. 210 (reproduced in *A Liberalism Safe for Catholicism: Perspectives from the Review of Politics.* Edited by Daniel Philpott and Ryan Anderson (South Bend: University of Notre Dame Press, 2017), 68-99.*)*
[9] Terrence Kenney, *The Political Thought of John Henry Newman*, (London: Longmans, Green and Co, 1957), 18.
[10] Ibid.
[11] Cf. John Henry Newman, *Apologia Pro Vita Sua* (London: Longmans, Green, and Co, 1908)*,* 33; hereafter cited as *Apologia.*
[12] Robert Pattison, *The Great Dissent: John Henry Newman and the Liberal Heresy* (Oxford: Oxford University Press, 1991)*,* viii.
[13] Ibid., 217.

he changed his principles[14] or dissimulated.[15] Newman looked back on his life in 1878 and saw a consistent opposition to liberalism that his interpreters have either missed or denied.

The failure of interpretation is the result of an insufficient political philosophy.[16] Analysis which presumes the concepts of modern political philosophy is ill-equipped to comprehend John Henry Newman's thought. Either he appears as a non-political quietist[17] or as a thinker who has failed to properly distinguish the political from the theological. However, any scholar who attempts to disentangle the two will already be engaged in distortion. Newman's reflections were always rooted in the corporate and institutional reality of the Church, what he called its "personality."[18] If Newman offered little political analysis in modern terms, it was because Newman rejected the modern terminological and theoretical apparatus. For Newman, modern political thought was grounded in a heretical "liberalism" that denied the possibility of religious knowledge[19] and

[14] John Coulson, *Newman and the Common Tradition*: *A Study of the Church and Society* (Oxford: Clarendon, 1970). Also Paul Misner, *Papacy and Development: Newman and the Primacy of the Pope* (Leiden: Brill Academic Publishers, 1976). See below, pp. 68 in Ch. 2 for a full discussion.

[15] One can find accusations of dissimulation as far back as Charles Kingsley's (which prompted Newman to write the *Apologia)*. But the modern school of suspicion begins with Frank Turner's 2007 biography, *John Henry Newman: The Challenge to Evangelical Religion* (New Haven: Yale University Press, 2007). See especially the article by Colin Barr and Simon Skinner, "Social and Political Thought," in *The Oxford Handbook of John Henry Newman*, Edited by Frederick D. Aquino and Benjamin J. King (Oxford: Oxford University Press, 2018). doi: 10.1093/oxfordhb/9780198718284.013.20 See pp. 88ff. infra.

[16] Newman's concerns were primarily theological—but those concerns have been distorted by the scholarly presupposition of a progressive philosophy of history. When modern political philosophy is understood to be in rupture with classical and Christian political thought, Newman's own principled consistency reveals itself. Newman opposed a liberalism that he cognized according to pre-modern or pre-liberal concepts. Newman's theological concerns appear "non-political" only if politics is understood along modern liberal lines; when Newman is viewed from the perspective of classical political philosophy, he is revealed as a thinker deeply engaged in prudential political reflections on the best life.

[17] Questions of concrete political policy rarely occupied John Henry Newman's pen. His extensive public writings contain only a single treatment of a contemporary political debate, and even those eight essays on England's management of the Crimean War were written under the pseudonym Catholicus. "Unlike such other representative English prose writers of the Victorian Age as Mill, Ruskin, Carlyle, and Arnold, Newman rarely [if ever—ed.] addressed himself to the 'Condition of England question'" (Ryan, "The Development of Newman's Political Thought," 69). Newman's apparent quietism stood in sharp relief to his fellow Anglican convert, Cardinal Henry Manning, whose public activity on behalf of the working classes (especially in the London Dock Strike of 1889) has frequently been contrasted with Newman's relative silence about social questions.

[18] Cf. Ch. 4 below on the question of social ontology and the personality of the Church

[19] Cf. pp. 76 to 92 below on Newman's understanding of liberalism as a heresy. See also Dave Delio's forthcoming article "Liberalism: Personal and Social Aspects in Newman's Thought."

reduced the social-ontological status of the Church to a private voluntary society. Both as an Anglican and later a Catholic, Newman searched for a way to break the Church free from the theologico-political constraints placed upon it. Modern political philosophy, grounded in a new anthropology, had obscured fundamental human realities.[20] Newman's project was to return to a more adequate language of human ethics (in the conscience) and human sociality (in the Church). In breaking free from the liberal vista (in which human history moves from customary authority to individual liberty),[21] Newman also avoided the reactionary ultramontane inverse (in which human history is a decline from orthodox monarchy to diabolical democracy). Newman returned to the classical perspective of multiple legitimate regimes: which meant a meditation on how the Church's personality could be preserved (or obscured) in each of them. By resisting a hegemonic liberal movement of history, Newman was able to reassert the importance of prudence in the consideration of the relations between spiritual and political authorities. This project of a lifetime—referenced in the biglietto speech—culminated in *A Letter Addressed to the Duke of Norfolk*.[22]

A Brief Life

[20] Chapter 1 below follows generally Straussian lines to distinguish modern from classical political philosophy. See pages 49 – 57 for the Hobbesian innovation on the meaning of "conscience." Newman explicitly refers to this phenomenon in *Letter* p. 249, when he describes the "resolute warfare, I had almost said conspiracy against" conscience by philosophers.

[21] A representative example of the "liberal vista" can be found at the outset of John Stuart Mill's *On Liberty.* See pp. 221ff infra for Newman's rhetorical inversion of Mill in the *Letter to the Duke of Norfolk*. See pp. 88ff to see how a presupposition of this liberal vista has distorted Newman scholarship.

[22] John Henry Newman, *CERTAIN DIFFICULTIES FELT BY ANGLICANS IN CATHOLIC TEACHING CONSIDERED: In a Letter addressed to the Rev. E. B. Pusey, D.D., on occasion of his Eirenicon of* 1864; *And in a Letter addressed to the Duke of Norfolk, on occasion of Mr. Gladstone's Expostulation of 1874, Volumes I and II.*(London: Longmans, Green, and Co, 1900), Volume II. Hereafter cited as *Letter.* Volume I is cited as *Certain Difficulties.*

No one has contested the biglietto's first claim, that Newman endured "many trials" during his seventy-seven years. Newman's life tracked the turbulence of the 19th century, punctuated by his conversion in 1845 from the Church of England to the Roman Catholic Church. The Anglican Newman of the 1830's was the most influential voice at Oxford. Oxford in the 1830's was the epicenter of the debate over the liberalization of the Church of England, and Newman was a leader and founder of the orthodox resistance, the Oxford Movement. He published and authored many of the *Tracts for the Times*, the series of essays written to English clergy and laity resisting dis-establishment and what Newman termed the "Erastianism" of the English government.[23] His *Parochial and Plain Sermons* quickly sold out upon publication. His *Oxford University Sermons*[24] delivered from the pulpit of St. Mary's were taken to be the definitive word on the question of faith and reason. Matthew Arnold, who was then a young student at Oxford, said of Newman at that time:

> Who could resist the charm of that spiritual apparition, gliding in the dim afternoon light through the aisles of St. Mary's, rising into the pulpit, and then, in the most entrancing of voices, breaking the silence with words and thought which were religious music—subtle, sweet and mournful?[25]

[23] The Movement began in no small part as a reaction to Parliament's suppression of Church of England bishoprics in Ireland: neither Newman nor the other early Tractarians denied that the bishoprics were corrupt, but they objected to Parliament taking it on itself to make or unmake portions of the Anglican Church. As Newman recounted, the "Tracts for the Times were founded on a deadly antagonism to what in these last centuries has been called Erastianism;" (*Letter*, 198) that is, the quasi-Hobbesian account of institutions and sovereignty that conceived of the Church as merely a creation of the state and drained it of any substantial content.

[24] John Henry Newman, *Fifteen Sermons Preached before the University of Oxford* (London: Longman, Green, and Co, 1909). Hereafter cited as *Oxford University Sermons.*

[25] Matthew Arnold, *Matthew Arnold: Complete Prose Works*. Vol. X, *Philistinism in England and America*, ed. R.H. Super (Ann Arbor: University of Michigan Press, 1974), 165.

Throughout the theological debates, "*Credo in Newmannum* was a common phrase at Oxford."[26] For an Anglican priest with such influence and reputation, a conversion to the Catholic Church—the superstitious religion of uneducated Irish peasants, not Oxford dons—required the sacrifice of all that he had achieved.[27] Writing in 1864, in his spiritual autobiography, he recounted his final parting from his beloved Oxford:

> I left Oxford for good on Monday, February 23, 1846. … I called on Dr. Ogle, one of my very oldest friends, for he was my private Tutor, when I was an Undergraduate. In him I took leave of my first College, Trinity, which was so dear to me, and which held on its foundation so many who had been kind to me both when I was a boy, and all through my Oxford life. Trinity had never been unkind to me. There used to be much snapdragon growing on the walls opposite my freshman's rooms there, and I had for years taken it as the emblem of my own perpetual residence even unto death in my University. On the morning of the 23rd I left the Observatory. I have never seen Oxford since, excepting its spires, as they are seen from the railway.[28]

Though Newman finally returned to Oxford in 1878, after an absence of 32 years, at the time his conversion necessitated the leaving behind of all he had attained.

His first years as a Catholic were not without trouble. He was sued for libel in the Achilli Trial, in which England's strict libel laws and Newman's mis-placed reliance on his Catholic friends resulted in a conviction viewed by most parties as unjust. The Irish university he was asked to found in 1854 he was compelled to leave in 1858, frustrated by the very bishops who had invited him. He was quickly asked to edit the journal *The Rambler* and quickly asked to step down (after

[26] J.A. Froude, *Short Studies on Great Subjects*, Vol. 4 (London: Longmans, Green, and Co., 1899), 273. Froude speaks with first-hand knowledge of the situation, having been a second-generation member of the Oxford Movement, before he broke with Newman later in life.
[27] Of course, there were influential English gentry Catholics—otherwise the 1827 Emancipation bill would not have been put forward. But in converting, Newman sacrificed his influence and reputation, at least in the mind of public England.
[28] Newman, *Apologia* 236-7.

the publication of his short tract *On Consulting the Faithful in Matters of Doctrine*).[29] While under suspicion from his Catholic superiors in the 1860s, he had been publicly accused of dishonesty by the Protestant professor of literature, Charles Kingsley, in 1864.[30] As an Anglican, Newman had often been accused of being a crypto-Catholic; as a Catholic, he was suspected of being "essentially anticatholic and Protestant."[31]

Throughout these reversals, Newman maintained that his core principles had remained unchanged. To explain his conversion in 1845, he published *An Essay on the Development of Christian Doctrine*.[32] It was written, as Newman himself said, to be "an hypothesis to account for a difficulty".[33] The difficulty was inescapable: how could one know that the present-day Catholic Church was the same as the Church of the first centuries? The two appeared so different. Newman's entire project as an Anglican was to try to return the Church of England to an apostolic and patristic purity, in contrast with what he took to be the medieval corruptions of the faith introduced by Rome. But as Newman studied the early Church Fathers,[34] he was compelled to

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[29] John Henry Newman, *On Consulting the Faithful in Matters of Doctrine,* ed. John Coulson (Oxford: Rowman & Littlefield, 2001) was originally written as an 1859 article in the journal the *Rambler* and suggested that the laity or faithful should be consulted (as one consults a barometer to determine the atmospheric pressure) on questions of theological or dogmatic definition. But it scandalized an English hierarchy who considered the role of the laity "to hunt, to shoot, to entertain. These matters they understand, but to meddle with ecclesiastical matters they have no right at allall" (p. 41 of Coulson's introduction, quoting an 1867 letter from Talbot to Manning).

[30] "Father Newman informs us that truth for its own sake need not be, and on the whole ought not to be, a virtue of the Roman clergy" (Charles Kingsley, in *Apologia Pro Vita Sua*, ed. Wilfrid Ward (London: Oxford University Press, 1913), 25)). Newman's vigorous defense of his own consistency took the form of his much-renowned spiritual autobiography, the *Apologia Pro Vita Sua*, in which even Kingsley himself was forced to admit Newman was fully vindicated.

[31] In the words of the famous 19th century American Catholic convert, Orestes Brownson. Brownson had reviewed Newman's *An Essay on the Development of Christian Doctrine* in *Brownson's Quarterly Review* in July 1846, and wrote: 'It is therefore due both to the Church and to Protestants to say, expressly, and we do so with the highest respect for Mr. Newman, … that his peculiar theory is essentially anti-Catholic and Protestant' *(The Works of Orestes A. Brownson* (Detroit: H. F. Brownson, 1906), XIV, 5). Newman and Brownson later reconciled, and Newman even attempted to bring Brownson to his Irish university to lecture on geography.

[32] John Henry Newman, *An Essay on the Development of Christian Doctrine* (South Bend: Notre Dame Press, 1989). Hereafter cited as *Development.*

[33] Newman, *Development*, 30.

[34] Especially St. Athanasius in his debate with the heretic Arius over the divine personhood of Jesus, which culminated in the Council of Nicaea and the formulation of the Athanasian (Nicene) Creed. This research supplied

admit that what he originally took to be papist corruptions might be legitimate developments. His conversion was not a reversal, but a gradual realization of what his core principles required. The 1850 lectures *Certain Difficulties Felt by Anglicans in Catholic Teaching* argued that the Oxford Movement was naturally drawn towards the Catholic Church: no reversal was involved for one from the Movement to find a home in the Catholic Church—indeed, no lasting home in the Church of England was possible.

The *Apologia Pro Vita Sua* was written in 1864 to rebut Kingsley's accusation of dishonesty. In what would become the famous and well-regarded spiritual autobiography, Newman argued that his intellectual and spiritual life had been characterized by a devotion to three principles: (1) the principle of dogma; (2) the belief in a visible church; and (3) the belief that the pope was the anti-christ.[35] The drama of his conversion consisted in the gradual realization that the third principle could not be held together with the first two. His life was the extrication from a spiritual tension, and he had never abided in the Church of England with a false heart. In summing up his own position, Newman said that his consistency could best be understood in terms of his opposition: "my battle was with liberalism; by liberalism I mean the anti-dogmatic principle and its developments."[36] In a footnote added to the 1865 edition, Newman made clear his own understanding of the liberalism he had opposed as head of the Oxford Movement. Whatever else he had pursued, Newman had always opposed "the mistake of subjecting to human judgment those revealed doctrines which are in their nature beyond and independent of it, and of claiming to determine on intrinsic grounds the truth and value of propositions which rest for their reception

the matter for Newman's first book, *The Arians of the Fourth Century* (London: Longman, Green, and Co, 1908). Hereafter cited as *Arians.*

[35] Newman, *Apologia*, 48-53.

[36] Ibid., 48.

simply on the external authority of the Divine Word."[37] By liberalism Newman had in mind a particular set of religious commitments—or rather, a mode of regarding religious propositions. Liberalism subjected divine truth to human judgment.

Liberalism was antithetical to the "dogmatic principle," and this claim was elaborated most comprehensively in 1875's *Letter to the Duke of Norfolk.* The *Letter* was written to answer the charge of the English Liberal statesman William Gladstone, who published two pamphlets in 1874 and 1875 in the wake of the first Vatican Council's declaration of papal infallibility. In them, Gladstone attacked infallibility and accused English Catholics of having "forfeited their moral and mental freedom." The "Absolute Obedience" owed to the Pope made it impossible for Catholics to be loyal British subjects, Gladstone maintained. To a degree, Gladstone acknowledged Newman's claim about the incompatibility of liberalism with the dogmatic principle.

To answer Gladstone's charges adequately, Newman was compelled to offer a political history of the Church from the 3rd century to the 19th. He contended that the Church remained what she always had been (Gladstone's had claimed that "infallibility" was an innovation on the Church's long tradition). The Oxford Movement itself was drawn to the Church of Rome for that very reason.[38] The culmination of the historical treatment was Newman's famous defense of "Conscience." Gladstone erroneously accused Catholics of mental slavery, Newman argued, because Gladstone himself had forgotten or misunderstood how his own conscience operated. Conscience properly understood allowed an Englishman to be a loyal subject to both Pope and Queen. If liberalism was inconsistent with the dogmatic principle, liberalism was equally inconsistent with the British Constitution. Newman perfectly inverted Gladstone's charge:

[37] Ibid., 493.
[38] *Letter*, section 3.

Catholics could be *loyal* to both Queen and Pope, but liberals (it appeared) could be loyal to neither.[39]

Pope Leo XIII intended the elevation to Cardinal to vindicate Newman. The pope is supposed to have said that "the policy of his pontificate would be revealed by the name of the first cardinal he created," with the effect of finally "removing among non-Catholics the suspicion that [Newman's] immensely persuasive and popular apologetic writings were not really properly Catholic."[40] The red cap solidified Newman's place both within England and within the Catholic Church. The pope's action was part of a long overdue public recognition that Newman received in the 1870s (though the public reversal truly began with the *Apologia*). The 1875 *Letter's* defense of British Catholics was so heartily received by Catholic and Protestant England alike that "the general public had come to regard Newman 'as an English possession of which they [were] proud."[41] On December 15, 1877, Newman was presented with the offer to become the first honorary fellow of Trinity College, Oxford (thus reversing the hardship of the 1845 parting).

A Brief Afterlife

Despite this popular reversal, scholarly and elite Catholic opinion moved more slowly. Newman's contemporaries in the 1870s were publicly forced to retreat in the wake of *A Letter to the Duke of Norfolk* and the pope's decision. WG Ward and Cardinal Manning, two of Newman's ultramontane opponents, admitted that the substance of the *Letter* (including its refutation of

[39] See Ch. 5, esp. pp. 202ff. below, for a full elaboration of this argument, which has not been properly appreciated by Newman scholars
[40] Op. cit., in Ian Ker, *John Henry Newman: A Biography* (Oxford: Oxford University Press, 2009), 715.
[41] Ibid., 691.

ultramontane exaggerations of papal power) was sound.[42] Manning nevertheless surreptitiously obstructed Newman's elevation to cardinal,[43] and late 19th - and early 20th-century Catholic political thinkers did not know what to do with Newman. He was suspected to be a proto-pragmatist[44] and "dangerously liberal."[45] Newman's ambivalence towards the pope's temporal power[46] led him to be regarded with unease. Maintenance of papal temporal dominions was a *sine qua non* position of 19th-century ultramontane thought, and Newman had been out of step.

However, around the time of the Second Vatican Council (1962-1965), scholarly opinion shifted. Suddenly, Newman was discovered to be forward-looking, pointing towards a reconciliation between the Church and the modern world. In this sense that Newman has been called "the father of Vatican II"[47] and its new emphasis (if not innovation) on the political rights of conscience. Even if Newman contended all his life that his one great opponent was "theological liberalism," he came to be regarded as a political proto-liberal, someone who recognized the exhaustion of the *ancien regime* and, in the words of one commenter, "looked forward to the tolerant, secular state, without misgivings or regret."[48] Newman's defense of the "rights of conscience" in his *Letter to the Duke of Norfolk* has been used to argue for Newman's "modern" understanding of politics. By looking to the *Letter,* Newman scholarship in the mid-to-late 20th century has argued that "just and lasting solutions of political problems"[49] could be discovered by grounding claims of justice in the protection of individual rights. The solution to "the problem of

[42] Ibid., 690.
[43] See Ker, *Biography*, 715ff.
[44] Crane Brinton, *English Political Thought of the 19th Century* (London: Ernest Benn Limited. 1933), 164.
[45] Ryan, "The Development of Newman's Political Thought," 68.
[46] As witnessed in, for instance, the sermon "The Pope and the Revolution," in *Sermons Preached on Various Occasions* (London: Longmans, Green, and Co, 1908).
[47] Op. cit., attributed to Pope Paul VI in Ian Ker, *Newman on Vatican II* (Oxford: Oxford University Press, 2014), 1.
[48] Terrence Kenny, *The Political Thought of John Henry Newman* (, 154.
[49] Ryan, "Development of Newman's Political Thought," 93.

Church and State…involve[d] an acceptance…of 'liberal principles,' or a principle of pluralism."[50] "It was the duty of Catholics…to adapt themselves to the conditions of the moment and to fight with the modern arms of freedom of conscience, of the press and of the vote."[51] In the 20th century, Newman's political thought was understood to presage a liberalism or a pluralism that grounded itself most firmly in the rights of conscience. Catholic Newman—despite his repeated denunciations of liberalism—had come to be seen as a harbinger of the 20th-century Catholic Church's reconciliation with political liberalism.

The mid-century view was a paradox: the ardent theological anti-liberal as political liberal extraordinaire. In the late 20th century, a new view ascended. It solved the paradox by simplification: viewing with suspicion Newman's Catholic turn, it argued that Newman's Catholic writings were the product of dissimulation—the earlier Anglican period was where Newman's deepest sympathies lay.[52] Not only was Newman not an *avant la lettre* political liberal, he was a disguised theocrat.

A central irony links these alternate analyses. Both have presumed that Newman's life was characterized by an intellectual rupture. Both saw Newman breaking with his past when he converted. To argue that Newman's thought was consistent with the best liberal thought, mid-century scholars felt compelled to argue that Newman was internally inconsistent, and that his later

[50] Ibid. Ryan says that Newman "is defending a kind of pluralism in the political order" when, in Newman's *Present Position of Catholics*, he "successfully appeal[s] to the English nation to respect the right of conscience of himself and his fellow Catholics." However, in the lecture Ryan cites to support this claim, Newman refers to the danger that "we might even lose the rights of British subjects, and be deprived of the free exercise of our religion." Newman does not invoke any "rights of conscience" as he would develop in the *Letter to the Duke of Norfolk* (and which he would refuse to make the foundation of political organization); instead, he refers to rights generally held and granted by way of British tradition. In other words, Newman does not raise the issue of natural or human rights but of specific "rights of British subjects." Newman resists the abstract or categorical claim.

[51] Op. cit., Ibid., 92. (Ryan, in a strange moment of analysis, is quoting a Msgr. Dunaloup—who had written these words independent of any analysis of Newman—to elucidate Newman's implicit political doctrine).

[52] See pp. 87ff in Ch. 2, infra.

Catholic writings repudiated his earlier church-and-state Anglican Tory period. From the other side, the revisionist school has accepted the same rupture, but placed Newman's deepest intellectual sympathies before the 1845 conversion.

Both analyses depend on a progressive account of the history of political thought and the emergence of rights discourse therein, where the movement of history is from customary or theocratic authority to individual liberty.[53] While they disagree about where to place Newman within that continuum, neither questions the continuum. The presumption of a progressive history of political philosophy demands Newman's own thought be understood as a rupture. But by understanding political philosophy itself to have undergone a rupture, [54] Newman's own self-proclaimed principled consistency can be restored.

A History of Newman's Thought In Light Of A History of Political Philosophy

The argument over whether Newman's political thought was in line with 20th century political liberalism has presumed that Newman's own development involved a rupture. His later Catholic writings were either a repudiation or a dissimulation of his Anglican theologico-political positions. But this analysis only obtained by application of a progressive history of political philosophy. Such a philosophy was typical of mid-and-late 20th century Catholic political thought, but Fr. Ernest Fortin (working from principles propounded by Leo Strauss) has argued that the mid-and-late 20th century Church suffered from the absence of a "theology in a political mode," or a theology informed by the methods and concerns of classical political philosophy.

[53] Both schools share a narrative of progress much more at home in a work of August Comte's or J.S. Mill's *On Liberty*.
[54] see Ch. 1 of this dissertation for a fuller discussion of the history of political philosophy

The problem came from Christianity's confused response to the double challenge of the Enlightenment and the success of modern science. In his reviews of the last two centuries of the Church's political thought, Fortin saw the Church mistakenly "espousing the principles of the Enlightenment along with their hidden premise, the ideology of progress"[55] which most often took the form of attempting "to combine a nonteleological science of nature with a teleological science of man."[56] The failures of the theological movements of the 20th century were attributable to their lack of "interest in political philosophy and thus they lacked self-knowledge, i.e., they were unaware of their dependence on the larger political context."[57] They were "too provincial," meaning that they did not have an adequate knowledge of either modern or ancient thought. The Church's flirtation with the "ideology of progress" manifested itself most readily in the belief that the modern discourse of natural or human rights was a harmonious development of the older natural right or natural law political philosophy. But Fortin argued that the language of natural rights was the result of a rupture in political philosophy, and any attempt to reconcile it with either Aristotelian natural right or Thomistic natural law had the effect of occluding fundamental political and philosophical realities.[58]

For Fortin, what the Church needed was both a reintroduction to the concepts of classical political philosophy and the use of "a theology which, like early Christian theology, is 'political' in its mode of treatment."[59] That is, a theology that both understood politics and *spoke* politically. Fr. Fortin argued that Newman himself had rediscovered the political or economic quality of the

[55] Ernest Fortin, "The Trouble with Catholic Social Thought," in *Human Rights, Virtue, and the Common Good*. ed. J. Brian Benestad (Lanham, Md.: Rowman and Littlefield, 1996.), 308.
[56] Ernest Fortin, "Why I am not a Thomist" in *Ever Ancient, Ever New: Ruminations on the City, the Soul, and the Church*. Edited by Michael P. Foley. (Lanham, Md.: Rowman and Littlefield, 2007), 179.
[57] Ibid.
[58] See, Ch. 1, pp. 30-48 for a fuller discussion
[59] Ernest Fortin, "An Academic Approach to the Teaching of Theology," in *Ever Ancient, Ever New*, 204.

Alexandrian Fathers,[60] and this dissertation will argue that Newman's political thought can be properly understood only when it is understood by means of "theology in a political mode" *as itself an instance of* "theology in a political mode."

Absent such treatment, Newman's political thought is bound to be misunderstood. Against the placement of Anglican-Theocrat Newman versus Catholic-Liberal Newman, one must escape the "theocracy to liberalism" continuum entirely. By appreciating the non-modern character of Newman's thought, he is rightly revealed as neither an Anglican theocrat nor a Catholic liberal. Newman was principled and consistent, as he claimed, but his consistency derived from an adherence to pre-modern political concepts.[61]

Newman's understanding of the relation of rights to duties, for instance, was decisively pre-modern; and any attempted synthesis with modern liberalism was bound to fail. A common result was the conclusion that while Newman may have had good insights, he nevertheless "did not go far enough" or offered a "defective" account of the modern pluralist state, since he did not proceed to the full logical consequences of a rights regime.[62] Alternatively, especially if scholars have retained an "authoritarian" interpretation of Newman's account of conscience in its the relation to the Pope, Newman's political thought becomes either irredeemably Hobbesian, with individuals subjected to an irresistible and infallible political authority,[63] or irresistibly Lockean,

[60] see pp. 24 for a fuller discussion.
[61] One distinction that will be uncovered through this dissertation is Newman's understanding of the status of pre-modern political concepts. They were not self-sufficient and closed to fuller elaboration but were themselves open to divine interpenetration and *preparation evangelii* (preparations for the gospel, as Clement of Alexandria said). This obviously distinguishes Newman from someone like Leo Strauss.
[62] David Nicholls, "Individualism and the Appeal to Authority" in *John Henry Newman: Reason, Rhetoric, and Romanticsim*, ed. David Nicholls and Fergus Kerr. (Carbondale and Edwardsville: Southern Illinois University Press, 1991): 194-209.
[63] Ibid. Nicholls argues that a "radical individualism" is at "the basis of Newman's understanding of life in general and Christianity in particular" (194). This individualism requires Newman to rely upon a "strongly authoritarian approach to religion" (ibid.) in order to knit together a church of individuals. Newman's appeals to papal power are distinctly Hobbesian (209), Nicholls attests.

with a proto-capitalist "providence" assuring the workings of a divine justice that becomes indistinguishable from the conclusions of political economy.[64] When modern questions are put to Newman with the expectation of modern answers, what results are unsatisfying and derivative republications of other modern philosophers' thoughts.

The question of "liberalism" is especially illuminating. For Newman, liberalism at its root was neither a political nor a moral or social phenomenon: liberalism was a heresy. As an arch-heresy or general form of heresy, it recurred throughout time as a constant temptation against orthodoxy. Asking whether political liberalism could accommodate theological anti-liberalism misses the mark. The liberalism Newman opposed was not founded by Mill nor Locke; it appeared in the Protestant Reformation, in the 11th century investiture debates, in 4th century Arianism. Eve herself, when she used her own judgment in the Garden, liberalized.[65] As with the question of rights, modern self-understandings of liberalism fail to adequately capture the context of Newman's opposition.

A further difficulty is that Newman himself was a political or economical[66] writer—not in the sense that he wrote about political economy, but that his rhetoric adapted itself to readers and circumstances. Newman's "economy" has received less scholarly attention than has been due,[67]

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[64] John Milbank, "What is Living and What is Dead in Newman's *Grammar of Assent*?" in *Newman and Truth*, ed. Terrence Merrigan and Ian Ker (Cambridge: Eerdmans Publishing Company, 2008), 62.

[65] John Henry Newman, "Tract 73: On the Introduction of Rationalistic Principles into Religion," in *Essays Critical and Historical,* Vol. 1 (London: Longmans, Green, and Co, 1907): 30-137. See pp. 97ff of this dissertation

[66] Another cognate would be "esoteric," though see below for the distinction between Straussian esotericism and Newmanian economy. This aspect of Newman's writings has been rarely thematized, with Robin Selby's *The Principle of Reserve in the Writings of John Henry Newman* (Oxford: Oxford University Press, 1975) being the foremost treatment. This short work does not consider reserve or economy in a rhetorical or propaedeutic aspect. It treats reserve as a strategy for communicating the incommunicable ("since we are at a distance from truth, and can only apprehend it by means of economical representations, words themselves are economies" (67) and as a product of personal rectitude (89-105).

[67] It's an open question as to why. One suggestion: the predominating school of thought from the mid-century onward has been focused on assuring Newman's canonization. In this project of rehabilitation, crucial was the need to definitively settle the matter *against* Kingsley: Newman hadn't lied. To argue that he was "economical" with the

though modern treatments of his dissimulation miss the mark. Newman's economical mode of writing was distinctly *Alexandrian*: it accommodated itself to the nature of the reader and gently led him towards the truth.[68] While similar in some respects to Leo Strauss' account of esotericism, Newman's "Alexandrian hermeneutic" was not founded on the sharp divide between the few and the many.[69] A failure to appreciate Newman's careful rhetoric has resulted in a scholarship that has failed to see how Newman's use of words like rights and toleration undermined modern doctrines of rights and toleration. Accommodation to political fact was never met with an endorsement of political principle—indeed, Newman continually redirected his audience's attention to the asserted (and not proven) quality of the first principles that imbued modern political doctrines with their nigh-incontestable quality.

The failure to appreciate Newman's political writing is in some sense a microcosm of Catholic political thought in the 20th century. The narrative of Newman's migration from a "theocratic"[70] Anglican Tory to a separation-of-church-and-state Catholic liberal mirrors to a remarkable degree Catholic political thought's self-understanding of its transition from the *ancien regime* through the French Revolution to the contemporary rights-based liberalism supported by the *Declaration on Religious Freedom* (succinctly understood as the move from de Maistre's political theology to John Courtney Murray's political liberalism)[71]. If the narrative of Newman's

truth might appear unbecoming of a saint. Alternatively, the 20th century itself (with its commitments to democracy and "public" discourse) was congenitally undisposed to appreciate or notice "economical" nuance. Thus the need for Leo Strauss' *Persecution and the Art of Writing* (Chicago: University of Chicago Press, 1952) and Ernest Fortin's criticism of 20th century Catholic theology's naivete.

[68] Cf, *Arians*. Also see Ch. 5 below.

[69] Remi Brague, "Athens, Jerusalem, Mecca: Leo Strauss's 'Muslim' Understanding of Greek Philosophy." *Poetics Today* 19, no. 2 (1998): 235–59, on in which Brague argues that an esotericism which views Athens and Jerusalem from the perspective of Mecca will draw a sharp distinction between the few and many, whereas an esotericism viewing the same from the vantage of Rome will not.

[70] Barr and Skinner, "Political and Social Thought" doi: 10.1093/oxfordhb/9780198718284.013.20

[71] Emile Perreau-Saussine, *Catholicism and Democracy: An Essay in the History of Political Thought* (Princeton: Princeton University Press, 2012).

political development needs correction, so will the general Catholic political narrative. It will be relevant as well to modern political philosophy: central to the modern political project but perhaps rarely brought to the fore is the question of religious vitality: modern political philosophy from Hobbes onward[72] has undertaken to analyze the political *efficacy* of religion, but rarelyinvestigated the grounds from which an efficacious religion might grow.[73] This is no fault of modern political philosophy, since it gains its own efficacy by removing speculative and theological questions from the sphere of real and actionable knowledge. One consequence of this modern formulation was that religious beliefs became primarily speculative questions, divorced from a concrete, institutional embodiment. It was, after all, an explicit aim of moderns like Hobbes and Locke to deflate the ontological status of the Catholic Church and to "privatize" religion.[74] But John Henry Newman's primary concern was with the life or *personality* of religion, understood not merely as an inchoate set of beliefs affirmed jointly in private, but as a corporate and therefore political institution. As he said in the *Apologia,* "the idea of a visible church." It is the question of the reality of a corporate body modern political philosophy had endeavored to occlude.

A New Perspective on Newman's Political Thought, with the *Letter to the Duke of Norfolk* as culmination

Modern Newman scholarship has failed to give due weight to the following considerations: the rupture in the history of political thought (manifested in the distinction between ancient and

[72] Explicitly in Ch. 12 of Thomas Hobbes' *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1996), though the theme is implicit to the whole.
[73] One sees this, for instance, in Alexis de Tocqueville's plea in the 2nd part of *Democracy in America* to preserve or conserve a state's religious foundations at all costs—since the question of how to renew those foundations lies beyond the scope of political philosophy. From the other side, the spectacular failure of all Comtean "religions of humanity" equally attests to the superficial understanding of the issue under investigation.
[74] See pp. 165ff. of this dissertation

modern natural right); Newman's own understanding of liberalism as a sempiternal heresy; the "personality" of the Church as a corporate institution (alongside the attempt of modern political philosophy to deflate its corporate ontology); and Newman's own Trinitarian (particularly Athanasian or Alexandrian) hermeneutic of history and economy of language. As a result, Newman's political reflection has been subject to a distortion that has placed him alternatively on either side of a narrative of progress which he himself would have rejected.

This dissertation will argue for the relevance of these considerations to Newman's political philosophy by using them to undertake a sustained treatment of his 1875 *Letter to the Duke of Norfolk*. Newman's treatment of conscience in the *Letter* has become famous, making its way into the *Catechism of the Catholic Church*.[75] It has also become infamous, especially his concluding remarks that if he is to offer after-dinner toasts, "I shall drink—to the Pope, if you please,—still, to Conscience first, and to the Pope afterwards." Such has been the oft-quoted justification for any number of conscientious objections to papal pronouncements. The *Letter* has been the text most often used to argue for Newman's forward-looking reconciliation with modern liberalism, which had made it the primary locus for confusion surrounding Newman's political thought—all centered on one of modernity's trickiest liberties, the "liberty of conscience." On the one hand, this freedom could be said to characterize the entire modern project (implicit at least in the toleration of Locke, and explicit from Rousseau onward).[76] On the other hand, Leo Strauss has argued that the doctrine of conscience and its relation to the natural law[77] marked a significant divide between ancient and

[75] Catholic Church and United States Catholic Conference, *Catechism of the Catholic Church*. (Washington, DC: United States Catholic Conference, 1994) no. 1776.
[76] Leo Strauss, *Natural Right and History*, (Chicago: University of Chicago Press, 1999), 256ff; *Liberalism Ancient and Modern*, (Chicago: University of Chiago Press, 1995) 22.
[77] Strauss, on pp. 157 of *Natural Right and History*, mentions Aquinas specifically, but argues that Aquinas' treatment of the doctrine is consistent with the Christian tradition as a whole.

medieval natural right,[78] perhaps as significant as that which divided the two from modern natural right.

It is interesting, then, that Newman's political teaching in the *Letter* eschewed any assertion of natural rights of conscience—in fact, denied the helpfulness of the concept for Catholics in England—and instead made its political teaching an education in how to talk about the church. Newman relied very little on the Thomistic natural law teaching central to so much of Catholic political thought. If the proper set of interpretive principles is kept in mind, what emerges from the *Letter to the Duke of Norfolk* is not so much a concrete political doctrine, but instead a political mode of thinking and writing about matters spiritual and temporal. Behind the face of the *Letter*, which scholars have perceived, another "economical" project was at work.

To claim that the *Letter to the Duke of Norfolk* contains something like a "secret" political teaching—it must be made clear what is and what is not implied in such an assertion. The *Letter* does not contain a meaning of which Newman was unaware, as though some secret bias or unexamined presupposition characterizes his work—this author does not propose to be able to understand Newman better than he understood himself. Nor was Newman a sloppy writer whose meaning "outran" him in some way—whatever is within the *Letter* was intentionally placed there by Newman. If such a secret meaning is not the result of bias but of explicit intention, that does not necessarily make impenetrable except through divination by a mystical hermeneutics. Newman was neither stupid, nor sloppy, nor esoteric.

[78] Strauss, *Natural Right and History*, 157ff.

Rather, despite the exotic language, this claim concerns something more ordinary. The *Letter to the Duke of Norfolk* was not written to persuade so much as to teach,[79] so that the work was characterized by a pedagogical or propaedeutic quality whereby statements made at the beginning of the *Letter* could take on a very different meaning in light of what is said later; all the while, the *Letter* was addressed to and took account of different levels of readers. This special kind of writing was characteristic especially of Plato, who used it "as a means of preserving in the medium of the written word the advantages of oral communication, deemed superior on the ground that it allowed the speaker to adapt himself more perfectly to the intellectual needs of his hearers."[80] And while this style of writing has usually been attributed to a Straussian interpretation of the ancient philosophers, some of the Church Fathers themselves explicitly adopted it, including two of Newman's Alexandrian luminaries,[81] Clement of Alexandria who spoke of an oral teaching "inscribed in the text," and Origen who spoke of "listening with the third ear" while reading a certain kind of work.[82] Newman himself rediscovered what the Alexandrian fathers called the "economy of truth" while writing the *Arians of the Fourth Century* and possessed a keen awareness of the distinction between oral and written communication.[83] Perhaps the best way to characterize

[79] Cf., for instance, the discussion in Bk. IV of Augustine's *De Doctrina Christiana* (ed. RPH Green (Oxford: Clarendon Press, 1996) of the tasks of a Christian orator as compared to a Ciceronian orator. Although the three tasks, teaching, pleasing, and persuading, are identical, the primary task is different. "The Christian orator's preeminent function is not to persuade, as it is for Cicero's orator, but to teach" (Fortin, "Augustine and the Hermeneutics of Love," in *The Birth of Philosophic Christianity*, ed. J. Brian Benestad (Lanham: Rowan and Littlefield Publishers, 1996) 6).

[80] Fortin, Foreword, XVI in *The Birth of Philosophic Christianity*. But compare also Strauss, *Persecution and the Art of Writing*, and Brague, ""Athens, Jerusalem, Mecca"; and *The City and Man* (Chicago: University of Chicago Press, 1964), 50-62 on the nature of Platonic dialogue.

[81] Cf. *Apologia*, p 26-8, where Newman talks about being drawn to the "sacramental" philosophy of Clement and Origen.

[82] Op. Cit., Fortin, Foreword, XVI in *The Birth of Philosophic Christianity.*

[83] Cf. the introduction to the *Idea of a University* (London: Longman, Green and Co, 1907) on the necessity of a physical location to counteract the effect of the press, and the introduction to *The Rise and Progress of Universities* (in *Historical Sketches Volume 3* (London: Longman, Green, and Co, 1900): 1-254) which distinguishes between the type of teaching possible through books compared to teaching through personal influence. Also, see Oxford University Sermon 5, "Personal Influence the Means of Evangelization."

the style of writing in the *Letter to the Duke of Norfolk* is to say that it adheres to Ernest Fortin's enunciation of "theology in a political mode," or the application by Newman of an "Alexandrian hermeneutic."

To make this argument, this dissertation will proceed in three parts. In the first section on background material, chapter one will outline a brief history of the difference between ancient and modern natural right and the rupture in the history of political thought. But that break, while relevant, points towards more fundamental questions about the nature of authority—so the first chapter will conclude with a short analysis of the history of the concept of the conscience. Conscience is a locus where the modern rupture with the past is most evident. Hobbes and Locke retain the language of conscience, but only after subverting the pre-modern account of practical reasoning. Conscience remains, but with an inverted meaning. The second chapter will summarize the contemporary readings of Newman's *Letter*, emphasizing their implicit acceptance of modern natural right and a narrative of progress. Against that narrative of progress, the second chapter will conclude with a provisional account of Newman's "Alexandrian hermeneutic" and his understanding of liberalism as a sempiternal heresy.

After the first section on background material, the dissertation will analyze Newman's relationship to three modern political doctrines: political rights of religious liberty; pluralism; and toleration. Newman's relation to these doctrines has caused confusion: he has been presented as both arguing for and inconsistently defending each doctrine. Especially in the case of toleration, the *Letter*'s supposed defense of toleration presents an ostensible break with his support as an Anglican for persecution. Either the *Letter* contains a renunciation of Newman's earlier antipathy

to toleration (as is sometimes argued),[84] or its continuity is not immediately apparent. What is sometimes missed in the claims about Newman's "doctrine" on tolerance in the *Letter* is that the *Letter* preserves a relative silence around the issue—indeed, it may well be the case that the public reception of the *Letter*, in which the British public judged Newman to have completely vindicated his position has influenced perceptions of the *Letter* beyond what the text itself may warrant. For all three concepts (rights, pluralism, toleration), scholars have allowed the hegemony of modern natural right to obscure how Newman himself is using (and manipulating) the concepts at hand.

In fact, Newman refused in the *Letter to the Duke of Norfolk* to avail himself of the arguments of modern natural right. In doing this, he was resisting not only a particular set of arguments but a particular mode of political thought. The third, fourth, and fifth chapters will argue that Newman's rejection of modern natural right in the *Letter* was of a piece with his suspicion of principles like inalienable rights, pluralism, and toleration (understood as *principles*). While Newman accommodated himself to these "liberal principles" as political facts, he refused to treat them as an actual political good or as a solid theoretical foundation for politics.[85]

The third chapter will argue that the *Letter* grounds itself in non-modern natural right. The "freedom of conscience" Newman advocated within the *Letter* was a selective right that could be

[84] See pp. 87ff for a summary and citations of this argument

[85] Compare, for instance, the *Declaration of the Rights of Man*, which grants religious liberty in article 10 and free speech in article 11. Or the United States Constitution, which enshrines both toleration and free speech in the First Amendment. Compare also Locke's "Letter on Toleration" and the beginning of J.S Mill's "On Liberty," where the domain of "inward conscience" includes both toleration of all religious opinions *and* the freedom to express them. On the other hand, the liberal progenitors themselves rarely understood such rights to be completely unrestricted. Mill himself (as Newman noted in the *Letter*. See pp. 226ff in Ch. 5 infra for the full discussion) presumed that "English common sense" would limit the abstract and complete application of the principle. See also arguments in Walter Berns *Freedom, Virtue, and the First Amendment* (Washington, D.C: Gateway Books – Henry Regnery Co, 1965) and Herbert Storing's *What the Antifederalists Were For* (Chicago: University of Chicago Press, 1981), for the case that the Founders did not understand the First Amendment in categorical or unrestricted terms. See also "Civil Unity and Religious Integrity: The Articles of Peace" in John Courtney Murray's *We Hold These Truths* : *Reflections on the American Proposition* (ed. Peter Augustine Lawler (Lanham: Rowman and Littlefield, 2005)), which argues that the First Amendment is an "article of peace" not an "article of faith." It makes only prudential accommodations and asserts no religious or political doctrine.

earned, but it was not a foundational or universal right on which politics could be securely built. Central to Newman's political analysis of conscience was a battle between obedience and self-will. Newman invoked only to ridicule the "freedom" or "liberty" of conscience. Conscience was an "authority" and a "law," and insofar as it was the "echo of the voice of God," it was never in a neutral or "original position." The very attempt at founding politics on a set of inalienable rights was a result of self-will or pride. Since he was working with concepts from the pre-modern tradition that had been inverted by men like Hobbes and Locke, Newman had to proceed carefully in order to resist the hegemony of modern rights discourse. Nor, even when using language that might be construed as such, did he ever put forward a modern natural rights "doctrine," which settled the political problem in an abstract or a definitive way.[86]

Chapters four will treat corporate "personality," a concept which appeared in the *Letter* but developed over a long period of Newman's Anglican and Catholic writings. Newman's account of the Catholic Church's personality has been interpreted as a nascent attempt at a doctrine of pluralism, but when looking at the *Letter*'s account of personality in the context of Newman's larger writings, nearly the opposite conclusion compels itself. Not only was Newman's account of personality *not* an attempt at a doctrine of pluralism, it was a means for Newman to permit sacred biblical and ecclesiastical history to re-emerge as a hermeneutical framework for the interpretation of contemporary political events. It rejected pluralistic "public reason" in order to re-assert appropriate Scriptural categories.[87]

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[86] Which, as Ch. 1 will argue, characterized the modern political project, not only for Hobbes and Locke but also for thinkers like Kant as well.

[87] Ch. 4 will conclude by arguing that despite being revealed as a non- or anti-pluralist thinker, Newman did not accede to political theology. Rather, Newman's take on political phenomena is a return to an Augustinian account of the relation between the political and the spiritual, which rejects *both* political theology (which tightly binds the political and the theological) *and* pluralism (which attempts to safely quarantine one from the other) As represented in the early 20th century debate between Harold Laski and the English pluralists with Carl Schmitt and the political

Chapters three and four address what *Letter to the Duke of Norfolk* was not. Chapter five will argue for what the *Letter* is: an instance of "theology in a political mode," both in terms of content and style. Newman keenly perceived that 19th century liberalism opposed orthodoxy by refusing to engage with it (that is, by denying its provenance), by redefining key concepts (like "conscience"), and by pursuing what Eric Voegelin would call a "Gnostic" interpretation of human experience: asserting (and asserting as "proven") an ideological distortion of a human experience, prohibiting any acknowledgement of the remainder of human experience that the ideology failed to explain.[88] Newman has been interpreted as a political liberal on the basis of his supposed rights doctrine. Such a rights doctrine implied a progressive idea of history.[89] But rights were not at the center of Newman's political analysis. Instead, he used an "Alexandrian hermeneutic" that depended upon the concept of the personality of the Church. Personality was anti-historical, if history was understood to be progressive (i.e., future ages leave prior ages behind). Thus, since there was no "new secular age" of politics, Newman did not turn the prudential into the theoretical. One saw this in the treatment of toleration. Newman consistently advocated prudential toleration but perceived that modern "toleration" had transformed itself into a doctrine as a means to persecution of the Church. But to argue for prudential rather than doctrinaire toleration was at a certain point to argue for persecution—which could not be heard by moderns who made "free thought" and "private judgment" their watchwords.[90] So one needed an "Alexandrian economy" not only to gently insinuate what could not be said aloud, but also to move men from a liberal account of history to a scriptural account. This was the project of the *Letter to the Duke of Norfolk*.

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theologians: both of whom quote Newman in their works, with Laski especially indebted to (though misreading) Newman.

[88] Cf, Ch. IV (107-132) and V (133-161) of *The New Science of Politics (*Chicago: University of Chicago Press, 1987), especially Voegelin's treatment of Marx.

[89] Or at the very least, the idea of a rupture. Hobbes and Locke, for instance, both see themselves *refounding* the discipline of political science. See Ch. V in *Natural Right and History,* pp. 165ff.

[90] *Letter,* 203. See pp. 233ff. infra.

The almost-unspoken conclusion of the *Letter* was an inversion of Gladstone's original accusation. Gladstone had accused Catholics of forfeiting their moral and mental freedom and being incapable of a dual loyalty to both queen and pope. The *Letter* led a reader ever so gently to the opposite conclusion: adherents to liberal principles were the true forfeiters of mental freedom (their assertion of conscientious freedom led to a slavery of self-will); liberal principles were a betrayal of the non-liberal British constitution; and the liberal principles themselves simultaneously relied on *and* undermined a non-liberal "British common sense." But the *Letter* pointed to without drawing such conclusions, since a weakness of contemporary Catholic polemics was their desire to speak "in the most paradoxical form" and push principles to the point of "snapping."[91] "The *Letter to the Duke of Norfolk* will be seen to fulfill what the Anglican Newman had hoped the Oxford Movement to do: prepare the public imagination for an apostolical church.

To conclude, if (as Ernest Fortin has argued) the weakness of mid-20th century Catholic political thought resulted from an unawareness of the homogenizing tendency in the secular rights discourse, Newman showed himself perceptive of that issue and offered the best possible solution: an Athanasian or Alexandrian hermeneutic which resisted both secular or public reason *and* political theology, that could once again treat rights, pluralism, and toleration as important matters for political prudence, not self-evident theoretical, doctrinaire foundations—the dogmatic principle (understood politically) against political dogmatism.

[91] And, as Newman would show, the project of learning how to speak properly about the Church will influence, in fundamental ways, what one understood the Church to be. For the Church to retain its personality, it could not be spoken of *as if* it were "the Ark of Salvation, the Oracle of Truth, the Bride of Christ," it must be understood *to be* those appellations. See Ch. 4, esp. pp. 159ff.

CHAPTER I: NATURAL RIGHT, NATURAL RIGHTS, NATURE OF CONSCIENCE

Introduction: Errors in Political Philosophy and Theology in a Political Mode

This chapter, preparatory to an analysis of Newman's own thought, will narrate a history of political philosophy in order to adequately characterize the break made in early modernity by figures such as Thomas Hobbes and John Locke. "Western political thought" must be understood to be comprised of at least two competing traditions, and no continual tradition of progress can be understood to connect Plato and Aquinas to Locke, Kant, and Rawls. It will rely on the distinction drawn by Leo Strauss' *Natural Right and History* between classic natural right and modern natural right (or between natural right and natural rights). But the redefinition of natural right impacted other political and metaphysical claims, like the existence of a supervening order and the naturality of political (and metaphysical) authority. This chapter will conclude with a short history of the concept "conscience," since the conscience is a nexus for claims concerning natural right, natural law, and the perception of an authoritative supervening order. It is also a concept explicitly *redefined* by Hobbes and Locke in order to effect their break from the ancient and medieval tradition of natural right. Conscience, understood traditionally to be naturally placed within teleological and narrative structures, lost its positive teleology and retained only a moral anti-narrative. And it is that Hobbesian/Lockean redefinition that John Henry Newman will contest in *A Letter to the Duke of Norfolk*.

For Ernest Fortin—an Assumptionist priest, student of Leo Strauss and the history of political philosophy—what distinguished Christianity from Judaism and Islam was that Christianity alone, as a Revelation, did not take the form of a comprehensive social order or law which regulated virtually every aspect of human life. Instead, it was essentially a "transpolitical"

religion which showed an "all but total indifference to problems of a properly political nature."[1] Since Christianity's dominant theme was love, not justice, and insofar as "love as a political principle is at best a pretty fuzzy thing," "any attempt to derive a coherent political program from the pages of the New Testament alone is bound to end in futility or madness."[2] From one perspective, Christianity would appear the most politically naïve of religions.

But, as Fortin contended, just the opposite was the case. Christianity alone, of all the western religions, possessed "an understanding of politics," and this despite (or because) "Christianity is the world's only apolitical religion. Maybe, in fact, it is precisely because Christianity is apolitical that it has such a profound understanding of politics."[3] The solution to this paradox was that the earliest Christian writers (and the best Christian writers from then onward) recognized that Christianity required the supplement of political philosophy. In proposing a higher destiny and supernatural end, Christianity "effectively destroyed the regime as a total way of life"[4] and opened itself to the resentment (to put it mildly) of those regimes, which it did not replace but degrade.

At first, Christianity required political philosophy as a defensive weapon. If Augustine's *City of God* was to successfully explain why Christianity was not responsible for Rome's fall, it would have to marshal the arguments of classical political thought, if for no other reason than to be heard by its audience. But political philosophy served another equally important purpose. If Christianity was indeed a transpolitical religion, then "in order to understand Christianity, one

[1] Ernest Fortin, "Rational Theologians and Irrational Philosophers: A Straussian Perspective," in *Classical Christianity and the Political Order: Reflections on the Theologico-Political Problem*. Edited by J. Brian Benestad (Lanham, Md.: Rowman and Littlefield, 1996.), 289.
[2] Ibid., 289-90
[3] Ernest Fortin, *Ever Ancient, Ever New: Ruminations on the City, the Soul, and the Church*. Vol. 4 of *Collected Essays*. Edited by Michael P. Foley. (Lanham, Md.: Rowman and Littlefield, 2007), xxi.
[4] Fortin, "Rational Theologians," 290.

must also have a fair idea of what it is transcending, the *polis.*"[5] In other words, Christianity's scriptural indifference towards answering the question of the best regime therefore made it all the more necessary to understand each of the regimes—since Christianity claimed to be equally at home[6] in all. Catholic political thought attained its "historic dynamism" by precisely this "openness" towards the "deliberation about the best regime and the best way to live."[7]

What worried Fortin was that this openness was being lost by "the Church's newfound enthusiasm for modern liberal democracy."[8] While the Church might prudentially endorse democracy, anything which moved past a cautious alliance and towards a doctrinal solution to what might be called the theologico-political problem[9] risked compromising the Church's uniquely transpolitical character and its self-understanding. Fortin saw these risks not only in the social

[5] Fortin, *Ever Ancient Ever New,* xxi.
[6] Or, perhaps more precisely, to be equally a pilgrim in all. For one perspective on the status as eternal pilgrim, see Stanley Hauerwas' and William Willimon's *Resident Aliens: Life in the Christian Colony (Expanded 25th Anniversary Edition)* (Nashville: Abingdon Press, 2014).
[7] Fortin, *Ever Ancient Ever New,* xvi.
[8] Ernest Fortin, "Social Activism and the Church's Mission," in *Human Rights, Virtue, and the Common Good*. Edited by J. Brian Benestad (Lanham, Md.: Rowman and Littlefield, 1996.), 258.
[9] Remi Brague proposed the "theoi-practical problem" as a replacement for the "theologico-political problem," a term developed in Leo Strauss' reading of Spinoza's *Tractatus Theologico-Politico* (Leo Strauss, "Preface to *Hobbes' politische Wissenschaft."* In *Interpretation: A Journal of Political Philosophy* 8 (January): 1-3, 1979. Brague used the term to indicate not only the "connection between two academic disciplines, theology and political science" but also the fundamental reality of the "articulation onto the divine, not only of the political, but of the entire genre of the *practical* , as it was is classically divided into three parts," ethics, economics, and politics (*The Law of God* (Chicago: University of Chicago Press, 2007, 6-7). Brague replaced "theologico" with "theoi" in order to escape the specifically *Christian* formulation (i.e., of a science concerning the rational elucidation of divinity): the Christian reformulation was an answer or an application of the fundamentally human commingling between the divine and the practical. Brague was moved to this reformulation in order to get behind the *grand* recits—the grand narratives—in which modernity tries to explain itself: an escape of the political from the domain of theology" (ibid., 4). Rather than the classically modern narrative of the progressive disenchantment or movement from the sacred *to* the secular, Brague wanted to "consider the inverse movement, from the profane toward the sacred, as well" (ibid., 5). The "theoi-practical problem," then, refers not only to the fundamentally human questions of sociality and divinity (who are the gods of the city?), but also to the modern self-understanding as an *escape* from or solution to those fundamental questions. In other words, those concerns and questions only become reformulated as a *problem* (to which there could be a "solution") within the modern narrative of progress. In this dissertation, "theologico-political *issues*" and "theologico-political *concerns*" will be used as terms of art to characterize the interrelations between the divine and the human as a cause for reflection rather than a problem to which a solution can be discovered. "Issues" or "concerns" are preferred in order to avoid adjudicating Strauss' particular characterization of the problem (see, for instance, Heinrich Meier, *Leo Strauss and the Theologico-political Problem,* (Cambridge: Cambridge University Press, 2006)).

activism of the 20th century Church,[10] but as more fundamentally a product of Christianity's confused response to the double challenge of the Enlightenment and the success of modern science. In his reviews of the last two centuries of the Church's political thought, Fortin saw the Church mistakenly "espousing the principles of the Enlightenment along with their hidden premise, the ideology of progress"[11] which most often took the form of attempting "to combine a nonteleological science of nature with a teleological science of man."[12] The failures the theological movements of the 20th century were attributable to their lack of "interest in political philosophy and thus they lacked self-knowledge, i.e., they were unaware of their dependence on the larger political context."[13] They were "too provincial," meaning that they did not have an adequate knowledge of either modern or ancient thought. The Church's flirtation with the "ideology of progress" manifested itself most readily in the belief that the modern discourse of natural or human rights was a harmonious development of the older natural right or natural law political philosophy. But Fortin argued that the language of natural rights was the result of a rupture in political philosophy, and any attempt to reconcile it with either Aristotelian natural right or Thomistic natural law had the effect of occluding fundamental political and philosophical realities.

