

ON THE RELATIONSHIP OF CHURCH AND STATE IN THE WORLD TODAY - 2018

I. The Catholic Church offers to the government and society an authentic vision of the human person, a balanced view of government and a rightful notion of patriotism. She does not seek to dictate the details of policy, or even the overall structure of the economy or government, but rather to outline the principles that make such things more human and humane.

A. In part I, chapter 4 of the Gaudium et Spes, the Pastoral Constitution on the Church in the Modern World, the Vatican II Council described the interaction of the Church and society. Sections 42 and 43 describe what the Church offers to society; paragraph 44 then describes what society offers to the Church.

1. Section 42 draws a clear distinction with regard to the Church's role. She is open to all legitimate forms of government, economy and society; but she seeks to bring the law and love of God to all of them.

a. Thus, the section begins by saying that Jesus Christ "did not bequeath to the Church a mission in the political, economic or social order; the purpose He assigned was religious. But this religious mission can be the source of commitment, direction and vigor to establish and consolidate the human community according to the law of God." In particular the section says that the Church initiates actions, such as works of mercy to benefit everyone, especially those in need, and witnesses to the fact that true peace and progress come from true faith and love.

b. With reference to international relations, the section says "the Church is universal in that she is not committed to any one culture or any political, economic or social system." Precisely because of this universality, she can promote a harmony between nations based upon the law of God. The section concludes that the Church that she seeks to assist "any regime that recognizes the basic rights of the person and the family and the requirements of the common good."

2. Likewise, section 43 describes the role of Christians in the world. Once again, there is a careful balance in upholding our final divine end, but also recognizing that advancing toward that end involves activity to make this world a better place. The section says that "it is primarily to the laity that secular duties and activity properly belongs." And in particular, the section says that the faithful should seek "to cultivate a properly formed conscience and to impress the divine law on the affairs of the earthly city." It calls for the laity to consult the Church and the clergy for clearer understanding of the divine law, but also says that they must use their own judgment and talents as well. The section recognizes that some of the faithful will see a solution to problems in one way, "yet it happens rather frequently, and legitimate so, that some of the faithful, with no less sincerity, will see the problem quite differently." In that case, the Church cannot be identified with one solution or the other, but rather, the parties should "try to guide each other by sincere dialogue in the spirit of mutual charity and with a genuine concern for the common good of all." The Council is thus indicating that we should distinguish between fundamental principles of right and wrong and judgement calls in how we carry them out.

- Thus, one should distinguish between two, or even three, levels of decision-making. First, there are matters of fundamental right and wrong, such as basic human rights and principles of justice. Second, there are matters of judgment regarding how to implement those basic principles. Third, there are sometimes matters of taste, such as the design of a building or park, or many specific rules on architecture. People should always defend what is right, use their best reason on judgment calls, and be flexible on matters of taste.

3. Part II, chapter 4 then describes some overall principles that govern what makes for a good political system. That chapter concludes with section 76, which makes it clear once again that the Church does not endorse one political system verses another, nor dictate to the political system judgements calls belonging to the latter. But the Church does encourage “political freedom and responsibility of the citizen” of the different nations and must be free “to pass moral judgements when the whenever fundamental human rights or the salvation of souls requires it.”

B. Likewise, the Catechism distinguishes between the fundamental moral law, which the Church helps define, and the choice of how to enact it. Thus, citing Gaudium et Spes, paragraph 1901 says that “the diversity of political regime is morally acceptable, provided they serve the legitimate good of the communities that adopt them. Section 2420 likewise distinguishes the Church’s role from the political, while seeing the connection between them. For the Church defends the “common good, human rights and right attitudes with respect to earthly goods and in socio-economic relationships.”

C. In Centissimus Annus (1991), Pope John Paul II pointed out that what the Church brings to society above all else is an authentic vision of the human person. As he wrote in paragraph 11, “the guiding principle . . . of all the Church’s social doctrine is a correct view of the human person and of his unique value.” The Catechism likewise says in paragraph 2245, “The Church, because of her commission and competence, is not to be confused in any way with the political community. She is both the sign and the safeguard of the transcendent character of the human person.” People in politics always say that they are serving the best interests of the people. The Church helps make it clear what these real interests are.

D. In his final encyclical Caritas in Veritate (2009), Pope Benedict XVI likewise distinguished between the technical judgments that belong to the political sphere and the rightful orientation to truth, especially the truth of human nature that the Church defends and that should inspire the political realm. In paragraph 9, he quotes Paul VI’s encyclical Populorum Progressio when he declares, “The Church does not have technical solutions to offer and does not claim ‘to interfere in any way in the politics of States.’ She does, however, have a mission of truth to accomplish, in every time and circumstance, for a society that is attuned to man, to his dignity, to his vocation. Without truth, it is easy to fall into an empiricist and skeptical view of life, incapable of rising to the level of praxis because of a lack of interest in grasping the values — sometimes even the meanings — with which to judge and direct it. Fidelity to man requires *fidelity to the truth*, which

alone is the *guarantee of freedom* (cf. Jn 8:32) and of *the possibility of integral human development*. For this reason the Church searches for truth, proclaims it tirelessly and recognizes it wherever it is manifested. This mission of truth is something that the Church can never renounce. Her social doctrine is a particular dimension of this proclamation: it is a service to the truth which sets us free.” He also points out in paragraph 6 that, while different societies all have their own ways of establishing justice, charity should be the guiding principle. Civil law is geared more directly toward justice. But, as Pope Benedict points out, charity builds on justice and fulfills it.

