

# Symposium: Religious Freedom and the Future of the Catholic Church in the American Public Order

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## Contributors

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## INTRODUCTION

Over the past few decades, America has undergone a far-reaching—in-  
deed, radical—transformation. As Ryan Barilleaux has pointed out:

At the opening of the century, federal and state laws protected the institution of marriage, religious institutions were able to conduct their affairs with a minimum of state interference, and no one seriously questioned which bathroom a male or a female should use. Since then, however, each of these facts had changed or were seriously challenged: following passage of the Affordable Care Act (ACA) in 2010, the Obama Administration mandated that all employers in the nation—secular or religious—provide free contraceptive and abortifacient drugs to their employees; in 2015 the U.S. Supreme Court discovered a right to same-sex marriage in the Constitution; and in 2016 the Obama Administration tried to require schools across the nation to allow transgender students to use the bathroom or locker-room that corresponds to each student’s “gender identity.” Along with these legal and regulatory changes, public opinion had changed: in 2001, 57 percent of Americans opposed same-sex marriage; by 2016, 55 percent supported it. What had once been the mainstream view in American society and public policy was increasingly being defined as a “fringe” position.<sup>1</sup>

Indeed, as anyone who has been paying attention can plainly see, a new and very different public order has been taking shape in America. At the institutional level, this new order takes the form of a highly centralized state in which the powers of the national government are seen as essentially plenary in nature, and in which governmental power is concentrated

in an imperial executive and an even more imperial judiciary, as well as in administrative agencies that simultaneously exercise executive, legislative and judicial power. In this new order, government by the people has been largely supplanted by government by technocrats—government by executive, administrative and judicial fiat—and the reach of the centralized state has become all-encompassing. No area of human life lies beyond its jurisdiction.

At the level of public philosophy, this order is rooted in a radically post-Christian understanding of man and society whose most striking features are its individualism, subjectivism, and secularism. This order is not only irreconcilable with the Catholic vision of man, society and the state—it is incompatible with both the Church’s ability to exercise her divinely ordained ministry and with the freedom of Catholics to live out their faith.

Confronted with the ascendancy of this new order, Catholics (at least Catholics committed to freedom and magisterium of the Church) have tried to secure the legal and social space needed for the Church to exercise its ministry and for themselves to live in accordance with the Church’s teachings by appealing to the America’s historic commitment to religious freedom, a commitment enshrined in the First Amendment. As Yuval Levin observes, in the face of the emergence of this new order, “religious liberty has emerged as the foremost priority of social conservatives.”<sup>2</sup>

The problem is that America’s heritage of religious liberty is itself in jeopardy. In October 2017, as I was preparing for the panel from which this symposium emerged, I stumbled across a news item that received little national attention: California’s governor, Jerry Brown, had just vetoed a bill that would have made it illegal for California employers to discipline or fire employees “for their reproductive health decisions.” Dubbed the Reproductive Health Non-Discrimination Act, this bill explicitly covered religiously affiliated institutions exempting only employees who were “the functional equivalent to a minister.” Under this bill, as one commentator noted,

a Catholic hospital could not fire a media-relations director for appearing in a public-interest story on the local news station to discuss her experience with in vitro fertilization. A pro-life crisis-pregnancy center could not fire a counselor for “shouting her abortion” for a Planned Parenthood video. And a private Christian school could not fire a pregnant, unmarried, abstinence-education teacher.<sup>3</sup>

Now, believers and all friends of religious liberty rightly rejoiced at Governor Brown’s veto and celebrated it as a victory for religious liberty. But, the fact that this bill passed both houses of the California legislature overwhelmingly—the vote was 55–20 with four abstentions in the Assem-

bly, and 27–13 in the Senate—and that this is hardly an isolated incident, makes one wonder about the future of religious liberty in America (at least if religious liberty is understood as involving more than a simple freedom to worship).

