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-ARTICLE-

CHURCH AND STATE: THE ORIGINS AND IMPLICATIONS OF SEPARATE JURISDICTIONAL SPHERES

*Karen Jordan**

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I. INTRODUCTION

This article explores the development of the concept of separation of Church and State. Although many today may think of the concept as an innovation of the United States and the “American experiment,” it is instead a concept that emerged, part and parcel, *with* the Christian Church. Within decades of imperial recognition of the Church as an institution, the Church began breaking free from the traditional mold in antiquity, in which the State was a political, ethical and religious unit. To great thinkers within the Church, the nature of the Church itself compelled separation from the State. Yet, a level of collaboration existed and Church influence on certain aspects of secular government was accepted as necessary and appropriate. As society today struggles with the many questions associated with the relationship between Church and State, it is useful to review the early Church’s stance on the issue and the reasons underlying that position. A key insight from such reflection is that the early Church’s success in having a meaningful impact on secular society was closely tied to the Church’s understanding of the nature of the Church itself – and its ability to effectuate and give life to that understanding.

Striking the right balance in the relationship between “Church” and “State” has been a challenge since the origins of the Church.¹ The question is, to what extent should the Church’s teachings have some bearing on the decisions and actions of civil governing bodies or individual civil actors; and vice versa, to what extent should civil governing bodies have power or influence over ecclesiastical matters. Citizens of the United States tend to think that our founding fathers got it right. United States citizens generally take pride in the freedom of conscience protections in the First Amendment to the United States Constitution and in the Amendment’s limitation on governmental imposition of, or intervention in, religious matters.

¹ This article uses the term “State” generally, as referring to the secular governing structure of earthly societies. The article uses the term “Church” in a manner consistent with the understanding of the early Church: as a unique society that is both “human and divine, visible but endowed with invisible realities;” a real, visible, universal society which is united in faith and worship. CATECHISM OF THE CATHOLIC CHURCH 771.

Pride in the United States' recognition of the value of freedom of conscience is warranted, but it is also appropriate to acknowledge that a growing number of citizens are becoming alarmed at the seemingly ever-increasing secularization of United States society.² Even a cursory study of the founding fathers' writings reveals that they did not envision a society in which any and all forms of state action would be rendered devoid of any influences relating to man's duties to our Creator.³ Given that the United States remains a country in which a substantial majority of its citizens believes in the existence of a Creator, it seems imperative that policy makers take note of the concern about heavy handed attempts to push God out of the public realm, and carefully consider how well the country's current approach to First Amendment issues is actually serving our country and whether adjustments may be appropriate.⁴

In light of the idea that adjustments may be appropriate, a review of history is warranted: specifically, a review of the history and evolution of the relationship between Church and State. For many in the Church, a key period in time to consider is the era when the Church was first emerging.⁵ Some accounts of the early Church characterize the Church's response to secular

² The term "secularization" is being used here to refer generally to the phenomena of God and religion being pushed out of the public arena. A debate exists regarding the state of more formal theories of secularization. *See, e.g.,* Philip S. Gorski & Ates Altinordu, *After Secularization?*, available at www.yale.edu/cr/workshop/papers/AfterSecularization.pdf.

³ For a concise and well-balanced collection of excerpts from writing at, and shortly after, the drafting and ratification of the religion clauses of the First Amendment, see MICHAEL W. MCCONNELL ET AL., *RELIGION AND THE CONSTITUTION* (Aspen 2006).

⁴ Some have pointed to our judicial system, arguing, for example, that judicial interpretations of the First Amendment's religion clauses have created an environment in which citizens are increasingly uninformed or misinformed about religious matters. The vision of the founding fathers was premised on more than the idea that citizens should be free from coercion regarding the duties that humans owe to their Creator. The vision was also premised on the understanding that citizens would study the pertinent evidence – indeed, that citizens had a *duty* to study the evidence – in forming their conscience in relation to religious matters. It is thus reasonable to question judicial interpretations which prevent the state from fostering meaningful examination of the evidence. *See, e.g.,* PATRICK M. GARRY, *WRESTLING WITH GOD: THE COURTS' TORTUOUS TREATMENT OF RELIGION* (Catholic Univ. of America Press 2006).

⁵ Although the Church has long understood the concept of a living tradition, i.e., of the need for the Church to speak to humanity throughout the ages in terms that are meaningful for each generation, it is also understood that the seeds of Church teachings were planted by Christ. The import of the idea is that later generations can and should look to teachings and understandings of the "fathers of the Church" when searching for answers to contemporary problems and concerns. Although the Church may change course as to some matters, such as matters of discipline or some

control or secular influence in ecclesiastical matters as “uncritical,” meaning that the early Church failed to carefully analyze the issues at stake.⁶ However, close scrutiny of historical accounts reveals that the Church was cautious from the outset and protective of its independence, especially the Church in the western portion of the Empire. As early as the late fourth century, within mere decades of the first Christian emperors, significant theological arguments were emerging to address the proper relationship between Church and State.

Scholars of Church history often point to the fifth century and Pope Gelasius for the first articulations of the Church’s understanding of Church-State relations.⁷ However, papal declarations of doctrine generally do not emerge without a prior period of development by theologians.⁸ In the realm of Church-State relations, the most significant fourth century theologian was Ambrose of Milan. As noted by biographer Angelo Paredi, “[t]here can be no doubt as to the originality of St. Ambrose’s concept of the relations between Church and State. . . . Responsible historians are here unanimous in stating that the historical importance of Ambrose cannot be exaggerated.”⁹ Accordingly, this article explores the early development of a theory of Church-State relations, with a special focus on the understanding demonstrated by Ambrose of Milan in his dealings with a series of emperors of the Roman Empire. Historical evidence shows

aspects of liturgy, developments in Church teachings generally must maintain consistency with early understandings.

⁶ For example, Gregory Armstrong notes that the persecutions “prepared the Church to accept the benefits of imperial recognition and favor without serious qualms” and, further, opines that Constantine was “an absolute emperor who had no intention of letting the Church operate independently of the State.” See Gregory T. Armstrong, *Church and State Relations: The Changes Wrought by Constantine*, in *STUDIES IN EARLY CHRISTIANITY: VOL. VII CHURCH AND STATE IN THE EARLY CHURCH*, 265-271 (Everett Ferguson ed., Garland Publishing 1993). George Huntston Williams similarly notes that the bishops initially exhibited “uncritical acceptance of imperial patronage.” See George Huntston Williams, *Christology and Church State Relations in the Fourth Century*, in *STUDIES IN EARLY CHRISTIANITY: VOL. VII CHURCH AND STATE IN THE EARLY CHURCH*, 273-303 (Everett Ferguson ed., Garland Publishing 1993).

⁷ Pope Gelasius (492-96) is often credited with first articulating the principles supporting the separation of Church and State, in his opposition to the actions of Emperor Anastasius I. See Aloysius K. Ziegler, *Pope Gelasius I and His Teaching on the Relation of Church and State*, *CATHOLIC HISTORICAL REVIEW* (1941-42).

⁸ In particular, two Church leaders are recognized as making significant contributions to the development of the concept of the separation of Church and State: Lucifer of Cagliari (Calaris) and Ambrose of Milan. See *infra* notes 251 to 257 and accompanying text.

⁹ See ANGELO PAREDI, *SAINT AMBROSE: HIS LIFE AND TIMES* 315 (M. Joseph Costelloe trans., University of Notre

that St. Ambrose clearly viewed the Church as a separate sovereign, independent from any earthly sovereign, such as the State, or the civil or secular authority of the State. Yet, at the same time, he understood that collaboration was often necessary and that there existed a proper realm for Church influence on the secular government.¹⁰ That early conception of the relationship between Church and State, and its underlying reasons, continues to be relevant to contemporary Church and State issues.

II. AMBROSE: AN ABLE BISHOP IN A DIFFICULT TIME AND PLACE

A. INTRODUCTION TO AMBROSE

St. Ambrose served as Bishop of Milan from 374 to 397.¹¹ Although not specifically trained for ecclesiastical office, his background prepared him well. He was a member of an important, although not aristocratic, Roman family which had embraced Christianity.¹² At the time of Ambrose's birth, his father was praetorian prefect at the court of Constantine II.¹³ After his father's death, the family removed to Rome, where Ambrose received a solid education.¹⁴ His religious convictions were influenced by his sister, Marcellina, who was about ten years older and had made a formal profession of virginity in the new basilica of Saint Peters.¹⁵ He was

Dame Press 1964).

¹⁰ As such, it is valid to assert that the doctrine proclaimed more than 100 years later by Poper Gelasius I can be "substantially" found in the writings of St. Ambrose. See CLAUDIO MORINO, CHURCH AND STATE IN THE TEACHING OF ST. AMBROSE 82 (M. Joseph Costelloe trans., The Catholic University of America Press 1969). Morino presents a detailed study of the writings of Ambrose and concludes that Ambrose's understanding was confirmed by the doctrine articulated by Gelasius I.

¹¹ See generally PAREDI, *supra* note 9, at 375. Ambrose died in the early dawn of Holy Saturday in 397. *Id.* at 375.

¹² PAREDI, *supra* note 9, at 2-3. See also *id.* at 7-9 (explaining that Athanasius, bishop of Alexandria, was exiled in Trier from 335-37, and helped to foster there a vibrant Christian community).

¹³ Constantine II ruled the Western provinces of the Empire from 337-340 (the geographic area included the present territories of France, Britain, and Spain, together with Tingitana in Africa). Ambrose was likely born in 339. See NEIL B. MCLYNN, AMBROSE OF MILAN: CHURCH AND COURT IN A CHRISTIAN CAPITAL 32 (Univ. of California Press 1994). But see PAREDI, *supra* note 9, at 2 (opining that Ambrose likely was born in 334).

¹⁴ PAREDI, *supra* note 9, at 14-17 (noting that Ambrose likely was educated by a pedagogue and thus was spared from attending the weak private run schools in the Roman cities).

¹⁵ MCLYNN, *supra* note 13, at 34; PAREDI, *supra* note 9, at 10. See also JOHN MOORHEAD, AMBROSE: CHURCH AND SOCIETY IN THE LATE ROMAN WORLD 21 (Pearson Educ. Ltd. 1999).

also influenced by the theological tensions that escalated as Constantius II sought to forge a doctrinal compromise amongst the divisions that had arisen in the Church post-Nicea.¹⁶

Ambrose was well educated and had acquired a mastery of the Greek language and literature.¹⁷ Presumably planning to follow in his father's footsteps, Ambrose studied and practiced the law. He distinguished himself as an advocate in the praetorian prefect court at Sirmium, earning first a promotion in 368 to assessor, and then in 372-73 an appointment to the office of *consularis* of Liguria and Aemilia, with residence in the province of Milan.¹⁸ That role brought him into contact with a key segment of the Christian community in Milan and helped pave the way for his transition to the bishop of Milan in 374.

Ambrose proved to be an able and inspirational bishop. He gave his treasures to the Church, using the money to assist the poor and prisoners and to build church buildings and cemeteries for the people.¹⁹ Thereafter, he devoted himself to the study of Scripture, and the Fathers and other important writers and philosophers of the era.²⁰ McLynn explains that Ambrose did not write his first book until two years into his tenure as bishop, using the time to prepare to combat the various strains of Arianism ingrained in many of the people and clerics of Milan.²¹ Given his Roman background, he was skilled at digesting and translating into Latin the "best fruits of Greek thought."²² Importantly, his studies were focused by the events of the day,

¹⁶ See, e.g., PAREDI, *supra* note 9, at 26-36. See also *infra* note 39 and accompanying text.

¹⁷ *Id.* at 18-20 (explaining that Ambrose's sermons and writings show a mastery of Greek, and a solid familiarity with Virgil and Cicero, as well as Homer, Plato and Xenophon). Ambrose also demonstrated an exceptional education in music. *Id.* at 22. See also MCLYNN, *supra* note 13, at 57.

¹⁸ A key responsibility of the *consularis* was the suppression of public disorder. See MCLYNN, *supra* note 13, at 42-43; MOORHEAD, *supra* note 15, at 22.

¹⁹ MCLYNN, *supra* note 13, at 55. See also MOORHEAD, *supra* note 15, at 32; PAREDI, *supra* note 9, at 123-24.

²⁰ See PAREDI, *supra* note 9, at 130-32. Cf. MOORHEAD, *supra* note 15, at 72-74.

²¹ MCLYNN, *supra* note 13, at 53-54. See *infra* notes 29 to 35 and accompanying text for a brief introduction to Arianism.

²² See MORINO, *supra* note 10, at 13 ("Ambrose was a master of Latin style, and in this respect he is surpassed in Latin patristics only by St. Augustine and St. Jerome."). Paredi explains that Ambrose studied much of the time in order to be able to adequately explain and express the truths of the faith. Ambrose focused first on the Bible, then turned to writings by Christian authors: Origen, Basil, Hippolytus of Rome, Eusebius of Caesarea, and Athanasius. He also studied works of the Jewish philosopher Philo. Paredi notes that Ambrose's works show that he was careful

and he learned that he might teach.²³ Ambrose was also a gifted orator. St. Augustine, who studied for a time under Ambrose, stated: “He was one of those who speak the truth, and speak it well, judiciously, pointedly, and with beauty and power of expression.”²⁴ Yet, Ambrose was not a theologian in the traditional sense. Rather than working out systematic formulations, the teaching and preaching of Ambrose were directed at the necessities of the day.²⁵

Notably, the necessities of the day included dealing with Christian emperors in the decades immediately following the Edict of Tolerance in 313;²⁶ and contemporaneously with edicts such as those of Gratian in 379 and Theodosius in 380, both aimed at stamping out heretical versions of Christianity and promoting “orthodoxy,” the pure faith, which “the Apostle Peter once taught the Romans.”²⁷ Thus, Ambrose was at the forefront in working out the proper relationship between the Church and the imperial government. As such, his writings and sermons reflect not mere philosophy and theology, but rather, the actual dialogue that took place between a strong, able bishop and the imperial forces.

to correct the extremely Jewish interpretations of Philo and the extreme allegorical interpretations of Origen. PAREDI, *supra* note 9, at 131-32.

²³ In the exordium of his treatise, “De Officiis,” Ambrose complains that, owing to the suddenness of his transfer from the tribunal to the pulpit, he was compelled to learn and teach simultaneously. PAREDI, *supra* note 9, at 127-29 (quoting from the treatise *On the Duties of Ecclesiastics*).

²⁴ See NEW ADVENT, CATHOLIC ENCYCLOPEDIA, www.newadvent.org/cathen/01383c.htm (last visited Dec. 12, 2009). But see MOORHEAD, *supra* note 15, at 22 (noting that Ambrose had a weak voice).

²⁵ Cf. MOORHEAD, *supra* note 15, at 6 (noting that, unlike many scholars who have the luxury of writing in a detached way, Ambrose found himself having to relate his sermons and writings to the themes foremost in his mind from day to day). Most writing of the Patristic period was geared towards the body of the faithful, and was pastoral rather than systematic.

²⁶ See *infra* note 256-267 and accompanying text.

²⁷ See PAREDI, *supra* note 9, at 185-87 (the quote is from Theodosius’ edict of 380 (*Cod. Theod.* 16.1.12)). Gratian, augustus of Gaul, Spain and Britain, and regent for his half-brother in Illyricum, Italy and Africa, made Theodosius augustus of the Eastern portion of the empire in 378, following his impressive leadership of a military campaign

B. INTRODUCTION TO MILAN AND ITS ROLE IN THE THEOLOGICAL TENSIONS OF THE DAY

As noted, Ambrose became Bishop of Milan in 374. The essence of the story is that, while speaking to a crowd gathered at a church in an attempt to calm the tensions between the Arians and Catholics, the assembly spontaneously began calling for Ambrose to be bishop. This was quite unexpected, and Ambrose initially resisted. He soon acquiesced, however, and received baptism from a Catholic bishop. Eight days later, on December 7, 374, he was consecrated bishop.²⁸ The story behind the story is more complex. Nonetheless, it is a story important to a full appreciation of Ambrose's beliefs, teachings, and actions while bishop.

At that time, the tensions in Milan were but a reflection of the broader tensions within Christianity and the Empire: tensions arising from differing views as to matters essential to a proper understanding of Christianity. In 325, the Council of Nicaea had resolved an important issue relating to a proper understanding of Jesus Christ and his relationship to God the Father, but issues remained and continued to cause divisions.²⁹ At Nicaea, the bishops of the eastern portion of the Empire were persuaded to reject the teaching of Arius³⁰ to the effect that Jesus, the Son of God, was somehow subordinate to the Father.³¹ Instead, the Council embraced the

against the barbarians following the death of Valens. *Id.* at 182-83.

²⁸ *See id.* at 116-120. *See also* MCLYNN, *supra* note 13, at 43-51 (noting that the event was "first of the many spectacular public relations coups that became the distinctive mark of Ambrose's episcopate").

²⁹ *See* George Kretschmar, *The Councils of the Ancient Church* 69-76, in *THE COUNCILS OF THE CHURCH: HISTORY AND ANALYSIS* (Hans J. Margull, ed., *Die okimenischen kanzile der christeneit* trans., Fortress Press 1966) (discussing the continuing "christological controversy").

³⁰ *Id.* at 38-40. Arius was an Alexandrian presbyter who became a central figure in the dissemination of the erroneous view of the nature of Jesus. *Id.*

³¹ *See id.* Arianism emerged due to misperceptions caused by associating Jesus with the *Logos*, a concept developed by Greek and Jewish philosophers. Greek theologians began to use the Greek word "hypostasis" to refer to the distinct existence of Jesus as the *Logos* or revealer. Christians firmly believed that God created the world. As such, one could plausibly say that, "there was a time when the world did not yet exist." Thinking along these lines, some thought as follows: revelation prior to creation is meaningless; if there was a time when the world did not exist, this must also be true of the Son of God, the *Logos*/revealer; the Son of God must therefore also be a creature (a part of creation) and in some way subordinate to God. This line of reasoning was later successfully combated by the teaching that "time" itself is part of creation. In the third century, however, many were caught up in the idea that the Son of God, as *Logos*/revealer/mediator, could actually be some sort of "intermediate being." *Id.* at 34-41.

teaching of the bishop of Rome and the Church in the western portion of the Empire that, although in some way distinct from God the Father, the three persons of the One God are “one substance.”³² The Council included in the confession of faith approved at Nicaea the term *homoousios*, meaning “of one essence.”³³ Because all geographic areas were represented at Nicaea, including the presence and approval by the bishop of Rome, this view was considered and referred to as the “Catholic,” or universal, view.

For a number of reasons, however, certain bishops in the eastern portion of the Empire sought to discredit the concept of *homoousios*.³⁴ A campaign emerged to promote advocates of Arianism and to demote their opponents, spearheaded by Emperor Constantine. Although Constantine recognized the Creed of Nicaea as correct doctrine, he was willing to tolerate

³² Through complicated circumstances, Arius was able to present his theology as being sound and in-line with reputable theologians and numerous bishops within the eastern portion of the empire began adhering to the Arian point of view. *Id.* at 40-41. The Church in the Western empire, however, under guidance from the bishop of Rome, adhered strongly to the apostolic teaching of the unity of the Trinity: of three persons and one God. At the beginning of the third century, the Latin theologian Tertullian had articulated the formula that “the three ‘Persons’ are ‘one substance,’” and the Latin Church expressly disapproved of the Eastern theological teaching of “three hypostaseis.” *Id.* at 41-42. Kretschmar explains: “A linguistic difference contributed to [the] antithesis. Hypostasis meant distinct ontological existence; the Latin *substantia*, however, corresponded linguistically to hypostasis. The very word used by the East to denote the distinct co-existence of the Son and the Spirit with the Father, the West seemed to employ to express the unity of the Trinity. . . . It was almost inevitable, therefore, that the West considered the [Eastern theology] a covert tritheism, a doctrine of three Gods, while the East understood the Latin theology to be modalistic.” *Id.* at 42.

³³ The dogmatic outcome of Nicaea was a surprise: despite the overwhelming presence of bishops from the East – bishops familiar with the Arian articulation of the Logos theology with its emphasis on the distinct *hypostasis* and the distinct existence of the Son – the council approved the doctrine urged by the Church leaders of the western portion of the empire. *Id.* at 45-46 (explaining that, although Eusebius attributes inclusion of the term to “the express wish of the Emperor,” more likely the term was advocated by Ossius (Hosius), a personal advisor of Constantine’s who had participated in prior discussions and debates on the issue. He likely knew that the term proposed by the bishop of Rome had been accepted by the bishop of Alexandria). Notably, this resolution left the door open for further development of the idea of the distinct person of Jesus, but definitely rejected the Arian idea that Jesus was somehow subordinate to God the Father.

³⁴ In the East, a group of bishops – lead by Eusebius – sought to retain the Logos theology because of the way it neatly supported their vision of the relationship between Church and State. For a variety of reasons, in the Eastern portion of the Empire the bishops and theologians were much more open to imperial governance of the Church. Parker notes that Byzantine reverted to a type of “totalitarianism” in which the conception of a free church in a free state – or of a state in any way subject to the church – would not arise. THOMAS M. PARKER, *CHRISTIANITY & THE STATE IN THE LIGHT OF HISTORY* 70 (Harper & Bros. 1955). The tight integration between sacred and secular continued in the East until 1453. *Id.* at 67.

substantial freedom of interpretation, including views by those who continued to try to discredit the concept of *homoousios*. Scholars speculate that this was largely due to Constantine's overriding goal of "unity of empire."³⁵ Additionally, scholars have noted that Constantine became somewhat more disposed to Arian views, perhaps because those views provided greater support for imperial control of ecclesiastical matters.³⁶ Imperial favor of Arianism steadily grew after Constantine's death in 337. His son Constantius, who obtained sole rule in 351, was especially enamored with Arian theology and hostile towards the eastern bishop Athanasius, See of Alexandria, who had tried to suppress the eastern opposition to *homoousios*.³⁷ Athanasius and later his supporters, including Pope Liberius, were exiled and replaced by bishops supportive of

³⁵ A.H. Armstrong, *The Way and the Ways: Religious Tolerance and Intolerance in the Fourth Century A.D.* in STUDIES IN EARLY CHRISTIANITY: VOL. VII CHURCH AND STATE IN THE EARLY CHURCH, 353-369 (Everett Ferguson ed., Garland Publishing 1993) (noting that a primary concern of Constantine as a ruler was peace and unity of the Empire). Constantine readily accepted the "weak formula" proffered by Arius. Kretschmar, *supra* note 29, at 51. See also PAREDI, *supra* note 9, at 29 (noting that Arius died in Constantinople on the eve of his official reconciliation).

³⁶ Classical and pagan conceptions of kingship were more readily supported by Arianism. As explained by Huntston, the Catholic view of the consubstantiality of the Son supports the understanding that, because Christ is the Head of the Church, the Church must remain independent of the State. Williams, *supra* note 6, at 5, 10. In contrast, the view that Christ is subordinate to the Father, along with the idea that the Father has entrusted earthly governance to the King, can support the understanding that the Church can be or is subordinate to the King. *Id.* The Eusebius group thus began to view the emperor as the "interpreter and imitator of the Logos": the emperor was performing on earth the primary function of the Logos – leading men to knowledge and worship of God. As such, "salvation could be viewed as coming through the might of a godly ruler." *Id.* 17-19. In contrast, the Western Church held fast to the understanding that salvation was secured by the divine self-sacrifice of the Logos Incarnate, and that Christ established the Church and the ecclesiastical law to which even the Christian sovereign is subject. *Id.* at 16.

