

PRESENTATION ON RELIGIOUS LIBERTY – PART I
GENERAL PRINCIPLES OF THE CHURCH AND OF AMERICA

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“Awareness of man's freedom and dignity, together with the affirmation of the inalienable rights of individuals and peoples, is one of the major characteristics of our time.” Thus wrote the Vatican’s Congregation on the Doctrine of the Faith in its 1986 document on Christian Freedom and Liberation. The author, the then Cardinal Ratzinger, now Pope Benedict, went on to say “The Church of Christ makes these aspirations her own, while exercising discernment in the light of the Gospel which is by its very nature a message of freedom and liberation.” In this talk, I will try to apply this discerning call for liberty to the concept of freedom of religion, with reference both to the teachings of the Church and to the vision of the founding fathers of this nation and show that the two visions are consistent and mutually supporting.

We begin with the teachings of the Church with regard to human rights and in particular religious liberty. Overall, the Church teaches that we have rights from God precisely because we have duties from God. Thus does Pope Benedict say in his latest encyclical *Caritas in Veritate*, “it is important to call for a renewed reflection on how rights presuppose duties, if they are not to become mere license.” CV 42. He goes on to point out a great irony: “A link has often been noted between claims to a right to excess, and even to transgression and vice, within affluent societies, and the lack of food, drinkable water, basic instruction and elementary health care in areas of the underdeveloped world and on the outskirts of large metropolitan centers. The link consists in this: individual rights, when detached from a framework of duties which grants them their full meaning, can run wild, leading to an escalation of demands which is effectively unlimited and indiscriminate.” This insistence that rights presuppose duties may seem like a limitation, but in fact, they give human rights their most secure basis, for the basis is in the callings of God Himself. As Pope Benedict points out, “Duties thereby reinforce rights and call for their defense and promotion as a task to be undertaken in the service of the common good. Otherwise, if the only basis of human rights is to be found in the deliberations of an assembly of citizens, those rights can be changed at any time, and so the duty to respect and pursue them fades from the

common consciousness. Governments and international bodies can then lose sight of the objectivity and inviolability of rights. When this happens, the authentic development of peoples is endangered.”

Thus, for example, the Vatican II Council supports the right of parents to raise their children precisely because they have the duty to raise children well. See, e.g., Vatican II Council Gravissimum Educationis 3 (1965). People have freedom of speech, press, and the like precisely because there is a duty to seek and share truth. See, e.g., Vatican II Council, Inter Mirifica 9-12 (1963). People have the right of free enterprise precisely because there is the duty to work and develop one’s talents and abilities. See, e.g., Pope John Paul II, Centissimus Annus 43 (1991). And likewise, freedom of religion is so important precisely because there is a duty to seek God and worship Him. That connection between rights and duties is precisely how Dignitatis Humanae, the Vatican II Council’s Declaration on Religious Liberty, frames the issue.

The declaration, which is the Church’s most extensive document on religious liberty, begins by emphasizing that “all are bound to seek the truth, especially in what concerns God and the Church, and to embrace it and hold on to it as they come to know it.” Section 2 then says that, precisely because we are endowed with reason and free will, we are called by our very nature “To seek the truth, especially religious truth . . . to adhere to the truth once [we] come to know it and to direct [our] whole lives in accordance with this truth.” The document does not retreat in the least from affirming the Catholic Church’s centrality in salvation history. For it states confidently that “God has made known to the human race how people by serving Him can be saved and reach happiness in Christ. We believe that the one true religion exists in the Catholic and apostolic Church to whom the Lord Jesus entrusted the task of spreading [the faith] among all peoples.” The Church does not at all deny that there is goodness to be found in other religions; and in fact Lumen Gentium the Vatican II Council’s Constitution on the Church describes in sections 15 and 16 how other faiths are in part united to the Church; and section 6 of Dignitatis Humanae calls for the government “to create circumstances favorable to the fostering of religious life.” However, there is a strong call for the faithful to promote the truth of our faith and call others to the grace that we have in Christ.

But this calling to promote the faith is a challenge to use the persuasive force of reason and beseech the power of grace, not a permission to employ force or threat. As section 11 emphasizes, Jesus Christ is the Messiah and brings people to salvation through truth and grace, not coercion. And thus He, and now the Church, certainly defends the truth and denounces sin in the strongest terms, but seeks to bring people to the truth by persuasion and invitation. Thus, the Vatican Council emphasizes the fact that this pursuit of truth must be free and rational in order to fulfill human nature. For, faith is not faith if it is not free. And thus we “cannot satisfy this obligation [of truth] in a way that is in keeping with [our] nature unless we enjoy both psychological freedom and immunity from external coercion.” As the document puts it in section 3, “everybody has the duty and consequently the right to seek the truth in religious matters.”

