

## **Liberal Individualist Monism and the Future of Religious Freedom**

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*The liberal individualist tradition proclaims itself to be committed to the protection of individual rights under a regime of neutral laws and limited constitutional government. However, the model of man and society upon which it often depends for sustenance is neither neutral nor anti-statist. Rather, its alternative orthodoxy would effect a comprehensive reordering of what John Courtney Murray called “the natural forms of social life.” The recent trajectory of church-state relations in the United States, and of federal and state efforts to effect comprehensive changes in our health care system(s), testify to the dangerous consequences both for religious freedom in general and the Catholic Church in particular. The Catholic Church must continue to advance its personalist understanding of constitutional democracy as the better foundation for limited, constitutional government and religious freedom.*

About thirty years ago, as a lowly untenured assistant professor, I had the distinct misfortune of being expected to participate in my college’s Diversity Training Workshop. Expecting the worst from the experience, I dutifully attended and, rather quickly, ran afoul of the person who was the leader of one of the small groups of “diversity trainees” of which I was a member. The topic under consideration was a proposed college diversity mission statement which included, among other components, extractions from members of the campus community the promise that we would not discriminate against anyone on the basis (among other factors) of race, sex, religion, and sexual orientation, and that we would not belong to any organization that engaged in such discrimination. Suspecting that those members of the campus community who were faculty members were being asked to do more than merely endorse a grading policy that would grade students on the basis of relevant criteria (i.e., how well they knew the course material) rather than illegitimate factors such as those mentioned in the proposed mission statement, I sought enlightenment on the nature and scope of the substantive commitments that we were being asked to make and asked a question of my “group leader.” The conversation went something like this:

Question: “Suppose my Church tells me that the ordination of female priests is not consistent with Church teaching and that homosexual activity is immoral. Am I violating the proposed college mission statement by being a member of that religious organization?”

Answer: “Well, you don’t necessarily have to agree with everything that your church tells you.”

Question: Suppose that I do agree with my Church on these matters. What then?”

Answer: “Maybe you shouldn’t be teaching here at this college.”

I have cited this snippet of conversation at numerous college events and academic panels over the course of the past thirty years, primarily to point out the irony of the Procrustean limits that my “diversity trainer” would place, in the name of diversity, on the substantive intellectual and religious commitments of members of my college community. In most instances, my captive listeners responded with either a sharp intake of breath or a shake of the head, indicating that they were properly surprised and appalled by my trainer’s illiberal willingness to bend others to her own will and comprehensive substantive worldview. In my most recent iteration of the story, told to a class of undergraduate students, I observed and heard neither intake of breath nor shake of head but rather unmoved silence and seeming incomprehension. I cannot say that I was completely surprised. The silence does not bode well for the future of American constitutional democracy, religious freedom, or the Catholic Church in America.

### THE NEW MONISM

In 1960—a year which now seems to be moral and cultural eons ago—John Courtney Murray, in *We Hold These Truths: Catholic Reflections on the American Proposition*, argued that faithful and committed Roman Catholics could and should bring the full weight of their faith tradition to bear upon the American experiment in self-government. The American experiment, he argued, needed to be re-examined and re-appropriated by each generation of Americans, and Roman Catholic Americans were particularly well-suited to contribute to this effort because they were able to set the truths of democratic, constitutional government in their proper setting—the natural moral law and human personalism. Murray described what he called the “political substance of democracy” in the following way:

I take it that the political substance of democracy consists in the admission of an order of rights antecedent to the state, the political form of society. These are the rights of the person, the church, the

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associations men freely form for economic, cultural, social and religious ends. In the admission of this prior order of rights—inviolable as well by democratic majorities as by absolute monarchs—consists the most distinctive assertion of the service-character of the democratic state. And this service-character is still further enforced by the affirmation, implicit in the admission of the order of human rights, of another order of right also antecedent to the state and regulative of its public action as a state; I mean the order of justice. In other words, the democratic state serves the ends of the human person (in itself and its natural forms of social life) and also the ends of justice. As the servant of these ends, it has only a relative value.<sup>1</sup>

Murray's defense of the American experiment was grounded in a distinctly Christian understanding of human nature and of the purposes and limits of politics—with the purpose of politics defining the limits of state power. Christian personalism and its substantive defense of certain “natural forms of social life” provided a better foundation for the truths asserted in the Declaration of Independence than that supplied by modernity, one offshoot of which was what Murray described as “Continental Liberalism.”

