

FREEDOM IS FULFILLED IN LOVE: PART II
FATHER JOHN COURTNEY MURRAY AND
THE AMERICAN EXPERIMENT IN LIBERTY UNDER THE LAW OF GOD

I. 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 Vatican's statement on religious liberty Dignitatis Humanae.

A. John Courtney Murray was born in 1904 to a devout Catholic family and entered the Jesuit order in 1920. He received a degree in Classics and Philosophy from Boston College in 1926 and a masters a year later.

B. He then taught Latin and literature in Manila for four years.

C. He returned to the US in 1930 for theological studies and was ordained a priest in 1933. He then attended the Gregorian in Rome and earned a doctorate in 1937. He then taught systematic theology, and in particular grace and the trinity, at the Jesuit theology seminary in Woodstock, MD. He held that post until his death in 1967. Likewise, in 1941, he became the editor in chief of the new Jesuit scholarly journal Theological Studies and held that position until his death.

D. In the 1940s he started writing more about ecumenism and religious liberty. He 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 an official church worked in a bygone era, but was no longer helpful. He did argue for tax credits for religious schools so that there would be a variety of types of education. He was a visiting professor at Yale University 1950-51, the first priest to teach at that university.

E. 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, which he did.

F. 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 F. 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

G. When the Vatican II Council began, Cardinal Francis Spellman of New York brought John Courtney Murray with him to the council as his peritus, starting with the second session in 1963.

1. During the First Session, Pope John XXIII created the Conciliar Commission on Christian Unity, and placed Cardinal Augustine Bea in charge of it. Through its participation in the document on ecumenism, that Commission would write the document on religious liberty.

2. At the Second Session in 1963, the decree on ecumenism included a chapter on religious liberty. However, the debate indicated that bishops wanted a separate document on religious liberty. And so Blessed Pope Paul VI entrusted that task to the Commission on Christian Unity. The Second Session ended, however, before there was time for a debate on the topic.

3. On September 23, 1964, the Commission on Christian Unity presented the document to the Third Session of the Council. The document not only affirmed that people should not be forced to convert to any faith (a principle that was widely agreed upon), but also that the very dignity of the human person demanded that people should be fully free to profess and promote their faith, with the understanding that there is a duty to seek the truth and adhere to it. There was a passionate debate for four days. Some bishops, such as Cardinal Ernesto Ruffini of Palermo, Italy and Cardinal Fernando Palacios of Santiago de Campesteello, Spain strongly opposed the document on the grounds that it changed Church teaching and that error has no rights. Other bishops, especially from America, England, and Eastern Europe supported it strongly. Archbishop Karol Wojtyla of Krakow, later Blessed Pope John Paul II, supported the document, but said that there must be more emphasis on the duty to pursue truth and virtue.

4. Many bishops who objected to the document wanted the revisions to be made by a new Commission, guided by Cardinal Ottaviano, and with participation from Archbishop Marcel LeFebvre, who opposed it altogether and would later be in schism from the Church partially because of it. However, Pope Paul VI assigned the Commission on Christian Unity the task instead.

5. After the debate, the Commission revised the document to respond to the objections. Cardinal Francis Spellman, the archbishop of New York, had brought Fr. Murray with him as his peritus. And the Commission allowed Fr. Murray a great deal of influence in drafting the revisions.

6. The revised document was presented to the Council on November 16. But many bishops objected taking an immediate vote on it because it had been changed so much that the amended document needed more discussion and consideration. The Presidents of the Session argued for a delay on a vote until the

next session; and Pope Paul VI agreed to delay the vote, but with the promise that it would be the first issue on the agenda for the Third Session.

7. On the second day of the Fourth Session in 1965, the revised draft was presented again to the Council. Once again there was strong debate for four days, but with the debate largely going in its favor. Fr. Murray was very ill recovering from a collapsed lung while the debate was continuing, but he continued commenting on the revisions. It was very likely to get the required two thirds vote, but if the vote was close, Pope Paul VI likely would have required more revisions to satisfy the bishops who objected. The final vote was 1997-224, a ninety percent majority, although with the most dissents of any final document of the Council.

H. 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.

I. Fr. Murray died suddenly of a heart attack in 1967.

II.T The book We Hold These Truths and Fr. Murray's writing in general are still very relevant to the state of public debate today.

A. 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 in America, there is the experiment of joining different religious traditions into one; and that Catholicism is not only compatible with that experiment, but her contributions are essential to it. 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 together. With reference to religion, the question was how to hold such a society together. He will argued that the Church upholds the solution that the country found.

B. In the Introduction, entitled The Civilization of a Pluralist Society, Fr. Murray addressed the question of whether we have a free society anymore by first asking the question of whether we have a civil society at all. He begins with the proposition of a Dominican theologian that "Civilization is formed by men locked together in argument. From this dialogue the community become a political community".

