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## Transatlantic Catholic Gap: Ernst-Wolfgang Böckenförde and John Courtney Murray on State and Society

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### Abstract

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In comparing the works of two major Catholic thinkers, John Courtney Murray (1904–1967) and Ernst-Wolfgang Böckenförde (1930–2019), one finds an example of the divergences between European-continental Catholic and US Catholic concepts of the state and society. This divergence has become more evident in the context of the rise of American Catholics in politics and in the context of the crisis of the post-World War II liberal political order, but they have been at the heart of different Catholic intellectual traditions for quite some time. A comparative analysis of Murray and Böckenförde helps to explain the role of US Catholicism in the crisis of American democracy and the complexity of the reception of Vatican II in political theology in different Catholic Churches around the world.

**Keywords:** political theology; Vatican II; Catholic concept of society; Catholic concept of state; Catholic social thought

### The Widening Intra-Catholic Gap Concerning Society and the State

In a supposedly cohesive Catholic intellectual tradition, connecting different legal and political traditions in one Catholic social doctrine or Catholic social thought, there are significant differences, if not substantial disagreements on key concepts. These disagreements are not just between the Catholic traditions identified with the West and the Global South or the non-European churches, for they are also found within the Catholic tradition in the Western world.

This gap between different Catholic understandings of ideas that are very consequential for the life of the church and of Christians in modern social and political order has arguably widened in the last three decades since the end of the Cold War. In the context of a process of dislocation of the centers of power—from the political to the economic, from the axis between church and state to the power of the market, from bourgeois capitalism to globalized capitalism—Catholic understandings of concepts like the state and society



have also visibly taken trajectories that vary significantly in the political and legal debates between continental Europe and the United States.

This widening gap has become even more evident in the context of the rise of American Catholics in politics.<sup>1</sup> These differences have been amplified by the crisis of the post-World War II liberal political order, but they have been at the heart of different Catholic intellectual traditions for quite some time. They are not a product of the new century, but part of the genuinely divergent historical experiences of Catholics between continental Europe and the United States. An interesting example of this divergence is found in comparing the works of two major Catholic thinkers, John Courtney Murray (1904–1967) and Ernst-Wolfgang Böckenförde (1930–2019).

### John Courtney Murray: Society and Church in the “American Consensus”

In 1960, during the campaign that led to the election of the first Catholic president of the United States, John F. Kennedy, Jesuit theologian John Courtney Murray published a collection of essays, *We Hold These Truths*, seen as the manifesto for the full belonging of US Catholicism to the cultural and political mainstream and the end of the anti-Catholic prejudice in America. Murray had been silenced by the Holy Office just a few years before for his work on religious liberty, which in pre-Vatican II Catholicism had put him at odds with the official teaching of the church, US ecclesiastical circles, and American Catholic academia.<sup>2</sup> He was the most important advocate for a new relationship between Catholicism and American political values and that role earned him the December 12, 1960, cover of *Time* magazine with the title “U.S. Catholics and the State.”

In the book, and particularly in the essay “E Pluribus Unum: The American Consensus,”<sup>3</sup> Murray made the most consequential argument for the compatibility between American political ideals and Roman Catholicism, as well as for the centrality of the Catholic intellectual and theological tradition about the concept of the State and society and its relation to the position of Catholics in the American social and political order. Murray had to convince the American mainstream about the democratic reliability of Catholicism and, at the same time, keep at bay the “democratic heresy” where everything must be decided by vote. Murray not only upheld the role of natural law, but also explained the differences in the history of the constitutions in America and Europe, particularly between the French Revolution and the European revolutions of 1848 on one side and the American Revolution on the other. Murray’s Catholic defense of the American Declaration of Independence was based on the difference between the “Christian tradition of America” and the “Jacobin laicist tradition of Continental Europe,” particularly concerning the “sovereignty of God in the American Revolution versus sovereignty of man in the French Revolution.”<sup>4</sup>

<sup>1</sup> See Massimo Faggioli, *Joe Biden and Catholicism in the United States* (New London: Bayard, 2021) (also available in Italian and in French); Manlio Graziano, *In Rome We Trust: The Rise of Catholics in American Political Life* (Stanford: Stanford University Press, 2020, also in Italian).