The difference extended even to the respective understandings of the Eucharist. Catholics understood the Church as a community sustained and bonded together by the Eucharist – the on-going incarnation, and firmly understood that salvation is attained by participation in Eucharistic fellowship. *Id.* at 18. The Eucharistic sacrifice is understood as an unbloody sacrifice – but as a sacramental re-presentation to God the Father of the most perfect worship possible: the eternal sacrifice of Jesus. The Arians, however, came to view the Eucharist only as an unbloody substitute for the pagan sacrifices. Williams, *supra* note 6, at 1. The Arians were deemed to be "not in communion" with the Church due to their obstinance in adhering to erroneous doctrine.

³⁷ Francis Dvornik, *Emperors, Popes, and General Councils* in STUDIES IN EARLY CHRISTIANITY: VOL. VII CHURCH AND STATE IN THE EARLY CHURCH 339 (Everett Ferguson ed., Garland Publishing 1993) (noting that Constantius was attracted to Arianism because "the Arian view of God's monarchy seemed to agree better with the . . . concept of the Roman empire as the reflection of one single divine empire."). Kretschmar notes that Constantius caused the Eusebian theology to prevail. Kretschmar, *supra* note 29, at 55.

the Arian view.³⁸

In 353, Arianism gained a significant foothold in the western portion of the empire when Constantius II became the sole ruler of the empire. Constantius had set up court in Milan in 352, with an eye toward forging political unity through a compromise between the supporters of the Nicene formula (the Catholics or Nicenes) and the opponents (the Anti-Nicenes or *homoeans*).³⁹ Milan was likely chosen due to its location. Milan is located in the northern portion of Italy, along a convenient route connecting Illyricum and the eastern portions of the Empire with Gaul in the West. At the same time, its proximity to Rome ensured ease of access between the senatorial aristocracy of Rome and the imperial court. Emperors after Constantius continued to set up court frequently in Milan.⁴⁰

To Constantius, the Council of Milan of 355 provided a means for informing western bishops about the developments in the east. However, after seemingly obtaining a favorable vote in favor of the eastern view, the western ally Eusebius of Vercilli arrived at the Council with a copy of the Nicene creed, asking the bishops to sign their support. The bishop of Milan, Dionysius, signed in support of the Nicene Creed, thereby invoking the disfavor of Constantius.⁴¹ By this time, the pious people of Milan had gathered to support their bishop and his defense of the Catholic faith. Although Constantius exacted the capitulation of other bishops, Dionysius and Eusebius, along with Lucifer of Cagliari (present as the legate of Pope Liberius), remained steadfast in their support of Nicaea. They were thus tried as enemies of the peace and unity, and sent into exile.⁴² The *homoean* Auxentius was then appointed as successor of bishop of Milan.⁴³

³⁸ One important consequence of the Arian influence on the Eastern Church was the emergence of a strong secular role in the appointment of bishops in the Eastern churches. Williams, *supra* note 6, at 10. Traditionally, and in the Western Church at this time, bishops were selected by the local church.

³⁹ See MCLYNN, *supra* note 13, at xiii.

⁴⁰ Milan had become the official seat for the Augustus of the West in 293. The city retained its position as a capital through the fourth century, but in 404 the capital was transferred to Ravenna. PAREDI, *supra* note 9, at 97-99.

⁴¹ *Id.* at 34-35.

⁴² *Id.* at 35-36. Soon thereafter, Constantius similarly sent Pope Liberius into exile. *Id.* at 36. All were kept under the surveillance of Arian bishops. *Id.* at 35-36.

⁴³ See *supra* note 38 and accompanying text.

Auxentius was still serving as bishop of Milan when Ambrose arrived in his government position almost twenty years later. During that time, some of the people in Milan came to support Auxentius. However, scholars speculate that it is very possible that they never strongly adopted an anti-Nicene viewpoint. Further, even if some did, the Catholic or Nicene forces in Italy and other parts of the western Empire fostered in Milan a strong, albeit perhaps small, community which remained in opposition to *homoeans*.⁴⁴ Thus, the assembly of the faithful, which acclaimed Ambrose as bishop, likely was comprised of people from both sides of the issue. The *united* acclamation has been explained as the people of Milan recognizing Ambrose as a gifted public servant with strong ties to Catholic bishops, and thus as a means for a united return to the Catholic faith, i.e., to the universal and true understanding of the faith.⁴⁵

After some initial trepidation, Ambrose set firmly upon a course of teaching and leading the Christian community in Milan and, as many had hoped, he remained true to the universal Catholic faith as confirmed by the bishop of Rome. That faith and, in particular, the Catholic understanding of the Church as a society willed by Christ, guided Ambrose's actions during his time as bishop of Milan. Because emperors frequently set up court in Milan, the community within the charge of Ambrose included emperors and the other powerful leaders. Accordingly, as noted, the writings and sermons of Ambrose often reflect the actual dialogue that took place between the imperial forces and a strong bishop dedicated to the Catholic faith.

Several specific episodes resulted in the type of dialogue that sheds light on Ambrose's understanding as to the proper relationship between Church and State. Those episodes include: the campaign by Symmachus to have a pagan altar restored to the Roman Senate; the attempts by the powerful personnel supporting Valentinian II and his mother, the Empress Justina, to have a basilica turned over to them for use for Arian worship; and an imperial order to an area bishop to use his own funds to rebuild a synagogue which was burned, supposedly at the instigation of the

⁴⁴ *Id.* at 117-18 (explaining that the Catholics had bishops from the surrounding sees on their side, while the Arians had the support of the majority of the local clergy).

⁴⁵ *Id.* at 119-20.

bishop. Many of the statements made by Ambrose that are highlighted in this article were made in the context of these episodes. In each case, Ambrose valiantly fought against the imperial view – and won. More importantly, in these and other episodes, Ambrose fought *for* the Church’s integrity and independence.

Yet, as important as the specific episodes were in prompting Ambrose to define the relationship between Church and State, the real essence of Ambrose’s views can be gleaned only from an evaluation of the entirety of his writings: writings which reveal strong advocacy for unity within the Church and against heresies causing divisions – and the accompanying view that Christians must side with the bishop of Rome – and repeated assertions to the effect that the emperor had no role in sacred matters. At the outset, however, it is important to appreciate that the foundation for Ambrose’s teachings is the nature of the Church itself. In *Church and State in the Teachings of Ambrose*, Msgr. Claudio Morino demonstrates that Ambrose’s understanding of the Church is what compelled his actions and statements bearing on Church and State relations.

III. THE CHURCH IN THE FOURTH CENTURY: A NEW SOCIETY WITH DEFINITE CHARACTERISTICS

Over time in the early centuries of Christianity, the Church emerged as a real, visible and recognized organization. Beginning at Pentecost, the Apostles valiantly undertook the commission given by Jesus to proclaim the Gospel to all nations.⁴⁶ The books of the New Testament reveal the basic contours of an initial organizational structure. Other historical documents go further and provide greater insight into the Church’s emergence as a viable organization, an organization with a governing structure allowing it to be functional and effective. But the Church is more than a mere functioning, human institution; it constitutes a real continuing presence of Christ here on earth. St. Ambrose’s rich and deep understanding of the

⁴⁶ See *Matthew* 28:18-20; *Acts* 1:7-8 (for the Commission); *Acts* 2:1-41 (for the story of the beginning of the Church’s proclamation at Pentecost).

Church in its fullest dimensions had clear implications for his dealings with the imperial authorities.

A. THE CHURCH AS AN INSTITUTION

Historical evidence shows that secular rulers did not pay much heed to “the Church” as an institution until well into the third century. Before that time, the rulers primarily saw “Christians” as *individuals* who adhered to distinct religious tenets. The Christians were alternately tolerated and persecuted, depending on a variety of circumstances.⁴⁷ Although first protected, in a sense, as a sect of the Jewish religion (*religio licita*), Christians were accused of atheism in 95 A.D., and thus as practicing a *religio illicita*.⁴⁸ However, Christians viewed as individuals, as members of a number of sects, were often largely viewed as harmless and, as such, as not posing any political threat.⁴⁹ Under certain emperors they were even encouraged to become part of public life.⁵⁰

Recognition by secular rulers of the “institution” – the Church – occurred in stages in the late third century and early fourth century, beginning with the actions of Emperor Valerian. Following a significant period of imperial tolerance, fear of “Christianization” of the Empire, combined with a resurgence in the view that Christians were to blame for the “wrath of the gods which was manifesting itself in . . . natural catastrophes of the period,” is thought to have

⁴⁷ See MARTA SORDI, *THE CHRISTIANS AND THE ROMAN EMPIRE* 30-134 (Annabel Bedini trans., University of Oklahoma Press 1986).

⁴⁸ *Id.* at 50-53.

⁴⁹ In the year 178, Christians were described as “people so divided into competing, mutually hostile groups ‘that, so to speak, they have only one thing in common, if they really have that in common, namely, the mere name. This is the only thing which they have so far been ashamed to give up. As for the rest, one party holds one thing and another something else.’” See Kretschmar, *supra* note 29, at 2 (citation omitted).

⁵⁰ See A.D. Lee, *Traditional Religions*, in *THE CAMBRIDGE COMPANION TO THE AGE OF CONSTANTINE* 159, 166-67 (Noel Lenski ed., Cambridge University Press 2006) (explaining the Roman tendency to tolerate what seemed harmless, and to “draw the line” only when there seemed to be a threat of possible harm. Persecutions were sporadic, indicating a “passive acquiescence in the presence of cults which they could not control” on the part of the government).

inspired Emperor Valerian to come down strongly on the Christians.⁵¹ To ensure that the action was more decisive than in the past, Valerian took action against the Church.⁵² As explained by historian Marta Sordi, Valerian “went straight for Christianity as an institution and, modifying old laws, attacked [the Church] as such for the first time. From 257 onwards, churches were closed, burial grounds and meeting-places were confiscated, and bishops, priests and deacons were sent into supervised exile.”⁵³ In 258, an additional order went out to the effect that all Christian ecclesiastics arrested previously, and all Christian senators and knights, were to be deprived of their property and possessions and put to death.⁵⁴ Sordi notes that the detailed and *ad personam* measures taken in 257 and 258 against specific bishops show “precisely how clear an idea the state had of church organisation [sic] and to what extent it was considered essential to dismember it.”⁵⁵

Now...the church itself is declared illegal equally with the profession of the Christian religion. In this declaration of illegality, the state put into use all the knowledge of the ecclesiastic organisation [sic] that it had acquired throughout the long years of tolerance; it did not have to limit itself to making a generalised [sic] declaration because by now it was able to identify, and therefore strike directly at, each separate level of the hierarchy (bishops, priests and deacons) and to single out the ecclesiastic property to be confiscated (churches and cemeteries)...For the moment this recognition [of the church as an institution] is only in operation as an instrument of prohibition and punishment, but it nevertheless constitutes the first step towards a more positive form of recognition: it lays the foundations for the church's future right to exist.⁵⁶

⁵¹ SORDI, *supra* note 47, at 113. See also Christopher J. Haas, *Imperial Religious Policy and Valerian's Persecution of the Church, A.D. 257-260*, in *STUDIES IN EARLY CHRISTIANITY: VOL. VII CHURCH AND STATE IN THE EARLY CHURCH 155-66* (Everett Ferguson ed., Garland Publishing 1993).

⁵² “The Church organisation (sic) must be uprooted, its influence over the ruling classes eradicated by means of a ‘purge’ of the senate, the equestrian class and the court.” SORDI, *supra* note 47, at 113-14.

⁵³ *Id.* at 114.

⁵⁴ *Id.* Sordi notes: “The fact that the edicts only refer explicitly to members of the ecclesiastical hierarchy and the lay members of the ruling class does not mean that Valerian intended to leave the simple Christian unpunished or that, having abolished Christianity as a public institution, he was prepared to allow it to continue to exist in private. . . . Undoubtedly, however, the Christians of the ruling classes were the ones Valerian intended to suppress immediately and completely, giving no one a chance to escape.” *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 115.

Historian Heinrich Rommen similarly views Valerian's actions as a response to the Church as an institution, noting that Valerian saw the Church as a "state within the state, a state that did not consider the Emperor the Lord and God..."⁵⁷

In very short order, Emperor Gallienus in 262 made a type of positive act of recognition of the Church. In contrast to the views of Valerian, Emperor Gallienus believed that peaceful co-existence with Christians would be helpful for the well-being of the Empire and, acting without the consent of the senate, Gallienus ordered the local authorities to restore to the bishops previously confiscated places of worship and cemeteries. That Gallienus understood that he was dealing with the Church as an institution is reflected by his personal communication about his decisions to the effected bishops.⁵⁸ While not an official recognition of a legal right to be a Christian, the act nonetheless constituted a positive act of tolerance of the institutional practice of Christianity.

The actions of Gallienus have been recognized as the beginning of a 40 year period of "peaceful coexistence, *de jure* rather than merely *de facto*," during which the Christian religion, like the Hebrew religion before it, was tolerated as a "*religio licita* within an officially pagan state."⁵⁹ The imperial governance accorded respect for certain legal rights of the Church as an institution (e.g., the right to own property), and allowed individual Christians to hold official positions and function as fully accepted members of the community.⁶⁰ Christianity was not favored at this time, but, rather, was accepted. That acceptance came about in part because Christianity was consistent with the growing pagan monotheism encompassed within the concept of solar syncretism – a concept which fostered peaceful co-existence by recognizing "the *summus*

⁵⁷ HEINRICH A. ROMMEN, *THE STATE IN CATHOLIC THOUGHT: A TREATISE IN POLITICAL PHILOSOPHY* 513 (B. Herder Book Co. 1945).

⁵⁸ SORDI, *supra* note 47, at 116-17 (explaining the documents preserved by the historian Eusebius, which Gallienus addressed to the bishops of Egypt and other areas affected by prior confiscations). "By turning directly to the bishops as such, [Gallienus] was automatically recognising [sic] them as the authorities on ecclesiastical matters. . . ." *Id.* at 117.

⁵⁹ *Id.* at 118.

⁶⁰ *Id.*

deus of the many names, a deity in whom each group could to some extent recognise [sic] its own god or gods, and one to whom the empire itself could appeal for protection...’⁶¹

One last great and bloody persecution occurred in the early fourth century, as Diocletian tried to reinstate the traditional religious worship.⁶² However, the turning point was at hand. Constantius, strongly faithful to solar syncretism, stopped persecutions in all its forms when he became Augustus in 305. His son, Constantine, ushered in a new era of Church and State relations after his conversion to Christianity in 312. Constantine, who came to rule the western portion of the Empire, brokered a compromise in 313 with the pagan Licinius, who ruled in the East.⁶³ The compromise, the Edict of Milan, expressly established religious freedom as the policy for the Empire, and went beyond the actions of Gallienus by expressly recognizing Christianity not only as a *religio licit*, but, arguably, as a favored religion. The Edict of Milan provided that:

[L]iberty is to be denied to no one to choose and to follow the religious observances of the Christians, but that to each one freedom is to be given to devote his mind to that religion which he may think adopted to himself;...now every one who has the desire to observe the religion of the Christians may do so without molestation;...liberty is granted to others also who may wish to follow their own religious observances; it being clearly in accordance with the tranquility of our times, that each one should have the liberty of choosing and worshipping whatever deity he pleases. This has been done by us in order that we might not seem in any way to discriminate against any rank or religion.⁶⁴

⁶¹ *Id.* at 122. See also W.H.C. Frend, *Prelude to the Great Persecution: The Propaganda War*, in *STUDIES IN EARLY CHRISTIANITY: VOL. VII CHURCH AND STATE IN THE EARLY CHURCH* 167 (Everett Ferguson ed., Garland Publishing 1993).

⁶² SORDI, *supra* note 47, at 122-27.

⁶³ *Id.* at 128-29. Licinius was willing to compromise in return for Constantine’s support in the struggle against rival Maximinus. *Id.* at 141. After losing the battle, Maximinus tried to gain the support of Constantine by issuing an edict giving freedom to Christians and restoring Church property. *Id.* This edict, issued in Nicomedia or Cappadocia in 313, represents the final end of the conflict between Christianity and the Roman Empire. *Id.* at 142.

⁶⁴ Sister Agnes Bernard Cavanagh, *Pope Gregory VII and the Theocratic State* 3 (1939) (unpublished Ph.D. dissertation, The Catholic University of America) (citation omitted) (on file with author). Sordi notes that, by isolating the “Christians” from the rest and by putting them first, the language of the Edict “reverses the traditional order of precedence of the various religions of the empire, and does so in favour of the Christian religion.” SORDI, *supra* note 47, at 138.

Constantine was genuinely passionate about religious tolerance.⁶⁵ Nonetheless, for Constantine the Edict of Milan represented but a step towards greater unity within the Empire.

B. AN INSTITUTION WITH A NECESSARY AUTHORITY STRUCTURE

Although the secular rulers during the first few centuries tended to see merely individual Christians, historians recognize that the Church viewed itself as an “institution” from the beginning; and, further, that the institution adopted a hierarchal structure from the start. The New Testament strongly suggests such a structure,⁶⁶ for effective temporal societies require authority, especially those desiring to grow and expand.⁶⁷ Additionally, Roman society would not have tolerated “un-ordered” associations. Sordi explains that “as soon as the Roman government discovered the facts about the hierarchical structure and rigid discipline of the Church, the Christians began to be looked on with admiration rather than mistrust.”⁶⁸ Indeed, as the Church emerged into the public scene, it published details of its organization and hierarchy.⁶⁹ The hierarchical structure served both ecclesiastical and legal interests.

As a legal matter, the hierarchical form adopted by the Church allowed it to acquire meeting-places and burial grounds. In the first two centuries, the Church relied primarily on the

⁶⁵ See H. A. Drake, *The Impact of Constantine on Christianity*, in *THE CAMBRIDGE COMPANION TO THE AGE OF CONSTANTINE* 111 (Noel Lenski ed., Cambridge Univ. Press 2006). Drake notes that the protections to Christians emerged as paramount only in retrospect; and that the Edict’s “center of gravity amounts to a repudiation of coercion as a means to achieve religious unity.” He states: “The Edict of Milan defines Constantine’s religious policy. Though he was himself a Christian and made no effort to hide his allegiance to that faith, he would not return to the policy of coercion, whose disastrous consequences were apparent to all.” *Id.* at 121-22.

⁶⁶ See, e.g., *Acts* 15:1-12 (describing the Apostles and presbyters meeting to discuss an important disciplinary issue); *Acts* 16:21; 1 *Timothy* 3:1-13 (discussing bishops and deacons); 1 *Timothy* 5:17-25 (discussing presbyters).

⁶⁷ See DANIEL-ROPS, *THE CHURCH OF APOSTLES AND MARTYRS* 13 (E.P. Dutton & Co. 1960). Daniel-Rops explains that all human enterprises presuppose some type of organization, and that the very success of Christianity on the temporal plan demonstrates it conformed with the need for “solid ranks, a principle of command and a plan of action, all this working in close relationship with its doctrine, and, moreover, forming an integral part of it.” See *infra* notes 82 to 88 and accompanying text (describing the emergence of effective societies).

⁶⁸ SORDI, *supra* note 47, at 181. See also *id.* at 180-182 (describing the Roman distrust of un-ordered associations, such as the “bacchanals” and Roman respect for the hierarchy of the Hebrew religion).

generosity of the laity for its meeting places and centers of communication.⁷⁰ The legal ban on the practice of Christianity meant that, during times of hostility, the Church could not give any external sign of its presence; it could not openly possess the premises it used for worship or burials.⁷¹ However, during the more tolerant period of the Severan dynasty, Pope Callistus took the initiative in bringing the Church out from its “semi-clandestine state and openly assumed responsibility for its places of worship and burial.”⁷² He likely did so using an associational entity permitted by Roman law. The Roman legal world recognized the appropriateness of allowing “associations” for certain purposes. The “*collegia*” was a recognized organizational structure for “associations of private individuals whose members had in common their profession, their religious beliefs or their mutual desire to contribute to a burial fund.”⁷³ Sordi explains that the early Church likely took advantage of this organizational form so that it could legally possess meeting places and burial grounds – even during the time that Christianity was considered a *religio illicita*.⁷⁴

As an ecclesiastical matter, the Church adopted a hierarchical structure in order to maintain unity and true doctrine. Unity and truth are hallmarks of Catholic Christianity.⁷⁵ One

⁶⁹ *Id.* at 181.

⁷⁰ *Id.* at 187-88. Sordi notes: “The Acts of the Apostles and the Epistles of St. Paul are full of references to the generous Christians who provided these facilities: Lydia the seller of purple at Philippi *Acts* 16:5; Jason at Thessalonica *Id.* at 17:5; Aquila and Priscilla, husband and wife tent-makers in Corinth and then Ephesus *Id.* at 18:2 and 18; Tyrannus, a school teacher at Ephesus *Id.* at 19:9; Mnason, a Cypriot of Caesarea *Id.* at 21:16; Nymphas at Laodicea *Colossians* 4:15; and Philemon *Philemon* 1:1-2.” *Id.*

⁷¹ *Id.* at 188.

⁷² *Id.* at 189. From that time onwards, domestic churches began to slowly appear.

⁷³ *Id.* at 182. “*Collegia* were founded on the solidarity and mutual assistance of their members, their leaders (*magistri*) were chosen by election and a monthly contribution was paid into the society’s ‘bank’ (*arca*).” *Id.* The legality of such associations spread “from Rome to the whole Italy and the provinces;” and the right was extended to form *collegia religionis causa*. *Id.* at 183.

⁷⁴ *Id.* at 182-84.

⁷⁵ Christianity is understood as encompassing the truths that God desires humans to understand, as revealed in a more complete manner through Jesus. And Catholic Christianity is understood by Catholics as encompassing the fullness of God’s revelation. The Catholic faith is understood as encompassing the fullness of truth in part because of its more holistic mode of thinking. In contrast to non-Catholic Christian sects or denominations, which tend to look to the Bible as the only source of revelation, the Catholic Church recognizes and synthesizes a broader field of revelation, including not only Sacred Scripture, but also tradition and truths discerned through continued application

of the truths of Christianity is the understanding that God desires communion – a special union of love – with the human race.⁷⁶ Accordingly, one task for the society of Christians on earth is to strive to attain communion here in the earthly kingdom. A requisite feature of the communion that God desires is unity. Indeed, on the evening before his passion and crucifixion, Jesus prayed for unity: “that they may be one, even as we are one. . . .”⁷⁷ Such unity is both real and visible and, on earth, is attainable only through an appropriate authority structure.

Jesus understood the human need for authority. He recognized that his disciples would need to see authority in order to believe that he was sent from God and he respected that need and manifested authority.⁷⁸ Further, from time to time during his life, Jesus sent certain of his disciples to teach in his stead. The Gospels are clear that, before doing so, he expressly delegated his authority to his disciples,⁷⁹ even stating: “Whoever receives you receives me. . . .”⁸⁰ Jesus followed this pattern after his resurrection. Jesus had selected twelve of his disciples for special training, and his commission was directly to the eleven remaining at the time of his Ascension.⁸¹ Later, Jesus directly selected and imparted knowledge to Saul of Tarsus, and sent him also to serve in the same capacity as the Apostles.⁸² In ministering to the early Christian communities, the Apostles and Paul exercised the authority delegated to them in order to maintain true

of revelation to emerging circumstances and data. The Catholic Church has also always been guided by the principle of adhering to the deposit of faith entrusted to the Apostles.

⁷⁶ See, e.g., *Romans* 6:1-6; *Romans* 8:14-17; *2 Corinthians* 5:1-10; *Ephesians* 1:3-14; *Ephesians* 2:3-10.

