

# Continuing the Search for Religious Liberty: The Contribution *Dignitatis Humanae*

## Introduction

Let me begin with warmest thanks for your very kind welcome. It is a privilege to be a part of this lecture series celebrating the fiftieth anniversary of *Dignitatis Humanae*, the Declaration on Religious Liberty promulgated by the Second Vatican Council on December 7th, 1965. My special thanks to you, Father Billy and to the seminary community for your gracious invitation and your kind hospitality.

I have been preceded to this podium by true experts in religious freedom, including the Archbishop Chaput, who is both a colleague and a friend, as well as Professor George of Princeton and Mr. Bill Mumma of the Becket Fund. These speakers devote their considerable intellectual and spiritual capital and most of their waking hours – to the defense of religious liberty. With you, I am most grateful to them.

The way I see it, I'm the fourth one at bat and in baseball that would make me the cleanup batter – and usually the cleanup batter's job is to clear the bases. I'd say it'll take more than a Ryan Howard (the cleanup batter for the Phillies) to drive in the winning run against today's challenges to religious freedom.

So what is my single responsibility this evening? I think it is this: To invite you to re-read *Dignitatis Humanae*, if you haven't done so already. And I will issue that invitation by citing what I think are its most enduring contributions in the ongoing search for religious freedom. That search, dear friends, continues to intensify. Abroad we see overt religious persecution, especially against Christians, in the Middle East, Africa, and elsewhere. Believers are dispossessed, exiled, enslaved, and beheaded by radical Islamist militants, especially those who belong to ISIS. In the Western democracies, including the United States, religious liberty is under assault

in the media, on college campuses, through bad court decisions, laws, and regulations. Although *Dignitatis Humanae* is fifty years old, its teaching remains prophetic. It is as if the Council Fathers looked ahead to read the signs of our times. Now it is up to us to re-read this Declaration on Religious Liberty for guidance in addressing threats to religious freedom, in helping to shape the Church's mission of evangelization, and in contributing to the formation of a society that is just and peaceful.

So this evening, I will propose four of many contributions which DH has made to the ongoing quest for religious liberty, and along the way, I will mention how these contributions apply to our times. Here are the four points:

1. The very existence of the document itself is an enduring contribution to the Church's treasury of knowledge, teaching, and prophetic witness.
2. A second contribution is the link which DH makes between truth and freedom in explaining religious freedom as integral to human dignity;
3. A third is the way in which the document links reason and revelation in explaining the origins of religious freedom and its roots in our Tradition;
4. And fourth is the enduring contribution of DH to the Church's mission of evangelization.

When I've finished, I'll be happy to take your questions.

## The “Fact” of the Document

So let me begin with the first contribution of DH, (if I could put it this way) “the fact” or the “existence” of the document itself. DH, of course, was not the first word the Church spoke about religious liberty. Pope Leo XIII championed the Church's religious freedom in the context of his day, especially with the rise of various anti-religious ideologies and political developments such as the Kulturkampf in Bismarck's Germany. Similarly Pope Pius XI defended the Church's religious freedom as totalitarian governments sprang up in Europe. So too Pope Pius XII defended the Church's liberty as well as the human rights and freedoms of the victims of World War II. Nonetheless DH marks the first time the Church issued a

magisterial document solely on the subject of religious freedom. It is the first time an ecumenical council dealt with religious freedom in such a sustained fashion and at such a high level of authority.

Why, then, did the Council decide to deal with religious liberty? In convoking the Council, John XXIII spoke not only of the progress of humanity but also of the immense crisis that was confronting society. When he said that the Church was in a period as tragic as any in her history the saintly Pontiff was surely referencing the bloody wars of the 20th century, the totalitarian regimes, the threat of nuclear annihilation, and the rise of atheism. He proposed to bring the Church into closer contact with a conflicted global culture, first by looking deeply into her own Tradition and expanding it, and secondly, by “reading the signs of the times and interpreting them in light of the Gospel” (GS, 4).

Among the human aspirations to which the Council listened attentively was the yearning of the oppressed for freedom, including religious freedom. Further, the American bishops strongly believed that the experiment of religious freedom in the United States was exceptional and that it should be reflected in the deliberations of the Council. As we shall later discuss, during the Second Session of the Council, Francis Cardinal Spellman of New York brought with him Fr. John Courtney Murray S.J. as his peritus or expert on religious liberty.

