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Libertatem Religionis: Remembering Our Origins

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The University of Southern Mississippi

LIBERTATEM RELIGIONIS: Remembering Our Origins

By

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A Thesis

Submitted to the Honors College of
The University of Southern Mississippi
in Partial Fulfillment
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Abstract:

At a time when the Catholic Church in the United States is publicly berated with accusations of being an outdated, oppressive institution concerned only with depriving women of their reproductive rights and devaluing freedom of conscience, many contemporary Catholics and others see only the stubbornness and isolationism rather than the constructive good of the church or the scope, depth, and fluidity of the Catholic Church's teachings about modern society. This paper will assess the extent to which American political thought is ingrained in the *Dignitatis Humanae*: The Declaration on Religious Freedom from the Second Vatican Council. It will include: a) an explanation of the Declaration on Religious Freedom from the Second Vatican Council, b) an exploration of relevant founding-era political texts from the United States, c) a brief synopsis of the development of relevant Christian teachings on church-state relations, d) an introduction of the person of Fr. John Courtney Murray. This paper will be a multi-step textual analysis of the documents and will seek to draw connections between the Declaration on Religious Freedom and elements of the American religious experience, then relating these connections to Christian political thought. It will show that there is a correlation between the Declaration on Religious Freedom and the American religious experience, and will argue that the former could have been modeled after the latter.

Preface

As a young Roman Catholic adult in the United States of America, I hear a great deal from my father's and grandfather's generations about how the Second Vatican Council has transformed American Catholicism, but nothing of a reciprocal relationship. The truth is however, American political thought practically framed parts of Vatican II. This may be a surprise to some, especially to non-Catholics, as it is a wide misconception that the Catholic Church as an institution is nothing more than a group of closed-minded old men who have locked themselves up in Rome, completely disengaged from the world. This however could not be farther from the truth, as this paper will show.

The Catholic Church, as an institution tasked with spreading the gospel of Christ throughout the world, takes an active role in society through its teachings. These teachings find their root in Sacred Scripture and Sacred Tradition. These sources of authority take the form of the Holy Bible and the collection of papal encyclicals and dogmatic constitutions compiled through Church history.

The Church has been developing these teachings since the time of its formation. At times, the focus of these developments has been in regards to the roles, rights, and responsibilities of the government. As the world changes through history, these teachings usually shift focus to address crucial issues of each age. Through its authoritative writings, the Church has sought to combat what it viewed as the great evils of its time. As new social and economic movements develop in the world, the Church seeks to lead the Christian faithful to

truth and justice. One such teaching, outlined in *Dignitatis Humanae* which came out of the Second Vatican Council, was somewhat novel to the historical teachings of the Church; the concept of religious liberty.

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Methodology

In order to understand the gravity of this document, we must first examine the essential groundwork of Catholic political thought in which these documents were rooted, and the teachings which the Declaration on Religious Freedom seems to overrule. This will serve the two-fold purpose of helping us to establish a theological basis for the teaching, and differentiate between Catholic and American political thought as we identify the correlations between them.

This paper will assess the extent to which *Dignitatis Humanae* was influenced by American political thought. The sample will include the Declaration on Religious Freedom, selected texts outlining the impact religion had on the foundation of the United States, articles explaining the political philosophies of key Doctors of the Church, and a text entitled *We Hold These Truths: Catholic Reflections on the American Experiment* which may shed some insight into the predisposition of the author of *Dignitatis Humanae*, and potentially expounding on the connection between the two. This paper will be a textual analysis which seeks to draw connections between elements of original American political thought and *Dignitatis Humanae*. This paper will follow a multi-step process to answer the research question presented at that end of this section.

First, this paper will introduce the person of Fr. John Courtney Murray SJ, the central character of this work. He is the link which connects all of the dots, and makes sense of otherwise unrelated information.

Next, this paper will briefly touch on some of the traditional teachings of the Church to illustrate the role Tradition may have played in the writing of the documents. This is important because the Catholic Church is built on Tradition and often refers to Tradition for guidance. Also, this will allow a distinction to be made between originally American political thought, and traditionally Catholic political theory. Such sources will include previous papal encyclicals and writings on the Doctors of the Church.

Third, this paper will outline selected elements of original American political thought using relevant quotes from pertinent historical figures and documents. Outlining these elements of original American political thought will provide a standard to which *Dignitatis Humanae* can be compared to assess the influence. The frequency with which these elements are reflected in the documents will speak to degree of influence.

Once the lessons of *Dignitatis Humanae* and the American religious experience have been enumerated, the selected Vatican II documents may be analyzed for correlations. A thorough reading of the Vatican II documents will be required, as some correlations may appear subtle while others appear more obvious. Additionally, the context in which the documents were written should be considered.

Next, this paper will give a brief narrative summary of Catholic political theory. To do so, it will discuss in chronological order the development of the teachings of the Church on the relationship between citizens, the state, and the Church in terms of roles. This will provide a context in which to review and assess the similarities between the *Dignitatis Humanae* and the

American religious experience. This will also provide a standard of Catholic political theory against which to measure the changes in political theory developed during Vatican II.

Lastly, these correlations will be compared with, and reviewed in light of, the narrative of Catholic political thought. They will be examined for the purpose of building a consensus and exploring other findings which have not been expanded in this paper. In addition to building a consensus, these findings will answer the question: How could American political thought have affected the teachings of the Catholic Church in regards to the elements of political theory enumerated during the Second Vatican Council?

Foreward

During the Second Vatican Council, a dramatic change occurred in the church's position in regards to the relationship between Church and State. In an encyclical which advocated a position which came to be known as the "Two Swords Doctrine" in the early 14th century, Pope Boniface VIII stated:

"Both swords, the spiritual and the material, therefore, are in the power of the Church; the one, indeed, to be wielded for the Church, the other by the Church; the one by the hand of the priest, the other by the hand of kings and knights, but at the will and sufferance of the priest. One sword, moreover, ought to be under the other, and the temporal authority to be subjected to the spiritual."¹

In other words, the church, through the person of the pope and priests, should direct and command the acts of the civil authorities who are subject to them as ministers of God. Yet, in 1965, the magisterium of the Church stated that:

"... the demand is increasingly made that men should act on their own judgment... The demand is likewise made that constitutional limits should be set to the powers of government... It regards, in the first place, the free exercise of religion in society. This Vatican Council takes careful note of these desires in the minds of men. It proposes to declare them to be greatly in accord with truth and justice." . . . "The right to religious freedom is exercised in human society: hence its exercise is subject to certain regulatory norms."²

With the Church's adherence to doctrinal Tradition, how does such a discrepancy in teaching arise?

¹ Witte, John, and Joel A. Nichols, Religion and the American Constitutional Experiment (Boulder, CO: Westview, 2011) 8.

² Vatican, Dignitatis Humanae: The Declaration of Religious Freedom (Vatican Archives: 1965).

Introduction

The Declaration on Religious Freedom was one of the most important documents to come out of the Second Vatican Council, yet its thesis seemed to violate a Catholic Tradition dating back to before the Protestant Reformation: State deference to the Holy Roman Catholic Church as necessary and sole legitimate authority in matters of faith and morals. The Declaration on Religious Freedom taught that all human beings should justly have a civil right to freedom of conscience, and more specifically a right to religious freedom, with all of the rights and privileges pertaining thereto, recognized in constitutional law³. Given that the Catholic Church has historically referred to two primary sources of authority by which it supports its teachings – Scripture and Tradition – it may come off as somewhat inconsistent for the church to make a claim which is not only unsubstantiated by centuries of Tradition, but with which it is in direct contention, even contradiction. Such claims have been made in the years following the Council, and not infrequently.

While the Declaration on Religious Freedom may not have been in keeping with previous centuries of Church Tradition, it was very much in keeping with the attitude of the Council as a whole. It was one of the primary Vatican II documents which most fundamentally altered Catholic teaching. Opened by Pope John XXIII on October 11 in the year 1962, the Second Vatican Council was called to bring the Church abreast of the modern world and face the challenges it posed in full force. When asked as to the reason for calling the council, Pope

³ ibid

John famously answered, "I want to throw open the windows of the Church so that we can see out and the people can see in."⁴

Another major change was the adoption of the practice of the Holy Mass being said in the vernacular rather than Latin – a Tradition dating back to the 1570 when Pope Pius V invoked Apostolic Authority to affix the Latin Tridentine Mass⁵ – resulting in “a thrilling renewal of liturgical life, with increased participation on the part of the whole parish community.”⁶

Another significant change came in the form of the Decree on the Apostolate of the Laity, which exponentially increased the number of ministries for lay persons, ranging from Extraordinary Ministers of the Eucharist to Catholic Charities, even religious education.

