Religious Freedom Project
BERKLEY CENTER
for Religion, Peace & World Affairs
GEORGETOWN UNIVERSITY

Report of the Georgetown Symposium on
Catholic Perspectives on Religious Liberty
September 13, 2012
About the Berkley Center for Religion, Peace & World Affairs

The Berkley Center for Religion, Peace, and World Affairs at Georgetown University, created within the Office of the President in 2006, is dedicated to the interdisciplinary study of religion, ethics, and public life. Through research, teaching, and service, the center explores global challenges of democracy and human rights; economic and social development; international diplomacy; and interreligious understanding. Two premises guide the center’s work: that a deep examination of faith and values is critical to address these challenges, and that the open engagement of religious and cultural traditions with one another can promote peace.

About the Religious Freedom Project

The Religious Freedom Project (RFP) at Georgetown University’s Berkley Center for Religion, Peace, and World Affairs began in January 2011 with the generous support of the John Templeton Foundation. The RFP is the nation’s only university-based program devoted exclusively to the analysis of religious freedom, a basic human right restricted in many parts of the world. Our team of interdisciplinary scholars examines different understandings of religious liberty as it relates to other fundamental freedoms; its importance for democracy; and its role in social and economic development, international diplomacy, and the struggle against violent religious extremism. Our target audiences are the academy, the media, policymakers, and the general public, both here and abroad. For more information about the RFP’s research, teaching, publications, conferences, and workshops, visit http://berkleycenter.georgetown.edu/rfp.
On September 13, 2012, the Religious Freedom Project convened distinguished Catholic legal theorists, philosophers, political scientists, and theologians to discuss the meaning and value of religious liberty from different perspectives in the Roman Catholic tradition. Over the course of a daylong symposium, these scholars debated the legacy of *Dignitatis Humanae*, the Church’s landmark declaration on religious freedom issued in 1965.

In his keynote address, Cardinal Donald Wuerl, Archbishop of Washington, underscored the historical value and present-day promise of religious freedom on the shape and sustenance of American social and political structures.

The assembled scholars presented their views in three panel discussions. The first panel considered the message of *Dignitatis Humanae*, and the document’s standing within the tradition of Catholic social thought. Does *Dignitatis* represent a revision or a development of doctrine? What impact has it had on the spread of religious freedom and democracy in countries with Catholic populations?

The second panel weighed the impact of *Dignitatis* on the Church’s relationship with social movements, sovereign governments, and other faith-traditions with respect to the idea of human rights. That is, how has the Second Vatican Council’s affirmation of religious freedom affected the Church’s conception of international human rights law and practice?

The third panel explored the application of *Dignitatis* to hotly contested legal questions in the American political context. What happens when assertions of religious liberty collide with other rights’ claims, as has been the case in contentious debates over the HHS mandate and same-sex marriage?

Our invited scholars conducted a searching examination of the legacy of *Dignitatis Humanae*. They presented their views vigorously and with mutual respect. The result was a deeper understanding on the part of everyone present. We think you’ll find the following transcript of their conversations to be lively and enlightening.
Program

Panel I: *Dignitatis Humanae* and the Legacy of Vatican II
Panelists: Gerard Bradley, *Professor of Law, University of Notre Dame Law School*
Lisa Sowle Cahill, *J. Donald Monan Professor of Theology, Boston College*
Fr. John O’Malley, *Professor of Theology, Georgetown University*

Moderator: Thomas Farr, *Director, Religious Freedom Project*

**Keynote Address: Religious Liberty in a Pluralistic Society: The Legacy of *Dignitatis Humanae***
Introduction: John J. DeGioia, *President, Georgetown University*

Keynote Speaker: Cardinal Donald Wuerl, *Archbishop of Washington*

Panel II: Religious Freedom, the Church, and International Law
Panelists: Robert Destro, *Professor of Law, Columbus School of Law, The Catholic University of America*
Fr. John Langan, *Cardinal Bernardin Chair in Social Thought, Georgetown University*
Daniel Philpott, *Professor of Political Science, Notre Dame University*

Moderator: Marilyn McMorrow, *Visiting Assistant Professor, School of Foreign Service, Georgetown University*

Panel III: Conflicts Between Religious Freedom and Other Rights Claims
Panelists: Marc DeGirolami, *Associate Professor of Law, St. John’s University School of Law*
Cathleen Kaveny, *John P. Murphy Foundation Professor of Law and Professor of Theology, University of Notre Dame*
Mark Rienzi, *Associate Professor of Law, Columbus School of Law, The Catholic University of America*

Moderator: Thomas Banchoff, *Director, The Berkley Center for Religion, Peace & World Affairs*
THOMAS FARR: I will introduce our panelists in just a moment, but let me first do a bit of stage setting. *Dignitatis Humanae* is the Latin title for the Roman Catholic Church’s declaration on religious liberty. The Latin means “the dignity of the human person,” which gives you immediately a sense of what the Church is claiming. Of the sixteen documents that came out of the Second Vatican Council, this was by far the most contentious, and it remains so to this day, although the grounds of contention may have shifted. While there is probably less disagreement among Catholics over the normative value of *Dignitatis* to the Church and the world, there remain strong differences over the meaning of the religious freedom embraced in that document and how it emerged within the Catholic tradition.

Today we have assembled three highly accomplished Catholic scholars to discuss some of these disagreements and perhaps engage in some of those disagreements themselves. The great American Jesuit John Courtney Murray, who contributed himself so much to *Dignitatis*, once pointed out that what we call disagreement is sometimes merely confusion. Confusion is something to be avoided. Principled disagreement is an accomplishment, necessary for the proper functioning of a democracy.

So let us proceed. As a starting point, I put three questions to our panelists. First, what was the central teaching of *Dignitatis* with respect to religious freedom? Second, to what extent was *Dignitatis*’ approach to religious freedom in continuity with established church teaching, and to what extent did it mark a departure? Finally—and in some ways the most interesting question to me—how are the teachings of *Dignitatis* relevant to contemporary controversies surrounding religious liberty in the United States and around the world?

Speaking first will be Father John O’Malley, a Jesuit priest and university professor in the Department of Theology here at Georgetown. Next we will hear from Lisa Cahill, J. Donald Monan Professor in the Department of Theology at Boston College. Last will be Gerard Bradley, a professor of law at Notre Dame Law School.

FATHER JOHN O’MALLEY: I think my task is basically to set the stage for what is coming. The issue of church-state relationships originated in the early fourth century, when the Emperor Constantine convoked the Council of Nicaea, which he treated as if it were the ecclesiastical equivalent of the Roman Senate. Not only did he convoke the Council, but he also committed himself to implement the Council’s decrees as the law of the land. From that time forward, reciprocally helpful but fragile and often contentious partnerships developed, which existed in a wide variety of forms up to the sixteenth century.

When in that century it became clear that Protestantism was here
to stay, the principle of “cuius regio, eius religio” was applied in both Catholic and Protestant lands and evolved into what we know as established churches in confessionally committed states. In those states, one religious confession was privileged above all others to the point that the others might be illegal or at least subject to severe civil disabilities.

When the French Revolution swept away this marriage of throne and altar in Catholic lands, the popes of the nineteenth and early twentieth centuries tried to reinstate it whenever and wherever possible. As part of the heritage of the Enlightenment, however, a new problem had emerged: advocacy of religious liberty and freedom of conscience. In 1831 Pope Gregory XVI denounced these principles as an absurdity and as the beginning of the end of right order in society. Subsequent popes followed suit, but sometimes with qualifications.

In the 1950s, on the eve of Vatican II, the Supreme Sacred Congregation of the Holy Office of the Inquisition under Cardinal Alfredo Ottaviani insisted that the confessional state was the ideal, and he sought its implementation in concordats with Spain, Portugal, and other countries. In these confessional states, circumstances might warrant a certain toleration for other churches, but might also warrant imposing civil restrictions, especially prohibiting public cult. The paradox here is that the leaders of the Christian Democratic movement after World War II were Catholics—Gaspari in Italy, Adenauer in Germany, and de Gaulle in France—all of whom subscribed to the principle of religious liberty. Within the ranks of Catholic thinkers, moreover, Jacques Maritain in France, Pietro Pavan in Italy, and John Courtney Murray in the United States mounted arguments in favor of liberty that brought them into conflict with the Holy Office. Ottaviani was head of the Preparatory Theological Commission for the Council, and, as late as June of 1962, the draft of the church-state section of the decree of that commission on the Church stated that the Catholic state could legitimately put restrictions on the practice of other confessions. This section was dropped from the draft finally presented to the Council six months later on December 1, 1962.

Early the next year the Council relocated the church-state issue, removing it from Ottaviani’s commission and consigning it to the Secretariat for Promoting Christian Unity under Cardinal Augustin Bea. Meanwhile, just two months before his death, Pope John XXIII published his encyclical Pacem in Terris, ghost-written in part by Pavan, in which he asserted the right of all human beings to freedom of religion, a position strikingly opposed to that of the Holy Office. The decree that became Dignitatis Humanae was first briefly presented to the Council at the end of the second period, 1963, but it did not hit the floor for discussion until September of the next year, when it met vehement opposition. Except for perhaps Nostra Aetate, no other document had such a
The Vatican Council declares that the human person has a right to religious freedom. Freedom of this kind means that everyone should be immune from coercion by individuals, social groups, and every human power so that, within due limits, no men or women are forced to act against their convictions nor are any persons to be restrained from acting in accordance with their convictions in religious matters in private or in public, alone or in association with others. The Council further declares 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. This right must be given such recognition in the constitutional order of society as will make it a civil right.”

The document justifies this teaching by saying it “intends to develop the teaching of recent popes.” In fact, except for John XXIII, it contradicts the teaching of the popes. This is a good example of the euphemisms the Council employed that helped get documents passed but have led since then to serious controversies. Nonetheless, a decent argument can be made even in this case for a kind of development. The more basic justification the document addresses, however, is a form of resourcement, a going back to a more ancient and basic tradition in order to correct the present. In this case the more ancient teaching was, first, the free character of the act of faith, and second, the fact that obedience to one’s conscience is the norm to which everyone is held. Beyond those two fundamentals, the document argues that religious liberty is more in accord with the dignity of the human person and especially the dignity of the Christian.

So what? Well, first of all, Dignitatis Humanae does mark, as was often said at the time of the Council, “the end of the Constantinian era” for the Catholic Church, the end of the era that began with the Council of Nicaea. More specifically, the document marked and constituted a role-reversal for the Church. Instead of being the most prominent teacher of the legitimacy of religious repression, the Church now took its place among the teachers of the right to religious freedom. The document provided the Church, therefore, with a new message, a new mission, and a new job description: herald of a basic human right. Even before the Council ended, Pope Paul VI dramatized this 180 degree change when on November 4, 1965 he addressed the United Nations just after the Council had ratified Dignitatis Humanae by an overwhelmingly positive vote. In his address he commended the UN for its dedication to human rights and especially the right

“...
to freedom of religion. Such a statement from a pope would have been inconceivable just four years earlier. Thank you.

THOMAS FARR: Okay, so now we are up to 1965 and Paul VI at the United Nations. Lisa, take it from there.

LISA CAHILL: Well, one needs to say first of all that I am a Catholic theologian and a Catholic social ethicist—not a lawyer, not a historian, and not a politician. So I am approaching this from the standpoint of the effect of this discussion especially on my field, which is Catholic social ethics. And I am a great advocate of the public voice of the Catholic Church on that basis. So I have four or five points. The first thing about Dignitatis Humanae is that it presents religious freedom as a human right. And it is not only the freedom to have the truth, such as was the older view in which error had no rights, it is also the freedom to seek the truth as the individual, the tradition, the organization, and the Church see fit. So religious freedom now appears as a human right in a way which it never had before.

My second point is that the basis of the right is what we used to call natural law. I still like that term myself. And it has to do, as paragraph seven of Dignitatis insists repeatedly, with the dignity of the person and the common good. That same paragraph of the document uses phrases such as “the objective moral order” undergirds the right to “religious freedom, true justice, public morality, and public order.” In a footnote that was authored by John Courtney Murray, public order is further specified as the minimal standards of public morality enforced for all. The objective moral order is what Catholic ethics and Catholic social teaching of course are based on. The objective moral order can be equated neither with a general public consensus, which of course can fail to conform to the objective moral order. Nor is it to be equated with religious teaching, which is narrower. Both of those might be related to the objective moral order and both of them in fact might be indicators of a direction in which that order lies. But objective moral order means something a little different, and I would say is not always really easy to ascertain. It is the objective moral order and public order that established the right to religious freedom and also limits that right. Also heard in the process is a premise or affirmation of the natural law as the basis of the objective moral order. There was a later encyclical written by John Paul II called Redemptor Hominis which comments specifically on Dignitatis Humanae in paragraph 17 and further builds out this idea of objective morality using these terms: “human experience,” “reason,” “dignity,” “justice,” “the authentically human.” This is what the objective order is about.

My third point is that religious liberty is defined not only in terms of freedom from coercion, but also freedom from restraint in the practice of religion. And this I believe includes not only religious individuals, but also the national and international leadership of religious bodies, including the Vatican, its representatives, and our Catholic bishops. And we see that free exercise of religious conviction in the moral order based on objective morality, reason, public order, and so on was expressed in and motivated by encyclicals such as John XXIII, Pacem in Terris; Paul VI, Populorum Progressio; John Paul II, Solicitudo Rei Socialis and Centesimus Annus; and of course Benedict XVI, Caritas in Veritate. All of those have to do with national and international issues of the common good, human dignity, and justice.

Lisa Cahill

“Religious liberty is defined [by Dignitatis Humanae] not only in terms of freedom from coercion, but also freedom from restraint in the practice of religion. And this I believe includes not only religious individuals, but also the national and international leadership of religious bodies, including the Vatican, its representatives, and our Catholic bishops. And we see that free exercise of religious conviction in the moral order based on objective morality, reason, public order, and so on was expressed in and motivated by encyclicals such as John XXIII, Pacem in Terris; Paul VI, Populorum Progressio; John Paul II, Solicitudo Rei Socialis and Centesimus Annus; and of course Benedict XVI, Caritas in Veritate. All of those have to do with national and international issues of the common good, human dignity, and justice.

There have also been papal and other ecclesial documents having to do not so much with social justice issues, but with life issues. Of course those are not separate, but to me the most successful and influential public document of the Church, a document that had an impact on the public order in this regard, was Humanae Vitae. It was instruction on reproductive technology that was published in 1968. It was in the middle of a big national and international debate about the morality and the proper restrictions on or guid-
morality and the requirements of the public order. We must acknowledge that there will be problems and gray areas. We do not have a lock down on every argument about every item, particularly, as Thomas Aquinas said, the more we descend to matters of detail. As he pointed out, those matters of detail are contingent matters. There will not always be certainty. There will not always be agreement and there will not always be the same right solution for every situation. In my opinion the political discussion in this country is far too polarized. I would hate to see our Church or other religious groups contribute to that polarization rather than attempting to bridge it. And personal disagreements are one thing, but I think we have plenty of disagreements in our political atmosphere. What we need now are some bridges to be built. I personally do not believe that either Christian or Catholic religious liberty or reproductive rights are under serious threat in this country. Much more civil discussion is needed and we need to pursue what John Paul II called for, as cited in our bishop’s guide to faithful citizenship, what John Paul II called the “art of the possible”—and he used that phrase actually in reference to abortion laws. So I know that we have complicated matters out there: universal healthcare, the budget, the nature and funding of a federal benefit program, military policy, measures to promote racial equality, education, and employment. But the conversation needs to be had and the polarization needs to be reduced.

Catholic social teaching and our responsibility to freely exercise our religion call us to be a force for the common good and the Gospel calls us to be a force for reconciliation.

One final point that I will make is about the definition of what is a religious institution. So obviously I have been looking at our Catholic tradition quite broadly as a religious institution that should have a voice in this society. While I am a strong advocate of healthcare reform and I do think there should be compromise on the HHS mandate, I also do believe that the HHS definition of a religious institution is too narrow. Catholic hospitals and Catholic universities are Catholic institutions. I do not mean that to settle the question of whether they should have to fund contraceptive coverage. That is one of those other difficult issues that have to be negotiated. But certainly from a Catholic standpoint, our social mission is to work with others outside of our own tradition and to serve all. So on that basis, again, I would call us simply to try to be a force for civil conversation and for a better political atmosphere and a healthier outcome in terms of public policy. Thank you.


GERARD BRADLEY: Well thanks, Tom. Tom put a lot on our plates. He gave us three questions to consider: what is the central
teaching of *Dignitatis Humanae*, what is new and what is not new, and its relevance to the contemporary world, America, and beyond. I thank him for the confidence that he’s exhibiting in each one of us by giving us such a big assignment. Each one of those questions could and has called for book length treatments by others. And Tom, in a further display of confidence in us, has given us a whole eight to ten minutes to handle this.

THOMAS FARR: Most of which is already gone, Gerry [LAUGHTER].

GERARD BRADLEY: Yes, I’m trying to be charming and clever [LAUGHTER]. I’ve wasted one quarter of my time, so I’m going to cut to the chase.

I think it is pretty certain that the new part of *Dignitatis Humanae* has to do with the public manifestation of non-Catholic religions. I think *Dignitatis Humanae* affirms the right of all persons, no matter what their religion, to profess, propagate, and manifest their religions in public and in private, as well as in groups, and whether they are living in a non-Catholic or predominately Catholic society. Now I think this is new, and *Dignitatis* is referring most of all to this new thing in its own paragraph 12 where—perhaps in an example of the kind of benign expression that Father O’Malley referred to in a different context earlier—there is an attempt to keep up as much continuity as possible. But in *Dignitatis Humanae* 12, the Council fathers say that through its pilgrimage in history there have been times when the Church has acted in a way that is contrary to the spirit of the Gospel and I think that refers most of all to instances of violent suppression of non-Catholic religions. But nonetheless, in *Dignitatis* 12 the fathers affirmed that the doctrine, the teaching of the Church, has remained intact.

Now I think that there are many sources of this new thing. I think it was at the time in the mid-1960s probably in the dominant stream of Catholic, philosophical, and theological thought. I think it was in the middle of elite opinion, Cardinal Ottavi-ani notwithstanding, and it has, I think, its deepest roots in the norm or truth that goes back to the Gospel, which of course is that people must come to the Gospel freely. And I think that the Church, its teachings and its behavior, by and large through the centuries, in season and out, respected that truth—that people should not be forcibly baptized. Now with regard to the freedom of people to leave the faith and not to be violently or coercively brought back to the faith, the treatment of heretics and apostates, there I think the matter is much darker. The Church has not respected the freedom of persons to exit the faith that they have been baptized into. It is a long and dark history of suppression of heretics, apostates, and the suppression of non-Catholic believers. Nevertheless I think if you look with as much care as you can muster at that tradition of violent suppression of apostasy, heresy, and non-Catholic religions, it will be difficult to identify very many instances where the suppression—which was wrong in any event—where the suppression itself was precisely to bring persons back to the faith in the case of heresy and apostasy or to forcibly convert non-Catholics. I think there were other ends in view, such as preventing scandal to those Catholics who remained in the population; to reunify the political order where the political order itself was understood to be a Catholic political order; to bring back the individual apostate or heretic to a Christian way of life—and of course the most often stated grounds in this regard was to make a person live up to their promises, promises made at baptism either individually or by the godparents in the case of infant baptism. I think this is the core of *Dignitatis Humanae*. It is even the core explanation of what is new and it goes back to Jesus.

But I think that we can say a little bit more about what is new and what is more in *Dignitatis Humanae* and here I will turn to what I think is maybe most relevant or most pertinent, the most important takeaway; that is, to look at what is driving this recognition of the rights of all persons to freedom from coercion.
It is not only the freedom with which a person should come to faith, but rather an increasing understanding and appreciation of the overriding importance that people do so. This is seen from the front to the back of *Dignitatis Humanae*, but really I think woven all through the first half of it, the natural law part of it if you will. What centrally is being said there is that people have come to see that each one must have an authentic engagement with the search for truth, that each one must appropriate what one comes to believe is true and direct his or her life according to that truth. That simply has come to be appreciated as more important, more urgent, of greater value than, for example, stymieing an appearance of religious indifferentism or preventing scandal for the simple-minded faithful.

So this is the new underwriter of religious freedom, and here I think the best example of what I am trying to describe outside of the pages comes from Wojtyla which was during the course of the discussion of *Dignitatis Humanae*. Speaking on behalf of the entire Polish Bishop’s Conference, Wojtyla offered up an account of why the Council was recognizing everyone’s religious liberty in a way that was new. Throughout his comments he emphasizes the relationship between liberty and moral duty, that liberty of religion must be seen precisely in light of man’s moral responsibility. He says that the liberty is large or maximum because religion, the relationship to God, is of maximal importance. And again this is the part that I think we commentators on *Dignitatis*, American Catholics and Catholics throughout the world, have neglected. The moral duty is of overriding importance as the fuel or the propellers of the freedom from coercion.

and the notion that religion is a zone of transcendent truth. Now why do I think this is especially important?

Well, let me try to explain in about one minute. Farr is giving me the green light.

THOMAS FARR: You get two [LAUGHTER].

GERARD BRADLEY: Tom has made me especially comfortable by arranging this to look like our living room, or as if I’m on the Letterman Show [LAUGHTER].

But as we go forward facing threats to religious liberty from, let’s say, a kind of communitarian right—maybe in some Islamic countries especially—there is a difference with countries, not just Islamic, where religion is embedded in a social order and where the site of liberty, you might say, is still the community or even the political society and where conformity to what others believe is still part of that society’s understanding of its own political unity. In some places there is that kind of social understanding that religion is connected with prevailing social practices and unifying norms. On the other hand, in America the trend is to a greater individual liberty without an accompanying sense of responsibility, and in America the zone of religion is not so much a zone of transcendent truth, but rather religion finds itself in a zone of identity or discovery of establishing one’s personality, of coming to grips with the person I am and establishing it and announcing it to the world. So you might say on the liberal left or individualist side, there are the tendencies of a cultural granting of freedom
of religion within persons, where on the right you might say it is turning into society. And in either case there are firm cultural commitments to religion as transcending the political order.

So I suggest that it is a good time to mine, recover, and to propagate the norm of *Dignitatis Humanae* by locating this liberty as an object in something beyond the political order, which is clearly what the document is talking about. There is a much better chance of religious liberty doing the one thing that it really ought to do, which is limit the state, to hold back Leviathan. Locating the object beyond the political order will solve some of the problems or ameliorate some of the negative tendencies I just described, and by emphasizing individual moral responsibility, we can ameliorate some of the other bad tendencies or negative effects. I think especially in our own situation in America we have come to a point where religious liberty seems to have become merged with or subsumed by a wider personal liberty. As the Supreme Court said about 20 years ago, “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” This is a kind of voyage of self-discovery and self-assertion of one’s stance in the world within which you can find religious liberty.

But that is not the kind of religious liberty that we see in *Dignitatis Humanae*. And further, to Tom’s great relief, I sayeth not.

**THOMAS FARR:** Great, thank you, Gerry. That is a great start, but I want to stimulate a little more controversy than we have gotten so far here. I want to spend a minute on this issue of development of doctrine. Each of you mentioned it in some way. Non-Catholics and many Catholics probably wonder what difference it makes. I believe Father O’Malley said basically there was a break; certainly *Dignitatis* contradicted the popes. You said that the best case for development—and I’m paraphrasing here—is that it went back to the deep past to correct the present. Gerry Bradley quoted from the document itself saying no, this is a development of doctrine. Well what difference does it make? If *Dignitatis* constitutes a break with the past does that remove limiting principles for what Church teaching might become in the future? Or is there another way to approach this? Why should anybody care? Father?

**FATHER JOHN O’MALLEY:** Well I think it is a very basic issue and it speaks to how you look at the tradition of the Church. And that is what we are all engaged in. Every theologian is engaged in that. And the trouble with this idea of development of doctrine is that it is a nineteenth century idea. John Henry New- man gave his classic formulation and it is extremely helpful and it works for a lot of things. And a good example in the 1950s was the development of Mariology, right? So one goes back to conception and the assumption we’re building on that so you see a continuity. But it does not answer all the questions about what goes on with our tradition. One thing that goes on within our tradition, this idea of reform, is a resourcement, that is to say going back to an older, presumably more fundamental tradition to correct the present. And so you have to have both of those working. Otherwise I think you do not do justice to the way the tradition has worked and should work.

**THOMAS FARR:** Lisa?

**LISA CAHILL:** Well I was just going to say to even talk about development of doctrine has to mean there is something new or there was no development. And it has to mean it is in continuity with the past or it is not doctrine. So obviously it’s both ends. I would also emphasize, going back to the history that Father O’Malley gave of the document *Dignitatis Humanae*, that the development of doctrine is very messy. There is no one set of criteria by which we can ascertain that this is an authentic development and not one occasion. Development of doctrine usually takes decades or even centuries as in this particular case. And it will be disputed. Yes, it will be contentious. That is part of the problem or part of the reality.