E. With reference to the applicability of Church teachings to the political sphere, there are two other important distinctions to clarify. First, civil law, because it deals with people of many different religions, focuses more on the natural law understandable to all people, rather than the supernatural law that is specifically revealed to Christians. However, even here it should be noted that, as Pope Benedict points out, no natural justice is complete without charity. Second, the Church officials, from the Pope downward, or organizations, such as the Vatican Congregation or national bishops’ conferences, do sometimes hand down opinions on specific legislation or initiatives (e.g., laws or treaties.) In these cases, the judgements, while flowing from Church teachings and worthy of respect, are not themselves Church doctrine. Thus, faithful Catholics should always adhere to principles of right and wrong, and be faithful to the Church’s doctrines in these case; but they can loyally disagree with judgment calls.

F. The Church also gives people a rightful notion of attitudes toward government and human authorities.

1. When asked about taxes, Jesus so famously said, “Render unto Caesar the things that are Caesar’s and unto God the things that are God’s.” Matt 22:21; Mark 12:17; Luke 20:25.

2. Likewise, the Bible supports loyalty to rightful authority, but also willingness to defy it when it contradicts divine law. Thus, for example, Romans says, “Let every person be subject to governing authorities. For there is no authority except from God, and those that exist have been instituted by God.” Rom 13:1. On the other hand, when the Sanhedrin ordered Saints Peter and John to stop proclaiming the Gospel, they responded, “Judge for yourselves whether it is right for us to listen to you rather than God.” Acts 4:19.

- It should also be noted, as the great historian and commentator Hannah Arendt noted in her 1965 work On Revolution that authority is based upon the legitimate role of upholding a common tradition, while mere power can be gained by force.

- Precisely by saying that rightful authority comes from God, the Church both upholds its legitimate role and makes it subject to a higher law and the obligation to support the common good.

3. The Catechism both supports the respect for rightful authority, but also says that people should have the right to criticize authorities and even defy them when they contradict God’s law. Thus, paragraph 1900 says that “the duty of obedience

requires all to give due honor to authority and to treat those who are charged to exercise it with respect and, insofar as it is deserved, with gratitude and good will.” It then quotes Pope St. Clement I (who was martyred by the Roman Emperor) in his call for prayers for political authorities. On the other hand, paragraph 2238 says that citizen’s “loyal collaboration [with authorities] includes the right, and at times the duty, to voice their just criticisms of that which seems harmful to the dignity of persons and the good of the community.” Likewise, paragraph 2242 says, “The citizen is obliged in conscience not to follow the directive of civil authorities when they are contrary to the demands to the moral order, to the fundamental rights or persons, or the teachings of the Gospel.”

4. Furthermore, the Catechism, reflecting Church teachings, both upholds the principle of solidarity, the calling that peoples should care for each other and the centrality of each family, rather than the government, as the fundamental unit of society, as well as the principle of subsidiarity, which maintains that larger entities should not interfere in the independence of smaller ones (such as the family and associations) unless they must do so. See Catechism 1883, 2207

5. Thus, the Church upholds legitimate political authority against mere rebelliousness, but likewise puts political authority under the law of God and in its rightful role of supporting, but not dominating individuals, families and society.

G. Furthermore, the Church gives a rightful sense of patriotism, upholding the goodness of each land and loyalty to one’s native land, without becoming jingoistic or disparaging of other nations.

1. In paragraph 2239, the Catechism says, “The love and service on one’s country follow from the duty of gratitude and belong to the order of charity.”

2. In final book Memory and Identity, St. John Paul II dedicated a chapter on patriotism. There he described patriotism as “a love of everything to do with our native land: its history, its traditions, its language, its natural features” extending also “to the works of our compatriots and fruits of their genius.” As he points out every nation has a unique culture through which her people grow in their relationship to each other and to God, a culture that is not stagnant but rather develops and expands through time in what he called “the theater of history.” There are also always threats to that culture, both from within (e.g., decadence and tyranny) and from without, as with foreign enemies or dominating and impersonal economic forces. And so each generation must choose whether to defend its nation’s goodness or give into decay. He recounted lines from a poem he had written much earlier. “Freedom – a continuing conquest. // It cannot be simply possessed! // It comes as a gift, but keeping it is a struggle. // . . . How weak the people that accepts defeat, // that forgets its call to keep vigil.”

3. But, even as the Church upholds rightful patriotism, she also upholds the universal call to respect the goodness of other countries. In his 1967 encyclical Populorum Progressio, Blessed Pope Paul VI called for nations to recognize each other’s gifts and come to each other’s assistance, leaving to the true progress of

peoples. And the Catechism states in paragraph 1911, “The unity of the human family, embracing people who enjoy equal natural dignity, implies a universal common good.” Likewise, paragraph 2438 calls for a “solidarity among nations which are already politically interdependent” and criticized situations in which nations dominate each other, or economic, political or military strife damages the dignity of smaller countries.

II. While respecting the government’s role and authority, the Church also teachings that its authority is limited if it interferes with people’s religious practices.

