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Declaration on Religious Freedom: Three Developmental Aspects

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Abstract

This article considers key aspects of the Vatican II declaration on religious freedom *Dignitatis Humanae* and John Courtney Murray's role in its formulation. This will be done with concern for the broader theological context as exemplified in Thomas Aquinas. After a brief outline of the difficulties Murray faced and their resolution, the discussion moves in four stages: a summary of the key ideas in the document on the relationship between truth and freedom from which the following three ideas receive a focus; the person (dignity and conscience); rights and their evolving context; historical consciousness and its role as a mode and locus of theological reflection. Here, a suggestion is offered about the interrelationship of speculative and practical reason in doctrinal development.

Declaration on Religious Freedom: Three Development Aspects

Thomas Ryan SM

The fiftieth anniversary of the start of the second Vatican Council occasioned assessments in various books and theological journals. Naturally, attention was given to the Council's 1965 document on religious freedom, namely, *Dignitatis Humanae* (DH). Recent studies have been a timely reminder of the contribution made by the American Jesuit, Fr. John Courtney Murray in the writing of this declaration.[1] When the final tally was announced (2,308 in favour, 70 against), the bishops responded with applause. The next day, the *London Times* referred to the vote as 'a great event in the history of Catholicism and in the history of freedom'.[2]

In any discussion of DH, the relationship to ideas developed by Murray is a needed ingredient. Having acknowledged that, my principal concern here is within the ambit of DH as an instance of the development of doctrine. I argue that there are three controlling concepts (one anthropological, the other two, moral) in DH that, themselves, can be seen in a developmental framework. I begin by exposing key ideas in two foundational articles of DH on the relationship of truth and freedom. On that foundation, the discussion will focus on, respectively, the human person, rights and, finally, practical reason in relation to DH and doctrinal development.[3]

I.   Foundational Article

As already noted, there are more extensive analyses and evaluations of *Dignitatis Humanae* (DH). For the purposes of this article, the most appropriate starting point is article 2 of DH. There we find three interwoven ideas: the dignity of the human person; the duty to seek the truth; the freedom (and rights) essential in appropriating truth through the mediation of conscience.

These three elements are succinctly distilled in art. 2. The right to religious freedom is grounded in 'the very dignity of the human person as known through the revealed Word of God and by reason itself'. The dignity of persons is understood as 'beings endowed with reason and free will' with the privilege of bearing 'personal responsibility - that all men (sic) should be at once impelled by nature and also bound by moral obligation to seek the truth, especially religious truth' There is a consequent duty to 'adhere to the truth once it is known' and to 'order their whole lives' in accordance with its demands'.

These obligations, however, can only be discharged in a 'manner in keeping with (their) own nature' only if 'they enjoy immunity from external coercion as well as psychological freedom.' The right to religious freedom has its foundation 'not in the subjective disposition of the person, but in his every nature.' The exercise of this right should not be 'impeded' with due care taken to preserve public order. Importantly, 'the right to this

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[1] See Nicholas J Healy, 'Dignitatis Humanae' in Matthew L. Lamb and Matthew Levering, *The Reception of Vatican II* (UK: Oxford University Press, 2017) 1-34 from www.oxfordscholarship.com Also, Ladislas Orsy, S.J., 'The Divine Dignity of Human Persons in **Dignitatis humanae**', *Theological Studies* 75:1 (2014), 8-22.

[2] Barry Hudock, *Struggle, Condemnation, Vindication: John Courtney Murray's Journey toward Vatican II* (Collegeville, MN: 2015), 155. This is a gripping account of the development of Murray's thought, his personal struggle, the other 'combatants' (Fenton and Connell), his rejection and ultimate vindication by the promulgation of DH.

[3] I am indebted to the constructive criticisms and helpful suggestions made on an earlier version of this article by two reviewers.

immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it'.[4]

In art. 3, the specific implications of art. 2 are spelt out. Every person's duty to seek the truth 'in matters religious' has a correlative right: the interplay of duty and right is needed so that a person may 'with prudence form for himself right and true judgments of conscience, with the use of all suitable means.' It is by such means the human person can 'participate' in the divine law and come to an increasing grasp of the truth 'under the gentle disposition of divine Providence.'[5]

The first wing of human dignity concerns the truth: the second wing balancing it is freedom. Seeking the truth is to be done in a 'manner proper to the dignity of the human person and his social nature'. Search for, and inquiry into, the truth must be free. It is carried out through instruction, communication, explanation and dialogue. While it is a shared quest, 'as the truth is discovered, it is by personal assent that men are to adhere to it'.

Central here is the role of conscience: the human person 'perceives and acknowledges the imperatives of the divine law through the mediation of conscience'. In everything we do, we are bound to follow our conscience faithfully in order to come to God, for whom we were created.' It follows that no one is to be forced to act 'contrary to his conscience' nor be restrained from acting in accord with conscience, 'especially in matters religious'.[6] This is the foundation of religious freedom in the public and legislative domain. It embraces the private and public domains, whether 'alone or in association with others, within due limits'.[7]

Mgr. Pietro Pavan, one of the theologians who collaborated with Fr. Murray in the draft and defence of the Declaration, states in his commentary: 'Article 2 is undoubtedly the most important article of the Declaration.'[8] He goes on to say that 'the right to religious freedom must be regarded as *a fundamental right of the human person or as a natural right, that is one grounded in the very nature of man*, as the Declaration itself repeats several times'.[9] Our discussion can be guided by Pavan's comment.