DH originated in the Secretariat for Promoting Christian Unity (SCU) under the direction of Cardinal Augustin Bea, its first president. The document sought to do two things: First, to avoid the shoals of religious indifferentism, that is to say, the danger of describing religious freedom in such a way that Church would seem to be saying one is free to choose one’s religion because one religion is as good as another. Second, it sought to recognize the value of structuring society in such a way that the religious freedom of all citizens was protected. The Council planners thought that its statements on religious liberty should be part of an eventual document on ecumenism and interfaith relationships and in fact devoted Chapter V of the first draft of that document to religious liberty. After all, the questions raised by religious liberty and by ecumenism were parallel. In treating ecumenism the Council Fathers would have to avoid indifferentism, i.e., relativizing the Catholic Church as merely one Tradition among many, while promoting the crucial

importance of Christian unity & interfaith understanding. In treating religious liberty the Council Fathers would also have to avoid indifferentism while defending the religious freedom of people everywhere. Speaking in favor of that very early draft on religious freedom, Bishop De Smedt of Belgium anticipated the debate on religious liberty that would take place on the Council floor: "What, therefore, is meant in the text by 'religious freedom'? Positively, religious freedom is the right of the human person to the free exercise of religion according to the dictates of his conscience. Negatively, it is immunity from all external force in his personal relations with God."

By 1964, the Central Commission of the Council decided that the Declaration on Religious Liberty should become a free-standing document. The draft was developed, amended, and debated in late September that same year, and a vigorous debate it was, with some 43 Council Fathers speaking. Some bishops serving in the Roman Curia and most of the Spanish bishops opposed this still-early draft on the grounds "the truth alone has a right to freedom whereas error may be 'tolerated' for the sake of avoiding a greater evil." Other Council Fathers objected to assertions in the draft that the State is "incompetent" or even "benignly disinterested" in religious matters. Seeing such a view as a departure from the Church's constant teaching, they maintained that civil authority cannot be indifferent with regard to religion. Rather it must take note of Revelation as proposed by the Church and the moral law and frame laws and policies accordingly. Still others, including some French bishops and Archbishop Karol Wojtyla of Cracow criticized "the overly judicial" notion of religious freedom in that early draft, an assertion to which we will return later in the talk.

In the end, the conciliar debate about the document on religious freedom hinged on the question of "who man is" - and on his fundamental orientation towards God. It hinged on the innate "capacity" of the human being for truth in his search for God, a capacity that perdures in spite of man's sinfulness and his inability to save himself. Describing the work of Vatican II Pope Benedict XVI said this: "In the great dispute about man which marks the modern epoch, the Council had to focus in particular on the theme of anthropology" (Curia, 2005). To be sure the Council brought forth the Church's teaching on Revelation, on Christ, on the Church in a very rich and beautiful way. And in doing so, the Council allowed the faith to shed its light on who

human person is and on the problems which humanity is facing. Thus, along with a doctrinal / theological line, one might also be able to trace an “anthropological line” in the conciliar documents, especially DH and *Gaudium et Spes* (cf. 22). In the debates about Religious Liberty and the Church in the Modern World, a fuller, more “theological” account of the human person was advanced. Without discounting original sin, or personal sin, or indeed structural sin, the Council, some would say, moved away from the view that man has a natural end and a supernatural end. According to that view, while man can know moral truth & even the existence of God by means of reason unaided by Revelation, nonetheless in his innate state man has only a non-repugnance for the divine. In stating that Christ, the Word made flesh, in revealing the Father, revealed man to himself and brought light most fully man’s dignity and destiny, the Council signaled, it seems to me, a theologically richer view about man including his innate capacity for truth and his desire for God. The fault lines in the conciliar debate on religious liberty will be around this question and I will refer back to this point a few times later in my remarks.