For Murray, rather than providing a defense of “the liberal tradition of politics,” philosophical and political modernity (e.g., Continental Liberalism or laicism) posed a significant danger to this “personalist” view of the American experiment in democratic self-government.<sup>2</sup> Because it lacks a conception of *ordo iuris*, modernity tends to reduce all connections between and among human persons to “power” relationships, and left to its own devices, it can swing wildly from an abstract defense of the isolated individual or sovereign self to a defense of the sovereign *demos*. Or, what's worse, it can latch on to both poles at one and the same time, endorsing a form of statist individualism.

Under the rubric of “equal concern and respect” (à la Ronald Dworkin) or moral autonomy (à la David Richards), or even “the need for diversity” (à la my Diversity Training Workshop antagonist), all individuals must be emancipated from the arbitrariness of social and political institutions to which they have not voluntarily chosen to be tied.<sup>3</sup> Those individuals who have not accepted this newly ascendant political orthodoxy—an orthodoxy that claims to put an end to all orthodoxies—are free to believe whatever they choose to believe in religious matters. But those religious beliefs are henceforth to be considered matters of private morality, irrelevant to matters of public concern except when those views happen to coincide with this overarching set of political commitments. In short, as my diversity trainer implied, the devout religionist has one of two options: (1) He can remain a vibrant contributor to a “diverse” civic culture, or an

assistant professor at a public institution of higher education, only if he “doesn’t necessarily agree with”—i.e., becomes less devout about—his Church’s teaching on matters of contestation between the new “non-orthodoxy” and his faith tradition. (2) He can continue to believe what his faith tradition teaches, but the price for maintaining those beliefs is that he must retire to a smaller enclave of fellow sectarians who, my trainer believes, should have little role to play in the formation of public morality or political governance.

Murray described this tendency to subordinate authentic personalism and the “natural forms of social life” to the larger social whole as a form of political monism, a tendency that stands in sharp contrast to Christian dualism. For the monist,

there is only one Sovereign, one society, one law, one faith. And the cardinal denial is of the Christian dualism of powers, societies, and laws—spiritual and temporal, divine and human. Upon this denial follows the absorption of the Church in the community, the absorption of the community in the state, the absorption of the state in the party, and the assertion that the party-state is the supreme spiritual and moral, as well as political authority and reality. It has its own absolutely autonomous ideological substance and its own absolutely independent purpose: it is the ultimate bearer of human destiny. Outside of this One Sovereign there is nothing. Or rather, what presumes to stand outside is “the enemy.”<sup>4</sup>

Murray was quite aware of the dangers of this new kind of political monism, and he warned his fellow Americans (and Catholics) of the danger of subordinating one’s faith commitments to the demands of a monist conception of human nature and politics:

[T]he principles of Catholic faith and morality stand superior to, and in control of, the whole order of civil life. The question is sometimes raised, whether Catholicism is compatible with American democracy. The question is invalid as well as impertinent; for the manner of its position inverts the order of values, whether American democracy is compatible with Catholicism.<sup>5</sup>

The impertinent inversion of values about which Murray spoke so eloquently almost sixty years ago has now become a conventional truth among polite members of society. To what extent, they ask, is Catholicism—or any religious tradition that has too deep a set of faith commitments—compatible with American democracy? To what extent is the Catholic Church’s position on a variety of “public issues” compatible with the principles of “liberal democracy”—conceived, of course, in voluntarist terms? The answers they give, of course, are a resounding “No” and “They’re not.”

