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# GOD IN A BOX II

## THE RESPONSE OF RELIGIOUS ORGANIZATIONS TO STATE OPPOSITION

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### **Abstract**

How should the Church in a democratic society respond to opposition from the state? Has the rise of the liberal, secular state altered the Thomistic synthesis of Church and state upon which Catholic social teaching rests? How are these dynamics illustrated in the current debate about the Patient Protection and Affordable Healthcare Act (Obamacare) in the U.S.?

*Keywords:* Church-state, Hobbes, Thomas Aquinas, Obama, healthcare

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### **1. Introduction**

In ‘God in a Box: The Dialectic of Secularization’ [[unpublished manuscript](#)], I argued that in legal systems such as the United States, what I called ‘nonreligion’ should not be given the same status as religion, because doing so results in the removal of religion from the public sphere in a manner that limits religion’s salutary role in society and violates the kind of double learning Habermas calls for between secular and sacred societies. In this paper, I ask what should be the response of religious organizations when the State imposes policies on it that directly violate its own theological self-understanding? What should be the stance of the Church towards the State in such instances? And, what does conflict between Church and State mean for the Church’s philosophy of engagement with the State? To illustrate this, I shall look at the current debate before the United States on Obamacare’s provision that requires employers to offer abortion, sterilization, and contraception services for their female employees, even if such services are morally objectionable to the Church.

Part of Obama’s controversial healthcare plan, the Patient Protection and Affordable Care Act (PPACA), is a set of federally enforced mandates. One is the widely-publicized ‘individual mandate’, objected to by twenty-six states and litigated in the Supreme Court during the spring of 2012, which dictates that all

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individuals purchase insurance. Another is the mandate requiring all religious institutions that partake of the healthcare benefits from the federal government, including Medicare and Medicaid, to supply contraceptive and abortion services to their employees, even if doing so contradicts the religious institution's beliefs. The only exemption from that mandate is for clergy. But, in the case of the Catholic Church in the U.S., Catholic hospitals, schools, social service agencies, etc. employ thousands of non-clergy who must be offered those services, without exception.

That mandate met strong objections from the Catholic Church. The Obama administration responded with a compromise. It allows the Church to not directly pay for those services by mandating that the insurance providers offer those services to employees of Catholic organizations for free.

This special condition allows the federal government to force a private entity, in this case an insurance company, to buy a product or service it otherwise would not. Critics charge that this maneuver is a way of expanding the power of the federal government without having to face the political difficulties that would be associated with direct legislation. A direct legislative order to engage in conduct antithetical to their religious convictions could amount to a violation of the First Amendment's guarantee of the 'free exercise of religion'. The compromise is a way to guard against such a legal challenge, while extending the government's power without requiring new laws and without running the risk of political defeat. The Catholic Church and other opponents of the mandate reject the Obama compromise as nugatory.

The constitutional procedure for distributing free goods is through taxation. That requires the Congress to go through the legislative process and make public expenditures. The mandate gets around that process. Many critics of Obamacare have charged that the entire bill is a Trojan horse. The left has long wanted America to adapt a 'single payer' system, which is a euphemism for a completely state-run healthcare system, or what critics more clearly label 'socialized medicine'. The political opposition to such a system has always been too strong to allow passage. The current version of Obamacare is the most the left could get. So its proponents really intend it only as an incremental, temporary step toward a national healthcare system. By telling private insurance companies they must pay for services and not clearly stating how those services will be paid for, the mandate could create new expenditures for insurers that would eventually force them to exit the market, leaving the government no choice but to step in.

Something similar is happening with the unfunded mandates the federal government makes under the new law regarding Medicare programs. The federal government shifts costs to states, which cannot meet those costs, resulting in the failure of the states or the programs. This is why twenty-six states have sued the federal government, hoping to prevent the imposition of Obamacare in whole or in part by arguing that the individual mandate exceeds Congress's limited power to control interstate commerce.

