

FREEDOM, TRUTH, AND
HUMAN DIGNITY:
AN INTERPRETATION OF
DIGNITATIS HUMANAE ON THE
RIGHT TO RELIGIOUS LIBERTY

DAVID L. SCHINDLER

“[T]he juridical idea of freedom, in abstracting the negative meaning of a right from its positive link with truth, so far . . . renders the right to religious freedom arbitrary; while the Declaration’s idea of freedom, in affirming freedom’s positive . . . obligation to seek the truth . . . demands a genuinely universal right to religious freedom.”



Catholics are generally aware that the background preparations for what was to become the Council’s Declaration on Religious Freedom emphasized that truth alone had rights, and that error was at best to be tolerated. Catholics are also generally aware that, after the early debates regarding religious freedom, the Council shifted its emphasis away from the formal question of

truth to the rights of the human person. While the vast majority of Council bishops affirmed this shift, it harbored an ambiguity that became the source of intense debate during the further process of redaction. The new approach, with its framing of the question of rights mainly in terms of the dignity of the person—hence *Dignitatis humanae* (=DH), the title (“*incipit*”) of the final document—so far appeared to involve abstraction from considerations of truth: but in what sense? The Council bishops claimed, not that a person had a right to error as such, but rather that each person had, in relation to others in society and to the state, a *civil* right to exercise his religious freedom, even when he was wrong.

Over time, however, it became clear that the Council bishops did not agree regarding the foundations underpinning the right to religious freedom. Granted that this right is founded in the dignity of the human person, on what does the dignity of the human person itself finally rest, and how does one’s conception of these foundations affect the nature of the right? Can one assert a civil right to religious freedom without thereby at least implicitly invoking some claim about the nature of the person, and so far the question of truth? And if rights are not tied in some significant sense to a claim of truth, what assurance can we have that the state will adjudicate justly in the case of conflicting claims of rights, thus avoiding arbitrary repression of one group’s rights in favor of another’s?

I argue in this article that the prevalent readings of *DH* today, while rightly recognizing the Council’s shift of emphasis away from the notion of truth formally considered to the notion of the person, fail for the most part to take note of the profound ways in which the issue of truth emerges once more, *precisely from within this new context centered in the person*. In other words, there are in point of fact not one but *two* significant conceptual shifts that occurred during the course of the conciliar debate. The first occurred in connection with the third draft of the document (*textus emendatus*), when the discussion moved away from the earlier focus on whether error as such has rights to a focus rather on the person as the subject of rights. But a second shift also occurred, notable especially in the fifth draft (*textus recognitus*), regarding the concern voiced by some of the Council bishops that the necessary “connection that exists between the obligation to seek the truth and religious freedom itself has not yet [i.e., in draft three or four]

been made clear.”¹ The significance of this second conceptual shift has been largely underestimated in most post-conciliar discussions, despite the fact that the concerns that lay behind the second shift are clearly reflected in the final text of the Declaration. In fact, the controversies regarding *Dignitatis humanae* and religious freedom that have beset the Church since the Council bear on just the issues raised in this second conceptual shift. It is the relationship between these two shifts of emphasis, which emerge especially with schemas 3 and 5, respectively, that I wish to focus upon in this article.

Let me begin by framing the *status quaestionis* in terms of the following statement by Professor Nicholas Lobkowitz, which summarizes well the prevalent reading of *DH* on religious freedom:

The extraordinary quality of the declaration *Dignitatis humanae* consists in the fact that it shifted the issue of religious freedom from the notion of truth to the notion of the rights of a human

1. Bishop Alfred Ancel, intervention of 22 September 1965, in *Acta Synodalia Sacrosancti Concilii Vaticani II* (Vatican City: Typis polyglottis Vaticanis, 1970–80), vol. IV, par. 2, 17 (hereafter abbreviated *AS IV/2*, or similarly). A significant portion of Bishop Ancel’s intervention was incorporated into the final text of *Dignitatis humanae*, as I will discuss more at length below. For a fuller discussion of the six redactions of the Declaration, see the historical overview by Nicholas J. Healy, Jr., to appear in a forthcoming volume on *Dignitatis humanae* by Healy and myself. This work will include an English translation of the conciliar interventions of Alfred Ancel and Karol Wojtyła in the course of the redactions. A longer version of the present article, with more complete documentation, will also appear in the same work, to be published by Eerdmans Publishing Company in 2014.

There are many important issues arising in connection with the question of the right to religious freedom in *DH* that cannot but be implicated in our discussion here, which is focused specifically on the relation between freedom and truth, and the nature of rights as conceived in light of an adequate understanding of this relation. These issues will be treated in the present article to the extent necessary to clarify its argument regarding freedom, truth, and rights. Nevertheless, their importance is such that the book version of the article will present a more thematic discussion of the *status quaestionis* regarding each of them, as demanded by the view of freedom, truth, and the right to religious liberty put forward here. The issues include the following: the development of doctrine; the relation between reason and revelation; the distinctions between society and state, and between the public order and the common good; the limited state; freedom as “the political method par excellence”; the competence of the state in religious matters; church and state; the freedom of the church; problems regarding church “establishment” and the “confessional state”; the question of the “historical principle,” and the distinction between classical and historical consciousness; the legitimate secularity of society; and the pluralism of modern societies.

person. Although error may have no rights, a person has rights even when he or she is wrong. This is, of course, not a right before God; it is a right with respect to other people, the community, and the State.²

In response to this statement, I would say, first, that the Council did indeed shift the focus of discussion regarding religious freedom from truth as the subject of rights to the person as subject. Second, the Council thus affirmed, not that error has rights, but that the person has rights even when he errs. Third, Professor Lobkowitz nevertheless states, apropos of this shift to the person, that this indicates a shift in “the issue of religious freedom from the notion of truth to the notion of the rights of a human person.” This third part of Lobkowitz’s statement, I believe, can be reasonably accepted as an accurate summary of the teaching of *DH* only when qualified further in light of the ambiguity we noted above. It was in fact the recognition of this crucial ambiguity by the Council bishops that alone suffices to explain why, with the support of Paul VI, they introduced the changes that they did following schema 3, and why these changes were retained in the final document.

Jesuit Father Hermínio Rico’s book *John Paul II and the Legacy of Dignitatis Humanae* helps sharpen the nature of the problem indicated here.³ Rico poses the question whether, according to *DH*, human dignity stems finally from the freedom that is inherent in every person, a freedom which can be used well or not, or rather from “the person’s relationship with transcendent truth” (142). Rico discusses the first view in terms of Father John Courtney Murray (and supporters of Murray such as Pietro Pavan), and in terms of what is understood to be the “juridical” approach of the Council bishops from America. He discusses the second view in terms of Karol Wojtyła/John Paul II, and in terms of what is understood to be the “ontological” approach characteristic of the French bishops—an approach reflected in the text from Bishop Ancel cited above. In his book, Rico defends the first of these views, arguing that the juridical approach installed

2. Nicholas Lobkowitz, “Pharaoh Amenhotep and *Dignitatis Humanae*,” *Oasis*, Year 4, no. 8 (December 2008).

3. Hermínio Rico, *John Paul II and the Legacy of Dignitatis Humanae* [=Rico] (Washington, DC: Georgetown University Press, 2002).

in the third draft indicates the essential teaching of *DH*.⁴ Indeed, he argues that Wojtyła's arguments at the Council, and later during his pontificate as John Paul II, while emphatically supportive of the principle of religious freedom, actually misconstrued the terms of the problem as shaped by Murray's juridical approach, in their insistence on the essential relation of freedom to truth, as well as on the need for appealing to the sources of Revelation (see, e.g., 113). In this insistence, Rico argues, John Paul II threatened to undermine the genuine achievement of the Declaration in its affirmation of a *universal* right to religious freedom, a right which must continue to be upheld even when persons are in error.

Rico makes a helpful contribution to the post-conciliar debate regarding the teaching of *DH* by drawing into clear relief the fact that, broadly speaking, there are two main approaches to the question of religious freedom—the juridical and the ontological—which emerged, respectively, around schema 3 and schema 5 of the Declaration.⁵ He is right as well to focus the discussion of his book above all around the figures of Murray and Wojtyła/John Paul II. As is well-known, Murray was the “first scribe” of the crucial third schema.⁶ Wojtyła/John Paul II, for his part, made several important interventions during the redactions of the document, supported the changes that were introduced in the fifth schema and retained in the final document, and placed the problem of religious freedom and its relation to truth in the forefront of his concerns as pontiff.

4. According to Rico, the approach that ultimately “prevailed in the overall structure of the declaration and in the basic conceptual definitions . . . was personified in John Courtney Murray” (29). Rico nonetheless also affirms that, regarding “the [specific] arguments advanced to ground the right, Murray actually found himself on the losing side of the dispute” (47).

5. Rico discusses these two main approaches in the third chapter of his book. He understands the second approach, represented above all by the French school, in terms of a preference for a theology of religious freedom rooted in Scripture, as well as in terms of a methodology reacting to the secularistic liberalism of nineteenth-century France. But we will discuss the nature of these two approaches below.

6. Richard J. Regan, S.J., *Conflict and Consensus: Religious Freedom and the Second Vatican Council* (New York: Macmillan Company, 1967), 95. According to Jan Grootaers, in October 1964 Murray became *la cheville ouvrière*, or “mainspring,” of the subsequent reformulation of the text: see Grootaers, *Actes et acteurs à Vatican II* (Leuven: Leuven University Press, 1998), 65.

Questions regarding what the Council really meant to affirm with respect to the right to religious freedom are thus necessarily linked with how one interprets the significance of the later redactions, especially the fifth and the final, relative to schema 3. As we will see, Murray argued that the changes introduced following schema 3 were not necessary on strictly theoretical grounds, and that the essence of the juridical approach was kept intact in the final text of *DH*. Indeed, he argued that the juridical approach, with its abstraction of freedom from truth, remains a necessary presupposition for reading *DH* in a way that can sustain a truly universal right to religious freedom. Those bishops who insisted on the changes introduced in the later schemas argued, on the contrary, that such changes *were* theoretically necessary, and that the juridical approach, if it did not tie freedom in a more integrated way to man's natural relation to the transcendent order of truth, remained so far vulnerable to arbitrariness or abuse in the effort to protect human rights.

My purpose in this article is to offer a judgment regarding the issue raised here. The argument has seven sections. Section I summarizes (1) Murray's understanding of the so-called juridical approach; (2) Wojtyła's interventions during the course of the redactions; and (3) the principal changes with respect to schema 3 that were introduced especially in schema 5 and that became part of the final Declaration. Section II sets forth Murray's two main criticisms of these changes. Sections III and IV propose responses to each of Murray's criticisms, defending the changes—which is to say, the final, officially received, Declaration—in the face of these criticisms. The main or “constructive” part of my argument here will be to show the inner coherence of the Declaration. Section V returns to the opening articles of the Declaration in order to show how, in light of the foregoing, the right to religious freedom as a negative immunity is to be properly understood. Section VI shows the coherence of the Declaration in light of the teaching of John Paul II and Benedict XVI. Finally, section VII concludes with a summary of the main elements of the argument.

My intention, in sum, is to demonstrate that the Declaration did indeed center the Church's understanding of religious freedom and rights in the person, and did indeed develop more fully and explicitly her understanding of and commitment to the right to religious freedom. But I argue that the Declaration did so

by way of *affirming the person within a new unity of freedom and truth before God*. This is the import of the officially received text of *DH*, when properly interpreted, especially in light of the changes made to the document in its final redactions. My contention is that it is only when we understand the Declaration's intention to defend the intrinsic unity of freedom and truth, or indeed the notion of the person as himself an integrated order of freedom and truth, that we are able, logically, to see the profound coherence of the doctrine of the right to religious freedom as developed in *DH*, on the one hand, and in light of the theological anthropology of *Gaudium et spes* and the Council more generally, on the other, as articulated especially in the pontificates of John Paul II and Benedict XVI.

Regarding this last: Rico is right that John Paul II emphasized the relation between freedom and truth throughout the various phases of his papacy. But Rico is wrong in his assertion that the Council essentially ratified the juridical approach, such that one can justly read John Paul II's insistence on the intrinsic relation between freedom and truth as a backing away from *DH*'s teaching regarding religious freedom. On the contrary, what John Paul II affirmed regarding religious freedom throughout the course of his papacy was in essence just what he had repeatedly affirmed already in his interventions as Archbishop of Kraków during the redactions of *DH*, namely, that there is an essential, mutual binding of freedom and truth. My argument will show that this view alone can account adequately for the final form of the Declaration.

Let me emphasize at the outset: it is not the case that, with the conciliar affirmation of religious freedom, the Church has signaled a new awareness of the importance of freedom *in addition to*, or even *despite*, her traditional emphasis on truth. On the contrary, with this conciliar teaching, rightly understood, the Church rather signals a development in her understanding of the inherent unity of truth with freedom and freedom with truth. While still affirming that the *truth alone* frees, she now affirms at the same time, in a more explicit way, that truth itself presupposes freedom, and that truth *really does free*. My purpose is to demonstrate the sense in which this is so, and how this represents the heart of the teaching undergirding the Declaration's affirmation of the right to religious freedom.

I begin, then, with an overview of Murray and Wojtyła and the redaction process of *DH*.

I.

(1) *John Courtney Murray and the juridical approach*.⁷ (i) According to Murray, the right to religious freedom as defined by *Dignitatis humanae* is “an immunity; its content is negative.”⁸ This is what

7. What Murray calls the juridical approach to religious freedom was introduced at the Council in the third schema (*textus emendatus*) of what became the Declaration. This draft, as well as the slightly emended fourth schema (*textus reemendatus*), were written with Murray as their “first scribe,” as mentioned above. Due to health issues, Murray was not organically involved in the subcommittee discussions regarding the decisive fifth schema, which was largely carried over into the finally approved document. It was in the fifth draft that most of the significant changes were added pertinent to the question of the foundations of the right to religious freedom and the duty to seek the truth about God. Cf. Leon Hooper in *Religious Liberty: Catholic Struggles with Pluralism*, ed. J. Leon Hooper (Louisville: Westminster/John Knox Press, 1993), 127: “A fifth text (the *textus recognitus*) was written while Murray was out of circulation because of a collapsed lung. The fifth text was presented to the Council on 25 October 1965, during the fourth session (September to December, 1965). After the incorporation of several proposed amendments, a final text was approved and promulgated on 7 December 1965, as a conciliar declaration. The main argument of the fifth and final texts was grounded on the human right to search after the truth and to embrace the truth once found. Murray’s principal line of argument entered the text . . . as an addendum.” Cf. also Regan, *Conflict and Consensus*, 158: “[T]he *textus recognitus* integrated the argument from man’s right and duty to follow conscience and the argument from the social nature of man and religion under the primacy of the argument from man’s right and duty to seek truth; the constitutional argument was simply appended as a further consideration.” In a footnote to this passage, Regan notes that “On October 5 Murray suffered a lung collapse, which forced him to the sidelines of subsequent Secretariat deliberations on drafting the *textus recognitus*. Murray discounts as highly improbable that he would have had much influence on the *textus recognitus* even if he had been present at all the Secretariat deliberations. In any event, Murray did return to action in time to consider the petitions for final revision of the Declaration” (168, fn. 15). On the question of the hermeneutical significance of Murray’s absence relative to the final form of the Declaration, see section V.3.ii below.

8. John Courtney Murray, “The Declaration on Religious Freedom: A Moment in Its Legislative History” [=MLH], in *Religious Liberty: An End and a Beginning*, ed. John Courtney Murray (New York: The Macmillan Company, 1966), 15–42, at 27–28. Cf. also Edward Gaffney, “Religious Liberty and Development of Doctrine: An Interview with John C. Murray” [=RLDD], *The Catholic World* 204 (February 1967): 277–83, at 279: “Fundamentally, religious

is meant in calling religious freedom a “formally juridical concept” (MLH, 27). “The object of religious freedom as a juridical conception,” in his words,

is not the actualization of the positive values inherent in religious belief, profession, and practice. These values, as values, are juridically irrelevant, however great their religious, moral, and social significance. The object of the right is simply the assured absence of constraints and restraints on individuals and groups in their efforts to pursue freely the positive values of religion. . . . This is good juridical philosophy. It is of the nature of a juridical formula—in this case, religious freedom—simply to set outside limits to a sphere of human activity, and to guarantee this sphere against forcible intrusion from without, but not to penetrate into the interior of this sphere and to pronounce moral or theological judgments of value on the activity itself. Such judgments exceed the category of the juridical, which is concerned with interpersonal relationships. They likewise exceed the competence of the forces of juridical order—the forces of law and of political authority. (MLH, 28–29)

Murray says that the first to launch such a conception of rights was the United States, and that “the object or content of the right to religious freedom, as specified both in the Declaration and in the American constitutional system, is identical.”⁹ We can recall here Murray’s well-known reading of the First Amendment’s religious clauses as “articles of peace,” rather than “articles of faith.” Articles of faith would express “certain ultimate beliefs, certain specifically sectarian tenets with regard to the nature of religion, religious truth, the church, faith, conscience, divine revelation, human freedom”—would imply, in short, an “ecclesiology” or “religious philosophy.”¹⁰ The consti-

freedom is a freedom from something; it is an immunity from coercion.”

9. Murray, “Declaration on Religious Freedom: Commentary” [=“Commentary”], in *American Participation at the Second Vatican Council*, ed. Vincent A. Yzermans (New York: Sheed and Ward, 1967), 668–76, at 668. Cf. also Murray, “The Declaration on Religious Freedom” [=DRF], in *Vatican II: An Interfaith Appraisal*, ed. John Miller (Notre Dame: Associated Press, 1966), 565–76, at 568; and MLH, 28.

10. Murray, *We Hold These Truths* [=WHTT] (Garden City, NY: Doubleday Image, 1964), 58, 60.

tutional order of the state, on the other hand, contains instead only articles of peace, insofar as this order is understood to “have no religious content” and to “answer none of the eternal human questions with regard to the nature of truth and freedom or the manner in which the spiritual order of man’s life is to be organized or not organized” (*WHTT*, 58). Thus the juridical or articles of peace approach intends to abstract from, or to remain “negative” with respect to, the meaning of man in his transcendent relations to truth and to God, thereby remaining on the “horizontal plane” of man’s relationships; while the articles of faith approach makes positive claims with respect to man’s transcendent relations to truth and to God, thereby entering the “vertical plane” of man’s relationships.¹¹ Notice, however, that “negative” is not understood by Murray to imply a rejection of man’s positive relationship to truth and to God, but only an abstraction from this relationship for purposes of the exercise of civil authority.¹² In Murray’s terms, in other words, “negative” here implies only a legal-constitutional “indifference,” not a substantive “indifferentism,” with regard to man’s relations to truth and to God.

The key for Murray, in a word, is that the juridical formula of the First Amendment regarding the free exercise of religion is empty of any “ideology,” and that this ideological emptiness is common to both *DH* and the American Constitution. In neither document does the juridical formula contain a “positive evaluation of the religious phenomenon in any of its manifestations” (*DRF*, 568).¹³

11. For further discussion of this distinction between articles of peace and articles of faith, see fn. 56 below.

12. As Pietro Pavan puts it in his commentary on the text of *DH*, “there is [in the Declaration] no question of the relations between the person and truth or between the person and God, but of the interpersonal relations in human and political society” (“Declaration on Religious Freedom,” in *Commentary on the Documents of Vatican II*, vol. 4, ed. Herbert Vorgrimler [New York: Herder and Herder, 1969], 58). Or, as he puts it elsewhere, “Religious freedom . . . does not concern the relation of the person to truth, but the mutual relationships between physical as well as moral persons” (63–64). According to Pavan, this is what is indicated by the change in the subtitle made in the fifth schema, where *libertas* was qualified as *socialis et civilis libertas*.

13. Thus according to Murray, the American Constitution distinguishes between “a right as an immunity and a right as a positive claim” (“Commen-

(ii) To this notion of the right to religious freedom as a negative immunity, Murray says, there corresponds “the constitutional concept of government as limited in its powers” (MLH, 36). This concept of limited government

yields a more narrow criterion for legal limitation of the free exercise of religion, namely, the necessary exigencies of the public order Inherent, therefore, in the notion of religious freedom is the notion of government incompetence in matters religious. This latter notion, however, has to be exactly understood. The constitutional provision for religious freedom is a self-denying ordinance on the part of government. That is to say, government denies to itself the competence to be a judge of religious belief and action. But this denial is not an assertion of indifference to the values of religion to man and to society. Nor is it a reassertion of the outworn laicist creed that “religion is a purely private matter.” It is simply a recognition of the limited functions of the juridical order of society as the legal armature of human rights.¹⁴ (MLH, 36–37)

tary,” 668). It considers a right not as a claim upon, but as an assurance against, the government, and this negative character is what defines rights as properly “political” or “civil.” Though Murray affirms an essential identity between *DH* and the American Constitution in the matter of the “negative” content of the right to religious freedom, he also states that “the Declaration is not as correct and clear as the [American] Constitution . . . that the statute of religious freedom is essentially a self-denying ordinance on the part of the government” (“Commentary,” 669).

14. Elsewhere Murray defines the idea of public order as follows: “The public order is that limited segment of the common good which is committed to the state to be protected and maintained by the coercive force that is available to the state—the force of law and of administrative or police action” (“This Matter of Religious Freedom” [=TMRF], *America* 112 [9 January 1965]: 40–43, at 40). Cf. also MLH, 35: “The underlying distinction here is between what is necessary for the sheer coexistence of citizens within conditions of elemental social order, and what is useful in promoting their collaboration toward more perfect conditions of social welfare. . . . The category of the necessary is the category of public order. The wider category of the useful covers the more comprehensive concept of the common good.” Finally, on the distinction between the common good and public order, see Murray’s “The Problem of Religious Freedom” in *Religious Liberty: Catholic Struggles with Pluralism*, 127–97, at 145. This essay was written by Murray before and during the third session of the Council; according to Hooper, it presents the central argument of schema 3.

Regarding the notion of public order, then, which is essentially tied here to the concept of limited government, Murray says that, “after some hesitation and in spite of some opposition,” the Council adopted this notion as its main criterion for the limitation of the right to religious freedom, rather than the traditional notion of the common good, because of the greater precision of the former (DRF, 575; cf. MLH, 34). In adopting the criterion of public order,¹⁵ Murray argues, the Council moved away from the ethical concept of the purpose of political authority characteristic of Leo XIII and toward the civil concept—the protection of civil rights—that according to Murray is more characteristic of Pius XII and John XXIII (cf. MLH, 33).¹⁶ The hallmark feature of this civil concept, which Murray says is “the theory of what we would call ‘constitutional government,’” is “the tradition of a free man in a free society,” and it represents “the essence

15. Cf., e.g., the reference to “the exigencies of public order” as that which determines juridical norms in schema 3, aa. 5b and 4e (*AS* III/8, 432–33). This earlier schema places an emphasis on the negative duties of the state (aa. 7 and 9) and favors conditions for exercising choice (a. 4e).

16. Cf. Murray, “The Declaration on Religious Freedom,” in *War, Poverty, Freedom: the Christian Response. Concilium*, vol. 15, ed. Franz Böckle (New York: Paulist Press, 1966), 13–16. Cf. also Murray’s statements in *Council Daybook*, vol. III: Vatican II, Session 4, Sept. 14 to Dec. 8, 1965 (Washington, DC: National Catholic Welfare Conference, 1965), 14–17. According to Murray, “Leo XIII’s dominant conception of government was paternal; it was adapted to the historical conditions of his time,” namely, “the historical fact of the formless ‘illiterate masses’” (14). As a consequence, “in Leo XIII the traditional distinction between society and state is largely lost from view.” Pius XII, on the contrary, understood that “government is simply political; it represents a return to tradition (to St. Thomas, for instance).” Pius thus returns to the traditional idea of “‘the people’, a structured concept, at whose root stands ‘the citizen (who) feels within himself the consciousness of his own personality, of his duties and rights, of his proper freedom as joined with a respect for the freedom and dignity of others’ (Radio Discourse, Christmas 1944)” (14). Pius likewise revives the distinction between society and state, making it “a pillar of his . . . concept of the juridical state” (15). There is in Pius XII, then, and still more fully in John XXIII, an affirmation of “the truth of the juridical nature of the state—its primary commitment to the protection of the exercise of man’s rights and to the facilitation of the performance of his duties. There is, finally, the truth of the limitation of the powers of government by a higher order of human and civil rights, which John XXIII elaborated, again in dependence on Pius XII, but with greater detail and emphasis” (15). For further discussion of the tradition from Leo XIII to John XXIII, see Murray, “The Problem of Religious Freedom,” in *Religious Liberty: Catholic Struggles with Pluralism*, 155–78.

of the liberal tradition of the West” (RLDD, 281). The central principle of this tradition, in his view, is “the political principle of the free society: ‘Let there be as much freedom as possible, and only as much restraint as necessary’” (DRF, 573).¹⁷

The function of government, then, in this conception—which, according to *DH* as interpreted by Murray, is limited to the securing of public order—becomes more properly “coercive” than “pedagogical” in nature. That is, in contrast with the ancient view of state authority, whose purpose was above all to promote the education and formation of citizen-subjects in and toward the human good, the view adopted by the Declaration, according to Murray, understands the function of the state to be one essentially of insuring that citizens do not interfere with each other in an intrusive manner.¹⁸

(iii) Regarding the foundation for the right to religious freedom, Murray says that, in accord with the traditional conciliar custom, the doctrinal authority of the Declaration falls on *what* is affirmed and not on the *reasons given for* that affirmation, and thus here “upon [*DH*’s] affirmation of the human right to

17. Cf. Murray’s commentary on *DH* in *The Documents of Vatican II* [=Abbott], ed. Walter M. Abbott, S.J. and Joseph Gallagher (New York: America, 1966), 687n21. Regarding the statement in *DH*, 7 that “For the rest, the principle of the integrity of freedom in society should continue to be upheld. According to this principle man’s freedom should be given the fullest possible recognition and should not be curtailed except when and in so far as is necessary,” Murray remarks: “Secular experts may well consider this to be the most significant sentence in the Declaration. It is a statement of the basic principle of the ‘free society.’”

Regarding the Church’s development of doctrine in the matter of religious freedom, Murray says that the Church gave formal expression in *DH* to an awareness that had long been developing already in modern culture, and that was given its distinctive juridical-“doctrinal” formulation especially in the founding documents of America. He affirms in this regard that *DH* was “an exercise in *aggiornamento* in the strict sense. Its achievement was simply to bring the Church abreast of the developments that have occurred in the secular world” (DRF, 565). Murray’s conception of public order and his understanding of freedom as the political method par excellence, as well as the question of the Church’s development of doctrine in *DH*, will be treated at greater length in the book version of this study.

18. Cf. Murray, “On Religious Liberty,” *America* 109 (November 1963): 704–06. On the importance of this article for the course of the Council discussion, see Walter Kasper, *Wahrheit und Freiheit: Die ‘Erklärung über die Religionsfreiheit’ des II. Vatikanischen Konzils* (Heidelberg: Carl Winter, 1988), 20–21.

religious freedom, not on the arguments advanced in support of this affirmation” (DRF, 570). In Murray’s judgment, the final Declaration leaves intact the juridical notion of rights as defined in schema 3, while it shifts the primary argument given regarding the ground for rights (DRF, 567, 570–71).

With respect to the nature of the foundation of the right to religious liberty as a civil right, then: Murray says first of all that it was necessary that the Declaration propose an argument regarding foundations, in order to demonstrate that “the affirmation was being made in principle” and not as a matter of expediency, that is, of concession to the contingent historical circumstance that the Church no longer exercises the hegemony that she once did in political societies (DRF, 570). Further, in this context, it was important for the Church to show that its argument differed from arguments tied to relativism or religious indifferentism or secularism.

But secondly, Murray says that, nevertheless, “it is not necessary to believe that the Conciliar argument is the best one that can be made” (DRF, 570).

Murray then indicates what he believes is “a more cogent argument,” one that he says “can be constructed from the principles of the Declaration itself, assembled into an organic structure.” “The mark of man as a person,” he says,

is his personal autonomy. Inseparable, however, from personal autonomy is personal responsibility. This is twofold. First, man is responsible for the conformity between the inner imperatives of his conscience and the transcendent order of truth. Second, man is responsible for the conformity between his external actions and the inner imperatives of conscience. . . . Man bears [these responsibilities] as a moral subject, as he confronts, so to speak, his vertical relationship to the transcendent order of truth. However, on the horizontal plane of intersubjective relationships, and within the social order, which is the order within which human rights are predicated, man’s fulfillment of his personal responsibilities is juridically irrelevant. The major reason is that no authority exists within the juridical order that is capable or empowered to judge in this regard. . . .

