Religious Freedom in Global Context Today:

Some Contributions by Vatican II and John Courtney Murray

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There are several good reasons why it is most appropriate that Boston College is marking the one hundred and fiftieth anniversary of its founding by also commemorating the fiftieth anniversary of the Second Vatican Council and, in particular, the contributions of the Jesuit John Courtney Murray to the Council. First, Murray was one of the most significant theological voices at the Council. He was also an alumnus of Boston College, receiving a B.A. in 1926 from Weston College, one of the institutions that has become B.C.’s School of Theology and Ministry that is sponsoring our conference today, and also received an M.A. in Philosophy from Boston College in 1927. Murray’s major influence at the Council was through his crucial contribution to the drafting of the Council’s Declaration on Religious Freedom, *Dignitatis Humanae*. Through his contribution to the creation of this Declaration, Murray was without doubt the single most influential U. S. theologian at the Council. Second, Murray’s work on religious freedom enabled the U.S. Catholic church to make its most important contribution to Vatican II by helping the Roman Catholic community throughout the world come to see the crucial connection between Christian faith and freedom in civil society and politics, especially the connection between Christian faith and the civil right to religious freedom. When *Time* magazine put Murray on the cover of its issue of December 12, 1960, it somewhat impishly described the way Murray brought the American and Catholic traditions into dialogue with each other as “Loyola meets Tom Paine.” Third, it is appropriate that we celebrate the anniversaries of both Vatican II and Boston College by highlighting the contribution of a theologian to the Council. It is a
remarkable coincidence that the year of Murray’s birth was also the birth year of three other
great theologians who made crucial contributions to the Council. Murray was born in 1904, and
so were Yves Congar, Bernard Lonergan, and Karl Rahner. As we commemorate the
anniversaries of both the Council and of Boston College here today, these four great theologians
can lead us to ask how theology, this School of Theology, and this university can contribute to
both church and society in ways that seek to follow their examples.

My approach to Murray’s role at the Council will, of course, focus on his contribution to
the drafting of Dignitatis Humanae. I propose to take an approach to his contribution that has
particular importance today by considering the continuing relevance of religious freedom to
peace and justice within nations and among them. In very recent decades, religion has been
playing an increasing public role in world affairs. The interaction of religion and politics
sometimes leads to injustice toward religious minorities and, too often, to conflict and even war.
The shape of the issues today would be of great concern to Murray, because his work on
religious liberty arose from his strong interest in the public role of religion, and also because of
his theological and ethical engagement with the ethics of war and peace. Vatican II, in its
Pastoral Constitution on the Church in the Modern World, Gaudium et Spes, also devoted major
attention both to the public role of the church and to the church’s possible contribution to justice
and world peace. The issues of religious freedom, justice for minorities, and interreligious
conflict are increasingly intertwined today. This essay will therefore draw on the thought of both
Murray and the Council concerning religious freedom to suggest how the church and other faith
communities can help build a more just and peaceful world.
Elsewhere I have discussed the implications of the treatment of religious freedom by Murray and the Council for a recent controversy between the U.S. Catholic bishops and the Obama administration. The bishops see the administration’s mandate that health care insurance at Catholic institutions cover the provision of contraception to its female employees as a demand that these institutions violate some aspects of Catholic moral teaching. The bishops see this as an infringement of their religious freedom and of the religious freedom of some Catholic institutions and of individual employers who for religious reasons hold that contraception is morally unacceptable. I have argued earlier, however, that a compromise could be worked out between the bishops and the administration that is fully compatible with Catholic doctrine and traditional principles of Catholic moral theology on cooperation in the actions of others that are judged to be immoral. Such compromise is the route taken by the Catholic Health Association in both 2012 and most recently in July 2013. Because my view of this controversy has not changed, I will not repeat the analysis I have previously published, though a fuller development of this analysis would surely be possible in light of the way the controversy has unfolded.

The practical focus of this essay is due to the fact that religious communities have been playing an increasingly influential role in public life in the past few decades. Thus the need to consider the significance of religious freedom from the social standpoint, including that of international peace and justice, is itself a recent development. This essay will join the discussion of this need from the distinctive standpoint of the approach to religious freedom taken by Murray and Vatican II.

