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# Religion and the Purification of Reason: Why the Liberal State Requires More Than Simple Tolerance.

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# Religion and the Purification of Reason: Why the Liberal State Requires More Than Simple Tolerance

JOHN M. BREEN\*

## I. INTRODUCTION

On Friday, September 17, 2010, a truly momentous event took place in Westminster Hall, the ancient seat of the English Parliament. On this day Pope Benedict XVI addressed an assembled group of British politicians, diplomats, academics, business leaders and other representatives of British society, including members of the present government and four former prime ministers.<sup>1</sup> The event was all the more remarkable in that it took place in a space swelling with meaning in terms of both the political history of the British people and the historic relationship between the Papacy and Christianity in the British Isles.

The bishops of Rome have long taken an interest in England, beginning with Pope St. Gregory the Great who sent missionaries to evangelize the Anglo-Saxons in 596 headed by the future St. Augustine of Canterbury.<sup>2</sup> Sadly, the bonds of full communion were severed with

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1. See John Hooper, POPE'S VISIT: BENEDICT TELLS POLITICIANS THAT RELIGION IS BEING MARGINALISED, <http://www.guardian.co.uk/world/2010/sep/17/pope-visit-keynote-westminster-speech?INTCMP=ILCNETTXT3487> (last visited Apr. 10, 2011); Foreign and Commonwealth Office, POPE DELIVERS CIVIL SOCIETY ADDRESS, <http://www.fc.gov.uk/en/news/latest-news/?view=News&rid=22883287> (last visited Apr. 10, 2011) (listing Gordon Brown, Tony Blair, John Major and Lady Thatcher as attendees).

2. J.N.D. KELLY, THE OXFORD DICTIONARY OF POPES 67 (1986).

the advent of the English Reformation and the ensuing years of suspicion, animosity, and neglect. Indeed, full diplomatic relations between the United Kingdom and the Holy See were established only as recently as 1982.<sup>3</sup>

Yet here was Benedict – the Pope, the Bishop of Rome, the Supreme Pontiff of the Universal Church and Successor to St. Peter – speaking in Westminster Hall, the same forum where Parliament enacted the *Act of Succession of 1533* which annulled the marriage between King Henry VIII and Catherine of Aragon and declared lawful Henry's marriage to Anne Boleyn while at the same time prohibiting appeals to Rome;<sup>4</sup> and the *Act of Supremacy of 1534* which created the "Church of England, called *Anglicans Ecclesia*" and then "annexed and united [it] to the imperial crown" of the English realm, declaring Henry and his successors to be "the only supreme head in earth of the Church of England";<sup>5</sup> and the *Act Respecting the Oath to the Succession of 1534* which, with the Holy See in mind, required subjects of the realm to renounce the power of any "foreign authority or potentate" and repudiate any oath previously made to the contrary.<sup>6</sup> These formal acts of government – acts by a political body upon and indeed purporting even to constitute a religious community, acts that might charitably be described as driven by political concerns and not theological ones – brought about a tragic division in Western Christendom that endures to this day.

The significance of the venue and its meaning with respect to the papal visit were not lost on Benedict who described Westminster Hall as "a building of unique significance in the civil and political history of the people of these islands" which has had "a profound influence on the development of participative government among the nations, especially in the Commonwealth and English-speaking world at large."<sup>7</sup> Westminster Hall was also the place where St. Thomas More "the great English scholar and statesman, who is admired by believers and non-

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3. Pope John Paul II, ADDRESS OF JOHN PAUL II TO THE FIRST AMBASSADOR OF GREAT BRITAIN TO THE HOLY SEE (Apr. 1, 1982), [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1982/april/documents/hf\\_jp-ii\\_spe\\_19820401\\_ambassador-britain\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1982/april/documents/hf_jp-ii_spe_19820401_ambassador-britain_en.html) (last visited Apr. 10, 2011).

4. Succession to the Crown Act 1533, 25 Henry VIII. c. 22.

5. Act of Supremacy 1534, 26 Henry VIII. c. 1.

6. Act Respecting the Oath to the Succession 1534, 26 Henry VIII. c. 2.

7. Pope Benedict XVI, ADDRESS TO THE REPRESENTATIVES OF BRITISH SOCIETY (Sept. 17, 2010), available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2010/september/documents/hf\\_ben-xvi\\_spe\\_20100917\\_societa-civile\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2010/september/documents/hf_ben-xvi_spe_20100917_societa-civile_en.html) (last visited Apr. 10, 2011) [hereinafter WESTMINSTER ADDRESS].

believers alike<sup>8</sup> was tried and convicted of treason. For his offense against the Crown, More was beheaded on Tower Hill, July 6, 1535.<sup>9</sup> For his fidelity to Christ, he is recognized as a martyr<sup>10</sup> and the patron saint of lawyers, statesmen and politicians.<sup>11</sup>

This fact and the Pope's remarks at Westminster directly address the topic of our conference precisely because Thomas More is so widely admired for "the integrity with which he followed his conscience, even at the cost of displeasing the sovereign whose 'good servant' he was, because he chose to serve God first."<sup>12</sup> Thus, for Benedict, More's life brings into relief in an especially poignant fashion "the perennial question of the relationship between what is owed to Caesar and what is owed to God," the issue of "the proper place of religious belief within the political process."<sup>13</sup>

According to Benedict, "the fundamental questions at stake in Thomas More's trial continue to present themselves in ever-changing terms as new social conditions emerge."<sup>14</sup> These questions include "[W]hat are the requirements that governments may reasonably impose upon citizens, and how far do they extend? By appeal to what authority can moral dilemmas be resolved?" or "[W]here is the ethical foundation for political choices to be found?"<sup>15</sup>

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8. *Id.*

9. For accounts of Thomas More's life and times see E.E. REYNOLDS, *ST. THOMAS MORE* (1958); GERARD B. WEGEMER, *THOMAS MORE: A PORTRAIT OF COURAGE* (1995); PETER ACKROYD, *THE LIFE OF THOMAS MORE* (1998).

10. The Center for Thomas More Studies, *HOMILY AT THE CANONIZATION OF ST. THOMAS MORE*, [http://www.thomasmorestudies.org/rep\\_canonization.html](http://www.thomasmorestudies.org/rep_canonization.html) (last visited Apr. 10, 2011).

11. POPE JOHN PAUL II, *APOSTOLIC LETTER ISSUED MOTU PROPRIO PROCLAIMING SAINT THOMAS MORE PATRON OF STATESMEN AND POLITICIANS* (2000), *available at* [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/motu\\_proprio/documents/hf\\_jp-ii\\_motu-proprio\\_20001031\\_thomas-more\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/motu_proprio/documents/hf_jp-ii_motu-proprio_20001031_thomas-more_en.html) (last visited Apr. 10, 2011).

12. WESTMINSTER ADDRESS, *supra* note 7 (paraphrasing by Benedict of More's final words on Tower Hill that "he died the King's good servant, but God's first"); REYNOLDS, *supra* note 9, at 299; ACKROYD, *supra* note 9, at 405.