II.   Personhood

We noted above that religious freedom is grounded in 'the very dignity of the human person as known through the revealed Word of God and by reason itself'. Ladiaslas Orsy opens his article on the 'divine' dignity of the person in *Dignitatis Humanae* by citing French Benedictine Ghislain Lafont: 'the history of the Christian churches is perhaps the history of their struggle to believe finally in man (sic). [10] He goes on to observe that Christ died because he 'believed' in the human person.[11] Lafont's observation suggests further considerations.

We are guided by the phrase 'the very dignity of the human person' (Art. 2). Elsewhere, the Council Fathers say that human dignity is grounded in the God-like nature of

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[4] 'Declaration on Religious Freedom' (*Dignitatis Humanae)* in Walter M Abbott, S.J. (Ed.), *The Documents of Vatican II* (New York: Guild Press, 1966), 672-700, art. 2 at 679-80 (henceforth DH). Murray did the translation, introduction and annotations of the document in this publication. One reviewer suggested the possible use of an inclusive language rendition of the Vatican II documents. Unfortunately, I did not have access to that version.

[5] DH, art. 3, 680.

[6] DH, art. 3, 680-81.

[7] DH. art. 2, 679.

[8] H. Vorgrimler, ed., *Commentary on the Documents of Vatican II* (New York: Herder and Herder, 1968), 4: 64.

[9] Ibid., 65 (Emphasis in original).

[10] Orsy, 'The Divine Dignity', 8, citing Ghislain Lafont's original French: 'L'histoire des Églises est peut-être celle d'un combat pour finalement croire en homme', *in L'Église en travail de reform*, Imaginer l'Église catholique 2 (Paris: Cerf, 2011), 23.

[11] So too, John Paul II sees 'this' (each individual) man is the primary and fundamental way of the Church' *Redemptor Hominis* (Boston, MA: St Paul, 1979), no. 14.

the human person as created 'to God's image' referring to Gen 1:26.[12] This is not simply a semblance or 'mirror image', as Orsy explains, but a 'replica' of God, as a child is a replica or 'reproduction' of its parents. [13] Yet, in the theological tradition, 'image' has a stronger sense; it is a mode of participation in God that that comes to full realisation ('in the likeness') through dominion over our eternal destiny in sharing in the life of the Son.[14] Hence, as Orsy notes, 'the divine dignity of persons' in Vatican II continues the patristic tradition of 'divinisation'. [15]

Helpful here are insights from Bernard McGinn. He points out that Christian thought has contained three main understandings of the nature of humanity as an image of God. The intellectual approach founds the image essentially in the human being's gift of reason and intelligence as a sharing in divine knowing such that it sets humanity apart from other creatures. The volitional tradition, while not denying the cognitive aspect, places more emphasis on the human ability to act freely where, to be *imago dei,* is to share in God's freedom. The third approach accentuates interpersonal relationships. Here, created in God's image and likeness means being called to share in the self-transcending love of the Trinity and to communicate this love to others.[16]

McGinn sums up the *imago dei* anthropology as involving a) the dignity given to all human beings 'in their capacity as God's image' and b) the dignity as the duty to engage in the goal-oriented free exercise of freedom flowing from the gift of that image.[17] Orsy reflects those aspects from another angle. While human dignity emerges from 'the God-like nature of a human person (hence, it is universal), the authenticity of a human person is grounded in her or his integrity (hence, it is personal).'[18] While Orsy notes that 'integrity' is not used in DH, the concern for the sincere search for truth and goodness (and choices made to that end) is a central aspect of the document. In other words, its focus is on the volitional aspect of *imago dei* – our next concern.

We have noted earlier that, central to the argument in this Declaration (and in Murray's thought), is the understanding of the human person.[19] As noted above, in the document, the dignity of persons has a precise focus, namely, as beings endowed with reason, free will and capable of personal responsibility. The declaration is not offering a comprehensive treatment of the dignity of the human person. Its context is provided by the opening lines of the declaration, namely, that the 'dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man' (sic). There is an increasing demand that human beings should act 'on their own judgment', make use of 'responsible freedom, driven, not be 'coercion' but 'motivated by a sense of duty.'[20]

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[12] '…in our own image, in the likeness of ourselves.' The biblical text proceeds to say that the image is exercised in having stewardship over creation and in the capacity for relationships.

[13] Orsy, 'The Divine Dignity', 15.

[14] *Summa Theologica* 1.35. 2 (henceforth *ST*). For translations of the *Summa*, the author has consulted the *Summa Theologica of* St. Thomas Aquinas, 2nd rev. ed. 1920, translated by Fathers of the English Dominican Province in the on-line version www.newadvent.org/summa/ and the new translation by Alfred J Freddoso, on-line version at http://www.nd.edu/~afreddos/summa-translation/TOC.htm accessed 20/12/2017. Unless indicated, translations are from the Freddoso version. Summaries or paraphrases are the author's.