It is well known that Murray’s contribution to the Council had a distinctively American accent. At the same time, Murray was not afraid to propose strong criticisms of some aspects of the culture prevailing in the United States in his day. Murray feared that despite the great
wisdom embodied in the institutions by which the United States was governed, including First Amendment protections of religious freedom, there was a real danger that the United States culture was losing its appreciation of this wisdom. Indeed he suggested that the United States was threatened by the weakening of the bonds that link citizens in the common project of building civil society together through shared argument and debate. He feared, in other words, that the U.S. was losing cultural and institutional commitment to the common good that Cicero and Augustine knew was essential to the flourishing of a republic.\(^7\)

The absence of the shared conversation and argument that link citizens from diverse traditions together in a civil community is evident in many approaches to religious freedom in today’s postmodern context. In the United States it is not uncommon to hear religion called a strictly private matter. Seeing religion, and indeed all value commitments, as private affairs is one of the results of the individualism that is such an important current in United States culture. This individualistic approach to religion can highlight the intimate relation between one’s religious belief and one’s deepest identity as a person and thus its high importance. Seeing religion as a purely private affair, however, can also reduce religion to an insignificant level that verges on triviality. In addition, when a strictly private view of religion prevails, it will be easy to overlook the importance of the public, institutional dimensions of religious freedom and the influence of faith communities on the public realities of peace and justice. Or if the role being played by religion in public life cannot be ignored due to religious conflict or threats to social justice, many Americans will likely call for the faith communities involved to go back to the private sphere where they belong.\(^8\) Religious freedom can thus become identified with the privatization of religion.
Neither Murray nor Vatican II saw religion as a private reality. Both certainly saw the deeply personal aspects of faith and wanted to preserve the crucial role religious freedom plays in enabling individual persons to shape who they themselves are. But both Murray and the Council also saw freedom, including religious freedom, as achieved only in society and in public life. Religious freedom has important public dimensions that depend on the political and juridical institutions that shape both society and its members. Strictly private or individualist understandings of religious freedom do not have the tools needed to help faith communities envision their roles in public society in ways that help build up the common good of individual countries and of the larger international society. This essay, therefore, will explore how Murray and Vatican II saw religious freedom not only as an essential protection for the personal act of faith, but also as a social, public reality with important political implications. It will draw upon both Murray and the Council to help clarify how religious freedom is particularly important today because of its essential contributions to global peace and justice.

**Religious Freedom as a Personal Reality**

Stressing the importance of the connection between religious freedom and matters of global peace and social justice, of course, should not lead us to overlook the fact that religious freedom is a personal reality that reaches into the heart of each individual. Before considering how religious freedom is important for the promotion of peace and justice, therefore, we will make a few comments on how both Murray and the Council saw religious freedom as a deeply personal reality. A person’s religious belief or nonbelief shapes her identity in paramount ways. Thus the protection or violation of religious belief has effects that could hardly be more personal.
The Council’s *Dignitatis Humanae* argues for the human and civil right to religious freedom by noting several ways the protection of this freedom is important to the innermost identity of persons.

First, the Council appeals to the longstanding Catholic conviction concerning the high importance of freedom of conscience. It is a basic affirmation in Catholic tradition that every person has an obligation to follow the dictates of his or her conscience. This obligation binds not only in the moral sphere but religiously as well. As *Dignitatis Humanae* put it:

The human person sees and recognizes the demands of divine law through conscience. All are bound to follow their conscience faithfully in every sphere of activity so that they may come to God, who is their last end. Therefore the individual must not be forced to act against conscience nor be prevented from acting in accord with conscience, especially in matters religious.  

Freedom of conscience in the domain of religion thus implies the existence of a personal right to religious freedom. The exercise of conscience is a profoundly personal activity. This was made clear by the Council’s *Gaudium et Spes*, when it wrote that “conscience is people’s most secret core, and their sanctuary. There they are alone with God whose voice echoes in their depths.”

The Council sees conscience, and thus religious freedom, as exercised in intimacy of each person’s heart where they encounter God. The language could hardly be more personalist. We will see below, however, that despite the tone of this statement the Council did not hold that religious belief is a private reality nor that religious freedom will be protected by keeping religion in the private sphere.