<sup>2</sup> See David Hollenbach, “Public Theology in America: Some Questions for Catholicism after John Courtney Murray,” *Theological Studies* 37, no. 2 (1976): 290–303; Joseph A. Komonchak, “The Silencing of John Courtney Murray,” in *Cristianesimo nella Storia. Saggi in onore di Giuseppe Alberigo* [Christianity in History. Essays in honor of Giuseppe Alberigo], ed. Alberto Melloni et al. (Bologna: Il Mulino, 1996), 657–702; Barry Hudock, *Struggle, Condemnation, Vindication: John Courtney Murray’s Journey toward Vatican II* (Collegeville: Liturgical Press, 2015); Susanna De Stradis, “Not Quite Silenced: Understanding the Censoring of John Courtney Murray,” *Commonweal*, December 2021, 10–11.

<sup>3</sup> John Courtney Murray, “E Pluribus Unum: The American Consensus,” in *We Hold These Truths. Catholic Reflections on the American Proposition* (Lanham: Rowman and Littlefield, 2005), 43–58.

<sup>4</sup> Murray, “E Pluribus Unum: The American Consensus,” 44.

Murray explained the American Revolution as a moment of “conservation,”<sup>5</sup> of preservation of social and religious self-understanding of the American people versus an idea of state and government that Murray clarified with frequent references to the Jacobin tradition as the matrix for totalitarianism. Murray saw Catholicism playing a key role in the formation and maintenance of this American consensus: “this consensus was political, that is, it embraced a whole constellation of principles bearing upon the origin and nature of society, the function of the state as the legal order of society, and the scope and limitations of government. ‘Free government’—perhaps this typically American shorthand phrase sums up the consensus. ‘A free people under a limited government’ puts the matter more exactly. It is a phrase that would have satisfied the first Whig, St. Thomas Aquinas.”<sup>6</sup>

In this famous essay, Murray refashioned the genealogy of America’s first political principles to make it fit into a Catholic and medieval source, with some important silences. There was a qualitative difference in the French versus American revolutions, but what Murray did not say is that the Jacobins were responding to *Catholic* political principles and an infant democracy was facing a far more resistant religious-political opposition than the American founders. Arguably, Thomas Jefferson was closer to the Jacobins than he was to Thomas Aquinas. Murray emphasized that the American Constitution was not an *octroyée* constitution—not a “gift” from the king—and the “American consensus” was an act of faith in the capacity of the people to govern themselves.<sup>7</sup> Murray stated that the American consensus has a key place for Catholicism because in the American order “state is distinct from society ... Government submits itself to judgement by the truth of society; it is not itself a judge of the truth in society.”<sup>8</sup>

Murray guaranteed the democratic bona fides of Catholicism: “The American experiment reposes on Acton’s postulate, that freedom is the highest phase of civil society.”<sup>9</sup> This makes the church and society in charge of the inner strength of the consensus. Political freedom is endangered if the universal moral values, held by society and by the church, are no longer vigorous enough. The difference between the 1789 French Declaration of the Rights of Man and the American Bill of Rights is that “the man, whose rights are guaranteed in the face of law and government is, whether he knows it or not, the Christian man.”<sup>10</sup> This is why, Murray wrote, Catholics are at “complete ease” in the American consensus and have a role of “guardianship of the original American consensus.”<sup>11</sup> Murray’s assurance that it is up to society and the church to uphold the values at the basis at the American consensus was aimed at reassuring the liberal establishment and Protestants that Catholicism was not interested in taking over and remaking the United States as a Catholic state. The emphasis on society as opposed to the state was also revealing of the socioeconomic—and not political—dynamics at the heart of the Americanization of Catholics.

### Ernst-Wolfgang Böckenförde: “How Much State the Society Needs”

In an essay published originally in 1999, “Wie viel Staat die Gesellschaft braucht” (How much state does society need), Ernst-Wolfgang Böckenförde addresses the issue of the

<sup>5</sup> Murray, 46.

<sup>6</sup> Murray, 47.

<sup>7</sup> Murray, 49.

<sup>8</sup> Murray, 49–50.

<sup>9</sup> Murray, 51.

<sup>10</sup> Murray, 53.