Obama has recently referred to matters traditionally described as matters of religious libertine in terms of a 'right to worship'. He and members of his team have tried to shift the rhetoric away from the expansive notion of religious liberty to the more restricted idea of a right to worship. So in the present case, requiring a Church to supply abortion and contraception to its employees could not be seen as an interference with believers' rights to worship. But it could be seen as a violation of the free exercise of their religion, which requires them to act in certain ways, apart from liturgical or individual prayer. Such requirements are part of every religion. Believers have to eat certain ways, dress certain ways, speak certain ways, care for the poor, educate children, and tend the sick — things that nonbelievers might also do, but which religious persons do as part of their religious activity. Obama's ploy treats those religious-motivated behaviors as outside the reach of the constitutional solicitude the Constitution clearly offers religious acts, *qua* religious acts. So providing healthcare to employees is a wholly secular act, he would reason, and, as such, cannot receive a special exemption or accommodation not afforded the general public. Free Exercise encompasses a far broader and more comprehensive set of rights than the religious 'right to worship', which nowhere appears in the U.S. Constitution. Perhaps Obama's minions, who often look to Europe for models of state regulation, are thinking of the UN Declaration on Human Rights, which speaks of a right to 'manifest' religion 'in worship'. But even that document is very clear that the right to manifest religion includes 'practice' and 'observance' [1]. The right to manifest religion has been found to cover such things as ritual slaughter of animals and religious dress.

The ideas of an expanded federal government role in healthcare and religious freedom are related in several ways. There are to be sure many American religious people who care about providing healthcare to the poor. The abortion and contraception mandate presents a terrible conflict for Catholics who want to see healthcare extended to the unfortunate.

What is the issue the PPACA tries to address? Over 80% of Americans receive their healthcare from their employers. Those programs are generous, and cover the full range of medical services, including preventative and catastrophic care. Another large segment of the population, those over 65 years of age and those whose income is below a certain level or those with permanent disabilities, are covered by two federal insurance programs, Medicare and Medicaid.

Who's left? There are the young. Up until age 21, they are covered by the parent's health insurance plans. After that, they are not. Many of them choose not to purchase healthcare insurance, because they bet, with the odds, that they will not require catastrophic coverage and they know that the cost of routine preventative medicine will be less than the cost of regular insurance premiums. If they wish to have insurance, they may easily buy that in the open market, at a very low cost. That does not leave very many people who are truly uncovered. Furthermore, not having insurance does not prevent you from receiving medical care. All U.S. hospitals are required to treat all persons who present themselves with emergent conditions, regardless of their ability to pay. So virtually no one

in the US is without healthcare. The emergency rooms in American hospitals are full of people without insurance, including illegal aliens. They are treated, and the costs of their care are born by the hospitals.

There are, however, those whom insurance companies wish to avoid, because of their high cost to the system. The insurers are allowed to exclude a small number of persons under various circumstances, such as pre-existing illnesses. This latter area is where there is most valid case for expanded access to care.

Cost control and greater availability of healthcare under a few limited conditions are probably the most widely accepted motivations for the PPACA. The debate has long been waged over whether single payer systems are superior to the open market the US has. While it is very likely single payer systems cannot match open systems on quality measures, theoretically they should be able to drive down costs more effectively, and could solve the problem of coverage for that small number now excluded from affordable insurance. Managed care has tried to control costs by taking more control of the care regimens employed by providers, but, after years of successes, now seems unable to stop the constant increase in costs. The current system is without fundamental market disciplines, because people merely go to the doctor's office, in the case of people with insurance, or to the emergency care facilities of hospitals, for people with or without insurance, without having to pay directly for the services received and without knowing ahead of time what those services cost. Employers, who under the current system provide healthcare insurance to their employees, would be happy to see the government take over that ever-growing expense. Finding some way of shifting that cost from private firms to the public is widely endorsed by businesses. Yet, because this is not an attractive idea politically, the debate about the PPACA avoided this discussion. Instead, the issue of healthcare was presented as a moral obligation that the people should take up out of a sense of compassion, fairness, or social justice.