For Fortin, what the Church needed was both a reintroduction to the concepts of classical political philosophy and also the use of "a theology which, like early Christian theology, is 'political' in its mode of treatment."[14] That is, both a manner of thought and a manner of speaking. Fred Lawrence has argued in his encomium of Fortin, "The Recovery of Theology in a Political

[10] Fortin, "Social Activism and the Church's mission," 253-260.
[11] Ernest Fortin, "The Trouble with Catholic Social Thought," in *Human Rights, Virtue, and the Common Good*. Edited by J. Brian Benestad (Lanham, Md.: Rowman and Littlefield, 1996.), 308.
[12] Ernest Fortin, "Why I am not a Thomist" in *Ever Ancient, Ever New: Ruminations on the City, the Soul, and the Church*, 179.
[13] Ibid.
[14] Fortin, "An Academic Approach to the Teaching of Theology,"204.

Mode: the Example of Ernest Fortin, AA," that theology in a political mode "shares the 'Socratic turn' to philosophy in the classic sense where the friendly conversation known as dialectic made the question of truth integral to answering the question about the good."[15] Lawrence believed that "the distinction [Fortin] adopted from Augustine and Aquinas between the primary and secondary precepts of the natural law as the standard of the quest for the human good" was central to such a theology, and that moreover, "this non-doctrinaire standard for excellence is not quite congruent with either neoscholastic natural law or early modern natural right." It was instead "more heuristic than propositional, more a matter of inquiry than of dogmatic assertion; it has more to do with perennial sets of problems and questions constitutive of philosophy."[16] Theology in a political mode, then, was most of all a particular *kind* of investigation more concerned with the clarification of fundamental issues than with easy solutions-to-problems.

A more adequate treatment of Newman's political philosophy[17] requires a more adequate history of ideas. Rather than the history of political thought being one of progress or development, political philosophers like Leo Strauss, Eric Voegelin, and Alasdair MacIntyre have persuasively argued that its history is best characterized by a rupture: modernity is in a crucial respect a break from prior thought. By acknowledging the rupture in the history of political thought, one can appreciate anew Newman's insistence on his own consistency. Rather than an Anglican Tory *or* a

[15] Lawrence, Frederick. "8. The Recovery of Theology in a Political Mode: The Example of Ernest L. Fortin, AA" In *The Fragility of Consciousness: Faith, Reason, and the Human Good* edited by Randall S. Rosenberg and Kevin Vander Schel, 278-295. (Toronto: University of Toronto Press, 2018), 279.
[16] Ibid.
[17] The absence of a "theology in a political mode," or a theology informed by the methods and concerns of classical political philosophy, has been reproduced in miniature in Newman scholarship. Though two rival schools of interpretation exist, both have presupposed a certain account of progress and acceptance of rights discourse, ignoring the fact of a rupture within the history of political thought. Both schools share a narrative of progress much more at home in a work of Comte's or J.S. Mill's *On Liberty*, where the movement of history is from customary authority to individual liberty. Both schools see the movement of history from one of theocratic autocracy to individual liberty: they disagree about where to place Newman within that continuum. But neither questions the continuum. This will be more fully discussed in Ch. 2.

Catholic liberal (and being compelled to describe the movement from one to another as a reversal), one can appreciate in Newman a lifelong devotion to pre-modern political principles which show differently in different circumstances.

Natural Right

While it was once considered common knowledge (as A.J. Carlyle claimed in his monumental *History of Medieval Political Theory in the West*) that "modern political theory has arisen by a slow process of development out of the political theory of the ancient world,"[18] developments within political theory over the past 50 years have made clear the degree to which *discontinuity* is as much a characteristic of the Western tradition. The rediscovery of ancient political thought and its discontinuity with modern political thought began with Leo Strauss' publication in 1950 of *Natural Right and History*, which recovered the centrality of ancient philosophy's questions concerning nature and the naturalness of political things, most succinctly represented in the distinction Strauss drew between classical natural right and modern natural rights. Hobbes and Locke, in rejecting the ancient interdependence of philosophy, contemplation, and nature, attempted to establish a new philosophy and a new political science on the more firm ground of a non-teleological, non-Aristotelian nature. Through a series of waves or revolutions,

[18] AJ. Carlyle, *History of Medieval Political Theory in the West* (New York: Putnam, 1903), 2. See for a representative thought of the period, Charles McIlwain's *The Growth of Political Thought in the West from the Greeks to the End of the Middle Ages*(New York: The Macmillan Company. 1932), George S. Sabine's *A History of Political Theory* (New York: Holt Rinehart, and Winston, 1937), and Edward Corwin's "The 'Higher Law' Background of American Constitutional Law." *Harvard Law Review* 42, no. 3 (1929): 365–409. More recent iterations of this theory of progress or continuity include Brian Tierney, *The Idea of Natural Rights* (Grand Rapids: Eerdmans Publishing Company, 1997)and Francis Oakley, *Natural Law, Laws of Nature, and Natural Rights* (New York: Continuum 2005).

this new modern natural right led to historicism and nihilism.[19] What was most needed, then, was a return to the classical natural right of Aristotle and Plato.[20]

Two years later, Eric Voegelin published *The New Science of Politics* in which "the nature of modernity"[21] was discovered to consist in its consummation of a specific Christian heresy, Gnosticism. Voegelin, like Strauss, argued for a return to pre-modern political thought,[22] but already, for all their agreement about the diagnosis of modernity, fault lines had opened in the debate. The central question concerned the status of Christianity: was it in continuity with ancient thought, such that modernity was a break away from both; and a recovery of pre-modern thought could include Augustine and Aquinas? Or was Christianity perhaps the ultimate *source* of modernity's rejection of the past, such that any recovery of ancient thought must necessarily exclude the Christian patrimony? This question was the *basso profondo* of all the mid-to-late 20th century[23] attempts at recovery of past thought (which implicitly accepted the thesis of rupture). Was it to be a return to Aristotle? Or Aquinas? Sometimes the corpus of a political theorist embodied the full breadth of this question: Alasdair MacIntyre, for instance, answered Aristotle in *After Virtue*[24] in 1981, only to endorse the return to Aquinas in *Three Rival Versions of Moral Enquiry*[25] in 1990.

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[19] See, in addition to *Natural Right and History*, Strauss' lecture, "The Three Waves of Modernity," (in *Political Philosophy: Six Essays*, ed. Hilail Gildin (New York: Pegasus-Bobbs-Merrill, 1975) although Strauss is much more explicitly supportive of Roman Catholic political thought in the latter, whereas he is relatively silent in the former (which more often than not indicates latent criticism for Strauss).
[20] Of course, Strauss has always to be read carefully, and the Platonic/Aristotelian synthesis of *Natural Right and History* compared against the journey *through* Aristotle *to* Plato in *The City and Man*.
[21] Eric Voegelin, *The New Sciecne of Politics*, 107ff.
[22] Ibid., 190ff.
[23] This schema leaves out the explicitly Catholic project of return, which began in in 1879 with Leo XIII's encyclical *Aeterni Patris*, which recommended the return to Aquinas and the revival of Scholastic philosophy.
[24] Alasdair MacIntyre, *After Virtue Third Edition* (South Bend: University of Notre Dame Press, 2007).
[25] Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry* (South Bend, University of Notre Dame Press, 1994).

One consequence of this question about the status of Christianity was that the point of rupture was variously identified. The Straussian tradition identified Hobbes and Locke as the source of the break (though they were "footsoldiers" for Machiavelli, who "introduced modernity"[26]).[27] Another tradition found the break to take place earlier, in the innovations of William of Ockham and the nominalist tradition.[28] Or the rupture could be identified with the Protestant Reformation itself, as in Brad Gregory's *The Unintended Reformation*,[29] though Gregory was careful to note the influence of figures like Machiavelli and Ockham in what would become the Reformation.

This dissertation follows the Straussian placement of the rupture with Hobbes, though for non-Straussian reasons. Hobbes, of course, was not the first figure to "discover" subjective rights; nor was he the first to pioneer a kind of reason divorced from participation in the divine; nor was he the first to deny positive teleology to nature. But Hobbes was a nexus, where these various reactions against the ancient/Christian tradition came together to form a particularly powerful counter-tradition and counter-narrative. Insofar as the modern break consisted not only in a different *kind* of thought, but also in a different kind of self- and cultural-narration about *why* the change occurred,[30] Hobbes is an excellent point of departure. Hobbes' bold proclamation of a new kind of political right, derived from a new understanding of a mythical state of nature (understood

[26] Michael P. and Catherine H. Zuckert, *Leo Strauss and the Problem of Political Philosophy* (Chicago: University of Chicago Press, 2014), 196.
[27] Not only *Natural Right and History*, but also *Thoughts on Machiavelli* (Chicago: University of Chicago Press, 1958). It must also be kept in mind (cf. footnote 36 infra) that Strauss' real antagonist may not be Locke, or Hobbes, or even Machiavelli, but Christianity and the Christian *tradition* itself. So there is a question of whether the "rupture" takes place around 1500 AD, 1200 AD, or (roughly) 31 AD.
[28] For instance, Michel Villey "La genese du droit subjectif chez Guillaume d'Occam." *Archives de philosophie du droit* 9 (1964): 97-127. Also Michael Allen Gillespie in *The Theological Origins of Modernity* (Chicago: University of Chicago Press, 2008) ; Alasdair MacIntyre in *Three Rival Versions of Moral Enquiry (*South Bend: Notre Dame Press, 1994); Thomas Pfau in *Minding the Modern* (South Bend: University of Notre Dame Press, 2013).
[29] Or Charles Taylor's *A Secular Age* (Cambridge: Harvard University Press, 2007).
[30]Cf, for instance, William Cavanaugh's *The Myth of Religious Violence* (Oxford: Oxford University Press, 2009) on the re-narration and self-forgetting surrounding the wars of religion

as a *replacement* for the account of man in the Garden of Eden)[31] is a concise representation of the break in Western political thought; and the centrality of rights for Hobbes and his followers has influenced the way Newman's recourse to "rights of conscience" has been understood.

The point of entry into this vast field of intellectual history will be through the distinction between modern natural rights and classical natural right. This distinction is illuminated most clearly in the contrast between the priority of rights and duties in political discourse, but this argument about duties and rights points towards a more fundamental disagreement concerning the nature and status of authority, reason, and tradition (which all come together under the concept of "conscience.")

It is best to begin on the surface, and the guide to the surface of the problem is Ernest Fortin. Following Leo Strauss, Fortin has argued that there was a "decisive break" between ancient and modern political thought, such that any attempt to synthesize the two traditions is apt to result in an "uneasy tension" rather than a true harmonization.[32] The difference between the two traditions sprang from their opposing conceptions of nature, with the ancients taking a teleological and the moderns a non-teleological view. In the political sphere, the consequences were most evident in the modern doctrine of natural rights and its contrast with its ancient predecessor.

"Natural rights," in the sense understood by the moderns, hardly existed for the ancients. Natural rights were "totally foreign to the literature of the premodern period."[33] Nothing like an

[31] Russell Hittinger argues for this understanding of the Hobbesian state of nature in "Natural Law and Catholic Moral Theology," (*The First Grace* (Wilmington: ISI Books, 2003): 3-38). Hobbes' own text offers sufficient evidence on its own. One need look no further than the fact that desire and ratiocination are the means by which Hobbesian man successfully escapes the state of nature (*Leviathan*, Ch. 13), a direct inversion of the classical Christian tradition whereby desire and ratiocination are the means of the *fall* from grace and expulsion from the Garden.
[32] Ernest Fortin, "Sacred and Inviolable: *Rerum Novarum and Natural Rights*," in *Human Rights, Virtue, and the Common Good*, 192.
[33] Ibid., 202.

explicit teaching concerning natural rights exists within the Bible, if for no other reason than because the Bible spoke very little about nature.[34] Nor did the teachings of Plato and Aristotle contain a discussion of "natural rights." Both philosophers (with significant variety between them) talked instead about natural *right* and the elucidation of the kinds of things that were right by nature to do (central to this, of course, was whether a common good existed and to whether it could be harmonized with the good of the soul). Ancient natural law was a modification of the Platonic and Aristotelian teaching and differed from it most significantly "by the fact that it not only points to what is intrinsically right or wrong but commands the performance of one and the avoidance of the other by pain of sanction."[35] Not only did the natural law teach what was right (and wrong), but it also taught the certainty of punishment for non-adherence in a way beyond what Plato and Aristotle thought they could discover. This teaching wound its way through the Stoics and the Church Fathers, being finally and most clearly expressed by St. Thomas Aquinas. For all their differences, ancient natural right and medieval natural law both took their bearings from mans' ends and believed that nature could give some indication of those ends. The medieval natural law was much stricter than the Greek philosophy of natural right, but in both cases the kinds of activities men could and should pursue were comprehended by man's rational understanding of (or participation in) rational nature.[36]

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[34] Cf. Leo Strauss, *Natural Right and History*, 81ff.; although it is worth noting that even if the Bible does not explicitly theorize the concept of "nature," this does not necessarily mean that it is written from a perspective antithetical to nature. Silence is not necessarily rejection. For instance, in *Genesis* 1:25, God makes the animals "according to their kind," which implies a natural stability of species, which is one element of a philosophical understanding of "nature." Also, insofar as God *speaks* to man in the Bible and trusts his meaning to be understood, there exists a kind of regularity of reason, speech, and logic—which also presupposes something like "nature." For the most insightful take on these issues, from which these short reflections were drawn, see Remi Brague, Law of God: The Philosophical History of an Idea.

[35] Fortin, "Natural Law," in *Human Rights, Virtue, and the Common Good,* 160.

[36] Strauss takes a dour view of the transition from ancient natural right to Stoic/Christian natural law. Strauss' ambivalence, while it appears in *Natural Right and History*, pp. 157ff, also shows up in his short article on the

In contradistinction to this, modern natural right, beginning with Hobbes, took no account of a teleological nature, nor did it build politics on what man was oriented or inclined towards.

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natural law when he contrasts Aristotle with the Stoics (and, by extension, Aquinas). Strauss himself calls attention to the distinction when he says that Aristotle:

> teaches that all natural right is changeable; he does not make the distinction made by Thomas Aquinas between the unchangeable principles and the changeable conclusions. This would seem to mean that sometimes (in extreme or emergency situations) it is just to deviate even from the most general principles of natural right (Strauss, "On Natural Law," *Studies in Platonic Political Philosophy* (Chicago: University of Chicago Press, 1983): 137-146), 140)

Natural law, as such, does not exist in Aristotle; Aristotle speaks only of natural right, which is "that right which must be recognized by any political society if it is to last and which for this reason is everywhere in force" (ibid.). As examples of this natural right, Strauss points towards the assistance of citizens made poor by civic duties and the worshiping of the gods. In addition to these foundational political duties, the principles of commutative and distributive justice "cannot possibly belong to merely positive right" (ibid.), and so must also be examples of natural right. Natural right for Aristotle, then, is the combination of commutative and distributive justice along with whatever minimal political actions are required to hold a community together. The difficulty then is that "bad regimes habitually counteract the principles of distributive justice and last nevertheless." It is in recognition of this contradiction that Strauss concludes that Aristotle "teaches that all natural right is changeable." But how do we get from the fact that bad regimes counteract principles of natural right to the conclusion that all natural right is changeable?

The answer lies in the nature of a bad regime. On the one hand, it is bad; on the other, it is a regime. In other words, it is bad by the fact that it denies the principles of distributive justice, which recommends the proper distribution of political offices; but it is a regime by the fact that it continues to exist—or, to rephrase, engages in the minimal acts which are necessary for political survival. A bad regime, therefore, is in a necessarily contradictory position regarding natural right: in the one case, natural right compels the actions that preserve "any political society"; in the other case, to act in accord with the natural right of distributive justice would undermine the regime's existence. A democracy, to preserve itself, cannot award its offices to the best gentlemen, else it would no longer remain a democracy. Therefore, bad regimes are faced with the prospect of an act being simultaneously for and against natural right. In the last analysis, the claims of natural right must find their identification with the regime itself.

The conflation of natural right with the regime is precisely what is made impossible by Aquinas and the Stoics. Since natural right is derived from "the unchangeable and universally valid natural law," and the natural law also "is the ground of positive law," therefore "all positive laws contradicting natural law are not valid" (141). Such a statement could not occur in Aristotle. A law might be counter to a democracy or oligarchy (or even an aristocracy), but it could not be against the natural universal order. The difference between Aristotle and Aquinas is most clearly illustrated by looking to Aristotle's *kallipolis*: even the perfect regime contains conventional slavery (i.e., slavery not in accord with the natural slavery described in Bk. 1 of the *Politics*), an acknowledgement of the limits of the rational and political perfection of man. Within Aristotle's philosophical framework, the best regime might be argued against on the basis that another type of injustice ought to be allowed in order for slavery to be abolished, but the language simply doesn't exist to claim that Aristotle's best regime is *against natural law*. To make such a claim would be to accept a universal, harmonious, and non-contradictory natural law and thereby a universal, harmonious, and non-contradictory best regime. For Aristotle, the best regime is a matter necessarily up for debate. By positing a uniform natural law, a certain regime is implied, and a certain type of philosophy can no longer exist.

Since this debate is treated in more detail elsewhere, I will only say that Fortin is not unaware of this critique, and in fact spends a number of essays arguing that Aquinas' understanding of natural law is not necessarily of a "universal, harmonious, and non-contradictory" character: i.e., Aquinas himself (and Augustine before him—and, as I'll argue, Newman after him) are more aware of natural law as a "problem" than might first appear. As to whether even a greater awareness of this problem changes the nature of the rivalry between Athens and Jerusalem, see the conclusion, pp. 212ff.

Rather, it grounded its new science of man in a pre-political state of nature. Human beings were "actuated, not by a desire for some pre-existing end or ends in the attainment of which they achieve their perfection, but by a pre-moral passion, the desire for self-preservation, from which arises the 'right' of self-preservation."[37] This pre-moral passion, when understood to entail the right of self-preservation, was the firm basis on which a modern politics could be built. From this right flowed a number of rights and duties, and the modern natural law was "the sum of conclusions that human reason arrives at by a process of deduction from the right of self-preservation."[38] The difference between the ancient and the modern view was characterized by the orientation towards ends versus the orientation towards beginnings (with beginnings understood as *un*conditioned or not naturally connected to the ends), as well as the precision with which a whole system of rights and duties could be "deduced" from this origin.

For the ancients, human beings were by nature characterized by certain ends, including among them "the knowledge of truth and life in society."[39] These ends were intimated by natural inclinations and could be discovered by noetic intellection or the exercise of "an intellectual virtue called *synderesis*,"[40] although the rational apprehension of these ends never took on the deductive character of modern natural right. Because humans were ordered towards certain ends, they had duties or obligations to pursue them— humans were by nature *inclined* towards the pursuit of those ends. Although the language is slightly anachronistic, it is not unreasonable to say that duties were the primary moral counter, and rights, if they existed, were circumscribed by those duties.

[37] Fortin, "Natural Law," 162.
[38] Ibid.
[39] Ibid., 161.
[40] Ibid.

Taking due caution about conflating ancient pagan with Christian authors,[41] a characteristic example was Aquinas' view on land ownership. Human beings had a right to own property, but it was not an absolute right, in the sense that a human could dispose of it however he saw fit. To introduce a scholastic distinction, individual humans owned "not the essence but merely the usage of things." Individuals could "own a tract of land or other objects in so far as they procure, dispense with, and take care of them," but never could they claim the "total usage" of property—such remained a common possession (with "common" indicating a future humanity as well, who will inherit the property, as well as signaling that all was ultimately "owned" by the Creator). Conditions attached to the right such that, if the property was used incorrectly, the right to it could be rescinded (or, if not rescinded, at least judged as sinful, with the penalty accruing in the afterlife).[42] All rights to ownership were considered in light of the more general ends towards which man was directed, and which ends constricted the rights given.[43]

For the moderns, the order of priority is reversed. No longer were duties (as determined by an objective, teleological nature or natural law) the primary moral counter. Moderns began with rights, and whatever duties that existed were both derived from and circumscribed by those most basic rights:

> Rights [for the pre-moderns] were by no means unconditional. They were contingent on the performance of prior duties and hence forfeitable. Anyone who failed to abide by the law that guarantees them could be deprived of everything to which he was previously entitled: his freedom, his property, and in extreme cases his life. Not so with the natural rights on which the modern theorists would later base their speculations and which have

[41] Not least of all because the ancients would never speak with as much precision or confidence as Aquinas does here, in part because of the ancient hesitance about the concrete reality (rather than the mere possibility) of a true common good.
[42] The inclusion of the afterlife here as a "guarantee" of a natural order marks a sharp division between the ancient pagans and the medieval Christians.
[43] Thomas Aquinas, ST II.II Q 66. I follow John Milbank's interpretation of Aquinas in "Against Human Rights," *Oxford Journal of Law and Religion*, Vol. 1, No. 1 (2012); pp. 203–234, 213-4.

> been variously described as absolute, inviolable, imprescriptible, unconditional, inalienable, or sacred.[44]

One consequence of this shift is that politics changed its character. Whereas on the old understanding, politics was primarily concerned with pursuing certain shared goods (though the question ancient philosophy asked was whether politics, which always pursued *apparent* goods, could in accord with the *logos* pursue *true* goods), modern politics was devoted not to pursuing goods but to protecting individual liberties. Since man was not naturally political, the desire or passion that brought men into political society is not the pursuit of a naturally given (even if faintly or mistakenly perceived) good, but the calculus that by combining they might preserve themselves from violent death.[45] Thus the rights of the individual took precedence over any duties or obligations towards a substantive common good.

There was a rupture in the understanding of nature and right that occurred with Hobbes and Locke and went on to characterize the modern period. Nature was deprived of meaning and politics changed its identity by refusing to consider man's ends and concerning itself only with his (apolitical and non-teleological) beginnings. The reversal of priorities between ends and beginnings was mirrored in the transition from duties to rights as the primary political and moral counter. Because, on the modern account, all rights and duties could be deduced from a single original right to self-preservation, modern natural right aspires to a quasi-mathematical precision; whereas for ancient and medieval natural right, even the *natural* ends of man depend on a quasi-noetic intellection that was not immediately accessible or comprehensible to all.

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[44] Fortin, "On The Presumed Medieval Origin of Individual Rights," *Classical Christianity and the Political Order*, 247.

[45] Or, perhaps, "allow for their own self-actualization" in language tinged by Rousseauian or Kantian concerns.

Rival Histories

This account of a rupture in the history of political thought is not uncontested. Some, following Michel Villey, do not argue the thesis of rupture, but place the break not with Hobbes but with Ockham and the Franciscan nominalists of the 12th century.[46] One version of this argument sees the Copernican moment as the distinction, first drawn in the middle ages, between objective right and subjective right, with objective right being "the right thing," whereas subjective right is the possession of an individual of a faculty or power to do something.[47] The most sophisticated version of this argument sees Ockham and the Franciscans innovating on the nature of property rights, whereby these rights become divorced from any relational context—either to an order of nature or to other human communities—and, in becoming divorced from a relation, are justified by being ascribed to the "absolute subjective will" rather than being justified "according to their social fittingness."[48] By making rights claims the product of the individual isolated will, "such a right, precisely as non-relational, is infinite"[49]—that is, there is no way to adjudicate such rights politically since, as infinite and inviolable, they can bear no compromise. Again, this argument shares the Straussian conclusion about the presence of modern rights as the

[46] Others who tell a similar story but have no debt to Villey are Michael Allen Gillespie in *The Theological Origins of Modernity*; Alasdair MacIntyre in *Three Rival Versions*; and Eric Voegelin in *The New Science of Politics*. Of course, Strauss himself names Machiavelli, not Hobbes, the central character in the drama of modernity (*Some Thoughts on Machiavelli*, also *Natural Right and History* pp. 177-82 and *What is Political Philosophy? and Other Studies* (Chicago: University of Chicago Press, 1959, pp. 40-49), but my reasons for choosing Hobbes have already been mentioned.
[47] Cf. Fortin, "Sacred and Inviolable," 203.
[48] Milbank, "Against Human Rights," 218.
[49] Ibid., 221.

"absolute moral phenomenon,"[50] but takes its bearings from an earlier theological debate. This argument is cogent but not necessary for this dissertation.

It may well be the case that the way for Hobbes' and Descartes' modern turn was prepared by Franciscan nominalism and the subordination of divine reason to divine power, but Hobbes rather than Ockham is the point of departure because of the tremendous influence of the "state of nature" arguments put forward by Hobbes and Locke as a replacement for the Biblical story of Creation. Even if Ockham and the Franciscans' elevation of will tends towards similar ends, their arguments must be read within a context and tradition of Christian scriptural exegesis[51] open to other interpretations and accompanied by other presuppositions. In other words, modern natural right draws its power not only from the quasi-mathematical rigor of its proceedings, but also from its claim to *refound* a discipline from new beginnings—a novelty which even heterodox Christians, as being inescapably within Christian tradition, could never claim.

There are also those who argue that the modern rights doctrine is the natural development of the original natural law doctrine—in other words, the history of right is one of continuity. Brian Tierney is the foremost proponent of this view, and he argues that "the now triumphant rights doctrine is indeed an early rather than a late-medieval or a specifically modern contribution to

[50] Fortin, "Sacred and Inviolable," 205.

[51] *Leviathan* and *Two Treatises* are themselves full of scriptural exegesis, but I understand Hobbes' and Locke's treatments of scripture to be primarily rhetorical. Both authors treat the problem of scripture separately from their "state of nature" arguments. Hobbes' systematic analysis of scripture occurs in parts three and four of the *Leviathan*, having already established the nature of man and the nature of the commonwealth in parts one and two. Hobbes undertakes to show that scripture (properly understood) is consonant with the laws of nature (see, for instance, Hobbes' ingenious reworking of the Decalogue in Ch. 30 "Office of the Sovereign Representative" and his argument that all salvation requires is faith in Jesus and obedience to the laws of nature (Ch. 43, "Of What is Necessary for a Man's Reception into the Kingdome of Heaven"). Locke reverses Hobbes' order, and treats scripture first, in the *First Treatise*, before tackling the state of nature in the *Second Treatise*. The argument of the *First Treatise* is destructive: by overturning traditional scriptural justifications of political authority, an opening is made for the new arguments in the *Second Treatise*.

political and legal theory."[52] Even Fortin has had to admit that Tierney has shown "convincingly" "that the definition of rights as 'powers' antedates the Nominalist movement by some two centuries and that in this matter Ockham and his followers were not the radical innovaters Villey makes them out to be."[53] Tierney has done historical research to discover a rights language that predates Ockham.[54]

The thesis for continuity thus appears to be a strong one, since Tierney has discovered a medieval language of rights. If "rights talk" existed in the early medieval period, and it also exists now, is that not an indication that the development of political thought has been continuous?[55] If nothing else, Tierney's work shifted the battle ground between partisans of rupture and continuity. The fundamental question now is not whether medieval subjective rights existed—(since Tierney has shown that they did), but in what sense they could be considered "natural." For the thesis of continuity to be persuasive, medieval natural rights must not only have existed, but they must also have been understood as natural in the way that moderns understand rights to be natural, which "have been variously described as absolute, inviolable, imprescriptible, unconditional, inalienable, or sacred."[56] Only if medieval rights were similarly inviolable can the continuity thesis be accepted.

Francis Oakley, in summarizing and approving Tierney's position, argued for exactly this understanding of medieval natural rights. For Oakley, Ockham held "simple use" of food and provisions to be "a *natural* right, indeed an inalienable natural right."[57] Oakley contests Fortin at

[52] Fortin, "On the Presumed Medieval Origin of Natural Rights," 245.
[53] Ibid., 245.
[54] The Villey thesis can be saved by attributing the break less to Ockham than to Franciscan theology generally, as is done by Milbank, "Against Human Rights," 222ff.
[55] Prescinding, of course, from the question of whether Christianity itself marks a rupture in political thought.
[56] Fortin, "On the Presumed Medieval Origin," 247.
[57] Francis Oakley, *Natural Law, Laws of Nature, Natural Rights*, 105

the crucial point, and claims that inalienable, natural, subjective rights were not a modern invention but had a medieval pedigree. Tierney put the position similarly: "Ockham wrote of alienable natural rights and of at least one inalienable natural right, the right of self-preservation."[58] Here, then is the heart of the matter. What exactly was Ockham's "inalienable" natural right of self-preservation—which can sound so similar to Hobbes and Locke?

Ockham discussed this right in *Opus nonaginta dierum*, where his purpose was to defend the apostolic poverty of the Franciscans against the attacks of Pope John XXII. According to Tierney, Ockham's "whole purpose" was to uphold "the thesis that Christ and the apostles had renounced all property," an argument which required Ockham to distinguish between a property right and a "simple use of fact."[59] In order to succeed, Ockham had to "distinguish between a power of appropriation that could be relinquished voluntarily and a natural right of using things that could never be renounced."[60] As Ockham himself had it: "it is licit to renounce property and the power of appropriating but no one may renounce the natural right of using."[61] Tierney's argument and Ockham's language appears incontestable—within Ockham's writings there was an unquestionable natural right to use that is inalienable. However, Tierney's and Oakley's argument[62] does not progress much beyond the discovery of this right within Ockham's works. Tierney's claim reduces to the following syllogism: there is an inalienable natural right in Ockham; there are inalienable natural rights in Locke and Hobbes; therefore there is a continuity. As has

[58] Brian Tierney, *The Idea of Natural Rights*, 194.
[59] Tierney, 157.
[60] Ibid., 164.
[61] Op. cit. in Tierney, 164.
[62] The limits of Oakley's arguments may be excusable, insofar as he does not claim to be doing "philosophical" work, but only historical. But in that case, how does he justify the strong line he takes against Strauss' or Villey's *philosophical* claims concerning Hobbes' invention of modern natural right? Philosophy, not history, must decide whether Hobbes' enumeration of natural rights was conceptually consistent with or derivative from the historically prior Franciscan enumeration of natural rights.

been noted, Fortin was willing to grant the presence of burgeoning natural rights in a medieval framework: his concern was with their status and their relationship to a larger natural order. So Tierney's discovery, absent a further discussion of that inalienable right's status, may not imply as much as Tierney hoped. The central question becomes: did Ockham mean the same thing by *inalienable* as does Hobbes?

In fact, the inalienable right in Ockham applied only in *extreme necessity*, and even then, did not create any positive rights (Ockham was insistent on this point). Moreover, when there was not a case of extreme necessity, the natural right did not have any status in positive law. The specific inalienable right was the right to *use* or consume food or property. In extreme necessity, one might eat food without gaining permission. But normally, a permission or license must be granted for the inalienable natural right to have any standing. Ockham put the whole matter another way: this inalienable natural right, since it is not a right "of the forum," is not a matter that can be "litigated in court," nor is it a power that is acknowledged by positive or civil law. [63]

Inalienable natural rights for Ockham could not be adjudicated in court, and insofar as they only applied in extremes, applied only where civil law failed, and thus could not be a firm basis for civil law. So even though Ockham admitted an inviolable natural right, he could not be farther from Locke or Hobbes, for whom "the fundamental political fact [is] the rights of man" and who "identify the function of the state with the protection or the safeguarding of those rights."[64] Modern inalienable natural rights are the basis on which a new political science is built; for Ockham, an inalienable natural right applies only at the margins in which an otherwise normative natural order

[63] This argument can be found in William of Ockham, Ch. 65, *The Work of Ninety Days (a defence of Franciscan Poverty against Pope John XXII),* Trans. John Kilcullen and John Scott, ed., H.S. Offler. Accessed January 1, 2018: http://pm.nlx.com.proxy.uchicago.edu/xtf/view?docId=ockham/ockham.01.xml;chunk.id=div.pm.ockham.work.ninety.176;toc.depth=1;toc.id=div.pm.ockham.work.ninety.171;brand=default%20)
[64] Strauss, *Natural Right and History*, 181-2

breaks down. Modern natural law was *deduced* from the original inalienable natural right, while Ockham's inalienable right was *restricted* by natural law[65] until the moment of an emergency—nevertheless, the inalienable right did not provide the original grounding for the wider natural and divine law. Here once again was the rhetorical power of the modern appeal to a "state of nature": even Ockham's appeal to an inalienable natural right had to accommodate itself to a pre-existing and free-standing natural and divine law that did not depend on that right as a source of meaning or grounding. An inalienable natural right will look very different depending on whether the natural law to which it relates is considered an independent and objective reality or merely a deduction and derivation from that same right.

The apparent similarity but ultimate divergence between the medievals and the moderns can also be demonstrated by the manner in which the rights or duties of a prisoner to preserve his own life are understood. Tierney, in his article on Henry of Ghent, argued that a prisoner who has justly been sentenced to death has the right to save his own life, as long as such a right can be exercised without injury to anyone else.[66] Aquinas adopted essentially the same position, although Henry and Thomas differed slightly in that Henry believes that under certain circumstances "fleeing may [become] a 'necessity' or positive duty."[67] Because of the presence of a subjective

[65] Ockham begins by noting that "to use temporal things pertains to a right of nature that no one can licitly renounce." However, "in many cases" the right can "be limited and in some way restricted and impeded so that it does not licitly issue in an act." The natural right "can never be emptied totally," because "temporal things can never be appropriated in such a way that they ought to be common in time of necessity." Usage can be "restricted by human law and by a free man's own will" but "cannot be eradicated totally." The result is that "anyone can use by right of heaven any temporal thing whatever that he is not prohibited from using either by natural law or by human law or by divine law or his own act." Moreover, "in time of extreme necessity" "by the law of heaven," anyone may use "any temporal thing whatever without which he cannot preserve his life; for in this case he is not obliged not to use a temporal thing by any law whatever or by his own act" (Ockham, Ch. 65, *Work of 90 Days*)

[66] Tierney, "Natural Rights in the Thirteenth Century: A Quaestio of Henry of Ghent." *Speculum* 67, no. 1 (1992): 58–68 , 64; cf. Fortin "On the Presumed Medieval Origin," 250.
[67] Fortin, "On the Presumed Medieval Origin," 250.

right of self-preservation in both Henry and Thomas, Tierney "takes this as further evidence that the key concepts of the seventeenth-century rights theorists 'often had medieval origins'."[68]

Fortin contested this point. Even though both the medieval and the Enlightenment rights theorists discussed rights of self-preservation, this apparent similarity obscured the "crucial fact" that "by the time we come to these seventeenth-century theorists, the ban against inflicting bodily harm on one's judge or executioner has been lifted."[69] In other words, for the medieval scholastics, the subjective right of self-preservation was circumscribed by the command or duty from the Decalogue not to kill. Duty circumscribed rights, even natural rights, even at the moment of "necessity." For Hobbes and Locke at least, the order of priority between rights and duties was reversed.

Hobbes made the point most clearly in the *Leviathan*, where he always reserved the individual right in the face of any other claim. Of the many times he made the claim, the following are a representative sample:

> If the sovereign command a man, though justly condemned, to kill, wound, or maim himself, or not to resist those that assault him…yet has that man the liberty to disobey.[70]
>
> …
>
> No man is supposed bound by covenant not to resist violence, and consequently it cannot be intended that he gave any right to another to lay violent hands upon his person
>
> …
>
> Before the institution of commonwealth, every man had a right to everything and to do whatever he thought necessary to his own preservation, subduing, hurting, or killing any man in order thereunto; and this is the foundation of that right of punishing which is exercised in any commonwealth. For the subjects did not give the sovereign that right, but only in laying down theirs strengthened him to use his own as he should think fit for the preservation of them all.[71]

[68] Ibid.
[69] Ibid.
[70] Hobbes, *Leviathan*, Ch. 21
[71] Both this and the preceding are from Hobbes, *Leviathan*, Ch. 28

Here, while the right sounds similar—in both cases is no man (even the criminal) compelled to cooperate in his own death—the crucial difference for Hobbes was that the resistance included "a right to everything…necessary to his own preservation," including "subduing, hurting, or killing any man" who aimed to harm him. When the individual's self-preservation was at stake, there were *no limits* to his most fundamental right. Not even the natural law or the Decalogue[72] can or *should* restrain him in that moment. He, and not any objective order or divine law, was the final judge of what is necessary to do. [73]

Locke, while gentler, made the same point. The right of self-preservation was so fundamental that men were incapable of dispensing with it, "they will always have a right to preserve what they have not a power to part with, and to rid themselves of those who invade this fundamental, sacred, and unalterable law of self-preservation for which they entered into

[72] And, of course, the Decalogue itself is re-interpreted in Ch. 30 in order to fully subordinate it to the judgment of the political sovereign, who retains the natural *right to everything* .

[73] Tierney in a later article took account of Fortin's argument by dismissing it:

> But is [Fortin's argument about Hobbes' criminal's absolute right] persuasive? What modern thinker is arguing that a criminal has the right to murder his guard? Hobbes's characteristic argument maintained that individuals had absolute rights but no duty to respect the rights of others. But again, who is defending such a doctrine nowadays? The United Nations Declaration of 1948, the grandfather of all later Declarations and Agreements on human rights, referred to everyone's "duties to the community" and to "due recognition and respect for the rights and freedoms of others." Our whole modern culture of rights is built around the idea that persons have rights that others must respect. It is profoundly anti-Hobbesian. Its roots are in an earlier tradition. (Tierney, "Author's Rejoinder." *The Review of Politics* 64, no. 3 (2002): 416–20, 419-20)

Fortin, who did not have the opportunity to respond to Tierney, could have answered in a number of ways. First, he could have said that Hobbes at least had the virtue of being more consistent in his principles than the United Nations. Second, he could have reminded Tierney that even in Hobbes, others' rights and freedoms attain "due recognition"—at least, up until the final moment. But it is the final moment that is at issue: not the mutual presence of rights and duties to respect them, but the question of which must finally give way before the other. The question might be asked if the United Nations has ever curtailed the expansion of new rights on account of everyone's "duties to the community," or if those new rights are the ones eventually considered as primary. And finally, even granting that we must respect others' rights, Fortin could have asked: why must we do so? Because there is an objective order that requires it, because we are inclined to it by nature—as the ancients would have it? Or because, by respecting others' rights, we guarantee (more or less) that our own rights will be protected? If the second, the "duty towards others' rights" is still a modern innovation, insofar as it arises from a calculus of self-interest and a decision by an originally a-social man to enter political society for those specified reasons.

society."[74] Locke softened Hobbes' conclusion by noting that just as men were bound to preserve ourselves, they were also bound to preserve the rest of mankind. However, he added a crucial qualification: only so long as one's own preservation "comes not in competition" with anyone else's,[75] in which case the duty towards mankind is trumped by one's individual right.

Locke could sound further away from Hobbes than he truly was when he limited the rights of nature by the natural law. Locke said that men were naturally in "a state of perfect freedom to order their actions and dispose of their possessions and person as they think fit, within the bounds of the laws of nature."[76] Here, Locke sounds almost medieval: right is limited by law. Locke even claimed that men were "the workmanship of an omnipotent and wise maker…made to last during his, not one another's pleasure,"[77] with the implication being that man was under the supervision of a divine master. In both cases it appeared that the natural right to self-preservation found itself limited in a way analogous to the ancient and medieval teachings.

But this difference was only apparent and due to the new way in which Locke used words like reason, natural law, and conscience. Locke meant something very different by laws of nature than Aquinas or Ghent.[78] In the Locke's state of nature, each man was the "executor of the law of nature." The traditional natural law doctrine had not considered there ever to be a time when the individual was under no authority but his own. Not only were all men considered under the authority of God, who wrote the natural law on their hearts and enforced it with mundane and

[74] John Locke, *Two Treatises of Government* in *The Works of John Locke in Nine Volumes: Volume Three* (London: Rivington, Egerton, Cuthell, Arch, Longman et al., 1824), 427. Hereafter cited as *Two Treatises*.
[75] Ibid., 341.
[76] Ibid., 387.
[77] Ibid.
[78] As, of course, did Hobbes, whose 20 laws of nature were derived from the original natural right. Hobbes was insistent that those laws of nature could not be circumscribed by any other code or covenant (with the obvious implication being on one hand the scholastic natural law and on the other the Decalogue) (*Leviathan*, Part II, Ch. 21 "On the Liberty of Subjects.")

eternal rewards and punishments, but men were also considered *naturally* to be under political authority, an authority which participated (to some limited degree) in divine authority.[79] All political and divine authority was considered part of a "divine pedagogy" aimed at countering the effects of the Fall. The Hobbesian and Lockean state of nature, wherein the laws of nature were judged and executed by each autonomous individual, was meant "to be a secular substitute for the story of Genesis" which "rejects this scheme of divine pedagogy" and was "designed for the political purpose of unseating the traditional doctrine of natural law."[80] Fortin himself highlighted one effect of this difference. Since for Thomas there was "no state in which human beings are not subject to some higher authority," with one consequence being that the meting out of punishments is "the prerogative of rulers and no one else," "only the 'minister of the law' has the authority to punish [men] for doing evil."[81] There was never a moment in which individuals possessed the executive power of punishment absent any reference to other authorities: there was never a moment when the individual was the "executor of the laws of nature."

Similarly, while Locke said that men are the "workmanship of an omnipotent and wise Maker," he never said they had been *commanded* by that Maker. Rather, "human beings are directed by God to preserve themselves by means of their 'senses and reason'" in a similar way to that by which animals preserve themselves by their "sense and instinct."[82] The desire for survival present in men issued in a right while it did not for animals, "presumably because only men have reason and are thus able to figure out what is necessary for their self-preservation as well as their

[79] There is no point in denying that this is a place where the ancients break from the medieval scholastics. However, even for Aristotle, man is a political animal who is naturally under political authority. The only men who are "naturally" outside of political life are either below it (as beasts) or above it (as gods). Even then, those below it are still subject to political authority, while those above it ought rightly be appointed the head of it (cf, *Politics*, Bk 3., Ch. 17)
[80] Russell Hittinger, "Natural Law and Catholic Moral Theology," 13-14.
[81] Fortin, "On the Medieval Origin," 250
[82] Ibid., 252.

comfortable self-preservation."[83] What made for the right, then, was the *calculating* capacity of the individual—rights were not grounded in "the self-evident principles on which the moral life is said to rest by the medieval theorists," but in the "matter of calculation."[84] This reduction of reasoning to calculation, without participation in some divine logos, was noted by both Leo Strauss and Eric Voegelin in their correspondence. Strauss had written in an article that according to Locke, "the judgment of conscience is so far from being the judgment of God that conscience is nothing else but our opinion or judgment of the moral rectitude or depravity of our own actions."[85] Voegelin objected to the precise formulation of Strauss', since the "traditional view" of conscience had always considered it the judgment of an *individual*, but an individual judging under and participating in the divine reason. Nevertheless, he agreed with Strauss' conclusion and charged Locke with having changed the meaning of reason. "The Lockean *ratio* is in fact opinion, no longer participation in the *ratio divina.*"[86] Classical and Christian *ratio* had always "derive[d] its authority from its share in divine being," and Voegelin was convinced Strauss had shown how Locke departed from the classical and Christian tradition. Voegelin concluded that Locke "must drop the swindle of *ratio*, and in the last instance refer to desire."[87] So whereas both Locke and the medieval proponents of natural law had both spoken of an individual conscience, the medieval view always saw the conscience as *naturally* under the authority of a divine order or divine law or a divine reason: but the modern conscience took itself to be liberated from any of those authorities (or, perhaps more precisely, re-defined reason in such a way that cognizance of such authorities would be considered irrational), and created a natural law based on its own deductions, beginning

[83] Ibid., 253.
[84] Ibid.
[85] Leo Strauss in a letter to Eric Voegelin, in *Faith and Political Philosophy*, Translated and edited by Peter Emberley and Barry Cooper (Columbia and London: University of Missouri Press, 2004) 94.
[86] Ibid.
[87] Ibid.

from a place of absolute autonomy and a recognition of the foundational desire for(and thus the right of) self-preservation.

This opposition between conscience participating in a supervening order versus a conscience judging autonomously in the absence of any order is one way of characterizing the thesis of rupture in the history of natural right. The presence or absence of a supervening order marked a more fundamental difference than whether a medieval language of "rights" existed. As Fortin put it: "if, as was generally assumed in the Middle Ages, there is such a thing as the natural law, one has every reason to speak of the rights to which it gives rise as being themselves natural."[88] Fortin granted a medieval co-existence between natural law and natural rights, but with the medieval privileging and circumscribing the rights by the law. The relevant point was that the rights, while they may be natural, were not inalienable.[89] They give way before the order of the natural law.

In that case, the true value of Tierney's project was that it "showed with admirable lucidity to what extent our medieval forbears managed to find a place for rights *within a human order* [emphasis mine] that reflects the natural order of the universe."[90] In other words, modern natural right was decisively different from ancient natural right because it lacked a supervening natural order. It was not the language of "rights" but understanding of what was implied in the word "nature" that distinguished the modern view from its predecessors. Since the understanding of nature was so different, all that could exist between the modern and non-modern view was a "rapprochement," but one conducted "on the basis of the highest principles of one or the other of

[88] Fortin, "On the Presumed Medieval Origin," 256.
[89] Milbank, in "Against Human Rights," puts forward the provocative claim that the true sign of a modern "inalienable" right is its absolute alienability. Only if the modern right is exclusively mine, exclusively non-relational, can I demonstrate the "possession" of such a right by giving it away.
[90] Fortin, "On the Presumed Medieval Origin," 256.

these two positions."[91] Since the two could not be synthesized, one must be privileged. But what Tierney has shown was that natural rights and pre-modern natural law could co-exist, at least within a framework in which the supervening order of nature or the natural law predominated.

The continuity thesis advocated by Tierney faltered because it failed to perceive how the presence of a supervening order limited and circumscribed claims of right. Nevertheless, there is still another group of scholars who grant this story, more or less, but refuse to see it as a story of decline or loss. The most prominent presentation of this view appears in Nicholas Wolterstorff's *Justice: Rights and Wrongs*.[92] There, he presents a double argument: first, that justice is best founded on a basis of subjective rights and second, that such a political order is compatible with and derived from Christianity. As John Milbank comments, Wolterstorff "wishes to claim that modernity, properly understood, is the consummation of Christian practice."[93]

However, to claim that modernity is the consummation of Christian practice is not to argue *against* rupture. Rather, modernity is Christian because there *has* been a rupture with the ancient world. The ancients understood justice as rooted in a "right order," a cosmological understanding of justice native to the ancient Greeks but infecting the Church Fathers and Aquinas as well. Christianity only *appeared* to be based on a cosmological right order because it had not been sufficiently de-Hellenized. The problem with a justice of "right order" is that it will tend to produce an arbitrary political hierarchy (supposedly justified by claiming to be grounded in the nature of the cosmos) which will not recognize the full personhood and dignity of its members. The solution to this tyrannical politics of right order, also known as political theology, was a politics grounded in subjective rights, detached from any metaphysical ends or natures which

[91] Ibid.
[92] Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2010).
[93] Milbank, "Against Human Rights," 209.

might restrict the full freedom of individuals. This understanding of the freedom of the human person, as consisting in subjective rights, is embodied in the modern liberalism whereby the state renounces any claim to order or judge human ends, and proposes, from a position of neutrality, to secure the subjective rights whereby each individual may pursue those goods as he conceives them—in which case, Wolterstorff's project is (as he admits) that of providing a sounder philosophical basis for Rawlsian liberal claims.[94] Wolterstorff embraces the thesis of rupture, though the relevant break is not with Hobbes or Ockham but rather between the ancient and Christian worlds—though there is a slow historical process of disentanglement.

The rupture thesis can then be viewed with misgiving (from the perspective of Strauss, Fortin, Villey, MacIntyre, etc.) or with hopefulness (from that of Wolterstorf et. al.). Before a firm judgment can be passed on the consequences of the rupture, a number of other preliminaries must be clarified. While the fundamental issues may initially appear to be the presence or absence of some kind of supervening order which either proposes salutary limits or unjustly oppresses and circumscribes rights claims (depending on one's orientation), the deepest question concerns the naturalness of authority. Even if there is some supervening order of nature or divinity, is it the case that the individual conscience naturally apprehends that order as authoritative? Or is the conscience separated from that order in a fundamental way, so that even if the order exists it is never recognized as naturally authoritative? It is within this question about the naturalness of the authority of some supervening order that the priority of political rights and duties gain their particular sharpness.

[94] Wolterstorf, *Justice: Rights and Wrongs*, 14-17.

Conscience

In what has been said so far, a crucial term has been neglected: the *conscience*. It has been mentioned as the hinge on which Locke posited a new form of reason; it was connected in some way to the intellection of ends that are right by nature; and it has just been brought forward as crucial to the perception of the naturalness of authority. It is, perhaps, too blithe to say that the ancients had no conception of conscience: while it is true that the words *synderesis* and *conscientia* are Latinate terms whose meanings coalesce in Christian theology, the philosophical question at issue is whether the characterization of the moral phenomena captured by those terms (especially in Aquinas' analysis) represented a corruption, an advance, or a faithful replication of what Plato and Aristotle had discovered about the moral life. This question is part of the larger issue of the relation of Christianity to the ancient world more generally: and for the time being (though not indefinitely), it must be tabled.

While Aquinas' account of conscience is not uncontested, it is a classic account. In the *Summa Theologicae*, *Prima Pars*, Q. 79, Aquinas discussed the relationship between *synderesis* and *conscientia*. *Synderesis* was a "natural habit"[95] that apprehended what Aquinas called the primary principles of the natural law, where the natural law was the participation of the rational creature in the divine wisdom and reason.[96] Whereas Aristotle, for instance, had taught that all natural right was changeable,[97] "Thomas distinguishes between the primary principles of the natural law, which are invariable, and its secondary principles, which are subject to change. The primary principles are regarded as self-evident and form the object of an intellectual virtue called

[95] S.T., Prima Pars, Q. 79, Art. 12.
[96] S.T., I.II, Q. 93 and 94.
[97] Cf. footnote 36 supra for Aristotle on the "changeability" of all natural right

synderesis."[98] These primary principles indicated the general ends of human existence, such that *synderesis* "is said to incite to good and to murmur at evil, inasmuch as through first principles we proceed to discover, and judge what we have discovered."[99] *Synderesis* apprehended the first principles on which the moral life was built, and it set the terms from which moral reasoning would proceed.

Conscientia was a related but not identical power. Or, rather, as Aquinas said in the article immediately following the one on *synderesis*, "strictly speaking, *conscientia* is not a power but an act."[100] *Conscientia* was the immediate moral judgment and act, which made use of the primary principles of the natural law (disclosed by *synderesis*), but supported by the more changeable, less certain secondary principles. "In Aquinas' view any more specific moral rules will be less likely to be true in all cases, and less easy to be sure of,"[101] as Aquinas indicated in *S.T., I-II,* 94, 4. Thomas Pfau related and explained the two terms in Aquinas' thought:

> Aquinas had analyzed this basic moral sense under the name *synderesis* and, importantly, he classifies it as a 'natural habit, not a power' (*synderesis non est potential, sed habitus*). In defining *synderesis* as a natural habit all but synonymous with natural law, Aquinas emphasizes that this moral sense is but a point of departure and, as such, in need of constant cultivation. It must not be misconstrued as some ready-made, apodictic inner certitude. Notably, in his response to the third objection (which, by way of Augustine, affirms that within 'the natural power of judgment there are certain 'rules and seeds of virtue, both true and unchangeable') Aquinas emphasizes the complementarity of the practical reason or 'judgment' (*prudentia*) and this inner sense. Both here and in his subsequent definition of conscience (*ST*, I Q 79, A 13), Aquinas thus takes care not to mystify *synderesis* and conscience as a metaphysical 'power' of sorts, but instead, to stress its evolving, act-like nature. The very basic moral orientation that is universally infused into every human being ('do good,' 'avoid sin,' etc.) merely constitutes the 'seed' (Augustine's term) or dynamic source for the progressive cultivation of rational personhood in dispositions, habits, and the virtues. As such, *synderesis* offers no determinate judgments or rational appraisals of the good. Rather, it constitutes a basic phenomenology of what it means for us to be ethical

[98] Fortin, "Natural Law," 161.
[99] ST., ibid.
[100] St., ibid., art. 13.
[101] Gerard Hughes, "Newman and the Particularity of Conscience," *Newman and Faith*. (Grand Rapids: Peeters Press, 2004), 64.

> agents—that is, both capable of making moral choices *and* obligated to do so. Thus it manifests itself affectively and with minimal articulacy; in Aquinas words, '*synderesis* is said to incite to good, and to murmur at evil [*instigare ad bonum, et murmurare de malo*].' It furnishes human life with a basic orientation and with the energy potential required if the narrative of moral self-fashioning is ever to get underway.[102]

Pfau's explanation has emphasized the degree to which both *synderesis* and *conscientia* required cultivation and teaching in the service of a project of "moral self-fashioning"[103] conceived as a "narrative." In the complicated interplay between narrative and education appeared the necessary role of authority.

Aquinas's delineation of conscience[104] absorbed an aspect of Augustinian moral enquiry elucidated most clearly by Alasdair MacIntyre. A central part of any medieval Augustinian beginning his moral education was the:

> …reading aloud and liturgical recitation of Scripture…in which the oral and the written text were one. The reader in his or her own life reenacts that of which he or she reads in Scripture; the enacted narrative of a single life is made intelligible within the framework of the dramatic history of which Scripture speaks. So the reading of texts is part of the history of which the same texts speak. The reader thus discovers him or herself inside the Scriptures.[105]

The moral life, conceived in narrative terms, was made intelligible by being integrated into the larger narrative of Scripture as a whole. But this kind of moral education through right reading was not without its problems: a person engaged in this project "encounters [an] apparent paradox at the outset, a Christian version of Plato's *Meno:* it seems that only by learning what the texts

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[102]Thomas Pfau, *Minding the Modern*, 230-1.
[103] Though not "self-fashioning" conceived as a Rousseauian or Kantian "autonomy." Remi Brague has noted the way in which the pre-modern tradition included a concept of "autonomy" but the autonomy of intentional *participation* in a divine order (cf. *The Law of God,* 232).)
[104] To use a single term to combine *synderesis* and *conscientia*, which has a long history through a division into habitual and actual conscience, respectively. Cf. for instance, John Finnis, "Newman on Conscience in the *Letter to the Duke of Norfolk*," in *Newman After A Hundred Years* (Oxford: Clarendon Press, 1990) 410-11.
[105] MacIntyre, *Three Rival Versions*, 83.

have to teach that he or she comes to read those texts aright, but also that only by reading them aright can he or she learn what the texts have to teach."[106] The requirements for a person in this situation were twofold: "a teacher," and "an obedient trust" that the interpretations and reasons the teacher offers will turn out to be well-grounded "in the light afforded by the understanding of the texts which becomes available only to the transformed self."[107] A pre-rational reordering of the self has to occur before one can have an adequate standard by which to judge. In other words, "faith in authority has to precede rational understanding," and "humility is the necessary first step in education or in self education." In opposition to an education in geometry or the deductive sciences, in moral enquiry "we move towards and not from first principles and we discover truth only insofar as we discover the conformity of particulars to the forms in relation to which those particulars become intelligible, a relationship apprehended only by the mind illuminated by God. Rational justification is thus essentially retrospective."[108] Connected with this was the vexed concept of the will, and the need for an "initially perverse will"[109] to be transformed "from a state of pride to one of humility [so] that the intelligence can be rightly directed."[110] And the initial obedience of the will was not directed only towards "this particular teacher, but in that of the whole tradition of interpretive commentary into which that teacher had had earlier him or herself to be initiated through his or her reordering and conversion."[111] Augustinian moral enquiry required a recognition of the authority of an interpretive *tradition*.

[106] Ibid., 82.
[107]Ibid.
[108] Ibid., 84.
[109] Ibid., 84
[110] Ibid., 91.
[111] Ibid., 82-3.