Thus, the Vatican Council strongly supported the “right to religious freedom.” This freedom is not a mere freedom of believing religious truths or limited to “freedom of worship” alone, as some recent Administration statements have said. See, e.g., Unites States Commission on International Religion Freedom, 2010 Annual Report, Chairman’s Introductory Remarks 2. Rather, the Vatican II Council said that “everyone should be immune from coercion by individual, social groups or any human power so that, within due limits, no men or women are forced to act against their convictions nor are any persons to be restrained from acting in accordance with their convictions in religious matters in public or in private, alone or in association with others.” Later the Council would reiterate that “all are bound to follow their conscience faithfully . . . so that they may come to God. Therefore, the individual must not be forced to act against his conscience.” There is certainly the qualification “within due limits,” for if a person’s religious practices were to injure others or completely upset the social order, they would have to be restrained, not because of religious disapproval, but for the rights of others. Thus, in section 8 the Council does say that laws can rightfully restrict religious groups from injuring the rights of others, upsetting the peace and good order or damaging public morality. But it concludes that “people’s freedom should be given the fullest possible recognition and should not be curtailed except when and in so far as necessary.”

Thus, the Vatican Council upholds a broad idea of religious liberty, not as a generous or even practical gift of the government, but rather based upon the very

nature of man and the law of God. For example in section 4, the Council states that, because faith is usually practiced in community, freedom of religion must also extend to religious groups, who likewise must not be forced to act against their consciences, as long as “the just requirements of public order are not violated.” The Council also reiterates that it is wrong for earthly powers to interfere in the ability of religious communities to appoint their own ministers or to promote their religious views, unless they use of fraud or coercion. In addition, section 8 of the declaration states that, because culture, charity and education are naturally intertwined with the faith, religious groups have the right to promote their culture, charitable and educational institutions. The Council also strongly defends the rights of families to raise their children in their faith. For example, the Council said that parents should have the right “to choose in genuine freedom schools or other systems of education.” The Council also states that “the rights of parents are violated if their children are compelled to attend classes which are not in agreement with their religious beliefs.” The idea is that the government is meant to uphold a society in which the faith can be practiced in full; and interfering in that practice against individuals, churches or families, except to stop violence, fraud or public immorality, is an act of oppression

As section 12 of the document does note, these teachings have not always been practiced by members of the Church, for there have been times when force has been used against those not of the faith. However, it should be noted that, in almost all of those instances, the force came from those outside the Church hierarchy, not within it. Thus, for example, while it is true that heretics were often required to recant their heretical beliefs, non-Christians could not be tried as heretics, for a heretic had to be a believer who teaches falsehoods. Thus, such institutions as the various Inquisitions (which despite much misreporting actually committed much less violence than almost any of the monarchies of the Middle Ages) were designed to preserve the faith from error, not compel any non-believer to join. And, because church and state were combined, it was thought that division within the Church would cause anarchy. And, as Professor Phillip Daileader of William & Mary College explains in his lectures CDs on the High Middle Ages, most of the worst oppression was done because of popular superstition or simple greed by the wealthy, not from Church instruction. See [The High Middle Ages](#) Lecture 13 (The Teaching Company 2001.) Thus, for example, the expulsion of

the Jews from France in 1182 and England in 1290 were engineered by kings and nobles trying to seize property or get out of paying their debts, not primarily by churchmen.

And thus the Vatican Council does state accurately that the Church has never taught coercion should be used to compel people to believe against their will. For example, as St. Thomas Aquinas wrote in his great work the Summa Theologica, “There are some unbelievers such as Gentiles and Hebrews who have never accepted the Christian faith. These people should in no way be forced to believe, for faith is a matter of the will.” ST II-II q. 10 art. 8. Regarding the civil rights of non-believers, Pope Innocent IV (1243-54) argued that property and civil rights belong to all people, Christian or not, because they are innate in human nature. As he wrote “ownership, possession, and jurisdiction can belong to infidels licitly . . . for these things were made not only for the faithful, but for every rational creature.” See Brian Tierney, “The Idea of Natural Rights – Origins and Persistence, 2 Northwest Univ. Jour. Human Rights 2 (April 2004). . . It is certainly true St. Thomas Aquinas argued, as would Pope Leo XIII in his 1888 encyclical Libertas, that non-Christian worship is often tolerated mostly because suppressing would cause greater harm. The Vatican II Council, had a more positive view of other religions, and thus considered religious liberty to be more of a matter of divinely given right than a practical necessity. But the Vatican II Council’s teachings should thus be seen as a development, not as a contradiction of what had gone before.