It will be long debated whether DH represents a break with Tradition or whether it stands in continuity with the Tradition. In issuing DH, however, the Council Fathers were careful to say that it is not a break from the Tradition but an organic development of it. DH is new insofar as it entertains the notion that the State is “incompetent” in religious matters, or to put it another way, matters of religion are above the “pay grade” of civil officials and government itself. DH is new insofar as it takes account of the diverse contemporary political arenas in which the Church “lives and moves and has her being”, so to speak. Yet in maintaining the Church of Christ “subsists” in the Catholic Church and in laying down markers on the relationship of truth and freedom in a way that corresponds both to the yearnings of the human spirit and the mission of the Church to proclaim the Gospel to the ends of the earth – the Church, reading the signs of the times, digs deep into her Tradition & develops it. In the end, DH offers the building blocks for a fully integrated and articulated vision of human dignity that seems more necessary than ever in an era of resurgent religious persecution and an era when liberal democracies are eschewing religious freedom. The words of Pope Francis to the European Parliament are instructive: “In the end, what kind of dignity is there without the possibility of freely expressing one’s thought or professing one’s religious faith?”

# Truth and Freedom

And this provides a segue into my second point, namely, the contribution of DH to our understanding of the relationship of truth and freedom in the ongoing search for religious freedom. This will bring us to the heart of the conciliar debates as DH was being hammered out on the Council floor and behind the scenes. The dramatis personae include Father John Courtney Murray, S.J., Archbishop Karol Wojtyla, and a number of French Bishops, including Bishop Alfred-Jean-Felix Ancel, then Auxiliary Bishop of Lyon. What was the debate about?

## **Fr. John Courtney Murray, S.J.**

The II Vatican Council took place in the midst of what historians call, “The American Century”. It was a time of unparalleled American influence around the world. And to all appearances, the Church in the United States was also riding high. It had flourished in the context of the American religious freedom experiment. Its features included limited government, constitutionally guaranteed freedoms, and the separation of Church and State. In the American system, the State declared itself “incompetent” in religious matters, so long as there was not a compelling interest for governmental intervention. Despite setbacks such as the 1947 Supreme Court decision, *Everson vs Board of Education* (which misinterpreted the Establishment Clause), for the most part civil authorities seemed relatively well-disposed to the Church, especially towards its leaders and institutions. Indeed, not only were Catholic parishes and institutions booming, Catholics themselves were advancing in mainstream society and the halls of power. No wonder the American bishops believed that the American Catholic experience had a lot to say to the rest of the Church.

In that context Jesuit Father John Courtney Murray’s thought was very influential. Ordained in 1920, he taught Trinitarian theology at Woodstock, the Jesuit theologate in Maryland and was the long-time editor of *Theological Studies* until his death in 1967. During World War II, in 1943, he helped draft an interfaith statement on post-war reconstruction known as Declaration of World Peace. Among other things, this document argued for a constitutional arrangement between the German government and the Church, especially regarding taxation, an arrangement which continues to

be operative. Over time Murray became increasingly interested in Church-State relations and authored a series of essays collected in his 1960 book, *We Hold These Truths*. There he argues for “a formally juridical concept” of religious freedom. What does he mean by this?

By this phrase he meant that the object of religious freedom is not to encourage and foster the values inherent in religious belief and practice. Such values, he says, are “judicially irrelevant”. Rather, the object of religious freedom is simply to ensure there are no undue constraints on individuals and religious groups to pursue freely whatever is of value to them in their religion. Describing religious freedom as “the absence of constraint” or as “immunity” from it, Murray believes the “content” of religious freedom to be “negative”. As conceived in the American Constitution, Murray tells us, religious freedom is not a rejection of but an abstraction from man’s relationship to truth and to God. I don’t think Murray used this image, but if you will, picture it this way: Religious freedom means that the State is obliged to preserve and protect for each citizen what it sees as an “empty space” which individuals and groups can “fill up” by choosing to practice a religion or not. Murray advances this “negative” view of religious liberty for two primary reasons:

First, Murray says it fits well with the American idea of limited government. Religion is one of those spheres of human activity which the government acknowledges and protects from constraints. At the same time, the government refrains from entering into those spheres by imposing its own judgments, be they philosophical, moral, or theological. The government declares itself “incompetent” in such matters which are better left to individuals and those in free association with one another. And relying on the maintenance of a broad moral consensus among civil authorities, the culture at large, and the Church, Murray could read the First Amendment as “articles of peace”. By that he meant that the Church and State are at peace because the State does not involve itself in matters spiritual, religious, and eternal. Of course, in real life, things are seldom so tidy!

