

Religious Liberty and the Common Good:
An Engagement with the Catholic Americanist Tradition

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The notion of the common good has been revived in recent years by the political and religious left to illustrate the shared responsibility of American citizens for social justice. Less often, the right employs common good language in favor of the role of capitalism in the creation of wealth or to call for legislation restricting certain behaviors. One problem with these understandings is that they fail to consider that those who conceived and refined the common good had clear ideas about the nature of the good and recognized that it presupposes agreement about ultimate ends and the practices necessary to pursue them. Whether being content to privatize such ends or arguing for the privileging of Christianity, the right, left, and center share a trust in personal preference and the role of the nation-state as primary caretaker of the common good.

This has a number of consequences. For example, both ends- and rights-based notions of the common good presume that some form of moral reasoning must be available to all persons. Among Protestants this leads to a quest for objectivity that either falls into biblicism or leaves substantive claims behind. Some argue for divine command, others advocate Christian realism, and still others turn to the Catholic tradition. Unfortunately, the latter tend to elevate either a reductionist form of natural law as a method for universal morality or Catholic social teaching as a blueprint for the duty of the state. Both appeals include elements of truth, but they neglect other Catholic sources that can counter the state's corrosive effects. In this essay, I will investigate what Donald Pelotte has named the "Americanist tradition," the history of Catholic accommodation to the condition of religious liberty, which Baptists helped create.¹ In particular, I will explain how John Courtney Murray was able to negotiate this condition better than Baptists and other Protestants because of his ecclesial location but ultimately was

¹Donald E. Pelotte, S.S.S., *John Courtney Murray: Theologian in Conflict* (New York: Paulist, 1976), 145-46. William L. Portier analyzes the shift from the condemnation of Americanism to Pelotte's claim in "Americanism and Inculturation: 1899-1999," *Communio* 27, no. 1 (spring 2000): 139-60.

unable to craft a satisfactory notion of the common good for Christians in the United States. In turn, I will argue that this failure can be overcome through a radical theology that locates the common good (and politics itself) not in the nation-state but in diverse and overlapping communities formed by common practices and committed to common ends, a theology applicable to the Baptist tradition.

The Common Good as Theopolitical Concept

The notion of a common good originated with Greek and Roman philosophers, especially Aristotle, who held definite convictions about the nature of the good and assumed the context of a *polis* or republic that shared them. Likewise, theologians who engaged the common good, especially Augustine and Thomas Aquinas, assumed a union of church and state and of Christian and citizen, as did Martin Luther and John Calvin, though in different forms. In short, these thinkers insisted that common activity in economics and politics presupposes a web of tacit agreements; thus economics and politics *as such* do not govern themselves but rather stand under the judgment of a moral framework. As Aristotle understood, this enables discussion of the relationship between the interests of individuals and those of the community in which they participate. Further, it includes agreement about the ultimate end (the highest good or *summum bonum*) for human beings, which, in turn, shapes their character.²

Enlightenment philosophy and liberal political theory are often credited with undermining this presupposition. *Liberalism* is a diverse tradition, of course, but its theorists have generally agreed that the common good (in the classical sense) cannot be sustained by modern states because no moral framework can be agreed upon by free persons. Therefore they have insisted that such states be organized not around the common good but around the protection of the natural rights of the individual. For this purpose such individuals enter into a social contract bound by reason and the rule of law. This conviction animated the founders of the United States, who declared in the Declaration of Independence that the purpose of government is to secure “self-evident” rights, a purpose derived “from the consent of

²Cf. Thomas W. Smith, “Aristotle on the Conditions for and Limits of the Common Good,” *American Political Science Review* 93, no. 3 (September 1999): 625-36. Smith thinks that Aristotle is helpful precisely because he is not concerned with “contested religious doctrines” (626).

the governed.” However, they expressed a concern for the common good in the preamble to the Constitution, which ascribes a set of goals to the people of the nation: “to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.”

The precise nature of the relationship between human rights and the common good has been a matter of debate. Liberals of a conservative or libertarian stripe have insisted that the preamble refers not to government but to the Constitution itself. In this view, the above objectives are merely descriptions of what the people must work for in order to preserve the rights granted to them by the state. Thus human rights (in a limited sense) are first principles, for if they are infringed upon the common good suffers and the nation is threatened by totalitarianism. In economics, the protection of business and free enterprise lead to prosperity and the advancement of the common good, an argument supposedly vindicated by the failure of communism. “Liberal” liberals, however, posit a role for the state in establishing a common morality based on agreement not about a *telos* but about respect for a broad spectrum of rights. Particular moral frameworks contribute to the common good insofar as they foster such respect and are regulated by a neutral conception of justice that prevents the distortions they inevitably bring to public life. The preeminent example of political liberalism is John Rawls, who defined the common good as “certain general conditions that are . . . equally to everyone’s advantage” and the organization of diverse conceptions of the good in terms of “overlapping consensus.”³ Political authority derives its legitimacy from agreement on the part of individuals and groups, religious and otherwise, to refrain from contesting and directing public morality in exchange for the freedom to privately pursue their various ends.

It is fair to say that, despite its competing views, liberalism has been the dominant perspective in American public life. However, a host of scholars have contended that it has led to not only privatization but excessive individualism, both of which harm the common good. These can be grouped

³John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 246.

under the heading *communitarianism*. Some communitarians have called into question the self-evidence of natural rights; others have argued that neutrality obscures the fact that any political order favors the interests of certain groups. They agree on the need for a substantive conception of the common good that accounts for particularities but differ over where it can be located. Further, while many view communitarianism as a correction that can be inserted into the liberal order through procedural means that increase conversation, a minority contends that the common good is found only in smaller communities that share deep moral agreements. Still, the majority of liberals *and* communitarians accept that society requires something like the nation-state. In other words, the common good subsists in institutions and systems that operate in a manner benefiting everyone; thus it is advanced or hindered to the degree that they function properly. While not all are directly related to government, many are, and increasingly so. More important, although they often operate across them, the boundaries of the society they serve are defined and defended by the state.

This presents a number of practical problems. For example, the sheer number of different ideas makes reaching agreement on institutions difficult, increasing the likelihood that efforts to promote the common good will favor certain views and lead to coercion. Further, some may refuse to sacrifice freedom for the sake of the common good or choose to receive its benefits without contributing to it. It is easy to see the consequences for issues such as education, the environment, health care, and poverty. Yet all agree that the economic, political, and social spaces of the United States are worth the risks; therefore their debate is usually articulated in terms of tensions among competing interests. That is, the state must primarily protect either individual rights or social values. As Brian Stiltner explains, “It is often assumed that this is a zero-sum game; for instance, to ensure more political freedom means further to privatize and stigmatize citizens’ religious beliefs, while a political accommodation of some citizens’ beliefs entails a greater burden on those citizens who do not participate in the favored religion(s).”⁴

⁴Brian Stiltner, *Religion and the Common Good: Catholic Contributions to Building Community in a Liberal Society* (Lanham, Md.: Rowman and Littlefield, 1999), 4-8.

The Other Side of Religious Liberty

Their fear of absolute religious claims in the wake of European wars has been exaggerated, but the founders did recognize the necessity of handling religion with special care. Therefore they placed freedom of religion at the beginning of the Bill of Rights as the condition by which other freedoms could flourish. If anything about the founding was providential, it was the First Amendment, for it prohibited religious establishment—John Howard Yoder called it “Constantinianism”—but, unlike disestablishment in much of Europe, allowed for religious expression and assumed its role in fostering the common good.