What is juridically relevant, however, and relevant in the most fundamental sense, is the personal autonomy which is constituent of man’s dignity. More exactly, resident in

man's dignity is the exigence to act on his own initiative and on his own responsibility. This exigence is . . . simply the demand that man should act according to his nature. And this exigence is the basic ontological foundation, not only of the right to religious freedom, but of all man's fundamental rights¹⁹ (DRF, 571–72)

Thus, “given the exigence of the person to act on his own initiative and responsibility,” says Murray, “coercion appears as a thing of no value to the person.” Hence “all . . . rights are immunities from coercion” (DRF, 572; cf. also 574–75).

There are two main points to be kept in mind with respect to this argument regarding the foundation for the right to religious freedom. (a) Murray clearly affirms man's responsibilities as a moral subject, in his “vertical relationship to the transcendent order of truth.” But he emphasizes that *civil* rights essentially concern, not this vertical plane, but rather the “horizontal plane of intersubjective relationships”; and that they do so, not because man's responsibility to truth is not important, but because it *is*. The burden of a “negative” right, in other words, is precisely to create the free conditions necessary to enable the person's search for truth.

Now anyone familiar with the work of Murray knows that the principle operative here is his well-known distinction between state and society. Murray affirms a natural law operative in man that binds and obligates man to a transcendent order of truth, ultimately to God.²⁰ But man's natural relation and obliga-

19. Cf. DRF, 574: “The truth about the human person is that his fundamental exigence is to act on his own initiative and responsibility,” and DRF, 572: “[T]he basic exigence of the person is for immunity from coercion.” There are of course many slightly variant expressions of Murray's notion of the foundations of human dignity as articulated here. Cf., e.g., RLDD, 282: “The Declaration takes its stand on the notion of the dignity of the human person. This notion is, of course, known through human reason, but it is also known through revelation, where man is clearly proclaimed to have been created in the ‘image of God’; that is to say, man is a creature of intelligence and free will called upon to have dominion over his actions and to be the one who directs the course of his own life.”

20. See, e.g., *WHTT*, ch. 1, “*E Pluribus Unum: The American Consensus*,” 27–43; ch. 4, “The Origins and Authority of the Public Consensus: A Study of the Growing End,” 97–124 and ch. 13, “The Doctrine Lives: The Eternal Return of Natural Law,” 295–336.

tion to this order of truth are the proper concern of the institutions of society such as the family and the Church, *not* of government. The fact that this obligation is *juridically* irrelevant, in other words, does not, according to Murray, make it thereby irrelevant *to man and society as such*.²¹ That is just the point of a juridical order conceived in terms of articles of peace: what is relevant in the juridical order is man's nature *qua* exigent to act on his own initiative and responsibility, *not* *qua* obligated to transcendent truth. Murray takes this clean distinction between the two orders, the juridical and the ontological-moral, to be necessary in order to affirm a universal right to religious freedom in a pluralistic society. That is, a civil right that would be truly universal in scope must so far, for Murray, not be tied intrinsically to any particular claim of truth.

In a word: to bring together the nature of freedom as exigent for initiating action and the nature of freedom as obliged to the transcendent order of truth is to unite what Murray insists on keeping apart, as what is, respectively, juridically relevant and juridically irrelevant. A *civil* sense of right must be disjoined from an *ontological-moral* sense of right. As we will see, it is precisely the question of how best to understand the distinction indicated here that drives Murray's criticism of the changes introduced in the later schemas, as well as the Council bishops' decision to make these changes in the first place.

(b) Murray suggests at the same time that how one conceives the foundations of the right to religious freedom is in any case not crucial in determining the nature—the proper object and content—of this right. According to Murray, that is, the “negative” sense of the right to religious freedom remains intact irrespective of whether its primary foundation is the autonomy of the person or the person's obligation to seek the truth. And yet Murray's own argument would seem to affirm the interlocking, and thus far inseparable, character of the key elements of the juridical approach. Specifically, Murray emphasizes the primacy of the exigence to act on one's own initiative and responsibility *as the reason for* the primacy of a right understood as an immunity: given the primacy of this exigency, it follows that the first thing

21. See Murray's discussion regarding the important question of “the spiritual substance of a free society” in *WHTT*, 192, 210.

demanding is that other persons not act toward me in an intrusive manner. That is, according to the juridical approach, a right is first a freedom *from* someone or something, not a freedom *for*.²² The emphasis on the primacy of the obligation to seek the truth about God and religion, on the contrary, seems so far to indicate the primacy of a positive relation to another, and thus the priority of freedom *for* another.

Our reflection will return to the issues focused here regarding the foundation and the nature of the right to religious freedom. But let us consider now the most important themes that emerge from the interventions voiced by Karol Wojtyła.

(2) *Karol Wojtyła*.²³ (i) First, Wojtyła objected to the purely “negative” concept of religious freedom as an “immunity from coercion.” Such a concept, he thought, lacked an adequate sense of the right to religious freedom as an *intrinsically positive good* owed to all persons.²⁴ Emphasizing religious freedom only in the negative terms of immunity leaves this right logically vulnerable to indifference in the matter of truth.²⁵ The “negative”

22. Cf. Abbott, 675n5: “It is further to be noted that, in assigning a negative content to the right to religious freedom (that is, in making it formally a ‘freedom from’ and not a ‘freedom for’), the Declaration is in harmony with the sense of the First Amendment to the American Constitution.”

23. On Wojtyła’s interventions, see, *inter alia*, Avery Cardinal Dulles, S.J., “John Paul II on Religious Freedom: Themes from Vatican II,” *The Thomist* 65, no. 2 (April 2001): 161–78; Rico, 103–116; Kasper, *Wahrheit und Freiheit*, 26–31.

24. See AS III/3, 766: “[T]he authors of the schema . . . state that religious freedom is immunity from external coercion . . . : ‘religious freedom, or the person’s right not to be impeded by others from observing and proclaiming his public and private duties to God and to men, whether individually or collectively, as these duties are manifested by conscience.’ Both of these definitions seem partial and negative, concerned with religious tolerance rather than with freedom. . . . Thus I propose that the definition and conception of freedom found in our schema at least be supplemented with a definition and conception in which the importance for freedom of objective truth itself—not only of subjective truth—is made more clear.”

25. In the words of Avery Dulles, interpreting Wojtyła, “the merely negative definition could easily be exploited to promote unacceptable forms of liberalism or indifferentism” (Dulles, “John Paul II on Religious Freedom,” 165). In this regard, Wojtyła calls for the Council to emphasize not only the *right* to religious freedom, but also the *responsibility* that is entailed in such a right: see AS IV/2, 12.

concept abstracts the roots of human dignity from man's positive relationship to God.²⁶ The right to religious freedom thus has its origins in relation to, and is actually realized only through dependence upon, truth.²⁷ As Wojtyła put it in an early intervention, "Non datur libertas sine veritate" ("Without truth, there is no freedom": *AS III/3*, 531).²⁸ Again, Wojtyła insisted that one

26. "It was imperative . . . to work with a positive conception of religious freedom, rooted in a theological understanding of the dignity of the person in relationship with God" (Dulles, "John Paul II on Religious Freedom," 165).

27. "On the one hand, freedom exists for the sake of truth; on the other hand, without truth freedom cannot be perfected" (*AS III/3*, 531). In a set of written observations on the third schema, Wojtyła proposed that the document state in its opening article: "this sacred Council declares that the Catholic teaching on the one true religion is in no way opposed to human freedom; for the necessity of following the truth, once known, is in no way opposed to the free will of the human person. Indeed, in his need to follow the truth there is rather manifested the true dignity of the human person, a dignity which intimately corresponds with the teaching of the Gospel, and which is at the same time drawn from the font of reason itself" (*AS III/2*, 606). Dulles points out that Wojtyła voiced this concern for the recognition of freedom's intrinsic dependence upon truth in his first intervention at the Council (166).

28. The immediate context of this statement regards what Wojtyła calls "religious freedom . . . in the ecumenical sense," which he distinguishes here from religious freedom "in the civil sense." This distinction reflects the fact that what became the Declaration on Religious Freedom was originally a chapter of the Decree on Ecumenism. In ecumenism, Wojtyła argues, dialogue should arise from the very heart of one's faith and should be ordered toward the fullness of truth: "The relationship of freedom to truth is of the utmost importance [here] . . . for the aim of [ecumenism] is nothing less than the liberation of all Christendom from schism, which cannot be achieved in full until the union of Christians is made perfect in truth. For this reason it is not enough, in our dealings with our separated brethren, to propose the principle of religious freedom as simply a principle of tolerance" (*AS III/3*, 531).

On the other hand, Wojtyła says, "When the discussion concerns religious freedom in . . . the civil sense, then, to be sure, the principle of tolerance enters into the question" (*ibid.*). "Nevertheless," he continues, "we must consider" that many in the political sphere, especially atheists operating in Communist regimes, "are inclined to see in religion nothing more than the alienation of human reason. . . . Hence, when speaking about religious freedom [in the civil sense], we must present the human person with complete accuracy." Precisely in the civil context, then, "The human person must appear in the real grandeur of his rational nature, and religion must appear as the culmination of this nature. For religion consists in the human mind holding fast to God in freedom, in a way which is wholly personal and conscientious, and which arises from the desire for the truth. . . . The Council, therefore, in the light of faith and sound reason, should declare the full and genuine truth about man, who in religion is in no way alienated, but rather achieves his own perfection." In this way, "The

cannot say “I am free” without saying at the same time that “I am responsible” to God and others. “This teaching has its foundation in the Church’s living tradition of confessors and martyrs. Responsibility is, as it were, the culmination and necessary complement of freedom. This must be stressed, so that our Declaration may be seen to be deeply personalistic in the Christian sense, yet not subject to liberalism or indifferentism” (AS IV/2, 12).

(ii) In the related matter of how the political limits to religious freedom are to be conceived, Wojtyła was critical of the statement in the third schema that religious freedom could legitimately be restricted “according to juridical norms determined by the exigencies of public order (*secundum normas iuridicas, quae constituuntur exigentiis ordinis publici*)” (a. 5b [AS III/8, 433]). Wojtyła objected that the idea of the exigencies of public order, if not further qualified, could permit limits to the exercise of religious freedom that were *simply* grounded in positive law, and that were thus potentially unjust in light of the God-given nature of this right. According to Wojtyła, rather, “the right to religious freedom, as a natural right (a right having its foundation in natural, and therefore in divine, law) admits of no limitations except on the part of this same moral law. Positive human law cannot impose any limits on this right, except in accordance with the moral law. In other words: only a morally evil act, or one that is contrary to the moral law, can be considered an abuse of religious freedom” (AS IV/2, 12–13).²⁹ Juridical limits, in a

[civil] right to freedom in the exercise of religion is connected to those rights of the person which concern the truth” (ibid., 531–32).

While it is right to distinguish between the ecumenical and the political contexts, then, it is clear all the same that for Wojtyła not only the former but also the latter is concerned with and ordered toward the truth about man. “It is in truth that the human person achieves his own proper perfection, for the truth corresponds to his rational nature and constitutes the firmest foundation for true freedom” (ibid., 531). Acknowledging that the “rights of the person and the rights of truth itself must [therefore] be brought together,” Wojtyła insists that “*the civil right to religious freedom has its foundation . . . not only in the principle of tolerance, but also in the natural right of every person to know the truth*” (ibid., 766, emphasis added).

29. Cf. AS IV/2, 292. Regarding the moral order and the rights of conscience, Wojtyła took issue with a statement in an early draft that stated “if . . . the human person comes to an erroneous conclusion, no human being and no human power has the right to take the place of this erring conscience, or in other words to exercise coercion over it.” According to Wojtyła, “No human

word, need to be rooted in man's nature and thus include substantively ethical criteria. In light of this, Wojtyła argued, it was "particularly necessary to revise the statements found [in schema 4, a. 4b] on the juridical norm and its power to limit the use of religious freedom, which so far in many places do not seem suitable, and which could in fact provide occasion for abuse against true religious freedom" (AS IV/2, 13).

(iii) Wojtyła insisted that, in an ecclesial document on religious liberty, "it would not suffice simply to repeat what has already been said about religious freedom in the civil legislation of various nations, and in international declarations as well" (AS IV/2, 11). The Council should of course take over what is true in those declarations; but at the same time it should make clear the sense in which the Christian teaching on religious liberty has its own distinctive origin and meaning in Scripture and the revelation of Jesus Christ: "For the truth is that it is in what has been revealed, indeed in the very fact of Revelation, that the true and profound teaching on religious freedom is contained. Men are becoming more conscious of this teaching, the more they acknowledge the human person's dignity in theory and in practice" (AS IV/2, 11).

In this context, Wojtyła thought it important to avoid a conciliar statement that would divide too neatly a doctrine of religious freedom accessible to reason from the richness of what was given in Christian revelation. Wojtyła was critical of earlier schemas of the Declaration on this point.³⁰ He proposed instead that

being or human power has the right to use coercion on a person who has come to an erroneous conclusion, if this conclusion is not itself opposed either to the common good, or to another's good, or to the good of the person in error. If it is, in fact, opposed to one or more of these, then certainly legitimate superiors, such as parents or those responsible for the common good, can exercise a kind of coercion on the one in error, lest by following his error he cause proportionately grave evil either to others or to himself" (AS III/3, 768). Wojtyła elsewhere clarified that "In the case of an erroneous conscience, even one that is invincibly so, respect for the person does not exclude the possibility of persuading him of the truth by means of arguments in support of it. Any remote or immediate physical pressure or physical or social coercion, however, is excluded" (AS III/2, 607).

30. See AS III/3, 767, where Wojtyła expresses dissatisfaction with a passage in the first schema in which "it seems that the Christian moral order, consisting in supernatural charity, is superimposed upon (*superaedificari*) a purely natural order, which flows from the dignity of the human person in the order

the very concept of religious freedom in the conciliar document *be presented in essence as a revealed teaching, one that is wholly consonant with sound reason, and yet not separated from it*, as we find in the text. The Council should teach the truth of God, not simply the truth of man. If the former is apparent to human reason as well, as we see in the contemporary state of affairs on religious freedom, then so much the better. Still, the world awaits the Church's teaching on this matter, the revealed teaching, and not simply the repetition of what it itself is already capable of, as we well know. (*AS IV/2*, 293, emphasis original)

Wojtyła's concern here was not that *DH* had to be tied to an exclusively theological approach, but only that an approach based on reason or philosophy must be conceived as intrinsically open to, and ultimately fulfilled only by, God's revelation in Jesus Christ.³¹ As noted above, against those who see in religion "nothing more than the alienation of human reason," the Church must "present the human person with complete accuracy . . . [He] must appear in the real grandeur of his rational nature,

of nature. We should express it differently: the Christian moral order contains within itself the moral order of nature and all the rights of the human person; at the same time, it elevates, animates, and sanctifies these" According to Dulles, the changes made in the final document seemed to Wojtyła to accommodate his concerns here (Dulles, "John Paul II on Religious Freedom," 163–64).

Cf. also, in this regard, *AS IV/2*, 11: "See how that teaching found in sections II and III [of schema 4] is one and the same teaching of the Church; it is presented in section III in a more scriptural or positive way, and in section II in a more speculative way. Still, it would seem better not to separate reason and revelation so much in these sections, at least as they seem to be from their titles." In this earlier schema, section II was entitled "The teaching on religious freedom derived from reason," and section III "The teaching on religious freedom in the light of revelation." In the following, fifth schema, as well as in the final document, a new division was introduced, which included only two major section headings: section I "A general account of religious freedom" and section II "Religious freedom in the light of revelation."

31. Once we recognize this, we see why, for Wojtyła, anchoring the right to religious freedom ultimately in revelation itself allows for, and indeed presupposes, a certain priority of reason's grounding of this right, which further anchors the universality of the claim to this right by all persons, believers and nonbelievers. Cf. in this connection *Fides et ratio*, 76 on the sense in which the light of the Gospel first opens reason to new concepts—such as the notion of a free and personal God, of the reality of sin, of the person as a spiritual being, or of history as event—which subsequently enrich the operations of reason in its own concrete historical exercise as such.

and religion must appear as the culmination (*culmen*) of this nature” (*AS* III/2, 531). Christian revelation, in other words, must be understood as the *fulfillment* of, and not merely as *an* (arbitrary) *addition to*, what is accessible to reason.

In a word, Wojtyła recognized that the Declaration’s teaching regarding religious liberty needed to be accessible to both Christian believers and nonbelievers alike, but insisted that this must not be understood in a way that would attenuate the distinctive Christian exigence to transform the human person—in Wojtyła’s words, to “elevate, animate, and sanctify” him—in his nature and as a subject of rights (*AS* III/3, 767).

(3) *Redaction history*. Finally, let us note some of the key changes that were made to the Declaration following the third schema (*textus emendatus*), especially in the fifth schema (*textus recognitus*), and incorporated into the final authorized text (*textus denuo recognitus*).

(i) Relating its work to the aspirations of the human spirit, and to the growing awareness in our time of the dignity of the human person (*DH*, 1, 9), the Declaration states that its purpose is to ponder all of this in light of “the sacred tradition and teaching of the Church.” Its intention thus is to draw forth “new things that are always in harmony with the old,” with “a view to declaring to what extent [these modern, human aspirations] are in accord with the truth and justice (*declarare quantum sint veritati et iustitiae conformes*)” (*DH*, 1).³² The Declaration thus

32. The translation of *Dignitatis humanae* used in the present article is that of Laurence Ryan in *Vatican Council II: The Conciliar and Post Conciliar Documents*, ed. Austin Flannery, O.P. (Northport, NY: Costello, 1979), 799–812. In this sentence of the opening paragraph, as generally, the official Vatican text available through the Vatican website follows Murray’s translation: “This Vatican Council takes careful note of these desires in the minds of men. It proposes to declare them to be greatly in accord with truth and justice. To this end, it searches into the sacred tradition and doctrine of the Church . . .” (cf. Abbott, 674). The Latin reads: “Ad has animorum appetitiones diligenter attendens, haec Vaticana Synodus sacram Ecclesiae traditionem doctrinamque scrutatur . . .” The use of the subjunctive and the term *quantum* here (*quantum sint*) would seem to call for a different translation. Rather than making a declarative statement in this regard (the Council “proposes to declare them to be greatly in accord . . .”), the Declaration is rather posing an indirect question (the Council “proposes to declare to what extent they are in accord . . .”). In this regard, Ryan’s translation better captures the sense of the original text: “This Vatican Council pays careful attention to these spiritual aspirations and, with a view to

highlights the fact that the Church intends to take full account of the developments of the present age, genuinely listening to what has been said by other national and international bodies regarding the question of religious freedom, all the while integrating such developments in light of scriptural and doctrinal sources and her own proper ecclesial reality.³³

(ii) Following this introduction, the Declaration states: “The sacred Council begins by professing that God himself has made known to the human race how men by serving him can be saved and reach happiness in Christ,” and “that this one true religion continues to exist in the Catholic and Apostolic Church.” Taking note of the Church’s missionary task—“Go, therefore, and make disciples of all nations . . .” (Mt 28:19–20)—the Declaration says that “all men are bound to seek the truth, especially in what concerns God and his Church, and to embrace it and hold on to it as they come to know it” (*DH*, 1). Having highlighted this duty, the Declaration stresses that the truth does not impose itself except “in virtue of its own truth,” and then states: “while the religious freedom which men demand in fulfilling their obligation to worship God has to do with freedom from coercion in civil society, it leaves intact the traditional Catholic teaching on the moral duty of individuals and societies towards the true

declaring *to what extent* they are in accord with the truth and justice, searches the sacred tradition and teaching of the Church . . .” (emphasis added)

Cf. the last of Wojtyła’s written observations on schema 4, which concludes: “By means of these changes, the intrinsic character of the document will be improved in this sense, that the Council will produce a revealed teaching *on the moral and indeed fundamental question of what constitutes the nature of religious freedom (de re morali et quidem fundamentalis, qualis est libertas religiosa, emphasis original)*, using to this end arguments derived from reason also . . .” (*AS IV/2*, 293). The task of the Council bishops, as Wojtyła saw it, was not simply to presuppose the secular sense of religious freedom that is prevalent in modernity, but to ponder this sense in light of the Church’s own teaching and tradition.

33. The final text of *DH* opens with the phrase, “On the Right of the Person and Communities to Social and Civil Freedom in Religious Matters,” followed by two parts, entitled respectively “I. The General Principle of Religious Freedom” (aa. 2–8), and “II. Religious Freedom in the Light of Revelation” (aa. 9–15). The first of these parts replaced what was termed in schema 3 “The Teaching on Religious Freedom Derived from Reason.” The point of this shift, already indicated above in our discussion of Wojtyła, was to prevent a reading of the document that would harden the teaching of its first and second parts into a dichotomy between reason and faith.

religion and the one Church of Christ" (*DH*, 1).

It is thus within the context of the obligation of all men to seek the truth, especially as it bears on God and the Church of Christ, that the question of religious liberty as an immunity from coercion is situated. This marks a shift from the structure of the third schema, in which the conception of religious freedom "as it is commonly understood today," above all as a juridical right to immunity, is treated at some length already in the first article of the document. In the third schema, the Council's assertion (in a. 3) concerning the "one true religion" which all men are bound to seek comes after its statement regarding freedom as a right to immunity (in a. 1) (see *AS* III/8, 426–27, 429). Schema 4 retained the same structure. Here article 2 begins with the statement: "This Vatican Council declares that the right to religious freedom truly has its foundation in the very dignity of the human person." It continues: "This Council also declares that this right must be acknowledged in the juridical order of society, so that it becomes a civil right." Finally, it concludes: "This Council declares that it does not follow from this affirmation of religious freedom that man has no obligations in religious matters The principle of religious freedom thus leaves intact the Catholic teaching on the one true religion and the one Church of Christ" (*AS* IV/1, 146–47). In schema 5 the order of these statements was reversed, so as to begin with reference to the truth of the Catholic faith, and with man's corresponding obligation freely to seek the truth (*AS* IV/5, 77–78).

It was likewise in the fifth schema that the following paragraph, on the relationship between truth and freedom, was introduced (in a. 2). This paragraph, drawing substantially on the intervention of Bishop Ancel referred to above, was retained in the final document of the Declaration:

It is in accordance with their dignity that all men, because they are persons, that is, beings endowed with reason and free will and therefore granted personal responsibility, are impelled by their nature and bound by a moral obligation to seek the truth, especially that truth which concerns religion. They are also bound to hold fast to the truth once it is known, and to order their whole lives in accordance with its demands. Men cannot satisfy this obligation in a way that is in keeping with their own nature, however, unless

they enjoy psychological freedom as well as immunity from external coercion. Nevertheless, religious freedom does not have its foundation in a subjective disposition, but in the very nature of the human person. Consequently, the right to immunity persists even for those who do not satisfy their obligation to seek the truth . . . (AS IV/5, 79).³⁴

(iii) Regarding the foundation for the right to religious freedom: affirming with schema 3 that this right consists in immunity from coercion, and likewise that the right derives from the dignity of the human person as endowed with reason and free will, *DH 2* nevertheless links this dignity with men's natu-

34. Cf. *DH*, 2. In a short speech on 22 September 1965 (referred to in fn. 1 above) which concerned "the connection that exists between the obligation to seek the truth and religious freedom itself," Bishop Ancel proposed that "the ontological foundation of religious freedom, as set forth in our text, is the very obligation to seek the truth":

For in fact every man, because he is a human being, endowed with reason and free will, is bound to seek the objective truth, and to hold fast to it and order his whole life according to its demands. . . .

[B]ecause this principle has its foundation not in any subjective disposition, but in the very nature of man, it has a strictly universal validity. . . .

Nevertheless, in order for man to be able to satisfy this obligation in the way God wills, that is, in the way that is consistent with his nature, it is necessary for him to enjoy not only psychological freedom, but also immunity from all coercion. Therefore, not only is there no opposition between religious freedom and the obligation to seek the truth, but religious freedom actually has its foundation in this obligation itself, and the obligation to seek the truth in turn requires religious freedom.

Finally, venerable Fathers, please note that most men, whether Christians or not, will especially examine what is expressed in our text in article 2. Indeed, this article constitutes the nucleus (*nucleum*) of the Declaration.

Therefore I would recommend that this ontological foundation find a place in this article, and that the connection that exists between religious freedom and the obligation to seek the truth be clearly stated there. (AS IV/2, 17)

Regan indicates that three days later, on 25 September 1965, Bishop Carlo Colombo (who, as private theologian of Paul VI in the first session of the Council, was "attentively listened to") emphasized once more that the right to religious freedom has its foundation above all in "the obligation of every man to seek truth" (84–85). According to Regan, the argument "from man's right and duty to seek truth was proposed by Colombo and Ancel, introduced into the third and fourth texts in a subordinate position, and given primacy in the fifth and final texts" (173). Cf. schema 3, a. 4b (AS III/8, 431); schema 4, a. 3 (AS IV/1, 148–49); as well as the following footnote.

ral movement (*sua ipsorum natura impelluntur*) and moral obligation to seek the truth about religion and to “direct their whole lives in accordance with the demands of truth” once it is known. Men cannot satisfy this obligation in keeping with their nature unless they have psychological freedom and are immune from coercion. Because the right to religious freedom is thus founded in the very nature of man (*in ipsa eius natura*), the right is objective and not merely subjective: it is retained by every person regardless of whether he or she lives up to the obligation, “as long as the just requirements of public order are observed” (*DH*, 2). Article 3 adds that “this becomes even clearer if one considers that the highest norm of human life is the divine law itself—eternal, objective and universal—by which God orders, directs and governs the whole world and the ways of the human community God has enabled man to participate in this law of his so that, under the gentle disposition of divine providence, man may be able to arrive at a deeper and deeper knowledge of unchangeable truth.”

Article 3 then insists in light of the above that “everybody has the duty *and consequently* the right (*officium ideoque et ius*, emphasis added) to seek the truth in religious matters.”³⁵ Given man’s social nature, this search for truth must include the right to free inquiry, along with instruction, dialogue, and the like, as well as the right to external expression of man’s interior religious acts. Protection of this right is warranted as long as its exercise preserves “the just requirements of public order.”

(iv) The term “*just* public order (*iustus ordo publicus*, emphasis added)” is used in articles 2 and 3 of the Declaration, and is an addition made following the third schema. As indicated in our discussion of Wojtyła, the notion of “public order” alone, found in schema 3, articles 4d, 4e, and 5b without further qualification (*AS* III/8, 432–33), was seen by many Council bishops to be vulnerable to possible abuse by government authorities.

35. The nature of the connection between man’s duty and his right in this regard—i.e., that man has a right to religious freedom *because of* his duty to seek the truth—was made clearer in the fifth schema, which introduced the term *ideoque* (“and therefore”) between *officium* and *ius* (*AS* IV/5, 80). The statement that “Man has the duty and the right to seek the truth (*Homo habet officium et ius quarendi veritatem*)” could already be found in schema 3, a. 4b (*AS* III/8, 431).