When we have to rely on Jerry Brown (or in lieu of Brown, the courts) to stop a piece of legislation such as this from becoming law, religious liberty is in serious trouble. The fact is that this is not an isolated incident. The American tradition of religious liberty today faces challenges that were unimaginable just a few short years ago.<sup>4</sup> As Gary Glenn has noted, “at least in the public square” we may well be witnessing a “nascent suppression” of Catholicism and “Catholic moral teaching.”<sup>5</sup> Indeed, while Americans continue to celebrate the ideal of religious liberty, our understanding of the scope of this liberty seems to be becoming progressively narrower and less friendly to believers and religious institutions. We seem to be witnessing the fruition of what John Courtney Murray feared was in its early stages in his day, namely, “the retheoretization the American way of life”—and thus of our understanding of the legal and constitutional norms relating to religion—along lines that “resemble nineteenth-century Continental theories”<sup>6</sup> in which religion is “relegated to the hushed confines of the sacristy.”<sup>7</sup>

The focus of this symposium is on the nature, causes, and consequences of this troubling development. Gary D. Glenn’s paper examines the debates in the First Congress surrounding what became the religious provisions of the First Amendment. In particular, he focuses on the fears of anti-Federalist members of Congress that the language proposed by Madison could in the future be “construed” in a way “extremely hurtful to the cause of religion.” They thus sought to craft language that would not be open to such construction and would still permit the federal government to assist and promote religion in certain ways. History seems to suggest that their fears about how this language might be interpreted were not unwarranted. Robert P. Hunt’s article explores how modern liberalism’s anthropology and political morality translate in practice into a new monism in which the state is authorized to remake all social institutions and relationships in accordance with its vision of “moral autonomy.” Modern liberalism, he contends is simultaneously “individualist and statist,” and the “normlessness” it champions turns out to be itself a norm.

Kenneth L. Grasso explores the current strategy of appealing to America’s historic commitment to the ideal of religious liberty to secure to Catholics and other social conservatives the social and legal space they need to live out their faith commitments. Over the long haul, he argues, this strategy is unlikely to succeed because religious liberty is not self-

defining and the inner logic of “the new ethos that is in the process of colonizing our public life” will tend to propel us toward a “desiccated vision” of the nature and scope of religious liberty. Finally, rather than focusing on claims that religious freedom should exempt them from obeying certain laws, Steven J. Brust argues that Catholics should focus their energies more on the injustice of the laws in question, an injustice deriving from the fact that these laws inconsistent with the “objective truth regarding human nature.” Arguing in this fashion, he maintains, prevents the debate being framed as a conflict between irrational religious “dogma and the rights of others.”

This symposium began as a panel at the 2017 Annual Meeting of the Society of Catholic Social Scientists at Franciscan University of Steubenville. The articles that comprise this symposium are revised versions of the papers presented at that panel.

It is our hope that this symposium contributes in some small measure to a much-needed discussion among Catholics about the future of the Church in the new America whose emergence we’ve been witnessing.

### Notes

1. Ryan Barilleaux, “Put Not Your Trust in Princes: Catholics in the American Administrative State,” *Catholic Social Science Review* 22 (2017): 109–21, 109; notes omitted.

2. Yuval Levin, “The Perils of Religious Liberty,” *First Things* (February 2016): 30.

3. <http://www.nationalreview.com/article/452813/jerry-brown-vetoes-bill-curtail-religious-liberty-left-reacts>.

4. On this point, see Mary Eberstadt, “The New Intolerance,” *First Things* (March 2015): 33–38; and *It’s Dangerous to Believe: Religious Freedom and Its Enemies* (New York: Harper, 2016).

5. Gary D. Glenn, “Tocqueville’s Prediction about the Pantheistic Tendency of the ‘Democratic Social State’ and Catholicism’s Present Situation,” *Catholic Social Science Review* 22 (2017): 123–35, 126.

6. “Leo XIII: Separation of Church and State,” *Theological Studies* 14(2) (June 1953): 151.

7. “Law or Prepossessions?,” *Law and Contemporary Problems* 14(1) (Winter 1949): 31.