For Aquinas, the consequence of these Augustinian parameters affected how one understood the proper education of the conscience to proceed:

> At the beginning of all intellectual activity, then, lies the commitment to a specific outlook on the nature, scope, and ambition of knowledge itself, beginning with the choice of how (or whether) to acknowledge that all rational inquiry, in addressing itself to what is inexplicably and unconditionally gven, rests necessarily on an "undecidable" proposition.[112]

Intellectual activity (practical and theoretical alike) depended ultimately on indemonstrable or unprovable foundations (Aristotle had already said as much, in Book 1 of the *Posterior Analytics* [113]). That did not make those foundations irrational; rather, there were particular intellectual virtues *noesis* and *synderesis* that apprehended the first theoretical and the first practical principles of knowledge. But the development of virtues required the initiation into a community of some kind,[114] and such an initiation necessarily required an important obedient trust in authority, as well as the well-balanced intellectual perception to recognize the appropriate (and possible) proofs available for certain propositions. Thus, for Aquinas, conscience was characterized by a number of features: (1) tradition, through which it is habituated into the virtue of *synderesis* and educated in the *phronetic* perception of the less-certain secondary principles of the natural law; (2) authority, not only in the irrevocable need for authority in teaching, but also through the participation in the natural law and recognition of a divine lawgiver; (3) practical virtue, whereby the conclusions reached in the conscience cannot be expected to have geometric precision; and (4) narrative, where the moral life is understood to be a part of a larger story that made the individual life intelligible.

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[112] Pfau, *Minding the Modern*, 159
[113] Aristotle, *Posterior Analytics,* 71a7ff.
[114] Cf. for instance, *After Virtue*, Ch's 10 – 15.. See also Bk 10 of Aristotle's *Nicomachean Ethics*, and the entire project of the *Republic*.

In comparing Hobbes and Locke with the aforementioned account of conscience, the rupture in modern thought is manifest. The new mythology of a state of nature broke decisively with the traditional understanding of conscience. The state of nature eradicated any claim to tradition, authority, or practical virtue. In the state of nature, there was only war: it was a never-ending single moment of conflict, in which the only means of escape came through an agreement premised on calculation—there can be no such thing as an initiation into a virtue, because there were neither teachers nor students, and trust was rewarded only with death. And while this might make one think that the state of nature could be considered a rival narrative of the moral life—even if only a dystopic one—it is more truly seen as an *anti*-narrative.

The characteristic features of a narrative moral enquiry according to Alasdair MacIntyre are at least threefold. First, a narrative quest is never pursued in isolation,[115] since the "narrative of any one life is part of an interlocking set of narratives."[116] Second, the quest involves the asking and answering of the questions "what is the good for me?" and "what is the good for man?" and it is the "systematic asking of these two questions and the attempt to answer them in deed as well as in word which provide the moral life with its unity. The unity of a human life is the unity of a narrative quest."[117] Third, and implied by the aforementioned questions, is the presence of a *telos.* "Without some at least partially determinate conception of the final telos there could not be any beginning to a quest,"[118] though the *telos* is of a very specific type:

> [it] is not at all that of a search for something already adequately characterized, as miners search for gold or geologists for oil…it is in the course of the quest and only through

[115] Even narratives of isolation, like *Robinson Crusoe*, implicitly take man's social nature as a reference point: otherwise Crusoe's isolation would not be understood *by contrast* as something tragic or necessary to overcome. A Hobbesian man in the state of nature could never understand himself to be *in isolation*, since he has no reference point of society—in the same manner in which darkness is only elucidated by a contrast with light.
[116] *After Virtue*, 218.
[117] Ibid., 218-219.
[118] Ibid., 219

> encountering and coping with the various particular harms, dangers, temptations and distractions which provide any quest with its episodes and incidents that the goal of the quest is finally to be understood. A quest is always an education both as to the character of that which is sought and in self-knowledge.[119]

The narrative of the moral life is defined by the necessary presence of a *telos*, taken to be the good for man, the truest meaning of which is disclosed only in the course of the quest itself. The fact that the *telos* of the moral life is only dimly perceived at its beginnings is no argument against this formulation: rather, it is a sign of the need for education—of the idea that man is not born with a fully developed nature. This is not a Christian addition to ancient sources (nor MacIntyre's model of the "medieval quest" too historically specific), the account of the ladder of love in the *Symposium* follows essentially the same model, with a dialectic unfolding not over the course of a conversation, but over the course of a life, slowly disclosing the *true* good that was implied by all of the apparent goods that are pursued and then transcended. The narrative moral life requires a conception of the good.

And a conception of the good is exactly what Hobbes' and Locke's state of nature lacked. No longer was the moral life analyzed in terms of the knowable natural ends and the *summum bonum*. Nature, having lost its meaning, could not provide any *positive* teleology. "In the absence of a *summum bonum*, man would lack completely a star and compass for his life if there were no *summum malum*."[120] Since, as Locke said, "desire is always moved by evil, to fly it,"[121] (there no longer being a natural *desire* for the good), and "the strongest desire is the desire for self-preservation. The evil from which the strongest desire recoils is death. Death must then be the

[119] Ibid.
[120] *Natural Right and History,* 249-50. See specifically *Leviathan* Ch. 11 for Hobbes' replacement of the *bonum* with the *malum.*
[121] Locke, *Essay on Human Understanding*, ; op. cit. *Natural Right and History*, 250.

greatest evil."[122] Whereas earlier in this chapter, a distinction had been drawn between the pre-modern and the modern in terms of the presence or absence of a natural teleology, it is in fact more correct to say that, while modernity retained a teleology, the teleology it retained was entirely negative. It is a teleology of *flight*, of *escape*. And what this negative teleology destroyed was the possibility of the moral life being understood in narrative terms. There was no true good that is slowly disclosed by a dialectic of life; rather, the true evil was immediately and perfectly known, and avoided. While techniques for avoiding death might be learned, they did not contribute to a more perfect awareness of the end: indeed, they functioned to keep the end away rather (than as would happen in a pre-modern narrative) to bring the end closer. The state of nature did not provide an alternate starting point for a new narrative; instead it only allowed for the construction of an anti-narrative.

The conscience in the state of nature was utterly alone, and while it stood in need of many things, its need could not be characterized as a lack which tradition, authority, and narrative could supply. All that was available was the pre-moral passion for life, and all that could be fashioned (via an instrumental reason) out of this pre-moral passion were a series of protections *against* the thing most feared: death. Those protections were what become, in another word, *rights*.[123] These rights took the individual conscience (and its attendant natural isolation) as their source. So

[122] Ibid.

[123] The late-modern distinction between "positive" and "negative" rights, made so famous by Isaiah Berlin, does nothing to change this basic position. The presence of "positive" rights, following Rousseau et al., merely changes the focus; the picture remains the same. If the "negative" rights are supposed to protect the freedoms of the originally free conscience in a state of nature, the "positive" rights hope to restore *or finally create the situation where* a conscience can attain that initial freedom (see, for instance, Pierre Manent, *An Intellectual History of Liberalism* (translated by Rebecca Balinski (Princeton: Princeton University Press, 1995) 65-80), on Rousseau and the importance of "revolution" to liberal thought.). But the initial freedom thus gained by the positive rights is *still* conceived as the freedom *from* want or privation. One can see this process of thought at work in the way in which positive rights do not ever adopt any *positive* teleology; instead, they work on the implicit assumption that material conditions/privations (which can be fixed by the positive right) inhibit the operation of an initial freedom.

modernity retained the language of conscience, but only by denuding the concept of everything that the classical and Christian tradition had meant to indicate by such a term.

Conclusion

The history of rupture in Western political thought involved not only questions about the priority of rights and duties, but also the presence or absence of a supervening order. All of this coalesced around the concept "conscience." The changing treatment of conscience gave insight into the rupture because it was a concept which modern figures like Hobbes and Locke intentionally re-defined in order to move political thought onto a new track:

> Originally, in the medieval frame, conscience involved the *intellectual* awareness of guilt (as in a "bad conscience). Because of sin, the conscience was not free; rather, the conscience needed to be educated, formed in the truth, and this formation was a crucial [sic] to the discernment of virtues and vices. The conscience was formed in a complex moral grammar within a penitential culture ordered to the city of God.[124]

Conscience became what it was only by being integrated in a narrative tradition, which took the naturality of authority as one of many necessary starting points. But for Hobbes and Locke, conscience lost everything but its decision-making capacity,[125] and it became the "executor of the laws of nature" on no authority outside its own. From this shift, rights completely changed their meaning: ought they be interpreted in light of something like nature or natural law; or ought they be understood as the most fundamental moral phenomena themselves, out of which duties can be derived, but with those duties lacking a similar "inalienability" as the original rights? This raised the further question of the nature of reason: was reason capable of apprehending certain

[124] Pecknold, *Christianity and Politics: A Brief Guide to the History* (Eugene, OR: Cascade Books, 2010), 110.
[125] See *Leviathan*, Ch. 7, where Hobbes turns conscience into mere self-consistency.

indemonstrable metaphysical and political first principles; or was reason capable only of "calculating" about the satisfaction of certain basic desires, which are also given, but can never be understood as being "rationally" given in the same way? If the second understanding of reason was correct, there is something like a necessity that the liberal regime be considered the only legitimate regime: since there is no way of recognizing universal ends or goods, the least-tyrannical political option is to establish a state that declares neutrality with regards to ends and aims only to preserve and enhance the unencumbered freedom and autonomy of its individual members. But, if on the other hand, there was the possibility that reason may amount to more than a calculation of desire-satisfaction, the question of possible plural legitimate regimes was re-opened: human reasoning, striving towards metaphysical competence, did not necessitate or require a theocracy that tyrannically established a rigid but arbitrary hierarchical order. Instead, an older style of political deliberation could re-emerge. There might be a number of possible legitimate regimes which human prudence could recommend based on determinations which take into account both local conditions and humankind's natural (and perhaps even supernatural) ends. Which meant, in the end, that the question about natural rights is a question not of whether or not to accept political liberalism, but a question of *how* it ought to be accepted: was it the fulfillment and destiny of the human race, the culmination of human freedom; or was it a regime that must always be judged in light of other political arrangements, and accepted (if accepted) on a prudential determination? Did political liberalism *close* the theologico-political problem,[126] or not?

One question from which this first chapter has prescinded is that of the relation between Christianity and the ancient world. Can something like the medieval Christian concept of

[126] On the question of the theologico-political problem, see footnote 9 in Ch. 1 *supra*, with "problem" rather than "issues/concerns" used her to signify liberalism's self-understanding of its conquest of theocratic politics.

conscience be synthesized with ancient accounts of the soul? Or is the history of Western political thought the story not of one but of two ruptures? In the short term, this question will have to be delayed, since the most pressing issue is *which* version of conscience Newman employed in his account of the rights of conscience. First must be settled the issue of whether Newman was modern or ancient-medieval. Only then can the question of that hyphen be addressed; and it may well be the case that Newman himself has something to contribute towards how that question is posed.[127] Along these lines, Newman's return to the Alexandrian tradition was especially relevant, and as Eric Voegelin had it, "the great problem of the *praeparatio evangelica* that had been understood by Clement of Alexandria when he referred to the Hebrew Scripture and Greek philosophy as the two Old Testaments of Christianity."[128][129] But this will have to wait until the conclusion.

[127] Since, philosophically speaking, the most that can be done is to pose the question as clearly as possible.
[128] *The New Science of Politics*, 80 (footnote 7)
[129] Especially relevant here is a passage from Newman's review of Millman's *History of Christianity*:

> Now, the phenomenon, admitted on all hands, is this:—that great portion of what is generally received as Christian truth, is in its rudiments or in its separate parts to be found in heathen philosophies and religions. For instance, the doctrine of a Trinity is found both in the East and in the West; so is the ceremony of washing; so is the rite of sacrifice. The doctrine of the Divine Word is Platonic; the doctrine of the Incarnation is Indian; of a divine kingdom is Judaic; of Angels and demons is Magian; the connexion of sin with the body is Gnostic; celibacy is known to Bonze and Talapoin; a sacerdotal order is Egyptian; the idea of a new birth is Chinese and Eleusinian; belief in sacramental virtue is Pythagorean; and honours to the dead are a polytheism. Such is the general nature of the fact before us; Mr. Milman argues from it,—"These things are in heathenism, therefore they are not Christian:" we, on the contrary, prefer to say, "these things are in Christianity, therefore they are not heathen." That is, we prefer to say, and we think that Scripture bears us out in saying, that from the beginning the Moral Governor of the world has scattered the seeds of truth far and wide over its extent; that these have variously taken root, and grown up as in the wilderness, wild plants indeed but living; and hence that, as the inferior animals have tokens of an immaterial principle in them, yet have not souls, so the philosophies and religions of men have their life in certain true ideas, though they are not directly divine. (*Essays Historical and Critical*, Vo. II, (London: Longman's, Green, and Co, 1907), 231-232)

CHAPTER II: PROGRESS AND RIGHTS PRESUMED IN NEWMAN SCHOLARSHIP

Introduction: A Brief History

Prior to the decisions of the Second Vatican Council, any sustained treatment of John Henry Newman's political thought could have been considered a sign of scholarly eccentricity. In addition to being an almost exclusively occasional writer, Newman devoted little of his time to extended political reflections; both conditions combined to make any detailed investigation of Newman's political thought (if such even existed in more than an embryonic form) appear daunting if not quixotic. Nor were his specific concerns in the mainstream of either Catholic or secular political thought. On the one hand, Catholic political thought of the 19th and early 20th century was still fixated on the idea of the confessional regime; while from the other side, secular thought had no need for a Catholic cardinal whose primary concern was the preservation of the unique institution of the Church.

But with the Second Vatican Council, and its *Declaration on Religious Freedom*, suddenly religious liberty became "the cornerstone of Catholic political thought."[1] The *Declaration* took as its point of departure the individual right of conscience.[2] The question became urgent: had the Church allied itself with the kind of liberalism derived from Hobbes and Locke, who gave priority to inalienable rights which arose from the individual conscience? In a modified form, such was the claim of the great Catholic political theorists of the mid-century, John Courtney Murray and Jacques Maritain. For Murray, the American Founders had built better than they knew, and the American Regime in the mid-20th century was providentially prepared to receive an infusion of

[1] Emile Perreau-Saussine, *Catholicism and Democracy*,127ff.
[2] Ibid., 129.

Catholic natural law principles.[3] For Maritain, the Church could affirm the Enlightenment's notion of inalienable rights.[4] The Church could benefit from an "instrumental" or "juridical" state that did not claim sovereignty but protected the rights of individuals and communities.[5] Moreover, both believed that the modern rights doctrine was compatible with the classical Christian understanding of natural law.[6] It was with this understanding of politics—always with a presumed continuity between ancient and modern thought, and often with the presumption that the state's purpose consisted in protecting the individual inalienable right of conscience—under which analyses[7] of Newman's political thought have been made.

The predominant school of thought has understood Newman's project to foreshadow the work of the Second Vatican Council and its reconciliation of the Church with the modern world. Newman's "rights of conscience" as delineated in the *Letter to the Duke of Norfolk* have been understood to be consistent with the modern rights enumerated by the liberal rights regime, and the work of scholarship has been to integrate Newman's right of conscience into the larger liberal order. But in order to argue that Newman's thought was consistent with the best liberal thought,

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[3] John Courtney Murray, *We Hold These Truths*, 46-49, 267-300.)

[4] Maritain, *Man and the State,* (Washington, D.C.: CUA Press, 1998), 95

[5] For Murray's use of the "juridical state," "The Problem of Religious Freedom" (*Theological Studies,* Volume 25 Issue 4, (December 1964): 503-575) and "The Issue of Church and State at Vatican II" (*Theological Studies 27* (December 1966): 580-606.) Maritain's "instrumental state" is discussed in *Man and the State.*

[6] Hittinger, *The First Grace*, 18-19; Fortin, "Natural Law and Social Justice," 235; "The Trouble with Catholic Social Thought," 306. These articles draw out what is latent in *We Hold These Truths,* "The Problem of Religious Freedom," "The Issue of Church and State at Vatican II," and *Man and the State*. To Murray's credit, he distinguishes between a tradition of medieval Catholic liberalism (brought to America via the English common law) and European laicist liberalism (inaugurated by the French Revolution but finding its sources in Rousseau and Locke), argues that America partakes of the first, and is well adapted to receive an infusion of classic natural law principles (Ch. 1). But Murray's conceptualization of the American project as "a unique historical realization" (23) "inaugurat[ing] a new history" (39) participates in a kind of historical thinking foreign to classical and medieval political philosophy. Also, his distinction of the two realms of spiritual authority and political authority (81-86) is drawn more concretely and dogmatically than either classical political philosophy or John Henry Newman would (see Ch. 5 for more on Newman's prudential distinction between spiritual and political authorities).

[7] At least of the first school; it may appear that the Turner school of suspicion is excluded, since their general argument is that Newman's Catholic period is a dissimulation of his truer Anglican leanings. But more often than not, the Turner school identifies Newman as non-modern or non-liberal *in order to criticize him*: that is, they judge him to be insufficiently cognizant of "the individual inalienable right of conscience." More will be said in Ch. 4.

these scholars have been compelled to claim that Newman was internally inconsistent, and that Newman's later Catholic writings repudiated his earlier church-and-state Anglican Tory period.

Against this first school of thought, a rival trend of analysis has recently surfaced. The rival account, which has viewed with suspicion Newman's Catholic turn, has argued that the later writings were the product of dissimulation—and that the earlier Anglican period was where Newman's deepest sympathies lied. A central irony links these alternate analyses. Though opposed on nearly all the key questions, they have both presumed that Newman's life was characterized by an intellectual rupture. Both have agreed that Newman broke with his past when he converted.

Despite the apparent antipathies, the shared priors are even deeper. Both, also, have presumed that political philosophy is characterized by a progress from theocracy to liberalism, but a progress in which the prior stages have been decisively overcome.[8] Thus Newman's apparent "progress" was necessarily the result of a deep rupture in his own thought—Catholic liberalism must leave Anglican theocracy decisively behind. But Newman himself argued throughout his life for a principled consistency—was he mistaken? Or are his interpreters?

This chapter will survey the critical scholarship of Newman's political thought with the purpose of showing that despite a number of real disagreements, at the deepest level the scholarship shares a mistaken presumption of progress and continuity in the history of political thought. This survey will proceed historically, beginning with Harold Laski's *Studies in the Problem of Sovereignty*, a work of substantial insight which set the pattern for future scholarship. Central to Laski's interpretation were the rights of conscience and the concept of pluralism. Later scholarship

[8] As would be the case in Comte's three historical stages: the theocratic, the metaphysical, and the positivist. See Auguste Comte, *The positive philosophy of Auguste Comte*, Trans. Harriet Martineau (London: J. Chapman, 1853).

has developed one or the other of Laski's insights. Even the scholarship that treats critically Newman's contributions nevertheless adopts a modern account of progress in order to criticize Newman's failures. Neither the claim that Newman foreshadowed a reconciliation with liberalism *nor* the one that claims Newman dissembled about his antipathy to liberalism are adequate to Newman's own work. This chapter will conclude by arguing that Newman's own understanding of liberalism has been misunderstood by both schools of Newman scholarship because both have proceeded from incorrect premises about the history of political thought. Instead, Newman made use of an "Alexandrian hermeneutic" which understood liberalism to be a sempiternal heresy. In resisting liberalism's manifestation in the 19th century, Newman's "Alexandrian hermeneutic" did not speak at the level of policy: instead it argued that central liberal assumptions (the non-reality of religious knowledge and thus the dawn of a new "secular" age) were inadequate: in fact, "liberalism" itself could be understood only in light of Scriptural and Ecclesial analogies.

Laski: Pluralism, Personality, and Conscience

The first serious treatment of Newman's political thought came not only before the Second Vatican Council, but also from a non-Catholic writer. Harold Laski's *Studies in the Problem of Sovereignty* has maintained its influence and is regularly cited in later studies of Newman's political thought. Laski wrote in order to resist the "omnicompetent"[9] "monistic"[10] "Hegelian"[11] state and defend the rival conception of a "pluralistic"[12] vision of politics and sovereignty. Through Laski's work, pluralism became for the first time an explicit concept in political theory with the

[9] Harold Laski, *Studies in the Problem of Sovereignty* (New Haven: Yale University Press, 1917), 39.
[10] Ibid., 8.
[11] Ibid., 6.
[12] Ibid., 12, 13, 20.

development of the English pluralist school in the early 20th century.[13] Though insightful in many respects—including its appropriation of Newman's *Letter to the Duke of Norfolk*—Laski's pluralism offered an inadequate rejection of Hobbesian/Lockean political thought. At a crucial point, Laski incorporated Hobbesian premises in his anti-Hobbesian argument. This same inconsistency was adopted by later Newman scholars who built from Laski's work.

Writing in 1917, Harold Laski explicitly claimed Newman's *Letter to the Duke of Norfolk* as a pluralist work, since it contained "the profoundest discussion" of pluralism and sovereignty. This combination—pluralism and sovereignty—was at the heart of the issue, since the English pluralist school developed its theory of pluralism as a critical response to Thomas Hobbes' account of sovereignty in the *Leviathan* and the subsequent development of political theories of sovereignty, culminating in what Laski would call the "Hegelian" account of state sovereignty. Hobbes had claimed that in in order to escape the state of nature, individuals must:

> Reduce all their wills…unto one will: which is as much to say, to appoint one Man or Asseembly of Men, to beare their person…and therein to submit their Wills, every one to his Will, and their Judgment to his Judgment. This is more than Consent or Concord; it is a real Unitie of them all, in one and the Same Person…This done, the Multitude so united in one Person, is called a Common-wealth, in latine Civitas. This is the generation of the great Leviathan, or rather (to speak more reverently) of that Mortall God, to which we owe, under the Immortal God, our peace and defense…and he that carryeth this person, is called Soveraigne.[14]

There was a double-movement in Hobbes' account. First, all the individuals were reduced to a single group personality; second, the person of the sovereign bore that group personality. In other words, Hobbes was not merely saying that each individual consented to the judgment of a single

[13] Specifically in the works of Harold Laski, Edmund Figgis, and F.W. Maitland; all of whom were influenced by the German legal scholar Otto von Gierke. Of course, the political question of the relation of the parts to the whole was at least as old as Plato's reflections in Books III-V of the *Republic*, but pluralism as it is now known took its point of departure from a particular set of historical and political circumstances.
[14] *Leviathan*, 87-88, 104-105.

common judge (as Locke, for instance, would have it); rather, these individuals were now formed into a commonwealth—that is, a real and not merely fictional *group personality*—whose group personality was *represented* by the person of the sovereign. Carl Schmitt, the good Hobbesian, made the point that "the state is more than and something different from a covenant concluded by individuals…the sovereign-representative person is much more than the sum total of all participating particular wills…to this extent the new god is transcendent vis-à-vis all contractual partners."[15] The Hobbesian sovereign state had a *real* personality that transcended every other association and individual.[16]

Moreover, while other institutions such as "a Church, an Hospital, [or] a Bridge," were capable "of being represented by fiction," the representation borne by the sovereign was more substantial. These other institutions were "things inanimate"—whose members could "procure their maintenance" by appointing someone to be their fictional representative, a "rector, master, or overseer."[17] This agreement was a species of contract; and Hobbes insisted that contracts did not hold in the state of nature. One of the reasons the commonwealth was formed was to "compel men to keep" contracts.[18] Therefore, "such things [as churches or hospitals] cannot be Personated, before there be some state of Civil Government."[19] Other institutions have a fictional personality that presupposed and required the prior establishment of a sovereign state with a real personality.

The English pluralist school argued that this substantial and transcendent personality was an illusion: the sovereign bore the purely fictional, unreal person of the people; he impersonated

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[15] Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol,* Translated by George Schwab (Chicago and London: The University of Chicago Press, 2008) 98.
[16] This account of the history and content of pluralism is deeply indebted to Miguel Vatter's work in "The Political Theology of Carl Schmitt," in *The Oxford Handbook of Carl Schmitt* (New York: Oxford University Press, 2013): 245-268.
[17] *Leviathan,* Ch. XVI, 113.
[18] Ibid., Chapter XV, 101.
[19] Ibid., Ch. XVI, 113.

"the mere ghost of a fiction,"[20] as F.W. Maitland has said. While the English pluralists did not deny the personality of the state, they were unwilling to grant it transcendence over any other association. Laski's central thesis in *Studies in the Problem of Sovereignty* was exactly that: while "the reality of the State's personality" must be acknowledged, "the habit is common to other things also." "Any group of people leading a common life" developed "a personality that is beyond the personalities of its constituent parts. For us that personality is real. Slowly its personality has compelled the law to abandon the theory of fiction [i.e., that corporations like churches or universities possess only a fictional personality represented within the law]." "There are within the State enough of these monistic entities, club, trade-union, church, society, town, country, university, each with a group life and a group will, to enrich the imagination."[21] Group personality was a consequence of any kind of common-life, not merely the common-life of a state.

Of course, Hobbes could well have responded that even if all these entities possessed a real personality, the personality of the state was more sovereign, more transcendent, more like a "mortall god." But Laski denied this. There was no "a priori justification which compels [someone's] allegiance [to the state] more than the allegiance to Church or to other groups—it [the state] wins the allegiance pragmatically."[22] Since "there is no sanction for law other than the consent of the human mind,"[23] any act of allegiance must be the result of consent: nothing justified the state's sovereign compulsion absent an individual's consent to the state.

To explain how this could be the case, Laski invoked Newman's account of conscience. Laski read Newman to recognize that the "central problem was the relations of sovereignty to

[20] David Runciman, *Pluralism and the Personality of the State* (Cambridge: Cambridge University Press, 2005), 101. Op cit, Vatter, "The Political Theology of Carl Schmitt," 254.
[21] Laski, *Studies in the Problem of Sovereignty,* 4.
[22] Ibid., 19.
[23] Ibid, 14.

allegiance on the one hand, and to conscience on the other."[24] Newman's was "a theory of liberty since it bases power and obedience on the consent of men."[25] What Laski meant was that, by grounding sovereignty in the *consent* of the individual conscience, Newman in effect said "man should do that which he deems morally right, and the only obedience he can render is the obedience consonant with his ethical standards," standards whose ultimate source was the individual conscience itself.[26] Because "our theories have to validate themselves in practice we may perhaps fear little the remorselessness of their logic,"[27] by which Laski meant that the logic of a theory of sovereignty was less politically fundamental than the freely-chosen obedience of an individual's conscience. The state never had total sovereignty because every claim to sovereignty or obedience must, on Laski's reading, come before the bar of the individually-judging conscience. On this reading, Newman turned out to be arguing for exactly the kind of "pluralistic"[28] vision of the State that Laski saw to be the necessary replacement for the "omnicompetent"[29] "monistic"[30] "Hegelian"[31] state to which Laski opposed himself. Laski's thesis was that "a state that demands the admission that its [i.e., the state's] conscience is supreme goes beyond the due bounds of righteous claim,"[32] and Newman, by arguing for the rights of the individual conscience, shaped a theory of a pluralistic state whereby no single totalizing vision can secure total obedience—since all authorities had to justify themselves before the individual conscience. So not only was there the basic privileging of the sovereignty of the individual conscience over the state, there was also an image of the conscience as a kind of bar or judge, whereby all claims to authority must justify

[24] Ibid., 202-3.
[25] Ibid., 207.
[26] Ibid., 206.
[27] Ibid., 207.
[28] Ibid., 12, 13, 20.
[29] Ibid., 39.
[30] Ibid., 8.
[31] Ibid., 6.
[32] Ibid., 39.

themselves. The conscience was supreme, and all group-personalities must pragmatically win allegiance from it. The conscience can place itself under various authorities, but not without this initial moment of freedom whereby it can rationally conclude what obligations to lay on itself. Or, even if there was no initial moment of freedom, the loyalty or obedience that a group-personality could expect from an individual was only partial, limited, and circumscribed by explicit consent.

Laski and the English Pluralist account of the spontaneity of group personality dealt a blow to the Hobbesian account of representation: if any group sharing a common life naturally produced its own personality, the quasi-mechanical (or quasi-mystical) Hobbesian process of representation (whereby all individual wills were reduced to one supreme will) was unnecessary. However, the pluralist escape from Hobbes depended for its success on a central Hobbesian (and Lockean) assumption: the sovereignty of the individual conscience.[33] Even if common-life groups developed a personality on their own, the pluralists (in order to escape the tyranny of any one group personality) incorporated an idea of the individual conscience that had the freedom to submit in any number of degrees to any number of group personalities. In other words, even if the pluralists recovered something of man's political nature from Hobbes by making group personality a natural political phenomenon, they secured this only by making political loyalty and authority *unnatural*. Political groupings were natural but man was not naturally under the authority of any of those groupings, absent his consent.[34] In using (or rather, mis-using) Newman's account of

[33] A fascinating alternative solution to this same problem was developed by the Catholic political philosopher Yves Simon, who argued in *Philosophy of Democratic Government* (South Bend: Notre Dame Press, 1993) that the only way to explain how men can bind their consciences to one another (excluding the social-contract model) is to understand all authority as originally derived from God.

[34] But as the next chapter will argue, Newman simply did not see the relationship between power, obedience, and consent to be what Laski here claimed. For Laski, power and obedience were only ever justified by "the consent of men." But Newman's account of the liberty of conscience was founded on the initial recognition of a power which compelled obedience (the voice of God in the conscience); to interpose the question of whether one should "consent" to obey this initial authoritative voice was to already be influenced by self-will: to ask such a question was already to misconstrue the moral phenomenon at hand. The argument here was not that Newman was "opposed" to

conscience as a support for pluralist theory, Laski indicated one way in which this Hobbesian attack on Hobbesian principles lent an uncertainty to all accounts of pluralism that rooted themselves in the sovereignty (or, in as many words, the inalienable rights-bearing) of the individual. Group personality was accorded a fundamental status, which required a pluralistic theory in order to prevent the tyrannical oppression of any particular group personality. But in order to prevent the tyrannical oppression *by* any particular group personality, the sovereignty of the individual conscience (perhaps to such a level as to be considered "the executor of the laws of nature"[35]) was proposed. Subsequent Newman scholarship emphasized either the sovereignty of the conscience or the reality of personality and pluralism, but the tension between these alternate concepts has not been appreciated.

The Tradition of Newman on Conscience

Laski's thesis was reiterated in the first treatment of Newman's political thought from a Catholic perspective, which occurred in Alvin Ryan's 1945 *Review of Politics* article, "The Development of Newman's Political Thought." "Just and lasting solutions of political problems"[36] could be discovered by grounding claims of justice in the protection of individual rights. The solution to "the problem of Church and State…involve[d] an acceptance…of 'liberal principles,' or a principle of pluralism."[37] Ryan summarized Newman's political thought in the

consent; instead, the point is that Newman's thought is not elucidated but only obscured by subjecting it to a conceptual dialectic of "consent and obedience."

[35] Cf. pp. 46ff. of Ch. 1 on Locke

[36] Ryan, 93.

[37] Ryan says that Newman "is defending a kind of pluralism in the political order" when, in Newman's *Present Position of Catholics*, he "successfully appeal[s] to the English nation to respect the right of conscience of himself and his fellow Catholics." However, in the lecture Ryan cites to support this claim, Newman refers to the danger that "we might even lose the rights of British subjects, and be deprived of the free exercise of our religion." Newman

following manner: "that it was the duty of Catholics…to adapt themselves to the conditions of the moment and to fight with the modern arms of freedom of conscience, of the press and of the vote."[38] Newman's political thought was characterized by a liberalism or a pluralism that grounded itself most firmly in the rights of conscience.

Terrence Kenny, in *The Political Thought of John Henry Newman* (1957) undertook the first book-length study of Newman's political thought from a Catholic perspective. Kenny, perhaps in a sign of things to come, put forward the interpretation of Newman that would appear to be vindicated by the Second Vatican Council. Kenny read Newman's own life as an essential *rupture*, turning from a conservative Church-and-State Tory in his early life to an enthusiastic political liberal by the end: "it can be fairly stated," Kenny said about Newman's eventual conclusions, "that there is nothing in his whole attitude to authority which can cause a liberal democrat of this day to question the value of Newman's thought."[39] And while Newman may be guilty of "Augustinianism" in his preaching, "it might be as easy to compare Newman with John Locke as with St. Augustine"[40] in his political outlook, since he "no doubt…owed a great deal to Locke,"[41] by which Kenny meant Locke's emphasis on individual rights of conscience (including toleration). Kenny followed Laski's reading of Newman's arguments about conscience and declared that Newman would have "positively welcomed the new relationship of Church and State which his age had seen."[42] He was a "positive enthusiast for the secular state."[43] In fact,

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does not invoke any "rights of conscience" as he would develop in the *Letter to the Duke of Norfolk* (and which he would refuse to make the foundation of political organization); instead, he refers to rights generally held and granted by way of British tradition. In other words, Newman raises the issue not of natural or human rights but of specific "rights of British subjects." Newman resists the abstract or categorical claim.

[38] Op. cit. 92.

[39] Kenny, *The Political Thought of John Henry Newman*, 107.

[40] Ibid.

[41] Ibid., 22.

[42] Ibid., 147.

[43] Ibid., 18.

"Newman's ideal" was "the secular, neutral, tolerant State,"[44] where the secularity and neutrality of the state was guaranteed by the assertion of inalienable rights of conscience.

John Coulson, writing after the Vatican Council in *Newman and the Common Tradition* (1971), tracked the same evolution in Newman's thought as Kenny. "From disapproving condemnations of national apostasy Newman develops to a positive acceptance of a non-ideological, pluralist, and open society."[45] Paul Misner in *Papacy and Development* (1976) also saw an identical development in Newman's thought. As a youth, Newman affirmed "the right or rather the duty of State and Church to proceed against a non-conformist individual,"[46] but "as times changed, he became less rigid, adopting a position much more favorable to individual freedom and unfavorable to compulsion."[47] In fact "his thoughts on the rights of conscience and the political freedom needed to safeguard them approached those of the much-maligned Montalembert,"[48] the French liberal who "yearned for a world renewed by liberty."[49] In both, there was a reading of Newman's life that presented his own intellectual movement as a rupture, but implicitly presumed that modern liberalism was in continuity with the best historic Christian thought. Only by breaking with the old-fashioned Church-and-State Toryism was Newman able to put forth the *truest* kind of Christian thinking, that which begins in the liberty of the conscience.

The Laski/Kenny thesis was extended by Stephen Kelley's *A Conservative at Heart? The Political and Social Thought of John Henry Newman* (2012). Kelley aimed to counter the "perception…within the historiography that Newman lacked a 'social conscience'"[50] and argued

[44] Ibid.
[45] Coulson, *Newman and the Common Tradition*, 239.
[46] Misner, *Papacy and Development*, 153.
[47] Ibid.
[48] Ibid.
[49] Perreau-Saussine, *Catholicism and Democracy*, 60
[50] Kelley, *A Conservative at Heart,* (Blackrock, Co. Dublin: The Columbia Press, 2012), 8.

that Newman's lifelong conservatism was 'religious" rather than "political and social."[51] Like Kenny, Kelly presented Newman as a liberal of sorts, despite his religious conservatism. Kelly's Newman believed that "the neutral and tolerant state was the ideal form of society"[52] and that "democracy was the best form of government," at least "in peace" if not in war.[53] Ultimately, Kelly's and Kenny's Newman was not conservative so much as he was conventional: a modern doctrine of rights was pre-supposed, and Newman was seen to be moving the Church towards it—predicting, as it were, a certain understanding of what happened at Vatican II.

It has happened, occasionally, that Newman has been interpreted as a "conservative" rather than a "liberal," but even when being taken as a conservative, those making this claim are still working from a political situation in which "conservative" and "liberal" are defined in terms of a modern politics of rights. The most famous example of this is Russell Kirk's *The Conservative Mind*, which treats Newman as one of history's "great conservatives."[54] Newman was a "consistent Tory, devoted to the principles of aristocracy,"[55] but his great contribution to conservatism lay in two matters: (1) his stand against the disestablishment of the Church of England[56] and (2) his "theory of knowledge and his ideas of education."[57] He rejected the Utilitarian idea that mere knowledge was the vehicle for moral improvement, and his defense of liberal education "preserved the concept of an education designed for liberal gentlemen."[58] Indeed, Kirk saw Newman's conservative *bona fides* most apparent when arguing *for* the idea that government and legislation "ought to be of a religious character," namely (with Kirk quoting Newman), that "the state has a

[51] Ibid., 209.
[52] Ibid. 123.
[53] Ibid., 146.
[54] Kirk, *The Conservative Mind*, (Hawthorne, CA: BN Publishing, 2008), 244.
[55] Ibid.
[56] Ibid., 245ff.
[57] Ibid., 246.
[58] Ibid., 256

conscience."[59] Here, Newman is presented as the inverse of those prior sketches: he *opposed* the neutral or tolerant state and hopes for the rule of the liberally-educated gentleman.[60] But this portrait runs into two difficulties. On the one hand, how can Newman's Tory conservatism be squared with his later Catholic position on disestablishment—the same quandary that has led more recent analysis to accuse the Catholic Newman of dissimulation? Any "conservative" defense of Newman will have a difficult time explaining his turn *away* from an established Anglican Church towards the Roman Catholic Church[61] --especially if Newman's conservative bona fides lay primarily in his arguments *against disestablishment!*[62]

The second difficulty is that Kirk's account is not so much an escape from the modern paradigm as it is the photographic negative of liberal aspirations. Newman is here a great defender of the old, in line with the purpose of Kirk's book, which was to defend a Burkean conservatism that took as its project "the conservation of society upon the grand design of piety."[63] The old was the best because it was the old, as preserved through the "unrolling of history" that gives insight into "God's purpose among men," and even "God's mind and will."[64] This kind of conservatism could end up as the mirror image of liberalism, since it took whatever happened *before* the introduction of Lockean natural rights to be part of a divine order. And, even though it opposed a Lockean liberalism, it still allowed the same terms of debate to persist: it was not the

[59] Ibid.
[60] Because the terminology can be confusing, it is worth noting that the argument for the rule of the liberally-educated is not a *liberal* argument, but a conservative one. It depends on ideas of aristocracy and natural hierarchy (a conservative presupposition) rather than the equal right to rule (a liberal presupposition). This, at least, is how Kirk sees it.
[61] Much of what Kirk says about Newman is accurate, but Kirk's inclusion of Newman as a "conservative" figure will have to wrestle with how to interpret Newman's turn *from* the conservative, established Church of England to the foreign Roman Catholic Church. In other words, Kirk's analysis is not wrong so much as it is insufficient.
[62] Also, as will be noted in Ch. 4, Newman as an Anglican could view dis-establishment with equanimity, when understood through the Alexandrian hermeneutic.
[63] Ibid., 25.
[64] Ibid., 26.

authority of the individual conscience that was politically efficacious, but the authority of the conscience of the state, or the authority of the old regime, or history. The rules of sovereignty were still the same, but the relevant sovereign was the authoritative established order rather than the authoritative individual conscience. More precisely, the argument in favor of the old did not use *old arguments*, but rather incorporated and transposes new liberal arguments about the sovereignty of conscience to apply backwards to a sovereign state conscience. Relevant here are Leo Strauss'[65] and Alasdair MacIntyre's critiques of Burkean tradition as an incomplete recovery of the pre-modern tradition.

Another example of Newman as a conservative comes from Robert Pattison in *The Great Dissent* (1989). Newman, in Pattison's view, "produced the most uncompromising condemnation of modern civilization yet attempted."[66] "Newman was a zealot whose true intellectual counterparts were Marx and Nietzsche."[67] In his religious intolerance and praise of persecution, "Newman was among the first to demonstrate how terrorism might subvert liberal society."[68] Such language is almost too extreme to take seriously, but it has the benefit of establishing a contrast with Kenny and Kelly. From different points of view Newman can be either an accommodating liberal or a zealous reactionary.[69] Pattison's treatment—for all its extremism—acknowledged Newman's ambivalence about liberalism and modernity in a way that Kennny and Kelley missed. However, by making Newman a second Marx or Nietzsche, Pattison turned into a revolutionary

[65] *Natural Right and History,* Ch. VI B (292-322) ; *After Virtue*, 257.
[66] Pattison, *The Great Dissent*, vii.
[67] Ibid., viii.
[68] Ibid., 217.
[69] Which is an argument in favor of carefully considering Newman's political thought. This argument would follow lines similar to ones taken by Chesterton in *Orthodoxy* when he explained that his interest in the Catholic Church initially arose because the church was being attacked from one side as being too conservative, from the other as too liberal; one side as cloistering women, the other as allowing them too much freedom. It must be a strange and impressive institution, thought Chesterton, to be able to provoke such contradictory responses.

the man who hated revolution above all else.[70] Newman often returned to the models of St. Benedict and St. Philip Neri, men who conserved and renovated without recourse to violence or rupture. In his resistance without revolution, Newman was less like Marx or Nietzsche than he was like Tocqueville, and who felt a "religious dread" about the "providential" and irresistible tendency of modern democracy.[71] But Marx and Nietzsche, even if anti-liberal, were profoundly *modern*, insofar as their thought was a development or culmination of certain key modern assumptions.[72] And again, Pattison relies on Newman's Anglican statements without attempting a synthesis with his later Catholic views. Turning Newman into a reactionary or revolutionary requires the presumption of rupture within Newman's own life.

Even treatments of Newman as a "conservative" still use a framework dependent on the presuppositions of modern liberalism.[73] The general consensus has found Newman, if antagonistic towards theological liberalism, at least welcoming towards political liberalism. There is an agreement that Newman, through his defense of the primacy of the rights of conscience, can make an easy synthesis with a kind of liberalism that proclaimed neutrality on all questions of ends. These interpretations presume that there is a deep continuity between Christian claims and the claims of political liberalism. Newman is even read as undergoing a sort of rupture in his own thought, in order to explain why he began his life as a conservative Tory but ended it (as is argued) with arms open to the promises of the secular state. One of the tools for this synthesis is an

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[70] See, for instance, Note 16 in the Appendix on Liberalism to the *Apologia.*

[71] Tocqueville, *Democracy in America, Vol. 1*, Edited by Eduardo Nolla, Translated by James Schleifer (Indianapolis: Liberty Fund, 2010), 13-15:

> The entire book that you are about to read has been written under the impression of a sort of religious terror produced…by the sight of this irresistible revolution … To want to stop democracy would then seem to be struggling against God himself, and it would only remain for nations to accommodate themselves to the social state that Providence imposes on them.

[72] Strauss, "Three Waves of Modernity;" MacIntyre, *Three Rival Versions of Moral Enquiry*.

[73] The rare instances in which this is not the case will be treated in ch .4.

understanding of conscience as a kind of judge before which all claims of authority must come to defend themselves. Newman's defense of the rights of conscience against the pope are seen as analogous, in some fashion, to Locke's claim that the individual himself is "the executor of the laws of nature."

Anglican Newman against Catholic Newman

Against the claim that Newman was a liberal (or even that he was a liberal conservative), a more recent line of scholarly analysis has argued that Newman was a theocrat. This analysis does not deny the fact of a rupture within Newman's life, but it prefers the pre-conversion Anglican Newman to the later Catholic—in fact, the Catholic Newman is presented as a dissimulator. Following the lead of Frank Turner's 2008 biography of Newman, this analysis has understood Catholic Newman to be "cunningly shaping his past—and the language he used to describe it—to meet pressing contemporary needs." It has criticized the first school for "the degree to which his (mainly Catholic) biographers have read his (mainly Anglican) life through his *Apologia* of 1864." By engaging in a deep historiographical review of the Oxford Movement, it has uncovered otherwise unnoticed political and social dimensions in the Anglican Newman's thought. Anglican Newman held a definite "ideal of a theocratic polity," while Newman's later Catholic "crystalline separation of Church and state was forced on him by circumstance." Interestingly, it does not deny the rupture thesis of the first school: instead, it insists that Newman's own explanations of how his conversion entailed a deep continuity are not to be trusted. If the first school has often been accused of "hagiography" in defense of Newman, this second group has employed a hermeneutics of suspicion instead. Catholic Newman is distrusted by this school: his political reflection is either

explained away as the result of a sentimental patriotism (i.e., *not* the result of principle), or he is indicted as insufficiently liberated from his Church-and-State past.[74]

Both camps have recognized a certain aspect of Newman's thought. Even those influenced by Turner's analysis, which has viewed Newman's own explanations with such suspicion, have re-discovered political elements of the Oxford Movement that had been so long ignored. Nevertheless, this entire catalogue of scholarly work on Newman's political thought suffers from the weakness of its political philosophy. Each party has accepted the narrative of progress from theocracy to individual rights, though they have disagreed about whether Newman was a progressive or reactionary figure within the narrative. The fact that each camp has seen Newman's life as characterized by a *rupture* is an indication that neither can find a way to reconcile the political opinions of Anglican Newman with those of Catholic Newman. More to the point, the fact that both view the Anglican Newman as an advocate of a "theocratic ideal"[75] shows that their philosophy of history is borrowed from liberal narratives rather than the actual history of Catholic political thought.

As Newman himself insisted within the *Letter to the Duke of Norfolk*, when he was re-narrating the motives of the Anglican Oxford Movement, the very fact of Christianity was a decisive rebuke to theocracy.[76] The reality of apostolic power, eventually concentrated in the papacy, put an end to what Eric Voegelin and Remi Brague have termed "sacral kingship,"[77] in which the king or emperor was understood as either a god or a son of god and the political regime

[74] Barr and Skinner, "Social and Political Thought" doi: 10.1093/oxfordhb/9780198718284.013.20.
[75] Ibid.
[76] *Letter,* 203ff. See pp. 231ff infra.
[77] Voegelin, *New Science of Politics*; Brague, *The Law of God*

a reflection of the cosmic order.[78] Pierre Manent has argued that the discovery or invention or revelation of the Catholic Church, "a human association of a completely new kind" firmly excluded a return to pre-Christian polity: the Christian separation of political and spiritual authority (which ancient theocracy had combined) opened up "the theologico-political problem."[79] For Emile Perreau-Saussine, not even the *ancien regime* of the French monarchy could be understood as a theocracy, strictly understood. The French king was crowned by the archbishop in the Reims cathedral—nevertheless, he could not crown *himself*. He styled himself "The most Christian king" of the nation who was "the eldest daughter of the Church"—but such appellations implied other kings and other daughters: in other words, a larger Christendom of which France was a but a part. The Gallicanism of the *ancien regime* was not a single coherent movement so much as it was a negotiation between "political Gallicans" and "ecclesiastical Gallicans" whose loyalties were divided between the French King, the French Church, and the Pope in Rome. Of such confused and splintered allegiances was no theocracy or sacral kingship ever made. The history of Catholic political reflection has been a working out of what Pope Gelasius termed the "two swords" theory of spiritual and political authority in 494 AD: even if the two swords were occasionally held by a

[78] This realization is at least as old as Augustine's *City of God*. Carl Peterson rehabilitated the Augustinian claim against Carl Schmidt's "political theology" in his 1935 *Monotheism as a Political Problem* (reprinted in Carl Peterson, "Monotheism as a Political Problem," *Theological Tractates*. Trans Michael J. Hollerich. (Stanford: Stanford University Press, 2011). The Trinitarian claims of orthodox Christianity could not possibly be secularized into a political theology (Peterson uses "political theology" to indicate a set of theologico-political relations in which the order of the universe is analogically reflected in the order of political society. The earthly monarch is tightly allied to the heavenly ruler)]. Not divine monarchy but trinitarianism was the characteristic of Christian theology. "Only on the basis of Judaism and paganism can such a thing as a 'political theology' exist. … The peace that the Christian seeks is won by no emperor, but is solely a gift of him who 'is higher than all understanding'" (104-105). Peterson was not arguing that political theology did not exist historically or could not exist conceptually; his argument was that the specific theological claims of Christianity made their translation into political theology impossible. There was, on Peterson's account, an exception to the Schmittian analysis of the relation between politics and theology.

[79] Manent, *Intellectual History of Liberalism*, 4.

single individual,[80] the conceptual distinction between the two introduced a departure from ancient theocracy or sacral kingship.

One can see this confusion present in Newman scholarship in the Oxford Handbook's article on Newman's political thought. The article puts forward as evidence for Newman's "theocratic ideal" the Anglican Newman's reverie for the time when "Charles is the King, Laud the prelate."[81] Nothing could be further from a theocracy than this distinction between king and prelate[82]—not least of all because the reign of Charles the King and Laud the prelate was put to an end by the king's execution at the hands of a true theocracy, the revolutionary Puritan usurpation.[83] But if "theocracy" is supposed to indicate only the fact of communication and influence between political and spiritual authority, then "theocracy" is revealed to be a term of liberal ideological derision.[84] Only upon liberal presuppositions is politics supposed to be a "neutral" or "public" space from which religion has been safely quarantined in private.[85]

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[80] As with medieval and early modern papal states. But however much the pope might re-incarnate political theology on a local level, he could never expand those bounds beyond a certain limit. Even the maximalist papal claims—that the pope could depose a prince—were not political theology, strictly speaking. The pope claimed the ability to depose but not the further power to sit on the throne himself.

[81] Barr and Skinner, "Social and Political Thought" doi: 10.1093/oxfordhb/9780198718284.013.20. The Handbook quotes Newman on Charles and Laud from "How to Accomplish It," in *Discussions and Arguments on Various Subjects* (London: Longmans, Green, and Co., 1907): 1-43, 23.

[82] At least in Newman's own mind: see, for instance, in Tract 15, "On the Apostolical Succession in the English Church," where Anglican Newman makes the fascinating claim that the English Church liberated *itself* during the English Reformation. Newman has re-worked Henry VIII's quest for an annulment into the church's own search for apostolical purity, with which the state merely *cooperated*. Whether the Anglican Newman is faithful to the historical record is beside the point: what is noteworthy is his refusal as an Anglican to grant an "erastian" beginning to the Church of England, in which the monarch retains full control over the church. The Church is an independent body that functions coordinately, not subordinately, with the state.

[83] See, for instance, Eric Voegelin's analysis of the Puritan moment in English history as the paradigmatic example of modern Gnosticism, which attempted to re-assert the model of sacral kingship (*The New Science of Politics,* pp. 133-161). Voegelin understands theocracy to be a kind of anti-politics, in which the ruling class excludes fundamentally political questions from ever arising by collapsing the political into the theological. For a contrasting account of theocracy, see Newman's own "Pope and the Revolution." Newman argues that if theocracy is meant literally, the only true theocracy was Israel under the rule of the judges, when God ruled the Israelites directly. The theocracy ends when Israel demands a king.

[84] Is Plato's *Laws* a work of political theology? The most important legislation concerns the gods, after all.

[85] Cf. Ch. 5 below.

If one refuses to accept this liberal philosophy of history, there is no need to view Newman's life as a "rupture" and to choose between his Anglican and Catholic periods. By admitting a rupture in political philosophy, one can once again see Newman's intellectual project as founded on a consistent theme—as he himself repeatedly insisted. But to understand Newman's consistency properly, one must allow him to explain what he meant by claiming a lifelong opposition to liberalism—especially Newman's own idiosyncratic definition of "liberalism." Here too, Newman scholarship has imported definitions of liberalism alien to Newman's own thought—and then discovered an inconsistency which did not exist.

Newman's Liberalism

Stephen Kelly has noticed that, "for over a century, from a political and social perspective, commentators have continued to try to dragoon Newman into the conservative or the liberal camp."[86] Analysis of Newman has taken place within the modern (especially American) spectrum of conservative-to-liberal, where "conservative" most often means the classical liberalism of the American Founders and "liberal" identifies any position along a spectrum from Rawls to Rousseau.[87] The most common conclusion—the one most often reached by members of the first school of Newman interpretation—has been to label him a religious and social conservative, but a political liberal.[88] In other words, Newman's lifelong opposition to *theological* liberalism[89] carried no necessary antipathy to *political* liberalism. One could be fully at home as a religious conservative (i.e., an opponent of theological liberalism) within a regime founded on the principles

[86] Kelly, *A Conservative At Heart,* 4.
[87] Left unexamined, of course, is whether the classical liberalism of the American Founders is a development or departure from pre-modern political thought.
[88] This began with Kenny's book in the 1950's. Almost the same locution recurs in Kelly, Ryan, and Coulson
[89] See p. 83 below for Newman's own definition of theological liberalism

of political liberalism: in fact, one might be most at home there.[90] A series of monographs have argued that Newman's later, Catholic quietism was explained by his conclusion that the social problems of the age were ultimately spiritual, not political. Newman "had no intention of producing a scheme of systematic thought on political questions…why should it be otherwise? Newman thought and wrote for other reasons; his was the world of transcendence, not of the immediate and the passing."[91] On this account, Newman could leave political structures well enough alone, since his primary concerns were moral and spiritual.

However, this line of analysis presupposes the very claims of political liberalism it wants to discover within Newman's writings. Newman is harmonized as a religious conservative and political liberal only by presuming that "religion" refers to a private, non-public activity which is clearly separated from the public and secular realm of politics, what John Locke would theorize as the principle of toleration. For Locke, politics was concerned with solid and definitive issues like "life, liberty [and] health"[92]; religion was merely a matter of "speculative opinions" which could be safely relegated to private, non-political societies.[93] By interpreting Newman within the conservative-liberal divide, and especially in claiming him as a political liberal, scholars have imported a foreign account of liberalism (provided on political liberalism's own terms) onto Newman rather than allowing Newman's own definition of the term to surface. It is the height of

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[90] The Oxford handbook rightly says:

> Terence Kenny's *The Political Thought of John Henry Newman* (1957), for example, sought to explain Newman's later disengagement from direct social activism in terms of his conviction that the social problems of his age were ultimately spiritual. Edward Norman followed Kenny in arguing that Newman 'had no intention of producing a scheme of systematic thought on political questions'. 'The same could be said for his fleeting considerations of economic circumstance. And why should it be otherwise? Newman thought and wrote for other reasons; his was the world of transcendence, not of the immediate and passing' (Norman 1990: 172–3).

[91] Edward Norman, "Newman's Social and Political Thinking," *Newman After A Hundered Years,* 172-3.

[92] John Locke, "A Letter Concerning Toleration," *The Works of John Locke in Nine Volumes: Volume Five* (London: Rivington, Egerton, Cuthell, Arch, Longman et al., 1824), 10.

[93] Ibid., 39-40.

question-begging to claim that *since* Newman's concerns were moral and spiritual, therefore one ought not to expect from him a manner of political reflection—especially a "scheme of systematic thought." The discoverers of political philosophy, Plato and Aristotle, understood moral and spiritual concerns to be at the center of political reflection. Nor did they produce a scheme of systematic thought. Their political reflection was comprehensive and transcendent, but it is only within the horizon of Lockean (or Hobbesian) liberalism that one presumes politics can be safely quarantined from the spiritual, and that political thought ought to produce schemata along mechanical lines.[94]

The Turner school of suspicion has rightly critiqued the alchemic transformation of Newman into a political liberal. Colin Barr and Simon Skinner have protested against the previous school's interpretation on the grounds that "this widespread construction—that Newman's preoccupations were spiritual at the expense of the secular—imposes the very segregation of the spiritual and the secular to which Newman (like, of course, many other varieties of Christian) was deeply resistant."[95] Since it is untrue that Newman's spiritual concerns were necessarily apolitical, so the Turner school argues, therefore Newman's Anglican theocratic leanings were incompatible with his later Catholic support of the separation of church and state. The Turner school asserts the intertwining of politics and religion in order to accuse Newman of being a liar for suggesting a principled consistency amid changes in his life. This suspicion of Newman appears in a long concluding paragraph from the Oxford Handbook:

> Newman was and remained what he had been since his conversion: a conservative but not a Conservative, a liberal Catholic but not a Catholic Liberal. This has been obscured by Newman's increasingly hysterical denunciations of 'liberals' and 'liberalism', culminating in the extraordinary 'Note A' in the 1865 edition of his *Apologia*. There he defined

[94] One can see this, for instance, in Hobbes' claim in the *Leviathan*, that his laws of nature are of a scientific and geometric precision, that can demonstrate with certainty the best regime.
[95] Barr and Skinner, "Political and Social Thought" doi: 10.1093/oxfordhb/9780198718284.013.20

> Liberalism as 'false liberty of thought, or the exercise of thought upon matters, in which, from the constitution of the human mind, thought cannot be brought to any successful issue, and therefore is out of place'. He identified a 'Liberal party' that had been in the van of his persecutors in Oxford (Apo. 256, 259). Several contemporary reviewers knew this was nonsense, and said so. James Fitzjames Stephen (1829–94), for example, noted that Newman had misunderstood 'so completely as to fall into the double error of ascribing to Liberals principles which hardly any of them hold, and of drawing from those principles inferences which have nothing to do with them' (quoted in Turner 2008: 74). Turner convincingly argued that Newman was in fact cunningly shaping his past—and the language he used to describe it—to meet pressing contemporary needs. Among other sins, Newman's flirtation with *The Rambler* had left him suspect in his own Church. In order to deflect that suspicion, he redefined his opponents of the 1830s and early 1840s as liberals, and their creed as liberalism. After all, he could hardly be accused of being a liberal himself if his life-long struggle had been against liberalism. *As a result, there has all too often been a confusion between the political liberalism of the 1850s, 1860s, and later, the liberal Catholicism of Acton and his friends, and the almost entirely imaginary liberalism of the Anglican Newman's long-ago opponents* [emphasis mine]. This imprecision of language was entirely Newman's doing, and was probably his intention.[96]

The Turner school has confidently accused Newman of falsehood because it has historical evidence at hand demonstrating that prominent 19th century liberals disputed Newman's characterization of his 1830's Oxford opponents as liberals. Because Newman's Oxford opponents did not understand themselves to be partisans of political liberalism, Newman is revealed as someone "hysterically" and "cunningly" "shaping his past."