Many claim that religious liberty is the “trophy” of Baptists—our unique contribution to American (and Christian) history—and the work of Roger Williams, John Leland, Isaac Backus, and others in prying the sword out of the hand of the church can hardly be overvalued.⁵ However, Baptists have not proved adept at negotiating the situation produced by their advocacy. No longer in a position of dissent, we were among the first groups to apply the democratic spirit of the early republic to our congregations.⁶ In a culture infused by Protestant morality, Baptists saw no need for an articulated ecclesiology; in fact, we saw this culture’s existence as a vindication of Baptist principles. This presented few problems until the Civil War and industrialization ended its hegemony in the North and, later, the fundamentalist-modernist controversy marked the beginning of the end in the South, where Baptists were “the center of gravity.”⁷ Much about Southern Baptist conflict in the last century is explained by differing reactions to this breakdown, as the SBC became vulnerable to modernism and fundamentalism. The response of “moderates” to subsequent division has been to emphasize “soul liberty” (or “soul competency”), a concept closely related to religious liberty that refers to the right of the individual to have direct access to God and to interpret the Bible. A classic formulation was given

⁵For a moderate Baptist perspective, see J. Brent Walker, ed., *The Trophy of Baptists: Words to Celebrate Religious Liberty* (Macon, Ga.: Smyth and Helwys, 2003).

⁶Nathan O. Hatch, *The Democratization of American Christianity* (New Haven: Yale University Press, 1989).

⁷Edward L. Queen II, *In the South the Baptists Are the Center of Gravity: Southern Baptists and Social Change, 1930-1980* (Brooklyn, N.Y.: Carlson, 1991), 16. Queen’s took his title from a comment in Victor I. Masters, “Baptists and the Christianizing of America in the New Order,” *Review and Expositor* 17 (July 1920), 297.

by Herschel Hobbs, following E. Y. Mullins, when he wrote that “religion is a personal matter between the individual and God” and that soul liberty “includes salvation by grace through faith without the need of a human mediator or any institution, ecclesiastical or political.”⁸

A closer examination of Mullins is helpful for two reasons. First, he argued that Catholic sacramentalism is the antithesis of soul liberty. As Elizabeth Newman explains, for Mullins “the seven sacraments illustrate in a ‘striking way’ that priestly mediation is necessary, thus implying the soul’s incompetency.” Second, he claimed that democracy is inherent to the state *and* the church as an “inevitable corollary” of soul liberty.⁹ A similar ecclesiology has been promulgated by scholars such as Glenn Hinson and Walter Shurden, and Newman notes that while Shurden affirms the role of the community in the Baptist vision, he makes two false assumptions. First, “the church has an important role . . . but is not absolutely necessary; the church is subsequent to the faith of the individual that he or she brings to the larger body.” Second, the church and the individual “need to be kept in tension.”¹⁰

Shurden’s claims reflect a legitimate fear of coercion, and Newman includes a quote from James McClendon noting that soul liberty implies “the rejection of violence as the basis of community.”¹¹ Still, they set up an inevitable trade-off and ultimately place the individual over the community, which finally becomes optional. Baptists are right to emphasize the integrity of the human person. However, we are all part of the biblical narrative, and even those not born into Christian families or congregations learn of the faith from others and engage in practices carried through time by the church, which exercises authority and judgment in doing so. We do not “choose” to be part of these stories; we simply

⁸Herschel Hobbs, *You Are Chosen: The Priesthood of All Believers* (San Francisco: Harper and Row, 1990), 3, quoted in Elizabeth Newman, “The Priesthood of All Believers and the Necessity of the Church,” in *Recycling the Past or Researching History: Studies in Baptist Historiography and Myths*, ed. Anthony R. Cross and Philip E. Thompson (Waynesboro, Ga.: Paternoster, 2005): 51. Hobbs added that soul liberty is “the distinctive contribution of Baptists to the Christian world.” Barry Hankins notes that this conception of soul liberty and a strict-separation view of church and state motivated the conservative cause in the SBC split. Hankins, *Uneasy in Babylon: Southern Baptist Conservatives and American Culture* (Tuscaloosa, Ala.: University of Alabama Press, 2002), 15-17, 107-38.

⁹Newman, 52. See E. Y. Mullins, *The Axioms of Religion* (Philadelphia: Judson, 1908), 55, 60-61. For a different view, see Philip E. Thompson, “Sacraments and Religious Liberty: From Critical Practice to Rejected Infringement,” in *Baptist Sacramentalism*, ed. Anthony R. Cross and Philip E. Thompson (Waynesboro, Ga.: Paternoster, 2003): 36-54.

¹⁰Ibid., 53. See Walter B. Shurden, “The Baptist Identity and the Baptist *Manifesto*,” *Perspectives in Religious Studies* 25, no. 4 (winter 1998): 321-40.

¹¹James Wm. McClendon Jr., *Systematic Theology*, vol. 1, *Ethics* (Nashville: Abingdon, 1986), 30.

are part of them and they part of us. As Newman says, a helpful tool in this regard is Ludwig Wittgenstein's philosophy of language, and she adds three criticisms: first, freedom does not reside in the individual as a right but comes as a gift at God's initiative; second, private interpretation places the authority of the individual *above* that of Scripture; and third, soul competency reflects a conception of religion as, in William Cavanaugh's words, "a set of beliefs which is defined as personal conviction and which can exist separately from one's public loyalty to the State." That is, in the early modern period religion shifted from an ecclesial location to the criteria of independent propositions or, later, personal experience. "Religion is no longer a matter of certain bodily practices within the Body of Christ, but is limited to the realm of the 'soul,' and the body is handed over to the State."¹²

Cavanaugh's conclusion reaches the heart of my argument. In short, soul liberty has become problematic for moderate Baptists in two ways. First, it has not provided us with an identity that is sustainable over time. If the freedom of the individual soul is the heart of the Baptist vision, then it is difficult, if not impossible, for this vision to serve a normative function. That is, we have no basis for claiming that we or any other groups are "real Baptists." Further, without proper notions of the church, tradition, and authority we are open to perversions of them (i.e., fundamentalism). Second, this lack of identity makes it difficult to discern the dangers of the nation-state and its culture.

Most moderate Baptists take it for granted that the nation-state is the keeper of the common good. One source will have to suffice. The common good appears regularly in the publications of the Baptist Center for Ethics. For example, in "A Baptist Pastoral Letter Supporting Public Education" the center identifies churches as one of many types of organizations that contribute to the common good. Children "deserve the nurture of a good society" advanced by public schools, which are committed to separation of church and state and therefore "free from coercive pressure to promote sectarian faith." That is, churches are necessarily divisive, but American society is a "just society" and its institutions are

¹²William T. Cavanaugh, "A Fire Strong Enough to Consume the House: The Wars of Religion and the Rise of the State," *Modern Theology* 11, no. 4 (October 1995): 403-5.

unifying. The letter closes with this statement: “We call on Baptists to recommit themselves to the nation’s founding principle of ‘E Pluribus Unum.’ A society based on unity out of diversity will embrace every child and recognize the vital role public schools play in achieving national unity.”¹³