Second, the Council stresses religious freedom’s personal dimensions when it argues that the right to this freedom is based on the fact that a person can come to a conviction that a belief
is true only through personal deliberation conducted in freedom. Some of the more conservative bishops at the Council, such as the head of the Holy Office, Cardinal Alfredo Ottaviani, feared that the affirmation to religious freedom rested on an indifference to truth. This suspicion had led to the effective silencing of Murray on the issue of religious freedom just a few years before the Council. To counter this concern, Dignitatis Humanae unambiguously affirmed that its understanding of religious freedom presumed that all persons have a duty to affirm the truth: "all persons should be at once impelled by nature and bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth once they come to know it, and to direct their whole lives in accordance with the demands of truth." This duty, however, can be followed only in freedom. Human beings can seek and come to hold the truth about God and the human condition in relation to God only through free deliberation and freely given personal assent. The Declaration thus affirms that all persons should be free from coercive interference with their duty to fulfill this obligation, and therefore have a right to religious freedom.

Third, the Council grounds religious freedom on that fact that the act of faith must itself be free if it is to be a genuine act of faith. As Dignitatis Humanae put it, “The act of faith or its very nature is a free act. The human person . . . can assent to God’s self-revelation only by being drawn by the Father and through submitting to God with a faith that is reasonable and free.” Because of this essential connection between authentic faith and freedom, the civil protection of personal religious freedom is closely associated with the advancement of freedom more generally understood. Securing religious freedom is thus closely linked with the institutions of democracy that protect freedom more broadly conceived.
Murray synthesized these personal dimensions of religious freedom by arguing that they are all expressions of the essential connection between the freedom of faith and fundamental dignity of the human person. In one of his final writings on the Declaration, Murray eloquently explained the Council’s understanding of human dignity as the ontological foundation of the right to religious freedom. This freedom is not only the freedom of choice by which persons decide among various options that appear on a kind of menu of specific religious alternatives. The religious freedom that is a deep expression of human dignity is the freedom of the person to decide who she is and what she will become. It is a decision about the ultimate meaning of one’s life. It is the kind of freedom through which a person puts at risk her whole existence. In Murray’s words:

The primordial demand of dignity, then, is that man acts by his own counsel and purpose, using and enjoying his freedom, moved, not by external coercion, but internally by the risk of his whole existence. . . . Human dignity consists formally in the person’s responsibility for himself and, what is more, for his world. So great is his dignity that not even God can take it away.\(^{14}\)

Human dignity, therefore, comes to expression in human freedom, and the deepest meaning of one’s dignity as a person is shaped by the use of one’s religious freedom.

The Council, therefore, makes a philosophical claim about the nature of the human person as free and self-determining when it argues for the right to religious freedom. It also goes on to make a theological claim when it affirms that freedom—including religious freedom—is one of the key characteristics that constitute human beings as created in the image of God. Through these theological and philosophical arguments the Council sets forth why the right to religious freedom is of such high personal importance to every human being. These arguments
are the basis of the Council’s affirmation that religious freedom is an essential expression of personal dignity “as known through the revealed word of God and by reason itself.”

Murray and Vatican II had clear secular philosophical warrants for their affirmation that the protection of religious freedom is essential to treating humans as what they are, i.e. as free, self-determining beings. They also had strong Christian theological warrants for affirming this right. Both kinds of warrants set Murray and the Council at odds with those currents in modern and post-modern thought that affirm the importance of religious freedom because of skepticism about religious or even secular philosophical truth claims about what it is to be human. At the same time, the Council did not hesitate to affirm that those who rejected its reasons were nonetheless still entitled to respect for their religious freedom. Indeed, though the Council argued that religious freedom is grounded in the truth about the human person, it also maintained that this freedom must be respected “even in those who do not live up to their obligation of seeking the truth and adhering to it.”

Thus the Council’s strongly personalist understanding of the importance of religious freedom did not lead it to hold that religion should be kept private, as do some other modern and postmodern understandings of religious liberty. Far from it. The Council argued that the right to religious freedom means not only that individual persons ought not to be forced to act against their convictions, but also that they should be free to act in accord with those convictions “in private or in public, alone or in association with others.” Indeed the right to free exercise of religion, to borrow the U.S. constitutional term, includes the right of religious communities to form social organizations that aim to influence public life by “demonstrating the special value of their teaching for the organization of society.”
Murray and the Council, therefore, were strongly committed to the importance and legitimacy of public activity by the church for justice and peace. The Council, and even more so Murray, was aware, however, that in a pluralistic society public religious action can lead to considerable tension. Indeed in our day the public action of religious communities has sometimes led to significant conflict in global politics. At the same time, the impact of faith communities in public life has also often been very positive, with religious leaders and believers at large making significant contributions to justice and peace nationally. To set the stage for a consideration of dimensions of religious freedom that go beyond the protection of individual freedoms, we now turn to a description of several examples of both negative and positive social influences of religion in public life. This will enable us better to clarify how Murray and the Council understood the relation between religious freedom and the promotion of peace and justice in society.

