MURRAY AFTER FIFTY YEARS: FIVE THEMES

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This essay explicates five themes from We Hold These Truths. Specifically, it seeks to: (1) compare Murray’s treatment of contemporary America’s loss of a public philosophy to similar arguments made by important non-Catholic journalists and political theorists in his day; (2) bring Murray’s account of the Christian roots of the liberal tradition into conversation with the view that the liberal tradition is specifically modern; (3) explore the significance of Murray’s famous interpretation of the religion clauses of the First Amendment as entirely practical “articles of peace”; (4) critically engage Murray’s account of the thought of the founders and explore the motivations underlying this account; and (5) relate Murray’s account of the natural law theory undergirding the American democratic experiment to the political theory informing the Declaration of Independence and Lincoln’s re-founding of the American regime.

Antiquity alone does not justify returning to a book on the fiftieth anniversary of its publication. It is worthwhile only if that book’s themes are of continuing relevance. This essay seeks to identify and evaluate five themes of We Hold These Truths that seem of importance today albeit from the perspective of different concerns and interests. These themes structure this essay. Each section begins with a statement of the enduring question to which the particular theme might be especially relevant.

I

The first of these themes is of particular relevance to the permanent question of the extent to which America requires a substantive agreement about political right and wrong, and concerns what Murray terms the “public philosophy.”

The title of Murray’s book takes its bearings from what he, echoing Lincoln’s Gettysburg Address, calls “The American Proposition.” That proposition received its classic expression in the famous paragraph of the Declaration of Independence invoked by Lincoln that begins “We hold these truths to be self evident.” The true American proposition is that all men are created equal, with certain inalienable rights, and that it is the purpose of government to secure these rights (vii ff.). Murray stresses that we hold this proposition as
truth, following the black letter language of the Declaration. We do not hold it as mere opinion. That is we hold it not merely because our ancestors chose to hold it, but because it reflects a rationally graspable moral reality on which we have staked our existence as a nation. We do not hold it as a mere construction having its foundation in nothing more than the human will.

This proposition Murray describes as our “public philosophy”; and he says that it is by virtue of our holding it, that we are a people. He has come to doubt, however, that “we” Americans still “hold” it (viii-ix). In place of the truths we “held” in our country’s beginning, and were willing to defend as late as the Civil War, there is now what he describes as a “vacuum.” He argues that the vacuum is a product of bad ideas—namely, positivism and relativism—which have subverted the possibility of a public philosophy, that is of a public philosophy which “holds” (i.e. is committed to) public truths in the sense of the Declaration. One large consequence of this vacuum is that we, as a society, now recognize no moral order except what we human beings construct.2

This thesis reflects one of the large conversational contexts within which this book was written. Two other important books preceded Murray’s in addressing the question of whether America still held a public philosophy, doubted that it did and argued for a need to restore it. One was the well-known journalist Walter Lippmann’s The Public Philosophy.3 The second was political theorist John H. Hallowell’s The Moral Foundations of Democracy.4 Murray’s book was published in 1960 and last reprinted in 2005. That these two books, in addition to Murray’s, are still in print is in itself evidence of the continuing relevance of their themes.

It is relevant here to mention a third book contemporary to Murray’s. It also argues that positivism and relativism had recently come to dominate American social thought and that the effect of this has been to undermine belief in the Declaration’s assertion of the self-evident truths that all men are equal in the rights to life, liberty and pursuit of happiness. That book in question is Leo Strauss’ Natural Right and History.5 This book is particularly worth noting here because Murray subtitles his book “Catholic Reflections on the American Proposition” and his avowedly Catholic perspective implies that his reason is informed by faith. Strauss, in contrast, argues from a purely philosophic perspective. While Strauss grants that his merely rational defense of natural rights against positivism and relativism comes down on the same side as “Roman Catholic social science,”6 no one has ever claimed that Strauss approaches his subject from a Catholic point of view.
So, while Murray’s critique of positivism and relativism as undermining the American Proposition may reasonably be called “Catholic Reflections,” those reflections are not a sectarian Catholic critique. One need not take a Catholic view of the American proposition in order to see either the need for a public philosophy (as Lippmann’s and Hallowell’s books show) or to see such a public philosophy as endangered by positivism and relativism (as Strauss’ book shows).