A very controversial development was the Decree on Ecumenism, which reversed another centuries-old Tradition that the only path to salvation was through the one true church, the Roman Catholic Church, and which encouraged dialogue between the various sects of Christianity and Judaism.

Lastly, the council weakened centuries of Tradition, which concentrated the Church’s teaching authority in the Papacy, by instead emphasizing the teaching authority of the bishops,

⁴ Vatican II, *New World Encyclopedia* (Web: 2012) <http://www.newworldencyclopedia.org/entry/Vatican_II>.

⁵ *Catholic Traditionalist Movement, Inc.*, [The Unchanged Sacrifice of the Mass and Decree Quo Primum](http://www.latinmass-ctm.org/priest/priest_unchanged.htm) (Web: 2012) <http://www.latinmass-ctm.org/priest/priest_unchanged.htm>.

⁶ Foley, Leonard O.F.M., [Catholic Update - Vatican II: The Vision Lives On!](http://www.americancatholic.org/Newsletters/CU/ac0393.asp) *American Catholic: Franciscan Media: Catholic News Magazine Books Videos* (Web: 2012). <<http://www.americancatholic.org/Newsletters/CU/ac0393.asp>>.

individually and in collegiality with the pope, resulting in the formation of national ecclesiastical councils in many countries for the purpose of addressing religious matters at the local level.⁷

Given these apparent inconsistencies, it should come as no surprise that many of the developments of the Second Vatican Council greatly scandalized many in the Church, and have been met with some question.

The question stands: If the developments of the Second Vatican Council do not seem to have been derived from Tradition, from whence were they derived? While these latter developments indeed warrant and have been met with some inquiry, the present scope of inquiry will be limited to the Declaration on Religious Freedom. The first step will consist in breaking the document down and categorizing it into component parts according to particular themes.

⁷ Foley, *ibid*

Fr. John Courtney Murray

In August of 1961 Fr. John Courtney Murray SJ, a leading American Catholic theologian and preeminent Catholic thinker in the field of Church-State relations in the United States, who would later become the chief architect of the Declaration on Religious Freedom, compiled his thoughts on the subject in a book entitled “We Hold These Truths: *Catholic Reflections on the American Proposition.*” It was an exploration into the question of whether or not America’s attitude toward religion was compatible with Roman Catholicism. It is in this work that he discusses religious liberty at length, specifically as it relates to American religious pluralism. Here, Fr. Murray argued that the Religion Clauses of the US Constitution were, more than anything else, “articles of peace;”⁸ that they were written with the primary goal of establishing a framework within which the many different religious groups that constitute these United States might practice their respective faiths freely and without infringement, and that this was “accomplished in the United States by an argument from experience,”⁹ thus avoiding the problems of persecution and civil war to which history bore witness in the several centuries prior to their own. Now that “the problem of Pluralism . . . created a demand for a new solution... and the demand was met by the American Constitution,” Murray argued, a “new problem has been put to the universal Church by the fact of America.”¹⁰

In this work, Murray addresses and discusses many of the rights enumerated in the Declaration on Religious Freedom. These are: 1) Freedom of Conscience, 2) Free Exercise of

⁸ Murray, John Courtney, *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960) p. 78.

⁹ Murray, *Ibid* 72

¹⁰ Murray, *Ibid* 27

Religion, 3) Religious Education Rights, 4) Protection of Religious Rights, 5) Social Responsibility, and 6) Freedom as Catalyst. In the section entitled “The Nation Under God,” Murray begins by outlining a consensus between the Church and American political thought, or “the American Proposition,” concerning the source of true natural rights. He states:

“The first truth to which the American Proposition makes appeal is stated in that landmark of Western political theory, the Declaration of Independence. It... imparts to politics a fundamental human meaning. I mean the sovereignty of God over nations as well as over individual men.”¹¹

He gives further substance to this claim in the section entitled “Human and Historical Rights,” by introducing the Bill of Rights as “the product of Christian history,”¹² stating:

“The philosophy of the Bill of Rights was also tributary to the tradition of natural law, to the idea that man has certain original responsibilities precisely as man, antecedent to his status as citizen . . . their ultimate source, as the Declaration of Independence states, is in God, the Creator of nature and Master of history.”¹³

In the section entitled “Articles of Peace,” Murray explains how the freedom of conscience guaranteed in the American Proposition is compatible with the Church’s teachings.

Citing Pope Pius XII, Murray states:

“In fact, the Pope goes much further when he flatly states that ‘in certain circumstances God does not give men any mandate, does not impose any duty, and does not even communicate the right to impede or to repress what is erroneous and false.’ The First Amendment is simply the legal enunciation of this papal statement.”¹⁴

¹¹ Murray, Ibid 28

¹² Murray, Ibid 39

¹³ Murray, Ibid 37

¹⁴ Murray, Ibid 62 - 63

In the section entitled “The Freedom of the Church” Murray further establishes the First Amendment’s religion clauses compatibility with Church teaching in that they, again citing Pius XII, “assure to the Church a stable condition of right and of fact within society . . . to guarantee to her a full independence in the fulfillment of her divine mission.”¹⁵ Murray goes on to point out that the Church is guaranteed a right to free exercise of religious practice, most importantly “in fulfillment of her spiritual mission to communicate divine truth and grace to the souls of men, and her equally spiritual mission of social justice and peace.” This freedom including a right to a degree of self-government, stating:

“The Church is entirely free to define herself and to exercise to the full her spiritual jurisdiction. It is legally recognized that there is an area which lies outside the competence of government. This area coincides with the area of the divine mission of the Church, and within this area the Church is fully independent, immune from interference by political authority . . . It should be added that this guarantee is made not only to the individual Catholic but to the Church as an organized society with its own law and jurisdiction.”¹⁶

In the section entitled “The American Economy,” Murray makes a case for the First Amendment in terms of the right to religious education. He points out that both the Church as an institution and the Catholic faithful have benefitted from the disestablishment of the Church in the United States. Specifically, this benefit can be seen in Catholic education, “supported by the voluntary contributions of the faithful, who have found in it a means of professing their faith and expressing their spirit of charity and sacrifice,”¹⁷ as opposed to the means of

¹⁵ Murray, Ibid 69 - 70

¹⁶ Murray, Ibid 70

¹⁷ Murray, Ibid 180

education for the Church in Europe, “whose tradition has been one of alliance with, and to that extent dependence on, government and its favors, for material support.”¹⁸

Finally, in the section entitled “A Virtuous People,” Murray argues that the type of religious freedom advocated for in the United States is a responsible freedom, or in the words of Lord Acton, “not the power of doing what we like, but the right of being able to do what we ought.”¹⁹ It is not the “outlaw conscience... the conscience that knows no law higher than its own subjective imperatives.”²⁰ Rather: “Part of the inner architecture of the American ideal of freedom has been the profound conviction that only a virtuous people can be free. . . when the people as a whole are inwardly governed by the recognized imperatives of the Universal moral law.”²¹

While Murray’s ideas were considered fairly radical by the Catholic powers in Rome, as well as abroad and some conservatives at home in the United States, Murray was a faithful servant of the God and loyal to the Holy See. He did not try to misread or misconstrue the Church’s teachings in order to further the position he advocated. Rather, he clearly acknowledged and respected Church doctrine and Tradition, giving them deference in acknowledging the shortcomings of his own positions. He acknowledged at the time that the relationship established between the Church and the State in the United States by the “articles of peace” was not ideal, but that it was one practicable solution, if not the only solution to the problems that arise from religious pluralism in a society under constitutional government. He

¹⁸ Murray, Ibid 181

¹⁹ Murray, Ibid 36

²⁰ Murray, Ibid 36

²¹ Murray, Ibid 36

said this very simply in *We Hold these Truths*, stating: “Religious pluralism is against the will of God. But it is the human condition; it is written into the script of history.”²²

Two years later, Pope John XXIII issued his encyclical *Pacem in Terris*.²³ It was ambiguous to the extent that it allowed for a wide range of interpretations and implications, establishing a foundation for future developments such as the Declaration on Religious Freedom. This author does not seek to establish any direct connection between the Murray’s works and John XXIII’s *Pacem in Terris*, but is merely establishing a historical frame of reference.