<sup>11</sup> Murray, 56.

relationship between state and society in the context of a national conversation on the reform of the publicly funded retirement and pension system in Germany. Böckenförde opens his essay by criticizing the idea that society does not need the state—a society supposedly based on “mutual agreements and balanced networks based on consensus.” The fact is that, according to Böckenförde, “the consensus model for the organization of society, even if not without charm, is unsustainable.” The reason is that “this consensus, if it is to come about at all, cannot be formed in any other way than through the play of forces.”<sup>12</sup> Böckenförde reminds the reader that origins of the European modern state as a response against the threat of violence, the feudal order, and the wars of religion in order to obtain peace. A peaceful society is the product of the state and of state sovereignty: “It can only exist in this way as a state-ordered society; it is necessarily dependent on the state and statehood.”<sup>13</sup>

In the second part of the essay, Böckenförde responds to the objections of those who see the state always as carrying a threat of overregulating and ultimately constricting the liberties typical of a free society. The starting point is the liberal state, which has at its center the concepts of security, rights, freedom, and the possibility for the development of the individual—for all individuals, not just the members of some tier, group, or class. But society is also based on some level of necessary inequality that is stabilized and reinforced intergenerationally by the system of inheritance. This is a system that augments inequalities: “If this development is allowed to run free, social inequality will result in social unfreedom, because—the longer the more—the prerequisites for realizing legal freedom will diminish.”<sup>14</sup>

Böckenförde emphasizes that fighting against this social inequality and the social *unfreedom* is a necessary function of the state. The solution is not the abolition of the free social order, as Karl Marx would have it, nor is it the implementation of policies that aim not at the abolition of all social inequalities. It is the implementation of policies that aim at the relativization all social inequalities. For Böckenförde, the decisive question is not whether the state should intervene to relativize social inequalities, but what the modality and the scope of such policies are. What needs to be found is the measure of the activity of the state: an overreach of public policies could pressure the freedom of society.<sup>15</sup> Böckenförde makes clear that the intervention of the state must not be in the sense of “placing the economic-social process from the outset and as a whole under state control.” On the contrary, “the guiding and limiting principle is the furthering of freedom.”<sup>16</sup> Böckenförde also developed a section of the essay on subsidiarity as a concept that is key to “aid and secure the realization of freedom.”<sup>17</sup>

<sup>12</sup> Ernst-Wolfgang Böckenförde, “Wie viel Staat die Gesellschaft braucht” [How much state does society need], in *Wissenschaft, Politik, Verfassungsgericht. Aufsätze von Ernst-Wolfgang Böckenförde* [Science, politics, constitutional court. Essays by Ernst-Wolfgang Böckenförde] (Berlin: Suhrkamp, 2011), 53–63, at 53 (expanded version of an article originally published in *Süddeutsche Zeitung*, November 8, 1999, p. 12, with the title “Wie viel Staat die Gesellschaft braucht”). Unless otherwise noted, all translations are my own.

<sup>13</sup> Böckenförde, “Wie viel Staat die Gesellschaft braucht,” 54.

<sup>14</sup> “Wird dieser Entwicklung freier Lauf gelassen, entsteht aus der sozialen Ungleichheit soziale *Unfreiheit*, weil—je länger je mehr—die Voraussetzungen zur Realisierung der rechtlichen Freiheit fehlen.” Böckenförde, 57 (emphasis original).

<sup>15</sup> “There is almost no room in it for freedom that is not administered by the state, and people become dependent in new ways.” Böckenförde, 59. In this paragraph he also includes a long quotation from Alexis de Tocqueville, *Democracy in America* (vol. 2, book 4, chapter 6) on the limits of the interventions of the state.

<sup>16</sup> “[L]eitender und begrenzender Gesichtspunkt ist die Hilfe zur Freiheit.” Böckenförde, 60.

<sup>17</sup> “Hilfe und Sicherung zur Ermöglichung von Freiheit,” Böckenförde. 60

## From Vatican II to a Widening Transatlantic Gap in Catholicism

The idea of the secular and liberal state in Böckenförde's thought would deserve a much more comprehensive analysis exploring a much wider body of scholarship.<sup>18</sup> The intent of this short essay is to develop some reflections on the parallels and divergences between two leading thinkers of the relations between the church and the state, Böckenförde and Murray.<sup>19</sup> This comparison is revealing in light of the history of the reception of Murray's thought in US Catholicism. His thesis on an "American consensus," with Catholics as the central element of that consensus, has been criticized in recent years by Catholic thinkers including by those close to a "radical orthodox" understanding of the relations between the church and politics<sup>20</sup> and, in a different way, by so-called neo-integralists.<sup>21</sup>

Both the radical orthodox and the neo-integralist critiques of Murray neglect to consider the historical context—and the political, theological, and ecclesiastical—in which the Jesuit theologian was making his argument.<sup>22</sup> On the other hand, the ambiguous and divided posture of Catholics in the constitutional and political disruption in the early twenty-first-century United States casts a light not only on the foremost US Catholic theologian of the twentieth century, but also indirectly on the importance of Böckenförde's contribution to an interpretation of the modern secular state. This is a central element for understanding the widening gap within US and European Catholicism concerning the role of the church in the public square.