Public Religion, Conflict, and Peace: Some Examples

Vatican II holds that the liberty to exercise religion in public includes the freedom of a faith community to seek to shape public policy and otherwise influence public affairs. A quick overview of the recent historical record shows that such a public role of religion can have both negative and positive effects. It can generate conflict and lead to the violation of the requirements of justice for some members of the communities affected. Or this public role of religion can be a source of enhanced social unity, reconciliation, peace, and justice. One need only contrast the roles played by Osama bin Laden and by Archbishop Desmond Tutu of South Africa to see that the effects of public religion can be quite diverse. The multiple kinds of influence of religion in the affairs of the larger society have led Scott Appleby to speak of the “ambivalence of the sacred.” Before turning to the way Murray and the Council propose that
faith communities, including the Catholic church, should seek to influence the institutions of public life, it will be useful to note some recent examples of both the negative and positive influences of religious communities in public life. This will help show that religious freedom is not simply a personal reality, much less a strictly private affair, but that it has important public, institutional dimensions.

On the negative side of the ledger Brian J. Grim and Roger Finke have noted several regrettable twentieth century cases in which religious communities have denied religious freedom to people of other faiths, leading to grave injustice and conflict. In the early 1900s, for example, there were more than three million Christians in Turkey, about 20 percent of the population. Today there are but three hundred thousand, or about 2 percent. Most of the difference is due to the large number of Armenians who perished in what can appropriately be called genocide. Better known is the Shoah in which anti-Judaism and anti-Semitism led to the genocide of the Jewish people at the hands of the National Socialist regime in Germany, taking the lives of about two thirds of all the Jews living in Europe when the Nazis came to power. During the cultural revolution in China in the 1960s and 70s, religion was a particular focus of state persecution; all religious practice was banned and many religious leaders faced prison and even death.

The record in the first years of the twenty-first century is also deeply distressing. Drawing upon data gathered by the U. S. State Department, by the Pew Forum on Religion and Public Life, and by several other sources, Grim and Finke have concluded that 86 percent of the 143 counties with populations of more than two million have experienced at least some cases of people being abused or displaced from their homes because of their religion. Religious persecution is today so widespread in much of the Middle East and South Asia that Grim and
Finke conclude it has become the norm in those regions and that the injustice of such persecution is one of the principle causes of the conflict and bloodshed in the region. There are severe cases of religious persecution and conflict in Africa as well. In Sudan, for example, the long civil war between south and north had religion as one of its driving forces, with Christians and adherents of traditional African religion in the south resisting efforts by the north to Islamize the whole of Sudan. This conflict took over two million lives and created over five million displaced persons. Since the Comprehensive Peace Agreement of 2005 and the independence of South Sudan in 2011, Christians in the north, including the 300,000 living in the capital Khartoum, face arrest, detention, and deportation. Though religion is not the sole source of conflict in Sudan or some of these other regions, it has played a significant role in generating and sustaining conflict.

Persecution because of religion is less present in Europe and the United States but it is certainly not absent. Martha Nussbaum has made a strong appeal to resist what she calls the “new religious intolerance” directed at Muslims in Europe and, to a lesser degree, in the United States. Nussbaum cites European legislation banning Muslim women from wearing head scarves in certain public settings and the U.S controversy over the proposal to construct a mosque near the “ground zero” of the September 11 attacks on the World Trade Center in New York. A particularly vivid illustration of the rise of “Islamophobia” in the West is the recent case of remarks made by Marine Le Pen, head of the National Front in France and member of the European Parliament. Madame Le Pen compared the public presence of veiled women and of Muslims praying in public because of insufficient space in mosques to the Nazi occupation of France during World War II. Le Pen and the National Front are significant political actors in France. Though the European Parliament has rejected Le Pen’s views, the fact that she received
17.9% of the vote in the first round of the French presidential election in 2012 indicates she cannot be ignored.\textsuperscript{25}

Failure to respect those who are religiously different has also led to violent conflicts. For example, the commitment of the ruling family of Saudi Arabia to exclusive state support for the Wahhabi school of Islam has led to resistance by other schools of Islam. It has helped generate jihadist movements, including al-Qa'id. The resulting conflicts in Afghanistan and Iraq have been grave. Buddhist control of the government in Sri Lanka was the cause of resistance by the minority Hindu community that generated a bloody civil war. In India, the Hindu nationalist convictions of the Bharatiya Janata Party was one of the sources of the rise of Lashkar-e-Taiba, a Muslim group with ties to Pakistan that in 2008 carried out terror attacks in Mumbai, killing many.