**THOMAS FARR:** Gerry, I want you to address this, but let me just throw in that this has relevance not just to the Catholic tradition, but also to the Islamic tradition. As far as I know, Islam has no Newman-type theory to articulate how development of doctrine might take place. Some would argue that there is a need for an Islamic theory precisely on the issue we are talking about today, on religious freedom. What is the theological and philosophical basis on which to claim this as a development in Islamic doctrine? So this is not just a Catholic issue. It is also important to issues that we are dealing with in the Islamic world.

**GERARD BRADLEY:** Well I think that many writers about *Dignitatis Humanae*, including John Courtney Murray, would say there is legitimate development of doctrine, insofar as Murray and many others have really stressed the location of the teaching of *Dignitatis* in modern circumstances, stressing the context in which teachings were announced. I think that there is a danger there of historicizing everything and I think that is a danger to be resisted and a danger that can be avoided. But nonetheless I do think that it is clearly the case that there is a repudiation effectively in *Dignitatis* of much that came before
with regard to the public manifestation of non-Catholic religions. What came before—papal policies, the concordats that Father O’Malley mentioned even into the twentieth century, papal teaching, theological opinion, respectable and otherwise, practices of Catholic states and rulers—we all have that as effectively repudiated.

What I do not think is repudiated in Dignitatis Humanae is anything that came before that was taught by the Magisterium as certainly true. The heart of Dignitatis is something that has always been taught as certainly true—that people have to come to the faith freely. I think that there is a continuous development of that norm in the tradition. As the document says, given contemporary demands for recognition of greater or more human dignity, this is the sort of new thing mined from primordial freedom. And I just might say one more thing about the moral duty, the inalienable moral duty which as I said before is not stressed enough. Dignitatis Humanae says the state must give up on coercing persons, and it says that coercion by civil authority is out. They say, of course, on the other hand that the moral duty of persons and society is to recognize the truth about religion. In the Gospels, of course, Jesus never is calling for anybody to be coerced, but Jesus condemned very harshly those people who he thought should believe but did not.

FATHER JOHN O’MALLEY: I just want to call attention to this whole issue of development of doctrine and what went on with Dignitatis Humanae. Benedict XVI talked about a hermeneutic of reform for Vatican II to the Roman Curia on December 22, 2005. One of his very crucial questions was, “What is reform?” Vatican II is a council of reform. It is a judicious blending, at different levels, of continuity and discontinuity. It seems to me that, in a few words, there is nothing really new. We are always in continuity with the past and yet there are new things; sometimes those new things come from repudiating at least the immediate past. And that is essentially what happens here, with a repudiation of ideas and principles that got especially formulated in the nineteenth century.

THOMAS FARR: Several questions emerge from this discussion. First, can this kind of reform lead to an evolution of Church teachings on sexuality and marriage? Is there a limiting principle that would prevent that? Second, Gerry, you have written a book about the American founding, and today you spoke about man’s duty. Religious freedom is not simply freedom from coercion; it is also the freedom to exercise the duty. This sounded a lot like James Madison. I am wondering if Catholics are discovering something from essentially a Protestant founding of this country? Are they reaffirming something that the founders of the country understood?

GERARD BRADLEY: Well it certainly does sound like Madison, maybe most famously in Madison’s Memorial and Remonstrance, which he composed in 1785. It was a document collecting and articulating arguments against a proposed tax in Virginia, which would be on all persons, to support Christian ministers. I’ll paraphrase from memory, but I think the text is close to this: The foundation of religious liberty is the duty which we owe to our Creator and the manner of discharging this duty must be by reason and conviction, not by force and violence.

Now that sounds much like Dignitatis Humanae. Madison there is not articulating an extension of political theory to a particular area. It is not even a political ethic. Pretty clearly what Madison is talking about, and correspondingly Dignitatis is talking about, is the truth about God, the truth about religion, and the truth about human beings, namely that religion is the kind of thing that you have to appropriate for yourself for it to be of any real value to you. And this is what God wants. So, again, Madison
is like Dignitatis in that respect. Now whether Catholics have discovered the founding or what to make of it, I do not know. Of course Murray was a great student of the founding. I think not as careful or as informed a student as perhaps sometimes we think he was, but he certainly knew plenty about the founding. But I think he went to the founding not with the kind of historian’s eye for detail, but looking for materials with which he could synthesize and schematize to find in the founding a kind of proto-Catholic outlook. And I do not think Murray has made as much of Madison as perhaps he might have. Murray’s view was in the second and third drafts of Dignitatis Humanae, Murray’s view being more specifically that the state is incompetent in matters of religion. And I do not think Murray has made as much of Madison as perhaps he might have. Murray’s view was in the second and third drafts of Dignitatis Humanae, Murray’s view being more specifically that the state is incompetent in matters of religion. And that I think was maybe one of Murray’s main thoughts about church-state relations in American history.

That thought actually didn’t make it into Dignitatis. There was a great push back not only from conservatives in the faith, but many others at the Council. It did not make it to the end. I do not think Murray was right about the finding in that respect, nor is it what Dignitatis Humanae ended up saying. It really ends up grounded in the truth about religion and ethics rather than in a truth, so to speak, of constitutional limitations upon democratic government.

Thomas Farr: Well, Father, jump in here if you like, but even if Murray did not directly quote or adduce Madison, did not Madison also say in the Memorial and Remonstrance that this duty is prior to and precedent to that of any other duty in civil society, which seems to me to be very much a limiting principle on the state and affirming the incompetence of the state which Murray two centuries later affirmed? I just hear these echoes in the American founding. Did you want to add anything to that, Father or Lisa?

Lisa Cahill: I have something. So first of all, I really liked Gerry’s point that there is actually a human value and a responsibility to seek to know religious truth and that is a basis of the right to religious freedom. But I have not talked about natural law and it is something that goes back before Madison to Thomas Aquinas in his Treatise on Law. The question in natural law goes through various levels of existence saying to what ends or goods are these levels inclined? When Aquinas gets to humans he says human beings distinctively seek to live together in political society and seek to know the truth about God. So it is not so much that a certain religious belief is a matter of natural law, but he just says all human beings seek to know the truth about God. The one qualification I would make is what Gerry said is that religious traditions, or Catholicism at least, and democratic societies promote this human inclination to seek to know the truth about God and he contrasted that to an individualistic view where the truth is found within one’s self. That is a highly communal view, where the political community is the locus of truth. I always find it better to try to find the value and the meaning in other points of view and I would say that individuals seeking to know the truth like spirituality do believe that there is a transcendent and they are seeking to find it. However they are mistaken that they can find that only by looking inward because, as Charles Taylor pointed out in his book Ethics of Authenticity, we are all formed by communities and traditions. There is no such thing as a naked, authentic self that has no social debt or no social formation. And on the other side if you take a Muslim community or a very traditional religious community of some type, it is not true that they think there is nothing transcendent—it is just that they identify that political community and its specific arrangements at that time with the only locus through which the transcendent can be encountered. And you are saying no, it should be broader, which I totally agree with, but your basic point I thought was very well taken.

Gerard Bradley: That is a good point. Taylor is quite right. We use the language or rhetoric of “inventing ourselves,” but people don’t. We are cultural products much more than we
think. I think that is true and I suppose I should emphasize in that respect then the importance of having a culture—supported in important but secondary ways by law—which encourages everyone to engage in the authentic search for truth, a culture in which religion is understood to be a zone of truth and which people are responsible for the religious class.

With regard to the inward turn in our own culture there is a real difference, maybe an unbridgeable difference, between a view about what one is doing when one is engaging in a certain authentic search for identity, and engaging in a search for the truth about the transcendent. It seems to me that believing or not believing that there is a reality beyond what we can see and beyond temporal matter is accessible in some manner only when there is a God who has revealed himself or itself. So that thinking is very different than thinking that what I want to be doing is establishing or discovering my individuality. The two I suppose could overlap in some unusual case, but they are two different operations. And I think that we tend towards thinking the latter: the search for individual authenticity as such, as a kind of terminal point for identity, is beginning or has already begun to swallow up, you know, the search for the transcendent.

While on the transcendent, Tom is quite right—even in Madison's first paragraph he uses a couple of phrases, one is the universal sovereign and the other is the great governor of the universe, referring to this God. So the God that is not only out there and in some kind of communication with a person, but is actually interested in governing or setting norms is the source of norms. So God is the source of greater than human norms and values, and if you buy into that view of what's out there, again, it's going to be different on the ground than if one is looking for one's own identity or discovering one's passions.

THOMAS FARR: Very good. All right, let's go to the audience.

JOSÉ CASANOVA (Georgetown University): My comment is actually a reference to the final paragraph of Dignitatis Humanae—which in a way points to this issue not of development of doctrine, but of a changing context within which doctrine has to be formulated and this is this new global world we are entering of many religions and many cultures—which points to other crucial documents of Vatican II, Nostra Aetate and Gaudium et Spes. Nostra Aetate, which is of course the document on interreligious dialogue with non-Christians or with non-Catholics, and Gaudium et Spes, which is the constitution of the Church in the modern world. All three council documents make reference to the “signs of the times”. If you compare Vatican I, in which 80 percent of all the bishops were Europeans and 20 percent North Americans, to 1965, when the majority of fathers of the council were already from non-Europeans, the latter means a new context for the global Church which understands its message cannot be Western-centric, but open to a new context. So I think this is very, very important and is the context within which Dignitatis Humanae also has to be understood.

FATHER JOHN O’MALLEY: Let me just underscore something there, José. We have talked about development of doctrine. We have talked about resourcement going back to the past, but also the other feature of Dignitatis Humanae, as well as other documents that you pointed out, is this attempt at aggiornamento—you're influenced by the culture and, this is important in the way the church operates, to try to conform to that and to try to move in that direction.

AUDIENCE MEMBER: Lisa, first of all, you were talking about the futility of bringing religious languages into the public forum and the usefulness of that. There is one thing out of Murray's quiver that might be helpful for you. He did in the late 1950s make the argument that in the public schools, teachers of the religious faiths ought to be teaching our students those faiths. What he was interested in was, of course, knowing what the other is about, but he was more interested in people of faith being able to spell out the link between their own policy choices and their deeper commitments, for the sake of public trust. It was for the sake of public trust that we ought to be able to bring our religious languages into the public forum. If we cannot demonstrate a link between a policy such as religious freedom and our deeper commitments, then we have to deal with that in the public forum. But it is a demand that puts a lot of responsibility on those people of faith for the level of public trust within a society. So that, I think, would actually draw us into further issues that we will be talking about today.

Also Murray was not happy with the final arguments in Dignitatis, not just the limitation of the state as the primary norm. He spent the last two years of his life trying to argue on the basis of social moral agency, the responsibility of us all to develop the deeper commitments within our social reality and the attempt to ground that. One last issue, which John and I have worked on before, is that Murray would argue the importance of natural law. Murray argued almost to the point that religious freedom as we now understand it, as social moral agency for the common good and a conversation, is a new revelation. It is not simply a return to the past and a correction of errors; it is learning something from outside of the Church in the contemporary world that we did
not know before and he took this as even putting demands on the revelation that we have seen before. It is a viewpoint on the development of doctrine that has a lot to tell us about the pluralistic religious environments that we are currently in and where we look for God in our future as well as God in our own past.

FATHER JOHN O’MALLEY: Well that is a very, very deep annunciation of the principle of aggiornamento. It takes it to a whole different depth, what you just said.

THOMAS FARR: Very good, thank you very much. For those of you who are not familiar with John Courtney Murray, he was not a pope [LAUGHTER], but he did have a great deal to do with the issues that we are talking about here and he is a very important, arguably the most important, American figure in our discussion of Dignitatis Humanae.

AUDIENCE MEMBER: My question has to do with the hermeneutic of interpreting Vatican II. It was pointed out by Father O’Malley that Pope Benedict has been emphasizing a hermeneutic of reform versus a hermeneutic of rupture, and part of what I think theologians and ethicists are trying to do is figure out exactly what that means in terms of the balance between resourcement and aggiornamento.

Certainly in terms of the liturgical reforms that we have had, we have seen more resourcement and more emphasizing continuity with the Council of Trent. My question for the panelists is whether you see this emphasis on continuity rather than the new moment, rather than reform in the area of religious liberty, as well. And one of the things I am thinking of was an article by Thomas Pink in First Things arguing that the Church does have jurisdiction to coerce at least the baptized, arguing in some sense that they freely consented even though they were tiny babies, and that it can, but does not have to, delegate that responsibility to the state. And right now we are not doing it and we could do it, and that seems to me at least to be approaching almost sideways the old thesis-hypothesis approach and therefore not very much development. I would like to hear what our distinguished and brilliant panelists have to say about that.

GERARD BRADLEY: Do I have to be distinguished and brilliant or can I talk anyway? [LAUGHTER]

THOMAS FARR: You can answer it anyway.

GERARD BRADLEY: Pink’s article in First Things is very provocative. Its main thesis, is that we should read Dignitatis Humanae jurisdictionally. I am not sure that Pink is asserting so much; it is really what the council fathers were trying to articulate. He said that the tradition going way back is that the Church itself possesses, as an original matter and by divine commission, a right to coerce in the interest of faith, which as [the audience member] says, the Church for a long time with great frequency would delegate to the state or would request the state to execute a coercive sentence that the Church itself rightly imposed. I do not think that is sound for a couple of reasons. I think that Dignitatis in this case self-consciously steers around that coercion that is internal to a system of canon law and Church household maintenance. That is, within the church there are coercive penalties such as interdict and excommunication, and if a parish is closed and people want to occupy it anyway, I suppose the Church can call in civil authorities to evict the trespassers. So the Church has a certain internal coercive authority which clearly is limited to those who buy into it; that is to say, in this view, the Church’s authority extends to those who voluntarily remain within the household of faith, and you always have the option of just going away. I do think the council steers clear around that.

Now as to civil authority and the Church, which is what really Pink is saying, I think he is just mistaken. Dignitatis Humanae unequivocally states that all persons have this right against coercion by anyone else. It is not just a doctrine about civil authority but that everyone should avoid coercion, manipulation, undue pressure and manipulation of people when it comes to matters of religion. So it does seem to me that Dignitatis Humanae, on its own terms, is articulating a human right. That is to say, there is an ethical, moral duty on everyone to avoid coercion, manipulation, and pressure, which corresponds to a right on the part of everyone to be free of that coercion. That is definitely not what Pink wants to say. In Pink’s view the alternatives are a jurisdiction-centered view and then a human rights view. I think the latter is not only really the way to read Dignitatis but I think it is firmly rooted in the tradition, and I just do not think that the jurisdictional view has legs.

ROGER TRIGG (Oxford University): I would like to just press the panel a bit more about some of the issues that arose from what Thomas Pink was saying. We can all agree that Dignitatis Humanae is talking about church-state relations, but how far did it involve a change in the view of the Catholic Church to its own members, particularly if you actually do count membership as the baptized, which might include Protestants? If you say, “Well, Dignitatis does not actually involve any radical change,” then you could still be justifying the Inquisition, and apostasy and heresy therefore ought to be stamped on very, very vigorously. If you
do, as Gerry was saying, respect the conscience of the individual in a very strong sense, the Church should be standing back a little bit even from the conscience of its own members. Now as Pink says, this is more than just membership rules because obviously if you belong to a community you would abide by its rules. The Church seems to be saying something a lot more than that to its own members and particularly those who have been, in a sense, signed up to it on their behalf by godparents or whoever. So there are quite big issues about the relationship of the Church and its respect for the freedom of the people who actually are its own members.

THOMAS FARR: I suppose another way to ask the same question is how Dignitatis addresses dissent.

FATHER JOHN O’MALLEY: Well this is the issue that actually was one of the objections that the people opposed to the document raised, that it exalted conscience over obedience and over discipline, and so the issue was there in the Council itself but not resolved.

LISA CAHILL: I think where we come back to, though, is whether you can transpose that criterion of what is the minimal restriction necessary for public order and the common good and relate that internally to the Church, and that is precisely where people disagree. How much disagreement, discussion, variation in viewpoint within the Church is consistent with the identity of the Church and its teaching mission, and where has it gone so far that we just have kind of a random pluralism where we have lost our center. I do think that there are central values within our tradition about sex and marriage, for example, or about the economy, about war and peace. But I do not think that every particular detailed teaching of the Church at a given time in history is necessarily indivisibly locked into that center. There is a productive pluralism, diversity, and exchange. I always think of the model of the New Testament with four different gospels written for four different communities, and they are not alike in every respect but there is a visible unity. And so the struggle that we are always having is how much diversity can exist within a visible unity and I just do not think there is an easy answer to that. I definitely think that—as Gerry pointed out and expressed so eloquently—that there should be not just a right but a duty to responsibly seek the truth that is part of our exercise of religious vocation even within the Church and that it is internal, not just external.

THOMAS FARR: Murray did the footnotes to Dignitatis in the Walter Abbott edition of the council documents. In one of Murray’s footnotes he talks about this issue of freedom of conscience within the church. He said that freedom of conscience is nowhere addressed in this document as it is often meant in modern terminology. It does not say that “Conscience means that I have the right to do whatever my conscience tells me to do simply because my conscience tells me I can do it.” So here he attempted to express in a footnote the limiting principles.

GERARD BRADLEY: That is quite right. Leon Hooper and many of us present, including the panelists, probably know better than I do, and in some cases surely know better than I do, exactly what Murray meant. Murray would say that the document is not really about conscience or it is not about freedom of conscience. I have always been a bit perplexed by that statement to be honest with you. So I do not profess to have much insight into what Murray was thinking, but surely it is the case that it is a hijacking of Dignitatis Humanae by hostile forces to make it say something like that—that a conscientious judgment is sort of self-authenticating in that it is a warrant to do as one pleases, perhaps minus tangible harm or absent tangible harm to others. That is a hijacking of Dignitatis Humanae for sure.

FATHER JOHN O’MALLEY: It is a clear document—I mean that is not the right interpretation of it.

THOMAS FARR: But the issue of dissent within the church, Gerry, did you want to address that?
GERARD BRADLEY: I think that Dignitatis does not quite get up to addressing the matter of dissent because its addressees are really the poor, and especially states in the world. So I do not think it speaks directly to the matter of dissent in the Church and I do not think it does so in any sort of significant way inferentially or implicitly for that matter. What I mean to say is that it is really about the sort of authenticity of the quest of each individual being free from coercion. At the same time it affirms a duty of society towards the Church and to the truth about Christ. Now where does that leave one? I do not think that leaves one in any more lucid position when one’s conscientious thoughts and exploration lead one to conclude, just for example, that something the Church teaches as certainly true you judge it to be false. Now I do not think that Dignitatis addresses that situation. I think it leaves in sight whatever other learning we can gain from the council or any other parts of the tradition about that situation. So the limits of legitimate dissent and where they turn into a kind of heresy or apostasy, I think that is left to other sources at the council and other sources within the tradition. And I do not think Dignitatis itself comprises itself a kind of an extravagant dissent so that one remains just as Catholic even as one denies this or that truth affirmed as true by the Church.

LISA CAHILL: What the Church teaches in the moral areas which would have to do with the economy, war and peace, and sex and gender issues are according to our tradition grounded in the natural law. So Church teaching itself should be defensible on the basis of, to cite Redemptor Hominis, human experience, the authentically human reason. John Paul II said specifically that they are defensible on not purely religious arguments. And this is where I have a big question or problem with some of the religious liberty rhetoric as well as some of the arguments that are taught by the Church—that they precede from the attempt to defend and the necessity to keep in conversation about the ways in which these teachings are grounded in human dignity and the common good. And that is a bar that has to be met. We cannot just set that aside and simply resort to religious authority, revelation, and authoritative teaching because it is undermining the credibility of the public religious witness that we could otherwise have.

THOMAS FARR: I think we achieved a disagreement here [LAUGHTER].

GERARD BRADLEY: Or at least a partial disagreement in this way, and I will just try to be brief. Now I do think at least in the moral area, leaving aside dogmas like the Assumption and the Trinity where you are not going to get too much of a rational account of what it means or how it could occur, but let us say in the area of social life and sexual ethics, I mean I certainly think it is true that Church authorities and Catholics generally ought to give it the best account they can on natural grounds or reasonable grounds of why these things are true. And I think pretty much across the board one can do that to a degree of cogency that is becoming of the Church. I do not know if this is disagreement, but the thing that makes a difference between judgment—let us say that all life is inviolate, or capital punishment is always wrong, or sex in marriage but not outside of marriage—whatever the teaching in particular is, the difference between a judgment based on grounds of reason that those conclusions are almost certainly true or look true to me and holding them as certainly true is the Holy Spirit. I mean I cannot think of any reason why someone should take the view that on grounds of reason alone you might say one can be sure of that. This is not only true today, it was always true and always will be true. Maybe that can happen in some cases, I am not sure, but it seems to me that one ought to believe rather few things to be propositions, to be certainly true absent a guarantee stemming from Christ that the Holy Spirit will keep the Church on track.

That is not to abandon reason. That is just to say that the clinching reason is authority. I believe because it is taught, and it can be completely reasonable to believe because it is taught. So it is not blindly adhering to authority—it is affirming that if the authority teaches such and such is the case, then that itself is a reason and in this case a clinching reason.

THOMAS FARR: That, I think, sets the stage for much of the discussion that is going to happen later today. Thank you.

“We have talked about development of doctrine. We have talked about resourcement going back to the past, but also the other feature of Dignitatis Humanae… is this attempt at aggiornamento—you’re influenced by the culture and, this is important in the way the Church operates, to try to conform to that and to try to move in that direction.”

Father John O’Malley
THOMAS BANCHOFF: I’m delighted to welcome you to our keynote address this afternoon by His Eminence Cardinal Donald Wuerl on the topic “Religious Liberty in a Pluralistic Society: The Legacy of Dignitatis Humanae.” But first a bit of background on the symposium as a whole, which is co-sponsored by the Maryland Bishops Conference and by our Religious Freedom Project here at the center and at Georgetown. The project, under the leadership of my colleagues, Tom Farr and Tim Shah, is designed to generate scholarship in teaching and inform policy debate about the meaning and implications of religious freedom in our contemporary world. When we began our work in early 2011, with the generous support of the John Templeton Foundation, religious freedom really was not in the headlines as it is now. We cannot claim credit for that, but we do see it as an opportunity to elevate and to inform debate on a set of issues critical to the academy, critical to our country, and critical to the world. Now, given the Catholic Church’s strong advocacy of religious freedom since the Second Vatican Council, our symposium today is especially timely in the light of its central role in contemporary controversies. It is an opportunity to bring together and discuss different Catholic perspectives on religious liberty, an opportunity to listen and to learn from each other in the spirit of truth and collegiality.

It is now my pleasure to introduce President John J. DeGioia. Dr. DeGioia has served as the forty-eighth president of Georgetown since 2001. Over the past decade under President DeGioia, Georgetown has emerged as a global force in higher education and as an innovator in our efforts to link up our core mission of teaching and research with service to the wider world in the Catholic and Jesuit tradition.

JOHN J. DEGIOIA: Thanks very much Tom, and thank you for your leadership with the Berkley Center. I would also like to welcome and thank my dear friend and colleague, John Garvey, for joining us today. As you know, John is president of The Catholic University of America and we are deeply appreciative of his presence here today. I would like to note that, just yesterday, Catholic University hosted its own conference on religious freedom. This conference focused on the international dimensions of religious freedom in the context of peace and the common good.

Our collective dialogue is enriched by our examination of the many aspects and perspectives on this subject. It feels fitting that we gather today in Copley Hall. This building is named for Father Thomas Copley of the Society of Jesus, who we believe participated in the drafting of the Act of Religious Toleration in 1649. This act protected the Trinitarian and Catholic right to worship in the Maryland colony and was
the first law on religious tolerance in British North America. There is also a table in my office in the president’s suite in Healy Hall called the Lord Baltimore table, which has been closely associated with the Maryland colony’s effort to protect religious freedom: many believe that parts of the Act of Religious Toleration were drafted on that table. This act influenced similar laws throughout the colonies and echoes of it can be heard in the First Amendment to the United States Constitution.

The founder of our university, John Carroll, was also an early proponent of religious liberty in our country. The same year that George Washington was elected president, 1789, John Carroll was elected the first Catholic bishop of the United States, and in that year founded Georgetown. Embedded in his vision for our school is a simple but profound promise. In his prospectus for Georgetown he writes, “The school will be open to students of every religious profession.” And for more than two centuries since our founding, sometimes fitfully, sometimes rapidly, but always persistently, our Georgetown community has worked to understand, to interpret anew, and to always fulfill John Carroll’s vision.

I bring up this historical context to underscore our university’s deep foundational engagement with today’s subject. Our tradition as a Catholic and Jesuit university and our history as an American university are inextricable from our commitment to the preservation of religious liberty. In more recent history, Dignitatis Humanae, from Vatican II, provides important guidance for our contemporary engagement with this topic. And Pope John Paul II’s apostolic constitution for Catholic universities, Ex Corde Ecclesiae, and the USCCB’s document, “The Application of Ex Corde Ecclesiae,” also guide our engagement.