<sup>18</sup> See also, for example, Ernst-Wolfgang Böckenförde, "Der säkularisierte, religionsneutrale Staat als sittliche Idee—Die Reinigung des Glaubens durch die Vernunft" [The secularized, religion-neutral state as a moral idea—the purification of faith through reason], in *Wissenschaft, Politik, Verfassungsgericht*, 84–93; the essays in Ernst-Wolfgang Böckenförde, *Kirche und christlicher Glaube in den Herausforderungen der Zeit. Beiträge zur politisch-theologischen Verfassungsgeschichte 1957–2002* [Church and Christian faith in the challenges of the time. Contributions to the political-theological constitutional history 1957–2002], 2nd ed. (Munster: Lit, 2007), many of which are included in English translation in Ernst-Wolfgang Böckenförde, *Religion, Law, and Democracy: Selected Writings*, ed. Mirjam Künkler and Tine Stein, trans. Thomas Dunlap (Oxford: Oxford University Press, 2020); the essays in Ernst-Wolfgang Böckenförde, *Recht, Staat, Freiheit: Studien zur Rechtsphilosophie, Staatstheorie und Verfassungsgeschichte* [Law, state, freedom: Studies in legal philosophy, state theory and constitutional history] (Frankfurt: Suhrkamp, 2006), many of which are included in Ernst-Wolfgang Böckenförde, *Constitutional and Political Theory: Selected Writings*, ed. Mirjam Künkler and Tine Stein, trans. Thomas Dunlap (Oxford: Oxford University Press, 2017); Ernst-Wolfgang Böckenförde, *Der säkularisierte Staat. Sein Charakter, seine Rechtfertigung und seine Probleme im 21. Jahrhundert* [The secularized state. Its character, justification and problems in the 21st century] (Munich: Carl Friedrich von Siemens Stiftung, 2007); in translation: Ernst-Wolfgang Böckenförde, "The Secularized State: Its Character, Justification and Problems in the 21st Century [2007]," in Künkler and Stein, *Religion, Law, and Democracy*, 220–37.

<sup>19</sup> For another important comparison, that between Böckenförde and the renowned US historian of the Catholic tradition and distinguished federal appellate judge John T. Noonan Jr. (1926–2017), see Michael J. Hollerich, "The Böckenförde Paradox. What a German Jurist Can Teach American Catholics," *Commonweal*, December 2017, 22–25.

<sup>20</sup> See, for example, Michael Baxter, "Murray's Mistake: The Political Divisions a Theologian Failed to Foresee," *America*, March 12, 2014, <https://www.americamagazine.org/issue/murrays-mistake>; William Cavanaugh, "If You Render unto God What Is God's, What Is Left for Caesar?," *Review of Politics* 71, no. 4 (2009): 607–19; the contributions in Daniel Philpott and Ryan T. Anderson, eds., *A Liberalism Safe for Catholicism? Perspectives from the Review of Politics* (Notre Dame: University of Notre Dame Press, 2017).

<sup>21</sup> See Timothy Troutner, "The New Integralists: What They Get Wrong, and Why We Can't Ignore Them," *Commonweal*, November, 2020, 32–37. Recent examples of Catholic integralism in the United States (with endorsement from Catholic bishops and academics in prime Catholic universities) include the following: P. Edmund Waldenstein and Peter A. Kwasniewski, eds., *Integralism and the Common Good: Selected Essays from The Josias*, vol. 1: *Family, City, and the State* (New York: Angelico Press, 2021); Thomas Crean and Alan Fiminter, *Integralism: A Manual of Political Philosophy* (Neunkirchen-Seelscheid: Editiones Scholasticae, 2020).

<sup>22</sup> About this, see Massimo Faggioli, "What Joe Biden (and all American Catholics) Owe Jesuit John Courtney Murray," *America*, January 19, 2021, <https://www.americamagazine.org/faith/2021/01/19/joe-biden-john-courtney-murray-who-was-239757>.

The crisis in the cohesiveness of a Catholic understanding of democracy and state sovereignty within the Western world is a product of the massive changes in the political order, at both the national and the global level, due to the transition from bourgeois national capitalism to economic globalization. This has momentous effects on the political order, both at the transnational and national level, and on the intellectual Catholic tradition more generally.<sup>23</sup> This is a crucial stress test for the legacy of the twentieth-century magisterium of the Catholic Church on the foundations of modern democracy and the modern state, for which Vatican II opened a new phase: a reconciliation that was not just pragmatic, but also in principle.