[14] *ST* 1.29. 3. The quoted phrase applied to rational creatures and super-eminently to God.

[15] Orsy, 'The Divine Dignity', 15, n. 15.

[16] Bernard McGinn, 'Humans as *Imago Dei:* Mystical Anthropology Then and Now', in Edward Howells and Peter Tyler, *Sources of Transformation: Revitalising Christian Spirituality* (London, UK: Continuum, 2010), 19-40. 23-4.

[17] McGinn, 'Humans as *Imago Dei'*, 33.

[18] Orsy, 'The Divine Dignity', 15.

[19] Murray's more philosophical rationale is reflected in Ch 2 and the influence of European theologians (with a more biblical and patristic approach) in Ch. 3. See Hudock, *Struggle, Condemnation, Vindication,* 131.

[20] DH, introduction, 673.

In the Catholic tradition, much discussion on the human subject, for some centuries, had been couched in terms of the substance/accident distinction of Aristotle. A person or '*suppositum*' (supposit) is a being that subsists by itself. Hence, we find in Aquinas, the traditional definition of Boethius: a suppositum (person) is 'an individual substance of a rational nature.'[21] The underlying assumption was that a 'person' was so constituted as a) rational (intellect and will) and b) as a specific instantiation of what is held in common, namely, a human nature.

But, as is implied in the various aspects of *imago dei* explained by McGinn, there is needed an account of the human subject that incorporated what is unique. Each human being is not just one example of something held in common – a human nature. Each human being is rational, certainly, but also distinctive, irreplaceable and, importantly, relational, in other words, a *person.* This final quality, muted in the Boethius definition, is more developed in Aquinas through his treatment of the Trinity and of the human being as *imago dei.*

Elements of the Aristotelian/Thomistic tradition are clearly detectable in articles 2-8 of DH and its theological anthropology. Aquinas, too, engaged in the 'struggle' to 'believe in man'. At the very beginning of his discussion on the persons of the Trinity, Aquinas speaks of the human person (viz., that which subsists in a rational nature) as 'that which is the most perfect in all of nature'.[22] While he does not appear to pursue this thought in further detail, elsewhere, there are clues that Aquinas sought and anticipated a dynamic and existentially grounded approach to the human person congruent with this observation.

In his discussion of precisely this point, Norris Clarke is our guide. For Aquinas, an individual rational nature needs more, namely, that it be 'a complete, actually existing being with its own act of existence which renders it the ultimate, autonomous source of its own actions.' In other words, this is a rational being who is *self-possessing*, encapsulated in the phrase 'master of itself' (*dominus sui*), who is self-aware, self-directing and morally responsible, even if these are exercised as part of a journey to wholeness 'ever imperfect and incomplete.' [23]

Personal existence involves not only self-presence but also presence to others, hence, is relational and social. Human self-presence must be awakened by being open to the world of others, to be 'awakened by their action on it and their own active response', hence, in mutual relations with others. The person is *self-communicative.*

Thirdly, the self must have an intentionality toward another than oneself. All 'knowing and loving is a 'transcending of one's own self limits' (whether horizontally or vertically). A person, then, is *self-transcending.* [24]

Such an understanding of the person illuminates the Vatican Council's statement that 'authentic freedom' as 'an exceptional sign of the divine image within man', namely, 'that he acts according to a knowing and a free choice'.[25] We find antecedents for such a statement in the patristic authors (as McGinn explained) and in Aquinas, as we have discussed above. Aquinas introduces his extensive treatise on the moral life with a summary of this earlier discussion and a pointer to his next stage (drawing on St John Damascene): having spoken of the exemplar (God), it is time to speak of the divine image, namely, the human person as an intellectual and free being but, importantly, as self-directing (*per se potestativus*).[26]

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[21] *ST* 1.29. 1.

[22] *ST* 1.29. 3. The quoted phrase applies to rational creatures and super-eminently to God.

[23] See T. Norris Clarke. 'To be is to be self-communicative: St. Thomas' view of personal being', *Theology Digest* 33:4 (Winter) 1986, 441-452, at 444-5.

[24] Clarke. 'To be is to be self-communicative', 446-450.

[25] *Gaudium et Spes* in Walter M Abbott, S.J. (Ed.), *The Documents of Vatican II* (New York: Guild Press, 1966), 183-316, no.17, at 214.

[26] S*T.* 1.2. Prol.

It must be remembered that, as Aquinas notes, 'exemplar' is a more 'proper' description of the Trinity in whose 'image' humans are made. Whereas the Son is the 'perfect image of the Father', so humans are made 'in the divine image' in having a certain tendency to perfection, namely, realizing the image by sharing the life of the Son. This is realised through knowing and loving God such that we share in God's own life.[27] By implication, the self-directing capacity is, as we have seen, also self-communicative and self-transcending. This process entails a three- stage movement of the human being as 'image' by nature to 'likeness' in grace (virtue) and glory [28]

Personhood, then, for Aquinas, is both a state and a task, one characterised by the drive to reach out beyond the self – in seeking truth, goodness and, crucially, through love: 'to lose oneself in order to find oneself'. The gifts of rationality, self-direction in freedom and conscience are at the service of the person through the thrust towards self-transcendence, especially in its moral expression in relationships, specifically through love and justice (the highest of the cardinal virtues).[29] It is precisely in the possession and exercise of these rational and relational gifts that the human person is made in the divine image and grows into the divine likeness. To this end, also, as implied in Pavan's comment above, there is an integral role for rights – our next consideration.