Finally, as a university we are committed to dialogue—that together through dialogue we can grasp the truth. Symposia, like today’s on Catholic perspectives, are an important venue in which we can engage in dialogue and move forward together.

I’m honored to introduce the archbishop of Washington who has a long engagement with the issues at stake in our conversation today. Cardinal Donald Wuerl has been the archbishop of Washington since 2006. He was elevated to the College of Cardinals in 2010 by Pope Benedict XVI. He is widely respected for his efforts on behalf of Catholic education and for his catechetical and teaching ministry. He serves on numerous national and international bodies. He’s chairman of the board of trustees of the Basilica of the National Shrine of the Immaculate Conception here in Washington; the Board of the Pope John Paul II Cultural Foundation, and the Papal Foundation. He’s chancellor of The Catholic University of America. He’s chairman of the USCCB’s Committee on Doctrine and a member of the Committee on Evangelization and Catechesis and its Ad Hoc Committee for Religious Liberty. He’s relator general for the Vatican Synod of Bishops and the New Evangelization for the Transmission of the Christian Faith, and he serves on the Vatican Congregation for the Doctrine of the Faith and the Congregation for the Clergy.

This summer he also hosted the Celebration of Freedom. This gathering, which took place here in the Archdiocese of Washington, was a part of the National Fortnight for Freedom event initiated by the USCCB to pray, teach, and witness for religious liberty.

He received graduate degrees from The Catholic University of America, the Gregorian University while attending the North American College, and a doctorate in Theology from the University of St. Thomas in Rome. He’s published numerous books including the bestsellers The Teaching of Christ and The Catholic Way. In January he published Seek First the Kingdom, and in the year before that, two additional books, The Mass and The Gift of Blessed John Paul II.

It is a great privilege and honor for me to introduce to you His Eminence Cardinal Donald Wuerl.

CARDINAL DONALD WUERL: Thank you President DeGioia for your very gracious words of introduction and kind welcome to participate in this Religious Liberty Symposium. I also want to recognize and express my appreciation to all of the sponsors of this symposium: the Maryland Catholic Conference and the Religious Freedom Project of the Berkley Center for Religion, Peace & World Affairs. This gathering deals with one of the most pressing issues of our day—religious liberty.

My brother priests, women and men in consecrated life, participants in the Religious Liberty Symposium, distinguished guests, and dear friends.

With pageantry and prayerful ceremony, hundreds of people gathered in May 2009 at the reconstructed 1667 Brick Chapel in historic Saint Mary’s City, southern Maryland for an
unusual event, an occasion that has increasing significance for us today.

The sheriff of Saint Mary’s County, using an exact reproduction of what is believed to be the very key that his predecessor used to seal the chapel in 1704, unlocked its tall, sturdy wooden doors. Together with the priest representing the Jesuits in Maryland, I had the privilege of pushing open the doors.

The unlocking, while a symbolic or ceremonial event, carried with it great meaning because it is a reminder that we are a free people and among the rights we celebrate are the freedom of conscience, freedom of worship, and freedom of religion.

In 1634 when The Ark and The Dove arrived, carrying nearly 150 English settlers to what is now Saint Mary’s County, those brave women and men established the first settlement to offer and guarantee religious liberty to all of the inhabitants. In effect, they constructed what would become known as the birthplace of religious freedom in America. All of us, as spiritual descendants of those intrepid women and men, can rejoice and take pride in their vision and courage.

Unfortunately, in 1704, when those who did not share this foresight and perspective gained political control, the Act of Toleration, as it had become known, was revoked. The royal governor ordered the brick chapel locked and never again used for religious purposes.

The celebration of the unlocking of the Brick Chapel is a reminder of the place of values—moral, ethical, and religious—in the life and in the society of which we are a formative part, the importance of our individual freedom in living and articulating those values, and finally of the fragile nature of freedom of conscience and freedom of religion.

The history of Saint Mary’s Chapel is a reminder of two aspects of the American experience. First is the ubiquitous place of religious conviction in the unfolding and articulation of the American political and social structure. Concomitantly with this awareness is the history of religious bigotry. One does not cancel out the other. But the legitimization of all faith groups and especially Catholicism in American culture and political circles has come at a slower pace than the far more generally recognized place of religion itself in the American social, cultural, political, and legal structures.

Examples, therefore, of curtailment of specific religious liberties do not of themselves argue against the more general thesis of the importance of religious conviction in the formulation of the mores, public policy, and idea of the common good of our nation.
As we reflect on the legacy of the Second Vatican Council’s document on religious freedom, *Dignitatis Humanae*, I would like to look briefly at the role of religious faith in our nation from its very beginning: religious faith as the conscience of our society; its manifestation in so many institutional ways as a part of the fabric of our country; and then on the challenges to that vision, history, and practice that the new and virulent secularism proposes. All of this, as I said, we will look at in the light of the legacy of *Dignitatis Humanae* as we face the challenges to religious liberty in a pluralistic society.

Here we can see elements in our heritage that support the intuitions of the Second Vatican Council. We also see how the council’s teaching today recalls us to our own legacy and historic political ideal of freedom. Precisely as the hegemony of secularism is being asserted and its voice lifted up as the only legitimate articulation of our public identity, we can see in *Dignitatis Humanae* a call to our own roots and constitutive values.

As you know, there are statues in the Capitol building representative of the history of each state. When I served as an auxiliary bishop in the state of Washington, I was always very proud of the fact that one statue was Mother Joseph, a Sister of Charity of Providence, who was considered one of the pioneers in the formation of that state by her work as a religious and the impact of her life on the state.

The state of Hawaii is represented by the recently canonized Saint of the Lepers—Damien de Veuster.

Representing California in the same expanse of space under the dome of the Capitol is the statue of Junipero Serra. It is hard to imagine another person who has left such an impact on any state in the Union as has this quiet, modest, faith-filled Franciscan whose footsteps left in their wake what are now communities along most of the coast of California.

The church buildings, temples, and synagogues that dot the landscape and the interstate highway signs that recall the calendar of the saints do more than simply remind us of our faith history. They also proclaim how deeply embedded religious faith is in our culture and in our vision of human dignity, moral imperative, and the purpose of life.

In the August 18, 2012 issue of *The Economist* there is a recognition of the extent of Catholic involvement in our nation. “Of all the organizations that serve America’s poor, few do more good work than the Catholic Church: its schools and hospitals provide a lifeline for millions.” The article goes on to state, “Discrimination against the Catholic minority...encouraged American Catholics to create a sort of parallel society in the nineteenth and twentieth centuries, with the result that there are now over 6,800 Catholic schools...630 hospitals plus a similar number of smaller health facilities; and 244 colleges and universities.” Our own archdiocesan publication, *Catholic Impact*, highlights in great detail the contributions to this local community of our Catholic schools, hospitals, healthcare entities, Catholic charities, and social service ministries. But there is far more that religious faith brings to the community beyond the extraordinary range of human services.

With religious faith comes also a way of living, a set of standards for moral and civil behavior and those expectations of conduct that are threads, to this day, woven into the fabric of secularism.
of our societal life. “You shall not kill” is not simply a legal convention of any particular political tendency, but rather a moral imperative rooted in our human nature, proclaimed by our religious heritage, and intrinsic to our identity as a people.

In his legendary farewell address as president of the United States, George Washington dwelt on the necessary and vital part that religion must play in the wellbeing of a nation. “Of all the dispositions and habits which lead to political prosperity,” our first president declared, “religion and morality are indispensable supports…let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education of minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles.”

A most remarkable point about President Washington’s statement is precisely the fact that it was utterly unremarkable in his time. Today I would like to explore with you why that was so: why there were not shockwaves of indignation at his emphatic endorsement of religion as a presupposition for the “political prosperity” of our infant republic, how far some of the opinion makers of today’s dominant culture have sidelined the mindset from which his remarks sprung, and how the Second Vatican Council’s Declaration on Religious Freedom may help us chart a course into the future.

Section I: The Natural Law and Religious Liberty in the American Experience

Natural Law in the Formulation of Civil Law

“Recently, in a unanimous Supreme Court judgment affirming the importance of religious freedom, the Chief Justice of the United States explained that religious liberty is not just the first freedom for Americans; it is also the first in the history of modern democracy, tracing its origins back to the initial clauses of the Magna Carta of 1215 and beyond. The intensity of our early founders’ demands for religious liberty can only be understood in light of this history. To our Founding Fathers, religious liberty was a direct derivation of the natural law itself. It is a natural right, our patrimony as rational beings and creatures of God, and a primary conclusion of the natural law and hence must be protected, not treated as a benefice granted by the government.”

Cardinal Wuerl

The American experience, like virtually all political endeavors in history, assumed the importance and authority of divine law in the fashioning of its civil laws. As George Washington’s address suggests, the place of religion in shaping American political and cultural life was presumed from the beginnings of our country. Drawing from contemporary political philosophy as well as English common law and political theory, the religious undertones of natural law principles were of decisive importance in the formulation of positive civil law in the early American colonies and the new nation.

The development of American political thought from the time of the Mayflower Compact and the Maryland Act of Toleration resulted eventually in a composite political philosophy that guided the colonists at the time of the revolution. It is found in a multiplicity of sources such as the Bible, sermons, classics in philosophical literature, platform addresses, newspaper discussions, pamphlets, official pronouncements and directives, resolutions of colonial assemblies, and colonial charters and constitutions. Though in varied ways, these sources all recognized that the foundation of all law was the divine law and identified the natural law written in the heart of every man and woman as the human manifestation of that eternal law. As John Barnard in his Massachusetts election sermon of 1734 stated simply, “This voice of nature is the voice of God.”

Increasingly, the natural moral law became the primary lens through which Americans perceived the basis of their legal system. In his classic 1935 work, The Education of the Founding Fathers of the Republic, James Walsh argues convincingly that the system of colonial colleges instilled in the
young pre-revolutionary Americans a deep conviction in both divine and natural law. He cites a large number of references in the form of thesis topics chosen at various colleges to make his point.

Many other documents could be cited to demonstrate that we Americans have, since our founding, acknowledged the vital role of religious faith in our public life. We are historically very comfortable with the role of a natural moral order, grounded in transcendent norms, that should guide the formulation of civil law. It is only in this context that we can properly evaluate and appreciate the religious liberty that the founders fought so hard to weave into our national fabric and to protect in our Constitution.

**Religious Liberty Derived from Natural Law**

Recently, in a unanimous Supreme Court judgment affirming the importance of religious freedom, the chief justice of the United States explained that religious liberty is not just the first freedom for Americans; it is also the first in the history of modern democracy, tracing its origins back to the initial clauses of the Magna Carta of 1215 and beyond. The intensity of our early founders’ demands for religious liberty can only be understood in light of this history. To our Founding Fathers, religious liberty was a direct derivation of the natural law itself. It is a natural right, our patrimony as rational beings and creatures of God, and a primary conclusion of the natural law and hence must be protected, not treated as a benefice granted by the government.

There is another reason why religious liberty so colored American revolutionary fervor. Given the foundations of American jurisprudence in the divine and natural law, freedom of religion was tantamount to political freedom itself. If religion enjoyed freedom from undue government burdens, it would better be able to serve the important role of discerning and understanding, in the words of the Declaration of Independence, “the Laws of Nature” that derive from “Nature’s God.” Even the very plurality of religious traditions created an atmosphere in the new republic that promoted fruitful engagement and discussion of the most credible and convincing approach to the natural law as it was inscribed into our nation’s legal framework.

It is therefore fitting that, when the Bill of Rights was ratified, religious freedom had the distinction of being the First Amendment, guaranteeing that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” It is that freedom which has historically enabled religious believers to make their particular contribution to the common good, especially in the application of transcendent truths and the natural law to the political and cultural challenges of each age.

**Section II: Religion as Cultural Conscience**

**The Church as Interpreter of the Natural Law**

We need to consider the manner in which the voice of faith has served and continues to function as the conscience of society. Here we distinguish between the Church’s proclamation of uniquely revealed truth, such as the resurrection of Jesus, and her defense of the truth rooted in human nature. The protection from errors in matters of faith and morals was assured by Christ himself.

Nevertheless, it is not in her infallible magisterium that the Church most frequently contributes to the public square but rather it is through her articulation of privileged expressions...
of the natural law, as the catechism of the Catholic Church reminds us, such as the defense and elucidation of the commandments.

As we shall see, Dignitatis Humanae makes the same appeal. The Church speaks in defense of the human person, human dignity, a natural moral order, precisely out of the reasoned apprehension of the created order.

Moreover, with two millennia of experience under the guidance of the Holy Spirit of the human condition, the Church has a unique capacity to interpret the natural law in a way that genuinely contributes to the common good of this country. She has studied human nature in the light of revelation and is able like no other institution to take a long view of present circumstances, to address changing cultural and technological circumstances, to respond to new and unforeseen moral challenges, and she has been present for—and learned from—the greatest mistakes and the greatest triumphs in human history.

In his address to American bishops on their “ad limina” visit in January last year, the Holy Father had this to say about the Church’s role in the interpretation of the natural law:

> With her long tradition of respect for the right relationship between faith and reason, the Church has a critical role to play in countering cultural currents which, on the basis of an extreme individualism, seek to promote notions of freedom detached from moral truth…The Church’s defense of a moral reasoning based on the natural law is grounded on her conviction that this law is not a threat to our freedom, but rather a “language” which enables us to understand ourselves and the truth of our being, and so to shape a more just and humane world.

The Church in this land enjoys a long and distinguished history of communicating the natural law coherently and convincingly with a view to promoting the common good in public policy. One particular example of this service in the United States is in the area of labor relations, especially addressing working conditions and the attendant social justice issues.

Today we look back aghast at what was the cultural climate that permitted the exploitation of workers or the slavery of peoples. I suspect that someday, future generations will look at our age equally appalled that under the banner of “choice” we have witnessed the justification of incredibly evil acts.

Like the pro-life movement, the civil rights movement was essentially religious but appealed to natural law principles that all men and women could grasp. In this way, the Church continues to play a decisive role in calling our countrymen to the noblest demands of our American values and of the natural law.

The Church has demonstrated that capacity over and over again in the history of our nation and continues to serve as the “conscience of the state” even as her freedom to do so is slowly diminished.

Christians, however, do not stand alone in this effort. There has been a movement in recent decades among believers of every tradition to discover common bonds in their efforts to inform the conscience of society with greater clarity and unanimity, and hence greater credibility. A glance at this basic harmony among religious creeds demonstrates their capacity to understand and expound upon the natural law with relative harmony, and thereby jointly contribute to the public square.
Commonalities Across Religious Traditions

The understanding of our common humanity, the recognition of our relationship to the transcendent as a concomitant part of human existence, and the realization of the spiritual dimension or quality of human life are all unifying threads or basic commonalities among all world religions.

Years ago, Jaroslav Pelikan, former Sterling Professor of History at Yale University and the editor of The World Treasury of Modern Religious Thought, produced a six-volume series of sacred writings. His volumes contained the core of the received teachings of Judaism, Christianity, Islam, Confucianism, Hinduism, and Buddhism. Based on his broad research and study of world religions, Professor Pelikan observed, “A modern reader who puts two or more of these sacred books side by side will repeatedly find large areas of similarity, especially in their prescriptions for the life of virtue and justice. The grounds of hope for world peace and for harmony within one neighborhood or nation lie in such similarity…”

Interfaith efforts, here and abroad, remind us of the contribution that religion can and must make to weave together the common threads of the human spirit into a rich tapestry of peace with justice for all peoples in all places. Religion cannot play that role if it is confined to a strictly private sphere and relegated to the margins of public life.

Section III: Challenges to Religious Influence in the Public Square

Recasting “Separation of Church and State”

As a nation we are passing from one cultural structure in which moral and ethical principles, rooted in religious faith, are seen as normative to a culture that marginalizes religious faith as mere personal preference or opinion. Public ethical decisions, once a multi-faceted and pluralistic response to the human condition, are increasingly narrowed into a single, monolithic, secularist point of view.

The assumption of the “secular” model of society as the only acceptable way of addressing life colors much of our media presentation and sets the tone for the discussion of most issues of true significance. Precisely because of this, we need to look again at the place of religion and gospel values in our efforts to build a common good.

We cannot divide personal morality and ethics from political life any more than we can separate spiritual values from human values. It is an unnatural and unhealthy condition for the individual and society to compartmentalize our most firmly held convictions so that they are not allowed to affect our public lives.

Not only did Thomas Jefferson subscribe to the proposition that all are created equal, but his writings indicate that he extended the logic of that statement. All people are obliged to a code of morality that rests on human nature that is the foundation for our human dignity and equality. Jefferson recognized no distinction between public and private morality. In a letter to James Madison dated August 28, 1789 he wrote, “I know but one code of morality for all, whether acting singly or collectively.”

Our Holy Father, Pope Benedict XVI, offers us guidance when we deal with the relationship of faith and public life. In his first letter to the Church, God Is Love, he tells us, “The two spheres [church and state] are distinct, yet always interrelated (28).”

The separation of church and state as it has been long understood in our country does not mean separation of faith and moral values from the public square and the formulation of public policy. The pope goes on to tell us that the separation of church and state opens the space necessary for both church and state to influence and form culture. Politics, law, and faith are mingled because believers are also citizens. Both church and state are home for the same people.

The Church does not pursue her mission or function by becoming involved in civil governance or by taking sides in partisan politics. Rather, the function of faith is one of persuasion. The Church teaches and teaches and continues to teach and should be free to do so unencumbered by legal or cultural restrictions on speech.

Growing Rift Between Religious Worldview and Secular Humanism

Already two decades ago, William Bentley Ball wrote an account of how and why religion slipped from its place from the first of American freedoms. In his book, Mere Creatures of the State: A View from the Courtroom, he highlights the degree to which both the legislative and judicial arenas accommodate challenges to the exercise of freedom of religion and

26
freedom of conscience.

These political and legal indicators of the growing disregard for religious liberty and a widening gulf between religion and the public square reflect a broader rift that is opening between a basically religious worldview and secular humanism. In his address to American bishops last year, the Holy Father reflected on this division that is becoming more evident by the day. He stated:

“At the heart of every culture, whether perceived or not, is a consensus about the nature of reality and the moral good, and thus about the conditions for human flourishing. In America, that consensus, as enshrined in your nation’s founding documents, was grounded in a worldview shaped not only by faith but a commitment to certain ethical principles deriving from nature and nature’s God. Today that consensus has eroded significantly in the face of powerful new cultural currents that are not only directly opposed to core moral teachings of the Judeo-Christian tradition, but also increasingly hostile to Christianity as such.”

This gathering storm has been created not by religious influence on our public policy—which has been a part of our American experience from the beginning—but by an increasingly bold, ideologically driven, and progressively intolerant secular humanism that sees religious values as the principal threat to the secular frame of reference for the public forum.

It is not difficult to find examples of this marginalization of faith in our national conversation. Mention of God, until recently, was simply taken for granted in our public civic life, and prayer—sufficiently generic—was a routine part of public, government-sponsored programs and activities. Limitations on religious expressions are now common by both judicial fiat and ordinary bureaucratic decree.

There are more ominous signs, though, of this bleaching out of religion in the public sphere, reflected in certain threats to our religious freedom. The “Statement on Religious Liberty” published last year by the United States Conference of Catholic Bishops Ad Hoc Committee for Religious Liberty includes a number of pointed examples, including the recent HHS mandate for insurance coverage of abortion-inducing drugs, sterilization, and contraception; harsh immigration laws that would impede ordinary pastoral care for immigrants and refugees; attempts by the Connecticut State Legislature to forcibly restructure the internal governance of Catholic parishes; and discrimination against Catholic humanitarian services such as the USCCB efforts in administering contract services for victims of human trafficking.

As believers, we need to chart a course for the future. Fortunately, we have the map, the foundational principles for Christian life in a pluralistic world embedded in the Declaration on Religious Freedom [Dignitatis Humanae] of the Second Vatican Council, the document towards which we now turn as we prepare to navigate ahead in challenging times.

Section IV: Dignitatis Humanae and the Way Forward

In reflecting upon the principles established in Dignitatis Humanae by the fathers of the Second Vatican Council, I would like to briefly identify seven points of reference for our consideration. Two of these pertain to religious liberty itself, three to the government’s relationship to religion and liberty, and two to the Church’s immediate response.
1. Religious liberty proceeds from the dignity of the human person.

The Declaration on Religious Freedom \textit{[Dignitatis Humanae]} states that “the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.” Made in the image and likeness of God, every person enjoys, as our own Declaration of Independence affirms, certain inalienable rights.

Whatever the shadows in our own Catholic history regarding religious liberty, the teaching of the Church is absolutely clear: “This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that in matters religious no one is to be forced to act in a manner contrary to his own beliefs … whether privately or publicly, whether alone or in association with others, within due limits … This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed.” It is the duty of every Catholic, then, to defend our own religious liberty and that of others.

2. Religious liberty protects not only worship but also the good works that arise from faith.

As the USCCB statement states, “[r]eligious liberty is not only about our ability to go to Mass on Sunday or pray the rosary at home. It is about whether we can make our contribution to the common good of all Americans. Can we do the good works our faith calls us to do, without having to compromise that very same faith?”

Thus \textit{Dignitatis Humanae} teaches that “the social nature of man and the very nature of religion afford the foundation of the right of men freely to hold meetings and to establish educational, cultural, charitable, and social organizations, under the impulse of their own religious sense.” Recent attempts to curtail our religious liberty with specious and narrow “exemptions” for certain religious institutions thereby exclude institutions that are not “religious enough” and hamper the free exercise of religion, not in worship but in works.

3. The role of government is neither to bestow nor hamper that liberty, but rather to protect it.

Our nation was founded on the principle that essential rights of man are not conferred by the government but given directly by God. The Second Vatican Council taught that the “truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power.” The government’s role, then, in providing protection against coercion contributes to the deepest good of man. By fostering a safe environment for religious exploration and expression, the government honors/respects the most important purpose of every person’s life: his quest for truth and for God.

4. Transcendent moral norms are vital for a healthy society; hence government should foster, not simply remain neutral towards religion.

Since this personal quest for truth is the highest good of man, it follows that it is also the highest good for society at large. As President Washington stated so forcefully in his farewell address, the importance of transcendent moral norms in a democratic system, together with the free religious and secular associations that help embody those moral beliefs, cannot be overstated. \textit{Dignitatis Humanae} states that the government “therefore ought indeed to take account of the religious life of the citizenry and show it favor, since the function of government is to make provision for the common good.”
for the common welfare.”

Ultimately it is transcendent beliefs, of whatever shade, that validate the claims of society to bind its citizens to a specific way of living. To put it negatively, without some spiritual reference point that binds all of us, public moral values in a democracy are reduced to personal opinion and a simple majority of voters, a reductivist approach that poses the grave danger that political choices will be motivated solely by personal convenience and gain. Law can thereby become a matter of might—who has more power—rather than right—what we know we ought to do.

Transcendent truth is recognized as immutable and independent of the individual. Positions determined by the exercise of pure reason are internally generated, alterable, and dependent on the individual. When majority opinion is the only reference point for the validity of the law, rather than transcendent truth—an objective moral order—a member of the minority might properly regard the law as merely someone else’s opinion. Our sense of obligation to follow a law is related to our recognition that it has its roots in abiding, objective norms rather than even the will of the majority.

What religious faith and conviction bring to the political order is the conscientious requirement that out of all the things we can do, we do only what we ought to do.

5. Unwarranted restrictions on religious liberty are unjust laws, and unjust laws are not laws at all.

In his famous “Letter from a Birmingham Jail” in 1963, Rev. Martin Luther King, Jr. boldly said, “The goal of America is freedom.” As a Christian pastor, he argued that calling America to the full measure of that freedom was the specific contribution Christians are obliged to make.

He rooted his legal and constitutional arguments about justice in the long Christian tradition: “I would agree with Saint Augustine that ‘An unjust law is no law at all.’…To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal law and natural law.” Unlike conscientious objection, when relief is sought from a just law for reasons of conscience, no relief is sought from an unjust law. It is not a law at all; the only response is to repeal it.

6. The Church remains the voice of conscience for our society.

Whatever the threats to our liberty, it is imperative that the Church continues to serve our culture and our nation as the voice of conscience. Our efforts to pray for our fellow citizens and public leaders, to share the living words of the Gospel and their implications today, to speak up on behalf of the truth, and to protect those on the margins of society are never wasted. The pope offered these words of advice to the bishops last January:

“For her part, the Church in the United States is called, in season and out of season, to proclaim a gospel that not only proposes unchanging moral truths but proposes them precisely as the key to human happiness and social prospering.”

Institutions such as Catholic universities and hospitals, too, must be prepared to manifest courageously their institutional commitment by articulating ever more clearly Catholic moral principles and standing by them. Institutional witness has to have an identity every bit as explicit as personal witness.