⁷⁷ After praying for his disciples, Jesus prayed: “I do not pray for these only, but also for those who will believe in me through their word, that they may all be one, even as you Father, are in me, and I in you, that they also may be in us, so that the world may believe that you have sent me. And the glory which you have given me I have given to them, so that they may be one, as we are one, I in them and you in me, that they may become perfectly one, that the world may know that you sent me and have loved them even as you loved me.” *John* 17:20-23.

⁷⁸ See, e.g., *Matthew* 7:28 (explaining that the people who heard his teaching were astonished, “for [he] taught them as one who has authority”); *Matthew* 9:1-8 (explaining that he healed the paralytic to help the people “know that the Son of Man has authority on earth to forgive sins”).

⁷⁹ See, e.g., *Matthew* 10:1-5; *Luke* 9:1-6.

⁸⁰ See, e.g., *Matthew* 10:40.

⁸¹ See, e.g., *Matthew* 28:16-20; *Mark* 16:14-20. The commission extends indirectly to all Christians.

⁸² See *Acts* 9:1-22. See also DANIEL-ROPS, *supra* note 67, at 52-64, 81 (describing Saul’s background, education, and conversion, and explaining how he was particularly well prepared for his role in spreading the Gospel and dealing with the awkward relations between the “Hellenists” and the “Judaizers” – i.e., those with a more “universal”

doctrine, as well as right worship and appropriate disciplinary practices.⁸³ People were converted to Christianity and listened to the Apostles and Paul because their authority was clear. They had learned and received a delegation directly from Jesus.

In-turn, the Apostles and Paul followed the pattern established by Jesus. They specially trained certain disciples for ministry to the Christian communities.⁸⁴ The writings preserved in the New Testament reveal that, even during the lifetime of the Apostles, rival “sects” began emerging as a result of personal and private interpretations of the teachings of Jesus.⁸⁵ It was the authority of the Apostles – the tangible, visible Apostles – that provided assurance to the followers that they were following the right interpretations.⁸⁶ After the Apostles died, what would provide similar tangible, visible assurance to followers? Historical letters reveal that the key to true doctrine and right worship was the hierarchical structure put in place by the Apostles, namely, the appointment of bishops to lead the faithful in different geographic areas. By the second century, the Apostles were viewed as a “closed college, the bearers of the one apostolic message;”⁸⁷ and it was understood that the Apostles had “appointed successors.”⁸⁸

Inevitably, however, doctrinal and disciplinary issues arose which were not explicitly answered in the body of Jesus’ teachings, written and oral, as preserved and handed down by the Apostles. As to some of these issues, the individual bishops sometimes disagreed. On matters of discipline, regional disagreements among bishops were not necessarily troublesome.

mindset and those with a more “sectarian” mindset).

⁸³ See, e.g., *Acts* 1:21; *2 Corinthians* 2:5-11.

⁸⁴ See, e.g., *1 Corinthians* 3:5-9; *2 Corinthians* 8:16-24; *Philippians* 2:19-30. See also DANIEL-ROPS, *supra* note 67, at 14-15, 30-32 (describing the existence of assistants to the Apostles, who “appear[ed] to have constituted a kind of secondary grade in the hierarchy, and the emerging use of deacons).

⁸⁵ See, e.g., *1 Corinthians* 1:10-17; *Galatians* 1:6-10. See also DANIEL-ROPS, *supra* note 67, at 75 (explaining Paul’s correction of errors made by Apollos, and establishing the faith on a solid foundation).

⁸⁶ See, e.g., *Galatians* 1: 11-24. See also DANIEL-ROPS, *supra* note 67, at 17.

⁸⁷ Kretschmar, *supra* note 29, at 6.

⁸⁸ Daniel-Rops explains: “[A]postolicity was a pledge of the authenticity of their religion, a justification of their faith. ‘Christ came from God,’ writes St. Clement of Rome, ‘and the Apostles came from Christ, and it was the Apostles who, finding their inspiration in the Spirit, instituted certain men as bishops.’” DANIEL-ROPS, *supra* note 67, at 238.

Doctrinal questions, however, are another matter. Questions such as the nature of Jesus cannot have more than one answer. The early Church therefore developed methods and procedures for ascertaining the correct answers to important doctrinal questions. Scholars recognize that, by the third century, the synod or council had emerged as the primary means that the Church, as an institution, formulated opinions and exercised authority.⁸⁹ The council's origins are found in the Acts of the Apostles.⁹⁰

Councils in the ancient church were used primarily to resolve issues and provide clarification for an entire region or for the whole of the Church.⁹¹ The council as a body and the procedures used by the Church followed the model provided by the administrative and juridical system of the Roman Empire.⁹² As such, a synod or council was a type of investigational tribunal, and proper process was integral to the proceedings. However, it was understood that the action of the synod, as an action of the Church as an institution, was guided by the Holy Spirit.⁹³

The records of the earliest councils show regions of the Church dealing with disciplinary matters. By the third century, however, important doctrinal questions emerged which required resolution. On questions of doctrine, unity is essential and the synods or councils provided an important means for achieving unity. Once an issue was *properly* decided by a council,⁹⁴ “unity [was] limited only by manifest heresy or, in the case of an individual bishop, by apostasy or some other mortal sin that would, also in the case of a lay Christian, entail exclusion from the

⁸⁹ See Kretschmar, *supra* note 29, at 58. “Concilium” is the Latin word for the decision making body. “Synodos” is the Greek word.

⁹⁰ *Id.* at 6 (citing *Acts* 15; *Galatians* 2). Attempts to prove that the term synod or council was originally a technical term for the assembly of the congregation have fallen short. *Id.* at 11 n.18.

⁹¹ *Id.* at 10.

⁹² See Dvornik, *supra* note 37, at 1. Dvornik notes, “This was a natural evolution and there is nothing objectionable in this adaptation of highly developed and experienced methods already existing. The bishops were Roman citizens familiar with Roman forms of government. When the need arose to discuss problems concerning Christians of a whole province, it was logical for the bishops to meet in the residence of the most prominent prelate in order to discuss the matters which touched the life in their diocese.” *Id.*

⁹³ Kretschmar, *supra* note 29, at 1-11.

⁹⁴ From earliest times, the title “catholic” referred to that segment of the Church that recognized the importance of being in union with Peter – i.e., the bishop of Rome. See DANIEL-ROPS, *supra* note 67, 238, 246-51.

church.”⁹⁵ The hierarchical structure of the Church thus emerged in a pragmatic but providential manner – as a necessary means for achieving the Church’s purpose.

C. A REAL AND VISIBLE SOCIETY, CONSTITUTING CHRIST’S CONTINUING PRESENCE ON EARTH

The fact that the Church emerged as an institution with channels and procedures for the exercise of authority is important, but is not the most significant aspect of the Church. Rather, the more important aspect of the Church is that it constitutes a real and tangible continuing presence of Christ on earth. As such, certain characteristics are inherently part and parcel of the Church, and St. Ambrose fully appreciated those characteristics. Ambrose and the Fathers of the Church understood the Church to be a unique union of the human and divine: a real, tangible and fully united society of the faithful.⁹⁶

Much of his teaching and understanding of the Church was premised on the fundamental principle that the Church constitutes the mystical Body of Christ. “The whole Church is the one Body of Christ.”⁹⁷ Further, it is Christ who draws the faithful to the Church, and who serves as

⁹⁵ Kretschmar, *supra* note 29, at 14 (explaining Cyprian’s third century theology as to the synod, including Cyprian’s inadequate and later discounted understanding of the need for authority among the bishops; i.e., authority was found to be needed to maintain unity). However, Margull opines that the “binding effect” of a synod’s decision hand extends only to those who believed and approved it. *Id.* at 23. Often, some did not, raising the issue of what to do. As early as 275, the State stepped in to provide some assistance. For example, the State helped adherents of the decision to take possession of the church building in Antioch. The operation of the counsels during the first 150 years of the official recognition of the Church as an institution reveals that the concept of separation of Church and State (and the proper functioning of the separate entities for the good of society) developed along with the Church’s understanding of the need for authority within the Church to maintain truth and unity. It is fair to say that the two concepts are of one piece.

⁹⁶ Indeed, Morino explains that St. Ambrose conceived of the Church “under its most universal, and, we might say, loftiest aspect. Actually, according to him, the Church had its origin at the foundation of the world. It was pre-figured in the Flood, announced by the Law, invoked by the Prophets. It preceded the Synagogue itself, which had entered into the world so that sin might abound and that grace might thus abound still more. . . . It is the celestial Jerusalem which shines in the splendor of the eternal sun and enlightens us with supernatural grace. It seems sterile in this world since it does not beget temporal and worldly good, but it begets future benefits and those that are not seen. It is ‘the winepress of the eternal font, and from it flows the fruit of the heavenly vine.’” MORINO, *supra* note 10, at 3.

⁹⁷ MORINO, *supra* note 10, at 4 (quoting *De fide* 5.169 (PL 16:682): “*Omnis Ecclesia unum Corpus est Christi.*”).

its Head. St. Ambrose explains that it is Christ:

who is the Head of all, through whom the whole Body of the faithful and of the wise is joined, knit, and united together through the reasonable harmony of the Word - that is, through every joint of the system, according to the functioning of each part - thereby increasing the Body and building it up in love, so that there may rise a single temple of God in all, and that one dwelling of the heavenly mansion may be in the spirit of all.⁹⁸

Christ “is himself the principle of all and the author of every virtue because He is the Head of the Church.”⁹⁹ Thus, Christ both binds the faithful together, and leads them. Because Christ permeates the Church, the Church has very real supernatural aspects.

Morino notes that Ambrose most frequently uses the phrase “to congregate” when describing the “coming together and union of the faithful in the Church.”¹⁰⁰ Further, Ambrose understood that the members of the Church are called from every race,¹⁰¹ and that they should form one society. “Therefore, from every valley the Catholic people has been brought together. There are not now many congregations; there is but one congregation, one Church.”¹⁰² The joining of people from every race has important implications: “Since we have been brought together from different peoples we cannot use for ourselves the name of a single race, and, consequently, since we do not have a name here on earth, we have received one from heaven so that we are called the people of Christ.”¹⁰³ Therefore, although having very real supernatural aspects, Ambrose also recognized the Church as a real and tangible new society of humans.

⁹⁸ MORINO, *supra* note 10, at 4 (quoting Ambrose and citing *Ep.* 76.12 (PL 16:1262)).

⁹⁹ MORINO, *supra* note 10, at 5 (quoting Ambrose and citing *De fide* 3.49 (PL 16:600))(Latin included).

¹⁰⁰ MORINO, *supra* note 10, at 6 (*congregari*) (citations omitted). See also DANIEL-ROPS, *supra* note 67, at 236-37.

¹⁰¹ *Id.* at 6 (citing *De Abraham* 2.65 (PL 14:487): “The holy Church . . . has risen from all four quarters of the world.”) (Latin included).

¹⁰² *Id.* at 6 (quoting Ambrose and citing *Hexaem* 3.3 (PL 14:156): *Ex omni igitur valle congregatus est populus catholicus. Iam non multae congregationes sunt, se una est congregatio, una Ecclesia.*) See also DANIEL-ROPS, *supra* note 67, at 237 (explaining that within each city there was a community – a church – but that, above all the churches was “the Church” – the embodiment of the universal society that Jesus prayed would be one).

¹⁰³ *Id.* at n.45. “*Nos de diversis populis congregati, vocabulum nobis unius gentis non possumus usurpare: et ideo, quia nomen non habemus in terris, de coelo accepimus, ut Christi populus diceremur.*” (citing *In Ps. XXXVI* (PL 14:969)).

Importantly, because it is a real, tangible society of human beings, the Church necessarily must have certain characteristics. As a society open to all,¹⁰⁴ universality is a necessary aspect of the nature of the Church.¹⁰⁵ Further, although earthly societies (nations, states, cities, etc.) have membership restrictions tied to territories, the Church as a society necessarily exceeds the bounds of any such earthly society. Because “the world” is in the Church,¹⁰⁶ the Church is, in essence, a non-territorial society.

Another crucial aspect of this real, universal society is unity.¹⁰⁷ The Church is the Body of Christ, and the union between Christ – the Head – and the members, is most intimate. Ambrose notes: “[w]e are members of His Body, of His flesh, and of His bones. What greater salvation is there than to be with Christ and to adhere to Him in a kind of bodily union?”¹⁰⁸ Ambrose also taught that an intimate union existed among the faithful. Notably, it is the love between Christ and the Church that creates the bond of union amongst the faithful. “The Church is the Body of Christ, which is linked together by the bond of charity.”¹⁰⁹ Ambrose also drew upon the idea that the Church is the Spouse of Christ and emphasized that the faithful share in this spousal love. If the faithful are in Christ, they must share in Christ’s love for and union with the Church. Conversely, to truly love Christ, the faithful must love through the Church.

¹⁰⁴ “Christ has suffered for all.” *Id.* at 7 (quoting Ambrose and citing *In Luc.* 6.25 (PL 15:1675): “*Christus pro omnibus passus est.*”).

¹⁰⁵ *Id.* at 30 (citing *De poen.* 2.72 (PL 16:514)). Morino describes the view of Ambrose as follows: “His vision now opens upon a vast new world . . . The brotherhood of men, which is based upon their common nature and strengthened by the universality of the Church, is a bridge over which he passes from the Roman Empire, extensive as it was, to the universal kingdom of God over all men. Those who live outside the Empire are no longer barbarians or enemies but brothers brought together and united in one single body through the unity of faith and love.” *Id.* at 23.

¹⁰⁶ *Id.* at 6. “And it is well that the world should be in the Church, in which no one is either Jew or Greek, the barbarian or Scythian, bond or free, but all are one in Christ.” (quoting *In Ps CXVIII* 12.25 (PL 15:1369)).

¹⁰⁷ Numerous passages in the New Testament letters exhort Christians to remain united. *See, e.g., Romans* 16:17-20; *1 Corinthians* 1:10-17 & 12:12-26; *Ephesians* 4:1-6.

¹⁰⁸ MORINO, *supra* note 10, at 41 n.89 (citing *In Ps XXXIX* 11 (PL 14:1061)) (Latin included). Ambrose also explained: “If then, the union of Adam and Eve is a great sacrament in Christ and in the Church, it is certain that, just as Eve was bone of the bone of her husband and flesh of his flesh, so we also should be members of the Body of Christ, bone of His bone and flesh of His flesh.” *Id.* at 4 (quoting *Ep.* 76.4 (PL 16:1260)). *See also id.* at 5 n.34.

¹⁰⁹ *Id.* at 4 (quoting Ambrose and citing *In Ps. XLIII* 17 (PL 14:1098)) (Latin included).

Ambrose stated: “The Church loves Christ and never changes her affection for Him;”¹¹⁰ and, “No one can love so much as she who loves through many.”¹¹¹

To Ambrose, then, the Church is a real and tangible non-territorial society, comprised of humans from throughout the world who are intimately united with Christ and with one another. This intimate union of the faithful with Christ and with themselves meant for Ambrose that the faithful “prays in common, . . . works in common, . . . [and] is tried in common.”¹¹² Rinna has noted that, “[t]here is scarcely any other thought so dear to the Bishop of Milan, none so impelling and meaningful, as the twofold unity of the Church with its body united to its Head and all members united in the Mystical Body.”¹¹³

Because unity of the Church is integral to its nature, Ambrose strongly fought against heretics.¹¹⁴ Heretics destroy the unity of the Body of Christ by breaking the bond of union amongst the faithful. According to Ambrose, “[t]hey rend the garment of the Church through their impiety and, desiring to separate the undivided unity of the divine power, gnaw at the precious veil of faith with their sacrilegious bite.”¹¹⁵ Notably, Ambrose emphasized that faith in God was not sufficient if one was not in unity with the Church:

Although they had faith in God, they still did not keep it in the Church of God, whose limbs, as it were, they suffered to be divided and its members torn. For since Christ suffered for the Church, and the Church is the Body of Christ (Eph. 5:25), faith does not seem to be given by those who void His passion and tear His body asunder.¹¹⁶

¹¹⁰ *Id.* at 40 (quoting Ambrose and citing *Hexaem.* 4.22 (PL 14:198)) (Latin included).

¹¹¹ *Id.* (quoting Ambrose and citing *In Luc.* 6.22 (PL 15:1674)) (Latin included).

¹¹² *Id.* at 4 (quoting Ambrose and citing *De Officiis* 1.142 (PL 16:65)) (Latin included).

¹¹³ *Id.* at 147 n.35 (quoting RINNA, J., *DIE KIRCHE ALS CORPUS CHRISTI MYSTICUM BEIM HL. AMBROSIUS*, 142 (1940)).

¹¹⁴ Heretics included those who deviated from the pure faith, the faith as taught by the Apostles and preserved by the bishops remaining in union with the bishop of Rome. Heretical teachings abounded, but the key heretics during the era of Ambrose were the Arians. *See generally* PAREDI, *supra* note 9, especially Chapter VIII.

¹¹⁵ MORINO, *supra* note 10, at 107 n.72 (quoting Ambrose and citing *De Spir. Sanc.* 1.164 (PL 16:742)) (Latin included).

¹¹⁶ *Id.* at 108 n.77 (quoting Ambrose and citing *De excus. frat. Sat.* 1.47 (PL 16:1306)) (Latin included).

Thus, unity of the Church – and unity *with* the Church – is crucial. According to Ambrose: “We live in Christ through the unity of the body.”¹¹⁷

In sum, a key underpinning of the teachings of Ambrose was the understanding that the Church constitutes a new kind of society: a real, tangible society with certain definite characteristics. The Church is a universal society, open to all human beings, with no fixed territorial boundaries. Yet, at the same time, the Church is a society that must remain one – one in faith, one in work, and one in worship. The Church is supernatural in its essence, since its origin and its Head is Christ. But it is a society that, while on earth, is comprised of humans. The question, then, was how this new, real and tangible society should be organized, and how it should relate to earthly societies.

As to this question, Ambrose’s view of the Church as the “City of God” becomes instructive. Notably, St. Ambrose was not the only Father of the Church who grasped onto the concept of the Church as the City of God, and he did not develop the concept in a manner akin to St. Augustine.¹¹⁸ Yet, his writings and actions reveal a sophisticated understanding of key ramifications of viewing the Church as the City of God – ramifications stemming from the classical view of the “City.”

IV. THE CITY IN ANTIQUITY

Throughout history, humans have tended to gravitate towards communities or societies.¹¹⁹ Societies help to satisfy the human need for relationships and, as well, enhance living conditions through cooperative activity.¹²⁰ Communal living is so integral to human nature that it is

¹¹⁷ *Id.* at 5 (quoting Ambrose and citing *De fide* 4.128 (PL 16:642): “*In Christo vivimus per corporis unitatem.*”).

¹¹⁸ See, e.g., SAINT AUGUSTINE, *THE CITY OF GOD* (Marcus Dods, D.D. trans.) (1950). Morino notes that, although Augustine bases his discussion of the City of God on passages from scripture, it is likely that he got the idea from “hearing the sermons, or reading the works, of his great father in the spirit.” MORINO, *supra* note 10, at 32 n.18 (citing numerous other scholars).

¹¹⁹ For example, the family, the clan, the tribe, the village. See MASON HAMMOND, *THE CITY IN THE ANCIENT WORLD* 6 (Harvard Univ. Press 1972).

¹²⁰ Plato saw the division of labor and trade as the key force leading to the formation of cities. MOGENS HERMAN

reasonable to presume that “human society” is according to God’s will.¹²¹ Effective societies, however, require authority and, thus, some type of structure for the exercise of authority. Historical evidence suggests that, as societies enlarged, the natural tendency was towards an organizational structure which involved some type of hierarchical ordering.¹²² Societies that can be called “cities” emerged in various places in antiquity.¹²³ However, the concept of the *City* as the perfect organizational form for society emerged largely due to the philosophical analyses of Plato and Aristotle.¹²⁴

A. THE FEATURES OF THE GREEK POLIS

In ancient Greek culture, the term *polis* referred to a reasonably small, urbanized community (together with its surrounding countryside), which had adopted an institutionally-based, self-governing organizational form, and which was comprised of a citizen body with well-defined rights and responsibilities. Because such communities were often fortified by walls, the term *polis* likely originally meant a “fortified place.”¹²⁵ However, that meaning was gradually replaced and by the Hellenistic period the term came to refer to the “community of people,” when the community exhibited the characteristics just noted.¹²⁶ Central features of the *polis* include the citizen body, centralized governmental institutions dependant upon vibrant citizen

HANSEN, POLIS: AN INTRODUCTION TO THE ANCIENT CITY-STATE 94 (2006).

¹²¹ MORINO, *supra* note 10, at 48 (also noting that God established the first society, the family). St. Ambrose held this perspective, noting that life in primitive communities was modeled on the communal existence of certain animal species. *Id.* at 49.

¹²² HAMMOND, *supra* note 119, at 172 (noting that the political organization of any emergent urban society would “naturally” tend to parallel, to some degree, the forms of government reflected in the various Archaic Greek city-states – i.e., a pattern akin to magistrates, councils, and assemblies. Even an absolute ruler needs advisors and will seek to secure the good will of his subjects by allowing them some voice in important decisions).

¹²³ See generally HAMMOND, *supra* note 119; see also GEOFFREY PARKER, SOVEREIGN CITY: THE CITY-STATE THROUGH HISTORY 32-34 (2004) (noting the existence of Hellenistic poleis and barbarian poleis).

¹²⁴ MORINO notes that, in Greek philosophy, the “city” was recognized as the “perfect society.” MORINO, *supra* note 10, at 30. Hansen explains that the most general, surviving account of the *polis* as a political community is Aristotle’s *Politics*, especially Books 1 and 3. See HANSEN, *supra* note 120, at 109. Another useful source is Plato’s *Republic*. *Id.* at 108.

¹²⁵ HANSEN, *supra* note 120, at 40.

participation, and the laws enacted by the well-functioning institutions of the *polis*.¹²⁷

In analyzing the concept of the *polis*, Hansen notes that, in Aristotelian terms, the citizen body is the “matter” – the potentiality – of the *polis*.¹²⁸ Rather than a “community of people,” Hansen concludes that a more precise description of the *polis* is a “community of citizens.”¹²⁹ The notion of citizenship is thus an essential feature of the *polis*. From Aristotle’s functional and political perspective, only adult males were full citizens. However, wives of citizens also had citizenship status and passed that status to children.¹³⁰ Citizenship was understood as a person’s juridically defined membership in the *polis*.¹³¹ A person had to meet certain established standards to be entitled to citizenship. For example, under Roman law, citizenship was established in certain definitive, limited ways: birth, adoption, and manumission.¹³² In Roman law, adoption “brought a new *filiusfamilias* into a family and thus confer[red] a new state of citizenship.”¹³³ Manumission involved the freeing of a slave and was effected by a master renouncing his rights over his slave. As a result, the slave’s subjection to his master ceased and the slave acquired full legal status, which included personal freedom and Roman citizenship.¹³⁴

Citizenship in the *polis* brought with it rights and duties, and thus was the source of a concrete juridical relationship between the individual and the city. The obligations associated

¹²⁶ *Id.* at 56.

¹²⁷ *Id.* at 44.

¹²⁸ HANSEN, *supra* note 120, at 110 (drawing on Aristotle’s Book 3). Aristotle viewed worldly things as being comprised of matter and form. The principle of determinateness (the actual character of a changing thing) was termed the “form” of the thing. The principle of indeterminateness (the potential character of the thing) was termed “matter.” Form and matter are not things, but causes: a formal cause and material cause, respectively. Parker, *supra* note 34, at 87-89. Hansen uses the concepts of form and matter to help describe the *polis*.

¹²⁹ HANSEN, *supra* note 120, at 110.