## **2. The moral obligations of the State**

Why should the State be morally obligated to provide health services to its citizens? Not all Americans endorse this view, common in Europe, that the state has an obligation to provide for the welfare of its citizens such goods as healthcare.

Doubtless, the sovereign debt crisis faced by Europe and the U.S. will only be solved if governments spend less. Nevertheless, the twentieth and twenty-first centuries continue to see the growth of welfare states in most western democracies. Crucially, since the end of World War II, the development of states that promise cradle to grave services for their citizens, including education, housing, employment, healthcare, and pensions for the unemployed and old, has coincided with the embrace of the Bretton Woods economic goals [2, 3], which have been the basis for globalization: the free movement of goods; the free movement of capital; and the free movement of labor. Western nations

have lost jobs to lower cost suppliers, just as their welfare ambitions and obligations have continued to grow.

There is another non-economic reason for the growth of elaborate state systems of public assistance. Welfare states are run by people whose power is a function of their ability to redirect the wealth of a nation from one group to some other group, which they favor. They do this through taxation, regulation, and spending.

What forces in a society can limit state power? In a constitutional republic, the state power is divided among branches of the federal government and between the federal government and the states. It is a constant battle, as the history of the growth of central government in the U.S. since World War II illustrates. The Tenth Amendment of the U.S. Constitution reserves all powers not specifically given to the federal government in the Constitution to the states. But as the unfunded mandates of the federal healthcare program Medicare show, the federal government exercises constant pressure on the states to comply with its policies and relentlessly expands the breath of its reach. States are reduced from confederated sovereigns to administrative bureaus of the central government, critics charge.

Political parties might also restrain the power of government through the political process. While movements like the Tea Party strive to do this, persons elected to roles in the Congress often succumb to the system and act to preserve, rather than shrink, their power. California provides a case study of this battle between the people and the professional politicians. The California state constitution enables legislation to be made through popular referenda in which all voters can participate. Tax-payer initiatives to limit government spending and taxing have been popular. But each initiative over time is undermined by the professional politicians who require more and more money and prerogatives to maintain and expand their personal power. The antics of those politicians have bankrupted the state government's economy, while the private sector economy of California continues generating greater and greater wealth. The government's constant attempt to possess that wealth generated by individuals and families through taxes, regulations, and limitations on inheritance is a ploy as old as rapacious European kings, who somehow thought they were born to a position that gave them a right to other peoples' money.

The welfare states of today do not rely on class privilege to make their claims to right. They instead rely on conceptions of the common good, charity, and responsibility towards others. Each is a notion that can be subverted by the overreach of the State, and it is in that distorted shape that I speak of them. There are at least three sources of those ideas in Western countries: *noblesse oblige*, communism, and religion.

The first has a heritage reaching back to the Cain and Able. One person thought it his right to harm another and take from him what he thought he should have for himself. That instinct for robbery and thief, born of envy, pride, and a sense of superiority over another, soon found ways to mask itself in high-sounding notions of compassion, responsibility for others, or the 'common

good'. Under the guise of care for others, people stole from others the fruits of their labors and then returned to them some small share, generating dependency and a stinking hypocrisy that over generations made the peasants into a hopeless lot and the noble into an effete aristocracy. The liberal democracies born in the eighteenth, nineteenth, and twentieth centuries often came to power as a reaction to the injustices of society. But tragically, the role of the feudal lords was simply transferred to the state, under the fiction, made popular by Thomas Hobbes' idea of Leviathan, that somehow the state was the representation of the people and its will sovereign. This Alice-in-Wonderland turn of events led to the modern welfare state, which in the name of the people usurped power and money from the private sector to redistribute as it saw fit. An oligarchy of professional politicians came to run the governments and operate as nobility, under the guise of being representatives of 'the people'. In most systems access to that oligarchy is not defined by class or parentage; but that functions often as an incentive to corruption, not a check against it, by coopting persons, who believe that they too might be able to enter that privileged group and reap the benefits of membership. They have no need to change the system that makes their rise to power possible in a way that hereditary aristocracy did not. The path to grasping political power is open to all, so all cooperate with the system that creates that power.