III.   Rights

What is the foundation of human dignity according to Article 2? It is a person's relationship with God, especially, its religious dimension in that one is created to 'come to God', to share in the divine law, through the faithful following of conscience. There is an associated duty to seek the truth (especially the truth about God) to achieve that goal but through adherence and assent that is free - in terms of psychological freedom and external coercion. The right to religious freedom, then, is integral to the responsibility to seek the truth and how it is appropriated, with immunity from coercion. The right is natural, is absolute and inalienable, cannot be removed or surrendered – because it has a transcendent foundation and purpose, namely, the personal relationship with God. To obey the law written in the human heart by God 'is the very dignity of man; according to it he will be judged.' [30]

Religious freedom can be seen in terms of a balance of the duty and the 'right' to seek the truth. In so doing, there is the complementarity of the objective and the subjective, the two poles within which freedom of conscience must be understood.[31] In considering 'rights', we have recourse to ideas of Murray that informed the text of DH.

DH exemplifies a conviction of Murray; rights could not be attributed to abstract terms such as error or truth, as in 'error has no rights' and, conversely, 'the exclusive rights of truth'; rights could be 'predicated only of persons (or of institutions')'.[32] Such a distinction

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[27] *ST* 1.35.1 ad 1 35. 2.

[28] *ST* 1.93.4 and 135.2.ad 3.

[29] *ST* 1.2.58.12.

[30] *Gaudium et Spes* in Walter M Abbott, S.J. (Ed.), *The Documents,* 213.

[31] Popes Paul VI, John Paul II, and Benedict XVI participated in the conciliar debates on the question of religious freedom. Each emphasised the fundamental importance of the right to religious freedom and sought to implement and develop DH's teaching. Contemporary discussion has probed further the relationship between freedom and truth and its ontological foundations. Some (e.g., Philippe André-Vincent and David L. Schindler) consider the relationship between truth and freedom and the person's relation to truth as foundational for human dignity and as 'informing religious freedom'. Others such as Murray, Pavan and Martin Rhonheimer hold that religious freedom is a formally 'juridical concept' and does not concern 'the person's relationship to truth'. See Healy, 'Dignitatis Humanae', 4, 8,16-25.

[32] Hudock, *Struggle, Condemnation, Vindication,* 35, 133. See full discussion in John Courtney Murray, 'The Problem of Religious Freedom', *Theological Studies* 25:4 (December), 1964, 503-573, at 508-510 et passim.

does not appear, *prima facie,* to be particularly innovative. For the contemporary reader such language may seem rather puzzling. Its significance, in this context, is better appreciated in the light of an underlying issue. If the Church is the unique bearer of divine revelation in the name of Jesus Christ, it has a claim (right) to be the medium of the truth. What is the Church's relationship to other cultural and religious traditions? How can it articulate its relationship to society and the governmental authority if the state is confessional (Catholic), or, alternatively, non- confessional (a Church in the minority)? What or who is the subject of rights in that context?

In earlier writings, Murray grappled with this Church/State question by returning to its fifth century Gelasian foundations about what is permanent teaching and what is historically conditioned on this matter.[33] Concerning Church and State, there was an 'in-house' Catholic terminology, namely, 'thesis/hypothesis' that can be traced back to Boethius (c. CE 475-526).[34] In the accepted view, the 'thesis' (or ideal) was the 'confessional state' where governments recognized Catholicism's unique status yet could place restrictions on other denominations. With the 'hypothesis' (or the exception, namely, a particular historical situation, where the Church was in a minority, for example in the USA), freedom of religion was a needed accommodation. Importantly, Murray viewed the thesis/hypothesis approach not as firm doctrine but as 'received opinion' (a matter we will pursue later).[35] As noted earlier, he disagreed with its underlying assumptions, namely, that exclusive rights applied to truth whereas 'error has no rights'.[36]

The hot point of disagreement is captured in the phrase noted above: 'the right to this immunity (from external coercion) continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it' provided there is due care to 'preserve public order' (art.2). This epitomises the standing of the right to religious freedom (whether personal or social) as 'natural', namely, bound up with the inherent dignity of the person. It is further captured in the same status accorded those who are in a state of invincible error or ignorance with regard to the truth. As another document notes, it can happen that 'conscience frequently errs from invincible ignorance without losing its dignity.'[37] Later, Pope St. John Paul II expands this by saying that conscience maintains its dignity because

> even when it directs us to act in a way not in conformity with the objective moral order, it continues to speak in the name of that *truth about the good* which the subject is called *to seek sincerely*.[38]

Such a statement does not relieve a person of the consequences of their actions, as in the case of a person causing damage to another, albeit without blame or fault. At the heart of what Pope John Paul II says is the ongoing correlation of the duty to seek the truth and the right to appropriate it freely. The authentic nature of the search is preserved by the 'sincere' or genuine desire to seek 'the truth about the good'. In the last analysis, it is the direction of

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[33] In 494 CE, Pope Gelasius I wrote a letter *Famuli vestrae pietatis* which laid the basis for the relationship between priestly spiritual authority and secular temporal authority for a millennium. The letter is often referred to in shorthand as 'Duo Sunt' and by Murray as 'Two There Are'.