¹³⁰ *Id.* at 119. Citizenship was restricted, e.g., both parents had to have been citizens. HAMMOND, *supra* note 119, at 191. In the Greek empires, there was only single citizenship – citizenship in the city. *Id.* at 192. In the Roman empire, a type of double citizenship existed. *Id.* at 273. Every *polis* also included free-noncitizens. HANSEN, *supra* note 120, at 35.

¹³¹ HANSEN, *supra* note 120, at 111.

¹³² MORINO, *supra* note 10, at 32 (citing F.K. VON SAVIGNY, SYSTEM DES HEUTIGEN ROMISCHEN RECHTS, VIII 47 (1849)).

¹³³ *Id.* at 37 (citing P. BONFANTE, ISTITUZIONI DI DIRITTO ROMANO 150-53, 156 (1946)).

¹³⁴ *Id.* at 37-38 (citing P. BONFANTE, *supra* note 133, at 44).

with citizenship were substantial. As noted by Hansen, the “very heart” of the *polis* concept is participation by the citizen body in the political institutions of the *polis*.¹³⁵ Parker similarly notes that participation in the affairs of the *polis* by the whole citizen body was deemed essential.¹³⁶ Citizens were expected to devote themselves to public service and to fight for the integrity of their city.¹³⁷ In a similar vein, the individual in a *polis* was subordinate to the whole.¹³⁸ That is, citizens were expected to give greater weight to the interests of society than to their own personal interests. Additionally, no distinction existed between public and private sectors of life:¹³⁹ citizens willingly accepted governmental regulation affecting private aspects of life if the regulation was important for the well-being of the community.

In terms of rights, citizens of the *polis* attained the right to the enactment and just enforcement of non-arbitrary laws, and to laws with the aim of enriching the collective lives of the citizenry.¹⁴⁰ In part, the attainment of this aspect of the *polis* hinged on active citizen participation.¹⁴¹ When citizens have a voice, and use that voice for the good of the whole, the government is more likely to be just.

Laws come into being only if a government structure is in place. Thus, a second essential feature of the *polis* was the use of a centralized, highly institutionalized governmental form.¹⁴² Again drawing on Aristotelian terminology, Hansen notes that if the citizen body is the “matter”

¹³⁵ HANSEN, *supra* note 120, at 110. See also HAMMOND, *supra* note 119, at 177.

¹³⁶ PARKER (GEOFFREY), *supra* note 123, at 45. Size of the polis was therefore key. HAMMOND, *supra* note 119, at 180 (citing Plato and Aristotle). Plato and Aristotle emphasized that the polis should be small enough for citizens to be able to participate in the affairs of the city. PARKER (GEOFFREY), *supra* note 123, at 34. Participation by the citizens helped ensure that laws served the citizenry and, as well, created loyalty for the city-state. *Id.*; see also HANSEN, *supra* note 120, at 64.

¹³⁷ HAMMOND, *supra* note 119, at 181. In Sparta for example, citizens owed a strict allegiance to the *polis*, and their most important responsibility was military service for the defense of the city. PARKER (GEOFFREY), *supra* note 123, at 38-39.

¹³⁸ HAMMOND, *supra* note 119, at 177.

¹³⁹ *Id.* at 177-78.

¹⁴⁰ Citizenship also triggered rights to equal treatment. *Id.* at 177.

¹⁴¹ Participation by the citizens helped ensure that laws served the citizenry and created loyalty for the city-state. PARKER (GEOFFREY), *supra* note 123, at 34; HANSEN, *supra* note 120, at 64.

¹⁴² HANSEN, *supra* note 120, at 12.

of the *polis*, its constitution is the “form” of the *polis*.¹⁴³ Although a variety of types of political organizations emerged in the city-states, an overarching characteristic was the use of a mixed constitution; an organizational structure that combines features of rule of the one (monarchy), rule of the few (aristocracy), and rule of the people (democracy).¹⁴⁴ Generally, however, the organizational form of the various *poleis* consisted of councils, magistrates, and assemblies.¹⁴⁵ A key innovation of the *polis* was the shift away from absolute rule to a governmental structure that provided a vehicle for the voice of the people.¹⁴⁶ Participation by the people promoted policy-making grounded in the interests of the whole.¹⁴⁷ As noted by Aristotle, “[T]he many, no one of whom taken singly is a good man, may yet taken all together be better than the few, not individually but collectively.”¹⁴⁸

A third key feature of the *polis* was its laws.¹⁴⁹ Laws ensure order within society. As noted, citizens have a right to the enactment and just enforcement of non-arbitrary laws. From the perspective of Plato and Aristotle, the ideal *polis* would control the behavior of citizens in every department of life.¹⁵⁰ This was not considered oppressive for at least two reasons. First, in a well-functioning *polis* the citizens had a voice, and exercise of that voice helped ensure that laws would promote the maintenance and furtherance of the society.¹⁵¹ Second, the concept of “liberty” traditionally was understood differently than it is today. Rather than the modern

¹⁴³ *Id.* at 110.

¹⁴⁴ *See id.* at 111. *See also* HAMMOND, *supra* note 119, at 188 (explaining Plato’s double classification of the three forms: the good side being known as monarchy, aristocracy, and democracy; and the bad as tyranny, oligarchy, or mob rule or ochlocracy).

¹⁴⁵ HANSEN, *supra* note 120, at 14; HAMMOND, *supra* note 119, at 189.

¹⁴⁶ Few were truly democratic; many were republican. HANSEN, *supra* note 120, at 12.

¹⁴⁷ HAMMOND, *supra* note 119, at 189.

¹⁴⁸ PARKER (GEOFFREY), *supra* note 123, at 35. Sovereignty rests with the people. HAMMOND, *supra* note 119, at 189.

¹⁴⁹ The functions of the *polis* included granting of citizenship, enacting laws, administration of justice, striking of coins and collection of revenue, foreign policy. HANSEN, *supra* note 120, at 122. Justice derived from gods, but the making of law and the administration of justice rested with humans. HAMMOND, *supra* note 119, at 189.

¹⁵⁰ HANSEN, *supra* note 120, at 122. Few attained the ideal. *Id.* at 122.

¹⁵¹ *Id.* at 113. Functions also included organization of religious festivals and oversight of necessary sacrifices to the gods. *Id.* at 112.

emphasis on personal freedom – with its focus on personal rights and personal interests – liberty traditionally was understood as freedom from arbitrary or tyrannical governance, and as allowing citizens the freedom to willingly be subject to appropriate authority.¹⁵²

In a well-functioning *polis*, citizens had a voice in and through the government institutions, and the government and its laws worked for and built-up the people.¹⁵³ From Aristotle’s perspective, this meant that the *polis* exists for the “good life.” While in other types of “states” the people exist for the well-being of the state, in the Greek city-state, the state exists for the well-being of the people.¹⁵⁴ The ideal, therefore, encompassed “the citizenship of the good man in a good city-state.”¹⁵⁵

The legal order within the *polis* facilitated its ability to exist as a *sovereign* society. Indeed, an overarching hallmark of the *polis* was its “self-governing” nature.¹⁵⁶ The *polis* was considered a sovereign entity with control over its own affairs.¹⁵⁷ Even when not fully independent, the *polis* exhibited internal sovereignty; a government that wields a rule of law within a given territory over a given population,¹⁵⁸ or as a system of political institutions with the right to define and enforce a legal order over the population.¹⁵⁹ Moreover, the essential features of the classical, sovereign *polis* – its citizen body, institutional structures, and heightened use of the rule of law – clearly denote a juridically grounded society. A “juridical society” has been described as “a union of men bound together by law for the purpose of obtaining the same end

¹⁵² See HAMMOND, *supra* note 119, at 292 (noting that the prevailing Stoic philosophy supported this view of liberty because, in stoic philosophy, freedom – the highest form of self-realization – consisted of willing subjection to the universal reason which was embodied in the “wise ruler”).

¹⁵³ Parker notes that the polis liberated humanity in a manner that was alien to the empires of the east. PARKER (GEOFFREY), *supra* note 123, at 46.

¹⁵⁴ *Id.* at 34.

¹⁵⁵ HAMMOND, *supra* note 119, at 318. The ideal included the concept of self-sufficiency. *Id.* at 181. Yet, few ever attained self-sufficiency. *Id.* at 190; HANSEN, *supra* note 120, at 91 (e.g., even the market economy of Athens was based on significant outside trade).

¹⁵⁶ HANSEN, *supra* note 120, at 12. Most cities had lost their independence by 350 B.C., and the meaning of *autonomia* shifted to “self-governance.” *Id.* at 49.

¹⁵⁷ PARKER (GEOFFREY), *supra* note 123, at 34.

¹⁵⁸ HANSEN, *supra* note 120, at 12.

through common means.”¹⁶⁰ Morino notes that the “legal or juridical bond is what distinguishes a true society from a merely social group whose members may be united by moral, intellectual, or even religious ties.”¹⁶¹ Historians have thus viewed the concept of the *polis* as an immense advancement in terms of the organizational structure for society

B. THE CITY: A CONCEPT WITH IMPORT FOR AMBROSE AND THE CHURCH FATHERS

Although conceptualized as an ideal in philosophical thought, the vision of the *polis* was never fully realized. In the Hellenistic period, the kings did not alter traditional municipal constitutional forms and the many *poleis* continued to exhibit a vigorous civic life; the *poleis* were left alone if they paid their taxes and provided the appropriate honors to the kings.¹⁶² However, even with this degree of independence and within this more fully Greek culture, the general citizenry did not live up to their civic duties and tended to let the more well-to-do take over many governmental responsibilities.¹⁶³

During the reign of the Romans the concept of the *polis* continued to have vitality until the late Roman Empire, but, similarly, the ideal was never achieved. Because Roman city-states were shaped by Greek political thought, the *civitas* continued as a self-governing society with a highly institutional structure.¹⁶⁴ However, as the territory under Roman control spread, the

¹⁵⁹ *Id.* at 64. Today, the “city” is most closely analogous to our notion of “State.”

¹⁶⁰ MORINO, *supra* note 10, at 55 (quoting F. CAVAGNIS, *INSTITUTIONES IURIS PUBLICI ECCLESIASTICI*, I, 24 n.41 (1906); and citing A. OTTAVIANI, *INSTITUTIONES IURIS PUBLICI ECCLESIASTICI*, I, 44 n.22 (1948)).

¹⁶¹ *Id.* at 55.

¹⁶² HAMMOND, *supra* note 119, at 208.

¹⁶³ *Id.* at 194; *see also id.* at 188 (noting that rule by aristocracy tended to shift towards oligarchy).

¹⁶⁴ Historically, Roman societies were tribal in nature. The chief or king consulted with an advisory council of elders or a senate. HAMMOND, *supra* note 119, at 240. The citizenry was divided in to two groups. *Id.* at 252. Over time, the *civitas* moved towards the classical Greek *polis*. The central political institution of a Roman city was the Council. HANSEN, *supra* note 120, at 50. Morino explains that the term “regna” referred to the vast territories which had as their capital the monarch’s residence, and that the political associations of the barbarians were called *civitates*, even though they were not cities, but free forms of government. Thus, *civitas* corresponds to the modern notion of Nation-state. MORINO, *supra* note 10, at 31 n.11 (quoting BONFANTE, *supra* note 133, at 6 n.2).

Romans tended to use the cities as the means through which the central government reached the individual subjects.¹⁶⁵ In contrast to the practice within the Greek empire, Rome extended citizenship liberally, and manumission of slaves was common.¹⁶⁶ Individuals thus became Roman citizens but they also retained their citizenship – and thus their rights and duties – as to their *civitas* or *polis*,¹⁶⁷ thereby introducing a type of double citizenship.

Over time and for a number of reasons, the *polis* became more and more a *mere concept*, and less and less a reality. Prior to the Roman Empire, a major problem facing city-states was their lack of political unity.¹⁶⁸ In a well-functioning *polis*, the political identity and patriotic sentiment of citizens are directed towards the individual city-state.¹⁶⁹ Thus, the identity and patriotism fostered by citizen participation created a force, which separated one *polis* from another.¹⁷⁰ Parker explains that, “from earliest times there had been rivalries and conflicts and an unwillingness to accept any overall leadership”,¹⁷¹ and opines that the “ultimate failure of the classical *polis* can be attributed more than anything else to the lack of progress in creating an organization that . . . could be a vehicle for the harmonization of the relations among the sovereign cities.”¹⁷²

Rome achieved – to some extent – what the Hellenistic monarchies had failed to work out. The Roman Empire provided an overall organizational structure in which individual cities

¹⁶⁵ HAMMOND *supra* note 119, at 195. However, Rome did tend to establish cities other than the main Greek polis, as the capital of each province. For example, Rome named Corinth as the capital of Greece, rather than Athens, and Ephesus as capital of Asia, rather than Pergamun. For similar reasons, Rome established Caesarea as the capital of Judea, rather than Jerusalem. *Id.* at 289.

¹⁶⁶ *Id.* at 263-64. Through 241 B.C., citizenship was often granted to whole communities; other times, “private rights” or “half-citizenship” were granted instead. *Id.* at 264, 267.

¹⁶⁷ *Id.* at 273 (at the local level, Roman citizens were expected to fulfill their civic duties to the polis).

¹⁶⁸ PARKER (GEOFFREY), *supra* note 123, at 42.

¹⁶⁹ HANSEN, *supra* note 120, at 12.

¹⁷⁰ *Id.* at 12.

¹⁷¹ PARKER (GEOFFREY), *supra* note 123, at 41. “For most of the time the Hellenic city-states existed in a condition that approximated to one of ‘no war – no peace’ and conflicts among them over boundaries, trade and dynastic questions were regular occurrences.” *Id.* at 42.

¹⁷² *Id.* at 46.

could continue self-governance,¹⁷³ subject to centralized control as to certain issues.¹⁷⁴ Yet the *polis* nonetheless declined,¹⁷⁵ and two weaknesses in the Roman solution have been identified. First, in the integration of empire and *polis*, Rome failed to implement some form of representation of the people in the centralized government.¹⁷⁶ Second, there emerged the perhaps inevitable reversion to the Hellenistic pattern of “rule from above, as an outside control.”¹⁷⁷ Emperors gradually assumed for themselves functions of the city-state. Magistrates and senates still existed within the cities, but loyalties shifted towards the emperor.¹⁷⁸ As early as the second century, although the imperial government continued to depend heavily on organized communities for local administration, the weight of the authority was with the emperor.¹⁷⁹ Hansen concludes that the decline of the city became more significant after restrictions on local self-governance were set in place by Diocletian (A.D. 284-305) and that, after Justinian (A.D. 527-65), the political city-state no longer existed.¹⁸⁰

Nonetheless, through much of the late empire, local governments maintained a vigorous economic and social life and, thus, the concept of the ideal remained alive.¹⁸¹ Hammond notes that, for Ambrose and others, the “civic spirit still burned bright.”¹⁸² Indeed, thinkers and statesmen of that time period did not recognize the weakness of the Empire, and tended to view the empire as the “fulfillment of the development of the classical city.”¹⁸³ The sentiment of the era is well reflected in a speech delivered in Rome, by the Greek orator Aristeides to the Roman

¹⁷³ HAMMOND, *supra* note 119, at 273.

¹⁷⁴ For example, conquered communities were allowed to keep their own forms of government and to retain self-governance as to internal city administration; but were obliged to heed Rome’s orders when given, to accept Rome’s lead in foreign affairs, and to supply Rome with provisions, troops, ships, or funds in time of war. *Id.* at 267.

¹⁷⁵ The city-states declined in the era of economic expansion and international politics. *Id.* at 208.

¹⁷⁶ HAMMOND, *supra* note 119, at 30. By the late republic, Roman citizenship was associated with a privileged status; however, it came with a loss of meaningful ability to take part in governance. *Id.* at 273.

¹⁷⁷ *Id.* at 273.

¹⁷⁸ *Id.* at 286.

¹⁷⁹ *Id.* at 286.

¹⁸⁰ HANSEN, *supra* note 120, at 50.

¹⁸¹ HAMMOND, *supra* note 119, at 307.

¹⁸² *Id.* at 317-18.

emperor Antoninus Pius:

A common democracy of the world has been established under one, the best ruler and marshal; and all come together into a common agora, each receiving his due. . . . [M]any in each city are fellow citizens of yours, no less than of their own kin, although some of them have never seen this city. [Due to the Roman peace and security], [a]s on a holiday the whole civilized world lays down its ancient burden, [weapons], and has turned to adornment and all glad thoughts, with power to realize them. . . . [T]he city of Athenians began today's cultured life, but this has been confirmed by you who, though (as they say) later, are better.¹⁸⁴

Hammond provides the reminder that:

[T]he ultimate breakdown of the Augustan compromise between the Roman city-state and the need for an imperial administration does not make any less remarkable the successful continuation for two centuries of the concept of the empire as Aristeides' democracy of self-governing communities under the protection and leadership of the Roman emperor.¹⁸⁵

It is therefore understandable that Ambrose and other Fathers of the Church would draw upon the concept of the *polis* – the perfect society – when addressing issues relating to the Church as a new and distinct society.

IV. THE CHURCH AS THE CITY OF GOD

¹⁸³ *Id.* at 301.

¹⁸⁴ *Id.* at 301 (quoting Aristeides, *To Rome* (adapted/translated from J.H. Oliver, *THE RULING POWER: A STUDY OF THE ROMAN EMPIRE IN THE SECOND CENTURY AFTER CHRIST THROUGH THE ROMAN ORATION OF AELIUS ARISTIDES* NS 43, pt. 4 (1953)).

Ambrose often expressly associated the City of God with the Church.¹⁸⁶ In his commentary on Psalm CXVIII, Ambrose stated: “*Civitas Die ecclesia est.*”¹⁸⁷ He also stated: “For this is the City of Jerusalem, which is now seen on earth, but it will be snatched above Elias. It will be taken up and transferred to heaven;”¹⁸⁸ and, “Whoever enters into the Church through good faith and works becomes a citizen and dweller of that supernatural city which has descended from heaven.”¹⁸⁹ Thinking in terms of a city as a fortified dwelling, Ambrose described the Church as having walls consisting “primarily of the individual churches” and the stones of the walls as being comprised of individual believers.¹⁹⁰ Consistent with Ambrose’s understanding of the Church, when Ambrose spoke of the City of God, he meant something real, concrete, tangible, visible, and organized.¹⁹¹

Ambrose did not expressly develop a theology surrounding the concept of the Church as the City of God. Nonetheless, from his writings and actions generally it is reasonable to conclude that Ambrose’s understanding of the Church as the City of God conformed in

¹⁸⁵ HAMMOND, *supra* note 119, at 302.

¹⁸⁶ MORINO, *supra* note 10, at 33 (quoting *In Ps CXVIII* 35 (PL 15:1422)). See also *id.* at 32 (citing *In Ps. XLVII* 23 (PL 14:1155)); *Id.* at 4 (citing *In Ps CXVIII* 14.35 (PL 14:1422)). Ambrose was not the only leader of the early Church who conceived of the Church as the City of God. *Id.* at 32. Likely, this is because Sacred Scripture readily supports understanding the Church from such a perspective. The New Testament authors used terms associated with the classical concept of the city, and terms having bearing on status within the city – citizens, slaves, birth, adoption. Further, Old Testament scripture portrays Israel as the People of God. As a human society, the People of God naturally adopted political organizational structures: Israel became a kingdom ruled by a king, but was also a society comprised of Nations, which arose from the twelve tribes of Israel. The Fathers of the Church understood Israel as a “foreshadowing” of the Church, and the Church was understood as the real thing. Logically, then, the Church would move forward towards the more perfect form of society – the *City*. The politico-religious teaching of Ambrose is therefore imminently based on scripture. *Id.* at 22 (stating the conclusion, but without providing any reasons).

¹⁸⁷ *Id.* at 33, n.39 (citing *In Ps CXVIII* 35 (PL 15:1422)).

¹⁸⁸ *Id.* at 32, n.28 (quoting *In Luc.* 2.88 (PL 15:1585) (Latin included)).

¹⁸⁹ *Id.* at 39 (quoting Ambrose and citing *Apolog. Proph. Dav.* 83 (PL 14:883): “*Quisquis bona fide atque opera ingreditur Ecclesiam, fit supernae illius civis et incola civitas, quae descendit de coelo.*”).

¹⁹⁰ *Id.* at 33, n.37 (quoting Rinna, I. DIE KIRCHE ALS CORPUS CHRISTI MYSTICUM BEIM HL. AMBROSIUS 143 (Rome 1940) (“St. Ambrose describes the Church as an organic unity of the faithful gathered together from every race and making up the City of God. Its walls consist primarily of the individual churches; the individual believers comprise the stones of the walls, since it is a structure whose walls are built up of living stones.”) and (citing *Apolog. Proph. Dav.* 83 (PL 14:883)).

¹⁹¹ *Id.* at 45.

significant ways with the classical concept of the *City*. And thinking of the Church as the *City* – the *Civitas* – in turn had a significant impact on his understanding of the proper relationship between Church and State. In particular, two aspects of the *polis* were central to an understanding of the Church and of the relationship between Church and State: the juridical nature of a perfect society, and the essential notion of sovereignty.

A. THE CHURCH IS A JURIDICAL SOCIETY

Morino emphasizes that, given his background, Ambrose readily recognized the juridical nature of the *City*, the perfect society, and thus the analogous juridical nature of the Church as the City of God. Understanding the City of God as a juridical society – a union of men bound together by law for the purpose of obtaining the same end through common means – has important implications. First, Ambrose recognized that persons must satisfy certain standards, both procedural and substantive, in order to enter the Church. Similar to the concept of citizenship under Roman law, entry into the Church involves certain specific procedures: e.g., birth, adoption, and manumission.¹⁹² The spiritual birth of baptism confers the right of spiritual citizenship and, thus, incorporation into the *Civitas Dei*.¹⁹³ Incorporation into the City of God allows one to become a son of God through a type of supernatural adoption: a “definite act on the part of God that sets up a new juridical relationship” which enables the soul to acquire a new internal quality or *habitus*.¹⁹⁴ Becoming a member of the City of God also involves freedom

¹⁹² Morino notes: “[w]hen it is a question of entrance into, and belonging to, the *Civitas Dei*, all these elements concur, since entrance into the Church is at the same time a spiritual birth, an adoption on the part of God, [and] a liberation from the yoke of Satan. . . .” *Id.* at 35.

¹⁹³ *Id.* at 35 (explaining that baptism is a “spiritual birth which sets a man upon a supernatural plane and places him in direct contact with Christ . . . and also in contact with all other supernaturally reborn citizens.”).

¹⁹⁴ *Id.* at 37. Philosophers of that era understood that the life principle of human beings had certain faculties (e.g., intellect and will), and that those faculties had a certain quality – a quality or virtue determined by voluntary human actions. See generally RALPH MCINERNEY, *ETHICA THOMISTICA: THE MORAL PHILOSOPHY OF THOMAS AQUINAS* (The Catholic University of America Press 1997). Spiritual adoption infuses supernatural qualities into the human life principle, namely, the theological virtues of faith, hope and charity. See generally ROMANUS CESSARIO, O.P., *THE VIRTUES, OR THE EXAMINED LIFE* (2002).

from one's slavery to sin, meaning the liberty to renounce sin.¹⁹⁵

Ambrose also recognized substantive standards. Ambrose taught: "Whoever enters into the Church *through good faith and works* becomes a citizen and dweller of that supernatural city which has descended from heaven."¹⁹⁶ Although acknowledging that Ambrose could have been speaking of "theological faith," Morino concludes that, instead, Ambrose was speaking from the perspective of a jurist.¹⁹⁷ From that perspective, what Ambrose demanded was that new members approach the Church with "sincerity and fidelity" – akin to the *bona fides* required as the foundation of all legitimate juridical transactions under Roman law.¹⁹⁸ That is, just as the substantive standard of good faith is required for legal transactions, sincerity and fidelity is required for the legitimacy of juridical actions in the Church.

