One of the charges often leveled against the Protestant Reformation is that it essentially continued, and on some accounts exacerbated, fundamental problems with the received medieval models of the relationship between church and state. As Lord Acton put it memorably, “From the death of St. Bernard until the appearance of Sir Thomas More’s Utopia, there was hardly a writer who did not make his politics subservient to the interest of either Pope or King.” There was nothing approaching a modern doctrine of religious liberty in the views of the major Protestant and Roman Catholic traditions of the sixteenth century.

The reformer Wolfgang Musculus (1497-1563), himself a source for what would come to be known as an Erastian theory of government, described two basic options concerning religious freedom. The first view is identified with the church father Tertullian, and recognizes the fundamental freedom required by true worship. Piety is viewed as, to a significant degree, a matter of internal orientation to God, which cannot be coerced, and therefore is not a matter of concern for the civil magistrate. The second option, however, argues that it is the responsibility of the authorities to uphold both
tables of the Decalogue, the commandments concerning religion as well as civic morals. In this way true religion might be protected from heresy, apostasy, and godlessness. This latter approach, says Musculus, has been “received among Christian magistrates, both the Papists as well as the Evangelicals.”

Musculus, as well as other early modern defenders of enforcement of religious observance, recognized that true faith is ultimately a matter of internal disposition and the individual’s relationship with God. The reformers realized that true religion could not be coerced. But this was not the end of their calculus. They feared the hypocrisy that enforcement of religion would create, but they worried even more about the destructive social and spiritual consequences of an evangelical apostasy. Their judgment that true religion ought to be protected and promoted by the civil authorities was grounded in their principles, but was also an expression of their pragmatic judgment that apostasy was a greater threat than hypocrisy. The hypocrite might be damned by his or her false piety, but the apostate might lead many others astray, thereby endangering not only the tranquility of the commonwealth but also threatening their eternal beatitude.

The reformers’ principled prudential disregard for religious liberty is perhaps best illustrated in the most infamous example of the execution of a heretic of the era, the death of Michael Servetus in Geneva in 1553. Servetus, who had been warned not to enter Geneva, and who was unwelcome in many cities across Europe, was caught as he stayed overnight on his way to Italy. Within months Servetus was condemned for his antitrinitarianism and burned at the stake as a heretic (his nemesis John Calvin had argued for a more merciful beheading). The Servetus affair seems to be the ideal illustration of the disconnect between the religious convictions of the early modern and the contemporary worlds. Where Servetus died as a heretic in the sixteenth century, the historian Marian Hillar claims, “Servetus died so that freedom of conscience could become a civil right in modern society.”

Himself a Reformed pastor, theologian, and educator, Abraham Kuyper denounced Servetus’ execution in no uncertain terms
at the close of the nineteenth century. For Kuyper, the difficulty of defending Calvinism as a source for religious liberty “lies in the pile and fagots of Servetus” and “in the unanimous and uniform advice of Calvin and his epigones, who demanded intervention of the government in the matter of religion.” For his part, Kuyper extolled a doctrine of structural separation represented in the motto, “A free Church in a free State,” and found this, contrary to the presumption of the evidence, to be in fact the only legitimate expression of the fundamentals of Calvinism. “Only the system of a free Church, in a free State, may be honored from a Calvinistic standpoint,” he concluded. As Kuyper would have it, the reformers’ intolerance of dissenting religious beliefs was an imprudent misapplication of their own principles.

The Roman Catholic historian Brad S. Gregory relates a different picture of the legacy of the Reformation with respect to religious liberty than one of simple theocratic heresy-hunting or benign separation of church and state. According to Gregory in his recent work, *The Unintended Reformation: How a Religious Revolution Secularized Society*, the Reformation did foment modern religious liberty, but this inheritance is ambiguous at best: “Today, within the limits of the law, literally anything goes as far as truth claims and religious practices are concerned—an extension and latter-day manifestation of the full range of views produced by the Reformation unfettered.” The result is that rather than theocratic domination of civil affairs, the state has assumed tyrannical control over the phenomenon of religious belief. As Gregory argues, “Whether in Western confessional, liberal, or totalitarian regimes, states control churches: whether they prescribe permit, or proscribe religion, they do so entirely on their terms, exercising an institutional monopoly of power in the public sphere.” The result, claims Gregory, *pace* Kuyper, is that “controlling the churches by disestablishing them freed not only political institutions from churches but also established the institutional framework for the eventual liberation of society from religion.”

Rehearsing a bit of this prehistory of modern ideals of religious liberty, freedom of conscience, and the separation of church
and state is worthwhile because these narratives illustrate the fundamental tensions that have existed from the earliest days of the Christian church. Given the developments since the sixteenth century, we might wonder if there is a secular corollary to that axiom from Richard John Neuhaus, “Where orthodoxy is optional, orthodoxy will sooner or later be proscribed.” Neuhaus wrote this in 1997, and was talking specifically about orthodox doctrine within the context of the church. As he concluded, however, “Almost five hundred years after the sixteenth-century divisions, the realization grows that there is no via media. The realization grows that orthodoxy and catholicity can be underwritten only by Orthodoxy and Catholicism.”