The problem is not that it is wrong to support public education or that it should include state-sponsored prayer. Rather, it is that while state institutions are *public*, churches are *private* (in regard to their deepest convictions) and incapable of producing unity without the state. Similarly, James Evans says that while “honoring the Scriptures and following a covenant ethic is certainly good, it must be seen as a particular good—that is, a good that is not self-evident to everyone.” Therefore faith is best kept private except when it can contribute to a universal ideal (“caring for the poor and disadvantaged”) that “transcends religious belief” and promotes the common good.¹⁴ Again, the problem is not that Baptists should abandon working with other groups for common goals; it is that since the church is incapable of solving social problems, the state is our best hope. Yet the center sees no obstacle to expecting accountability to biblical norms. After the 2006 election Robert Parham called on the Democratic majority to demonstrate faith not through prayer—Jesus “spoke for prayer in private”—but through “public service” because “the nation hungers for a politics of humility that pursues the common good.” He also claimed that “faithful and secular Democrats” should share “a commitment to do justice,” but he defined justice in biblical, not secular (Rawlsian), terms.¹⁵ It is unclear how one can expect a state separated from the church by a “high wall” to operate according to biblical standards, but the center applies them—usually without translation—to a wide range of institutions, including the IRS.¹⁶

¹³Baptist Center for Ethics, “A Baptist Pastoral Letter Supporting Public Education,” EthicsDaily.com, April 21, 2006, http://www.ethicsdaily.com/static.cfm?mode=public_education_letter (accessed April 13, 2007). Executive director Robert Parham later implied that Baptists who support the common good must support public education. Bob Allen, “201 Baptist Ministers Sign Letter Supporting Public Education,” EthicsDaily.com, May 12, 2006, http://www.ethicsdaily.com/article_detail.cfm?AID=7351 (accessed April 13, 2007).

¹⁴James L. Evans, “The Voice of Faith Necessary in Social Issues,” EthicsDaily.com, July 21, 2006, http://www.ethicsdaily.com/article_detail.cfm?AID=7651 (accessed April 13, 2007).

¹⁵Robert Parham, “A Bible Verse for Victors,” EthicsDaily.com, November 13, 2006, http://www.ethicsdaily.com/article_detail.cfm?AID=8143 (accessed April 13, 2007).

¹⁶Susan Pace Hamill, “Taxation and Justice,” Ethics Daily.com, August 22, 2006, http://ethicsdaily.com/article_detail.cfm?AID=7792 (accessed April 13, 2007). Hamill notes that “instead of embodying justice and working for the common good, our system of taxation reflects the values of selfish individualism.” She describes tax justice

Here we have a contradiction: these Baptists identify particular failures of the state in pursuing the common good but do not consider that it might be incapable of doing so. In other words, while recognizing the presence of “selfish individualism,” they fail to see that our capitalist democracy fosters it. To be clear, to question soul liberty is not to question religious liberty or institutional separation of church and state. Instead it means recognizing that this gift comes with a responsibility—the other side of religious liberty. Those who resist community because it threatens the individual conscience and church structures because they limit options for association fail to recognize that the challenge facing Baptists is not the loss of individuality; Martin Marty was correct in claiming that the United States has undergone “baptistification.”¹⁷ Rather, the challenge is that, in McClendon’s terms, we have lost our “shared and lived story.”¹⁸

Many Baptist and other Christians no longer see themselves as first part of the church. For example, a recent survey reported that while 48 percent of Christians identified themselves as “American first” only 42 percent answered “Christian first.”¹⁹ While this is not a new problem, it does have new significance. Early Baptists formed our tradition out of dissent and Baptists in America shaped it in the midst of a Protestant culture. Today, however, the priesthood of all believers and soul liberty are not enough to sustain identity. Many Baptists remain dedicated to local churches, but most are influenced more by evangelicalism or mainline liberalism. Divided and optional Baptist entities are no match for the formation of the state and market. The point is not that we stand wholly for or against the nation or culture but that we develop the ability to discern what we can embrace and what we must reject. This will require a re-envisioning of our ecclesiology, one engaging the tradition found in its

in terms of standards such as “fair burden” and “adequate revenue” but contends that taxation is a “moral conversation” into which Jesus’ admonition “from everyone to whom much has been given, much will be required” ought to be inserted.

¹⁷Martin E. Marty, “Baptistification Takes Over,” *Christianity Today* (September 2, 1983): 33-36. For an example of this type of rhetoric, see John Pierce, “A Conversation with Bill Leonard,” *Baptists Today* (January 2007), 4-5, 14-17.

¹⁸McClendon, 332. McClendon describes the task of ethics as “the discovery, understanding, and creative transformation of a shared and lived story, one whose focus is Jesus of Nazareth and the kingdom he proclaims—a story that on its moral side requires such discovery, such understanding, such transformation to be true to itself.”

¹⁹Pew Research Center, “Muslim Americans: Middle Class and Mostly Mainstream,” Pew Research Center Publications, May 22, 2007, <http://pewresearch.org/pubs/483/muslim-americans> (accessed May 30, 2007). In contrast, 47 percent of Muslim Americans answered “Muslim first” but only 28 percent answered “American first.”

most robust form in the Catholic Church. Baptists have a long history of anti-Catholicism—see George Truett’s speech on the steps of the U.S. Capitol in 1920—that reappears all too frequently. However, it is worth asking what we might learn from Catholicism. After all, Catholic political theory almost single-handedly kept the notion of the common good through the twentieth century. First, however, it is important to know something about the history of how Catholics came to see themselves as contributors to the *nation’s* common good.

Americanism and the Common Good

Catholics have been assessing their place in the United States since the mid-eighteenth century, but back then their starting point was a theoretical, though not always practical, rejection of religious liberty. Americanists such as John Ireland, John Keane, and Denis O’Connell challenged this position, only to be rebuked by Leo XIII in *Testem Benevolentiae Nostrae* (1899). Not until the adoption of the Declaration on Religious Freedom (*Dignitatis Humanae*, 1965) by the Second Vatican Council did it shift definitively. Central to this story is John Courtney Murray, the Jesuit once silenced yet “vindicated” by the declaration, which he helped compose.²⁰ In the late 1960s, the focus of Catholic moral theologians shifted to a debate over whether liberals or conservatives would lay authentic claim to the vision of the council. Murray has functioned as a “totem” for both factions and as a target for radical critics who question whether the Catholic Church can indeed be reconciled with the American state.²¹

Murray’s consideration of religious liberty in the 1950s and early 1960s was consistent with his treatment of intercredal cooperation.²² Pelotte notes that by the early 1940s Murray was already “working at uncovering aspects of his Church-State theory. It mattered little to Murray whether one

²⁰Contrary to what was long claimed, Murray was not the principal architect of *Dignitatis Humanae*. Instead his argument for human dignity and juridical freedom was a later addition to the French revision of his fourth draft. J. Leon Hooper, S.J., introduction to John Courtney Murray, S.J., *Religious Liberty: Catholic Struggles with Pluralism* (Louisville: Westminster John Knox, 1993), 36-37.

²¹“Totem” is coined by William L. Portier in “Theology of Manners as Theology of Containment: John Courtney Murray and *Dignitatis Humanae* Forty Years After,” *U.S. Catholic Historian* 24, no. 1 (winter 2006): 83-85.

²²John Courtney Murray, S.J., “Current Theology: Christian Co-operation,” *Theological Studies* 3 (September 1942): 413-31; “Current Theology: Co-operation: Some Further Views,” *Theological Studies* 4 (March 1943): 100-11; “Current Theology: Intercredal Co-operation: Its Theory and Its Organization,” *Theological Studies* 4 (June 1943): 257-68.

spoke of the relation between Church and State or of religious liberty or of cooperation. All three represented various ways of speaking about the same issue.” Indeed, it was cooperation that first drew the ire of two professors at Catholic University, Francis Connell and Joseph Fenton, who would challenge Murray on religious liberty. Murray’s subsequent work on education continued this trajectory.²³ In fact, the “school question” has long been a point of contention among Catholics and Protestants and is a good entry point into the Americanist narrative.