13. *Id.*

14. *Id.*

15. *Id.*

Benedict makes clear that in the Catholic tradition “objective norms governing right action are accessible to reason, prescinding from the content of revelation.”<sup>16</sup> Thus, in the key passage of his address, Benedict says that:

the role of religion in political debate is not so much to supply these norms, as if they could not be known to non-believers – still less to propose concrete political solutions, which would lie altogether outside the competence of religion – but rather to help purify and shed light upon the application of reason to the discovery of objective moral principles.<sup>17</sup>

Religion, he says, performs a “corrective” function in the political process such that it “is not a problem for legislators to solve, but a vital contributor to the national conversation.”<sup>18</sup> As Benedict notes, however, religion in general and Christianity in particular are often marginalized so that the voice of religion is “silenced, or at least relegated to the purely private sphere” often in the name of “tolerance.”<sup>19</sup>

What could Benedict possibly mean by this astounding claim that reason in public discourse must be “purified” by religion? What does he mean in saying that religion has a “corrective” role to play in the political process? In the essay that follows, first, I explore the meaning of this provocative passage as elucidated in the other documents of Benedict’s papacy, in the work of Joseph Ratzinger prior to his election as pope,<sup>20</sup> and in the larger body of papal encyclicals, conciliar documents and episcopal statements collectively known as “Catholic social teaching.”<sup>21</sup>

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16. *Id.*

17. WESTMINSTER ADDRESS, *supra* note 7.

18. *Id.*

19. *Id.*

20. Joseph Ratzinger, the former university professor and Archbishop of Munich and Freising, and longtime Cardinal Prefect of the Congregation for the Doctrine of the Faith, was elected by the College of Cardinals sitting in conclave to succeed the late John Paul II on April 18, 2005. He accepted and chose the name “Benedict” in honor of the St. Benedict of Nursia, the father of Western monasticism, and Pope Benedict XV, the pope of Ratzinger’s early childhood who worked first to prevent the outbreak of the First World War and then to bring about a cessation of hostilities once the war began. See Pope Benedict XVI, GENERAL AUDIENCE: REFLECTION ON THE NAME CHOSEN (Apr. 27, 2005), available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/audiences/2005/documents/hf\\_ben-xvi\\_aud\\_20050427\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/audiences/2005/documents/hf_ben-xvi_aud_20050427_en.html) (last visited Apr. 10, 2011).

21. For a further description of the nature of “Catholic social teaching,” the sources it draws upon and the topics it frequently addresses, see John M. Breen, *Neutrality in Liberal Legal Theory and Catholic Social Thought*, 32 HARV. J. L. & PUB. POL’Y 513, 519–21 (2009).

Second, I will show how much of what Benedict has to say about the positive contribution religion can make to public life finds support in two diverse sources – the commentary of Alexis de Tocqueville in *Democracy in America* and the work of contemporary political theorist Jeremy Waldron. Third, I will review the Supreme Court’s recent decision in *CLS v. Martinez*<sup>22</sup> in light of the positive and corrective function that Benedict says religion performs in the political process. I end the essay with a brief conclusion that ties together the various themes developed.

## II. POLITICS AND THE INADEQUACY OF REASON ALONE

### A. *Drawing Proper Lines: Eschewing Theocracy and Championing Natural Law*

The purifying effect of religion in public life that Benedict proposes does not portend the establishment of a theocratic state founded on Christian revelation. Instead, the role he envisions is far more subtle and indirect. Although these points are implicit in Benedict’s brief Westminster remarks, they are addressed at greater length in the Pope’s other writings and in the Church’s social doctrine.

First, since the Second Vatican Council, freedom of religion has been a hallmark of the Church’s social teaching. The Church recognizes the right of “professing a religion both privately and publicly”<sup>23</sup> including the right “to seek the truth” and to “adhere to the truth, once it is known, and to order [one’s] whole [life] in accord with the demands of truth.”<sup>24</sup> While this right includes both freedom from coercion and freedom to act

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22. *CLS v. Martinez*, 130 S.Ct. 2971 (2010).

23. SECOND VATICAN ECUMENICAL COUNCIL, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD *GAUDIUM ET SPES* ¶ 73 (1965), reprinted in *CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE* 166 (David J. O’Brien & Thomas A. Shannon eds., Orbis Books 1992) [hereinafter *CATHOLIC SOCIAL THOUGHT*], available at [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_cons\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html) (last visited Apr. 10, 2011) [hereinafter *GAUDIUM ET SPES*].

24. SECOND VATICAN ECUMENICAL COUNCIL, DECLARATION ON RELIGIOUS FREEDOM *DIGNITATIS HUMANAE* ¶ 2 (1965), reprinted in *THE DOCUMENTS OF VATICAN II*, 675 (Walter M. Abbott, S.J. ed., Joseph Gallagher trans., 1966), available at [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html) (last visited Apr. 10, 2011).

in accord with one's beliefs,<sup>25</sup> even this solemn right must give way to other compelling interests so as to ensure that "the just requirements of public order are observed."<sup>26</sup>

Second, that the state's obligation to preserve "public order" can trump the individual's interest in "religious freedom" suggests two orders of value – that which a particular religious community holds dear and that which is common to all regardless of religious belief. The Catholic Church has long understood that there is a "twofold order of knowledge"<sup>27</sup> deriving from "two cognitive fields,"<sup>28</sup> namely, human reason and divine revelation.<sup>29</sup> According to Benedict, the Church's social teaching "argues on the basis of reason and natural law, [that is], on the basis of what is in accord with the nature of every human being."<sup>30</sup> As such, "it has no intention of giving the Church power over the State. Even less is it an attempt to impose on those who do not share the faith ways of thinking and modes of conduct proper to faith."<sup>31</sup> Instead, "[t]his universal moral law provides a sound basis for all cultural, religious and political dialogue" and is even "the precondition for all constructive social cooperation."<sup>32</sup>

Third, in his Westminster address Benedict states that the role of religion is not "to propose concrete political solutions."<sup>33</sup> From this

25. *Id.* (describing religious liberty as freedom from being "forced to act in a manner contrary to his own beliefs" and as freedom to act in accordance with "his own beliefs, whether privately or publicly, whether alone or in association with others").

26. *Id.*

27. FIRST VATICAN ECUMENICAL COUNCIL, DOGMATIC CONSTITUTION ON THE CATHOLIC FAITH *DEI FILIUS*, chap. 4, ¶ 2 (1870), *reprinted in* DECREES OF THE ECUMENICAL COUNCILS vol. 2 at 808 (Norman P. Tanner ed., 1990).

28. POPE BENEDICT XVI, ENCYCLICAL LETTER *CARITAS IN VERITATE* ¶ 5 (2009), *available at* [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20090629\\_caritas-in-veritate\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate_en.html) (last visited Apr. 10, 2011) [hereinafter *CARITAS IN VERITATE*].

29. POPE JOHN PAUL II, ENCYCLICAL LETTER *FIDES ET RATIO* (1998), *available at* [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_14091998\\_fides-et-ratio\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_14091998_fides-et-ratio_en.html) (last visited Apr. 10, 2011) [hereinafter *FIDES ET RATIO*] ("Faith and reason are like two wings on which the human spirit rises to the contemplation of truth.").

30. POPE BENEDICT XVI, ENCYCLICAL LETTER *DEUS CARITAS EST* ¶ 28 (2005), *available at* [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20051225\\_deus-caritas-est\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est_en.html) (last visited Apr. 10, 2011) [hereinafter *DEUS CARITAS EST*].

31. *Id.*

32. *CARITAS IN VERITATE*, *supra* note 28, at ¶ 59.