This phrase was gradually qualified in the following schemas. In schema 4, the term *legitimus* was introduced in article 6: “Religious communities also have the right not to be impeded . . . provided they do not violate the legitimate demands (*legitimis exigentiis*) of public order” (*AS IV/1*, 153). In schema 5, the term “public order” was more consistently qualified: “provided that legitimate public order is preserved” (a. 2); “provided true public order is preserved (*vero ordine publico servato*)” (a. 3); “the legitimate demands of public order” (a. 4) (*AS IV/5*, 79, 81, 82). In article 7, moreover, schema 5 says that it pertains to the public power to “afford protection” to civil society “not in an arbitrary fashion . . . but according to the juridical norms demanded by the needs of public order and grounded in the objective moral order” (*AS IV/5*, 85). Finally, in the Declaration itself, public order is consistently qualified with the adjective “just” (*iustus*): “provided that just public order is preserved” (*DH*, 2, 3), “provided the just requirements of public order are not violated” (*DH*, 4). In *DH*, 7 the reference to the demands or needs of public order is dropped. The document states that the public power should provide protection simply “in accordance with legal principles which are in conformity with the objective moral order.” These qualifiers indicate that the Council bishops recognized that the purely juridical idea of public order needs an explicitly ethical component and so far some intrinsic link to the idea of a positive *good*.³⁶

36. It needs to be clear, in other words, that public order, rightly understood, bears a substantively just, and not merely negative-juridical, content. Thus the final text of the Declaration states that any limitation of the right to religious freedom by the civil power is legitimate only insofar as it is undertaken in accord with

legal principles which are in conformity with the objective moral order. These principles are necessary for the effective protection of the rights of all citizens and for peaceful settlement of conflicts of rights. They are also necessary for an adequate protection of that just public peace which is to be found where men live together in good order and true justice. They are required too for the necessary protection of public morality. All these matters are basic to the common good and belong to what is called public order. For the rest (*ceterum*), the principle of the integrity of freedom in society should continue to be upheld. According to this principle man's freedom should be given the fullest possible recognition and should not be curtailed except when and in so far as is necessary. (*DH*, 7)

The final text of the Declaration thus situates what Murray understands

(v) Article 3 of the final text retains reference to the fact that “the private and public acts of religion by which men direct themselves to God . . . transcend of their very nature the earthly and temporal order of things,” and that, consequently, control or restriction of such acts exceeds the limits of civil authority.³⁷ But *DH*, 3 also eliminates the passage in schema 3, article 4e (*AS* III/8, 432) (which was slightly modified and amplified in schema 4, article 3 [*AS* IV/1, 150]), which frames this restriction in terms of the language of the competency (*competentia*) of civil authority. This competency was understood by Murray to mean that the civil authority’s law-giving power is legitimately extended only to external acts, and that it has the essentially negative function of not impeding religious communities from performing their proper tasks of teaching and the like.³⁸ Article

as the central principle of the liberal tradition—“as much freedom as possible and only as much restraint as necessary” (*DRF*, 573)—explicitly within a public order understood to include the features of objective moral order and true justice that are characteristic of the common good. Murray’s consistent translation of *bonum commune* as “common welfare” risks obscuring this fact. On this last, cf. fn. 86 below.

37. Cf. Wojtyła, *AS* III/2, 532: “No secular arm may insert itself within this relationship [between God and man], because religion of its very nature transcends all secular matters.”

38. Cf. the following changes in this article beginning with the third schema through the final document:

Schema 3, a. 4e: “Religious acts, in which men privately and publicly order themselves toward God through a personal, intimate decision, transcend the temporal and earthly order of things. In performing these acts, therefore, man is not subject to the civil power, whose competency, on account of its end, is restricted to the earthly and temporal order, and whose legislative power extends only to external actions. The public power, then, since it cannot pass judgment on interior religious acts, likewise cannot coerce or impede the public exercise of religion, provided that the exigencies of public order are preserved. Man’s freedom should be acknowledged as far as possible and should not be restricted except insofar as necessary. The public power completely exceeds its limits if it involves itself in any way in the control of minds or the care of souls (*in regimen animorum aut in curam animarum*).” (*AS* III/8, 432)

Schema 4, a. 3: “Furthermore, religious acts, in which men privately and publicly order themselves towards God through an interior decision, by their nature transcend the earthly and temporal order of things. The competency of the civil power, in fact, on account of its proper end—which today is more accurately perceived and described in terms of the exigencies of the dignity of the person

3 of the Declaration offers instead a simpler sentence: “Therefore the civil authority (*potestas civilis*), the purpose of which is the care of the common good in the temporal order, must recognize and look with favor on the religious life of the citizens (*religiosam quidem civium vitam agnoscere eique favere debet*).”³⁹

Thus schema 3 and the Declaration in its final form both affirm the transcendence of religious activity vis-à-vis the power of civil government. Schema 3, however, expresses this transcendence in terms of the competency of the state and the state’s negative limits where matters of religion are concerned. The final text of the Declaration, in contrast, avoids the language regarding the (negative) competency of the government in matters of religion, and so far also avoids the formal terms of the question regarding the limits of the concerns proper to the state as distinct from religion and the Church. At the same time, the Declara-

and his rights—is restricted by this understanding to the earthly and temporal order, in order that human persons can strive toward their final end more easily and freely, according to their conscience. The civil power, therefore, must be said to exceed its limits if it involves itself in those matters which concern the very ordination of man to God. Nor should it be said to be deprived in any way of its inherent worth if it performs its duty towards the community, restricting itself to secular matters, and in this way acknowledging and serving the human person.” (*AS IV/1*, 150)

Schema 5, a. 3: “Furthermore, religious acts, in which men privately and publicly order themselves toward God through an interior decision, by their nature transcend the earthly and temporal order of things. The civil power, therefore, must be said to exceed its limits if it attempts either to impede or to direct those matters which by their nature transcend the earthly and temporal order of things.” (*AS IV/5*, 81)

DH, 3: “Furthermore, the private and public acts of religion by which men direct themselves to God according to their convictions transcend of their very nature the earthly and temporal order of things. Therefore the civil authority, the purpose of which is the care of the common good in the temporal order, must recognize and look with favor on the religious life of the citizens. But if it presumes to control or restrict religious activity it must be said to have exceeded the limits of its power.”

39. And again, in *DH*, 6, it is said that the civil power should “help to create conditions favorable to the fostering of religious life (*propitias suppeditare condiciones ad vitam religiosam fovendam*) so that the citizens will be really in a position to exercise their religious rights and fulfill their religious duties and so that society itself may enjoy the benefits of justice and peace, which result from man’s faithfulness to God and his holy will.”

tion affirms some principled sense, not precisely defined, of the *government's* (*potestas civilis*), and not merely of *society's*, *positive responsibility* to acknowledge and look with favor on the religious life of the citizens.⁴⁰ The final document also drops the sentence from the third schema that had affirmed that the “public power completely exceeds its limits if it involves itself in any way (*quovis modo*) in the control of minds (*regimen animorum*) or the care of souls” (schema 3, a. 4e [AS III/8, 432]).

40. As indicated, the final text also, to be sure, says that “if [the civil power] presumes to control or restrict (*dirigere vel impedire*) religious activity it must be said to have exceeded the limits of its power” (*DH*, 3). Note however that the final text affirms in this context the positive *obligation* of the *civil authority* (state) to acknowledge and show favor to the religious life of its citizens (*agnoscere eique favere debet*) (*DH*, 3). Schema 3, in contrast, makes reference rather to the need for civil *society* (*societas civilis*), not the state, to provide *favorable conditions* for spreading the truth and fostering religious life (*propitias suppeditat condiciones ad veritatem divulgandam vitamque religiosam fovendam*), that is, as distinct from showing favor to religious life itself (schema 3, a. 6 [AS III/8, 434]). Schema 3 also states, as we have indicated, that the “public power completely exceeds its limits if it involves itself *in any way* (*quovis modo*; emphasis added) in the control of minds or the care of souls (*in regimen animorum aut in curam animarum*)” (a. 4e [AS III/8, 432]).

Regarding the sense in which civil authorities should recognize and favor religion, Murray comments that “it would seem to be in the sense of the Declaration to say that governmental favor of religion means favor of the freedom of religion. Similarly, conditions favorable to religious life should be understood to mean conditions favorable to the free profession and practice of religion. Government does not stand in the service of religious truth, as an instrument for its defense or propagation. Government, however, must somehow stand in the service of religion, as an indispensable element of the common temporal good. This duty of service is discharged by service rendered to the freedom of religion in society” (“The Issue of Church and State at Vatican Council II,” in *Religious Liberty: Catholic Struggles with Pluralism*, 199–227, at 217). For Murray, thus, given his juridical approach, the function of the state with regard to religion is limited to creating *free conditions* wherein religion might be fostered, as distinct from fostering religion itself. Murray’s choice of terms in his translation of *DH*, 3, regarding the positive role of government toward religion, is more in keeping with this understanding: whereas Ryan renders *agnoscere* here as “to recognize” (“the civil authority . . . must recognize and look with favor on the religious life of the citizens”), Murray uses a more neutral “to take account of” (“Government . . . ought indeed to take account of the religious life of the people and show it favor”: Abbott, 681). Murray does translate *agnoscere* as “to recognize” when it is a matter of the state’s obligation toward the individual’s right to religious freedom (“This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed. Thus it is to become a civil right”: *DH*, 2, Abbott, 679; cf. also *DH*, 4, 5, 6).

(vi) Schema 3 had included a long discussion at the beginning of the document on how the historical conditions in which the question of religious freedom is to be framed have changed. Referring to the nineteenth century and the ideology of laicism, with its idea of the absolute autonomy of individual human reason, article 2 of the third schema calls attention to the relativism and indifferentism cloaked within the idea of religious freedom that derives from reason so conceived. However, according to this same article, today it is “more clearly affirmed . . . that the chief function of the public power consists in protecting, nurturing, and defending the natural rights of all citizens” (*AS* III/8, 429). In other words, according to schema 3, “there has appeared a new way of framing the question about religious freedom. Religious freedom today is concerned with observing and maintaining the dignity of the human person and thus with effectively protecting his rights, the first of which is man’s right to be free from coercion in religious matters, especially on the part of the public power” (a. 2 [*AS* III/8, 429]). Schema 3 thus had clearly intended to situate the Council’s treatment of the problem of religious liberty within the historical context set by what Murray characteristically referred to as the differences between French or Continental democracy, on the one hand, and Anglo-American constitutional democracy, on the other (see, e.g., *DRF*, 568–69).

As pointed out in (i) above, the Council bishops certainly understood themselves to be taking account of modern historical developments with respect to human dignity and rights; nonetheless, they eliminated from the final document this long passage from article 2 of the third schema that implied a specific judgment on the different historical approaches to religious freedom and rights in the nineteenth century.

(vii) In schema 5 and the final document, the Council bishops incorporated a statement pertinent to the question whether the juridical order of a state may legitimately grant special civil recognition to one particular religious community: “If because of the circumstances of a particular people special civil recognition is given to one religious community in the constitutional organization of a State, the right of all citizens and religious communities to religious freedom must be recognized and respected as well” (*DH*, 6). The Declaration is thus

clear that it is in principle legitimate for a government to privilege a specific religious community in its civil order, provided this government at the same time protects the right to freedom in religious matters on the part of all citizens and of other religious communities.⁴¹

Needless to say, these seven comments regarding changes that were made in the later drafts and incorporated into the Declaration itself demand further qualification, and we will therefore have to return to them. Suffice it to say that the changes revolve most basically around the question of the foundation for the right to religious freedom: of how best to conceive the human dignity that grounds such a right from the perspective of political order. The changes suggest, each in its own way, that this right must be founded on a human dignity intrinsically linked with a transcendent relation and obligation to truth, especially religious truth. This truth is understood to be reasonable and thus accessible in principle to all, Christian believers or not; but it is nevertheless also understood to find its full and proper meaning only in the light of the revelation of Jesus Christ as carried in the sacramental tradition of the Catholic and Apostolic Church.

We will return at a later point to this question of the foundation of the right to religious freedom, and of how the

41. Murray interprets this paragraph to mean that “the Declaration disavows the legal institution of state religion that in various ways was characteristic of the sacral society. The disavowal is discreet but firm: ‘If, in view of peculiar circumstances obtaining among people, special civil recognition is given to one religious community in the constitutional order of society’ The statement regards legal establishment of religion as hypothetical, as a matter of circumstances, not of doctrine. Thus, again, the notion of the sacral society is dismissed into history, beyond recall. The free society of today is recognized to be secular” (“The Declaration on Religious Freedom: Its Deeper Significance,” *America* 114 [23 April 1966]: 592–93 at 593). Thus, according to Murray, the only thing the Church seeks in the political realm is “the freedom of the Church: this is the fundamental principle in what concerns the relations between the Church and governments and the whole civil order” (593). He interprets this as the Church’s “final farewell to the sacral society and to the situation of legal privilege in it that she had bought at the price of her own freedom” (593). Regarding the Declaration’s disavowal of the sacred function of the state, according to Murray, see also his “The Issue of Church and State,” in *Religious Liberty: Catholic Struggles with Pluralism*, 206. The relationship between Church and state, and Murray’s interpretation of this relationship, will be discussed further in the book version of this article.

resolution of this question affects the nature of this right. But first we need to consider Murray's criticisms of the changes in the later redactions of *DH* indicated here.⁴²

42. As Rico points out, Murray "finally . . . concede[d] the wisdom of the conciliar [position]. It was more prudent to let the political principle take secondary position and give primacy to religious arguments" (50). The reason for this is largely the "vast confusion and opposition . . . [that] would have arisen if the major political argument for religious freedom—from the principle of equality before the law—had been pressed. Minds and emotions conditioned by the Continental experience of nineteenth-century laicism would surely have seen it as a concession to, if not an outright embrace of, the indifferentist principle of the equality of all religions before God" (Rico, 50; citing Murray, "Commentary," 673). However, if it is true that in the end "Murray settles for the declaration as we have it," according to Rico this is ultimately because

the efforts of Anglo-American bishops, nevertheless and in spite of opposition, enabled the inclusion in the text of an explicit statement of the principle of equality before the law, "the essential basis of religious freedom" in American constitutional history. Murray gladly welcomes this inclusion, not just because it is a sound principle but especially because in this way "the commentator on the Vatican Declaration can find a footing in the text from which to enlarge its argument and to make a more balanced and convincing case for religious freedom by appealing to political as well as to religious or moral principles." This sentence describes with precision the whole hermeneutical strategy of Murray's commentaries and interpretations of *Dignitatis humanae*. . . .

His commentaries in the near aftermath of Vatican II kept the focus on the workings of the political-juridical argument. . . . Because of the difficulties the correct understanding of the declaration was facing, Murray insists on the explanation of the core issue, perhaps purposely avoiding distractions of further explorations until the essential point had reached such widespread acceptance and clear comprehension that it could be considered to be above challenge. This effort to attract all the attention to the simple, fundamental doctrinal statement of the document may also explain his apparently lessening comments on the importance and reach of *Dignitatis humanae*: "[A] document of very modest scope," dealing with "the lesser issue of the free exercise of religion in civil society," "in itself minor," whose "achievement was simply to bring the Church abreast of the developments that have occurred in the secular world." (Rico, 50–51)

The point here, then, is that while Murray's juridical interpretation has largely been taken for granted as the proper hermeneutic for reading the Declaration—such that Rico, for example, feels justified in accusing John Paul II of backpedaling in his emphasis on the primacy of (religious) truth in this matter, rather than simply on rights conceived civilly-juridically—it is actually the case that both Murray and Rico recognize that the final document gives pride of place *not* to the political argument but rather to the "religious" one: to the grounding of man's (religious) freedom in his ordination by nature to truth and ultimately to God.

II.

Murray's main criticisms can be anticipated from his positive argument as set forth above. He believed, first, that the changes made were unnecessary, and, second, that they risked undermining a principled commitment to the right to religious freedom. He nevertheless insisted that, despite these changes, the juridical line that had been adopted in the third schema "remained substantially the same" and was "the line of the definitive declaration, promulgated on December 7, 1965" (MLH, 16). I will first address Murray's two criticisms (in sections III and IV), then assess (in section V) his overarching claim that the final declaration essentially sustained the juridical line instituted in schema 3.

Regarding the criticisms, then: Murray first highlights his puzzlement over "the prominence given [in the final document] to man's moral obligation to search for the truth, as somehow the ultimate foundation of the right to religious freedom" (DRF, 570). In the same vein, he questions the statements of *DH* regarding the responsibility of government to foster the religious life of the people, asserting that the right to religious freedom is "simply an immunity," and that he doesn't know "how you can promote an immunity—making someone more and more immune. This just doesn't make any sense . . ." (DRF, 580).

The source of Murray's puzzlement is clear: the changes, according to him, manifest the Council bishops' failure to appropriate fully the distinction between the Continental-laicist and American liberal traditions. As Murray understands it, while the Continental idea of freedom and rights embodies an ideological or indifferentist and consequently relativist stance vis-à-vis religion, the American idea implies a merely institutional-juridical "indifference" that encourages debate regarding truth, including religious truth, on the part of members of civil society. The American liberal state professes an incompetence in religious matters that implies not secularism, but rather a legitimate secularity whose purpose is to create the free space within society where religion has the possibility to flourish.⁴³ According to

43. The Declaration's statements that government should show religion favor (*DH*, 3, 6) are thus for Murray best understood as warranted because "society itself may benefit from [such favor] in terms of justice and order, and so on. Therefore, the duty of government to favor religion in society does not

Murray, the Declaration's statements regarding the obligation to truth and the need for the state to foster religion were thus warranted, not on strictly doctrinal grounds, but only for a pastoral reason that in fact reflected a mistaken historical judgment.

For Murray, in a word, the fear of relativism expressed by some of the Council bishops has no theoretical basis, provided one rightly understands that the juridical approach's indifference to truth is only political or methodological, not substantive or ontological. The government's abstraction from truth, rightly-juridically conceived, is for the purpose of creating the free conditions necessary for pursuing the truth. The Council bishops who insisted on the changes in the later drafts missed this distinction, and therefore unnecessarily burdened the final conciliar text with considerations regarding truth.⁴⁴

But this first criticism by Murray is tied to a second: linking the right to religious freedom to the duty to seek the truth fails to yield the necessary political conclusion of a principled universal commitment to this right. Murray suggests that making such a link to truth leads to problematic tendencies that were evidenced in both contemporary Communist and at least some Catholic governments: namely, "that they already have the truth; that they represent the truth, which is also the good of the people; that, consequently, they are empowered to repress public

derive from the rights to religious freedom, but from another root. So at least I understand the matter" (DRF, 580).

44. Murray distinguishes four general approaches among the Council bishops regarding the foundation of the right to religious freedom: (1) some thought that the whole matter was too complex and that the Council should stick to short, practical statements on the matter; (2) some argued that the foundation was to be found in the right and duty to follow conscience; (3) others, such as Murray, argued for the juridical approach; (4) lastly, there was the approach of the French with its focus on truth. According to Murray, the difference between (3) and (4) had "not a little" to do with the postponement of the vote on 19 November 1964, the culmination of what became known as "Black Week." See Murray, "Religious Freedom" in *Freedom and Man*, ed. John Courtney Murray (New York: P.J. Kenedy, 1965), 131–40. Cf. also TMRF, 42: while the Americans considered religious freedom a "problem . . . in the legal and juridical order," so as to be "formally and in the first instance a juridical notion," to the French "this view of the matter seemed 'superficial' (I heard the adjective often)." The issue at stake here was not the affirmation of religious freedom as a human right, which all agreed upon, but rather the manner in which the case should be made for this affirmation.

manifestations of error” (DRF, 571).⁴⁵ If freedom is meant for truth, in other words, and if the government is in possession of the truth, then by imposing such truth, the government can be said merely to be assisting freedom to realize its own intrinsic finality. According to Murray, then, binding freedom with truth in the political order leaves the exercise of freedom logically vulnerable to a premature or arbitrary restriction by the government.

Thus Murray’s criticisms, in sum: on the one hand, the changes incorporated into the final Declaration assume that the juridical approach, if left unqualified, is logically vulnerable to relativism. But this follows, according to Murray, only if one confuses the history of (Anglo-American) juridical liberalism with the history of (French-Continental) ideological liberalism. At the same time, attaching religious freedom to the duty to seek the truth undermines a consistent commitment to a universal right to religious freedom. That is, a government that takes itself to be responsible in a privileged way for the realization of truth in society will be so far prone to repress groups or persons who are in error, in order to insure these persons’ appropriation of the truth toward which their freedom is in any case already obligated.

The French bishops and many others like Wojtyła who insisted on the changes were, on the contrary, convinced that attaching freedom and rights to the obligation to seek the truth was necessary in order to avoid relativism; and they judged the juridical approach to be problematic on properly philosophical and theo-

45. Apropos of Murray’s criticism of the argument from the obligation to seek the truth, see also “Arguments for the Human Right to Religious Freedom,” in *Religious Liberty: Catholic Struggles with Pluralism*, 229–44, at 234–36. Cf. Regan, *Conflict and Consensus*, 173: “A fourth line of argument, from man’s right and duty to seek truth, was . . . given primacy in the fifth and final texts. But this argument will not establish the right of all men to religious freedom if it is not fixed in a social and political context, since it must conclude to the right to communicate what is in fact false, or even known to be false, and to the right of a complacent man to communicate his religious views, whether true or false. To be convincing, the argument must rely on the fact that [the] search for truth, as social dialogue and exchange, requires the political condition of freedom. Only in this context may every man claim, within the limits of public order, a right to immunity in all expression that concerns the order of truth, and religious truth in particular.” As I will argue below, this demand for recognition of a distinct “political condition of freedom” only follows, in the strict sense, if one fails to see that truth itself, properly understood, already requires freedom as a matter of truth’s own inner logic as true.

logical, and not merely (mistaken) historical-pastoral grounds. Indeed, they were convinced that it is *only in the recognition by government that freedom is intrinsically tied to truth* that the right to religious freedom can be sustained permanently and as a matter of principle for all human beings—whether they are believers or nonbelievers. The Declaration that was approved by the vast majority of the Council bishops, and officially received by the Church, incorporated these changes.

My intention in the remainder of this article is to defend the inherent reasonableness of this received text of *DH* in light of the Church's philosophical-theological tradition and in the face of Murray's criticisms. The questions to be answered in this regard are three: first, does a (would-be) purely juridical approach to religious freedom logically entail substantive indifferentism or "neutrality," hence relativism (section III)? Second, does linking freedom with truth yield an enduring, principled commitment to a universal civil right to religious freedom? That is, can a universal right be consistently upheld if we affirm that it is the truth that frees—indeed, that truth alone frees—even-also within the jurisdiction of the legal-constitutional order (section IV)?

Having addressed these two questions, we will return in section V to the third, overarching question: is it the case that, notwithstanding the shift in the conception of the foundations for the right to religious freedom in the fifth and final schemas, the juridical approach of the third and fourth schemas still remains essentially intact, as Murray argues? In other words, does the Declaration's conception of the foundation of human dignity—which indeed recognizes the exigence to act on one's own initiative and responsibility, but *only qua related to transcendent truth and the obligation to seek this truth*—leave unaffected the primacy accorded to the juridical, or negative, sense of the right to religious freedom as an immunity? Put more simply and directly, what does the Declaration mean to affirm, in the end, regarding the nature of this right?

III.

In response to Murray's first criticism, then, we will begin (1) by recalling the historical discussion of freedom provided by the late French Dominican scholar Father Servais Pinckaers, in order (2)

to consider how what Pinckaers describes as “freedom of indifference,” with its relativist consequences, is implicit in the juridical approach to freedom and rights. We will then (3) look at a common objection to this charge of relativism that the avoidance of relativism is a task that devolves upon society and not the state, before (4) returning to the changes made by the Council bishops and to Murray’s criticism that these changes were not theoretically necessary.

(1) In his important book, *The Sources of Christian Ethics*, Pinckaers distinguishes between what he calls “freedom of indifference,” on the one hand, and “freedom of excellence” or “freedom of quality” (*liberté de qualité*), on the other.⁴⁶ The former expresses the teaching of the nominalists, but is reflected also in a certain stream of modern scholasticism; the latter expresses the authentic teaching of St. Thomas Aquinas. According to Pinckaers, freedom of indifference is “the most widespread concept of [freedom] today,” that which “fills the horizon of [contemporary] thought and experience”—so much so that the alternative view of freedom, freedom of excellence, which prevailed in the patristic and great scholastic periods, now “necessitates a process of veritable rediscovery” (330).

For St. Thomas and his freedom of excellence, inclinations toward truth and the good, and indeed a desire for a happiness founded in God (335), indicate “the deepest source of that spontaneity which shapes our willing, a primitive élan

46. Servais Pinckaers, O.P., *The Sources of Christian Ethics*, trans. Sr. Mary Thomas Noble, O.P. (Washington, D.C.: The Catholic University of America Press, 1995), 327–78. The French “*liberté de qualité*” suggests a more subtle range of meaning than the English translation “freedom for excellence.” The problem with translating *liberté de qualité* as “freedom for excellence” is that such a rendering tends to blur rather than maintain the difference between the two freedoms which Pinckaers presents, by failing to indicate adequately the way in which freedom of quality is *ordered by truth* already in its *original constitution as freedom*. “Freedom for excellence” shifts the emphasis toward freedom’s need to grow in virtue, in a way that tends to overlook freedom’s primitive ordering toward, and so far also by, the good and the true. The point, in other words, is not merely that freedom has to grow in virtue, but that it does so *because* the inclination to the good is present already at freedom’s *very source*, and hence orders freedom in its first actuality as such. In what follows, therefore, I will translate this phrase instead as either “freedom of excellence” or “freedom of quality.” For more on the ambiguity of “freedom for excellence,” see section VI.6 below.

and attraction that carries us toward the good and empowers us to choose” (402). Such inclinations form the “core of freedom” (332), ordering the human exercise of self-determination from its roots.⁴⁷

The first and decisive point of difference, then, between the modern view and that of St. Thomas, according to Pinckaers, lies in the “breach between freedom and the natural inclinations, which were rejected from the essential core of freedom” (332; cf. 402). The nominalists, and not a few scholastics after them, “exclude[d] natural inclinations from the free act,” making these inclinations themselves “subject to choice”; they thereby rendered freedom originally “indifferent” with respect to such inclinations—and so far “indifferent’ to nature” itself (375, 333).⁴⁸ Freedom on this understanding “has no need . . . of finality, which becomes [merely] one circumstance of actions” (375): “The end was no longer an essential part of the action; it became circumstantial, qualifying it from the outside” (337).⁴⁹

Second, freedom of indifference is understood as “the power to choose between contraries” (375). “[T]he human per-

47. Thus for St. Thomas, “natural law was the expression, in the form of precepts, of our natural inclinations, which were guided by our inclinations to goodness and truth” (404). Ockham’s freedom of indifference set freedom in opposition to these natural inclinations, and in this way “demolished what we might call the capstone of St. Thomas’s doctrinal edifice and overturned the structure of moral theology” (405).

48. “All natural inclinations, summed up in the inclination toward goodness or happiness, were . . . uprooted from the will’s depths, to be placed before it, beneath it, and subjected to its choice. They were no longer a part of the essence of freedom” (333).

49. Pinckaers notes that, although freedom of indifference has origins in the nominalists, it also became characteristic of the scholastic tradition as represented, for example, by the theologian Charles Billuart (1685–1757), who “played the role of classical author” for this tradition in the eighteenth and nineteenth centuries (352). For Billuart, freedom was best defined as freedom of indifference because “it was applied to contraries (*est ad opposita*),” and was “free from all necessity, including every natural instinct and all determination to any ‘one thing,’ which would cancel the power to choose between contraries” (353). “Even among Thomists,” then, “freedom of indifference was accepted, though it had caused the relativism against which they were fighting” (352). “Apparently it did not occur to Billuart to wonder how St. Thomas could place the natural inclination to the good and to happiness at the very source of human freedom, as the inclination that wins us our final end and engenders all our choices” (353).

son's basic dignity lies in the power to act at any given moment in the way he chooses . . ." (338).

Third, the primitive passion underneath freedom of indifference is "the human will to self-affirmation . . ." (338). Freedom is "identified with the will, as the origin of willing and acting, as a power of self-determination" (332).⁵⁰ Such a power "corresponds to the Father, for his is the most powerful of acts and it is primary, not being moved, but moving" (331, citing St. Bonaventure). In this view, the "essential note of personality is independence" (337).

Fourth, freedom of indifference insists on the need to take first a negative stand, and therefore has as its formula: "against the positive and for the negative." This involves an autonomy that entails "rejection of all dependence" (339), forcing a primitive choice between "my freedom or the freedom of others. The freedom of others appear[s] as a limitation and a threat, since . . . freedom [is] self-affirmation in the face of all others" (350–51). "Freedom is locked within self-assertion, causing . . . the individual to be separated from other freedoms" (375).

Fifth, the will is "no longer defined as an attraction toward the good, exercised in love and desire, as in St. Thomas and the Fathers" (332). Freedom, furthermore, has no need to grow in virtue. Increase or decrease in freedom is a matter, not of interior growth, but simply of the reduction or expansion of exterior limitations (337).