Catholics lived almost without incident in the early republic, mostly due to small numbers, but immigration in the mid-nineteenth century heightened their sense of being outsiders. “Living in a Protestant society, it would be extremely difficult for Catholic immigrants to appropriate an American—i.e., Protestant—worldview. Throughout the era of the immigrant church, the United States was still perceived by most Catholics as too Protestant and thus too threatening.” They responded in roughly two ways: a group of French and German origin cultivated the practices of devotionalism and the theology of ultramontaniam, while those of Irish descent embraced an American conception of “church.” Yet, as Jay Dolan notes, *both* imbibed the national ethos; papal infallibility and certainty about the Church “gave Catholic outsiders a confidence that they were the ones on whom the future of America rested.”²⁴ They welcomed an impressive stream of converts, including Orestes Brownson. As Catholic success was assured, a question presented itself: would it come by converting the nation or by the joining its project?

Meanwhile, Protestants—especially evangelicals thriving after the Second Great Awakening—were crafting their own vision, one that “recaptured the vision of John Winthrop’s ‘city on a hill,’ to which all nations would look for guidance and inspiration. Once this movement took hold, its

²³Pelotte, 14-16. Pelotte shows that Murray was involved in the school question by the late 1940s, when he helped the American bishops with their written opposition to the Supreme Court’s *Everson* and *McColum* decisions. In the early 1950s he participated in an influential assessment of academic freedom that supported giving tax money to private (and parochial) schools and religious education in public schools. His mature thought on the issue is found in chapter six of *We Hold These Truths*.

²⁴Jay P. Dolan, *The American Catholic Experience: A History from Colonial Times to the Present* (Notre Dame, Ind.: University of Notre Dame Press, 1992), 238-39.

supporters promoted it with a crusader's zeal, and before long the schoolhouse became the established church of the American republic."²⁵ Evangelicals were concerned about the unchurched and social problems, both of which affected immigrants in the cities, and saw education as key to inculcating republicanism and Protestant morality. Agreement on theological points that separated denominations was thought to be impossible, and, in the popular mind, civil liberty and religious liberty were inseparable. However, national unity endured even after the Civil War; thus the education movement was non-sectarian and varied according to region but was highly organized and focused on its goal. Catholic leaders were troubled because they could not assent to the ideology of public education, and their response was equally thorough.²⁶ "Catholics could not understand the fuss," Dolan says. "They claimed to be loyal Americans, but because they challenged the Protestant culture of the public schools they were labeled 'un-American' and enemies of the republic."²⁷ In short, all parties recognized that education is neither religiously nor politically neutral. Today, however, some Baptists and other Protestants join secularists in arguing the opposite. Others call for injecting "Christian values" into public education; still others advocate withdrawal to private or home schools. The point is not to argue for one of these positions; it is to note that all understand themselves as being *in service to the nation*.

By Murray's day loyalty to America was no longer a question for Catholics. The Americanists' spirit of conversion had vanished, replaced by the consensus of the postwar era. How do we explain this turn of events? John Tracy Ellis contends that by the end of the nineteenth century "children born to the rough and tumble crowd of Catholic immigrants were second to none in their true American character and spirit." America's political arrangement was not the issue; the issue was "belonging."²⁸ Catholic mobilization of the period had an "evangelical, outward-directed impulse" systematized by Pius XI in

²⁵Ibid., 266-67.

²⁶David O'Brien, *Public Catholicism*, 2nd ed. (Maryknoll, N.Y.: Orbis, 1996), 36. "People had to be persuaded to join a church, to support its minister and its works, and to make its teachings a part of their daily lives. To resist the evangelical project and insure the survival of Catholicism, bishops, priests, and lay leaders had to do the same."

²⁷Dolan, 269.

²⁸John Tracy Ellis, *American Catholicism*, 2nd ed. (Chicago: University of Chicago Press, 1969), 123, 157, 190. Ellis claims that "the fundamental principle of separation of Church and State has always been accepted by the American hierarchy from the time of Archbishop [John] Carroll to our own day" and that Americanists from Carroll to Ireland to Francis Cardinal Spellman erred only in occasional excess. He and Murray had a close relationship; see Pelotte, 36-50.

“Catholic Action” and reflecting the neo-scholastic revival. Later, the formation of the National Catholic War Council during the First World War cemented belonging, and its successor, the National Catholic Welfare Council, belatedly joined the reformist, social gospel spirit.²⁹

World War II and its aftermath only strengthened Catholicism’s standing. As Philip Gleason points out, “Set against the monstrous contrast of Naziism, with its heavy overtones of romantic antimodernism, the American version of modernity—which was, of course, nothing other than the American way of life—looked very good indeed.”³⁰ The Church was also a longtime opponent of communism, which gave it the credibility to stand proudly with the nation as the Cold War began. Further, economic recovery propelled the descendants of immigrants into the same spheres of wealth as other citizens, historians such as Ellis and Thomas MacAvoy recovered Americanism on the intellectual front, and the election of John F. Kennedy signaled political arrival. Still, while these were “halcyon days,” they included a drift toward privatism.³¹ Catholics had not yet become indifferent, only uninterested in converting their fellow Americans. According to David O’Brien, Will Herberg’s *Protestant, Catholic, Jew* revealed that Catholicism “had become a way of being American, of finding identity and belonging while worshiping not the God of the Scriptures but America itself.”³² This explains why Church teaching on religious liberty was seen by many as an embarrassment.

The “new nativism” only heightened the tension. Murray saw that it was not so much Protestant as it was naturalist, operating on the premise that democracy demanded a naturalist, secularist philosophy.³³ The same certainty that had comforted Catholics as immigrants now called their loyalty to the United States into question. The loudest critic was journalist Paul Blanshard, who fit the secular

²⁹Philip Gleason, *Keeping the Faith: American Catholicism, Past and Present* (Notre Dame, Ind.: University of Notre Dame Press, 1987), 184. William M. Halsey analyzes this period in *The Survival of American Innocence: Catholicism in an Era of Disillusionment, 1920-1940* (Notre Dame, Ind.: University of Notre Dame Press, 1980).

³⁰Ibid., 30-31. Thomas W. O’Brien examines the influence of the Cold War on Murray’s thought in *John Courtney Murray in a Cold War Context* (Lanham, Md.: University Press of America, 2004).

³¹James Hennesey, S.J. *American Catholics: A History of the Roman Catholic Community in the United States* (New York: Oxford University Press, 1981), 287-88.

³²O’Brien, 204. See Will Herberg, *Protestant, Catholic, Jew: An Essay in American Religious Sociology*, rev. ed. (Garden City, N.Y.: Anchor, 1960).

³³Hennesey, 295. See also Pelotte, 17-18 and John Courtney Murray, S.J., “Paul Blanshard and the New Nativism,” *Month* 5 (April 1951): 214-25.

profile despite being an ordained minister. Yet suspicion also came from the National Council of Churches, Baptists such as J. M. Dawson—who helped found Protestants and Other Americans United for Separation of Church and State (POAU) to prevent funding of religious education—and theologians such as Reinhold Niebuhr, who argued that separation of religion and education “represents a gain for our public life, since organized religion is bound to be divisive, and it is a divisiveness we simply cannot afford.”³⁴ Blanshard distinguished the Roman hierarchy from the “Catholic people” who “fight and die for the same concept of freedom as do other true Americans.” More important, he prefaced his only direct reference to Murray as follows: “It is an understatement to say that the Roman Catholic Church is *in* politics. It *is* political.”³⁵ This, of course, was what Kennedy took great pains to deny in front of a group of mostly Baptist ministers when he claimed that he only “happened” to be a Catholic, that the Church did not speak for him, and that he supported the “absolute” separation of church and state.