A second source of justification for the welfare state's expanded role is communism. In the minds of some communists, perhaps the most idealistic, it was to be a movement against Leviathan, not a creation of control economies and mega-states. Italian communism novelist, Carlo Levi, in his masterpiece, *Cristo si è fermato a Eboli*, writes stirringly of how the poor peasants of Lucania were completely misunderstood by the enlightened liberals of northern Italy, whom he characterizes as worshippers of the State. Here he reflects as he travels by train back to Lucania after a stay in Torino: "As I sat on the hard seat I meditated upon the past few days. I thought of my feeling of strangeness, and of the complete lack of understanding among those of my friends [in Torino] who concerned themselves with political questions, of the country to which I was now hurrying back.... At bottom, as I now perceived, they were all unconscious worshippers of the State. Whether the State they worshipped was the Fascist State or the incarnation of quite another dream, they thought of it as something that transcended both its citizens and their lives. Whether it was tyrannical or paternalistic, dictatorial or democratic, it remained to them monolithic, centralized, and remote. This was why the political leaders and my peasants could never understand one another. The politicians oversimplified things, even while they clothed them in philosophical expressions. Their solutions were abstract and far removed from reality; they were schematic halfway measures, which were already out of date.... There will always be an abyss between the State and the peasants, whether the State be Fascist, Liberal, Socialist or take on some new forms." [4]

The peasants of the south never could understand or value a strong, centralized government. It was the problem, not the solution, because it imposed bureaucratic measures, hatched by persons far removed from the local reality.

Those measures inevitably did not solve the problems they addressed. They often made things worse because of unintended outcomes. There was no way such a system could work. It could not be fixed with tinkering, could not be improved by simply replacing the old bureaucrats with new ones. There would always be a tension between the *contadini* (peasants) and the *luigi* (named after the school teacher and Fascist party operative in Levi's first novel.) It had to end. Autonomy of the local regions was necessary. Localism had to replace centralism. A loose federation of states should replace the strong centralized government. As much as Levi understood the how the State could become a monster, many of his fellow communists made the crucial mistake, born of an idealistic hope, dizzying in its ambitions, of assuming that a communist state could be different. The communist state justified its totalitarianism with bazaar notions of historical dialectic that made some observers think that the terrible oppression of individuals by the communist governments was somehow necessary, but only for a short transition, to be followed by a new society. Levi did not fall for this, as his critical report of the Soviet Union, *Il future ha un cuore antico* showed. But many of his communist friends were willing to allow, when it came to the Soviet Union, the massive idolization of the State he so deplored because of the delusion that the State was the proletariat and that the dialectic of history required reactionary excesses.

That idea, that the State is the people, rather than simply a part of society charged with limited administrative duties, resembles closely Hobbes' view of the Leviathan and the Italian Fascist notion *tutto nello stato; niente a di fuori del lo stato* (everything in the state, nothing outside the state). Society is not, as contemporary proponents of civil society claim, a collection of voluntary associations, each competing with the other, each contributing to the society, but no one dominating the others [5]. Rather, society is the people, the proletariat, the body politic, outside of which lies only personal ambition, individualism, partisanship, and other forces opposed to the general welfare. The State represents the common good, in contrast to those forces. The idea that the true good of society is advanced best by competition among groups and by each individual citizen or entity seeking its own good, is unacceptable to the communist mind. Because of the prevalence of such anti-communist sentiments in traditional societies, communists easily accepted that violence would be necessary to retrain a society to focus on the common good.