Very shortly after *Pacem in Terris*, when John XXIII called the Second Vatican Council, an Ecumenical Council to address the state of the world, Murray was invited to participate as a *peritus*. He was widely recognized as “an expert on church-state relations” and was a “consultor” of the Theological Commission. In this capacity, he was often consulted by Bishops and Cardinals for advice on important Council matters.²⁴ In fact, Murray’s expertise on the matter was so well known that, during a meeting of the Theological Commission called to determine whether or not the Religious Liberty chapter of the Decree on Ecumenism should be sent to the Council floor for consideration, Bishop Charue asked him to address the Commission on the matter.²⁵ What followed was a vote of 18 to 5 in favor of sending the text to the floor.²⁶ Another such instance took place shortly before the aforementioned floor debate, at which point the chapter on Religious Liberty had become an entity of its own; the Declaration on

²² Murray, *Ibid* 23

²³ "[Murray Collection](#)" *Woodstock Theological Center: Theological Reflection on the Human Problems of Today*, (Web: 2012).

²⁴ Rynne, Xavier *The Second Session* (Stratford Press: New York 1964) p. 192

²⁵ Rynne, Xavier *The Second Session* (Stratford Press: New York 1964) p. 192

²⁶ Rynne, Xavier *The Second Session* (Stratford Press: New York 1964) p. 193

Religious Freedom. American bishops and cardinals at the council met with Murray who, shortly before they had their opportunity to present arguments on the floor, helped them prepare arguments and talking points by once more addressing them on the subject.²⁷ During the final days of the debate, recounted attendee Bishop Robert E. Tracy, “a bishop beside me observed: ‘The voices are the voices of United States bishops; but the thoughts are the thoughts of John Courtney Murray!’ Indeed, the declaration itself sounded strikingly like J.C.M.”²⁸ This was because the final version of the text of the Declaration on Religious Freedom, which was passed by a vote of 1,997 to 224, was written predominantly by Fr. John Courtney Murray.²⁹ Murray was therefore not just considered “one of the drafters,”³⁰ but was, in the words of Bishop Tracey, “so often spoken of as the architect of the declaration on Religious Liberty.”³¹

²⁷ Rynne, Xavier *The Third Session* (Stratford Press: New York 1964) p. 29

²⁸ Tracy, Bishop Robert E. *American Bishop at the Vatican Council* (McGraw-Hill: New York 1966) p. 172

²⁹ Rynne, Xavier *The Fourth Session* (Stratford Press: New York 1965) p. 32

³⁰ Rynne, Xavier *The Third Session* (Stratford Press: New York 1964) p. 255

³¹ Tracy, Bishop Robert E. *American Bishop at the Vatican Council* (McGraw-Hill: New York 1966) p. 175

Ch. 1 Declaration on Religious Freedom

The church begins by expressing the reasons for which the Declaration on Religious Freedom is being promulgated. She has taken note that a sense of the dignity of the human person has been “impressing itself more and more on the consciousness of contemporary Man.” In the wake of this increased self-awareness, says the Church, “the demand is increasingly made that men should act on their own judgment,”³² so that they may freely choose to act out of righteousness, or as Aquinas put it: freedom toward justice.³³ Additionally, there is a demand that “constitutional limits should be set to the powers of government” in order to ensure the protection of these rights. The church asserts no monopoly as source of the constitutional right to religious freedom; she makes no claim that it is a doctrine originally posited by her own teachings and Traditions. Rather, she acknowledges that this is a demand which has popularly manifested itself in the minds of Man, of which she has taken account and for whom her teachings must be shaped, and that she has found it to be “greatly in accord with truth and justice.”

³² Vatican, *ibid*

³³ Garrett, Jan, [Thomas Aquinas on Law](http://www.wku.edu/~jan.garrett/302/aquinlaw.htm) (Western Kentucky University, Web: 2012)
<<http://www.wku.edu/~jan.garrett/302/aquinlaw.htm>>.

Foundations of Liberty

1. *"This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs... within due limits." "However, men cannot discharge these obligations [the obligation to worship] in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom." "This council further declares that the right to religious freedom has its foundation in the very dignity of the human person as... know through the revealed word of God and by reason itself. This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right."*

The second point which the Church makes is to declare that "the human person has a right to religious freedom." This "freedom" is defined as a complete immunity from coercion of any kind in an attempt to restrict individuals from their necessary obligation to worship God, or in an effort to force individuals to act in a manner which would violate their own beliefs. Absent this freedom from external or psychological coercion, the Church argues, "men cannot discharge these obligations in a manner in keeping with their own nature."

The church asserts that this right rests in "the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself." In other words, Man's dignity is revealed not only through Scripture, but also through reason. As this right is based in the very nature of human persons as "beings endowed with reason and free will," consequently the immunity from coercion which it entails applies to individuals regardless of intent to fulfill their obligation to follow God's law.

In order to ensure its protection, the Church further urges that this right be affirmed in constitutional law as a civil right.

Freedom of Conscience

2. *"Wherefore every man has the duty, and therefore the right, to seek the truth in matters religious in order that he may with prudence form for himself right and true judgments of conscience".... "It follows that he is not to be forced to act in manner contrary to his conscience. Nor... is he to be restrained from acting in accordance with his conscience, especially in matters religious. The reason is that the exercise of religion, of its very nature, consists before all else in those internal, voluntary and free acts whereby man sets the course of his life directly toward God.".... "Government... ought indeed to take account of the religious life of the citizenry and show it favor."*

The third point for which the Church argues is that Man has the right "to seek the truth in matters religious." The Church grounds this right in Man's obligation to follow the divine law. By endowing Man with reason, God has made Man a participant in the divine law. As a result, Man has the ability to perceive, and therefore the duty to seek "the truth that is unchanging;" the divine law, religious truth. The purpose of this endowment by the Creator God, says the Church, is that Man "may with prudence form for himself right and true judgments of conscience."

An inward freedom, such as intellectual discernment in the course of the pursuit of truth, can hardly be considered truly free if the means of its execution are in any way restrained. Wherefore the pursuit of religious truth is a right, the pursuit thereof likewise ought not to be restrained, but rather aided by "instruction, communication and dialogue." In

the course of this pursuit, in a sort of dialectic of inquiry, men are able to work together by sharing their discoveries; each aiding another in his or her “quest for truth.”

Additionally, as the right to the pursuit of religious truth rests in Man’s nature as endowed with reason and free will, and as the dignity of the human person is the standard to which the pursuit of religious truth ought to conform, therefore this freedom is not contingent on Man’s intent to act in accord with the truth.

Because the medium through which Man “perceives and acknowledges” the divine law – the highest good – is his conscience, Man can be forced neither to act in accord with nor contrary to the demands of his conscience, “especially in matters religious.” As Man is a social being, the freedom of pursuit of religious truth should extend to his public expression and/or profession of his religion, as long as it does not result in the disruption of just public order.

Furthermore, because religious acts, private or public, lead men to God and are therefore the highest good, and because “the function of the government is to make provision for the common welfare,” the government “ought indeed to take account of the religious life of the citizenry and show it favor.”

Free Exercise

3. *“The freedom... in matters religious... is also to be recognized as their right when they act in community . . .religious communities may govern themselves according to their own norms, honor the Supreme Being in public worship . . . not be hindered... in the selection, training, appointment, and transferral of their own ministers, in communicating with religious authorities and communities abroad, in erecting buildings for religious purposes , and in the acquisition and use of suitable funds or properties. . . not to be hindered in their public teaching and witness to their*

faith. . . freely to hold meetings and to establish educational, cultural, charitable and social organizations, under the impulse of their own religious sense.”

As social beings, men naturally act in community; this condition necessarily extends to Man in his religious activities and so to religion itself. The freedom which is to accompany Man’s activities therefore is to extend to his acts in community. Likewise, religious communities have a right to worship in public and to a degree of autonomy, or self-government, provided they not disturb the public order. This latter part may take the form of tending to the religious needs of individual members; whether through practice, instruction, or cooperation.

