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Religious Freedom and Public Argument: John Courtney Murray on “The American Proposition”

Robin W. Lovin*

In his classic essays in We Hold These Truths, John Courtney Murray developed an understanding of “the American proposition” that integrated a theological account of human good with the search for public consensus in a constitutional democracy. While this understanding of the relationship between religious freedom and political life was incorporated into Catholic social teaching at the Second Vatican Council, subsequent developments in both political theory and theology call Murray’s understanding of public discourse into question. This essay examines these challenges and argues that Murray’s reconciliation of moral truth and political choice is still an important resource for discussion of religious freedom and other moral issues in today’s polarized politics.

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INTRODUCTION

From the late 1940s through the Second Vatican Council, John Courtney Murray devoted himself to two related tasks. One was theological and ecclesiastical: making a case for religious freedom as a Catholic doctrine, essential to the Catholic understanding of human dignity.¹ The other was political and social: explaining the Catholic doctrine in relation to an American constitutional system that enacted

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1. See, e.g., JOHN COURTNEY MURRAY, *Religious Freedom*, in FREEDOM AND MAN 134–35 (John Courtney Murray ed., 1965) (arguing that the right to religious freedom belongs to the individual).

freedom of religion primarily through the institutional separation of church and state.² Taken together, these two tasks suggested a dialogue between church and state that would establish the practical meaning of religious freedom under the concrete conditions of a pluralistic democracy. These are large tasks. Both remain unfinished, and both are still important.

This essay focuses primarily on the second task, the political and social one, which Murray addressed in his best-known work on public theology, *We Hold These Truths*.³ Murray was always clear about the importance of first principles, whether in doctrine or in law. But he understood that principles alone do not settle all questions in relation to matters of policy.⁴ One must understand first principles to allow clarity regarding the goals and purposes one takes up when considering the complex and essentially disputed questions of how to achieve those goals in relation to a particular social and historical context. Thus, Murray might regard it as appropriate to define the parameters of religious freedom by beginning, not with the specific questions of policy that become the focus of litigation and public attention, but with a reconsideration of the “American proposition” that he reflected on in *We Hold These Truths*.⁵ The question we must today pose against Murray’s work is basic: Is there an “American proposition” for us to reflect on? Or, to use another of Murray’s formulations, is there a “public consensus” about the terms of our life as a nation and as a society?⁶

Given all that has changed in the world since Murray wrote *We Hold These Truths*, it is hardly surprising that the way we think about the “American proposition” has changed, too. That means that theologians have to re-examine the relationship between Christian truth and the “public consensus” as it exists today. Indeed, they must ask *whether* a public consensus exists today. Does Christianity relate to the American proposition as a dialogue partner? Or as a prophetic critic? Or simply as another tradition nostalgic for a vanished past?

I. MURRAY’S LEGACY

This phrasing of the questions has a skeptical edge that might have

2. For an intellectual biography that traces the development of both aspects of Murray’s work, see BARRY HUDOCK, *STRUGGLE, CONDEMNATION, VINDICATION: JOHN COURTNEY MURRAY’S JOURNEY TOWARD VATICAN II* (2015).

3. JOHN COURTNEY MURRAY, *WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION* (2005).

4. *Id.* at 143.

5. *Id.* at 5.

6. *Id.* at 87.

annoyed Murray, who, in 1960, was still trying to convince Protestants that Catholics could be good Americans and to convince his Catholic critics that American constitutional arrangements were consistent with Catholic truth.⁷ When Murray and his editor began to assemble the essays that went into *We Hold These Truths*, the Second Vatican Council had only just been called.⁸ The mass movement that would change civil rights law, race relations, and a whole range of religious and social institutions in the United States was just beginning. Relationships between religion, state, and culture, as the Roman Catholic Church had observed them from Leo XIII through Pius XII were about to change dramatically.

Murray anticipated many of these changes. He devoted the last years of his life to the racial justice work of the John LaFarge Institute, and his work on the relationship between human dignity and religious freedom during the Second Vatican Council has had global implications for the life of the church.⁹ But, to determine how Murray might have responded to the issues of religious freedom today, we must extrapolate from ideas that he formulated before the events that frame our questions.