A. Overall, the principle is that individual and communal right are based upon responsibilities.

1. As Pope Benedict wrote in 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. . . . [I]ndividual 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.”

2. 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.

B. That connection between rights and duties is precisely how Dignitatis Humanae, the Vatican II Council’s Declaration on Religious Liberty, frames the issue.

1. 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.”

2. The document also affirms the Catholic Church’s centrality in salvation history, stating “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.”

3. 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.
4. But this calling to promote the faith is a challenge to use the persuasive force of reason, give good example, and beseech the power of grace, not a permission to employ force or threat.
5. 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.
6. 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.”
7. This freedom is not a mere freedom of believing religious truths or limited to “freedom of worship” alone, as some recent government statements have said. See, e.g., United 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.”
8. Later the Council reiterates 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” with the qualification “within due limits.”
 - a. 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.

- b. 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.”
 - 9. 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.
 - a. 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.”
 - b. 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.
 - c. 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.
 - d. 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.”
 - 10. 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.
- C. This teaching is certainly a dramatic development of doctrine, but it does not flatly contradict what came before. Rather, in a former era, it was assumed that the government would support a specific religion. And, in that context, the Church said that the religion supported should be Catholicism. But now, in a world where government neutrality can be the norm, a greater understanding has developed.
1. As section 12 of Dignitatis Humanae notes, the teachings that it enunciates regarding religious liberties have not always been practiced by members of the Church. And both authorities and popular whims have sometimes used force against those who do not share our faith.

2. However, it should be noted that, in almost all of the instances when coercion and violence was used against non-Christians, 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.

- a. Regarding the Inquisition, because church and state were combined, it was thought that division within the Church would cause anarchy in the country. And so the civil leaders themselves were the ones who first launched persecutions against heretics. The Church established the Inquisition to determine who in fact was a heretic so that such force was not used against the faithful or simply political opponents. 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.) The Inquisitors in fact wanted to bring people in error back to the truth, not punish them for their beliefs.
- b. Violence against non-believers, especially Jews, was not in accord with Church teachings.
 - Thus, for example, 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).
- c. Persecutions of Jews and other non-believers were often due to greed or political considerations. 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.

3. 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. 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.
4. As Fr. John Courtney Murray argued in the 1950s, the Church's previous teachings regarding the preference for the state to support the Church made sense in a former era where societies could be assumed to have a common religious background. But with the modern world and the diversity of religions, we have entered a new era. And so, while the fundamental principles of the teachings remain the same, the situation has changed.

III. In his 1960 classic We Hold These Truths, Fr. Murray also described how the American experiment is consistent with the Church's vision of government guided by human rights and religious rights and respect for religious liberty. He went on to argue that the Church is now in fact in the best position to defend the American experiment.

A. Fr. John Courtney Murray was a Jesuit theologian who set forth a vision of America and of religious liberty that would be central to the drafting of Dignitatis Humanae.

1. Fr. Murray (1904 – 1967) was a Jesuit priest who taught at a seminary in Woodstock, Maryland from 1937 until his death. He was also the editor in chief of the new Jesuit scholarly journal Theological Studies and held that position until his death.
2. In the 1940s he started writing more about ecumenism and religious liberty. He certainly maintained that Jesus Christ established the Catholic Church as the primary means to salvation. However, he argued more for dialogue and for religious liberty. He said that a state supported church worked in a bygone era, but was no longer helpful. In that context, he still promoted tax credits for religious schools so that there would be a variety of types of education.
3. His writings attracted the attention of the Holy Office in Rome, led by Cardinal Alfredo Ottaviano, who told him in 1954 to stop publishing new articles on the subject of religious liberty until further review, which he did. However, in 1960, he agreed that some of his previous articles could be published in a book entitled We Hold these Truths: Catholic Reflections on the American Proposition. With John Kennedy running for the Presidency, the book received a great deal of attention. After the election, Time magazine had a cover article on his thoughts, with the image of St. Robert Bellarmine in the background, and Fr. Murray in the foreground.
4. When the Vatican II Council began, Cardinal Francis Spellman of New York brought Fr. Murray with him to the council as his peritus (expert), starting with

the second session in 1963. His work was central in the drafting of Dignitatis Humanae and the persuasion of the bishop to approve of it, which they did by a margin of 1997-224, a ninety percent majority, although with the most dissents of any final document of the Council.

5. After the Council, Fr. John Courtney Murray continued to be active in public affairs. For example, President Johnson appointed him to a committee that reviewed Selective Service exemptions. There he argued unsuccessfully that conscientious objector status should be given, not only to those who objected to all warfare, but also to those who objected specifically to the Vietnam War.

B. In We Hold These Truths, Fr. Murray addressed the connection between the Catholic Church's teachings and the American experiment and argued for their consistency.

1. In the preface, he argues that people ask whether Catholic teaching is consistent with the American ideals, but that that question is not the right one, given that the Catholic Church has been around a lot longer. Nevertheless, he says that they are compatible. America launched an experiment of joining different religious traditions into one; Catholicism is not only compatible with that experiment, but her contributions are essential to America's ideals.
2. He argued that the United States is different from most countries, because from the beginning, we have been a pluralist society with people of many divergent religious views living in balance. With reference to religion, the question was how to hold such a society together. He argued that this unity comes from an American proposition, an ideal that the Church's teachings support.