This right also applies to freedom from hindrance of the administrative functions of the religious community – on the part of the government – in the “selection, training, appointment, and transferral of their own ministers, in communicating with religious authorities and communities abroad;” in control over its infrastructure; in public instruction and “witness;” and in holding meetings and establishing educational, cultural, charitable and social organizations.

Religious Education Rights

4. *“Parents... have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive.”*

As the family is the most fundamental level of society, religious freedom applies equally to it “under the guidance of the parents.” According to the Church, this translates to the right of the parents to determine the kind of religious or irreligious education their children receive and where they go to school. In this regard, the government cannot use freedom of choice as

an excuse to place unjust burdens, direct or indirect, on parents. It would therefore be a violation of the rights of the parents were the children only able to receive an education that was either devoid of religious formation or was in contention with their religious beliefs.

Protection of Religious Rights

5. *“the common welfare of society... chiefly consists in the protection of the rights, and in the performance of the duties, of the human person.” “Therefore government is to assume the safeguard of the religious freedom of all its citizens.” “Government is also to help create conditions favorable to the fostering of religious life, in order that the people may be truly enabled to exercise their religious rights... and also in order that society itself may profit by the moral qualities of justice and peace which have their origin in men’s faithfulness to God and to His holy will . . . Finally, government is to see to it that equality of citizens before the law... is never violated... for religious reasons.”*

Its primary responsibility being the provision for the common welfare of its citizens, the government has a responsibility not only to protect their religious freedom, but to see that equality before the law is not violated on the basis thereof and to establish the conditions in which religious life can thrive. The purpose therein is two-fold: to enable the exercise of religious rights, and the benefit to society by way of the “moral qualities of justice and peace” which accompany religious devotion. By establishing those kinds of conditions, men are able to fulfill their highest duties; their religious duties. Those conditions are likewise accompanied by justice and peace which profit society in their manifestation.

6. *“the right to religious freedom is exercised in human society: hence its exercise is subject to certain regulatory norms.... In the exercise of their rights, individual men and social groups are bound by the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare of all.... Furthermore, society has the right to defend itself against possible abuses committed on the pretext of freedom of religion. It is the special duty of government to provide this protection.”*

Given the social character of religion as a reflection of Man's nature as a social being and its consequent exercise in society, and given the government's primary responsibility to the common welfare, religious freedom must be "subject to certain regulatory norms" to ensure the protection of the rights of all citizens for the common good. The privilege of religious freedom requires a mutual respect for the rights of others to freedom of conscience or religion, as a matter of both principle and pragmatism.

In the course of history, injustice has paraded itself as a force for, or realization of freedom. In those instances where injustice is done under the guise of religious freedom, society has a right to defend itself. This responsibility belongs to the government as the agent of the enforcement of rights, and should be carried out in a manner informed by, and in conformity with the "juridical norms which are in conformity with the objective moral order."

Social Responsibility

7. *"not a few can be found who seem inclined to use the name of freedom as a pretext for refusing to submit to authority and for making light of duty of obedience. Wherefore this Vatican Council urges everyone... to do their utmost to... come to decisions on their own judgment and in the light of truth, govern their activities with a sense of responsibility, and strive after what is true and right"*

As with all freedoms, religious freedom must be accompanied by a degree of responsibility. A sense of, and respect for its purpose should accompany its exercise. It would be a perversion of the law to use it as a justification for refusing to obey the law without genuine cause. Rather, men should exercise their freedom with responsible judgment, moral virtue, and respectful obedience to the "lawful authority." It is not a freedom *from* personal or social responsibility, but a freedom *toward* personal or social responsibility.

Freedom as a Catalyst

8. *“The act of faith is of its very nature a free act. Man... cannot give his adherence to God revealing Himself unless... he offers to God the reasonable and free submission of faith. ... In consequence, the principle of religious freedom makes no small contribution to the creation of an environment in which men can without hindrance be invited to the Christian faith, embrace it of their own free will, and profess it effectively in their whole manner of life.”*

Lastly, the Church acknowledges that religious freedom is an absolute necessity for true conversion of the soul to Christ, as it can only be achieved through an inward voluntary act; a forced adoption of Christianity is a false adoption. Further, not only is this freedom “completely in accord with the nature of faith,” but religious freedom, allowing for free pursuit and individual personal acceptance of the faith, is and has been found to be, a catalyst of religious conversion and participation.³⁴

³⁴ Vatican, *ibid*

Ch. 2 American Religious Experience

Religious freedom as a constitutional right has its origins in the American religious experience. First heralded by Protestant religious dissidents in Europe, oppressed by the dominant established religions of their time, they viewed religious freedom as necessary to properly practice their religion and live according to its teachings. Unable to peaceably practice their religion in their respective home countries for fear of persecution, and believing that the best way to achieve this was to distance themselves from these oppressive religious institutions, they sought refuge in the New World and established communities of their own where they would be free to establish and live according to their own laws and religious beliefs.

Beginning in 1620 with the Pilgrims of Plymouth, Massachusetts, followed shortly thereafter by the Puritans in Boston, Massachusetts, eventually by Catholics in Maryland and Jews in New York; North America became a haven for anyone seeking religious freedom, predominantly Christians (PBS). In the pilgrim spirit of the first colonists, divisions occur in the newly established religious communities of the British colonies, beginning in 1636 with Roger Williams' split from the Puritans in Massachusetts to found Providence Plantation (present-day Rhode Island) and establish religious freedom for all. While the Puritan colonies in Massachusetts presented a refuge primarily for many Calvinists fleeing persecution in Europe, Providence became a refuge for all manner of religious dissidents including Anabaptists, Baptists, Quakers, Jews, etc... William Penn, a Quaker leader, likewise establishes Pennsylvania in 1681 on principles of religious liberty for all who profess a monotheistic religious creed, attracting English Quakers and Anglicans, German Lutherans, Reformed, Mennonites, Amish,

Dunkers and Moravians, and Scottish Presbyterians... Over the following century, religious revivals swept over North America, dividing denominations and giving birth to new sects, further diversifying the religious composition of the North American colonies.

By the end of the 18th century, religious and political divergences between the British colonies and England culminate in the American Declaration of Independence, severing all allegiance to the British crown and acknowledging each of the “united Colonies” as “Free and Independent States” with all the accompanying rights and privileges. Having been convinced of the inadequacy and unreliability of an unrestricted parliamentary monarchy, the colonies seek to limit the powers of their respective governments, each fixing said powers in its own state constitution. Likewise, delegates from the now United States convene and fix the powers and restraints of the national government in the U. S. Constitution and attending Bill of Rights. Among the separate states and the national government, of primary import was the right to the freedom of conscience. This right was crafted by men of religious persuasion and for religious reasons, some more so for religious reasons than others. Their influences ranged from Puritan and Evangelical ministers to Enlightenment and Civil Republican thinkers.³⁵

Keeping in mind this author’s thesis, below are certain excerpts from historically significant figures and documents conveying meaning and importance of the right to freedom of conscience:

³⁵ *God in America*, PBS.org (Public Broadcasting Service, Web: 2010)
<<http://www.pbs.org/godinamerica/view/>>.

Foundations of Liberty

1. "Questions of natural right are triable by their conformity with the moral sense and reason of man."³⁶ "endowed with a sense of right and wrong... This sense is ... a part of his nature,"³⁷ "impressed... under the King of Kings."³⁸ - Thomas Jefferson

Just as, according to Madison, a proper understanding of the Establishment and Free Exercise clauses of the U. S. Constitution is best ascertained by referring "to the text itself [and] the sense attached to it by the people in their respective State Conventions, where it received all the authority which it possesses," an understanding of the conception of rights in general, and specifically the right to religious freedom, requires insight into the perceived foundation of rights and the historical context in which this conception was advocated.³⁹

The founding of the present-day United States took place over a span of approximately 150 years, during a time when great religious and political revolutions of thought were taking place across Europe in the form of the Protestant Reformation and the Enlightenment. Attracted by promises of religious freedom and opportunities, many religious dissidents and independent entrepreneurs settled in the New World of North America, taking along these revolutionary religious and political ideas.

³⁶ Thomas Jefferson, *The Works of Thomas Jefferson*, Federal Edition (New York and London, G.P. Putnam's Sons, 1904-5) Vol. 7 Chapter: *OPINION ON FRENCH TREATIES W. MSS.*

³⁷ Bennett, William J., *The Book of Virtues*, (Google Books: 2012) Chapter: Jefferson Urges an Examination of Faith.