33. WESTMINSTER ADDRESS, *supra* note 7; *see also* *CARITAS IN VERITATE*, *supra* note 28, at ¶ 9 ("The Church does not have technical solutions to offer and does not claim 'to

comment alone it should be clear that the Pope does not envision a privileged place for the Church or any religious body as the dispenser of positive law or the effective arbiter of justice in the liberal state.<sup>34</sup> If the Church were to engage in proposing concrete solutions, if she were to participate in the formulation of public policy directly then she would be straying outside her field of competence. Instead, the task of “[b]uilding a just social and civil order” is “a political task” and as such “cannot be the Church’s immediate responsibility.”<sup>35</sup> Indeed, Benedict makes emphatically clear the Church “cannot and must not replace the State” that “the Church cannot and must not take upon herself the political battle to bring about the most just society possible.”<sup>36</sup> Rather, “[a] just society must be the achievement of politics, not of the Church” as such.<sup>37</sup> Accordingly, “[t]he *direct* duty to work for a just ordering of society . . . is proper to the lay faithful” and other citizens.<sup>38</sup> Instead, the Church’s mission is “to help form consciences in political life and to stimulate greater insight into the authentic requirements of justice.”<sup>39</sup> That is, “[t]he Church has an *indirect* duty . . . to contribute to the purification of reason and to the reawakening of those moral forces without which just structures are neither established nor prove effective in the long run.”<sup>40</sup> But what does this “purification” mean?

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interfere in any way in the politics of states.” (quoting POPE PAUL VI, ENCYCLICAL LETTER *POPULORUM PROGRESSIO* ¶ 13 (1967), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 23, at 240, also available at [http://www.vatican.va/holy\\_father/paul\\_vi/encyclicals/documents/hf\\_p-vi\\_enc\\_26031967\\_populorum\\_en.html](http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_26031967_populorum_en.html)) [hereinafter *POPULORUM PROGRESSIO*]).

34. If the Church were to assume such a role she would, necessarily be in the position of imposing her views on those outside the Church. As Benedict’s predecessor, John Paul II was fond of saying “The Church proposes; she imposes nothing. She respects individuals and cultures, and she honors the sanctuary of conscience.” POPE JOHN PAUL II, ENCYCLICAL LETTER *REDEMPTORIS MISSIO* ¶ 39 (1990), available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_07121990\\_redemptoris-missio\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_07121990_redemptoris-missio_en.html) (last visited Apr. 10, 2011).

35. *DEUS CARITAS EST*, *supra* note 30, ¶28.

36. *Id.*

37. *Id.*

38. *Id.* ¶29 (emphasis added).

39. *Id.* ¶28.

40. *Id.* ¶29 (emphasis added). As Jean-Marie Cardinal Lustiger, the late Archbishop of Paris, put it in his Erasmus Lecture, the Church’s task is not to be involved in politics “as simply one party among others. The Church’s task, rather, is to discern and denounce the alienations and seductions that destroy human liberty by severing it from its divine source.” Jean-Marie Cardinal Lustiger, *Liberty, Equality, Fraternity*, *FIRST THINGS*, Oct. 1997 at 38, 40, available at <http://www.firstthings.com/article/2008/09/002-liberty-equality-fraternity-12> (last visited Apr. 10, 2011).



B. *Expansion and Purification: Correcting the Modern Understanding of Reason*

The boundaries of reason – the question of what constitutes rational thought – has been a topic of great concern in Benedict's pontificate and in the scholarly work of Joseph Ratzinger long before he was elected pope. This concern was most famously on display in Benedict's lecture at the University of Regensburg in September 2006. Although the media focused on what it took to be Benedict's provocative remarks concerning Islam, Benedict himself described the lecture as "a critique of modern reason from within."<sup>41</sup> According to Benedict, the modern conception of reason is based "on a synthesis between Platonism (Cartesianism) and empiricism" which in the first dimension "presupposes the mathematical structure of matter, its intrinsic rationality" and in the second dimension maintains that "only the possibility of verification or falsification through experimentation can yield decisive certainty."<sup>42</sup> The understanding of rationality that emerges from this synthesis holds that "[f]irst, only the kind of certainty resulting from the interplay of mathematical and empirical elements can be considered scientific," and second, that rationality "by its very nature . . . excludes the question of God, making it appear [as] an unscientific or pre-scientific question."<sup>43</sup> Without "rejecting the insights of the modern age" Benedict urges us to "broaden[] our concept of reason and its application" by "overcome[ing] the self-imposed limitation of reason to the empirically falsifiable."<sup>44</sup>

There is, says Benedict, a human yearning to go beyond this narrow understanding of rationality that still holds the high ground in contemporary culture. Human beings find this restricted view of reason overly confining and ultimately unsatisfying because "the specifically human questions about our origin and destiny, the questions raised by religion and ethics, then have no place within the purview of collective reason as defined by 'science', so understood, and must thus be relegated

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41. Pope Benedict XVI, LECTURE OF THE HOLY FATHER AT THE AULA MAGNA OF THE UNIVERSITY OF REGENSBURG, FAITH, REASON AND THE UNIVERSITY: MEMORIES AND REFLECTIONS (Sept. 12, 2006), available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2006/september/documents/hf\\_ben-xvi\\_spe\\_20060912\\_university-regensburg\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg_en.html) (last visited Apr. 10, 2011) [hereinafter REGENSBURG ADDRESS].

42. *Id.*

43. *Id.*

44. *Id.*

to the realm of the subjective.”<sup>45</sup> Put another way, when rationality is “reduced to the natural sciences” it is unable to “answer the real questions – like where do we come from, what am I, what must I do to live properly, what am I here for at all.”<sup>46</sup> Accordingly, “[t]he real danger of our time, the crux of our cultural crisis, is the destabilization of ethics” that results from the reduction of reason “to what is calculable.”<sup>47</sup> We must instead “be converted again to a broader concept of reason; we must relearn moral reason as something rational.”<sup>48</sup> A conception of reason that renders the perennial and unavoidable question of the meaning of personal existence unintelligible can only be judged a failure precisely because the human person gazes out at the horizon and asks not only “How does the world work?” but “How should I live my life?” A conception of reason that supports human inquiry into the material world but dismisses the question of why human beings are drawn to engage in such inquiry in the first instance, why they would consider such inquiry a worthy endeavor, defies the longings of the human subject and so cannot help but leave men and women frustrated and unsatisfied.

At Regensburg Benedict further argued that we must “overcome the self-imposed limitation of reason to the empirically verifiable” because reason so conceived cannot operate in a way that is wholly consistent with the method it champions as the exclusive means of obtaining true knowledge. As Benedict explains, “modern scientific reason with its intrinsically Platonic element bears within itself a question which points beyond itself and beyond the possibilities of its methodology.”<sup>49</sup> That is, “[m]odern scientific reason quite simply has to accept the rational structure of matter and the correspondence between our spirit and the prevailing rational structures of nature as a given, on which its methodology has to be based.”<sup>50</sup> But the question of why the inherent rationality of the universe must be taken for granted as an assumption “is a real question, and one which has to be remanded by the natural sciences to other modes and planes of thought – to philosophy and

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45. *Id.*

46. JOSEPH CARDINAL RATZINGER, *SALT OF THE EARTH: CHRISTIANITY AND THE CATHOLIC CHURCH AT THE END OF THE MILLENNIUM—AN INTERVIEW WITH PETER SEEWALD* 163 (Adrian Walker trans., 1997).

47. JOSEPH CARDINAL RATZINGER, *CHURCH, ECUMENISM, AND POLITICS: NEW ENDEAVORS IN ECCLESIOLOGY* 204–05 (Michael J. Miller et al trans., 2008) (1987) [hereinafter, RATZINGER, *CHURCH, ECUMENISM*].