II

The theme of the “ancient liberal tradition” is particularly relevant to situating Murray’s argument in the history of political philosophy (9, 33). Contemporary students of that history may find Murray’s invocation of the “ancient liberal tradition” confusing since they have been taught that “the liberal tradition” is entirely modern (i.e. post-Hobbesian).

In contrast, Murray’s “ancient liberal tradition” is medieval. He calls it “liberal” because it freed the Church and its spiritual sphere from rule by the state and its this-worldly sphere. Murray holds this Christian/Catholic view of what the “the liberal tradition” is because, in the history of Western political philosophy and practice, it was Catholic Christianity which first established limits on the lawful authority of rulers. What modern scholars call the “liberal tradition,” Murray regards as “a deformation” of this older tradition (31). The modern liberal tradition is only “secular liberal” (24) and, in opposition to the older tradition, subordinates the church and religion to the state.

In Murray’s account of the development of Western thought and practice, what is decisive is the statement by Pope Gelasius, at the end of the fifth century, to the Byzantine Emperor Anastasius I, that human life has, not one, but two structures of authority; the secular (governed by the Emperor) and the sacred (governed by the Church). Gelasius’ formula “Two there are” asserts the “freedom of the church” from the political order (205). This is the first assertion of a principled limit on the hitherto monolithic political order in Western thought and “bespoke the revolutionary character of the Christian dispensation.” In this new understanding, the church governed matters such as marriage and education, and the state governed matters such as property, civil peace, and foreign policy. Each institution had their respective laws and courts. In contrast, Murray says, secularized “political modernity” distinguishes state and society as a way of attempting to preserve an idea of limits on the state’s power while replacing the idea of the church’s distinct and independent sphere with the subordination of the church to the state (205
ff., 35). Put another way, limitations on government originated, not in the modern attempt to deny the state the right to intrude into the sphere of individual freedom (to live as one sees fit), but in this sixth-century distinction between secular and sacred spheres of authority (66, 202–205). 

On Murray’s account, the later common law tradition (including what he calls “the American thesis” “which developed out of it”) is “a theory that is recognizably part of the Christian political tradition” (69). He acknowledges that those within “the American thesis” may not be aware of its being so recognizably part of the Christian political tradition. He quotes the Third Plenary Council of Baltimore (1884): “We consider the establishment of our country’s independence, the shaping of its liberties and law, as a work of special Providence, its Framers ‘building better than they knew’ the Almighty’s hand guiding them” (30).

If students of the history of political philosophy take seriously this idea of the “ancient liberal tradition,” then modern Hobbesian-derived liberal political philosophy looks quite different than if the earlier tradition is forgotten. In particular, modern liberalism looks like an effort to preserve in secular modernity the idea of limits on state power which had originated in the irruption into Western thought of an idea of the sacred that transcends this world and the inference that the sacred so understood requires freedom of the church from the political order. It at least causes one to wonder whether, without the pre-modern establishment of (1) the idea of limits on state power and (2) of the idea of the sacredness of the individual, modern liberal individualism would have been able to find the purchase for such limits that it did.

III

The theme of the religion clauses and the First Amendment may especially interest students of American constitutional law and of the Constitutional founding, in particular those who suspect there is something disingenuous in the interpretations (more properly theories) of the religion clauses that have come to prevail since the 1940s.

Murray views the First Amendment religion clauses in the light of the earlier “ancient liberal tradition’s” limitation on the power of the state vis-à-vis the church and religious doctrine. Specifically, he argues that the historical truth is that these clauses are entirely practical “articles of peace.” This means that they neither are, nor contain, either a political theory or a particular theological doctrine. However, he believes that there are those who (erroneously) interpret them as embodying both.
The view of them as political theory understands them as implying the subordination of the church to the state in the name of the separation of church and state. This is recognizably the teaching of Hobbes and Locke on the state’s relation to both the church and religion. Religion and churches are tolerated by the sovereign/majority in return for their subordination to the state.

The view of the clauses as theological doctrine is of two interestingly different sorts. The first views the religion clauses as embodying certain “Protestant religious tenets” (49). Specifically, it understands them as embodying an “anti-authoritarian religious individualism” (50). By authoritarian religions Murray means those that claim the right or duty to instruct individuals consciences, churches with bishops and popes who claim authority over individual consciences. To read the religion clauses in this way means understanding them as embodying a “sectarian [free church] Protestant” (51) view that religion is a private not a public matter.