[34] The words *thesis* and *hypothesis* were used by Boethius to describe two forms of communication. The first, Dialectic concerns what is universally true, regardless of the circumstances. Logic and syllogistic argument are used to make the truth clear, even to those 'who do not wish to accept it'. Dialectic's realm is *thesis.* Conversely, *hypothesis* is the concern of Rhetoric which gives attention to the circumstances and surrounding context and uses 'approximations to persuade the listener'. See Hudock, *Struggle, Condemnation, Vindication,* 13 citing Richard McKeon, 'Rhetoric in the Middle Ages', *Speculum* 17:1 (January), 1942, 1-32, at 10-11.

[35] Hudock, *Struggle, Condemnation, Vindication,* 17.

[36] The 'thesis/hypothesis' model with its grounding in abstract terms such as 'truth' and 'error' as the subject of rights was a key dividing point between Murray and other theologians such as Fenton and Connell.

[37] *Gaudium et Spes* 16 cited in *Veritatis Splendor* (Homebush, NSW, 1993), 62 (Henceforth *VS).*

[38] *VS*, 62 (emphasis added).

the will that guarantees the dignity of the person when they are honestly mistaken. In other words, such a person is in 'good faith'. This is a reminder that the inviolability of the person in the exercise of conscience applies to God too. God respects the freedom of the being 'made in his image and likeness'.

This position is in continuity with a long-standing tradition. Seven hundred years earlier, Aquinas acknowledged the limit case of someone who strives to know what is right yet arrives at a position in which their conscience is at odds with Church teaching. For Aquinas, contra Peter Lombard, such a person should die excommunicated rather than violate their conscience.[39] Again, it would be wrong for someone, he says, to believe in Jesus Christ when this is erroneously apprehended as a bad thing. To go against conscience, according to St, Thomas and the tradition of the Church, one would commit sin.[40]

Aquinas's position on conscience, which is standard in Catholic moral theology today, broke with the tradition of his time (including his own teacher St. Albert the Great) and marked a moment of development. Though his insistence on this approach to conscience, Thomas represented an awakening in medieval consciousness of interiority and personal consciousness and its repercussions in moral and psychological existence.[41] As Walker Bynum sums it up: it is the twelfth century that discovered, within in a relational rather than an individualistic anthropology, 'the self, the inner mystery, the inner man, the inner landscape'.[42]

Again, with regard to the moral life, the judgment of conscience and divine respect for our freedom and the human condition, Aquinas foreshadows another future development. John Thornhill points out Aquinas' 'noteworthy' view about the Spirit's action beyond the boundaries of the Church. His position, remarkable for its time and not representative of prevailing views, is another instance of how he was part of the struggle 'to believe in man' highlighted by Lafont emerging in the 12th. century and after – as noted earlier. In fact, Aquinas anticipates Vatican II's teaching, saying that 'each human being who achieves a mature self-determination, in so doing either turns to God and enters into divine grace with the remission of original sin, or culpably turns from God by not doing "what within him lies."'[43]

Returning to religious freedom in a social and political context, we must keep in mind that there is a variety of human rights traditions (e.g., Western liberal, Marxist, Third world approaches). In this, looking back, we can detect a developmental trajectory. Kasper points out that explicit talk of 'human rights' is peculiar to the modern period but that the associated ideas are as old as Christianity. Rather than the 'image of God' confined to the king or ruler, it was now 'democratized' to include every person 'irrespective of race, people, sex, or culture'.[44] Rights can be traced back to the 'dignity' of the human being created in the image and likeness of God (Gen, 1:26) and strengthened by the covenant between God and humankind So understood, human dignity is inviolable and inalienable, no matter how much

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[39] *Scriptum super Libros Sententiarum,* IV, 38.2.4 q.a 3 (exposition). Also, *Quolibetales* 3.12.2. *de Veritate* 17,4; 4 and 5, *In Galatians* Ch 5:1. It is worth noting, as does Orsy, that DH does not address the issue of a believer who finds themselves, in good faith, unable assent to a certain matter of Church teaching. Orsy suggests that such situations must be dealt with on a one-to-one basis as guided by equity and prudence. See Orsy, 'The Divine Dignity', 18-19.

[40] *ST* 1.2. I9, 5.

[41] See M. D. Chenu, OP, *L'Éveil de la conscience dans la civilisation mediévale* (Paris: Vrin, 1969), p.54.

[42] Caroline Walker Bynum, 'Did the Twelfth Century Discover the Individual?' In *Jesus as Mother: Studies in the Spirituality of the High Middle Ages* (Berkeley: University of California Press,1982), 82-109, at 105-6.