48. *Id.* at 205.

49. REGENSBURG ADDRESS, *supra* note 41.

50. *Id.*

theology.”<sup>51</sup> Modern reason, in other words, presupposes that which it also rejects – something that cannot be verified or falsified through experimentation, namely, the intrinsic rationality of matter and the correspondence and receptivity of the human mind to that rationality. Put another way, “[t]he real problem that confronts us today is reason’s blindness to the entire nonmaterial dimension to reality”<sup>52</sup> of which the very operation of scientific reason is an example.

In addition to calling for an *expansion* of reason beyond what is empirically verifiable, Benedict has also called for the *purification* of reason, and indeed this claim represents the heart of his remarks at Westminster. He insists that “the role of religion in political debate is . . . to help purify and shed light upon the application of reason to the discovery of objective moral principles.”<sup>53</sup> Without the corrective tonic of religion, reason “can fall prey to distortions as when it is manipulated by ideology, or applied in a partial way that fails to take account of the dignity of the human person.”<sup>54</sup> Thus, the idea of the purification of reason has a specifically political dimension.

Justice is “both the aim and the intrinsic criterion of all politics” so the state must invariably confront the question of what justice is and “how justice can be achieved here and now.”<sup>55</sup> This inquiry, says Benedict, is a problem of practical reason, “but if reason is to be exercised properly, it must undergo constant purification, since it can never be completely free of the danger of a certain ethical blindness caused by the dazzling effect of power and special interests.”<sup>56</sup> Religious faith “liberates reason from its blind spots” and so “enables reason to do its work more effectively and to see its proper object more clearly.”<sup>57</sup>

### C. *The Failures of Distorted Reason in History*

Blindness is of course an inability to see, or an impairment of vision so that one sees in only a partial and imperfect way. History has laid bare the often brutal consequences that follow from the blindness of reason gone awry. In his Westminster address, Benedict cited the slave trade as an example of “the misuse of reason” that failed “to take full

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51. *Id.*

52. JOSEPH CARDINAL RATZINGER, *VALUES IN A TIME OF UPHEAVAL* 66 (Brian McNeil trans., 2006).

53. WESTMINSTER ADDRESS, *supra* note 7.

54. *Id.*

55. *DEUS CARITAS EST*, *supra* note 30, ¶ 28(a).

56. *Id.*

57. *Id.*

account of the dignity of the human person.”<sup>58</sup> In the case of slavery the blindness of political reason is an inability to see the human person at all. Instead of a man or a woman or a child, the slaveholder sees property – an asset to be sold, a chattel to be used and exploited. The same could be said of “the tragic and widespread scourge of abortion”<sup>59</sup> which treats a living, albeit not yet born, human being as a “disposable object.”<sup>60</sup> Elsewhere Benedict has argued that the modern cause of environmentalism reflects a distorted form of reason insofar as it considers nature “an untouchable taboo,” as “something more important than the human person” that leads to “attitudes of neo-paganism or a new pantheism.”<sup>61</sup>

It is more often the case, however, that the blindness of reason in contemporary politics is only partial as when the human person is regarded “only as a producer and consumer of goods, or as an object of State administration.”<sup>62</sup> The cure that religion offers for this blindness is an anthropological vision – “a correct view of the human person.”<sup>63</sup> It is the recognition of “man’s creation ‘in the image of God’ (Gen 1:27), a datum which gives rise to the inviolable dignity of the human person and the transcendent value of natural moral norms.”<sup>64</sup> Both consumer capitalism and Marxism sought to “totally reduce[] man to the sphere of economics and the satisfaction of material needs.”<sup>65</sup> But man is more than “a producer or consumer of goods”; he is “a subject who produces

58. WESTMINSTER ADDRESS, *supra* note 7.

59. CARITAS IN VERITATE, *supra* note 28, ¶ 75. For an extended reflection on the morality and legality of abortion, euthanasia and capital punishment, see POPE JOHN PAUL II, ENCYCLICAL LETTER *EVANGELIUM VITAE* (1995), available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html) (last visited Apr. 10, 2011).

60. Pope Benedict XVI, ADDRESS TO THE PARTICIPANTS OF THE SYMPOSIUM ON THE THEME: “STEM CELLS WHAT FUTURE FOR THERAPY?” (Sept. 16, 2006), available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2006/september/documents/hf\\_ben-xvi\\_spe\\_20060916\\_pav\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/september/documents/hf_ben-xvi_spe_20060916_pav_en.html) (last visited Apr. 10, 2011) (organized by the Pontifical Academy for Life).

61. CARITAS IN VERITATE, *supra* note 28, ¶ 48.

62. POPE JOHN PAUL II, ENCYCLICAL LETTER *CENTESIMUS ANNUS* ¶ 49 (1991), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 23, at 439, available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_01051991\\_centesimus-annus\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html) (last visited Apr. 10, 2011) [hereinafter *CENTESIMUS ANNUS*].

63. *Id.* ¶ 11.

64. CARITAS IN VERITATE, *supra* note 28, ¶ 45.

65. *CENTESIMUS ANNUS*, *supra* note 62, ¶ 19.

and consumes in order to live.”<sup>66</sup> Man is not “a molecule . . . completely subordinated to the functioning of the socioeconomic mechanism.”<sup>67</sup> Nor is he “a lost atom in a random universe: he is God’s creature whom God chose to endow with an immortal soul and whom he has always loved.”<sup>68</sup>

Here reason is purified by “[a] metaphysical understanding of the relations between persons” as it finds “inspiration and direction in Christian revelation” according to which inclusion in human community does not annihilate the identity of the individual but completes his or her being as a person.<sup>69</sup>

D. *“I Was Blind But Now I See”: The Corrective Lenses of Solidarity and Subsidiarity*

On the level of practical politics, this purification of distorted reason, this cure from the blindness of ideology, can accomplish two things: *solidarity* – something that the state can never achieve on its own, and *subsidiarity* – something that the state often finds difficult to accept.

Solidarity, says Benedict, is “first and foremost a sense of responsibility on the part of everyone with regard to everyone.”<sup>70</sup> It is not, said John Paul II, “a feeling of vague compassion or shallow distress at the misfortunes” of others but “a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all.”<sup>71</sup> Moreover, as a personal responsibility it is not something that can be “merely delegated to the State.”<sup>72</sup>

66. *Id.* ¶ 39. As an “ideology” Marxism “presume[d] to imprison changing socio-political realities in a rigid schema.” *Id.* ¶ 46. This kind of ideological blindness was really “an inhuman philosophy” in that it rejected charitable efforts to alleviate suffering under the “theory of impoverishment.” *DEUS CARITAS EST*, *supra* note 30, ¶ 31(b).

67. *CENTESIMUS ANNUS*, *supra* note 62, ¶ 13.

68. *CARITAS IN VERITATE*, *supra* note 28, ¶ 29.

69. *Id.* ¶ 53. For a discussion of the origin and meaning of the concept of “person” and its meaning in the Christian tradition, see John M. Breen, *Love, Truth, and the Economy: A Reflection on Benedict XVI’s Caritas in Veritate*, 33 *HARV. J. LAW & PUB. POL’Y* 987 (2010).

70. *CARITAS IN VERITATE*, *supra* note 28, ¶ 38.

71. POPE JOHN PAUL II, *ENCYCLICAL LETTER SOLLICITUDO REI SOCIALIS* ¶ 38 (1987), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 23, at 395, available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_30121987\\_sollicitudo-rei-socialis\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis_en.html) (last visited Apr. 10, 2011).