In light of our concern with religious freedom, we may summarize the fundamental problems regarding freedom of indifference as follows. First, the natural inclinations to truth and the good and to God become what Pinckaers calls "objects of circumstance," and thus matters of a choosing that is contingent and arbitrary because empty of any original or natural information by truth and goodness. Here is the root of the relativism to which, according to Pinckaers, freedom of indifference logically leads.

Second, on this account freedom is a power that moves before it is moved, or again a power of self-determination that

50. This contrasts with the view of St. Thomas that freedom is "a faculty proceeding from reason and will," which only in their unity make the act of choice (331).

recognizes no anterior dependence. It is, so to speak, a more originally spontaneous (*sponte*, of one's own self or will) than originally re-sponsive power.

Third, freedom of indifference emphasizes the individual's autonomy, such that the freedom of others is viewed first as a potential limit upon, or as an intrusive threat to, one's own freedom. One's own freedom becomes set, at the most primitive level, in potential competition with that of others. The movement of freedom in the first instance abstracts from (and so far treats as absent), rather than affirms (and so far accepts as already present), the naturally given order of relations to God and others and to truth and the good that bind freedom in love, from within freedom's own deepest élan.

Each of these three problematic features stems from a common failure to grasp what is entailed by the fact that inclinations to the true and the good, and the desire for a happiness that is founded in God, are naturally constituent of the person, and so are "*the deepest source of that spontaneity which shapes our willing*" and which "*engenders all our choices*" (402, 353, emphasis added).

In all of the above ways, freedom of indifference stands in contrast with freedom of excellence or of quality, which *already within its reflexivity as a free act* is an *ordered relation* to the true and the good and God. Freedom of excellence is an *act of choice* only as initially integrated into this *naturally-given order*. Such freedom is thus a matter of self-determination only as it is itself always already "determined" or bound in love; spontaneous (*sponte*) only as re-sponsive; and in-dependent only as a dependent participant. Finally, freedom of excellence is a positive act before it is negative: at its deepest level it cannot but begin by affirming (however implicitly) the dynamic relation to another—to a truth and a good rooted in God—within which it originally discovers itself.⁵¹

51. Cf. also the following statements of Pinckaers: "freedom . . . presupposes natural inclinations and takes root in them so as to draw forth the strength needed for their development. . . . In this we discover the true, specifically moral meaning of the famous principle of ancient philosophy, *sequi naturam*, 'follow nature,' so frankly adopted and christianized by the Fathers of the Church. This 'nature' does not restrain human freedom; it is essentially liberating" (357–58). "Thus founded on a natural sense of goodness and truth, freedom is no longer characterized by indifference, but rather by the spontaneous attraction and interest experienced in regard to all that is true and good" (359). Freedom thus bears "a natural openness to the truth and the good"

(2) My contention is that what is described by Pinckaers as freedom of indifference is presupposed in the juridical approach to freedom and rights defended by Murray. To be sure, Murray insists that the articles of peace proper to his constitutional order are to be undergirded by substantive articles of faith generated by members of civil society. It is merely the restriction of the constitutional order to articles of peace—to freedom *from*—that defines the juridical approach. This latter approach is established as juridical, in other words, precisely by its exclusion of articles of faith, by its abstraction of man's exigence for acting on his own initiative and responsibility from the order to transcendental truth, for all purposes of the administration of legal power. But it is just this abstraction of freedom from the order of truth—which abstraction renders truth so far extrinsic to freedom—that, according to Pinckaers, transforms freedom into freedom of indifference. Hence the main premise of my argument regarding Murray's first criticism: the fact that the initial abstraction of freedom from its ordering in and toward truth is intended exclusively for legal-political purposes does not mean that freedom of indifference is thereby avoided; *it means merely that it is freedom of indifference alone (as distinct from freedom of quality) that is privileged for legal-political purposes.*

Recalling Pinckaers's description, then, we can indicate the metaphysical features of human being and action that are logically, if unintentionally, privileged in Murray's conception of juridical order: freedom as the power to choose between contraries (*est ad opposita*); the will as first moving, not moved, as "sponsive," not re-sponsive; freedom as a matter most primitively of potential intrusiveness and competition between one individual and others—freedom thus as first a "negative" act relative to the non-self; freedom as an act ordered in the first instance not by love or desire but by external, hence "coercive," constraints; finally and most comprehensively, a human act whose ends are no longer natural but circumstantial—an idea of the human act, that is, which is rightly seen as susceptible to relativism.

(377); it is "the outcome (*le produit*) of the mind's inclination to truth and the will's inclination to goodness" (381). In this way one could say that our natural "instinct for truth and goodness, which is at bottom an instinct for God . . . creates freedom, which can neither exist nor develop without it" (404).

Murray's abstraction of freedom from truth and God thus does not leave the juridical order empty of a definite idea of the nature of freedom, of some implicit articles of faith regarding the nature of freedom *vis-à-vis* truth and God. The juridical approach implies, not *no* claim of truth about the nature of freedom, but rather a definite ("substantive") claim on behalf of freedom of indifference. This originally indifferent sense of freedom reconfigures the primitive nature of both freedom and the truth, and thus bears the same range of metaphysical implications as freedom of excellence, only different ones. The entire order of transcendent truth and good and the dynamic relation to God that on St. Thomas's understanding are *naturally given at the core of freedom* now become *contingent objects of choice*, for all purposes of the enforcement of civil law.⁵²

52. The simple but crucial point that I mean to introduce here is that the (putative) purely formal freedom that establishes juridical rights in their merely negative sense is in fact not innocent of a "positive" metaphysical conception of the human person. A freedom viewed first as structurally empty of relation to God, and so far as silent or neutral with respect to God, does not thereby cease to embed *a kind of relation* to God, one with definite implications regarding a transcendent order of truth or goodness. On the contrary, such a freedom implies that man's relation to God—insofar as God is believed to exist—is one that is always logically yet-to-be-enacted by a conscious act of choice, one that is so far, in this sense, *extrinsic* to freedom in the latter's primitive or essential constitution as such; such a freedom thereby implies, *eo ipso*, a definite idea regarding the nature of man as a creature and God's nature as Creator. The (would-be) purely formal freedom and negative rights of a (would-be) purely juridical political order thus have the same range of metaphysical implications as a freedom understood to be innerly fraught with an order of positive relations to God and others, and to truth and goodness, *only implications of a different sort*. To use the contemporary jargon, the juridical idea of rights, in its purported metaphysical "thinness," is rather, of its inner logic, metaphysically "thick," albeit in a peculiarly hidden sense.

But this raises the question: why does Murray not see that his abstraction of freedom from the transcendent order of truth for constitutional purposes *transforms the nature of the free human act*? In other words: rightly understood, the free act is not simply an exigence for exercising initiative or choosing between contraries; on the contrary, this exigence is ordered from the beginning and from its deepest depths, however implicitly, by a desire for truth and God. Thus it is not the case that the two freedoms, the freedom abstracted from truth (juridical-political) and the freedom ordered to truth (societal-ontological), each represent, as it were, one half of the whole of freedom. On the contrary, Pinckaers's point is that the original act of choosing, rightly understood in light of St. Thomas, is itself already and in principle a desire for truth and God: in the *very reflexivity that constitutes its reality as an act*, freedom is moved by, hence already initially "formed" with respect to, the reality of truth,

Again, let us be clear: although claims of truth about the nature of the good and of religion are considered irrelevant with respect to the legal power of the *state*, a properly understood juridical approach at the same time encourages individuals and groups *in society* to develop and defend just such claims. The problem, however, is that the juridical state, insofar as it would act consistent with its own inner logic, must always treat such natural claims, *for all legal-constitutional purposes*, as contingent objects of choice. However much these truth-claims might be proposed as natural to man by individual citizens or groups, such claims can logically be considered by the state only as arbitrary additions to the free-intelligent human act, insofar as the latter is subject to the constitutional authority of the state. Truth-claims made by members of *society* regarding what they take to be *natural to man* will, *eo ipso*, be (mis-)represented by the *state* as *simple objects of choice*. Rights-claims defended in the name of juridically conceived legal power, in a word, can and will be evaluated only qua competing exercises of (arbitrary) choice. We arrive thus at (procedural) relativism.

Now, in its conventional usage, relativism signals the absence of any normative standards or claims to truth rooted in nature; the term thus calls attention to the arbitrariness of such claims in the way just indicated. But notice the paradox implied here. The relativism implicit in the juridical approach is in fact driven by freedom of indifference; and freedom of indifference, as we have seen, despite its vaunted purely formal character, its apparent *a priori* emptiness of any metaphysical claim of truth, hiddenly expresses a *single* or *unitary claim* regarding the *nature* of the human act. The work of Pinckaers makes this clear: the abstraction of truth and of the desire for God from the original sense of freedom leaves us, not with no metaphysics of freedom, but only with the alternative metaphysics of freedom of indifference. Murray himself, in fact, understands the exigence for exercising initiative as *that aspect of*

the good, and God. The original act of choosing, in other words, is already affected from within its inmost depths by this desire for and “form” of truth. Murray’s argument implies a failure to see this. His argument, rather, implies that the relation between the act of choosing, on the one hand, and the truth (or God) that is chosen, on the other, is a matter simply of adding a content to an act conceived as originally empty or purely formal, and this expresses the essence of an ontology of freedom as indifference. For further development apropos of this point, cf. D.C. Schindler, “Freedom Beyond Our Choosing: Augustine on the Will and Its Objects,” *Communio* 29 (Winter 2002): 618–53.

man's nature that alone is pertinent to human dignity in the latter's grounding of the civil right to religious freedom.

The point, then, is that the apparently arbitrary character of the juridical state in the face of any given claim of rights masks what is always in advance a monolithic (a single: *monos*, and stone-like, hence rigid: *lithos*) claim on behalf of the truth of freedom of indifference. The would-be formlessness characteristic of relativism is a *metaphysical* formlessness: relativism hiddenly embodies the paradoxically "*substantive*" *formlessness of freedom of indifference*. The consequence is twofold. On the one hand, the articles of peace that supposedly characterize the juridical approach *do not exist and cannot exist as such*. Such articles of peace, of their (masked) inner logic, express the metaphysical articles of faith summed up in freedom of indifference. But this is just to say, on the other hand, that the *fiction* of articles of peace implies the *reality* of articles of faith, which, expressing freedom of indifference, so far (hiddenly) dictate relativism—or better, a relativistic monism.

As we will see, recognition that this is so is crucial, because it deflects in advance what is typically the trump card played in the debates regarding the juridical approach: namely, that this approach alone can succeed in rendering justice in principle to *all* groups in society, with their variant claims of truth, because, unlike all the other, non-liberal approaches to constitutional order, it avoids the question of *any* truth about man. The structure of the debate changes, however, when we recognize the simple but crucially important fact that the would-be purely juridical approach to government and civil-human rights is as fraught with a metaphysics of human being and action as any other approach to government and civil-human rights, except that the former approach tends of its essence to hide this fact.

Consider the core implications of this paradoxically monolithic vision of relativism for the problem of rights. Civil rights are meant to apply to every person, regardless of his or her peculiar claims of truth about the good or about God and religion. Given the negative-juridical approach, however, these rights will be attached to all persons *only qua original agents*, or *original choosers*, as distinct from *original-natural receivers of*, or *participants in*, truth. Here is the neuralgic point: for purposes of the exercise of legal-constitutional authority, each person's claim of rights will be evaluated in terms of a freedom in regard to which

the truth and the good are understood to be first enacted or constructed, as distinct from naturally given.⁵³ For the purposes of the defense of juridically-protected rights, freedom will be assumed to be voluntaristic in nature; intelligence to be a matter most basically of technical skill and strategic management exercised in the service of claims that are not inherently reasonable but arbitrary; and religious truth to be a function of positivistic election. Natural communities such as the family, and any religious communities that understand themselves to be rooted in naturally-given relations to God, will be treated by the juridical state as essentially voluntary communities. The maximum openness to all worldviews assumed by the juridical approach to rights, by virtue of which this approach claims to be uniquely able to accommodate the pluralism of modern societies, is thus an illusion. This illusory openness masks, and so far hiddenly imposes, a monism that transforms all would-be diverse claims of truth into surface manifestations of a single claim of truth: one that at root always, even if unwittingly, regards its content as contingently elected by way of an originally indifferent, free-intelligent human act.⁵⁴

In a word, the (would-be purely) juridical approach to government hiddenly, if unintentionally, imposes *a priori* a thoroughgoing logic of repression with respect to all those human beings who would tie their rights-claims to naturally given relations to the truth and the good and the Creator. Civil rights are logically restricted to nominalistically-conceived individuals demanding protection of their liberty from intrusion by other such individuals; which is to say, such rights are granted only to those citizens who are willing to make the case for their civil liberty in such nominalistic terms, or who will have their case

53. Cf. Joseph Ratzinger, *Introduction to Christianity* (San Francisco: Ignatius Press, 2004), 57–66, on the difference between the ancient-medieval conception of truth—that a thing is true or good already *in itself*, insofar as *it is*, having received being via the creative intellect of God (*verum* or *bonum qua ens*)—and the modern conception of truth as that which we know only insofar as we ourselves have made or shaped it (*verum* or *bonum quia factum*).

54. For further reflection on the monism hidden within liberal pluralism, see my “Civil Community Inside the Liberal State: Truth, Freedom, and Human Dignity” in *Ordering Love: Liberal Societies and the Memory of God* (Grand Rapids, MI: Eerdmans, 2011), 65–132, at 65–88.

rendered into such terms regardless.⁵⁵

(3) In the face of the typical rejoinder of the juridical approach, that its state–society distinction provides the necessary principle for resisting such relativism, there are basically two possible responses. (i) On the one hand, one can continue to insist that a robust civil society that permits and indeed encourages each group to make its best case for truth and religion provides all that is necessary for resisting relativism. The problem of relativism, in other words, on this view, stems not from the *de jure* logic of the juridical approach but only from the *de facto* failure of citizen groups themselves to make their case.

Such a response, however, misses the subtle but crucial core of the foregoing argument. Let us imagine, for example, that a liberal society inherited a given set of assumptions regarding the human person and human dignity: regarding the worth of embryonic life, the gender distinction, marriage and family, the reality and cultural implications of God as Creator and Redeemer, and the like. Suppose a majority of citizens takes such assumptions to be natural to man, to be structured into the human creature by virtue of the act of creation, and thus to be somehow always already a *given* for him. As long as a majority of citizens holds such a set of assumptions consciously or unconsciously, there would appear to be no principled reason why a liberal society would drift toward relativism. But here is the problem: the juridical approach—which is the hallmark of the liberal state brought into being by a liberal society—remakes any and all possible natural truths about man before God into voluntary claims. In this way, it (hiddenly) builds freedom of indifference into the law, such that this freedom becomes the single truth in and through which all other truths claimed in society have their legal-juridical relevance.

Insofar as any of the basic natural assumptions noted above become subject to the jurisdiction of legal-constitutional authority, then, they are recast, *eo ipso*, in terms of a civil unity ordered around freedom of indifference. Efforts by citizens to have or keep such truths enshrined in law will be subject to the

55. On this, see my “The Repressive Logic of Liberal Rights: Religious Freedom, Contraceptives, and the ‘Phony’ Argument of the *New York Times*, *Communio* 38 (Winter 2011): 523–46.

dynamic of a homogenizing logic that remakes the content of such truths into objects of (arbitrary) choice, when and insofar as these truths become disputed in society and juridical protection is sought for those who hold them. Citizens may indeed retain the legal right to hold such truths, but the truths themselves have relevance to the legal order only qua matters of “opinion,” not qua naturally true and inherently reasonable; only qua matters, thus, that are to be adjudicated exclusively on the basis of a justice conceived as formal fairness between various competing individual interests. Different claims of truth will and can be adjudicated only in terms of competing exercises of freedom of indifference, under the logic of proceduralism that such indifference implies. Here, then, once again, is where would-be robust debate in a liberal society that is informed by the juridical approach to government will, and logically must, given enough time, come to an end: in a civil society that characteristically invites debate even as it is always already, hiddenly, “dictating” a unity enforced juridically in the direction of a relativistic monism.

In the name of maintaining a clear distinction between society and state, by inviting debate regarding all possible claims of truth about the nature of the human being and his freedom, the juridical state in fact absorbs society, for all of the state’s legal-political purposes, into the single truth of freedom of indifference that defines the juridical state. The truth of this argument is in fact verified historically, in that there exists no liberal society today whose legal-constitutional order has not over time evolved in just this direction of relativistic monism, with respect to the anthropological-ontological claims noted above regarding the nature and dignity of the human being.

(ii) On the other hand, then, there is the response of those who recognize that robust debate in a liberal civil society, and so a principled freedom to conduct one’s own search for the truth and to present the fruit of this search to others, is logically impossible over the long term, insofar as such a society organizes itself constitutionally in terms of the juridical approach. This response recognizes in at least some implicit way that defenders of the juridical approach, by abstracting freedom from truth for legal purposes, do not succeed thereby in avoiding a claim of truth about freedom or indeed about the nature of the truth it-

self. Such a response recognizes that this abstraction of freedom from truth makes truth extrinsic to freedom: truth becomes a simple object of freedom rather than a natural end providing freedom with its original order *as* freedom. What those who follow this second response see, in a word, is that the juridical approach's reading of the state-society distinction rests upon and is mediated by freedom of indifference and thus by a freedom conceived to be related first extrinsically and not intrinsically to truth. But it is just this "extrinsicist" conception of the relation between freedom and truth that evacuates in advance any genuine search for truth, and, *a fortiori*, drains societal debates regarding the truth, especially truth in religious matters, of any real rational vigor.

My contention is that it was the Council bishops' grasp of the link between an extrinsically conceived relation between freedom and truth, on the one hand, and the logic of relativism, on the other, that prompted the main qualifiers with respect to the juridical approach that these bishops incorporated into the final Declaration. Note: this does not mean that the bishops rejected the distinction between society and state; it means only that this distinction needed to be (re-)conceived in terms of an intrinsic relation between freedom and truth. Indeed, the bishops recognized that the society-state distinction could be rightly sustained *only* on the basis of this intrinsic relation, such that freedom and truth each required the other for its own inner integrity *as* freedom and *as* truth.

(4) Now, in making this claim, I do not mean to suggest that the Council bishops developed a fully articulated theory with respect to the problems attendant upon the juridical approach and the relation between freedom and truth presupposed therein. I have only wished to show, drawing on the Church's tradition of thought regarding freedom as articulated by Pinckaers, that there is abundant justification for what was the intuitive conviction of a majority of the Council bishops: that the would-be merely "institutional indifference" claimed by the juridical approach is in fact, as a matter of that approach's inmost logic, a *metaphysical* and not merely "methodological" indifference, and thus what may properly be termed an "indifferentism" or "neutralism." That is why the majority of the Council bishops, including Wojtyła, judged it reasonable and important

to tie the Declaration's argument regarding the civil right to religious liberty to a more explicit anthropological and theological framework: to the human person's obligation to seek the truth about God, and to the indissoluble relation between freedom and truth. There is, in a word, objective warrant for the anthropological revisions that the Council bishops, by a vast majority, approved for inclusion in the finally approved Declaration.

The burden of my argument with respect to Murray's first criticism, then, is that the juridical approach he defends lands him in a fundamental dilemma. On the one hand, defense of the would-be purely juridical approach to the right to religious freedom implies the legal enshrinement of a metaphysics of an originally indifferent human freedom and intelligence, and so far the relativism feared by the Council bishops who supported the changes to the Declaration made in the later schemas. On the other hand, rejection of such a relativistic notion of political-constitutional order requires tying the juridical constitutional order in some principled way to the obligation to seek the truth. Or, to use the language of articles of peace and articles of faith: on the one hand, Murray's would-be articles of peace imply articles of faith consisting in a definite idea of freedom (freedom of indifference) that carries within it a definite idea of the nature of truth (truth as a matter of [arbitrary] choice: relativism); and this definite idea of freedom and truth undermines what is the legitimate intention of articles of peace, namely, a principled affirmation of a universal right to religious freedom. But this is to say, on the other hand, that if Murray wishes to realize the legitimate *intention* of articles of peace, he must develop articles of faith that in fact sustain this intention, by replacing freedom of indifference with a more adequate notion of freedom as bound intrinsically to truth.⁵⁶

56. Several commentators have raised questions regarding the coherence of Murray's distinction between articles of peace and articles of faith, and the place of this distinction in his overall argument. Gerard Bradley, for example, asks whether the distinction does not, contrary to Murray's intention, logically involve a privatization of all claims linked with religion, and so far imply endorsement of the "proceduralist" democracy that Murray meant to avoid (see Bradley's "Beyond Murray's Articles of Peace and Faith," in *John Courtney Murray and the American Civil Conversation*, ed. Robert P. Hunt and Kenneth L. Grasso [Grand Rapids, MI: Eerdmans, 1992], 181–204). Bradley suggests that a way of resolving Murray's problem, at least for purposes of American consti-

Either way, Murray's first criticism—that the changes made in the later schemas were introduced without genuine warrant—does not and cannot stand. His own affirmation of a universal right to religious freedom demands of its inner logic acceptance of just the sorts of additions made by

tutional law, is to maintain an “originalist” reading of the First Amendment, according to which “‘nonestablishment’ would . . . mean an equality among religious groups (but imply no hostility toward fostering religion generally)” (204). My own argument is that the integration needed between articles of faith and the fairness intended by articles of peace can be resolved only on the basis of an adequate view of the *nature* of the human being in relation to truth and to God. This, I argue, is the approach adopted in the final text of *DH*.

Kenneth Craycraft proposes that Murray's appeal to articles of peace is best interpreted as ironic, a kind of “myth” that would be helpful in persuading Catholics to accept the American regime, whose meaning is otherwise likely to be conceived in terms of some amalgam of Protestantism and the Enlightenment (see Craycraft's *The American Myth of Religious Freedom* [Dallas: Spence Publishing, 1999]).

Robert Hunt argues that Murray's appeal to “a political ‘articles of peace’” can be protected from proceduralism, or an “antiperfectionist ‘negative liberty,’” only if these political articles of peace are supported by “a societal ‘articles of faith’ that is open to religion as an aspect of human flourishing” (Hunt, “Two Concepts of Religious Freedom,” in *Catholicism and Religious Freedom: Contemporary Reflections on Vatican II's Declaration on Religious Liberty*, ed. Grasso and Hunt [Lanham, MD: Rowman and Littlefield, 2006], 19–42, at 37). Hunt thus reads the distinction between articles of peace and articles of faith in terms of Murray's distinction between state and society, which lies at the heart of the modern Western constitutional state and its hallmark limited government.

I share these commentators' concerns regarding the need to clarify Murray's distinction between articles of peace and articles of faith. The difficulty nonetheless, as we will see, is that Murray insists, in his reading of the Council's *Declaration on Religious Freedom*, on the “juridical irrelevance” of man's transcendent relation to truth, even as he criticizes the final redactions of this Declaration that tied the right to religious freedom to this transcendent truth; and this commits him to a continued embrace of the dichotomy between (juridical-legal) articles of peace and (societal) articles of faith that logically involves a proceduralist state. As I will argue, the concerns these commentators rightly share regarding Murray's distinction between articles of peace and articles of faith can be secured, in a way that realizes the legitimate intention of both “peace” and “faith,” only by recognizing, also for juridical-legal purposes, the nature of freedom as originally ordered to the truth and to God. But what this implies in terms of the Declaration itself will be clarified as we proceed. For a helpful reading of the articles of peace/articles of faith distinction as pertinent to my argument, cf. also especially David Crawford, “The Architecture of Freedom: John Paul II and John Courtney Murray on Religious Freedom” in *Catholicism and Religious Freedom: Contemporary Reflections*, 195–221; cf. also Adrian Walker, “Whose New Horizon?” *Catholic Social Review* 3 (1998): 63–68.

the Council bishops following the third schema of the Declaration.⁵⁷ The Council bishops, then, were right, on prop-

57. In connection with my argument regarding Murray, cf. the recent response of George Weigel to what he calls “the David Schindler/*Communio*/‘Ill-Founded Republic’ critique of the American experiment”: “The [American] Founders were doing politics, not theology, and in any event the job of formulating and sustaining a public philosophy (which, given American religiosity, had to be ‘religiously informed’) was the job of a robust civil society, not of government” (“Fighting on New Terrain: A Symposium on the Future of *First Things*,” *First Things* 235 [August/September 2013]: 35–38, at 35–36). This statement provides an emblematic summary of the position I have criticized here in connection with *Dignitatis humanae*. As we have seen, a politics that would be without theology itself expresses a theology—of a positivist sort. Such a claim implies that there can be a human act—here a human act involved in “doing politics”—which does not invoke a vision of the human being, or more completely stated, some view of the nature of reality (ontology), of the human person (anthropology), and finally of the person’s ultimate origin and end (theology, at least of a philosophical sort, one that cannot but bear implications for a theology that claims an origin in supernatural faith).

The hidden positivist theology that Weigel implies in invoking an a-theological politics appears to be innocent of theology only because, and insofar as, it rests on a freedom conceived *formally, in abstraction from transcendent relation to truth and to God*, and thus on “articles of peace” to the exclusion of any implication of “articles of faith.” The problem, as we have seen, is that this abstraction itself privileges, for all political-legal purposes, not no view of freedom but freedom of indifference; not no vision of the human person, but rather the sort of ontological philosophical-theological vision of the person properly termed voluntarist, and indeed individualist. The point, thus, is that even in the case of Weigel’s example of America, the Founders, like all political authorities in every regime in the entire course of human history, in doing politics were (thereby) necessarily, at least implicitly, doing theology of one sort or another. What is unique about the state (here, the American state) that would claim “articles of peace,” or “politics without theology,” is not that such a state—for the first time in history, according to its defenders—succeeds in avoiding the enshrinement of a substantive view of freedom, and thereby the person, before the world and God. What is unique, rather, is that—for the first time in history—a state exists that (given Weigel’s reading) takes itself to be innocent of the implication of a theology, all the while in fact enshrining juridically a *peculiar sort* of theology.

My concern here is not with Weigel’s interpretation of America, which is a distinct question to be argued elsewhere. It is rather with the theoretical issue raised by his comment, in its significance also with respect to the debate at the Council regarding how best to interpret the civil right to religious freedom. The Council bishops were prompted to make changes regarding the juridical approach in the final drafts of the Declaration precisely because of their concern that a religious freedom not bound to truth, and not recognized by the civil power as so bound, would leave the state open to a repressive arbitrariness in its enforcement of this right. The invitation to Weigel, then, is that, to avoid a *petitio principii* with respect to the present argument—as posed in terms of the Council’s teaching regarding religious freedom—he needs to adduce an ex-

erly theoretical grounds, that the changes they proposed were necessary. The merely *civil* right to religious freedom asserted by Murray had to be tied in principle to an *ontological-moral*—indeed by implication ultimately *theological*—right, or, more precisely, had to be tied to some form of an ontology of freedom of excellence as distinct from freedom of indifference.

But this leaves us still with the need to address the burden of Murray's second criticism: if the civil right needs such an ontological-moral ground, needs so far to be tied in principle to the truth about human being and agency in relation to God, how can such a right be sustained as *universal*? In what sense can a person who is in error still be considered a subject of rights? The foregoing argument, in other words, even if it succeeds in responding to one part of Murray's concerns, may seem only to return us to a version of the old terms of the problem: whether the truth has rights. It is to Murray's second criticism, then, and to this problem, that we now turn.

IV.

The second question is thus whether the final text of *DH*, in binding religious freedom with the obligation to seek the truth about God, and thus with relation to truth and to God, is still able consistently to affirm a universal civil right to religious freedom: in other words, whether binding freedom to truth in this way yields the necessary political consequence of a principled commitment to the right to immunity. In asking this question, it is essential to keep in mind the premise to which my argument has brought us: that there is no way of defending the right to religious freedom that does not, at least implicitly, invoke some claim of truth that grounds human dignity, and thereby impart to such a right its original meaning. We have seen that the juridical view purports to avoid such a claim of truth, but in fact succeeds only in proposing a hidden claim on behalf of freedom of indifference as the foundation for human dignity.

ample of a free and intelligent human action, here one intending only to "do politics," which is *actually without the implication of a theology*—and which does not thereby hide what is merely a positivistic, hence voluntaristic theology.