Second Murray argues that this “negative” concept of religious freedom, which by definition is free of theological presuppositions is the best way to deal with the competing truth claims and religious claims in a pluralistic society. In those days, the United States was sometimes characterized not only as a Christian country but

indeed as a Protestant Christian country and at times religious liberty was framed by Protestant theological views. His effort to decouple religious liberty from such views, however, does not mean that Murray in any way subscribed to moral relativism or pragmatism. Father Murray himself was a natural law theorist and, as I mentioned, he saw the need for a moral consensus in society to support the articles of peace. As one author framed the question, the constitutional articles of peace need to be buttressed by societal “articles of faith”, that is, a view held by a critical mass of society but not the State as such, that openness to religion is important to human flourishing (Hunt p. 37). It remains a matter of debate whether religious freedom, framed solely as immunity from coercion is adequate to make an intrinsic link between freedom and moral responsibility. And while freedom from coercion is certainly fundamental to religious liberty, we may wonder if it is adequate when the societal moral consensus breaks down, as is arguably the case in many Western democracies, including our own. Does that result in a society filled with competing freedom claims with little hope of resolution, absent a moral consensus? Does that set the stage for the government’s becoming the referee of those claims? ... as seems to be happening in our country in these times. And paradoxically, does this end up involving the government in religious matters about which the government had declared itself “incompetent”?

Allow me to dwell on this point a bit more. Essential to human dignity is personal autonomy coupled with moral responsibility. Father Murray recognizes this very clearly in his writings. He writes that, man, in his personal life, “is responsible for the conformity between the inner imperatives of his conscience & the transcendent order of truth.” He also says that man is responsible “for the conformity between his external actions and the inner imperatives of conscience.” Yet, Father Murray goes on to assert, that in the social order “where human rights are predicated, man’s fulfillment of his personal responsibilities is juridically irrelevant.” Murray is not saying that personal moral responsibility is irrelevant to society but rather that it is juridically irrelevant as far as the State is concerned, because the State, as such, is “incompetent” to judge such matters. As the debate on DH unfolded a pronounced difference of emphases would emerge between those who believed that immunity from coercion was as far as the State could go in recognizing and guaranteeing religious freedom, and those who underscored that the State itself should guarantee



religious freedom as grounded in a recognition of man's capacity for transcendent truth and the moral freedom to do that which a well-formed conscience dictates.

In spite of the misgivings of the Holy Office in the 1950's regarding Murray's writings, at the urging of Francis Cardinal Spellman, Father Murray was invited to attend the 2nd and subsequent sessions of the Council. Spellman and other American bishops used Murray as their peritus on religious liberty. Murray was not a Council Father and thus did not intervene in the debate but his ideas were put forth by a number of American bishops, and thus he made a substantial contribution to this important Council document.

### **Archbishop Karol Wojtyla**

As the debate on DH proceeded, however, Murray's ideas on the "negative" conception of religious freedom were challenged. The challenger-in-chief was Archbishop Karol Wojtyla of Kracow. He took issue with the notion of religious freedom as mere "freedom from coercion" not because he thought it was wrong but because he thought it was incomplete. Of itself, it was not indicative of a theologically adequate view of the human person appropriate for a church document and even for the formation of a just society. He recognized that human rights, including religious freedom, are protected only when the State acknowledges the transcendence of man. A merely negative conception of religious freedom, emptied of all philosophical, religious and moral content, does not fully take into account the transcendence of the human person, made by God in his likeness and endowed with reason and free will. But it is precisely in this transcendence that human rights have their origin. It is easy to see how a government could claim to be the grantor of religious liberty when religious freedom is thought of mere as protection from undue coercion. Yet, when religious freedom is linked to the inbuilt human search for truth & for God, then we can more readily see that God, not the State, grants religious freedom. Ministering as he was in Communist Poland, I am sure Archbishop Wojtyla would have welcomed a new found freedom from governmental constraints on the religious rights of individual Poles and the rights of the Church's institutions. Yet Wojtyla, from his experience and studies knew that religious freedom had to rest on the study basis of transcendent human nature, that is open to a relationship with God and to truth, perceived by a well-formed conscience which is the inner core, the

inmost sanctuary of the human person (cf. GS, 16).