Despite this interruption, theologians were laying the groundwork for the engagement with the modern world that would come to fruition at Vatican II. A key area of inquiry was the common good, and its first great synthesizer was the French Thomist Jacques Maritain. Maritain argued from a strong notion of human freedom and distinguished between the human being as an individual that relates to a social order and as a person with an ultimate, spiritual end. However, he argued that humans participate in a common good in *both* orders; therefore they have social obligations but cannot be subordinated to them. He saw this *personalism* (or “integral humanism”) as a middle way between individualism and socialism. In short, Maritain sought to bring the dimensions of the human person together by distinguishing the private good, which is subordinate to the community’s temporal good, from the superior spiritual good. He grounded the rights that form the basis of the state in the natural law and the

³⁴O’Brien, 207, quoting Reinhold Niebuhr, “A Note on Pluralism,” in *Religion in America: Original Essays on Religion in a Free Society*, ed. John Cogley (New York: Meridian, 1958), 49.

³⁵Paul Blanshard, *American Freedom and Catholic Power* (Boston: Beacon, 1949), 4-5, 43. Blanshard concluded that “if [the people] controlled their own Church, the Catholic problem would soon disappear because, in the atmosphere of American freedom, they would adjust their Church’s policies to American realities.” For more on the conflict between Blanshard and Murray, see Mark Massa, “Catholic-Protestant Tensions in Post-War America: Paul Blanshard, John Courtney Murray, and the ‘Religious Imagination,’” *Harvard Theological Review* 95, no. 3 (July 2002): 319-39.

common good.³⁶ Maritain influenced a diverse group of thinkers, including Dorothy Day and Peter Maurin, Paul VI, and Murray, who recognized that applying the common good to the United States required a new analysis of religious liberty.

The Case of John Courtney Murray

Murray's theology was the culmination of more than a century of struggle. To immigrants fleeing persecution and famine the United States was a welcome alternative, as it was after two world wars and in the face of communism, and Catholics co-existed rather well with their Protestant neighbors. The nation was changing, however, and Murray sensed the implications. He agreed with Niebuhr that democracy demands a basis that cannot be achieved through "organized religion" but rejected the alternative of secularism in mild or strict forms.³⁷ He also did not share the self-criticism among elites regarding Catholic anti-intellectualism, which led to "acceptance of modern secular standards in the realm of ideas and culture."³⁸ Murray's involvement in education caused him to challenge the presentation of Catholic positions by priests such as Connell and Fenton, as he was convinced that anti-Catholicism was due primarily to the official preference for establishment. Popes from Pius IX to Pius XII had theorized the ideal (or "thesis") to be a harmony of church and state and accepted toleration (the "antithesis") only for the sake of the common good. They initially opposed state churches but in response to continental liberalism began to see them as a method of defense.³⁹

³⁶Jacques Maritain, *The Person and the Common Good* (New York: Charles Scribner's Sons, 1947); *Man and the State* (Chicago: University of Chicago Press, 1951).

³⁷Murray lamented the metaphorical "wall of separation between church and state" that first appeared in an 1802 letter from Thomas Jefferson to the Danbury (Conn.) Baptist Association and was solidified in the 1947 Supreme Court case *Everson v. Board of Education*. John Courtney Murray, S.J., "Separation of Church and State," *America* (December 7, 1946): 261-63; "Separation of Church and State: True and False Concepts," *America* (February 15, 1947): 541-45.

³⁸Gleason, 32. "The main thrust of Catholic liberalism in the fifties was unquestionably that Catholics should abandon separatism, outgrow their siege mentality, and break out of their Catholic ghetto" (186). Ellis was among those who pressed this point in regard to education.

³⁹John Courtney Murray, S.J., "Contemporary Orientations of Catholic Thought on Church and State in the Light of History," *Theological Studies* 10 (September 1949): 177-234; "The Problem of State Religion," *Theological Studies* 12 (June 1951): 155-78. Even the social reformer John Ryan, who utilized a natural law methodology similar to that of Murray, employed this distinction. See John A. Ryan and Moorhouse F. Miller, ed., *The State and the Church* (New York: Macmillan, 1922).

Murray's initial statements met with resistance from traditionalists, much of it citing Leo XIII against him. He responded with a series of articles agreeing with Leo's critiques of continental liberalism but stating that the pope's defense of the confessional state was contingent.⁴⁰ He applied this hermeneutic—which distinguished between permanent and historically (and polemically) conditioned teachings—to church and state, where traditionalists had set up particular embodiments as universal ideals.⁴¹ Further, Murray argued that the “genius” of the First Amendment rightly separated the temporal and spiritual orders and that the West had developed a new truth about human dignity: *freedom*, the responsibility of each citizen for his or her own religious beliefs grounded in natural law philosophy and enshrined in constitutional democracy.⁴² This importing of a truth from outside the Church upset Alfredo Cardinal Ottaviani, who by 1955 had convinced the Vatican to silence Murray on church and state. The silencing was lifted in time for the publication of *We Hold These Truths* in 1960 and for him to attend the council's second session of at the request of the American bishops.

Keith Pavlischek describes the “dilemma” of religious liberty as “justifying political neutrality toward particular conceptions of the good.” Liberalism attempts to do so via one of two approaches, which Pavlischek calls “horns.” One is prudential and seeks a *modus vivendi* (“way of living”) or “a possible convergence of rational support for certain institutions, laws, and public policy” among divergent groups; the other is foundationalist (or idealist) and expects that rational persons can reach a common set of convictions.⁴³ The former is associated with progressives, the latter with neo-

⁴⁰John Courtney Murray, S.J., “The Church and Totalitarian Democracy,” *Theological Studies* 13 (December 1952): 525-63; “Leo XIII on Church and State: The General Structure of the Controversy,” *Theological Studies* 14 (March 1953): 1-30; “Leo XIII: Separation of Church and State,” *Theological Studies* 14 (June 1953): 145-214; “Leo XIII: Two Concepts of Government,” *Theological Studies* 14 (December 1953): 551-67; “Leo XIII: Two Concepts of Government: Government and the Order of Culture,” *Theological Studies* 15 (March 1954): 1-33. A sixth article was near publication when Murray was silenced.

⁴¹John Courtney Murray, S.J., “The Declaration on Religious Freedom,” *Concilium* 15 (May 1966), 6-16. Murray described this in Lonerganian terms as a shift from classicism to historical consciousness: in the former truth is objective and exists in timeless propositions, while in the latter truth progresses both through history and in being grasped by the subject yet retains objectivity. On Murray's indebtedness to Bernard Lonergan, see J. Leon Hooper, S.J., *The Ethics of Discourse: The Social Philosophy of John Courtney Murray* (Washington, D.C.: Georgetown University Press, 1986), 121-56.

⁴²John Courtney Murray, S.J., *We Hold These Truths: Catholic Reflections on the American Proposition* (Lanham, Md.: Sheed and Ward, 2005), 79-81, 186-90. Subsequent references to this volume will be made parenthetically in the text.