## **LIBERAL MONISM: NORMLESSNESS AS A NORM**

One of the more effective rhetorical devices employed by contemporary liberal individualists is their claim that they are asking nothing more than that the government maintain a position of official neutrality on what constitutes the good life for human beings. Moreover, to be anything other than “neutral” on what constitutes the good life is to violate basic constitutional principles in matters of speech, association, religious freedom, and personal autonomy. For example, Ronald Dworkin famously argued that

Government must be neutral on what might be called the question of the good life. . . . Each person follows a more- or-less articulate conception of what gives value to life. . . . Since the citizens of a society differ in their conceptions, the government does not treat them as equals if it prefers one conception to another, either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or powerful group.<sup>6</sup>

Liberalism’s “constitutive morality provides that human beings must be treated as equals by their government” (i.e., treated with “equal concern and respect”) and this constitutive political morality must, as a matter of justice, prevail in law and the protection of rights over more substantive moral commitments.

But, as has been noted by political philosophers such as Michael Sandel and Francis Canavan, this “deontological” conception of justice which claims not to privilege any substantive understanding of the good life, is anything but “neutral.” Sandel claims that this form of liberal individualism privileges the claim “that we are separate, individual persons, each with our own aims, interests, and conceptions of the good, and seeks a moral framework of rights that will enable us to realize our capacity as free moral agents, consistent with a similar liberty for others.”<sup>7</sup> In other words, deontological liberalism leads to a particularistic and, one might even argue, sectarian view of the “just” society based on the equal recognition of rights and fundamental moral autonomy.

Francis Canavan properly notes that under this deontologically rigorous effort to exclude deeper substantive religious and moral commitments from the public square “normlessness . . . turns out to be itself a norm. It is a steady choice of individual freedom over any other human or social good that conflicts with it, an unrelenting subordination of all allegedly objective goods to the subjective good of individual preference.”<sup>8</sup> One might suspect that this substantive normlessness would lead logically to political, economic, and social libertarianism, and there are indeed deontological liberals such as Robert Nozick who have argued for a more libertarian

view of the state in the economy of social and political life.<sup>9</sup> Moreover, viewed from a certain angle, this from of libertarianism might well commend itself, if only for purposes of a social *modus vivendi* in pluralist society, to Catholic personalists who would like the state to protect their ability to conduct their lives in conformity with their understanding of the dignity of the human person and what Murray described as “the natural forms of social life.” To be “let alone” to conduct one’s (and one’s family’s or church’s) life free from an overweening paternalistic state is no small thing in a society of differing faith commitments.

In an incredibly prescient essay written about a half century ago, Canavan also noted, however, that, while one strand of philosophical liberalism moves in the direction of a libertarian, minimalist state, there is another strand of individualism that moves *necessarily* in an entirely different direction.

Recent constitutional law in the United States has limited government by insisting more and more upon individual rights. Still more recently, so has civil rights legislation enacted by Congress or by the several state legislatures. This undoubtedly limits what government may do to individuals, but by the same token, and necessarily, it increases what government may do for individuals and to institutions.

Consequently, government today is obligated to be, at one and the same time, individualistic and statist. It is individualistic when it serves an expanding array of rights. But insofar as it uses the power of the state to impose those rights upon institutions, government is statist, and the fingers of the bureaucracy reach more and more into all the institutions of society.<sup>10</sup>

A first necessary step on the road toward a recovery of the type of “personalist,” limited form of constitutional government which both Murray and Canavan ably defended is to demonstrate that normlessness is not normless. Rather, it establishes a set of norms and expectations for all members of society. The second essential step is to demonstrate that normlessness is not anti-statist. It cannot help but move from defending what Sir Isaiah Berlin described as “negative liberty (i.e., individual freedom *from* governmental intervention in social, cultural, and economic matters) to “positive liberty” (i.e., individual freedom *for* individuals to carry out their life plans freed from the burdens imposed by all arbitrary social, cultural, and economic institutions).<sup>11</sup>