The Council bishops who supported the changes in the final Declaration recognized, on the contrary, that it is not the supposed absence of a view, but only an adequate view, of the truth about man and his freedom in relation to God that alone can sustain rights for every human being with objective moral consistency. Indeed, these bishops meant to say both that this *truth alone* frees, and that this truth *really does free*. Our treatment of Murray's second criticism, then, need not establish *that* some claim of truth is necessary to ground and give initial definition to the meaning of freedom and rights—since some truth will always be operative regardless. Rather, it need only show how the explicit ontological unity of truth and freedom endorsed by the majority of Council bishops, and incorporated in the final document, succeeds in defending the universal right to religious freedom that is excluded by the would-be purely juridical approach.⁵⁸

The heart of the Declaration's argument in this connection is expressed in article 2, an addition made in schema 5:

It is in accordance with their dignity that all men, because they are persons, that is, beings endowed with reason and free will and therefore bearing personal responsibility, are both impelled by their nature and bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth once they come to know it and direct their whole lives in accordance with the demands of truth. But men cannot satisfy this obligation in a way that is in keeping with their own nature unless they enjoy both psychological freedom and immunity from external coercion. Therefore the right to religious freedom has its foundation not in the subjective attitude of the individual but in his very nature. For this reason the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it. The exercise of this right cannot be interfered with as long as the just requirements of public order are observed. (*DH*, 2)

58. The problem with the use of the term “juridical approach” without a qualifier is that it implies that such an approach actually exists. As we have seen, however, any approach claiming to be (simply) juridical—absent of a definite view regarding the nature of freedom—thereby tacitly enshrines freedom of indifference. It is important then to understand that even when the term “juridical” is used in my discussion without the necessary qualifier “would-be purely”—to avoid repetition of a clumsy phrase—the qualifier is still implied.

The crux of the argument is thus that the right to immunity from coercion in matters of religious truth resides in every person because it is rooted in the “very nature” of the person (*non . . . in subiectiva personae dispositione, sed in ipsa eius natura ius . . . fundatur*). Human persons are naturally endowed with reason and free will even as they are naturally moved by (*sua ipsorum natura impelluntur*), and morally bound to seek, the truth, especially with respect to religion.

Now, it is important to see that the position enunciated in this text from *DH* finally presupposes, and demands completion in light of, the revelation of God in Jesus Christ as emphasized in the second chapter of the Declaration. That Jesus Christ is the ultimate and most basic foundation for an integrated view of freedom and truth was repeatedly stressed by Archbishop Wojtyła, as we have seen. *DH* states that, “[a]lthough revelation does not affirm in so many words (*non expresse affirmet*)” the right to immunity from external coercion in religious matters, it nonetheless “shows us Christ’s respect for the freedom with which man is to fulfill his duty of believing the word of God,” and thereby clearly directs us to the “general principles on which the teaching of this Declaration on Religious Freedom is based” (*DH*, 9). Furthermore, article 10 says that it is one of the key truths in Catholic teaching “that man’s response to God by faith ought to be free”:

The act of faith is of its very nature a free act. Man, redeemed by Christ the Savior and called through Jesus Christ to be an adopted son of God, cannot give his adherence to God when he reveals himself unless, drawn by the Father, he submits to God with a faith that is reasonable and free. It is therefore fully in accordance with the nature of faith that in religious matters every form of coercion by men should be excluded. (*DH*, 10)

And further:

God has regard for the dignity of the human person which he himself has created; the human person is to be guided by his own judgment and to enjoy freedom. . . . For Christ, who is our master and Lord and at the same time is meek and humble of heart, acted patiently in attracting and inviting his disciples. He supported and confirmed his preaching by miracles to arouse the faith of his hearers and give them assurance, but not to coerce them. (*DH*, 11)

We will return in the book version of this article to the question of the role played by Christian revelation in the argument regarding human dignity and religious freedom. It is important, however, in light of the present study's more limited purpose, to take account of the Declaration's appeal to the *nature* of the human being, and this not only for pastoral reasons—that is, because this ecclesial document is meant to speak not only to Christians but to all of humanity—but for reasons intrinsic to truth itself, theological and philosophical. In article 2, the claim of a right is tied to human dignity, and this dignity is tied to a view of the human person who, properly conceived as free and intelligent, is naturally inclined, and hence morally obliged, to seek the truth. The right to religious freedom, in other words, is rooted in the person's natural inclination to seek the truth, but this inclination is rightly realized only via the freedom and intelligence that define his human nature. The human person is by nature a truth-seeker and a truth-knower, but only as exigent for acting—reasoning and choosing—on his own initiative and responsibility. Truth makes one free; at the same time, there is no truth without freedom. The argument from revelation in part II of the Declaration takes over and deepens this double claim set forth in article 2. Indeed, this seems to me the core claim of *DH*, the claim that alone can account adequately for the changes introduced in the final drafts.

As we have noted, it is not the responsibility of a conciliar document to provide a sustained constructive argument in these matters. My purpose here is to indicate the warrants for the position taken by the Declaration, in light of the ancient-medieval tradition of thought carried in the teaching of the Church. As in the previous section, with the help of Pinckaers, we exposed the problems inherent in the modern understanding of freedom against the backdrop of the ancient-medieval idea of freedom, so now, with the help of philosophers Kenneth Schmitz and Josef Pieper, we will (1) demonstrate similar problems in the modern idea of (human) nature and truth against the background of the ancient-medieval idea of (human) nature and truth, in order (2) to respond to Murray's second criticism, that a right tied to truth cannot be genuinely universal.

(1) My contention is that it is the modern presupposition of an extrinsic relation between truth and freedom—of an origi-

nal indifference of each to the other—that *alone justifies the claim that entering into the truth necessarily involves the lessening of freedom*. I will show on the contrary why, on the medieval view, the movement into, and indwelling of, truth already presupposes and demands freedom, even as freedom itself presupposes the movement into, and indwelling of, truth. My argument addresses four points, regarding: (i) the nature of nature; (ii) the spirituality of human nature: the *anima forma corporis*; (iii) the originally transcendental nature of truth; and (iv) the nature of man as inherently religious.

(i) *Nature*. An adequate idea of truth presupposes an adequate idea of nature. And the first thing to note is that, on a proper reading of nature, relations between one natural entity and another are not primarily mechanical, but organic. Organic relations of their essence involve dimensions of immanent or interior order, and thus cannot be reduced to extrinsic and hence forceful-mechanical activity. The difference indicated here is that between the ancient-medieval idea of nature, on the one hand, and the modern idea to which we have become accustomed, on the other. Thus Aristotle says that everything constituted by nature “has within itself the principle of movement and rest (ἐν ἑαυτῷ ἀρχὴν ἔχει κινήσεως καὶ στάσεως)” (*Physics*, bk. II, ch. 1, 192b14–15). According to this understanding, the defining features of nature are three: (a) ἀρχή: beginning, origin, or first cause, hence what has an original principle or source within itself; (b) κίνησις: movement, from the verb κινέω, to move or set in motion, or indeed to cause; and (c) στάσις: standing, or standing still, stationariness, from the verb ἵστημι, to make stand, or stop, or stay. As we will see, each of these features of Aristotle’s concept of nature, or better, all of them together as understood in relation to each other, are essential for the classical understanding of truth and indeed of the relation between truth and freedom.

Key for Aristotle in his understanding of nature, says Professor Schmitz, is form.⁵⁹ Form implies immateriality: natural things, insofar as they are informed, bear this feature of immateriality. There are for the ancients and medievals many “modes, kinds, and degrees of immateriality, beginning with the simplest

59. Kenneth L. Schmitz, “Immateriality Past and Present,” in *The Texture of Being: Essays in First Philosophy* (Washington, DC: The Catholic University of America Press, 2007), 168–82, at 172.

forms of primitive material composites and building in complexity, unity, and power towards the human intellectual form and beyond it" (169).

In this classical conception, the main characteristics of form are as follows. First, "formal principles manifest a kind of eidetic autonomy: they are what it is they are, and the composites of which they are forms are what they are by virtue of their formal principles" (170). The point here is that the conception of form in traditional philosophy includes at its heart the principle of self-identity: in the first instance, immateriality is "inseparable from a sort of self-possession and self-definition" (170).

Second, form in medieval philosophy is a principle of activity. The radical self-determinateness of form manifests itself as "self-determination." But it is important to see that form "carries out its self-determination by a certain reflexivity that is rooted in the very nature of form and its self-determinateness. This primitive reflexivity lies deeper than self-conscious reflection, deeper even than the great cycle of organic activity. It is inseparable from all action" (170).

The most basic kind of activity for the ancients and medievals, thus, is not activity that is simply directed outward, or what is termed "purely transitive activity." On the contrary, purely transitive activity is a kind of "limit-concept that is most closely approximated only by minute particles that dissolve themselves in their own ephemeral activity" (170). Which is to say, purely transitive activity would be a characteristic only of an instance of matter that is utterly without form. In sum, "the formal element may . . . be said to *dwell within* the sphere of power originating from its own activity," and so is characterized above all by what is termed *immanent* activity (170, emphasis added). This reflexive-immanent activity, furthermore, "is the active basis upon which the principle of reciprocity [among things] is built" (170). Reflexive-immanent activity, in other words, is what enables each thing to enter into genuine relations with other things: into relations, that is, which are not simply extrinsic and thus forceful, and which so far protect the integrity of the nature of the things *in* relation and *qua* related. Form so far bears a certain "generosity" (171).

Our summary point regarding the classical idea of nature, in light of Schmitz's reflections, is that it is this immanent

or interior activity of natural things, which always exists *within* their transitive or outward-directed activity, that permits genuine reciprocity among things. Relations among things of nature are not at root primarily matters of external force: of two things acting merely in an outward direction with respect to each other, as in the prevalent modern conception of nature. Nor is the capacity of one entity to receive from an other a matter of simple passivity with respect to that other. Each thing of nature actively appropriates its environment in a way that at root involves immanent or interior activity, that thus “prefigures” the freedom of the human spirit. All of this, suggests Schmitz, follows from the immateriality of form that is fundamental for the classical understanding of nature.⁶⁰

(ii) *The spirituality of human nature: anima forma corporis.* Our idea of nature is deepened immeasurably when we move from the immateriality of form in natural things to the spirituality of the human soul as the form of the body. Consistent with the argument of Schmitz, Josef Pieper, in his *Wahrheit der Dinge*, “The Truth of Things,”⁶¹ says that “having an intrinsic exis-

60. Due to this intrinsic immateriality, “The forms of material things . . . escape the strict circumscription of space and time and outstrip determinate indexing. They are trans-indexical just because they are principles of order that are replicable in the many spatially and temporally distinct individuals that instantiate them. . . . [T]he formal principles, even of material things, are not exhausted in their formation of a single spatially and temporally indexed distinct individual. Form, if we may so speak, radiates beyond any determinately indexed instance of it” (171). This immateriality of nature rooted in form enables material things to be known without being essentially distorted. Knowledge of these things consists in giving them a sort of “second nature through and in which the thing[s] [can] be present to the knower” (171). Hence the “generosity” inherent in nature: by virtue of their formal and so far immaterial character, natural things are able to be known truly, are capable, as it were, of lending their being to be known in its eidetic integrity by others. And the human knower, on the other hand, by virtue of his immanent-transcendent activity, is able generously to let the thing be cognitively as it really is in itself. The real relation between the knower and the thing known that consists in the genuine knowledge called truth, in other words, presupposes immaterial form in the thing (in nature) and spiritual form in the knower (in human nature). But all of this will be discussed further in connection with the work of Josef Pieper.

61. *Wahrheit der Dinge: Eine Untersuchung zur Anthropologie des Hochmittelalters [=WDD]* (Munich: Kösel Verlag, 1947). This text is available in English as the first part of a two-part work: cf. Josef Pieper, *Living the Truth [=LTT]* (San Francisco: Ignatius Press, 1989), 11–105. I will cite primarily from this trans-

tence' corresponds to 'being able to relate'" so that "the higher the form of intrinsic existence, the more developed becomes the relatedness with reality" (*LTT*, 81–82). This is because "the inside (*das Innere*: inwardness or interiority) is the power by virtue of which a relation to something external is possible [or, is that by which a thing is able to relate itself to something outside it: *sich in Beziehung zu setzen zu einem Aussen*]" interiority is thus "the capacity to establish relations and to communicate."⁶² This inwardness finds its perfection in spirit. Spirit thus needs to be understood not simply as incorporeality, but as the capacity to relate, indeed as "the capacity to relate itself to the totality of being" (*LBC*, 98; cf. *LTT*, 83). "To have spirit, or to be spirit, means to exist in the midst of the whole of reality and before the whole of being, the whole of being *vis-à-vis de l'univers*" (*LBC*, 99). As St. Thomas says, "the higher the power [of the soul], the more comprehensive is the sphere of objects toward which it is ordered" (*LTT*, 83; cf. *ST I*, 78, 1). This view, according to Pieper, represents "the tradition of Western philosophy" (*LBC*, 99). Thus Aristotle, for example, says that the human soul, the spiritual form of the human-natural body, "is, fundamentally, everything that is" (*LBC*, 99; cf. *De Anima*, bk. III, ch. 8, 431b20: ἡ ψυχὴ τὰ ὄντα πῶς ἐστὶ πάντα). The same idea is expressed in the medieval axiom, "*anima est quodammodo omnia*, the soul is in a certain sense all things" (*LBC*, 99). Again, the spiritual soul,

lation, with some alterations or indications from the German where noted.

62. Josef Pieper, "The Philosophical Act," in *Leisure the Basis of Culture* [= *LBC*] (San Francisco: Ignatius Press, 2009), 75–143, at 94. Cf. Pieper, *Was heißt Philosophieren?* [= *WHP*] (Einsiedeln: Johannes Verlag, 2003), 34: "Das Innere ist die Kraft eines Wirklichkeit, Beziehung zu haben, sich in Beziehung zu setzen zu einem Aussen; 'Innen' heißt Beziehungs- und Einbeziehungskraft." This interiority capable of relation with the whole involves the whole human person qua human. Here I am not interested in distinguishing between the faculties of intellect and will, but am concerned rather with the spiritual act as such, that is, the intelligent-free human act. Cf. Pinckaers on the unity of intellect and will in the thought of St. Thomas: "St. Thomas explained freedom as a faculty *proceeding from* reason and will, which unite to make the act of choice" (331). "St. Thomas's analysis of choice was unique in that it united and maintained in close relationship two dimensions that were later to be separated as a consequence of nominalism. One dimension related to the intellect. . . . The other dimension applied mainly to the will. . . . These two dimensions together [for St. Thomas] constituted freedom and its exercise" (383).

according to Aquinas, “is meant to fit in with all being (*convenire cum omni ente*)” (*LBC*, 99; cf. *De Ver.* I, 1).⁶³

To the philosophers of the past—to Plato, Aristotle, Augustine, and Thomas Aquinas—the belonging together of “spirit” and “world,” in the sense of the whole of reality, is strictly and deeply anchored in both terms (*ist sogar die Zusammengehörigkeit der Begriffe “Geist” und “Welt”—im Sinne von Gesamtwirklichkeit—so eng und so tief in beiden Gliedern verankert*). . . . [T]hey formulated that relation in such precise terms that we scarcely dare to take them at their word. Not only, they said, is it of the nature of the spirit for its frame of reference to be the totality of existing things; but it is also of the nature of existing things for them to lie within spirit’s frame of reference. (*LBC*, 100, translation slightly altered; *WHP*, 43)

Pieper emphasizes here that he is not referring “to some vague abstract ‘spirituality’ (*Geistigkeit*) but to a personal spirit, to an immanent power of establishing relationships” (*LBC*, 100; *WHP*, 44). He is referring above all to the creator God, but also to “limited, created human spirit” (*LBC*, 100).⁶⁴

(iii) *The transcendental meaning of truth*. Furthermore, the inner relation between spirit and the world as conceived by St. Thomas, says Pieper, implies the medieval proposition “*omne ens est verum*—all that is, is true” (*LTT*, 91). That is, being and truth are interchangeable concepts, because and insofar as everything that is is known (by the Creator) and knowable (by the created

63. It is important to note that this “most comprehensive ability to relate—namely, the power to ‘conform to all that is’—implies at the same time also the highest form of intrinsic existence, of selfness” (*LTT*, 81). It is both of these elements combined, “dwelling most intensively within itself, and being *capax universi*” that “together constitute the essence of the spirit” (*LTT*, 83). There is an asymmetrical order here, however: I can only know myself in knowing something else. It is only simultaneously in relation to the world and above all to God that I discover the depths of my own interiority. Or, as Aquinas puts it: “Our intellect cannot know itself by being immediately aware of itself; but by being aware of something else it comes to know itself” (*LTT*, 136; cf. *De Ver.* X, 8).

64. The human spirit is understood by the medievals to be open to the infinite and simultaneously to be the form of the body. Thomas Aquinas says, for example, that “the soul united with the body is more in the image of God than when separate; for [in this union] it realizes its own essence more perfectly” (*LTT*, 94; cf. *De Pot.* V, 10).

human spirit) (*LTT*, 91).⁶⁵ “[T]he world of all existing things ‘is placed between two knowing minds,’ the mind of God and the mind of man,” and thus all things are true (*LTT*, 98; cf. *De Ver.* I, 2). Aquinas therefore calls truth a “transcendental”: that is, “a *mode of being* . . . that ‘pertains to every being as such’” (*LTT*, 30; cf. *De Ver.* I, 1: *modus generalis consequens omne ens*).⁶⁶

(iv) *Man as a naturally religious being (homo religiosus)*. Pieper’s Thomistic reading of spirit and of the originally transcendental nature of truth shows, finally, that the human being is by nature, and most profoundly, religious: that is, open to and interiorly oriented at the core of his being toward God. Dominican Father Philippe André-Vincent, in his book on the Council and religious freedom, *La Liberté Religieuse: Droit Fondamental*, echoes Pieper here.⁶⁷ According to André-Vincent, the free-intelligent human act “cannot be defined negatively” (in terms of what is first a negative relation, or “freedom from”). Rather the human

65. Cf. Ratzinger, *Introduction to Christianity*, 59: “For the ancient world and the Middle Ages, being itself is true, in other words, apprehensible, because God, pure intellect, made it, and he made it by thinking it. To the creative original spirit, the *Creator Spiritus*, thinking and making are one and the same thing. His thinking is a creative process. Things are, because they are thought Conversely, this means that since all being is thought, all being is meaningful, *logos*, truth. It follows from this traditional view that human thinking is the rethinking of being itself, rethinking of the thought that is being itself. Man can rethink the *logos*, the meaning of being, because his own *logos*, his own reason, is *logos* of the one *logos*, thought of the original thought, of the creative spirit that permeates and governs his being.”

66. Thus, “‘To be true’ means the same as ‘to manifest and reveal being’” (*LTT*, 61; cf. *De Ver.* I, 1: *Verum est manifestativum et declarativum esse*). This is contrasted with the Enlightenment idea of truth, polemicized by Kant, according to which “truth means: each thing is what it is”—an “entirely degenerated concept” which considers “reality’s intrinsic orientation toward nothing but itself” (*LTT*, 67). This same loss of the transcendental meaning of truth is also reflected in the common Enlightenment conception of the world as existing “outside” God. Pieper contrasts this with “the conception held by the great Christian thinkers of the High Middle Ages” such as St. Thomas, who “maintained . . . that the archetypes of all things, and the things themselves, are in God, while God ‘is necessarily in all things, in the most intrinsic manner (*intime*).’ Thomas Aquinas would never speak of an ‘outside’ God. It is one thing to affirm that Creator and creation are not identical. . . . But to speak of a *Deus extramundanus* is not the Christian language; it is the deistic language of the Enlightenment” (*LTT*, 48).

67. Philippe André-Vincent, *La Liberté Religieuse: Droit Fondamental* (Paris: Téqui, 1976).

act is defined first as the “spontaneity of a nature which is finally . . . determined by the Absolute Being only, of a will which beyond all goods and through them tends to the Sovereign Good; of an intelligence which through all truth and beyond all truth adheres to the Primordial Truth” (214). Thus the act of religion is the fundamental act of man: “it embraces the whole of man and of the universe” (191). “Every man finds in the religious act the meaning of his life. He is so ordered by his nature, whatever his religion or irreligion. [An] ‘ontological obligation,’ it has been called: that is, a religious obligation written into the nature of the human being, into his ontological structure. That structure founds religious freedom” (215–16).⁶⁸

This overview of the ancient-medieval tradition in light of the work of Kenneth Schmitz and Josef Pieper yields three profoundly relevant points with respect to the relation between truth and freedom; relative, that is, to the claim that truth and freedom can be realized only simultaneously, in an initial-original unity with one another.

First of all, regarding spirit: in its correspondence to the totality of being, spirit

is also the highest form of inwardness, what Goethe called “*wohnen in sich selbst*”—dwelling in oneself. The more embracing the power with which to relate oneself to objective being, the more deeply that power needs to be anchored in the inner self of the subject so as to counterbalance the step it takes outside. And where this step attains a world that is in principle complete (with totality as its aim), the reflective [or free] self, characteristic of spirit, is also reached. (*LBC*, 102)

Again:

[T]o have (or to be) an “intrinsic existence” means “to be

68. Indeed, André-Vincent says that it is the fact of man’s nature as fundamentally religious that alone establishes the right to religious freedom as the first and most basic of all human rights. This connection between the person and truth—ultimately the primordial truth who is God—establishes the relation between natural law and the Gospel that is necessary to show that the second part of the Declaration is not merely a juxtaposition or superposition with respect to the first part. “Religious freedom grounds itself on the personal relationship of the spirit to the truth, of man to God. This evidence obtained by the labor of natural reason is reinforced by the light of revelation” (191).

able to relate” [or, to be capable of relation: *beziehungsfähig sein*] and “to be the sustaining subject at the center of a field of reference.” The hierarchy of existing things, being equally a hierarchy of intrinsic existences, corresponds on each level to the intensity and extension of the respective relationship in their power, character and domain. Consequently, the spirit-based self, the highest form of being and of intrinsic existence as well, must have the most intensive power to relate and the most comprehensive domain of relatedness: the universe of existing things. These two aspects, combined—dwelling most intensively within itself [“the capacity of living in oneself, the gift of self-reliance and independence”: *LBC*, 102], and being *capax universi*, able to grasp the universe—together constitute the essence of the [human] spirit (*das Wesen des Geistes*). Any definition of “spirit” will have to contain these two aspects as its core. (*LTT*, 83; *WDD*, 87–88)

The most intensive power to relate and the most comprehensive domain of relatedness, have “in the philosophical tradition of Europe . . . always been regarded as the attributes of the human person, of being a person” (*LBC*, 102).⁶⁹

Thus it is characteristic of the human being, by virtue of his spiritual soul, to be and to act from within himself—“intrinsically” or intensively and interiorly, and thus independently; but to act thus only as *already ordered by and toward the world and ultimately God*, only as *already standing in the truth as implied by creation*. To separate the intensive, self-reflexive, free-intelligent human act from its standing in the truth is, *eo ipso*, to drain this act of its original meaning as spiritual. It is to drain the human act of the inner depth and breadth and order indicated in its reality as *capax universi*, a capacity for receiving the other: the world and God. It is to lose what is peculiar to the spiritual soul of man, indeed, what is present already (analogically) in the immaterial (non-spiritual) form of natural entities: namely, a *unity* of immanent and transitive activity. In light of such a separation, the immanent character of the free-intelligent human act becomes a matter of empty

69. “The human mind, in the very core of its nature, is receptivity, readiness, openness for all reality. . . . The human mind is ultimately the pure receptor of all that is” (*LTT*, 83n12; citing A. Rohner, “Das Grundproblem der Metaphysik,” in *Philosophia Perennis*, ed. J. von Rintelen [Regensburg: Josef Habel, 1930], 1083).

(merely “subjective”: formless, arbitrary) inward activity, while its transitive character becomes a matter of simply outward-directed (merely “objective”: surface, extroverted) activity.

Second, regarding truth: for the medievals, each instance of knowledge of the truth presupposes this already-given reciprocal reference of, or transcendental relation between, mind and reality. This is why Aquinas says that “knowledge is in a certain sense the offspring (*Frucht*) of truth” (*LTT*, 63; *WDD*, 65; cf. *De Ver.* I, 1: *Cognitio est quidam veritatis effectus*). That is, each instance of knowledge as an adequation of mind and reality (*adequatio intellectus et rei*) presupposes an originally-“transcendentally” given relation between the mind and all of reality, a true relation that has its origin and end in God.⁷⁰ In a word, it is not knowledge that first produces truth; rather, it is truth—as a transcendental—that first enables knowledge.

The point here is that the free-intelligent human act is from its roots *disposed toward* and hence so far *already initially ordered by* this relation. Human intelligence of its nature already

70. Cf. Kenneth L. Schmitz, *The Gift: Creation* (Milwaukee: Marquette University Press, 1996), 111–12: “[T]he world is not some thing apart from its creatures: it does not have its own *act* of being. Still, it does have its own *mode* of being. The world is not an individual. Nor is it a mere collection, a network of relations resting upon non-worlded and private individuals. Nor is it the system of which they are mere members. Rather, the world is that which is built into its creatures, and they into it. For they are built-up in and for and with regard to the world within which they have their being. The world is a sort of compossibility grounded in the mutual existence of creatures. The creator’s regard for creatures’ being-in-the-world is not restricted to ordinary categorial relations, but is directed fundamentally to a distinctive kind of transcendental interrelationship. For the mode of the world is that it have its being in the acts of its creatures.”

The point is that relationality is already something given (“transcendentally”), not simply first established by “categorial” relations between things, that is, relations enacted by various entities. While the worldly community does not exist except in and through such individuals and their relations, at the same time these individuals and their relations do not exist except within the (transcendent) relationality built into their being by the Creator in the very act of creation. Needless to say, “transcendental” is here understood in its classical-ontological sense, rather than its modern-Kantian (or indeed “transcendental Thomist”) sense. Transcendental truth has its roots in the *esse commune* implied by the act of creation, rightly understood; it is not something that is first a function of the human mind. Cf. Adrian Walker, “Personal Singularity and the *Communio Personarum*: A Creative Development of Thomas Aquinas’ Doctrine of *Esse Commune*,” *Communio* 31 (Fall 2004): 457–79.

stands in the truth and tends toward or desires truth. We recall here again the words of Pieper: “The human mind, by its nature and created structure, *finds itself* in this preordained orientation toward the universe in the same way and at the same moment it finds its own existence” (*LTT*, 91; emphasis added).⁷¹

Third, the originally given relation of the human spirit (or of the free, intelligent human act) to the world implies an original relation finally to God. The free, intelligent human act is best understood in its primitively given nature and most profound depths as an order or orientation toward the truth about God. To separate the human act from its inner ordering by and toward this truth is to evacuate that act of its essential character as spiritual.

In sum: we cannot separate the free human act from its ordering in and toward the truth of things and God, or man’s “truthing” of things from his own reflexive, interiorizing act, without thereby doing violence simultaneously to the very nature both of spirit (human freedom and intelligence) and of truth (about things and about God). Such is the import of the Aristotelian concept of nature, deepened by a medieval (Thomistic) understanding of the spiritual nature of the human soul, of the transcendental convertibility of being and truth, and of the natural, always-already given relation to God implied in this convertibility.

(2) In returning to Murray’s second criticism, then—that a right to freedom tied to truth could not be universally sustained—we can begin by noting Pieper’s claim that it is characteristic of modern thinkers to fracture the indissoluble unity between the mind’s interior, self-reflexive ordering toward things, on the one hand, and the inherent knowability and truth of things, on the other. Such fracturing stems from, and in turn reinforces, modernity’s inadequate understanding of the spiritual nature of man’s soul, the transcendental nature of truth, and the natural religiosity of man. The arguments we have presented thus point us back to the problem identified by Pinckaers, regarding a freedom (or human act) originally indifferent to the order of truth given by the Creator. The discussion above has covered

71. Pieper continues: “And the mind’s inborn ability to ‘reach the whole’ is actuated already in each single instance of cognition; for the light that makes any individual object intelligible is the same light that permeates the universe. All this, then, is the anthropological meaning, the affirmation about the nature of man, contained in the principle: *omne ens est verum*—all that is, is true.”

much of the same ground covered already in terms of Pinckaers, though in terms now of the question of truth in its relation to spirit (the free, intelligent act).