- C. He grants that societies form from 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 so much any one or a few pursuits. Rather, there is a sense of duties to and from the country and a set of beliefs that unites the people together.
- D. In the midst of this agreement of beliefs, there is still public debate, especially in government, on at least three levels. First, there are the policies of the government about which there is a continual debate. Second, there is the debate about the culture at large and especially about the advance of knowledge and education, which is a broader concept than government. Third, and at the deepest level, there is a debate about the very consensus that holds the people together, how they play out.
- E. 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. But how these truths are understood or applied must be debated. The process is a dynamic one. He says that this philosophy is both ancient and yet always developed. "In philosophy, a proposition is the statement of a truth to be demonstrated. In mathematics, a proposition is at times the statement of an operation to be performed. Our Fathers dedicated the nation to a proposition in both of those senses. The American proposition is at once both doctrinal and practical, a theorem and a problem. It is an affirmation and also 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 historical 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 historical 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.” And thus, the American experiment began with the Declaration of Independence saying, “We hold these truths to be self evident.”

- F. The fact that people hold to certain truths does not mean that there will always be agreement or unanimity, or that they will never fade.
1. He says that the truths are the patrimony of a civilization and that, like all patrimony, they are handed on to be augmented, diminished or even lost.
 2. The dynamic culture sees how the truths have worked in history, takes on argument and thus develops them further. A weak culture ceases caring about them, and the consensus and thus the nation gradually decline.
 3. And it is the great danger of modern politics that the great issues are no longer debated, but ignored or transformed into mere rhetoric or grievances. As he says, “If the public argument dies from disinterest, or subsides in the angry mutterings of polemic, or rises to the shrillness of hysteria, or trails off into positivistic triviality, or gets lost in a morass of semantics, you may be sure that the barbarian is at the gates of the City. . . . The barbarian need not appear in bearskins with a club in hand. He may wear a Brooks Brothers suit and carry a ball-point pen with which to write his advertising copy. In fact, even beneath the academic gown there may lurk a child of the wilderness, untutored in the high tradition of civility engaged in a philosophy to put an end to all philosophy and thus to put an end to vital consensus and thus to civility itself.” See page 30-31.
 4. It is a point St. John Paul II made in his last book *Memory and Identity*, in which he describes “patriotism is 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 itself or give in. As Blessed John Paul II said in a poem he recounts in that book, “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.”

G. Fr. Murray recounts that there are, in America several traditions that come together, rather than merely one overarching tradition. 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, that with this religious diversity, whether there can be a common consensus to create an atmosphere of civil debate all the same. And he 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. Quote from page 39

H. 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.

III. 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. by saying that America was founded precisely on the idea of the many joined together.

A. He maintains that five overall principles are central to the consensus that has held this nation together: (1) the notion that a nation is under 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) part of natural law it the conviction that human rights are given by God Himself. Other nations certainly have these principles, and in fact they are all based in different ways on English law, but they are particularly central in the American experiment.

B. Regarding the sovereignty of God over nations, he 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. See page 44 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.”

C. 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.
- The law of nature also governs the limits of government, what it is capable 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”

D. 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.

1. The overall concept of popular participation was there in British law as well. He cites the Chief Justice Sir John Fortescue in the fifteenth century 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.

- 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 *houi poloui*) could not govern themselves, but rather that a democracy would degenerate into mob rule and then rule by a demagogue.

2. But for this consent to work, the people must be able to be educated and speak with each other 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.
3. 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 *Centesimus 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.

- E. 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.
1. 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.”
 2. This highest virtue is not imposed from above, but rather flows from the people’s nature and from recognition of a higher law.
 3. He does not quote them, but America’s founding fathers believed likewise that virtue and freedom must go together. 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 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.’”
 4. 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.”
 5. 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.” 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. 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. ”

- F. 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.
1. 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.
 2. 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 once 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. The idea of these rights is not new, but rather America placed them into 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. Quote from page 53.

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

1. He notes that the idea of natural law, a law discernable by reason 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. In that context, he says that the successful argument is not that this consensus exists or is popular, 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 the opposition to communism, which has a consensus, albeit a terrible one. In the modern world, we have nations and movements that have a focus, a consensus, radical Islam, Russian expansionism, 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. See page 100

2. In this context, the Church can play a vital role in reviving this consensus about the law of God, about the role of reason, about the importance of participatory and limited government, about the connection between virtue and freedom, and about fundamental human rights. And in fact he says that if this consensus falters, it will be the Church that will carry forth the great traditions of America into the future. See p. 56.
3. 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 the 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. It is the church who has, in her social teachings and example, preserved what is best.
4. The consensus can be revived by the few who lead society, as it was the few who launched the American experiment. Whether this effort will work or not is unknown, as it was in Fr. Murray’s day. However, it will be the case 1000 years from now, that the Church who has preserved the best of ancient philosophy and ancient Rome, the best of the Roman Empire and the Middle Ages, whose missions spread throughout colonial empires that no longer exist, it is the Church who will have preserved the best of America as the centuries come and go.