The Turner school has misunderstood what Newman meant by liberalism as profoundly as the school it criticized in its turn. In the first place, the Turner school's mastery of the historical record is not nearly as firm as it pretends. Newman's attribution of liberalism to the opponents of the Oxford Movement was not only a retrospective maneuver within the *Apologia.* The Movement is generally understood to have begun in reaction to the Whig Reform Bill of 1832—and Newman wrote of it at the time, "Whigs are neither fish, flesh, nor fowl. Their policy is liberalism, and their

[96] Ibid.

basis is Socinianism."[97] His letters of the 1830s contain numerous references to liberals and liberalism as his opponents.[98]

Moreover, James Fitzjames Stephen's claim that Newman committed "the double error of ascribing to Liberals principles which hardly any of them hold, and of drawing from those principles inferences which have nothing to do with them" obtains only if Newman meant by liberalism what Stephen and other prominent 19th century liberals meant by it. Nor is it sufficient to claim that because a certain individual denied the influence of a principle within his life, he was thereby free of it. Newman's mind was finely attuned to tracing out tendencies and ultimate consequences of the intellectual principles presupposed in public life,[99] and his studies of epistemology focused on the latent and surreptitious influence of principles only dimly perceived by the subject.[100] It could well be the case that Newman knew the 19th century liberals better than they knew themselves.

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[97] John Henry Newman*, Letters and Diaries,* Volume 3 (Oxford: Clarendon Press, 1980): 42.

[98] Volume 3 of the *Letters and Diaries*, for instance, from January of 1832 to June of 1833, contain at least twenty references to liberals and liberalism; fourteen in Volume 4 (July 1833 – December 1834).

[99] An example from "A Form of Infidelity of the Day," an address within the *Idea of a University*:

> It must not be supposed that I attribute, what I am going to speak of as a form of infidelity of the day, to any given individual or individuals; *nor is it necessary to my purpose to suppose that any one man as yet consciously holds, or sees the drift, of that portion of the theory to which he has given assent*[emphasis mine]. I aim to describe a set of opinions which may be considered as the true explanation of many floating views, and the converging point of a multitude of separate and independent minds; and, as of old Arius or Nestorius not only was spoken of in his own person, but was viewed as the abstract and typical teacher of the heresy which he introduced, and thus his name denoted a heretic more complete and explicit, even though not more formal, than the heresiarch himself, so here too, in like manner, I may be describing a school of thought in its fully developed proportions, which at present every one, to whom membership with it is imputed, will at once begin to disown, and I may be pointing to teachers whom no one will be able to descry. Still, it is not less true that I may be speaking of tendencies and elements which exist; and {387} he may come in person at last, who comes at first to us merely in his spirit and in his power. (*Idea of a University*, 386-7)

[100] For instance, from the *Oxford University Sermons* "Personal Influence," "Implicit and Explicit Reason;" the first two chapters of *Development*; and *An Essay in Aid of a Grammar of Assent* (London: Longman, Green, and Co: 1904) (hereafter *Grammar)* especially its sections on informal inference and the illative sense.

Nevertheless, the Turner school is correct to assert that the most common opponent of the 1830s Newman was not liberalism. Throughout his time in the Oxford Movement, Newman understood himself to be primarily opposed to *heresy*. Stephen Thomas' book, *Newman and Heresy*, has argued that in the early 1830s Newman saw himself as opposed to Arianism, Sabellianism and Apollinarianism in the mid-1830's ,and Monophysitism at the close of the 1830's and collapse of his Anglican career. On the other hand, the Anglican Newman of the 1830's and the Catholic Newman of the 1870's both agreed that Erastianism was the primary opponent of the Oxford Movement. And Newman's most heated rivalry in the 1830's was with Renn Dickson Hampden, whose appointment to the chair of moral theology Newman publicly and vociferously opposed. When arguing against Hampden's candidacy, Newman publicly accused him of being a "Socinian."[101] So, was Newman an opponent of liberalism, or an opponent of Arianism, Sabellianism, Apollinarianism, Monophysitism, Erastianism, and/or Socinianism?

This riddle is resolved by Newman's own definition of liberalism. For Newman, liberalism and heresy were not alternate conceptual possibilities: rather, liberalism was itself the *arch*-heresy, of which the various 1830's heresies were species. It is true, Newman did not regularly systematize these heresies under the banner of liberalism in the 1830's. But Newman in the 1860's was not "hysterically" shaping his past. Rather, he was identifying what has been the common thread throughout.

In the *Apologia*, Newman was clear. Newman held to "the principle of dogma: my battle was with liberalism; by liberalism I mean the anti-dogmatic principle and its developments."[102] In his famous "Note A on Liberalism," Newman defined liberalism as the:

[101] Stephen Thomas, *Newman and Heresy* (Cambridge: Cambridge University Press, 2003), 73 and 81.
[102] *Apologia*, 49.

> exercise of thought upon matters, in which, from the constitution of the human mind, thought cannot be brought to any successful issue… Liberalism then is the mistake of subjecting to human judgment those revealed doctrines which are in their nature beyond and independent of it, and of claiming to determine on intrinsic grounds the truth and value of propositions which rest for their reception simply on the external authority of the Divine Word.[103]

The revealed doctrines were housed in dogmatic formulations. Dogma was more than a received teaching or a proposition to which one must submit, renouncing the use of reason. The dogmatic principle protected supernatural truths from being reduced to human or syllogistic logic.[104] Already in 1836, Newman had termed this reductivist tendency "rationalism," and had protested against it in his "Tract 73: On the Introduction of Rationalistic Principles into Revealed Religion." There, in language nearly identical to that from the *Apologia*,[105] Newman had identified the tendency of rationalism or liberalism to oppose itself to "the idea of mystery."[106] Because the rationalist desired "clear" and "systematic" knowledge, he was forever impatient with revelation—since revelation was "not a revealed *system*" but "a number of detached and incomplete truths belonging to a vast system unrevealed." Revelation was a combination of light and dark, half-illuminated and half-shadowed, like a landscape in twilight or a tapestry viewed from the back. Insofar as Revelation could not be neatly circumscribed into a system, the rationalist tended to conclude that Christian revelation was not concerned with knowledge. As Newman argued in a post-script to Tract 73, Schleiermacher's insistence that Christian revelation had to do only with feelings or internal states—not knowledge—was the logical conclusion of the rationalist/liberal position.

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[103] Ibid., Note A, 288.
[104] See Chapter 8: Inference in the *Grammar of Assent* for a criticism or limitation of verbal reasoning
[105] *Apologia,* 294. The second "note" of liberalism is "2. No one can believe what he does not understand. Therefore, e.g. there are no mysteries in true religion."
[106] Newman, "Tract 73: On the Introduction of Rationalistic Principles into Religion," *Essays Critical and Historical, Volume 1* (London: Longman, Green, and Co, 1907), 34.

Against rationalism, in order to preserve both knowledge and mystery, Newman insisted on the importance of "creeds."[107] The creedal summation of scriptural and apostolic language protected religious truth because it insisted that scriptural language could not be "translated into" other formulations without loss. John Coulson, in *Religion and Imagination*, has analyzed the manner in which Newman understood the objects of religious assent to be "dilated in Scripture, and contracted in the creed."[108] For Newman, the creedal formulations were a kind of poetic language that could not be translated into prose without their reduction.[109] Those creedal formulations, understood as dogmatic statements, were the targets of attacks from liberals in the 1830's.[110] How, they wondered (in a line of thought beginning at least with John Locke), could one believe what one doesn't understand? And who but a trained theologian could understand the abstruse language of Christian creeds? Newman wrote Tract 73 in 1836, and the *Grammar of Assent* in 1870, to defend belief of what one only partially understood *as a form of knowledge*.

The attack on creedal or dogmatic formulations formed the core of Newman's definition of liberalism—a definition which allowed "liberalism" as a phenomenon to re-appear throughout history. In Newman's first major work, 1833's *Arians of the Fourth Century,* Newman identified a nascent "liberalism"—and he used the very word "liberalism"—in the opponents of

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[107] Ibid., 35.

[108] John Coulson, *Religion and Imagination* (Oxford: Clarendon Press, 1981), 35-42, 166. Newman is quotes (*Lectures on the Prophetical Office of the Church: Via Media Volume 1* (London: Longmans, Green, and Co, 1903), 289) F.D. Maurice from *Subscription No Bondage, or the Practical Advantages afforded by the Thirty-Nine Articles as Guides in all Branches of Academical Education* (London: Rusticus, 1835)

[109] Coulson, *Religion and Imagination*, 17-28. Coulson analogizes Newman's understanding of religious assent to the "dense" images characteristic of the best literary metaphors. Contrast, he says, Shakespeare with Matthew Arnold. While "we cannot easily explain how [Shakespeare's language] gains its effects" (18) Arnold's language "seems to invite, even demand, interpretation or paraphrase" (25). In other words, Shakespeare's images stand for *wholes* whereas Arnold's images are philosophy or criticism *translated into* poetry.

[110] Pp. 117 of the *Apologia* described the Duke of Wellington's support of Catholic emancipation (especially the repeal of the Test Act, whichrequired adherence to the Anglican creed or 39 Articles) as a policy "dictated by liberalism." Pp. 104ff of "Apostolical Tradition," published in the *British Critic* in 1836 (to be found in *Essays Historical and Critical, Volume 1,* 102-137), identified the unitarian emphasis on private judgment to be destructive of all creeds.

Athanasian/Trinitarian orthodoxy.[111] The seat of orthodoxy was in the School of Alexandria, where the best elements of Jewish and Greek thought were blended together in a new synthesis. The Jewish insistence on the literal truth of Scripture harmonized with a Platonic understanding of allegory or levels of writing and mystical ascent. Writing retrospectively in the *Apologia*, Newman described his interest in the Alexandrian school:

> What principally attracted me in the ante-Nicene period was the great Church of Alexandria, the historical centre of teaching in those times. Of Rome for some centuries comparatively little is known. The battle of Arianism was first fought in Alexandria; Athanasius, the champion of the truth, was Bishop of Alexandria; and in his writings he refers to the great religious names of an earlier date, to Origen, Dionysius, and others, who were the glory of its see, or of its school. The broad philosophy of Clement and Origen carried me away; the philosophy, not the theological doctrine; and I have drawn out some features of it in my volume, with the zeal and freshness, but with the partiality, of a neophyte. Some portions of their teaching, magnificent in themselves, came like music to my inward ear, as if the response to ideas, which, with little external to encourage them, I had cherished so long. These were based on the mystical or sacramental principle, and spoke of the various Economies or Dispensations of the Eternal. I understood these passages to mean that the exterior world, physical and historical, was but the manifestation to our senses of realities greater than itself. Nature was a parable: Scripture was an allegory: pagan literature, philosophy, and mythology, properly understood, were but a preparation for the Gospel. The Greek poets and sages were in a certain sense prophets; for "thoughts beyond their thought to those high bards were given." There had been a directly divine dispensation granted to the Jews; but there had been in some sense a dispensation carried on in favour of the Gentiles. He who had taken the seed of Jacob for His elect people had not therefore cast the rest of mankind out of His sight. In the fulness of time both Judaism and Paganism had come to nought; the outward framework, which concealed yet suggested the Living Truth, had never been intended to last, and it was dissolving under the beams of the Sun of Justice which shone behind it and through it. The process of change had been slow; it had been done not rashly, but by rule and measure, "at sundry times and in divers manners," first one disclosure and then another, till the whole evangelical doctrine was brought into full manifestation. And thus room was made for the anticipation of further and deeper disclosures, of truths still under the veil of the letter, and in their season to be revealed. The visible world still remains without its divine interpretation; Holy Church in her sacraments and her hierarchical appointments, will remain, even to the end of the world, after all but a symbol of those heavenly facts which fill eternity. Her mysteries are but the expressions in human language of truths to which the human mind is unequal. It is evident how much there was in all this in correspondence with the thoughts which had attracted

[111] See *Arians,* esp., Section 4, “The Eclectic Set,” pp. 100ff.

> me when I was young, and with the doctrine which I have already associated with the Analogy and the Christian Year.[112]

The rival to the School of Alexandria was the School of Antioch. Antioch was also characterized by Jewish and Greek influences, but in a dis-harmonious way. Jerusalem and Athens stood side-by-side in Antioch, whereas they met and blended in Alexandria. Antioch was the seat of nascent liberalism for Newman. The Jewish influence "was essentially literal in its interpretations,"[113] unable to see the way in which "Scripture was an allegory." Alternatively, the Greek influence was essentially skeptical (adopting a cynical rather than a mystical Platonism), and doubted the capacity of language to communicate any supernatural truth—in its own way, it was equally unable to see Scripture as an allegory.[114] Whereas the Alexandrian synthesis preserved dogmatic formulations through an allegorical or sacramental philosophy, the Antiocene liberalism undermined dogma by treatments alternatively too literal or too skeptical.

Newman came to understand the drama of these two approaches as embodied in the battle between Athanasius and Arius, two fourth century bishops on either side of the crucial question about trinitarian doctrine. In the 4th century, the pressing theological issues concerned the relationship of the first two persons of the Godhead, the Father and the Son. Scripture was full of language describing the obedience of the Son—but it was also full of language announcing the equality of the two. Athanasius, the defender of orthodoxy, argued for the classical Trinitarian formulation, which preserved distinction without subordination. Arius, on Newman's reading, was too much the analytical philosopher. He could not see how co-eternity or co-equality could

[112] *Apologia,* 26-8.
[113] *Arians*, 110
[114] It is important to note that Newman understood allegory as the patristic and medieval theologians did, to have four senses which did not contradict one another. The scriptural account was simultaneously *literally* true, *ethically* true, *allegorically* true, and *anagogically* true. One sense did not dis-prove another.

be predicated of any being described as a "son." Arius' error lay in "taking the *literal* and material sense of the words *Father* and *Son* as the basis of a logical argument."[115] Arius misunderstood how the various images of the divine being ("Word, Son, Image, etc.") related to one another. They were not "intended to *explain* how the Sacred Mystery in question is possible…[but] they are merely intended to show that the words we use concerning it are not *self-contradictory*."[116] The Arian heresy involved the reduction of images to propositions (what Newman elsewhere would call "notions"), which tried to rely on the logic of words without entering into the full significance of the real images. Those images were so "dense" that they could not be reduced to "explanations" without transforming them into something else.[117]

The Arian reduction of the Son had a wide array of political consequences. If, as Carl Peterson argued, the Trinitarian claims could not be secularized into a political theology (as against the Judaic monarchy or the pagan empire of Rome), political magistrates of the 4th century discovered the Arian claims extremely hospitable to a re-assertion of a unified political theology. If God the Father is a strict monotheistic God, and the Son is merely his appointed instrument in the world (with overtones of the Platonic *demiurge* of the *Timaeus*), then the emperor, prince, or king can easily re-integrate himself into a cosmic hierarchy on an analogy with the Son. The further the Son is pulled from the Godhead, the more the emperor can ascend.[118] But the Trinitarian formulation held political theology at bay precisely through its reliance on the dogmatic

[115] This formulation is F.D. Maurice's in *Subscription No Bondage*, 53; it is his summary of "Newman's *Arians*, cap ii, para v." See Coulson, *Religion and Imagionation*, 38, footnote 73.
[116] Newman, *Select Treatises of St. Athanasius* (Oxford: Longmans, 1842-4), i. 43-44. Found at footnote 65 in Coulson, *Religion and Imagination*, 64.
[117] See footnote 110 supra.
[118] Robert Pattison, in *The Great Dissent*, has an excellent treatment of the theologico-political implications of the Arian heresy (100-128), including the contention that the relation of ideas to political realities within the Arian conflict gives lie to the Marxist claim that ideological development is derivative of material conditions. In the Arian conflict, ideas influenced material reality much more than the opposite.

principle. The relations between the three persons of the Trinity were dogmatically believed *before* they were understood precisely because they were held to be *revealed*.

Newman identified a series of episodes throughout history where nascent liberalism gave battle to orthodoxy (in the 4th century, in the 11th, in the 16th and 17th, and in the 19th),[119] precisely insofar as the dogmatic Trinitarian claims were challenged by Arians (in the 4th), in the Investiture Controversy (11th), the Protestant Reformation, with the first generation of liberal thinkers (the Erastian Hobbes and liberal Locke) (16th/17th), and now with modern liberalism (19th). Liberalism was the arch-heresy because it denied that claims about supernatural truth could be made through human language. This was not pre-eminently a modern question: as soon as the dogmatic principle was contested, liberalism had been born. Newman was clear on this point even in 1833: what animated the opponents of orthodoxy in the 4th century debates was "liberalism."[120] Newman's lifelong opposition to theological liberalism, in that case, did not mean that he took Schleiermacher (for instance)to be his primary opponent; nor Locke (theological liberalism being the concomitant of political liberalism); nor even the opponents of the Stuart monarchy (from which the decrepit contemporary Church of England derived). To oppose theological liberalism meant to oppose *Arius*—or even Thomas as he doubted, Nicodemus as he questioned baptismal regeneration, Naaman as he resisted Elisha, Eve when she decided that independent of God's command, the "tree was good for fruit."[121] Liberalism was an intellectual manifestation of the fundamental

[119] From pp. 114 the *Apologia*: "I have described in a former work, how the history affected me. My stronghold was Antiquity; now here, in the middle of the fifth century, I found, as it seemed to me, Christendom of the sixteenth and the nineteenth centuries reflected. I saw my face in that mirror, and I was a Monophysite. The Church of the *Via Media* was in the position of the Oriental communion, Rome was where she now is; and the Protestants were the Eutychians."

[120] See above for the reference in the *Arians*.

[121] Tract 73, 32-33:

> When the rich lord in Samaria said, "Though God shall make windows in heaven, shall this thing be?" he rationalized, as professing his inability to discover *how* Elisha's prophecy was to be fulfilled, and thinking in this way to excuse his unbelief. When Naaman, after acknowledging the prophet's supernatural power,

human temptation to "self-will."[122] Critics have misunderstood Newman when they have taken his denunciations of liberalism—even theological liberalism—to refer primarily to a movement in the 16th, 17th, or even 19th century.

Theology in a Political Mode, Against Liberalism

Though liberalism was a sempiternal phenomenon, 19th century liberalism opposed orthodoxy in a way distinct from any prior controversy: liberalism refused to engage orthodoxy. This mode of attack was analyzed by Newman in a short lecture appended to the end of the *Idea of a University,* "A Form of Infidelity of the Day." There, it is argued that the "principle of toleration" "[was] conceived in the spirit of unbelief, in order to the destruction of Catholicity."[123] Toleration presupposed and took as self-evident the first principle that "Religion [was] not the subject-matter of a science,"[124] meaning that one could have "opinions," "theories," and "arguments" about religious matters, but no knowledge.[125] "Religion [was] just one of those subjects about which we can know nothing."[126] Accordingly, it was the great rival of the Catholic faith, and "assailed revealed truth."[127] Unbelief under the guise of toleration made war against the Church.

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objected to bathe in Jordan, it was on the ground of his not seeing the *means* by which Jordan was to cure his leprosy above the rivers of Damascus. "*How* can these things be?" was the objection of Nicodemus to the doctrine of regeneration; and when the doctrine of the Holy Communion was first announced, "the Jews strove among themselves," in answer to their Divine Informant, saying, "*How* can this man give us His flesh to eat?" When St. Thomas, believing in our Lord, doubted of our Lord's resurrection, though his reason for so doing is not given, it plainly lay in the astonishing, unaccountable nature of such an event. A like desire of judging for one's self is discernible in the original fall of man. Eve did not believe the Tempter, any more than God's word, till she perceived that "the fruit was good for food."

[122] Cf. *Letter to the Duke of Norfolk,* section 5. "Conscience"
[123] "A Form of Infidelity of the Day," *The Idea of a University*, 385.
[124] Ibid., 387.
[125] Ibid.
[126] Ibid.
[127] Ibid.,381.

This was no paradox: modern unbelief perpetuated a "union of intense hatred with a large toleration of Theology."[128] Modern unbelief understood that religious minds loved nothing more than controversy,[129] and to openly antagonize Christian faith might well cause men to "rally round it from a feeling of generosity."[130] The policy of the unbelieving philosopher, then, was not "to oppose Theology, but to rival it. Leave its teachers to themselves."[131] Introduce other sciences which, by their apparent utility and richness, would bewilder the imagination of the student when he turned from the study of ethnology and geology to the Book of Genesis.[132] "While, then, Reason and Revelation are consistent in fact, they often are inconsistent in appearance,"[133] and "the department of fact, and the method of research and experiment which is proper to it, may for the moment eclipse the light of faith in the imagination of the student, and be degraded into the accidental tool, *hic et nunc*, of infidelity."[134] Therefore, the modern tolerant unbeliever should "suffer disputations in the theological schools every day in the year, provided they can manage to keep the students of science at a distance from them."[135] Broad toleration, combined with an isolation of theology and an assertion that, since religion cannot aim at any sure knowledge, it ought not infringe upon any of the *real* sciences, were the means by which the Church (while being tolerated) was to be defeated.

Part of the project of the *Idea of a University* was to secure each science its own sphere of relative independence, ultimately united with one another under the protection and guidance of theology: the sciences could ignore theology up to a point, but they were not self-sufficient. Politics

[128] Ibid., 403.
[129] Ibid., 394.
[130] Ibid., 395.
[131] Ibid., 396.
[132] Ibid., 401-2.
[133] Ibid., 401.
[134] Ibid., 398.
[135] Ibid., 401.

and ethics were no different[136]—political economy ,for instance, "cannot itself declare that it is a subordinate science, that its end is not the ultimate end of all things,"[137] and required the "setting Scripture and the Fathers over against Political Economy."[138] Nor was this method constrained to the *Idea.* In a later sermon "The Pope and the Revolution," Newman criticized the Israelites of the Book of Samuel for being *proto-liberals*: their sin wasn't in desiring efficiency or good government, but in forgetting that those ends ought to be subordinated to sanctity.[139] The liberal political project, as Newman understood it, was foremost an extension of the anti-dogmatic principle into politics: the creation of an ostensibly neutral public language which excluded appeals or corrections from scriptural and ecclesiastical images and language.

Newman's *political* response to liberalism consisted in the dogged re-assertion of the non-independence of secular political discourse—and Newman scholarship has gotten it wrong when it scoured his writings for visions of an ideal polity or a comprehensive account of public policy. All of Newman's political writings were animated either by the desire to check a new hegemonic discourse, or to re-assert an older understanding of political or corporate life on the verge of being

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[136] Ibid., 86:

> Political Economy is the science, I suppose, of wealth,—a science simply lawful and useful, for it is no sin to make money, any more than it is a sin to seek honour; a science at the same time dangerous and leading to occasions of sin, as is the pursuit of honour too; and in consequence, if studied by itself, and apart from the control of Revealed Truth, sure to conduct a speculator to unchristian conclusions. Holy Scripture tells us distinctly, that "covetousness," or more literally the love of money, "is the root of all evils;" and that "they that would become rich fall into temptation;" and that "hardly shall they that have riches enter into the kingdom of God;" and after drawing the picture of a wealthy and flourishing people, it adds, "They have called the people happy that hath these things; but happy is that people whose God is the Lord"—while on the other hand it says with equal distinctness, "If any will not work, neither let him eat;" and, "If any man have not care of his own, and especially of those of his house, he hath denied the faith, and is worse than an infidel."

[137] Ibid., 88.

[138] Ibid.

[139] The Israelites desired "that public affairs ought to be put on an intelligible footing, and be carried on upon system, which had never yet been done. So they came to the conclusion that they had better have a king, like the nations around them. They deliberately preferred the rule of man to the rule of God. They did not like to repent and give up their sins, as the true means of being prosperous; they thought it an easier way to temporal prosperity to have a king like the nations, than to pray and live virtuously" ("The Pope and the Revolution," in *Sermons Preached on Various Occasions* (London: Longman, Green, and Co, 1907), 299-300).

forgotten. The Oxford Movement was founded on a defense of the corporate status of the Church of England. Even in its infancy, Newman understood its writings to be "quasi-political."[140] The Movement began in no small part as a reaction to Parliament's suppression of Church of England bishoprics in Ireland: neither Newman nor the other early Tractarians denied that the bishoprics were corrupt, but they objected to Parliament taking it on itself to make or unmake portions of the Anglican Church. As Newman later recounted, the "Tracts for the Times were founded on a deadly antagonism to what in these last centuries has been called Erastianism;"[141] that is, the quasi-Hobbesian account of institutions and sovereignty that conceived of the Church as merely a creation of the state and drained it of any substantial content. The theoretical weakness of Erastianism could be safely ignored while Parliament was considered the Church of England in session.[142] Once the liberalization of the vote allowed non-jurors, Catholics, and evangelicals to sit in Parliament, however, it became clear that a Unitarian could have a greater power to reform the Anglican Church than her own bishops. If the Anglican Church was to be true to its apostolical claims, it needed some way to secure an independent existence.

Compounding the Parliamentary endorsement of Erastianism was a British public unaccustomed to thinking about the Church in any more substantial terms. In an 1836 letter, Newman described the purpose of the Movement "to prepare the public mind for a restoration of the old Apostolic System,"[143] with Apostolic being opposed to Erastian. The means of doing so were indirect:

> As to *indirect* inculcation of the Apostolical doctrines, we have begun the Records of the Church with that view. We are printing extracts from Eusebius etc., giving little stories of

[140] op. cit. (in reference to the *Lyra Apostolica*) in Ian Ker, *John Henry Newman: A Biography,* 54
[141] Newman, *Letter*, 198.
[142] cf., Richard Hooker's *Ecclesiastical Polity*.
[143] *November* 17, 1833 letter to J.W. Bowden in *Letters and Correspondence of John Henry Newman to 1845 in Two Volumes, Volume 1* (Lodon, Longman, Green and Co, 1907), *425.*

> the Apostles, Fathers etc., to familiarize the imagination of the reader to an *Apostolical state* of the Church.[144]

In addition to his own works on the subject, Newman later recalled the importance of Hurrell Froude's remark that the Church of England was " 'united' to the State as Israel to Egypt,"[145] Froude's translation of Becket's letters, and Bowden's life of Hildebrand.[146] In order to prepare the public mind for the restoration of an apostolic and independent church, Newman did not quote Hooker's *Of the Laws of the Ecclesiastical Polity* nor re-assert the claims of Filmer in order to oppose a Lockean understanding of politics. Instead of political treatises, Newman and the Movement presented images of a unique institution, described in Scriptural language. Of course, spheres of sovereignty and legal relations would have to be reworked, but what was of the utmost importance was to see the church unshackled from its bondage to the state—or, at least to see that bondage in light of the various servitudes inflicted on Israel as punishment and the various persecutions the church had itself endured throughout its own history. The political independence of the church, Newman and the Movement judged, could not be secured by narrowly political and legal arguments.

For Newman, the relevant hermeneutic for the interpretation of the 19th century was almost always the 4th century debate over Arianism. Wilifred Ward, in a contemporaneous biography, said of the Anglican Newman's recourse to the 4th century:

> The subject was congenial to Newman for one reason especially. It was chiefly the state of the Church in the fourth century which enabled him to think of the Established Church of England as a part of the Church Catholic. He could not deny that the English Sees were in 1830 filled by Protestant bishops. But then so were multitudes of Catholic Sees in A.D. 360 filled by Arian bishops. He and his friends were in the position of faithful Catholics in those days, who kept the faith in spite of their bishops. He could only hope that an

[144] Ibid.
[145] *Letter,* 199.
[146] Ibid., 200, with Hildebrand being the eventual Gregory VII who presided over the Investiture Crisis.

> Athanasius or a Basil would arise in England. Perhaps there was some subconscious presage that he himself might be destined to take the place of those great champions of truth in the nineteenth century. But with this historical parallel to give him confidence in his position, he considered in the course of his history the deeper problems of Christian faith and the analogy in the fourth century to his own campaign against liberalism, and intellectualism.[147]

Newman's analysis of the contemporary situation made this analogy explicit. In 1834's *Letters on the Church of the Fathers*, Newman contemplated the distinctly political question of the Church of England's possible disestablishment by drawing a comparison to the popular election of Ambrose. If Ambrose could throw himself on the people, so could the Church in the 19th century. And in the 1835 edition of the same, Newman extended the analogy by analogizing the Church's popular turn to the language of Revelation 12:15, where the woman "fled into the wilderness." Contemporary issues gained clarity in light of ecclesial history, understood on a Scriptural pattern. 1837's *The Fall of De La Mennais* found Newman criticizing the French liberal *not* for throwing himself on the people (Ambrose had done no different), but for substituting a *modern democratic understanding* of "people" for a scriptural account.[148]

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[147] Wilifred Ward, *The Life of John Henry Newman Based on His Private Letters and Correspondence* (London: Longman, Green, and Co, 1912), 47.

[148] "The Fall of De La Mennais," *Essays Historical and Critical Volume 1,* 157-8:

> Now here we seem to see the elementary error of M. de la Mennais, an error fruitful in many others, and which betokens him the true disciple of the Gregories or Innocents of past times. He does not seem to recognize, nay, to contemplate the idea, that rebellion is a sin. He seems to believe in the existence of certain indefeasible rights of man, which certain forms of government encroach upon, and against which a rising is at any time justifiable. Accordingly what we, in our English theology, should call the lawless and proud lusts of corrupt nature, he almost sanctifies as the instinctive aspirations of the heart after its unknown good. Such were the cravings of Eve after the forbidden fruit; some such vision of a *summum bonum*, unpossessed but attainable, did the tempter suggest to her. But the promise, "Ye shall be as gods," seems in M. de la Mennais' system to be a sufficient justification of rebellion. Hence he is able to draw close to the democratical party of the day, in that very point in which they most resemble antichrist; and by a strange combination takes for the motto of his *L'Avenir*, "Dieu et la Liberté."
>
> Starting from this beginning, it is not surprising he should practically quite discard the doctrine, that the "many are always bad;" he seems to consider them only mistaken. The excesses, tumults, and waywardness of popular feeling, all that is evidently sinful and irreligious in what are called "the masses," he lays at the door of their rulers; who, by damming or obstructing the current of their instinctive and most laudable desires after something they have not, have caused it to overflow, or to be furious. We almost could fancy

Newman's Catholic period was animated by a similar insistence on the political relevance of a scriptural and ecclesial hermeneutic (especially of the 4th century). The sermon "The Second Spring" (1852) argued that the Catholic Church's re-appearance on the British Isles could only be properly understood in terms of natural and revealed religion; the "Benedictine Essays" (1858) contested a Comtean philosophy of history on scriptural grounds; "On Consulting the Faithful in Matters of Doctrine" (1859) delineated the "democratic" element of the Catholic Church's constitution by a repeated reference to the role of the laity in 4th century debates[149]; "The Pope and the Revolution" analogized both the liberal reformers of the papacy *and* their conservative ultramontane opponents to the Davidic monarchy; and "A Letter Addressed to the Duke of Norfolk" (1875) offered a comprehensive retrospective vision of Newman's political career, connecting the Oxford Newman to the Catholic Newman over the shared concern that the Church be conceived as a substantial institution capable of "veneration and loyalty."[150] Newman's only foray into a more secular political discourse arose in the immediate wake of his 1845 conversion, in "On the Present Position of Catholics" (1850) where Newman attempted to explain the Catholic situation to a Protestant audience, and his 1852 "Lectures on the Turks." The "Lectures on the Turks" introduced themes that would be developed in Newman's more traditional style in the 1858 Benedictine Essays. Again and again, Newman rejected the idea that a new secular language was sufficient to describe political realities (against the Hobbesian-Lockean rights discourse) or that a new era of human history had decisively severed mankind from its past (against the Comtean-positivist philosophy of history, which Newman opposed by way of J.S. Mill's appropriation

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> he held that the multitude of men were at bottom actually good Christians: certainly he speaks of them with compassion and tenderness, as mistaken children, who mean only to pursue their own good, but know not how. Here again is a clear connexion between his theology and the popular philosophy of the day. He is a believer in the gradual and constant advance of the species, on the whole, in knowledge and virtue.

[149] Which clarifies Newman's criticism of Lammenais all the more as being a turn towards an unscriptural democracy.

[150] *Letter,* 198

thereof).[151] What consistently animated Newman's interpretation of political phenomena was what can be called his "Alexandrian hermeneutic"—Alexandria against Antioch, Athanasius against Arius, bound up with Alexandria's "sacramental philosophy" that understood Scripture as an allegory, the Greek philosophers as an allegory, and even history as an allegory.

Conclusion

Newman proclaimed himself a lifelong opponent of liberalism. Contemporary scholarship has interpreted that self-explanation to mean that Newman opposed religious but not political liberalism or accused him of dissimulation. But the scholarship as a whole has relied on an inadequate history of political philosophy. Any philosophy of history that understands modern liberalism to be a progressive development of past thought will compel an interpreter to see in Newman's own intellectual life evidence of deep rupture.

The liberalism Newman opposed was not born in the 16th or the 19th century. Nor was it in continuity with historic Christian thought. Instead, liberalism was an arch-heresy. Ever since dogma was first received, liberalism continually threatened a retreat from the reality of religious knowledge. While it gained special prominence in modernity, it was a consistent anthropological temptation: a nascent liberalism was present in scriptural and ecclesiastic history.

Newman's "Alexandrian hermeneutic" was the means by which he understood contemporary history to be in deep continuity with the scriptural and ecclesial past. Liberalism itself could not be adequately understood on its own terms: in fact, the presumption of liberalism's

[151] Compare this to Newman's early Essays on Miracles (*Two Essays on Biblical and Ecclesiastical Miracles* (London: Longman, Green, and Co, 1912)) which contested the popular Protestant position that the "age of miracles" was over, and that mankind had entered a new secular age of history.

own attempt to establish a new "secular" age premised on the non-reality of religious knowledge was comprehended adequately only in light of scriptural and ecclesial analogues. The Alexandrian hermeneutic allows Newman to see Hobbes and Locke instituting a rupture in the history of political philosophy. But whereas the Straussian critique would see that rupture in light of ancient natural right, Newman would characterize it in terms of the Alexandrian allegorical synthesis of Athens and Jerusalem.

Despite those differences, Newman and Strauss share a central concern with the inadequacy of the first principles of modern political philosophy. And since first principles cannot be argued to but only argued from, any public critique must take an indirect and economical form. Newman did not hesitate to use the terminology of modern liberalism, but it was always in the purpose of laying bare the inadequacy of that terminology. Modern scholarship has attached itself to Newman's use of concepts like "rights of conscience" and "toleration" without adequately tracking Newman's project of economical deflation.

CHAPTER III: EXECUTOR OF THE LAWS OF NATURE? CONSCIENCE AND RIGHTS IN *THE LETTER TO THE DUKE OF NORFOLK*

Introduction

In 2013, Robert George argued in *National Affairs* that the liberal project as envisioned by John Stuart Mill could be helpfully supplemented by John Henry Newman's reflections on religious liberty in the *Letter to the Duke of Norfolk.* These "two thinkers whose views have helped shape our understanding of liberty and of conscience"[1] could be synthesized in such a way that modern human freedom could be reconciled with a robust liberty of conscience. Mill's account of human liberty, despite some significant errors, displayed the use of a method that would allow for a firm "moral ground of liberty"[2]; the greatest weakness was Mill's "tin ear for religion,"[3] but that lack could be supplied by Newman's "religious genius."[4] What emerged from George's article was a portrait of a modern politics of right which seamlessly blended the best of Mill and Newman into a political theory that could be actionable within the American constitutional order.

George's article is the culmination of a line of argument that has understood Newman's rights of conscience within the modern account of natural or human rights. As the last chapter argued, Laski used Newman's analysis of conscience to construct the framework of a pluralist state. Kenny argued that Newman's thought was deeply indebted to Locke and the principle of toleration on which the neutral and secular state was constructed.[5] Alvin Ryan concluded that "the problem of Church and State…involves an acceptance as [Newman] says of 'liberal principles,'

[1] Robert George, "Liberty and Conscience," in *National Affairs* 17 (Fall 2013), 129.
[2] Ibid., 132
[3] Ibid., 133.
[4] Ibid.
[5] *The Political Thought of John Henry Newman,* 18.

or a principle of pluralism." "The position of the Catholic in the modern state makes the acceptance of 'liberal principles' inevitable."[6] Political thought culminates in liberal principles, and Newman's defense of the rights of conscience can be added to this liberal rights discourse to elevate modern politics, at least insofar as Newman's discussions of conscience allow a liberal political discourse to speak more coherently about human dignity and religious liberty.

This chapter will argue that Newman worked with non-modern ideas of the relation between rights, duties, and authority. His concepts were in such sharp distinction from modern natural rights that no easy synthesis between the two can be effected. Newman's rights of conscience were the reward of a particular disposition, education, and *obedience*; not a universal foundational guarantee on which politics can be built. Unless one keeps in mind the distinction between pre-modern natural right and modern natural rights while reading the *Letter to the Duke of Norfolk*, one risks not only misattributing modern doctrines to Newman but mis-characterizing the entire orientation of Newman's political thought.

Even Robert George's reading fails to adequately capture Newman's arguments, though it is the most sophisticated reading to date *and* recognizes the rupture in Western political thought. This chapter will develop the non-modern character of Newman's *Letter* by critiquing George's use thereof. While George's analysis does in some respects correct the errors of prior scholarship,

[6] Ryan, "The Development of Newman's Thought," 92. Though Ryan puts quotes around "liberal principles" to indicate that they are Newman's own words, I cannot find any use of that phrase in the *Letter to the Duke of Norfolk*. Ryan is careful to say that Newman "does not make a universal of this solution, nor does he call for a 'Free Church in a Free State' as did Montalembert…" (ibid.). But Ryan does go on to compare Newman's political thought favorably to Maritain's, such that "Newman was working toward such a solution as Maritain has propounded in works like *True Humanism*" (94). There is no doubt that Maritain was concerned with truth and community, and couldn't be further in temperament from Enlightenment rationalists, but Maritain nevertheless by his emphasis on human rights turned toleration or pluralism into a political principle in a substantial way.
Newman uses "the liberal principle" (singular) in the *biglietto speech*, but only to indicate a rival political and philosophical system which, because now ascendent, must be acknowledged. The reality of many religious sects in England means that "the liberal principle is forced on us from the necessity of the case" ("Biglietto Speech," 67).

it misrepresents Newman in two fundamental regards: first, George adopts the modern prioritization of rights over duties against Newman's pre-modern emphasis on duty; second, George's account of a "religious quest" has a dubious relationship to Newman's account of religious life. If modern political thought is characterized by looking to beginnings rather than ends,[7] this difference is manifested by the manner in which George hopes to secure a free and uncoerced *beginning* to the religious quest. Newman would never deny the reality of the religious quest (though he never uses such terminology), but Newman's attention is always focused on the *end* in light of the beginnings—which, in a certain sense can never be free and uncoerced, and the attempt to make them so is a result of an unnatural *pride* that resists the obedience most natural to conscience.[8] George uses inalienable rights to protect an individual's freely chosen decision to begin a "religious quest." Newman, on the other hand, believes that by the time one becomes aware of a religious quest, one is already engaged in it—and that the most natural "recognition" of the quest is in the realization that the conscience obliges obedience. The adventure consists not in beginning a quest but in clarifying a pre-existing authoritative internal voice.

Robert George's Synthesis of Mill and Newman

The most interesting modern appropriation of Newman's work comes from Robert George's short article "Liberty and Conscience," published originally in *National Affairs* but republished in George's book *Studies in Conscience* in an edited form. In the article's republication

[7] Cf pp. 33 and 56 of this dissertation on the modern political philosophy's rejection of positive teleology, with the idea that the beginnings are unconditioned by the ends.
[8] One's origins are never "free" of influence, whether it be the culture of one's parents and city or one's own human nature, which sets and limits one's possibilities. The modern attempt to identify freedom as man's nature (e.g., Rousseau, Kant, Marx.) prescinds from the weightiest questions. Robert George is obviously aware of mans' nature and man's limits. But this chapter will argue that a modern political philosophy which centers "liberty" and "freedom" will always tend to misrepresent the necessary origins and givens of human life.

in *Studies in Conscience*, nearly all the language that could be interpreted as favorable towards John Stuart Mill has been excised. The changes are significant enough to consider the two versions as two separate articles: the first which attempts to synthesize Mill's account of liberty with Newman's account of religion; and the second which contrasts Mill's account of liberty with a new natural law account of religious liberty (which will turn out to be consonant with Newman's description of religious liberty). The first version interprets Newman to be in harmony with liberal theory; the second proposes a thesis similar to this chapter's—namely that Newman is *not* a modern liberal thinker. However, by making Newman a proponent of the new natural law, George mis-understands and mis-characterizes what makes Newman non-modern or non-liberal; and in contrasting Newman with the new natural law, I reveal some weaknesses of the new natural law.

The two articles will be treated separately. The analysis of the *National Affairs* article will argue that George tries to synthesize the thought of Newman and Mill. This argument may be too strong; however, by heightening George's attempt at synthesis, it allows for a firm refutation of attempts to draw Newman into the modern liberal camp. The treatment of the revised article in *Conscience and its Enemies* will be as sensitive to George's thought as possible, and will incorporate George's own account of the new natural law in his *In Defense of Natural Law*.

Religious Liberty in National Affairs

According to Robert George, an interesting feature of the debate surrounding the Obama administration's requirement that health plans provide contraceptives and abortifacients, is that litigants on both sides of the issue claim "to be the defenders of liberty and conscience."[9] The very

[9] George, "Liberty and Conscience," 129.

fact that both sides use terms such as "freedom," "conscience," and "religious liberty" indicates that there is no easy dichotomy whereby liberty and freedom on one side are assailed by conscience and religion on the other: the terms are much more interrelated than they are oppositional. There is a complexity or ambiguity here that requires further investigation, for which George turns to "two thinkers whose views have helped shape our understanding of liberty and of conscience—John Stuart Mill and John Henry Newman."[10]

In "Liberty and Conscience" George set himself a specific task: he would use Newman's arguments about conscience to supplement and complete the account of liberty given by John Stuart Mill in *On Liberty*. For George, Mill's general account of liberty is acceptable, despite its utilitarianism and unwarranted optimism. Mill's utilitarianism can be corrected by substituting a theory about human flourishing in which liberties are grounded in certain "basic human goods" which "conduce to but [also] constitute our flourishing."[11] Humans have rights and liberties because there are certain incommensurable human goods which human beings need if our "permanent interests as progressive beings" are to be cultivated, one of which is the good of religion.[12] So liberties are grounded in basic goods.

Religion is a basic human good. While Mill may have been inattentive to religion, the good of religion (rightly understood) is consistent with Mill's principles about truth-seeking. Religion as a human good is "the human person's being in right relation to the divine—the more-than-merely-human sources (if there be such) of meaning and value."[13] A human participates in this good when one "begins the quest to understand these more-than-merely-human sources" and

[10] Ibid.
[11] Ibid., 132.
[12] George is here using an account of human flourishing developed by John Finnis and Germaine Grisez as a part of the New Natural Law (cf. John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980).).
[13] Ibid., 132.

"to live authentically by ordering one's life in line with one's best judgments of the truth in religious matters."[14] The good of religion is the participation in the quest for knowledge about ultimate things and the architectonic ordering of the basic goods in light of what one discovers about religious truth.

The religious quest takes the form of a recognized *obligation* or duty, but the status of this obligation is somewhat obscure. The duties or obligations that characterize the good of religion are the outcome of discursive reasoning for George. He describes how one "authentically" realizes the "distinct good of religion"[15]:

> The raising of existential questions, the honest identification of answers, and the fulfilling of what one sincerely believes to be one's duties in the light of those answers are all parts of the human good of religion[16]

First, one raises questions. Then, one tries to answer those questions. On the basis of those answers, one makes judgments about what one has a duty to do or refrain from. Only at the end of this process does the duty emerge, and the duty is constructed *by oneself* on the basis of conclusions to questions raised. Because none of this can begin without the freedom to ask questions, one must have (with echoes of Mill) "respect for everyone's liberty in the religious quest,"[17] so that everyone can be provided with the freedom whereby they can ask questions and generate answers and make judgments about duties. So, liberties—or rights—come at the beginning of the quest, and duties come at the end—presuming that the end is ever reached

[14] Ibid.
[15] Ibid
[16] Ibid., 133.
[17] Ibid.

George has a sense that this account of religion, based on Mill, may not get far enough. "Mill's contribution to our understanding of the right to freedom of religion does not extend past freedom. To go further, we would do well to turn to Newman."[18] George incorporates Newman at this point to help elucidate how the dutiful religious quest proceeds—to explain what happens *after* the free religious quest is secured. Here George wants to correct Mill's optimism by way of Newman's "religious genius."[19] Newman recognized—because of his belief in human fallenness—in a way that Mill did not see the need for "restraints on freedom,"[20] lest liberty descend into vice. What George means by "restraints on freedom" is specifically Newman's strict view of conscience. Newman "could not be more deeply at odds with the liberal ideology that is dominant in the contemporary secular culture." For Newman, conscience "is the very opposite of 'autonomy' in the modern sense."[21] It does not write permission slips. Rather, it is "one's last best judgment specifying the bearing of moral principles—principles which are in no way one's own invention—on concrete proposals for action."[22] Conscience does not tell men what they *can* do, but rather what they *must* do. George quotes approvingly Newman's description of conscience as a "stern monitor."

The false view of conscience which George's Newman opposes is "the right of self-will." "Conscience as 'self-will,'" George says, "is a matter of feeling or emotion, not reason."[23] Instead of going about identifying one's duties, self-will pays attention to "feelings." This false conscience "licenses behavior" by means of internal gymnastics whereby one realizes that he does not feel *that* guilty about doing something, whereby it becomes licit. So whereas the "true" conscience

[18] Ibid., 134.
[19] Ibid..
[20] Ibid.
[21] Ibid., 135
[22] Ibid.
[23] Ibid.

pays dutiful respect to rational calculation or deduction about duties, false conscience concerns itself only with feelings.

Newman's "core insight" is that conscience only has rights because it has duties. Religious liberty for communities and individuals obtains not because "autonomous agents should be able to do as they please," but rather "because people have duties and the obligation to follow duties."[24] So whereas false conscience caters to one's own feelings, true conscience may present the situation where one feels compelled to do something "even if one strongly does *not* want to."[25]

Even though this duty may be strong, it is not unlimited: "there are limits to the rights of conscience,"[26] since everyone admits that "gross evils—even grave injustices—can be committed by people sincerely acting for the sake of religion." While the presumption in favor of religious liberty is strong, it can be curtailed if the believer sinks to using "morally bad means."[27] Examples of "deeply wrong" actions are "human sacrifice" and "coercion and even torture in the cause of what [people] believed was religiously required."[28] To think otherwise is to fall into the paradox that "violations of religious freedom…must be respected for the sake of religious freedom,"[29] with the violation being precisely the infringement of the initial *freedom* whereby someone else begins his "religious quest."

George concludes by explaining that even though "any basic liberty might be assigned a kind of priority," there is a sense in which religious liberty "has special priority or at least a sort of pride of place."[30] Religious liberty protects an "architectonic" and "in an important sense, pre-

[24] Ibid., 136.
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid., 137.
[30] Ibid.

political" freedom. The religious questioning, whereby one tries to align himself with his best judgment about transcendent values, affects "every aspect of our lives."[31] By trying to integrate oneself into a whole and finding principles by which one can direct his actions, one gains a special "integrity." Even if religion is not the only means by which humans flourish, the good of religion helps integrate all the basic goods of human flourishing.

The picture of conscience and obligation can be summarized in the following way. Conscience is the locus for the pursuit of the religious quest for meaning. This religious quest must be protected by an absolute liberty in its beginnings. Once a person begins, he discerns to the best of his abilities certain principles and conclusions. On the basis of those principles, particular duties emerge by way of discursive reasoning. These duties, arising as they do from the conscience, ought to be protected by a wide but not invincible liberty, since there is no reason to respect a duty that infringes on another's *right* to begin or pursue the religious quest (or, presumably, that infringes on the pursuit of any other basic human good). For that reason, there is an absolute rejection of persecution and coercion for religious reasons. One must not be constrained in one's *search* for religious truth, though one can be constrained in the performance of what one finds to be a duty.

Moreover, the difference between a conscience that recognizes duty and a conscience as self-will is found in the contrast between feelings and reason. True conscience is capable of adhering to rational conclusions about one's duty, whereas false conscience takes its cue not by reason but by whether or not one "feels bad about engaging in" a certain action.[32] So whereas George quotes Newman as saying conscience has rights because it has duties, in George's exegesis it ends up being perhaps the reverse: conscience can have duties *if* it is initially granted rights to a

[31] Ibid.
[32] Ibid., 136.

free religious quest, and on the basis of those deduced duties, it can claim certain (restricted) rights of action. As elevated as George's formulation is, in the last analysis the individual conscience is the sole arbiter of whether there is any duty one must respect. The duty is discovered in the individual conscience's pursuit of the religious quest. It might still be the case that the individual is "the executor of the laws of nature."

"Conscience has rights because it has duties"

In his *Letter to the Duke of Norfolk*, John Henry Newman defended the "rights of conscience" in order to persuade the British public that Catholics can be good political subjects. This has often been taken to mean that Newman was engaged in a version of the modern liberal political project, whereby the state is compelled to recognize and protect certain inalienable rights, with the rights of conscience numbered among them. But these appropriations of Newman's argument have been insufficiently attentive to the modern rupture in the history of natural right. Even though Newman was writing at the time of and in response to someone like John Stuart Mill, Newman's understanding of the relationship between right and duty and between right and politics was decidedly *non*-modern. In light of this fact, Newman's political teaching takes on an entirely new character. But any discussion of his political thought in detail must begin with the "rights of conscience."

When Newman said that "conscience has rights because it has duties," he meant something different from George. When Newman began his fifth chapter of the *Letter*, the chapter devoted to conscience, he defined conscience as the "Divine Law" "apprehended in the minds of individual

men,"[33] using both Augustine and Thomas as supporting witnesses. By "divine law" Newman meant less a law code than the presence of God himself. The Supreme Being has various attributes "as eternal characteristics in his nature, the very Law of his being, identical with Himself," and when God became Creator, "He implanted this Law, which is Himself, in the intelligence of all His rational creatures."[34] So when Newman said that conscience is the apprehension of the Divine Law, he meant most specifically the apprehension of the presence of God. The point here is that conscience is less a law, apprehended as propositions, than it is the immediate recognition of a superior, commanding obedience, which relies ultimately on the personal character of the lawgiver.

This understanding of conscience as personal and aware of the divine presence[35] was reflected in how Newman understood the relationship between conscience and the Church to be organized. The Pope's (and Church's) mission was founded "on the law of conscience and its sacredness." Lest one think that the "law of conscience" was overly legal, Newman explained that the support for the Pope arose from "the universal sense of right and wrong, the consciousness of transgression, the pangs of guilt, and the dread of retribution," all of which are "first principles deeply lodged in the hearts of men."[36] These first principles were not noetic apprehensions of propositions by which a rigorous and deductive science can be constructed; rather, they were recognitions of a pre-existing relationship between creature and Creator. They were an accurate self-recognition of internal moral phenomena. In the older scholastic vocabulary, they could have

[33] Newman, *Letter*, 246-7.
[34] Ibid., 246.
[35] An excellent treatment of Newman's "personalism" can be found in John Crosby's *The Personalism of John Henry Newman* (Washington, D.C.: Catholic University of America Press, 2016).
[36] *Letter*, 253.

been termed *inclinations*.[37] Such language does not deny that conscience can (and must) lead to the apprehension of propositional truths, but that the discovery of such truths must begin with the recognition of a superior, especially of a duty towards that creator. Already, Newman has placed the conscience as *immediately* aware of a relationship towards a superior: to try to grant a right of religious liberty where there is no *initial* constraint on one's religious quest is to mis-represent the phenomenon of the conscience itself.[38]

Moreover, when Newman discussed the rights and duties of conscience, he meant no such religious liberty as defended by George: or, rather, the relationship between rights and duties was non-modern rather than modern. This could be seen most clearly when Newman began to discuss the "rights of conscience themselves." The argument was both lengthy and circuitous, but began as follows. When Newman mentioned the "rights of conscience"[39] for the first time, it was to allege that throughout his lifetime there "has been a resolute warfare, I had almost said conspiracy"[40] against them. He explained that "literature and science have been embodied in great institutions

[37] Newman elaborated on this understanding of conscience in the *Idea of the University*, where he contrasts a "civilized" understanding of conscience with a "religious" one. "Conscience indeed is implanted in the breast by nature," and it "inflicts upon us fear as well as shame," but "when the mind is simply angry with itself and nothing more, surely the true import of the voice of nature and the depth of its intimations have been forgotten, and a false philosophy has misinterpreted emotions which ought to lead to God" (145). Newman sketches a syllogism: "Fear implies the transgression of a law, and a law implies a lawgiver and a judge," which is the true, religious intimation of conscience. Intellectual culture, however, replaces fear with self-reproach, and self-reproach is "limited to our mere sense of what is fitting and becoming." In other words, "fear carries us out of ourselves, whereas shame may act upon us only within the round of our own thoughts" (145). Whereas conscience recognizes "the command of duty" and sin as "an offence against God," the intellectual reduction of conscience to "the moral sense" turns duty into "a sort of taste" and offense as something merely "against human nature." The most important consequence of this change is not the reduction in force, but the forgetting of a relationship. Whereas religious conscience preserves the interaction between God and man, the reduced moral sense turns ethical activity into the intensely personal judgment of whether a person has been "consistent." "Their conscience has become mere self-respect" (146), and they become "engrossed in notions of what is due to themselves, to their own dignity and their own consistency" (146).

[38] George might well reply that while this is a *true* account of the conscience, it ought not be imposed politically: someone is not *prevented* from feeling the force of this obligation by being granted a full initial religious liberty to investigate all permanent questions. There is much to say on this topic, and I will engage with this later in this chapter.

[39] Newman, *Letter*, 249.

[40] Ibid.

in order to put it down,"[41] though in the end it was "too subtle for science and too profound for literature."[42] Philosophers have tried to turn conscience into an irrational passion or an imagination, or explain away the possibility of free will by referring to the "infinite eternal network of cause and effect" that prevents any "real choice" between good or evil. Nevertheless, Newman did not say any more about what the "rights of conscience" entailed in his paragraph about intellectual attacks upon its basis.

More was said about these rights in the next paragraph, when Newman treated "the notion of conscience in this day in the popular mind,"[43] which was just as mistaken as the philosophers' idea. "When men advocate the rights of conscience, they in no sense mean the rights of the Creator, nor the duty to Him, in thought and deed of the creature."[44] Rather, they meant "the right of thinking, speaking, writing, and acting according to their judgment or their humor, without any thought of God at all."[45] The true rights of conscience, according to Newman, were rights accorded to God; for a person possessing a conscience, he did not have a right so much as a duty towards the Creator. The popular mind did not explain away conscience, as the philosophers did; rather, it inverted the order of rights and duties. The public mistakenly believed that they could claim in good conscience "what they think is an Englishman's prerogative, for each to be his own master in all things…and accounting [anyone] utterly impertinent who dares to say a word" against him.[46] "They do not even pretend to go by any moral rule,"[47] which was what Newman, in another context, felicitously described as the almost inexorable slide whereby "the right of private

[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Ibid., 250.
[45] Ibid.
[46] Ibid.
[47] Ibid.

judgment" becomes "the private right of judgment."[48] Newman summarized his position by saying that "Conscience has rights because it has duties, but in this age, with a large portion of the public, it is the very right and freedom of conscience to dispense with conscience."[49] Conscience has been "superseded by a counterfeit," namely, "the right of self-will."[50] Based on Newman's conclusion, two issues immediately presented themselves, which will be treated in turn. The first concerns the priority of rights or duties. The second concerns "the right of self-will."