The role of religion in the civil wars of recent decades is similarly discouraging and has been rising. 19 percent of the civil wars begun in the 1940s were fought at least in part over religious issues. This percentage rose to 41 percent in the 1980s, to 45 percent in the 1990s, and to 50 percent of the 16 civil wars underway in 2010. Such religiously linked civil wars are not only of concern to the countries in which they occur but internationally as well. Intrastate wars almost always produce serious effects on neighboring regions, through the disruption of economic activity, the displacement of refugees, and through their possible effects on the balance of power and ideological alignments. When civil wars are religiously based such international consequences are likely to be magnified because religious identity is almost always tied to membership in a community that reaches across national borders. Thus when conflicts have religious dimensions they easily flow over into the affairs of other countries.\textsuperscript{26}
These are examples of the negative effects religious communities can have if they pursue their public roles without attending sufficiently to the rights of other religious communities, including their rights to religious freedom. Vatican II was well aware of the ways that faith communities, including Catholicism, have engaged in behavior that has led some to see religion as a threat to human well-being, including the peace and justice needed to sustain such well-being, thus presenting a distorted picture of religion and indeed of God. The attaining of peace and justice calls for protecting society from such social misuse of religion.

Fortunately, public activity by religious communities also often has very positive results. Religious leaders such as Mohandas Gandhi, Martin Luther King, the Dalai Lama, Pope John Paul II, and Archbishop Desmond Tutu have played significant roles in the pursuit of social justice, peace, and reconciliation. Gandhi’s nonviolent campaign for the independence of India from British rule was grounded in his Hindu beliefs, interpreted with the help of his reading of Christian authors such as Tolstoy. His nonviolence has inspired movements for justice and peace among Christians, such as Martin Luther King’s campaign for racial justice in the United States and Anglican Archbishop Tutu’s participation in the anti-apartheid movement that led to the non-racial democracy that elected Nelson Mandela its first president in 1994. Pope John Paul II was deeply involved in Poland’s struggle for freedom from control and domination by the Soviet Union. The Pope’s support for the Solidarity movement in Poland contributed in very important ways to tearing down the Berlin Wall in 1989 and to the collapse of the Soviet Union and its empire in 1991. The Dalai Lama has been a powerful Buddhist voice raised on behalf of the people of Tibet in the face of their oppression by the People’s Republic of China. His voice, like that of many other religious people engaged in campaigns for justice, has appealed for significant change through nonviolent means. One of the most notable developments of recent
international affairs has been the significant rise of nonviolent movements for political change, and many of these movements have been religiously inspired. Despite the conviction of many political realists that nonviolence is an ineffective political strategy, many of these movements have been successful. The commitment to respect those who are different, including those who are religiously different, has enabled these movements to seek greater justice in public life in vigorous ways while remaining committed to the use of peaceful means.

The efforts of religious communities to contribute to greater justice in society by promoting democratic political processes and institutions have also been very visible in recent years. Particularly notable among these efforts have been the contributions made by the Catholic community to the process of democratization. The late Samuel Huntington concluded that the post-Vatican II Catholic church has become one of the strongest worldwide forces for human dignity, human rights, and democracy. He saw the modern rise of democracy occurring in three waves. The first wave was the U.S. and French revolutions in the eighteenth centuries, the second was the democratization of the former Axis powers of Germany, Italy, and Japan following the Second World War, and the third wave has been underway since the early 1970s. This third wave included the coming of democracy to Spain and Portugal, the decline of military and authoritarian rule in Latin America, S. Korea, and the Philippines, and end of communism in the Warsaw Pact nations. From his analysis of the data, Huntington concluded that “In its first fifteen years, the third wave was overwhelmingly Catholic. . . . [R]oughly three-quarters of the countries that transited to democracy between 1974 and 1989 were Catholic.”