C. In the introduction, entitled The Civilization of a Pluralist Society, Fr. Murray addresses the question of what a civil society. He begins with the proposition of a Dominican theologian that "Civilization is formed by men locked together in argument. From this dialogue the community becomes a political community." He grants that societies form in the land without careful thought at the beginning unlike a contract. However, unlike a family, the bond is not so much familial associations or family or romantic love, nor as with friendships, or one or a few common pursuits. Rather, there is a sense of duties to and from the country and a set of beliefs that unites the people together.

1. In the midst of this agreement of beliefs, there is still public debate, especially in government, on at least three levels: (1) the policies of the government; (2) the culture at large and especially the advance of knowledge and education, which is a broader concept than government; (3) the very consensus that holds the people together.
3. This argument continues in every culture as its own self-understanding either grows or diminishes. But here must be some held truths, or there are no premises upon which to debate anything.
4. Fr. Murray then turns to the American consensus and says now as much as ever we must renew that consensus. As he put it, "The American proposition is at once both doctrinal and practical, a theorem and a problem. It is an affirmation

and an intention. It presents itself as a coherent structure of thought [even as] it also presents itself as an organized political project that aims at historic success. . . . Neither as a doctrine nor as a project is the American Proposition a finished thing. Its demonstration is never done once for all; and the Proposition itself requires development on penalty of decadence. Its historic success is never to be taken for granted, nor can it come to some absolute term; and any given measure of success demands enlargement on penalty of instant decline. In a moment of national crisis Lincoln asserted the imperiled part of the theorem and gave impetus to the impeded part of the project in the noble utterance, at once declaratory and imperative, ‘All men are created equal.’ Today, when civil war has become the basic fact of world society, there is no element of the theorem that is not menaced by active negation, and no thrust of the project that does not meet powerful opposition. Today therefore thoughtful men among us are saying that America must be more clearly conscious of what it proposes, more articulate in proposing, more purposeful in the realization of the project proposed.”

5. Fr. Murray describes some of the traditions that have formed this nation, and notes that no one of them was ever dominant.
 - a. In particular, from a religious and philosophical standpoint, he says that, in his day, there were four general traditions, Protestant, Catholic, Jewish, and secular. And the question is whether, with this religious diversity, whether there can be a common consensus to create an atmosphere of civil debate all the same. Fr. Murray argues that, with the great crises of the modern world, this unified debate is both needed to confront the dangers and an opportunity to demonstrate how the different faiths can live together.
 - b. As the leading Catholic author and papal biographer George Weigel argued in an article on this book six 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.

F. Fr. Murray then describes in the chapter entitled “E Pluribus Unum: The American Experiment” the American idea that can unite so many people from different traditions together precisely because she was founded on ideals that join the many together.

1. He maintains that five overall principles are central to the consensus that has held this nation together: (1) the notion that nations are themselves governed by the law of God; (2) the tradition of natural law, that is, the idea that the law of God as applied to government can be ascertained by reason; (3) the principle of the consent of the people and the resulting commitment to limited government and economic power; (4) the notion that virtue is the condition and goal of freedom; and (5) the conviction that part of God’s law is the

principle of human rights. Other nations certainly have these principles, and in fact they are all based in different ways on English law. The argument is that they are particularly central in the American experiment.

2. Regarding the sovereignty of God over nations, Fr. Murray states that the Declaration of Independence recognized this law, as distinguished from the French Revolution, which considered religion to have no role in politics; in the French revolution, only the popular will, or the party, governs.
 - Fr. Murray quotes from John Adams and Abraham Lincoln to this effect. He even quotes the liberal Supreme Court Justice William O. Douglas in the 1952 decision Zorach v. Clauson, a case upholding the constitutionality of assistance to religious schools, “We are a religious people whose institutions presuppose a Supreme Being.
 - One likewise thinks of the Declaration of Independence, which based the independence upon “the laws of nature and of nature’s God” and likewise concluded by “Appealing to the Supreme Judge of the World for the Rectitude of our Intentions” and declaring “firm Reliance upon the protection of Divine Providence.”
3. The second principle is that the law of God as applied to government is discernable to reason. This principle is the foundation of the idea of natural law.
 - He cites among others Clinton Rossiter’s 1953 history *Seedtime of the Republic* as saying that the people at the time of the Republic accepted the idea that there was a law discernable reason to govern conduct.
 - It is this generally discernable moral law that governs both the nation and the people that unites people of different traditions, giving them a common ground to dialogue. It is a point that Pope Benedict made in his much misreported talk at Regensburg University in 2006, in which he argued that without an alliance of faith and reason, faith has no way of dialoguing with others and that absence tends to lead to persecution and violence.
 - This natural law also establishes the limits of government, what it is capable of and has the right to do. And, therefore, the law itself limits the government. In this way, the American experiment stands in contrast to such things as the French and Russian Revolution that recognized no outside law guiding the new governments and societies. In fact, Fr. Murray argues, “By reason of this fact that American Revolution, quite unlike the French Revolution, was less a revolution than a conservation. It conserved, by giving newly vital form to, the liberal tradition of politics, whose ruin in Continental Europe was about to be consummated by the first great modern essay into totalitarianism”