Newman was clear enough that duties preceded rights: "conscience has rights because it has duties," namely the duties towards God. But once those duties were recognized, what kind of right was granted? And to whom was it granted? In the preceding section it appeared that when Newman spoke of the rights of conscience, he was speaking directly of the rights of God. Humans, it appeared, did not have any rights of conscience. But if humans did not possess any rights of conscience, how could they assert those rights against the judgment of the Pope—which, after all, was the purpose of Newman writing the *Letter*, to defend Catholics against the charge of mental and moral slavery? When Newman addressed this issue, he chose his words very carefully. He said: "When it has the right of opposing the supreme, though not infallible Authority of the Pope, it must be something more than that miserable counterfeit which, as I have said above, now goes by the name,"[51] where the antecedent to "it" was not "a person" or "a Catholic" but "conscience truly so called."[52] When Newman referred to the "rights of conscience," he meant for the preposition to have a subjective rather than an objective sense: it was not the case that a person

[48] Published originally as an article in the, *British Critic*, July 1841, ("Private Judgment," *Essays Historical and Critical, Volume 2* (London: Longman, Green and Co, 1907), 341)., with the argument being that the right of everyone to judge according to his own standards quickly becomes the right for *me* to judge in any way I want, regardless of standards and regardless of anyone else's right.
[49] *Letter*, 250.
[50] Ibid.
[51] Ibid., 257
[52] Ibid.

possessed a right of conscience; rather conscience itself, by participating in the divine, possessed certain rights.

Newman's locution is important for two reasons. First, this kind of wording takes seriously Newman's claim that conscience cannot be reduced to a purely human impulse or passion. It is "not a long-sighted selfishness, nor a desire to be consistent with oneself; but it is a messenger from Him, who, both in nature and grace, speaks to us behind a veil, and teaches and rules us by His representatives. Conscience is the aboriginal Vicar of Christ."[53] The claims of conscience did not have their origin in any rights of man, but in the rights of the divine, in its claim to being a messenger from the Almighty.

The second reason for emphasizing this relationship between rights and duties is that it was an echo of similar arguments that occurred earlier in the *Letter* where exactly the same symmetry recurred, with the divine claiming rights and the human possessing duties. In surveying the conversion of the Roman Empire and the prerogatives granted to the Church on that occasion, Newman said that

> there were two broad conditions which accompanied the grant of all this ecclesiastical power and privilege, and made the exercise of it possible; first, that the people consented to it, secondly, that the law of the Empire enacted and enforced it. Thus the high and the low opened the door to it. The Church of course would say that such prerogatives were justly hers, as being at least congruous grants made to her, on the part of the State, in return for the benefits which she bestowed upon it. It was her right to demand them, and the State's duty to concede them.[54]

When discussing papal power in the middle ages, Newman returned to the same relationship between church and state. Gladstone had accused the papacy of sharpening "rusty tools" of

[53] Ibid., 248.
[54] Ibid., 203-4.

medieval statecraft in the publication of the encyclical *Mirandi Vos*, in which the papacy reserved the right to depose princes. Newman had argued previously that encyclicals had to be read carefully, and that no assertion was ever baldly thrown forward without certain limiting restrictions. Newman interpreted the encyclical's claim of political rights in the following way:

> Now let us observe how the Pope restrains the exercise of this right. He calls it his right—that is in the sense in which right in one party is correlative with duty in the other, so that, when the duty is not observed, the right cannot be brought into exercise; and this is precisely what he goes on to intimate; for he lays down the conditions of that exercise.[55]

Those conditions were (1) "rare and critical circumstances" (2) not an arbitrary power but "by a process of law and formal examination of the case" and (3) "the exercise of this right is limited to the ages of faith; ages which on the one hand, inscribed it among the provisions of the *ius publicum*, and on the other so fully recognized the benefits it conferred, as to be able to enforce it by the common consent of the peoples," meaning "no consent which is merely local…but a united consent of various nations of Europe, for instance, as a commonwealth, of which the Pope was the head."[56]

Each instance reproduced the same symmetry. Duties and rights were correlative, but the duty came first. If the duty was observed, then a right could be invoked. But if the duty was ignored, "the right cannot be brought into exercise." While the Pope retained the abstract right to depose princes, it could obtain only when the duties of peoples towards the Pope were observed—namely, in this instance, they had to give their consent.[57] But the reversal of priority between rights and duties does more than change which term is on top: it also changed the entire character of the

[55] Ibid., 221.
[56] Ibid., 221-2.
[57] For a fuller discussion of these two passages, the relationship between rights and duties, and popular consent, see Ch. 5, pp. 201-202.

activity being described, as can be seen most clearly in the discussion of "self-will." Newman's description of how a right of conscience could obtain will be very different from George's, not only because of the inverted order of rights and duties but also because of what is termed self-will.

For Newman self-will perverts the process by which a conscience acquires a right. For conscience to gain the "right of opposing the supreme, though not infallible Authority of the Pope," the following must first occur: (1) "serious thought and prayer," including "all available means of arriving at a right judgment"[58] must be exercised and (2) a decision must be made beginning from an initial position of obedience:

> the *onus probandi* of establishing a case against him [i.e., the Pope] lies, as in all cases of exception, on the side of conscience. Unless a man is able to say to himself, as in the Presence of God, that he must not, and dare not, act upon a papal injunction, he is bound to obey it, and would commit a great sin in disobeying it[59]

It is wrong to reduce Newman's injunctions to a demand that one needs to "think through" one's moral decisions, that the decision can be justified if one can show that he has acted "in good faith" and consulted various experts. All of this is important, as Newman made clear in the first condition. And all of this is what is required in George's "religious quest." But even more important than the process of deliberation is how one construes the place from which he begins. Newman said that in order for the second condition to obtain, a person must "vanquish that mean, ungenerous, selfish, vulgar spirit of his nature, which, at the very first rumour of a command, places itself in opposition to the Superior who gives it, asks itself whether he is not exceeding his right, and rejoices, in a moral and practical manner, to commence with skepticism."[60] Prior to all moral reasoning lay the question of the naturalness of authority. Either one must recognize within

[58] Ibid., 258.
[59] Ibid.
[60] Ibid.

the conscience the voice of a superior, or to ignore it; to accept an initial obedience or to proclaim an initial independence.

Here, the rights of the Creator and the "right of self-will" were most keenly contrasted. If conscience was going to gain the right to contradict the (non-infallible utterances of the) Pope, it must begin by granting the rights of the Creator, and beginning with a kind of moral conversion that "vanquish[es] that mean, ungenerous, selfish vulgar spirit of his nature." In other words, the "supposed rights" of the public world were not being criticized by Newman because they were insufficiently rigorous (though Newman did criticize them for "not even pretend[ing] to go by any moral rule"), but because they began from a place where, in re-creating the temptation of Eve and choosing self over God, they misinterpreted moral reasoning itself.[61]

Conscience, while always free, is never unformed, or in a neutral position. It is unlawful, Newman explained, even for a heretic to violate his conscience.[62] But the alternative of a conscience raised in faith or raised in heresy was not a free conscience, but rather a conscience subjected to self-will and the "vulgar spirit of his nature." Such a conscience was not truly free. It appeared to be subject to no authority only because it had already silenced the voice of the first, natural authority. The naturality of this authority is important—it was not a Kierkegaardian choice Newman was invoking. There was no conscience free of education, but a freedom from the Pope was a subjugation to something else. Or, the freedom secured by a *rebellion* was unnatural, since the conscience *naturally* sensed the relationship of a divine Lawgiver.[63]

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[61] Compare this to the account of 'rationalism' in Tract 73.
[62] Ibid., 260. Not that this saves the heretic, of course.
[63] Here, of course, is the crux of the matter: is it in fact the case that the conscience *naturally* and *immediately* recognizes the voice of an external superior? Newman was not blind to the fact that the argument is much more one of first principles than of deductive rigor. Nor is Newman blind to the rejoinder that many people do not naturally and immediately feel the voice of conscience to be that of an external superior. Newman even explains that the

This is the strongest indication that Newman was thinking from a non-modern perspective. For moderns like Locke and Hobbes, natural rights were based in the pre-moral desire for life, such that the right derived therefrom was inalienable and the possession of everyone. The new natural rights were a *replacement* for the project of moral improvement and an alternative to pre-modern political thought, which always took an account of the necessity of virtue for political life. Modern political life was not based on a conversion towards virtue, but on calculations of self-interest pertaining to inalienable rights. For moderns (even including Rousseau and Kant, for whom the formulation appears more elevated), the political rights pertained *regardless* of any considerations of virtue (so, even for Kant, a properly constructed free society could be composed entirely of devils, as long as they were "intelligent," meaning capable of recognizing their self-interest[64]).

But for Newman, the right was granted *only* if one began from an appropriate self-mastery. The right was not universal or inalienable: it was the reward of those who acted in accordance with conscience. Fortin's characterization of pre-modern right applies equally well to Newman's discussion of the rights of conscience: "Rights [for the pre-moderns] were by no means unconditional. They were contingent on the performance of prior duties and hence forfeitable."[65]

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whole purpose of the Church lies in the fact that the "echo of the voice of God" in the conscience is so easily obscured. One crucial distinction worth making is that, for Newman, an immediate recognition of the voice of conscience as implying an external superior does not entail that one immediately recognizes that voice as the Trinitarian God. One senses something about an external superior which, if attended to, becomes clearer and more manifold. In an early sermon, Newman gives an account of conscience that can sound very similar to George's religious quest—but with differences that will be made plain:

> "Thus a man is at once thrown out of himself, by the very Voice which speaks within him; and while he rules his heart and conduct by his inward sense of right and wrong, not by the maxims of the external world, still that inward sense does not allow him to rest in itself, but sends him forth again from home to seek abroad for Him who has put His Word in him" ("Faith without Sight," *Parochial and Plain Sermons*, Volume 2 (London: Longman, Green, and Co,. 1908), 18)

[64] Immanuel Kant "Perpetual Peace," *Kant's Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1970), 111-112.

[65] Fortin, "On the Presumed Medieval Origin," 247.

Only upon the condition of the self-mastery of the will, in addition to serious thought and prayer, was something like a right of religious liberty ever granted.

Here, then, is where George's appropriation of Newman falls short. They can sound similar insofar as they both describe a pattern of rights flowing from duties, and George made much of Newman's claim that "conscience has rights because it has duties." But even though both Newman and George saw duties as preceding rights, they differed in a fundamental way on the *origin* of those duties. For George the duties were the result of a rational process that must begin from an initial absolute liberty: only if one has the full freedom to go on the religious quest, will he ever come to *authentic* intellectual discoveries from which he will be able derive conclusions about his duties. Thus, George interpreted Newman's "self-will" as the process whereby emotion and feeling overruled the appropriate "rational" conclusions. Duty versus self-will manifested itself, in George's account, as reason versus emotion.

But for Newman, the duties which preceded rights were not duties arrived at on the basis of deductive reasoning. Newman's duties—the serious thought and prayer and initial obedience to existing authorities—were not deliberately "chosen" on the basis of a religious quest so much as they are natural outgrowths of the initial *natural* position of a conscience that recognized itself as immediately in relation to a superior. Contra George's three-stage process of absolute liberty/conclusions about duties/limited rights, Newman appeared to have a process that looked like immediate awareness of a divine superior/ which tended towards an initial obedience or respect towards existing authorities / which could be resisted via certain rights of conscience only if the initial two positions had been respected. For Newman, it was not rights/duties/rights, but cosmic duty/mundane duty/mundane rights.

One consequence of this different understanding of rights and duties was that George mischaracterized or misunderstood Newman's account of self-will. George saw self-will as an emotional resistance to conscientious conclusions about duty, which would apply only to the middle-term in George's sketch of rights and duties. But for Newman, self-will applied most of all *at the beginning* rather than in the middle, in the initial resistance to any sort of command. In which case, the resistance was not due to "emotion" or "feeling" that overpowered rational conclusions, but rather an initial *pride* that resisted any claim to obedience.

For Newman, the conscience naturally and immediately was inclined in a relationship towards a superior;[66] George saw discursive investigations about duties not to be relevant to the beginning of the religious quest, which must be unencumbered. It was here that the question about the natural character of authority, which was so decisive in the history of natural right, returned (i.e., Aristotle and Aquinas both saw men as naturally under political authority; Hobbes and Locke, via the state of nature, saw man as a-political, a-social, and under no authority but his own—all authority was artificial). And Newman saw the issue clearly: even though Newman prioritized duties over rights, it was his recognition of the natural character of divine and political authority that most especially made him a non-modern figure and incapable of being synthesized with someone like Mill. Of course, Mill, even though he refused the metaphysical grounding of "natural rights" was no less modern on that account. Mill was decisively modern because he denied the natural character of authority. Or, rather, he might have said that man was naturally under

[66] One question which will have to be addressed later is the relation of Wolterstorff's claims to this question. He, at the very least, makes clear the stakes: is it the case that the rights regime, which rejects any language of natural order, is both (1) *the* just regime and (2) the most truly *Christian* regime? Or, is it rather the case that what it produces is something like an anti-regime that is not Christian at all, both because of the fact that it conflates the political with the supernatural, but also because it requires a non-Christian understanding of conscience? Can a regime which denies that the conscience naturally apprehends a relation to the divine be a Christian regime?

authority, but the movement of history was one from customary authority to individual liberty—so that natural authority, even if natural, was not normative, and must be escaped from.[67] This orientation made Mill more modern than any particular claim about inalienable rights.

One paradoxical consequence of Mill's position was that even though he disclaimed any metaphysical grounds for the rights of man, the rights he established (even if conventional, even if positive, even if based on utilitarian considerations) ended up being more inalienable than any pre-modern right. This was due to the fact that they—as absolute and uncontestable, except by other individuals' rights—could never be limited or constrained in the way made possible by the ancient and medieval understanding of a natural and naturally authoritative supervening order. The same holds true for George: the duties he defends are not the result of man's natural relation to natural authorities—the "religious quest" compels a complete initial freedom. The duties are a determination of deductive reason, which determine how one can protect and claim his own rights while also respecting the rights of others—again, there is no supervening order limiting the rights and duties.

No fundamental reconciliation can be achieved between a modern account of liberty—as, for instance J.S. Mill's—and the liberty of conscience described in Section 5 of the *Letter to the Duke of Norfolk*. Newman was non-modern in his understanding of the relationship between rights and duties and the naturalness of authority. If Robert George intended, in his article in *National Affairs*, to suggest any different, George is guilty of the same mistake as Laski, Ryan, Kenny, and Kelly. In his later revision, George has taken pains to check any such interpretation, but he nevertheless still mischaracterizes Newman's account of conscience and the moral life. This

[67] See Sections I and II in John Stuart Mill, "On Liberty," *The Collected Works of John Stuart Mill, Volume XVIII* (Toronto: University of Toronto Press, 1977): 213-310.

mistake is a function of George's adherence to the new natural law account of moral reasoning, which will be the subject of the final section of this chapter.

Religious Liberty in Conscience and its Enemies

A fairer means of engagement is at hand: to meet George squarely on the field of his own moral theory. George is well known for endorsing and extending what is sometimes called the "new natural law theory" of Germaine Grisez and John Finnis. This theory looms much larger in the edited version of "Liberty and Conscience" appearing in *Conscience and its Enemies*,[68] if only because George has excised much (and the warmest part) of his discussion of J.S. Mill. In effect, the article is born-again, and its new thesis is that Mill ought to be *opposed* rather than synthesized with Newman. Newman gets conscience right where Mill gets conscience wrong because Newman gives an account of liberty of conscience consistent with the new natural law theory—which George takes to be the correct account of moral life. Therefore, any critique of the edited version of "Liberty and Conscience" will have to face this claim: can Newman be made a new-natural-lawyer, or does such a move distort Newman's account of the moral life? The literature on the new natural law is vast—perhaps too vast for this study. This dissertation's method will be to use George's own presentation of the new natural law in two articles: "Liberty and Conscience," and "Religious Liberty and Political Morality," an article collected in his *In Defense of Natural Law*[69] that deals with issues similar to the ones raised in "Liberty and Conscience."

[68] Robert George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, Delaware: ISI Books, 2013).
[69] Robert George, *In Defense of Natural Law* (Oxford: Oxford University Press, 1999).

The new natural law theory is rooted "in the tradition of thought about practical reason and morality in which St. Thomas Aquinas is so central a figure," [70] so the theory takes Aquinas' reflections on conscience and practical reason as its point of departure. For Aquinas, the first principles of practical reason are "self-evident."[71] Grisez, Finnis, and George offer a novel interpretation[72] of Aquinas' first principle of practical reason: whereas traditionally that principle was understood to be a moral principle ("do good and avoid evil"), the NNL[73] treats the first principle as *pre*-moral. "The Fppr [first principle of practical reason] is 'premoral.' It represents practical reason's innate capacity to grasp goods as 'possibilities' of fulfillment, and, as such, it directs us to goods rather than specifying moral norms which guide choices."[74] The Fppr, then, has to be supplemented by a set of "goods," intuited or grasped by the practical intellect, for a full theory of morality to develop. The NNL distinguishes between "instrumental" and "intrinsic" goods, with the intrinsic goods being (1) sought for their own sake and (2) more foundational or basic than instrumental goods. Thus, the NNL introduces a system of "basic goods" at the center of its morality. These basic goods appeared in George's correction of Mill in the *National Affairs* essay:

> The basic aspects of human well-being and fulfillment that, together, constitute the ideal of human flourishing are reducible neither to each other nor to some substance or factor they share. These basic human goods, though they all provide more-than-merely-instrumental reasons for action and are partially constitutive of our all around well-being, are not just different forms of the same thing. They differ substantially as distinct dimensions of our flourishing and fulfillments of our capacities and human persons. They are, as such, incommensurable in a way that renders hopeless the utilitarian project of identifying a rule for choosing that promises, in Jeremy Bentham's phrase, "the greatest

[70] *In Defense of Natural Law,* 1.
[71] See pp. 60ff. supra.
[72] See Russell Hittinger's *A Critique of the New Natural Law Theory* (South Bend: University of Notre Dame Press, 1988) Ch. 1, 10-48 for a full treatment of the NNL's "novelty" and the complications arising therefrom.
[73] From here on, NNL will be shorthand for the new natural law theory (inclusive of Grisez, Finnis, and George)
[74] *A Critique of the New Natural Law Theory,* 30.

> happiness of the greatest number," or of producing the net best proportion of benefits to harm overall and in the long run[75]

These basic goods are the fulfillment of innate human capacities and are also taken to be "incommensurable" with one another, meaning that they cannot be reduced to a common denominator but rather indicate the distinct aspects of human flourishing.

The basic goods are what the self-evident Fppr points men towards, so they are, in a certain sense, self-evident as well. In "Religious Liberty and Political Morality," George sketches a summary of the relation between the basic goods and a theory of morality. Here, he is speaking of them in light of "basic reasons for action":

> Qua basic reasons for action, the value of intrinsic goods cannot and need not be inferred from more fundamental reasons for action. Nor, as Germain Grisez has rightly insisted, can basic reasons for action be deduced from purely theoretical premises (i.e., premises that do not include reasons for action). As first principles of practical thinking, basic reasons for action are, as Aquinas held, self-evident (*per se nota*) and indemonstrable (*indemonstrabilia*). As fundamental aspects of human well-being and fulfillment, they belong to human beings as part of their nature; they are not, however, derived (in any sense that the logician would recognize) from mythologically antecedent knowledge of human nature drawn from anthropology or any other theoretical discipline. Rather, they are grasped in acts of non-inferential understanding by the mind working inductively on the data of inclination and experience.
>
> What are the basic reasons for action? John Finnis has usefully classified them as follows: life (in a broad sense that includes health and vitality); knowledge; play; aesthetic experience; sociability (i.e., friendship broadly conceived); practical reasonableness; and religion. Practically reasonable action in respect of the plurality of basic reasons for action is guided and structured by moral norms that are, as it were, methodological requirements of the good of practical reasonableness.[76]

The basic goods supply the basic reasons for action, since the goods are the things on account of which and for which men act (i.e., that give the Fppr the needed specificity to build out a moral

[75] "Liberty and Conscience," 132.
[76] "Religious Liberty and Political Morality," 128.

theory). These basic reasons and basic goods are seven: life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion. These seven basic goods are self-evident and indemonstrable. One does not grasp these basic goods by deriving them from any antecedent philosophy of nature or philosophical anthropology. Rather, they are apprehended or intuited[77] by the practical reason *itself* as goals or possibilities towards which the practical reason moves. The freedom of the basic goods from any pre-supposed philosophy of nature is taken to be one of the NNL's major achievements, since "one of the major difficulties facing the natural law theorist is that his understanding of human nature was originally bound up with a teleological view of the universe which has seemingly been destroyed by modern science."[78] This, of course, could mark a departure from Aquinas himself, which George acknowledges: "Whether or not Aquinas himself supposed that sound practical philosophy necessarily depends upon a methodologically antecedent speculative philosophy of nature…the Grisez-Finnis theory…dispenses with this supposition."[79] The NNL rescues a Thomistic practical philosophy from entanglement with a (supposedly) debunked philosophy of nature, but only by way of making the seven basic goods self-evident: if such self-evidence can be demonstrated, then the NNL has accomplished a great deal. But much depends on the self-evidence of the basic goods.

The basic good most relevant for this investigation is religion, and the first step is to gain clarity on what George and the NNL mean by the basic good of religion; after that will come an analysis of its supposed self-evidence. The accounts of religion in "Religious Liberty and Political Morality" and "Liberty and Conscience" are harmonious and mutually supportive. In "Religious Liberty," George says that "religion is a basic good" in the following sense: "agnostics and even

[77] Finnis has rejected the idea that these basic goods are "intuited," but it is difficult to find other words to describe the process whereby these goods are grasped. CF. pp. 33-36 in *A Critique of the New Natural Law Theory*
[78] Fortin, "The New Rights Theory and the Natural Law," 266, with an emphasis on *seemingly*.
[79] George, "Recent Criticism of Natural Law Theory," *In Defense of Natural Law,* 75.

atheists can easily grasp the intelligible point of considering whether or not there is some ultimate, more than human source of meaning and value, of inquiring as best one can into the truth of the matter, and of ordering one's life on the basis of a reasonable judgment."[80] George then quotes Finnis to support his point:

> As Finnis explains, 'if there is a transcendent origin of the universal order-of-things and of human freedom and reason, then one's life and actions are in fundamental disorder if they are not brought, as best one can, into some order of harmony with whatever can be known or surmised about that transcendent other and its lasting order.' Religion is a basic reason for action then, inasmuch as one has reason, even without appeal to ulterior reasons, to ascertain the truth about ultimate or divine realities and, if possible, to establish 'peace with God, or the gods, or some non-theistic but more-than human source of meaning and value.'[81]

The good of religion is simultaneously theoretical and practical. It combines (1) a search for the "transcendent origin of the universal order-of-things" and (2) the re-orientation of one's life to "establish 'peace with God.'" As George's formulation suggests, the good of religion involves both "inquiring…into the truth of the matter" and "ordering one's life" on the basis of those discoveries.

The NNL often designates this combination of the theoretical and practical as the "religious quest." In "Liberty and Conscience," George describes the good of religion by invoking the religious quest:

> One begins to realize and participate in this good [of religion] from the moment one begins the quest to understand the more-than-merely-human sources of meaning and value in our world and to live authentically by ordering one's life in line with one's best judgments of the truth in religious matters.
>
> The raising of existential questions, the honest identification of answers, and the fulfilling of what one sincerely believes to be one's duties in the light of those answers are all parts of the human good of religion. And for that reason, respect for a person's well-being, or

[80] "Religious Liberty and Political Morality" 132-3.
[81] Ibid. 133. infra *Natural Rights and Natural Law*, 155.

> more simply respect for the person, demands respect for his flourishing as a seeker of religious truth and as one who lives in line with his best judgments of what is true in spiritual matters. And that, in turn, requires respect for everyone's liberty in the religious quest—the quest to understand religious truth and order one's life in line with it.[82]

The religious quest combines the desire "to understand" with the desire "to live authentically" on the basis of what one investigates. The religious quest is a three-part process, where one first raises existential questions, then attempts to discover the answers, and then reforms one's life so as to harmonize with those answers. The quest is not without risk: neither George nor Finnis want to deny that an "authentic" outcome of the religious quest is atheism or agnosticism. But such possibilities have to be allowed if the religious quest is going to be the kind of adventure that Finnis and George claim. One starts one's participation in the good of religion when one *begins* the religious quest: and this quest begins with the raising of existential questions. So while the ultimate source of meaning in the universe is left in doubt through this formulation, there is an active, individual agency that must choose to begin the quest.

If the NNL basic good of religion is in large part calibrated to the religious quest, then much depends on how self-evident (and how *universal*) the religious quest is taken to be. But the question of self-evidence is best approached indirectly; for now, it is enough to note some similarities between George's account of the good of religion and what has already been said about the classical Christian account of conscience and its use of narrative quests. As MacIntyre describes the narrative quest in *After Virtue*, some of the characteristic features appear to be shared by the NNL religious quest. One feature is the asking and answering of the questions "what is the good for me?" and "what is the good for man?" The "systematic asking of these two questions and the attempt to answer them in deed as well as in word which provide the moral life with its unity.

[82] "Liberty and Conscience," 132-3.

The unity of a human life is the unity of a narrative quest."[83] The asking of questions about the good and the attempt to realize them both in word and deed are central to the narrative quest. This combination of question-asking with a combined theoretical-and-practical orientation is familiar from the NNL's religious quest.

Implied in any account of a quest isthe presence of a *telos* or end towards which the quest is directed. MacIntyre insists that "without some at least partially determinate conception of the final telos there could not be any beginning to a quest."[84] But even though a *telos* is implied in any quest, the quest does not require that the *telos* be explicitly formulated:

> [it] is not at all that of a search for something already adequately characterized, as miners search for gold or geologists for oil…it is in the course of the quest and only through encountering and coping with the various particular harms, dangers, temptations and distractions which provide any quest with its episodes and incidents that the goal of the quest is finally to be understood. A quest is always an education both as to the character of that which is sought and in self-knowledge.[85]

The narrative of the moral life is defined by the necessary presence of a *telos*, taken to be the good for man, the truest meaning of which is disclosed only in the course of the quest itself. The fact that the *telos* of the moral life is only dimly perceived at its beginnings is no argument against this formulation: rather, it is a sign that man's nature is progressive: not in the sense of being infinitely improvable, but rather that it is directed towards certain ends (even if it is not aware of them) and that education is in some way necessarily part of man's nature.

Already, some fault lines can be seen to develop between MacIntyre's and the NNL's accounts of the quest, especially in the sphere of the agent's awareness of the quest and the nature

[83] MacIntyre, *After Virtue*., 218-219.
[84] Ibid., 219
[85] Ibid.

of his active choice to participate. A discussion of these differences is best deferred until a word has been said about the universality of this quest. MacIntyre might merely claim that his account of the quest-narrative is internal to a *particular* Christian-Thomist tradition and should not be understood as a universal feature of all rationality. But for the NNL, claiming that religion is a self-evident basic good, and that the religious quest in large part characterizes the good of religion, is to claim that the religious quest is a universal feature of human practical reason. And on its face, this claim can be contested.

Grisez and Finnis argue that practical reason, in investigating its own workings, discovers all of the basic goods. They are willing to rely on "survey[s] of psychological literature and a comparison with categories of human activity found by anthropologists"[86] to support their conclusions, but they do not rely on social science for *proof* of the basic goods. Finnis, in explaining his method of discovering the basic goods, goes so far as to say:

> It amounts to no more than saying that any sane person is capable of seeing that life, knowledge, fellowship, offspring, and a few other such basic aspects of human existence are, as such, good., i.e., worth having, leaving to one side all particular predicaments and implications, all assessments of relative importance, all moral demands, and in short, all questions of whether and how one is to devote himself to these goods.[87]

The claim, then, is that any sane person will recognize and pursue all of the basic goods, including that of religion—defined in large part by the religious quest. One immediate protest is raised by Russell Hittinger in his *Critique of the New Natural Law*:

> Turning to a good like religion, after the searching criticism of theorists like Hume, Feuerbach, and Freud, is it philosophically advisable simply to posit religion as a basic

[86] Germain Grisez, *Abortion: The Myths, The Realities, and The Arguments* (New York: Corpus Books: 1970), 312. Op. cit, Hittinger, *A Critique of the New Natural Law Theory,* 44.
[87]Finnis, *Natural law and Natural Rights,* 29ff.; op cit *A Critique of the New Natural Law Theory* 46.

> good? Is the commitment to bring one's choices into conformity to the will of God such a transparent good that one operationally refutes oneself in the act of questioning the value?[88]

Hittinger's point is not that the claims of Feuerbach or Freud are indefeasible; but their defeat is predicated on "certain principles established by a philosophy of religion, if not a natural theology."[89] A moral theory like the NNL which appeals to self-evidence while denying the need for a presupposed metaphysical anthropology either *cannot* defeat the claims of the modern skeptics *or* has implicitly smuggled a philosophy of nature in through the back-door.[90] If a basic good like religion is truly a universal constituent of human happiness, how to explain the fact that (in both thought and action) both philosophers and the modern man on the street reject the very good that is supposed to blend thought and action in a unique way by living without the felt need for religion?

There is another problem with the NNL's account of the universality of religion: namely, whether there is a theoretical coherence to all the phenomena grouped under the label "religion."[91] Finnis, in his explanation of the seven basic goods, says, "seventhly, and finally in this list, there is the value of what, since Cicero, we summarily and lamely call 'religion.'"[92] Finnis borrows

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[88] *A Critique of the New Natural Law Theory*, 47.
[89] Ibid.
[90] Hittinger raises this point by questioning how we can distinguish between basic and non-basic goods. "The argument…that each of the basic goods is irreducible and hence incommensurable, still must presuppose a way to distinguish them from nonbasic goods." (Ibid., 47).
[91] Compare, for instance, Joseph Ratzinger on pp 48ff. of *Introduction to Christianity* (San Francisco: Ignatius Press, 2004) "We generally assume rather unthinkingly that 'religion' and 'belief' are always the same thing and that every religion can therefore just as well be described as a 'belief.' But this is true only to a limited extent; many of the other religions have other names for themselves and thus establish different centers of gravity. The Old Testament as a whole classified itself, not as 'belief,' but as 'law.' It is primarily a way of life, in which, to be sure, the act of belief acquires by degrees more and more importance. Again, by *religio* Roman religious feeling understood in practice mainly the observance of certain ritual forms and customs. It was not crucial that there should be an act of faith in the supernatural; even the complete absence of such faith did not imply any disloyalty to this religion. As it was essentially a system of rites, the crucial factor was the careful observance of these. We could go on like this through the whole history of religions…"
[92] Finnis, *Natural Law and Natural Rights*, 89.

"religion" from the Latin "religio" in Cicero's *De Natura Deorum*. In *De Natura Deorum*, "religio" is the proper ritual propitiation of the proper providential gods, for the purpose of Rome's protection. As Cicero makes clear at the opening of *De Natura Deorum*, for "religio" to exist, the gods must exist and be influenced by sacrifices.[93] To what extent the religious quest maps onto the performance of ritualized sacrifice for political safety is obscured by Finnis' and the NNL's claim of religion's universality. There is a significant difference between a search for the right *technique* of influencing the gods (which ritual do I use; which rain dance is appropriate; what *kind* of sacrifice is most appropriate) and a search as to whether the gods exist and are even subject to techniques of control. If, as Eric Voegelin has said, the "anthropological turn" of the axial age discovered a new depth and extension of the human soul,[94] can it be said that the Hericlitan mystical philosopher, contemplating the eternal and ever-kindling fire,[95] is self-evidently engaged in the same project as the priest who in sacrificing to Athena hopes to guarantee Athenian success in battle? It is not immediately apparent that the NNL account of the good of religion retains appropriate theoretical precision by grouping together under the concept of "religion" the religious quest with a long history of cultic and ritualized practices, especially in the movement from concerns about political theology to individual sanctity.

On the other hand, perhaps the NNL account of religion *is* the true account and *does* appropriately identify a similarity between Augustine's "restless heart" and the cultic

[93] Bk. 1, II. (Cicero, Marcus Tullius, and H. Rackham. *De Natura Deorum: Academica*. (Cambridge, MA: Harvard University Press, 1933), 5.). Cicero himself, of course, is not implicated in this popular understanding of *religio*

[94] Voegelin, *New Science of Politics*, 53.

[95] Fragment 37: "This world, which is itself entire, neither one of gods nor men has made. But it was always and is and will be: an ever-living Fire, kindling in part and in part going out." (κόσμον τόνδε, τὸν αὐτὸν ἁπάντων, οὔτε τις θεῶν οὐτε ἀνθρώπων ἐποίησεν, ἀλλ' ἦν ἀεὶ καὶ ἔστιν καὶ ἔσται πῦρ ἀείζωον, ἁπτόμενον μέτρα καὶ ἀποσβεννύμενον μέτρα) (found in Charles H. Khan and Heraclitus. *The Art and Thought of Heraclitus : A New Arrangement and Translation of the Fragments with Literary and Philosophical Commentary*. (Cambridge: Cambridge University Press, 1979), 45. The translation is my own).

performances of ancient Romans and modern Easter Islanders—even if the ancient Romans and modern Islanders would reject that account. Perhaps everyone *is* on a religious quest, even if they do not know it. John Henry Newman himself, in an arresting passage on "natural religion" in the *Grammar of Assent*, articulates the manner in which the historical pagan religions all partook of elements of Christianity.[96] Newman takes this as evidence that they were pointing towards the true religion, even if they did not know it themselves. There is much to be said for this kind of argument; but for this argument to be successfully pursued, it requires both an understanding of teleology and an argument for the retrospective character of rationality, with retrospective understood to emphasize the degree of difference between the things that are "self-evident" to the wise and the things that are "self-evident" to everyone.[97] If the basic good of religion is supposed to be universal *and* self-evident, an account sensitive to rationality's retrospective character is needed.

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[96] Seven elements, specifically: (1) a sense of sin/guilt, which leads to the doctrine of Atonement; (2) an understanding of an alienation of God from man; (3) the omnipresence of religion betokens hope, otherwise despair would prevent the recurrence of religion; (4) prayer; (5) revelation; (6) a concomitant of atonement, vicarious punishment; (7) the doctrine of meritorious intercession. To see how Newman argues for each of these elements' presence in the historic pagan religions, see *Grammar of Assent*, Ch. X, "Natural Religion," 309-317. The section on revelation is especially thought-provoking (pp. 314-5).

[97] Cf, for instance, Aquinas in the I.I. Question 2 Article 1:

> **I answer that,** A thing can be self-evident in either of two ways: on the one hand, self-evident in itself, though not to us; on the other, self-evident in itself, and to us. A proposition is self-evident because the predicate is included in the essence of the subject, as "Man is an animal," for animal is contained in the essence of man. If, therefore the essence of the predicate and subject be known to all, the proposition will be self-evident to all; as is clear with regard to the first principles of demonstration, the terms of which are common things that no one is ignorant of, such as being and non-being, whole and part, and such like. If, however, there are some to whom the essence of the predicate and subject is unknown, the proposition will be self-evident in itself, but not to those who do not know the meaning of the predicate and subject of the proposition. Therefore, it happens, as Boethius says, "that there are some mental concepts self-evident only to the learned, as that incorporeal substances are not in space." Therefore I say that this proposition, "God exists," of itself is self-evident, for the predicate is the same as the subject, because God is His own existence as will be hereafter shown (I:3:4). Now because we do not know the essence of God, the proposition is not self-evident to us; but needs to be demonstrated by things that are more known to us, though less known in their nature — namely, by effects.

The distinction Newman draws between the "creative" and the "critical" powers of reason, sometimes identified as implicit and explicit reason, captures this phenomenon. In his final Oxford University Sermon, Newman points to the difficulty a person has whenever he tries to "trace the history of his own opinions in past years, how baffled he is in the attempt to fix the date of this or that conviction, his system of thought having been all the while in continual, gradual tranquil expansion." What one takes to be a change in opinions is less often an "abrupt revolution, or reaction, or fickleness of mind, but [has] been the birth of an idea, the development, in explicit form, of what was already latent within it."[98] Thirty years later, in the *Grammar of Assent*, Newman offers the example: "of three Protestants, one becomes a Catholic, a second a Unitarian, and a third an unbeliever: how is this?"

> The first becomes a Catholic, because he assented, as a Protestant, to the doctrine of our Lord's divinity, with a real assent and a genuine conviction, and because this certitude, taking possession of his mind, led him on to welcome the Catholic doctrines of the Real Presence and of the *Theotocos*, till his Protestantism fell off from him, and he submitted himself to the Church. The second became a Unitarian, because, proceeding on the principle that Scripture was the rule of faith and that a man's private judgment was its rule of interpretation, and finding that the doctrine of the Nicene and Athanasian Creeds did not follow by logical necessity from the text of Scripture, he said to himself, "The word of God has been made of none effect by the traditions of men," and therefore nothing was left for him but to profess what he considered primitive Christianity, and to become a Humanitarian. The third gradually subsided into infidelity, because he started with the Protestant dogma, cherished in the depths of his nature, that a priesthood was a corruption of the simplicity of the Gospel. First, then, he would protest against the sacrifice of the Mass; next he gave up baptismal regeneration, and the sacramental principle; then he asked himself whether dogmas were not a restraint on Christian liberty as well as sacraments; then came the question, what after all was the use of teachers of religion? why should any one stand between him and his Maker? After a time it struck him, that this obvious question had to be answered by the Apostles, as well as by the Anglican clergy; so he came to the conclusion that the true and only revelation of God to man is that which is written on the heart. This did for a time, and he remained a Deist. But then it occurred to him, that this inward moral law was there within the breast, whether there was a God or not, and that it was a roundabout way of enforcing that law, to say that it came from God, and simply unnecessary, considering it carried with it its own sacred and sovereign authority, as our

[98] John Henry Newman, "Sermon Fifteen: The Theory of Development in Religious Doctrine," *Oxford University Sermons,* 321

> feelings instinctively testified; and when he turned to look at the physical world around him, he really did not see what scientific proof there was there of the Being of God at all, and it seemed to him as if all things would go on quite as well as at present, without that hypothesis as with it; so he dropped it, and became a *purus, putus* Atheist.
>
> Now the world will say, that in these three cases old certitudes were lost, and new were gained; but it is not so: each of the three men started with just one certitude, as he would have himself professed, had he examined himself narrowly; and he carried it out and carried it with him into a new system of belief. He was true to that one conviction from first to last; and on looking back on the past, would perhaps insist upon this, and say he had really been consistent all through, when others made much of his great changes in religious opinion. He has indeed made serious additions to his initial ruling principle, but he has lost no conviction of which he was originally possessed.[99]

Each of these three men were consistent or faithful to their initial religious conviction, though it took a period of time for them to dislodge the serious conviction from accidental accompaniments. Implicit in this account of rationality is an understanding of teleology, that one is moving towards a certain something, *even if* one is only dimly aware of it.

This account of rationality overlaps to a great degree with the account of the narrative quest defended by MacIntyre. Even though a moral quest requires some conception of the *telos*, "it is in the course of the quest and only through encountering and coping with the various particular harms, dangers, temptations and distractions which provide any quest with its episodes and incidents that the goal of the quest is finally to be understood."[100] The *telos* reveals itself in and through the very pursuit of the quest. Quests of this sort can only be pursued in the presence, as has been said already, of "a teacher," and "an obedient trust" that the interpretations and reasons the teacher offers will turn out to be well-grounded "in the light afforded by the understanding of the texts which becomes available only to the transformed self."[101] A pre-rational reordering of the self has to occur before one can have an adequate standard by which to judge. In other words,

[99] *Grammar*, 245ff.
[100] *After Virtue*, 219.
[101] Ibid.

"faith in authority has to precede rational understanding," and "humility is the necessary first step in education or in self education." In opposition to an education in geometry or the deductive sciences, in moral enquiry "we move towards and not from first principles and we discover truth only insofar as we discover the conformity of particulars to the forms in relation to which those particulars become intelligible, a relationship apprehended only by the mind illuminated by God. Rational justification is thus essentially retrospective."[102] So an account of the religious quest that can survive the problems inherent in claiming both universality and self-evidence must take account of the four elements delineated above in the explication of the conscience: (1) tradition, (2) authority, (3) practical virtue, and (4) narrative.[103]

It is uncertain whether the NNL's account of practical rationality is adequate to this challenge. Even if it is the case that everyone is on a religious quest, it is much less clear that everyone *knows* that they are on such a quest. The NNL's account of the basic goods appear to require not only the presence of the quest but also the seemingly reflexive and self-evident knowledge that one is *on* this quest. Otherwise, religion could not be considered a basic good which every "sane" person recognizes as self-evidently good.

Newman, in this instance, appears much more on the side of MacIntyre than the NNL. Newman would not deny that human life contains something like a "religious quest," but he would never describe it in terms redolent (as George does) of Mill's *On Liberty*. Even if human lives are a religious quest, the quest is never intentionally and freely chosen.[104] Newman's description of

[102] Ibid., 84.
[103] See Ch. 1 on conscience and narrative, esp. pp. 54.
[104] MacIntyre himself had taken his bearings from medieval quest literature, whose paradigmatic quests are fallen into and inherited instead of freely chosen and consented to. In *Gawain and the Green Knight*, for instance, Gawain does not *choose* to begin his quest. He chooses to defend the dignity of King Arthur's table when the Green Knight appears (though he had already implicitly agreed to the terms by being a part of Arthur's table). His quest is a natural consequence of that action, but Gawain is drawn into the quest (rather than choosing it). In *The Song of*

the three Protestants illustrates how one's deepest principles are difficult to discover and only disclose themselves with time. One is not inconsistent or "historical"; it is difficult to know oneself. Newman would not refuse the idea of a religious quest, but he would claim that it is a prideful mischaracterization to assume that one can even *choose* to begin it, or that one could ever so organize one's thoughts and circumstances so as to have an *uninfluenced* (or even uncoerced?) quest. Whenever Newman described the journey or adventure or quest of the moral life,[105] the

Roland, Roland's heroic sacrifice is compelled by the treachery of Ganelon. The same can be said of both the *Odyssey* and the *Aeneid*, the two classical quest narratives. Odysseus pledged himself to Menelaus: his quest to return home is never "chosen." Nor Aeneas' journey to found Rome. He is constrained by the sack of Troy and his devotion to his father to seek a new land. To describe Aeneas' "choice" is to misrepresent the phenomenon. Even the absurd Enlightenment *Candide* journeys by way of accident and happenstance. Perhaps popular literature best portrays the quest. In Tolkien's novels, Bilbo Baggins ends up on his journey almost unintentionally. It is only because of his *trust* of someone like Gandalf (and Gandalf's prudential judgment about how to send Bilbo off *against his own will*) that Bilbo ever gets going. And the journey that he takes reveals its real meaning only slowly—and in ways that could never be known or chosen at the outset. The same is true for his heir, Frodo. Frodo's "quest" is a consequence of his inheritance. It appears that the "religious quest" that George describes has very little to do with the history of literary quests. The best analogue for George may be the Western frontier story, where one sets off into the unknown.

[105] For instance, here from the sermon "Personal Influence" (*Oxford University Sermons*, 80):

> We will suppose this Teacher of the Truth so circumstanced as One alone among the sons of Adam has ever been, such a one as has never transgressed his sense of duty, but from his earliest childhood upwards has been only engaged in increasing and perfecting the light originally given him. In him the knowledge and power of acting rightly have kept pace with the enlargement of his duties, and his inward convictions of Truth with the successive temptations opening upon him from without to wander from it. Other men are surprised and overset by the sudden weight of circumstances against which they have not provided; or, losing step, they strain and discompose their faculties in the effort, even though successful, to recover themselves; or they attempt to discriminate for themselves between little and great breaches of the law of conscience, and allow themselves in what they consider the former; thus falling down precipices (as I may say) when they meant to descend an easy step, recoverable the next moment. Hence it is that, in a short time, those who started on one line make such different progress, and diverge in so many directions. Their conscience still speaks, but having been trifled with, it does not tell {81} truly; it equivocates, or is irregular. Whereas in him who is faithful to his own divinely implanted nature, the faint light of Truth dawns continually brighter; the shadows which at first troubled it, the unreal shapes created by its own twilight-state, vanish; what was as uncertain as mere feeling, and could not be distinguished from a fancy except by the commanding urgency of its voice, becomes fixed and definite, and strengthening into principle, it at the same time developes into habit. As fresh and fresh duties arise, or fresh and fresh faculties are brought into action, they are at once absorbed into the existing inward system, and take their appropriate place in it. Doubtless beings, disobedient as most of us, from our youth up, cannot comprehend even the early attainments of one who thus grows in wisdom as truly as he grows in stature; who has no antagonist principles unsettling each other—no errors to unlearn; though something is suggested to our imagination by that passage in the history of our Blessed Lord, when at twelve years old He went up with His parents to the Temple. And still less able are we to understand the state of such a mind, when it had passed through the temptations peculiar to youth and manhood, and had driven Satan from him in very despair.

most fundamental reality was a sense of obligation. A superior, dimly perceived, was enjoining a duty. The adventure consisted in clarifying that internal voice:

> Thus a man is at once thrown out of himself, by the very Voice which speaks within him; and while he rules his heart and conduct by his inward sense of right and wrong, not by the maxims of the external world, still that inward sense does not allow him to rest in itself, but sends him forth again from home to seek abroad for Him who has put His Word in him[106]

George's religious quest begins with the question: are there any metaphysical or religious realities out there, such that if discovered, might enjoin some duty on me? For Newman, that beginning is already distorted by self-will. One can of course come to true and dutiful conclusions from George's quest, but on Newman's telling it would only come about through a process of *repudiating* one's own supposed starting point.

One might notice the difference here between the modern and the pre-modern orientation towards politics. Moderns, from Machiavelli onward, turned man away from his ends and towards his beginnings, and made politics the study of how to secure a solid foundation from which to build a decent regime. One can see this preoccupation in the recourse to "states of nature" in Hobbes, Locke, and Rousseau. Everything depends on a proper understanding of the beginnings—beginnings which were initially free. There is, of course, no desire to return to the state of nature, but political judgments ought to be informed primarily by these beginnings rather than by some end, which either cannot be known (Hobbes, Locke) or if it exists at all, exists as a nebulous "freedom" or ability to be one's own legislator (Rousseau, Kant). George's modern "religious quest" similarly emphasizes the need for free beginnings if the quest is to be successfully pursued.

[106] "Faith without Sight," *Parochial and Plain Sermons*, 18.

George might well protest that he is concerned about "ends" as well: whereas Finnis sees the good of politics as only instrumental, George himself is willing to acknowledge that there are real goods towards which politics can be directed. But by making the language of rights so central to his explication of the moral phenomena, George cannot help but make it appear as if the religious quest is something that each person *chooses* to begin on his own. And by asserting the centrality of the *right* to the religious quest, understood as the freedom to investigate and ask questions, George makes it appear that—if certain conditions are not met—then the religious quest cannot be pursued.[107]

Newman, on the other hand, is always concerned with the end or the goal of the quest—namely, God. God of course turns out to be both the beginning and the end of the quest, since the quest begins in the felt obedience within the conscience. But since God is not only the end but the beginning, and since the Church exists to supply the "echo of the voice of God" in the conscience is so easily obscured, there can never be—on Newman's account—any moment where a position of freedom as described by George can be secured. The difference may be put as follows: for George, one can say, "Now I begin my religious quest." For Newman, one can only say, "Now I *realize* I've been on a religious quest my whole life."[108]

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[107] One sees this in George's mistaken critique of MacIntyre, where George wonders why MacIntyre hasn't taken account of the case where someone is trying to decide *which* tradition to give his allegiance to. MacIntyre, of course, would say that this is the self-presentation of someone within the liberal tradition who is deluded about his supposed freedom from all traditional constraints. For MacIntyre and for Newman, freedom is an achievement growing out of particular traditional commitments: one cannot ever achieve something like freedom if one is committed to describing his "initial position," as it were, as one of freedom. (see, for instance, Newman's *Grammar of Assent*, Ch. 4, Section 2 on Credence).

[108] Newman's account seems more in line with the classical Christian tradition than the NNL's. Augustine's *Confessions* is the locus classicus: Augustine's religious quest doesn't begin when he converts to Manicheism. It's either life-long, or it begins early, with something like the episode of stealing the pears. But Augustine doesn't *realize at the time* that the theft of the pears is a significant event in his religious quest—what makes the theft so significant, in fact, is that it seems so mundane. Augustine's account of the religious life is very difficult to explicate in the terms of the NNL's religious quest.

Conclusion

Modern rights doctrines, severed from the supervening orders characteristic of ancient and medieval predecessors, have a strong tendency towards over-emphasizing the autonomy of the individual conscience. For pre-moderns (including Newman) conscience was, as Russell Hittinger has said, "a normed norm."[109] Conscience undoubtedly legislated—it was the echo of the voice of God as lawgiver—but it did not legislate on its own authority.[110] But when rights replaced duties as the primary moral counter and assumed a new "inviolability" and "inalienability," it was almost necessary for the definition of conscience to change. For characteristic moderns like Hobbes and Locke, the redefinition of the terms of the traditional moral language was an explicit aim.[111] Newman himself recognized the "resolute warfare"[112] of philosophers and public men against conscience traditionally understood—and intended his own account of the rights of conscience to be a sally from the other side. For Newman, rights of conscience were not universal, inalienable, and self-evident. They were the product of reflection, education, and moral cultivation. They were no solid foundation for a political edifice, but the rare fruit of a sustained effort. And insofar as Robert George's New Natural Law retains the centrality of a language of inalienable rights, it will continue to mis-characterize Newman's project.[113]

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[109] "The Natural Law as 'Law,'" *The First Grace*, 49.
[110] Aquinas—I.II. 90, Art II.; Hittinger, "The Natural Law as Law"; *Grammar of Assent,* 107; *Letter to the Duke of Norfolk*, 246-7..
[111] See above, also Mark Shiffman's recent article, "3. Leviathan's Reconquest of the Christian Person for the State". *Civil Religion in Modern Political Philosophy: Machiavelli to Tocqueville*, edited by Steven Frankel and Martin D. Yaffe, University Park, USA: Penn State University Press, 2021, pp. 53-69
[112] *Letter*, 249.
[113] Nevertheless, at this point, one might well wonder how an understanding of rights and duties such as Newman's could ever be actualized politically. Does not Robert George's "rereading" of Newman's arguments have the advantage of the possibility of political implementation? George's Newman could easily fit into the ranks of those arguing for 1st amendment religious liberty. And for Newman's other liberal readers, does it not make more sense to

Though Newman used the terms liberty, right, and conscience, he never established anything like a right of religious liberty as understood in the modern sense. In addition to the arguments presented in this chapter, there is an even clearer sign that Newman would reject George's appropriation: in the *Letter*, Newman put forward a version of George's argument in order to explicitly reject it. Newman's argument is excerpted below:

> We Catholics, on our part, are denied liberty of our religion by English law in various ways, but we do not complain, because a limit must be put to even innocent liberties, and we acquiesce in it for the social compensations which we gain on the whole. Our school boys cannot play cricket on Sunday, not even in country places, for fear of being taken before a magistrate and fined. In Scotland we cannot play music on Sundays. Here we cannot sound a bell for church. I have had before now a lawyer's authority for saying that a religious procession is illegal even within our own premises. Till the last year or two we could not call our Bishops by the titles which our Religion gave them. A mandate from the Home Secretary obliged us to put off our cassocks when we went out of doors. We are forced to pay rates for the establishment of secular schools which we cannot use, and then we have to find means over again for building schools of our own. Why is not all this as much an outrage on our conscience as the prohibition upon Protestants at Rome, Naples, and Malaga, before the late political changes—(not, to hold their services in a private house, or in the ambassador's, or outside the walls),—but to flaunt them in public and thereby to irritate the natives? Mr. Gladstone seems to think it is monstrous for the Holy See to sanction such a prohibition. If so, may we not call upon him to gain for us in Birmingham "the free exercise of our religion," in making a circuit of the streets in our vestments, and chanting the "*Pange Lingua*," and the protection of the police against the mob which would be sure to gather round us—particularly since we are English born, whereas the Protestants at Malaga or Naples were foreigners. But we have the good sense neither to feel such disabilities a hardship, nor to protest against them as a grievance.[114]

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speak of a universally-granted right of religious liberty than to demand that the state peer into each individual's heart to determine how well he has conquered a prideful self-will? These responses would be unanswerable if not for the fact that they rested on a category error. Newman's defense of the freedom of conscience is explicitly a *religious* defense meant to describe the appropriate relationship between the individual believer and the Church. Never does he make the claim that his146escriptiion of the rights of conscience is or ought to be enshrined *politically*. This seems to be a great and nearly unanimous mistake among scholars of Newman's political thought: to put it another way, while the Second Vatican Council may have made religious liberty the cornerstone of Catholic political thought, there is little evidence within the *Letter* that Newman made it the cornerstone of *his*. And such a mistake seems doubly blamable because Newman puts forward, within the *Letter to the Duke of Norfolk*, a distinctly *political* teaching, though it may not be so easy to see. This political teaching, however, does not proceed along modern lines either, but makes use of a prudence that judges the political good according to the nature of the political regime. And it also makes use of a prudential or "economical" mode of writing which has contributed to its being overlooked by scholars, though Newman gives his readers enough hints to be aware of it.

[114] *Letter,* 270-1.

Catholics in England were under all sorts of disabilities, so much so that they could find their situation untenable if it were considered according to principles of "the free exercise of…religion." But even while admitting that (according to modern claims of right) an injustice has been perpetrated, Newman judged the political position of Catholics to be endurable. It was the "good sense" of English Catholics to see that even being "denied liberty of our religion by English laws" was no hardship in light of "the social compensations which we gain on the whole." This political judgment refused the conclusion of modern inalienable natural rights. But if not modern natural rights, what then was the proper standard of judgment?

One could think that, even if Newman abjured the argument from the abstract right of religious liberty, he still argued from modern political principles. Immediately before the above passage, Newman quoted the venerable English jurist Sir William Blackstone in support of the premise that "the very idea of political society is based upon the principle that each member of it gives up a portion of his natural liberty for advantages which are greater than that liberty," and that such a relinquishment was "for the sake of a common security."[115] Undeniably, this has certain Hobbesian/Lockean overtones where a full natural liberty is relinquished for a greater security. The question, though, is how those "advantages" or "social compensations" were conceived for which the liberty was renounced: if the advantages were accounted according to utility or self-interest rightly understood, then Newman's argument would appear thoroughly modern. In other words, if by "advantages" and "social compensations" Newman meant something like "it is

[115] Ibid., 269-70.

advantageous to respect everyone's rights so that my own will be protected," Newman's argument would still proceed along modern lines.[116]

But it is not so. The social compensations were not the results of a calculus about self-preservation or about utility: the political necessities of the Church were very different indeed. In an earlier section of the *Letter*, Newman had reminded his reader what was "necessary" "in these bad times" "for all Catholics to recollect": the "doctrine of the Church's individuality and, as it were, personality, is not a mere received opinion or understanding, which may be entertained or not, as we please, but is a fundamental, necessary truth."[117] The church was not a private association constructed merely by the consent of its members; rather it was "a visible polity,"[118] with "one and the same structure of laws, rites, rules of government, independency, everywhere."[119] When one made political judgments about the Church's relation to the political authorities, one did not judge according to the "free exercise" of an *individual* private right to religious liberty; rather one determined whether the Church was able to preserve its form of *polity*, its life, and its personality. The "good sense" of English Catholics acknowledged the hardships under which they labored, but while the taxes to support secular schools and the abolishment of public religious processions may violate an individual right, they nevertheless did not prevent the

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[116] As the last chapter argued, pre-modern natural right was always circumscribed by a supervening order (whether natural or supernatural). Modern natural right, on the other hand, is only circumscribed by a calculus about reciprocity. One sees the distinction clearly in the shift occurring around the concept of the common good. For pre-modern thought, the common good was an end towards which the entire political body was directed; for modern thought, the common good has a tendency to be either ignored or re-interpreted as the set of "conditions" that will best allow for each individual to pursue his own private goods.

[117] *Letter,* 236.

[118] Ibid. Contrast this with Newman's description of the Anglican Church in *Certain Difficulties Felt by Anglicans in Catholic Teaching, Volume 1*(London: Longmans, Green, and Co:, 1901):

> We see in the English Church, I will not merely say, no descent from the first ages, and no relationship to the Church in other lands, but we see no body politic of any kind; we see nothing more or less than an establishment, a department of government, or a function or operation of the State—without a substance,—a mere collection of officials, depending on and living on the supreme civil power. Its unity and personality are gone, and with them its power of exciting feelings of any kind. It is easier to love or hate an abstraction than so tangible a frame-work or machinery.(6-7)

[119] Ibid.