Thus, Pieper holds that Bacon, Hobbes, and Descartes, for example, all deny that there is “truth in all things” (cf. *LTT*, 15–16). Descartes assumes an external relation between mind and things: between a human act that is originally indifferent to the world of things, and a world of things each of which bears an identity with itself that is originally indifferent to its being known or acted upon by others. The result is a human act that, in its original reflexivity as free, is interiorly empty of relation—which is to say, is not already ordered toward things. Things are not recognized to be standing in the truth already by virtue of their very being as creatures (*verum qua ens*); rather, they first become true by virtue of man’s initiating activity (*verum quia factum*).⁷²

Thus, on the Cartesian view, we have a free-intelligent human act that is no longer fraught, of its inmost essence as spiritual, with an openness to and original ordering by the totality of things, and ultimately God. In other words, we have a free-intelligent act that is no longer understood of its essence to be an original participant in the (transcendental) truth of things as established by the creative act of God. The consequence of such a view is an inability to grasp that an ever-deepening appropriation of the truth of things, on the one hand, and an ever-deepening appropriation of one’s own spiritual nature as free and intelligent, on the other, *occur only at the same time, each in direct proportion to the other*.

Now I am not suggesting that Murray, in his argument regarding the root of human dignity and the nature of (religious) freedom, follows this Cartesian position in an obvious or deliberate manner. As indicated already, Murray, thinking within the Scholastic tradition, clearly affirms the human act’s relation to the transcendent order of truth and to God. The point, how-

72. See fn. 53 above, on Ratzinger’s distinction between the *verum qua ens* of the ancients-medievals and the *verum quia factum* of the moderns. The latter need not of course imply absolute idealism, such that the mind creates reality. It implies only that the mind is understood to be precipitously constructive in relation to the world: constructive in a way that overlooks the original givenness of things to the mind and as fit for the mind, and the anterior receptive-immanent activity on the part of the mind that must be presupposed in accommodating this original givenness.

ever, as also indicated, is that for all legal-juridical purposes, and consistent with a certain strain of modern Scholasticism as described by Pinckaers, Murray abstracts the free-intelligent human act from its original relatedness to this order.⁷³ For purposes of constitutional order, the human act is conceived as a reflexive act of freedom-intelligence that is primitively empty, to which truth is logically something yet-to-be-added. Truth is thereby first simply an object of this primitively empty act. The human act, considered in its integrity from the perspective of the juridical order, is first empty; and truth thus becomes, *from that same juridical perspective*, adventitious, something that, as such, cannot but logically burden the free-intelligent human act by arbitrarily limiting and constraining what is considered by government, for

73. Apropos of our argument in this section, we should note that Murray rejects what he terms “the fallacy of a false ‘objectivism,’ as if truth could somehow be divorced from the possession of truth” (TMRF, 42). The truth really becomes true for man when he possesses it. Such a claim seems so far in keeping with Pieper’s claim that the subject’s growth in inwardness is integral to his growth in truth. The problem is that Murray’s emphasis on the importance of the self’s inner-subjective possession of truth is not informed sufficiently by the self’s *originally given, initial-anterior ordering in and by the truth*.

Thus Murray is right, in connection with the problem of “objectivity,” to take note of modernity’s growing historical consciousness, with its greater awareness of the dignity of the human subject. He is right also that the Declaration reflects this awareness. But the problem, again, is that he fails to integrate these claims with the medieval understanding of the spirituality of the human subject and the transcendental nature of truth. The result is that the human subject to which he appeals is not sufficiently ordered objectively by nature: the historical consciousness to which he appeals is not adequately seen as demanded *by the very truth of man’s spiritual nature and of truth’s transcendental nature itself*. Pointing to developments in modernity, Murray says that “the starting point [of the Declaration] is not abstract or ideological, but factual and historical” (TMRF, 41). Rather, I would say, the Declaration takes over the classical-medieval view regarding the human subject-spirit and transcendental truth, developing this in light of what are, to be sure, decisively important modern emphases. The Declaration is thus at once, to use Murray’s language, “abstract”—that is, rooted in the truth, *and* “factual”—that is, aware of the historical conditions of human subjectivity.

I will return to Murray’s distinction between what he calls classical consciousness and historical consciousness in the book version of this article. My concern in the present context is simply to point out that Murray’s emphasis on the importance of the self’s possession of the truth is legitimate only insofar as this self-possession is placed within the self’s original ordering in and by the truth of being. When not so conceived, the human subject (freedom), on the one hand, and the truth, on the other, tend to reduce to matters respectively of “subjectivism” and “objectivism.”

legal or public purposes, to be simply open, or abstracted from content. Freedom and truth, in this conception, stand in a basic tension with each other, such that each threatens the original integrity of the other.

The problem to which we are pointing here with respect to Murray thus repeats and amplifies the problem identified earlier in terms of freedom of indifference. Murray's approach effectively overlooks, for purposes pertinent to the exercise of constitutional power, the spiritual nature of the human act (as *capax universi et Dei*); the transcendental nature of truth (*verum qua ens*); and the fundamental relatedness to God implicit in this spiritual human act and transcendental truth. But it is just the overlooking of these three features regarding the nature of the human spirit and of transcendental truth that informs, and alone justifies, Murray's second criticism of the Declaration: namely, that the latter's linking of freedom with truth weakens rather than strengthens the right to religious freedom. His criticism, in other words, is that a government claiming to know the truth about the human being will be logically inclined to short-circuit the freedom of its citizens. But this assumes that linking freedom with truth, bringing them into intrinsic relation with each other, constitutes a principled threat to the integrity of freedom as well as to the right that is a function of this freedom. Such a claim, however, presupposes that freedom and truth have their original integrity as extrinsic to each other, as not interiorly open to one another such that each would have its integrity only as already given "form" by the other.

The problem in Murray's position here can be helpfully clarified by comparing it with that of another group of Council bishops, comprised in the end of a small minority, which was also critical of the final position taken by the Declaration, though from a direction opposite to that of Murray. I have in mind here the group centered around Archbishop Marcel Lefebvre. Lefebvre opposed the final Declaration because he took its affirmation of an intrinsic right to religious freedom to set in place in government a dynamic leading to the undermining of truth in civil society. As much as Murray believed that tying freedom to truth risked undercutting (or at least prematurely limiting) freedom, in other words, Lefebvre believed that opening truth in principle to freedom risked undercutting truth.

The opposition between Murray and Lefebvre appears to be, and in a crucial sense is, fundamental. However, it is important—if we would understand properly what the Declaration intended in its final affirmation regarding religious freedom—to see how this deep opposition is nonetheless dialectical in nature. That is, *what is (otherwise) the deep difference between the Murrayite and Lefebvreite positions is driven by a common assumption*: both positions imply, from opposite directions, that freedom and truth stand by nature (at least as conceived for juridical purposes) in an originally extrinsic relation to each other. That this is so for Lefebvre can be seen in the central distinction that guides his criticism of the Declaration.

Regarding the question of the foundation of the right to religious liberty, Lefebvre says that we must distinguish “between the *ontological* dignity and the *operative* dignity of man.”⁷⁴ The former “consists in the intellectuality of his nature, that is, the nobility of a nature endowed with intelligence and free will. Man is essentially called to know God” and “is capable of the beatific vision” (19). Thus it can be said that the “ontological dignity of man consists mainly in a transcendental orientation to God and is . . . a ‘divine call’ which is the foundation in man of the duty to search for the True God and the true religion to which, once found, man must adhere” (19). In this sense, “the ontological dignity of the human person is the same in everyone and can never be lost” (19). The problem, however, Lefebvre argues, is that “original sin profoundly wounded human nature in its faculties, most especially in its capacity to know God. The natural dignity of man has suffered, as a consequence, a universal degradation that not even the grace of baptism can heal completely in Christians” (20). The upshot is that there are “radical inequalities among people in the concrete natural dignity of persons,” which “require unequal treatment from both divine and human authority” (20). Furthermore, the fact that a soul in error may be said to be *searching* for God and truth means that he is “*potentially* ‘connected’” to these, not actually in acceptance of them: man’s dependence on God, in other words, is in this case not yet “effective” (36–37, emphasis added).

74. Archbishop Marcel Lefebvre, *Religious Liberty Questioned* (St. Louis: Angelus Press, 2002), 19.

Regarding the operative dignity of man, then, Lefebvre says that it “is the result of the exercise of his faculties, essentially intelligence and will” (20). “To the perfection of nature is added to man a supplementary perfection which will depend on his actions” (20). Man’s operative dignity, thus, “will consist in *adhering in his actions to truth and goodness*” (20). It follows for the Archbishop that “if man fails to be good, or if he adheres to error or evil, he loses his dignity” (20). In a word, the dignity of the human person for Lefebvre, in this sense, “does not consist in liberty apart from truth. . . . Liberty is good and true to the extent to which it is ruled by truth” (22).

Lefebvre’s problem with the teaching of *Dignitatis humanae*, in sum, is that it roots the right to religious freedom not in the operative dignity of man, which consists in “the actual adherence of the person to the truth,” but rather in the ontological dignity of man, which “refers only to his free will” made in the image of God (33). In the view of Declaration, “any man, regardless of his subjective dispositions (truth or error, good or bad faith), is inviolable in the actions by which he operates his ‘relation’ to God” (31). But, according to Lefebvre, this is false: “when man cleaves to error or moral evil, he loses his operative dignity, [which then leaves man without] the basis for anything at all” (33).⁷⁵

75. In this connection, Lefebvre cites a text from Yves Congar in support of Murray: “What is new in [*Dignitatis humanae*] compared to the teachings of Leo XIII, and even of Pius XII, . . . is the determination of the *proper and proximate* foundation of this liberty, established not on the objective truth of religious or moral goodness but on the ontological quality of the human person” (32; citing Congar, *Bulletin Études et documents du Secrétariat de l’épiscopat français* 5, 15 June 1965, p. 5).

This statement by Congar manifests the same begging of the question that we have indicated above in the case of Murray: namely, regarding the original ontological unity between truth (finally with respect to the Creator) and the human subject in his nature as free and intelligent. The relevant point is that the original ontological quality of the human person as free and intelligent always involves an initial (transcendental) ordering toward truth and by truth. The “ontological quality of the human person,” on the one hand, and “objective truth,” on the other, cannot be abstracted from one another without falsifying the proper nature of both. Nor, contrary to Lefebvre, does sin affect this order of reality so profoundly that it can be said no longer truly to represent the enduring objective *natural* order of reality. Congar, then, like Murray, makes the mistake of originally *juxtaposing* objective truth and the dignity of the human subject.

To be sure, the question of the sense in which the (subjective) acts of the human person do affect his situation pertinent to his reality *qua* subject of a

Thus, regarding the logic of Lefebvre's and Murray's positions in relation to each other. On the one hand, Lefebvre recognizes that there is in man a "transcendental relation to God" and a "divine call" that founds man's duty and dignity, and hence his right to search for the truth. But this relation and call have been profoundly affected by sin, to the extent that man's original natural orientation to truth and God are now conceived as only "potential," not yet in any proper sense actual or effective. Hence the operative dignity of man, the dignity that truly qualifies him as a subject of the right to religious freedom, is for Lefebvre tied to the exercise of his faculties of freedom and intelligence in the actual realization of truth and goodness in relation to God. Murray, on the other hand, locates human dignity, for purposes relevant to man's being recognized as a subject of the right to

right to religious freedom, demands further commentary, and we will discuss the matter further in the book version of this study. It suffices for present purposes to underscore the fact that the position affirmed by the Declaration, as we have interpreted it, incorporates the concerns of both objective truth and the ontological quality of the human person, while reconfiguring the nature of both as originally-transcendentally united with each other. This original indissoluble unity between the objective order of truth and the human subject is not drained of its essential natural integrity by sin, and thus it founds the human dignity warranting affirmation of a right to religious freedom for every human being, subject only to the demands of a true and just public order.

Closely related to Lefebvre's argument here is his suggestion that the Declaration, in referring to the human being who is "searching" for God and the truth, confuses the orders of actuality and potentiality. Thus, a soul in error may be said to be searching for God and truth, but this means that he is still only "potentially 'connected' to [these]" (36). Lefebvre says that this implies a confusion: "those who accept the truth only potentially would have the same right of expression as those who accept it in fact" (36). Lefebvre objects: "To be searching is at the most a potential acceptance of the truth only and therefore cannot be the basis for rights due solely to the actual acceptance of said truth. Only the effective dependence on God and His revealed truth confers on man dignity and thus a right to liberty of action" (37).

This argument, however, misses the burden of the medieval understanding of both the spiritual nature of the human act and the transcendental nature of truth. This medieval understanding demands a view of the human subject searching for God and truth as more than merely "potentially 'connected'" to these. The human subject who is still searching, in other words, does not thereby exist only as a negative capacity for, or empty container waiting to be filled by, God and truth. Rather, the searching human subject is already actually (transcendentally if not yet categorially) related to God and truth from the beginning of his existence. But I will return below to this question of the sense in which man's searching—or indeed original capacity—for the truth is only a "potential" relation to truth.

religious freedom, in man's exigence for exercising initiative, abstracted from man's relation to the transcendent order of truth.

The upshot is that both Lefebvre and Murray in their different ways—one stressing freedom's need to actualize relation to truth and God, the other freedom's original abstraction from truth for purposes of civil rights—presuppose a free-intelligent human act that is *originally disjoined from*, and thus *yet-to-be-related to*, truth and God. Both so far overlook the spiritual nature of the free-intelligent human act: that this act is *indissolubly both* self-reflexive and interiorly intensive, on the one hand, *and* actually oriented toward and by the world and God (*capax universi et Dei*), on the other. In a word, both fail to integrate the classical (Thomistic) understanding of the spiritual human act and of transcendental truth into their respective approaches to the problem of the foundations and nature of the right to religious freedom. The result is that both see an original and basic *tension* between truth and freedom, such that an emphasis on or embrace of one somehow threatens the integrity of the other (at least for purposes of juridical order).⁷⁶

To be sure, Murray and Lefebvre approach this tension with opposing emphases. Lefebvre, viewing freedom as a potential threat to truth, insists that truth needs in principle to be enshrined in law and that citizens' exercise of freedom is to be limited in light of truth so understood.⁷⁷ Murray, on the other hand, concerned to protect citizens' freedom and the rights that are a function of this freedom, defends the would-be purely juridical approach to the law that would bracket the truth, all the while transferring to citizens and civil institutions the responsibility for generating the truth necessary to provide foundations for the juridical order.

My argument, however, has been that Murray's appeal to freedom in abstraction from truth in the juridical order hides what is already a claim of truth; and that this hidden claim of

76. Of course, as distinct, there is always a kind of tension between freedom and truth. The point is that, on a proper reading, this tension exists within an original unity, and thus one that avoids both dialectic and indifference (which ultimately turn into each other). Such a tension is instead *fruitful* and *dramatic*. But I cannot go further into this here.

77. We will return to this conclusion of Lefebvre in the book version of this article.

truth, which is *not true* and *does not free*, logically deflects in advance any effort to integrate into the exercise of juridical power the different claim of truth implied by the spiritual nature of the human act and the transcendental nature of truth, and thus by the nature of man as *capax universi et Dei*. Indeed, Murray's would-be purely juridical approach, which embeds the single truth of freedom of indifference, leads logically, against his own deepest intention, to just the sort of relativism feared by Lefebvre.

My point, in sum, is that Murray and Lefebvre, while emphasizing freedom and truth, respectively, in their approaches to the juridical order, nevertheless share an original extrinsicism between freedom and truth that precludes, *a priori*, any recognition that the integrity of each is realized only within their original unity. But the unity of freedom and truth is just the burden of the Council's inclusion of article 2 in the Declaration: only such a unity of freedom and truth permits a principled defense of a universal right to religious freedom. Here, in the indissoluble unity between the person in his interior, self-determining activity, and the person in his standing already inside the truth of things, lies the foundation of the person as a subject of the right to freedom and as at once a participant in truth, finally in the truth about God: a participant called to seek ever deeper participation in this truth. In a word, man is a subject of the right to freedom only as already a participant in the original truth of things; and he is a participant in the original truth of things only as a subject of the right to freedom.

The Declaration thus *takes over the essential concerns of both Murray (freedom, rights) and Lefebvre (truth)*, while nevertheless *transforming the basic terms in which their respective arguments are articulated*. The Declaration is able to affirm an original unity between freedom and truth—such that it is right to say both that the *truth alone* frees and that the truth alone *really does free*—because of the Declaration's presupposed ancient-medieval view regarding the spirituality of the free-intelligent human act and the transcendental nature of truth, both of which imply relation to the Creator. All persons have the right to seek the truth, ultimately about God, *in freedom, because all persons share in the spiritual nature of the human act ordered to the transcendental nature of truth, and are (thereby) obliged to seek the truth about God*. This means that there can be no entry into truth, rightly understood, no legitimate promotion of

the person's movement toward truth, that does not presuppose and demand respect for the interior self-determining, hence free, activity proper to the spiritual nature of the person. Murray's criticism of the argument of the final Declaration, therefore, as well as Lefebvre's opposing criticism, are in the end warranted only if the ancient-medieval tradition's idea of the spirituality of the free-intelligent human act and of the transcendentalism of truth is false.⁷⁸

This response to Murray's second criticism, however, leaves us still with the third question indicated above. Murray insists that, notwithstanding the two deficiencies in the argument of the Declaration identified by his criticisms, the Declaration in its final form understands the right to religious freedom in the primarily negative terms of immunity from coercion. According to Murray, in other words, the juridical approach as first proposed in the third schema remains essentially intact in the final document. What does the foregoing defense of the Declaration against the criticisms of Murray imply regarding this claim?

V.

The principal terms of the answer to this question can, again, be found in the first three articles of the Declaration. I will begin by citing extensively from these three articles, underlining some of the key wording and passages introduced in the fifth and final drafts.

It is in article 2 that we find the statement that the right to religious freedom means "that all men should be immune from coercion on the part of individuals, social groups and every human power so that, within due limits, nobody is forced to act against his convictions nor is anyone to be restrained from acting

78. Murray's concern regarding governments that claim to be in possession of the truth that freedom seeks, and that therefore feel justified in imposing the truth in order to aid freedom's search, itself presupposes a truncated vision of truth: one that fails to grasp that freedom is an inherent dimension of truth, and thus is to be respected always and everywhere, *by virtue of* the defense of truth itself. Of course, it is crucial to understand that not imposing the truth does not rule out, for example, the importance of good laws that assist in the education of freedom, in keeping with the demands of a public order tied intrinsically to the common good. But that is a question to be treated more fully later.

in accordance with his convictions in religious matters in private or in public, alone or in association with others.” Following this statement, article 2 indicates that “the right to religious freedom is based on the very dignity of the human person as known through the revealed word of God and by reason itself,” and that “[t]his right of the human person to religious freedom must be given such recognition in the constitutional order as will make it a civil right.” The Declaration then elaborates further the roots of human dignity and thereby of the right to religious freedom in a paragraph that was inserted in the fifth schema, drawing largely on the intervention of Bishop Ancel, as indicated above.⁷⁹

Article 3 proceeds to place the foregoing statements within a more comprehensive framework:

This becomes even clearer if one considers that the highest norm of human life is the divine law itself—eternal, objective and universal, by which God orders, directs and governs the whole world and the ways of the human community according to a plan conceived in his wisdom and love. God has enabled man to participate in this law of his so that, under the gentle disposition of divine providence, man may be able to arrive at a deeper and deeper knowledge of unchangeable truth. For this reason everybody has the duty and consequently the right to seek the truth in religious matters so that, through the use of appropriate means, he may prudently form judgments of conscience which are sincere (*recta*) and true.

The search for truth, however, must be carried out in a manner that is appropriate to the dignity of the human person and his social nature, namely, by free enquiry with the help of teaching or instruction, communication and dialogue. . . .

It is through his conscience that man sees and recognizes the demands of the divine law. He is bound to follow this conscience faithfully in all his activity so that he may come to God, who is his last end. (*DH*, 3)

Man “must not be forced to act contrary to,” nor “prevented from acting according to,” his conscience, “because the practice of religion of its very nature consists primarily of those voluntary and free internal acts by which a man directs himself to God” (*DH*, 3).

79. This paragraph is cited in full at the beginning of section IV above.

Article 3 states further that the free exercise of religion in society can be denied only “when the just requirements of public order are violated.” To deny this free exercise when these just requirements are observed is “to do an injustice to the human person and to the very order established by God for men. Furthermore, the . . . acts of religion by which men direct themselves to God . . . transcend of their very nature the earthly and temporal order of things. Therefore the civil authority, the purpose of which is the care of the common good (*bonum commune*) in the temporal order, must recognize and look with favor on (*agnoscere eique favere*) the religious life of the citizens.⁸⁰ But if it presumes to control or restrict religious activity it must be said to have exceeded the limits of its power.”

Turning to the first article of the Declaration, we find the opening statement that

Contemporary man is becoming increasingly conscious of the dignity of the human person; more and more people are demanding that men should exercise fully their own judgment and a responsible freedom in their actions and should not be subject to the pressure of coercion but be inspired by a sense of duty. . . . This demand for freedom in human society is concerned chiefly with man’s spiritual values (*animi humani bona*), and especially with what concerns the free practice of religion in society. This Vatican Council pays careful attention to these spiritual aspirations and, with a view to declaring to what extent they are in accord with truth and justice (*declarare quantum sint veritati et iustitiae conformes*).⁸¹ searches the sacred tradition and teaching of the Church, from which it draws forth new things that are always in harmony with the old.

Article 1 then stresses that “God himself has made known to the human race how men by serving him can be saved and reach happiness in Christ. We believe that this one true religion continues to exist in the Catholic and Apostolic Church, to which the Lord Jesus entrusted the task of spreading it among all men. . . . All men are bound to seek the truth, especially in what concerns God and his Church, and to embrace it and hold

80. On Murray’s translation of this passage, see fn. 40 above.

81. Regarding Murray’s translation of this phrase, see fn. 32 above.

on to it as they come to know it.”

The article states further that “these obligations bind man’s conscience. Truth can impose itself on the mind of man only in virtue of its own truth, which wins over the mind with both gentleness and power.” The point, then, is that, “while the religious freedom which men demand in fulfilling their obligation to worship God has to do with (*respiciat*: regards, depends upon, looks for help to)⁸² freedom from coercion in civil society, it leaves intact the traditional Catholic teaching on the moral duty of individuals and societies towards the true religion and the one Church of Christ.”

My purpose in citing at length these statements from articles 1–3, many elements of which (as the underlined text indicates) were introduced in the later schemas, is to call attention to how frequently and emphatically the Declaration refers to truth, especially concerning God, as the foundation of human dignity, thereby indicating the ground of the right to religious freedom. The claim of truth sets the basic and positive context within which the right to religious freedom is affirmed in its negative content as an immunity. The fact that this is so is acknowledged in some way by almost everyone involved in the debate regarding the proper meaning of religious freedom as declared by the Council. The main point of contention arises rather over whether this positive context affects *internally* the original meaning of the right identified in article 2 in the negative terms of immunity. Is this negative meaning understood by the Declaration to be informed, at least implicitly, by the human act’s positive élan toward, and initial order of relation to, truth and God? The argument of the preceding sections has shown why an affirmative answer to this question is warranted on “systematic” grounds, and indeed why the answer *must be* affirmative if the coherence of the Declaration’s argument regarding a universal right to religious freedom is to be sustained as a matter of principle. Here our purpose is to show more explicitly, in terms of the language of articles 1–3, the sense in which this positive framework of truth operates inside the negative definition and gives to the latter its original and proper, or actual-concrete, meaning.

82. Both Ryan and Murray translate *respiciat* as “has to do with.” The point, in any case, is that the term scarcely entails that immunity is the *exclusive* meaning of religious freedom.

(1) Consider the following two statements: (i) “this right of the human person to religious freedom must be given such recognition in the constitutional order as will make it a civil right (*hoc ius personae humanae ad libertatem religiosam in iuridica societatis ordinatione ita est agnoscendum, ut ius civile evadat*)” (DH, 1); (ii) “For this reason everybody has the duty and consequently (*ideoque*) the right to seek the truth in religious matters so that, through the use of appropriate means, he may prudently form judgments of conscience which are right and true” (DH, 3). The first sentence clearly refers to the right to religious freedom as something that pertains to man in his intrinsic reality as man. It is the right to religious freedom that pertains to *man as such*, in other words, that is *to be recognized in the constitutional order* such that (*ita*: in order that) this natural right will become a *civilly-recognized* right. Thus this first sentence distinguishes between a right proper to man in his moral nature as such, and a right in its civil sense; at the same time, the natural, and so far ontological and moral, right to religious freedom is understood to be *operative within* the civil right to religious freedom, precisely as the inner ground for affirming this right in its *distinctly civil or juridical sense*.⁸³

Immediately preceding the first sentence cited here (sentence [i]) are the statements that the right to religious freedom “means that all men should be immune from coercion,” and that this right “is based on (*fundatum*: has its foundation in) the very dignity of the human person as known through the revealed word of God and by reason itself” (DH, 2). Immediately following this sentence (i), the Declaration indicates the nature of this foundation: that persons—beings endowed with reason and free will and bearing personal responsibility—are impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. For this reason, the second sentence cited above (sentence [ii]), from article 3, refers to the *right (ius)* to seek the truth in religious matters precisely as a *consequence (ideoque)* of

83. This contrasts with Pavan’s view, cited in fn. 12 above, that “there is [in the Declaration] no question of the relations between the person and truth or between the person and God, but of the interpersonal relations in human and political society.” For the Declaration, on the contrary, the relation between persons itself implies relation to the truth and to God.

the nature-based *duty (officium)* to seek this truth.⁸⁴ This second sentence, furthermore, declares this right to be *for the sake of (ut)* forming judgments that are right and true (*recta et vera*).⁸⁵ In sum, the person's immunity from coercion as affirmed in the Declaration—as articulated in articles 2 and 3—takes its bearings, its original meaning as negative, *from a freedom understood to be already positively tied to truth and ordered toward the search for truth, especially religious truth.*

In the terms used earlier in this study, the “freedom *from*” intrusive activity by others characteristic of a right already presupposes and is ordered in terms of “freedom *for*” the truth, especially about God. I have a right to be free *from* coercion *because* I am made *for* truth and God, *for the purpose of* seeking the truth and God. To remove the act of freedom from this original “*for*” is, according to the Declaration, to remove from the person the very dignity that warrants this claim to the right of freedom *from* coercion in the first place. Freedom *from* is indeed essential to the meaning of a right; but this essential negative meaning has its integrity as negative only as founded in and initially informed by the human act's positive movement toward, as well as obligation to seek, the truth, especially about God.