4. The third principle of the American experiment is a commitment to government by the consent of the governed. That principle in turn has two related aspects, first that the governed participate in government and in fact in all of society and the second that society is prior to government.
 - a. The overall concept of popular participation was there in British law as well. Fr. Murray cites the British Chief Justice Sir John Fortescue in the fifteenth century in saying that the king “may not rule his people by laws other than such as they assented to. One thinks of the Declaration of Independence and its reference to governments “derive their just powers from the consent of the governed” and that when the people determine that the government is no longer upholding their rights, they have the right to change or replace it.
 - b. Fr. Murray comments “The American consensus thus involves a great act of faith in the capacity of the people to govern themselves.” The confidence is that people have the capacity to understand the general principle of government. This principle does stand in contrast, not only with the aristocratic traditions, but also with Plato, who said in The Republic that the masses (the *hōi polloi*) could not govern themselves, but rather that a democracy would degenerate into mob rule and then rule by a demagogue.
 - c. But for this consent to work, the people must be able to be educated, speak with each other freely and be virtuous. On the first point, Fr. Murray points out that, from the call for consent by the governed, free speech and free press naturally follow. But these freedoms are not meant to be undisciplined, but rather meant to be used at the service of truth. As he says, “People who are summoned to contribute to the common good have the right first to pass their own judgment on the question, whether the good proposed by truly good, the people’s good, the common good.” And for this result, freedom of speech is necessary, not from an indifference to truth, but for its pursuit.
 - d. The call for the consent of the governed also leads to an idea of government as limited to upholding the consensus of society, not dominating it. As he says, “the state is distinct from society and limited in its offices toward society. . . . Government submits itself to judgment by the truth of society; it is not itself a judge of the truth of society.” Part of the idea here is that the people of a society participate, not only by casting a ballot in elections, but rather by forming the consensus and its development over time, from discussions, schools, press, books, culture, and so forth. And then the government is meant to enact what is hopefully the rightful consensus of the people. It is a point St. John Paul II made in Centissimus Annus in 1991, in which he said that government and economics should support, not dominate a society. For example, in paragraph 1, he says that the state is meant to be an instrument, not a master, and cites Leo

XIII's encyclical 100 years earlier as "repeatedly insist[ing] on the necessary limits to the State's intervention and on its instrumental character, inasmuch as the individual, the family and society are prior to the State, and inasmuch as the State exists to protect their rights, not stifle them." He likewise cautioned against excessive economic powers taking over society, a point Fr. Murray likewise makes in chapter 3.

5. As a necessary condition, however, for this freedom and public participation to work, a people must be virtuous. And in turn virtue is also the goal of freedom. Thus the fourth proposition, that a free people must be a moral people, follows.
 - a. He contrasts respect for political freedom from casting off moral laws. As he writes, "Part of the architecture of the American ideal of freedom is the conviction that only a virtuous people can be. It is not an American conviction that free government is inevitable, only that it is possible."
 - b. This highest virtue is not imposed from above, but rather flows from the people's nature and from recognition of a higher law.
 - c. He does not quote them, but America's founding fathers believed likewise that virtue and freedom must go together.
 - i. In 1787, as the Constitution was being written, Benjamin Franklin called upon the framers to invoke God's aid, saying, "God governs the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can with without His aid? We have been assured in the sacred writing that 'Except the Lord build the house, they labor in vain that built it.'"
 - ii. Likewise, as George Washington said in his Farewell Address, "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."
 - iii. 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."

- iv. John Adams wrote in 1798, “We have no government armed with power capable of contending with human passions unbridled by morality and religion. . . . Our constitution was made only for a moral and religious people. It is wholly inadequate to the governance of any other. ”
- v. These statements are but a few examples of the Founding Father’s understanding that, far from limiting the liberties of the people, the law of God is their firmest basis, as well as their guiding principle.

6. From both the tradition of natural law and from the idea of the consent of the governed, there follows the fifth aspect of the American consensus, that is the notion of human rights based upon the law of God that no government can rightfully revoke.

- a. These rights are discernable by reason, but also understood over the course of history. The founding fathers asserted their rights as Englishmen, and the Bill of Rights was based heavily upon English common law and upon the experiences with England.
- b. Over the course of time, legal structures, such as the right to trial by jury or the need for warrants for searches, and the like, arose to protect these fundamental rights. And, on this front again, the American nation did not simply try to start over again, but rather built carefully upon the experience of the English Constitution, along with experiences of abuses that had occurred. Fr. Murray once again contrasts the American experience with the attempt by the French Revolution simply to cast off tradition and start anew. Thus, for example, among the “self-evident truths” that the Declaration of Independence lists is the principle that people are “endowed by their Creator with certain inalienable rights, that among these are the rights to life, liberty and the pursuit of happiness.” The idea of these rights was not new. But the young nation placed them in codified law, such as the Bill of Rights, giving expression to the passionate desire to defend them. This tradition sprang from the Christian idea of each person as a son or daughter of God.