It is likewise important to remember that Murray's Catholic reflections on American public life were written well before some of the sociological, philosophical, and theological works that set the terms for our contemporary discussion of the problems that occupied his attention. In 1960, neither Robert Bellah's essay, *Civil Religion in America*, nor John Rawls's *A Theory of Justice* had been published.¹⁰ Murray's reflections established a relationship between Catholic thought and the American proposition by locating the origins of constitutionalism squarely within the tradition of natural law.¹¹ This was not without intellectual precedent,¹² but in 1960, this Catholic reinterpretation faced no significant competition from sociological accounts that interpreted distinctive American ideas and events as symbols of social cohesion. Nor did it face competition from liberal political theories that narrowed the terms of political life to the rational requirements of liberty and equality, with no need for arguments built on elaborate accounts of human nature

7. See generally MURRAY, *supra* note 3; see also HUDOCK, *supra* note 2, at 105–06 (explaining the role that Murray played in John F. Kennedy's presidential campaign).

8. HUDOCK, *supra* note 2, at 102.

9. *Id.* at 47; see also *id.* at 105–06.

10. See generally Robert N. Bellah, *Civil Religion in America*, 96 DAEDALUS 1, 1–21 (1967); JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

11. See MURRAY, *supra* note 3, at 51–52 (explaining that “[t]he philosophy of the Bill of Rights was . . . tributary to the tradition of natural law, to the idea that man has certain original responsibilities precisely as man, antecedent to his status as citizen”).

12. For an earlier example of natural law interpretation, see EDWARD S. CORWIN, *THE “HIGHER LAW” BACKGROUND OF AMERICAN CONSTITUTIONAL LAW* (1955).

or human goods.¹³

The competing positions that Murray had in view came from legal positivism and from various economic accounts of the origins of political power.¹⁴ These were, and are, genuine alternatives to a politics based on shared core values. But they had limited appeal in the American context of the 1950s, and Murray had little difficulty outlining an account of political authority based on consent and limited by law.¹⁵ Under this statement of the “American proposition,” he could then place a foundation of ideas that were articulated by the founders of the republic and have a history that reaches far back into the traditions of natural law. “‘Free government’—perhaps this typically American shorthand phrase sums up the consensus. ‘A free people under a limited government’ puts the matter more exactly. It is a phrase that would have satisfied the first Whig, St. Thomas Aquinas.”¹⁶

With this progress toward an American consensus that would be susceptible to a Catholic interpretation, Murray could not easily have anticipated the rise of a political philosophy that would see a fully developed natural law account as a threat to the consensus, rather than as a foundation for it. From its publication in 1971, John Rawls’s *A Theory of Justice* set the terms for a theoretical understanding of political liberalism.¹⁷ Rawls’s aim was to secure agreement on the requirements of justice by minimizing the need for agreement on human goods and human nature. Once the basics of a theory of justice are worked out, Rawls explained, we can use them for development of “the full theory of the good.”¹⁸ But we cannot build a theory of justice on a full theory of the good.

If Murray could not have anticipated these developments in liberal political theory, he would surely have been even more surprised by the reaction of some religious thinkers who moved from activist engagement with the problems of American society to a critical distance on its founding principles. Their reflections on the American proposition saw liberalism as designed to exclude their views of human nature, political history, and social relationships from the public square.¹⁹ Instead of

13. MURRAY, *supra* note 3, at 46–48.

14. *See id.* at 47, where he briefly dismisses legal positivism and Marxism. In constructing his American consensus, Murray aligns himself with leading public intellectuals of his day, including Adolf Berle and Walter Lippman, to formulate an account of authority that rests on consent rather than on power. *Id.* at 106–09 (discussing the public consensus and economic experience).

15. *Id.* at 47.