### 3. Religion and the common good

The third source of the idea of the common good as a concern and obligation of the state is religion. Specifically, in the West, Christianity has been a powerful force in shaping a society dedicated to the common good. After the conversion of Constantine in the fourth century, the Church was thrown into a new relationship with the State, which radically and permanently changed the role of Christianity in society. The Church became the partner of the State in civil functions. It took over healthcare and education. It played a significant part

in the administration of justice. As the Empire waned, the popes became the new Caesars. *Pontifex maximus* became a title for the successor of Peter, the humble fisherman, who somehow had been transformed into an emperor. A massive system of State-Church power grew up over the centuries in Europe. The house churches of the first century were replaced by massive basilicas and cathedrals built with huge amounts of State money, filled with tombs of the rich and powerful functionaries of the State, decorated by arts paid for by those same persons, and filled with rituals that constantly testified to the divinely-ordained union of the State-Church with the heavenly order of angels and saints and with God Himself.

By the height of the thirteen century, that union of Church and State had reached such a point that many within the Church pointedly criticized it. Dante never tired of lamenting that “the sword is now with the crook” (Purgatorio, 16:109). He heaped scorn on popes like Boniface VIII for meddling in statecraft and longed for a new emperor to arise who would put the Church back in its proper place in society. The Spiritual Franciscans like Joachim di Fiore went further, denouncing the popes as anti-Christ and the Church as *Revelations’* whore of Babylon. The monk Martin Luther took up those notions and attacked the political corruption of the Church, rending Christendom in two.

Rome’s reaction to the Reformation was to correct abuses in the Church such as nepotism, simony, lay investiture, poor clergy training and supervision. But it did not alter its philosophy of the relationship between Church and State. It relied on Saint Thomas’ ideal depiction of the State, which makes several key assumptions.

First, it assumes that in the natural order, some are created to rule and others to be ruled. Original sin requires that a ruler control the concupiscence of the people. Thomas, like Aristototele, is no democrat. The divinely ordained power of the few to rule over the many is the basis of the State’s power.

Second, it assumes the State is a Christian state, or at least a State that favors religion. Although later commentators, writing after the democratic revolutions of the eighteenth and nineteenth centuries would try to change this, Thomas’ ideas are not eternal verities born of the light of reason, but products of the age of Christendom, when no true separation of Church and State could even be imagined. So Thomas speaks often of the ‘common good’, deriving the idea from the individual’s responsibility to care for himself and his offspring. He labors to show a direct connection between a person’s natural instincts for self-preservation and the welfare of his offspring and the existence of the State. The Church is then assumed to be not only tolerated by the State, but allowed to freely function in its own realm. The Church is allowed to influence the moral character of the state, and the entire synthesis assumes that both entities naturally share common goals. Thomas writes in a wonderland of abstractions, forgetting the early Christian struggles between the Church and State in which his faith was born.

This all worked as long as the State was Christian. When, beginning with the Reformation, new ideas of the State emerged, the Catholic Church uniformly and consistently rejected them, whether they were the Anglican-inspired Leviathan of Hobbes that would control the Church, or the Rousseau inspired French Revolution that would substitute a new religion of humanity for Roman Catholicism. It rejected essentially the American Revolution on the same grounds along with the theology of Americanism offered by some Catholics in the nineteenth century who sought a *rapprochement* between democracy and Catholicism. With the loss of the Papal States in 1861, the Church went into a defensive mode, hoping for decades that a Catholic prince would end the ‘Roman captivity’ of the pope. When that prince came, he was no champion of the Christ but of the expansive, Fascist State. Slowly, the Church began reconciling itself to the new reality, which by the mid-twentieth century had become almost universal. It then, and only then, embraced a new vision of the Church in society, which did not insist on it having a privileged role vis-à-vis the State, although it could be allowed that status. Yet, crucially, it never dropped the idealistic Thomistic assumptions about the role of Church and State, most especially carried on in the language of ‘the common good’, with the Aristotelean and Thomistic assumptions so different from those of liberal democracy. The Church never abandoned the Thomistic synthesis, but continued urging the State to act like a Christian sovereign, advancing Christian values, and engaging in paternalist care for the welfare of its citizens in the broadest manner. So in the terms of H. Richard Niebuhr [6], it held to a synthetic notion of ‘Christ and culture’ in which the ideas of the culture and of the Church were thought to have the same origin and the same destiny. It left to the Protestant, and the left wing Protestant churches at that, the ‘Christ versus culture’ model in which Christians prophetically point to the Kingdom of God and oppose the power of the State when it contradicts its values. It was only in left wing Protestantism that that model of Christ versus culture played out. Lutheranism made its bed with new Protestant princes, and Anglicanism completely joined Church and State.