72. *CARITAS IN VERITATE*, *supra* note 28, ¶ 38.

Political reason, illuminated by religious faith – and in particular Christianity – helps to build solidarity. Thus, the *corrective* role of religion is really a *constructive* role. It builds communion among persons. It establishes the bonds of community. Living side by side within the borders of the same political entity may “make[] us neighbours but does not make us brothers.”<sup>73</sup> Brotherhood – true solidarity, real community – is not something that can be manufactured or created by command. As such, it is not something that the state can accomplish on its own with the limited means at its disposal: fear of coercion, pride in the history and status of one’s homeland, and mutual self-interest. These methods of forging bonds between strangers may be sufficient to meet the minimal demands of the common good, but they are inadequate in the face of circumstances that call for profound sacrifice.<sup>74</sup>

Law treats people as “a group of subjects who happen to live side by side,” not as “a single family working together in true communion.”<sup>75</sup> It can make strangers into fellow citizens but it cannot make them into brothers and sisters. It can demand that they treat one another with justice, but not charity. As Benedict says, “[r]eason, by itself, is capable of grasping the equality between men and of giving stability to their civic coexistence, but it cannot establish fraternity.”<sup>76</sup> Instead, “[t]he unity of the human race, a fraternal communion transcending every barrier, is called into being by the word of God-who-is-Love.”<sup>77</sup> It is “[o]nly through an encounter with God [that] we are able to see in the other something more than just another creature, to recognize the divine image in the other, thus truly coming to discover him or her and to mature in a love that ‘becomes care and concern for the other.’”<sup>78</sup>

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73. Cf. *CARITAS IN VERITATE*, *supra* note 28, ¶ 19 (referring specifically to the phenomenon of globalization).

74. History bears this out. The leaders of the French Revolution knew that something more was needed to bind people of the Republic together. “Liberte! Egalite! Fraternite!” This was the cry of the first truly modern state – the state that sought to sever itself from the religious and cultural milieu which preceded it and out of which it grew. The leaders of the Revolution recognized that more than tolerance was needed to sustain a society. The cry heard at the gates of the Bastille was not for “Liberty! Equality! Tolerance!” Instead, the ambition of this first State of the modern era was to make men brothers. It failed to accomplish this and resorted to the fear and coercion of the Terror.

75. *CARITAS IN VERITATE*, *supra* note 28, ¶ 53.

76. *Id.* ¶ 19.

77. *Id.* ¶ 34.

78. *Id.* ¶ 11 (quoting *DEUS CARITAS EST*, *supra* note 30, ¶ 6).

This care and concern for others, this building up of the common good that exceeds the demands of simple justice is what Benedict calls “the political path . . . of charity.”<sup>79</sup> It is actually necessary for men and women to go beyond the demands of justice because “human need and want persist even though no specific person fails to fulfill his obligation, and even though no binding obligation can be construed for anyone.”<sup>80</sup> A society founded on reason alone – the calculation of justice – will always be in need of more. Religion, and specifically Christianity, brings love to the public square.

Subsidiarity, by contrast, is the principle of social organization according to which it is wrong “to transfer to the larger and higher collectivity functions which can be performed and provided for by less and subordinate bodies.”<sup>81</sup> Thus, says Benedict, it “fosters freedom and participation through assumption of responsibility” and acts as “the most effective antidote against any form of all-encompassing welfare state.”<sup>82</sup>

The virtue of subsidiarity counsels humility. “We do not need a State which regulates and controls everything” since such a bureaucracy would prove tyrannical and would fail to provide “the very thing which the suffering person—every person—needs: namely, loving personal concern.”<sup>83</sup> Political reason “must not consider itself omnipotent.”<sup>84</sup> Thus, Benedict concludes that “[l]ove—*caritas*—will always prove necessary, even in the most just society. There is no ordering of the State so just that it can eliminate the need for a service of love.”<sup>85</sup>

#### *E. Religion and the Good Society: A Promise But Not a Guarantee*

Although Benedict argues that religion has a corrective role to play in political discourse, the presence of religion is not a guarantee to a harmonious social order. In the case of Christianity, the Gospel may be planted in a given culture, but its roots may not run deep. Religion may be followed in a formal, even meticulous fashion “solely out of a desire

79. *CARITAS IN VERITATE*, *supra* note 28, ¶ 7.

80. JOSEF PIEPER, *THE FOUR CARDINAL VIRTUES* 112 (1966).

81. POPE PIUS XI, *ENCYCLICAL LETTER QUADRAGESIMO ANNO* ¶ 79 (1931), *reprinted in* *CATHOLIC SOCIAL THOUGHT* *supra* note 23, at 42, *available at* [http://www.vatican.va/holy\\_father/pius\\_xi/encyclicals/documents/hf\\_p-xi\\_enc\\_19310515\\_quadragesimo-anno\\_en.html](http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html) (last visited Apr. 10, 2011).

82. *CARITAS IN VERITATE*, *supra* note 28, ¶ 57.

83. *DEUS CARITAS EST*, *supra* note 30, ¶ 28(b).

84. *CARITAS IN VERITATE*, *supra* note 28, ¶ 56.

85. *DEUS CARITAS EST*, *supra* note 30, ¶ 28(b).

to be 'devout' and to perform [one's] 'religious duties.'<sup>86</sup> Scrupulous religious observance may be proper in a technical sense "but loveless" if the Gospel message does not penetrate the hearts of those who hear it – if the person who performs these acts does not also reach out in service to others.<sup>87</sup> In such an instance, the faith may have been shared but not truly received by those to whom it was offered thereby preventing religion from fulfilling the corrective role that Benedict envisions.

This failure frequently manifests itself as a kind of tribalism where the factions are religious in nature, perhaps even specifically Christian. Examples of this include the long-running conflict in Northern Ireland, the civil war in Lebanon, the war between Croats and Serbs in the dissolution of the former Yugoslavia, and the sectarian violence in Iraq following the fall of Saddam Hussein. There are, of course, many other factors that complicate these disputes. They are not purely or even primarily disputes between religious groups as such. Still, if Benedict's thesis is correct, wouldn't one expect to see its truth demonstrated in history – evidenced in the facts on the ground?

The thesis that religion helps purify reason so that politics can fully respect the dignity of the human person and advance the common good does not lend itself easily to testing. We have, for example, no way of knowing whether the conflicts just mentioned would have been even more savage had religion not been present. The difficulty in testing Benedict's thesis also derives from the fact that there is no society today that is wholly a-religious in origin. Even avowedly secular states, like the current French Republic, and overtly atheistic governments, like the former Soviet Union, came into existence in societies that were once deeply religious. These regimes were or are accretions on what had been thoroughly religious cultures. Thus, Benedict argues that with respect to the states in Europe, their ethical political discourse "is vitally dependent on the ongoing effects of Christianity, which gave it the foundations of its reasonableness and its inner coherence. When this Christian foundation is completely removed, nothing is left to hold it together."<sup>88</sup> The modern state "simply has to know its historical place . . . the ground from which it cannot completely detach itself without falling apart."<sup>89</sup> Thus, the liberal democracies of the West are not proof of a benign liberalism that is sustainable. By contrast, history does offer proof of the

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86. *Id.* ¶ 18.

87. *Id.*; cf. *Matthew* 15:8 ("This people honors me with their lips, but their hearts are far from me.").