[43] John Thornhill, 'A Wholesome Agnosticism and Christianity's Coming Dialogue with the World Religions', *Pacifica* 6 (1993), 265-277, at 267 citing *ST* 1.2. 89. 6, corp. & ad 1.

[44] Walter Kasper 'The Theological Foundation of Human Rights' in *Human Rights and the Church: Historical and Theological Reflections* (Pontifical Council for Justice and Peace, Vatican City, 1990, 47-71, at 49, 55.

it may be violated by oneself or others. This offered a starting point for a secular theory of human rights. The Jewish understanding of the Torah, deepened by the New Testament ethos, displays a 'basic openness to human rights thinking.' It is only in modern times that the legal and political implications of this were systematically elaborated. [45]

Again, it must be remembered that the notion of rights remains a contested issue, particularly with regard to their foundation and, consequently, their scope and limits. In the liberal political tradition, as represented by Robert Nozick, the emphasis is on the individual and freedom, with rights protected by the state but with minimal interference into personal freedom.[46] Alternatively, a shared life in a community and the natural duties from such bonds underpin what seems to be a more communitarian approach, as found in Michael Sandel in his criticisms of social democratic liberals John Rawls and Ronald Dworkin.[47]

Different (and debated) approaches to rights (their foundation and scope) also apply to Catholic theological discourse since Vatican II, even within a Thomistic framework. Authors such as Alasdair MacIntyre (and Tracey Rowland) find the use of 'rights' language problematic. Any claim to, or discussion of, rights cannot be isolated from a particular tradition nor be immune from the formative impact of culture and historical context (a flaw with classical Thomism). 'Rights' language in the context of Liberalism puts the focus on 'right' in the subjective sense, 'my claim' against another. This contrasts with the more classical and Thomistic sense of the objective sense of *ius,* namely. *what is right* or *due* to a person.

Underlying the first (Liberal) is a view of personhood as essentially autonomous and self-creative. The second (natural law) view sees self-development as founded on a gift – a call from God to share divine life in a receptivity to divine and human interactions. MacIntyre and Rowland are concerned that reading the natural law tradition within the Liberal framework while adopting the language of modernity distorts, even marginalises, the classical tradition and the Catholic narrative. This is particularly relevant to social responsibility and the common good. [48]

Having acknowledged the debates around the origin, nature and scope of human rights, we return to the religious freedom question and DH. In the context of Church, State and social life in the modern period, it is wholesome to note Murray's comment about religious freedom: 'In all honesty, it must be admitted that the Church is late in acknowledging the validity of the principle'.[49] Naturally, the Church's resistance to the principle must be understood in its historical context and the movements inimical to the Church, particularly in the post-enlightenment period and in 19th. century Europe. With the changing context of the new world (especially the United States) and of post-revolutionary Europe, 'freedom' and 'secular' took on less antagonistic meanings. As with the United States, for instance, it was possible to have a situation of religious pluralism that was not divisive or subversive of the common good and social cohesion. For all that, the historical record clearly indicates how the Church's thinking on, and attitude to, human rights in a more secular context gradually evolved from rejection, to discernment, to dialogue and, finally, to proclamation.[50]

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[45] Thomas Hoppe, 'Human Rights' in Judith A. Dwyer (ed)., *The New Dictionary of Catholic Social Thought* (Collegeville, Minn: Liturgical Press/Michael Glazier, 1994), 454-470, at 455-6.

[46] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

[47] Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge, UK/ New York: Cambridge University Press. 1998).

[48] Tracey Rowland, *Culture and the Thomist Tradition after Vatican II* (London, UK: Routledge, 2003), 148-155.

[49] Introduction to *Dignitatis Humanae* in Abbott, op. cit., 673.

[50] See Sandie Cornish, *From Rejection to Proclamation,* ACSJC website www.socialjustice.catholic.org.au Her discussion draws on Monsignor Franco Biffi, 'Human Rights in the Magisterium of the Popes of the Twentieth

Underlying the debate and the Declaration (DN), then, was the Church's own self-understanding, particularly in its stance toward the modern world, shaped by the Enlightenment and post-revolutionary Europe. This applied, most especially, to human and political rights. Central for Murray (and others), was the need for the Church to engage with, and learn from, democratic institutions since, with their emergence, the civil order 'grew up'. It is through such institutions that people 'govern themselves'.[51] Such arrangements provide the context where the worth of persons together with the shared and conscientious pursuit of truth and the common good are best realized. This brings us to the next consideration.

IV.   Practical Reason and the Development of Doctrine

The opening sentence of art.1 sets the tone and direction of DH: 'a sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man.'