That Christ and culture model, that Thomistic synthesis, is still at the heart of the Catholic view of Church and State [7]. Cognizant at last that they will not have special access to shape the minds of political leaders in formerly Christian countries, modern popes advocate notions like the Christian roots of European society, advocacy for human rights, solidarity, or the insistence that the State provide social welfare to its citizens. Catholic Social Teachings have become increasingly well-defined, and a whole industry of social activism and political action has been born around them. Starting with Leo XIII’s advocacy of worker’s rights in *Rerum novarum* we have had enthusiastic promotion of international government agencies, of international development regimes, and of human rights campaigns. When those same organizations inevitably come to advocate policies opposed to Christian morality, like the provision of abortion services as part of healthcare, the Church objects, but never repudiates the

legitimacy of the regimes or re-examines the new relationship of Church and State.

The reality is that the thirteenth-century synthesis that defined Christendom has long since been replaced by an integralist model of the State, which sees the Church, and indeed all religion, as just one more aspect of society requiring its paternalistic regulation and oversight. Leviathan devoured Saint Thomas many years ago. But popes still labor to show how the Church and religion are relevant in a secular society, because of human nature's needs. Relevance, however, is not the question. The integralist State is often willing to allow religious people their own opinions, even their own 'right to worship', just as it allows them to have all sorts of private interests and hobbies, which people find relevant. The State controls all it wishes to, all it needs to in order to promote its values. If, for example, it chooses to compel the Catholic Church in the U.S. to provide abortions for its employees, it can do so. There is only one thing the Church can do, but because of its commitment to its ancient model of Church-State relations, it usually does not.

#### **4. Conclusion**

In the case of the Obama mandate, the Church must resist. It must work within the political process to change the regime. It must work within the legal process to sue the federal government and stop the implementation of the mandate. That failing, it must stop taking government benefits, forego its tax-exemptions, not take Medicare or Medicaid payments. But Leviathan has made that a very high price to pay, one that would greatly alter those Catholic institutions. The expansion of government power, even in the service of the apparent good of providing healthcare to more people, will always end this way in the era of the secular State.

For the Church to survive it should resist the State when its policies contradict its values. It should also, when engaging the State constructively, always favor limited government. Here the record of the Catholic Church is very bad, because of the complex ways Leviathan has been born of the Church and of religious values.

Leviathan has only two deadly enemies: constitutionally limited government and a religion that resists State power. They struggle together to tie its hands and bind the beast's feet. Limited government means a rejection of the welfare state. Providing healthcare, education, pensions, employment, etc. are all incompatible with limited government. Opposition to the government doing such things does not mean opposition to those things being done in society by non-governmental actors. The Church may advocate for those things in society. To do so is part of its legitimate teaching function. But it should exercise great care in advocating that the State do those things through its governmental mechanisms. Government can only do so by taking resources from other sectors of society. Eventually Leviathan will look to take from the Church. There are other legitimate ways that society can promote common goods, which do not

rely on a powerful State. The State is not the whole of the society. Free associations of citizens can work for the common good of their communities. Religion's best role in promoting common goods is to work within civil society. The days when it can enjoy a favored estate, along with the Ruler, are gone. The Church should engage in its good works by itself without government money of any kind. Such clarity is needed in the era of the modern secular State.

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