88. RATZINGER, CHURCH, ECUMENISM, *supra* note 47, at 205.

89. *Id.* at 207.



consequences that follow from a secular reason bereft of religion. We have seen it in the ovens of Auschwitz and behind the barbed wire of the Gulag.

Benedict is cognizant of the sort of religious tribalism that often marks conflicts in the world today. According to Benedict, “distorted forms of religion, such as sectarianism and fundamentalism” arise “when insufficient attention is given to the purifying and structuring role of reason within religion.”<sup>90</sup> This is why it is not only reason that needs to be purified by religion, but religious faith that needs to be purified by reason. It must be, says Benedict, “a two-way process.”<sup>91</sup> When aided by reason, religion is able “to show its authentically human face,”<sup>92</sup> that is, to speak to all peoples and cultures as St. Paul did when speaking in the Areopogas.<sup>93</sup> As John Paul II warned, when faith is deprived of reason it “stress[es] feeling and experience, and so runs the risk of no longer being a universal proposition.”<sup>94</sup> When faith is deprived of reason it “runs the grave risk of withering into myth or superstition.”<sup>95</sup> Faith that assumes the pathological form of fideism is incapable of contributing to the public conversation in a society defined by pluralism.

### III. ALLIES OLD AND NEW: DE TOCQUEVILLE AND WALDRON

The main point of Benedict’s Westminster reflection is that religion has a vital role to play in public discourse by correcting the distorting effects of reason – that religion is necessary to supply that which is absolutely indispensable to the political process but which the state cannot provide itself. Although boldly stated, Benedict’s thesis that religion has an important role to play in the public square is not especially new. What is interesting, however, is to see the diverse sources who agree with the thesis that Benedict seeks to advance.

Alexis De Tocqueville is, if not the most famous visitor to America, certainly the most famous political commentator to come to these shores and subsequently publish his observations. Tocqueville’s *Democracy in America* is not merely a seminal work. It remains, perhaps, the single most important study of American society and political culture more than 150 years after it was first published. Of even greater significance,

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90. WESTMINSTER ADDRESS, *supra* note 7.

91. *Id.*

92. CARITAS IN VERITATE, *supra* note 28, ¶ 56 (italics omitted).

93. FIDES ET RATIO, *supra* note 29, ¶ 36 ; *cf.* Acts 17:16-34.

94. *Id.* ¶ 48.

95. *Id.*

at least for our purposes, is that many of Tocqueville's observations concerning the role that religion played in the public life of the United States in the 1830s coincide with the vision that Benedict recently set forth in his address at Westminster.

Tocqueville writes that upon his arrival in the United States "the religious aspect of the country was the first thing that struck [his] attention,"<sup>96</sup> particularly the way in which the spirit of religion and the spirit of freedom were "intimately united" and "reigned in common over the same country."<sup>97</sup> Indeed, he thought that "there is no country in the world where the Christian religion retains a greater influence over the souls of men than in America."<sup>98</sup> This is not so much a "direct influence of religion upon politics" but a powerful "indirect influence."<sup>99</sup> That is to say, religion affects the "mores" or "habits of the heart" of the American people, "the various notions and opinions current among men, and the mass of those ideas which constitute their character of mind."<sup>100</sup> According to Tocqueville, the positive effects of religion on American life can be seen in helping to strengthen the bonds of marriage and family life. There is, he says, no country "where conjugal happiness is more highly or worthily appreciated" and that an "American derives from his own home that love of order which he afterwards carries with him into public affairs."<sup>101</sup> Likewise, Tocqueville says that religion effects "habits of restraint" in political society and that this contributes to "the tranquility of people and the durability of institutions."<sup>102</sup>

Because of their "boldness" and "enterprising spirit" Tocqueville believes that the United States could become a revolutionary power around the globe. Absent religion "they would shortly become the most daring innovators and the most persistent disputants in the world. But the revolutionists of America are obliged to profess an ostensible respect for Christian morality and equity, which does not permit them to violate wantonly the laws that oppose their designs."<sup>103</sup> Accordingly, Tocqueville concludes that although "[r]eligion in America takes no direct part in the government of society . . . it must be regarded as the

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96. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* vol. 1, 394 (Henry Reeve, trans., 1864) (1850).

97. *Id.*

98. *Id.* at 388.

99. *Id.* at 387.

100. *Id.* at 383.

101. *Id.* at 389.

102. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* vol. 1, 390 (Henry Reeve, trans., 1864) (1850).

103. *Id.*

first of their political institutions; for if it does not impart a taste for freedom, it facilitates the use of it."<sup>104</sup> Indeed, he says that Americans are cognizant of this influence and so "hold [religion] to be indispensable to the maintenance of republican institutions."<sup>105</sup>

Now, one might well question whether the bonds of domestic life in America are as secure as they were in Tocqueville's day,<sup>106</sup> as well as whether Christianity operates to check the American impulse for political adventure abroad.<sup>107</sup> Still, one can see in Tocqueville's description of religion in America precisely the purifying effects that the Benedict insists are indispensable to maintaining the dignity of persons and the common good.

In a recent essay, Jeremy Waldron makes an analogous point. Waldron objects to what he terms "prescriptive secularism," the point of view that would "deny that religious convictions have any place in politics."<sup>108</sup> His argument against this approach is not so much a matter of principle as a strategic desire to introduce certain perspectives and values into political discourse<sup>109</sup> and so differs from Benedict's epistemological argument in important ways. Still, there is a remarkable degree of overlap between the two.

What Waldron finds so troubling is that when "[p]urged of all trace of the view that there is something sacred in the poorest individual and something blasphemous in our indifference to human need, politics quickly becomes a playground for the selfish."<sup>110</sup> Prescriptive secularism, he says, "deprives social justice of some of its most powerful advocacy, advocacy of a sort that is politically, if not philosophically, indispensable in the effort to open the eyes of the well-off to the plight of those who are marginalized by the very structures that guarantee our prosperity."<sup>111</sup>

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104. *Id.*

105. *Id.* at 391.

106. *See, e.g.*, PROMISES TO KEEP: DECLINE AND RENEWAL OF MARRIAGE IN AMERICA (David Popenoe, Jean Bethke Elshain & David Blankenhorn eds., 1996). Of course, some of the most devastating effects of marital breakdown are incurred by the children of divorcing couples. *See, e.g.*, JUDITH S. WALLERSTEIN, JULIA M. LEWIS & SANDRA BLAKESLEE, THE UNEXPECTED LEGACY OF DIVORCE: THE 25 YEAR LANDMARK STUDY (2001).

107. *See, e.g.*, ANDREW BACEVICH, WASHINGTON RULES: AMERICA'S PATH TO PERMANENT WAR (2010).

108. Jeremy Waldron, SECULARISM AND THE LIMITS OF COMMUNITY, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1722780](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1722780) (last visited Apr. 10, 2011).

109. *Id.* at 23 ("These are strategic matters, not matters of principle.")

110. *Id.* at 2.