⁴³Keith J. Pavlischek, *John Courtney Murray and the Dilemma of Religious Toleration* (Kirksville, Mo.: Thomas Jefferson University Press, 1994), 6, 9-10.

conservatives, and both have claimed Murray. However, he sought to create a space between them for a strictly juridical notion of religious liberty. In short, he saw that the foundationalist position could not hold and that the “thesis-hypothesis” doctrine, a version of the *modus vivendi* argument, was inadequate. However, is it true that Murray, as Pavlischek says, ends up with something close to the latter?

Murray began his analysis of nature in *We Hold These Truths* with a distinction between the temporal and spiritual orders. Nature has its own form of reasoning that can be instantiated in public discourse, the purpose of which is to deliberate over means for achieving limited ends for all persons—the common good. Constitutionalism is beneficial because it is premised on decentralization of government through separation of powers, which allows for such deliberation. In this context the Catholic Church confronts the natural order only *indirectly* through its member-citizens. Its primary importance lies in the realm of grace, where it can direct people to their true and ultimate end. This distinction guards against a “monism” in which the political becomes primary; rather, grace is primary because it perfects nature. According to Murray, “There is indeed a radical discontinuity between nature and grace, but nature does not therefore become irrelevant to grace.” He distinguished this “incarnational humanism” from the “eschatological humanism” descended from Augustine and Luther that emphasizes the permanence of sin in human life, God’s judgment, and the cross (173-80).⁴⁴

Murray was convinced that the Reformation left no ground for social polity, but he aligned natural law with the Declaration of Independence. A realist epistemology does not require that truth be universally available, nor does denying it imply that truth is a matter of opinion. Yet Murray believed self-evidence to be the foundation of the American proposition and the consensus sustained by public argument balancing individual freedom and civic order (as in the First Amendment). Unlike secularism or theocracy and contra Baptists who appeal to Roger Williams, these are not “articles of faith” but

⁴⁴In the Augustinian view, Murray said, “the divine promise is not of peace but of the sword,” and he claimed that it “would fix a great gulf of separation between orders that are only distinct.” Thomas Ferguson contrasts Murray’s Thomism with Reinhold Niebuhr’s Augustinianism in *Catholic and American: The Political Theology of John Courtney Murray* (Kansas City, Mo.: Sheed and Ward, 1993), 149-51. See also Thomas C. Berg, “John Courtney Murray and Reinhold Niebuhr: Natural Law and Christian Realism,” *Journal of Catholic Social Thought* 4, no. 1 (spring 2007): 3-27.

“articles of peace”—that is, they are political and not theological and therefore do not imply a free-church ecclesiology (68-74).⁴⁵ Religious liberty is a right because it is inseparable from human dignity: it *allows* the person to act according to conscience and *prevents* the state from coercing them. Murray explained this via the history of constitutionalism culminating in the “public philosophy” of the United States. In short, both the nation and the Church have flourished, vindicating the philosophy. “Catholic participation in the American consensus has been full and free, unreserved and unembarrassed, because the contents of this consensus—the ethical and political principles drawn from the tradition of natural law—approve themselves to the Catholic conscience” (55). Yet Murray sensed that the philosophy was increasingly on “the brink of barbarism” (29-30).⁴⁶ Specifically, civic unity was endangered by the transition from *religious* to *moral* pluralism (37-39).

At the end of *We Hold These Truths* Murray described the demise of the “older American morality” that “believed in a direct transference of personal values into social life.” This idealist version of foundationalism was unable to deal with modern society because it did not recognize the autonomy of the political order. Equally troubling was the “ambiguous” pragmatism that had replaced it.⁴⁷ Contra this *modus vivendi* approach, Murray hoped to retrieve the natural law tradition and “its equation of morality with right reason” (249-52). “To the early American theorists and politicians the tradition of natural law was an inheritance. This was its strength; this was at the same time its weakness” (55).⁴⁸ Because this inheritance was not understood, voluntarism, a consequence of Protestantism, eroded the

⁴⁵However, Murray did use Williams to fortify his appeals to social peace and the distinction between state and society. “Murray’s main point is that the First Amendment is a law written by lawyers rather than a dogma written by theologians” (Portier, 93-94).

⁴⁶“Today the barbarian is the man who makes open and explicit rejection of the traditional role of reason and logic in human affairs. He is the man who reduces all spiritual and moral questions to the test of practical results or to an analysis of language or to decision in terms of individual subjective feeling.”

⁴⁷Some concluded that the nation was founded on pragmatism. “On the contrary, [the fathers] thought, the life of man in society is founded on truths, on a certain body of objective truth, universal in its import, accessible to the reason of man, definable, defensible. If this assertion is denied, the American Proposition is, I think, eviscerated at one stroke.” Murray, *We Hold These Truths*, ix.

⁴⁸Murray quoted the Third Plenary Council of Baltimore’s (1884) description of the fathers as “building better than they knew” (Murray, *We Hold These Truths*, 46). The line is from a poem by Ralph Waldo Emerson describing the dome of St. Peter’s Cathedral. Orestes Brownson first employed it to celebrate the American founding; his connection to the Third Plenary Council is unclear.

consensus. Consistent with Pavlischek's description, Murray contrasted his theory with John Locke's law of nature and, implicitly, the social gospel and neo-orthodoxy, which lead to conflict between "naïve biblical perfectionism" and Realpolitik. However, Charles Curran says, in natural law "there is no dichotomy between moral man and immoral society, for human beings are by nature social."⁴⁹ Murray explained what "widespread dissent" from the philosophy would entail: "The guardianship of the original American consensus . . . would have passed to the Catholic community" (56-57).

The Church, the State, and the Pursuit of the Common Good

Pavlischek admits that while Murray "grappled with the issue of religious liberty better than any twentieth-century Christian ethicist," his interest in Murray has "little to do with his Catholicism."⁵⁰ However, Murray's theology cannot be separated from his location. Raised in the Catholic subculture and educated and employed by its institutions, he was, like his immigrant forbears, able to assume much about the public and political character of the Church. It resists the claims of nation-states because it is a trans-national body; thus Murray was partly correct in not seeing those states as a threat to its integrity. Further, the natural law tradition enabled him to argue that the Church ought not attempt to transform the nation into the City of God but should instead present its vision on the basis of reason and the witness of the laity. Murray was not a Rawlsian proceduralist; he expected more than a minimum of morality in society. Yet he recognized limits to what could be infused by a juridical state and saw the church as working for the common good in the temporal space created by that state (186-90).

In his early articles Murray criticized the Protestant view of religious liberty as based in individual conscience (and therefore existing *sui generis*). "As soon as one begins to spread ideas, one moves in a new ethical dimension—that of the social good; and one comes under a new ethical principle of control—the interests of the common good."⁵¹ As his argument developed, the common good and

⁴⁹Charles E. Curran, *American Catholic Social Ethics: Twentieth-Century Approaches* (Notre Dame, Ind.: University of Notre Dame Press, 1982), 184-85.

⁵⁰Pavlischek, 4.