Church from maintaining its internal discipline, regimen, and –most importantly—its personality.[120] Newman's political judgment did not take as the primary political counter something like individual rights; instead, he looked to the preservation of what might be called the reality of the Church as something greater than the sum of its individual members. Newman's claim, then, was that to subject the current political situation to an analysis on the basis of rights was to *mis*-represent the character of the Church. It obscured the reality of the personality of the institution.

[120] Especially if the Church's personality consists (in part) in being able and ready to bear up under persecution, especially persecution understood through a scriptural hermeneutic—an argument the rest of this chapter will develop.

CHAPTER IV: PERSONALITY, PLURALISM AND THE ABSENCE OF ANY POLITICAL THEORY IN *THE LETTER TO THE DUKE OF NORFOLK* AND NEWMAN'S WIDER POLITICAL WRITINGS

Introduction

Forty years after the fact, in reflecting on what led so many members of the Oxford Movement to join the Catholic Church, John Henry Newman identified a shared principle of political theory between Oxford and Rome. Both retained a "thick" conception of human institutions which resisted the reduction of those institutions to the mere summation of the individual wills of their members. For Newman and the Tractarians, of course, the institution *par excellence* was the Church: and the contrast between the Anglican language of "establishment" and traditional Catholic devotion towards the Church constituted a "luminous fact" for many Tractarians who were groping for a way to speak of the Church *herself* as having "a claim on their love and obedience."[1]

The political and social history of the 19th century compelled both the Catholic Church and the Oxford Movement to reflect seriously on the social ontology of institutions. In order to confront the mid-century liberal revolutions, the ascendency of the nation-state, and the long shadow of Hobbesian sovereignty, the Catholic Church required an explicit defense of its traditional devotion, and Catholic social thought resurrected an Aristotelian-Thomistic language of social ontology.[2] Against a tendency to obscure every social reality which was neither the state nor the individual, the Leonine social encyclicals defended the corporate personhood of

[1] Newman, *Letter,* 198.
[2] For a comprehensive account of this social ontology, its roots in Aristotelian-Thomist metaphysics, and its re-emergence in papal documents of the 19th century, see Russell Hittinger, "The Coherence of the Four Basic Principles of Catholic Social Doctrine, An Interpretation," *Nova et Vetera* 7, No. 4 (2009): 791-838.

intermediary institutions. This had the double effect of protecting the Church from a deflation to the status of (in Locke's words) a "voluntary society"[3] while also enumerating a robust account of subsidiarity and the common good, whereby society comprised not only individuals but also multiple, overlapping institutions with a *unitas ordinis* or personality.[4] The ultimate result was the first explicit theory of political pluralism.

The Oxford Movement's theorization was much more limited in scope, even if it responded to similar events. The Movement began in no small part as a reaction to Parliament's suppression of Church of England bishoprics in Ireland: neither Newman nor the other early Tractarians denied that the bishoprics were corrupt, but they objected to Parliament taking it on itself to make or unmake portions of the Anglican Church. As Newman recounted, the "Tracts for the Times were founded on a deadly antagonism to what in these last centuries has been called Erastianism;"[5] that is, the quasi-Hobbesian account of institutions and sovereignty that conceived of the Church as merely a creation of the state and drained it of any substantial content. The theoretical weakness of Erastianism could be safely ignored while Parliament was considered the Church of England in session.[6] Once the liberalization of the vote allowed non-jurors, Catholics, and evangelicals to sit in Parliament, however, it became clear that a Unitarian could have a greater power to reform the

[3] John Locke, "A Letter Concerning Toleration,"13.
[4] The category of *unitas ordinis* was brought forward "to avoid the extremes of nineteenth century social thought." Society is neither a super-individual having a single mind or will (as on the model of Rousseau) nor "a purely accidental unity ensuing upon the choices and actions of individuals who follow their own preferences" (as on the model of the political economists). Instead, society is constituted in relation to an intrinsic common good. This intrinsic common good takes cognizance not only of individuals but also the plural societies to which those individuals belong. The common good coordinates but does not suppress the intrinsic common goods possessed by subsidiary societies (e.g., matrimony, a church, or a team). Such subsidiary societies are properly and legally termed "group persons" because they retain a *unity of order* distinct from either substantial unity or mere partnership. By relying on this social ontology, the Leonine encyclicals could both defend the Church as a *societas perfecta* and present a natural-law (i.e., non-socialist) defense of labor organization. Leo saw clearly that the Church needed political or sociological concepts that 19th century liberal theory did not have at its disposal.
[5] Newman, *Letter*, 198.
[6] As with Richard Hooker's *Ecclesiastical Polity*.

Anglican Church than her own bishops. If the Anglican Church was to be true to its apostolical claims, it needed some way to secure an independent existence.

Neither Newman nor the larger Oxford Movement had access to the Aristotelian-Thomistic language of unities of order, which found its full expression in the social encyclicals of the 1890's. Tractarian Newman arrived too soon. The Oxford Movement's political and ecclesial meditations could be described the same way Newman spoke of his Oxford University Sermons: they were conducted "with no aid from Anglican, and no knowledge of Catholic theologians."[7] The only resources at hand were Scripture, the Fathers, and Newman's idiosyncratic empiricism that constantly refused the dogmatic assumptions of Locke and Hume.[8] What resulted was a serious meditation on a simple question that developed over Newman's Anglican and Catholic periods: what would it mean to think of the Church as the Bride of Christ? Not *as if* it were, but *as*?

In an inchoate way, without the aid of a scholastic account of corporate personhood, this deceptively simple question summed up the theologico-political concerns of Newman and the Oxford Movement. The Movement was not drawn to the pre-encyclical Catholic Church through any particular argument or theory. Rather, it was through a shared *devotion* to the idea that "the Church [was] a divine creation…the Ark of Salvation, the Oracle of Truth, the Bride of Christ."[9] Both Oxford and Rome held that the Church was an object of "love and obedience" because the Church—and not merely her members—possessed the characteristic of holiness. Oxford moved towards Rome because it found in Rome a devotion to the Church herself.

[7] Newman, Sermons 9 and 10, *Oxford University Sermons*
[8] John Milbank, "What is Living and What is Dead in the *Grammar of Assent," The Future of Love: Essays in Political Theology* (London: SCM Press, 2009): 36-60.
[9] Newman, *Letter,* 198-199.

The dominant political discourse of early-19th century Anglicanism was unable to describe this phenomenon, and the Anglican establishment was unable to think of itself in these more substantial terms. Newman was compelled to strike out on his own, and he developed a language to describe the holiness and substantial personhood of the Church by means of a paradox: the Church, as an institution, had the power of personal influence (which Newman called its "personality"); and the Church's holiness was no sum total of its members' sanctity but a distinct characteristic of a *personal* institution.

This chapter will investigate Newman's concept of institutional personality, which lies at the root of what will be called his "Alexandrian hermeneutic" for political and cultural concerns. Institutional personality has generally been under-appreciated in the scholarly analysis of Newman's thought, though it has occasionally been characterized as Newman's nascent attempt at political pluralism. Newman tended to treat institutions *as if* they were persons, but he reserved the term itself for the Catholic Church (with the occasional exception of a Catholic university). Personality was an evaluative rather than a descriptive concept, and to claim that the Church had a personality was really to insist that it possessed a *perfected* personality; other institutions were characterized by defective personalities. Newman's institutional personality allowed the Church to inspire veneration and loyalty, retain a unity, and perdure over time. Its continuity over time allowed for its past history—specifically biblical and ecclesiastical sacred history—to be a relevant hermeneutic for contemporary political problems. But this "Alexandrian hermeneutic" was deeply antithetical to liberal pluralism, such that Newman's account of personality undermines a pluralist account of politics. Newman was concerned with corporate personality not in order to develop a particular political theory or policy prescription, but rather to re-work the classical city-soul

analogy into that of the church-soul. The Church was the model to which a soul ought to conform itself.

The Scholarly Appraisal of Newman's Pluralism

Not interests and rights but images and relationships governed Newman's judgments about the political position of the Church. To begin a political investigation of the Church with a question like, "Are the Church's interests and rights protected—or rather, are the interests and rights of her members protected?" was to ask the wrong kind of question. For Newman, what was of pre-eminent political importance was that the Church retain a hold on its members' imaginations as something greater than, or not reducible to—or perhaps more precisely, not *comprehensible* by—the modern rights analysis. The Church was to be understood not only as a supernatural association that transcended the political realm, but also as an association that retained the characteristics usually attributed to persons.[10] Newman began his political reflections in the *Letter* not by asking about interests and rights, but by wondering whether the Church could still be seen as having a personality.[11] But what was implicated in such a question?

The *Letter*'s concern with the "personality" of the Church has sometimes been seen as a groping towards a theory of pluralism or of the "pluralist state." Harold Laski used Newman's *Letter* as a source for his theory of a pluralist state, and Laski and the English pluralist school in

[10] This characterization of the Church can be found throughout Newman's *Parochial and Plain Sermons*, especially in "The Church, a Home for the Lonely," "The Glory of the Christian Church," "The Church Visible and Invisible." The metaphors are familiar, the Church as Bride of Christ, the Church as Mother—but Newman takes them seriously as analogies and types.

[11] See *Letter,* 236: what was "necessary" "in these bad times" "for all Catholics to recollect "was the "doctrine of the Church's individuality and, as it were, personality, is not a mere received opinion or understanding, which may be entertained or not, as we please, but is a fundamental, necessary truth."[11]

the early 20th century[12] brought pluralism forward for the first time as an explicit concept in secular[13] political theory (though, of course, the political question of the relation of the parts to the whole was at least as old as Plato's reflections in Books III-V of the *Republic*). The 1917 *Studies in the Problem of Sovereignty* explicitly claimed Newman's *Letter to the Duke of Norfolk* as a pluralist work since it contained "the profoundest discussion" of pluralism and sovereignty. This combination—pluralism and sovereignty—was at the heart of the issue, since the English pluralist school developed its theory of pluralism as a critical response to Thomas Hobbes' account of sovereignty in the *Leviathan* and the subsequent developments, culminating in what Laski would call the "Hegelian" account of state sovereignty. However, as chapters two and three have argued, Laski's Hobbesian attack on Hobbesian principles[14] compelled him to misinterpret Newman and foreshadowed the uncertainty of a pluralism that roots itself in the sovereignty (or, in as many words, the inalienable rights-bearing) of the individual.

These same tensions are present in the most recent analysis[15] of Newman's pluralism as conducted by David Nichols. Nichols has argued that Newman "contributed in important ways" to the development of the pluralist state,[16] the three principles of which Nichols summarizes:

> In the first place it is a state in which there is a considerable degree of liberty, where the government does not control and does not attempt to control, every aspect of the life of the citizen. Furthermore it is a state in which this liberty is guaranteed and maintained by a dispersion of power throughout the community. It is not merely liberal, it is anti-despotic.

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[12] Specifically in the works of Harold Laski, Edmund Figgis, and F.W. Maitland; all of whom were influenced by the German legal scholar Otto von Gierke.
[13] As mentioned above, the Church's "common good" pluralism rooted in *Rerum Novarum* was either contemporaneous or immediately prior to the English Pluralist School's developments.
[14] See esp., pp. 68 of Ch., 2 where it is argued that Laski was compelled to use a Hobbesian account of the non-rational individual in order to oppose the Hobbesian real personality of the Leviathan
[15] In between Laski and Nichols, Alvin Ryan has suggested that Newman saw the resolution to the problem of church and state involved an acceptance of "the principle of pluralism."
[16] David Nicholls, "Gladstone, Newman, and the Politics of Pluralism," in *Newman and Gladstone: Centennial Essays*, James D. Bastable ed. (Dublin: Veritas Publications, 1978), 28. Nichols uses "pluralist state" and "secular state" synonymously on pp 28.

> Secondly, it acknowledges the right of groups to exist within it, as self-governing, semi-autonomous entities, possessing a life and a 'personality' which is recognized by law but which is not created by the state.
>
> Thirdly the pluralist state does not claim, and is not believed by its members to possess, sovereignty, in the moral, political nor even in the legal sense. Such absolute supremacy is possessed by no human institution.[17]

According to Nichols, Newman's contribution to pluralist thought related especially to the second principle, the rights of "self-governing, semi-autonomous entities." Newman "insisted upon the corporate status of churches, seeing them as distinct from…the state," an insight that sprang originally from Newman's association with "the Oxford Movement."[18] Nevertheless, Newman's "heresy of identifying the institutional church with the heavenly kingdom"[19] kept Newman from realizing the full insights of pluralism, since his preference for the Roman church might "conflict with the rights of other groups, as conceived of by pluralists."[20] At the very least, Newman was able to recognize the danger of a liberalism that, in asserting and protecting only the rights of individuals, dissolved the corporate status of associations distinct from the state. His failure, on

[17] Ibid., 27.
[18] Ibid., 29.
[19] Ibid., 37, n. 19.
[20] Ibid.

Nichols' reading,[21] consisted in refusing to apply more broadly the corporate freedom due the Catholic Church, to *all* "groups…possessing a life and a 'personality.'"[2223]

A more careful reading of Newman's arguments within the *Letter* will reveal an alternate possibility, for a complete pluralist account of politics was never Newman's project. Whatever the merits of pluralism generally, Newman's work within the *Letter* did not appeal to it. It may be, as Nichols says, that pluralism wants to protect "the right of groups to exist within it, as self-governing, semi-autonomous entities, possessing a life and a 'personality'," but Newman was concerned only about the personality of the Church (a point of continuity between his Anglican and Catholic worlds) . Even if one understands Newman to be allied with the pluralism as described in the Leonine social encyclicals, he did not rely on the scholastic language of a *societas perfecta*, which was self-sufficient to the ends it pursued. Newman turned instead to biblical analogy and salvation history, to an Alexandrian hermeneutic.

The Personality of the Church, in Oxford and Rome.

[21] Nichols' first and third principles presuppose an account of justice grounded in modern natural rights. How can the "considerable degree of liberty" of citizens be "guaranteed" if not via a conceptualization of inherent individual rights, whatever their grounding (self-preservation, rationality, dignity, etc.)? Or, if not in the conceptualization of inherent rights, at least in the *denial* of anything like a natural order of justice, which ultimately amounts to the same thing. And how can the state renounce sovereignty except by depositing that sovereignty ultimately in the consciences of its individual members (which, as has been argued, is how Laski uses Newman to found his "pluralist state")? Unless the associations mentioned in the second principle are devalued so that they are understood to exist only because they are the most *efficient* means of preserving the primary liberties, it is hard to see how the second principle can co-exist with the first and the third.

[22] Ibid., 27. One can also subsume a remainder of the Turner School's analysis under this critique, according to which Newman *resisted* the liberalism he later pretended to claim to support because he was concerned with the pre-eminence of the Anglican Church, and his failure to recognize other personal institutions was an indication of his "theocratic ideal."

[23] One difficulty in judging whether such scholarship was faithful to Newman's thought arises from the fact that the word pluralism itself can be used to indicate anything from a defense of local political associations to metaphysical claims about incommensurability of values. Another difficulty is that Nichols' description of the three principles of a pluralist state incorporate a number of different strands of pluralist thought, some of which are in tension with one another.

Newman often spoke of institutions in personal terms. In the *Apologia*, when he re-narrated his life at the time he was writing the *Arians*, he said of himself:

> I considered there was a middle race, [*daimonia*], neither in heaven, nor in hell; partially fallen, capricious, wayward; noble or crafty, benevolent or malicious, as the case might be. These beings gave a sort of inspiration or intelligence to races, nations, and classes of men. Hence the action of bodies politic and associations, which is often so different from that of the individuals who compose them. Hence the character and the instinct of states and governments, of religious communities and communions. I thought these assemblages had their life in certain unseen Powers. My preference of the Personal to the Abstract would naturally lead me to this view.[24]

Insofar as the institution seems to possess some characteristic that could not be easily reduced to the individual wills of its members, Newman searched for "personal" language to describe the phenomenon. Similarly, in the *Idea* he asserted that any group of persons living in one place for a certain length of time would develop a characteristic *genius loci* communicated from one to another by the fact of their living together.[25] And in the *Development of Doctrine*, when speaking of the interaction between ideas and minds, Newman made clear that institutions were more than just assemblages of individuals; there is some characteristic quality about the group as well.[26] Throughout his writings, Newman had a tendency to treat institutions *as if* they are persons.

This manner of viewing human association culminated in the term "personality," although it is important to note that Newman used this term only to describe the institution of the Catholic Church. Newman's general tendency to describe institutions in personal terms never caused him to ascribe a personality to them. Only the church received this attribution—except for a single instance in the suppressed original fifth discourse to the *Idea of a University*, where Newman

[24] Newman, *Apologia,* 28–29.
[25] Newman, *Idea of a University*, 147.
[26] Newman, *Development,* 36ff.

mentioned the personality of a Catholic university, with personality being an analogue for "soul" or Aristotelian "form."[27]

Personality was an exemplary term for Newman, meant both to distinguish the church from other institutions and to analogize it to individuals. Even if other institutions were like persons, the church was like persons in a unique way—or rather, the church was like a particular person (Christ), who perfected human personality. For Newman, "personality" was already evaluative, and the church's personality was the perfected institutional personality. Other institutions did not so much lack a personality as they possessed a deficient personality. In this regard, Newman was much more the Platonist than the Aristotelian.[28]

Newman explicitly ascribed personality to the Church in two works: *On Certain Difficulties Felt by Anglicans* and its sequel, the *Letter to the Duke of Norfolk*.[29] Both works offer a retrospective analysis of the Oxford Movement and explain why the Movement naturally developed towards the Catholic Church. Institutional personality is central to the contrast between the reality of the Catholic Church and the "Erastianism" of the Anglican establishment—Erastianism understood as the idea that the Church is dependent on and a creation of the state. Within the two articles, a church with personality has an existence characterized by independence, the ability to inspire feelings of veneration and loyalty, and an analogical connection to salvation history. The institutional personality of the church allows her to bring her own sacred history (biblical and ecclesial, especially in the analogy of the church to particular persons within that history) into the present as a hermeneutic for contemporary theologico-political concerns.

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[27] John Henry Newman, *Discourses on the Scope and Nature of University Education Addressed to the Catholics of Dublin* (Dublin: James Duffy, 1852), 145.
[28] Because, for Plato in the *Republic*, all of the deficient cities were really not cities at all; whereas Aristotle in his *Politics* was much more willing to grant that the defective forms were still cities.
[29] Also known as *On Certain Difficulties Felt by Anglicans, Vol. 2*

While the ascription of personality to the Church is retrospective, an analysis of Newman's writings as an Anglican reveals a deep consistency in Newman's understanding of the Church. The Anglican writings understand the church to have the characteristics that would coalesce under the rubric of personality. One corollary aim of this chapter will be to argue that in this respect, Newman's thought remained consistent throughout his career, even though he changed communions. Writings of the Catholic Newman in between the publication of *On Certain Difficulties* and the *Letter* are consistent with the Newman of the Oxford Movement as well, though they make clear that while Newman used personality in order to allow sacred history to interpret contemporary theologico-political concerns, he refused to conflate the theological with the political—in other words, political theology.

Certain Difficulties

Personality was deployed for the first time in the *Lectures on Certain Difficulties Felt by Anglicans* in order to contrast the "Erastian" Anglican Church to the Catholic Church. In those 1850 lectures, the newly Catholic Newman reflected on the insights of the Oxford Movement in the 1830s. The Oxford Movement's resistance to Erastianism centered on the possibility that the church could be considered an "object of religious loyalty and veneration;" a characterization impossible to maintain if the Church was merely "one department of the State's operations." Newman took stock of the situation of the established church:

> We see in the English Church, I will not merely say, no descent from the first ages, and no relationship to the Church in other lands, but we see no body politic of any kind; we see nothing more or less than an establishment, a department of government, or a function or operation of the State—without a substance,—a mere collection of officials, depending on

> and living on the supreme civil power. Its unity and personality are gone, and with them its power of exciting feelings of any kind.[30]

The personality of the institution was intimately connected with two functions: 1) it established a line of continuity between the present-day institution and its past antecedents, and 2) it allowed the institution to be an object of excited feelings, of veneration and loyalty. The Erastianism of the Anglican Church consisted in its being turned into (or rather, revealed to have always been) a mere "department of government" without any "unity" or "personality." Newman described the state of the church, now that its personality was gone:

> It is easier to love or hate an abstraction, than so commonplace a framework or mechanism. We regard it neither with anger, nor with aversion, nor with contempt, any more than with respect or interest. It is but one aspect of the State, or mode of civil governance; it is responsible for nothing; it can appropriate neither praise nor blame; but, whatever feeling it raises is to be referred on, by the nature of the case, to the Supreme Power whom it represents, and whose will is its breath. And hence it has no real identity of existence in distinct periods, unless the present Legislature or the present Court can affect to be the offspring and disciple of its predecessor. Nor can it in consequence be said to have any antecedents, or any future; or to live, except in the passing moment. As a thing without a soul, it does not contemplate itself, define its intrinsic constitution, or ascertain its position. It has no traditions; it cannot be said to think; it does not know what it holds, and what it does not; it is not even conscious of its own existence. It has no love for its members, or what are sometimes called its children, nor any instinct whatever, unless attachment to its master, or love of its place, may be so called.[31]

Without unity and personality, the church is incapable of inspiring feelings of veneration and loyalty—how could one love or hate "so commonplace a framework or mechanism"? Moreover, without a personality, "it has no real identity of existence in distinct periods," nor was it even "conscious of its own existence." In which case, it could not possibly serve to bring sacred history into the present, since it had no connection with its own past. It could not even have recourse to its

[30] Newman, *Certain Difficulties felt By Anglicans*, Vol. 1, 6.
[31] Ibid., 6-7.

own divines (to say nothing of an analogy to Israel or the patristic church) as a warrant for its action in the future:

> It will not be able to resist the Arian, Sabellian, or Unitarian heresies now, because Bull or Waterland resisted them a century or two before; nor on the other hand would it be unable to resist them, though its more orthodox theologians were presently to leave it. It will be able to resist them while the State gives the word; it would be unable, when the State forbids it.[32]

Because it had no internal principle of unity, it could not guarantee its own teachings in the future. Its power lay in its total dependence on the state. The Anglican Church *was* an Erastian creation.

Against the Anglican Church, which was dead, was a church with personality: it could inspire veneration and loyalty, retain unity, and perdure over time. Its continuity over time allowed for biblical and ecclesiastical sacred history to be a relevant hermeneutic for contemporary analysis. An Erastian account of the church not only mistook the origin or source of the church's authority but could not conceptualize a human association with the living unity possessed by the church on Newman's terms. Newman's real opponent was a political philosophy that both demoted the status of the teaching the church professed to hold and deflated the ontological or even eschatological status of the church as an institution. Newman and the Movement (as retold by Newman in 1850) understood the church to act and be acted upon *personally*, such that the traditional analogies (like those of the bride of Christ and the woman in Revelation 12:5) point toward the church's unity not merely as an institution composed of its members but as an *object* herself.

[32] Ibid., 8.

The Letter to the Duke of Norfolk

The story is much the same twenty-four years later in the *Letter to the Duke of Norfolk*. Here, Newman's account of the Church's personality and the liberal world's resistance to it occurred in the second section, "The Ancient Church." Newman argued for the fidelity of the contemporary church to its ancient ancestor and invoked his own Oxford Movement as being particularly attuned to the question of the Church's personality. While he referred to some suggestive passages from Keble and Froude[33] and supplemented them with a deft argument, Newman did not give anything like an exhaustive account of the Church's personality. The *Letter* pointed back to the Oxford Movement.

For Newman in the *Letter*, the root cause of Gladstone's reaction against the contemporary papal doctrines was his animadversion to the character and personality of the Church. Even though Gladstone ostensibly inveighed against papal supremacy, "it was not the existence of a Pope, but of a Church; which is [Gladstone's] aversion."[34] Even if "the Christian polity now remained as history represents it to us in the fourth century," before papal centralization, "would politicians have less trouble with 1800 centers of power than they have with one?"[35] The "history of the Church" was "the very embodiment of Apostolical independence…which in the eyes of man is her great offence now."[36] The independence of the Church (whether in one or eighteen-hundred centers of power) rested not on "the task merely of administering spiritual consolation, or of making the sick-bed easy, or of training up good members of society, or of 'serving tables'," but

[33] John Keble (1792 - 1866) and Hurrell Froude (1803 – 1836) were with Newman two of the leaders of the Oxford Movement. Keble's sermon on the suppression of the Irish bishoprics, "National Apostasy" (1831), is widely considered the beginning of the Movement.
[34] Newman, *Letter,* 209-10.
[35] Ibid, with 1800 referring to the number of individual bishoprics.
[36] Ibid., 197.

in the fact that it "has a message to deliver to the world…from the world's Maker, whether men would hear or whether they would forbear."[37] The church was not merely a human association that provided certain secular benefits; but neither was it a human association founded on what might be called a "high ideal." It was "a divine creation, 'not of men, neither by man, but by Jesus Christ,' the Ark of Salvation, the Oracle of Truth, the Bride of Christ, with a message to all men everywhere."[38] It claimed authority and independence because of its divine founding, its divine mission, and its divine character—none of which could be reduced to secular or purely legal language. The claims were understood only when the Church was seen as ark, oracle, and bride (among others).

Gladstone had argued that the Church, in asserting its independence, had "'repudiat[ed] ancient history,'", which Newman took to mean "the ancient history of the Church."[39] But Newman explained in the second section of the *Letter* that it was precisely the Church's *fidelity* to ancient history that is so galling to Gladstone. Moreover, it was this very insight, this very "fidelity to the ancient Christian system"[40] that animated the Oxford Movement. Newman invoked the Oxford Movement's understanding of the Church as a counter to Gladstone's liberalism. What unified the Oxford Movement and the Church of Rome was their shared insight that the Church was a divine creation, with "rights which the State could not touch, and was prone to ignore."[41] Here, in an apparent contrast with what has been argued before, Newman was willing to use a language of rights to make his point: the Church had rights that the state was liable to ignore. But when Newman provided examples of the Oxford Movement's defense of the Church's rights, he

[37] Ibid.
[38]Ibid., 198.
[39] Ibid., 195.
[40] Ibid., 198
[41] Ibid., 199-200.

excerpted passages that argued in a manner entirely different from the modern rights analysis. The Oxford Movement, in Newman's retelling, addressed the political question of the Church's independence by, in a certain sense, avoiding argument—at least in terms familiar to modern arguments about sovereignty and rights. Instead, in the selections from the Oxford Movement which Newman quoted, a very different type of politics emerged, one that was in its fullness not comprehensible by a language of individual rights of religious liberty.

In asserting the Church's independence, the writers of the Oxford Movement (as narrated by Newman)[42] did not make recourse to arguments about rights and interests. Instead, their arguments ran along the axis that considered the Church not a department of state but an object of loyalty and veneration. The very analogies they used—Church as "Ark of Salvation," "Bride of Christ," and the fulfillment of Isaiah's promise—moved the terms of debate away from a mere question of political or civil independence and towards the kind of liberty promised by the Gospel. And the Church was not understood as a mere mechanism by which such liberty is guaranteed to individuals; rather the Church itself was personally involved in the promises and practice thereof.

Newman quoted selections from Keble, Froude, and Bowden to illustrate his point. The first involved Keble's response to a contemporary reviewer who had been shocked by Froude's speaking of the Church of England as being " 'united' to the State as Israel to Egypt."[43] The reviewer chastised Froude, explaining that the Church was not a slave, like Israel to Egypt, but "united as a believing wife to a husband who threatened to apostatize…so the Church must struggle

[42] The writers of the Oxford Movement made occasional reference to rights and interests of the Church. Newman himself did so in *Tracts for the Times* (esp. Tract 2 "The Catholic Church" and Tract 15 "On the Apostolical Succession of the English Church," both penned by Newman himself) and the sermon "The Visible and Invisible Church" (see pp. 178 infra).
[43] *Letter,* 199.

even now, and save, not herself, but the State from the crime of a divorce."[44] Keble's response, which delighted Newman, ran as follows:

> We had thought that the Spouse of the Church was a very different Person from any or all States, and her relation to the State through Him very unlike hers, whose duties are summed up in 'love, service, cherishing, and obedience.' And since the one is exclusively of this world, the other essentially of the eternal world, such an Alliance as the above sentence describes, would have seemed to us, not only fatal but monstrous![45]

Two elements in this exchange are remarkable. The first is Froude's recurrence to salvation history—the Erastianism of the Anglican Church was best illustrated by analogy to Israel's bondage, not by arguments about rights or sovereignty. The second is Keble's related turn to personal and sacramental analogies. Keble's church was a spouse in a substantial sense, but in a marriage re-imagined through the Gospels. Moreover, Keble's riposte succeeded, in a literary and imaginative way, in bringing to the fore the latent Erastian presuppositions of the reviewer. For both Keble and Froude, the political position of the Church could best be defended and explained by a reference to personal characteristics in light of biblical history. Biblical history was not part of a past, that secular political relations can ignore, but was instead always present and always relevant—and never reducible to modern political categories.

Newman also mentioned Froude's translation of Becket's letters and Bowden's life of Hildebrand.[46] Once again, moments of crisis in the relation between spiritual and political authority were brought to contemporary attention through personal narrative history—in this case, the history of the famous English martyr and the Pope who reduced the Holy Roman Emperor to hair-shirted penitence outside of Canossa. In an 1836 letter to Bowden, contemporaneous to the

[44] Ibid.
[45] Ibid.
[46] Ibid., 200, with Hildebrand being the eventual Gregory VII who presided over the Investiture Crisis.

events Newman was re-narrating in the *Letter*, Newman described the purpose of the publication of the aforementioned works and others:

> As to *indirect* inculcation of the Apostolical doctrines, we have begun the Records of the Church with that view. We are printing extracts from Eusebius etc., giving little stories of the Apostles, Fathers etc., to familiarize the imagination of the reader to an *Apostolical state* of the Church.[47]

Being of a mind that the political situation was "returning fast to a state of dissolution," Newman saw the purpose of the Movement "to prepare the public mind for a restoration of the old Apostolic System,"[48] by which he meant a return of an Apostolic rather than an Erastian Church, with all of the apostolic independence and personality previously enumerated. But to prepare the public mind for the restoration of an apostolic and independent church, Newman did not quote Hooker's *Of the Laws of Ecclesiastical Polity* nor re-assert the claims of Filmer in order to oppose a Lockean understanding of politics. Instead of political treatises, Newman and the Movement presented images of a unique institution. Of course, spheres of sovereignty and legal relations would have to be reworked, but what was of the utmost importance was to see the church unshackled from its bondage to the state—or, at least to see that bondage in light of the various servitudes inflicted on Israel as punishment and the various persecutions the church had itself endured throughout its own history. The political independence of the church, Newman and the Movement judged, could not be secured by political and legal arguments.

Of his own writings at the time, Newman made an oblique reference in the *Letter* to "my Whit-Monday and Whit-Tuesday Sermons"[49] as containing a representative sample of thought

[47] November 17, 1833 Letter of John Henry Newman to John William Bowden, *The Letters and Diaries of John Henry Newman,* Volume 4 (Oxford: Clarendon Press, 1980), 109.
[48] Ibid., 110.
[49] *Letter*, 200.

consistent with the Movement. It is not entirely clear to which sermons Newman is referring. No sermons are so titled or grouped by Newman in any of his publications. A study of his journals from the beginning of the Movement in 1833 to his conversion in 1845 reveals that Newman preached a cumulative total of three sermons on Whit-Monday and Whit-Tuesday (the two days after Pentecost, or Whit-Sunday). On Whit-Tuesday of 1839, he preached what became the Oxford University Sermon 12, "Love the Safeguard of Faith"; on Whit-Monday of 1840, he preached a previously composed and often recited sermon 299, "Christian Nobleness"; and on Whit-Tuesday of 1841, he preached Oxford University Sermon 14, "Wisdom as Contrasted with Faith and Bigotry." The two Whit-Tuesday sermons were preached for the first time; the sermon preached on Whit-Monday was constantly returned to by Newman during the 1830's as a sermon for Pentecost itself. None of these sermons directly bear on political issues or the independence of the Church, though they do have occasional comments to the point. Rather, especially in the case of the two Oxford University Sermons, their primary topic of investigation was the relationship of faith to reason, with faith (understood as a rational process which proceeds by presumption and antecedent probabilities rather than syllogism and argument) and wisdom (the philosophical comprehension of Christian mysteries) contrasted with bigotry (the presumed philosophical comprehension that results not from true wisdom but from attempting to make the whole world conform to one system or one operative principle).[50] There was certainly the implicit criticism here of a Gladstonian politics that, in its narrow principles, was unable to conceive of a Church with a personality, but it is strange that Newman should reference these sermons when there is so

[50] *Oxford University Sermons* 12 and 14. A very clear elucidation of the arguments involved in OUS 14 can be found in Dave Delio's "Calculated To Undermine Things Established, Newman's Fourteenth Oxford University Sermon," Newman Studies Journal 2008.

much of his writing during the Oxford Movement that was more immediately to the point. Newman may simply have mis-remembered an attribution.

A wider survey of Newman's Anglican writings will be able not only to shed more light on what it meant for the Church to have a "personality," but also to highlight the deep continuity between Newman's Anglican and Catholic periods. Even though Newman's ecclesiology and understanding of Church authority differed in his Anglican and Catholic periods, the same set of principles and concern for a living church animated both periods of his life. What changed, of course, was his judgment about which Church contained life and incorporated a *real* (rather than a notional or ideal) personality.

Wider Anglican Writings

At the beginning of the Oxford Movement, when Newman was concerned about the Erastianism of the Anglican Church, Newman contemplated with equanimity the possibility that dis-establishment might become necessary. If the Church risked domination by the state, "the Church of England might have to take a 'popular' course and 'flee to the mountains' in order to prove its anti-Erastianism"[51] and secure its independence. From one aspect, Newman might appear to be a proto-liberal, arguing for dis-establishment and its consequent, toleration. But Newman's *reasons* for considering disestablishment were not liberal ones. Newman was concerned with the independence and vitality of the Anglican Church, which he felt was threatened by an alignment with and subjugation to the political powers. Newman did not look to liberal political theory to

[51] Peter Nockles, *The Oxford Movement in Context* (Cambridge: Cambridge University Press, 1994), 84.

explain the advantages of disestablishment.[52] Instead, he looked back to the Church Fathers. "An imaginative identification with antiquity" was evident in Newman's "highly coloured passages in his *Letters on the Church of the* Fathers," which related the "popular election of St Ambrose." Newman appealed to antiquity "not primarily for testimony to a particular disputed doctrine…but in order to provide the model of a living church that could be reproduced in the nineteenth century."[53] If Ambrose could depend on the people, the argument ran, then royal supremacy and establishment were not the only bulwarks for the church. At any rate, here, as later, the political judgment reached by Newman could appear a liberal one, but it is reached by means of non-liberal premises—and in both cases, its concern was with preserving the living personality of the Church.

In a letter on Augustine's monasticism in 1835, Newman argued that the establishment of monasteries served the purpose of maintaining the truth "at times and places in which the Church had let it slip from her." "Under such sad circumstances, the spouse of Christ 'fled into the wilderness, where she hath a place prepared of God.'"[54] The Church flew into the wild in analogy with the woman pursued by the serpent in Revelation 12:6. Newman even emphasized the analogy by describing the "noxious Arian 'flood' which 'the serpent cast out after the woman',"[55] with the text of Revelation 12:15 being applied to the Arian heresies of the 4th century. Just as Mary and Joseph fled to Egypt, so could patristic defenders of the faith flee Arianism, and so can a 19th century church imitate their example.

For all that, the emphasis was not on any particular "tactic" that could be appropriated from patristic examples. Rather, the point was to present a portrait of a living institution which could

[52] As Nockles notes, "Newman's readiness to bow to the totems of Protestant constitutionalism purely as a rhetorical device to disarm contemporary churchmen should not be underestimated" (*The Oxford Movement in Context,* 76).
[53] Ibid., 112-13.
[54] Newman, "Letters on the Church of the Fathers," *British Magazine* 7 (1835), 663.
[55] Cf. Revelation 12:15.

function as a reference for the present. Part of that living vibrancy included a grant of privileges, but these privileges must be seen as deriving from heaven, rather than from any particular government, and they must be understood in an important way to be invisible and irreducible to perfect political formulation. In a sermon also first preached in 1835, "The Church Visible and Invisible," Newman explained that a "living" church is "a visible body invested with invisible privileges,"[56] privileges which are "unseen influences and gifts from Heaven" upon which the church depended "for its life and strength."[57] At the sermon's conclusion, Newman can use political language to describe the content of those privileges, "'to bind and to loose,' to consecrate, to bless, to teach the Truth in all necessary things, to rule, and to prevail"[58]; but in his first, most important, and lengthiest elucidation of the unseen privileges, Newman turned not to legal or political language, but to scriptural parable:

> The Church of Christ, as Scripture teaches, is a visible body, invested with, or (I may say) existing in invisible privileges. Take the analogy of the human body by way of illustration. Considering man according to his animal nature, I might speak of him as having an organized visible frame sustained by an unseen spirit. When the soul leaves the body it ceases to be a body, it becomes a corpse. So the Church would cease to be the Church, did the Holy Spirit leave it; and it does not exist at all except in the Spirit. Or, consider the figure of a tree, which is our Lord's own instance. A vine has many branches, and they are all nourished by the sap which circulates throughout. There may be dead branches, still they are upon one and the selfsame tree. Were they as numerous as the sound ones, were they a hundred times as many, they would not form a tree by themselves. {225} Were all the branches dead, were the stock dead, then it would be a dead tree. But any how, we could never say there were two trees. Such is the Scripture account of the Church, a living body with branches, some dead, some living[59]

The privileges given to the Church derived from the Holy Spirit, who was the "soul" and the "sap" of the Church. The activity of the Holy Spirit within the Church was to be understood on the

[56] Newman, "The Church Visible and Invisible," *Parochial and Plain Sermons,* Volume 3 (London: Longman, Green and Co, 1904), 221
[57] Ibid.
[58] Ibid., 234.
[59] Ibid., 224-5.

model of the true vine in John 15. What the Holy Spirit guaranteed is not a set of legal prerogatives but an animating life and unity. This understanding of the Church was contrasted (as so often) with the spirit of the day:

> if the Church Visible really has invisible privileges, what must we think, my brethren, of the general spirit of this day, which looks upon the Church as but a civil institution, a creation and a portion of the State? What shall be thought of the notion that it depends upon the breath of princes, or upon the enactments of human law?[60]

Again, it was not only that the Erastian church mistook the origin or source of the Church's authority, but that an Erastian understanding could not conceptualize a human association with the living unity possessed by the Church on Newman's terms. There was no new "secular" age that required the church to empty itself of its own self-understanding. All of this was of a piece with Newman's earlier 1826 essays on miracles, whose purpose John Milbank described as follows:

> Crucial here to Newman's entire cultural strategy was his youthful recognition that the magisterial Reformation had rendered belief incredible precisely by insisting that the age of miracles is closed, such that in consequence the sacred drama and radically empirical possibility of the irruption of the *exceptional event* is a thing of the past. Once the deep sacred past had been claimed by evolution, it became doubly crucial, as Newman realized, to claim the present also for the continuation of the sacred drama or the 'scenic' as he terms it.[61]

The sacred drama, as Milbank called it, required a Church that understood itself in a way radically different from what contemporary political philosophy allowed. Since these disagreements arose at a fundamental level, regarding first principles, there was little use for public argument (which by nature has to assume a shared set of presuppositions if any public issue is to be coherently debated). The whole issue, after all, was that the arguments available to the public necessarily

[60] Ibid., 234.
[61] Milbank, "What is Living and What is Dead in Newman's *Grammar of Assent*," *The Future of Love*. 46-7.

misconstrued the message (and the institution) that Newman and the Movement were trying to convey.

Because the issue could not be solved discursively, Newman and the Movement engaged in what could be called an indirect dialectic, contesting the very premises from which contemporary political society began its understanding of the Church. They took it as their task to "familiarize the imagination" of the public with an apostolical and independent church. This church was understood to act and be acted upon *personally*, such that analogies to the Bride of Christ and the woman in Revelation 12:5 pointed towards the Church's unity not merely as an institution composed of its members but as an *object*, inspiring veneration and loyalty.

In returning to the patristic example during his Anglican debates, Newman was criticizing Anglicans who considered the record of the patristic church only (as he wrote in 1836) as "historical records, or depositories of facts, or again in their bearing upon one or two important modern questions, than in themselves, in their great fundamental principles, and their peculiar character and spirit, or what is sometimes called their ethos."[62] Newman looked to the ethos, peculiar character and spirit—in a word, the personality—of the patristic church in order to interpret contemporary events.

The Oxford Newman glossed the text of Revelation 12 to find an interpretive key for possible disestablishment. In Newman's Catholic period, he returned to these typologies and dynamics again and again, with the two exemplary models being found in *Sermons Preached on Various Occasions*. In the "Pope and the Revolution," Newman used the example of pre-Davidic Israel to interpret with equanimity the pope's potential loss of temporal dominion. This was a

[62] Newman, "Burton's History of the Church," *British Critic* Vo. 19, July 1836, 210.

particularly deft piece of work, since it offered a rebuke both to the liberal reformers who criticized the quality of the pope's governance,[63] and the English ultramontanists like Manning who often used the model of *Davidic* Israel to justify the pope's temporal claims.[64] In another sermon, "The Second Spring," Newman used the model of the Resurrection-as-fulfillment-and-contravention-of-nature to explain the Catholic Church's unique re-establishment on English soil, long after it had died in the same cyclical manner as all other social and political bodies.

Institutional personality allowed for an idiosyncratic analysis of political realities. It escaped the dominant liberalism of the age, in which institutions were reduced to aggregations of individuals. It also escaped liberalism's photo-negative, political theology, in which the political and the theological are tightly bound. Personality gave typological precedent to Anglican disestablishment and to Catholic equanimity about the pope's temporal power. While personality elevated the contemporary importance of sacred history, it was nevertheless an anti-*historical* concept: it denied the reality of a new dis-enchanted secular age or the discovery of a new secular politics. History was what it had always been.

Personality as the Key to the Church-Soul Analogy

The most immediate political question of any age is how one relates to one's institutional surroundings. And it is here that personality has its most trenchant effect. If personality allows one to see the Church as a person, it ultimately allows one to see the Church as a person on which

[63] The liberal reformers were analogized to the pre-Davidic Israelites: or, rather pre-Davidic Israel was revealed to be politically proto-liberal in its manner of criticism of the judgeship.
[64] In other words, Newman's criticism of Manning et al. was not that they did political theology, but that they did not do political theology well: they used the wrong analogy to Israel. See Manning, *The Temporal Power of the Vicar of Christ* (London: Longman's, 1862), 12 for the argument that just as David ruled a temporal kingdom, so must the Pope.

one ought to model one's own soul. The sermon, "Intellect, the Instrument of Religious Training," given on the feast day of St. Monica at the opening of the academical year at Newman's Irish University, develops Newman's modification of the Platonic city-soul analogy in an ingenious manner.

In reflecting on the experience of St. Monica and her son, St. Augustine, Newman detected a pattern oft-repeated in human history:

> This is, I say, not a history of past time merely but of every age…age goes after age, and still Augustine rushes forth again, with his youthful ambition, his intellectual energy, and his turbulent appetites, educated, yet untaught…and still, again and again, does hapless Monica weep…cherishing his image in her heart, keeping his name upon her lips[65]

The youth who wandered due to his wild intellect and appetites, and the mother who lamented for his return—and the re-uniting of his intellect with his religious life—was not only a human pattern, but also a pattern for the church: "and thus Monica…becomes an image of Holy Church."[66]

> And still again does Holy Church take her part and her place, with a heart as tender and more strong, with an arm, and an eye, and an intellect more powerful than hers [i.e., Monica's], with an influence more than human, more sagacious than the world, and more religious than home, to restrain and reclaim those whom passion, or example, or sophistry is hurrying forward to destruction.[67]

The church was described as possessing all the characteristics and influences of personality in service of a project (moral reformation) which can proceed only through the effect of personal influence.

[65] John Henry Newman, "Intellect, the Instrument of Religious Training," *Sermons Preached on Various Occasions* (London: Longmans, Green, and Co, 1908), 3-4.
[66] Ibid., 3.
[67] Ibid., 4.

If Monica was analogized to the Church, Augustine was analogized to the state of affairs in the world wherein moral and intellectual excellence were de facto divorced: or rather, he was the youth who in the course of his intellectual development began to notice that "too often good men are not attractive, and bad men are; too often cleverness, or wit, or taste, or richness of fancy, or keenness of intellect, or depth, or knowledge, or pleasantness and agreeableness, is on the side of error and not on the side of virtue."[68] Such a youth, desiring an expansion of mind, began to find religious and family life "tiresome" and to be "repelled" by "places and scenes that would do him good."[69] Newman admitted that "there is a separation" between virtue and intellect, but he "den[ied] its necessity."[70] This apparent divorce was a result of the fall and some of its consequences—and the remedy called for a university with personality.

Originally, the elements and virtues of human nature were not separated nor in rivalry. "A supernatural grace" "blended together all its faculties, and made them conspire into one whole, and act in common towards one end." But as a consequence of the fall, "the grace is gone; the soul cannot hold together; it falls to pieces; its elements strive with each other." Newman described the present state of a human soul by adverting to a political analogy:

> As, when a kingdom has long been in a state of tumult, sedition, or rebellion, certain portions break off from the whole and from the central government, and set up for themselves; so it is with the soul of man. So is it, I say, with the soul, long ago,--that a number of small kingdoms, independent of each other and at war with each other, have arisen in it, such and so many as to reduce the original sovereignty to a circuit of territory and to an influence not more considerable than they have themselves. And all these small dominions are, as I may call them, in the soul, are, of course, one by one, incomplete and defective, strong in some points, weak in others, because not any one of them is the whole, sufficient for itself, but only one part of the whole, which, on the contrary, is made up of all the faculties of the soul together.[71]

[68] Ibid., 8.
[69] Ibid., 10.
[70] Ibid., 8.
[71] Ibid., 6.

In different men, then, were found the reign of different elements in the soul. Newman listed five, though he did not claim to be exhaustive: "appetite, passion, secular ambition, intellect, and conscience."[72] Each was at war within a man, and "when he looks out of himself" for aid, "he sees them all severally embodied on a grand scale, in large establishments and centres, outside of him, one here and another there, in aid of that importunate canvass, so to express myself, which each of them is carrying on within him."[73] The confusion and separation of virtues and passions in the world at large reflected the confusion within an individual soul.

The soul looked to the world for a pattern of unity, but instead only found its own disorder re-produced on a large scale. Various institutions embodied one principle of the soul, but only in such a way that all the principles were seen to be at war with one another. "The strength of this delusion lies in their being a sort of truth in it." After all, "ever since the fall of man, religion is here, and philosophy is there; each has its own centers of influence separate from the other; intellectual men desiderate something in the homes of religion, and religious men desiderate something in the schools of science."[74] Newman's primary concern in this sermon was the apparent separation of intellectual and moral virtue, so he emphasizes religion and science—but he did not reduce all the faculties or elements of the soul into those two.

Since the soul could find no pattern for its unity in the world, "here, then, I conceive, is the object of the Holy See and the Catholic Church in setting up universities; it is to reunite things which were in the beginning joined together by God, and have been put asunder by man."[75] The

[72] Ibid., 7.
[73] Ibid.
[74] Ibid., 12.
[75] Ibid., 12-13.

university will be no sort of compromise "as if religion must give up something, and science something." Newman wishes "the intellect to range with the utmost freedom, and religion to enjoy an equal freedom." Moreover, "they should be found in one and the same place, and exemplified in the same persons. I want to destroy that diversity of centers, which puts everything into confusion by creating a contrariety of influences. I wish the same spots and the same individuals to be at once oracles of philosophy and shrines of devotion."[76] The university and the church, then, were to be a pattern in the world of the sort of unity after which the soul should strive—and a unique pattern, since every other institution embodied only a *part* of the soul's warring factions.

Some of the effect would be gained by the collection of individual teachers who embody the principle: "I want the intellectual layman to be religious, and the devout ecclesiastic to be intellectual."[77] This was the normal kind of personal influence at work. But the university *as a place and institution* was also necessary to the formation. In describing the work of the university itself, after labeling her an "Alma Mater," Newman extended the analogy in order to find the truest pattern of a university in "that greatest and most heavenly of mothers," who is both "Mater Amabilis," "Causa nostrae laetitiae," and, on the other hand "Sedes Sapientiae."[78]

> She is a mother, living, not in the seclusion of the family, and in the garden's shared, but in the wide world, in the populous and busy town, claiming, like our great Mother, the meek and tender Mary, 'to praise her own self, and to glory, and to open her mouth,' because she alone has 'compassed the circuit of Heaven, and penetrated into the bottom of the deep, and walked upon the waves of the sea,' and in every department of human learning, is able to confute and put right those who would set knowledge against itself, and would make truth contradict truth, and would persuade the world that, to be religious, you must be ignorant, and to be intellectual, you must be unbelieving.[79]

[76] Ibid., 13.
[77] Ibid.
[78] Ibid., 5.
[79] Ibid., 5.

The university serves its end not only by collecting men who possess both intellectual and moral virtues, but by (after the pattern of Mary) proclaiming to the wide world the unity of knowledge—with the text from Sirach 24:8's description of Lady Wisdom applied to the university *by way of* Mary. Once again, the Alexandrian hermeneutic found the New Testament in the Old, and contemporary events in both. In a manner similar to the church, this appeared to be an attribute of "personality," in which the institution itself could effect a kind of influence on individuals. Contrast the work of the Catholic university, for instance, with the effect of all the other institutions which embodied one or other faculties of the soul. They provide an inadequate model because they embody only a single principle. The Catholic university, on the other hand, was able to embody and unify all. This element of unity, as seen above, characterized the personality of the Catholic church in contrast to the Anglican. While it might appear that all the various centers of power had something of a personality (since they exerted a kind of personal influence on the individual who patterns himself after one of them), it was only the church and the university that could provide a pattern which reflected the original and hoped-for unity of the soul. For Newman, the primary analogue for the soul was not the city: rather it is the church or the university, because both possessed a *personality* capable of unity and personal influence.

Conclusion

One central tenet of the pluralism described by Nichols above (and attributed to Newman) was that the pluralist state ought to tolerate and encourage the existence of a variety of institutions with a personality: "it acknowledges the right of groups to exist within it, as self-governing, semi-autonomous entities, possessing a life and a 'personality' which is recognized by law but which is

not created by the state."[80] The pluralist state, of course, in abjuring any claims of sovereignty on its own behalf, would deny that it itself possessed a personality; and it would furthermore deny that entities possessing a personality were the *creation* of the state. From one perspective, this political arrangement could appear to echo Newman's criticism of Erastianism (in which the church was understood to be a creation of the state) and paint Newman as a proto-pluralist whose only mistake was not to afford the protections of pluralism to institutions beyond the Catholic Church.

But as should be clear from the foregoing investigation of Newman's thought, an institutional personality was not a characteristic that could be widely attributed. On Newman's account, only the Catholic Church possessed a personality.[81] Insofar as the church was the pattern for a unified soul, every other institution was by necessity a defective model *lacking* in some decisive feature of personality. The very nature of an institutional personality required that the institution defend itself publicly in terms of salvation history; and its very presence as a rival authority to the public press[82] testified to a kind of learning that was *not* publicly shared or publicly accessible. Personality and public reason cannot both be sheltered under the aegis of pluralism. If the previous chapter argued that Newman's position on rights and duties was irreconcilable with a liberal understanding, this chapter has argued the same about pluralism (and its photo-negative, political theology). What has sometimes been called Newman's nascent theory of pluralism in fact turns out to be deeply anti-pluralist in principle and in tendency, if not in its conclusions.

[80] Nicholls, "Gladstone, Newman, and the Politics of Pluralism," 28.
[81] And the Catholic university, by way of its participation in the life and personality of the Church (182-3 supra).
[82] See *Idea of a University,* Preface, XVIII-XIX, where "viewiness" is a kind of pseudo-philosophy encouraged by an anonymous (i.e., unrooted and permeable) public press, for which the only remedy is the physical establishment of a place-bound university.

However, the bringing of sacred history into the present is no part of a political theology, which would weave the sacred and the secular tightly together. Newman neither separates nor conflates the temporal and the eternal. Rather, he engages in the deeply Augustinian project of developing a mature political judgment that can distinguish between times when sacred history ought to be interpreted temporally, and times when it ought to be interpreted spiritually. The concept of the Church's personality saves Newman's thought from descent into political theology; and it is only with a firm grasp of ecclesial personality that political prudence is able to judge accurately between incidental and necessary features of the Church's temporal arrangements. It is exactly this process at work that allowed Newman, in the *Letter to the Duke of Norfolk*, to reject the arguments of modern natural rights and even to accept certain features of what could be termed persecution.[83] Were rights violated? Perhaps. But would the bold assertion of those rights risk the surreptitious assertion of political principles ultimately inimical to the Church's self-understanding? What was most important was not whether Catholic boys were prohibited from playing cricket on Sundays, but whether the Church was more than a private association.

What was politically most important in 1832—and remained so in 1875, despite Newman's conversion—was to preserve an arrangement whereby the Church could be conceived of as an entity—as a *polity*—with a personality, such that it could "fly to the hills" if need be. Looking back at his Anglican opinions in the *Letter*, Newman noted that the Oxford Movement was so attractive to so many because it was "founded on a deadly antagonism to what in these last centuries has been called Erastianism or Cæsarism." Newman and his fellows "considered the Church to be a divine creation, 'not of men, neither by man, but by Jesus Christ,' the Ark of

[83] See the conclusion of Ch. 3, pp. 132, for a full discussion of this passage from the *Letter*.

Salvation, the Oracle of Truth, the Bride of Christ, with a message to all men everywhere."[84] Both as an Anglican and as a Catholic, Newman was always concerned foremost with preserving the life and personality of the church, a personality which was difficult if not impossible to capture under a political rubric that began with the assertion that only individuals (and individual rights) exist.

This defense of the Church's independence can be understood as a contribution to pluralist thought only if it is taken within the tradition of the Church's perfect society pluralism, differences of language notwithstanding. Nevertheless, there is little within Newman's description of the Church's personality and prerogatives that could be expanded to other associations. The Church's divine institution and divine mission allow it to have analogical recourse to salvation history: not only would it be impermissible for a Bureau of Vital Statistics to fly to the hills, but so too for a bowling club or even a legislature.[85]

One consequence of Newman's emphasis on personality and political prudence is that nothing like a particular "political theory" can ever emerge from his writings. In rejecting political theology, he rejects the programmatic reading of Scripture with the purpose of finding a model to impose on contemporary politics. And in rejecting liberal pluralism, he rejects the programmatic imposition of a particular "value" or "right" like free speech or individual religious liberty. The overriding concern for Newman is this: does a particular political arrangement allow the Church to retain its personality in the public mind and private imagination? Or does it presuppose a mode of thinking or speaking that would undermine the ecclesial personality? In this sense, Newman's

[84] *Letter*, 198.
[85] The Catholic university is a counter-example. It partakes of personality by way of the Church's personality, which means that a properly Catholic bowling club might have a personality of its own (if a hand as a part of a body can have a personality).

opposition to Erastianism can be seen as either a resistance to a liberal Erastianism (that sees the church as a private institution created by the state or the individual wills of its citizens) or a conservative Erastianism (that in insisting on a certain necessary correspondence between the church and a specific political form, makes the church subject to the temporal things of the earth).

CHAPTER V: TOLERATION AND HISTORY

Introduction

Toleration as a practical matter has a long history. The modern liberal project did not discover or invent toleration but changed it from a prudential consideration to a categorical imperative and theoretical principle. Newman was a consistent advocate of prudential toleration but he refused to allow toleration to become a foundational principle of political thought. The *Letter to the Duke of Norfolk* insisted on prudential toleration through the presentation of a paradox: the only two logically consistent political responses to the Church's supernatural claims were either political persecution of the Church or political conversion to the Church. But history was not a progressive movement from one pole to the other: rather, it was the never-ending oscillation between the two poles. Political conversion was rooted in a people's prior moral and theological re-orientation. Some sects—the "immoral" or "demonic" ones—deserved persecution. Others ought to be tolerated. But their toleration was rooted in the fact that overt persecution would only solidify them in their errors. Toleration was a *means* to conversion, not a retreat from it.