G. Fr. Murray does then ask whether this consensus endures.

- 1. He notes that the idea of natural law, a law discernable by reason and applicable to all people, is commonly rejected, especially by the so-called elites in academia and culture. But the rejection is not based so much on a refutation as on ignorance, people simply have not learned the tradition very well.
- 2. In chapter 3, he speaks about the fact that when he teaches about a national consensus on law and liberty, he often gets a hostile response by people who question the validity of reason itself, or who think that philosophy is impractical, or who think that only scientifically verifiable proposals are objectively valid, or

by those who think that intellectual debate is what is most important, not the conclusion.

3. In that context, he says that we should argue not only that this consensus exists or is popular (which it may not be), but that it is necessary. For once a nation has abandoned its consensus, it is in decline and cannot oppose the forces against it who do have a philosophy of life, a consensus. He notes in that chapter that communism does have a consensus, albeit a terrible one, and thus has an advantage over nations who have abandoned their ideal. In the modern world, we have nations and movements that have a focus and a consensus, such as radical Islam, imperial governments, and drug lords who value power over all. The response to such erroneous ideas must be based upon a correct one, or it will drift. As he says, "So baffling has the problem of national purpose become that it is now the fashion to say that our purpose is simply survival. That statement, I think, indicates the depth of our political bankruptcy. This is not a purpose worthy of the world's most powerful nation." He goes on to note that there is no purpose, a nation drifts.
4. We have seen his predictions coming true as politics has in many ways degenerated into a mere defending of material interests, with little discourse on the nature of human rights, freedom and justice, but rather with such terms used sloppily, with people asserting more and more rights with no sense of responsibility, with virtue and holiness having little place in political life, and with fear and anger playing such a central role.
5. What Fr. Murray noted then is even more true now. The Church is in the best position to defend these principles of the American experiment. For her teachings uphold every element of it.
 - a. Thus, she maintains that governments are guided by a higher law and receive their authority from it.
 - b. The Church maintains that the natural law, and thus the law governing governments, is accessible to reason, as the American experiment does.
 - c. The idea that there is a universal call to holiness, and that all people can share in the wisdom of God supports the idea of democracy, as opposed to rule by the elite. And the Church's teachings on subsidiarity limit government, while her teachings on solidarity uphold the dignity of each person.
 - d. The Church very much maintains that freedom is important precisely because it is needed for love, that love is the fulfillment of freedom, and that virtue and the law of God lead us to be able to love most perfectly.

- e. The Church also upholds that the law that governs nations includes, at its very core, the human rights of each person as one loved by God and having callings from him.

IV. In addition to the overall challenges to this consensus, the principle of religious liberty, for which this nation is famous, has also come under attack in recent years.

A. The notion of freedom of religion is foundational to Anglo-American democracy.

1. In 1215, Archbishop Stephen Langton brokered a deal between King John and nobles that has come to be known as the Magna Carta, the foundation of Anglo-American system of rights under the law. The very first provision of that great charter protects freedom of religion, saying “In the first place we grant to God and confirm by this our present charter for ourselves and our heirs in perpetuity that the English Church is to be free and to have all its rights fully and its liberties entirely.”
2. It is also the first liberty protected by the Bill of Rights. The protection of religion in the First Amendment was in turn largely based upon the Virginia Statue on Religious Freedom, which Thomas Jefferson considered to be the second of his three greatest accomplishments, following only the Declaration of Independence. The preamble to that statute says, “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical.”
3. Twenty years ago, there was a consensus on religious liberty in this land. Thus, for example, the 1993 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.

B. However, as Popes Benedict XVI and Francis have noted, there has been a decline in respect for this tradition

1. In 2012, Pope Benedict XVI address to American bishops, “In America, [the] consensus, as enshrined in your nation’s founding documents, was grounded in a worldview shaped, not only by faith, but also by a commitment to ethical

principles deriving from nature and nature's God." But then he went on to warn, "Today, that consensus has eroded significantly in the face of powerful new cultural currents, which are not only directly opposed to core moral teachings of the Judeo-Christian tradition, but are also increasingly hostile to Christianity as such. It is imperative that the entire Catholic Church in the United States comes to realize the grave threats to the Church's public moral witness in the cultural and political spheres. . . . Of particular concern are efforts being made to limit the most cherished of American freedoms, the freedom of religion."

2. On March 26, 2014 when he met President Obama, Pope Francis discussed at length issues of religious freedom in America, as did Secretary of State Cardinal Parolin in his meeting with John Kerry. May 7 address to European Bishops, Pope Francis said, "I think of the challenges posed by legislation which, in the name of a misinterpreted principle of tolerance, ends up preventing citizens from peacefully and legitimately expressing their religious convictions."

3. Among other things, there have been attempts to reduce religious freedom merely to worship in churches or to say that it does not apply to businesses. But as Pope Francis said in his talk on religious freedom in Philadelphia last year, "Religious liberty, by its nature, transcends places of worship and the private sphere of individuals and families. Religious freedom isn't a subculture, it's a part of every people and nation."

C. For example, there have been efforts to force merchants, employers and insurers to provide contraception and even abortion coverage.

1. Some states including Illinois and Washington State have mandated that all pharmacists and pharmacies sell such things as contraception and even abortifacient pills. On a related point, a doctor in California was disciplined because he would not help with in vitro fertilization, even though his partner performed the services anyway.