The other “theological” understanding of the religion clauses sees them as reflecting the “ultimate suppositions of secular liberalism” (49). These “ultimate suppositions” include a denial that either revelation or “metaphysical inquiry” constitutes knowledge; and the assertions that only “scientific empiricism” counts as knowledge and that the existence of a universal moral law that commands man’s obedience is “not empirically demonstrable.” Simultaneously, this “school usually reads into the First Amendment a more or less articulated political theory” that runs as follows: (1) “Civil society is the highest societal form of human life”; (2) “civil law is the highest form of law and is not subject to higher or prior ethical canons” (legal positivism, as in Oliver Wendell Holmes); and (3) “[T]he state is purely the instrument of popular will, than which there is no higher sovereignty” (52).

In the fifty years since Murray wrote, this legal positivism has been modified somewhat by an appeal to “world opinion” and/or to the Universal Declaration of Human Rights, which are now widely considered as something like universal moral standards against which the positive law of states may be evaluated (e.g., the International Criminal Court). But this does not affect Murray’s fundamental thesis. It is still the case that no ethical canons are understood to be higher than those recognized by world opinion.

The cumulative effect of these two “theological” understandings (i.e., free church Protestant and secular) of the religion clauses, and of the political theory to which they give rise, is that “the churches are inevitably englobed within the state, as private associations
organized for particular purposes. They possess their title to existence from positive law, not from their claim to divine origin. Their right to freedom is a civil right [rather than a sacred one] and it is respected as long as it is not understood to include any claim to independently sovereign authority” (53). Murray does not trace this consequence to the history of political philosophy but what he describes is clearly a drawing out of Hobbes’ explicit teaching in the second half of *Leviathan* and of Locke’s implicit teaching in the *Letter on Toleration*. In theological history, this subordination of church and religion to the state would be called Erastianism.

In contrast to this political theory of the religion clauses, Murray’s “Articles of Peace” view denies to the state the right to impede or repress false or erroneous religious faith. Murray denies this is relativism because it does not deny the difference between true and false religious faith. Rather, it is a prudential position that “in American circumstances the conscience of the community, aware of its moral obligations to the peace of the community . . . does not give government any mandate, does not impose upon it any duty, and does not even communicate to it the right to repress religious opinions or practices, even though they are erroneous and false” (63).

Murray’s reminder that there can be a “non-theological” understanding of the religion clauses shows how religious freedom can be protected against the danger of religion and the Church being subordinated to the state.

**IV**

The theme of Murray and the founders is especially relevant to distinguishing a Catholic interpretation of what the Founders wrought from an attempt to see to what extent Catholics can accept what they wrought.

Despite the book’s title, Murray has little to say about the Founding Fathers. His book does not show that he studied their thought with any particular care. And this occasionally results in his attributing to the Founders some ideas that are simply not well supported by the evidence. For example, Murray relates a famous anecdote from the founding era. The papal nuncio at Paris approached Benjamin Franklin, shortly after American Independence had been won, and inquired about procedures for establishing an episcopal see in the United States. Franklin forwarded the request to the Continental Congress, which replied as follows: “the subject of this application to Doctor Franklin being purely spiritual, it is without the jurisdiction and powers of
Congress, who have no authority to permit or refuse it, these powers being reserved to the states individually” (79).

Here is what Murray takes this episode to illustrate:

[T]he artisans of the Constitution had a clear grasp of the distinction between state and society, which had been the historical product of the distinction between church and state, inasmuch as the latter distinction asserted the existence of a whole wide area of human concerns which were remote from the competence of government. . . . [H]ere again it was a matter of the Fathers building better than they knew. Their major concern was sharply to circumscribe the powers of government. The area of state—that is, legal—concern was limited to the pursuit of certain enumerated secular purposes (to say that the purposes are secular is not to deny that many of them are also moral; so for instance the establishment of justice and peace, the promotion of the general welfare, etc.). Thus made autonomous in its own sphere, government was denied all competence in the field of religion. (66)

But Congress’ response does not show anything about the alleged incompetence of “government” concerning religion. It shows that the Articles of Confederation reserved power over religion “to the states individually” as Congress said in its response. Article II of the Articles states: “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.” Since there is no expressly delegated power concerning religion, Congress, but not the states, lacked authority, jurisdiction or power, rather than competence, as Murray would have known had he read the Articles. He appears simply not to understand the “federal” character of American government under the Articles.