In a word, as Ancel concisely put it in his intervention: “not only is there no opposition between religious freedom and the obligation to seek the truth, but religious freedom actually has its foundation in this obligation itself, and the obligation to seek the truth in turn requires religious freedom.” Indeed, Ancel says that the very “nucleus of the Declaration (*nucleum declaratio-*

84. On the addition of the important qualifier *ideoque*, see fn. 35 above.

85. Cf. Wojtyła, *AS III/3*, 766, cited above: in regard to the negative definition of religious freedom as immunity from coercion, “or the person's right not to be impeded by others from observing and proclaiming his public and private duties to God and to men . . . as these duties are manifested by conscience,” Wojtyła comments that this definition “seem[s] to be partial and negative, concerned with religious tolerance rather than with freedom. Certainly each individual is permitted to follow a sure (*certam*) conscience, even if it is invincibly erroneous, but there is another principle which should be set before this one, namely: we should follow a sure and true (*certam et veram*) conscience.” The statement that man has the duty to seek the truth in order to form for himself sure (*certa*) judgments of conscience, found in schemas 3 and 4 (*AS IV/1*, 148), was changed to right (*recta*) judgments in schema 5 (*AS IV/5*, 80) and to right and true (*recta et vera*) judgments in the final Declaration.

nis)” can be found here (AS IV/2, 17).⁸⁶

(2) In his comments accompanying his translation of the Declaration, however, Murray provides a different interpretation of the above. He says that, “in assigning a negative content to the right to religious freedom,” the Declaration is “making [the right] formally a ‘freedom from’ and not a ‘freedom for,’” and that in this “the Declaration is in harmony with the sense of the First Amendment of the American Constitution” (Abbott, 674n5). Consistent with what we said earlier, Murray indicates that it was important for the Council to make an argument supporting the principle of religious freedom, but that it was nonetheless “not the intention of the Council to affirm that the argument, as made in the text, is final and decisive” (680n7). Regarding the nature of the Council’s argument, then, Murray makes two points. First, he states that “the simple essence of the matter is that man, being intelligent and free, is to be a responsible agent. Inherent in his very nature, therefore, is an exigency for freedom from coercion, especially in matters religious” (680n7). This argument of *DH*, 2, he says, provides “the objective foundation of the right

86. It is this integration of the positive roots and meaning of freedom into its negative meaning that alone can account adequately for two further changes made in the final drafts of the Declaration, and indicated above. First, there is the qualification of the concept of public order as the criterion for determining when the exercise of the right to religious freedom might be properly limited. The term *iusto (ordine publico)* is added in order to protect against a merely “procedural” sense of this public order, whereby justice would consist essentially in a balancing of competing interests (cf. section I.3.iv above). Second, since the “acts of religion by which men direct themselves to God . . . transcend of their very nature the earthly and temporal order of things,” the civil government, “*the purpose of which is the care of the common good (bonum commune)* in the temporal order, must *recognize and look with favor on (agnoscere eique favere) the religious life of the citizens*” (*DH*, 3, emphasis added). The use of the term common good implies a reference to some positive good held (naturally) in common by citizens; the indication of the government’s responsibility to recognize and favor the religious life of the citizens within this context of the common good implies a positive recognition by government of religion itself as *good*, and not merely a recognition by government of the conditions of freedom which make religion possible, although of course also the latter. The point is that the changes indicated here, which involve affirmation of the essential link of freedom with truth (and the good) as the ground of the human dignity that alone warrants the claim of rights, are explicable only as efforts to insure *positive recognition* of freedom *for* (truth, especially about God) as integral to, and as able to account consistently for the universality of, the right to religious freedom in the first place.

to religious freedom . . . in terms that should be intelligible and acceptable to all men, including non-believers.”⁸⁷

Second, Murray says that the Declaration also includes further arguments in article 3 that are meant to “appeal to those who believe in God, in the objective order of truth and morality, and in the obligation to seek the truth, form one’s conscience, and obey its dictates. To the man who so believes, it will be evident that no one is to be forced or constrained to act against his own conscience” (680n7). Murray also notes in this connection what he takes to be the different approaches of American theorists, on the one hand, and the Declaration itself, on the other. The former ground religious freedom in political terms, relating it to “a general theory of constitutional government, limited by the rights of man, and to the concept of civic equality,” while the latter “lays less stress on this political argument than it does on the ethical foundations of the right itself.”

There are difficulties with respect to the line of interpretation offered here by Murray, however. He concludes by stating that the Declaration leaves one “free to construct the argument [undergirding the right to religious freedom] in the form which may seem more convincing” (Abbott, 680n7). This claim is highly ambiguous. Murray recognizes that the Declaration does in fact affirm a distinct argument regarding the right to religious freedom. However, this argument is not the one that Murray prefers, i.e., the argument based on personal autonomy, which Murray takes to be the only argument capable of sustaining this right in its essentially negative meaning. What Murray means, then, is that the argument *actually made by* the Declaration is inadequate; and that we are free to make alternative arguments, *so long as these alternative arguments succeed in grounding the right to religious freedom in its negative sense as immunity from coercion, as “freedom from” and not “freedom for.”*

In a word, Murray understands his interpretation as a defense of what he takes to be the core teaching of the Declaration, namely, the right to freedom as primarily and most properly a negative right. And he takes his argument based on personal au-

87. As stated earlier, this is for Murray the “more cogent argument” that “can be constructed from the principles of the Declaration itself, assembled into an organic structure” (DRF, 571–72).

tonomy to be necessary to sustain a right so understood, even as he criticizes the Declaration's argument based on truth for its supposed inability to sustain this right in a principled manner. The point, then, is that Murray's apparent openness to different arguments regarding the foundation of the right to religious freedom is fixed in advance. On the one hand, the suggestion of openness presupposes his view of foundations that logically entails the simple primacy of a negatively conceived right; on the other hand, and at the same time, the suggestion begs the fact that the changes made in the final drafts of the Declaration were for the express purpose of *correcting* Murray's juridical view, by way precisely of tying the negative right to immunity to man's positive obligation to seek the truth, an obligation that according to the Declaration is rooted in man's nature.

I have already shown the problems with Murray's argument as well as the soundness in principle of the Declaration's argument, on the basis of the earlier Christian philosophical tradition. Here I would like briefly to go over the same ground in terms of the opening articles of the Declaration, read now in light of Murray's interpretation of the negative meaning of the right vis-à-vis the question of the foundation of that right.

On the one hand, Murray ties his defense of a primarily negatively conceived right to religious freedom to the human person's exigence to act on his own initiative and his own responsibility. In Murray's own argument, in other words, the demand for the right to religious freedom *to be recognized* is linked logically to the demand that this right *be conceived first and most basically in the negative terms of immunity*. Thus in regard to *DH, 2*, Murray writes in his commentary that "man, being intelligent and free, is to be a responsible agent. Inherent in his very nature, *therefore*, is an exigence for freedom from coercion" (Abbott, 680n7; emphasis added). Murray's primarily negative right, in a word, presupposes a primarily negative freedom, of a freedom first related to truth extrinsically, not intrinsically.

On the other hand, the Declaration makes the opposite claim: because every person is positively impelled by nature to seek the truth, every person has a right to seek the truth. It was precisely the juridical approach's initial abstraction of freedom from truth that provoked the concern on the part of many Council bishops regarding the risk of relativism, and that alone

accounts adequately for the changes proposed in the later drafts of the Declaration. The very point of these changes, in other words, was to clarify and emphasize *the internal relation between freedom and truth*: to insist that there *actually exists no freedom outside of its naturally given movement toward truth and toward God*. But if the free-intelligent human act is intrinsically related to the order of truth and to God, then this act evidently cannot be related first extrinsically, hence negatively, to truth—not even for legal-political purposes. Freedom cannot be negatively related to truth without thereby changing the primitive nature of the freedom upon which the right to religious freedom rests. The changes incorporated into the final text of the Declaration, then, by expressly tying freedom with truth, thereby involve taking over the negative meaning of the right to religious freedom, *all the while simultaneously infusing this negative meaning with the positive meaning that derives from freedom's original-dynamic order toward truth*. In a word, the right to religious freedom, on a proper reading of the Declaration, bears a unity of negative and positive meanings, within an ontological (not temporal) priority of the positive.⁸⁸

In sum: just as Murray's argument regarding the foundations for the civil right to religious freedom is logically tied to a freedom conceived in abstraction from truth and God, *and therefore to a primarily negative right*, so is the Declaration's argument regarding foundations logically tied to a freedom already related to truth, *and therefore also to a negative right, but **only as***

88. It should be noted that this does not make freedom merely functional or instrumental with regard to the truth. To think this would be to miss the nub of the point being made, which is that truth and freedom mutually presuppose each other, asymmetrically: each simultaneously depends upon the other, while the self-reflexive act of freedom "first" presupposes a transcendent relation to its object as true.

Incidentally, this is one way of stating the flaw governing the argument of Rico's book: he thinks that granting priority to truth entails the instrumentalization of freedom. Indeed, Rico takes this view to characterize the essence of the classical approach to the problem of the relation between truth and freedom. In response, I would say that, however true it may be that Christians at various times in the political history of Europe took truth to permit the denial of freedom, the fact remains that the anthropological-ontological heart of the Christian tradition, as indicated above via Pinckaers and Pieper (Aquinas), affirms that truth and freedom are at root two dimensions of the same ontological reality.

already infused with a positive movement toward and ordering by truth and God.⁸⁹

(3) Four final comments will further clarify my argument regarding the Declaration's teaching on the right to religious freedom. (i) First, as indicated, Murray suggests that the Declaration's argument based on the obligation to seek the truth, especially in religious matters, is not *per se* "intelligible and acceptable to all men, including non-believers" (Abbott, 680n7). But this suggestion contradicts the express intention and meaning of the text. Article 3 to be sure begins by acknowledging that further light is shed on the subject of religious freedom by the recognition that "the highest norm of human life is the divine law." The precise burden of articles 2 and 3, however, is to underscore that the movement toward the truth and the obligation to seek the truth in religious matters are rooted in the *very nature* of the human being, and that it is just because of this *rootedness in nature* that the right to religious freedom can in principle never be abandoned, even with respect to nonbelieving citizens. These articles of the Declaration underscore this fact while simultaneously acknowledging that a deeper sense of the rootedness of the law of nature *in the divine law* will help us to enter into a deeper understanding of the law of nature itself. This indeed expresses exactly the spirit (and letter) of Wojtyła's interventions regarding the "reasonable," vis-à-vis theological, nature of the Declaration: Wojtyła argued not that the Declaration needed to be simply theological in its method, but that the reasonable (philosophical) arguments it makes on behalf of nature needed themselves to be open to final integration in light of Scripture and the revelation of God in Jesus Christ.⁹⁰ Indeed, Murray's comment here, that

89. But here the implicit irony in Murray's way of proceeding must again be stressed: his argument, regarding both the primary nature of the right to religious freedom and the foundations for such a right, is itself governed, not by no claim of truth, but *by a definite (albeit hidden) claim of truth founded in human nature*. The Declaration's argument differs from the juridical approach, in other words, not by adding to the free act a reference to truth where the latter avoids one, but rather by making a contrasting reference—that is, to a free act which is itself already inherently "truthed."

90. See my earlier discussion of Wojtyła, and the texts cited there (section I.2.iii above). Interpreters repeatedly suggest, in contrast to what I am suggesting here, that Wojtyła wanted only a theological approach. Cf. for example, in this connection, Regan's claim: "In fact, the role of rational argumentation

in article 3 “an argument is suggested that will appeal to those who believe in God, in objective order of truth and morality, and in the obligation to seek the truth” (Abbott, 680n7), implicitly overlooks the substance of the Catholic-Thomistic natural law tradition, within which the inclination to do good and to seek the truth about God are essential ingredients of human nature itself—and thus in principle available to reason.⁹¹

In a word, the Declaration clearly does not understand its reference to believing in God, an objective order of truth and morality, and the obligation to seek the truth to be a function simply of theological faith. Nor does it understand such a reference to be apt only with respect to those who have actually succeeded in living with fidelity this belief in God and truth and the obligation to search for the truth.⁹² On the contrary, the text is explicit: such a recognition of the movement toward God and of a moral obligation to seek the truth, especially religious truth, is rooted “not in the subjective disposition of the person but in his very nature.” *That is why “the right to . . . immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it”* (DH, 2, emphasis added). This does not mean that all human beings are *explicitly conscious* of the movement toward, or obligation to seek, God and truth, but only that human beings cannot be aware of themselves, of their own nature as human, without thereby being aware at least implicitly of this movement and obligation.⁹³

was progressively de-emphasized and less space accorded to it in the successive texts” (159).

91. Natural law is a staple of Murray’s thought, of course. My point is that he seems here to relegate awareness of God simply to the theological order, while this is clearly not the intention of the Declaration.

92. The book by Rico is particularly egregious in its mischaracterization on both points, especially as they concern the work of Wojtyła/John Paul II.

93. Cf. Cardinal Ratzinger’s comments on the “ontological dimension” of conscience, which “consists in the fact that something like an original memory of the good and true . . . has been implanted in us, that there is an inner ontological tendency within man, who is created in the likeness of God, toward the divine. . . . This anamnesis of the origin, which results from the god-like constitution of our being, is not a conceptually articulated knowing, a store of retrievable contents. It is, so to speak, an inner sense, a capacity to recall, so that the one whom it addresses, if he is not turned in on himself, hears its echo from within” (“Conscience and Truth,” in *On Conscience* [San Francisco:

(ii) Second, we should recall here once more that most commentators, including those who support Murray's reading of *DH*, acknowledge that the Declaration did not accept his argument regarding foundations. Most of these commentators also follow Murray in his claim that the Declaration's view of this foundation is not integral to the Declaration's understanding of the nature of this right as (in Murray's view) primarily negative. Now, the foregoing reflections have shown that the Declaration's argument regarding foundations is indeed integral to its understanding of the nature of the right to religious freedom. But we should point out that not a few of these same commentators also tend to assume that the shift of the Declaration's argument regarding foundations away from the juridical approach was in an important sense due to Murray's health problems during discussion of the final drafts of the Declaration.⁹⁴

Ignatius, 2007], 32).

There is a widespread tendency among interpreters of *DH*, especially defenders of Murray, to read the Declaration's affirmation of an intrinsic relation between freedom and truth and an objective moral order as requiring a conscious conviction of this relation on the part of those who would be proper subjects of the right, that is, as a condition of their being accorded a right. Such a reading, as noted, is characteristic of Rico's argument (cf., e.g., 64). But this reading makes the mistake of confusing the Declaration's appeal to the *nature* of human beings with their actual, explicitly conscious existential condition at a given moment in their history. *DH*, 2 clearly avoids such a confusion.

94. As indicated in fn. 7 above, Murray became seriously ill and was hospitalized as work began on the fifth draft of the Declaration. Some two hundred written interventions from the Council bishops had been submitted for consideration by the members of the redacting committee for the fifth text. Interpreters often note the significance of Murray's absence during this crucial penultimate redaction. Gilles Routhier, for example, says that "Murray's absence led to a shifting of the tone of the text, as the theological dimension received greater emphasis at the expense of the more strictly juridical or rational argument proposed by Murray [earlier]" ("Finishing the Work Begun: the Trying Experience of the Fourth Period," in *The History of Vatican II*, vol. 5: *The Council and the Transition*, eds. Giuseppe Alberigo and Joseph A. Komonchak [Maryknoll: Orbis, 2006], 114). Donald Pelotte, in his *John Courtney Murray: Theologian in Conflict* (New York: Paulist Press, 1975), claims that the final revisions to the text were "altogether unnecessary," concurring with Routhier regarding the effect of Murray's absence: "These changes, however, weakened the Declaration and left it somewhat ambiguous. In all likelihood many of the last-minute changes would never have been made had Murray not been ill" (99).

As indicated earlier, Murray suffered a collapsed lung requiring time in the hospital, thus forcing him to miss subcommittee meetings and important debates that took place following the dramatic postponement of a vote regarding schema 4 of the Declaration. Paul VI had decided on the postponement following an intervention by many Council bishops who insisted that they had not had enough time to study and make comments on this version of the text. I mention this again only to note the fact that such an appeal to Murray's absence clearly does not suffice as an adequate hermeneutic for interpreting a conciliar text. Deciphering the authentic meaning of a conciliar text is not a matter of ascertaining the sum of the subjective dispositions and intentions of the Council bishops, or indeed of balancing competing arguments in terms, say, of political strategies or unforeseen health conditions. While reviewing the detail of these strategies and health conditions may be interesting, and while careful historical study of the evolution of a text through its stages of redaction has an indispensable role to play, neither suffices for an authentic Catholic hermeneutic.

Such a hermeneutic assumes the sacramental nature of the teaching office of the Church, and begins with a final text received in faith. The proper way of proceeding is to look for the meaning of the text that accounts best—that is, most coherently—for all the elements of the text while also disclosing (and, where indicated, drawing out further) the faith of the Church that originates with Jesus Christ and is handed on by the apostles via the creedal-magisterial tradition of the Church. It is not that historical events like Murray's ill health are not important and do not need to be taken into account. On the contrary, belief in a sacramental Church with a sacramental teaching office, rightly understood, implies belief in a divine providence that allows and indeed demands honest examination of such events, precisely because divine providence itself works through these events, however fortuitous they may seem. The crucial point is that divine providence is never outwitted by such events. What must be recognized, in a word, is that providence works its positive will not (only) despite, *but more fundamentally within and through*, the vicissitudes of health problems or even political posturings of members of the Council.

The upshot is that commentators are able rightly to inter-

pret the conciliar document in an authentically Catholic manner only insofar as they take this document to bear a meaning that has an objectivity and integrity *in se*, one that emerges within but nevertheless transcends the historical circumstances of its emergence.

(iii) Third, as indicated already, I do not mean to suggest by my argument that *DH* developed a fully integrated theory in defense of this ontological unity of freedom and truth characteristic of the person in relation to God. The point is simply that the key elements for such an integrated theory are to be found in the text itself. The text, in other words, bears a unity of meaning, one that, I have argued, consists in its affirmation of an intrinsic relation between freedom and truth, and thus of the positive relation of truth to freedom as the internal context for the negative meaning of the right to religious freedom. My contention is that it is such an affirmation that alone can bring together the two overarching concerns voiced during the course of the redactions of the Declaration: to affirm *both* the intrinsic good of the right to religious freedom *and* the integrity of the human person in his natural ordering toward and in truth, in relation to God. To be sure, the final text of the Declaration, approved by the vast majority of the bishops, bears signs of the debate between the two dominant, and significantly different, approaches to the question of the relation between freedom and truth, vis-à-vis political authority in civil society. In the end, however, the Council clearly rejected the juridical approach's claim of an originally empty act of freedom in favor of a freedom understood to exist actually only within an ordered relation to truth and God, a freedom fraught with an obligation to seek the truth, especially religious truth, and to embrace that truth, when found, with the whole of one's being. To be sure, and again emphatically: the bishops, in their approval of this freedom, did not develop a well-rounded reasonable/philosophical or scriptural/theological theory on its behalf. However, it is not the proper task of a Council to resolve such philosophical or theological debates, except to the extent necessary to establish the parameters for future understanding in the Church, in a way that both is faithful to the apostolic teaching of the Church and reaches to the natural depths of the human heart. In the words of André-Vincent, the redacting process of the Declaration itself invites a further "prolongation" (*prolongement*: 203), one that ponders further the nature of the realities

engaged in the received text of the Declaration, in light of this text itself.⁹⁵

Thus qualified, I believe the positive vision of the Declaration and of the principles that set essential boundaries for future discussion among Catholics is summed up in the following two statements. The first is proposed by a French bishop during the Council debate itself, the second by a French theologian some ten years after the Council.

First, Bishop Ancel explains as follows the reason for the crucial intervention he offered during the redaction of Schema 5, the substance of which was incorporated into article 2 of the Declaration:

[T]he connection that exists between the obligation to seek the truth and religious freedom itself has not yet [in Schemas 3 and 4] been made clear. Certainly, it has often been said that man has the obligation to seek the truth; it has likewise been said that religious freedom presents no objection to this obligation; but at no time, unless I am mistaken, has the positive connection between these two been made clear.

95. André-Vincent acknowledges a significant ambiguity that remains in the final document: “Without a doubt, the intention of the Fathers and the objective sense of the text refer to the traditional notion of natural right” (155–56). But the final text, he suggests, is nonetheless not sufficiently clear regarding the difference between a traditional natural law theory (which is objective) and a “modern natural right” theory (which is dominated by subjectivism): “The Declaration formulates an objective requirement of natural law as it founds religious freedom in human nature; but it does so in the optic of modern natural right.”

My own argument supports André-Vincent’s claim regarding an ambiguity that remains in the text, but differs from his argument on two points: first, on any adequate reading of the redaction process leading to the final document, and of the final document itself, the Declaration clearly does reject a (subjectivist) modern rights theory, even if not on the basis of a fully theoretically integrated conception of rights of its own. In other words, contrary to André-Vincent’s suggestion that in the end *DH* holds that religious liberty is a negative right, I believe, as I argued above, that this right is in fact *essentially also* negative, but not *primarily* so—or in other words, that it is only negative qua already initially informed by man’s positive dynamic ordering by truth in relation to God. Second, contrary to what André-Vincent seems to suggest, I believe there is a legitimate development in the text in terms of the incorporation of the subjectivity of the subject of rights, an incorporation that is implied already in the objective meaning of nature and spirit and transcendental truth in the ancient-medieval tradition. This was the burden of my argument in section IV regarding Murray’s second criticism.

Thus, in a few words, I would like to propose this ontological foundation, and thereby show the necessary connection that exists between the obligation to seek the objective truth and religious freedom itself.

My proposition is as follows: the ontological foundation of religious freedom, as set forth in our text, is the very obligation to seek the truth. (*AS* IV/2, 17)

Second, a decade later, in 1976, André-Vincent, in summarizing the teaching of *Dignitatis humanae*, says that

the mother-idea (*l'idée-mère*) [of *DH*] appears with the foundation of the right to religious freedom: the ontological bond of the person with truth, a natural bond grounding a natural obligation to search for the truth and to adhere to it, grounding at the same time a right to the freedom necessary to realize that obligation. The ontological bond of freedom to truth is the mother-idea of the Declaration.⁹⁶ (203–04)

(iv) A fourth and final point: as indicated at the outset of this article, Rico argues that Pope John Paul II, especially as the years of his pontificate advanced, retreated from the fullness of the Declaration's teaching, downplaying its appreciation of the individual person and its embrace of the primarily negative-juridical

96. Cf. in this connection Rico's comment: "As the similarity of language and coincidence of emphases have made obvious, [John Paul II's] reading of the document, in what concerns the relationship between freedom and truth, follows the approach of a line of reconstruction of the doctrine of *Dignitatis humanae* illustrated . . . by the work of André-Vincent. This interpretation tends to present freedom and truth in competition one against the other" (Rico, 221). Rico is right that John Paul II appears to follow in a significant sense André-Vincent's line of argument, though not without important differences: notably, John Paul II's greater emphasis on and development of the intrinsic mutual relation of human subjectivity and truth—his view that an adequate appreciation for the integrity of either of these entails recognition of the original mutual, albeit asymmetrical, openness of each to the other. Rico's charge of a "line of reconstruction," however, and his assertion that there is a competition between freedom and truth on John Paul II's reading essentially begs the question on both scores: in fact, the Council rejected the juridical approach; and the heart of that rejection was precisely its insistence on an original unity between freedom and truth, a unity which the Council judged to be alone sufficient to keep freedom *precisely from undermining its own natural integrity qua free*. But this has already been dealt with at length in the body of my argument.

idea of the right to religious freedom.⁹⁷ In the face, for example, of what he perceived to be a growing secularism and indifferentism in society, according to Rico, John Paul II attempted to restore a more traditional, pre-conciliar emphasis on truth, indeed on the revelation of Jesus Christ, as alone providing the sufficient condition for a rightful exercise of freedom. The fact of the matter, however, is that the pontificate of John Paul II confirms, while to be sure clarifying further, the authentic teaching of the Declaration that he supported already in his work as Archbishop of Kraków at and immediately after the Council.⁹⁸ My purpose in the next section, then, will be to summarize, in terms of representative texts from the writings of John Paul II and his successor Benedict XVI, how these pontificates assume while developing the Council's authentic teaching on religious freedom. The effort will be to show how these writings sharpen the basic terms in which the foundation and nature of the right to religious freedom must now be framed, if we are to promote an integrated reception of the teaching enunciated by the Declaration.

VI.

(1) *Religious freedom within the missionary task of the Church.* The importance of *Dignitatis humanae* and the issue of religious freedom for John Paul II's pontificate is signaled in the prominence he gives this document already in his first encyclical, *Redemptor hominis*. Placing discussion of the Declaration within the context of the Church's "missionary attitude," John Paul says that "the Church attaches great importance to all that is stated by the Second Vatican Council in its *Declaration on Religious Freedom*, both the first and the second part of the document. We perceive

97. To cite but one expression of the burden of Rico's argument: "While John Paul II unequivocally underscores the priority of the duty toward the truth, the Declaration, in turn, has affirmed even more forcefully the dignity and autonomy of the individual person and the respect for each one's way and pace of forming his or her own conscience in the personal search for truth" (Rico, 177).

98. Recognition of profound continuity does not entail denial of differences and development due, for example, to John Paul II's growing awareness of and dealings with the different cultural situations presented earlier by Communism and later by the liberal countries of the West.

intimately that the truth revealed to us by God imposes on us an obligation. We have, in particular, a great sense of responsibility for this truth” (*RH*, 12). He continues:

the Church, because of her divine mission, becomes all the more the guardian of this freedom, which is the condition and basis for the human person’s true dignity. Jesus Christ meets the man of every age, including our own, with the same words: ‘You will know the truth, and the truth will make you free’ (Jn 8:32). These words contain both a fundamental requirement and a warning: the requirement of an honest relationship with regard to truth as a condition for authentic freedom, and the warning to avoid every kind of illusory freedom, every superficial unilateral freedom, every freedom that fails to enter into the whole truth about man and the world. (*RH*, 12)

Notable here is the fact that, for John Paul II, respect for religious freedom is an expression of the Church’s mission to make known the truth about Jesus Christ. This mission imposes on us a responsibility for this truth, even as the responsibility itself demands respect for the dignity of the human being and thus for the freedom that is foundational for that dignity. The obligation imposed by the Church’s missionary attitude, in other words, is not merely that we respect the freedom of every human being, but that we do so *by virtue of our very obligation to the truth*. The demand to respect the freedom of all human beings flows organically from the positive demand to seek and proclaim the truth, even as these two demands are indissoluble: neither is merely instrumental or functional in relation to the other.

(2) *The necessary bond between the right to religious freedom and truth and the natural law*. The missionary task of the Church indicates the framework for the unwavering link John Paul II makes between the right to religious freedom and truth, and indeed human nature and natural law. Thus, in *Centesimus annus*, the pope refers to “the transcendent dignity of the human person, who, as the visible image of the invisible God, is therefore by his very nature the subject of rights which no one may violate—no individual, group, class, nation or state” (*CA*, 44). Furthermore, he says, “in constantly reaffirming the transcendent dignity of the person, the Church’s method is always that of respect for freedom” (*CA*, 46). In his address to the United Nations in 1979,

John Paul II cites from the important articles 2 and 3 of *DH* as a “contribution to respect for man’s spiritual dimension.” All human beings, “endowed with reason and free will and therefore bearing personal responsibility, are both impelled by their nature and bound by a moral obligation to seek the truth, especially religious truth.” The practice of religion thus “of its nature consists [in] voluntary and free internal acts. . . .”⁹⁹

Benedict XVI for his part reinforces these statements by John Paul II in his own address to the United Nations almost thirty years later. Human rights, he says,

are based on the natural law inscribed on human hearts and present in different cultures and civilizations. Removing human rights from this context would mean restricting their range and yielding to a relativistic conception, according to which the meaning and interpretation of rights could vary and their universality would be denied in the name of different cultural, political, social, and even religious outlooks. This great variety of viewpoints must not be allowed to obscure the fact that not only rights are universal, but so too is the human person, the subject of those rights.¹⁰⁰

Furthermore, in his 2011 “Message for the Celebration of the World Day of Peace,” Benedict states the following:

Openness to truth and perfect goodness, openness to God, is rooted in human nature; it confers full dignity on each individual and is the guarantee of full mutual respect between persons. Religious freedom should be understood, then, not merely as immunity from coercion, but even more fundamentally as a capacity¹⁰¹ to order one’s own choices in accordance with truth (n. 3).

The right to religious freedom is rooted in the very dignity of the human person (DH 2), whose transcendent nature must not

99. John Paul II, “Address to the 34th General Assembly of the United Nations,” 2 October 1979, n. 20.

100. Benedict XVI, “Address to the Members of the General Assembly of the United Nations,” 18 April 2008.

101. While there is apparently not an official language version of this text, the French (*capacité*) and Italian (*capacità*) indicate that what is intended here has a more positive meaning than a merely neutral “ability.” On the significance of the term “capacity,” cf. section VI.6 below.

be ignored or overlooked. God created man and woman in his own image and likeness. For this reason each person is endowed with the *sacred right* to a full life, also from a spiritual standpoint. . . . Our nature appears as openness to the Mystery, a capacity to ask deep questions about ourselves and the origin of the universe, and a profound echo of the supreme Love of God, the beginning and end of all things, of every person and people. The transcendent dignity of the person is an essential value of Judeo-Christian wisdom, yet thanks to the use of reason, it can be recognized by all. This dignity, understood as a capacity to transcend one's own materiality and to seek truth, must be acknowledged as a universal *good*, indispensable for the building of a society directed to human fulfillment. (n. 2)¹⁰²

The texts cited here spell out more fully the unity between truth and the person's right to religious freedom, by affirming that the truth of the person as ordered to the transcendent is the foundation of this right. John Paul II and Benedict XVI unequivocally affirm a principled, or universal, right to religious freedom, even as they bind this universal right with a universal human nature and dignity conceived in terms of relation to God. Such dignity is understood in terms of freedom and intelligence, to be sure, but a freedom and intelligence that is intrinsically-dynamically ordered to "the whole truth about man and the world," which means finally to the truth about God as revealed in Jesus Christ (*RH*, 12). Rights are universal, in a word, not because they are abstracted from truth-claims about nature and natural law—which would make rights a matter pri-

102. Cf. Benedict XVI, Angelus message of 4 December 2005: "The Second Vatican Council dedicated an attentive reflection . . . to the relationship between truth and freedom. In particular, the Council bishops approved, precisely 40 years ago, a Declaration on the question of religious liberty, that is, the right of persons and of communities to seek the truth and to profess their faith freely. The first words that give this document its title are *Dignitatis humanae*: religious liberty derives from the special dignity of the human person, who is the only one of all the creatures on this earth who can establish a free and conscious relationship with his or her Creator. . . . [T]he Second Vatican Council reaffirms the traditional Catholic doctrine which holds that men and women, as spiritual creatures, can know the truth and therefore have the duty and the right to seek it (cf. *DH*, 3). Having laid this foundation, the Council places a broad emphasis on religious liberty, which must be guaranteed both to individuals and to communities with respect for the legitimate demands of the public order."

marily and most basically of immunity from coercion—but because they are, on the contrary, rooted in the truth which every human being on earth participates in, *by nature*, and which *as a consequence* (ontological, not temporal) demands the human being's immunity from coercion.