As a devotee of neither Orthodoxy nor Catholicism but who is deeply concerned with orthodoxy and catholicity, I am inclined to wonder if Neuhaus’ Law, as it has come to be called, applies only to Protestantism. In fact, given the secularization that both Kuyper and Gregory point to in their own ways, it seems worthwhile to consider whether Neuhaus’ Law might be applicable outside the church, to the liberal political order as such. If so, the recognition that there is no via media might well apply to the purported neutrality of the secular state.

The recognition that the idea of a normatively neutral secular state is a myth has not been entirely absent from political discourse over the last two centuries, but it is slowly coming again to the foreground. As the political philosopher Christopher Wolfe observes, “Even democracies shape a way of life (tolerance itself is, after all, a way of life).” Every vision of social life, every political philosophy, every economic theory presumes some basic truths about the human person. These truths may be more or less comprehensive, they may be more or less accurate, but for all that they are no less dependent on particular judgments about human beings. Anthropology, whether more robust or less defined, is a postulate of social philosophy.

This debate about the presence of normative judgments about the human person at the heart of modern liberal order has taken shape in some intriguing ways. In recent years some of this
discussion has focused on the image of the so-called “empty shrine” at the center of the modern liberal order. Writing three decades ago in *The Spirit of Democratic Capitalism*, Michael Novak could highlight the “empty shrine” at the “spiritual core” of “a genuinely pluralistic society” as an intentional and positive phenomenon. “That shrine is left empty in the knowledge that no one word, image, or symbol is worthy of what all seek there,” he says.

By contrast, in a speech delivered earlier this year, George Weigel excoriated the empty shrine as the product of the “secular project,” or in the terms of Henri de Lubac, the “atheistic humanism,” which in the twentieth century “produced, among other things, two world wars and the greatest slaughters in recorded history.” For Weigel, the secular project symbolized by the empty shrine ignores “the deep truth that it takes a certain kind of people, living certain values, to make democracy and the free economy work properly.” The perspectives of Novak and Weigel on the virtues or the vices of the empty shrine are only compatible when we realize that they are, in fact, talking about different shrines.

Novak’s empty shrine is actually more akin to the apostle Paul’s appeal to the altar “to an unknown god” as recorded in Acts 17:23. Just as Paul does not rest content to leave God unknown, Novak does not actually leave the shrine empty. He points to the recognition in the Declaration of Independence that human beings “are endowed with inalienable rights by the Creator.” He refers to the invocation of “the Almighty” by numerous presidents, and to the American motto, “In God we trust.” The purpose of these and other “pointers,” says Novak, “is to protect the liberty of conscience of all, by using a symbol which transcends the power of the state and any other earthly power. Such symbols are not quite blank; one may not fill them in with any content at all. They point beyond worldly power. Doing so, they guard the human openness to transcendence.” In accord with Weigel, Novak argues that the free society is dependent upon people who embody certain virtues and who recognize certain principles. Novak thus refers to a “sacred canopy” with a “practical” rather than a dogmatic or “creedal” character, which “allows for unity in practice, diversity in belief.”
Just as there are in some real sense then two different “empty shrines” to which Novak and Weigel point respectively, there are two different revolutions which characterize the modern approach to liberty, and to religious liberty in particular. Weigel concludes his lecture by pointing positively to the example of Leo XIII, “who created the modern papacy.” As Weigel writes, “What I have called the ‘empty shrine’ at the center of political modernity was, for Leo XIII, the result of a dramatic revolution in European intellectual life in which metaphysics had been displaced from the center of reflection, thinking-about-thinking had replaced thinking-about-truth, and governance had therefore come unstuck from the first principles of justice.” Weigel symbolically relates this reversal to the French Revolution, and specifically “to April 4, 1791, when the French National Constituent Assembly ordered that the noble Parisian church of St. Geneviève be transformed into a secular mausoleum, the Panthéon.”

The difference in the two shrines arises because of the difference in two revolutions. Christian thinkers like Abraham Kuyper, Leo XIII, Edmund Burke, and Lord Acton recognized these critical differences. On the American model, the separation of church and state was based on a kind of principled prudence which respected the place of the church and religious life in society. For the French model, religion was something to be overcome, subsumed, and undermined. There is, in this way, a shrine that is empty because it points to something beyond itself and a shrine that is empty because it allows for nothing to compete with its claims of dominance and allegiance.

What we find in the movement from the sixteenth century to the present day is that there is actually a via media between the government enforcement of religious observance typical of the models of medieval and early modern Christendom and the antireligious secularism of the French Revolution and its intellectual and spiritual heirs. This middle way is represented in the institutional liberalism of the American Founding and the sphere sovereignty of Abraham Kuyper. As it turns out this middle way is not, in fact, grounded in the idea that religious liberty is the proper
political response to epistemic doubt concerning divine things. Instead, it is a model grounded in transcendent and normative truths about God and the human person created in his image.