16. *Id.*

17. RAWLS, *supra* note 10, at 396.

18. *Id.*

19. *See generally* RICHARD JOHN NEUHAUS, *THE NAKED PUBLIC SQUARE: RELIGION AND*

casting Saint Thomas Aquinas as the first Whig, as Murray did, some Aristotelian and Thomist philosophers discovered that the beginnings of liberalism marked the end of coherent public ethics.²⁰ Under the influence of a freedom that lacks goods and goals, modern political ethics has disintegrated into fragments that retain the terms of moral traditions without their substance.²¹ By the time two decades had passed after *We Hold These Truths* was published, the reconciliation of political liberalism and natural law seemed far less promising than when Murray labored over his essays during the 1950s. The differences seem even more pronounced today. Recent analyses of our public life and public discourse are sharply divided between those who see an Enlightenment skepticism about ultimate questions as the only basis on which to construct a free and equal society and those who see political liberalism as the ultimate failure of the Enlightenment project.²² The forces Murray hoped to marshal into his American consensus now take his moderate and mediating insights in radically different directions.

So where should we locate Murray's work among these contending forces? Would he still speak confidently to an American public about the natural law foundations of their constitutional freedoms? Or would he now be among those for whom religious freedom means the freedom to create an alternative community, insulated from secular demands that contradict their religious vision? What do we still owe to Murray, and what does his legacy imply for our polarized views of politics today?

II. THE PUBLIC ARGUMENT

Notably, we owe Murray for his approach to the basic question whether there is a "public consensus" or an "American proposition."²³ It is easy to say that Murray came from a simpler age when everyone assumed that public life has moral and religious foundations. (That is especially easy to say if you are a theologian trying to explain why nobody pays attention to theologians anymore.) If we just know that there is something like an American proposition, we can move at once to explaining its contents and identifying its sources. But Murray never simply assumes the existence of the social and intellectual frameworks he wants to review from a Catholic perspective. He constructs them; and not as straw men he can knock down, but with profound respect even for

DEMOCRACY IN AMERICA (1984).

20. ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY 2–3 (2007).

21. *Id.*

22. *See infra* Section V (discussing this contemporary polarization of political thought).

23. *See generally* MURRAY, *supra* note 3, at 43–57.

those ideas and thinkers he intends to call into question.²⁴ He understands that the questions he is raising are part of a “public argument,”²⁵ and the price of admission to that argument is showing that you understand the case that your interlocutor is making.

Murray clearly had that price of admission in hand as he wrote *We Hold These Truths*. If he were here today seeking admission to the public argument, the question is whether there would be anyone to take his ticket. Public discourse now seems chiefly about mobilizing people who already agree with you and directing their thinking toward a more consistent and comprehensive ideological position. It helps in that task if you can convince yourself and your hearers that there are no good arguments on the other side, that those who oppose you are motivated by self-interest or misled by false consciousness. Rallying the base begins by reducing your opponent’s position to a tweet.

Murray might not have anticipated the specific directions of contemporary political philosophy, but he would recognize the problems with our public discourse. “Argument ceases to be civil when it is dominated by passion and prejudice,” he wrote,

when its vocabulary becomes solipsist, premised on the theory that my insight is mine alone and cannot be shared; when dialogue gives way to a series of monologues; when the parties to the conversation cease to listen to one another, or hear only what they want to hear, or see the other’s argument only through the screen of their own categories²⁶

The “public consensus” Murray had in mind was not that kind of ideological unanimity. The point of public argument is to shape policy and legislation. Murray was clear about that. But in a civil society, this is not to be achieved by repeating your demands until everyone else has been silenced. The public consensus is an agreement on what the important questions are and, indeed, on a range of possible answers to those questions that are relevant to our place and time. So public argument is about refining the case for one or another of those reasonable alternatives in relation to new knowledge and changing circumstances. Through argument, some ways of looking at things become more persuasive and better differentiated from the alternatives, and thus they establish an intellectual direction that shapes public choices.²⁷

To understand this development from principle to policy in a way that is relevant to contemporary questions about religious freedom, it is worth looking again at the way Murray engages the public argument in chapter

24. *See id.* at 227–47 (explaining potential counterarguments to public consensus).