Böckenförde saw clearly, and early, the illusory nature of embedding the social preeminence of society in a capitalistic system: “It is an illusion to believe that the basic virtues of human and civic coexistence can be effectively preserved or renewed through school and education once the spirit and conduct within society are increasingly shaped by ruthlessness and the economic-selfish maxim of achieving the maximum financial return for the least effort, and if the state is unable to endow the civic virtues with recognition and support in public institutions through its own actions.”<sup>24</sup> The constitution *Gaudium et Spes* itself states that “the Church, by reason of her role and competence, is not identified in any way with the political community nor bound to any political system.”<sup>25</sup> Böckenförde understood that Vatican II’s reconciliation with democracy was based in a new understanding of the relationship between constitutional systems and the state on one side and the Catholic Church: “a harmony exists between the freedom of the church and the religious freedom which is to be recognized as the right of all men and communities and sanctioned by constitutional law.”<sup>26</sup>

Both Böckenförde and Murray embodied the theology of Vatican II on state and society. But the different ways in which they embodied that theology suggests something important about the abandonment of a theology of the relations between state and society by current Catholic streams in the United States after Vatican II. Since the first half of the 1960s, within the Catholic tradition, both at the level of intellectual production and in the lived interpretation of it by Catholics in different positions and vocations, a split has become visible between a continental European Catholic stream and a US Catholic stream. The gap between the continental European and US Catholic streams is a product of the failed or interrupted theological reception of *Gaudium et Spes*, especially after beginning of the 1990s as an effect of the imprint of the pontificates of John Paul II and Benedict XVI, which reshaped the ecclesial and theological map in the North American context, and in a way that has few or no parallel in the Catholic Church in other countries. The crisis of the reception of Vatican II in the United States began in the 1990s: this activated the diversion of large pockets of US Catholicism from an ecclesial and theological reception of Vatican II, and the development of a more doctrinaire understanding of the Catholic tradition. This diversion was based especially on sociopolitical arguments—that is, the alleged evidence of the failure of Vatican II to reframe the relations between the church and the world. Theological and political polarization have fueled one another—a theologization of political identities and a politicization of the ecclesial discourse—with Catholic conservative cultures developing arguments that became more and more explicit in the direction of a rejection of Vatican II.

<sup>23</sup> See Massimo Cacciari, *Il lavoro dello spirito. Saggio su Max Weber* [The work of the spirit. An essay on Max Weber] (Milan: Adelphi, 2020), 65–95.

<sup>24</sup> Ernst-Wolfgang Böckenförde, “The State as an Ethical State [1978],” in Künkler and Stein, *Constitutional and Political Theory*, 86–107, at 140.

<sup>25</sup> Second Vatican Council, *Gaudium et Spes* [Pastoral Constitution on the Church in the World] (December 7, 1965), § 76.

<sup>26</sup> Second Vatican Council, *Dignitatis Humanae* [Declaration on Religious Freedom] (December 7, 1965), § 13.



This split is important in order to understand the divergent political cultures of Catholics in Europe and the United States as something more than an aberration, more than an isolated political crisis caused by the rise and presidential election of Donald Trump, whom many anti-liberal Catholics in the United States have identified as the providential response to the crisis of liberal democracy. It is, on the contrary, something older and deeper than the product of the ideological and religious polarization between two political and ecclesial parties. The differences in the understandings of the relationship between state and society reflected in the thought of leading Catholics such as Böckenförde and Murray help us see where these differences come from and how they represent different ideas of freedom and of sovereignty.

Murray represents an American Catholic idea of freedom that is identified in free society in which the church is a central component, per opposition against an activist state and government always perceived as possibly threatening freedom. Böckenförde, on the contrary, is representative of a European Catholic idea of freedom that is less concerned with the possibility of an overreach by the power of the state and government because, in the political and social experience of European Catholics, freedom is nothing without the practical ability of doing something. The idea of the state is coupled with the idea of the welfare state that puts people into the material condition to live their lives as emancipated or free individuals. Böckenförde shows his engagement with Hobbes in the origins and concept of the state.<sup>27</sup>