Nowhere is this transition from a libertarian individualist defense of negative liberty to a statist individualist defense of positive liberty made more clearly than in an interview which then-Illinois State Senator Barack Obama gave back in 2002. Obama paid homage to the U.S. Supreme Court

for the manner in which it had, since at least the 1950s and 1960s under the aegis of Chief Justice Earl Warren, advanced the civil rights movement's push for greater liberty and equality for all American citizens. The problem, he argued, was not the Warren Court's admirable commitment to the moral worth and dignity of every human being, but that its very nature as a court of law precluded it from taking a more activist stand in favor of government's moral obligation to do things *for* individuals. The U.S. Constitution construed by the Courts was "a charter of negative liberties" which "says what the states can't do to you" and "what the Federal government can't do to you, but doesn't say what the Federal government or State government *must do* on your behalf." Progressive political activists today must rely more extensively on the political branches of government (rather than the Courts) at the Federal and state levels, because those branches have a greater capacity to ensure the positive liberty that it is every government's obligation to provide.<sup>12</sup>

This interview comment became campaign fodder in 2008 and 2012, when Senator (and, later, President) Obama was running for President against Senator John McCain and former Massachusetts Governor Mitt Romney. Those who criticized Obama's comment focused primarily on the *economic* implications of his argument, claiming that he clearly adopted a more socialistic or, at the very least, redistributionist view on questions of political economy than was acceptable in a market-oriented society. And it was certainly not unfair for those critics to focus on the economic implications, since Obama himself emphasized those implications, claiming that "we still suffer from a Constitution that does not guarantee its citizens economic rights."<sup>13</sup>

But it is certainly also fair to ask the question whether Obama's defense of positive liberty can or should be limited to economic rights or whether it might not equally extend to social and cultural rights as well, particularly when asserted against social and cultural institutions that do not fully accept the social and cultural implications of those rights. Or, as Francis Canavan might frame the issue, might not contemporary liberal progressivism require the state to be both "individualistic and statist" and to "reach more and more into all the institutions of society" to remake those institutions in light of its own view of human nature and society?

One might further argue that the jurisprudential defense of negative liberty embraced by the courts since at least the Warren Court's tenure, rather than being a defense of legal libertarianism, marked the first step on the road to the type of social and political monism about which Murray warned us in 1960. Contrary to Obama's perception of the limits of the courts' ability to remake American society, the Court's defense of negative

liberty (i.e., freedom *from* governmental coercion) was itself grounded in a more robust and potentially comprehensive conception of positive liberty that threatened true personalism and the “natural forms of social life.” In other words, the courts set the paradigmatic stage for what the political branches of government would do once progressive deontological liberals fully assumed the reins of power.

The U.S. Supreme Court’s interpretation of the First Amendment’s free exercise clause provides ample evidence of this transition from libertarianism to statism. Given the Court’s paradigmatic embrace of the principle of “governmental neutrality” in its reading of the Establishment Clause (i.e., the Federal and State governments must be neutral between religion and non-religion, between religionists and non-religionists, in determining what constitutes an “establishment of religion”) the free exercise clause comes to be interpreted as being about something other than religion. In questions of free exercise, as Gerard V. Bradley has noted, “the coherent rationale for a ‘superneutral’ religious liberty is this: it’s about liberty, not religion.”<sup>14</sup> Thus, the “free exercise of religion” must be understood in light of a larger meta-ethical commitment to the sovereign ability of each individual to live her life in conformity with her own life plan, consistent with a similar liberty for others. The free exercise of religion for religionists becomes synonymous with the “freedom of worship,” defined in almost precisely the same substantive terms as those advanced by my “diversity trainer”: Of course you are free to believe and worship as you wish within the enclave of your fellow sectarian believers, but you are not free to enter the public square and impose those beliefs on the larger population.

This “superneutral” form of liberty is a very stern taskmaster. It threatens to break the boundaries and limitations ostensibly placed on governmental power by its ostensibly purely “negative” conception of human freedom. If the first step on the road to political and social monism, as undertaken by the courts, is to free autonomous human beings from arbitrary *governmental* restraints (e.g., on abortion, same sex marriage, et al.), the second step must be to use the power of government to free those same autonomous human beings from arbitrary *social, political, and economic* restraints. As future President Obama said, while it might be difficult for courts of law to require government, as a matter of moral obligation, to act *on behalf* of human beings, there are no such institutional constraints placed on the political (legislative and executive) branches of government. In fact, those branches have precisely that moral obligation and, once they have acted, the courts must defer to the political branches’ best judgments about how to advance that more capacious (but, ironically, still “neutral”)



use of governmental power, even if that means that a variety of social, cultural, and economic institutions must be transformed in the process.