³⁸ Thomas Jefferson, *The Works of Thomas Jefferson*, Federal Edition (New York and London, G.P. Putnam's Sons, 1904-5) Vol. 7 Chapter: *TO DOCTOR JOHN MANNERS.*

³⁹ Witte, John, and Joel A. Nichols, *Religion and the American Constitutional Experiment* (Boulder, CO: Westview, 2011) 22.

Taken from several separate sources, the above quote reflects the natural rights theory which was characteristic of the time. According to the natural rights tradition, into which the founders and framers were indoctrinated, there exist certain inherent natural rights, described in the Declaration as “Laws of Nature and of Nature’s God,” given from God equally to all men, by virtue of their humanity. Man comes to know these rights as they are “impressed” upon him by God through the use of his conscience and his reason. As with all other rights, they are dependent on the government for their protection, but as they were inherent – and therefore “unalienable” – they exist outside of the government which cannot rightly withdraw them, not having granted them in the first place. They therefore must be, and so were, placed outside of the reach of the government and vested in constitutional law as a civil right.⁴⁰

Such was the case with the United States national government, constrained in its powers by the U. S. Constitution; the first right guaranteed therein was religious freedom.

Freedom of Conscience

2. *“Every man has an equal right to follow the dictates of his own conscience in the affairs of religion. Every one is under an indispensable obligation to search the Scriptures for himself . . . and to make the best use of it he can for his own information in the will of God, the nature and duties of Christianity.”* – Elisha Williams 1744, Puritan preacher, jurist, and rector of Yale University⁴¹

“no man ought or of right can be compelled to attend any religious worship or maintain any religious ministry contrary to or against his own free will and consent” – 1776 Delaware constitution⁴²

“Congress shall make no law... prohibiting the free exercise [of religion]” – 1st Amendment U. S. Constitution⁴³

⁴⁰ "Declaration of Independence" *National Archives and Records Administration*, (Web: 2012).

⁴¹ Witte, John, and Joel A. Nichols, *ibid* 25

⁴² Witte, John, and Joel A. Nichols, *ibid* 44

*“True and saving religion consists in the inward persuasion of the mind” – John Locke, Letter Concerning Toleration*⁴⁴

Many of the residents of the North American colonies were Protestant religious dissidents who broke ties with the established ecclesiastical religions on the grounds that “God alone is Lord of the Conscience, and hath left it free from the Doctrines and Commandments of men.” Although Man is to be free from physical compulsion in the formation of his conscience, “It is,” as John Adams said in the 1780 Massachusetts Constitution, “the right as well as the duty of all in society, publicly, and at stated seasons, to worship the Supreme Being... in the manner and season most agreeable to the dictates of his own conscience,” he no less has a duty to seek out religious truth whereby to form his conscience, for as Baptist leader John Leland said in 1791, “Every man must give an account of himself to God.”⁴⁵

It was no mystery to the founders and framers of the national and various state constitutions that forcing Man to act contrary to his conscience would qualify as a violation of his right to act in accordance with his conscience, and that true freedom of conscience could not be realized without simultaneously securing the freedom to exercise their consciences “exempt from... every species of persecution on account of religion.”⁴⁶ Nearly all, if not all, of the North American colonists were vividly familiar, either through experience, witness, or account, with the bloody and violent destruction of life and property that may arise from religious dissent in states with established religions, as was the case with the persecutions of religious dissidents in Europe. To this end, when Jefferson recounts that “Millions of innocent

⁴³ U.S. Constitution: First Amendment, *First Amendment Religion and Expression*, (Web: 2012).

⁴⁴ John Locke: A Letter Concerning Toleration, *Index* (Web: 2012) <<http://www.constitution.org/jl/tolerati.htm>>.

⁴⁵ Witte, John, and Joel A. Nichols, *ibid* 42

⁴⁶ Witte, John, and Joel A. Nichols, *ibid* 43

men, women, and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advanced one inch towards uniformity,” John Adams reminds him that the “Checks and balances” of religious freedom and pluralism are the “only Security, for the progress of Mind, as well as the Security of Body.”⁴⁷ It would nevertheless be impossible for the government to affect true change of conscience or religious belief, because those are inward qualities which cannot be affected by outward force. Rather, it would be to the detriment of the government to violate this freedom of conscience, as Thomas Jefferson stated in the 1786 Virginia Statute for the Establishment of Religious Freedom, because “Almighty God hath created the mind free; that all attempts to influence it by temporal punishment, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion.”⁴⁸

As religion serves to inform Man on how to best live his life according to God’s will, and as men exercise their religious practices within religious communities, true religious freedom therefore must extend to those religious communities within which men practice.

Free Exercise

3. *“No injunctions are to be put upon any church, church officers or member in point of doctrine, worship, or discipline”*
– Nathaniel Ward 1641 Body of Liberties⁴⁹

“...to have full enjoyment and exercise of those purely spiritual powers . . . as may be consistent with the civil rights of society.” – William White 1836 Memoirs of the Protestant Episcopal Church in the United States of America⁵⁰

⁴⁷ Witte, John, and Joel A. Nichols, *ibid* 47

⁴⁸ Witte, John, and Joel A. Nichols, *ibid* 33

⁴⁹ Witte, John, *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge UP, 2007) 325.

“Congress shall make no law... abridging the freedom of speech... or the right of the people peaceably to assemble”
 – 1st Amendment US Constitution⁵¹

While there is little in the way of explicit wording guaranteeing *corporate religious rights*, religious institutions were certainly a reality of the times. Given the diversity of religions and religious communities however; ranging from the Anglican and Puritan covenant religious societies – having very institutionalized churches which was closely allied with and protected by the civil government in its many functions and teachings – to the Evangelical religious communities such as the Baptists – seeking to establish a “wall of separation” between the church and the state – the formulation thereof would have been a very difficult task. The Puritan communities, for instance, had extensively codified laws regulating the relationship. A couple of good examples of this are the liberty of “all churches... to deal with any of their members in a church way that are in the hand of justice” and of “Every church... to deal with any magistrate, deputy of court or other officer whatsoever that is a member in a church way in case of apparent and just offence given in their places.”⁵² It would have been unrealistic, or at least impracticable to define explicit rights which could apply equally to all religions and religious communities.

The same degree of diversity in religious life in the colonies at the time of the founding has grown steadily with time, and is now more varied than ever before. Religious institutions in the United States have been able to govern themselves according to their own teachings; operate independently according to their own administrative rules; retain property and manage

⁵⁰ Witte, John, and Joel A. Nichols, *ibid* 46

⁵¹ U.S. Constitution, *ibid*

⁵² Witte, John, *ibid* 285

their own infrastructure; collaborate with other religious communities, domestic and foreign; hold meetings; and establish educational, cultural, charitable and social organizations; each according to its own desired degree, with little to no successful legal challenge, defiance or opposition on the part of the government. This practice of establishing educational, cultural, charitable and social organizations was very popular among Evangelicals, who developed public schools, hospitals, and charities.⁵³

This success could be in part attributed to the other civil protections, at both the national and state level, such as freedom of assembly, association, press, speech, etc... all of which have been recognized as applying both to individuals in their religious exercise and at times to religious institutions themselves.

Religious Education Rights

4. *“Religion, morality and knowledge, being necessary of good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” – Northwest Ordinance 1787⁵⁴*

Education has always played a central role in the United States and as a result is deeply ingrained in the fabric of the culture. The prestigious university system dates back to the early protestant divinity schools which have come to be the greatest institutions of higher learning in the world. Likewise, the early puritans established their own local schools, primarily for religious education. Many of the most influential men in the then colonies were graduates from institutions of higher learning in the United States, and were clearly well aware of the benefits to society which accompany widespread education among the population. As the

⁵³ *God in America*, ibid

⁵⁴ Witte, John, and Joel A. Nichols, ibid 35

above quote from the Northwest Ordinance of 1787 shows, schools and education were viewed as the vehicles for spreading “Religion, morality and knowledge” which were “necessary of good government.” After the Second Great Awakening, when Evangelical religious communities began reacting to the perceived social ills that plagued the nation at the time, public education became a primary concern. Evangelical public schools began springing up in communities all around the country, providing religious teaching and general education with a religious bent at little to no cost to local families who otherwise would be unable to provide their children with an education. A prime example of this is The American Sunday School Union, which was an institution formed in 1824 for the purpose of educating children who lived on the frontier, outside of the reach of any government infrastructure, in literacy and Christian morals.