A way in which we might see how civil law regarding religious observance might be limited and yet be consistent with a normative vision of the common good and transcendent truth is found in Thomas Aquinas’ principle of prudence. In answering the difficult issue of when to promulgate law, and specifically whether every vice must be legislated against, Aquinas observes that there is a pedagogical aspect to the law. “The purpose of human law is to lead men to virtue, not suddenly, but gradually,” says Aquinas. The positive law is constructed in such a way that it is sensitive to the specific cultural, spiritual, and moral character of the people. Thus the law “does not lay upon the multitude of imperfect men the burdens of those who are already virtuous.” In this way, the greater matters of religious observance might be deemed prudentially to be something that, when they are enforced by the state, causes rebellion among those who are not sufficiently religiously mature. In this case, warns Aquinas, “the precepts are despised, and those men, from contempt, break into evils worse still.” Attempts to coerce true religious observance can be judged more likely to cause such rebellion than to promote righteousness. Such grounds do not in any way deny the reality of spiritual and normative truth and yet respect the limitations inherent in expressions of positive law.

True religious liberty is not then principled in the sense that it is grounded in a principled neutrality, an institutional agnosticism on the part of the state which refuses to recognize any normative truth or attendant claims about the limitations and responsibilities of social life. A religious liberty grounded on a myth of secular neutrality turns out to be imprudent indeed. But a vision of religious liberty grounded on a vision of the limitations of political force, out of respect for the dignity of the human person to respond freely to God and the dictates of conscience, is prudent. The difference between the two versions of religious liberty can be identified by their fruits.
The principled prudential version of religious liberty views the state as a legitimate and necessary authority for civil life. But it also recognizes the legitimacy of other authorities and the need for other structures, like the family and the church. This model of religious liberty is one which recognizes this variegation and the vital role of the mediating structures of civil society. With respect to structures like the family and the church, the state understands itself to have the role of affirmation and support, not one of creation and dominion. As Kuyper speaks of the status of other spheres and structures of social life, “This authority the state does not confer but acknowledges.”

The other version of religious liberty, the imprudent and absolutist version, views the expression of religious faith only to be valid insofar as the state itself grants permission. Such authority as other spheres may possess is only at the behest of the state, and they are ultimately to be seen as delegated authorities, accountable to the state for their existence and continuance. The kind of liberty enforced by this state does not limit itself to maintaining the relationships between different spheres, but instead insinuates itself into the internal governance of various institutions.

If the only options for ordering religion in society were the models of Christendom, which hold the government responsible for promoting, protecting, and enforcing true religion, on the one hand, and the atheistic drive for freedom from religion masquerading as religious neutrality on the other, then the validity of Neuhaus’ Law to political life would certainly hold true. Given these options, orthodoxy must either be enforced or proscribed. In either case we have a kind of (a)theistic orthodoxy codified in law. But thankfully we have a third option, the option represented by the tradition of religious liberty in the American setting, as distinct from the religious and secular absolutism so common in Europe.

In his lecture, George Weigel draws on the story in Daniel 5 of the hand which appears on the king of Babylon’s wall, writing Mene, Mene, Tekel, Upharsin, foreshadowing the imminent downfall of Belshazzar’s kingdom. But it is also worth remembering an encounter that occurs before the kingdom of Babylon gets to that
point. Just two chapters earlier, as recorded in Daniel 3, Belshazar’s father Nebuchadnezzar had attempted to coerce worship of a golden image he had set up. As the text says, at the appointed time everyone “must fall down and worship the image of gold that King Nebuchadnezzar has set up.” The punishment for failure to respect the king’s wishes would be severe: “Whoever does not fall down and worship will immediately be thrown into a blazing furnace” (Dan. 3:5-6 NIV).

Out of their convictions and in faithfulness to God, Shadrach, Meschach, and Abednego refuse to acquiesce to Nebuchanezzar’s religious policy. When the punishment is carried out, the three Jews are miraculously saved, and Nebuchadnezzar is forced to confess: “Praise be to the God of Shadrach, Meshach and Abednego, who has sent his angel and rescued his servants! They trusted in him and defied the king’s command and were willing to give up their lives rather than serve or worship any god except their own God” (Dan. 3:28 NIV). Nebuchadnezzar goes on to grant Jews religious protection from persecution. As we see from this account, biblical faith challenges the state’s “divine supremacy” through its promotion of the belief that the state and its rulers are subject to the requirements of God’s law and justice.

We are faced then, with two competing and ultimately antithetical visions of religion and society. One is the way that leads to life and the other the way that leads to death. For our society of flourish, we must constantly recall the vital role that religion plays in social life and thereby protect the liberty of religious institutions and individual faith to trust in God and, when necessary, defy the commands of a tyrannous state.

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