In one of his interventions, for example, Archbishop Wojtyla asserts that immunity from coercion is more concerned with religious toleration than with freedom. Religious freedom does not merely mean that the State allows religions to exist. Rather, it means that the State acknowledges the right of the human person to the free exercise of religion as something good for the human spirit and for society itself. Wojtyla could see how the merely negative notion of religious freedom could easily slide into religious indifferentism and moral relativism. In other interventions, he stated that this “negative” idea of religious freedom alienates human dignity from its foundation, namely, his “natural” relationship with God. Indeed, the right to religious freedom is primary because it pertains to man’s most fundamental relationship, his relationship with God. What’s more, God himself respects the freedom and the capacity for truth which he inscribed on our human nature. He manifests himself to us in various ways but does not coerce us. Rather he seeks to elicit from us a free response of love. By rooting religious liberty in human nature, in the heart of man, DH intrinsically links religious freedom with the obligation to seek the truth. And so, the God-given ability to choose is itself not indifferent to the truth but is oriented, as St. Paul say, towards “whatever is honorable, whatever is just, whatever is pure, whatever is lovely, whatever is gracious...” (Phil. 4:8). Thus it was that Archbishop Wojtyla spoke one of the most memorable sentences in all the deliberations of the Second Vatican Council: “Non datur libertas sine veritate” – “There is no liberty without truth.”

Wojtyla saw another danger in a “content-less” notion of religious liberty. Even taking for granted the neutrality of the State regarding religious claims, it can hardly be said that the State is neutral with regard to moral claims. For better or worse, all human laws and regulations have a moral dimension. Yet, when human freedoms are divorced both from man’s subjective search for truth and from a societal acceptance of an objective moral law to which everyone is bound, then everyone’s rights are in danger of being violated. Without an underlying moral consensus, the opinions of the powerful will dominate not only the views but indeed the rights of the disadvantaged. Indeed, one of the criticisms of Murray’s views is that the neutrality of the State toward religion in fact masks a relativism that makes society a place where competing claims bump up against one another with little

hope of resolution. To be sure, it is imperative for us to enter into dialogue about such competing claims but the success of such dialogue is diminished when there is a lack of shared values.

Wojtyla's concern that religious freedom be grounded in the objective moral order showed itself in yet another way during the Conciliar debate on the text of DH. An early draft stated, somewhat baldly, that religious liberty could be limited by the requirements of public order. He called for that statement to be qualified in this way: the exigencies or the requirements of the public order cannot be limited merely positive law, by purely man-made laws and regulations. Rather such positive law and policies must be in accord with the natural law known by reason and known more clearly via Revelation. Indeed, religious freedom is violated when governmental authority constrains individual or groups from following the natural law. In an era when religious freedom is beset by a host of governmental regulations clearly at odds with the Church's moral teaching and the natural law itself, the future Pope's words not only ring true, they are prophetic.

Momentarily we shall see how Wojtyla also insisted that DH set forth not only what reason but indeed also Revelation teaches about the authentic meaning of religious freedom. His concerns about the philosophical, theological and doctrinal adequacy of the text made it more responsive to the original intentions of the Council itself, as described by Pope John XXIII ... Reading the signs of the times in light of the Gospel, DH looks deeply into the Church's Tradition and indeed expands it. Archbishop Wojtyla helped to connect the newness of DH with the Tradition while contributing here and in GS to the development of the Church's teaching on the transcendent dignity of the human person a dignity revealed most fully in Christ, the Word made flesh (GS, 22).

## **Illustrating the Two Streams of Thought in DH**

The influence both of Father Murray and Archbishop Wojtyla (and others) can be seen in the text of DH in its final form as one of the Council's most important

documents. Their influence is not mutually exclusive or conflicting but more properly should be viewed as complementary. Here are a few snippets to demonstrate this, beginning with a “Murray quote”:

DH, 1: after declaring that the human person has a right to religious freedom, it says: “Such freedom consists in this, that all...should be immune from coercion on the part of individuals, social groups or any human power, so that no one is forced to act against his conscience in religious matters, or prevented from acting according to his conscience in private or in public, whether alone or with others, within due limits...” Cf. also, DH 4. There immediately follows lines that reflect the influence of Wojtyla:

“In addition, this Council declares that the right to religious freedom has its foundation in the very dignity of the human person as known from both the revealed word of God and reason itself...”