⁵¹John Courtney Murray, S.J., "Current Theology: Freedom of Religion," *Theological Studies* 6 (March 1945): 98.

public order became more important than historical consciousness and human dignity. Catholic theology informed Murray of goods that are not strictly definable and may be contrary to liberal goods. In the ontology of Aquinas (inherited from Aristotle), violations of the natural law violate the common good; thus traditionalists claimed that the many Americans who do not accept Catholic moral premises undermined Murray's theory. Yet he saw that "the state's responsibility for the materially and spiritually good society could be used to override any right claimed in favor of the 'free exercise of religion' if the larger society were Catholic." He solved this problem by distinguishing the realm of the secular, civil common good, where the limited use of coercion was legitimate, from that of religious liberty, which protects the spiritual common good.⁵²

Recent Catholic thinkers have followed the vision of Murray and Maritain while further integrating it with social teaching. For example, David Hollenbach identifies with Murray's public philosophy but re-frames the common good in terms of *solidarity* in order to respond to the challenges of urbanization and globalization. Hollenbach believes that the common good is capable of transcending liberal-communitarian polarization. In short, he attempts to synthesize the Augustinian view that temporal goods are partly the Church's responsibility with the Thomistic emphasis on the necessary completion of those goods by the eternal good of the human *telos*. Further, he challenges mere tolerance in the public square, arguing instead for an "intellectual solidarity" that is neither neutral nor secular and accommodates the convictions of all parties in dialogue.⁵³ Similarly, Stiltner argues that Maritain's combination of natural law and personalism and its contrast between universal and particular can be described as "communal liberalism," which "aims to create room in society for substantive discussion about ethical issues and to guide cooperative political action for just and good solutions."⁵⁴

⁵²Pavlishcek, 110-11, 186.

⁵³David Hollenbach, S.J., *The Common Good and Christian Ethics* (New York: Cambridge University Press, 2002), 22-34, 137-38. "There are many indications in the United States today that tolerance of diversity occupies the place held by the common good in the thought of Aristotle, Thomas Aquinas, and Ignatius Loyola. Tolerance of difference, not the common good, has become the highest social aspiration in American culture."

⁵⁴Stiltner, 163.

This appeal to the best of liberalism and communitarianism reflects Murray's attempt to insert natural law between Pavlischek's horns. As Pavlischek shows, however, his counter to liberal Protestants and secularists that the religion clauses are mere "articles of peace"—that is, political and not metaphysical—left him with a concept of justice very close to the Rawlsian, *modus vivendi* approach he wanted to reject. His concern for accommodation by the state undermined any traction his "principled" justification of religious liberty had for traditionalist Catholics.⁵⁵ In other words, it left little distinctive or substantive public role for the Church, especially if moral pluralism and bureaucracy are on the rise. Although it wisely advocates reaching solutions to social problems through dialogue among local and global communities, the work of Hollenbach and Stiltner also displays a tendency to default to state institutions for their assessment and implementation.⁵⁶

There is much Baptists can affirm about Murray's Americanism. We can hail his work on religious liberty as providential, for today the Catholic Church has joined most Protestants in renouncing coercion. We can also look to Catholic social teaching for guidance and embrace a notion of the common good that takes social justice seriously. Other elements will be more difficult to appreciate. Murray recognized the necessity of a moral consensus to support the political arrangement of the First Amendment. Wary of foundationalism, moderate Baptists are likely to articulate a liberal or *modus vivendi* notion of religious liberty as an individual right and a neutral means of accommodation. Still, as revealed above, we also advocate a large role for the state in pursuing the common good. Here we differ *theoretically* from Murray, whose strictly juridical state assumed the place of the Church and was favorable to it. Although we imagine such a place, our ecclesiology works against it. Like anti-

⁵⁵Pavlischek, 103-4.

⁵⁶Even Benedict XVI's first encyclical grants the state that guarantees religious liberty a degree of autonomy and the responsibility to achieve justice through politics. Here "faith" and social doctrine, though oriented to God, serve as a "purifying force" for political reason on the basis of natural law. Thus "political life" is given over to the state while the Church offers a "contribution" to the common good. The pope is critical of the "mere bureaucracy" of a state without love and instead advocates one that "generously acknowledges and supports initiatives arising from the different social forces." Benedict XVI, encyclical letter *Deus Caritas Est*, December 25, 2005, sec. 28-29. Elsewhere there are clues that Benedict is thinking of the United States, which is "little more than a free space for different religious communities to congregate." Joseph Ratzinger and Marcello Pera, *Without Roots: The West, Relativism, Christianity, Islam*, trans. Michael F. Moore (New York: Basic, 2006), 109-13.

foundationalists Alasdair MacIntyre and Jeffrey Stout, Murray engaged liberal democracy *as a tradition*.⁵⁷ He did not share Stout's pragmatism and, like MacIntyre, believed that if democracy became secular it would have to be rejected. Still, unlike MacIntyre, he did not think that it had done so or that it was a rival to the Christian tradition. Finally, he argued that while religious pluralism was "the native condition of American society," it is also "against the will of God" (37-39). Perhaps the most compelling question, then, is whether secularism has advanced and religious pluralism has transformed into moral pluralism.

Several points lead to an affirmative answer. First, even the Catholic Church has lost much of its ecclesial identity. Although he praised *Dignitatis Humanae*, Murray later advocated other reforms, including a reassessment of Church hierarchy.⁵⁸ In fact, a significant number of Catholics viewed the council as the culmination of a reform movement that had much in common with early Americanism. "What this meant was that Catholics tried to solve the riddle of religion and modernity overnight," Dolan says. "It proved to be quite difficult." He contrasts this with Protestants, who had been engaging the modern world, especially religious liberty, for centuries.⁵⁹ While the Church was slow to deal with modernity and partly to blame for post-council confusion, that confusion indicates that many Catholics were already so much like their neighbors that they were more than willing to make the moves Murray lamented. The subculture, along with separate views on issues such as abortion or marriage, now made little sense. Soon the rush toward all things "secular" encountered a culture in the throes of conflict over civil rights and Vietnam (and, later, Watergate). "For American Catholics, what happened next was surely one of history's most ironic twists," Gleason says. "Before they had time to get used to being partisans of modernity, the modern world in its most advanced American embodiment became an object

⁵⁷Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Ind.: University of Notre Dame Press, 1988); MacIntyre, *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy, and Tradition* (Notre Dame, Ind.: University of Notre Dame Press, 1990); Jeffrey Stout, *Democracy and Tradition* (Princeton, N.J.: Princeton University Press, 2004).

⁵⁸O'Brien, 235. While the council enabled American Catholics "to abandon equivocation in speaking about the First Amendment," it also "opened the door to the possibility that individual Catholics might apply its principles to their own relationship to ecclesiastical authority."

⁵⁹Dolan, 425-28.

of loathing.”⁶⁰ Yet this resulted in little questioning of Americanism; instead it became the ground on which discussions of other issues took place. Is it possible to both support the nation-state as such and fervently oppose much of its culture and/or policy? To answer this question, Catholics of left and right have claimed what George Weigel terms the “Murray Project” and offered narrations of its decline.⁶¹ Each ignores key aspects of his thought, especially in advocating an expansive state in some areas and a limited one in others.⁶²

Here a second difficulty arises: Does the presence of “Protestant” characteristics in American Catholicism indicate something about their shared environment? The decline of neo-scholasticism offers some insight. Neo-scholasticism was the Church’s response to modernism and conflict after the First Vatican Council, and although it maintained the supernatural virtue of faith it also asserted that natural reason was enough to produce essential truths about God and humanity. “From this it followed that the application of faith to virtually every sphere of life could be determined in some detail,” Gleason says. “Catholicism came to be viewed as a culture, a total way of life.” Unfortunately, this “way of life” was so closely identified with neo-scholasticism that when the latter was abandoned the former was also largely lost.⁶³ This mirrored the experience of Protestants, whose morality no longer elicits enough agreement to generate consensus among themselves, let alone the public. Yet Christians of many stripes see only the nation, not the church, as necessary to maintain whatever vision may emerge.