19th century political philosophy of history had obscured fundamental political and anthropological realities. With the philosophy of progress presumed as a first principle of discourse, concepts like "rights," "pluralism," and "toleration" were invested with a rhetorical invincibility. They themselves resisted defeat in argument—one had to go behind them, to the presumed (not proven) philosophy of history. The *Letter to the Duke of Norfolk* highlighted the strangeness of the presumed principle by incessantly returning to alternative accounts of human nature: through analogy to nature, through Scripture, through recourse to poets, through close-eyed attention to quotidian life. In its cognizance of the classic problems of political philosophy, it was

eminently theology in a political mode. It refused to allow a new "secular" discourse to displace Scriptural parallels, ecclesiastical history, and the corporate personhood of the Church.

The project required an economy of presentation, since self-will disguised as liberty of conscience had become an operative principle for Newman's opponents. Newman had rediscovered the economy of the Alexandrian fathers. His theologico-political arrangement, between the two logically consistent poles of persecution and conversion, required the use of economy in order to navigate the vast space between the two poles. 19th century Catholics had "stated truths in the most paradoxical form, and stretched principles till they were close upon snapping; and who at length, having done their best to set the house on fire, [left] to others the task of putting out the flame."[1] Between liberal ideologies of progress and Catholic assertions of papal supremacy, the *Letter to the Duke of Norfolk* aimed to illustrate an alternate understanding and an alternate mode of discussion.

This chapter will offer a brief history of toleration, emphasizing the radical character of its modern form. Newman will be shown to have recognized the novelty of modern toleration and to have argued against it. Nevertheless, the *Letter to the Duke of Norfolk* contains apparently inconsistent statements on toleration and the separation of Church and State. This chapter will investigate possible reasons for those inconsistencies. Much of the apparent inconsistency dissipates when one realizes that Newman's toleration is not Locke's nor Rousseau's: prudent (or premodern) toleration is elaborated in the *Letter*. Nevertheless, there are real inconsistencies. This chapter will argue that these are the result of Newman's "economical" style of writing. The project of the *Letter* is to teach Catholics how to talk about theologico-political realities and how to lead

[1] *Letter,* 177.

the liberal protestant Britain out of its cramped ideological interpretation of the world. The fullness of Newman's argument, which is sprinkled throughout the *Letter*, is a perfect inversion of Gladstone's original charge. Gladstone claimed that infallibility was inconsistent with Church tradition and made Catholics mental and moral slaves; Newman countered that Gladstone's liberal principles were inconsistent with the British constitution and made Britons slaves to self-will. Such self-will (which understood its own rebellion and obstinacy as "free-thought" and "liberty") would respond to direct argumentation as an imposition of illegitimate authority—so the extrication of Britain from this self-delusion would require a gentle Alexandrian economy.

Tolerating the Principle of Toleration

In 1689, John Locke "esteem[ed] it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other." Boundaries were derived from a true and sober reflection on the commonwealth, which existed to preserve men's "civil interests," namely, "life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like." The "salvation of souls" was demonstrably different from a civil interest. Insofar as the true nature of the commonwealth could be understood in light of the laws of nature, it became evident that "liberty of conscience is every man's natural right." What resulted therefrom Locke called both the "law of toleration" and the "doctrine of toleration."[2]

Toleration therefore stood at the very beginning of the liberal project as one of its foundational claims. Toleration attempted to solve the old theologico-political problem by safely

[2] John Locke, "A Letter Concerning Toleration," 9-10. Compare this to 1667's so-called "Essay on Toleration," in which Locke made a prudential case for toleration.

quarantining the theological from the political.[3] By taking as its point of origin self-preservation and comfortable self-preservation, the liberal project intentionally moved from contemplating man's ends to contemplating man's beginnings. "Liberal democracy is unique among regimes in that it does not seek to define the goals of human existence or produce a specific type of human being,"[4] and instead of actively promoting some particular conception of the good, it tried instead "to provide a neutral framework within which each individual is allowed to choose his own goal and find his own way to it."[5] One consequence of liberalism's "neutrality" was that it could not take a stance on the branch of human study concerned preeminently with man's ends—religion.[6] Toleration was therefore a fundamental presupposition of the liberal project.

Toleration as a practical matter was not a novelty invented in the 16th or 17th century. In previous ages it "was taken to be a matter of practical policy rather than of universal principle."[7] Religious toleration was always judged in light of some more final end, with prudential considerations (rather than universal application of a principle) predominating. A broad but not unlimited toleration characterized the Roman empire, which was willing to admit any number of foreign gods into its Pantheon. Only Christianity, with its exclusive claims about the one true God, necessitated suppression by the Romans.[8] This was of course no inconsistency on the part of the

[3] The subjects of the two preceding chapters, rights of conscience and pluralism, can be understood as specific means by which this central doctrine of toleration has been worked out and embodied in political societies. For a fuller discussion of the history and doctrine of toleration, see footnote 18 infra.
[4] Fortin, "The Regime of Separatism," *Human Rights, Virtue, and the Common Good,* 11. Of course, as Fortin notes, this is more a self-description than a reality. "Liberal democracy does breed a specific type of human being, one that is defined by an unprecedented openness to all human possibilities. What this leads to most of the time is…easy going indifference and mindless conformism" (ibid.).
[5] Ibid.
[6] Philosophy, of course, would also claim to be the one science that contemplates man's ends; or at least a philosophy that does not presuppose that it exists for the relief of man's estate.
[7] Ibid., 12.
[8] Hobbes himself makes this claim in Ch. 12 of the *Leviathan*: pagan religions existed for the sake of civic order, and thus the Romans were able to tolerate any cult that wasn't incompatible with civil order (i.e., the small semitic religion which claimed to be the chosen people of God; Hobbes of course hides his animadversion to non-Hobbesian Christianity behind an explicit criticism of Judaism).

Romans, but rather an example of the Romans' *consistency* and deference to prudence. The Romans could tolerate any religion that left the established order intact. When one religion challenged that order, the Romans had to make a judgment about the extent to which this particular new religion should be endured or suppressed.

One might think that Christianity's exclusivist claims would eliminate the possibility of anything like religious toleration in the Roman tradition. Rome's toleration appeared to be the result of a desire for civil peace[9]—the religion of state was ceremonial and made few if any doctrinal claims on its adherents. Christianity, which ordered itself around a particular body of doctrine, could never make prudential judgments about toleration according to Rome's standards. Not civil peace, but everlasting life, was its predominant concern. Nevertheless, even though Christian approaches to politics could not tie toleration to civil peace, they could approach toleration prudentially.

St. Augustine vacillated between persuasion (in "On True Religion"), persecution (Letter 93, to Vincentius), and leniency (Letter 133, to Marcellinus),[10] a movement explicable less by some mendacious inconsistency than by varied prudential judgment based on disparate local circumstances. Toleration was narrower for Christians than for Romans, since the good in light of which toleration was judged was no longer civil peace but eternal salvation. Nevertheless, prudent toleration was required by Christianity, insofar as an acceptance of the faith depended on a free choice of the will—and care for souls required a kind of paternal love that was sometimes harsh and sometimes lenient.

[9] Compare, for instance, Cicero's *De Rerum Deorum*, in which the primary exoteric consideration of the Roman religion is the supplication of the gods responsible for protecting Rome's internal and external peace.
[10] Cf. Augustine, of Hippo, *Political Writings*, trans. Michael W. Tkacz, Douglas Kries, and Roland Gunn. (Indianapolis: Hackett, 1994), . 230-247.

Questions of forced conversion engaged toleration prudentially. The *Decretum Gratiani*, the 12th century compilation of canon law, quoted the 4th Council of Toledo to the effect that: "Jews are not to be forced into the faith, although even if they accept it unwillingly, they must be forced to retain it…thus, in order that they be converted by the free exercise of the will and not by force, they are to be persuaded but not impelled."[11] Aquinas distinguished between categories of tolerated and persecuted. The heathens and the Jews, "are by no means to be compelled to the faith."[12] But this absence of compulsion was *for the sake of their eventual belief*, "so that they may believe, because to believe depends on the will."[13] Thomas' prudential toleration did not presume (as did Locke's, for instance) that the magistrate ought to make no law at all about "speculative opinions."[14] It was for this reason that Christians made war on unbelievers:[15] not to compel belief, but "to prevent them from hindering the faith of Christ." There was no inconsistency in Aquinas, but rather the prudent treatment of religious toleration in light of higher ends.[16]

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[11] "The Teaching of Earlier Epochs: Gratian's *Decretum,*" *Church, State, and Jew in the Middle Ages,* trans. Robert Chazan (West Orange, NJ: Behrman House, 1980), 20-21. Op. cit. Jennifer Hart Weed, "Aquinas and the Forced Conversion of the Jews," *Jews in Medieval Christendom: Slay Them Not*, ed. Kristine T. Utterback, and Merrall L. Price (Leiden: Brill, 2013), 129-130.

[12] The second kind of unbelievers, the heretics and apostates "should be submitted even to bodily compulsion, that they may fulfil what they have promised, and hold what they, at one time, received." Persecution is then a punishment for oath-breaking.

[13] Insofar as reception of the faith depended on a free act of the will, a certain kind of toleration was not only recommended but required. "Nevertheless, they should be compelled by the faithful, if it be possible to do so, so that they do not hinder the faith, by their blasphemies, or by their evil persuasions, or even by their open persecution." While their profession of religion was tolerated, they were compelled to limit public utterances that might "hinder the faith."

[14] Locke, "Letter Concerning Toleration," 40. "the magistrate ought not to forbid the preaching or professing of any speculative opinions in any Church because they have no manner of relation to the civil rights of the subjects"

[15] In making this argument, Aquinas should not be understood to be an apologist for every (or any) Christian war of aggression, even or especially those which pretend to use Aquinas' quoted justification.

[16] Aquinas, *Summa Theologica*, Ia IIae 10.8:

> Among unbelievers there are some who have never received the faith, such as the heathens and the Jews: and these are by no means to be compelled to the faith, in order that they may believe, because to believe depends on the will: nevertheless they should be compelled by the faithful, if it be possible to do so, so that they do not hinder the faith, by their blasphemies, or by their evil persuasions, or even by their open persecutions. It is for this reason that Christ's faithful often wage war with unbelievers, not indeed for the purpose of forcing them to believe, because even if they were to conquer them, and take them prisoners, they should still leave them free to believe, if they will, but in order to prevent them from hindering the faith of Christ.

The liberal project aimed to do something new. Whether out of epistemological considerations, desire for civil peace, or theories of political and historical progress, the liberal project *presupposed* religious toleration as a founding principle. It was not a matter of prudential concern, but an inviolable, foundational right upon which political regimes were to be constructed.[17] While Rousseau was in some sense a culmination rather than an origin of the liberal tradition, his *Social Contract* was a succinct example of this line of thought. The political sovereign, "not being competent in the affairs of the other world" took "no interest" in the dogmas of a person's private religion, "except as they have a bearing on the morals and duties which the

[17] The development of modern toleration is a complicated story, with multiple points of origin (sometimes at odds with one another, only eventually gathered together under the hegemony of concepts originally derived from Hobbes and Locke). Luther, in his 1523 "Secular Authority: To what Extent It Should Be Obeyed," (*Selections From His Writings*, ed. J. Dillenberger (New York: Anchor Books, 1962.), proposed limitations of secular and ecclesiastical authority which would prove fertile ground for future developments, especially when combined with the on-the-ground exhaustion from the 16th- and 17th-century wars of religion (but see Cavanaugh's *Myth of Religious Violence* for the argument that the ascription of religious motivation is a post-facto ideological obfuscation). Three general tributaries coursed through the 16th and 17th century. First, there was the desire to cultivate and protect a rational or philosophical religion excised of controversial dogmatics. One can find this in the work of Montaigne's 1580 *Essays* (*The Essays of Michel De Montaigne.* Ed. George Burnham Ives et al. (New York: Limited Editions Club, 1946), Descartes' 1649 *Passions of the Soul* (trans. Stephen Voss (Indianapolis: Hackett, 1989)), Spinoza's 1670 *Tractatus Theologico-Politicus* (trans. S. Shirley (Indianapolis: Hackett, 2001)), and even Locke's 1689 "Letter on Toleration." Toleration here is not inimical to religion broadly or persecution specifically: Descartes does not extend protection to religious tenets that fall outside the dictates of manifest reason, and Locke's privatized churches retain the right to excommunicate members (but see note 33 infra). Locke's "Letter" also exemplifies a second tendency: the desire to limit political authority (especially in the interest of peace). Montesquieu's 1748 *On the Spirit of the Laws* (trans. and ed. A.M. Cohler, B.C. Miller, and H.S. Stone (Cambridge: Cambridge University Press, 1989) defends toleration on similar grounds. Hobbes' *Leviathan* and Rousseau's *Social Contract* (see infra note 19) work to the same end from the other direction, *expanding* political authority in the interest of peace. A third grounding of toleration was the epistemological limitation of reason. One can see this in Hobbes, Locke, and Rousseau, as well as Spinoza and, later, Kant in 1793's *Religion within the Limits of Reason Alone* (ed. and trans. Theodore Meyer Greene, Hoyt H. Hudson, and John R. Silber (New York: Harper, 1960). Kant attempted to defend a toleration derived from a chastened reason without falling into the skepticism typical of Voltaire (*Treatise on Tolerance,* trans. Brian Masters, and Simon Harvey. (Cambridge: Cambridge University Press, 2000). Newman recognized how an empiricist epistemology led to the skepticism that succored modern toleration, and made it the target of his attacks (Ch. 6, *Grammar)*. By the 19th century, the characteristic defense of toleration was JS Mill's "On Liberty," which added to concerns about religious factionalism, political authority, and the limits of reason a positive defense of diversity in the hope of future progress. For a succinct overview of the history of toleration and its connections to early modern skepticism, see Alan Levine et al. *Early Modern Skepticism and the Origins of Toleration*. (Lanham: Lexington Books, 1999). But for alternate perspectives, see Preston King, *Toleration* (New York: St. Martin's Press, 1976) and Richard Tuck's "Scepticism and toleration in the seventeenth century" (*Justifying Toleration: Conceptual and Historical Perspectives*. Ed. Susan Mendus (Cambridge: Cambridge University Press, 1988): pp. 21-36).

citizen professing it should hold and perform in dealing with others."[18] In addition to private religion, the state must have a civic religion, founded not on dogmas but on "social sentiments." Of those, "the negative element I would confine to a single article—intolerance."[19] Private religion was to be tolerated as long as did not interfere with public peace, and civic religion was based upon a sentiment *against* intolerance. Broad toleration was one of the governing principles of the state.

One reason why Rousseau took this line was because he believed that "theological and civil intolerance" were "naturally the same thing."[20] "Wherever theological intolerance enters it cannot but have an effect on civil life, and when that happens, the Sovereign is no longer sovereign, even in temporal affairs."[21] Wherever theological intolerance existed, the state could never be securely founded. One consequence of this, of course, was that any exclusivist religion was excluded from the state—in the name of tolerance. Roman Catholicism was most often excluded on this basis in the literature of liberal toleration: in Milton,[22] in Hobbes,[23] in Locke,[24] and (in a slightly different manner) in Mill.[25] The liberal arguments were not paradoxical or contradictory:

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[18] Rousseau, *Social Contract: Essays By Locke, Hume, and Rousseau* (London: Oxford University Press, 1960), 437. This is, of course, a large exception that undermines the "foundational" or "doctrinal" aspect of modern toleration. But, as Newman recognized, modern toleration did not put an end to persecution, it simply veiled the activity.
[19] Ibid., 438. The positive sentiments are "the existence of a mighty, intelligent, and beneficent Divinity, possessed of foresight and providence, the life to come, the happiness of the just, the punishment of the wicked, the sanctity of the social contract and the laws." These positive and negative dogmas must be believed by citizens, and the state could banish one who refused, "not for impiety, but as an antisocial being, incapable of truly loving the laws and justice."
[20] Ibid., 423.
[21] Ibid., 439.
[22] John Milton, *Areopagitica, Complete Prose Works of John Milton*, ed. Don M. Wolfe et al., 8 vols. (New Haven: Yale University Press, 1953- 82), 7: 249-250, 254.
[23] See, for instance, all of Hobbes, *Leviathan,* Part IV, which treats the papacy as the "kingdom of darknesss"
[24] Locke, "Letter Concerning Toleration," 46-7.
[25] Mill, "On Liberty," 265ff., where Mill excludes Calvinistic opinions from his liberal republic, using similar arguments that Milton, Locke, and Rousseau use for Catholic exclusion. . Mill equivocates on whether Calvinistic opinions are merely unhelpful or categorically unwelcome in a society committed to liberty. One wonders as well about the status of the persons holding such unwelcome opinions.

they were consistently willing to tolerate any religion which *accepted* the principle of toleration *as* a fundamental principle.[26]

From the perspective of a foundational toleration, Newman can only be judged an inconsistent or confused thinker. Despite the scholarly assertions of Newman's modern and tolerant mien, whenever a principle like toleration was taken up by Newman, it was in order to condemn it. The Anglican Newman of the Oxford Movement cared little for toleration. His 1834 sermon, "Tolerance of Religious Error,"[27] succinctly summarized his position. The church "is not tolerant of error…and if she retains within her bosom proud intellects, and cold hearts, and unclean hands, and dispenses her blessings to those who disbelieve or are unworthy of them, this arises from other causes, certainly not from her principles."[28] The pressing issue in the sermon was not political toleration, but the Anglican Church's toleration of dissidents within its own bosom. However, insofar as the English church was the church of the national establishment, theological intolerance[29] would have political consequences. The Anglican Newman praised "the duty of State and Church to proceed against a non-conformist individual."[30] The Anglican Church was most itself when "Charles [was] the King, Laud the prelate."[31] TThough the second chapter of this dissertation argued against describing the Anglican Newman's church-state doctrines as a

[26] Hobbes, whom scholars sometimes separate from the liberal tradition because of the "authoritarian" nature of his *Leviathan*, makes ultimately the same point as Milton, Locke, Rousseau, and Mill. Hobbes of course says that the sovereign has censorial power over the entrance of all religious opinions into his commonwealth: but this claim amounts to no more than Hobbes allowing *any* religion into his commonwealth that is willing to acknowledge the sovereign's ultimate authority—i.e., any religion that accepts the principle of toleration.
[27] Newman, "Tolerance of Religious Error," *Parochial and Plain Sermons, Volume 2,* 284-292.
[28] Ibid., 284-5.
[29] That is, the removal of dissident members from the Church of England, not the Rousseauean sense that non-believers are damned.
[30] Misner, *Papacy and Development*, 153.
[31] Newman, "How to Accomplish It," 23. Archbishop Laud was Charles I's most vigorous defender of orthodoxy against the rising Puritan threat—so vigorous, that he was arrested, tried, and executed by the Long Parliament during the English Civil War.

"theocratic idea," the Anglican Newman undoubtedly positions inconsistent with the liberal doctrine of toleration.[32]

If the Anglican Newman defended the Anglican church's establishment and prerogatives, it has been sometimes argued that Newman's position on toleration softened or reversed when he changed communions.[33] Even if Newman's opinions about the efficacy of compulsion changed, it is a non-identical statement to claim that Newman reversed himself on the value of toleration—especially if one means not prudential but doctrinaire toleration, especially since Newman's Catholic writings contained positive *denunciations* of toleration.

Newman's suspicion of the principle of toleration revealed itself most fully in two texts, "A Form of Infidelity of the Day," a short lecture given to the faculty of the Irish University and appended to the *Idea of a University*, and his "Biglietto Speech," which was given on the occasion of his elevation to the rank of cardinal. In both, toleration emerged as the unassuming face of modern unbelief, and the assumption of the principle of toleration marked the beginning of a different kind of battle against the forces of faith and orthodoxy. Of course, Newman neither denied the present political fact of a variety of religious sects nor proposed that such a fact could be "solved" by the imposition of force. Rather, he wanted to acknowledge the political fact *without* assuming a principle of toleration, which was not so much drawn from the political fact as it was imposed, as a presupposition, in order to break the power of orthodox religion. Newman was

[32] On the liberal principle of toleration: Locke, of course, allowed for churches to excommunicate dissidents, but only because excommunication would have no effect on civil liberties. Churches, being simply private entities, could deal with members as they wished ("Excommunication neither does, nor can, deprive the excommunicated person of any of those civil goods that he formerly possessed. All those things belong to the civil government and are under the magistrate's protection" (Locke, "Letter Concerning Toleration," 40)).

[33] See pp. 82 of Ch 2. Characteristic is Kenny's remark that "Newman's ideal" was "the secular, neutral, tolerant State."

acutely aware that toleration as a principle marked a new kind of politics. And Newman's politics required him to *oppose* toleration, albeit in a novel way.

"A Form of Infidelity of the Day" investigated the presuppositions and the policies of toleration. The "principle of toleration" "[was] conceived in the spirit of unbelief, in order to the destruction of Catholicity."[34] Toleration presupposed and took as self-evident the first principle that "Religion is not the subject-matter of a science,"[35] meaning that one can have "opinions," "theories," and "arguments" about religious matters, but no knowledge.[36] "Religion is just one of those subjects about which we can know nothing."[37] Accordingly, it is the great rival of the Catholic faith, and "assail[s] revealed truth."[38] Unbelief under the guise of toleration makes war against the Church.

This was no paradox: modern unbelief perpetuated a "union of intense hatred [of theology] with a large toleration of Theology."[39] Modern unbelief understood that religious minds loved nothing more than controversy,[40] and to openly antagonize Christian faith might well cause men to "rally round it from a feeling of generosity."[41] The policy of the unbelieving philosopher, then, was not "to oppose Theology, but to rival it. Leave its teachers to themselves."[42] Introduce other sciences which, by their apparent utility and richness, will bewilder the imagination of the student when he turns from the study of ethnology and geology to the Book of Genesis.[43] "While, then,

[34] Newman, "A Form of Infidelity of the Day," in *The Idea of a University*, 385.
[35] Ibid., 387.
[36] Ibid.
[37] Ibid.
[38] Ibid., 381.
[39] Ibid., 403.
[40] Ibid., 394.
[41] Ibid., 395.
[42] Ibid., 396.
[43] Ibid., 401-2.

Reason and Revelation are consistent in fact, they often are inconsistent in appearance,"[44] and "the department of fact, and the method of research and experiment which is proper to it, may for the moment eclipse the light of faith in the imagination of the student, and be degraded into the accidental tool, *hic et nunc*, of infidelity."[45] Therefore, the modern tolerant unbeliever will "suffer disputations in the theological schools every day in the year, provided they can manage to keep the students of science at a distance from them."[46] Broad toleration (combined with an isolation of theology) and an assertion that, since religion cannot aim at any sure knowledge, it ought not infringe upon any of the *real* sciences, were the means by which the Church (while being tolerated) was to be defeated at first in the university and then in the polity at large (by means of the university's influence on its students).

Newman of course recognized that "universal toleration prevails"[47] as a political fact and that outward enforcement of Catholic dogma would accomplish very little.[48] And, in fact, he preferred the modern arrangement to its medieval counterpart:

> …contrasting the two periods together, we may even say, that in this very point they differ, that, in the medieval, since Catholicism was then the sole religion recognized in Christendom, unbelief necessarily made its advances under the language and the guise of faith; whereas in the present, when universal toleration prevails, and it is open to assail revealed truth (whether Scripture or Tradition, the Fathers or the "Sense of the faithful"), unbelief in consequence throws off the mask, and takes up a position over against us in citadels of its own, and confronts us in the broad light and with a direct assault. And I have no hesitation in saying (apart of course from moral and ecclesiastical considerations, and under correction of the command and policy of the Church), that I prefer to live in an age when the fight is in the day, not in the twilight; and think it a gain to be speared by a foe, rather than to be stabbed by a friend.[49]

[44] Ibid., 401.
[45] Ibid., 398.
[46] Ibid., 401.
[47] Ibid., 381.
[48] Ibid., 382.
[49] Ibid., 381-2.

Newman could be thought of as reaching a "modern" conclusion, preferring broad toleration and freedom of speech to ecclesiastical supervision and censorship. But Newman preferred the modern situation not because toleration was an actual political or spiritual good, but rather because it allowed the Church to be surer of its own footing. The forces of toleration themselves did not encourage but aimed to undermine the Church—as Newman said, the only difference now was that the battle is in the open rather than in the twilight.

The battle between the forces of tolerant unbelief and the Church was fought for the imagination. The principle of toleration encouraged theology but only under the agreement that theology isolate itself. The Church could not abide by these strictures and, if accommodating itself to a situation in which it accepted a political fact of a broad variety of religious opinions, could never give any credence to the theory of toleration. But resistance to toleration did not involve censorship, but rather the attempt to form the imaginations of individuals such that they did not reject as strange and outlandish the first principles from which the Church proceeded.[50]

Resistance to the "the spirit of liberalism in religion" formed the topic of Newman's *Biglietto Speech*. Liberalism "is the doctrine that there is no positive truth in religion," but that religious matters were only "a sentiment and a taste." It was "inconsistent with any recognition of any religion, as *true*. It teaches that all are to be tolerated, for all are matters of opinion."[51] Toleration was a consequence of the impossibility of knowledge in the domain of religion: just as other matters of taste were tolerated, whether they be food or dress, so should religion be treated. Religious liberalism and the principle of toleration were closely linked.

[50] See the previous chapter on the personality of the church
[51] Newman, "Biglietto Speech," 64.

But liberalistic theory, by making religion "so personal a peculiarity and so private a possession," drew the conclusion that "we must of necessity ignore it in the intercourse of man with man." What began as a purely theological liberalism necessarily proceeded *mutatis mutandis* to political consequences: since religion was a matter of private taste, "Religion is in no sense the bond of society."[52] And while "hitherto the Civil Power has been Christian," "now the Philosophers and Politicians are bent on satisfying [the] problem [of political and civil organization] without the aid of Christianity." Newman did not see the liberal theory as existing *alongside* a Christian world—the liberal theory explicitly aimed at a replacement of the Christian world: "instead of the Church's authority and teaching, they would substitute first of all a universal and a thoroughly secular education," patterned on principles of enlightened self-interest, "broad fundamental ethical truths," and the "natural laws which exist and act spontaneously in society." But "as to Religion, it is a private luxury, which a man may have if he will; but which of course he must pay for, and which he must not obtrude upon others, or indulge in to their annoyance."[53] If religion was going to be maintained in the new order of society, it must be on a private basis, that presupposed that religion was neither knowledge nor a bond of society.

Though the method of proceeding was different in various countries, the general character of the liberal principle was consistent. Newman proposed only to talk about the progress of liberalism in England, since he knew that country best. He saw three reasons for liberalism's triumph. First, there was the political fact of a number of "religious sects"[54] in England, which "have ever been fiercely opposed to the Union of Church and State." These sects "would advocate the un-Christianising of the monarchy and all that belongs to it, under the notion that such a

[52]Ibid., 65.
[53] Ibid., 67.
[54] Ibid.

catastrophe would make Christianity much more pure and much more powerful." Newman's second reason appeared to explain the first: "Next the liberal principle is forced on us from the necessity of the case... All action would be at a deadlock unless the subject of religion was ignored." "What follows from the very fact of these many sects" is that "if each insists on the recognition of his own religious denomination,"[55] no political business could be accomplished. The question of religion was tabled as a matter of expediency. But Newman's second reason was not just an explanation of the first. The second reason was, as he said a "consequence" "from the very fact." But the first reason turned out to be more than a description of the fact of a number of sects. It also described a want of judgment on the part of those dissenting bodies, who would court a "catastrophe" under the misapprehension that it would make Christianity "much more pure and much more powerful." Their confidence in the beneficent effects of toleration was misplaced—or, in other words, they did not recognize that unbelief in the modern age waged war under the banner of toleration, and has constructed the principle of toleration for just that purpose. Newman himself could of course make the argument that, in the long run, the Church may well become "more pure" and "more powerful"[56] after disestablishment and a declaration of war against modern unbelief, but the purity and power will be a consequence of battling *against* the principle of toleration rather than a consequence of *accepting* it.

Newman appended a third reason that seemed to recommend something of the liberal theory to the British public:

> it must be borne in mind, that there is much in the liberalistic theory which is good and true; for example, not to say more, the precepts of justice, truthfulness, sobriety, self-command, benevolence, which, as I have already noted, are among its avowed principles,

[55] Ibid., 68.
[56] Ibid.

> and the natural laws of society. It is not till we find that this array of principles is intended to supersede, to block out, religion, that we pronounce it to be evil.[57]

Under the guise of principles that were true in their place, proponents of liberalism announced that these were the only true principles, that matters of religion ought not to interfere with good self-interest or benevolence. Since religion was not a matter for knowledge—since revelation was impossible (this was of course a consequence of claiming that religious knowledge was impossible)—the proponents of liberalism did not argue for their position so much as put it forward as a first principle from which (rather than *to which)* their arguments proceeded. In "A Form of Infidelity of the Day," Newman described their strategy:

> The teacher, then, whom I speak of, will discourse thus in his secret heart:—He will begin, as many so far have done before him, by laying it down as if a position which approves itself to the reason, immediately that it is fairly examined, which is of so axiomatic a character as to have a claim to be treated as a first principle, and is firm and steady enough to bear a large superstructure upon it,—that Religion is not the subject-matter of a science.[58]

He "does not prove it; he does but distinctly state it; but he thinks it self-evident when it is distinctly stated. And there he leaves it."[59] And Newman insisted that "there is no call on me here to refute these arguments, but merely to state them. I need not refute what has not yet been proved."[60] The liberal theory was "founded upon a mere assumption." "It has not yet been shown by our philosophers to be self-evident that religious truth is really incapable of attainment; on the other hand it has at least been powerfully argued by a number of profound minds that it *can* be attained; and the *onus probandi* plainly lies with those who are introducing into the world what the whole

[57] Ibid.
[58] Newman, "A Form of Infidelity", 387.
[59] Ibid., 388.
[60] Ibid., 390.

world feels to be a paradox."[61] The allure of the liberal position was that it posited a view as proven when it was only assumed,[62] and depended on the imaginative force of the success of other sciences and the respectability of other virtues to provide auxiliary support to its central claim. But, of course, the success of economics or the discernment of a natural law of motion did not, of its own nature, have anything to say about the possibility of religious knowledge. Not of course because religious knowledge was unconnected to the other branches of knowledge, but simply because religious knowledge *was not* a knowledge of economics or physics.[63]

Liberalism in religion, then, tended not only towards the effacement of religion but also towards a duplicity about its own intentions. Newman was careful not to ascribe this conscious intention to all its proponents: "At first sight it might be thought that Englishmen are too religious for a movement which, on the Continent, seems to be founded on infidelity; but the misfortune with us is, that, though it ends in infidelity as in other places, it does not necessarily arise out of infidelity."[64] Similarly, in "A Form of Infidelity of the Day," Newman did not even allege "that any one man as yet consciously holds, or sees the drift of that portion of the theory to which he has given assent"[65] Newman said he was:.

> describing a school of thought in its fully developed proportions, which at present every one, to whom membership with it is imputed, will at once begin to disown…still, it is not less true that I may be speaking of tendencies and elements which exist, and he [that is, the fully self-conscious atheistic philosopher] may come in person at last, who comes at first to us merely in his spirit and in his power.[66]

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[61] Ibid.
[62] A similar argument is put forward in the introduction to the *Development*, Introduction, 3, (pp. 6). The most natural hypothesis is to assume a continuity of the Church from the 1st century to the present day. The other hypothesis requires extreme skeptical assumptions—which may end up being right, but the radical quality of their initial claims ought not to allow them to form the basis of an investigation.
[63] Cf. Discourse 3, *Idea of a University*.
[64] Newman, "Biglietto Speech," 67.
[65] Newman, "A Form of Infidelity," 386.
[66] Ibid., 386-7.

Nevertheless, because modern unbelief has made a *principle* out of toleration rather than merely an accommodation—and in making it into a principle must presuppose the impossibility of religious knowledge, with all of the eventual theological, political, and social consequences which follow—modern infidelity was positioned for an unexpected success:

> There never was a device of the Enemy [Satan] so cleverly framed and with such promise of success. And already it has answered to the expectations which have been formed of it. It is sweeping into its own ranks great numbers of able, earnest, virtuous men, elderly men of approved antecedents, young men with a career before them.[67]

Liberalism in religion was a "cleverly framed" "device of the Enemy." In its unassuming character it was sweeping up a number of earnest proponents who would disclaim, but could not see, its ultimate consequences. Its contest with orthodox faith was not on the level of argument, but on first principles—in which case, by entering too fiercely into arguments *with* proponents of liberalism, defenders of orthodoxy risked the implicit assumption of liberal principles, so that victory in argument would be pyrrhic.

Therefore, one needed to exercise extreme caution when discussing the ways in which Newman adopted or approved liberal principles like toleration. It may be that "the liberal principle is forced on us from the necessity of the case," but it was for exactly that reason that Newman refused to adopt the liberal mode of proceeding. Kenny was correct in arguing that Newman had no longing for the "medieval theocracy."[68] Newman himself, as has been seen, was ready to say that he "prefer[s]" to live in this age than the medieval. But as always, the reasons for that conclusion were more telling than the conclusion itself. Newman preferred to live in the modern age because the spiritual and political arrangements allowed infidels to leave the church and

[67] "Biglietto Speech," 69-7.
[68] Kenny, *The Political Thought of John Henry Newman,* 133.

establish separate centers of power. The battle between faith and unbelief was sharper in the modern age—and Newman preferred fighting "in the day, not in the twilight." He did not prefer—as Kenny has it—the arrangements of the modern tolerant secular state because such an arrangement solved the theologico-political problem. Rather, Newman preferred the modern situation only insofar as it *heightened* rather than solved the tensions between faith and unbelief.

The principle of toleration and the liberalism from which it arose both presupposed rather than proved that religion was not a bond of society. Part of the Church's war for the imagination consisted in contradicting that assumption by refusing to be turned into a mere "department of government, or a function or operation of the State—without a substance,—a mere collection of officials, depending on and living on the supreme civil power" or into an association of mere individuals, lacking anything like a polity . Somehow, the church's *personality* had to be retained.

Newman's resistance to the principle of toleration in "A Form of Infidelity of the Day" and the "Biglietto speech" dovetailed with the foregoing analysis of Newman's use of rights of religious liberty and pluralism within the *Letter to the Duke of Norfolk*. Newman refused to endorse an analysis built upon rights of religious liberty in the *Letter to the Duke of Norfolk* because such an analysis presupposed the principle of toleration—a principle which began with the assertion that religious knowledge either did not exist or could not be attained. It might well be necessary to contend politically with a variety of religious opinions, but such a political decision was a matter of prudence, to be decided by weighing costs and benefits, rather than a categorical presupposition that occluded rather than clarified the issues at stake.

Newman insisted that the principle of toleration needed to be combatted as vigorously as possible by the Church. But this combat should not take the form of a categorical intolerance—which was an inverse of the liberal claim, and one which came into being in response to it. Rather,

the issue was not even one of direct argument, but rather one of first principles. Indeed, by *arguing* against toleration, one might well risk assuming liberal presuppositions. On Newman's account, one had to think prudently about how to resist what might be called the rhetorical success of the new natural sciences and the (possibly spurious) support that the advocates of toleration drew from the sciences' successes.

All of which was to say, it was a misreading of Newman's prudential take on politics to characterize him as someone who adopted liberal principles or put forward liberal solutions. Not only was his account of the rights of conscience a non-modern account; he did not use it to found a new science of politics either. Newman's rights of conscience were unconnected to and not derived from (or presupposed by) the modern principle of religious toleration. They arose from separate traditions with separate understandings of nature and right. Nevertheless, the question remains: if not this, then what *was* Newman doing? And why has it been so often the case that Newman's readers were apparently *misreading* him on this political account? The most likely resolution of this problem resides in the fact that most of Newman's readers have missed the fact that he was employing a special kind of writing within the *Letter to the Duke of Norfolk*.

Method Within the *Letter*

The purpose of the *Letter* was not to establish some political standard according to which a legitimate regime could be constructed. It was not to offer a political doctrine or teaching that could be applied in order to make every state more just. The *Letter's* preface, which is only rarely considered, is the best place to see Newman's explicitly stated intentions.

The preface recognized that the Catholics of England had no one but themselves to blame for their difficult situation, that they could "in good measure thank themselves, and no one else, for having alienated from them so religious a mind"[69] as Gladstone. The "chronic extravagances of knots of Catholics" prejudiced "the public mind against our Religion,"[70] with these extravagances taking three forms. First, certain Catholics "conducted themselves as if no responsibility attached to wild words and overbearing deeds"[71]; second, some have "stated truths in the most paradoxical form"[72]; and others have "stretched principles till they were close upon snapping"[73]. In all three cases, Newman's concern lay with injudicious speech. "The English people are sufficiently sensitive to the claims of the Pope, without having them, as if in defiance, flourished in their faces"[74]. With that said, Newman had no intention of denying those paradoxical truths and principles, nor even of "conceal[ing] any part of them"[75]. So while Newman's primary purpose in the *Letter* was to explain how he could see "no inconsistency in my being at once a good Catholic and a good Englishman,"[76] through his criticisms of intemperate speech he gave himself a second task as well, to show Catholics how to speak about the Church. He admitted as much when he enumerated the difficulties of his task, one of which was getting people "to put off the modes of speech and language which are usual with them"[77]. This second project, of properly orienting Catholic thought and speech, was not another task so much as it was a foundation for the first: Catholics could be good Englishmen only when they were capable of talking in the right way about the Church. Such speech would have to recognize the appropriate levels of conversation and

[69] *Letter*, 176.
[70] Ibid., 177.
[71] Ibid., 176.
[72] Ibid., 177.
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.

most especially the means of elliptically indicating a conclusion that could not be spoken aloud—it would have to discover an alternative to speaking "in the most paradoxical form" and to pushing principles to the point of "snapping."[78]

The *Letter to the Duke of Norfolk* contains two fundamental teachings, both of which have been alluded to in the previous chapters. Newman's purpose was not only to communicate those two teachings, but to show English Catholics *how* to talk about them. Correct belief could be properly formed only if it *avoided* certain temptations inherent in liberal discourse. Newman's first teaching was that there was no new "secular" age that could dispense with the old rivalries between ecclesial and political authorities. Newman wanted to put the lie to 19th century doctrines of progress. Newman offered a pseudo-liberal history of progress before undermining that history at the last moment. He concluded by insisting on the permanence of certain theologico-political concerns, but the detailed discussion of those issues was 75 pages prior—far enough for the inattentive mind to forget their radically non-liberal character.

The second teaching concerned the modern doctrines of rights in Britain. Not only did rights undermine the regime in which they were placed, but they also caused their proponents to mis-characterize the nature of liberty and authority. Newman's ultimate but unspoken conclusion was a bold one, and a perfect inverse of Gladstone's charge. Gladstone had argued that papal infallibility made Catholics mental and moral slaves, unfit for the British constitutional way of life. Newman's rejoinder was that the liberal principles by which Gladstone criticized Catholics were even *more* irreconcilable with the British Constitution; and adherence to those liberal

[78] And, as Newman would show, the project of learning how to speak properly about the Church will influence, in fundamental ways, what one understood the Church to be. For the Church to retain its personality, it could not be spoken of merely *as if* it were "the Ark of Salvation, the Oracle of Truth, the Bride of Christ," it must actually be understood *to be* those appellations. See Ch. 4, esp. pp. 144ff.

principles had a tendency to make someone a slave to self-will. By scattering his argument throughout the *Letter to the Duke of Norfolk*, leaving hints and half-digested arguments, Newman educated his reader in the truth and the most *political* means of communicating it. Economic speech in large part explained how a good Catholic who recognized the permanence of the theologico-political concerns could nevertheless be "at once a good Englishmen and a good Catholic."

Apparent Inconsistencies In Statements On Church and State

The endeavor to educate Catholics how to speak about the Church is a much more plausible project for Newman's *Letter* than the dissemination of a particular political doctrine, especially since when Newman put forward anything like a direct teaching in the *Letter*, he appeared to contradict himself. The first two essays in *Newman and Gladstone,* by James Bastable and David Nichols,[79] attempted to read the parts of the *Letter* in light of the whole and came away unimpressed. Not only did Newman not refute Gladstone's attacks, but at some points, Bastable and Nichols noticed that Newman even appeared to contradict himself to the detriment of his cause. How coherent and persuasive a case can Newman make, Bastable and Nichols wondered, if sometimes Newman says that the Church and State are "as distinct and divided in their nature as any two things can possibly be" and sometimes he says, "The circumferences of State jurisdiction and of Papal are for the most part quite apart from each other; there are just some few degrees out

[79] James D. Bastable, "Gladstone's *Expostulation* and Newman," (9-26) and David Nicholls, "Gladstone, Newman, and the politics of pluralism," (27-38) in *Newman and Gladstone.*

of the 360 in which they intersect."[80] Either they were separate or they were not—and which can it be if Newman says both?

There was an ambiguity to Newman's pronouncements on the issue of church and state throughout the *Letter*, not only in the two instances mentioned above. On the one hand, Newman could often sound as if matters of Church and State were separate affairs which ought not (or could not) overlap. "In their nature, in the abstract" the allegiance to Pope and king are "as distinct and divided in their nature as any two things can possible be."[81] "The Church is independent of the State"[82] and an "influential peculiarity of all Christian times" lies in the "separation of the Church from the State"—a separation caused as a "result of an internal necessity" of the claims of Christianity.[83] Because of this separation, an individual's conscience, in deciding on matters that may have political import, "cannot come into direct collision with the Church's or the Pope's infallibility."[84] A result of this separation of the domains of religion from the domain of the state was that there was no difficulty in obeying *both* Pope and Sovereign: "When, then Mr. Gladstone asks Catholics how they can obey the Queen and yet obey the Pope … I answer, that it is my rule, both to obey the one and to obey the other."[85] Newman "sees no inconsistency in my being at once a good Catholic and a good Englishman"[86] because a proper understanding of the separation of church and state, as effected by a Christian understanding of those claims, kept each kind of authority in its proper sphere and out of an unnecessary conflict. What more could John Courtney Murray desire?

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[80] *Letter,* 240.
[81] *Letter,* 187.
[82] Ibid., 201.
[83] Ibid., 204.
[84] Ibid., 256.
[85] Ibid., 243.
[86] Ibid., 177.

On the other hand, the *Letter* contained numerous assertions about the *inseparability* of the two domains. As already mentioned, Newman admitted of a "few degrees" where matters of church and state "intersect." Moreover, when speaking of the Irish, Newman reported that:

> And so as regards Irishmen, they do not, cannot, distinguish between their love of Ireland and their love of religion; their patriotism is religious, and their religion is strongly tinctured with patriotism; and it is hard to recognize the abstract and Ideal Ultramontane, pure and simple, in the concrete exhibition of him in flesh and blood as found in the polling-booth or in his chapel[87]

And while Newman agreed that "in the abstract," matters of church and state were separate, it was "in the abstract, but not in the particular case; for a heathen State might bid me throw incense upon the altar of Jupiter, and the Pope would bid me not to do so."[88] A state that misunderstands its sphere of independence is liable to overstep. Discussions of the "independence" of the Church often turned themselves on their head:

> If the Church is independent of the State, so far as she is a messenger from God, therefore should the State, with its high officials and its subject masses, come into her communion, it is plain that they must at once change hostility into submission. There was no middle term; either they must deny her claim to divinity or humble themselves before it,--that is, as far as the domain of religion extends, and that domain is a wide one.[89]

Here, "the domain of religion" was a "wide one" rather than a very "few degrees out of the 360," and there were only two possible stances of the state towards the Church's claims: either submission or persecution. Newman even declared it "as [his] own judgment":

> that the prerogatives…which the Church had under the Roman power, those she claims now, and never, never will relinquish; claims them, not as having received them from a dead Empire, but partly by the direct endowment of her Divine Master, and partly as being a legitimate outcome of that endowment; claims them, but not except from Catholic populations, not as if accounting the more sublime of them to be of everyday use, but

[87] Ibid., 186.
[88] Ibid., 187.
[89] Ibid., 201.

> holding them as a protection or remedy in great emergencies or on supreme occasions, when nothing else will serve, as extraordinary and solemn acts of her religious sovereignty.[90]

Those prerogatives Newman defined not only as the institution of ecclesiastical courts but also that "the emperors showed their belief in the divinity of the Church and of its creed by acts of what we should call persecution."[91] The second chapter, on the Ancient Church, even ended its discussion of "the grant of all this ecclesiastical power and privilege" by claiming that it was an example of the "separation of Church from state" and "the liberation of religion from all political elements."[92] The Church's acquisition of great political power in the Roman empire was somehow a sign of the separation of church and state.[93]

The *Letter* could be accused of containing two almost contradictory teachings. The Church has "Sovereignty" such that the Pope "will ever be in fact lord of a vast empire"[94] with the power to depose sovereigns and release people from the obligation of loyalty.[95] And yet, "the weight of [the Pope's] hand upon us, as private men, is absolutely unappreciable,"[96] and even with the Catholic Church claiming infallibility, such a claim "scarcely concerns the politician."[97] One could obey both Pope and King, since so little overlap between the two spheres existed. This summary,

[90] Ibid., 209.
[91] Ibid., 202.
[92] Ibid., 204.
[93] Now is not the time for a full analysis of Newman's claim. The point here is to highlight the apparent inconsistency. But as a short explanation, Newman argued that the acquisition of political power by the Church was a sign of the separation of church and state because it signaled the end of the sacral kingship as described in Ch. 2. That the Church could gain (or lose) political power indicated that political power was not naturally and necessarily co-terminal with spiritual significance.
[94] Ibid., 223
[95] Ibid., 212. Newman explains and minimizes this, as will be explained below on pp. 202ff.
[96] Ibid., 229.
[97] Ibid., 341.

of course, takes only a cursory view of Newman's arguments within the *Letter*, but such ambiguity demands an explanation. Three possible explanations, to be treated in turn, suggest themselves.

The first possibility is that Newman was simply inconsistent. Perhaps he has contradicted himself unintentionally because he was a sloppy thinker and writer. I dismiss this possibility without argument.[98] Perhaps, then, his contradictions were the result of a rhetoric concerned primarily with expediency. Newman's aim in the *Letter* was always to refute Gladstone's claims about the aggressiveness of the Church and the mental slavery of Catholics. If Gladstone's own arguments were self-contradictory, Newman could have been rhetorically interested in refuting *everything* Gladstone had charged, regardless of the ultimate coherence of his own argument. Gladstone had issued four charges against the Roman Catholic Church.

1. "That Rome has substituted for the proud boast of *semper eadem* [always the same] a policy of violence and change in faith."
2. "That she has refurbished, and paraded anew, every rusty tool she was thought to have disused"
3. "That no one can now become her convert without renouncing his moral and mental freedom, and placing his civil loyalty and duty at the mercy of another:
4. "That she [Rome] has equally repudiated modern thought and ancient history"[99]

The first and second charges are themselves inconsistent. Refurbishing rusty tools indicates occasional usage in continuity with past practice. To accuse the Church of new usage of old weapons is an argument *for* the *semper eadem* instead of the opposite. One cannot prove the Church's novelty by pointing out its return to its old ways. As Newman remarked, "Surely it is our

[98] The "school of suspicion" summarized in Ch. 2 will of course make this argument. I grant with them the presence of ambiguity in the text of Newman's writings. Below, I propose an alternative explanation for the presence of that ambiguity.
[99] W.E. Gladstone, "Four Propositions: Are They True?" *The Vatican Decrees and Their Bearing on Civil Allegiance* (London: John Murray, Albemarle Street, 1874), 5-12.

fidelity to the history of our forefathers, and not its repudiation, which Mr. Gladstone dislikes in us."[100] Perhaps this was the cause of Newman's inconsistency: since he felt the need to meet every one of Gladstone's charges, he must argue against them in pieces, resulting in a work that said different things in different places, depending on Gladstone's coherency. Gladstone's inconsistency would necessitate Newman's inconsistency.

Such a strategy would suggest no overriding pattern to the presence of divergent claims within the *Letter*. On this reading, Newman would address each of Gladstone's claims in turn and mount whatever resistance he could find, beginning with the first of Gladstone's propositions and working his way to the fourth. But as Alvin Ryan has suggested in his introduction to the *Letter*, Newman's selection of topics of his essay does not so align. Ryan suggested that if one "leav[es] aside [the] introduction and conclusion" to Newman's *Letter*:

> the second and third sections answer Gladstone's first and fourth propositions, the fourth and fifth sections answer the third proposition, the sixth and seventh sections answer the second proposition, and the eighth and ninth sections, while concerned with the Vatican Council and the Vatican Definition, also bear directly or indirectly on Gladstone's third proposition[101]

If Newman did not treat Gladstone's propositions in turn, from one to four, Ryan gives no indication as to why this *other* strategy of organization ought to be preferred. Or, even if it is to be preferred, Ryan does not explain why Newman organized the refutation in this way. Some better analysis will have to be found.

Another view does present itself. A closer look at the *Letter* shows that the most inflammatory statements regarding toleration were clustered in the sections about the ancient and

[100] Newman, *Letter,* 196.
[101] JH Newman and WE Gladstone*, The Vatican Decrees,* with an Introduction by Alvin S. Ryan (South Bend: University of Notre Dame Press, 1962), xvi-xvii.

medieval church (sections 2 and 3). The sections about the modern negotiation between Queen and Pope (sections 4, 5, and 6) abruptly excised the maximalist language that had previously characterized Newman's analysis. One could argue that this betokened something like a philosophy of history in which a liberal understanding of the state's claims began a new dispensation and a solution to the vexed relations of Church and State. Perhaps the ancient and the medieval church (and ancient and medieval polities) were characterized by fundamental errors—Newman himself admitted "that collisions can take place between the Holy See and national governments, the history of fifteen hundred years sufficiently teaches us."[102] But now, with a firmer understanding of the rights of man and the rights of conscience, a truer politics that protected the interests both of the church and of the (finally rightly organized) state could begin.

There is, of course, something to this. The sections on the political strife of ancient and medieval church were indeed followed by sections on liberty of conscience and arguments about the *naturality* and justice of a "dual allegiance." Newman talked about spiritual sovereignty and political sovereignty in a way that suggested the possibility of their safe separation *and* intimated influences by 19th century liberal progressive thinkers. Matters spiritual and political were both loci of sovereignty and power. Within each locus of sovereignty, there was a dialectic between two forces which Newman sometimes described as loyalty and intellect, and sometimes authority and freedom. This mode of analysis placed Newman firmly within a 19th century political tradition, exemplified by John Stuart Mill, which viewed political progress as the historical outgrowth of "the struggle between Liberty and Authority."[103] The change in tone from sections

[102] Newman, *Letter,* 237.
[103] Mill, "On Liberty," 217.

two and three, combined with the arguments about progress in the sixth section, would seem to betoken an implicit philosophy of history within the *Letter*.

However, within the sixth section of the *Letter*, Newman made use of arguments familiar from Mill in order to turn those arguments on their head.[104] Specifically, Newman used familiar arguments about political and moral progress in order to assert the opposite—the permanent status of certain political questions or problems. One consequence of this assertion about the non-progressive nature of politics was that it caused a re-consideration of the first two sections of the *Letter*, which concerned the ancient church. One could read the first two sections with only an antiquarian interest or with an understanding that such theological and political difficulties had been overcome, but Newman's arguments in later sections cause a reader to re-examine the earlier arguments, with one result being that some of Newman's most difficult and relevant political teachings were buried under what looked like *mere* historical analysis. In other words, Newman has organized the *Letter* not at random, nor because of progressive philosophy of history, but in order to make a subtle commentary on, and critique of, such a way of understanding political and theological problems.

Newman's Rhetorical Use of Liberal Philosophies of History

In order to discern Newman's intention within the *Letter*, the most productive place to begin is the sixth section on "The Encyclical of 1864," which includes in miniature, the interplay between the conflicting claims that characterized the *Letter* as a whole. Though titled "The Encyclical of 1864," in the first sentence Newman proclaimed that "to do justice to it, I must, as

[104] While it is possible to see Mill as the shadow-opponent of the sixth section of the *Letter*, one need not push that particular point in order to underline a broader concern.

in other sections, begin from an earlier date than 1864."[105] What followed was a brief historical sketch of theologico-political or rather ecclesiastico-political relations in Europe from the middle ages to the present day. Even though England separated from Rome in 1534 and "the king took the place of the Pope" in "the Anglican establishment," nevertheless "the Pope's principles kept possession." Though the Pope was ignored "the old idea of a Christian polity was still in force."[106] This understanding, that "the state had a conscience," was still a first principle at the turn of the 19th century when Newman was young, however superseded it may have appeared in 1870. Newman cited a number of examples from the eminent 18th century jurist William Blackstone's *Commentaries on the Laws of England* as support. Newman was careful to include Blackstone's exegesis of the Corporation and Test Acts, which existed (in Blackstone's words) "In order to secure the established Church against perils from non-conformists of all denominations, infidels, Turks, Jews, heretics, papists, and sectaries."[107] Newman concluded his summary of Blackstone by saying:

> Such was the position of free opinion and dissenting worship in England till quite a recent date, when one after another the various disabilities which I have been recounting, and many others besides, melted away, like snow at spring-tide; and we all wonder how they could ever have been in force.[108]

Whatever may be the contemporary opinion of men like Gladstone concerning the absolute primacy of the principle of toleration, especially in its relation to the British Constitution, Newman insisted that up until yesterday, the British constitution (in the words of its foremost jurist) understood toleration to be a prudential rather than a doctrinaire consideration.

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[105] Ibid., 262.
[106] Ibid.
[107] Op. cit, 265.
[108] Ibid, 266-7.

In describing the British Constitution as analyzed by Blackstone, prior to "the new civilization,"[109] Newman said that it embodied the idea of "Toryism." By this Newman meant not a political party or program, but rather the principle of "loyalty to persons."[110] Political life was conducted in such a way as to recognize the authority of particular persons. But these principles were "now superseded," nor could they have been maintained, because of the rise of a new and antagonist principle: "when the intellect is cultivated, it is as certain that it will develop into a thousand various shapes." "First one class of the community, then another, has awakened up to thought and opinion." Though the development of the intellect impacted a range of subjects, its effects were felt first and most forcefully in religious matters, "due to the extreme subtlety and abstruseness of the mental action by which [religious opinions] are determined." Thus the public developed "multiform views on sacred subjects," which "necessarily affected and found expression in the governing order." In a prior time, the State "had a conscience," but with the multiplication of religious opinion, "the ministry of the day could not agree together in the policy or justice of keeping up the state of things which Blackstone describes." Though the state should have a conscience, "what if it happened to have half-a-dozen, or a score, or a hundred, in religious matters, each different from each." "No government could be formed, if religious unanimity was a sine qua non." What then? "the whole theory of Toryism, hitherto acted upon, came to pieces and went the way of all flesh. This was in the nature of things." On a first glance, there were two competing principles, loyalty to persons and liberty of the intellect. Liberty of intellect obtained first in religious affairs, then the wider cultivation of the intellect led to a change in "the governing order." Where once there was a kind of customary authority, it was at a certain point succeeded

[109] Ibid., 263.
[110] Ibid., 268.

by a liberty of intellect—moreover, this was "in the nature of all things,"[111] or according to the nature of political progress.

As presented, Newman's analysis is almost indistinguishable from arguments appearing in J.S. Mill's *On Liberty* and *A System of Logic*. One need not insist that Newman was consciously using or re-working Mill's arguments,[112] only that there was a similarity between the two which could be the consequence of arguments in the style of Mill being popular with and familiar to the British public. However it stood, Mill's argument from *On Liberty* opposes customary authoritative opinion to the individual's liberty, with customary opinion being synonymous with "the likings and dislikings of society or some powerful portion of it."[113] Custom was first broken in religious affairs, where—with minorities unable to gain ascendance—"the rights of the individual against society"[114] were asserted. Eventually the assertion of liberty was extended even to political affairs. The story was linear, as liberty slowly overcame an imposed customary authority; and even if there may be temporary setbacks, the future was ordered towards freedom.