Toft, Philpott and Shah have reinforced Huntington’s conclusion about this dramatic contribution of the Catholic community by reviewing existing data on the spread of democracy between the years 1972 and 2009. During this period they conclude that 78 countries in the
world experienced substantial democratization. Religious communities played a role in advancing democracy in 48 of these countries, and religious communities took the leading role in advancing democracy in 30 of these countries and a supporting role in 18 of them. In nations such as India, Indonesia, and Kuwait, Islam was a leader in support of democracy. Hinduism was a leader in India, Orthodoxy in Serbia, and Protestantism played a leading role in several African countries, as well as in South Korea and Romania. Catholicism showed notably stronger leadership than these other faith communities. Toft et al. conclude that between 1972 and 2009 the Catholic community played a role in promoting democracy in 36 of the 78 countries that experienced substantial advances for democracy, and that the Catholic community had a leadership position in the democratization of 22 of these countries.

This move of Catholicism from its more traditional alignment with authoritarian modes of political organization to support for democracy was certainly dramatic, even revolutionary. There seems little doubt that the shift of the Catholic political stance from a tendency to support authoritarian government to a quite unambiguous commitment to democracy can be attributed to the innovations of the Second Vatican Council, and especially to Vatican II’s strong support for human rights, including the right to religious freedom. This shift was brought about by recognition of the dangers of authoritarian regimes such as Nazism and Stalinism in the several decades before the Council. These dangers threatened the church’s own freedom. The deep Catholic tradition of strong commitment to the freedom of the church in these circumstances helped Murray persuade the bishops at Vatican II that endorsement of the right to religious freedom was in continuity with important dimensions of the larger Catholic tradition. At the same time, the broad range of the violations of human dignity by Hitler and Stalin showed that more than the church’s own well-being and freedom was a stake. The experience of the multiple
kinds of abuse by authoritarian rule led John XXIII to strong support of the full range of human rights in his encyclical *Pacem in Terris*, which was issued during the Council. This broader human rights agenda had been earlier developed with the drafting of the United Nations’ *Universal Declaration of Human Rights* immediately following World War. When Vatican II followed the lead of *Pacem in Terris* in its endorsement of the full range of human rights articulated by the U.N., the Council moved the church to the forefront of the struggle for human rights and democracy. Further, both the *Universal Declaration* and *Pacem in Terris* explicitly see respect for human rights as essential to the protection of peace. In a similar way, Vatican II’s commitment to human rights and religious freedom supports the Council’s strong encouragement of the church’s mission for peace. A credible case can be made, therefore, that Murray’s thinking on religious freedom and its adoption by Vatican II played key roles in leading the post-Conciliar church to important new initiatives not only for democracy but for a broader agenda of human rights, social justice, and peace.

**Positive Public Contributions by Religion: Institutional Conditions**

If it is correct that these consequences for the church’s engagement with issues of human rights, social justice, and peace were stimulated by the Council’s affirmation of the right to religious freedom, it should be clear that this right has implications that reach well beyond a private zone of personal faith. Support for religious liberty is not simply a matter of individual freedom but has important effects for social and political institutions both within nations and globally. Clarifying how Murray and Vatican II understood the institutional requirements of religious liberty will help show why their support for religious freedom had significant consequences for the church’s broader engagement with matters of social justice and global peace.
Drafts one and two of the Council’s Declaration sought to base the right to religious freedom on the personal foundations of persons’ duty to follow the dictates of their consciences and on the fact that the act of faith must be free if it is to be authentic faith. In Murray’s view, however, these personalist arguments were insufficient to show that there is a right to free exercise of religion in the midst of society, especially in cases where a cogent argument can be made that the religious beliefs being exercised have morally objectionable public consequences. The existence of a right necessarily implies a correlative duty that others should respect this right. This raises the question of whether others in society have a duty to respect my conscience when it is in error. To be sure, they have a negative duty not to coerce me to act in a way that would violate my convictions. But do they have a positive duty to permit me to act on my convictions if acting upon those convictions can be reasonably judged to be harmful to others, perhaps in serious ways. Murray maintained that the arguments of those who answer this question negatively "are not negligible. . . . Another's error of conscience can create no duties in me, nor can it guarantee for me the rightness of his action."34 Thus Murray argued that the Council needed to go beyond the appealing to freedom of conscience in order to develop an adequate understanding of the public dimensions of the right to religious freedom and how respect for freedom should be expressed politically and legally. This is a matter of clarifying the way political and legal institutions should deal with religion when it exercises public influence.