7. There is a need for a credible restatement of transcendent moral norms.

Differing opinions are not a threat to a healthy human society, nor a threat to the political process based on a desire for a common good. The honest, open presentation of differences in a pluralistic society is the “stuff” around which dialogue takes place and out of which mutual respect and toleration grows.

What is a serious threat to the wellbeing—the common good—of a pluralistic society would be the exclusion from public life, policy, and law of the values held by a significant segment of the society.

Finally, the restatement of transcendent moral norms must be accompanied by a renewed commitment on the part of Catholics to live faithfully and joyfully those norms. Credibly restating transcendent moral norms, in this sense, is not only an intellectual challenge but a moral one. In the words of venerable Pope Paul VI, “Modern man listens more willingly to witnesses than to teachers, and if he does listen to teachers, it is because they are witnesses.” Dignitatis Humanae is a reminder to us that religious freedom is not a freedom to be enjoyed in isolation but a freedom to be exercised, a challenge to be met, and a gift to be shared with others.
“If we who draw upon the great American tradition of religious liberty in a pluralistic society continue to speak up as the voice of conscience in our land, if we continue to propose our moral convictions with wisdom, with ardor, with love, with courage, and with personal credibility, we do so not only out of our own national heritage but drawing deeply on the legacy of Dignitatis Humanae. Our religious beliefs stand, as they have from the beginning, ready to serve our country in the public square, shedding the light of God’s wisdom into the heart of the great American experiment in religious pluralism and liberty, while at the same time contributing to the common good and fostering the natural and spiritual prosperity of our people.”

Cardinal Wuerl

Conclusion

One of the great strengths of our national discourse is a conviction that different opinions are not a threat to a healthy human society. Recent incursions against religious freedom are so jarring precisely because they run counter to the great momentum of our national history. Excluding values that are held by a significant segment of the society from public life, policy, and law is a serious threat to the wellbeing—the common good—of a pluralistic society.

As the USCCB states, we Christians object to the notion of a “naked public square” stripped of religious arguments and beliefs, but neither “do we seek a ‘sacred public square’ which gives special privileges and benefits to religious citizens. Rather, we seek a ‘civil public square,’ where all citizens can make their contribution to the common good.”

Personally, I remain optimistic. I believe that the current effort to bleach out God from our public life will ultimately fail for a number of reasons. God is part of the lives of the overriding majority of people in our nation. This is demonstrated in poll after poll. To pretend otherwise ill prepares society to deal realistically with the actual human condition. Just as God was with the people who forged this great nation from sea to shining sea, so God continues to be with us. Each of us plays a part in the effort to balance what I suggest is truly out of kilter. This is done in our personal, serene but firm affirmation that God is a part of life, public and private. When enough people say what they believe, eventually it will be heard.

If we who draw upon the great American tradition of religious liberty in a pluralistic society continue to speak up as the voice of conscience in our land, if we continue to propose our moral convictions with wisdom, with ardor, with love, with courage, and with personal credibility, we do so not only out of our own national heritage but drawing deeply on the legacy of Dignitatis Humanae.

Our religious beliefs stand, as they have from the beginning, ready to serve our country in the public square, shedding the light of God’s wisdom into the heart of the great American experiment in religious pluralism and liberty, while at the same time contributing to the common good and fostering the natural and spiritual prosperity of our people.

It is precisely because of the religious liberty that is a legacy of Dignitatis Humanae and the heritage of our great nation made up of so many cultural, ethnically, and religiously diverse peoples that we can say, “God bless America.”

THOMAS BANCHOFF: Thank you, Your Eminence, for that wide ranging and comprehensive talk, which touched on so many of the issues we are addressing today. We do have time for a couple of questions [submitted by the audience]. This question gets at the issue of the relationship between the secular and the religious, which was one of the themes of your talk. In particular, I think it points to controversies surrounding the provision of adoption services to same-sex couples. The question is, “In accepting funding from a secular source, be it a government or a foundation, does a religious institution run the risk of compromising its basic moral convictions? Is it unreasonable for such a secular source to require compliance with its own secular values often at odds with those of religious institutions?”
CARDINAL WUERL: Thank you. Whoever brought that question forward, that is such a significant and important question. But I want to begin with indicating how we speak about organizations and their funding. We all pay taxes. It is the responsibility increasingly of government to use those funds to meet the needs of those citizens who have specific needs that cannot be met otherwise. Is that not why we have Social Security? Is that not why we have begun under the leadership of the Church over 100 years to accept the responsibility of caring for those in need? So we all pay taxes. The government now has to find a place alongside all the other faith-based and community entities that are already serving to meet those needs. The channel through which that is done historically has been faith-based and community-based organizations. And so, the government comes to us and says, “We would like to purchase a service from you.” They want these homeless people housed. You do it better than anybody else. You do it most cost-effectively. So we are going to purchase that service from you, and that is what we have done. That goes all the way back to Tocqueville. We have always understood that that is the way we work in a pluralistic society with multiple caregivers coming out of communities and faith-based entities, and it has worked. There were never restrictions that you must give up the principle that drives you to do this in order to do that. We have just said, “Care for everybody.” Whoever comes to your shelter, you can’t ask them, “Are you Catholic, Protestant, Jewish, Hindu, Muslim?” We only asked, “Do you have another place to stay?” I thought of that during the snowstorm we had here. It closed everything down. Catholic Charities kept 14 shelters open around the clock because there was no place for those people to go. We were not going to say to them, “Our Catholic obligation ended at five o’clock and get out there into the snow.” So it has always worked, but as long as you delivered the service, you could do it out of your own faith tradition.

And as for the question about if there are some services you do not want to provide? I believe no one should be constrained to do something they do not want to do. But I think it is impossible to say that in this city you could not find another agency doing that service. So why would one faith-based service be told you must do this because this person wants you to do it, when they can get the exact same service from another entity that is not constrained by that moral principle?

So I think the question at heart here is: Are we allowed to participate in the common good as we have done from the founding of our country out of our faith convictions—Catholic, Protestant, Jewish? I think of Lutheran Services and the great job they do. Or do we have to abandon all those principles and simply follow a new secular rule?

THOMAS BANCHOFF: One more question. I think this is probably from a student. “Your Eminence, you spoke about how we got to where we are today, but what do you recommend to members of the younger generation to ensure and protect religious freedom into the future?”

CARDINAL WUERL: That is an excellent question. This is one of the things about the new evangelization that I am so excited about. We are watching an enormous change culturally. It is almost as if a tsunami has washed across most of Western culture, and as it receded, it took away with it most of the foundational principles that we lived with—family, marriages, right and wrong, moral order—and swept that away as if that all has to be now recreated in a different mode. I believe what our young generation today is recovering, re-finding, and renewing is our heritage and the wisdom of our faith heritage, the wisdom of our national heritage, the wisdom of who we are.

Remember, so much of what we know and hear is all mediated. It is mediated through the communications industry, through the entertainment industry. You are the first generation who has access to immediate communication through the social network. You are the first generation who can communicate directly, and I would like to think that that is going to help build the future of what the Church is saying we need to do with faith in the new evangelization: Renew that understanding of who we are, of our values; have the confidence that we stand in the truth; and then simply be willing to share it. I think there is a great future, but we need to be courageous enough. And one other note, we need to be joyful enough. I think we need to simply recognize the joy of who we are, the gift we bring to this society, the gift faith has always brought to our culture, and simply live it to the best of our ability.
MARILYN MCMORROW: This afternoon we are switching our focus from the theological and historical background of the religious freedom documents to turf that is more comfortable for me, anyway, the international area. And I am very happy to introduce our three panelists for this afternoon’s presentation on “Religious Freedom, the Church, and International Law.” Our first panelist is Father John Langan, S.J., who is from Georgetown and is the Cardinal Bernardin Chair in Catholic Social Thought in the Department of Philosophy. Next to him is Daniel Philpott, who is associate professor in the Department of Political Science and the Kroc Institute for Peace Studies at Notre Dame. He is the author of a new book we heard mentioned this morning that will be discussed at an event here tomorrow, Just and Unjust Peace. And then at the end of the panel is Robert Destro, a professor of law at The Catholic University of America and the director and founder of the Interdisciplinary Program in Law and Religion there and has many other accomplishments in this area to his credit.

So as we switch our focus to religious freedom in international law, I know some of the international law that matters on this subject certainly has to be the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It is a very poignant moment to be having this panel given the events over the last 48 hours [the storming of the American embassy in Libya and the killing of the American ambassador and three other US citizens]. I think we can all in our minds immediately list an array of topics to which our panelists might be speaking. We have three orienting questions for the panel: first, the relationship between the Church’s understanding of religious freedom and the development of international human rights law and practice; second, how that relationship has changed since Vatican II, if it has, and if so, why; and, third, the critical challenges facing the Church’s understanding of religious freedom in the international arena in the years ahead.

So that should make for a very rich conversation. Father Langan.

FATHER JOHN LANGAN: Marilyn, thank you very much, and it is a pleasure and an honor for me to be addressing this topic here on home turf at Georgetown, which is probably where I have learned most of what I know about human rights, probably through early years of work at the Woodstock Theological Center, which I will take up in a moment. The issue of religious freedom has been particularly salient in American political life over the last year. We know that it has become a major priority for the bishops’ conference and has received eloquent expositions from Cardinal Wuerl, Cardinal Dolan, and various prominent spokesmen for the Church.

There is a need at this point to indicate that there are really two main ways of understanding religious freedom, one that I will...
call the quintessentially Catholic way, which has roots going back to the first millennium. This is really more a matter of libertas ecclesiae, the freedom of the Church to define and pursue its mission. Religious freedom is thought of in this model as being exercised and articulated within a community—which is in principle independent of the state and in some respects prior to it—and within its own life, which is not radically dependent upon the state. This has been a matter of contest in Western civilization at least since the time of the investiture controversy in the eleventh century. The Church has nearly always been menaced one way or another by political regimes that thought that the Church had too much power, too much influence, a different set of priorities than they preferred. Contemporary secularism is not without interesting historical antecedents, even though they may not have presented themselves in simply secular terms. This is not simply a matter of the Church defending its own turf. In articulating and exemplifying the freedom of the Church, the Church presented a paradigm for a range of social organizations to come into being that would have their own autonomy, their own moral agenda, and would contribute to the common good.

Father John Langan

or another by political regimes that thought that the Church had too much power, too much influence, or a different set of priorities than they preferred. Contemporary secularism is not without interesting historical antecedents, even though they may not have presented themselves in simply secular terms.

This is not simply a matter of the Church defending its own turf. In articulating and exemplifying the freedom of the Church, the Church presented a paradigm for a range of social organizations to come into being that would have their own autonomy, their own moral agenda, and would contribute to the common good. Not least of these institutions is the university, which, of course, is at home, as John Paul II reminded us of—at least in the Western context—with the Church itself. But obviously most universities today are in a broad sense secular, whether public or private, and not dependent on the Church. The university is an extremely valuable contribution to the vitality of Western civilization, and it is a standing barrier to the development of a totalitarian system. It creates a kind of frontier zone, a contested zone between the claims of autonomous institutions and the demands and norms of a meritocratic state.

But it seems to me that this should be interpreted simply along the lines of the great struggles against totalitarianism that marked the twentieth century. That this would in some ways inflate what are inevitable collisions of institutions and their jurisdictions and aspirations with major efforts to centralize control of social life in one body, whether by the state or a militant political party, which were profoundly threatening to the Church and a wide range of other institutions. A great deal of particular international thinking about human rights took shape with the Universal Declaration being drafted in the aftermath of the struggle against Nazi totalitarianism in the Second World War. So this is one conception of religious freedom.

The other is what I would call the quintessentially Protestant conception, a conception which has also been taken over to a large extent by secular liberalism. In this case, the primary subject of religious freedom is the individual. The individual will be acting in accordance with his or her conscience—and may well have a role to play within a community—but is thought of as having a certain sacred quality and possessed of God-given rights, which all social institutions are to respect. Now, in the present state of things, it seems to me there is a kind of—and not least in the way that this matters is presented by the Church and its many allies—there is a blending of emphasis here. And this in some ways may get political leverage, but it may also, I fear, produce intellectual confusion. The Church was probably most
comfortable with the language of human rights in the period from the adoption of the Universal Declaration in the late 1940s to sometime in the 1970s.

The teaching of John XXIII in *Pacem in Terris*, which was issued in 1963, and the teaching of *Dignitatis Humanae* in Vatican II represented an acceptance by the Church of large elements, which had previously been regarded as belonging to the Protestant and liberal conception of religious freedom, which now became another part of the Catholic stance on these matters. I am aware that the contrast proposed is in some ways a simplification, but simplifications are inevitable within the time range that we are given. The purpose of an exercise like this is really to promote discussion and reflection. But I think it is safe to say that since the 1970s, the Church has become somewhat wary of the language of human rights because the issues have changed.

When the struggle was against totalitarian regimes, whether in Germany or in the Soviet Union, there was a certain natural primacy to political rights, to the rights which are affirmed not merely in the Universal Declaration but in the Bill of Rights in the American Constitution. It was very natural for the Church to feel comfortable with most of the people who were arguing for human rights in areas of the world which had fallen under totalitarian control or in areas which were under the influence of national security state, the type that developed in the southern cone of Latin America or in the apartheid regime in South Africa. The Church went into a fairly comfortable alliance with a broad range of social activists, largely on the left, who probably did not share a lot of the other theological positions of the Church.

In the American context, the expansion of rights, which particularly focused on the rights of women, was specified as involving the rights to abortion and reproductive health. It was something that was bound to make the Church uncomfortable with simply this affirmation of human rights across the board. This has not led to the renunciation of the Church’s commitment to human rights by any means, but to a certain wariness when human rights are presented as a kind of across-the-board standard or a banner around which people are to rally. One of the important things to notice about human rights in the last two generations is the expansive character of this language and the increasingly universalist way in which its proponents have applied it to a wide variety of social circumstances.

The rigidity in a lot of these arguments is not purely and simply on the side of the Church, not by any means. In fact, in many ways a human rights culture has developed which has a fairly significant anti-clerical tinge—in the way in which, for instance, the child abuse cases were pursued in Belgium with a more than vigorous implementation. There is in the human rights culture a kind of progression from citizen activism, which contrasts with the reliance on working problems out through patron and clients—which is characteristic of a great deal of Latin culture and of Catholic cultures more broadly—through litigation and through judicial decisions. Partly because of some of the secularizing influences that have been manifest in the legal profession and in some of the caring professions, the Church is less comfortable in this environment than it used to be.

In some cases, there is a reluctance to trust these processes, and this has been exacerbated by the difficulties the Church has experienced in this country as a consequence of the sexual abuse crisis. So if we look forward at some of the problems that need to be faced, one is a much fuller, more honest, more expansive account of the rights of women. The positions need to be worked out, which the Church can live with, which come closer to satisfying the aspirations and the legitimate demands of women. This, of course, is also a very significant issue for the Muslim community. It would be a great mistake for the Church to look for support for some of its own imperiled contentions through an alliance with similar tendencies in the Islamic world. Secondly, there are likely to be continued points of tension not so much by a grand ideological conflict, but just by lots of very practical nitty-gritty questions about privacy and information policy.

The technological base is changing and the kinds of questions that can be asked both in the case of legal crisis and in efforts to implement various desirable social objectives are likely to be intrusive and experienced by the Church as a threat to the way it governs itself and the way it responds to the needs of people it serves. There are also likely to be questions about exclusions from public space. Earlier this week the Deputy Prime Minister in Great Britain referred to people who oppose same-sex marriage simply as bigots. He has since tried to unscramble that particular blunder. There’s also the case about the adoption agencies.

There will be pressures within certain ways of thinking about human rights which will marginalize the Church and which will intensify that wariness that I mentioned earlier. This happened some years ago with Amnesty International where they decided to include a right to abortion as one of the rights to be defended. This was something that was bound to marginalize Catholic participation and commitment.

And one of the glories of Amnesty International has been its
effort to try to keep out of political disputes and cultural disputes which were not tied to, in effect, the basic human rights, which are essential to the protection of society and free societies. In all this, I think we run many dangers of misdescribing and misunderstanding people on the other side of various controversies. The Church in recent periods in this country has shown a penchant for presenting itself as the object of persecution. That may be an attractive scenario, but I think it involves making a whole series of extremely negative judgments about many of our fellow citizens. We might be naïve in thinking that there is somehow agreement just around the corner that can, in fact, be long-standing hostility. But there is not much to be gained in the long run, I think, by deepening the disagreements.

Marilyn McMorrow: Thank you. So Father Langan has started us off by giving us some issues that will confront the Church on human rights grounds in the future. And Dan will take it from there.

Daniel Philpott: How should the Catholic Church respond to a government that threatens its freedom? Over the past year, the Catholic Church in the United States has come to face this question in historically unprecedented ways through the HHS mandate, which itself followed on the heels of other novel curtailments sought by Catholic Relief Services, Catholic Charities, certain Catholic adoption agencies, as well as the Catholic Church in Alabama in relation to its ministry to immigrants. Meanwhile, perhaps coincidentally, perhaps not, American Catholics encountered the same question in the movie theater when early this past summer the film For Greater Glory portrayed the largely unknown but colossally bloody war between the Cristeros Rebellion and the anti-clerical government of Plutarco Calles just south of the border in Mexico during the 1920s.

It was not directly through a military victory that the rights of the Church were at least partially restored in that conflict, but rather through the diplomacy involving the US Ambassador, the Vatican diplomats, and the Mexican government. My reflections today bring these two episodes together through a historical and global look at the Church’s response to curtailments of its religious freedom. I would like to ask what lessons we can learn for the Catholic Church in the United States today. Importantly, this is a question faced not simply by national Catholic Churches vis-à-vis their own governments. But it is also a diplomatic and transnational question due to the typical involvement of the Vatican. Thus, I engage the question of the panel by looking at Vatican diplomacy.

“The rigidity in a lot of these [human rights] arguments is not purely and simply on the side of the Church, not by any means. In fact, in many ways a human rights culture has developed which has a fairly significant anti-clerical tinge—in the way in which, for instance, the child abuse cases were pursued in Belgium with a more than vigorous implementation. There is in the human rights culture a kind of progression from citizen activism, which contrasts with the reliance on working problems out through patron and clients—which is characteristic of a great deal of Latin culture and of Catholic cultures more broadly—through litigation and through judicial decisions. Partly because of some of the secularizing influences that have been manifest in the legal profession and in some of the caring professions, the Church is less comfortable in this environment than it used to be.”

Father John Langan

The Church engages in diplomacy from a unique position: as the body of Christ, universal in its claims and bequeathed with a visible hierarchy that spans across the globe, it is challenged by the sovereign state, an entity that has territorial boundaries and whose government holds a monopoly of coercive force within those boundaries. This alone makes conflict virtually inevitable. The Church’s efforts to preserve its integrity vis-à-vis states have involved manifold tools: demarches and denunciations, communications and excommunications, alliances, papal bulls, martyrs, and nuncios. It is equally the case that whenever these tools are used, members of the Church debate their use. Hawks calling for tougher confrontation. Doves adapt to realities through diplomacy just as American Catholics today debate how to respond to the HHS mandate.

The Church achieved establishment status after the conversion of the Emperor Constantine in 313. By the tenth century or so, the Church had become a political football bereft of freedom in a matter most important to its freedom, the appointment of bish-
ops. Thanks to the Gregorian reforms of the eleventh century, of which Father Langan spoke, the Church regained its control. But even in the Middle Ages its freedom could be threatened, as we know from the murder of Thomas Becket. Drawing on my work with Monica Toft and Timothy Shah in God’s Century, I want to argue that the following period of European history from around 1300 to 1789 is one in which the Church weakened more and more in its power and authority relative to the sovereign state. This grew, expanded, and made increasing claims to govern the Church during the same centuries.

Yet during this same period, at least in Catholic countries, monarchs remained avowedly friendly to the Church. They were Christian monarchs claiming to govern in the Church’s favor. As a consequence, Vatican diplomacy was often in the position of negotiating with Catholic monarchs, maybe even its own bishops, sometimes over the extent of their authority over the Church. One can see this in negotiations over the Gallican liberties that the Crown asserted over the Church in France or the patronato real that the pope granted the Spanish kings and governors to wield authority over the colonial Latin-American Church. Even while monarchs in both cases sought to establish and promote the Church in these realms, they sometimes used means of doing so that we now find troubling.

This period came to an end and a new period of far greater hostility emerged through the French Revolution beginning in 1789. Motivated by Enlightenment ideals, the revolutionaries thought that the Church would disappear because of its ideas, but they also sought to hasten its demise. In 1790 the revolutionary government established the Civil Constitution of the Clergy, which put control of the Church directly in the hands of the state. Through the nineteenth and twentieth centuries, republican governments—in the French Revolution sense of republic—followed this model by seeking to control the Church’s governance, its education of children, its monasteries, and its general role in society. The Calles government of new cinematic fame is an example.

The twentieth century also saw the rise of regimes that sought even harsher control of the Church and even greater ambitions for its demise, especially Communist governments and Nazi Germany. How did Church diplomacy respond to the harsher threats of this period? Often it thought to engage in diplomatic negotiations with regimes that threatened it, perhaps its key leverage here being the presence of Catholic populations in the countries that these regimes wanted to control. A common device, one that indeed dates back to the early twelfth century, was the concordat, an agreement between the Church, usually the pope, and the government of a country. Usually, with some details varying from case to case, the Church would grant that government some degree of control over the Church in its country in exchange for that government’s agreement to protect the remaining privileges.

Now the three most controversial concordats, but hardly the only ones, were with Napoleon, Mussolini, and Hitler. Each leaves us with a bitter aftertaste of collaboration, especially the one with Germany’s government in 1933. Each was negotiated by a Church who perceived itself in a weak position, and sought to protect its authority and its mission in the country in question. The final concordat in Church history was signed with the Franco regime in Spain in 1953. During the nineteenth and early twentieth centuries, the Church also sought to strengthen the authority of the papacy and to promote Catholic civil society, eventually giving approval to the Christian Democratic politi-
cal parties, who would compete electorally in the name of the Church’s interest.

With respect to Communist governments, there was far less that the Church could do. It engaged little with the Soviet or Eastern European Communist governments until after Vatican II, when the Church sought through dialogue to secure not only a modus vivendi, but a modus non moriendi that would secure the existence of the Church and some degree of ties with the Vatican, however frail. This lasted until John Paul II, of course, who took a more assertively evangelical approach to defending human rights and religious freedom on the basis of the Council’s documents in communist Poland.

The case of China is also one where the Communist government harshly sought to stamp out the Church’s hierarchy by expelling bishops and forming alternative patriotic churches in the 1950s and 1960s. In the past decade and a half or so, some progress towards conciliation has been made through Vatican diplomacy, including recognizing bishops who have been ordained illicitly. Progress is halting, though, with the Chinese official church illicitly ordaining four more bishops without Vatican approval since 2010.

So are there lessons to be learned from all this history about how the Church ought to preserve its freedom? Well, the immense variety of circumstances in which the Church finds itself forbids easy maxims. Still, insofar as generalizations are possible, I venture that in the era of the nation-state, the Church best preserves its freedom to operate and indeed to be the Church by remaining at an institutional distance from the state in its authority, structure, its personal ties, its laws and governance, its finances, and its activities. Now this might seem obvious to the point of tautology, but the Church best preserves its freedom by being free. However, many Catholics over the centuries have thought the Church is most secure or most just or most appealing in some other sense when it agrees to close supervision from the state along the lines of the Gallican model in ancien regime France, the Anglican model in England, or I dare say perhaps the model implied by the HHS mandate. Of course, in many difficult circumstances of repression, the Church simply must do the best it can and often has little choice but to be closely supervised by the State.

But even under authoritarian regimes, the churches that are most successful in opposing that authoritarianism, or being the Church in remarkable ways, are the ones that maintain the greatest degree of relative autonomy. To see the point, consider three cases. The Catholic Church in Rwanda, which was cozy with the Hutu government for a generation, proved impotent and even acquiescent when the genocide in 1994 came along. By contrast, the Catholic Church in Uganda, with a tradition of independence, has played a vital and dynamic role in being a promoter of peace and reconciliation in the civil war in that country.

Second, during the Cold War, a Catholic Church in Hungary that was closely supervised and monitored by the government, provided little opposition. But the Catholic Church in Poland, which had clawed vigorously for its independence under its communist regime, was instrumental in bringing down that regime. Finally, in South America during the 1970s and 1980s, the Catholic Church in Chile was dynamic in its opposition to the regime of Augusto Pinochet, while the Catholic Church next door in Argentina whose hierarchy was closely interlocked with that of the ruling junta played little oppositional role in that country’s dirty wars. We do not live under an authoritarian regime in the United States with respect to religious freedom or any other value. Consequently, the Church’s opposition to curtailments of religious freedom has been entirely commensurate with democratic participation. Archbishop Dolan meets with President Obama. The bishops make public statements. Universities like mine file lawsuits. Maybe you could talk about Georgetown and Notre Dame again there.