There are also significant differences between Murray and Böckenförde in the concept of the sovereignty of the state.<sup>28</sup> According to Böckenförde, “It is a legal hallmark of the constitutional state in this sense that within it there no longer exists an authority that is the holder of sovereignty. Every state organ stands *beneath* the constitution, is a *pouvoir constitué*. It holds only those powers and competencies granted to it by the constitution. That applies not only to the organs of the executive, but also to the legislative power. And even the people do not appear as the ‘master’ of the constitution, regardless of whether the state is democratically organized.”<sup>29</sup>

This is relevant to understanding the differences in the reception of the political values expressed by Vatican II—that is, the reception by hierarchy, theologians, and the ecclesial community of the baptized Catholics between Europe and the United States, especially of the pastoral constitution, *Gaudium et Spes*, and the declaration on religious liberty, *Dignitatis Humanae*.<sup>30</sup> But there is also one more difference relevant to understand the gap in the Catholic churches across the North Atlantic, and it is the difference in the *political* reception of some of key theological concepts by political actors (lawmakers, but also the courts and the executive) in a constitutional system, such as the United States, where to the separation between church and state does not correspond to a separation between religion and politics.

<sup>27</sup> About this, see the work on the genealogy of the idea of freedom and of the state by Quentin Skinner; for the differences between Skinner and Alasdair MacIntyre, a Catholic thinker very much at the center of the contemporary Catholic narratives critical of political modernity, see Émile Perreau-Saussine, “Quentin Skinner in Context,” *Review of Politics* 69, no. 1 (2007): 106–22.

<sup>28</sup> For an in-depth analysis, see Mirjam Künkler and Tine Stein, “Böckenförde’s Political Theory of the State,” in Künkler and Stein, *Constitutional and Political Theory*, 38–53.

<sup>29</sup> Ernst-Wolfgang Böckenförde, “The Concept and Problems of the Constitutional State [1997],” in Künkler and Stein, *Constitutional and Political Theory*, 141–51, at 143.

<sup>30</sup> See the classical distinction made by Alois Grillmeier between different kinds of conciliar reception in the early church: *official* reception (by the hierarchy); *theological* reception (by the theologians); and *spiritual* reception (by the baptized faithful): Alois Grillmeier, “The Reception of Chalcedon in the Roman Catholic Church,” *Ecumenical Review*, no. 22 (1970): 383–411; Alois Grillmeier, *Christ in Christian Tradition*, vol. 2, *From the Council of Chalcedon (451) to Gregory the Great (590–604)*, Part One: *Reception and Contradiction: The Development of the Discussion about Chalcedon from 451 to the Beginning of the Reign of Justinian* (Atlanta: John Knox Press, 1987), 7–10.

There is a gap between the global reception of Vatican II's teaching on church and state and its reception in the United States, and it has to do with deeper theological and historical differences between continental European Catholicism and Catholicism in the United States and Britain.<sup>31</sup> This is also part of a recent evolution and involution of the intellectual and theological tradition of American Catholicism in the public square, where influential voices send out signals of regression toward confessionalism and theocracy.<sup>32</sup> Especially in the Anglosphere in the West, and in different ways between the United Kingdom and the United States, the rejection of Vatican II has become a way to react against the globalization and de-occidentalization of Catholicism—one of the strongest intuitions of Vatican II—and to embrace the so-called culture wars. In recent years in the United States, even Murray has been subject to a polemical traditionalist narrative that sees in the tumultuous 1960s—the Second Vatican Council included—the beginning of the church's adaptation to secular liberalism and the end of the true Catholic Church. This has become a key argument in the Catholic polemics against Vatican II—and not just to some aspects of its teaching, but to its legitimacy.

### Different Concepts of Freedom and the State: The Catholic Church and the Pandemic

Two recent global crises exemplify the consequences of the ways in which Catholics think the State and its relations with society and the church. The first is the COVID-19 global pandemic that since the beginning of 2020 has disrupted and changed significantly the way we live and has caused the premature death of a few million people around the world. The COVID-19 pandemic has accelerated and made visible for many the massive renegotiation of the relations between the power of the state and others—economy, society, science, and religion. Within the one Catholic Church, leaders and members have reacted in very different ways to the health measures taken by national governments. From a different theological understanding of the legitimacy or illegitimacy of the secular state, of secular institutions in general (for example, the ones leading scientific and medical research), and of the relations between church and state descend enormously different understandings of the role of state and government in the economy and health care.