A second implication of a juridical society is that, as in the *polis*, Ambrose recognized that citizenship in the City of God brings with it weighty "rights and duties." The rights or benefits are incomparable. Christians acquire a new nature and life in the spirit,¹⁹⁹ which in turn is the "cause, motive, and foundation of . . . [one's] communion with Christ, with the Church, and with all its individual members."²⁰⁰ At the same time, as explained in more detail *infra*,

¹⁹⁵ MORINO, *supra* note 10, at 38. The concept of redemption involves the understanding that Christ's incarnation, passion, death and resurrection has freed humanity from its slavery to evil by elevating or renewing humanity and thereby enabling humans to act on their freedom by rejecting evil. See DENNIS J. BILLY & JAMES KEATING, *THE WAY OF MYSTERY* (Paulist Press 2006), at 10-16 (discussing the different ways that the mystery of redemption has been described). According to Ambrose: "[Christ] therefore offered Himself according to our nature so that He might effect that which was beyond our nature." MORINO, *supra* note 10, at 38, n.66 (quoting Ambrose, *De incarn. Dom. sacr.* 54 (PL 16:832)).

¹⁹⁶ MORINO, *supra* note 10, at 39 (quoting Ambrose and citing *Apolog. Proph. Dav.* 83 (PL 14:883): "*Quisquis bona fide atque oper ingreditur Ecclesiam, fit supernae illius civis et incola civitas, quae descendit de coelo.*") (emphasis added).

¹⁹⁷ *Id.* at 39 (explaining other uses of the phrase *bona fides* by Ambrose).

¹⁹⁸ *Id.* at 39-41 (noting that it is also the logical interpretation: sincerity is necessary for true repentance, and fidelity is surely a condition and guarantee of belonging to the City of God).

¹⁹⁹ *Id.* at 42 (noting that "entrance into the Church implies a man's substantial transformation" and quoting Ambrose: "You know they are dead who are without Christ, who do not share in His life. . . ." (*In Luc.* 2.86 (PL 15:1585)); "the Church is the winepress of the eternal font in which the fruit of the heavenly life flows out" (*De Spir. Sanc.* 1.1 (PL 16:703))). On the basis of the gift of supernatural life, countless other gifts arise and "are manifest in the . . . works of devotion and perfection. . . ." *Id.*

²⁰⁰ *Id.* at 42 (noting that the spiritual city erected on earth will continue to endure throughout eternity).

Christian citizens of the City of God are subject to duties. Similar to the duty to devote themselves to public service and to fight for the integrity of their city, Ambrose emphasized that Christians have a duty to serve God and the Church with zeal and devotion.²⁰¹ The new and tangible society that is the Church is thus grounded in the type of reciprocal, juridical relationships that were the hallmark of the *polis* or *civitas*.

Analogies between other aspects of the Church, the City of God, and other essential juridical features of the *polis* also naturally developed. Effective governance is necessary for any society and, as noted, governmental structures evolved: the Church used councils, bishops took on functions of magistrates, and the people had a voice – e.g., when they met in assemblies related to the election of new bishops. Further, laws were promulgated within the Church as necessary to maintain order, to help the faithful to choose to act in accordance with the good, and to guard against arbitrary treatment. Differences existed. For example, the voice of lay citizens as to certain matters would be limited, for example, as to matters of doctrine. But, the parallels are impressive and Ambrose comprehended those parallels and the ramifications logically flowing from them. Of particular relevance to the relation between Church and State is the essential notion of sovereignty.

B. THE CHURCH EXISTS AS A DISTINCT, SOVEREIGN ENTITY

As noted, an overarching characteristic of the *polis* was its status as a sovereign entity: an entity wielding a rule of law over a given population.²⁰² Ambrose thus readily recognized that the City of God – as a *City* – must also constitute a sovereign entity. This conclusion flows from the fact that the legal order within the sovereignty binds the community together to enable each person to obtain his or her proper end through common means.

From Aristotle’s perspective, the *polis* exists for the well-being of the citizens. That is,

²⁰¹ *Id.* at 87 (“All those who are in the Church are in the service of God” (*Ep.* 27.15 (PL 16:1050))).

²⁰² PARKER (GEOFFREY), *supra* note 123, at 34.

societies exist to help men attain their proper end or objective. An initial question therefore is: what constitutes the proper “end” or objective for human beings? Philosophers in antiquity (and up until the period referred to as the Enlightenment) understood the “ultimate end” for humans as “eudaimonia” – a state resulting from a lifetime of performing human actions well, i.e., of performing acts to achieve true goods and not merely apparent goods.²⁰³ Humans can more readily choose true goods if their decision-making is guided by reason, virtues, and the “mean” established by the wise or prudent individual.²⁰⁴ Philosophers have traditionally understood that the institutional governmental form exists to help humans make good decisions about voluntary actions, because only in that way could humans attain the true good.

Given that function of the *polis* or *civitas*, the governing institutions in antiquity had a central role in religion. Understanding this connection requires a limited understanding of certain aspects of religion in antiquity. In ancient Greece and Rome, and through the fourth century, there existed a vast array of cults and practices, often referred to collectively as paganism, since the adherents to the traditional cults did not have an agreed upon common name.²⁰⁵ Indeed, in contrast to Christianity,

they had no tradition of discourse about ritual or religious matters (apart from philosophical debate or antiquarian treatise), no organised [sic] system of beliefs to which they were asked to commit themselves, no authority-structure peculiar to the religious area, above all no commitment to a particular group of people or set of ideas other than their family and political context.²⁰⁶

²⁰³ MCINERNEY, *supra* note 194, at 12-34. McInerney explains the Aristotelean understanding that “the human good cannot be the end of a particular action, of some one action distinct from all other human actions. [Rather, the] ultimate good . . . must be that which makes the countless goods at which human actions aim human good.” *Id.* at 20. He then explains the manner in which Thomas Aquinas built upon Aristotle’s notion of the ultimate good, by integrating the Christian understanding that humanity’s ultimate destiny is “loving union with God in the Beatific Vision . . . a vision realized not in this life but the next.” *Id.* at 31.

²⁰⁴ See generally DANIEL MARK NELSON, *THE PRIORITY OF PRUDENCE: VIRTUE AND NATURAL LAW IN THOMAS AQUINAS AND THE IMPLICATIONS FOR MODERN ETHICS* (Pennsylvania State Univ. Press 1992). For the essential link to a wise and prudent individual, see *id.* at 97.

²⁰⁵ A.D. LEE, *Traditional Religions*, in *THE CAMBRIDGE COMPANION TO THE AGE OF CONSTANTINE*, 159-179, 164 (Noel Lenski ed., 2006).

²⁰⁶ *Id.* at 164-65 quoting North, J., *The Development of Religious Pluralism*, in *THE JEWS AMONG PAGANS AND CHRISTIANS IN THE ROMAN EMPIRE* 187 (J. Lieu, J. North, and T. Rajak, eds. 1992).

Additionally, although the ancient world had strong beliefs relating to some type of after-life existence, the pagan religions offered no understanding of an “eternal destiny of the human soul.”²⁰⁷ Rather, religion – man’s relationship with the gods – consisted of relationships important only to the extent that they were profitable to man or the State “in time.”²⁰⁸ That is, pagan religions existed to serve earthly or temporal needs. Religion was used to make earthly life more satisfactory.

Because of that purpose of pagan religions, the State could readily assume religious responsibilities.

In such societies as men naturally form, one does not see the necessity of distinguishing between Church and State. *The State aims at making men happy*, at assisting them to become virtuous, and leading them to their goal. *Religious duties are included in this program*. The State . . . has the duty of watching over religious as well as other interests. As representative of the community, the State represents the community in its relations with the divinity as in everything else.²⁰⁹

The State thus used religion both as an instrument of rule and as a means to the welfare and stability of the state. Religion was a civic duty, and the magistrates of the State were the heads of the religion.²¹⁰ It is thus fair to characterize the pagan State as a “political, ethical, and religious unity.”²¹¹

²⁰⁷ See generally FRANZ CUMONT, *AFTER LIFE IN ROMAN PAGANISM* (1959); RAMSAY MACMULLEN, *PAGANISM IN THE ROMAN EMPIRE* (1981); NORTH, J., *Roman Religion, in GREECE & ROME, NEW SURVEYS IN THE CLASSICS* No. 30 (2000).

²⁰⁸ See MORINO, *supra* note 10, at 67. A.D. Lee explains that, although allegiance in traditional cults was expressed largely through public, communal rituals (such as sacrifice), some engaged in more private forms of religious devotion. Lee then includes astrology and magic as forms of ancient religion, since they too were employed to achieve success “in love, sport, or the law court,” and notes that they too represented an attempt “to manipulate spiritual forces.” See A.D. LEE, *supra* note 205, at 163-64.

²⁰⁹ MORINO, *supra* note 10, note 4, chap VI (quoting LECLERCQ, J., *L’ETAT OU LA POLITIQUE* 119 (Louvain 1948)). The Augustus office of *pontifex maximus*, brought back original unity of religion and political authority as found in the primitive Roman king.

²¹⁰ See DANIEL-ROPS, *supra* note 67, at 123 (noting that, in the Greek city-state “man . . . was a citizen of that city in the very measure in which he participated in the civic cult.”).

²¹¹ MORINO, *supra* note 10, at 29; See also DANIEL-ROPS, *supra* note 67, at 141 (explaining that, in the first two centuries A.D., the citizen’s whole existence was permeated by religion).

Christianity, of course, is a dramatically different religion. Foremost, Christ revealed that our true purpose in life is to attain communion with God – for eternity. Temporal needs and desires are no longer in the forefront. This new insight had significance when thinking about the relationship between the new society – the Church – and the State. Rather than the unity of secular and religious control of the pagan world, the nature of Christianity and the nature and function of the Church compelled separation.²¹² Because the end of a juridically perfect society is attainment of the “complete good,” meaning attainment of a set of goods fully satisfying human needs,²¹³ it becomes logical that *two* perfect societies must exist for humanity while here, in time, on this earth. That is, two societies must exist to fully satisfy humanity’s needs: “a perfect natural society, which has as its end the complete satisfaction of man’s needs in the natural order; and a perfect supernatural society, which aims at securing man’s eternal happiness in heaven.”²¹⁴ A *Civitas Terrena*, which seeks to satisfy man’s material needs and desires; and a *Civitas Dei*, which seeks to satisfy man’s supernatural needs and desires.²¹⁵

Moreover, the *Civitas Terrena* and the *Civitas Dei* must constitute distinct societies. Each *polis* or *civitas* must establish laws common to all, and that are observed by all, in order to promote the common good. The laws of the City of God serve to promote an end or objective that is uniquely pursued by those within the City of God: eternal communion with God. It thus follows that the City of God, although comprised of persons who also are members of a temporal society, must constitute a distinct and self-governing sovereignty.

VI. THE RELATIONSHIP BETWEEN THE TWO CITIES: AN EMERGING THEORY AND

²¹² Morino thus notes that Christianity brought about a revolution. Because the pagan State was a “political, ethical, and religious unity,” a “universal religion which would take into account the special interests of a number of independent states and which could be practiced by all was not even conceivable.” Outside of Christianity, no attempts have been made to separate and distinguish Church and State. *Id.* at 29-30.

²¹³ *Id.* at 44.

²¹⁴ *Id.*

²¹⁵ *Id.* at 33 (the Church is concerned with the Christian’s inner life, and it produces effects that cannot be seen); *see also id.* at 67 (the Church, through its clergy, carries out the work of redemption “in time” – i.e., in the realm of the temporal).

ITS SOLIDIFICATION BY AMBROSE

That the City of God must exist as a sovereign authority directly impacts what can constitute a proper relationship between Church and State. Scholars describe Ambrose as viewing the Church and State as “two independent authorities, each autonomous in its own sphere but lending aid and assistance to the other.”²¹⁶ More specifically, Ambrose is credited with having the keen intuition that, in stark contrast to the traditional practice of the State having a central role in religious affairs, the Christian Church must be independent from the State as to the things of God or sacred matters and that as to such matters, the Church must be considered superior to the State. Yet, at the same time, Ambrose recognized that a certain amount of collaboration between Church and State was necessary and appropriate.

A. AS A DISTINCT SOVEREIGNTY, THE CITY OF GOD MUST BE INDEPENDENT FROM THE STATE

A necessary corollary to the fact that the *Civitas Dei* constitutes a distinct society is that the society must be self-governing. As noted, citizens of the *polis* attain the right to the enactment and just enforcement of laws aimed at enriching the individual and collective lives of the citizenry. Laws are necessary and ensure order within society. Further, for the society of the faithful, an additional function exists for government and its laws: that of maintaining and teaching the faith, and determining the application of the faith to emerging circumstances that confront societies. The question becomes who should have a role, and what that role should be, in making laws and keeping purity of faith.

In the *polis*, the enactment and enforcement of the laws occurs through the interplay of appropriate government institutions and active citizen participation. Christians understood from

²¹⁶ *Id.* at 82, n.31 (quoting PIERRE BATIFFOL, *LE SIEGE APOSTOLIQUE* 79 (Paris 1924): “It is customary to attribute all the doctrine of the Middle Ages on the relations between Church and State to this famous letter of Pope Gelasius to Emperor Anastasius, but we must not forget that Ambrose was the first to attack this problem and lay down the principles, which Gelasius simply borrowed from him.”). *See also id.* at 69.

the beginning the need for authority within the society of the faithful and, as the needs of the society grew, the Church adopted recognized institutional structures. Specifically, geographic areas were recognized as subdivisions of the Church, each under the authority of a bishop.²¹⁷ Further, the Church from the beginning used a “council” format – a council being a meeting of bishops – for resolution of matters of doctrine and discipline.²¹⁸

Yet, without the assistance of the first Christian emperors, the governmental institutions of the new society could not function. The City of God, in its fledgling state, lacked the type of financial resources possessed by earthly societies, and the means of attaining them. Given its “non-territorial” nature, even garnering the attendance of all bishops for council meetings was a formidable obstacle. Because it was necessary – and because it was the logical thing to do given the State’s traditional role in religious affairs in antiquity – Constantine did not hesitate to facilitate the holding of the first ecumenical council, the Council of Niceae.²¹⁹ Similarly, because the emerging Church also lacked any means of enforcing the decrees of councils in the event that individual bishops elected to ignore them, Constantine provided assistance in whatever form was necessary; e.g., imperial forces would escort deposed but uncooperative bishops to their place of exile.²²⁰ Historians note, however, that Constantine largely respected the bishops’

²¹⁷ See DANIEL-ROPS, *supra* note 67, at 237 (describing Christian communities within each administrative center of the imperial region – each having a viable organizational structure); *id.* at 239-42 (describing the emergence of, and the various functions of, deacons and deaconesses, presbyters, and bishops).

²¹⁸ See *supra* notes 89 to 95 and accompanying text.

²¹⁹ Bishops had called a meeting in Ancyra in Antioch; and Constantine later transferred the meeting to Niceae and transformed it to a general council. ARMSTRONG, *supra* note 10, at 269. See also DRAKE, *supra* note 65, at 125 (noting the council would encompass the entire empire and hypothesizing that the change occurred because Constantine understood the key role of the presiding bishop, learned that the see of Ancyra, Bishop Marcellus, was a “a virulent opponent of Arianism,” and wished to avoid any conjecture of a “rigged” council, such as occurred in the Donatist dispute). See also MORINO, *supra* note 10, at 91 (explaining that emperors had summoned councils upon request by bishops, and provided the means of travel and lodging, and executed petitions and decrees).

²²⁰ Additionally, Constantine recognized the importance of Christians taking disputes to the Church, and thus had granted the right of plaintiff to seek a remedy bishop, and directed civil judges to execute the sentences of ecclesiastical tribunals. Over time, as the civil courts declined, an authentic episcopal court evolved. PAREDI, *supra* note 9, at 135-36

role in matters of doctrine and discipline.²²¹ At the same time, historians agree that some later emperors began to intervene more readily for political purposes, namely, unity of empire, and further agree that the acquiescence to an imperial role in ecclesiastical affairs was limited largely to the Eastern portion of the Empire where the Arian influence was much greater.²²² The Church, especially in the Western portion of the empire, pushed back against imperial intervention in Church affairs. Notably, Ambrose was not the first to push for independence, but his actions were the most influential and spectacular.

i. SOME SIGNIFICANT CHURCH ACTIONS TOWARDS INDEPENDENCE OCCURRED BEFORE AMBROSE

The concept of separation of Church and State was being forged from the beginning of the Church's emergence as an institution. Historians generally point to the actions of the bishop of Rome relating to the Donatists' saga and the Council of Sardica as the first real indicators of the Church's stance for independence. Additionally, Lucifer of Cagliari had spoken out strongly in favor of separation of Church and State.

The Donatists' dispute involved the validity of ordinations by a bishop who had committed apostasy during the persecutions. Following the view promoted by the prominent African theologian Cyprian of Carthage to the effect that heretics could not validly perform sacraments such as baptisms, a group of bishops known as the Donatists deposed and replaced Bishop Caecilian solely because he had been consecrated by a "traitor."²²³ In 312-313, however, Constantine recognized Caecilian as the proper bishop of Carthage, for purposes of monetary

²²¹ See, e.g., PAREDI, *supra* note 9, at 86-87 (explaining that it was only in his later years, and while under the influence of Arians bishops in the Eastern portion of the empire, that Constantine intervened in some purely ecclesiastical matters).

²²² See PAREDI, *supra* note 9, at 87-88 (explaining that Constantius, in particular, came to believe that the emperor had a prerogative to intervene in Church matters, and that, under Constantine II and Constantius, intolerance of paganism grew).

²²³ Kretschmar, *supra* note 29, at 25-28.

grants and other privileges.²²⁴ A key reason for recognizing Caecilian as the proper bishop was because he was in communion with the Bishop of Rome.²²⁵ Armstrong notes that “the whole handling of the controversy with the Donatists shows Constantine’s sense of responsibility for the unity of the Church at a very early date and his intervention with political means.”²²⁶

As the saga of the Donatists continued, the Church made one of its first significant moves in maintaining independence from secular control. The Donatists protested Constantine’s grants, and petitioned the Emperor to initiate an investigation.²²⁷ Desiring a resolution to the schism, Constantine granted their request and entrusted the dispute to a tribunal described as akin to the “civil service courts,” comprised of three bishops from Gaul and the bishop of Rome.²²⁸ Margull notes that Constantine intended the bishops to serve as “imperial commissioners,” but “the bishops obviously did not accept this role . . . [f]rom the beginning, they understood themselves not as impartial arbiters but as a synod under the local bishop, Miltiades of Rome, who called in fifteen additional Italian bishops.”²²⁹ Parker similarly explains that, although Constantine may have intended the bishops to act as “essentially a commission of royal delegates,” Miltiades

²²⁴ See PARKER, *supra* note 34, at 54-55.

²²⁵ Kretschmar notes: “The emperor’s advisor, Bishop Ossius (or Hosius) of Cordova, and the Roman bishop stood in ecclesiastical communion with Caecilian, who therefore received the money.” Kretschmar, *supra* note 29, at 26.

²²⁶ See ARMSTRONG, *supra* note 6, at 265-71 (explaining the grant to the Catholic clergy of funds and of immunity from civic burdens and taxes as evidence of Constantine’s attempt to “end the Donatist schism by drawing the Donatists back into the Catholic Church with special privileges”).

²²⁷ Kretschmar opines that Constantine “forced the Donatists into a position where they had to turn to him.” Kretschmar, *supra* note 29, at 30. However, it is not clear that the Donatists had to petition Constantine to investigate the claims. The petition arose because of Constantine’s decision to award a grant in aid to Caecilian. But, since the issue involved the validity of Caecilian’s ordination, the Donatists certainly could have petitioned some authority within the Church. A reasonable premise is that a decision within the Church that would have carried weight was a decision by the bishop of Rome; and that he viewed Caecilian as validly ordained was known. The Donatists thus elected to petition Constantine.

²²⁸ *Id.* at 26. See also PARKER, *supra* note 34, at 54-55 (explaining various views as to Constantine’s intent). Thinking that they might be more neutral, the Donatists had requested arbiters from Gaul. Constantine’s appointment was thus a bit of a compromise. Constantine also arranged for Caecilian to be brought to Rome along with ten representatives of the Donatist position, and ten representatives of the position supporting Caecilian. See DRAKE, *supra* note 65, at 117.

²²⁹ Kretschmar, *supra* note 29, at 27.

“adroitly exceed[ed] the Emperor’s instructions.”²³⁰ Recognizing and analogizing to the Roman view of baptism – that a baptism by a validly ordained minister was valid, notwithstanding the minister’s apostasy²³¹ – the tribunal found that the position of the Donatists was heretical.²³²

Kretschmar notes that, through this synod, the Church in the western portion of the Empire for the first time exerted its independence in dealing with the emperor.²³³ That is, Constantine likely tried to compel use of a tribunal of his making in hopes of achieving a compromise that would heal the schism and foster unity. The bishop of Rome, however, chose not to act as an arm of the emperor, but rather, transformed the tribunal to a “synod” – the decision-making body that had come to be used by the Church. Because the issue was one of doctrine, the Church acted as the Church. Parker aptly notes: “[i]t is significant to find as early as 313 a certain uneasiness, at least in Western Christendom, over the masterful way in which the first Christian Emperor was already dealing with Church affairs.”²³⁴

Despite being decided by a Church synod, the Donatists were not happy with the outcome and continued to pursue their position.²³⁵ Notably, Constantine’s reactions to the continuing Donatists’ schism readily reveals his dual positions; his desire as emperor to take action to restore unity, and his respect for the Church’s authority – and thus some measure of independence – in matters of doctrine at that point in time. Understanding the Church’s preference for a synod, Constantine summoned a council at Arles in Gaul to include bishops from all the Western provinces, thereby seeking to ensure “unity” within that portion of the

²³⁰ PARKER, *supra* note 34, at 55.

²³¹ As St. Augustine later explained, such a baptism is valid because “baptism is the baptism of Christ . . . it is effectual through the word of God, not through the merits of the minister who administers the sacrament.” Kretschmar, *supra* note 29, at 28.

²³² *Id.* at 27.

²³³ *Id.* at 27 (Kretschmar describes it more negatively, however, opining that “it was through this synod that the Western [C]hurch for the first time forced its will upon the emperor.”).

²³⁴ PARKER, *supra* note 34, at 55.

²³⁵ Indeed, Kretschmar opines that the decision “hardened the schism.” Kretschmar, *supra* note 29, at 28. Kretschmar’s view is that the Donatists believed that the synod adopted the Roman view not because it was the “correct view,” but, rather, because the synod was heavily weighted with Italian bishops. *Id.* at 27.

Empire which he governed. He had thus “acquainted himself with the conciliar law of the Church and he accepted it.”²³⁶ The issue, again, was doctrinal. Because the Donatists continued to promote their perspective, the Council of Arles in 314 more specifically addressed the issue of the validity of baptisms administered by heretics (an issue related to, but distinct from, the issue at the center of the Donatist schism). This council of all Western bishops similarly adopted the Roman view and rejected the view espoused by Cyprian of Carthage, which had pre-dated and spawned the Donatist schism.²³⁷ When the Donatists persisted further with another appeal, Constantine wrote:

They claim judgment from me, who am awaiting the judgment of Christ; for I declare, as is the truth, that the judgment of bishops ought to be looked upon as if the Lord himself were sitting in judgment They have lodged an appeal, as is done in the lawsuits of pagans; for pagans are accustomed at times to avoid the lower courts where justice can be quickly discerned and through intervention of the authorities to resort to an appeal to higher courts. What is to be said of these defamers of the law, who, after rejecting the judgment of Heaven, have thought that they should demand judgment from me.²³⁸

This text reveals not only Constantine’s impatience with the Donatists,²³⁹ but more importantly, his strong conviction in the Church’s authority – as expressed through the Church’s institutional mechanism – on matters of doctrine.²⁴⁰

²³⁶ *Id.* at 28.