Still, the curtailments of the Church’s freedom of the past few years are arguably among the greatest restrictions of its religious freedom in the history of the republic. I believe that they represent a stride towards management of religion that is more typical of, say, France or Turkey than of the republic in which we have lived. Many Catholics in the US do not consider these restrictions as threats and recommend acquiescing to them. But history and contemporary global comparison in my view counsel a profound wariness towards state governance of religion, even when this governance comes with a smile. Should we continue further in this direction, the Church in America might well have to turn to concordats, mobilizing dissidence or even prophetic pilgrimages, all the imperfect tools of beleaguered diplomacy.

MARILYN MCMORROW: Dan, thank you very much. And now to a spokesman from another great Catholic university, Bob Destro.

ROBERT DESTRO: Thank you. To this point, we have been talking about the substance of international human rights norms. I would like to shift the focus a bit, and ask that you consider what we can learn from the “structural politics” that
form the foundation of our understanding of the international human rights norms protecting religious freedom.

Structural analysis is helpful in such discussions for three reasons. First, it helps us to understand the relationship of human rights norms to “the politics of power” in both domestic and international affairs. Second, it helps us to understand the critically important role that good old-fashioned politics plays in the protection of human rights, and third, structural analysis provides us with a mental picture of the political environment in which debates over religious liberty occur.

Read together, the norms protecting human rights, including religious liberty, create not only a structure in which individuals and groups are free to practice their faith, but also establish important structural devices through which victims of discrimination or persecution can seek redress of their grievances.

“Our nation’s understanding of religious liberty was formed in dialogue with churches that did not hesitate to acknowledge the importance of revealed Truth, and the need for all persons of good will to adhere to “traditional moral doctrine”. If participation in public policy debates or business activity requires that religious believers leave “traditional moral doctrine” about the nature of the human person and the duties we owe our Creator and to each other at the door, we destroy the foundation on which the entire edifice of human rights norms are built. The view that references to “traditional moral doctrine” must be suppressed, either by law or social convention, also puts our government in an untenable position. Our religious heritage and diversity has given the United States a unique ability to engage other nations and cultures in a dialogue that accepts as a given the equality of the “other,” regardless of his or her faith, or lack thereof. If “separation of church and state”—an essential component of religious freedom—is understood to mean that we cannot accept, or engage with, nations or leaders who refuse to leave their religious beliefs, practices, and “traditional morals” at the door, we are in deep trouble in most of the world’s hot-spots.”

Robert Destro

The first question posed for our panel is, “What is the relationship between the Church’s understanding of religious freedom and the development of international human rights law and practice?” This is a big question. Let me begin to answer it by observing that our Western understanding of religious freedom is so completely bound up with the experience of the Catholic Church that present narratives about religious liberty can only be understood against the backdrop of that history.

Martin Luther, John Wesley, John Calvin, and other Christians who have followed in their theological footsteps are called “Protestants” because they were and remain engaged in a dynamic
struggle with the Church and among themselves over the meaning of Scripture and the demands that it makes on our consciences, both individual and collective. That dynamic struggle continues to this day, and has expanded to include the protests of those who freely admit that their beliefs and consciences have been formed on the basis of non-religious or “secular” norms.

The point here is to emphasize the dynamic nature of the debate itself. Our understanding of human rights has been shaped over the centuries by the teachings of the Church, by the critiques of the Reformers and of the Enlightenment, by the Church’s responses to those critiques, and by its own need to address the abuses of the Industrial Revolution, the rise of Nazism and Communism, and to efforts in our time to view religious teaching and observance as private, individual obligations.

One writer has observed that “religious freedom is the foundation. It is the cornerstone of human rights.” Others describe it as “the first freedom.” Both observations are correct, but only if understood as a shorthand way of describing the space in which our understanding of the Christian Scriptures has been shaped by a history of religious intolerance. Our understanding of human rights today is built upon generations of debate within the Christian West over how best to operationalize the two components of the Great Commandment, “Love God with all your heart, and with all your soul, and with all your mind,” and “Love your neighbor as yourself.”

Today, we have either forgotten that legacy or ignore it. It is, unfortunately, all too easy to see only the struggle through which we have come, and to blame the Church for its intransigence. Many human rights activists and human rights organizations, including Amnesty International, view the Church and her teachings as anti-human rights. In this view, the teachings of the Church on important topics like human sexuality and abortion are the antithesis of a pro-human rights theology. In order to feel free themselves, they demand that the Church and all religious believers who share her views must either conform to the dictates of the new secular morality, or be relegated to the sidelines of polite society.

This is, to say the least, a big problem. In order to understand its present dimensions, we must look, once again, to the lessons of history.

Dignitatis Humanae was, at bottom, the culmination of a lengthy debate within the Church over two doctrinal issues. The first is found in paragraph one, which observes that “the Council professes its belief that God Himself has made known to mankind the way in which men are to serve Him,” and that “this one true religion subsists in the Catholic and Apostolic Church, to which the Lord Jesus committed the duty of spreading it abroad among all men.” The second is found in paragraph three, which teaches that “every man has the duty, and therefore the right, to seek the truth in matters religious in order that he may with prudence form for himself right and true judgments of conscience, under use of all suitable means.”

The Council resolves the apparent tension between these teachings in paragraph 14 by reminding Catholics that every “disciple is bound by” two “grave obligations.” The first is to seek, to understand, to proclaim, and to defend the Truth as revealed by Scripture, and the second is to respect and defend “the rights of the human person[s]…who are invited freely to accept and profess the faith.” Paragraph three of Nostra Aetate goes a step further and “exhorts” Catholics to engage in “dialogue and collaboration with the followers of other religions” so that “with prudence and love and in witness to the Christian faith and life,” we may “recognize, preserve and promote the good things, spiritual and moral, as well as the socio-cultural values found among” the adherents of other faith traditions.

The religiously based conflicts between and among Christians and Muslims in Egypt, Syria, and in other parts of the Muslim world are rooted in the same apparent tension between revealed Truth and the freedom to seek it. As a result, a meaningful dialogue can take place if, and only if, both sides are willing to acknowledge the central role that revealed Truth plays in their understanding of the duties imposed by God’s law on all believers.
Many Western human rights advocates take the opposite view. For them, freedom of religion is synonymous with freedom from religion, and from “traditional moral norms” rooted in either scripture or a religiously based understanding of the natural law. Some go even further, and allege that “traditional moral norms” rooted in scripture are, themselves, inconsistent with basic human rights norms.

John Paul the Great identified this trend in *Veritatis Splendor*, when he observed that those who are now challenging the Church in the West are “no longer [engaged in] a matter of limited and occasional dissent, but [in] an overall and systematic calling for a depression of traditional moral doctrine on the basis of certain anthropological and ethical presuppositions.”

This is a dangerous development on many levels. For starters, it puts the Church in a completely untenable position in the political communities of which it is a vital and constituent member. Our nation’s understanding of religious liberty was formed in dialogue with churches that did not hesitate to acknowledge the importance of revealed Truth, and the need for all persons of good will to adhere to “traditional moral doctrine.” If participation in public policy debates or business activity requires that religious believers leave “traditional moral doctrine” about the nature of the human person and the duties we owe our Creator and to each other at the door, we destroy the foundation on which the entire edifice of human rights norms are built.

The view that references to “traditional moral doctrine” must be suppressed, either by law or social convention, also puts our government in an untenable position. Our religious heritage and diversity has given the United States a unique ability to engage other nations and cultures in a dialogue that accepts as a given the equality of the “other,” regardless of his or her faith, or lack thereof. If “separation of church and state”—an essential component of religious freedom—is understood to mean that we cannot accept or engage with nations or leaders who refuse to leave their religious beliefs, practices, and “traditional morals” at the door, then we are in deep trouble in most of the world’s hot-spots.

Sadly, this is now the case. The State Department and USAID get the constitutional shivers if anyone proposes that our diplomats engage religious leaders in direct talks about important international security and human rights issues. USAID balked
when it was suggested that the agency should support Norway’s efforts to create a working group designed to engage the religious leaders of the Holy Land in a faith-based dialogue over matters of common interest. It should come as no surprise that one of the first issues discussed among the members was the status of Jerusalem, which is sacred to three religious traditions. Our government “missed” both the Iranian Revolution and the Arab Spring and has little knowledge or understanding of the complex religious dynamics of the region. Dr. Tom Farr’s excellent commentary provides many additional examples of how the foreign policy establishment views religion and religious believers as either irrelevant in the world of Realpolitik, or as troublesome holdovers of a bygone era. Bad ideas, unfortunately, have lasting and sometimes deadly consequences.

Father Langan is therefore correct when he observes that we need to build bridges across the gulf that divides the religious from the secular worldview. Even more important, in my experience, is his observation that the sustainability and enforcement of the international human rights project in total depends on its ideological placement within the particular scriptures, rights, and histories of the world’s major religious traditions, namely Hinduism, Buddhism, Judaism, Christianity, and Islam.

We are never going to convince the Muslim world that it is duty-bound to respect human rights—as we understand them in the West—unless we are first prepared to make the case that our concept of international human rights is rooted in a concept of justice that draws its content from the law of God as revealed in the Qur’an. Nor will our words resonate in communities governed by Jewish law, which is organized, as the late Professor Robert Cover of Yale Law School has observed, around the concept of mitzvot—a “incumbent obligation,” rather than “rights.” In this view, and in Cover’s words, “a right without an obligation is a sad, almost a pathetic thing.”

And so too is our implicit understanding of “rights” in this country. While we often speak about the right to equal protection of the laws, we know that the most controversial aspects of that debate center on who should bear the costs of cleaning up the damage when government defaults on the obligation of equal protection that it owes to each and every one of us. The right to counsel is meaningless unless lawyers step up to the plate to defend the poor, and the right to religious liberty has no meaning if we are not duty-bound to respect beliefs we do not share.

Cardinal Wuerl’s keynote address reminded us that we have to be engaged in the process as believers. In practice, engagement also means that there will be considerable discomfort, embarrassment, and expense as we refuse, as a religious community or as individuals, to accede to demands by secular human rights advocates that we abandon the language of our scripturally-based, traditional moral norms. If abandoning one’s beliefs and practices is the price of admission to the political debate, the price is too high.

And thus, if we are to protect the right of religious believers like Dan Cathy to run companies like Chick-fil-A in accordance with their good-faith understanding of the Gospels, we must be engaged. If we are to defend the right of a Catholic hospital or social service agency to bear witness to the Truth in a way that authentically captures the Catholic understanding of the social gospel, we must engage every structural device at our disposal: the courts, Congress, state and local government, and, ultimately, the court of public opinion. By relying on the Supreme Court to protect us under the Free Exercise Clause, we give up our most important structural protections. Like the rest of us, the members of the Supreme Court also read the election returns.

I thus return to the point at which I began. We must move up one level of generality, and start talking about the structure of the political environment in which we find ourselves today. The history of religious liberty in the West is written in the dynamic struggles within the Church, between church and state, and between individual citizens and their governments. Read the Constitution. In many ways, both direct and indirect, it requires that our government take us as it finds us, religious or not. Professor Gerry Bradley’s excellent work reminds us that we must reconsider the importance of the No Religious Test Clause of Article VI, and the Qualifications Clauses for members of Congress, senators, and the president. Out of many, we become one—if, and only if, we accept the inherent dignity and civic equality of “the other.”

International human rights norms require no less. We must take the Iranians and their government as we find them and engage. We must understand the obligations accepted by observant Jews, not because they have a right to our respect, but because they are brothers and sisters who, like the rest of us, are seeking Truth along the paths marked out for them by the law of God. And we must reject—in no uncertain terms—claims by anyone that one can be a Catholic but that separation of church and state requires that we must not act or speak like Catholics in polite or political company.

James Madison and Thomas Jefferson understood all too well that those who claim the power to decide what is “orthodox” in
matters of either religion or politics are tyrants, and that the “first duty of citizens” is “to take alarm at the first experiment on our liberties.” The alarm has been sounding for years. We have finally heard it. Our history and tradition as a community has prepared us well. It is now time to engage fully, and as a community, in the bruising political debate that is to come. Thank you very much for your attention.

MARILYN MCMORROW: My head has been spinning all day from the breadth of historical allusions and the centuries that we have covered, never mind the topics. But I did hear one of those points of perhaps principled disagreement about the making of alliances and avoiding alliances. This is just a brainstorming of my own about the ways in which religious freedom is being challenged or questioned around the globe today. On the whole issue of proselytization, on the German ruling on circumcision, the French law on the hijab and the burka; the meaning of a Christian nation or a Jewish state; blasphemy trials, whether in Russia or in Pakistan; notions of sacrilege including notions of desecration that are inadvertent, wherein one might think that burning a damaged Qur’an is the most respectful thing to do with it rather than a further sacrilege; crime versus sin, reconciliation and forgiveness, and, as one of my colleagues reminded me this morning, humility—again, contributions that religions can make that we do not find everywhere.

“I venture that in the era of the nation state, the Church best preserves its freedom to operate and indeed to be the Church by remaining at an institutional distance from the state in its authority, structure, its personal ties, its laws and governance, its finances, and its activities. Now this might seem obvious to the point of tautology, but the Church best preserves its freedom by being free. However, many Catholics over the centuries have thought the Church is most secure or most just or most appealing in some other sense when it agrees to close supervision from the state along the lines of the Gallican model in ancien regime France, the Anglican model in England, or I dare say perhaps the model implied by the HHS mandate. Of course, in many difficult circumstances of repression, the Church simply must do the best it can and often has little choice but to be closely supervised by the State. But even under authoritarian regimes, the churches that are most successful in opposing that authoritarianism, or being the Church in remarkable ways, are the ones that maintain the greatest degree of relative autonomy.”

Daniel Philpott

FATHER JOHN LANGAN: Well, in general I am a modest practitioner and a strong proponent of inter-religious dialogue, and I think the point made about taking people and groups as they are is extremely important. We do not want to wind up in a position of saying we are universally tolerant. The flavor which will be served in all ice cream stores is vanilla. Deviations from that will be dismissed as morally inferior and politically...
incorrect. We need to be respectful of the immense diversity of human beings and the societies that they form.

I was earlier warning against one particular alliance, which I think is seductive for some people in the Catholic Church, which is to say that the likeliest allies for defending a traditional conception of the role of women are Muslims. I think that is something that will not have a positive effect on the Church’s position in Western societies and is likely to lead to serious misunderstandings between Christians and Muslims. For a number of reasons, that is the one alliance I would particularly warn against. But in general, I think greater dialogue rests on the legal structures that are provided by human rights and a recognition that these structures are inadequate to meet the religious hopes and aspirations of people.

MARILYN McMORROW: Dan, you seemed more cautious about alliances. Was I listening to you correctly?

DANIEL PHILPOTT: Well, my larger point was to look at the institution of a sovereign state historically, and I think that there is something kind of totalistic in the definition of a sovereign state—only one holder of authority as sovereign authority in a territory, and so it is very demarcated and so forth. There is something about the sovereign state that it should certainly use caution about its expansive octopus-like tendencies.

I think in terms of mounting the Church’s positions, as I treat this in the book Just and Unjust Peace, the Church has its views on justice that it roots internally. Once we have that then we can find resonances and alliances in pluralistic settings with other faiths and secular voices. I think there is a pragmatic logic, such that it is an ever-shifting coalition. We build alliances according to what is at stake. It can also involve friendship and deeper ways, of course, too. But I think there is a shifting character to it.

ROBERT DESTRO: Well, Dan, I think your point is very well taken for a couple of reasons. One, of course, was mentioned in terms of the privacy kinds of questions that come up, the all-pervasive “We know everything about you.” There is really no place you can run and hide. That is one. But the other is that in various religious traditions, some have separation of church and state and others do not. People always say in the Muslim tradition there is not one. Well, the Shi’ites certainly do not believe that, and they think that Saint Thomas has a lot to offer. When
you look from the perspective of the kinds of things I have been
doing particularly in the Middle East, what we are seeing really
is not exactly what Samuel Huntington thought. He said there
was a clash of civilizations, posed as the West versus the East. It
is not that. It is actually more of a clash of two fundamentalisms
where you have a secular fundamentalism in the West, which is
what the pope was trying to talk about at Regensburg. As one
of our Persian friends said, “Well, if you are going to a Persian
philosopher, you should at least give it a name.” But they said
their view was the pope was absolutely right. They said, “You
are suffering from a secular fundamentalism. We are living un-
der the boot of a religious fundamentalism. You have secularism
without faith, and we have faith without reason.” He said, “Both
of them, unless we have an alliance in the middle, they are going
to kill us all.”

MARILYN McMORROW: I am wondering whether using the
Universal Declaration and the International Covenant on Civil
and Political Rights is a good meeting ground for this question
about the future issues of human rights.

Let’s get some questions from the floor.

MONA SIDDQUI (University of Edinburgh): One comment
and one question. The comment is on the Common Word Ini-
tiative. I think it is one thing to say we need to make alliances,
but we also need to realize that these alliances are the converted
speaking to the converted, and they are on this academic level to
faith leaders with absolutely no impact on a grassroots level. So
they are good to themselves, but they already have a huge influ-
ence. Another issue is about speaking to minority religions and
the statement “You can be a Jew but do not act like one” or “You
can be a Muslim but do not act like one.”

I am thinking about some of the issues with multiculturalism
in the UK and the failure of multiculturalism as it is perceived.
It is precisely because you leave the Muslim to be the Muslim.
You leave the Jew to be the Jew. You leave the Sikh to be the
Sikh, and there are no common values that are bringing these
people together. So I would say that as well as religious free-
dom, we have to actually think about its parallel word, which is
“values.” We cannot just talk about religious freedom in the
abstract. Today, a lot of the issues around religious freedom, which
is really about minority religions and the place of minor-
ity religions in Western democracies, are really about the failure
of multiculturalism, the failure of them having the same values
that different democracies have.

What does that mean? Does that mean that diversity is inher-
ently a good thing? I do not think it is, and I think we tend to
say that because it is the right thing to say, but I think diversity
is only a good thing when it is negotiated with multiple voices.
And there has to be some common agreement about what are
the values that might be very contradictory in your particular
religion as it stands. But we should force it. We should demand
that you rethink. Otherwise, we will continue to have forced
marriages. We will continue to have honor killings. We will con-
tinue to have all sorts of abusive practices all under the name of
religious freedom.

FATHER JOHN LANGAN: I would like to pick that up. I
think we are dealing here with actually a number of different
problems. One, how to deal with members of minority commu-
nities that are profoundly alienated in many respects both from
the community of their birth and the larger political communi-
ty—I think that is an important and urgent problem. But the
general problem of how to shape a favorable environment for a
wide range of minority communities in many different stages of
assimilation—I think one looks for a big tent with very broadly
enunciated norms counseling mutual respect and freedom for
diversity. I will not give you the text of John Stuart Mill on this
point, but I think one of the most interesting arguments on our
liberty is in effect the argument from the good of diversity, that
can be taken in isolation. There is no way to boil this whole
problem down to something that can be solved with one value or
one slogan or one program or one strategy. This is really a ques-
tion of how coming from our diversity we learn to live together
without resorting to some kind of brutal standardization.

DANIEL PHILPOTT: I will just add that when we are trying
to find common values among different faiths in a pluralistic
setting, there are broadly two different models. One is what I
call rooted reason, where the members of the faiths are taking
their commitments that are deeply rooted in their traditions and
then trying to find common resonances, versus another model
that I think comes out of a more secular tradition that I will call
restricted reason, public reason that says that there is essentially
a kind of “floor” articulated in secular terms. Peace will only
happen when everybody reasons in that language, on that floor.
So in other words, peace can only happen essentially when the
deep commitments are set aside. And then we find agreement
on a thin basis.

I think the problem with that is that it really amounts to just
another kind of imposition, a kind of “secular religion” so to
speak. Whereas rooted reason allows the deeply rooted commit-
ments to come together, and then seek to find where the common resonances are.

ROBERT DESTRO: I love both of your questions. I think the comments are very, very well taken. Let me just give you a couple of examples from a “structural” perspective. We are, perhaps, most familiar with the “macro” structures, but there are also important microstructures, which are equally important, but less obvious supports for our freedoms. That is what Peter Berger and others have called the “mediating structures” of society. You need to be protecting and fostering these structures so that people meet each other in common space.

There was a case decided in Idaho involving a charter school that wanted to teach a “Great Books” curriculum. As you may know, charter schools are public schools that are run by private parties. The state sets the standards for what kids need to learn, and these standards require that students must have basic knowledge about religion and history.

Taking the state of Idaho at its word, the Nampa Classical Academy decided that it would use the Bible, the Qur’an, the Hindu holy books, the teachings of Native American tribes, and the Book of Mormon, and require the children to read them. The parents had no problem with the curriculum, nor did the state, until, of course, the ACLU complained. It sued, claiming that the use of religious primary source material would be “sectarian.” The District Court and Ninth Circuit agreed. The law in the western United States is that the use of religious primary source material is a forbidden preference for “sectarian” teaching.

The result is that our kids now have a constitutional right to be ignorant because others have determined that the state may not help them to understand that other people think differently.

At the other end of the same continuum is a congressionally mandated program in which the United States government buys and translates Qur’ans into Pashto and Dari, and supplies them to madrasas that teach kids to read the old-fashioned way: by reading the scriptures in their original language.

The reasoning behind this eminently sensible program is identical to that which motivated the faculty of the Nampa Classical Academy. We want our children to know the rules that govern not only their own lives, but the lives of others. Because most Islamic fundamentalists in South Asia do not speak classical Arabic, they cannot read the Qur’an. Our government has a vital interest in their education—as well as in their good behavior. And so our government is funding religious schools in Pakistan. The parents love it because their children are learning to read, and, more importantly, learn about the moral norms that hold their Islamic societies together.

So, what is wrong with this picture? The situation in Idaho bears witness to the religious intolerance of the great melting pot of the American public schools. For years, Catholics and Jews knew them as “Protestant Christian” schools, and many reacted by forming schools in which they were free to be who they are.

Unfortunately, things began to change in the 1960s. The courts began to accept the proposition that the only path to religious tolerance is to exclude religion from the schools, and to deny aid of any sort to students who want a more robust version of morality than the secular version on offer in the local public schools. In many ways, large and small, we have built a concept of religious liberty that values and rewards only social behaviors that do not give offense; religious liberty suffers.

We see the same problem in Yemen. If I am upset about the messages on someone’s Facebook page, I will go and blow somebody away to make a very public statement that I am upset.

This is the level at which we must engage. I mean that you have got to get down to the ground level. Academic conversations will not do it. You have got to get right down there on the ground, engage within those structures and make things change.

DAVID NOVAK (University of Toronto): I very much agree with the whole thrust of Robert Destro’s presentation. So I hesitate to criticize a certain point. Robert Cover has two articles that have been quoted by everybody in terms of representing the Jewish tradition. But I think that he seriously misrepresented it through no fault of his own. He misrepresented it as follows. I think that rights-talk is something that works in terms of working across traditional lines. I am working with a Muslim colleague and a Catholic colleague on natural law and our respective traditions, and what they have to say to each other and to the secular world.

The problem with eliminating rights-talk first of all is that you eliminate the most basic component of political discourse in the world. So to say—as Alasdair Maclntyre said in one of his less profound moments—that belief in human rights is the equivalent of belief in witches and unicorns is something that he should be forgiven, whether here or in heaven. The fact is that, in terms of rights and duties, Judaism talks about commandments...
and duties. But then the question becomes who are those duties to? A duty is something that you owe to somebody else. Well, of course, a traditional Jew like Cover would say, “These are duties that are owed to God.” Does God have a duty to command duties? Does not God have a right to our duties? The point that I am making is that the problem with rights-talk in the West is not rights-talk. It is impoverished because all rights only devolve on the individual.

Actually, in our Jewish tradition rights devolve on the individual, on the community, and God as the primary rights holder. Therefore, there is a balance of power between these rights claims that are made across these kinds of borders. I think that this is something certainly that can be discovered in the Christian natural law tradition. And my Muslim colleague tells me that it is also present in Islam. So I think that for purposes of being part of the political discourse in the world, in the Western world, it has become really everybody’s discourse. Even people not in the Western world learn to talk rights language. What our religious traditions can do is enrich rights talk so that it does not all devolve on individuals and an ultra-individualism, but rather is understood as what Charles Taylor calls group rights. And, of course, for our traditions, a belief in a divinely based law has God as the ultimate rights holder who entitles other rights holders, mainly the community and individuals, to exercise their claims on each other and even on God himself—as Job exercised this for example, i.e., his right to complain about God or to God.

So this is just a point that should be emphasized. The key is to challenge people from other traditions to ask, “Is this something we can talk about?” The challenge is really if they cannot talk about it, then there is not going to be any conversation. But there are many people, and certainly in the Islamic tradition because of political problems today, who are very interested in discovering these aspects of their own traditions. They might have other names. Just as natural law in the Jewish tradition is rightly natural law, but a rose by any other name is still a rose. So I would just point that out in terms of attempting to create a kind of even playing field for these points.