The limits of the appeal to freedom of conscience and the need for a consideration of the roles of political and juridical institutions in protecting religious liberty can be illustrated by a South African case that arose well after the Council. The apartheid regime, which legally required that different races and ethnic groups live apart from one another, had been developed by some Afrikaner Dutch Reformed Christians on the basis of their interpretation of parts of the
Bible, particularly the story of the Tower of Babel (Genesis 11). They understood the story’s description of God “scattering” people of diverse languages to different parts of the earth as indicating that separation of diverse peoples is the will of God. Most people today, both outside and within South Africa, are convinced that apartheid is an immoral system and that it was rightly abolished in 1994. However, after 1994 some Afrikaners continued to hold on conscientious religious grounds that racial separation was their religious duty. They sought legal approval of their right to act on this conviction by being permitted to exclude blacks from their towns and businesses and to create a new white "homeland" within South Africa based on racial/ethnic separation. Those who are convinced that such Afrikaners beliefs are simply false will need a theory of religious freedom that goes beyond appealing to respect conscience if they are to affirm both the right to religious freedom and the new South African constitution’s refusal to grant these Afrikaners the freedom to continue racial separation.

This South African example comes from a time after Murray’s death. But it shows why Murray maintained that the Council needed grounds other than freedom of conscience if it were to present an adequate understanding to the right to exercise religious freedom in public life. He made his case in a significant argument with several progressive, Francophone, pro-religious freedom theologians who were advising the bishops at the Council. Murray’s argument appears in imperfect form in the later drafts of what became Dignitatis Humanae. He introduced into the Conciliar declaration that idea that religious freedom depends on an understanding of the institutional relationship between the state and other bodies in civil society and on the limited power of legal or juridical institutions to implement the fullness of the common good. Murray’s key argument, in other words, was political—it concerned the power of the state and the laws implemented by the state.
The state is essentially limited in power, especially in relation to religious faith and the church. The argument for the limited power of the state has theological grounds. It goes back to the apostles’ statement that “we must obey God rather than any human authority” (Acts 5:29, NRSV), and to the medieval investiture controversy in which the popes defended the freedom of the church by resisting attempts by princes to appoint bishops. Both of these arguments presuppose that the spirit of the human person transcends politics. This transcendence, which Murray following Jacques Maritain called “the primacy of the spiritual,” means there is more to human beings than can be encompassed by politics and the state. This sets definite limits to the exercise of state power.

The relevance of this theological argument for the political realm comes from the fact that protection of the religious transcendence of the person and of the freedom of the church have as a direct consequence the freedom of society from any form of absolutist control by the government. Society and state are distinct from one another. Just as there is more to the person than can be controlled by the state, so there is greater richness to life in society than politics can encompass. A misguided effort to bring the totality of society under state control is the very definition of totalitarianism, and it should be opposed both in the name of the right to religious freedom and of human rights more generally. Citizens should be free from state control in their religious belief, which grounds the civil right to religious freedom. Analogously, citizens should also be free in other, broader ranges of their social life. Murray thus argued that religious freedom is linked with the full range of civil and political rights that are guaranteed by constitutional democracy and democratic self-government. In political life the person "is fully citizen, that is, not merely subject to, but also participant in, the processes of government." The
Catholic community’s engagement in struggles for human rights and democracy in the decades since the Council has been an effort to live out this insight.

The approach to religious freedom taken by Murray and the Council had important implications for the relation between juridical and legal institutions and the broader domain of the ethical or moral. Because the state is limited, its reach does not extend to the promotion of the full moral reality of the common good that should be achieved in society, but only to the most basic moral requirements of social life that Murray and the Council called public order. Public order includes genuinely moral values, including public peace, justice, and those standards of public morality on which consensus exists in society.\textsuperscript{39} These minimal moral standards are the concern of the government. But working for the attainment of the fullness of virtue and the totality of the common good is the vocation of the church, of families, and of the many educational and cultural bodies that form civil society. The state’s moral role is more limited: the protection of the basic requirements of peace, justice, and human rights that make life in society possible at all. This is the basis on which the Council affirmed that, when public order is at stake, law may legitimately limit human freedom, including religious freedom.\textsuperscript{40}