The way Pope Francis has encouraged Catholics to be vaccinated and to follow the health measures enacted by public authorities has been met by many US Catholic leaders, clerical and lay intellectuals, and Catholic politicians, with suspicion if not open hostility.<sup>33</sup> Objections had to do with different Catholic ethical judgments on the acceptability of the ways in which COVID vaccines were produced and with the limits to the freedom of worship resulting from the temporary closures of churches or the limits on the number of people who could enter church buildings and attend services. These reactions had different theological and psychological roots, but one of the most consequential was an idea of freedom disconnected from responsibility for the common good and based in a concept of

<sup>31</sup> One symptom of this gap is the revival of Catholic integralism in North America and the United Kingdom in the context of a political-theological radical critique of liberalism, for example in the writings of Thomas Pink and Adrian Vermeule.

<sup>32</sup> About this, see Massimo Faggioli, *Catholicism and Citizenship: Political Cultures of the Church in the Twenty-First Century* (Collegeville: Liturgical Press, 2017), 94–122.

<sup>33</sup> About this, see Andrea Vicini, "Papa Francesco, i vaccini e la salute globale" [Pope Francis, vaccines, and global health], *Civiltà Cattolica*, no. 4115 (2021): 423–33. For the reactions of influential US Catholics against Pope Francis on this, see the articles on the pandemic published, for example, in *First Things* and *Crisis* magazine and various statements by influential US Catholic prelates. The lecture given by Australian cardinal George Pell in St. Patrick Cathedral in New York City on December 3, 2021, was another example of how the Catholic "culture war" narrative against secularism and the secular state continued to drive the underestimation of the COVID-19 pandemic almost two years after the beginning of this major global health emergency.



society and religion as superior to the state. This is important because it shows that the reactions of Catholics to the pandemic and the health measures were driven not just by theological conservative or liberal views, but by divergent concepts of the relations between church, society, and the state and the relations of these to the common good.

The positions taken by many prominent Catholics in the United States since the beginning of the pandemic there in March 2020 against masking, suspension of in-person liturgical services, and vaccination exemplified Böckenförde's description of undervaluing the role of the state as leading to autarchic individualism: a clear contradiction of Catholic social teaching, but with a more complicated relationship with an American Catholic tradition regarding the supremacy of society (where a traditionally religious, European secular, and post-secular understanding of it have merged) and its consequences on the legitimacy of the state and public authorities.

### Different Concepts of Society and the State: The Catholic Church and the Abuse Crisis

The second recent and relevant example is the abuse crisis (sexual abuse, but also spiritual abuse, and abuse of power and authority) in the Catholic Church. The church's and the public's perception of the abuse crisis has been shaped in an overwhelming way by media coverage, which in turn has been influenced by the legal framework of tort litigation. Tort litigation against the Catholic Church in the United States is largely responsible for the widespread understanding of clergy sexual abuse as an institutional failure on the part of church officials. But the abuse crisis has remained an issue largely still understood in terms of *individual* responsibilities (those belonging to the clerical structure) and of *public* accountability (to the public square and secular society)—much less of *communal* processing (the crisis as an ecclesial crisis involving, with different degrees of culpability and responsibility, all members of the church).

But the focus on the abuse crisis as institutional failure is driven also by a social understanding of Catholicism as opposed to an institutional one. The journalistic and legal narratives focus on the undeniable institutional failures and responsibilities of church officials in the scandal—the crimes and the cover-up—while they tend to ignore the widespread culture of silence about sexual abuse that was shared well beyond the confines of ecclesiastical settings and clerical personnel. The social approach assumes as a model and speaks on behalf of an idealized civil society, almost like a new *societas perfecta*, against the corruption of the institutional dimension in both the institutional church and in political institutions). In an important book published in 2021, Italian church historians Francesco Benigno and Vincenzo Lavenia describe the framing of these crimes as a polarity “in a single public discourse, that of an idealized civil society, which arranges the moral order by articulating it in a polarity: on the one hand the qualities (honesty, rationality, openness, independence, cooperation, participation, and equality) and on the other the dangers (deception, hysteria, addiction, secret, aggression, hierarchy, inequality).”<sup>34</sup>

The contraposition between the social and the institutional, with blame for the abuse crisis put almost exclusively on ecclesiastical institutions, is one of the results of the emergence of cultures of ecclesial governance that aim to import managerial, technocratic models into the life of the church. But it reveals, first of all, the conviction that society and social dynamics of Catholics are not as guilty as the hierarchical institution. Those who cite