With a surge in Catholic immigration along the East Coast, many poor Irish and German catholic families turn to local public schools as an affordable source of education for their children. When parents learn that the public schools are using the King James Bible and educating their children in Protestant religious morals and teachings, the parents withdrew them from the public schools fearing they were being indoctrinated into Protestantism. This was particularly a problem with the heavy concentration of Catholics in New York, where 12,000 catholic children attended school. What followed was a bitter fight led by Catholic Archbishop of New York, John Hughes, campaigning either for public funding for Catholic parochial schools, or for the complete removal of religion from the public school system, arguing that using the King James version of the Bible amounted to favoring one religion or sect over another and therefore was a violation of the establishment clause. While the campaign

for funding was unsuccessful, Catholics turn out in droves for the 1841 state elections and win enough representation to pass a bill removing religious instruction in public schools.⁵⁵

Other variations of this story have played out in the United States since, affirming the rights of parents to determine the type of education their children receive, religious otherwise, and that the state could not put undue burdens on families, churches, or schools on the basis of this freedom. Among these instances include Supreme Court cases such as *Quick Bear v. Leupp*, *Meyer v. Nebraska*, *Pierce v. Society of Sisters*, *Cochran v. Louisiana State Board of Education*, *Everson v. Board of Education*, *Board of Education v. Allen*, *Tilton v. Richardson*, *Hunt v. McNair*, and *Roemer v. Maryland Public Works Board*.

Protection of Religious Rights

5. *“As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of the public instructions in piety, religion, and morality...”* – Art. III Massachusetts Constitution 1787⁵⁶

“Institutions for the promotion of good morals, are objects of legislative provision and support: and among these . . . religious institutions are imminently useful and important.” – Connecticut senator Oliver Ellsworth⁵⁷

“A just Government . . . will be best supported by protecting every Citizen in the enjoyment of his religion, with the same... equal rights of any sect” James Madison, *Memorial and Remonstrance*⁵⁸

While, in any pluralist society, there are a wide variety of views on the proper relationship between Church and State, there has always been a strong current of Civic

⁵⁵ *God in America*, ibid

⁵⁶ John Adams and the Massachusetts Constitution, *The Massachusetts Constitution* (Web: 2012)

⁵⁷ Witte, John, and Joel A. Nichols, ibid 35

⁵⁸ Witte, John, and Joel A. Nichols, ibid 53

Republicanism in the United States dating back to its Puritan origins, holding that there should be a positive, collegial relationship between government and religion in general towards their common ends and mutual benefit, i.e.: the common good. This was based on the common conception of the time, as echoed by George Washington, that “Religion and Morality are the essential pillars of Civil society.”⁵⁹ Not only was the relationship favorable, but necessary, for “We have no government,” as John Adams put it, “armed with power capable of contending with human passions unbridled by morality and religion.”⁶⁰ A civic republican himself, Ben Franklin coined this collegiality as “Publick Religion” in 1749.⁶¹ The popular support for this Publick Religion is evident in the various acts of the national Congress – representative of the manner and degree of the concerns and interests of the citizenry – in such acts as the Thanksgiving proclamations and the Northwest Ordinance of 1787, which asserted: “Religion, morality and knowledge, being necessary to good government and happiness of mankind . . . schools and means of education shall forever be encouraged.”⁶² This latter part is a clear public call for the accommodation and perpetuation of religion in general.

Likewise, American history shows us repeatedly that the government, as the protector of civil rights, should and has protected the right of religious liberty, and has tended to do so impartially. In the spirit of this protection, John Adams, a key framer of the U. S. Constitution, declared himself “an enemy to every appearance of restraint in a matter so delicate and sacred as the Liberty of Conscience.”⁶³ The constitutions of most states grant a freedom of conscience

⁵⁹ Witte, John, and Joel A. Nichols, *ibid* 34

⁶⁰ Witte, John, and Joel A. Nichols, *ibid* 34

⁶¹ Witte, John, and Joel A. Nichols, *ibid* 34

⁶² Witte, John, and Joel A. Nichols, *ibid* 35

⁶³ Witte, John, and Joel A. Nichols, *ibid* 42

or of religious worship, in some variation, to all residents. Adams further declares: “All men of all religions consistent with morals and property [must] enjoy equal liberty.” James Madison, another key framer, similarly stated: “While we assert for ourselves a freedom to embrace, to profess and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us.”

Social Responsibility

6. *“All persons whatever shall have the free exercise of their religion; provide it be not repugnant to the peace and safety of the State.” – 1777 Georgia Constitution⁶⁴*

“the civil rights of none shall be abridged on account of religion” – James Madison’s June 8 draft of religion clause⁶⁵

The two predominant schools of natural law theory in the United States at the time were the Enlightenment and Republican traditions, but each differed in its emphasis. In the Enlightenment tradition, emphasis was placed on individual liberty *from* responsibility to the state or society at large; rights of the individual took priority to the rights of the community. In the Republican tradition however, emphasis was given to individual liberty *toward* responsibility to the state or society at large. Of these two schools, the Republican tradition was more popular in the United States due to its political majority who were religious refugees seeking asylum to practice their religious beliefs. John Winthrop, an early Puritan leader, described this responsible freedom as thus: “The other kind of liberty I call civil or federal; it may also be termed moral, in reference to the covenant between God and man, in the moral

⁶⁴ Georgia Constitution of 1777, *Welcome to GeorgiaInfo* (Web: 2012).

⁶⁵ Witte, John, and Joel A. Nichols, *ibid* 76

law, and the politic covenants amongst men themselves. This liberty is the proper end and object of authority and cannot subsist without it; and it is a liberty to that only which is good, just, and honest.”⁶⁶ The exercises of this liberty should be restrained to “such acts only as are injurious to others,” and therefore the order of society. It follows therefore, that any instance in which an individual or group uses religious liberty as an excuse to do harm to, or violate the rights of another, the government is to prohibit and restrain such acts.

Freedom as Catalyst

7. *“Religion is best supported under the patronage of particular societies . . . Religion could not long be maintained in the world without forms and the distinctions of sects.”* - Benjamin Rush, *Letter to John Armstrong*⁶⁷

In the quote above, Benjamin Rush is referring to the kind of religiously pluralist society which arises from a foundation of religious freedom.

One essential characteristic of the natural law tradition is its focus on pragmatism. Natural law requires an appeal to reason in the formulation of laws. While it may have been obvious that Man had a duty to worship God, it was perhaps less obvious that such a duty required an attendant right to seek eternal truth for oneself and worship God according to the dictates of his own conscience. The recent history of religious war and persecution taught the colonists that the only way for Man to come to terms with his duties to God was for him to be free to seek out those duties for himself, else wise his adherence to any duty would not be a true adherence to, but rather a betrayal of his conscience.

⁶⁶ Winthrop, John, *“On Liberty” Constitution.org* (Constitution Society: 2012).

⁶⁷ Republican Government: Benjamin Rush to John Adams, (*Electronic Resources from the University of Chicago Press Books Division*: 2012)

Ch. 3 Historical Development of Christian Religious Liberty Theory

As suggested in an earlier chapter, the Declaration on Religious Freedom was a very clear break with Tradition – a source of heavy authority within the Church – and should therefore be examined in the light of the “development of doctrine”⁶⁸ on church-state relations. This will enable the reader to ascertain the extent to which this Declaration does or does not adhere to the Tradition of the Church, even over the course of its development.