This specification of when legal restraint is called for shows why the Afrikaners mentioned in the example above may be legally prevented from continuing with their racially separatist practices despite the fact that they claim these practices are required by their religious beliefs. Religious freedoms, like all human freedoms, are fundamental values, but they are not absolute. They are to be restricted only when and in so far as is strictly necessary to secure peace and justice. Murray called this the principle of the “free society,” which affirms that each human person “must be accorded as much freedom as possible, and that this freedom is not to be restricted unless and insofar as necessary.” Through his influence, this principle was enshrined
in the *Declaration on Religious Freedom*. In words that Murray himself surely wrote, the Council declared: “[T]he usages of society are to be the usages of freedom in their full range. These require that the freedom of the human person be respected as far as possible, and curtailed only when and insofar as necessary.”

Both the Council and Murray were thus very much aware of the link of the right to religious freedom with the full range of other freedoms. It was certainly not an accident, therefore, that the development of church teaching on religious freedom that occurred at the Council stimulated new engagement by the church on the broader global agenda of social justice, including the promotion of democracy. Recent experience has also shown that the promotion of freedom for religious communities removes that sense of oppression that often leads religious groups to feel that resorting to armed struggle is the only way to protect themselves and to bring their vision of society to the public realm. Protection of religious freedom is thus often a precondition for greater peace in society, both within countries and among them. Thus in addition to helping move the Catholic community to greater engagement with issues of social justice and democratization, the Council’s commitment to religious freedom also helped deepen the church’s engagement in the promotion of peace. The Catholic church’s strong engagement in the promotion of these broader issues of justice, democracy, and peace in the decades since Vatican II, of course, was not brought about solely by this new commitment to religious freedom. Additional factors surely include the Council’s encouragement of deeper pastoral engagement with poverty in the developing world, its suggestion that the dangers posed by nuclear weapons require “a completely fresh appraisal of war,” and its new support for interreligious dialogue and cooperation.
Nevertheless, the development of the church’s understanding of religious freedom brought about at the Council with Murray’s help surely set the Catholic church on a course that enabled it to make important contributions to justice and peace in society. My hope is that the movement along this course will see renewed vigor in the years ahead. The world is in great need of such a contribution to religious freedom, and to the justice and peace that is often linked with this freedom. By continuing on the path blazed by Murray and the Council, we can help respond to that need in our time as they did in theirs.
Notes


2 “City of God and Man,” *Time*, cover story, December 12, 1960, 64.

3 See, for example, José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).


7 *We Hold These Truths*, Introduction, esp. pp. 9-15.

8 Since 1991 there has been a significant increase in the percentage of Americans who hold that religious leaders should not seek to influence government decisions or the way people vote. The belief that religion is “too political” is particularly strong among young Americans. See Robert D. Putnam and David E. Campbell, *American Grace: How Religion Divides and Unites Us* (New York: Simon & Schuster, 2010), 121.


13 Vatican Council II, *Declaration on Religious Liberty*, no. 10.


15 Vatican Council II, *Declaration on Religious Liberty*, no. 2.
16 Vatican Council II, *Declaration on Religious Liberty*, no. 2.

17 Vatican Council II, *Declaration on Religious Liberty*, no. 2.

18 Vatican Council II, *Declaration on Religious Liberty*, no. 4.


France's Marine Le Pen loses immunity as MEP,” BBC News, July 2, 2013, online at:
http://www.bbc.co.uk/news/world-europe-23142984. This report indicates that Le Pen’s immunity from prosecution for the crime of inciting hatred because of her membership in the European Parliament was withdrawn by the Parliament on June 25, 2013. See the report from the Parliament’s Committee on Legal Affairs online at:


For a valuable set of studies of such nonviolent movements in recent politics, see Adam Roberts and Timothy Garton Ash, eds., Civil Resistance and Power Politics: The Experience of Non-violent Action from Gandhi to the Present (New York: Oxford University Press, 2009).


Toft, Philpott, and Shah, God’s Century, chap. 4, esp. Tables 4.1, 4.2., 4.3, and 4.4.


Pacem in Terris nos. 8-27 affirms most of the human rights set forth in the Universal Declaration on Human Rights. Pacem in Terris is available on the Holy See’s website, at:


sentence from the Council is from *Dignitatis Humanae*, no. 7, as translated in *The Documents of Vatican II*, Walter Abbott and Joseph Gallagher, eds.