Perhaps no one made this argument better than the great American theologian Fr. John Courtney Murray, whose ministry spanned from about 1940 until his death in 1967. He most assuredly held to the principal that all salvation is through the Church, although he recognized that that salvation flows to others through the truths we hold together. He also strongly promoted the idea that, in the modern world, there should be neutrality from the government, not because all religions are equal, but rather because the acceptance of religion should be by the individual and society, not the state; and he argued that, whatever was the case in the past, there is no longer in most countries any need for the government to support a specific religion. His views were greeted with some skepticism by many high in the Church, including Cardinal Alfredo Ottaviano, the prefect of the Holy Office, the precursor to the Congregation on the Doctrine of the Faith. However,

he patiently and quietly argued for this careful distinction between the political and religious realms. And, when the Vatican II Council fathers moved toward drafting a separate document on religious liberty, the Archbishop of New York Cardinal Francis Spellman was in the lead and brought as his peritus, or expert, Fr. Murray, to help draft the document. As Fr. John Richard Neuhaus, the editor of the ecumenical journal First Things, said in a 2003 interview, Dignitatis Humanae drew heavily on the experience of America's founding fathers and thus has often been called "the American document" of the Council." See "Vatican II, 40 Years Later: "Dignitatis Humanae: Father Richard Neuhaus on the Declaration on Religious Freedom", Zenit.org (Nov. 20, 2003).

Fr. Murray had in fact argued that a rightful understanding of Church and state was entirely consistent with the vision of America's founding fathers, developed throughout time and space. In We Hold These Truths, a series of essays published in 1960, he argued that the "American Proposition" was based upon a series of truths that Catholics are now in an excellent position to defend. As the leading Catholic author and papal biographer George Weigel argued in an article on this book two years ago, Fr. Murray pointed out that America was founded upon a democratic vision that is joined to a religious vision, with the latter vision coming not from any one religion, but rather from a common recognition of the sovereignty of God. See George Weigel, "'Truths Still Held?', First Things (May, 2010) 41. Thus, as Fr. Murray rightly pointed out, that the American Proposition involves both the idea of participatory government by the consent and advice of the governed, and also a recognition of the sovereignty of the law of God. The first idea is well accepted, but the second idea of God's law is now frequently ignored. However, the Founding Fathers understood well that this nation, and any nation, is subject to the laws of God. For the Declaration of Independence stated that the Revolution was justified, not by popular opinion or convenience but "by the laws of nature and of nature's God." It went on in its statement of principles to begin with the proposition "that all men are created equal and are endowed by their Creator with certain inalienable rights, that among these are the rights to life, liberty and the pursuit of happiness" (emphasis added). Only then did it get to the principle of self-governance, which is meant to be exercised consistent with this law of God. As Thomas Jefferson wrote in Notes on the State of Virginia, "Can the liberties of a nation be thought secure when we have removed their only firm basis,

a conviction in the minds of people that these liberties are a gift of God? That they are not to be violated without His wrath?"

Among those rights freedom of religion was very prominent. Thus, in 1786, the State of Virginia promulgated the Statute of Religious Freedom, whose leading author and champion was Thomas Jefferson. In fact, Jefferson considered this law to be so important that his gravestone reads, "Here lies Thomas Jefferson, author of the Declaration of Independence and of the Virginia Statute of Religious Freedom and founder of the University of Virginia." The preamble to that statute states that religious liberty is not a concession by the state or even the people, but rather comes from the law of God; in particular it says, "all attempts to influence [religious beliefs] by temporal punishments or burthens, or by civil incapacitations tend only to beget habits of hypocrisy and meanness, and therefore are a departure from the plan of the holy author of our religion, who being Lord, both of body and mind yet chose not to propagate it by coercions on either, as was in his Almighty power to do." It went on to denounce attempts to force people to pay for things contrary to their beliefs, saying "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." The role of government toward regulating religion would be limited to situations where beliefs "break out into overt acts against peace and good order."