²³⁷ Under this view, any baptism administered using the correct form and intent is valid. That is, a baptism is valid if preceded by instruction in the correct confession of faith and performed “in the name of the Father, the Son, and the Holy Spirit.” *Id.* at 29.

²³⁸ Dvornik, *supra* note 92, at 8.

²³⁹ See DRAKE, *supra* note 65, at 119 (explaining that, because, in Constantine’s view, “appeals from decisions fairly rendered were . . . devices used by ‘heathen’ (gentes) to circumvent justice,” the Donatists had begun to look like “obstructionists.”).

²⁴⁰ See PARKER, *supra* note 34, at 56 (noting the evidence of the authenticity of the letter; and characterizing it as expressing the view that the “decision of bishops should be received as that of Christ Himself”). See also DVORNIK, *supra* note 92, at 8. Notably, historians do not view Constantine’s actions relating to the Council of Nicea as being inconsistent with this view. Although he played a dominant role, the emperor likely would not have any right to vote and, further, as historian T.M. Parker concluded, it “seems clear” that the bishops assembled at Nicea “did not have to accept an imperial Diktat upon the theological questions at issue there and were left fairly free to discuss and decide them.” PARKER, *supra* note 34, at 53 (noting that, although Eusebius (as an avid admirer of Constantine)

The Council of Sardica similarly sheds light on the Church's evolving stance as to its independence. As noted, one consequence of the growing Arian movement and its influence on the Church in the Eastern portion of the Empire was the emergence of a strong secular role in the appointment of bishops in the churches in local communities in the East.²⁴¹ Actions by Pope Julius in 341 and the Council of Sardica in 342 provide key indicators of the Western Church's opposition to the emerging Eastern view of imperial control of the Church.

The action was prompted after the Eusebius group succeeded in deposing, via a synod in Tyre in 335, the Eastern bishop Athanasius, see of Alexandria, who had tried to suppress the Eastern opposition to *homoousios*.²⁴² Athanasius appealed to Rome, and Bishop Julius invited both parties to present their case to a Roman synod. In 341, a council of fifty Italian bishops annulled the decision of the council of Tyre and ordered the reinstatement of Athanasius.²⁴³ Bishops in the East viewed this as a usurpation of rights, and Julius convened the Council of Sardica, inviting bishops from both the East and the West. In this instance, the council mechanism failed as the bishops could view themselves only as representing their respective views: as partial councils of the East and West.²⁴⁴ Sardica did not end the matter and Arianism continued to spread under Constantius and other emperors.

However, the council remains significant in terms of theology and canon law – both reflecting the Western Church's discomfort with imperial control. Theologians were able to articulate the Western view that, because Christ is the Son of God in a way different from the manner in which Christians are made in the image of God, the emperor could not be viewed as having a divine likeness similar to Christ's.²⁴⁵ Similarly, canons were adopted which were more

plays-up Constantine's role, Athanasius "who had experience of later Emperors' interference in the doctrinal field, does not suggest that Constantine unduly pushed his own point of view.").

²⁴¹ Williams, *supra* note 6, at 10. Traditionally, and in the Western Church at this time, bishops were selected by their local churches.

²⁴² Kretschmar, *supra* note 29, at 52-53.

²⁴³ *Id.* at 54.

²⁴⁴ *Id.* at 53.

²⁴⁵ Williams, *supra* note 6, at 295-96.

express than Nicaea's canon 6 that "the ancient customs" were not to be changed. The Sardica canons clarified that bishops should use restraint in taking ecclesiastical questions before civil authorities or imperial tribunals;²⁴⁶ and clarified that the highest appellate authority is not a synod, but the bishop of Rome.²⁴⁷ The Eastern bishops challenged the validity of the canons by charging impropriety in the papal convocation of the council without imperial orders. Pope Julius' answer noted that "it was not the emperor's convocation, but the recognition of the synodal decisions by the whole Church that gave a council its general and abiding character."²⁴⁸

The growing resistance in the western portion of the empire to undue imperial control prompted key theological developments supporting the Western view. In addition to Ambrose, Lucifer of Cagliari is often cited as making significant theological contributions to the development of the concept of separation of the Church and State. By 344, the Arians understood the Son of God as being "similar" to God (*homoios*) and understood God more as the "Supreme God of pagan eclectic piety," than as the God made known through the Hebrew Scriptures.²⁴⁹ Moreover, as the Arian influence spread throughout the Eastern Empire, the appointment of bishops became more associated with imperial control than local church control; and the Eastern Arian bishops were more amenable to imperial control of all ecclesiastical matters.²⁵⁰ In his writings, Lucifer of Cagliari admonished both the emperor and the wayward bishops. Characterized as a type of contemporary Elijah, Lucifer wielded Old Testament scriptural texts rebuking kings in his attempts to explain to Constantius the importance of

²⁴⁶ Kretschmar, *supra* note 29, at 53 (citing canons 8, 9, and 11).

²⁴⁷ *Id.* (citing canons 3 and 4). See also PAREDI, *supra* note 9, at 31 (detailing several declarations of the Council at Sardica: "The final statement of the council was a solemn declaration of the right of the Church to its spiritual independence and the expression of a desire that the civil magistrates should not occupy themselves with matters about which only the Church [can] decide. In matters of ecclesiastical discipline, the Council Sardica ordered that an end should be put to the abuse of ordaining a rich layman, lawyer, or public official as bishop. . . . [a]nother abuse was the passing of a bishop from one see to another.").

²⁴⁸ See Dvornik, *supra* note 37, at 12.

²⁴⁹ Williams, *supra* note 6, at 7, 309.

²⁵⁰ See *supra* notes 32 to 38 and accompanying text; see also *supra* note 221.

obedience to spiritual authority.²⁵¹ Like all Christians, a Christian king must adhere to the truth in matters of doctrine and morality; and that truth is preserved by following the direction of the bishops. Using the understanding articulated as far back as the Donatist schism regarding the “power of the keys,”²⁵² Lucifer reminds Constantius that “the very Christ whom he denied” had given to the bishops “the power of the keys, that whatsoever they should bind on earth will be bound in heaven, [and] that therefore even a profane emperor is subject to the bishops.”²⁵³

Lucifer makes clear, however, that the truth is preserved only by non-heretical bishops. He refers to the Arian bishops as *pseudoepiscopi*: false bishops who were “personified” in the emperor and who, due to their denial of the full deity of the Son and the Holy Spirit, could not serve as channels of the Holy Spirit.²⁵⁴ True bishops obtained their authority through proper succession from Christ. The authority of the Arian bishops came only from the emperor.²⁵⁵

Ambrose’s development of the concept of the proper relationship between Church and State was thus not unprecedented. His statements and actions followed a definite lead initiated by the bishop of Rome. Nonetheless, his contribution remains among the most definitive and spectacular.

²⁵¹ Williams, *supra* note 6 at 8, 310 (noting that Athanasius called Lucifer the Elijah “temporibus nostris”).

²⁵² See Kretschmar, *supra* note 29, at 18. Cyprian of Carthage had to deal with the exegesis of Stephen of Rome regarding *Matthew* 16 (recording Christ’s gift of the “keys to the kingdom of heaven” to Peter, after Peter – due to revelation provided by the Father – identifies Jesus as “the Messiah, the Sons of the living God”).

²⁵³ Williams, *supra* note 6, at 8. Williams notes that Hilary of Poitiers similarly admonished the Arian bishops for depriving the kingdom of the keys which the episcopate obtained through Peter’s confession. *Id.*

²⁵⁴ *Id.* at 7.

²⁵⁵ *Id.* at 6-7. Williams explains an important distinction between the Catholic and Arian bishops. Catholic bishops traced their lineage and authority to the Apostles and Christ. The Arian bishops, in contrast, because they viewed the emperor as an “instrument of the Eternal Logos,” regarded imperial appointments or approval of elections as the necessary validation of their authority.

Another important aspect of Lucifer’s theology is his understanding of the Eucharistic nature of the Church. Lucifer understands that it is through the Eucharist that one is covenanted with both God and the “ongoing Israel.” *Id.* at 309-10. That is, the Eucharist makes the Church: the Church is the “Body of Christ.” To Lucifer, adopting heretical ideas is akin to dismemberment. He chastises Constantius for “tearing limbs, i.e., bishops, from the Body of Christ,” and views Arians as members “cut off” from the Church. *Id.* at 309. Lucifer refers to Arians as “Gentiles without the Law” because of their loss of proper guidance through the keys; and as “Judaizers” due to their denial of the full deity of the Son. *Id.* This, of course, is consistent with the Church’s stance that the Arian’s could not perform a valid Eucharist.

ii. AMBROSE'S ACTIONS SOLIDIFIED THE CHURCH'S VIEW OF ITS SOVEREIGNTY

Historians uniformly agree that Ambrose played a crucial role in forging the understanding that an emperor had no role in decision-making when it came to ecclesiastical matters, including matters central to the purity of faith and also matters of a more disciplinary nature. The viewpoints and teachings of Ambrose, discussed in more detail *infra*, flow largely from his understanding of the nature of the Church and from distinctions between the clergy and the laity as it relates to authority over doctrine. But what truly set Ambrose apart from other bishops of his time was his firm stance in direct confrontations with emperors. McLynn, who regards Ambrose's position in Milan as somewhat overstated,²⁵⁶ nonetheless notes that:

Ambrose conquered three emperors in his cathedral at Milan, and each victory was more spectacular than the last. He preached eloquently to Gratian upon the faith; blockaded himself against Valentinian II in a triumphant campaign of defiance; and brought Theodosius to his knees to make an unprecedented act of public penance. All three are reported to have died with the bishop's name on their lips. It is a record quite without parallel. Other combative bishops, Athanasius or Lucifer, fought their rulers from a safe distance: sustained proximity even to a sympathetic emperor proved fatal to John Chrysostom at Constantinople, and Gregory of Nazianzus, baffled and embittered, resigned from the same see after a matter of weeks. Ambrose's unique record sets him apart from contemporary churchmen and defines him historically.²⁵⁷

In his dealings with the emperors, Ambrose was both explicit and forceful regarding his view of the proper roles of both bishops and emperors.

For example, early in his tenure as bishop Ambrose was instrumental in drafting a synodal letter to Gratian in 378 that expressly reminded the emperor that “only bishops are

²⁵⁶ See MOORHEAD, *supra* note 15, at 13 (explaining that McLynn regards Ambrose as “a figure whose position was less secure and successes less clear-cut than they have hitherto been seen.”).

²⁵⁷ See MCLYNN, *supra* note 13 at xiii.

competent to judge bishops.”²⁵⁸ The same letter also emphasized the importance of civil assistance in enforcement: the letter explained that the bishop of Parma and the bishop of Puteoli had been deposed by a council of bishops, but remained in office, and stated that “[t]he prefect of the praetorium of Italy or the vicar of Milan or of Rome should see to it that the conciliar decisions are enforced.”²⁵⁹ Gratian’s response expressly agreed to most of Ambrose’s views.²⁶⁰ The same sentiment was reinforced in a synodal letter to Gratian following the Council of Aquileia in 381: the Church retained the right to oversee matters such as the election or deposition of bishops, and the State had an obligation to assist as needed.²⁶¹

In addition to being explicit, Ambrose did not hesitate to force his hand. This is perhaps best illustrated in Ambrose’s dealings with Theodosius relating to the incident at Callinicum. At Callinicum, an important military post, Christians in 388 had burned the Jewish synagog in the city. Because outbreaks of anti-Semitism were not uncommon, Theodosius sought to preserve order by directing the count to find those involved and to “compel the bishop of Callinicum to rebuild the synagog.”²⁶² Ambrose first wrote a letter detailing the inappropriateness of having Christian resources used to build a synagog, and strongly suggesting that the emperor reconsider his orders. When Theodosius did not respond, Ambrose delivered his message to the emperor

²⁵⁸ See PAREDI, *supra* note 9, at 178-79. The synodal letter, *Et hoc gloriae*, resulted from a meeting of bishops held in Rome in the final months of 378. *Id.* at 179. The bishops came from every part of Italy. *Id.* at 178. One matter considered was a criminal charge ledged against Pope Damasus. *Id.* The case had been tried before the prefect of Rome, and Gratian had absolved Damasus. *Id.* Damasus nonetheless wanted the matter investigated by bishops. *Id.* Paredi notes that those who have studied the letter believe that its form and content show that it was drafted by Ambrose himself. *Id.* at 178.

²⁵⁹ *Id.* at 179.

²⁶⁰ *Id.* Paredi explains Gratian’s response as follows: “Every bishop condemned by a council of Catholic bishops not submitting to such a decision and refusing to leave his see should be obliged to do so by the prefect of the praetorium of Gaul or of Italy. A bishop unwilling to answer to a summons before other bishops acting as his judges should be conducted to Rome under the care of the civil authorities. If [distance is a problem] the case should be deferred to the bishop of the metropolis . . . of the province.” *Id.*

²⁶¹ *Id.* at 194-95 (explaining the synodal letter *Benedictus*, as renouncing imperial interference in religious matters, but affirming the appropriateness of State assistance in carrying out decisions reached by ecclesiastical authorities). Paredi quotes Ambrose: “It is the duty of the State to give to the Church that material assistance which she demands. It is also to the interest of the State to do so, and Christ our Lord will reward it for this assistance.” *Id.* at 195. Gratian again granted the requests: troublemakers were dispersed and heretical bishops banished from their sees. *Id.*

publicly at church: as part of his sermon during the celebration of the Mass, Ambrose compelled the emperor to openly admit that his order to rebuild was overly harsh and expressly promise to not bring to trial the Christians involved.²⁶³ To Ambrose, this was a matter of religion: first, non-Christian temples should not be attributed to Christian resources, and second, while bishops could be judged and condemned for violations of the law, civil authorities had to respect that a bishop – having been consecrated to God – should be subject to ecclesiastical authorities only.²⁶⁴

Paredi also notes that it is likely that Ambrose was insistent about getting an express repudiation of the order from Theodosius because Theodosius, having spent years as Augustus of the eastern portion of the Empire – where imperial intervention in ecclesiastical matters was more accepted – needed a lesson on Ambrose’s view of the relations between Church and State.²⁶⁵ Throughout Ambrose’s tenure as bishop – and, indeed, throughout his lifetime – the key menace to the health of the Church (collectively and to individual members) was Arianism.²⁶⁶ And, from Ambrose’s perspective, the persistence of Arianism was due in large part to the unwarranted interference in Church affairs by various emperors over the years.²⁶⁷ Of the emperors with whom Ambrose dealt, he had had the least opportunity to influence the thinking of Theodosius and, thus, a heavy hand relating to the Callinicum matter was appropriate for the long-term health of the Church’s independence. Thus, although other bishops had begun advocating for the independence of the Church, Ambrose was instrumental in solidifying and maintaining the Church’s separation from strong imperial authority.

²⁶² *Id.* at 300-01.

²⁶³ *Id.* at 301-02.

²⁶⁴ *Id.* at 301-03.

²⁶⁵ *Id.*

²⁶⁶ *See id.* at 175-200.

²⁶⁷ PAREDI, *supra* note 9, at 303.

B. IN ITS REALM, THE AUTHORITY OF THE CHURCH IS SUPERIOR

In the course of his dealings with several emperors, Ambrose also began to flesh out the contours of the proper relation between Church and State. Ambrose recognized the legitimacy of civil authority, within its realm, but he also recognized the superiority of Church authority in its realm. As noted, the legal order within a sovereign binds the community, enabling persons to attain their proper end through common means. Societies can help people attain the “ultimate end” because of the authority structures employed. Authority “belongs to the very essence of a perfect society.”²⁶⁸ Following St. Paul, Ambrose taught that every power comes from God.²⁶⁹ Because the world comes from God, “every form of earthly rule should seek its authority from Him.”²⁷⁰ Abuse of authority, of course, is evil. “The ordering of authority is from God; the desire for power from the devil”²⁷¹ Because authority is from God, rulers are dependent upon God and owe a duty to God. Speaking of the duty of rulers, Ambrose notes: “He knew that he was held by stricter ties since his debt was greater, for more is demanded of one who has received more.”²⁷² Rulers have a duty to observe their own laws, and to strive for justice.²⁷³ Further, Ambrose taught that it is proper for Christians to be subject to authority, even the authority of the *Civitas Terrena*: “Tribute belongs to Caesar. It is not denied.”²⁷⁴

Importantly, however, Ambrose saw a distinction between the authority of the *Civitas Terrena* and the authority of the *Civitas Dei*. Because the citizens of the City of God are also

²⁶⁸ MORINO, *supra* note 10, at 45 (citing ALAPHRIDUS OTTAVIANI, *INSTITUTIONES IURIS PUBLICI ECCLESIASTICI* 37 (Rome 1948)).

²⁶⁹ *Romans* 13:1-4 provides: “Let every person be subordinate to the higher authorities, for there is no authority except from God, and those that exist have been established by God. Therefore, whoever resists authority opposes what God has appointed, and those who oppose it will bring judgment upon themselves. For rulers are not a cause of fear to good conduct, but to evil. Do you wish to have no fear of authority? Then do what is good and you will receive approval from it, for it is a servant of God for your good. But if you do evil, be afraid, for it does not bear the sword without purpose; it is the servant of God to inflict wrath on the evildoer.”

²⁷⁰ MORINO, *supra* note 10, at 57.

²⁷¹ *Id.* at 57. “There is not therefore fault in the office but in the minister: God’s ordination cannot offend, but the action of the administrator can.” (quoting Ambrose and citing *In Luc.* 4.29 (PL 15:1620)).

²⁷² *Id.* at 58 (quoting Ambrose and citing *Apolog. Proph. Dav.* 51 (PL 14:871)).

²⁷³ *Id.* (citing *Ep.* 21.9 (PL 16:1004)); *Id.* at 59 (citing *In Luc.* 6.6 (PL 15:1670)).

citizens of an earthly society, it becomes necessary to divide the realms of authority. Christians should obey the authority of the *Civitas Terrena*, but they are – above all – subject to the authority of the *Civitas Dei* (Christ).²⁷⁵ The laws of the earthly society thus cannot require conduct inconsistent with the City of God and, accordingly, earthly societies must be guided by the City of God on certain matters. In essence, as to matters within its realm, the authority of the City of God must be considered superior. To Ambrose, the superiority of the Church on certain matters necessarily flowed from the nature of the Church and its authority structure.

Any authority must be competent and, given the end or objective of the City of God, Ambrose understood that a special type of authority structure was required for the Church. Although the Church adopted various institutional forms for the exercise of authority, forms understood as being appropriate for a perfect society (councils, magistrates, and assemblies), the Church from the beginning recognized the need to properly channel the true authority within the Church – Christ, the Head of the Church. Because the Church is a real and tangible society comprised of humans, human authority is essential. But, it is essential that human authority convey the authority of Christ. Logically, then, the earthly authority within the City of God necessarily must share in the divine power.

As detailed in this article, the essence of the Church is its union with Christ. That union is a reality: a reality ensuring that the Church is being guided and driven by Christ. Ambrose noted: “Why is a ship chosen for Christ to sit in and from which he may teach the crowd except that the ship is the Church, which sails well in this world with the full sail of the Lord’s cross through the breath of the Holy Spirit?”²⁷⁶ That the Church is the Spouse of Christ was also significant to Ambrose. By making the Church His bride, “He confers upon it all the beauty and

²⁷⁴ *Id.* at 81 (quoting *Sermo contra Auxent.* 35 (PL 16:1018)) (Latin included).

²⁷⁵ The Church is the Body of Christ, and Christ is its Head. See *supra* notes 269 -274 and accompanying text.

²⁷⁶ MORINO, *supra* note 10, at Chapter V (quoting Ambrose and citing *De virginitate* 118 (PL 16:297)) (Latin included).

privileges of the spouse of God.”²⁷⁷ The sharing in the divine power is also a necessity given the objective which the Church’s authority exists to help men attain – their supernatural happiness in heaven. As Ambrose noted: “Life eternal is conferred through the Church;”²⁷⁸ the “Synagogue looks to the day, the Church to immortality;”²⁷⁹ and, the “Church . . . is the Mother of the living.”²⁸⁰

Ambrose emphasized that the human authority figures in the City of God have a more direct link to God than the authority figures in the *Civitas Terrena*. The Gospels make clear that Christ exercised divine authority.²⁸¹ According to St. Ambrose, “Christ granted this to his apostles and it has been transmitted by the apostles to the offices of bishops.”²⁸² Morino details Ambrose’s view of the authority of bishops as follows:

The bishops are the successors of the prophets of the Old Testament and of the apostles of the New.²⁸³ As heads of the Church, they have the right to teach: “We cannot now escape the duty of teaching.”²⁸⁴ They give orders²⁸⁵ and act as judges and arbitrators. . . .²⁸⁶ Moreover, they are directly responsible for the things of God: “In a cause of God, where there is danger to the community, it is no small sin to act as though one saw nothing.”²⁸⁷

Bishops thus have vast authority, which they exercise pursuant to a delegation from Christ.

Moreover, the statements and actions of Ambrose demonstrate that he followed the trend

²⁷⁷ *Id.* at 65.

²⁷⁸ *Id.* at 66 (quoting Ambrose and citing *De inst. virg.* 24 (PL 16:311): “*Per Ecclesiam vita confertur aeterna.*”).

²⁷⁹ *Id.* (quoting Ambrose and citing *Ep.* 74.5 (PL 16:1256) (Latin included)).

²⁸⁰ *Id.* at 67 (quoting Ambrose and citing *In Luc.* 2.86 (PL 15:155) (Latin included)).

²⁸¹ *See supra* note 78.

²⁸² MORINO, *supra* note 10, at Chap. V (quoting Ambrose and citing *De poen.* 2.12 (PL 16:499): “*Concessit hoc Christus Apostolis suis, quod ab Apostolis ad sacerdotum officia transmissum est*”).

²⁸³ *Id.* at 25 (citing *Ep.* 41.2 (PL 16:1113); *In Ps. XXXVII* 43 (PL 14:1032); and *In Luc.* 4.52-53 (PL 15:1628) and *In Luc.* 6.65 (PL 15:1685)).

²⁸⁴ *Id.* at 25 (quoting Ambrose and citing *De officiis* 1.2 (PL 16:24) (Latin included)).

²⁸⁵ *Id.* at 25 (citing *Ep.* 41.2-3 (PL 16:1113)).

²⁸⁶ Morino added: “They can refuse to intervene when the question in dispute is a financial one; and when they do decide such cases, they should be careful to preserve equity.” *Id.* at 25.

²⁸⁷ *Id.* at 25 (quoting Ambrose and citing *De officiis* 2.125 (PL 16:136) (Latin included)).

of recognizing the bishop of Rome as the Church's earthly foundation.²⁸⁸ The ultimate foundation and cornerstone of the Church is Christ, but Christ also described Peter as a rock.²⁸⁹ Ambrose noted that Peter "received the title because of the firmness and constancy of his faith and 'so that there might be in him the foundation of the Church and the authority to teach.'"²⁹⁰ To Ambrose, then, Rome's importance stemmed from its association with Peter.