AUDIENCE MEMBER: There is a great irony in what was pointed out about the US government translating Qur’ans, which seems to be very positive, but there are other examples. For many decades after World War II, the US government engaged in religious broadcasting. For example, in the Soviet Union, with a priest talking over the Voice of America to the Russian people about religion. Also, the Russian Orthodox Church in the United States provided religious texts and Bibles to people in the Soviet Union, and that could have been delivered with the assistance of our intelligence, diplomatic and military services.

MARILYN MCMORROW: Thank you.

AUDIENCE MEMBER: I have three points. I am here today for an event on Capitol Hill with rabbis from around the world and members of parliament and imams. So my first point is that freedom of speech is hampered by anonymous online expressions. I heard that and I think it is very valuable to take on board. The second greater concern came from the artificial intelligence that the marketing community is pushing. So for example, when someone goes online and they type in “Sharia” they are going to be flooded with similar thought and not have contrasting thought that is what dialogue between people is. I am concerned by the one-to-one dialogue that is going to be lost, of how to relate to each other. The third thing is that we forget to apply baby steps. The imam spoke honestly and bravely in a room full of rabbis, and one rabbi chastised him publicly and somebody else said, “Remember where he came from.” So I think we need to all learn to applaud the baby steps.

MARILYN MCMORROW: Thank you.

AUDIENCE MEMBER: I was very intrigued by the discussion of how we can deal with diversity in pluralism in a way that would then bring about shared values that can actually support
society’s functioning. I find myself struggling with that. Within our Catholic tradition we commented about the natural law, which has sort of a resonance in other religious traditions. But just the belief in a transcendent reality and an objective truth that people authentically seek through various traditions—it would seem to me that there is a resource there beyond us, telling us that human nature should give us faith that a society that is very pluralistic and very diverse can work these out. So we do not need an intolerant sort of secularism to push religion to the margins if the character of that religion is seeking a transcendent truth.

MARILYN MCMORROW: A range of questions on which to respond.

DANIEL PHILPOTT: On that last one, John Paul II said something about the character of the human person as asking the big questions. Where do I come from? Where am I going? What is the meaning of it all? And so forth. So he thought that that was a fundamentally human kind of orientation. This is something we have been talking a lot about in our Religious Freedom Project. Some even look at the ways in which psychologists talk about how we are “hardwired” for religion, so to speak. This is a very interesting idea we have been exploring—that there is something fundamentally religious about the human person, and that is something that can be affirmed before we get to which religion teaches what and so forth. Maybe it is something like Dignitatis Humanae in a way. Why do we defend human dignity with respect to the search for truth? Well, it is because there is something fundamentally good about religious truth, about that search and about adopting answers that place us in harmony with that truth. So I think you are right. That is something that can be a wonderful basis for common ground.

FATHER JOHN LANGAN: I would like to pick up the observations that we made about the effects of the technological revolution in communications that we have lived through. It seems to me that we need to be thinking about the impact of the multiplication of ways in which we communicate with each other and their moral and political implications. I think we are in very early days on this. Some of these matters are brought to the courts. But it would be a mistake to regard court decisions at this point as conclusive of the substantive concerns. For one thing, just to focus on something which is a matter of personal irritation to me, we need a different set of etiquette rules for how we talk to each other. I mean we have all lived through the experience of listening to one side of a phone conversation. We do not have effective social sanctions against that. It is the soci-

eter. I mention that as a comparatively superficial but not trivial example. We are going to need to think about the impact of all this on our sense of what it is to hear a word, which is a fundamental religious category. So this is a long-term project that we are moving into, and we may need to re-examine some of our presuppositions, even some of the legal presuppositions.

We have circumstances in which the expression of certain religious views may be very close to the equivalent of shouting fire in a crowded theater. And how we restrain that is something that at least needs to be discussed and thought about, not simply dismissed by the invocation of some form of secular fundamentalism.

ROBERT DESTRO: I like the idea, too, about the baby steps on the technological piece because I think sometimes when we talk about religious liberty we unduly restrict ourselves to the things that mention religion as opposed to the right of both physical association and privacy. When I go into a confession, is it a First Amendment question of whether there is a privilege or why does the government have a right to even intrude on that conversation? That is a physical space. The same thing would be true with respect to the artificial intelligence. My question would be, “Are they manipulating us?” or my concern would be somebody saying, “Well, look, you are not getting enough things, so we have to look at all this other stuff, too.” I mean that would be a religious freedom problem, too. So I think what we need to realize is just like the sociologist said, “We are hardwired for religion.” Religion shows up in everything we do. And so we have to be vigilant on any one piece of these rights issues. David Novak is exactly right and I think that is a friendly reminder. I agree with everything you said, but it is how do you speak to these issues? Any parent knows you have to have a big bag of tricks to get the message across.

MARILYN MCMORROW: All right. Well, I know I’m left still wrestling with the questions of how the Church can be an ally of religious freedom—our panelists spoke about the Church’s need for religious freedom—and how we’re to carry out its mission. I’m also left with the question the panelists have raised for us about the tensions between the human rights discourse and the Church’s ability to live its mission. These are some of the questions I’m taking away from the panel, and I hope you are also.
THOMAS BANCHOFF: What we're going to do in this panel as the title suggests is bring things back home to the United States, but also up to the present, and focus on some of the controversial issues that have raised the salience of religious freedom questions in our polity over the last couple of years—issues that have become more intense, more debated, more controversial, of course, in the run up to the election, which is just a couple months away.

We know from the historical overview that religious freedom, while broadly acknowledged as a foundational principle throughout the history of the United States, has always been controversial. The question of how to realize it in practice, the question of its relationship with other rights and with state power and compelling state interests has been an ongoing source of controversy. What we've seen now, though, over the last couple of years is the emergence of a couple of very identifiable controversies, which bring this down from the more theoretical level to the question of law and politics and elections, and that's what we're going to get into today. I'm thinking in particular of two areas, the equal rights of gay and lesbian Americans, especially gay and lesbian couples, and how that relates to questions of religious freedom, and the provision of preventive care services, particularly contraceptive services and abortifacients. It's a very political conversation, dealing with the intersection between religious freedom and healthcare, and rights to healthcare in this country.

I've asked our panel to focus on those two areas, as well as the broader question that we touched on already and Cardinal Wuerl touched on at lunchtime—the degree to which religious freedom is really under threat in the United States, whether the Catholic Church in that context is somehow under threat, and the nature of that threat. I've asked our panelists to think a little bit about that, and perhaps pursue it in these two specific contexts of the rights of gay and lesbian Americans/same-sex marriage, and controversy surrounding the HHS mandate.

MARC DEGIROLAMI: I thought to begin with a question of the subject of the panel itself, conflicts between religious freedom and other rights. It's worth pausing over that word “conflict.” It's been a word that we've heard throughout the day in the various panels. It's worth pausing to take the measure of the word before diving into some of the more specific discrete issues, because sometimes there can be a perhaps somewhat hasty desire to solve conflict, especially in this area before understanding it. The wish to resolve a conflict in law, I think especially, can mask the depth and complexity of the conflict. Even more than that, an over eager desire to resolve a conflict can mask the possibility that conflicts are part of every person's experience, and perhaps more controversially, that justice often does not consist of any sort of large scale, harmonious solution, or a consensus either within an individual, or within a polity.
So we are asked to consider certain types of conflicts, conflicts between and among rights. Underlying each of these rights are multiple values. The right to religious liberty includes within it the conventional values of liberty, autonomy, equality, but also less conventional values like piety, asceticism, charity, devotion, self-control, fidelity, temperance, patience, and obedience. Perhaps borrowing a page from John Garvey, those are only some of the values that religious liberty can help a person or an institution to achieve, and therefore only some of the reasons that we should want to protect religious liberty as a right. But those values can and often do intersect and compete with others that obtain in the particular social, political, and legal culture, and conflicts arise whenever these various values of religious liberty clash with other values, so that a decision must be made in favor of some, and against others. Conflicts can occur not only among different types of values, as when a Roman Catholic’s autonomy of conscience conflicts with a state’s interest in a certain conception of equality, or autonomy, or health, but also among different values of the same type, as when a Roman Catholic’s conception of equality, and what that means for religious liberty, conflicts with the conception of equality contained in, say, title seven of the Civil Rights Act, or when a court invokes the due process clause of the Fourteenth Amendment, and what that means for religious liberty.

We might be able to reach consensus in the abstract that equal treatment means the absence of unjust discrimination, but what counts as unjust discrimination is open to an array of conflicting interpretations, and those conflicting interpretations are underwritten by conflicting values. In fact, breaking things down a little bit, albeit truly all too crudely, it seems to me that there are at least three ways in which the values that underlie our rights can conflict.

First, sometimes a single value, equality, for example, will, on inspection, fragment into different and conflicting values. Equality of opportunity is not the same thing as equality of outcome. Neither of those is the same thing as formal equality. Equality as fairness is not the same thing as equality of respect. Conflict is likely when a person or a group is committed to a value like equality, which fragments into conflicting values.

Second, sometimes a person or a group will be committed to two or more values within a political culture which conflict—for example, liberty and equality in a democratic society, or the rule of law and the authority of conscience.

Third, sometimes a person or a group will be committed to multiple traditions, each of which contains values that conflict—for example, a person who is both a Roman Catholic and a citizen in a liberal democracy, and who has powerful allegiances to both cultural communities.

Okay. I want to make a strong claim now. The state of being in conflict, the condition of experiencing and living within these kinds of conflict is often the best approximation of justice of which we are capable. Conflict may have been a great evil for Plato, who argued that from the proper ordering of the social classes would come harmony, and that harmony is a precondition of justice. But conflict is not a great evil for us. In fact, as the philosopher Stuart Hampshire once put it, conflict is perpetual. Why, then, should we be deceived? Conflict is an essential and deep feature of our society, unavoidable and inevitable as Dan Philpott said in the last panel, but more than that. Conflict is desirable, since its source is our different backgrounds, different outlooks, different memories, and different traditions.

Now, of course, nothing that I have said about the justice of exist-
ing in a state of conflict negates the importance of compromise. But compromise does not mean harmony, or the complete relaxation of tension. A good compromise is one where the tension between conflicting sources and impulses is perceptible, and vivid, and both forces and impulses have been kept at full strength. A good compromise retains that sense of conflict in achieving a temporary holding together of force’s intention. Because of the fundamental nature of conflict, it is probable that our own lives could be characterized as a series of compromises of this kind between competing values. Much the same, in my view, may be said of the institutions of civil society. But neither in an individual, nor in an institution, nor in a larger political society, is a state of conflict the sign of a defect. In fact, it isn’t even a deviation from the normal.

So when the second question posed to us by our very good convener says, “What are the tensions between religious freedom and gay rights in the same-sex marriage debate; how should they be resolved?” My reaction, since I’m a law professor that deals with law students, is, like the ornery law student, to resist the hypothetical. Conflicts that partake in my view of all of the three categories that I described are not meant for harmonious resolution. They are meant for what Cardinal Wuerl’s interlocutor communicated to him, as he said earlier, a respectful and fair audience, perhaps represented by the injunction to listen to the other side. Perhaps they are susceptible of halting, partial, and temporary compromise. But the values that are at stake are constantly conflicting with each other, vying for supremacy—a gain for one will mean a loss for another. And that means that good compromises will be attuned to preserving the integrity of the conflicting positions, because compromises that preserve the integrity of conflict are superior to those that destroy it. There generally is, in any contemporary society like ours, a mess, a chaos of opinions and moral attitudes. A reasonable person knows this. Those with strong opinions deplore the chaos and hope for consensus, usually consensus in which their own opinions and attitudes are dominant. No state will realize perfect fairness in the representation of competing moral outlooks within it. But what I am suggesting is that in making its choices, a state should at least take care not to breeze past the deep importance of conflict in a misguided effort to reach that kind of harmony or consensus. Thank you.

THOMAS BANCHOFF: Thanks Marc for those framing comments, and I want to ask you what this all means and how you approach these issues more concretely, but we’ll come back to that in the question and answer period. Let’s first hear from Cathy Kaveny.

CATHLEEN KAVENY: Well, I think I’m going to take our conversation in a bit more concrete direction. It will be interesting to see whether the abstract and the concrete can meet in a fruitful conversation. This panel is about the relationship of religious liberty to other rights and values in the context of the HHS mandate, same-sex marriage, and other controversies between religious believers—at least some religious believers—and some aspects of state and federal and even local government and law.

One of the things that makes me uncomfortable about the way that the discussion has occurred thus far is I don’t think we’re framing the debate in a way that will help us get to a more precise understanding of what’s at stake, if not to a workable compromise. For example, on the stage today, we’ve got the words religious freedom on the wallboard behind us. In too many discussions, “religious freedom” is seen as a thing, almost as a univocal thing, an abstract thing that is conflicting with another abstract thing, also framed as a right—women’s reproductive freedom or nondiscrimination on the basis of gender. And we do not seem to be getting very far in this current discussion, framed as one abstract right pitted against another abstract right. We Catholics ought not to be surprised at this fact. After all, we all should have read Alasdair MacIntyre’s, After Virtue, which diagnosed one of the fundamental problems of Western liberal democracies as this conflict of rights against rights in a number of situations, such as “the right to life” versus “the right to choice.” Rights language talks about conflicts and it doesn’t tell you how to resolve them. Mary Ann Glendon made a similar point in her book, Rights Talk. Abstract rights describe non-particular claims, or non-specific claims, battling against each other without any resolution. Catholic notions of rights, within the Catholic social justice tradition, are not abstract entities battling one another. They’re presented as claims that can be nuanced in different situations to harmonize with other rights claims that are all contributing to the common good. So framing this controversy about the HHS mandate as a battle of abstract rights isn’t helpful, and isn’t in line with the best ways that we pursue our tradition philosophically and theologically.

A thicker, more precise, and more detailed understanding of the conflict is necessary. Another thing that’s necessary, I think, is to try to see how things look from all points of view in the discussion, not merely from our own point of view. How does the problem look from the perspective of the other side in the discussion? We’ve heard a lot about the claims that natural law makes upon us today, particularly from His Eminence. One of the things that’s very, very interesting to me about the natural law tradition is that St. Thomas Aquinas says one of the basic principles of the natural
law is “Do unto others as you would have them do unto you.” And I think the Golden Rule is very important in a liberal democratic society where there’s a tremendous amount of religious and moral pluralism. In the political context, it asks us to try to see how the issue that we’re pressing, how the point that we’re pressing, looks from the other side. So what I want to do here, just for the next couple of minutes, is to say what I think is at stake in this debate in a particular way, not merely in a general way. What is at stake for Catholics and Catholic institutions, with respect to religious liberty? Well, Catholic institutions are not being prevented from fulfilling a religious requirement; they’re not being stopped, say, from using wine at Mass. They are not being forced to do something that is directly against their religious tradition. They are not being required by the HHS mandate, for example, to worship an idol. Father Jenkins of Notre Dame isn’t being forced to give the shot of Depo-Prevera himself, or to perform an abortion. Instead, what is at stake is making a contribution, a financial contribution, an organizational contribution, to an immoral act that is being performed by somebody else. And so what the Catholic institutions, I think, are involved in here is cooperation with evil. One step removed from the actual wrongdoing at stake. Basically, the cooperation with evil matrix asks us to consider when it is morally permissible to contribute in some way to the wrongdoing, the primary wrongdoing of another party. In this case, the cooperation qualifies as remote material cooperation with evil, which is justified by “proportionate reason.” What’s at stake on the other side? How does it look if we apply the Golden Rule? It worries me that some defenders of religious liberty talk about it as if it’s simply a question of access to contraception. You hear people say, “Well, women can buy their own contraception,” or “I don’t want to subsidize so-and-so’s sex life.” It makes it look as if religious freedom is pitted against a kind of sexual license. I don’t think that’s a Golden Rule way of framing the issue. If you’re taking seriously how the situation looks from the perspective of the people making the law, the contraceptive mandate is about preventive medicine. What’s key is that HHS is trying to propose a whole benefits package, a basic benefits package that’s available to everyone, and a key component of that benefits package is preventive medicine. Why? Well, this is what the HHS webpage says: to reduce the rate of unintended pregnancies, which account for almost half of the pregnancies in the US, the report urges that HHS consider adding the full range of FDA approved contraceptive methods, as well as patient education and counseling for all women with reproductive capacity. Women with unintended pregnancies are more likely to receive delayed or no preventive care and to smoke, consume alcohol, be depressed, and experience domestic violence during pregnancy. Unintended pregnancy also increases the risk of babies born pre-term, or at a low birth rate, both of which raise chances of health and developmental problems. So that’s why HHS is backing the contraceptive mandate. And I think we can all agree that that set of goals articulated here is good. Our argument is about the means used to achieve the goals. The Roman Catholic Church teaches that artificial contraception...
isn’t a good and acceptable way of achieving these goals. It doesn't think that over the long term it will lead to flourishing, for either the women involved, or for the broader community. It’s treating this judgment as an interpretation of the requirements of the natural law. So this helps us see, actually, what’s at stake, I think, for the Church in this debate. The problem isn’t the actual contribution of money to contraceptive—that’s minuscule. The problem is that normalizing contraception and making sure people go along with it is causing scandal. That’s also a technical theological term. The basic worry of the Church, as I see it, is that the contraceptive mandate is going to make Catholic institutions treat as morally acceptable and good, as a legitimate preventive service, a pattern of activity that is not good or legitimate. The Church believes that it is being conscripted into teaching what it believes to be a false proposition of morality.

But here’s the rub. Not everybody in the United States agrees that the Roman Catholic Church is the authoritative interpreter of the natural law. It’s partly what Protestantism was all about. And in fact, some Christians, and indeed some Catholics, view the use of contraception as a morally responsible way to plan their families, and to exercise stewardship with respect to their reproductive powers. And what I’d like to suggest is that they have a religious liberty interest at stake here too. These are not people who are promiscuous, nor are they simply trying to get their contraception paid for by someone else. They see the use of contraception as a way of exercising their fiduciary obligations toward their family. Having them be restricted or disadvantaged in these aims by a religious viewpoint they don’t accept, I’d like to submit, is also an infringement of religious liberty. Consider Paul’s letter to the Galatians and Paul’s letter to the Romans, in which he indicates that being subject to a set of religious rules that you yourself view as false and constricting can be experienced as a restriction on your Christian liberty.

Now, that doesn’t settle the issue, it simply says there are religious liberty claims on the other side from the bishops. In fact, I’d like to suggest we could look at this as a situation of religious freedom and conflict, as a conflict between the rights of religious employers versus the rights of employees who don’t happen to go along with the tenants of their employer’s religion. United States v. Lee, 455 U.S. 252 (1982) recognized the potential conflict between the religious liberty interests of employers and those of employees. It said that when followers of a particular sect enter into commercial activity as a matter of choice, they accept statutory schemes, which are binding on others in that activity. More specifically, Lee said that granting an exemption from the legal obligation to pay social security taxes operates to impose the employer’s religious faith on the employees.

So in our discussion of the conflict over the contraception mandate, I think we also need to look at what level we’re locating the claim of religious freedom. We heard in the first panel today, the first move toward religious freedom was cuius regio, eius religio. There was religious freedom on the parts of various princes to organize their community in the way they wanted. And you could get up and move, maybe, communities if you didn’t like it. Do we want in the United States an analogous principle of cuius negotium, eius religio? Do we want to say that whoever’s business it is, that is whose religious framework rules? How far do we want that principle of organizational autonomy to govern, and how far do we want there to be a basic package of
rights that are available to everybody no matter where they work? It seems to me, then, that the tension between corporate religious freedom and the religious freedom of employees has not yet been looked at carefully enough.

So I see a conflict that’s more nuanced and less black and white than it’s appeared in some of the promotional literature issued by the bishops’ conference on the question of the mandate. I think we’ve got a question of religious freedom on the part of the Church, certainly, but I also think we have a question of public order and welfare, and the extent to which that can be instantiated in a basic benefits package. I think we’ve got the bishops’ concern for the moral and religious pedagogy that’s associated with sponsoring a benefits package that includes a service they believe to be harmful, not beneficial. On the other hand, I think we have a question of the level at which the protections of religious freedom attach: simply to the institution, or also to the individuals who work for that institution? After all, we don’t make every right of employees dependent upon whether an employer wants to respect it or not. There are a lot of mandates we impose on employers, such as child labor laws. Some may even interfere with their freedom of conscience. But we think that that’s the right thing to do.

I’d like to suggest that the new proposed regulations by the Obama administration, if they can be worked out in sufficient detail, actually might help resolve this problem. What those regulations want to say is there’s the group of narrowly defined religious entities, such as churches themselves, who don’t have to offer contraception at all. But there is also a larger group, like religiously affiliated hospitals and universities, who face a more complex situation. Here, the regulations say, yes, your employees will get access to this benefit, even though you’re a religious institution. But you will not have to reach out to them about it, or sponsor it, or pay for it. I’m not sure why that isn’t at least a tenable option from the perspective of Golden Rule analysis. The compromise tries to see how the matter looks from the perspective of the employees, and also to assess how it looks from the perspective of the religiously affiliated hospitals and institutions such as schools that aren’t covered by the pure exemption. I think that might be the way to go.

Thank you.

THOMAS BANCHOFF: Thank you. Okay, that was a different kind of presentation. Very rich in detail that linked back to some of the broader issues that Marc mentioned. We’ll have a lot to follow up on, but first let’s hear from the other Mark to my far left.

MARK RIENZI: Cathy mentioned religious diversity, and the obvious fact that not everybody agrees with the Roman Catholic Church. We obviously have great religious diversity in this country, lots of people of different faiths, lots of people with no faith at all. I think it is fairly obvious but worth pointing out at the outset that in a religiously diverse place, in a pluralistic democracy, you will, from time to time, have situations where one person’s religious liberty runs into some other people’s rights. And I think generally speaking, in a liberal, pluralistic democracy, the right answer should be, where possible, for us to find ways to work around the claims of religious liberty, so that in fact we are not forcing people as the price of participation in society to shed some of their religious beliefs to be here.

I’d like to start by talking about the issue of conflict a little bit like Marc did, and make the claim that there are fewer deep conflicts of rights involving religious liberty than there may seem at first glance. One of the questions we were asked to talk about is the conflict between religious liberty and same-sex marriage. If you think about the recent Chick-fil-A controversy that was in the news, there you had Dan Cathy who owns this business, Chick-fil-A, who made some statements about same-sex marriage, and that in his understanding of marriage and religion, same-sex marriage is a terrible thing, and that America, I’m paraphrasing here, but that America should watch out because God is paying attention and sitting in judgment. Obviously those comments came out, they became wildly unpopular, and several things happened. I want to leave aside for a second the question of government responses to Chick-fil-A, which I think can raise some conflict of rights issues, but I want to talk about private responses to Chick-fil-A. What happened in that controversy?

Well, a lot of private individuals said, “I don’t like that statement, and I don’t want to do business with Chick-fil-A; I don’t want to associate with Chick-fil-A; I don’t want a penny of my money to go to Chick-fil-A and the business that supports Dan Cathy because I disagree with him.” And lots of nonprofit corporations took the same stand. Several colleges said, “We don’t want Chick-fil-A on our campus because we don’t agree with the statements by Dan Cathy about same-sex marriage.” And a lot of for-profit corporations did the same thing. The Jim Henson Company, the company that makes the Muppets and the Muppet movies publicly said, “We can no longer have,” I think they had some product tie-ins with the kids meals at Chick-fil-A, they said, “We can no longer be associated with Chick-fil-A; we don’t want a penny of our money going to Chick-fil-A; we don’t want any association with Chick-fil-A; we disagree with what they stand for; we can’t be involved.” I would like to suggest that this is a conflict of rights
“So in our discussion of the conflict over the contraception mandate, I think we also need to look at what level we’re locating the claim of religious freedom. We heard in the first panel today, the first move toward religious freedom was *cuius regio, eius religio*. There was religious freedom on the parts of various princes to organize their community in the way they wanted. And you could get up and move, maybe, communities if you didn’t like it. Do we want in the United States an analogous principle of *cuius negotium, eius religio*? Do we want to say that whoever’s business it is, that is whose religious framework rules? How far do we want that principle of organizational autonomy to govern, and how far do we want there to be a basic package of rights that are available to everybody no matter where they work? It seems to me, then, that the tension between corporate religious freedom and the religious freedom of employees has not yet been looked at carefully enough.”

*Catheleen Kaveny*

that the government should have no business resolving. In other words, I’m quite certain that Dan Cathy found a lot of things said about him to be deeply hurtful and offensive. I’m quite certain he found a lot of them to be financially hurtful, I assume. I don’t really know, but I assume he’s suffering some financial pain. I assume he didn’t like hearing things said about him. I assume he didn’t like hearing things said about his religion. I assume he found it all deeply hurtful. But I don’t think there’s any conflict of rights going on when other private citizens say, “I don’t want to be associated with that. I don’t want a penny of my money to go to that. I don’t want to participate in anything that has to do with that because I think that’s wrong.”