As a condition of joining the new constitution drafted in 1787 for the Republic, this state and others demanded that a Bill of Rights be promulgated as a part of it. And thus the very first amendment says, "Congress shall make no law respecting the establishment of a religion, nor prohibiting the free exercise thereof." George Washington would likewise write in 1789 to a Baptist Convention:

If I could have entertained the slightest apprehension that the Constitution framed in the Convention, where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical Society, certainly I would never have placed my signature to it; and if I could now conceive that the general Government might ever be so administered as to render the liberty of conscience insecure, I beg you will be persuaded that no one would be more zealous than myself to establish barriers against the horrors of spiritual tyranny.

The founders believed so strongly in religious liberty, not because considered religious views to be unimportant, but rather because they considered religion to be so important that it is prior to government. This brings up another of Fr. Murray's points about the American Proposition, namely that our free society depends upon virtue and religious beliefs that backs it up. Thus, for example, in his Farewell Address, George Washington stated, "Of all the dispositions and habits which lead to political prosperity religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who would labor to subvert these two great pillars of human happiness, these firmest props of the duties of Men and citizens." Likewise, John Adams wrote in a 1798 letter to a military brigade that a free and democratic society would last only if the people use their freedom and influence with virtue. As he stated, "Our constitution was made only for a moral and religious people. It is wholly inadequate for any other." And in 1789, the First Congress promulgated the Northwest Ordinance, which governed much of what is now the Midwest. That act said, among other things, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, Schools and the means of education shall forever be encouraged." One can see the consistency with the principles of the Vatican II Council, namely, that religious truth is crucially important to the development of men and nations, that this pursuit must be free, and therefore that religious freedom is crucial to the human person.

Thus, the vision of our founders was prophetically consistent with the vision of religious liberty promulgated by the Church in the Vatican II Council. And, although there have been many failures and setbacks, this respect for religious liberty at least seemed to have taken hold in the latter part of the twentieth century. Thus, for example, in 1993 Congress passed the Religious Freedom Restoration Act with unanimous approval from the House of Representatives and a 97-3 vote in the Senate. The bill, then signed by President Clinton, began by saying that "the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution." It then observed that even if a law applies generally, it can be a burden on freedom of religion as surely as laws intended to interfere with religious exercise. And thus, the Congress agreed that "governments should not substantially burden religious exercise without compelling justification." Thus, the law said that all statutes must

be read to avoid substantially burdening a person's exercise of religion unless it can be demonstrated that the requirement or prohibition is necessary to a compelling state interest and is narrowly tailored to that interest. The idea was to restore the rulings of earlier Supreme Court decisions, which said that the government, federal or state, may neither forbid actions important to a religion, nor mandate actions contrary to a person's or institution's faith, unless doing so is narrowly tailored to a compelling purpose. One can see the consistency with that statement of *Dignitatis Humanae* that that "everyone should be immune from coercion by individual, social groups or any human power so that, within due limits, no men or women are forced to act against their convictions nor are any persons to be restrained from acting in accordance with their convictions in religious matters in public or in private, alone or in association with others."

Unfortunately, in the last 20 years there have been various threats to this vision, both of the Church and of our nation, with such things as requirements that medical personnel to be involved in contraception and sterilization, forcing Catholic and other traditional adoption agencies out of business unless they agree to decadent marriages, attempts to force religious groups on campuses to accept those who act contrary to their beliefs, the refusal of many governments to deal with Boy Scouts because they require reverence and traditional morals, and now the mandate that insurers and employers cover contraception, sterilization and even abortifacients. And it is our calling to respond to these threats in a fashion that reaffirms the nation as what the founders called "a republic of virtue." Fr. Murray argued in 1960 that, with the divisions in other faiths, and with academia no longer adhering to an idea of moral law or of virtue as the basis and goal of freedom, it was Catholics above all who are called to promote and develop in the modern age this vision of our fathers. And now, with these threats to religious liberty in the modern world, we have come to a crossroads. Happily, be a greater union of all people of faith to defend our traditional liberties and the virtues they are meant to foster. But we must build on this unity to advance the cause of faith and virtue. Next week, this talk will discuss the various threats to religious liberty here and our calling to respond so that this nation continues to be what she was ever meant to be, "one nation, under God, with liberty and justice for all."