Before addressing the main issue in this section of the paper, some brief observations are triggered by this above quote. It reflects a pattern of the Council itself as 'characterized by a sense of history, an awareness of the concrete world of fact, and a disposition to see in historical facts certain "signs of the times"'.[52] It is, then, an expression of 'historical consciousness'. Murray himself drew on Bernard Lonergan's binary of 'historical' compared with 'classical' consciousness.[53] The Gelasian thesis/hypothesis framework of how the 'ideal' and the 'particular historical situation' are related was formulated from within a 'classical consciousness' and its strong sense of stability and permanence.[54] Murray offers persuasive evidence of historical consciousness at work in the developing pattern of thought from Leo XIII, through Pius XII into John XXIII with specific reference to truth, justice, love, rights and, especially concerning religious freedom.[55]

DH is grounded in historical sensitivity to where Holy Spirit is at work in surrounding culture and in events – a *locus theologicus* – as, for instance, in the emergence of democratic institutions noted above. Such shifts and movements can provide the context of the 'new order of human relations' in the unfolding of God's plan ('inscrutable designs') proclaimed by John XXIII in opening Vatican II in 1962. Again, it must be remembered that, while, within the 'classical' consciousness period, the intellectual tools of 'historical consciousness' associated with the modern period had not yet emerged (e.g., the rise of the individual, prevailing pattern of change and development), the Spirit was still at work. It was also true that people, in religious and cultural traditions beyond the Church, were trying to live 'according to their lights' and searching for the truth 'in good faith' – something appreciated by Aquinas, as we have noted.

This brings us to the final issue - DH as an example of development of doctrine. This was at the heart of the 'struggle' and contestation that involved Murray, Fenton, Connell and the bishops themselves at the Council debates. Divided opinions reign during and since the Council.[56] Is DH a development or is it reversal and, even, a contradiction of doctrine?

On this matter, it might be helpful to examine the relationship between *prudence and divine providence* to see how much that has a bearing on the Declaration itself. As noted

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Century', in *Human Rights a Christian Approach,* (International Federation of Catholic Universities Research Coordination Centre, Manilla, 1988).

[51] Hudock, *Struggle, Condemnation, Vindication,* 45.

[52] FN 2 in DH, Abbott, 675.

[53] Bernard F Lonergan, 'The Transition from a Classicist World-View to Historical Mindedness'. In *A Second Collection,* edited by William F Ryan and Bernard Tyrrell (Philadelphia: Westminster, 1974), 1-9.

[54] Murray, 'The Problem'…560.

[55] Murray, 'The Problem ', 533-555. Also, Abbott (ed), DH, FN 21.

[56] See Healy, 'Dignitatis Humanae', 9-10.

earlier, DH states that we come to share gradually in the divine law through the guidance of divine providence in the exercise of prudential judgment. This converges with Aquinas when he notes that we are called to share actively in divine Providence through the virtue of prudence.[57] In other words, we are in the realm of practical reason. This can be helpful in approaching DH and how it can be understood in terms of the development (and not the reversal) of doctrine.

As explained earlier, the hypothesis/thesis model was offered as a framework to deal with the ideal when the boundaries of church and empire were coextensive and under the Divine law and its various human expressions (natural, positive law). For Gelasius and John of Paris (1255-1306), a civil ruler has real and distinct power (from God and not by delegation from the Pope) in areas of 'peace, justice and prosperity for the people'.[58] The concern was for what was 'due' to the spiritual and temporal realms in terms of the exercise of power and authority. At stake, then, were matters of justice; of equity, of fairness, and, hence, in the arena of practical reason. The thesis /hypothesis approach, so understood, appeared to see itself as a matter of 'firm doctrine', namely, considered simply as a matter of certainty of faith through speculative reason. But could it also be viewed as a matter of moral certainty from practical reason? As such, any model (or judgment) can subsequently be revised in the light of changed circumstances and other variables.[59] This could be another way of expressing Murray's view of the thesis/hypothesis model as 'received opinion'.

The 'practical reason' approach was suggested in 1964 by Murray himself in an extensive and detailed analysis of the approaches to the religious freedom issue.[60] He couches his discussion in terms of the 'First' or thesis/hypothesis approach with its associated view of the abstract terms 'error' and 'truth' claiming rights versus the 'Second' or person - based view of rights as adopted in DH.

In his discussion, Murray offers a helpful distinction related to the 'Second' view.[61] There is the 'conceptual' question: in the light of contemporary historical existence, what is religious freedom and its correlate, constitutional government? The task here is to clarify the nature of freedom, conscience (of personal religious decisions and its social nature) and the free exercise of religion. The latter embraces the distinction between sacred/secular; society/state; common good/public order and, finally, the freedom of all under the law (and, ultimately, divine law). This question of definition is concerned with meaning and truth –the level of certainty associated with speculative reason.

Relevant here are the distinctions just noted between state/society and public order/common good. For Murray, the state is only 'one order within society, the order of public law and political administration'.[62] The state's role is to be serve society, not just through ensuring public order, at times, through legitimate application of coercive powers,

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[57] *ST* 1.2.91.2 where Aquinas says: 'Now among all creatures, the rational creature is subject to divine providence in a more excellent manner, because he himself participates in providence, providing for himself and for others.' See also *ST* 1.103. 6 and 8.

[58] Hudock, *Struggle, Condemnation, Vindication,* 39-40.