The bark of Peter becomes the bark of the Church through the power of Christ, and this bark cannot be disturbed since it is ruled by Him in whom is the support of the Church: "For how could it be disturbed since it was ruled by Him in whom is the foundation of the Church?"²⁹¹

To Ambrose, the Catholic faith – the true faith – could be found when bishops were in union with the bishop of Rome.²⁹² Union with Rome was crucial: "They do not have the inheritance of Peter who do not have the See of Peter."²⁹³

Ambrose thus envisioned an authority structure for the City of God that would serve to properly channel on earth the Church's true authority in Christ. All bishops had a special authority to teach, but union with Rome provided a mechanism to safeguard the purity of faith from human fallacies. However, like earthly rulers, Ambrose similarly cautioned bishops and

²⁸⁸ See DANIEL-ROPS, *supra* note 67, at 246-50 (detailing very early evidence of solid recognition of a type of "primacy" associated with the office of the bishop of Rome). In addition to the statements noted, Ambrose's allegiance to the bishop of Rome was demonstrated by his actions at the Council of Aquileia in 381. See *id.* at 15-17 (describing a letter from Palladius to Ambrose after the Council, accusing Ambrose of being a servant of the bishop of Rome and thereby allowing the see of Rome to assert a primacy over the other bishops). See also PAREDI, *supra* note 9, at 192-95.

²⁸⁹ See *Matthew* 16:13-20 ("And so I say to you, you are Peter, and upon this rock I will build my church . . ."). See also *John* 21:15-18 (describing Jesus' similar directive to Simon Peter to "Feed my lambs" and "Tend my sheep.").

²⁹⁰ MORINO, *supra* note 10, at 9 (quoting *De virginitate* 105 (PL 16:293): "*In quo [Petro] esset Ecclesiae firmamentum et magisterium disciplinae.*") (citing *In Luc.* 6.97 (PL 15:1694).

²⁹¹ *Id.* 9-10 (quoting *In Luc.* 4.70 (PL 15:1633): "*Quemadmodum enim turbari poterat, cui praeerat is in quo Ecclesiae firmamentum est?*"). The association with Peter is crucial, because other bishops claiming primacy – e.g., the bishop of Constantinople – based their claim on non-biblical factors.

²⁹² *Id.* "He came together with the Catholic bishops, that is, with the Church of Rome." *Id.* at 10 (quoting *De excessu frat. Sat.* 1.47 (PL 16:1306): "*Percontatusque ex eo est utrumnam cum episcopis catholicis, hoc est, cum Romana Ecclesia conveniret.*"). Ambrose also wrote: "Where Peter is, there is the Church." *Id.* at 14 (quoting *In Ps XL* 30 (PL 14:1082): "*Ubi ergo Petrus, ibi Ecclesia.*").

²⁹³ *Id.* at 10 (quoting *De poen.* 1.33 (PL 16:476): "*Non habent enim Petri haereditatem, qui Petri sedem non habent.*").

priests to take care to avoid being influenced by Satan.²⁹⁴ Ambrose emphasized that the clergy must belong wholly and entirely to God. “One who has God for his portion should care for nothing except God, lest he should be impeded by some other obligation.”²⁹⁵ Similarly, the clergy should be detached from material things: “You should not become engaged in worldly business since you are fighting for God.”²⁹⁶ Rather, a priest must focus on his mission: “Vigorously carry out your appointed task.”²⁹⁷ Ambrose recognized that the clergy possess a special dignity, distinguishable from the dignity of the ordinary faithful, by virtue of their consecration and office: through their consecration and ordination, the priest becomes a minister of God.²⁹⁸ Because of this sharing in the divine authority, Ambrose understood the Church as wielding a superior authority as to matters within its realm. The issue thus becomes one of ascertaining the scope of the Church’s superior authority.

C. THE CHURCH’S REALM: SACRED MATTERS AND THINGS OF GOD

In the era of St. Ambrose, the superiority of the Church’s authority was delimited. The bishop’s superior authority did not extend beyond the realm of matters of faith and religion and matters pertaining to sacred things and consecrated persons.²⁹⁹ Ambrose notes: “who is there who can deny that in a question of faith, a question, I repeat, of faith, bishops are accustomed to

²⁹⁴ *Id.* at 58 (noting that Ambrose understood that power exercised in this world would be subject to the snares of the devil).

²⁹⁵ *Id.* at 27 (quoting Ambrose and citing *De fuga saec.* 7 (PL 15: 572)) (Latin included). A priest “must therefore deny himself and give up even his dearest friends in order that he may remain alone with God.” *Id.*

²⁹⁶ *Id.* at 27 (quoting Ambrose and citing *De officiis* 1.184 (PL 16:78)) (Latin included). Ambrose instructed the clergy to refrain from influencing persons as they made their wills. *Id.* (citing *De officiis* 3.58 (PL 16:162)). Ambrose also approved of laws invalidating bequests to the clergy from virgins and widows. *Id.* (citing *Ep.* 18.14 (PL 16:976)) (Latin included).

²⁹⁷ *Id.* at 28 (quoting Ambrose and citing *In Ps.* CXVIII 2.23 (PL 15:1218)) (Latin included).

²⁹⁸ *Id.* at 68. Citing Ambrose, Morino states: “A priest is God’s minister when he offers sacrifice, forgives sins, when he resists an emperor who is attempting to gain possession of a basilica, or when he condemns and imposes penance upon a ruler for some crime, such as the massacre at Thessalonica.” *Id.* (citing *Ep.* 17.13(PL 16:964)); *Ep.* 51.12 (PL 16:1163)) (Latin included).

²⁹⁹ Morino has compiled the many expressions used by Ambrose to describe the Church’s separate sphere of activity: the “cause of God”; the “cause of faith”; the “cause of religion”; the “rights of the Heavenly City”; the “rights of

pass judgment on Christian emperors, and emperors are not accustomed to pass judgment on bishops?”³⁰⁰ At official gatherings, Ambrose would interject: “It is a question of religion; as bishop I intervene.”³⁰¹ Ambrose understood that bishops must be instructed in the faith, but when so instructed they then serve as God’s instruments: “Let us not say what we wish but what we are commanded to say.”³⁰² However, in contrast to the traditional view in antiquity, the emperor’s authority did not share in the divine authority in the same way as did a bishop’s authority. As discussed in more detail *infra*, the emperor is a member of the laity – and thus lacks authority as to things of God. “Those things which are divine are not subject to the imperial power.”³⁰³

But what things constitute the “things of God”? Ambrose was at the forefront in drawing the dividing line. Ambrose firmly rejected the right of an emperor to influence doctrine as Constantius and Valens had tried in the Eastern portion of the empire. The records for the Council of Aquileia show that the bishops set the agenda and as to matters of faith, the emperor would not be heard. According to Ambrose:

If a bishop must be instructed by a layman, what will follow? Therefore let the layman dispute and the bishop hear! Let the bishop learn from the layman! But certainly, if we examine the context of Sacred Scripture or times past, who is there who would deny that in a matter of faith, in a matter, I say, of faith, bishops are accustomed to pass judgment on Christian emperors and not emperors on bishops?³⁰⁴

The letters to Gratian, discussed *supra*, similarly show the limited role of the emperor in matters such as the election of bishops.

Another episode, however, is particularly illustrative of the realm of the “things of God,”

priests”; the “rights of sacred things”; the “sake of the faith” or of “ecclesiastical rank.” *Id.* at 69 (Latin included).

³⁰⁰ *Id.* at 72 (quoting *Ep.* 21.4 (PL 16:1003-1004)) (Latin included).

³⁰¹ *Id.* at 71 (quoting *Ep.* 17.13 (PL 16:964)).

³⁰² *Id.* at 72 (quoting *Ep.* 40.4 (PL 16:1102): “*Id loquamur, non quod volumus, sed quod iubemur.*”); see also *id.*, at n.39 (“The work of the Holy Spirit is the duty of the bishop.”) (quoting *De poen.* 1.8 (PL 16:468)).

³⁰³ *Id.* at 71-72 (quoting *Ep.* 20.8 (PL 16:997)) (“*Ea quae sunt divina imperatoriae potestati non esse subiecta.*”).

³⁰⁴ *Id.* at 91 (quoting *Ep.* 21.4 (PL 16:1004)).

and of Ambrose's insistence that such things are beyond the realm of the emperor. Because Christian emperors had enabled the building of many basilicas for Christian worship, imperial personnel assumed that the emperor had authority over use of those buildings. Ambrose argued otherwise in an incident that turned into a true showdown between Ambrose and the imperial power. Much of the imperial personnel in Milan had Arian ties cultivated in the years before Ambrose was named bishop. Those ties were strengthened when twelve-year old Valentinian II became an Augustus of the West in 383 due to the death of Gratian. Valentinian's mother, Justina, had developed Arian ties long before Valentinian was transferred to Milan.³⁰⁵ In 385, an Arian bishop arrived in Milan and a small Arian community was organized. They asked Ambrose to transfer a basilica to them for worship. Ambrose refused and he and the Catholic community staged, in essence, a several month long "sit-in."³⁰⁶

Given Valentinian's age, imperial policy and personnel were heavily influenced by Justina and the court personnel. Ambrose's letters and sermons during this period were intended to convey to Valentinian II an understanding of the line between Church and State authority. In a Sunday sermon with Easter Sunday approaching, as the incident was coming to a head, Ambrose exhorted:

Why then are you disturbed? I shall never willingly desert you, though if force is used, I cannot meet it. I shall be able to grieve, to weep, to groan. Against weapons, soldiers, Goths, my tears are my arms, for these are a bishop's defence . . . I cannot take anything away from the temple of God; nor can I give up what I have received to guard and not to give up. In doing this I am acting for the emperor's good, for it would neither be right for me to give it up, nor for him to receive it. . . . [they] want to give to Caesar the right of the Church. . . . We pay to Caesar what is Caesar's, and to God what is God's. Tribute is due to Caesar, we do not deny it. The Church belongs to God, therefore it ought not to be assigned to Caesar. For the temple of God cannot lawfully be Caesar's. That this is said with respect for the emperor cannot be denied. For what is more respectful than

³⁰⁵ PAREDI, *supra* note 9, at 177-78 (describing how Justina was a significant patroness of the Arians in Sirmium in the mid-370s, and tried to stir-up the community against Ambrose in 376 when he arrived in Sirmium to help ensure the election of a Catholic bishop for the community).

³⁰⁶ *Id.* at 244-50 (the sit-in was carried out from January 386 through Easter week in April of 386).

that the emperor should be called the son of the Church?³⁰⁷

On Holy Thursday, the emperor put an end to the pursuit of the basilica.³⁰⁸

Yet, Ambrose did not – even during the basilica episode – teach that the State falls under the authority of the Church. Rather, Ambrose’s statements during this incident and others clearly acknowledge that the earthly governing power continues to have authority over temporal matters. Ambrose gave much weight to the admonition of Jesus that it is proper to “repay to Caesar what belongs to Caesar and to God what belongs to God.”³⁰⁹ In the dispute over the basilica, Ambrose emphasized: “If he asks for tribute, we do not refuse to pay it,” and “If the emperor wants our lands, he has the power to claim them; no one of us attempts to stop him.”³¹⁰ Further, Morino has concluded that, although the State was often properly called upon to assist the Church, Ambrose did not conceive of the State as a delegate of the Church.³¹¹

Nonetheless, a significant difficulty during this era was that, largely because of the traditional political, ethical and religious unity of the pagan state, any dividing line between sacred matters, matters of God, and non-sacred matters often simply was not clear.³¹² From the perspective of individuals, the Church’s work is interior and invisible; its goal is to help individuals attain eternal life. But, the Church is a real and tangible society of humans that has needs that require real and tangible human authority figures, and real and tangible property. Meeting those needs at times requires collaboration with the State. The overlap was also complicated by the fact that Christian emperors understood and respected the fact that the Bible

³⁰⁷ *Id.* at 248-49; *See also* MORINO, *supra* note 10, at 83 (quoting Ambrose and citing *Sermo contra Auxent.* 35 (PL 16:1018)) (Latin included).

³⁰⁸ PAREDI, *supra* note 9, at 252. Paredi notes that the change in imperial position may also have come about due to concerns that Maximus, the other Augustus of the West who had come into power as a result of Gratian’s death, would perhaps use a “defense of orthodoxy” excuse to invade Valentinian’s territory if the Arians appeared to gain an upper hand in Milan. *Id.* at 255.

³⁰⁹ *Matthew* 22:21. *See, e.g., Sermo contra Auxent.* 35 (PL 16:1018).

³¹⁰ MORINO, *supra* note 10, at 83 (quoting Ambrose and citing *Sermo contra Auxent.* 33 (PL 16:1017)) (Latin included).

³¹¹ *Id.* at 82-83.

³¹² *See, e.g., Daniel-Rops, supra* note 67, at 141 (noting that “the modern concept of *secularism* had no place

records Jesus as instructing that, if Christians cannot resolve disputes, they should take them to the Church for resolution. Thus, from the time of Constantine, dual tribunals have existed: Constantine allowed Christian plaintiffs to seek a remedy before a bishop, and civil magistrates were expected to help execute ecclesiastical sentences.³¹³ More importantly, perhaps, the line became even more blurred due to the monarchical form of government, where one person is able to control actions of the State.

**D. AS A CITIZEN OF THE CITY OF GOD, THE EMPEROR'S CHRISTIAN DUTIES
HAD A DIRECT IMPACT ON THE RELATIONS BETWEEN CHURCH AND
STATE**

As noted, the new and tangible society constituting the Church is grounded in the type of reciprocal, juridical relationships that was the hallmark of the *polis* or *civitas*. In particular, an important guiding principle for St. Ambrose was the idea that citizenship in the City of God carries with it rights and duties. As such, his teachings relating to the obligations of the Christian laity had significant implications for the sovereignty of the Church. “The emperor is within the Church, not above the Church” – “*Imperator enim intra Ecclesiam, non supra Ecclesiam est*” – is one of Ambrose’s most infamous statements.³¹⁴ Pronounced in a sermon during the time when the emperor was contemplating handing over the basilica to the Arians, Ambrose was drawing upon his understanding of what it means for a person to be a Christian and his understanding that, within the City of God, a distinction exists between the clergy and the laity.

Ambrose understood that becoming a citizen of the City of God requires certain *bona fides* – sincerity and fidelity. Similarly, Ambrose taught that Christians have on-going duties towards God and the Church. Ambrose proclaimed that “[a]ll those who are in the Church are in

whatsoever in the classical soul”) (emphasis in original).

³¹³ PAREDI, *supra* note 9, at 135-36.

³¹⁴ MORINO, *supra* note 10, at 83 (quoting *Sermo contra Auxent.* 36 (PL 16:1018)). Although the date of the sermon is uncertain, some historians have estimated that the sermon was given in February of 386. *See id.*

the service of God” – “*Omnes qui sunt in Ecclesia Deo militant;*”³¹⁵ and, that “[w]hoever serves this true God, receiving Him with deep affection in order to worship Him, does not employ deceit and treachery, but zeal and devotion for the faith.”³¹⁶ As pointed out by Morino, the words chosen by Ambrose – service (*militant*), zeal, devotion – are strong. *Militare* connotes being a soldier and enduring the hardships of battle.³¹⁷ Zeal suggests a profound and passionate interest. And the Latin word *devotio* implies a generous and complete dedication.³¹⁸ The parallel to the civic duties of the *polis* or *civitas* is clear.³¹⁹ By valiantly trying to instill that zeal in the faithful, Ambrose sought to effectuate in the City of God what was often lacking in the earthly cities.

As members of the community of the faithful, Christian emperors were expected to fulfill their Christian duties. In a letter to Valentinian II, Ambrose wrote: “Not only do all men who are living in Roman territory engage in your military service, rulers and princes of the earth, but you yourself wage war on behalf of Almighty God and our holy faith.”³²⁰ Similarly, Ambrose wrote the following to Theodosius: “We know that your saintly mind has been dedicated to the service of Almighty God with pure and unblemished faith.”³²¹

Scholars tend to agree that Ambrose’s conviction about the duties of a Christian emperor had significant implications for the relationship between Church and State.³²² A duty of complete dedication and zeal would not permit emperors to be Christian only in their private

³¹⁵ *Id.* at 87 (quoting *Ep.* 27.15 (PL 16:1050)).

³¹⁶ *Id.* at 88 (quoting *Ep.* 17.2 (PL 16:961)).

³¹⁷ Hammond notes that the term “pagan” was perhaps derived from the army slang term for civilians (*paganus*). In that case, Christians constituted “soldiers of God.” HAMMOND, *supra* note 119, at 318.

³¹⁸ MORINO, *supra* note 10, at 88-89.

³¹⁹ See *supra* notes 135 to 138 and accompanying text.

³²⁰ MORINO, *supra* note 10, at 88 (quoting *Ep.* 17.1 (PL 16:961)) (Latin included).

³²¹ *Id.* (quoting *Ep.* 13.1 (PL 16:950)) (Latin included).

³²² *Id.* at 84. “Ambrose does not wish to make a distinction between the emperor as a private individual and as a political person, and it is by this means that he obtains his religio-political goal . . . [Ambrose] substantially brings to an end the transcendent and syncretistic role of the emperor. [The emperor] can no longer be neutral, but partisan, and behind him is the Church which will never permit him to turn around or retreat.” *Id.* (quoting HANS FREIHERR VON CAMPENHAUSEN, *AMBROSIUS VON MAILAND ALS KIRCHENPOLITIKER* 181 (Berlin-Leipzig 1929)).

lives and, thus, Ambrose fully expected Christian emperors to lend appropriate support to the Church. As the holder of authority in the temporal realm, the ministry of a Christian ruler includes coming to the defense of the “cause of God” by “protecting the life of the Church and confounding its enemies.”³²³ Christian emperors who reigned during the tenure of Ambrose tended to comply with Ambrose’s expectations by putting into action the faith and devotion expected of Christians.

The Church’s use of councils again provides a useful example. The bishops requested a council,³²⁴ and the emperor assisted by summoning bishops, providing the means of travel, and otherwise carrying out the wishes of the bishops.³²⁵ As noted, the bishops set the agenda and, as to matters of faith, the emperor, as a layman, would not be heard.³²⁶ But the bishops were careful to inform emperors of their decisions, and the reasons therefore.³²⁷ Emperors were then expected to help execute decrees if necessary: they banished deposed bishops, outlawed heretics, and maintained tranquility in the Church.³²⁸

Ambrose pushed the implication even further. The Christian emperor must, of course, support the Church and the Catholic faith, but the emperor also must *not* favor or promote paganism. Ambrose forcefully made this point when a request was made to restore the pagan

³²³ *Id.* at 84 (quoting J. R. PALANQUE, *SAINT AMBROSE ET L’EMPIRE ROMAIN* 355 (Paris 1933)).

³²⁴ *Id.* “And therefore we ask you, most clement and Christian princes, to issue a decree that a council of all [c]atholic bishops should be convened at Alexandria so that they may more fully discuss and decide to what persons communion should be granted and with whom it should be maintained.” *Id.* (quoting *Ep.* 12.5 (PL 16:9949)) (Latin included).

³²⁵ *Id.* at 92 (citing *Ep.* 10.1 (PL 16:940) and the imperial rescript (PL 14:916)). See also PAREDI, *supra* note 9, at 194-95 (explaining that, despite Ambrose’s policy of non-interference in religious matters, his letters readily show an expectation that the “secular arm” of the State would provide assistance to the Church when needed).

³²⁶ See MORINO, *supra* note 10, at 91.

³²⁷ *Id.* at 92 (citing *Ep.* 14.1 (PL 16:953-954); *Ep.* 14.7 (PL 16:955)).

³²⁸ *Id.* at 92 (citing *Ep.* 10.11-12 (PL 16:913-914); *Ep.* 11.4-6 (PL 16:946); *Ep.* 12.7 (PL 16:949)). Morino notes: “No motives are alleged for [the imperial intervention]. The bishops feel that they can make the demand without hesitation and without fear of refusal. If we keep in mind Ambrose’s doctrine with respect to the duties of the emperors towards God and His Church, this is a perfectly logical procedure. If the emperors have ‘zeal for the faith,’ they should naturally do all in their power to favor the unity of the Church and the purity of the faith.” *Id.*

altar of victory to the senate at Rome, and to use public funds for worship.³²⁹ Through a letter to Valentinian II in 384, Ambrose questioned the emperor: “since you must show faith towards God and zeal, care, and devotion for faith itself, I wonder how some have come to hope that you must now, by your command, rebuild the altars of the gods of the Gentiles and pay also for the support of pagan sacrifices.”³³⁰ Ambrose exhorted: “A Christian emperor has learned to honor the altar of Christ alone.”³³¹ He further explained that, if Valentinian granted the requests, “it will seem that you are contributing something from your own funds rather than restoring what is theirs.”³³²

Moreover, to Ambrose, not only must a Christian discourage paganism, he must assist in its suppression. Morino aptly notes that Ambrose hints at this idea in his letter to Valentinian II regarding the altar of victory: “While they demand the restoration of what they had in the past, they show by their example the great reverence that Christian emperors should pay to their religion, since the Gentiles have done everything they could for their superstitions.”³³³ According to Morino, “[i]t is no longer a question of aiming at freedom of belief and equality of worship for all but of a Christian emperor’s *obligation* to favor *his own* religion [t]he goal is not simply the rejection of paganism by the emperors but its official suppression and condemnation.”³³⁴

To Ambrose, an obligation to suppress paganism arises due to the nature of Christianity. God is no longer a mystery.³³⁵ God has revealed Himself and, through Jesus and the Apostles, has established the Church. Ambrose understood that there was one God and one true religion.

³²⁹ The altar of victory had been removed from the Senate in 382 under the rule of Gratian. Gratian was killed in 383, and the 12-year-old Valentinian II moved to Milan with his mother, Justina. Symachus began his drive to have the altar returned in 384. PAREDI, *supra* note 9, at 209, 228-29.

³³⁰ MORINO, *supra* note 10, at n.131 (quoting Ambrose and citing *Ep.* 1.3 (PL 16:961)) (Latin included).

³³¹ *Id.* at 97 (quoting Ambrose and citing *Ep.* 18.10 (PL 16:974)) (Latin included).

³³² PAREDI, *supra* note 9, at 230-31. This theme is reiterated by Ambrose during the Callinicum incident. See *supra* notes 262 to 264 and accompanying text. See also MORINO, *supra* note 10, at 113-16.

³³³ MORINO, *supra* note 10, at 100 (quoting Ambrose and citing *Ep.* 18.10 (PL 16:974-975)) (Latin included).

³³⁴ *Id.* at 100 (emphasis added).

³³⁵ *Id.* at 97 (“May God Himself, who founded the heavens, teach me their mystery, not man, who does not know himself. Whom should I believe more about God than God Himself?”) (citing *Ep.* 18.7 (PL 16:974)) (Latin included).

“For salvation cannot be assured unless each one truly worships the true God, that is, the God of the Christians, by whom all things are ruled; for he is alone the true God”³³⁶ Accordingly, a Christian emperor, like any Christian, has an obligation to try to protect the faith and to help others see the truth. As explained by Paredi, Ambrose firmly believed that, even if the true religion could not be imposed upon individuals, “the State can and should favor its diffusion and make its practice possible.”³³⁷

During Ambrose’s tenure as bishop of Milan, numerous civil laws were enacted that aimed at the suppression of paganism, as well as at the suppression of heretical movements within Christianity.³³⁸ Although no evidence suggests that Ambrose had a direct role in their enactment, historians agree that the bishop’s teaching likely had a strong influence. Morino notes that ancient writers and the Fathers of the Church repeatedly testified as to the importance of the work of Ambrose in fighting heresy and attaining unity within the Church.³³⁹ Additionally, evidence exists showing that Ambrose approved of such laws.³⁴⁰ Importantly, however, Ambrose did not advocate a policy of intolerance such as that developed later by St. Augustine.³⁴¹ Rather, Ambrose wanted all to convert “freely” to Catholic Christianity.³⁴² He was concerned with their welfare and urged Christians to pray for them and to warn them.