25. *Id.* at 26.

26. *Id.* at 31.

27. *Id.* at 79–80.

six of *We Hold These Truths*.²⁸ The chapter is an essay on what justice requires in relation to what was then called “the school question,” a shorthand for a whole set of constitutional, political, and social problems that had to be addressed in search of public support for Catholic parochial schools.²⁹ The question had been around for some time, and it had usually been settled on constitutional terms that precluded government support.³⁰ The “school question” today would be different from the one that Murray addressed, partly because of a range of public policy solutions that have been devised to support curriculum and essential services in private schools, partly because Catholic schools are no longer “parochial” in several senses of that term, and partly because the “school question” today seems to be whether there is going to be public support for *public* schools. But important questions about religious freedom remain at the boundary where public policy touches religious belief, as cases from various jurisdictions about curriculum, terms of employment, and admissions guidelines attest.³¹ The “school question” in its mid-twentieth century form is less relevant today, but Murray’s way of structuring the question may still serve as a guide for dealing with some contentious issues about the boundary between public policy and private choice. For him, the “school question” was not just about Catholic education. It was tied up with public questions about what religious freedom means in contemporary life.

So, what does the question of religious freedom involve, if we look at it the way Murray looked at the school question? First, the question involves complex relationships between freedom, justice, and good. The constitutional commitment to a distinction between public authority and private belief sets the framework for a dialogue between church and state. It is a question of justice to competing claims, not a conflict in which faith must overrule law or law must determine the expression of belief. But it is also a question on which the requirements of justice change over time, as society develops and competing goods shift in relation to one another and in their importance to the common good.

28. See generally *id.* at 139–48.

29. *Id.*

30. See RICHARD WHITE, *THE REPUBLIC FOR WHICH IT STANDS: THE UNITED STATES DURING RECONSTRUCTION AND THE GILDED AGE, 1865–1896*, at 316–21 (2017) (explaining how the issue of religion in schools came about and tracing the history of the movement to allow some sort of religion in certain schools).

31. See, e.g., *Edwards v. Aguillard*, 482 U.S. 578, 579 (1987) (discussing the constitutionality of teaching creationism); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 199–201 (2012) (applying the equal opportunity law to the selection of religious leaders); *R v. Governing Body of JFS* [2009] UKSC 15 (discussing whether use of Jewish religious law to determine eligibility for admission to a Jewish school is discriminatory).

Education has become a public good in which the Catholic Church has a large stake and a large contribution to make, and the policy questions cannot be decided by views that were framed in the nineteenth century, when the public school was the single source of education for the public and society was less pluralist than it is today.³² Constitutional principles provide the framework within which a policy must be crafted by reference to particular circumstances, with a prudent acknowledgement of the limits to our knowledge. The task, in Murray's own words, "is to assemble all the relevant principles, bring them into harmony, and give them whatever rightful development they may need in the light of today's realities."³³ This is an ongoing process, not a single event. There is a place in the process for those who are committed to particular policy choices, but the public argument must also pay attention to how we see the problem. So, Murray does not hesitate to say, "I do not believe that anyone really sees the solution to this problem; it is much too complicated. But I do believe that a decisive number of people see the problem itself."³⁴ The civil argument, then, is a modest search for interim answers within a framework where we all agree that there is a problem. When public argument breaks down, by contrast, participants insist that the only people who understand the problem are those who agree with the participants' solution.

In this kind of public argument, facts matter. We cannot simply read the correct choices off of the facts, but we cannot have the argument without some agreement on what is happening and on what the likely results of any proposed course of action are going to be. If Murray does not bring this point into focus as clearly as we might like, that is perhaps because he does not think it is in question, at least within the framework of a democracy where there is freedom of inquiry and freedom of the press. That may be another point on which his time is different from ours. The explosion of social science research, the expansion of policy-driven research centers and "think tanks," and the multiplication of internet outlets basically gives us our choice of facts, and the difficulty of checking facts encourages us to make them up if the ones we want are not readily available.