- In Washington state, federal Judge Ronald Leighton observed that the state was perfectly willing to make exceptions to its mandate that pharmacists sell mandated drugs on the grounds that there was not enough demand for them, and thus that stocking the drugs would be unprofitable, but would not uphold an exception for religious reasons. The judge held that this different treatment indicated that both the intent and effect of the regulations was to discriminate against people of faith; and he thus that they had to make an exception to their rules for us. An appellate court, however, overturned the decision (*Stormans, Inc. v. Selecky*) and the Supreme Court refused to hear an appeal. Three justices wanted to hear the appeal and Justice Alito, writing for them said, "There are strong reasons to doubt whether the regulations were adopted for—or that they actually serve—any legitimate purpose. And there is much evidence that the impetus for the adoption of the regulations was hostility to pharmacists whose religious beliefs regarding abortion and contraception are out of step with prevailing opinion in the State. Yet the Ninth Circuit held that the regulations do not violate the First Amendment, and this Court does

not deem the case worthy of our time. If this is a sign of how religious liberty claims will be treated in the years ahead, those who value religious freedom have cause for great concern.” It is noteworthy that the courts were willing to look for anti-Muslim bias in overturning President Trump’s ban on immigration from certain countries, but have not been willing to give anything like similar attention to anti-Christian bias in legislation regarding contraception and gay rights, at least not until the Masterpiece Bakery case (see below) was decided by the Supreme Court this year.

2. Twenty-eight states have mandated artificial contraception as a part of insurance, and nine of them provide no exception for anyone with religious beliefs. And California now mandates that all insurance policies cover abortion. In 2013, Washington state came close to passing a mandate that all medical insurance cover abortion and all hospitals and other facilities that give maternal care must provide abortions. The bill passed the state House, and was supported by the governor, but was very narrowly blocked in the Senate. A similar bill was considered in New York, with the support of its governor Andrew Cuomo. The Hippocratic oath, which increasingly governed the medical profession as it expanded in the West, said that a doctor should promise that he will never give an abortion or suicide drug. And this year, California did pass such a statute mandating that all insurance policies, including those sponsored by churches cover abortion.

3. Acting under the 2010 Affordable Care Act, and authority it authorized to require coverage of “preventative care” without copayments, the Department of Health and Human Services mandated that all insurance policies cover all forms of artificial contraception approved by the FDA, including ella (often called Plan B), which can easily abort a conceived child. But it did not include natural family planning in this mandate.

- The mandate included only the narrowest exemption for churches. After numerous challenges under the Religious Freedom Restoration Act, the Supreme Court held in the Hobby Lobby case that the RFRA applies to businesses and requires an accommodation when a business can be identified with the religion of the owners. In response, the Obama administration came up with a convoluted solution that requires the insurance company administering employer health care plans to cover all forms of contraception, in theory without charge to the employer. The Trump Administration then provided broader but not complete exemptions for religious and moral reason; but the mandate is still in place.

D. There are also efforts to force businesses to cater to sinful behavior under non-discrimination acts in about 20 states.

1. Such discrimination has not been demonstrated recently. And, in fact some cases, such as a 2013 claim that a waitress was denied a tip because she was lesbian, or a 2015 claim by a pastor that a wedding cake he ordered has an

insulting message, turned out to be frauds. People will likewise cite a 2011 study by Andras Tilsik of Harvard involving a sample size of less than 1800 indicating that the 600 who applied for a job who listed a gay organization had about a 7.4 chance of a callback, as opposed to about 11.5 % for others. The study, however, does not seem to have been replicated and is based upon older data.

2. By contrast, real discrimination against people who hold religious or other views against gay marriages.

a. For example, Brenden Eich, founder of Mozilla, fired because of support of Proposition 8. Likewise, the introduction of recent survey of studies by Atlantis magazine by Lawrence Mayer a professor at Johns Hopkins University, reflects the threat of retaliation against those who oppose the prevailing consensus on sexuality. The study demonstrated that there is no scientific basis for saying that sexual orientation is genetic or that children who identify with the opposite sex will likely continue to do so. In the introduction, he explained, "In the course of writing this report, I consulted a number of individuals who asked that I not thank them by name. Some feared an angry response from the more militant elements of the LGBT community; others feared an angry response from the more strident elements of religiously conservative communities. Most bothersome, however, is that some feared reprisals from their own universities for engaging such controversial topics, regardless of the report's content — a sad statement about academic freedom."

b. In 2015, the owners of Memories Pizza in Indiana were subject to threats of violence because of their traditional views on marriage. In April of 2015, the owners were asked by ABC News if they would serve a gay wedding. When the owner Kevin O'Connor the owner said no, the O'Connor family subject to death threats and deluged with negative reviews on website, which closed the business temporarily. There was no outrage in most of the press or cultural elites over this threatened terrorism against peaceful people.