(3) *The right to religious freedom as the foundation and premise for all other rights.* John Paul II stresses that “freedom of conscience and of religion . . . is a primary and inalienable right of the human person; what is more, insofar as it touches the innermost sphere of the spirit . . . it upholds the justification, deeply rooted in each individual, of all other liberties.”¹⁰³ In his 1988 “Message for World Day of Peace,” he says, again, that “religious freedom, insofar as it touches the most intimate sphere of the spirit, sustains and is as it were the *raison d'être* of other freedoms. And the profession of a religion, although it consists primarily in interior acts of the spirit, involves the entire experience of human life, and thus all its manifestations” (n. 3). In *Redemptoris missio*, he says that the Church is “obliged to do everything possible to carry out her mission in the world and to reach all peoples. And she has the right to do this, a right given her by God for the accomplishment of his plan. Religious freedom, which is still at times limited or restricted, remains the premise and guarantee of all the freedoms that ensure the common good of individuals and peoples” (*RM*, 39).

It is not uncommon today for the right to religious freedom to be claimed as the most basic human right and indeed the foundation of all other rights. What is not so common, however, is to make explicit, as John Paul II does, the sense in which such a claim rests on an ontological judgment regarding the nature of religion or the natural religiosity of man (man as *homo religiosus*). It is because religion goes to the innermost depths of the human person and comprehends the whole of his life and experience that the right to freedom in matters of religion has priority over all other rights. Loss of the depth and comprehensiveness of the relation to God that is structured into man's original nature as a creature would, *eo ipso*, undermine the warrant for speaking of the right to religious freedom as the most fundamental right.

103. John Paul II, “Letter to the Madrid Conference on European Security and Cooperation,” 1 September 1980, n. 5; cf. also nn. 1, 3.

(4) *The indissolubility of freedom with truth and of truth with freedom.* The question regarding the link between freedom and truth runs through all of the preceding points, and was also, as we have seen, the basic question driving the debate over religious freedom at the Council. In his writings as pope, John Paul II gives more precision to the nature of this link. In *Veritatis splendor*, for example, he says that freedom rightly understood is “never freedom ‘from’ the truth but always freedom ‘in’ the truth” (*VS*, 64). Later in this same encyclical, he says that the “essential bond between Truth, the Good, and Freedom has been largely lost sight of by present-day culture. As a result, helping man to rediscover it represents nowadays one of the specific requirements of the Church’s mission” (*VS*, 84). Again, in *Evangelium vitae*, he says that “freedom . . . possesses an inherently relational dimension (*libertatem . . . essentialem necessitudinis rationem secum fert*),” and an “essential bond with the truth (*constitutivum veritatis vinculum*)” (*EV*, 19). Also in *Veritatis splendor*, John Paul states:

[Man’s] freedom is real but limited: its absolute and unconditional origin is not in itself, but in the life within which it is situated. . . . Human freedom belongs to us as creatures; it is a freedom which is given as a gift, one to be received like a seed and to be cultivated responsibly. It is an essential part of that creaturely image which is the basis of the dignity of the person. Within that freedom there is an echo of the primordial vocation whereby the Creator calls man to the true Good, and even more, through Christ’s revelation, to become his friend and to share his own divine life. It is at once inalienable self-possession and openness to all that exists, in passing beyond self to knowledge and love of the other. Freedom then is rooted in the truth about man, and it is ultimately directed towards communion. (*VS*, 86; cf. 85, 87)

Note the echo of Pieper (and Pinckaers) found in this last citation: the self-possessing activity of the human subject is simultaneous with, and inseparable from, his openness to all that exists. Man’s self-possessiveness or freedom is not first indifferent to the world, but always already informed by an openness to, and thus positive capacity for, the world. This is the implication of the pope’s statement that freedom is intrinsically related to truth. A freedom that is intrinsically related to truth is one that

is ordered by truth in its original constitution *as free*. What such a view of freedom excludes is the sort of primitively *extrinsic* relation to truth that would construe truth as first *consequent* upon the act of freedom, such that the act of freedom is thereby originally indifferent to truth.

An intrinsic (*constitutivum*) relation between freedom and truth, then, alone accounts for the letter and the spirit of the above statements by John Paul II, as well as the interventions by Karol Wojtyła regarding religious freedom at the time of the Council. This intrinsic relation alone enables us to understand the root meaning of John Paul's statement in *Fides et ratio* that "truth and freedom either go together hand in hand or together they perish in misery" (*FR*, 90).

(5) The intrinsic relation between freedom and truth implies an intrinsic relation between man qua man and man qua citizen: between man as subject of a moral right to religious freedom and man as subject of a distinct civil right to religious freedom. *Dignitatis humanae* states that "the right to religious freedom . . . based on the very dignity of the human person . . . must be given such recognition in the constitutional order of society as will make it a civil right (*in iuridica societatis ordinatione ita est agnoscendum, ut ius civile evadat*)" (*DH*, 2). In other words, it is precisely the *naturally or ontologically rooted moral right to religious freedom proper to the human person as such* that is to be recognized *also as a civil right*. The language here thus supports a unity simultaneous with distinction between these respective orders of rights. It is because all men are *ontologically* moved by nature to seek the truth, especially religious truth, that they have a *moral* duty and right to religious freedom; and this *moral right* demands distinct recognition as a *civil right*.¹⁰⁴

This position, supported by Wojtyła at the Council, remains characteristic of the pontificate of John Paul II. It is only such a position that accounts adequately for the many texts of John Paul cited above which clearly insist that the ontological truth about man, which grounds his moral right, be recognized

104. The point here is not an identity but an intrinsic relation between the natural and the moral that allows for the legitimate integrity of each. This suffices to avoid what is often termed the naturalistic fallacy.

also civilly, in the juridical order.¹⁰⁵

Such a uniting of the ontological-moral with the juridical is likewise implied in Benedict's *Caritas in veritate*, which insists that the concerns proper to cultural institutions such as the family—concerns like the truth of love—need to be included within the concerns proper to the economy and the state, in order that we might move beyond the binary logic of market-plus-state.¹⁰⁶ Finally, the intrinsic relevance of the ontological meaning of man generally for civil government is nicely summed up in John Paul II's *Catechism of the Catholic Church*:

Every institution is inspired, at least implicitly, by a vision of man and his destiny, from which it derives the point of reference for its judgment, its hierarchy of values, its line of conduct. Most societies have formed their institutions in the recognition of a certain preeminence of man over things. Only the divinely revealed religion has clearly

105. Thus, to cite but one example, the pope says in *Centesimus annus* that “authentic democracy is possible only in a State ruled by law, and on the basis of a correct conception of the human person (*in recta personae humanae notione consistit*). . . . It must be observed in this regard that, if there is no ultimate truth to guide and direct political activity (*nulla si sit postrema veritas quae quidem politicam actionem dirigat et moderetur*), then ideas and convictions can easily be manipulated for reasons of power. As history demonstrates, a democracy lacking foundations [or first principles: *principiis*] turns into open or hidden totalitarianism” (CA, 46).

106. Cf. CV, 39: “My predecessor John Paul II . . . in *Centesimus annus* . . . spoke of the need for a system with three subjects: the *market*, the *State* and *civil society*. He saw civil society as the most natural setting for an *economy of gratuitousness* and fraternity, but did not mean to deny it a place in the other two settings. Today we can say that economic life must be understood as a multi-layered phenomenon: in every one of these layers, to varying degrees and in ways specifically suited to each, the aspect of fraternal reciprocity must be present. In the global era, economic activity cannot prescind from gratuitousness . . .” Benedict goes on to argue that “[t]he exclusively binary model of market-plus-State is corrosive of society, while economic forms based on solidarity, which find their natural home in civil society without being restricted to it, build up society.” Indeed, Benedict here criticizes interpretations of *Centesimus annus*, which, in rightly calling attention to the three distinct “sectors” of society/culture, economy, and state, fail to see that the concerns proper to culture regarding truth and love are intrinsic and not merely extrinsic to the proper concerns of economy and state. Cf. also CV, 38, 41; and my “Beyond the Binary Logic of Market-Plus-State: A Sane Social Order for the Global Liberal Age,” in the forthcoming *The Beauty of the House of God: Essays in Honor of Stratford Caldecott*, ed. Francesca Murphy (Eugene, OR: Wipf & Stock).

recognized man's origin and destiny in God, the Creator and Redeemer. The Church invites political authorities to measure their judgments and decisions against this inspired truth about God and Man. (CCC, 2244)

The point here, of course, is not that John Paul II does not recognize the distinction between the ontological-moral and civil-juridical orders, but that he affirms an intrinsic rather than extrinsic relation between these. It is because freedom and truth, especially the truth about God, bear an intrinsic relation to each other that this relation cannot be fractured—that is, reduced to an extrinsic relation—even for the purposes of a (would-be) purely juridical order, without thereby distorting the original nature of each. In a word, then: the juridical approach which separates freedom and truth logically involves juridical enforcement of just the reductive sense of freedom and of truth, and consequently the arbitrary rights, that Karol Wojtyła/John Paul II consistently opposed over a lifetime.

(6) How, then, do we best frame the issue that most profoundly governs the argument of the Second Vatican Council's *Declaration on Religious Freedom*, in light of John Paul II's and Benedict XVI's reading of this document? For a summary answer to this question, we return to two terms that are basic to Servais Pinckaers and Josef Pieper.

Pinckaers emphasizes the difference between freedom of indifference and freedom of quality. As pointed out earlier, the latter bears a dual meaning that can give rise to significant ambiguity. On the one hand, freedom of quality calls attention to the original ordering of freedom by and toward truth and the good, an ordering that implies the natural desire for God. On the other hand, freedom of quality signals the virtuous acting into which freedom is able to grow, and refers thus to what is *logically yet to be accomplished*. Translating *liberté de qualité* as “freedom for excellence” (emphasis added) reinforces this second meaning, in a way that disposes us to miss the crucial point, both for Pinckaers and for the argument regarding religious freedom developed in this article.¹⁰⁷

107. The following statement regarding freedom for (of) excellence by George Weigel indicates the problem: “Freedom . . . is a matter of gradually acquiring the capacity to choose the good and to do what we choose with perfection” (George Weigel, “A Better Concept of Freedom,” *First Things* 121

There is also the term “capacity” used by Josef Pieper,¹⁰⁸ and indeed by Benedict XVI in the texts cited above. “Capacity” can be read as an originally neutral space for containing something, an empty (or originally “indifferent”) container that is logically yet to be filled. But, for Pieper, and in the spirit of Pinckaers, it also carries the positive sense of what is already, in its original structure, apt or fit for that which is meant to fill it.

The respective arguments of Pinckaers and Pieper serve to draw attention to the original dynamic ordering of the human act toward the truth and the search for God; and thus to the modern failure, often even within Catholicism, to grasp that the free-intelligent human act is *initially, by nature*, ordered within, and so far by, a truthful ontological relation to the world and its Creator. Human freedom, in its self-reflexivity as free and in its own deepest logic, cannot but love implicitly the good and the true and God. Human freedom is never neutral toward these.

In this context, we showed above that Lefebvre and Murray, from their opposite directions, both fail to integrate adequately just this original natural ordering of freedom by truth into their respective approaches to the question of the right to religious freedom. Thus we have, on the one hand, a human dignity tied to an exercise of freedom *abstracted from* truth (Murray); and, on the other, a human dignity tied to an exercise of freedom that *has realized* truth (Lefebvre). In neither case do we have a

[March 2002]: 14–20, at 16). To be sure, this statement makes an essential point regarding freedom of excellence. The burden of Pinckaers’s argument, however, is to underscore that it is just the *originally given* positive capacity, or positive aptness, of freedom *for the good* that inclines freedom’s movement toward the good in the first place. That is, lacking this original dynamic ordering of freedom toward truth, freedom’s (eventual) choice of the good would remain adventitious, and so far arbitrary. Recall here, for example, the following statements of Pinckaers: “St. Thomas place[s] the natural inclination to the good and to happiness *at the very source* of human freedom” (353, emphasis added; cf. 375); freedom, rightly understood, “grows like a living organism,” the wholeness of whose specific order is present from the outset (362); and “*finality is a principal element of free action*” (375).

108. Cf., e.g., *WDD*, 85: “die Begriffe ‘ein Innen haben’ und ‘*beziehungs-fähig sein*’ einander entsprechen” (“the concept of ‘having an interiority’ corresponds to ‘*being capable of relation*’” [*LTT*, 81; translation modified and emphasis added]). Pieper also uses *Beziehungskraft* (*WDD*, 88), “the power to relate,” which implies a *positive aptness for*; and *Vermögen* (*WHP*, 46), which again implies a positive power or capacity to do something.

human dignity, and hence a human right, tied to a freedom that is originally ordered toward truth (“already”) and at once still to be fully realized (“not yet”). In neither case, in other words, do we have a right to religious freedom rooted in a human dignity characterized in terms of an initial, *natural-ontological*, unity of freedom and truth.

My argument has been that it is this “already,” coincident with the “not yet,” of the free-intelligent human act’s relation to the world and God that is affirmed by both Pinckaers and Pieper. The human being, as a creature, stands in an original relationship of truth with the world and with God, a *naturally-given* relationship that he is called to freely-intelligently *realize* over a lifetime. My contention is that this is also the position implied in the important text of *DH*, 2: that, because of their dignity as persons—beings endowed with reason and free will—all men are impelled by nature and so far originally ordered (and bound by a moral obligation) to seek the truth, especially as that truth bears on religion.

In a word: *what Dignitatis humanae, consistent with the Catholic, ancient-medieval, philosophical tradition, understands as proper to the meaning of the human person, namely, reason and free will,*¹⁰⁹ *is understood also to bear the implication of a true relation to the world and God that is always first-given.* The pontifical writings of John Paul II and Benedict XVI, in their turn, accentuate this implication of relation to the world and to God in their understanding of the nature and dignity of the human person. What characterizes both the Declaration and the writings of these pontificates, albeit in distinctly developed ways, is thus the centrality given to relation to God (in Christ) and others (the world) in the constitution of the human person and the human act.¹¹⁰

109. Cf. the classic Boethian definition of the person as an individual substance of a rational nature (*Liber de Persona et Duabus Naturis: Contra Eutychem et Nestorium*, ch. 3).

110. See, for example, the strong statements in the *Compendium of the Social Doctrine of the Church*, which was produced at the request of John Paul II:

The likeness with God shows that the essence and existence of man are constitutively related (*costitutivamente relazionate*) to God in the most profound manner. This is a relationship that exists in itself, it is therefore not something that comes afterwards and is not added from the outside. The whole of man’s life is a quest and a search for

I return to the question of the human act's "capacity," of freedom's "indifference" vis-à-vis its "excellence" or "quality," in order to focus in summary the issue that is most profoundly in play in the works of subsequent interpretations of the Council in the matter of religious freedom: namely, the nature of the person's relation to God and the world. Is this relation originally given ("transcendentally") to the person or originally enacted ("categorially") by the person? Does the human subject with his free-intelligent act dwell already by nature ("transcendentally") within the truth of the world and God that he is at the same time yet to realize? In short, how in light of such questions, is John Paul II to be understood when he says, as quoted above, that

[freedom] is an essential part of that creaturely image which is the basis of the dignity of the person. Within that freedom there is an echo of the primordial vocation whereby the Creator calls man to the true Good, and even more, through Christ's revelation, to become his friend and to share his own divine life. It is at once inalienable self-possession and openness to all that exists, in passing beyond self to knowledge and love of the other. Freedom then is rooted in the truth about man, and it is ultimately directed towards communion. (*VS*, 86; cf. 85, 87)

The burden and the cogency of the Declaration's argument regarding the nature of the civil right to religious freedom

God. This relationship with God can be ignored or even forgotten or dismissed, but it can never be eliminated. Indeed, among all the world's visible creatures, only man has a "capacity for God" ("*homo est Dei capax*") (cf. *GS*, 12; *EV*, 34). The human being is a personal being created by God to be in relationship with him; man finds life and self-expression only in relationship, and tends naturally to God (cf. *EV*, 35). (n. 109)

The relationship between God and man is reflected in the relational and social dimension of human nature. Man, in fact, is not a solitary being, but "a social being, and unless he relates himself to others (*sine relationibus aliis*) he can neither live nor develop his potential" (*GS*, 12). (n. 110)

It is worth noting here that the translation of this last sentence from *Gaudium et spes*, 12, evokes the issue we have been concerned with in this article. While the original Latin indicates only that man cannot live without relations to others (relations which, as rooted in nature, are so far already—also in some significant sense given), the English translation renders this "unless he relates [himself] to others," thereby collapsing the person's natural socialness, or being-in-relation, simply into a task to be undertaken by the subject.

(is it primarily negative or primarily positive?) and the respective natures of freedom and truth as pertinent to the legal constitutional order (is truth originally bound with freedom or simply an object of freedom), hinge on the response to this question regarding the relation between the human subject and the world/God, and regarding the spiritual nature of the human act entailed by this relation.

VII.

Let us summarize, in conclusion, the main elements of the argument in terms of the central question posed at the outset regarding the nature—object and content—of the right to religious freedom:

(1) There is an originally given, intrinsic relation between freedom and truth.

(2) This is best conceived in light of the ancient-medieval understanding of the spiritual nature of the human being and human act (*anima forma corporis*), and the transcendental nature of truth, as recovered in their distinct ways by Pinckaers (freedom) and Pieper (spirit, knowledge, truth, and God).

(3) The Declaration's teaching regarding the right to religious freedom presupposes, and (implicitly) takes over this earlier teaching, in terms of the human person as *subject of rights*. The Declaration does not develop this understanding of the person in a thematic way. Its intention, rather, is to arrive at an adequate notion of a right, and this involves attending in a particular way to the *subjectivity* of the person, which it affirms while simultaneously securing the intrinsic link between that *subjectivity and the order of truth*, especially religious truth. But this process evidently involves the Declaration in drawing out more fully the interiority traditionally understood to be proper to the human act, an interiority fraught with an originally given true relation to the world (all that exists) and to God. Human subjectivity or interiority, in other words, is first positively, not “negatively,” related to the world and to God, and is necessarily presupposed by this relation.

(4) The Declaration thus ties the meaning of a right to a human subjectivity understood to be originally “truthed” by the world and, implicitly and more profoundly, by relation to the Creator. The right to religious freedom is an immunity from co-

ercion only inside, and by virtue of, this *naturally given positive relation to God and others*. On the Declaration's view, what is primary in the self's relation to the other is a *positive letting be*. On the juridical view, by contrast, what is primary is a *(negative) avoidance of constraint or intrusiveness with respect to the other*.

(5) This position affirmed by the Declaration, even if not developed in an integrated fashion, exposes the root problem of the prevalent interpretation, which holds that the right to religious freedom is primarily negative, a protection against intrusive action by others. The negative sense of the right as conceived by the Declaration is essential to the right's proper meaning. But this negative sense is understood to take its inner dynamic from within the human being's original true and positive relation to God and to other human creatures. In fact, this original positive relation discloses how a right conceived primarily in negative terms is so far individualist and constructivist in nature, granting priority to a singular human act conceived first in abstraction from its relation to the world and to God. It is this implied individualism and constructivism, which indeed is expressive of nominalism and (semi-)pelagianism, that logically gives rise to relativistic monism.

(6) The pontificates of John Paul II and Benedict XVI confirm the foregoing interpretation of religious freedom in *Dignitatis humanae*, while developing in a more integrated way the notion of the person undergirding this interpretation. They develop further the *relationality to truth and God* implied in the medieval conceptions of the spiritual, interior-subjective, nature of the human act and of its original-transcendental ordering toward and by the world. John Paul II and Benedict XVI, in other words, affirm the *modern emphasis on the subjective dimension of the person*, by way of taking over and drawing out the further implications of *the ancient-medieval conceptions of the human spirit and truth*.

(7) Finally, we summarize the Declaration's view of the foundation and nature of the right to religious freedom relative to the problem of liberal constitutional order. The pertinent question here is whether the *constitutional* indifference of the state (or liberal political *structures*) necessarily imply the *substantive* cultural indifference to questions of truth and value (or liberal *ideology*).¹¹¹

111. See Joseph A. Komonchak, "Vatican II and the Encounter Between

My argument has been that the majority of the Council bishops were convinced that a would-be merely constitutional indifference on the part of the state *of its inner logic* implied a substantive cultural-ideological indifference to the truth. This alone accounts for the changes made with respect to schema 3 in the later drafts of the Declaration. The Council bishops grasped that a would-be constitutional indifference on the part of the state privileges freedom of indifference over freedom of quality for purposes of constitutional order. The Council bishops grasped, in other words, that rights do indeed originate and thus first inhere, not in isolated individuals, but in persons who are naturally—by virtue of the act of creation—in community with others (the world) and implicitly, and most profoundly, with their Creator; and that rights, accordingly, must be recognized by the state as so anchored in this originally positive sense of community. The bishops understood at least implicitly that the formal notion of “freedom from” that undergirds the juridical approach and its primarily negative sense of a civil right (as an immunity) presupposes an individualist idea of the human person.

The point, then, is that those who would defend the juridical approach to the right to religious freedom cannot have it both ways. On the one hand, if they would defend religious freedom first in formal terms as “freedom from,” they so far privilege, for all of society qua subject to constitutional authority, the idea of freedom of indifference that Pinckaers shows logically implies relativism. On the other hand, if they would avoid the implication of relativism, they need to qualify the juridical approach, by integrating its “freedom from” in terms of *what freedom is positively for* already in its original natural structure as such, and not only in its choices. In other words, they need to see that the revisions made in the later drafts of *Dignitatis humanae* regarding the human act’s natural ordering toward and by the truth were required on inherently philosophical-theological grounds, and were thus not mainly the function of a mistaken historical judgment regarding different types of liberalism. What the Council bishops implicitly affirmed, then, in insisting that the foundation for the right to re-

Catholicism and Liberalism,” in *Catholicism and Liberalism: Contributions to American Public Philosophy*, ed. R. Bruce Douglass and David Hollenbach (Cambridge: Cambridge University Press, 2002), 76–99, at 89–90.

ligious freedom lay in a human dignity expressed in man's natural inclination and obligation toward the truth, was that "the broad liberal tradition" that would be purely juridical in its approach (or merely *constitutionally* indifferent: articles of peace) already implies enshrinement of "the doctrinaire liberalism" (*substantive* ideological indifference: articles of faith) expressed in proceduralist or relativist monism.

Joseph Komonchak rightly suggests that we can properly assess Vatican II's engagement with liberal modernity only by making the pertinent distinctions:

Those who see the Council's achievement as a naïve capitulation to modernity often fail to distinguish not only between the particular social reform Catholicism adopted in the last century and a half and the permanent essence of the church but also between the liberal political structures of modern democracies and the liberal ideology which often legitimates them. Those who celebrate the Council as a long-overdue accommodation to modernity often focus on its acceptance of many of the liberal structures of the day but ignore or play down the Council's insistence on the substantive relevance of religion to society. If the one group tends to demonize modernity, the other tends to deify it; and it is not hard to see why they encourage one another's simplicities. I would myself continue to insist that the key is still St. Thomas's general methodological injunction: *'Distinguendum est!'* . . . (95)

Regarding Komonchak's statement, then: the position enunciated in this study does not entail a denial of the modern constitutional order's hallmark distinction between "ideology" and juridical order, or society and the state. Such a denial would be implied only if distinctions, in order to be "real," had to be extrinsic in nature—which is to say, more Cartesian, or Cartesian-Scholastic, than genuinely Catholic-Thomist. "Real" distinctions, on the latter understanding, are open in principle to "real" unities that demand intrinsic relations.¹¹²

The fact is that the juridical approach, with its clean separation of freedom from truth for all public-legal purposes,

112. Further discussion of the nature of distinctions—between society and state, state and church, and the like—will be undertaken in the book version of this article.

expresses a Cartesian rather than a genuinely Catholic pattern of thinking. The key is the juridical approach's clean separation of freedom from truth: freedom as a subjective act of the self is abstracted from truth for purposes of the public-legal order of the state, while truth is expected to be added by persons and institutions of society. For public-legal purposes, truth is arbitrarily added, rather than organically related, to freedom. The Catholic tradition presupposed in the final Declaration, rightly understood, holds to a different view of the relation between freedom and truth, one that distinguishes between them from within their originally given unity. To put the matter in terms of Murray's distinction between articles of peace and articles of faith: the formal "freedom from" that is characteristic of articles of peace is indeed secured by the teaching of the Declaration, but only insofar as it is integrated into the "freedom for" (freedom of quality) that is characteristic of articles of faith. The Council does not thereby reject the distinction between articles of peace and articles of faith *tout court*; it rejects only the unconsciously Cartesian reading of the distinction that would insist on cleanly separating freedom from truth for purposes respectively of state and society. The Council's teaching in fact implies that articles of peace do not and cannot exist without necessarily implying some version of freedom of indifference (for public-legal purposes). The teaching implies that it is only rightly understood articles of faith that in any case can secure the equal right to religious freedom for all persons that is the *intention* of articles of peace.

In a word, I agree emphatically with the Thomistic dictum, "*Distinguendum est!*" But what the conciliar teaching on religious freedom demands above all in this respect is clarity regarding the difference between modernity's Cartesian manner of making distinctions and the Council's Catholic manner of making distinctions. Such a clarity demands a more adequate memory of the ancient-medieval understanding of the spiritual nature of human subjectivity and the transcendental character of truth, both of which are informed by the ontological implications of creatureliness.

But this leads to a final comment. Komonchak is quite right that the Council's teaching regarding religious liberty did not rely on easy certainties regarding either liberalism or anti-modern Catholicism: it neither demonized nor deified moder-

nity. In fact, *Dignitatis humanae* retrieved what is most true about modernity (its emphasis on subjectivity and the dignity of the human subject), in terms of what lies at the very heart of the ancient-medieval tradition (its understanding of the spiritual nature of human subjectivity and the transcendental nature of truth). The juridical reading of the Declaration, in contrast, embraces a reductive sense of modern subjectivity even as it implies a defective grasp of ancient-medieval notions of the free-intelligent human act, of truth, and of the Creator.

The minimal claim of the present argument, then, is that the right to religious freedom can be reasonably defended only coincident with our willingness to come to terms with the question of the truth about the human person and the nature of freedom vis-à-vis the person's origin and end. The full scope of what this implies, however, is grasped only insofar as we see the irony carried in liberalism's hallmark defense of a freedom that is assumed to entail no claim of truth. The condition *sine qua non* for responding in a truly reasonable—and genuinely post-conciliar Catholic—manner regarding the matter of the right to religious freedom in the current cultural situation, in other words, is that we come to terms with the pernicious paradox of the vacuous metaphysical “substance,” or “substantive” metaphysical vacuity, of the liberal-juridical state.¹¹³ □

DAVID L. SCHINDLER is Dean Emeritus and Gagnon Professor of Fundamental Theology at the Pontifical John Paul II Institute for Studies on Marriage and Family at The Catholic University of America in Washington, D.C.

113. I wish to thank Michael Camacho for his astute and painstaking assistance in the preparation of this article.