Francis Canavan's concerns about the trajectory of the liberal intellectual tradition and the internal logic of its embrace of both individualism and statism are repeated in Etienne Perreau-Saussine's *Catholicism and Democracy: An Essay in the History of Political Thought* (2011).<sup>15</sup> While Perreau-Saussine focuses primarily on the historical effort in France to effect a rapprochement between the Catholic and liberal intellectual traditions, he also displays a remarkable level of prescience on where possible fault lines might develop for anyone attempting to effect a full rapprochement between the Catholic and liberal intellectual traditions. According to Perreau-Saussine, the liberal tradition tends to emphasize the notion of negative liberty—freedom *from* the coercive power of the state—while smuggling a highly individualistic notion of personal autonomy into its defense of freedom. The Catholic Church, however, “did not [in *Dignitatis Humanae*] repudiate its traditional teaching: the freedom to choose between good and evil (*liberum arbitrium*, or negative liberty) was subordinate to the freedom to do good (*libertas*, or positive freedom), that is, the proper use of free will.”<sup>16</sup>

This conflict between the Catholic and individualistic notion of freedom, Perreau-Saussine contends, is precisely what has compelled the Church to reaffirm its teleological understanding of the human good against more statist forms of individualism. This fault line, the author believes, will be widened as the liberal democratic state makes more exhaustive claims on behalf of the autonomous self. Perreau-Saussine asks whether “liberal democracy [can] compel the Catholic Church to be silent or to change its moral teaching.” He also contends that “the notion of non-discrimination (originally envisaged in terms of race)” is “undertaking a radical transformation of society by means of law.”<sup>17</sup> The properly secular state is becoming a secularist state and attempting to remake society (and the Church) in its image.

### CATHOLICISM AND LIBERALISM

The future of religious freedom in general and of the Catholic Church in America in particular depends largely upon the Church's willingness to articulate, defend, and live out its own distinctive understanding of the nature and purpose of political and social life. In doing so, it must carefully distinguish between what Murray described as the “liberal tradition of politics” and deontological liberalism. The former is properly committed to “constitutionalism, the rule of law, the notion of sovereignty as purely political and therefore limited by law, the concept of government as an

empire of laws and not of men,” and the Church must reaffirm its commitment, as articulated in conciliar documents such as *Dignitatis Humanae*, to “the political substance of democracy”—Murray’s term—upon which that tradition can most securely rest. At the same time, it must forthrightly argue that progressive deontological liberalism embraces a form of voluntarism and statism that threatens the dignity of the human person and the natural institutions of social life. As Murray argued in *We Hold these Truths*:

[W]e see that the modern concept of freedom itself was dangerously inadequate because it neglected the corporate dimension of human freedom. We see too that modernity was wrong in isolating the problem of freedom from its polar terms—responsibility, justice, order, law. . . . We know that the myopic individualism of modernity led it into other errors, even into a false conception of the problem of the state in terms of the unreal dichotomy, individualism vs. collectivism.<sup>18</sup>

The firmness of the Church’s commitment to “liberalism” is entirely contingent upon liberalism’s remaining committed to political constitutionalism, a commitment rendered problematic by the liberal intellectual tradition’s underlying philosophical nominalism and voluntarist social ontology.

Even as perceptive a commentator as Emile Perreau-Saussine attempts to distinguish this undesirable social ontology from the (liberal) political constitutionalism, he favors by defining liberalism in political terms alone. Thus, limited constitutional government and religious freedom become essential characteristics of the liberal tradition, while the voluntarist social ontology that underlies it becomes a disposable distortion of that tradition. “The laicist tradition,” for example, “is not really liberal” because it places too much confidence in the state as “a force for emancipation . . . from the tyranny of outmoded intermediate institutions, in particular from religious bodies.”<sup>19</sup> However, some critics of the liberal intellectual tradition, such as John Hallowell and Francis Canavan, have argued that the liberal intellectual tradition is by no means intrinsically supportive of limited constitutional government and intermediate institutions. This is so because of its *essential* philosophical and methodological individualism. On this view, laicism is not merely an unintended distortion of the liberal tradition but a working out of its philosophical premises. In other words, the liberal intellectual tradition arguably contains within itself the seeds for the destruction of the political values it originally held.<sup>20</sup>