The source of this error appears to result, not from Murray’s explicit intention to offer “a Catholic interpretation of the American proposition,” but from his taking no particular care to understand the thought of the Founders, as they understood themselves, as it relates to the nature of the political system that existed under the Articles. It may well be that the Articles’ radical denial to Congress of power concerning religion dovetailed nicely with the medieval Catholic tradition Murray admires. Still, being congruent does not mean they rest on identical assumptions regarding the state’s competence regarding religion.
On the whole, I do not find Murray’s lack of careful attention to the Founders thought to be a huge problem. It would be a serious difficulty if we approach *We Hold These Truths* in order to gain an understanding of that thought. The safer way of approaching it is to seek in *We Hold These Truths* an understanding of the extent to which the Catholic religion and individual Catholics can have a place in the American Constitutional order. Murray shows that they can have a place but that they need to be careful of being deceived by understandings, especially of the religion clauses, that are incompatible with their faith. And, those understandings now prevail in Constitutional interpretation, even more than in Murray’s time. For Murray wrote before the Supreme Court outlawed official prayer or Bible reading in public schools, and the rest of the advanced secularization of public life which now exists.

V

I take it to be one of Murray’s most important doctrinal claims that “the American proposition” contained in the Declaration of Independence is “a statement of the truth of natural moral law” binding on all rational creatures. Although substantial elements of modern intellectual life have rejected the existence of that law in favor of metaphysical nihilism and moral relativism, Murray argues that Catholic thought still adheres to this natural moral law and is therefore a holdout against the dissolving acids of modern thought, in defense of the truths which constitute the American proposition. He sometimes seems to suggest that, given this state of affairs, only Catholic natural law could reestablish confidence in the American proposition and, by doing so, restore the identity of the American people (109).

There is some truth in this argument but also something misleading. It is true that the Declaration of Independence acknowledges the source of man’s natural rights in his Creator. However, this Creator is explicitly acknowledged only as a rights-giving Creator whereas traditional natural moral law explicitly encompasses duties. For the latter, rights are derivative from, and hence second in importance to, the duties. For the former, rights are primary and duties, if any, are derivative. Murray ignores this non-trivial difference.

In addition, Murray goes so far as to interpret the Declaration of Independence as teaching “the sovereignty of God over nations as well as over individual men” (28). He cites no passage from the Declaration of Independence supporting this claim other than that already quoted. Instead, to support his claim, he appeals to President Lincoln’s Thanksgiving Day proclamation of May 30, 1863. “Whereas
the Senate of the United States, devoutly recognizing the supreme authority and just government of Almighty God in all the affairs of men and nations,” he quotes it as saying, “has by a resolution requested the President to designate and set apart a day for national prayer and humiliation. And whereas it is the duty of nations as well as of men to own their dependence upon the overruling power of God, to confess their sins and trespasses. . . .” (29). This quote, however, does not quite show that the Declaration of Independence asserts or implies the sovereignty of God over nations as well as individuals. Rather, it shows that Lincoln, or the Senate of 1863, asserted that sovereignty.

VI

By taking his bearings more from Lincoln’s famous statement that the Declaration of Independence dedicated us as a “new nation” to its “proposition,” Murray sides with an understanding of the American order which recognizes that order’s dependence on God to a considerably greater extent than does either the Declaration of 1776 as written or the constitutional order established by the Founders eleven years later. It is commonly agreed among experts that Lincoln “refounded” the American regime. This is manifest regarding slavery and states’ rights. But Murray calls our attention to another aspect of that refounding, an acknowledgment of the sovereignty of God over nations. Murray does us a service by calling that addition to our attention, albeit in a way that leaves it unclear whether he understands the extent to which it is an addition.
Notes

1. John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960), 79 ff. Further citations of this work will be given parenthetically in the text.

2. Touched on throughout the book, this theme is the central focus of Chapter 12, “The Doctrine is Dead: The Problem of the Moral Vacuum.”


6. Ibid., 2, 8.


8. See 182–183 for Murray’s Catholic understanding of the relation of “the American proposition” and “the American system” to the ancient liberal tradition, on the one hand, and their distinction from the modern liberal tradition (which he describes as being “of Revolutionary and Jacobin inspiration”), on the other. “Modern” has a very different historical and philosophic meaning for Murray than for the standard accounts of the history of both philosophy and political philosophy. See 197, 205.