Third, Murray has been critiqued for overestimating the influence of natural law on the founders and for his portrayal of natural law itself. For example, David Schindler contends that Murray did not fully take into account the work of theologians such as Henri de Lubac on the supernatural.⁶⁴ Michael Baxter adds that his distinction of temporal and spiritual orders leads inevitably to dualism. Murray was

⁶⁰Gleason, 32.

⁶¹This division is reflected in two volumes of essays: Robert P. Hunt and Kenneth L. Grasso, ed., *John Courtney Murray and the American Civil Conversation*; J. Leon Hooper, S.J. and Todd David Whitmore, ed., *John Courtney Murray and the Growth of Tradition* (Kansas City, Mo.: Sheed and Ward, 1996).

⁶²Pavlishek, 191-96.

⁶³Gleason, 169-71, 174.

⁶⁴David L. Schindler, *Heart of the World, Center of the Church: Communio Ecclesiology, Liberalism, and Liberation* (Grand Rapids, Mich.: Eerdmans, 1996). See also Henri de Lubac, S.J., *The Mystery of the Supernatural*, trans. Rosemary Sheed (New York: Crossroad Herder, 1998).

right about the political arrangement of the United States, but by “excluding final ends” this arrangement “relegate[s] matters of theological truth to a separate sphere, and therefore is not, in Augustinian terms, genuine politics at all.”⁶⁵ The state does not accommodate the freedom of the Church; in fact, it is threatened by some religious claims, which can undermine the common good. Objections to military action are a good example. If McClendon is right and soul liberty implies “the rejection of violence as the basis of community,” Baptists must ask where true community is located.

A final critique addresses this question. Despite his disdain for foundationalism, Murray’s natural law methodology reflected the quest for universal decision-making that I noted at the outset. All foundationalisms are vulnerable to Nietzschean attacks, but the approach to natural law reflected by Murray also rests on a deficient reading of Aquinas, who was not concerned with those who doubt basic moral commitments. Rather, he assumed an ecclesial location and explained the relationship of action, reason, and will in light of creation and providence. The treatise on law reflected his understanding of human agency, which is shaped by the ends it pursues and governed by law as a dictate of practical reason. We participate in God’s law by knowing its demands through nature and habit, and what makes us rational creatures is our ability to deliberate over the means for achieving our good ends and exercise judgment in choosing among them. Thus every human action participates in the natural law in a minimal sense, and we can observe many similar commitments among persons. However, substantive moral guidance is found only by participating in communities formed by the virtues.⁶⁶

As I briefly mentioned, Wittgenstein’s philosophy of language reveals that one masters a concept such as justice only as one comes “to understand how it contributes to the success of some activity, to the pursuit of some collection of ends,” and, further, “to see the point of certain activities and concedes the truth of certain moral and empirical judgments.” In other words, the “foundation” of our linguistic

⁶⁵Michael J. Baxter, “Writing History in a World Without Ends: An Evangelical Catholic Critique of United States Catholic History,” *Pro Ecclesia* 5, no. 4 (fall 1996): 447. “A genuine politics, by contrast, is grounded in the service of ‘true religion’ from which flow ‘true justice’ and ‘true peace’ as embodied by the citizenry, not of any earthly city but of the pilgrim City of God.” Baxter critiques Ellis, Dolan, and O’Brien as representatives of “Americanist historiography.”

⁶⁶Thomas Aquinas, *Summa Theologica* I-II.90-94.

practices is composed of “certain ways of thinking and acting that presuppose certain moral and ontological commitments.” Some arise from custom or convention, but others stem from *nature* and are given and trusted prior to any “choice.”⁶⁷ To not accept these activities and judgments is to be unable to act with the rationality necessary for ordinary conversation. Thus they function not as knowledge in the usual sense but as *rules* for linguistic usage, as the boundaries of what Wittgenstein calls our “language-game.” That is, in a way resembling the first precepts of the natural law, they delineate the “form of life” all humans share as rational creatures.⁶⁸ There is no such thing as a private or individual language or form of life; rather, nature is fundamentally *social*.

An important task for Baptists who cherish religious liberty is the imagination of workable alternatives that take politics seriously without assuming the natural occurrence of the nation state or its necessity for pursuing the common good. Cavanaugh explains why the latter are not the case and how the state not only created violence “and then charged citizens for its reduction” but precipitated “a shift from ‘complex space’—varied communal contexts with overlapping jurisdictions and levels of authority—to a ‘simple space’ characterized by a duality of individual and state.”⁶⁹ Baptists can surely recognize this picture, and one way to negotiate it is by renewing congregations and associations, a Baptist strength that bears witness to overly centralized ecclesiologies. Yet we have much to (re)learn about the necessity of the church for carrying the gospel across the centuries. If William Portier is right that *Dignitatis Humanae* ought to be interpreted not as an endorsement of pluralism but as “a formal rejection of Christendom, ushering in a new ‘post-Constantinian’ age in the Church’s history,” then

⁶⁷John R. Bowlin, “Nature’s Grace: Aquinas and Wittgenstein on Natural Law and Moral Knowledge,” in *Grammar and Grace: Reformulations of Aquinas and Wittgenstein*, ed. Jeffrey L. Stout and Robert MacSwain (London: SCM, 2004), 161-62. See Ludwig Wittgenstein, *On Certainty*, ed. G. E. M. Anscombe and G. H. von Wright, trans. Denis Paul and G. E. M. Anscombe (Oxford: Basil Blackwell, 1969; reprint, New York: Harper and Row, 1972), sec. 505, 558.

⁶⁸Ludwig Wittgenstein, *Philosophical Investigations*, 3rd ed., trans. G. E. M. Anscombe (New York: Macmillan, 1968; reprint, Upper Saddle River, N.J.: Prentice-Hall, 1999), 251; *On Certainty*, sec. 124, 136, 356-60. “You must bear in mind that the language-game is so to say something unpredictable. I mean: it is not based on grounds. It is not reasonable (or unreasonable). It is there—like our life.”

⁶⁹William T. Cavanaugh, “Killing for the Telephone Company: Why the Nation-State Is Not the Keeper of the Common Good,” *Modern Theology* 20, no. 2 (April 2004): 249-52.

perhaps we too can hear “the Johannine incarnational imperative to make the word flesh” and join Catholicism in “[crying] out to be embodied in a culture at the center of which is the church.”⁷⁰

Portier has an ally in Benedict XVI, who calls for “creative minorities” that “reach other people and offer them a different way of seeing things.” These live not independently but “naturally from the fact that the Church as a whole remains and that it lives in and stands by the faith in its divine origins.”⁷¹ One model is the Catholic Worker. Through the personalism of Maritain and Emmanuel Mounier, Day and Maurin came to see common good as an antidote to individualism and to pursue it as persons joining with other persons. As Mark and Louise Zwick explain, “Peter and Dorothy were driven by the gospel and believed in striving together with others toward the common good—rather than by the invisible hand of the market or by imposing one’s views by violence.”⁷² Such communities need not be idealized, nor do they entail a withdrawal from public life. Rather, they enable Baptists and other Christians to negotiate the politics in which we find ourselves and challenges us to recover the radical openness to all persons displayed by Jesus Christ and the New Testament church and that witnesses to truth through nonviolent action and embrace of the poor and the enemy.

⁷⁰Portier, 103-4.

⁷¹Ratzinger and Pera, 121-23.

⁷²Mark Zwick and Louise Zwick, *The Catholic Worker Movement: Intellectual and Spiritual Origins* (New York: Paulist, 2005), 298.