Those seeds are bearing bitter fruit today as progressive liberals carry out their long march through the institutions of social life, whether it be through health care mandates and executive orders that require religiously

affiliated hospitals to accede fully or in part to their capaciously stultifying understanding of what constitutes an individual's health and well-being or through judicial decisions that redefine how we understand the nature of marital relations. It is indeed a sign of the times in which we live that the Church's fallback position is to ask simply to be "let alone," to be allowed to live according to its own social ontology and not be "imposed upon" by the federal government or the states. But as then-State Senator Barack Obama recognized (and, as President Barack Obama decreed through his Secretary of Health and Human Services), the negative freedom to be "let alone" must itself give way to both the federal and states' governments' responsibility to do things *for* individuals.

In the face of this "moral imperative," the long-term future of the Catholic Church and of religious freedom in any meaningful sense of the term is not bright. We can only hope that the Church's continuing pleas on behalf of the dignity of the human person and the natural forms of social life do not meet with the unmoved silence or seeming incomprehension on the part of the larger society that characterized the response of my aforementioned undergraduate class.

### Notes

1. John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960), 326.

2. John Courtney Murray, "The Problem of State Religion," *Theological Studies* 12(2) (June 1951): 162, 166.

3. See David A. J. Richards, *Toleration and the Constitution* (New York: Oxford University Press, 1986).

4. John Courtney Murray, "The Church and Totalitarian Democracy," *Theological Studies* 13(4) (December 1952): 531.

5. Murray, *We Hold These Truths*, ix-x.

6. Ronald Dworkin, "Liberalism," in *Liberalism and Its Critics*, ed. Michael Sandel (New York: New York University Press, 1984), 64.

7. Michael Sandel, "Introduction" in *Liberalism and Its Critics*, 4.

8. Francis Canavan, "The Pluralist Game," *Law and Contemporary Problems* 44 (Spring 1981): 34.

9. Robert Nozick, *Anarchy, State, and Utopia*, reprint edition (New York: Basic Books, 2013).

10. Francis Canavan, *The Pluralist Game: Pluralism, Liberalism, and the Moral Conscience* (Lanham, Md.: Rowman & Littlefield, 1995), 139.

11. See Isaiah Berlin, *Four Essays on Liberty* (New York: Oxford University Press, 1969).

12. Obama cited in Paul Roderick Gregory, "Why the Fuss? Obama Has Long Been on the Record in Favor of Redistribution," *Forbes*, 23 September

2012. Gregory's essay is characteristic of what I describe below as the primary critical focus on Obama's views on political economy (i.e., that he is an economic redistributionist).

13. Ibid.

14. Gerard V. Bradley, "Déjà Vu, All Over Again: The Supreme Court Revisits Religious Liberty," *Crisis* 13(4) (April 1995): 41. For another treatment of the same theme, see my own "Two Concepts of Religious Liberty: *Dignitatis Humanae* v. the U.S. Supreme Court," in *Catholicism and Religious Freedom: Contemporary Reflections on Vatican II's Declaration on Religious Liberty*, ed. Kenneth L. Grasso and Robert P. Hunt (Lanham, Md.: Rowman & Littlefield, 2006), 19–41.

15. Emile Perreau-Saussine, *Catholicism and Democracy: An Essay in the History of Political Thought*, trans. Richard Rex, with a foreword by Alasdair MacIntyre (Princeton, NJ: Princeton University Press, 2012).

16. Ibid., 128.

17. Ibid., 136.

18. Murray, *We Hold These Truths*, 200.

19. Perreau-Saussine, *Catholicism and Democracy*, 88.

20. See my own review of Perreau-Saussine's *Catholicism and Democracy* in *Perspectives on Politics* 12(2) (June 2014): 57–58, where I originally made this argument.