<sup>34</sup> Francesco Benigno and Vincenzo Lavenia, *Peccato o crimine: la Chiesa di fronte alla pedofilia* [Sin or crime: the church in the face of pedophilia] (Rome: Laterza, 2021), 244 (translation mine). About this dominance of the model of an idealized society and the postmodern, see Roberto Calasso, *L'innominabile attuale* [The unnamable present] (Milan: Adelphi, 2017; Roberto Calasso, *The Unnamable Present*, trans. Richard Dixon (New York: Farrar, Straus and Giroux, 2019), 24–31.

clericalism and hierarchy as the sole or primary cause for the abuse crisis do not see what went wrong in the social dimension of the church, including lay people in the church community. This is the flip side of a clerical culture that sees the abuse crisis as the result of moral corruption coming from the outside (such as from secularization, dissent against Catholic doctrine) and that defends the “in-house” approach and the sufficiency of “orthodox” teaching and discipline enforced by the hierarchical leaders of the church as a solution to the crisis. But it also reveals the predicament of US Catholics, whose understanding of the role of society as opposed to the state makes it even harder to deal with one of the lessons of the global abuse crisis: the fight against abuse (sexual, but not only; in the Catholic Church, but not only) relies on the rule of law, the secular justice system, and the adoption of broader public health approaches to sexualized violence and abuse.<sup>35</sup> But these expectations are contradicted by a loss of the sense of civil society as a buffer or mode of engaging the state and a perception of the state as something that is illegitimate and incompatible with Catholic political theology as a fetish created and manipulated by the liberal order.

## Conclusions

The differences between Böckenförde’s and Murray’s political philosophies about the relationship state-society are important because they embody two different streams within the Catholic intellectual tradition. At the heart of this difference is not only the dualism between church and state, between *regnum* and *sacerdotium*—a dualism that Böckenförde held as essential for a healthy constitutional system. There are also different concepts of society. Böckenförde’s social-democratic politics are based on a concept of the state’s relationship to society opposite that of Murray. Böckenförde’s concern is that Catholic social thought ought to offer more sound justifications for what he regards the state’s responsibility to relativize social inequalities. In the last few decades, these two different streams within the Catholic tradition have become estranged, with relevant political and theological consequences within European–North American Catholic conversations on key social issues such as the role of government and the state in the economy, health care, environment, immigration, and human rights, and the role of public authorities in addressing the sex abuse crisis in the Catholic Church.

In the eyes of American Catholics dealing with the crisis of the liberal political order in the United States, Böckenförde’s *Diktum—The liberal, secularized state is sustained by conditions it cannot itself guarantee* (p.167 of the cited chapter)—has become more relevant than ever.<sup>36</sup> But the relevance of this is fundamentally lost amid persisting and actually growing divergences between this continental European understanding of society and an American Catholic new, idealized version of society as *societas perfecta*. New technologies, automation, and their impact on work and on our way of life in general have drastically diminished the ability to think about a collective future outside of private expectations.<sup>37</sup> What Tony Judt remarked in his last public lecture in October 2009 about the need to “think the State” is

<sup>35</sup> See Anne-Marie MacAlinden, “Sexual Abuse within Institutional Contexts,” in *Sex Crimes: Transnational Problems and Global Perspectives*, ed. Alissa R. Ackerman and Rich Furman (New York: Columbia University Press, 2015), 173–87.

<sup>36</sup> Ernst-Wolfgang Böckenförde, “The Rise of the State as a Process of Secularization [1967],” in Künkler and Stein, *Religion, Law, and Democracy*, 152–67.

<sup>37</sup> About this, see the last book by one of the most important Italian philosophers of the twentieth century, Remo Bodei (1938–2019): Remo Bodei, *Domino e sottomissione. Schiavi, animali, macchine, Intelligenza Artificiale* [Domination and submission: Slaves, animals, machines, artificial intelligence] (Bologna: Il Mulino, 2019), 286–93, 380–87.

more relevant than ever.<sup>38</sup> The global capitalist economy has Americanized the world in the sense that the fear of state tyranny is still much stronger than the fear of being put completely in the hands of technocrats. We see this phenomenon also in influential circles articulating social thought in twenty-first-century US Catholicism. Böckenförde has a lot to teach global Catholics, and especially Catholicism in the United States, about law, religion, and society.

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<sup>38</sup> See Tony Judt, "What Is Living and What Is Dead in Social Democracy?," in *When the Facts Change: Essays, 1995–2010*, ed. Jennifer Homans (London: Penguin, 2015), 319–38.