Connected with this understanding of politics was Mill's sociological supposition within the *Logic* that there were two political forces at work in human affairs: the conservative and the progressive. The sociological study of the progressive force Mill termed the science of "Social Dynamics," which was in charge of history's direction, whereas the conservative, the study of

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[111] This and all quotes from the previous paragraph are from *Letter,* 267.
[112] Although such an argument could be made. It is known from his philosophical notebook that Newman carefully read Mill's *Logic* (John Henry Newman, *The Philosophical Notebook of John Henry Nemwan,* ed. Edward Sillem (Louvain: Nauwelaberts Publishing House, 1969). Newman makes reference to Mill's *Logic* on pp. 8, 13, 19, 24-25, 39, and 111.)As has been mentioned, Mill is cited as the ultimate originator of the arguments used by Gladstone and criticized by Newman in the *Letter*. Mill is cited by name in an postscript (363) that was published with later editions of the *Letter*. So it seems likely that Mill was on Newman's mind, though it is difficult to "prove" that Newman was intentionally re-working Mill's arguments.
[113] Mill, "On Liberty," 222.
[114] Ibid.

"Social Statics"[115] merely kept the progressive force from moving too quickly. The progressive science of "Social Dynamics" was a proposed rather than actualized science for Mill, though in the *Logic* he was comfortable stating that the leading principles of the science have been securely discovered. Specifically, it was the case that "the state of the speculative faculties, the character of the propositions assented to by the intellect, essentially determines the moral and political state of the community."[116] In other words "every considerable advance in material civilization has been preceded by an advance in knowledge," such that "the order of human progression in all respects will mainly depend on the order of progress into in the intellectual convictions of mankind."[117] There were the forces of progress and the forces of conservation; the force of conservation merely slowed down but does not decisively alter the force of progress; and the force of progress was determined by the state of intellectual advancement. To put the two arguments together, Mill's claim was that the nature of political things was to move from customary authority to individual liberty, with the chief historical motive being the degree of intellectual advancement, which manifested itself first in speculative and religious matters before exerting a similar influence on politics and society. So far, the analysis is indistinguishable from the narrative of personal loyalty and intellectual freedom told by Newman.

Newman's intellectual history ended by admitting, as has been seen, that the theory of Toryism has gone "the way of all flesh," as was "in the nature of things." "Not a hundred popes could have hindered it." At this point, however, Newman turned the 19th century philosophy of progress on its head. The *Letter to the Duke of Norfolk* had promised to accept the premises but deny the conclusions of its opponents. The 6th section accepted the apparent experience of

[115] John Stuart Mill, *A System of Logic*, Vol. 2., (Indianapolis: Liberty Fund, 1964), 918.
[116] Ibid., 926.
[117] Ibid., 927.

development within British political and religious history; it even accepted the liberal distinction between two principles, loyalty or authority and liberty. Newman concluded his apparent philosophy of history in the following manner.

> The Pope has denounced the sentiment that he ought to come to terms with "progress, liberalism, and the new civilization." I have no thought at all of disputing his words. I leave the great problem to the future. God will guide other Popes to act when Pius goes, as He has guided him … All I know is, that Toryism, that is, loyalty to persons, "springs immortal in the human breast"; that religion is a spiritual loyalty; and that Catholicity is the only divine form of religion. And thus, in centuries to come, there may be found out some way of uniting what is free in the new structure of society with what is authoritative in the old, without any base compromise with "Progress" and "Liberalism."[118]

First, Newman asserted a re-emergence of the principle of loyalty. It was not part of an older age that has been decisively overcome: loyalty and authority were permanently part of the human political condition. This assertion formed the first part of an argument concerning the continued relevance of the Catholic Church. Whereas Mill or Comte would argue that the Church belonged to an earlier stage in history, and that if it was to survive it would need to adapt itself to "progress, liberalism, and the new civilization," Newman argued that the Church, by being founded on a constitutive element of human nature, will ever have a support.

The ground for Newman's argument was a modified version of Alexander Pope's famous line in *An Essay on Man*, "Hope springs eternal in the human breast," wherein Newman replaced "hope" with "loyalty." In so grounding his argument, Newman appealed to something like the "English common sense,"[119] (a major element in the *Letter* which will be explicated later in this chapter) where he took the words of Pope to be a more adequate analysis of the character of people (British and otherwise) than any supposedly scientific or deductive analysis of history. The

[118] Newman, *Letter,* 268.
[119] Ibid., 364.

contemporary fact of the occlusion of the principle of loyalty by the principle of liberty was open to two rival interpretations, either of progress or return. For Newman, the question was acute: what caused one to claim *scientifically* that loyalty as a principle had been superseded? It was just as likely, in fact much more so, that the principle of loyalty would re-assert itself on a new ground. When Newman treated the idea of history within texts like "The Mission of St. Benedict," "The Mission of St. Philip," and "The Second Spring," the progress actually present within historical movement was of a sort entirely different from that argued by the philosophical historian.[120] It may be the case that specific regimes and specific men die, but there was nevertheless a set of permanent issues involving political and spiritual relations that could not be dispensed with by invoking "progress" and "history." In opposition to a mere "theory," Newman responded with the judgment of a poet. He did not argue for the preference of Alexander Pope's authority to that of Mill or Buckle or Comte; rather, he appealed to the every-day experience of the British—if everyone agrees that loyalty springs eternal in the human breast, ought we really to give so much latitude to a political theory that denies this possibility?

[120] For Newman, the premises of theological liberalism and toleration had been asserted rather than argued. To that end, there could not be a successful public demonstrative refutation of the liberal principles, since demonstration required the assumption of first principles. Newman would have to draw attention to the *strangeness* of the liberal principles and the places where they sharply departed from common sense or everyday experience. One of those premises was the principle of progress. In "The Mission of St. Benedict," "The Mission of St. Philip Neri," and "The Second Spring," Newman began from the same starting position as his opponents: all historical periods did not look the same; there appeared to be a difference between them that augured some kind of development; an analogy presented itself between "the life, whether of a race or of an individual of the great human family." But the central question concerned the nature of this progress: was it true that the past was decisively left behind? The examples of the Church and of St. Philip presented an institutional and a personal example wherein progress was accumulative, not exclusive. Moreover, was not the very *hope* in progress a result from the disappointment felt when the moral and political worlds failed to renew themselves on the model of natural and material rebirth? And why, after all, ought the third age of history (the positivist/historical) attach to itself the characteristic of an endless progress? Even *if* history were characterized by three periods, does the third period not end in the death of an individual? Would it not be incredibly strange to propose that the third age would be endless? If progress were a hope, not a proven principle, does not the very rebirth of the Church in England deal a fatal blow to that principle's supposedly *scientific* status? At any rate, Newman compelled the reader to ask himself whether the principle of progress was something true and derived from experience, or whether it was an unproven hope succored by the very disappointment that the complete *lack* of experience (of renewal and rebirth) caused.

With Newman's assertion about the re-emergence of the principle of loyalty, the argument he constructed is as follows. Because the principle of loyalty was eternally a part of human nature, its apparent absence or dissolution cannot be taken as a conclusive victory on the part of the new civilization. Newman's opponents—men like Mill and Gladstone—would look at the contemporary situation and judge that, because customary authority has been decisively overcome by individual liberty, there is now a new historical dispensation, or stable arrangement, whereby society can be firmly built upon the principles of progress and liberty. Newman's argument was that precisely *because* the principle of loyalty was nowhere to be found (or, at least not *recognized* as being operative), the political or social situation was *de facto* unstable (since any stable situation would require the presence, acknowledgement, and recognition of all relevant characteristics of human nature). The question of a more stable arrangement was left to the future--not because of the expectation of further "progress," but because the future would bring not progress but return.

One effect of Newman's strategy was to turn Mill's philosophy of history on its head. While there may be two forces at work in history—authority and liberty—the occlusion of one by the other was only an apparent progress. What looked like progress from Mill's point of view was, from Newman's, a partial forgetting of what counted as relevant political phenomena.[121] Newman's re-telling of the philosophy of history was not a pure inverse, like what would be told by someone like de Maistre or Chateaubriand,[122] whereby the same two forces were at work with

[121] It might be more accurate to say that Mill himself viewed history in two respects: on the one hand, the triumph of liberty over authority; on the other, the continual threatening presence of a re-emerging authority that needs to be constrained. In such a way are we able to take account of Mill's real concern with the tyranny of public opinion and his fears about an authoritative democratic public (as Tocqueville taught him to do). So Mill might agree, in a sense, with Newman, that liberty and authority are both eternally present political phenomena, but Mill would view the re-emergence of some form of authority with misgiving. Newman, on the other hand, would be more likely to point out to Mill that some kind of authority is always present—"we cannot do without first principles,"—and that if Mill does not see the force of authority at work, it is a fault of his perception more than a commentary on the conquest of individual liberty. On the question of the relevance of authority, even in a perfected "liberal" regime, see Yves Simon's *A General Theory of Authority* (South Bend: University of Notre Dame Press, 1962).

[122] Emile Perreau-Saussine, *Democracy and Christianity,* 113.

the same dynamic, only with the narrative changed from one of progress to one of decline. Rather, Newman asserted the co-ordinate and reciprocal presence of these two forces and judged a stable situation to include and recognize both. History did not have a direction so much as human nature had diverse elements that must be acknowledged in a governing order. When Newman professed hope about the future, it was not because he looked towards the triumph of a single principle, but because he trusted that at a certain point in time, a certain kind of forgetfulness would cease or at least abate in intensity. In other words, it might be said that Newman was a better sociologist of history than Mill: he began with Mill's same explicit pre-suppositions and categories, but refused to allow a "sociology" of history to become history with a direction.[123] Or, as Newman said himself about his method of proceeding with Gladstone, he accepted the premises but denied the conclusion.

It may be the case that specific regimes and specific men die, but there was nevertheless a set of permanent issues corresponding to political and spiritual relations that cannot be dispensed with by invoking "progress" and "history." In that case, the accounts of the ancient and the medieval church, in which there was so much inflammatory language about the relations between pope and emperor, cannot be safely quarantined in the past. If the past—especially the past of the Church—was eternally present, then a progressive philosophy of history cannot explain Newman's contradictions within the *Letter to the Duke of Norfolk*. The contradictions are real and must be adjudicated in some way.

[123] Eric Voegelin in the *New Science of Politics*, called this the mistaken project of attempting to discover an *eidos* of History (118-121)

The Maximal Claims within the Sections on the Ancient and Papal Church and Their Economical Presentation

Newman's survey of the ancient and medieval history of the Church was animated by Gladstone's accusation that the proclamation of papal infallibility repudiated the ancient history of the Church. Infallibility was, to Gladstone's mind, "incompatibl[e] with our civil allegiance," and "he tells us that our Religion [now] has a bearing and behavior towards the state utterly unlike that of ancient Christianity." "[The Church's] action is so antagonistic to the State's action, and our claims so menacing to civil peace and prosperity" that the Church has "actually forfeited the proud boast of being 'Ever one and the same.'"[124] The Vatican decrees interfered in the business of the state in a departure from the church of the early centuries and cast Catholics' civil allegiance into doubt. Instead of such an arrangement, Gladstone argued, the church ought to be independent of the state.

Newman's first response was to ridicule Gladstone: surely saints Ignatius, Polycarp, Cyprian, Laurence, Alexander, Paul of Constantinople, Ambrose, and Popes Leo, John Sylverian, Gregory, and Martin "cared supremely and labored successfully, to cultivate peaceful relations with the government of Rome." They had no doctrines or rules of life which caused them to be considered "the enemies of the human race!"[125] with Newman alluding to the famous line from Tertullian's *Apology*.[126] Insofar as the early history of the church was full of conflict between the Christians and Rome, "it is our fidelity to the history of our forefathers, and not its repudiation

[124] *Letter,* 195-6.
[125] Ibid., 196.
[126] Tertullian, *The Apology of Tertullian,* trans. W.M. Reeve (London, Sydney: Griffith Farran Okeden & Welsh, 1889), 100.Cf. Tacitus, *Annals*, 15.44.5, where Christians, having been charged by Nero with setting fire to the city, are convicted not so much because of the forensic quality of the proofs, but "because of their hatred of mankind." (op. cit. p. 58, *Christian and Pagan in the Roman Empire*, ed. Robert D. Sider (Washington, D.C.: CUA Press, 2001). Also quoted by Newman in *Development*, Ch. 6, p. 209.

which Mr. Gladstone dislikes in us."[127] The source of that conflict was the same now as it was then: the church maintained the "tradition of Apostolical independence and freedom of speech."[128] Newman agreed with Gladstone: the church *was* characterized by an independence from the state (an independence which "is even one of her notes or credentials"[129]), but this independence cannot be cognized as Gladstone would have it, upon lines of a liberal separation of church and state.

"The Church ha[s] rights which the State c[an] not touch, and [is] prone to ignore"[130] which derive from its supernatural mission. That claim to independence was the cause of persecution in the first centuries of the Church's existence. Religious persecution was not a mis-understanding, a mistake, or a human error that needed to be overcome—it was one of two theoretically consistent responses to the Church's claims:

> I have more to say on this subject, perhaps too much, when I go on, as I now do, to contemplate the Christian Church when persecution was exchanged for establishment, and her enemies became her children. As she resisted and defied her persecutors, so she ruled her convert people. And surely this was but natural, and will startle only those to whom the subject is new. If the Church is independent of the State, so far as she is a messenger from God, therefore, should the State, with its high officials and its subject masses, come into her communion, it is plain that they must at once change hostility into submission. There was no middle term; either they must deny her claim to divinity or humble themselves before it,--that is, as far as the domain of religion extends, and that domain is a wide one. They could not place God and man on one level.[131]

Insofar as the Church was independent of the state, the State must either deny the Church's claim to divinity or accept it and convert. Persecution or conversion were the two possible responses of the civil power to the Church's supernatural claims: "there was no middle term." Independence

[127] *Letter,* 196.
[128] Ibid., 197.
[129] Ibid.
[130] Ibid., 199-200.
[131] Ibid., 200-201.

did not mean that the Church could be quarantined or strictly separated from the civil power. Newman concluded his section on the ancient Church by quoting Ranke:

> The rise of Christianity involved the liberation of religion from all political elements. From this followed the growth of a distinct ecclesiastical class with a peculiar constitution. In this separation of the Church from the State consists, perhaps the greatest, the most pervading and influential peculiarity of all Christian times. The spiritual and the secular powers may come into near contact, may even stand in the closest community; but they can be thoroughly incorporated only at rare conjunctions and for a short period. Their mutual relations, their positions with regard to each other, form, from this time forward, one of the most important considerations in all history.[132]

Independence, in this case, meant that the Church was a new kind of spiritual authority; it derived its power *independent* of the gods of the city. Newman understood the independence of the Church in Augustinian terms.[133] The Christian revelation then marked something new for the political realm. Mark Shiffman has recently summarized Augustine's argument in the following manner:

> Liberation from the demons fundamentally reconfigures the civic association. For paganism, there is no distinction between a political sphere and a religious one. The gods are the gods of the city. The very first thing Augustine remarks upon in the sack of Rome by the Visigoths is a historical novelty: an invading foreign army, because they professed Christianity, spared those who made the same profession and let them take sanctuary in churches. This defies the logic of pagan religion, grounded upon pride in power: the gods of one city or people vie for power with the gods of another through human warfare. Christians on the other hand recognize that, although they remain members of different cities, they belong more fundamentally to a single community that transcends the bounds of civic belonging, because they share a fundamental relations hip to the Creator of the universe.[134]

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[132] Ibid., 204-5.
[133] Augustine, in the *City of God*, typically identified the gods worshipped in pagan cities with the demons who, through pride, fell from heaven (Augustine, *City of God,* X.26, XII 1-3. Op. cit. Shiffman, 601).
[134] Mark Shiffman, "Political Life and the Horizon of the Human: *Polis,* Church and State, and Totalitarianism," *Communio* 43, no. 4 (Winter 2016): 602.

The Christian Church *was* characterized by an independence in relation to the civil power, but this independence was the result of the separation of something that had previously been intermingled with the civil power.

The new identity of an independent spiritual authority distinct from the civil authority did not settle the theologico-political issue; rather it heightened the tension between the two spheres. Rome's first experience with the Christian claims caused her to label the Christians the "enemy of the human race." The introduction of the Christian church, in its relations to the civil power, "formed…one of the most important considerations in all history," with the two theoretically consistent alternative positions being those of persecution or conversion. And while persecution was not a peaceful state of affairs, conversion did not promise the end to all dispute and the broad reign of toleration. The "characteristics of the convert Empire were," Newman told his readers, "the immediate, some of them the logical, consequences of its new faith."[135] Newman identified three characteristics: emperors "bowed their heads before the Bishops" and the civil power more generally offered obedience to the church; "laws were passed in favor of the Church" with ecclesiastical courts being established; and:

> the Emperors showed their belief in the divinity of the Church and of its creed by acts of what we should now call persecution. Jews were forbidden to proselytize a Christian; Christians were forbidden to become pagans; pagan rights were abolished, the books of heretics and infidels were burned wholesale; their chapels were razed to the ground, and even their private meetings were made illegal.[136]

The alternative to persecution involved the Church's conquest of ground that looks to modern eyes to be purely political. In the new arrangement, the Church exerted personal influence over rulers,

[135] *Letter,* 203.
[136] Ibid., 202-3.

inserted herself into the legal code, and *even persecuted* in its own right and on its own behalf. Of course, such persecution was not categorical. Newman explained:

> As to the prohibition of heretical meetings, I cannot get myself quite to believe that Pagans, Marcionites, and Manichees had much tenderness of conscience in their religious profession, or were wounded seriously by the Imperial rescripts to their disadvantage. Many of these sects were of a most immoral character, whether in doctrine or practice; others were forms of witchcraft; often they were little better than paganism. The Novatians certainly stand on higher ground; but on the whole, it would be most unjust to class such wild, impure, inhuman rites with even the most extravagant and grotesque of American sectaries now. They could entertain no bitter feeling that injustice was done them in their repression. They did not make free thought or private judgment their watch-words.[137]

The sects were not persecuted because they were un-Christian. They were persecuted because they were "immoral," "witchcraft," and "paganism." While Jews were forbidden to proselytize to Christians, they were not suppressed. There were some ambiguities in Newman's presentation, as with Newman's elusive conclusion that the ancient sects "did not make free thought or private judgment their watchwords." The question of whether Unitarianism, for instance, would fall under the interdict that befell Paganism, Marcionism, and Manicheeism was left open. In a similar way, Newman had introduced this section on the convert empire by noting that these "characteristics of the convert Empire were the immediate, some of them the logical, consequences of its new faith."[138] This raised the possibility that some of these immediate consequences were *illogical* or perhaps unnecessary. Nevertheless, the irresistible presentation was one in which the Catholic Church's unique claims demanded that the civil sphere take cognizance of it, either through political action entailing persecution or political action entailing conversion.

In subsequent sections of the *Letter*, Newman reiterated this strong account of inseparably *political* nature of the Church's claims. In Section III, The Papal Church, the Pope spoke of his

[137] Ibid., 203.
[138] Ibid., 203.

right "to depose sovereigns, and release the people from the obligation of loyalty, a right which had undoubtedly sometimes been exercised in crucial circumstances."[139] Immediately following, in Section IV on Divided Allegiance, Newman began by asserting that:

> BUT one attribute the Church has, and the Pope as head of the Church, whether he be in high estate, as this world goes, or not, whether he has temporal possessions or not, whether he is in honour or dishonour, whether he is at home or driven about, whether those special claims of which I have spoken are allowed or not,—and that is Sovereignty. As God has sovereignty, though He may be disobeyed or disowned, so has His Vicar upon earth; and farther than this, since Catholic populations are found everywhere, he ever will be in fact lord of a vast empire; as large in numbers, as far spreading as the British; and all his acts are sure to be such as are in keeping with the position of one who is thus supremely exalted.[140]

The Pope, as head of the Church, was lord of a vast empire, possessing sovereignty, capable of deposing princes. And yet, Newman would go on to argue that "the weight of [the Pope's] hand upon us, as private men, is absolutely unappreciable,"[141] and even with the Catholic Church claiming infallibility, such a claim "scarcely concerns the politician."[142] And he began the *Letter to the Duke of Norfolk* by claiming that he saw "no inconsistency in by being at once a good Catholic and a good Englishman." How can these maximalist claims possibly be reconciled?

When Newman related the maximalist claims of the Roman and medieval church, he did not do so without conditions. After having enumerated the consequences of Rome's conversion, Newman added:

> there were two broad conditions which accompanied the grant of all this ecclesiastical power and privilege, and made the exercise of it possible; first, that the people consented to it, secondly, that the law of the Empire enacted and enforced it. Thus the high and the low opened the door to it. The Church of course would say that such prerogatives were justly hers, as being at least congruous grants made to her, on the part of the State, in return

[139] Ibid., 220.
[140] Ibid., 223.
[141] Ibid., 229.
[142] Ibid., 341.

> for the benefits which she bestowed upon it. It was her right to demand them, and the State's duty to concede them.[143]

In one sense, this comment was the barest of political facts: the maximalist claims of the Church did not have any political efficacy without this double condition of popular consent and legal recognition. But Newman's formulation of this condition with the pre-modern pattern of duties, rights, and consent, became clearer when he repeated this same formulation in his discussion of papal power.

Treating papal power in the middle ages, Newman returned to the same relationship between church and state. Gladstone had accused the papacy of sharpening "rusty tools" of medieval statecraft in the publication of the encyclical *Mirari Vos*, in which the papacy reserved the right to depose princes. Newman had argued previously that encyclicals had to be read carefully, and that no assertion was ever baldly thrown forward without certain limiting restrictions. The Pope himself, Newman related, had published an analysis of these claims in 1872, which Gladstone quoted without realizing the drift of their arguments:

> As if to answer Mr. Gladstone by anticipation, and to allay his fears, the Pope made a declaration three years ago on the subject, which, strange to say, Mr. Gladstone quotes without perceiving that it tells against the very argument which he brings it to corroborate;—that is except as the Pope's *animus* goes. Doubtless he would wish to have the place in the political world which his predecessors had, because it was given to him by Providence, and is conducive to the highest interests of mankind, but he distinctly tells us in the declaration in question that he has not got it, and cannot have it, till the time comes, which we can speculate about as well as he, and which we say cannot come at least for centuries. He speaks of what is his highest political power, that of interposing in the quarrel between a prince and his subjects, and of declaring upon appeal made to him from them, that the Prince had or had not forfeited their allegiance. This power, most rarely exercised, and on very extraordinary occasions, it is not necessary for any Catholic to acknowledge; and I suppose, comparatively speaking, few Catholics do acknowledge it; to be honest, I may say, I do; that is, under the conditions which the Pope himself lays down in the declaration to which I have referred, his answer to the address of the Academia. He speaks

[143] Ibid., 203-4.

> of his right "to depose sovereigns, and release the people from the obligation of loyalty, a right which had undoubtedly sometimes been exercised in crucial circumstances," and he says, "This right (*diritto*) in those ages of faith,—(which discerned in the Pope, what he is, that is to say, the Supreme Judge of Christianity, and recognized the advantages of his tribunal in the great contests of peoples and sovereigns)—was freely extended,—(aided indeed as a matter of duty by the public law (*diritto*) and by the common consent of peoples)—to the most important (*i piu gravi*) interest of states and their rulers." (*Guardian*, Nov. 11, 1874.)[144]

Newman interpreted the Pope's claim of political rights in the following way:

> Now let us observe how the Pope restrains the exercise of this right. He calls it his right—that is in the sense in which right in one party is correlative with duty in the other, so that, when the duty is not observed, the right cannot be brought into exercise; and this is what precisely what he goes on to intimate; for he lays down the conditions of that exercise.[145]

Those conditions were (1) "rare and critical circumstances" (2) not an arbitrary power but "by a process of law and formal examination of the case and (3) "the exercise of this right is limited to the ages of faith; ages which on the one hand, inscribed it among the provisions of the *ius publicum*, and on the other so fully recognized the benefits it conferred, as to be able to enforce it by the common consent of the peoples," meaning "no consent which is merely local…but a united consent of various nations of Europe, for instance, as a commonwealth, of which the Pope was the head."[146] Newman returned to the same understanding of duties and rights in both the ancient and medieval discussions. Duties and rights were correlative, but the duty came first. If the duty was observed, then a right could be invoked. But if the duty was ignored, "the right cannot be brought into exercise." While the Pope retained the abstract right to depose princes, it could obtain only when the duties of peoples towards the Pope are observed—namely, they had to give their consent.

[144] Ibid., 219-221.
[145] Ibid., 221.
[146] Ibid., 221-2.

The people's duty of consent cannot be understood as individual consent along mythical Hobbesian[147] or even Laskian lines.[148] When Newman talked about the consent of the people, he was not indicating a particular moment in time—a plebiscite or public acknowledgement. Rather, he meant the conversion and education of the people. The "united consent of various nations of Europe" manifested itself in something called "Christendom," not in any particular public act of allegiance. When Newman restated the two conditions accompanying the grant of power, he rephrased the second condition as "that they had the consent of the Christian populations." The populations who gave consent *were already Christian*. They were already converted. The public power acceded to the Church, whether ancient or medieval, was not a *means* by which the Church converted the population; instead it was a *consequence* of a prior conversion. It was a lagging, not a leading indicator.[149] Consent, on this model, was not a neutral or uninfluenced decision: it did not happen in the state of nature. Consent was given by a people already influenced or converted to central Christian claims.[150]

There were only two theoretically consistent alternatives, but a vast space was opened between them because of the conditions attached to conversion. History, then, was the movement between these two poles. Persecution and conversion were the two boundaries to political life, not the only available cases. In the present day, while the Pope still retained the "abstract right" of supreme jurisdiction, the political facts on the ground (i.e., the destruction of Christendom and

[147]"Mythical" Hobbesian meaning the popular understanding of consensual covenanting in order to escape the state of nature. Hobbes, of course, knew quite well that such conditions rarely obtained, and he treated "implied" consent in detail in *Leviathan* Ch.'s 14, 15, 20, and 21..

[148] Pp. 63ff. in Ch. 2, supra.

[149] For the Roman empire, the conversion of the state happened with the conversion of the emperors, who were the ruling element.]

[150] Compare this to Newman's treatment of self-will within the individual conscience. *Because* the conscience is naturally in relation to a superior, conscientious obedience is the proper natural response. "Independence" is then an act of self-will, not an attainment of a proper "neutrality." See pp. 133ff. in Ch. 3 supra, especially Robert George's alternate reading of Newman's account of conscience.

of the implicit consent of all the European populations) rendered that right un-assertable. Because the peoples of Europe were less-converted now than during the "ages of faith," the Pope's rights were inoperable—but only because of the historical movement back towards the pole of persecution. There was no new "secular" era in which these concerns were dismissed or overcome. All kinds of political accommodations were possible (and temporary), but there was no alternative to this movement back and forth between the possibilities of conversion and persecution. In just the same way that the principle of loyalty would always re-assert itself, so would this concern with conversion.

The possibility of conversion was a central political concern for the Church. Prudence dictated the negotiation of political accommodation within any specific point between the two poles. Newman criticized Gladstone for being insufficiently attentive to the relevant political phenomena, for having inadequate prudential judgment:

> But one thing, except by an almost miraculous interposition, cannot be; and that is, a return to the universal religious sentiment, the public opinion, of the medieval time. The Pope himself calls those centuries "the ages of faith." Such endemic faith may certainly be decreed for some future time… Is there any chance whatever, except by miracles which were not granted then, that the public law and the inhabitants of Europe will allow the Pope that exercise of his rights, which they allowed him as a matter of course in the 11th and 12th centuries? If the whole world will at once answer No, it is surely inopportune to taunt us this day with the acts of medieval Popes towards certain princes and nobles, when the sentiment of Europe was radically Papal. How does the past bear upon the present in this matter? *Yet Mr. Gladstone is in earnest alarm, earnest with the earnestness which distinguishes him as a statesman, at the harm which society may receive from the Pope, at a time when the Pope can do nothing*. [emphasis mine] He grants (p. 46) that "the fears are visionary ... that either foreign foe or domestic treason can, at the bidding of the Court of Rome, disturb these peaceful shores;" he allows that "in the middle ages the Popes contended, not by direct action of fleets and armies," but mainly "by interdicts," p. 35. Yet, because men then believed in interdicts, though now they don't, therefore the civil Power is to be roused against the Pope. But his *animus* is bad; his *animus*! what can *animus* do without matter to work upon? Mere *animus*, like big words, breaks no bones.[151]

[151] *Letter,* 218-19.

Gladstone could grasp a single principle—the assertion of a right—and the "mere animus" of the Pope but was unable (or unwilling) to recognize how a variety of circumstances rendered that right null. This was the effect of a doctrinaire politics that was unable to perceive how abstract principles modified one another or were limited by facts on the ground. In a later section on the papal Encyclical of 1864 (the *Syllabus of Errors*), Newman concluded his argument against Gladstone by noting that the encyclical itself had merely *denied* a universal claim. The *Syllabus of Errors* had denied that liberty of conscience:

> …being inherent in man, is of universal force—that is, all over the world— also, says the proposition, it is a right which must be recognised by all rightly constituted governments. Lastly, what is the right of conscience thus inherent in our nature, thus necessary for all states? The proposition tells us. It is the liberty of *every* one to give *public* utterance, in *every* possible shape, by *every* possible channel, without *any* let or hindrance from God or man, to *all* his notions *whatsoever* [152]

As Newman said, "is there any government on earth that could stand the strain of such a doctrine as this?" The encyclical did not offer any positive appraisal or judgment about how far liberty of conscience ought to proceed: it simply denied the universal claim above. But Gladstone attacked the Pope as the opponent of liberty on those grounds. Newman could then conclude:

> Which of the two in this matter is peremptory and sweeping in his utterance, the author of this thesis himself, or the Pope who has condemned what the other has uttered? Which of the two is it who would force upon the world a universal? All that the Pope has done is to deny a universal, and what a universal! a universal liberty to all men to say out whatever doctrines they may hold by preaching, or by the press, uncurbed by church or civil power. Does not this bear out what I said in the foregoing section of the sense in which Pope Gregory denied a "liberty of conscience"? It is a liberty of self-will. What if a man's conscience embraces the duty of regicide? or infanticide? or free love? You may say that in England the good sense of the nation would stifle and extinguish such atrocities. True, but the proposition says that it is the very right of every one, by nature, in {275} *every* well

[152] Ibid., 274.

> constituted society. … Has Mr. Gladstone really no better complaint to make against the Pope's condemnations than this?[153]

Newman predicted Gladstone's response: obviously, the "good sense" of the English people would prevent the full and unmoderated implementation of that principle. Newman would of course agree. But Gladstone's abstract or doctrinaire approach to political issues did not provide him the resources to take explicit cognizance of English common sense. He of course *depended* on it, but his political language was one of unmoderated abstract principles. This kind of discourse that relied on external principles it must ignore, was a failure of political judgment.

One sees this especially in the discussion of "toleration." The centrality of conversion explained why Newman had referred to the consequences, "some of them logical," of Rome's conversion, which had suggested that some of those consequences were illogical or at least not strictly necessary. In summarizing Rome's persecution of the ancient pagan sects, Newman mentioned that those sects "did not make free thought or private judgment their watchwords." If Newman were putting forward a categorical imperative, he might say that any sect that made free thought its basis ought not be persecuted, because this was a demand of impersonal reason. Newman *did* think that modern sects that made free thought their watchwords ought not be repressed, but not for any categorical reason. Because those sects made "private judgment" their watchword, they were predisposed to view *any* assertion of authority as intolerable oppression—which, as Newman would argue, was the impetus for Gladstone's own reaction to the Vatican Decrees. Newman's argument against persecution was a prudential psychological analysis, not an abstract claim. Since conversion was always a central concern, and since the assertion of any authority would cause the sects of free-thinkers to instinctively turn away, Newman had to find

[153] Ibid., 274-5.

another and more indirect method of persuasion. A method which would begin by drawing attention to the inconsistency of their own position.

Common Sense and Assumed Principles, Economically Considered

When Newman criticized Gladstone and contemporary British political policy in the *Letter to the Duke of Norfolk*, he did not use any calculus about rights to motivate his critique. His criticism consisted in the fact that British policy was not only inconsistent with its own constitution, but oblivious to that inconsistency. The criticism presupposed a pre-modern understanding of rights, duties, and a supervening order. The purpose of the critique was to gently lead British liberals to a realization that the efficacy of their political prescriptions depended on a set of "common sense" presuppositions which their liberalism both could not cognize *and* simultaneously tended to undermine. This argument was the culmination of Newman's indirect critique of liberalism—which could only ever be indirect, since first principles were at stake. Newman's argument occurred in an elliptical fashion over the 4th, 5th, and 6th, sections, "Divided Allegiance," "Conscience," and "The Encyclical of 1864." Because of the argument's gentle and economical nature, the best place to begin is at the end, in the 6th section, and work backwards.

Section 6, "The Encyclical of 1864," referred to the publication of the encyclical *Mirandi Vos* and the appended *Syllabus of Errors*, which famously contained the Pope's denunciation of "progress, liberalism, and the new civilization." It was on the basis of these documents (along with the subsequent declaration of papal infallibility) that Gladstone argued that the papal claims necessitated the enslavement of Catholics' consciences. In the gentlest terms, Newman's argument began in the form of a *tu quoque*: the criteria by which Gladstone and the liberal world

criticized the Catholic Church were equally able to undercut the principles by which Gladstone and the liberal world itself were governed. Newman showed that the venerable Blackstone took a position similar to the Catholic Church on the supremacy of religion[154]and on the liberty of the press, conscience, and worship.[155] Newman quoted Gladstone as having said "that the Holy See has 'condemned' the maintainers of 'the Liberty of the Press, of conscience, and of worship.' Again, that the 'Pontiff has condemned free speech, free writing, a free press, toleration of non-conformity, liberty of conscience'."[156] "Who would not understand it to mean that the Pope had pronounced a universal anathema against all those liberties *in toto*, which the Pope had condemned?" Newman asked. "But the Pope has done no such thing. The real question is, in what respect, in what measure, has he spoken against liberty: the grant of liberty admits of degrees."[157] It was exactly in this claim, that grants of liberty admitted of degrees, that Newman found Blackstone and the Pope together against Gladstone. "Blackstone is careful to show how much more liberty the law allowed to the subject in his day, how much less severe it was in its safeguards against abuse, than it had used to be; but he never pretends that it is conceivable that liberty should have no boundary at all."[158] Newman then gave an analysis of the manner in which Catholics were still under disadvantages in England and would be capable of raising claims about abstract rights, but "we have the good sense neither to feel such disabilities a hardship, nor protest against them as a grievance,"[159] because as Catholics they understood that abstract and unlimited rights simply did not exist.

[154] Ibid., 264-6.
[155] Ibid., 269ff.
[156] Ibid., 269.
[157] Ibid.
[158] Ibid.
[159] Ibid., 271.

Against this Catholic understanding of limited rights, Newman said that as "for the present state of English law—I say seriously Mr. Gladstone's accusation of us avails quite as much against Blackstone's four volumes, against laws in general, against the social contract, as against the Pope."[160] Blackstone endorsed certain restrictions of public meetings, of the Press, and of liberty of worship; and the present British law and British people did the same. Only when "Mr Gladstone has a right to say broadly, by reason of these restrictions, that British law and the British people condemn the maintainers of liberty of conscience, of the press, and of worship, in toto, then may he say so of the Encyclical, on account of those words which to him have so frightful a meaning."[161] Gladstone and the British public possessed a certain blindness with regard to the principles by which they lived and argued: or rather, the principles by which they lived were not the same as those they defended in argument.

Gladstone's political arguments (which, as Newman noted in an appendix, drew their inspiration from Mill's *On Liberty*) amounted to the assertion of a universal: "the right of conscience…being inherent in man, is of universal force—that is, all over the world…it is a right which must be recognized by all rightly constituted governments."[162] And this right of conscience was "the liberty of every one to give public utterance, in every possible shape, by every possible channel, without any let or hindrance from God or man, to all his notions whatsoever."[163] But, Newman asked, "is there any government on earth that could stand the strain of such a doctrine as this?"[164] Even Gladstone and his allies admitted the impossibility, for when faced with the logical consequences of such a doctrine, they would say "that in England the good sense of the nation

[160] Ibid.
[161] Ibid., 273.
[162] Ibid., 274.
[163] Ibid.
[164] Ibid., 273.

would stifle and extinguish such atrocities."[165] But, as Newman noted, the doctrine of liberty of conscience could take no account of "good sense," since "the proposition says that it is the very right of everyone, by nature, in every well-constituted society."[166] In the appendix on this section, Newman turned the same indictment to Mill: "I do not impute [the logical absurdities] to Mr. Mill. He had too much English common sense to carry out his principles to these extreme but legitimate conclusions."[167] Nevertheless, Gladstone, Mill, and the other liberals were making an argument about an absolute liberty that depended on a background of "English common sense" to limit the definition and consequences of such liberties, even though the theory of liberty employed by Gladstone and Mill was unable to take account of such restrictions.

When Newman mentioned the "English common sense" which limited the application of rights, he was not referring to Mill's harm principle[168] nor a self-interested respect of others' rights, but to widely-accepted presuppositions which limited the *possibility* of certain thoughts or actions occurring—or more precisely, which make it such that the public mind considered certain thoughts or actions *ignoble* or *base*. Newman's critique was not merely a *tu-quoque*, but a recognition that modern arguments about liberty and right depended on a non-modern framework wherein the rights were circumscribed by a supervening order ("the English common sense"); with the decisive weakness of the modern arguments being their blindness to that dependency.

But what caused this blindness? The liberty of conscience defended by Gladstone was nothing other than "a liberty of self-will."[169] The sixth section ended on this note, with an

[165] Ibid., 274.
[166] Ibid., 274-5.
[167] Ibid., 364.
[168] "Of course he does not allow of a freedom to harm of others," Newman says when summarizing the argument of "On Liberty," "though we have to consider well what he means by harming" (*Letter,* 363).
[169] Ibid., 274.

invocation of self-will that recalled the use of that concept in the 5th section of the *Letter*.[170] The problem with self-will was that it began with an instance of rebellion rather than an instance of obedience, although the only consequences Newman explicitly drew in the 5th section were theological. But when the 6th section ends by defining this false and abstract political liberty of conscience as self-will, it requires a re-interpretation of the whole argument Newman had pursued in the 4th, 5th, and 6th sections. The 6th section indicated the number of ways in which the English public misinterpreted the nature of their adherence to the British laws and constitution (as interpreted by Blackstone). The 4th section, in tracing out the nature of the possibility of divided allegiance between religious and political authorities, made a similar argument about law and obedience. But in light of this revelation about self-will in the 6th section, clarity is gained about an unusual feature of the 4th.

The 4th section proposed to investigate the nature of papal claims of sovereignty in order to reject Gladstone's argument that:

> since the Pope claims infallibility in faith and morals, and since there are no 'departments and functions of life which do not and cannot fall within the domain of morals,' p. 36…therefore Catholics are moral and mental slaves, and 'every convert and member of the Pope's Church places his loyalty and civil duty at the mercy of another,' p. 45[171]

Newman said that "I admit Mr. Gladstone's premises, but I reject his conclusion; and now I am going to show why I reject it,"[172] although the showing took a strange form. The section was composed in the following order: first, Newman gave a short aside about "the principle of obedience";[173] then he discussed the "parallel of human law" to papal power;[174] after which there

[170] See pages 102-114 of Ch. 3.
[171] *Letter,* 224, with Newman quoting from Gladstone's pamphlet.
[172] Ibid.
[173] Ibid., 225-6.
[174] Ibid., 227-232.

was a discussion of the pope's "general authority" as regarded discipline and regimen, with the conclusion that Gladstone did not know what those words meant;[175] and a final section on the possible "circumstance[s] of collision" between political and religious authority, with examples and explanations.[176] The inclusion of the first section about obedience is especially mystifying, since it was immediately dropped and not thereafter referenced in the larger argument.

Newman was prompted to begin with a consideration of obedience because Gladstone had claimed that the assertion of infallibility entailed "'the far more practical and decisive demand of Absolute Obedience,' p. 41, [and] 'the Absolute Obedience, at the peril of salvation, of every member of his communion' p. 42."[177] Since Gladstone had introduced the topic of obedience, Newman felt compelled to note that even in the Protestant Bible was included the command to obey those who are spiritual rulers, leaders, or guides.[178] "The principle of obedience" appeared to be "a religious duty,"[179] nor did Gladstone offer "any liberalistic reading of the Scripture passage" that explained away the injunction to obedience.[180] Newman concluded by saying that "it should be Mr. Gladstone's business, before telling us that we are slaves, because we obey the Pope, first of all to tear away those texts from the Bible"[181] which enjoined the duty of obedience. Newman's implicit argument was that it is not so much obedience to the pope, as the very idea of obedience *at all*, which rankled Gladstone.

But immediately upon suggesting that line of thought, Newman dropped the issue of obedience and moved to the comparison of the Pope's claims with the parallel of human law.

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[175] Ibid., 233-236.
[176] Ibid., 237-245.
[177] Ibid., 225.
[178] Ibid.
[179] Ibid.
[180] Ibid.
[181] Ibid., 226.

Compared to the books of moral theology, which "are little more than reflexions and memoranda of our moral sense,"[182] the law was much more powerful: "the Law is supreme, and the Law directs our conduct under the manifold circumstances in which we have to act, and may and must be absolutely obeyed;"[183] "it varies from year to year, and refuses to give any pledge of fixedness or finality;"[184] "nor are its enactments easy of interpretation," so much so that " 'the glorious uncertainty of the Law' has become a proverb."[185] Yet, for all that, "who therefore says that the law has the 'supreme direction; of us?"[186] reiterating the charge made by Gladstone against the Pope. The Law demanded a stricter obedience and enforced a wider scope than the Pope's claims, yet not only did Gladstone *not* make any criticism of the law, he did not even *feel* it as a burden upon his freedom nor an instance of obedience.

Newman followed that illustration with the example of a doctor. The doctor exercised a "supreme direction" over his patients, "but we do not say that we are the doctor's slaves on that account."[187] The important distinction was between being supervised in *every* and in *any* act. The doctor might pass over "the same journey the same press of business, the same indulgence at table" for many years, before he might suddenly "sternly forbid"[188] it. This was, of course, the common-sensical and regular nature of authority: a man was constantly under the sway of public opinion,[189] of the law,[190] of doctors and other experts,[191] none of whom drew a specific line over where their authority began and ended, and whose authority one only recognized as *authority* when one was

[182] Ibid., 227.
[183] Ibid., 228.
[184] Ibid.
[185] Ibid., 227-8.
[186] Ibid., 227.
[187] Ibid., 233.
[188] Ibid.
[189] Ibid., 232.
[190] Ibid., 229.
[191] Ibid., 231-2.

inclined to resist it. So for Gladstone to "object that the Pope does really exercise a claim over the whole domain of conduct inasmuch as he refuses to draw any line across it in limitation of his interference, and therefore it is that we are his slaves"[192] was to judge authority according to a standard such that "if Mr. Gladstone's argument is good, he has a finger in all the commercial transactions of the great trader or financier who has chosen him."[193] In other words, if the criticism against an obedience to the Pope obtained, it obtained also for nearly every other aspect of human life. If the Pope was a tyrant on Gladstone's terms, then so too was the law and the advisor and public opinion. But if they avoided Gladstone's charge while the pope did not, then the grounds of Gladstone's resistance must have been other than those he enunciated.

From there, Newman proceeded to discuss hypothetical instances of collision between the political and the temporal authority. Some hypothetical instances required obedience to the queen[194] some to the Pope,[195] though Newman protested at "forming impossible cases," since actual cases had to be judged "according to the particular case, which is beyond all rule."[196] Nevertheless, "there is no rule in this world without exceptions, and if either the Pope or the Queen demanded of me an 'Absolute Obedience,' he or she would be transgressing the laws of human society."[197] The process of decision-making was similar to that which would be enunciated for conscience in the section following: "I should look to see what theologians could do for me, what the Bishops and clergy around me, what my confessor; what friends whom I revered: and if, after all, I could not take their view of the matter, then I must rule myself by my own judgment and my

[192] Ibid., 231.
[193] Ibid., 232.
[194] Ibid., 242, on the supposition that the Pope require all Catholic soldiers to retire from a war "which I could not in my conscience see to be unjust."
[195] Ibid., 241, concerning "a question of worship."
[196] Ibid., 243. cf. pp. 159 in *Natural Right and History* on Aristotle's political prudence in light of "concrete actions."
[197] Ibid., which is the quote Laski loved so much.

own conscience."[198] At this point, Newman realized that it would be objected "that I am, after all, having recourse to the Protestant doctrine of Private judgment."[199] "Not so;" Newman protested, "it is the Protestant doctrine that Private Judgment is our ordinary guide in religious matters, but I use it, in the case in question, in very extraordinary and rare, nay, impossible emergencies."[200] One came to an appropriate decision in such a matter by beginning in obedience and only ending in criticism, if somehow the variety of authorities one consulted were inadequate.

Matters of obedience began and ended the 4th section, and the 4th section concluded by noting that even though no authority could claim *absolute* obedience, nevertheless an initial obedience was the proper point of departure. The doctrine of private judgment eschewed obedience in *religious* matters, but the bulk of the 4th section demonstrated the ways in which the protestant British public admitted the principle of obedience in all temporal matters, insofar as they obeyed the law, experts, and public opinion without any hesitation. At that point the 5th section began, and argued that the contemporary doctrine of conscience was more appropriately labeled "self-will," since it rejected the necessity of obedience and "at the very first rumour of a command, places itself in opposition to the superior who gives it, asks itself whether he is not exceeding his right."[201] Then the 6th section demonstrated the ways in which the protestant British public systematically misinterpreted its obedience *as* a liberty of private judgment, and while proclaiming the necessity and inviolability of absolute private judgment in religious *and* temporal affairs, nevertheless depended on an unacknowledged obedience to the standards of "English common sense." In other words, were those principles of liberty of conscience rigorously applied, the very means would be destroyed by which the law and experts and public opinion were obeyed. So self-will not only

[198] Ibid., 243-4
[199] Ibid., 244.
[200] Ibid.
[201] Ibid., 258.

tended towards a destruction of the political regime; it also disguised the means by which that destruction was accomplished.

Viewed from this perspective, the 4th through 6th sections have a dialectical movement. Ever so gently, Newman drew attention to the fact that the British public was not arguing from its own stated premises, and he slowly led them to a realization of why that was. Though they claimed "the right of private judgment" as their founding political doctrine, such a right was unworkable without the counterbalancing forces of British common sense. But they were unable to see this because what they claimed to be "the right of private judgement" was really "the right of self-will," or a prideful self-deception. Having rejected the first and most natural voice of authority in their conscience, they were compelled to re-describe the world around them so as to hide the fact that the majority of the decisions in their lives were obediences of one kind or another. But self-will was the at the center of the dialectic.

One now sees why Newman prudently argued against persecution in the 2nd section. As compared with the immoral pagan sects of the Roman empire, who were perhaps rightly persecuted, Newman noted that they "did not make free thought or private judgment their watchwords." One would be inclined to think that Newman was making a categorical argument, something along the lines of Rousseau's quoted above: anyone who respected free judgment ought not be persecuted. As similar as Newman's claim sounded, it sprang from rival considerations. Those who made free thought or private judgment their watchwords were those who had internalized the right of self-will. Any explicit assertion of authority (like the Pope's) would cause them to recoil. In other words, one could not confront them directly. Their whole identity had been founded on a self-delusive rebellion.

A gentler means of persuasion was necessary, and Newman laid out the means to do so. One must draw attention to the Biblical texts which preached obedience; one must draw attention to the common-sensical and every-day nature of authority, all those authorities obeyed every day without outcry; one must draw careful attention to the phenomena of decision-making, where one moved from authority to authority and *then* to private judgment. Most of all, one must draw attention to the fact that in political discourse, the British public depended on a number of premises and assumptions that they could not cognize: the success of the doctrines of private judgment *depended* on the authority of British common sense. At every moment, they must be encouraged to leave behind the progressive philosophy of history which gives to rights-claims a categorical and immutable quality which political deliberation cannot ultimately bear. One must not lie—but neither must one speak truth "in its most paradoxical form." Protestants must be led *past* ideology and back towards a re-consideration of political and moral phenomena; Catholics must also be led away from an ideologically un-nuanced concept of truth and falsehood which (having been forgotten), left them to "in good measure thank themselves, and no one else, for having alienated from them so religious a mind" as Gladstone and other natural British allies.[202]

Conclusion

Theologico-political relations took a new turn with the introduction of the Christian Church. The old unity of the gods and the city was at an end. For Newman, this new situation presented only two theoretically consistent relations of church and state: conversion or persecution. But history was not the movement from one pole to the other. Any stable political situation

[202] 176.

required the balancing of various loyalties and liberties. Social life operated according to similar principles as the conscience. One began with an obedience to what was inherited, and liberties were understood as the means by which particular concrete practical problems were worked out (liberties were not the rejection of loyalties but proper attention to their applicability and limits).[203] Unstable political situations resulted from a forgetfulness of these multiple elements of human nature, from the desire to found upon self-assertion or self-will. Such a project could never succeed, so the result was that the natural and necessary obediences of political and social life were either ignored or ideologically re-described as liberties (one's slavish devotion to public opinion praised as "the rights of the individual").[204] The necessary dependence of a rights regime on a prior authoritative order, understood as "British common sense," was untheorizeable from within the abstract rights regime. Therefore, modern assertions of rights tended to undermine the principles which made their application possible. From this perspective, the new modern "toleration" was simply the modern face of unbelief, the modern opposition to the Church, ingeniously formulated. Toleration or "liberty of conscience" was not a progressive advance over past ages: it was a forgetting or distortion of human experience.

Practical life was not a precise deduction from consistent theoretical positions. Newman constantly withdrew from "impossible" or imaginary cases in order to address the *hic et nunc*. Ultimately, Newman's defense of the liberty of conscience of Catholics was rooted not in a set of inalienable rights (divorced from all context), but *from the British constitution itself*. Newman depended on Blackstone's analysis and the British public's own submission to authorities to disprove Gladstone's thesis that obedience meant the end of free thought.

[203] Cf. the arguments of pp. 186-192 and 210-215
[204] Cf. pp. 210-212 on self-will and private judgment.

Was this theoretically indefeasible? No, of course not. But life was not lived at the limits of theory. Newman was willing to admit the theoretical case, but he did so only in the context of the ancient church. One need not discuss the extremes of persecution or conversion[205] here in the 19th century. His Catholic ultramontane compatriots were being *bad* Englishmen and *bad* Catholics by asserting their (true) principles as paradoxically as possible in order to scandalize the British public. One has to know how to speak and to whom. For a public devoted to "the private right of judgment," praises of Italian authority cannot gain any purchase. *Conversion* is the goal, but this manner of speaking about the issues at stake has the opposite effect. In fact, one can see the effects of a rebellious self-will in the desire to scandalize an otherwise well-disposed British public: to publicly push principles to their theoretical limits is more likely the result of a desire *to be seen* as clever than as a dutiful pursuit of truth.[206]

To argue for prudential rather than doctrinaire toleration is at a certain point to argue for persecution—which cannot be heard by moderns who make "free thought" and "liberty" their watchwords. So one needs an "Alexandrian economy" not only to gently insinuate what cannot be said aloud, but also to move men from a liberal account of history to a scriptural or doctrinal account. This is the project of the *Letter to the Duke of Norfolk*. The *Letter to the Duke of Norfolk* fulfills what the Anglican Newman had hoped the Oxford Movement to do: prepare the public

[205] This formulation describes the two fundamental orientations of political power towards the Church and could be phrased exhaustively as "persecution of the Church by the state or conversion of the state by the Church." As was seen above on pp. 197, once the Church converted the Roman Empire, it engaged in its own persecutions. The dialectic of "persecution or conversion" does not indicate the presence or absence of persecution (minimally, the alliance of authority with force). The dialectic indicates whether force is allied with or against the Church.
[206] One can see the same argument at work in Newman's distinction between "investigation" (which presupposes moral responsibility) and "inquiry" (undertaken with vain curiosity) in Ch. 6 of the *Grammar of Assent* (pp. 188ff). The same desire for intellectual self-aggrandizement characterizes the heretic in the *Development* (Chapter 11), who accurately perceives an abuse or a necessary development, but refuses to allow the gradual eradication or development.

imagination for an apostolical church, an institution in which obedience without mental slavery was married to liberty without self-will.

CHAPTER VI: CONCLUSION

Remi Brague, in the *Law of God*, has characterized the modern history of reflections on religious and spiritual authority in the following manner:

> European reflection on the relationship between the political and the religious is dominated by one of what Jean-François Lyotard calls the *grands recits*—the grand narratives—in which modernity tries to explain itself: an escape of the political from the domain of theology. The two are supposed to have gone their separate ways after an original unity. In order to express that unity, modernity reinterprets the past and distributes it into *ad hoc* categories. In doing so, the movement of disengagement from the past has received various names: the secularization of a world supposed to have been "enchanted"; the laicization of a supposedly clerical society; the separation of church and state, supposed to have been originally one. [1]

Each narrative contains a unidirectional movement, from the sacred to the profane. History is supposed to have an *eidos* or a direction, and the direction of history is towards the solution of the old theologico-political problem. But only within these modern narratives does the relation between the theological and the political attain the status of a "problem" that can be *solved*. Pre-modern political philosophy was not blind to the interrelation between the divine and the practical (ethics, economics, politics): but it never presumed that these fundamental and enduring theologico-polticial *issues* could be geometrically solved by the imposition of twenty laws of nature.[2] Questions about the city naturally led to questions about the gods.

Did Christian revelation introduce something new? Or did it bring into heightened relief a pre-existing tension of human nature? For John Henry Newman, the claim was almost reversed: pre-Christian philosophy was a *preparatio evangelii*, and ancient philosophy brought the tensions

[1] Brague, *Law of God*, 4.
[2] Hobbes, *Leviathan*, Ch. 16.

of human nature into such clarity that something like Christianity *was to be expected* as a resolution.[3] The question of the best life and the relation between the just city and the just man ultimately foundered under classical guidance: the inadequacies of the city-soul analogy found their culmination in the church-soul analogy.[4]

For the Church to function as an analogue to the soul, it had to possess an institutional personality. It had to be (and be seen as) a kind of person, stretching through time. And as a person, the Church's anthropology (as it were) was fundamentally scriptural and doctrinal. But just as the modern rupture in political philosophy constructed an ostensible "neutrality" that obscured the concerns of classical political philosophy, so too did such neutrality confuse the church-soul analogy. If the church was simply one more voluntary association, brought into being through the consent of its members and the volition of the sovereign, one could only be ridiculed for trying to order one's soul on such a model.

John Henry Newman's whole career (both Anglican and Catholic) grappled with how to represent the social ontology of the Church. As he said in the *Apologia*, the two enduring principles of his intellectual and spiritual life were the dogmatic principle and the idea of a visible church. The visible church was ultimately a corporate instantiation of the dogmatic principle. Dogma preserved specific formulations as irreducible expressions of divine truth—they could not be translated into other words without a loss. So too, the visible church (possessing a personality) represented something about divinity that could not be communicated in any other way.

[3] Newman, *Grammar of Assent*, Ch. 10. A similar argument can be found in *Development*, Ch. 2. One sees the same thought at work in the section on conscience in the *Letter*, where the fact that the conscience is merely the "echo of the voice of God" indicates a lack for from which the Church derives her mission (*Letter*, 252-4).
[4] Eric Voegelin, drawing from Augustine, makes a similar argument in pages 157-163 of *A New Science of Politics*.

The rehabilitation of the Church's corporate status could only proceed upon indirect or "economical" lines. The antagonistic philosophy of progress had become enshrined as a first principle of the 19th century mind, and argument was incapable of contesting first principles. But one could draw attention to the strangeness of the philosophy of progress: how often it was the case that this philosophy, which claimed a vast explanatory and predictive power, was so unlike everyday human experience. Secondary concepts such as natural rights, pluralism, and toleration gained their strength from the principle of progress. Newman refused to endorse those modern concepts precisely because he knew that these "modern arms" cut only in one direction. At every moment, he refused to ground his political reflections on inalienable rights or doctrinaire toleration.

Newman was in no sense a political theorist. Nor could he readily be called a political philosopher.[5] But his questions were questions originally taken up by classical political philosophy. And though Aristotle's philosophical language was characterized by a dispassionate objectivity, such an achievement depended on the difficult Platonic work of dialectically clarifying everyday experience and language.[6] Newman was in that sense an Alexandrian Platonist, working back behind an ideology rooted in self-will to the fundamental moral and political experiences which pointed towards a theological reconciliation. Did he write a detailed analysis of free trade? No. Did he sketch an ideal commonwealth? No. But Newman *did* work towards re-grounding fundamental political phenomena in a language open to divine interpenetration. Theology, then, but in a political mode.

[5] If political philosophy is understood in the Straussian sense as the reflection on fundamental problems in the absence of divine revelation.
[6] See Ch. 1 (pp. 13-49) of *The City and Man*.

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