I think a lot of the conflicts that we often think about when we think about religious freedom are, what I’ll call for lack of a better term, Chick-fil-A conflicts. It’s conflicts where two private parties are involved, and party A says to party B, “Hey, you may have a right to do that.” I haven’t heard anyone say Dan Cathy doesn’t have the right of free speech to say what he thinks, or Dan Cathy doesn’t have the right of free religion to believe what he wants. Or if people said that, I assumed it was a small, small, small minority. I think virtually everyone in the debate recognizes Dan Cathy’s exercising his constitutional rights. He’s entitled to do it. But I think the other people are exercising their constitutional rights, too, and I don’t actually think that’s the type of conflict of rights that the courts or the government ought to be in the business of resolving. I think free people ought to have the right to say, “You’re entitled to your views on the world, and you’re entitled to believe and do what you think, and I’m entitled to mine, and if I don’t want to pay for what you’re doing, I don’t want a penny of my money to go toward it; I don’t want to associate with it.” I think they should be perfectly willing and free and able to do that.

So when I think about conflicts between religious freedom and same-sex marriage, I think you can focus on a pretty small set of conflicts. So the deeply religious person who is the town clerk of marriage licenses, who says, “Based on my religion, I can’t be involved in facilitating anything that has to do with a same-sex marriage.” Well, theoretically, that person is in a position where they could be conflicting with someone else’s right to same-sex marriage. I don’t think you can say the same thing about someone who is a private wedding photographer who says, “You know what? That’s an event that I don’t want to go portray. I don’t want to be part of that. I’m a free person, too. You can have your right to do what you want; I don’t want to be involved in it.” I think the same thing comes up in the healthcare context. And before we get to the HHS mandate stuff, the more traditional healthcare contexts in which this comes up, of course, is conscience clauses related to abortion. The most recent manifestation of that has actually been on things like emergency contraceptives, pharmacies, pharmacists who say “I don’t want to participate in selling or dispensing that drug.” Again, I don’t think when a private pharmacist says, “I can’t be involved in that,” that that is really a conflict of rights.

In other words, I don’t think, generally speaking, that the right to obtain Plan B, or the week after pill, or any of these drugs, I don’t think that the right to obtain it entails the right to force unwilling private individuals to give it to you. I think the right is the right to get it without the government stopping you. I think those are two very different things. If the government were trying to stop you, if the head of the FDA said, “I have a religious objection to Plan B,” i.e., “Based on my religion, I can’t stamp the paperwork to approve it,” there, I think you have a true conflict of rights. But I don’t think you really have a conflict of rights when a private
The fact that those types of true conflicts are fairly rare, doesn't mean that the whole issue of conflicts between religious freedom and other rights doesn't pose a serious threat to religious freedom. I think it does. If you look at some of the litigation that's happened over the past few years though, one of the things that comes up over and over again is that where there are these claims with deep conflict and religion must yield, when you get into the nuts and bolts of the cases, you almost always find that in fact there's a relatively easy work-around that doesn't require drumming all the Christians out of the pharmacy community, or forcing all of the people who don't believe in same-sex marriage out of the wedding photography community.

There has been litigation in Illinois for the past, I think, seven years now, after Governor Blagojevich said every pharmacist in the state has to sell Plan B. Eventually the state has to come forward with its evidence. The state's claim was that there's a big conflict of rights. People are being denied their drug that they need access to. But when they were forced to put on some actual evidence of the problem, the state had to admit, actually, that it was not aware of a single person over the seven years who was unable to get the drug. They had no evidence of a single human being. And when you think about it, it makes a lot of sense. One of these pharmacies was in downtown Chicago. There are 30 pharmacies within a stone's throw of that guy's business. There's absolutely no compelling government interest to say we need to get that guy to give it out because 29 other people within the one mile radius is not enough. We need 30.

In Washington state they had a very similar case where the governor there imposed a very similar rule, and the claim was the same. We have a deep conflict of rights. We need to make sure people have access to the drugs until they actually had to put on the evidence, and when they actually had to put on the evidence, in Washington, like in Illinois, the answer was, actually, there's no human being who has been unable to get the drug because there's always a pharmacy next door. Could it be inconvenient? Could it make somebody go to the next pharmacy over? Absolutely it could. But this is a drug that's widely available. You can get it over the Internet. And in all of these places the government had actually made no serious effort to make it more widely available itself. So again, there was a lot of evidence that in fact, what was claimed to be a deep-seated problem was not.

In Illinois they were trying to force people who were in their early 50s and had young kids, and had only known one profession in their lives; Governor Blagojevich said, "Well, those people need to find another profession. Those people need to get out of the profession." The government was willing to drum them out of the pharmacy business, close down their pharmacies so that they don't provide any services, over a health risk that didn't really exist because there wasn't really and truly a conflict with religion.

To turn to the HHS mandate, first, the federal government in the cases and the lawsuits has made a whole lot out of the access arguments. I appreciate Cathy's point that it can be made more broadly, and at times, the government does make it more broadly. But quite frequently the government does make the access argument both in court papers and in public statements, that this is about access, and I do think, to the extent you frame the issues about access, it's very difficult to view it as seriously being at conflict with religion. It's as if there couldn't be lots of other ways to provide access to the drugs short of forcing unwilling people to be part of it.

Just one example is Title X [Family Planning Program]. One of the cases is in North Carolina with Belmont Abbey College, a college run by a community of monks. Belmont Abbey College said, "Look, we can't be involved in buying this stuff and giving it out." Well, if you do a little bit of looking on the Title X website, what you'll find is that the federal government is in the business of giving out the drug and gives it out to tens of thousands of people every year in the state of North Carolina. If the government thinks more people need to be given access to the drug, the government could give it to them directly. There's really no need for the government to force unwilling people to be involved. I think it's a fair argument to say that well, maybe this is remote participation with evil. Maybe it's not as directed as some people think. As a matter of how the law and society should approach that, though, I think the right answer is that that's a decision to be made by the individual religious believer, individual religious institution. In other words, many institutions may say, "You know what? That's right. I'm not giving the shot; I'm not taking the drug; therefore I'm not closely involved in the evil, and therefore I can pay for it." And if those people say that's fine with their religious convictions, I think the right answer is great, good for you, move on. You have nothing to worry about, or nothing to sue about.

But the fact of the matter is that many people don't view the participation as remote enough, and in a free and pluralistic liberal democracy, they ought to be able to make the decision that in
fact that is too close participation, and that’s something that they cannot participate in. I think the same thing goes for the government’s proposed accommodation, which was proposed by the president in February. We still haven’t seen any actual language on it. But if we give them the benefit of the doubt that something is coming, I think what’s fair to say is, they might come up with a solution that might satisfy some people. They might come up with a solution that might satisfy a lot of people. And if they do, I think that’s a great thing. But at the end of the day, if there are some people who say, “I still can’t be doing this because I can’t hand out the insurance policy which the government has stapled to the back of it the right to get the drug, even though you’re telling me I’m not paying for it.” That is a moral claim that I think a lot of people and a lot of institutions have. I don’t think it should be for the government to say, “Well, we have decided what ought to be good enough for your religious faith, or what ought to be good enough for your conscience.” It may be good enough for a lot of people’s conscience, and that’s great and good for them, but it may not be good enough for other people’s consciences. In those situations I think the right answer is that the government ought to be in the business, in a pluralistic society, of finding ways to work around that disagreement, and to say, “Okay, do we need to make it the price of admission to the public square that you have to be willing to pay for these drugs? Does that have to be the price of admission?”

If so, why does that have to be the price of admission? I think it is a very good argument that it shouldn’t be. If you think about the early conflicts, the fights over healthcare providers who say, “I can’t provide an abortion,” or the fights in Illinois and Washington over Plan B, one of the really big problems with that is what does that say to young Catholic or Christian or otherwise pro-life people who are coming up and thinking about careers in those states? One of the things that it says, one of the things I would certainly say if I were advising someone in that position is, “Boy, if you’re pro-life in Illinois, I don’t think I would go into pharmacy because we’ve just spent the past seven years fighting about whether, once you go into pharmacy, you have to give out drug X.” In states that authorize assisted suicide I think the same issue is lurking, although most of the time when they do it, they do it with a conscience clause.

So in those situations we’re dealing with specific professions, and I think it’s bad enough in those specific professions that we have the message from the government, “If you have this religious belief, you shouldn’t be in this profession.” What’s, to me, more troubling about the HHS mandate is how global it is. This is not just pharmacists or not just wedding services providers—this is everybody. If you want to run a bakery, you want to run a pharmacy, you want to run a widget shop, you have to be willing to give out insurance that covers these drugs, and if that violates your religion, you have to go find something else to do. To me, that’s a very serious burden on a religion, and it’s an entirely unnecessary one. Thank you.

THOMAS BANCHOFF: Thank you Mark. Okay, I’m going to try to provoke our panelists a little bit. You all resisted the way in which we laid out the terms of our conversation—is the conflict between rights?—and maybe that’s because you’re lawyers and you’re attentive to the complexities of the issues. You gave very nuanced discussions. In Marc’s case a sort of overview of conflict and how it’s really business as usual. I’m paraphrasing, Cathy, a kind of vision of how you can find a compromise on this contentious issue of the HHS mandate. And then Mark, on the same-sex marriage issue you seem to suggest there really aren’t that many fronts. There really isn’t all that much tension. You gave a couple of examples: a wedding, city hall clerks, wedding photographers, and so on. I’m a political scientist, though, and I see what’s going on in this election, and particularly the stance of the Catholic bishops. We heard Cardinal Wuerl talk about a new and virulent secularism, and the church under siege. We’ve had the Fortnight for Freedom; the political fronts are being set around this notion that there are conflicts, real conflicts, at stake. So if I could provoke you a little bit to speak to that context in which our Church leadership has taken very clear positions, and how that relates to the more nuanced analysis that you all have given. Maybe Marc, you can go first.

MARC DEGIROLAMI: Well, so I guess I’ll say this first, having been chided probably justly for being too abstract, and just listening to my colleagues, I’m going to put in another little pitch for abstraction if that’s all right. I think that this may, at least obliquely, address the question that you just raised, Tom.

We disagree about everything. We disagree about the level at which to frame the debate. We disagree about to whom religious liberty should apply, the institution or the individual. We disagree about the contexts in which a right actually is violated, and the context therefore in which law can get involved. We disagree about, as I said in my opening remarks, what happens when different ideas of equality are in conflict. We disagree about how to characterize the sorts of things that, say, the administration is after, whether to call it health, or whether to call it access to contraceptives, or whether to call it sexual autonomy. We disagree on the other side about what to call it, how to frame it, levels of generality. And because of all of these disagreements, trying to
think about how to characterize these various conflicts, I think, is a helpful exercise. I think it will be helpful to the Church leadership to think about it in these terms. I absolutely agree with Cathy, and I didn’t mean to suggest otherwise, that we should just sort of think about these issues in terms of conflicts of abstract rights and stop there. But I do think that because of the depth of the conflicts that we face, and because these conflicts, you know, they’re not so bad. It’s good that we have these problems because it means that we’re complicated. I guess as a lawyer, I’ll put in a pitch for legal resolution, at least for the kinds of cases that Mark is talking about that deserve legal resolution, proceed in a way that’s well suited to the kinds of conflicts that we face. They proceed casuistically. They proceed by attention to the particular facts. They proceed by reference to a background of doctrine.

You know, law is one of the only disciplines, it’s the only academic discipline I can think of, other than theology, where there is an authoritative body of doctrine. That doctrine isn’t just something that people have to become familiar with, or that is there to react against. It’s something that binds people. It’s something that has authority of itself just in virtue of its being doctrine. That means that the kinds of attention to background that were talked about in the first panel, and tradition, in coordination with incremental and modest change where it can be made makes law a useful instrument for our predicament, particularly because of the complexity of the conflicts that we face.

THOMAS BANCHOFF: Cathy. Can you just speak to this?

CATHLEEN KAVENY: I am very frustrated, I guess, with this framing of it as a war between secularism and religion on every level. There are a number of believing Christians, believing Jews, maybe even some believing Muslims who are advocating on behalf of same-sex marriage as consistent with the deepest truths of their religion. They are arguing for a development in the doctrine to encompass it. The same thing on contraception. John Noonan wrote a book arguing that Catholic teaching on contraception can develop based on the natural law. Now, you don’t have to agree with Noonan on this point, and it is very clear that the current Magisterium doesn’t agree. At the same time, I think it’s a mistake to call people who think the tradition can develop legitimately on this question by the names of secularists or relativists. Doing so, I think, sets up a fight that we don’t need to have, and it particularly sets up a fight with the people who are under 30 who
have different views on this, but may still love God very much and still love their religious tradition, but are trying to develop it, maybe rightly, maybe wrongly. I don’t think it should be framed as a battle between all of religion, which stands for all traditional values, and all of secularity, which stands for modernization in a way hostile to religion. I wish we would see ourselves as trying together to figure out what the principles of the natural law require, or what moral reality requires when we get to very hard and difficult cases. And what we are arguing about is that. We’re not arguing about a commitment to God, a commitment to equality, a commitment to the wellbeing of women, or a commitment to religion—we’re arguing about how to handle hard cases. And if we can do that, reframe it as a discussion of hard cases, then maybe we won’t have the tremendous amount of dissension in the world.

And I’d like to make one last point. You know, I think we need to be a little bit more Augustinian on some of this. Augustine says that every human being pursues his or her aims under the aspect of the good. You know, the culture war mentality doesn’t really leave a lot of room to see our interlocutors as pursuing something under the aspect of the good. That’s one thing. Then the second thing is, we’re not just dealing with questions of religion as in pure worship, and I completely agree that religion isn’t limited to questions of pure worship. But what we are partly arguing about is what the common morality of this country is and what common moral requirements we’re going to hold constant across the board, and what requirements we’re going to allow some people to depart from in order to promote another aspect of our common morality, respect the good of religion.

MARK RIENZI: I completely agree with Cathy that it’s not correct to say that it is all simply a battle between religion as if religion has just one set of views in it—it doesn’t—and secularism, as if everybody who disagrees with what you heard from Cardinal Wuerl this morning is a secularist, as opposed to a disagreeing Catholic or a member of some other faith. I, too, have heard people make religious arguments for the contraceptive mandate. I believe President Obama made an argument for same-sex marriage that was expressly religious. One useful starting point is to say that there should be nothing wrong with making an expressly religious argument on either side about what you think the right answer to these questions is.

But I do think sometimes in our culture, there’s an effort to say, “Religious arguments about what’s right and wrong don’t have a place here. That’s invalid; you shouldn’t be taking that into the public square.” I do think these are hard questions, and again, I agree with Cathy, that it is not useful to frame them as, for example, one side likes women and is willing to protect women’s health, and the other side hates women and doesn’t. I think that is silly, frankly. I think the important thing, from a religious freedom point of view, is to say that as we work out these issues and as we talk about what, through our laws, should be a common morality, and the law does impose and lead and reinforce morality in some way, but that again, in a place with the free exercise clause, and a place with the Religious Freedom Restoration Act, we ought to engage in that discussion conscious of the fact that people have different religious views. It is a particularly bad thing for the government to be in the business of saying not just, “We’re going to set the common morality with the law,” but that “You, you, and you cannot participate in business, you cannot participate in the public square, you cannot do X, Y, or Z unless you are willing to go with this level of common morality.” To me, the set of places where the government should have the power to do that ought to be really, really small, where there’s something particularly important going on, and other than that,

“IT WORRIES ME THAT SOME DEFENDERS OF RELIGIOUS LIBERTY TALK ABOUT IT AS IF IT’S SIMPLY A QUESTION OF ACCESS TO CONTRACEPTION. YOU HEAR PEOPLE SAY, “WELL, WOMEN CAN BUY THEIR OWN CONTRACEPTION,” OR “I DON’T WANT TO SUBSIDIZE SO-AND-SO’S SEX LIFE.” IT MAKES IT LOOK AS IF RELIGIOUS FREEDOM IS PITTED AGAINST A KIND OF SEXUAL LICENSE. I DON’T THINK THAT’S A GOLDEN RULE WAY OF FRAMING THE ISSUE. IF YOU’RE TAKING SERIOUSLY HOW THE SITUATION LOOKS FROM THE PERSPECTIVE OF THE PEOPLE MAKING THE LAW, THE CONTRACEPTIVE MANDATE IS ABOUT PREVENTIVE MEDICINE. WHAT’S KEY IS THAT HHS IS TRYING TO PROPOSE A WHOLE BENEFITS PACKAGE, A BASIC BENEFITS PACKAGE THAT’S AVAILABLE TO EVERYONE, AND A KEY COMPONENT OF THAT BENEFITS PACKAGE IS PREVENTIVE MEDICINE. HHS WANTS PREVENTIVE MEDICINE TO BE MADE AVAILABLE WITHOUT A CO-PAYMENT.”

CATHLEEN KAVENY
the government ought to be in the business of doing what the Religious Freedom Restoration Act says, which is going out of its way where it can, at least, not to burden religion unnecessarily.

CATHLEEN KAVENY: So would you let CVS say, “We’re sorry, we’re not going to hire anybody who’s not going to prescribe Plan B?” CVS owns the vast majority of pharmacies in Rhode Island, where I grew up. Would you let them say they’re not going to hire people opposed to Plan B? Would you let a hospital say, “We’re not going to hire a doctor who refuses to perform abortions, or a nurse who refuses to take care of patients who obtain them?” What worries me isn’t just the specific cases before us, but a whole range of associated issues. The bishops may think that saying the business owners’ right to religious liberty may help them deflect the contraceptive mandate. But that principle creates other problems in other areas for them. And right now, we do have laws that say hospitals can’t get federal funds and discriminate against people, you know, who won’t perform abortions, and I think that’s a very, very good law. So we’ve got intervention in the business realm, in which we don’t allow hospitals to impose their moral views on their employees.

MARK RIENZI: I think that’s absolutely true, and I don’t have any problem, for example, with Title VII saying a hospital can’t refuse to hire someone because they won’t perform abortions. It also says you can’t refuse to hire somebody who at other times has performed abortions. So under that exact law, a Catholic hospital couldn’t say, “I won’t hire you because you used to perform abortions.” They don’t have to let them perform them in the hospital, but it cuts both ways. I don’t have a problem with that. That is not infringing on either side’s religious liberty. If you were to say to the Catholic hospital, you have to allow abortions in your hospital, even if you’re not performing them, you have to let people do it there, then I think you’re forcing the business to be involved in a way that you’re not necessarily forcing them to do if you just say, well, you have to be willing to hire people. Simply hiring a human being who in the past has done X seems to me…

CATHLEEN KAVENY: How about doing them simultaneously at the hospital down the road?

MARK RIENZI: I think under the Church Amendment, the hospital cannot fire you for that. I think that was the compromise in 1970 in the Church Amendment.

CATHLEEN KAVENY: Yes, me, too.

AUDIENCE MEMBER: My question for Mark Rienzi is, when you tried to circumscribe the problem in terms of the impact on conflicts between private citizens and their opinions, what do you do in response to the sense that there’s an analogy to race discrimination? My question for Cathy and possibly Marc DeGirolami is, is the concern that there might be a sort of slippery slope problem to this—it’s one thing to participate remotely in funding birth control, and perhaps it’s another thing to participate remotely in funding abortion—and so what do you do with the concerns that there’s a pretty quick analogy that the same analysis should apply?

MARK RIENZI: As to the analogy with race, I don’t think the analogy is quite right, frankly. I think if you look at the rights we’re talking about, if you look at Lawrence and Casey, the two places constitutionally where the rights we’re talking about come from, the way the Court gets to those rights is it says the Fourteenth Amendment protects a realm of liberty that includes the right to, I’m paraphrasing Justice Kennedy here, but the right to define one’s own concept of the universe, of the mystery of life, and that basically on these life, death, and sex issues, what the government protects is the right of individual people to make their own decisions about them. To me, it would be odd to say that we arrive at the abortion right or the gay marriage right through this road of saying, “Well, the Constitution protects your right to make up your own mind, because this is a deeply personal, deeply important decision that each human being ought to be able to figure out for themselves.” It would be odd to arrive at the rights down that path, and then say once we’re through that path, “I’m going to slam the door behind us and nobody else gets the right to make their own decisions about whether and how they will participate in it.” So I think it’s just different in the way in which we got to the rights.

CATHLEEN KAVENY: On the question of the slippery slope, I think that is a legitimate question. I see a big area, at least jurisprudentially, between laws that don’t violate either the free exercise clause or the establishment clause, so I see a wide range of accommodations being constitutionally permissible but not necessarily constitutionally required. Conscience rights have been protected with regard to abortion in ways that I think are legitimate. But I also think you can distinguish between abortion and contraception. In the Catholic tradition contributing to an abortion is not merely contributing to a wrongful act on the part of a second person; it is also contributing to an injustice that takes the life of a third person. But contraception is not a justice issue in the same way. It seems to me that in the case of contraception, there is a stronger employee right there to determine what counts as right or wrong for themselves.
“When I think about conflicts between religious freedom and same-sex marriage, I think you can focus on a pretty small set of conflicts. So the deeply religious person who is the town clerk of marriage licenses, who says, “Based on my religion, I can’t be involved in facilitating anything that has to do with a same-sex marriage.” Well, theoretically, that person is in a position where they could be conflicting with someone else’s right to same-sex marriage. I don’t think you can say the same thing about someone who is a private wedding photographer who says, “You know what? That’s an event that I don’t want to go portray. I don’t want to be part of that. I’m a free person, too. You can have your right to do what you want; I don’t want to be involved in it.” I think the same thing comes up in the healthcare context. And before we get to the HHS mandate stuff, the more traditional healthcare contexts in which this comes up, of course, is conscience clauses related to abortion. The most recent manifestation of that has actually been on things like emergency contraceptives, pharmacies, pharmacists who say, “I don’t want to participate in selling or dispensing that drug.” Again, I don’t think when a private pharmacist says, “I can’t be involved in that,” that that is really a conflict of rights. In other words, I don’t think, generally speaking, that the right to obtain Plan B, or the week after pill, or any of these drugs, I don’t think that the right to obtain it entails the right to force unwilling private individuals to give it to you. I think the right is the right to get it without the government stopping you.”

Mark Rienzi

I do agree with Mark. I’m raising the cooperation with evil argument not as a legal argument, but as a Catholic. I’m asking what’s going on here from a theological perspective? As far as I can see, complying with the contraceptive mandate is remote material cooperation with evil that’s been deemed permissible in other cases. So why the worry now?

MARC DEGIROLAMI: I’ll just answer quickly, Amy, with respect to the issue as a legal matter under the Religious Freedom Restoration Act (RFRA). This is a statute, not what Cathy was talking about—the Constitution’s religion clauses. The RFRA requires a substantial burden, that is, that the religious claimant makes an argument that his conscience or his religious freedom has suffered a substantial burden. The difficulty with making a distinction between abortion and contraception is that, though there may well be differences, differences of Catholic moral theology, they’re not particularly differences that we’re interested in the state making, and that the state shouldn’t be in the business of deciding that abortion may be a substantial burden on free exercise, but the provision of contraceptive services is not. So that’s what I would say to that.

THOMAS BANCHOFF: Who decides if it’s not the state?

MARC DEGIROLAMI: Ah, well, no, it’s certainly the state when it comes to filing a legal claim.

MARK RENZI: But even there, the analysis from the court would largely be sincerity of the religious believer. In other words, I don’t think the court is likely to second guess the religious believer who says, “I believe it is a deep violation of my religious faith to buy contraceptives for somebody.” If the judge thinks that person is sincere, I think it’s going to be very difficult for the government to say it’s not a substantial burden because, oh, abortion would be, but this isn’t. I think it’ll be fairly deferential. So, from that point of view, there would be no distinction, insofar as the legal claim is concerned.

THOMAS BANCHOFF: Let’s get three questions from the audience

AUDIENCE MEMBER: I’m an obstetrician gynecologist, and I’m one of the many people who testified at the hearings in preparation of what ended up as the contraceptive mandate. I’d like to go back to the fact that most people are entitled to all facts before they make an informed decision, whereas the mandate has narrowed the modalities for family planning to commodities for...
which you can get money, some of which are quite harmful. I think that that is plain wrong. Before you foist only contraceptives or IUDs, all of which have known complications on people, or gadgets, or surgery, and you tell them that there is no other alternative because we’re not going to pay for any other, that’s wrong. Natural family planning is perfectly useful. It works, even though they have managed very often to suppress that information. They still say there’s a 25 percent failure rate, which is pure rubbish.

When you have truth that takes a beating like this, why are you talking about hiring rights when in fact what we’re talking about is not giving people informed choices to begin with?

Audience Member #10: Before I came here, I used to teach in a pontifical university in Rome where the university paid the state for each individual employee for their health care which explicitly included abortion services as well as contraception. Now, somehow that was considered perfectly acceptable to do even by pontifical institutions in Rome. I’m just wondering why it is that some similar understanding cannot be arrived at here. This is not a case of simply, you know, taxation. You give it to the government, and they use it for what they want. This is specifically for healthcare, and it’s specifically stated that it includes abortion services. So I wonder whether our whole problem here is not the fact that we don’t have a single payer government health service.