[59] See a parallel in Neil Ormerod's discussion of Jesus, salvation and Church structures. Ormerod makes the point that Church structures 'are not an end in themselves but means to an end of salvation. Their 'truth' is not the truth of speculative intellect, which is 'Yes/No' but of practical reason which is 'good/better/worse. In that sense they have a certain provisionality to them, even if we trace them back to the will of Jesus. This allows us to consider say the three-fold order of ministry or the papacy in terms of the good they are meant to achieve rather than as an arbitrary structure imposed by Jesus as the only way the Church can operate. This then can provide a standard or norm against which to measure their effectiveness in practice and so on'. See Neil Ormerod, 'The Knowledge and Authority of Jesus – a Response to Bishop Robinson', *The Australasian Catholic Record* 88:1 (2011), 88-97, at 96.

[60] Murray, 'The Problem', 503-573.

[61] Ibid. 516-531.

[62] Murray, 'The Problem', 520.

but in relation to promoting the common good. As Murray explains, 'the common good includes all the social goods, spiritual and moral as well as material, which man pursues here on earth in accord with the demands of his personal and social nature'. The pursuit of the common good is the responsibility of all its members and its institutions 'in accord with the principles of subsidiarity, legal justice, and distributive justice'.[63] Religious freedom, then, is not just a matter of a personal and natural right. It is also integral to the common good that personal conscience be immune from coercion in its internal religious decisions. 'Even the Church, which has authority to oblige conscience, has no power to coerce it'. [64]

Having considered the 'conceptual' perspective concerned with meaning and truth with the 'Second' view, we move on to the 'judgment' question which, argues Murray, affirms the validity of religious freedom in a social context, specifically as expressed in constitutional government. This question's concern is effectiveness and value. Here, to justify religious freedom is not make it an ideal- a claim never made in constitutional law.[65] It is a judgment exercised within the framework of law. Law, as Aristotle and Aquinas remind us, is an ordinance of reason for the common good. As 'reasonable' it is measured against the criterion of the purpose it is meant to achieve (good of the community). Another way of saying this is offered by Murray citing Aquinas (who draws on Isidore of Seville – the 'Jurist'): the function of law is to be *useful* to people. Later, in the same article we find the comment that, in assessing the nature of a law and its purpose as 'useful', consideration must be given to what is 'appropriate to the time and the place.'[66]

In other words, the criteria of judgment about religious freedom are not the ideal and the tolerable, thesis/hypothesis, principle and expedience (the First View). Rather, the overarching benchmark is the 'reasonable' – what is useful and practical in relation to the law's purpose. This locates the question in the realm of practical reason and of prudential judgment. Or as Murray says 'the good and the bad, the just and the unjust, the more or less just and the more or less unjust' (the Second View), hence, by implication, subject to review. Importantly, such an approach ensures 'there a single standard equally applicable to any order of constitutional law.[67]

In the last analysis, then, the Church/State issue is one of justice in the relationship between two orders of competence, the sacred and the secular. These are within the overarching norm of 'divine law – eternal, objective, and universal, whereby God orders, directs, and governs the entire' - and which humans 'are called to participate through 'the gentle disposition of Divine Providence'.[68] But, as explained above, the Church/State question also entails the relationship between religious freedom's meaning and its justified and effective application. Variables and relevant factors may lead to a different prudential judgment about action and legislative formulation in a particular historical situation. This is the point at which the effectiveness and value of religious freedom have a bearing on shifts in understanding of its meaning and truth, hence, a correlation between practical and speculative reason. Perhaps, in the ongoing debate about doctrine – its development or reversal (as in DH and religious freedom) - such considerations may be helpful.

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[63] Ibid., 520-1.

[64] Ibid., 523. The issues discussed in this paragraph are part of the more extensive treatment of Murray's *We Hold These Truths*. They are also found elaborated in Murray's annotations on DH (Abbott edition) especially FNs 4-20, at 684-686.

[65] 'Traditional philosophies of politics, law, and jurisprudence do not recognize any such thing as an ideal instance of constitutional law. By reason of the very nature of law, the issue of the ideal never arises. The function of law, as the Jurist said, is to be useful to men. Necessity or usefulness for the common good—these are the norms of law.' Murray, 'The Problem', 515.

[66] *ST* 1.2.95.3.

[67] Murray, 'The Problem', 571.

[68] DH, Art 1, 680.

V.   Conclusion

Our investigation of DH has been in relation to the developmental trajectory in the issues of the person, rights, and practical reason. It has revealed that we can reach back into the theological tradition, as in Aquinas and the Hebrew Scriptures, and find an openness to thinking and appreciation of these issues adumbrated there. Some developments started to become more evident in the medieval period, particular with the 12th century renaissance. This process of development continued in the second Vatican Council, in human society and continues to do so today, especially about human dignity and human rights. Lafont's allusion to the struggle to believe 'finally in man' encapsulates the trajectory of that quest. By probing our heritage, we can situate DH (and Murray) more clearly in terms of the human person, society, the right to religious freedom and the nature of doctrinal development. At the same time, we can appreciate better the Council's desire, by searching sacred tradition and Church teaching, to 'bring forth new things' in harmony with the old, especially more recent papal teaching on the 'inviolable rights of the human person'.[69]

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_____ *Scriptum super Libros Sententiarum,* IV, 38.2.4 q.a 3 (exposition), in Corpus Thomisticum, *Thomas Instituut te Utrecht at http://www.corpusthomisticum.org/snp4037.html*

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