³³⁶ *Id.*, note 45, Chap. V (quoting Ambrose and citing *Ep.* 17.1 (PL 16:961)) (Latin included).

³³⁷ PAREDI, *supra* note 9, at 228.

³³⁸ *Id.* Gratian in 379 and Theodosius in 380, passed laws aimed at stamping out Arianism. *Id.* at 182-83, 186. Gratian’s laws were retracted by the imperial court after Gratian’s death. *Id.* at 245. Gratian in 382 passed laws which deprived paganism of its resources and confiscated the goods of the temples. *Id.* at 228. The law of February 24, 391, prohibited in Rome all pagan ceremonies such as sacrifices, visits to temples, and the worship of idols, and imposed sanctions on officials who permitted such acts. The edict of June 16, 391, similarly prohibited pagan worship throughout Egypt. The edict of Constantinople of November 8, 392, prohibited – throughout the empire – public and private sacrifices, as well as the honoring of *lares* with fire, the *genii* with libations, and the *penates* with incense; and prohibited the adoration of idols and the decoration of altars. See MORINO, *supra* note 10, at 100 (citations omitted).

³³⁹ MORINO, *supra* note 10, at 104 (citing Migne’s *Patrologia Latina*); see also *id.* at 112 (citing modern historians).

³⁴⁰ *Id.* at 111 (citing the letter from Ambrose to Gratian after the promulgation of the law of 379, in which Ambrose congratulates the emperor for having brought peace to the Church and shutting the mouths of the “impious”).

³⁴¹ *Id.* at 119.

³⁴² *Id.* (“He who has given freedom loves the freedom of faith.”) (citing *In Ps.* CXVIII 5.45 (PL 15:1267)) (Latin included).

Let us likewise deal kindly with our adversaries; let us convince them of their true profit; let us pray and lament before the Lord who made us (Ps. 95:6), for we do not wish to overthrow but rather to heal; we lay no ambush for them, but warn them as we are in duty bound. Kindness often bends those whom neither force nor argument can overcome.³⁴³

Notably, the laws of which Ambrose approved did not result in a diminution of civil or personal rights, except as to apostates.³⁴⁴ Regarding Ambrose and intolerance, Morino concludes:

Ambrose believed that freedom of conscience and purity of faith were safeguarded by the refusal on the part of the State to employ physical violence or moral coercion. The prohibition of public worship, the closing of churches, the banishment of heretical bishops, the denial of public support for, and the proscription of, pagan worship did not of themselves pertain to freedom of conscience as such but were rather necessary means to be used in suppressing error. And, according to Ambrose, the prevention of error neither attacks the freedom of conscience nor does it imperil the sincerity and purity of the faith.³⁴⁵

For Ambrose, then, although the *Civitas Dei* must remain separate and independent from the *Civitas Terrena*, it was inconceivable that a ruler could separate his private Christian life from his public duties. As such, in a monarchical form of government, a Christian emperor's zeal and devotion for the faith necessarily would carry with it duties to use the law to educate the citizens of the *Civitas Terrena* about the emperor's views on matters of religion. In a similar vein, this idea also logically would lead to changes in laws relating to matters such as marriage and divorce. An emperor has responsibility for the well-being of citizens in his domain and, according to the prevailing moral philosophy of the time, human well-being necessarily is tied to actions consistent with the true good.

A necessary corollary to the inability of a Christian to separate his private and public life is the fact that public actions inconsistent with Christian duties render a person accountable to the Church. This too was a novel concept, brought to life by Ambrose in an episode involving

³⁴³ *Id.* at 118 (quoting Ambrose and citing *De fide* 2.89 (PL 16:579))(Latin included).

³⁴⁴ *Id.* at 120 (citing various laws, and noting that apostates were forbidden to make a will and to inherit).

Theodosius' violent temper. In the spring of 390, a revolt broke out in Thessalonica, the capital city of Macedonia: in response to the enforcement of a recent edict of Theodosius, the local enforcement agent was stoned and dragged through the streets.³⁴⁶ Theodosius' response was equally egregious. The people were invited into the circus and, while expectantly waiting for the start, soldiers conducted a massacre: Thousands of defenseless men, women and youth died in the ordeal.³⁴⁷ Recognizing the horrendous nature of his order, Theodosius sent a second order in an attempt to cancel the first, but the order failed to reach Thessalonica in time.³⁴⁸

Ambrose sent a respectful but forceful letter to Theodosius making clear that, although Ambrose did not mean to condemn him, Theodosius must recognize his sin and repent. Ambrose also delicately informed Theodosius that he could not be considered to be in communion with the Church until he had gone through the steps of reconciliation.³⁴⁹

I cannot deny, august emperor, that you are zealous for the faith. I do not doubt that you fear God, but you are of such an impetuous nature that you are at once turned to compassion if anyone placates you, and, on the other hand, you are so aroused that you can scarcely control yourself if anyone angers you. . . . I have preferred to draw your attention to this impetuosity secretly rather than perhaps irritate it by deeds in public. . . . At Thessalonica has occurred something which has no parallel in history. I was unable to prevent it; rather, I frequently told you how cruel it would be. Your attempt to revoke your order shows that you have realized the gravity of your deeds. It is something that I could not excuse. . . . Even if I, Ambrose, kept you in my communion, your crime would not have been forgiven. Rather, I would have been the object of public indignation if there had been no one to tell you that you had to be reconciled with our God.³⁵⁰

Theodosius eventually conformed to Ambrose's requirements. It is not clear what penance

³⁴⁵ *Id.* at 120.

³⁴⁶ PAREDI, *supra* note 9, at 307.

³⁴⁷ *Id.* The order had some relation to the people's actions. The revolt was in response to the imprisonment of a jockey for violation of an edict threatening the death penalty for those guilty of "unnatural vice." The people apparently wanted to see the jockey racing in the circus again. *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.* at 308 (explaining that Ambrose described seeing "in a dream" an incident wherein Ambrose had to decline to celebrate Mass in the presence of Theodosius).

³⁵⁰ *Id.* at 308-09.

Theodosius served. However, in August of 390 Theodosius published a law declaring that a “decree carrying a sentence of death” could not be carried out until thirty days after its publication.³⁵¹ It is also known that Theodosius sent a ministerial official to consult with Ambrose regarding the method of reconciliation.³⁵² On Christmas of 390, after publicly expressing his sorrow for his sin and asking pardon from the community, Theodosius was absolved and re-admitted to the sacraments.³⁵³ St. Augustine wrote that the people wept at seeing the humility of the emperor.³⁵⁴ Paredi emphasizes the historical significance of the event by noting:

For the first time in history a monarch publicly recognized the fact that he also was subject to the eternal laws of justice. . . . Unfortunately, even some modern critics have seen in Theodosius’s repentance only the excessive power of the Church and the weakness of an impotent prince or the “humiliation” of the imperial dignity. As a matter of fact, that Christmas of the year 390 is a great date not only in the history of the Church but in the history of civilization as well.

St. Ambrose’s courageous gesture is a symbol of the primacy that law and reason must have over brute force That it was the Catholic Church in the person of one of her bishops that affirmed this principle, which alone makes life worth living, is to her great and lasting credit.³⁵⁵

For purposes of this article, other features of the episode are paramount. A Christian ruler cannot separate his public and private life. At all times, a Christian is subject to Christian duties and a Christian ruler can be held accountable through the Church for actions inconsistent with Church teaching. Ambrose’s understanding and teaching regarding the duties of the Christian laity therefore played a central role in forging the relations between Church and State. Because the State in that era was a monarchy, the principle resulted in the Church’s ability to have a stronger influence on matters than in situations when the governmental structure takes other

³⁵¹ *Id.* at 309 (Theodosius had the edict published from Verona on August 18, 390).

³⁵² *Id.* (noting that although many historians have concluded that the incident described above in footnote 349 occurred, the only real evidence is the letter which seems to present the incident as a dream).

³⁵³ *Id.* at 309.

³⁵⁴ *Id.*

³⁵⁵ *Id.* at 310.

forms.

VII. CONCLUSION: LESSONS FOR BOTH THE STATE AND CHRISTIANS

Through his words and his actions, Ambrose played a significant part in laying the groundwork for the doctrine of separation of Church and State. Ambrose took to heart the teachings of Christ and the Apostles. He understood what Christ intended the Church to be: a new society; the People of Christ; a universal society open to all who are willing to make a proper confession of faith with sincerity and fidelity. The Church was to be a real, tangible and visible society which is united – one in faith, one in work and one in worship. A supernatural society intimately bound to Christ, its Head, yet, while on this earth, a society comprised of the human race. Ambrose significantly helped to develop the means for the Church to be what Christ intended. Drawing on the philosophical and legal foundations of the day, Ambrose and other Fathers of the Church understood that the Church should strive to be a “perfect society” – a *City*. As the City of God, the Church must be a sovereign entity separate from other sovereignties, and an entity with the authority to govern and lead its citizens in a manner that helps them attain their proper end: eternal happiness in heaven. That early vision of the proper relationship between Church and State can inform the current debate. An in-depth discussion of the relevancy of the Church’s early vision to current issues is beyond the scope of this article, but some brief comments are appropriate.

Clearly, some aspects of the early Church and State relations would be unwarranted and unworkable today. Laws pertaining to apostates, or mandating or forbidding any particular religious beliefs are, today, rightfully recognized as inappropriate. Similarly, the *level* of collaboration between Church and State that Ambrose and the early Church deemed necessary and appropriate could not be deemed appropriate today. The Church today has its own resources and thus could not and should not expect State assistance with internal governance or discipline.

At the same time, some collaboration remains important, and other aspects of the early

relationship are worth reiterating as well. The most basic principle is the inappropriateness of State interference with sacred matters, especially, matters of doctrine and faith. While the State may be a long way from transgressing that principle, other important principles are at risk. The State may be going too far in reducing collaboration and, indeed, in attempting to push the Church out of the public realm. Many current issues bear on the spiritual well-being of the faithful: ready access to and/or promotion of abortion and reproductive technologies, use of embryonic stem cells for research and treatment, and use of capital punishment. These issues are of central importance to humanity and issues about which the Church has something meaningful to say. The State should not seek to quash the Church from speaking as the Church. A proper realm for Church influence exists. The Church has studied and reflected upon issues such as these for centuries, carefully taking into account the full range and breadth of theological, philosophical, empirical, and scientific understanding. Thus, given the State's responsibility for the overall well-being of its citizenry, the State – at a minimum – has an obligation to listen to the voice of the Church and, further, to enable citizens to have opportunities to hear about the Church and its views.

Christians can also benefit from reflection on the Church's early understanding of Church-State relations. Such reflection may encourage Christians to consider the extent to which the secularization of society is, perhaps, a consequence of their own shortcomings. Foremost, Christianity today does not exhibit the essential characteristics of the City of God. As the variety of Protestant movements emerged, many jettisoned the idea of a real and visible Christian society – a society truly united as “one body” in faith and worship. Instead, the idea of a spiritual or invisible church is emphasized; a universal body of believers in Christ, but a body that outwardly appears fragmented and disunited. Within the United States alone, it is estimated that thousands of Protestant denominations exist, and there is little solidarity among them.³⁵⁶ Much of

³⁵⁶ The three main branches of Christianity are Catholic, Eastern Orthodox and Protestant. Most of the denominations that exist today developed in the 500 years since the Protestant Reformation and fall under the Protestant branch. With its emphasis on individual interpretation of scripture and a measure of religious freedom, the

Christianity today does not have in place a structure to act as a distinct sovereign in relation with the secular governments throughout the world.

Yet, the Church's early vision of the Church-State relationship flowed from the nature of the Church itself. It is thus notable that the Roman Catholic Church has retained the vision of the Church held by Ambrose and other Fathers of the Church. The Catholic Church has preserved the notion of the Church as the continuing presence of Christ on earth.³⁵⁷ In a manner analogous to the Incarnation itself, the Church is understood to be a unique mixture of both human and divine: a body "visible but endowed with invisible realities, zealous in action and dedicated to contemplation, present in the world, yet a migrant, so constituted that in it the human is directed toward and subordinated to the divine, the visible to the invisible, action to contemplation, and this present world to that city yet to come. . . ."³⁵⁸ *The Dogmatic Constitution on the Church*, issued by the Second Vatican Council, re-iterates that Christ established the Church and constantly sustains it here on earth as "a visible structure through which [Christ] communicates truth and grace to everyone."³⁵⁹ The Council then emphasized:

But, the society equipped with hierarchical structures and the mystical body of Christ, the visible society and the spiritual community, the earthly church and the church endowed with heavenly riches, are not to be thought of as two realities. On the contrary, they form one complex reality comprising a human and divine element.

This is the unique church of Christ which in the Creed we profess to be one, holy, catholic and apostolic which our Saviour, after his resurrection, entrusted to Peter's pastoral care, (Jn 21:17), commissioning him and the other

Reformation marked not only a break between Protestantism and Catholicism, but the beginning of denominationalism as it is understood today. Estimates of the number of Protestant denominations existing today vary widely.

³⁵⁷ "[T]he church, in Christ, is a sacrament – a sign and instrument . . . of communion with God and of the unity of the entire human race. . . ." See SECOND VATICAN COUNCIL, DOGMATIC CONSTITUTION ON THE CHURCH, LUMEN GENTIUM 1 (1964) [hereafter LUMEN GENTIUM].

³⁵⁸ SECOND VATICAN COUNCIL, THE CONSTITUTION ON THE SACRED LITURGY, SACROCANCTUM CONCILIIUM 2 (1963). See also LUMEN GENTIUM, *supra* note 357, at 8 ("Just as the people of Israel in the flesh, who wandered in the desert, were already called the church of God so too, the new Israel, which advances in this present era in search of a future and permanent city is also called the church of Christ.") (citations omitted).

³⁵⁹ See LUMEN GENTIUM, *supra* note 357, at 8.

apostles to extend and rule it (see Mt 28:18, etc.), and which he raised up for all ages as the pillar and mainstay of the truth. This church, constituted and organized as a society in the present world, subsists in the Catholic Church, which is governed by the successor of Peter and by the bishops in communion with him.³⁶⁰

Because the Catholic Church has retained the vision and the structure of the early Church, it can and does act as a sovereign in relations with secular governing bodies.³⁶¹ Its effectiveness, however, is diminished by the confusion caused by “competing” Christian denominations.

Thus, even where separation of Church and State exists – where the Church has independence – Christianity as a whole is not operating as a distinct sovereign which could effectively maintain the well-being of the faithful and purity of the faith and, further, could also more effectively engage non-believers as individuals and State sovereignties which are responsible for the laws and morality of their people.

³⁶⁰ *Id.* The document later explains who can be considered as “fully incorporated into the society of the church” (those accepting its entire structure and all the means of salvation established in it and who are united with Christ in the visible structure, ruled through the Supreme Pontiff and the bishops, through bonds of profession of faith, the sacraments, ecclesiastical government and communion); as opposed to those who are “related in different ways” to the church. See *id.* at 13-17. See also CONGREGATION FOR THE DOCTRINE OF FAITH, RESPONSES TO SOME QUESTIONS REGARDING CERTAIN ASPECTS OF THE DOCTRINE OF THE CHURCH (2007), available at <http://www.ewtn.com/library/CURIA/cdfrespchrch.htm>. This document explains that, in using the term “subsists,” the Councils intend to encompass the idea of the “perduring, historical continuity and the permanence of all the elements instituted by Christ in the Catholic Church” and thus to indicate “full identity of the Church of Christ with the Catholic Church.” *Id.*, Responses to the Second and Third Questions. The document also clarifies that certain Christian communities properly may be called “churches” because of true preservation of the sacramental priesthood and the Eucharist – even if they lack the essential principle of union with the bishop of Rome; but that other communities should be referred to as “ecclesial communities” because they chose to eliminate the sacramental priesthood and thus did not “preserve the genuine and integral substance of the Eucharistic Mystery. . . .” *Id.*, Responses to the Fourth and Fifth Questions. The explanations are consistent with the Vatican II documents. See, e.g., LUMEN GENTIUM, *supra* note 356 at 17 (noting that, although “anyone can baptize those who believe, it is for the priests to complete the building up of the body by the Eucharistic sacrifice.”).

³⁶¹ For example, formal diplomatic relations have existed between the United States and the Vatican for twenty-five years. In January 2009, the U.S. Embassy to the Holy See observed the silver anniversary with a symposium and dinner. President Franklin Roosevelt appointed the first U.S. envoy to the Vatican just before World War II. President Ronald Reagan elevated the position to ambassador in 1984, at a point in time when, given Pope John Paul II’s criticism of communism, Vatican and U.S. interests were seen as coinciding. See John Tavis, *Once controversial, U.S.-Vatican Relations Mark Silver Anniversary this Month*, CATHOLIC NEWS SERVICE (Jan. 16, 2009), available at <http://www.catholicnews-service.com/data/stories/cns/0900225.htm>.

Moreover, even within the Catholic Church – which strives to continue to operate as a sovereign City of God – many of its members, or “citizens,” have failed to live up to their “Christian-civic” duties. Many clergy and religious have failed to focus on their mission, some failing even to be properly educated in their faith and thus necessarily failing in their duties to properly care for the faithful. In-turn, many of the lay faithful have followed a path similar to the general citizenry of the Greek *poleis*: they have failed to be devoted and zealous to God and their Church. A prominent example is the recent stance taken by many Catholics in public office in the United States.³⁶² Members of the faithful – as citizens of the City of God – must respect their duties and, thus, Catholics serving as public officials of the State must fight for the rights of the Church and the rights of fellow members of the Church. They have a duty to know and understand the Church’s positions as to matters such as the sanctity of life, and thus on issues such as abortion and use of embryonic stem cells, and a duty to respect and uphold those positions. Such actions are fully consistent with our democratic form of government.³⁶³ Christians in public office can, and should, work to ensure a legal framework that protects life and the religious liberty of their fellow citizens by seeking to ensure the existence of conscience clauses that will allow Catholics to refrain from aiding with abortions or the use of contraceptives or other reproductive technologies.

As emphasized so firmly by Ambrose and the Church Fathers, members of the faithful in secular public office cannot separate their private religious life from their public life. Further, if they do neglect their duties in a manner that harms the Christian citizenry – e.g., by engendering confusion about Church teaching – their bishop rightfully can follow the example set by

³⁶² For example, over the years Catholics holding public office have asserted that, although they personally may not believe that abortion is a moral act, they believe they have an obligation to promote the currently recognized civil right to abortion, or at least that they should not fight to overturn the civil right. Nancy Pelosi recently went so far as to assert that, based on her study of the issue, the Church teaching on the matter of abortion was not clear. Interview by Tom Brokaw with Nancy Pelosi, Meet the Press (Aug. 25, 2008), *available at* <http://www.msnbc.msn.com/id/26377338/page/3/>.

³⁶³ See, e.g., CENTER FOR RELIGION AND PUBLIC AFFAIRS, WAKE FOREST UNIVERSITY SCHOOL OF DIVINITY, RELIGIOUS EXPRESSION IN AMERICAN PUBLIC LIFE: A JOINT STATEMENT OF CURRENT LAW (Jan. 2010),

Ambrose and other Church Fathers and respectfully and firmly explain why their actions or omissions have put them outside of any meaningful communion with the Church.³⁶⁴ The early Church readily understood such action to be for the good of both the offender and the citizenry as a whole. Any attempt by public officials to characterize the Church as being “uninformed” as to the concept of separation of Church and State – such as the statement issued by some Catholic members of Congress in 2007 – would be totally inaccurate.³⁶⁵ The concept of the separation of Church and State emerged *because of the Church*. The Church’s understanding and vision remains consistent today.

Thus, reflection on the early Church’s development of Church-State relations may foster an appreciation of the way in which a multitude of individual shortcomings has contributed to a shift in the Church’s effectiveness in addressing society today. The intent here is not to be overly

<http://www.divinity.wfu.edu/rpa>.

³⁶⁴ In response to questions about the position of the Mexican bishops conference to the effect that politicians who voted in favor of legalization of first-term abortions would be excommunicated, Pope Benedict XVI stated: “Excommunication is not something arbitrary, but is foreseen by the Code (of Canon Law). Therefore, it is simply part of church law that the killing of an innocent baby is incompatible with going to Communion, in which one receives the body of Christ.” John Thavis, *Vatican Tones down Papal Remarks on Pro-abortion Catholic Politicians*, CATHOLIC NEWS SERVICE (May 10, 2007), *available at* www.catholicnews.com/data/stories/cns/0702642.htm. The Pope’s statement was made on May 9, 2007, during a news conference aboard a plane before a five day visit to Brazil. *Id.*

³⁶⁵ The Pope’s recent statement agreeing as to the acceptability of a bishop’s denial of communion to politicians who refuse to accept and follow Catholic teaching was widely reported and resulted in a prompt response from a group of Democrats in the United States House of Representatives. In a public statement, eighteen House Democrats noted: “We are concerned with the Pope’s recent statement warning Catholic elected officials that they risk excommunication and would not receive communion for their pro-choice views.” The penalty, they said, “offend[s] the very nature of the American experiment and do[es] a great disservice to the centuries of good work the church has done.” Jonathan Kaplan, *House Dems Repudiate Pope’s Abortion Remarks*, May 15, 2007, <http://thehill.com/homenews/news/11913-house-dems-repudiate-popes-abortion-remarks>. Ironically, as noted by the official response of the United States Conference of Catholic Bishops, the politicians’ response tramples upon freedom of speech and freedom of religion. *See* Press Release, United States Conference of Catholic Bishops, Office of Media Relations, *Bishops Conference Responds to 18 Democrats Critical of Pope* (May 18, 2007), *available at* www.usccb.org/comm./archives/2007/07-088.shtml. (“To suggest that the Church should not clearly voice its teaching and apply it in a pluralistic society is to attack freedom of speech and freedom of religion.”). More importantly, however, the response reveals confusion on the part of politicians about the relationship between Church and State.

negative. Many within the Church have acted with zeal and devotion, and their numbers are growing. Nonetheless, if shortcomings and failures are not recognized and acknowledged, they often cannot be rectified. In highlighting the early development of Church and State relations, the most dramatic insight for many Christians may be a better understanding of the nature of the Church and an accompanying understanding of the duties of citizens of the City of God.

To reiterate, the key principles of the Church's early vision are of crucial importance. For the Church to effectively constitute the real, visible, universal and united society willed by Christ, the Church must strive to be the City of God; a distinct sovereignty with an authority structure that rightfully exercises power over, and for, the well-being of its members. The members of the Church – the citizenry of the faithful – have a right to just laws and to the preservation of true doctrine. They have a right to laws that ensure non-arbitrary treatment and access to the Sacraments, and laws that provide guidance for human actions, allowing the exercise of freedom by identifying true goods. They have a right to laws that foster the development of prudence – the virtue providing the intuitive sense of knowing how to act in specific circumstances.

At the same time, citizens of the City of God have meaningful and weighty duties – namely, a duty to exhibit zeal and devotion to society, and to be willing to put the interests of society ahead of personal interests when appropriate. The authority structure and the citizens are bound together as a real, tangible, and visible society – by the love of Christ and by the necessary and appropriate juridical nature of the society – for the purpose of obtaining the same end through common means. In the end, it is fair to say that, as in the *polis*, the ultimate success of the City of God – the Church – may rest in the willingness of its citizens (clergy and laity alike) to actively participate by attending to their Christian-civic duties.