Early Christian Community: Persecution and Obedience

Though they lived in a somewhat egalitarian commonwealth practically isolated from Roman society, fashioned after the teachings of Christ, the Christians of the early church were under the rule of the Roman Empire. Having radically different religious and moral beliefs, incompatible with those of the Empire, the early Christian community often found themselves at odds with the civil authorities. They were an obscure religious minority, undermining the authority of both the established religion and the social order of the state by seeking to convert Pagans and living out Christ’s social teachings of aid to the sick and the poor, and were therefore often the subjects of persecution for it. These persecutions prompted one of the earliest church teachings in regards to government, and it addresses Man’s responsibility to the civil authorities. According to Christ’s command to “render to Caesar the things that are Caesar’s,” the early church fathers repeatedly admonished the Christian faithful to obey the

⁶⁸ Murray, John C. *The Declaration on Religious Freedom: Its Deeper Significance* (America. 114 (April 23, 1966): 592-93).

earthly authorities. When the Christians in Rome were being persecuted for resistance, Paul admonished them to “be subordinate to the higher authorities.” He goes on to explain that they should respect the earthly authorities because “there is no authority except from God, and those that exist have been established by God.”⁶⁹ To make this point perfectly clear, Paul tells his audience that “whoever resists authority opposes what God has appointed, and those who oppose it will bring judgment upon themselves.”⁷⁰ Peter, the head of the church and the first pope, likewise instructs the early Christians to “honor the emperor” because his purpose is to “punish those who do wrong and to praise those who do right.”⁷¹ However, while Christ taught obedience to civil authorities, he taught that it should not be at the expense of God’s law, qualifying this obedience with the command to “render... to God the things that are God’s.”⁷² As for freedom of conscience, Paul seems to distinguish between civil and religious authorities, and Man’s obligation. While obedience to civil authority is required, in reference to religious law Paul reminds the Galatians: “For freedom Christ set us free; so stand firm and do not submit again to the yoke of slavery... For you were called to freedom, brothers. But do not use this freedom as an opportunity for the flesh; rather, serve one another through love.”⁷³ Thus, Paul seems to advocate for freedom *from* compulsory religious laws, but emphasizes an obligation *toward* love. The early Christian communities in Rome would continue to be persecuted for several centuries to come, and to an increasing degree.

⁶⁹ *Romans* The New American Bible, Northport, NY: Costello Pub., 1988, Chapter: 13 Verse: 1

⁷⁰ *Romans* The New American Bible, Northport, NY: Costello Pub., 1988, Chapter: 13 Verse: 1

⁷¹ *1 Peter* The New American Bible, Northport, NY: Costello Pub., 1988, Chapter: 2 Verse: 13-17

⁷² *Mark* The New American Bible, Northport, NY: Costello Pub., 1988, Chapter: 12 Verse: 17

⁷³ *Galatians* The New American Bible, Northport, NY: Costello Pub., 1988, Chapter: 5 Verse: 1-13

Holy Roman Empire: Rise to Power

These persecutions came to a head in the year 312 with the Christian conversion of the Roman Emperor Constantine setting the stage for drastic change. In 313 Constantine issued the Edict of Milan which for the first time guaranteed Christians and all other faiths “a public and free liberty to practice their religion or cult,” including Christian group rights – corporate rather than individual – to property and places of worship, as well as to compensations for past injustices, in order that God might bless them. This period was short lived however, as Roman emperors grew more and more to favor Christianity and began to persecute other religious sects. The policy of toleration was replaced in 380, by imperial edict, with the establishment of Trinitarian Christianity as the official religion of the Roman Empire.⁷⁴ With the Church now receiving all forms of support and protection from the civil authorities, and other religious faiths receiving only persecution, the place of Christianity had been reversed. Although the temporal influence and the missionary efforts of the church were exponentially strengthened, these benefits came at the cost of clerical and ecclesiastical control over doctrine and administration of the Church being overhauled by Roman emperors who then claimed both spiritual and religious authority, instituting “hundreds of new laws that governed the doctrine, liturgy, polity, and property of the established Christian church.”⁷⁵

Augustine: Two Cities

This was the era in which St. Augustine lived and wrote. One of the great theologians of Church history and recognized as a Church Father, St. Augustine, then bishop of Hippo,

⁷⁴ Witte, John, and Joel A. Nichols, *ibid* 4

⁷⁵ Witte, John, and Joel A. Nichols, *ibid* 5

developed a “two cities” theory. According to Augustine, this new relationship between the church and the state was representative of the “spiritual and temporal dimensions and powers of this earthly life.”⁷⁶ In his famous work *City of God*, Augustine emphasizes that men are free to strive for spiritual perfection in their religious lives, but reminds them that this spiritual freedom does not release them from the obedience of civil authority to which they are bound by virtue of their membership in the temporal world. He frames the Christian experience in cities: the city of God and the city of Man. The city of God consists of all those faithful Christians, led by clergy and living the Gospel through love, holiness, and morality. The city of Man, on the other hand, consists of all that is sinful in the world, as well as those socio-political institutions tasked with maintaining order and peace in the world. In an empire with Christianity as its established religion, such as the Roman Empire, the cities shared citizens and objectives. However, strive as he will for one world or another, Augustine argues, Man will always be bound by the laws and constraints of both worlds. Therefore, it would be ideal city of Man will be one which closely conforms to that of God.

Throughout this time, and up until the fall of the Roman Empire, Church leaders repeatedly emphasized that civic leaders had no business to “intrude upon core spiritual functions” of the church, as they were not clerics but laity; each to his own station.⁷⁷ While under this arrangement, the established Catholic Church enjoyed a number of liberties, including freedom from the interference of civil authorities in matters religious, this was not the case for religious minorities and “heretics,” whose false beliefs were to be contained, by force if

⁷⁶ Witte, John, and Joel A. Nichols, *ibid* 5

⁷⁷ Witte, John, and Joel A. Nichols, *ibid* 6

necessary. This power dynamic, clerics having authority over the church and kings having authority over the state, provided an effective and mutually beneficial framework of authority for approximately half a century.

Papal Authority in Byzantium

As the collegiality of the civil and religious institutions grew in the years following the fall of Rome, this dynamic was upset around the turn of the first millennium. In 1075, Pope Gregory VII issued *The Dictates of the Pope*, in which he asserted, under the pretext of religious freedom, that the Catholic Church was “an independent and superior legal and political authority of Western Christendom” than were the “emperors and kings.” According to Gregory, the pope alone could “depose emperors” and make new laws as may from time to time be necessary for all of Christendom. Known as canon laws, they ranged in subject matter and jurisdiction.⁷⁸ In a natural progression, in 1302 Pope Boniface VIII declared that the Pope and Church – as the authoritative source of God’s teaching – were superior to all civil authorities on earth who, being the instrument of enforcing God’s will on earth, are therefore subject to the former and perform their civil functions at the behest of the Church.

Aquinas: Natural Law

The next significant developments in Catholic political theory came about in this historical context and were formulated by another celebrated philosopher, theologian, and Church Father; Thomas Aquinas. Bearing witness to the Church’s increasing tendency toward the codification of moral laws, as well as to a renewed interest in Roman law, Aquinas wanted

⁷⁸ Witte, John, and Joel A. Nichols, *ibid* 7

to ensure the justice and efficacy of the laws by establishing that they were compatible with the will of God. The Natural law tradition which he championed was revolutionary in Europe.

With concern to the nature of Man, Aquinas believed that humans were predisposed to follow God's eternal law. For Aquinas, God's eternal law reveals itself to Man through those natural tendencies which direct and conform the actions of all living things. As the sole members of creation endowed with reason, humans are aware of their ability to act contrary to their natural tendencies, and are thereby endowed with freedom of choice. Aquinas refers to the eternal law in humans as natural law. This natural law is characterized by "a natural knowledge held by all people instructing them as to the fundamental moral requirements of their human nature." The most basic natural law is that "good is to be done and pursued and evil is to be avoided."⁷⁹ Aquinas then refers to the application of these natural tendencies to real situations as *conscience*. In other words, *conscience* is the consideration of one's natural tendencies toward an act to determine if it is good or evil. At the same time, Aquinas does acknowledge that acting simply based on natural inclinations can be dangerous because natural inclinations are subject to the corruption of sin. Therefore, one should first determine the natural reason of that inclination and then act with respect thereto. According to Aquinas, again as a result of the perversion of sin, Man's reason is distorted and thus needs to be educated towards God's teachings; otherwise he may be led astray. It is for fear of this deception as to God's law that the church warns against individual freedom of conscience. Aquinas believed that natural inclination in regard to Man's rational nature specifically

⁷⁹ Koritansky, Peter, "[Aquinas: Political Philosophy \[Internet Encyclopedia of Philosophy\]](#)" *Internet Encyclopedia of Philosophy*. University of Prince Edward Island, Canada, 27 Dec. 2007.

mentioned by Aquinas is to “live in society”. This is a crucial statement about the nature of Man.⁸⁰

In stating that Man has a natural tendency to “live in society”, Aquinas is making the claim that Man is a social being.⁸¹ As Peter Koritansky puts it, “Even though human beings are inclined to moral virtue, acquiring the virtues nonetheless requires both education and habituation.” The education and habituation to which he refers are the lessons of Christ’s gospel as explained by the Catholic Church.⁸² In fact, according to Aquinas, full humanity requires participation in political society. Any social grouping outside that of the family unit is considered a society, and they may range in size. The function of a political society should be to bring about the common good for all within the society.