3. People have used these non-discrimination acts to force businesses to support their agendas.

a. In January, 2014 the Colorado Commission on Civil rights fined Jack Philips, a baker who runs Masterpiece Bakery, and ordered him to have his entire staff undergo what it terms sensitivity awareness training, i.e., reeducation camps, because he would not design a cake for a same sex wedding. They did not oppose another bakery that refused to sell a cake to a group supporting traditional marriage, nor investigate death threats against Mr. Philips. The Supreme Court held 7-2 that the so-called Civil Rights Commission demonstrated such a clear anti-Christian bias that its conclusion must be overturned as violating the First Amendment. Four justices (Ginsburg, Sotomayor, Breyer, and Kegan) held, however, that such a statute could be used to compel a baker, and presumably others, in

such cases. Three justices (Thomas, Alito, Gorsuch) disagreed, with the views of Chief Justice Roberts and Justice Kennedy unclear.

b. Likewise, in 2010, a photographer in New Mexico named Elaine Hugenein was successfully sued because she would not take photographs for a lesbian “commitment ceremony.”

c. In 2008, a Methodist affiliated campsite named Ocean Grove lost its tax exempt status because it would not host a lesbian marriage reception.

d. In New York an Orthodox medical school called Yeshiva University was required to provide same sex “couples” with housing.

E. Places such Massachusetts and Washington, D.C., laws have forbidden Catholic Charities and any other groups that believe in traditional morals from arranging adoptions unless they give equal access to gay couples

1. Even in this state, the Virginia Social Services Administration at first proposed a similar rule here. That proposal was fortunately overruled after outrage from the people of faith and opposition by former Governor McDonnell. However, Congressman Pete Stark (D-CA) has introduced legislation in Congress that would make this prohibition law for the entire country.

2. On a related front, some governments refuse to deal with anyone, Catholic or otherwise, unless they adhere abandon principals of marriage. Thus, for example, when Washington, D.C. adopted homosexual marriage, the city said that it would not contract with anyone whose employment benefits did not cover homosexual partners. Catholic Charities of Washington then changed its insurance policy so that it no longer covers spouses.

F. The freedom of speech of students who express traditional views has also been suppressed. For example, in California students have been suspended for wearing T-shirts supporting traditional views on marriage. The 9th Circuit federal appeals court, which covers California, upheld the suspension in Hansen v. Ann Arbor (2004.) In 2015, two students and 13 supporters in Bangor, Pennsylvania were suspended for wearing Chick-Fil-A t shirts outside of an event sponsored by the Gay Straight Alliance.

G. Likewise, universities and others have attempted to force religious groups to accept people as tenants who do not agree with their tenants.

A. For example, some educational institutions such as the Hastings Law School of the University of California, Bowdoin College in Maine, and more recently the University of Iowa, require all groups on campus to accept practicing homosexuals. When the Christian Legal Society was forced off campus the Hastings campus, it took the case to the courts. But the Supreme Court decided in favor of the law school on a 5-4 vote. See Christian Legal Society v. Martinez (2010.)

2. In 2013, the Villanova University went even further and mandated that all student groups, including religious ones, accept not only as members but also as officers people of any faith. Thus, a Jewish group could be required to accept a Christian, a Hindu or an atheist as its president. The University of California system, with all 23 campuses, now does the same across the board.

3. In the Hosanna Tabor case before the Supreme Court (which involved who should be considered a minister) the Obama Administration even argued that the federal government can use employment laws to mandate that religious organizations hire as ministers those whom the government thinks are right.

H. Washington, D.C. now has a law that mandates that schools, even religious ones, make their facilities available to those who oppose their views and that even religious employers must hire people who have abortions, artificial contraception and the like.

I. When states have tried to protect religious liberty along the same lines as the Religious Freedom Restoration Act, they have been denounced as bigots. The legislation is routinely presented as anti-gay, when in fact these statutes are designed to protect religious liberty across the board.

1. Twenty one states have legislation similar to the Religious Freedom Restoration Act; and in 11 other states the courts have interpreted the state constitution in such a way. And until recently, they have been widely supported and understood to protect religions across the board. Under the federal government's statute, 18% of the cases have come from Jews, Muslims and Native American religions, who are 3% of the general public.

2. But now former supporters of religious liberty have renounced that position because of the sexual revolution. For example, ACLU now has even said it would oppose federal RFRA because of gay marriage issue.

3. When Indiana amended statute to provide that it applies to businesses and between private parties, big business (e.g., NCAA, Eli Lilly, Apple, Angie's List) persuaded the governor (then Mike Pence) to water it down by threatening to withdraw businesses otherwise.

4. Likewise, when Georgia proposed amended, the NFL and movie producers threatened to pull business from the state, with a similar result.

5. And when North Carolina passes similar legislation, along with legislation about the use of restrooms according to biological gender, the NBA, the NCAA and the ACC cancelled tournaments in the state, along with other businesses that cost about \$100 million in revenue. There was not a popular revolt; it was big business, the press and the media that spearheaded it.

6. Virginia's legislature passed a bill simply saying that no church or religious organization or its employees could be required to participate in a marriage they

disagreed with. The bill was denounced as being anti-gay and opposed again by big business and the ACLU; then vetoed by Governor McAuliffe.

7. In 2016, the U.S. Civil Rights Commission published a report entitled *Peaceful Coexistence*, in which it argued that anti-discrimination legislation should override civil liberties in all cases. The Commissioner Martin Castro said, “The phrases “religious liberty” and “religious freedom” will stand for nothing except hypocrisy so long as they remain code words for discrimination, intolerance, racism, sexism, homophobia, Islamophobia, Christian supremacy or any form of intolerance. “ He went on to blame religious arguments for justifying slavery and Jim Crow laws, ignoring the fact that people of faith more often opposed them.