111. *Id.*

Moreover, the Rawlsian thesis<sup>112</sup> that public debate must take place in terms of “public reason,” mutually accessible to believers and non-believers alike, is misplaced. For Waldron, the fear that religious convictions in the public square are unintelligible to non-adherents and inimical to the process of reasoned dialogue, and that these convictions do not lend themselves to the process of compromise endemic to democratic politics “is based on a caricature of religious interventions, or on a generalization from a very small and distorted sample.”<sup>113</sup> When it comes, for example, to arguments against gay marriage, there is, says Waldron, “very little *Leviticus*-quoting or invocation of papal authority” as such. What one finds instead are “elaborate tissues of argument and reason, open to disputation and vulnerable in the usual way to quibble, rejoinder, and refutation.”<sup>114</sup> That is, whether the subject is gay marriage, abortion, or poverty, people who speak from a religious tradition and out a religious motivation also speak in a way that non-believers (or rather other-believers) can understand and engage. Indeed, their manner of speaking and arguing “is really not much different from any body of value-laden political argument.”<sup>115</sup> To “shake up the deadly combination of contentment and self-righteousness which often characterizes the response of a prosperous community to the poor and outcast”<sup>116</sup> we want “something richer and more transcendent behind it than the abstract idea of humanity.”<sup>117</sup> In the process of practical deliberation “we don’t just present propositions to one another, or evaluate one another’s evidence or logic: we try to affect the way things are seen, the connections that are made, the value-language that is used.”<sup>118</sup> To put it in Benedict’s terms, religion serves a corrective role in that it purifies the arid logic of reason that has lost sight of human suffering and injustice.

Similarly, although Waldron does not invoke the language of “solidarity” he does see that the invocation of religion can help overcome the strict bifurcation between the virtues of justice and love. Secular political discourse is, he says, rather one dimensional, presenting a claim

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112. JOHN RAWLS, *POLITICAL LIBERALISM* 212–54 (expanded ed., 2005) (discussing the idea of “public reason” as the foundation for the exercise of political power which all citizens can be expected to endorse, regardless of the religious or “comprehensive” beliefs they might otherwise hold).

113. WALDRON, *supra* note 108, at 15.

114. *Id.* at 16.

115. *Id.* at 18.

116. *Id.* at 19.

117. *Id.* at 13.

118. *Id.* at 19.

as either “a perfect obligation (in which case there is a right)” or as something unimportant that “falls into the realm of the optional.”<sup>119</sup> Love, for Benedict, is something of the highest importance, though it cannot be compelled by the state. As Waldron notes, “religious materials shake up [the] logic” that distinguishes rights that others are obliged to respect and merely optional life-style choices “by presenting claims of love as compelling in ways with which secular moral philosophy may not be comfortable, but in ways that may more accurately capture our sense of what is required of us.”<sup>120</sup> Further echoing Benedict, Waldron notes that just as “sometime[s] progress is made in moral argument by developing new normative conceptions on the model of certain religiously-inspired concerns,” so too “progress can be made in theological thinking by subjecting it to the rigor of analytic philosophy.”<sup>121</sup> Thus it seems that Waldron agrees with Benedict that “the world of secular rationality and the world of religious belief . . . should not be afraid to enter into a profound and ongoing dialogue.” It is, as Benedict says, “a two-way process.”<sup>122</sup>

#### IV. MAKING ROOM FOR RELIGION: *CLS v. MARTINEZ*

If Benedict is correct that the secular, liberal state cannot sustain itself by operating on reason alone, then certain consequences follow. If it is true that, without the purifying influence of religion, the liberal state is susceptible to an abuse of “reason,” if it is true that, in the name of tolerance, unity, and inclusivity it acts in a way that is intolerant, divisive, and exclusive of select individuals and communities, then the legitimate role of religion in public life needs to be recognized. If reason is to operate free of distortion and ethical blindness then, as Benedict says, “religious bodies – including institutions linked to the Catholic Church – need to be free to act in accordance with their own principles and specific convictions based upon the faith and official teaching of the Church.”<sup>123</sup>

In light of this standard, how has the Supreme Court fared in its recent decisions concerning religious liberty and the freedom of religious communities? Specifically, what are we to make of the Court’s recent decision in *Christian Legal Society v. Martinez*?

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119. *Id.* at 20.

120. *Id.*

121. *Id.*

122. WESTMINSTER ADDRESS, *supra* note 7.

123. *Id.*

In *CLS v. Martinez*<sup>124</sup> the Supreme Court upheld the power of the University of California, Hastings College of Law to require all registered student groups to abide by the School's non-discrimination policy as a condition for the use of school facilities. The School interpreted its policy "to mandate acceptance of all comers: School-approved groups must 'allow any student to participate, become a member, or seek leadership positions in the organization, regardless of [her] status or beliefs.'"<sup>125</sup> The Christian Legal Society chapter at Hastings objected to this requirement in that CLS required its members to adhere to a "Statement of Faith" which included "the belief that sexual activity should not occur outside of marriage between a man and a woman" and that this belief precludes affiliation with "anyone who engages in 'unrepentant homosexual conduct.'"<sup>126</sup> The Court concluded that Hastings's "all-comers" policy was reasonable and view-point neutral under the Court's prior decisions concerning expressive association and free speech in a limited public forum.<sup>127</sup>

There is much to criticize in the majority opinion, but my point here is not to engage in an extensive review of Justice Ginsburg's doctrinal analysis. Instead, what I wish to suggest is that *CLS v. Martinez* represents precisely the kind of truncated secular reason in need of purification. Moreover, it works to further marginalize religion by restricting the free speech rights of a religious community, and by reconstituting the community through a kind of forced association.

Benedict's address at Westminster suggests a different approach. Just as the Christian religion in the past confronted distortions of reason in the ideologies of Marxism and liberal market capitalism (that man is only an economic being) and the new ideology of environmentalism (that holds that man occupies no special place in the universe, that humanity is merely one species among many), religion must be allowed to confront the ideology of sexuality – the distorted view that a person's identity is principally found in his or her sexual desires and the freedom to realize those desires.<sup>128</sup> Related to this, religion also fulfills a

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124. *CLS v. Martinez*, 130 S. Ct. 2971 (2010).

125. *Id.* at 2979 (quoting the policy from Hasting's appendix to its petition for certiorari).

126. *Id.* at 2980.

127. *Id.* at 2995.

128. CONGREGATION FOR THE DOCTRINE OF THE FAITH, LETTER TO THE BISHOPS OF THE CATHOLIC CHURCH ON THE PASTORAL CARE OF HOMOSEXUAL PERSONS ¶ 16 (1986), available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19861001\\_homosexual-persons\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html) (last visited Apr. 10, 2011) ("The human person, made in the image and likeness of God, can hardly be adequately described by a

desperately needed corrective role in public discourse in arguing that the family is not a mere social construct – a product of social and juridical conventions and individual choices. Religion in general and Christianity in particular has an indispensable role to play in correcting the distortions created in the logic of an autonomy unburdened by any notion of a natural order. In response to this, Christianity offers the idea that the family is the “basic social structure”<sup>129</sup> of social life, the “natural, primary cell of human society,”<sup>130</sup> and that there is a complementarity between the sexes<sup>131</sup> such that mothers and fathers cannot simply be swapped out for same-sex partners without having a profound effect on the development of the children in their care.<sup>132</sup>

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reductionist reference to his or her sexual orientation.”). A forthright repudiation of this ideology does not entail discrimination or permit animus toward those who experience same-sex attraction. Instead the Church teaches that “[i]t is deplorable that homosexual persons have been and are the object of violent malice in speech or in action” and that “[s]uch treatment deserves condemnation” since “[i]t reveals a kind of disregard for others which endangers the most fundamental principles of a healthy society,” namely, the principles of justice and solidarity. *Id.* ¶ 10. The homosexual person is, like every other person, the subject of “loving personal concern.” *DEUS CARITAS EST*, *supra* note 30, ¶ 28(b). Thus, although the Church condemns the practice of homosexual acts as she has since the time of the apostles, the Church also teaches that men and women who suffer from same-sex attraction “must be accepted with respect, compassion, and sensitivity” and that “[e]very sign of unjust discrimination in this regard should be avoided.” *CATECHISM OF THE CATHOLIC CHURCH* ¶ 2358 (1994).