In the context of society, Aquinas made a distinction between the natural law and the civil law; God’s universal law and Man’s law. Natural law, according to Aquinas, should inform civil law. We should attempt to shape and conform the civil law, which has coercive authority, to reflect that natural law revealed through our consciences. Because our reason is clouded by sin however, it must be educated to moral truths. It is for this reason that Man should not be sole arbiter of his own conscience, but should defer to the eternal wisdom of the Church which is guided by God’s truth. However, Aquinas was careful to qualify that not all natural law could or should be reflected in civil law. This is because no one is capable of perfection, and such a demand would turn people against the law. This will be helpful for understanding pluralism in the American tradition in a later chapter.

⁸⁰ Koritansky, *ibid*

⁸¹ Koritansky, *ibid*

⁸² Koritansky, *ibid*

Though Aquinas' work was groundbreaking, at first some members of the Church hierarchy criticized and condemned it. Nonetheless, his work grew in popularity though in the 14th, 15th, and 16th centuries as it spread throughout Europe and it remained a key work of the doctrinal theology of the church. However, the 17th century saw a shift of focus in the church from doctrinal theology to moral theology, and consequently, Aquinas' work fell out of fashion to make way for moral theology. The following two centuries were marked by the Protestant Reformation, shortly followed by the Catholic Counter-Reformation. In an attempt to reclaim its lost sheep, the Catholic Church allied itself with those western monarchies which still claimed loyalty to Catholicism. Faced with the growing popularity of atheistic subjective philosophies which began in the 17th century, the Church again shifted its focus in the mid-19th century, and this time back to Aquinas's Natural Law theory, also known as Thomism.⁸³

Pope Leo XIII: Return to Natural Law

Pope Leo XIII, in his 1879 encyclical *Aeterni Patris* pronounced a renewed interest in doctrinal theology as it was important when dealing with problems of the modern world. He made Christian Philosophy of the Church Fathers and Scholastics, particularly of Aquinas, a key focus of the church and clarified that it ought to be developed to address modern concerns.⁸⁴ These "modern concerns" at the time were the popular conceptions of liberalism which held that the "reason" of Man, as opposed to any religious authority or Tradition, was the sole authority in determinations of morality. In *Libertas Praestantissimum*, Leo XIII heralded individual liberty as "the highest of natural endowments... of intellectual or rational natures,"

⁸³ O'Meara, Thomas F. "Thomism (theology) -- Britannica Online Encyclopedia." *Encyclopedia - Britannica Online Encyclopedia*. Encyclopedia Britannica, 2011.

⁸⁴ ON THE RESTORATION OF CHRISTIAN PHILOSOPHY, *AETERNI PATRIS* (Web: 2012)

free will to choose rightly and do God's will being one of the most basic, fundamental teachings of the Church. He did however warn against Liberalism, in its deference to Man's individual conscience as an authoritative moral determinant. He distinguishes between *reason* and *will*; reason – tainted by sin – governs human judgments, while will – free and incorruptible in and of itself as from God – governs human action. He reminded the bishops of the Catholic world that the Holy Catholic Church is the single true source of authority on faith and morals, and is thus to be deferred to by civil authorities for moral judgments or dictates. Freedom of conscience, as it entails an equal treatment of all religions by the civil authorities, is not only flawed but potentially detrimental to all men in such a society.⁸⁵

Thus, it is clear that until the 20th century, the Church has at no point endorsed the principle of individual religious freedom, but rather cautioned against it.

Pope John XXIII: Freedom of Conscience

The next significant development to take place came from Pope John XXIII in the form of the encyclical letter *Pacem in Terris*. As with other encyclicals, this letter was something of a prescription for peace in the world and was written in response to an evil of the times; specifically the atheistic materialism that was at the heart of the Communist movement spreading across Eastern Europe and Asia, referring to “the mischief... often caused by erroneous opinions. Many people think that the laws which govern man's relations with the State are the same as those which regulate the blind, elemental forces of the universe.”⁸⁶ With the continuing growth of communism across Eastern Europe and Asia, people are made

⁸⁵ LIBERTAS PRAESTANTISSIMUM, *LIBERTAS* (Web: 2012)

⁸⁶ "Encyclical *Pacem in Terris* of John XXIII, 11 April 1963." *Vatican.va*. Web. 20 May 2012.

increasingly more aware of the loss of personal freedoms and opportunities which accompanied totalitarian communist nations, including but not limited to freedom of conscience. Fearing for the security of their own rights from the communist onslaught, in a pendulum effect, there was a reemphasis in Western nations on fundamental natural rights. Such was likewise the response of the Church.

For the first time in history, in *Pacem in Terris*, the Church declared an explicit right to worship according to the dictates of one's own conscience. It read: "Also among man's rights is that of being able to worship God in accordance with the right dictates of his own conscience, and to profess his religion both in private and in public."⁸⁷ The conscience clause therein could have been, and very likely was, conceived of as a drastic departure from Tradition. However, it was still a teaching which came from the highest temporal teaching authority within the church; the pope, and was therefore beyond question. This departure from Tradition does however bring us full circle and lays a foundation for the subject at hand: the Declaration on Religious Freedom.

Murray and Pope John XXIII were both ardent students of Natural Law, which primary concerns the use of reason to formulate good laws. These laws should be informed by the conscience to conform to God's universal law, but only to the extent that they are practicable and enforceable. John XXIII and Murray are both making an argument for religious freedom; John XXIII is writing to the Church primarily from a point of revelation in *Pacem in Terris* and Murray is writing primarily from a natural law perspective.

⁸⁷ *Pacem in Terris*, Ibid

Discussion

As previously established, the Declaration on Religious Freedom, which advocated for a wide degree of religious liberty, was derived not from divine revelation or deduction, but from “the demand... increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty” and that “constitutional limits should be set to the powers of government, in order that there may be no encroachment on the rightful freedom of the person and of associations.” This “increasing demand” likely stems from the same combination of factors as did the encyclical *Pacem in Terris*. Such was likewise the response of the church in the form of the Declaration on Religious Freedom.

It would be impossible to prove definitively that the Declaration on Religious Freedom was modeled after American political thought, as the Church herself would not admit to such an appeal for fear of undermining the credibility or legitimacy of her teachings as being ground in Scripture and Tradition and having divine authority, nor indeed would Fr. Murray – a faithful servant of the Church and loyal to her leaders – admit to such an appeal, lest he cause her scandal. Perhaps the strongest support for the claim to American political influence is an account by Bishop Tracy of claims by the opponents of the Declaration:

“First, they sprayed the Council Fathers with the rumor that the declaration had no place in the Council at all – that it was not a theological statement. They pointed out that even its proponents admitted that all the declaration wanted to say was that the State had no competence in judging the value of various religions. This, they contended, was a purely civil consideration, making of the declaration a mere American

political document aimed at easing pressures from a pluralistic community back home, no matter the cost to Catholics in other countries.”⁸⁸

However, regardless of whether or not any direct causal evidence can be established, the following at least can be strongly inferred: The United States, being the first successful experiment in religious liberty in a constitutional government; the similarity between the rights for which both the Declaration and the American religious experience advocated; the peaceable functionality of religious pluralism in the United States being Fr. Murray’s area of expertise and research interest... it would be therefore reasonable to expect that Murray, as the Declaration’s chief architect, had borrowed from the successful American religious experience when crafting a prescription for religious freedom in a Constitutional government.

As the first successful civil realization of lasting religious freedom in history was manifested in the religio-political experience which came to be known as the United States of America, Murray followed the U. S. constitutional model of religious liberty to frame the Declaration on Religious Freedom, and in so doing reminded the church of, as Cardinal Cushing put it, St. Paul’s “Gospel of Freedom.”⁸⁹

⁸⁸ Tracy, Bishop Robert E. *American Bishop at the Vatican Council* (McGraw-Hill: New York 1966) p. 173

⁸⁹ Rynne, Xavier *The Fourth Session* (Stratford Press: New York 1965) p. 34