The text goes on:

“It is in accord with their dignity that all men and women, because they are persons, endowed with reason and free will and thus privileged with personal responsibility, are impelled by their nature and bound by a moral obligation to seek the truth, especially the truth concerning religion...”

And finally,

“The right to religious freedom does not have its foundation in the subjective disposition of the person...but in his very nature....”

Let me also illustrate the influence of Murray and Wojtyla with two texts that pertain to the limitation of religious freedom by the demands of public order, beginning with a text that reflects the thought of Father Murray:

DH, 3: “It is therefore an injustice to the human person, and to the very order of human existence established by God, for men to be denied the free exercise of religion in society when the just public order is preserved...”

Later on, at DH, 8 the text seems to reflect Wojtyla’s concerns about grounding

public order limitations on religious freedom in the natural law: After stating that civil society has the right to protect itself against abuses that could be committed under the pretext of religious freedom it adds:

“This protection should not be provided in an arbitrary fashion... or by unjustly favoring one particular group, but according to juridical norms that conform to the objective moral order. Such norms are necessary for the effective protection of the rights of all citizens and the peaceful settlement of conflicts and rights...”

## The Debate Continues

The debate about DH continues at many levels; it includes those who believe that the interventions of Wojtyla, Ancel, et al gave definitive shape to the text and those who believe that those interventions were “add-ons” that enhanced but did not fundamentally change the teaching of DH that religious liberty is an essentially “negative” right, i.e., immunity from coercion. Unmistakably, both currents run through the text though I would venture to say that the interventions of Wojtyla were decisive in providing DH with a theological anthropology that comports best with other conciliar texts, notably *Gaudium et Spes*.

Father Murray reflects American Constitutional Law and tends to identify the Church’s teaching with it, yet American Constitutional Law does not give and does not claim to give a full accounting of the dignity of the human person, which, as we have seen, was further developed and enhanced by the Council itself and by the magisterium of Saint John Paul II and Pope Benedict XVI. Murray’s conception of religious freedom as immunity from coercion is not wrong (indeed one looks at it longingly these days) but again, in need of being complemented by a positive view of religious freedom, rooted in the transcendence of human nature. One of the ways we might celebrate the 50th anniversary of DH is to ponder how these differing streams of thought might be more fully integrated.

# Reason and Revelation

With that suggestion in mind, I turn to another contribution of DH in the ongoing search for religious freedom, namely, its appeal not only to reason but also to Revelation. And while the second part of DH is entitled, “Religious Freedom in the Light of Revelation”, let’s be clear that the entire Declaration is built on the foundation of a harmony between reason and Revelation. That said, Part Two offers a largely Scriptural account of religious freedom, resting on “a chief tenet of Catholic teaching...” viz., “that man’s response to God in faith should be voluntary” (DH, 10).

The Scriptural accounting does not present religious liberty as a clear and distinct biblical concept. Rather, it arises out of the image of the Savior as “meek and humble of heart”: Jesus who listened compassionately to those he encountered along the way; Jesus who showed compassion to erring sinners, yet challenged them to embrace the life-changing truth of the Gospel. Indeed it was he who said, “The truth will set you free!” Jesus taught us about the weeds and wheat growing together in the field yet warned us that one day we would give an accounting of our freedom. Jesus acknowledged the legitimacy of civil power “but he clearly warned that the higher rights of God must be upheld” (DH, 11).

Here we can clearly see how DH is both old and new. It rests on the Church’s settled teaching regarding the voluntary nature of the act of faith while in a new key teaching us how the Lord draws us to himself so as to evoke from us a free response of love. Here DH invites us to see wholehearted faith in Christ and in his Church as the ultimate fulfillment of the God-given gift of human freedom while at the same time not ruling out the religious freedom of those who fail to make an explicit act of faith or any act of faith at all. The document does not see human reason as “self-

contain