129. *POPULORUM PROGRESSIO*, *supra* note 33, ¶ 38.

130. POPE JOHN XXIII, ENCYCLICAL LETTER *PACEM IN TERRIS* ¶ 16 (1963), *reprinted in* *CATHOLIC SOCIAL THOUGHT*, *supra* note 23, at 131, *available at* [http://www.vatican.va/holy\\_father/john\\_xxiii/encyclicals/documents/hf\\_j-xxiii\\_enc\\_11041963\\_pacem\\_en.html](http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html) (last visited Apr. 10, 2011).

131. *See generally* POPE JOHN PAUL II, LETTER TO FAMILIES *GRATISSIMAN SANE* (1994), *available at* [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/letters/documents/hf\\_jp-ii\\_let\\_02021994\\_families\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jp-ii_let_02021994_families_en.html) (last visited Apr. 10, 2011); POPE JOHN PAUL II, APOSTOLIC EXHORTATION *FAMILIARIS CONSORTIO* (1981), *available at* [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_exhortations/documents/hf\\_jp-ii\\_exh\\_19811122\\_familiaris-consortio\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio_en.html) (last visited Apr. 10, 2011).

132. CONGREGATION FOR THE DOCTRINE OF THE FAITH, CONSIDERATIONS REGARDING PROPOSALS TO GIVE LEGAL RECOGNITION TO UNIONS BETWEEN HOMOSEXUAL PERSONS ¶ 7 (2003), *available at* [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20030731\\_homosexual-unions\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html) (last visited Apr. 10, 2011) (stating that “the absence of sexual complementarity in [same sex] unions creates obstacles in the normal development of children” in that children placed in the care of gay couples “would be deprived of the experience of either fatherhood or motherhood”). Although proponents of same-sex-marriage routinely claim that parenting by same-sex partners is beneficial to the children in their care and has no adverse effects upon those children relative to children raised by traditional married heterosexual couples, “[t]he most sound conclusion about gay parenting, reached not only by supporters of

Finally, as should be clear from Benedict's remarks, solidarity is essential to the well being of any society, yet genuine community cannot be compelled by the state. It must instead be the consequence of freedom. The state can command justice but not love. It can make us fellow citizens but not brothers. *CLS v. Martinez* represents an effort by the state to compel a kind of solidarity, to force a kind of fraternity on an unwilling group. The state has a role in fostering genuine community, but the attempt to bring about community through coercion is both perverse and doomed to failure.

## V. CONCLUSION

Reason – certainly the constricted reason of empiricism that locates the happiness of human beings in materialism and calculations of utility – cannot redeem man. As Benedict says: "It is not science that redeems man: man is redeemed by love."<sup>133</sup>

And so we return to the hall at Westminster and the figure of Thomas More. His presence echoes through the space and through the years as a reminder of the richness of a life not governed by the impoverished version of reason that regards as true only that which is

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traditional marriage, but also by those of gay marriage, is that we do not know the ultimate effects on children of long-term rearing in gay households, with or without marriage, with a few possible exceptions." Helen M. Alvare, *The Turn Toward the Self in the Law of Marriage & Family: Same-Sex Marriage & its Predecessors*, 16 STAN. L. & POL'Y REV. 135, 179 (2005) (summarizing the literature). One of the exceptions to which Alvare refers concerning reliable empirical evidence on the effects of gay parenting on children is Judith Stacey & Timothy J. Biblarz, (*How*) *Does Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV. 159, 170–71 (2001) (concluding that daughters raised by lesbians are likely to have more sexual partners before adulthood, and children of both genders raised by lesbians are more likely to experiment with or consider homosexuality themselves). See also Walter R. Schumm, *Children of Homosexuals More Apt to Be Homosexual?: A Reply to Morrison and to Cameron Based on an Examination of Multiple Sources of Data*, 42 J. BIOSOC. SCI. 721 (2010) (confirming a prior study that gay and lesbian parents are more likely to have sons and daughters who are gay, lesbian, bisexual or unsure of their sexual orientation). For an explanation of the difficulties involved in researching the effects of same-sex parenting on children compared to parenting by heterosexual couples, such as controlling for differences in levels of education and per capita household income, see FULL INTERVIEW WITH DR. WALTER SCHUMM, <http://www.lifesitenews.com/news/archive/ldn/2010/aug/10081802> (last visited Apr. 10, 2011); Walter R. Schumm, *FLAWED EVIDENCE ABOUT GAY MARRIAGE*, [http://www.mercatornet.com/articles/view/flawed\\_evidence\\_about\\_gay\\_marriage/](http://www.mercatornet.com/articles/view/flawed_evidence_about_gay_marriage/) (last visited Apr. 10, 2011).

133. POPE BENEDICT XVI, ENCYCLICAL LETTER *SPE SALVI* ¶ 26 (2007), available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20071130\\_spe-salvi\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20071130_spe-salvi_en.html) (last visited Apr. 10, 2011).



calculable and empirically verifiable. He was, to be sure, a man celebrated throughout Europe for his intellect, but also for his capacity for friendship, his capacity for love.<sup>134</sup> While imprisoned in the Tower, just prior to his execution, More showed the depth of that love in a prayer he composed, a *Devout Prayer Before Dying*.<sup>135</sup> In it he prays for the very men who have sought his blood and have now unjustly imposed upon him the sentence of death. He prays:

Almighty God, have mercy on [these men] and on all that bear me evil will, and would me harm, and their faults and mine to-gether, by such easy, tender, merciful means, as thine infinite wisdom can best devise, vouch-safe to amend and redress, and make us saved souls in heaven together where we may ever live and love together with thee and thy blessed saints. O glorious Trinity, for the bitter passion of our sweet Saviour Christ. Amen.

In these final words he echoes the prayers of Christ Himself: "Love your enemies. Pray for those who persecute you."<sup>136</sup> This is something that the reason of materialism and scientific method cannot fathom, but it is the reason by which man is redeemed. It is the reason of love. It is the reason that the world cannot do without.

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134. Thomas More's friend, the great humanist scholar Erasmus of Rotterdam, wrote that "[w]hoever desires a perfect example of true friendship will seek it no where to better purpose than in [Thomas] More." He was, said Erasmus "a man born and made for friendship," "a man for all seasons." "No one," he wrote, "is more openhearted in making friends or more tenacious in keeping them, nor has he any fear of that multiplicity of friendships against which Hesiod warns us. The road to a secure place in his affections is open to anyone. In choice of friends he is never difficult to please, in keeping with them the most accommodating of men, and in retaining them the most unfailing." WEGEMER, *supra* note 9, at 61–62.

135. Thomas More, DEVOUT PRAYER BEFORE DYING, <http://www.thomasmorestudies.org/docs/A%20DEVOUT%20PRAYER.pdf>. More made a similar prayer at Westminster Hall at the conclusion of his trial. See WILLIAM ROPER, THE LIFE OF SIR THOMAS MORE 54–55 (Gerard B. Wegemer & Stephen W. Smith eds., 2003) (c. 1556), available at <http://thomasmorestudies.org/docs/Roper.pdf>.

136. *Matthew* 5:44.