THOMAS BANCHOFF: Yeah, it’s hard to translate these controversies across national boundaries. So maybe there are some reflections on that. David?

DAVID NOVAK: At the risk of inserting myself among three lawyers, I would like to throw something out there. I’m curious if you would agree with this or not. I very much agree that we must break down this notion that there are religionists on this side and secularists on this side, and that it’s an either-or kind of situation. And I think that that third position is the question of secularity. I think that both religious speakers and secularists would agree that there’s a certain area called secularity. Secularity minimally means that there are areas of life in which we cannot simply deduce from revealed precepts what ought to be done, that it’s left to human judgment, and even innovation.

A mistake that I think that is made on both sides is that secularists will say that secularity must be deduced from a type of secularism that is really de facto atheism, which means that we simply cannot in any way acknowledge a divine law giver under any circumstances. Religious people, on the other side, sometimes talk about natural law. But people should not talk about the natural law. They should always use the Latin, lex naturalis, because Latin doesn’t have a definite article. There is not the natural law; there are natural law ideas that in various traditions have certain overlapping concepts. But the notion of that as an entity, I would question. Religious people make the same mistake assuming that from theistic premises we can deduce secularity and a kind of general revelation. I think that both sides have to affirm a secularity, and both sides have to use their respective metaphysical positions to inform their interpretation of secularity, not deduce secularity therefrom.

CATHLEEN KAVENY: Yes. I think that makes sense, and I thank you for what you said about the natural law not being a monolithic thing. That’s important.

THOMAS BANCHOFF: Does anyone have any knowledge of the pontifical university case?

MARK RIENZI: I don’t, but I would just say that that is an argument that comes up from time to time where some newspaper will find Catholic University X and say, “Well, aha, you’ve been funding it.” I would just point out, you know, at some level that points out that Catholics and Catholic institutions are humans and human institutions, and getting perfect accord among them is not all that likely. But ultimately that should not be an argument for the government to make, i.e., I found some other Catholic over here that does it, therefore you don’t have the right to make that objection.

THOMAS BANCHOFF: And that argument has not entered into our debate, I don’t think. It’s interesting. Those international cases don’t seem to be that relevant for the players in our debates.

CATHLEEN KAVENY: One of the benefits covered—I think it was by the Institute of Medicine addition—is breast feeding, lactation consultants, teaching women how to breast feed their children. I think that that’s a very, very good thing, and I would support adding training in natural family planning as a benefit that should be covered along with the other benefits. I think that that’s a reasonable request to make. So that would be good.

I think it is appropriate for Roman Catholics who are receiving all of this information from the bishops to say, well, you say this is against our teaching to pay for this, what about the Church in other countries? The pontifical university, in Rome! Could you please explain to us why the cooperation of evil analysis runs one way over there, and another way here? I think it’s certainly some-
thing that the Catholic community cannon should talk about. And David Novak, as always, is correct.

AUDIENCE MEMBER: I'd just like to add to the present discussion that what this reflects is the very powerful factors in our culture, in our politics, in our legal thinking, and increasingly in the way we do theology, to fit moral reasoning into a highly deductive pattern, and to place an enormous value on consistency across cases. And that's a reflection of very broad features of American culture and the fact is that the Church is operative in many different cultures, and it's to the interest of the people who are promoting this particular style of theology to conceal that fact, or at least to soft pedal it. And I think the objection is not in itself, should not be decisive of anything. It can be regarded as an incentive to further and more careful analysis. But if we think that the Church operates in some kind of cultural vacuum and can be expected to arrive at the same results in Rwanda and Chicago, we're deluding ourselves.

AUDIENCE MEMBER: We've talked about whether maybe rights, it's good if they conflict, and we talked about maybe they really aren't in conflict, but I guess what I'm still wondering about is the extent to which we presume that religious freedom is an absolute right. I think it's a qualified right. I happen to agree with the ICCPR [International Covenant on Civil and Political Rights] that freedom to manifest one's religion or beliefs, and it is beliefs, too, may be subject to limitations prescribed by law and are necessary for those categories of public safety, order, health, morals, and the fundamental rights of freedoms of others. It sounds as though we're not looking at the question to which the religious freedom right might be qualified, and I wondered if any of you had anything to say about that.

THOMAS BANCHOFF: Just to add to that, we heard this morning, *Dignitatis Humanae* also refers to the exercise of religious freedom within due limits, so that's a kind of grey zone we may want to explore.

CATHLEEN KAVENY: I think I was trying to do that by talking about this battle of abstract rights, and that what is at stake is something that pertains to the common good. In the Catholic tradition, the idea that a right would be trumped absolutely rather than qualified and fit in seems different.

MARC DEGIROLAMI: Let me just add, if I may, I think that's true in the American legal tradition as well. I don't think there's any question. In fact, that's part of the reason that we have conflict is that religious liberty is not an absolute right. If it were an absolute right, we wouldn't have this panel. We would always win. And we don't. In fact, religious liberty as a constitutional matter throughout the years that the Supreme Court has been ruling on these cases often loses. So it's certainly the case that religious liberty is not an absolute right. I can't think of any right that's an absolute right. Even life.

MARK RIENZI: Can I add one qualifier to that, which is as a matter of federal law, under the Religious Freedom Restoration Act, what you read from the international document is not the legal standard of federal law. The legal standard of federal law is that the government can only impose the burden if they have a compelling government interest, and if imposing that burden on the person is the least restrictive means of advancing that interest. So the federal statute toward law is actually a lot more protective of religion. I agree, it doesn't make it an absolute right, but it's much more protective than the international document.

AUDIENCE MEMBER: Reproduction, birth control, contraception, and abortion are framed in terms of women's health and are said to touch on issues of gender identity, equality, and discrimination. These same categories are applied to educational institutions. The funding of women's sports should be on a par with that of men's unless an institution is private like Hillsdale and doesn't accept any federal money. How do we then deal with institutions like Wellesley College, which do not allow men to be admitted and yet they receive federal money. Isn't this a contradiction?

MARK RIENZI: I don't know the answer to the Wellesley College question. I would point out, interestingly, the HHS mandate requires employers to pay for sterilization of women, but does not require them to pay for sterilization of men, so maybe there's more of the inconsistency there.

AUDIENCE MEMBER: When a Catholic institution like a hospital or an adoption agency is using money of its own, of course, it can establish its own rules. When it seeks support from a federal source, do the rules of the game change? In other words, you accept the money on the terms of your funding agency? Is that a legitimate point of view, or is it rather, as I think the cardinal indicated this morning, we've been working very effectively in providing these services at a cost effective level for decades now, why should the rules change in that regard? You know the quality of our services, the social needs are there, and you run the risk, as happened in my own country of birth, that the Church, faced with the same dilemma from the Labor government, just basically said, "We were locked out of adoption services because we
don’t agree with what the Labor government has said,” and they opted out. And everybody in that view, in my view, lost. But I’d just like a quick reaction on that point.

MARK RIENZI: I think the answer is twofold. One, where the government is spending money, I think the government sometimes can attach strings to that money, but there are limits on the ways in which the government can attach strings. From my point of view, I agree with you: everybody loses if the Catholic Church can do 85 or 90 percent of the adoptions in town; it can help with the problem. The idea of saying, you won’t go with us a hundred percent of the way, therefore you’re not eligible to be here at all, strikes me as a bad policy idea.

But it’s also worth pointing out that most of the restrictions we’ve been talking about, the HHS mandate, the restrictions on pharmacies and pharmacists, have nothing at all to do with acceptance of federal funds. In other words, the mandate that you have to give the contraceptive insurance has nothing at all to do with whether you accept federal funds or you don’t accept the federal funds. If you’re here and you’re in business, you’re providing what is mandated.

KELLY THOMAS (Georgetown University, SFS’15): One of the panelists brought up how a lot of the HHS mandate discussion has been turned into a women’s rights issue. How do you propose going forward in terms of asking for compromises in policy from the government? How can it be brought back to a rights issue and not just a women’s rights issue? How do you phrase it in such a way that you don’t come across as anti-women? I know people who have been defending religious freedom have taken a lot of heat for that, so how would you propose going forward and getting it back to that essential issue without coming across as anti-women?

ROGER TRIGG (Oxford University): I think Cathy originally suggested there was perhaps a religious freedom argument for people who in fact wanted not to oppose the contraceptive mandate because they had different beliefs perhaps based on natural law. But that doesn’t seem to me to apply because the issue isn’t what people do, i.e., are we going to allow people to act in this way, get contraception? The question is who pays for it? Should we pay for what they want to do?

I think it’s a very dangerous argument that the state should be providing all of this, or should insist that these things be provided. I say that because I come from Britain where we have a national health service that has now gotten to the point of actually being quite willing to accept contraceptives being encouraged for children under the age of 16 in schools without their parents’ knowledge. So the state is taking over, undermining family life. I don’t think one even has to think contraception is wrong to be worried about that. So the two things seem to be two different arguments.

DAVID NOVAK: I find the comments from Mark and Marc to be very helpful, but I want to push just a little. You are trying to do a bifurcation between when the government is and is not involved, and then you give a series of examples, all of which I thought were drawn to make your case kind of easy. Take the pharmacy availability, for instance. There are number of locations in the country where there aren’t 36 CVSes. There may be one pharmacy in town, and a woman is raped, or for whatever reason, just needs to get the morning after pill—she is poor, doesn’t have easy access to a car, or transportation, etc. You’re talking about a real burden now. Walk us through how you think about that situation in terms of the analysis that you
were discussing before. And Cathy, I don’t know if you want to join on that one also.

MARK RIENZI: On the question about religious freedom of employees, I have to say, I disagree with that construct. My boss is in the back of the room. I don’t view myself as having free speech rights, vis-à-vis my boss, because I work at a private institution. I cannot be discriminated against because of my religion under Title VII; that’s true. But I don’t think every time my employer chooses not to buy me something, whether it’s because I want to go out and read the Qur’an or some other book, it is an infringement on my religious liberty that my employer chooses not to pay for something. I don’t think that’s imposing anything on me. I get my salary. I’m a free person; I can do what I want.

In terms of how not to be anti-woman, I think that’s hard, frankly, because of the way the issue is spun in the media. I viewed the entire [Democratic] convention last week as largely pushed toward making clear that anybody who disagrees on this issue is in fact anti-woman. I think it’s flagrantly and obviously not true. One thing I like about litigating, frankly, is that when you get in front of a judge, the “oh, you’re anti-woman” argument really fades away, and you get down to more the type of arguments Cathy was making where the government has to lay out its claim and say, “Here is why we’re doing what we’re doing, and here is why we think it passes constitutional or statutory muster.” I think the truth is when they’re actually forced to do that, the government’s going to have a very bad win-loss record on this case.

To get to the last question on the really remote pharmacy issue, one, that’s one or two percent. That’s not the majority of pharmacies. And these laws apply to all of them. So if the government was actually just concerned about that I would be much more sympathetic to a regulation that just spoke in those terms, as opposed to one that regulates everybody. But even in those terms, it seems to me that if the government’s view is that there is a compelling need for people in location X to have a certain service, then the right response is for the government to provide it, or the government to work with willing providers to provide it. In other words, if there’s no one who’s willing to provide an abortion in a rural state X, to me, the much better response is, if the government thinks that’s a problem, the government ought to provide someone there. If Planned Parenthood thinks that’s a problem, Planned Parenthood, the willing provider, ought to go there. When we look at counties that have no one who will deliver a baby, and there are plenty of places where you would have to go 50, 60 miles to get to an OBGYN to deliver a baby, we never talk about that issue as those doctors who, for financial reasons, stop doing it, infringing the rights of anybody else. Nobody ever talks about that as an infringement of anyone else’s rights. Because people choosing not to facilitate your own choices, choosing not to give you that service, choosing not to be involved for financial reasons, we all just accept. We say that’s fine. We only call it a big conflict of rights when it’s religion. I agree; those are tougher cases. I still think the right answer is, in those cases, the government ought to find a way to provide it, and that ought to be the preferred way rather than telling individuals, you can’t be in this business unless you’re willing to do X.

CATHLEEN KAVENY: I think that what’s at stake here in America is an enormous social experiment, and I guess I disagree with you, Professor Trigg, about whether or not it’s good. I think what’s at stake is trying to provide a basic package of benefits to everybody in this country, a minimum benefits package. That package is going to have to be defined by someone, and it’s going to be defined by the Institute of Medicine, and then the HHS, and by groups that are responsible in a democratic way to those people who elected them. I recognize that this idea of nationalizing medical care can go too far, and maybe in England, it has gone too far, but the idea of having a basic benefits package is a good one, in my view.

On the rights of employers vis-à-vis employees, I think the question is, look how difficult it is to get employment. Many people are forced to work in places, not forced literally, but pressured by financial exigencies to work in places where they can get a job. For me, the question is, is there a basic set of benefits that should be available to you no matter where you work? No matter what kind of employer you worked for? I worry that this argument about religious freedom will eventually chip away at the ideal of a mandate altogether. If I don’t want to provide smoking counseling because I think you should be able to quit on your own, should I be able to refuse to provide counseling? A lot of these services in the basic benefits package may be objected to on various grounds by all sorts of people. Are we getting rid of the notion of a mandated benefits package? I think that sentence I quoted from United States v. Lee points to the fact that it is not just the religious liberty of the employer at stake; we also have to consider the liberty and wellbeing of employees. Insurance policies with contraceptive coverage are cheaper than policies without it because childbirth is more expensive than preventing pregnancy. So I may even be paying more as an employee for a policy that doesn’t cover the contraception I need. My proportional contribution is higher, in effect subsidizing my employer’s religious beliefs. Try to think about how it looks at all different
levels: the government level, which represents all of us and some sort of common morality; the level of the employer, whose ability to shape the religious and moral lives of his employees is solely due to the fact that he’s made a lot of money and is employing them; and then the employee level. So I think we’ve got to break down the analysis and see the religious liberty at every level.

I do worry about comparisons. One of the cases that came up in the bishop’s letter on religious liberty was the USCCB Migrant and Refugee Services group was deemed ineligible for a government contract to care for the migrant workers because they wouldn’t refer for abortion or contraception. A lot of these women were in very difficult circumstances. They were victims of sexual trafficking in some cases, and the Catholic group did a tremendously good job of caring for them, the best job. But it wouldn’t tell them about all services that were available to them legally, and protected, whether you agree or not, by the Constitution. And the Church objected to the fact that they weren’t allowed to participate because they wouldn’t refer for certain services. This is a hard case. But how would we feel, and what would be the difference if a group called “Atheist Relief Services” also did a really great job of taking care of these migrants, but refused to refer them to church groups or counseling groups that are based in churches, synagogues, or mosques because they think religion itself is harmful and misguided? Under those circumstances, wouldn’t the bishops want the government to say, “Hey, if you’re not willing at least to tell where somebody can get something that they might need, and that’s a constitutionally protected activity service, we can’t give you the government contract?” So I think that refusal to refer for services is a lot harder question than refusal to provide them.

MARC DEGIROLAMI: So I’ll just conclude, and my answers will be directed at the young woman who asked a question about how do we reframe the debate? There’s been a lot of talk about reframing, reframe the discussion so that we’re talking about religious rights as opposed to women’s rights. And I’m sorry to be bleak, but I don’t think that it’s possible to do this. I think that there is no reframing. The reason why there’s no reframing is that behind the rhetoric that Democratic and Republican convention speeches represent are true and real beliefs about the different ways that we ought to rank values and conflict. So we’ve got the rhetoric of women’s health, if you want to call it that, but it seems to me that that isn’t just rhetoric. That’s what a lot of people believe is a primary, if not an absolute value. And the people that believe that also believe that, when religious liberty concerns come into conflict with rights to women’s health, characterized in that way, those rights ought to, as a general matter, be subordinated. Other people disagree. The rhetoric coming out of the Republican convention is different. So there is no simple answer about just reframing or shifting the rhetoric because behind the rhetoric stand true and deep and irreconcilable conflicts, and that’s why, ultimately…one of the best ways to resolve these matters to the extent they can be resolved to reach compromise is through law. ”

Marc DeGirolami

“I think that there is no reframing. The reason why there’s no reframing is that behind the rhetoric that Democratic and Republican convention speeches represent are true and real beliefs about the different ways that we ought to rank values and conflict. So we’ve got the rhetoric of women’s health, if you want to call it that, but it seems to me that that isn’t just rhetoric. That’s what a lot of people believe is a primary, if not an absolute value. And the people that believe that also believe that, when religious liberty concerns come into conflict with rights to women’s health, characterized in that way, those rights ought to, as a general matter, be subordinated. Other people disagree. The rhetoric coming out of the Republican convention is different. So there is no simple answer about just reframing or shifting the rhetoric because behind the rhetoric stand true and deep and irreconcilable conflicts, and that’s why, ultimately…one of the best ways to resolve these matters to the extent they can be resolved to reach compromise is through law. ”

Marc DeGirolami

MARC DEGIROLAMI: So I’ll just conclude, and my answers will be directed at the young woman who asked a question about how do we reframe the debate? There’s been a lot of talk about reframing, reframe the discussion so that we’re talking about religious rights as opposed to women’s rights. And I’m sorry to be bleak, but I don’t think that it’s possible to do this. I think that there is no reframing. The reason why there’s no reframing is that behind the rhetoric that Democratic and Republican convention speeches represent are true and real beliefs about the different ways that we ought to rank values and conflict. So we’ve got the rhetoric of women’s health, if you want to call it that, but it seems to me that that isn’t just rhetoric. That’s what a lot of people believe is a primary, if not an absolute value. And the people that believe that also believe that, when religious liberty concerns come into conflict with rights to women’s health, characterized in that way, those rights ought to, as a general matter, be subordinated. Other people disagree. The rhetoric coming out of the Republican convention is different. So there is no simple answer about just reframing or shifting the rhetoric because behind the rhetoric stand true and deep and irreconcilable conflicts, and that’s why, ultimately, I think I agree with Mark that one of the best ways to resolve these matters to the extent they can be resolved to reach compromise is through law.
THOMAS BANCHOFF is a professor in the Department of Government and the School of Foreign Service. He serves as Georgetown University's Vice President for Global Engagement and founding director of the Berkley Center for Religion, Peace & World Affairs. He was a Conant Fellow at Harvard's Center for European Studies and a Humboldt Fellow at the University of Bonn in 2000 to 2001. Banchoff was awarded the DAAD (Deutscher Akademischer Austausch Dienst) Award for Distinguished Scholarship in German studies in 2003.

GERARD BRADLEY is a professor of law at Notre Dame Law School specializing in both Constitutional Law and Law and Religion. Since 1996, he has served as director of Notre Dame’s Natural Law Institute and as co-editor of the institute’s American Journal of Jurisprudence. He is president of the Fellowship of Catholic Scholars, vice president of the American Public Philosophy Institute, member of the board of advisors of the Cardinal Newman Society, chair of the Federalist Society’s Religious Liberties Practice Group, member of the Ramsey Colloquium on Theological Issues, and member of the board of advisors of the Society of Catholic Social Scientists.

LISA CAHILL is a J. Donald Monan Professor in the Department of Theology at Boston College. She is a fellow of the American Academy of Arts and Sciences and holds positions on the board of directors for the Public Religion Research Institute, the steering committee of the Catholic Common Ground Initiative, and the advisory board of the National Seminar on Jesuit Higher Education. In the past, she has served as the president of both the Society of Christian Ethics and the Catholic Theological Society of America, and she participated in the Barack Obama Catholic Advisory Committee. Among other honors, she has received the John Courtney Murray Award of the Catholic Theological Society of America and the Ignatian Award of Santa Clara University.

MARC DeGIROLAMI is an associate professor of law at St. John’s University and the director of the Center for Law and Religion there. He has served as an assistant district attorney in Cambridge, Massachusetts, taught legal research and writing as an associate-in-law at Columbia Law School, and then served as a visiting assistant professor and scholar in residence at Catholic University’s Columbus School of Law. His papers have appeared in various law journals including Constitutional Commentary, Legal Theory, Ohio State Journal of Criminal Law, and Boston College Law Review, and he contributes to both the popular legal blog, “Mirror of Justice” and the New Republic.

ROBERT DESTRO is a professor of law at The Catholic University of America and the director and founder of the Interdisciplinary Program in Law and Religion there. He has served as a commissioner on the United States Commission on Civil Rights and led the commission’s discussions in the areas of discrimination on the basis of disability, national origin, and religion. He has also served as special counsel to the Ohio attorney general and the Ohio secretary of state on election law matters, as general counsel to the Catholic League for Religious and Civil Rights, and as an adjunct associate professor of law at Marquette University.


CATHLEEN KAVENY is a John P. Murphy Foundation Professor of Law and professor in the Department of Theology at
Notre Dame. A member of the Massachusetts Bar since 1993, Professor Kaveny clerked for the Honorable John T. Noonan Jr. of the U.S. Court of Appeals for the Ninth Circuit and worked as an associate at the Boston law firm of Ropes & Gray in its health-law group. She has served on a number of editorial boards including the *American Journal of Jurisprudence*, the *Journal of Religious Ethics*, the *Journal of Law and Religion*, and the *Journal of the Society of Christian Ethics*. She is a member of the steering committee of Notre Dame’s Institute for Advanced Study.

JOHN LANGAN, S.J., is a Roman Catholic priest in the Society of Jesus and the Cardinal Bernadin Chair in Catholic Social Thought in the Department of Philosophy at Georgetown University. Fr. Langan has served as a consultant to the Chemical Bank (New York) and to the U.S. Navy Corps of Chaplains. He currently serves on the boards of the Bon Secours Health System (Maryland), the Society of Christian Ethics, Theological Studies, and the Georgetown University Press. He is chair of the American section of the Council on Christian Approaches to Defense and Disarmament.

Marilyn McMorrow, RSCJ, is a Religious in the Society of the Sacred Heart of Jesus and a visiting assistant professor at Georgetown University’s School of Foreign Service. She is an expert on political and normative theory of international relations, with emphases on human rights, poverty alleviation, just war theory, Catholic social teaching in international relations, and the role of the Nobel Peace Prize in world politics. In 2000, she received a Nobel Institute Fellowship.

JOHN O’MALLEY, S.J., is a Roman Catholic priest in the Society of Jesus and a professor in the Department of Theology at Georgetown University. He has held fellowships from the Guggenheim Foundation, the National Endowment for the Humanities, the American Council of Learned Societies, and other academic organizations. He has also written numerous books acclaimed by the American Historical Association, the American Philosophical Society, the Sixteenth Century Studies Conference, and from the Alpha Sigma Nu fraternity. In 1995 he was elected to the American Academy of Arts and Sciences, in 1997 to the American Philosophical Society, and in 2001 to the Accademia di san Carlo of the Ambrosian Library in Milan, Italy.

DANIEL PHILPOTT is an associate professor in the Department of Political Science and the Kroc Institute for Peace Studies at Notre Dame. He has published articles in the *American Political Science Review*, *World Politics*, *Ethics, the Journal of Democracy*, *the National Interest*, *America, Political Studies*, *the Journal of International Affairs*, *The Review of Faith and International Affairs*, *Security Studies*, and the *Annual Review of Political Science*. He has held fellowships at Harvard University, Princeton University, the University of Virginia, the Erasmus Institute at Notre Dame, the Hertie School of Governance, and the Wissenschaftzentrum Berlin, with the latter two on a fellowship from the Alexander von Humboldt Foundation.

MARK RIENZI is an associate professor of law at The Catholic University of America’s Columbus School of Law. Professor Rienzi is also senior counsel at the Becket Fund for Religious Liberty, a nonprofit, nonpartisan religious liberties law firm dedicated to protecting the free expression of all religious faiths. At the Becket Fund, Professor Rienzi is counsel in several challenges to the HHS Mandate. Prior to joining The Catholic University of America, Professor Rienzi served as counsel in the Supreme Court and appellate practice group at Wilmer Hale LLP. Prior to joining Wilmer Hale, he served as law clerk to the Hon. Stephen F. Williams, senior circuit judge for the U.S. Court of Appeals for the D.C. Circuit. Professor Rienzi was an editor of the *Harvard Law Review*.

CARDINAL DONALD WUERL is the archbishop of Washington and was elevated to the College of Cardinals in 2010 by Benedict XVI. He serves on numerous national and international bodies and is chairman of the board of trustees of the Basilica of the National Shrine of the Immaculate Conception, chancellor of The Catholic University of America, chairman of the board of the Pope John Paul II Cultural Foundation and also of The Papal Foundation. He serves on the Vatican Congregation for the Doctrine of the Faith, the Congregation for Clergy, the Pontifical Council for the Promotion of Christian Unity, the Pontifical Council for Culture, and is former chairman of numerous committees of the United States Conference of Catholic Bishops, including the Committee on Doctrine, and is a member of the USCCB Committee on Evangelization and Catechesis and the Ad Hoc Committee for Religious Liberty.