III. THE CASE FOR CONSENSUS

The "public consensus" may be more elusive today than it was when Murray wrote, but that is not just because there are more things on which

32. See MURRAY, *supra* note 3, at 147 ("The result [of cooperation between church and state in public education] will be a more harmonious statement of the full American tradition of the right relations between government and religion.")

33. *Id.* at 145.

34. *Id.* at 143-44.

the public disagrees. Nor is the problem that it is harder to get anyone's attention in an overloaded media environment and harder still to hold that attention long enough to say something that they may not want to hear. It is not even that society is more pluralistic, fragmented, and secular than it was in Murray's day. There was plenty of disagreement then, too, and Murray himself expressed the opinion in 1950 that America was far more secular in 1950 than it had been ten years before.³⁵

What may be new is the reluctance of some theologians to participate in the creation of the public consensus.³⁶ Religious freedom today often seems less to mean the freedom to be heard in the public square than the freedom to turn one's back on it and live the faith on one's own terms. Murray's understanding of religious freedom was different, at least when religious freedom can be lived out in a free society.³⁷ A free society not only provides religious liberty, it entails a religious vocation for the individual Christian, for the Christian community, and more particularly for the public theologian.

Murray was ready and able to launch an argument about school funding, censorship, or just war doctrine as if everyone understood the principles by which a modern democracy ought to approach such questions. But in more reflective moments, he talked about two cases for the public consensus.³⁸ One case treats it as a fact, a framework for argument that is just there to be taken up by whoever wants to enter the discussion.³⁹ Although he does not hesitate to engage in argument with those who will grant him that framework, he admits that framework itself may need repair, and its assumptions are subject to question.⁴⁰ The case for the public consensus as fact fails.⁴¹

The other case for the public consensus treats it as a need so that the person who wants to enter an argument about law, or policy, or national security must, subtly, create the framework in which the argument can go on in order to state the case.⁴² The Catholic tradition has an important

35. Joseph A. Komonchak, "The Crisis in Church-State Relationships in the U.S.A." *A Recently Discovered Text by John Courtney Murray*, 61 REV. POL. 675, 687–88 (1999).

36. See, e.g., STANLEY HAUERWAS, *AGAINST THE NATIONS: WAR AND SURVIVAL IN A LIBERAL SOCIETY* (1985).

37. See MURRAY, *supra* note 1, at 134–35.

38. See MURRAY, *supra* note 3, at 87–93 (noting that the American public philosophy was a failing one and needed a new moral purpose).

39. *Id.*

40. See *id.* at 89–90 ("The case is only outlined here; these bones would need to be clothed with flesh. And the full case would have to be made both by philosophical and by historical argument.").

41. See *id.* at 87–93 (noting that "the argument runs down and out. It ends in negation. On the question as put, is there an American public philosophy? [T]he Noes will have it. I have about come to the conclusion that they do have it.").

42. See *id.* at 93–95 (explaining public consensus as a need through a discussion of foreign

contribution to make to this framework in Murray's account, precisely because it offers a comprehensive view of the human condition that illuminates and sets in context the more particular questions that become the foci of public argument.⁴³ After the Second Vatican Council, Murray might have added that Catholics are good at this precisely because they have long experience with a body of doctrine that develops in relation to changing conditions without losing its unity and identity.

It is hard not to see a connection between what Murray calls "the growing end" of the public consensus in *We Hold These Truths* and his ideas about development of doctrine that made possible the Declaration on Religious Freedom.⁴⁴ A public consensus and the body of Catholic truth are not the same thing. They are not even the same kind of thing. But those who have a care for the public can identify with and learn from the skills that theologians use to ensure that fidelity to literal meanings does not contradict the proclamation of the faith or create stumbling blocks to its hearing. A democracy that has a history and a constitution has some of the same problems as a church that has a tradition and a body of doctrine. In both sorts of arguments, the important thing is "that a decisive number of people see the problem itself."⁴⁵

"Seeing the problem" involves, as always, locating particular questions about health care policy, education, the protection of life, and the accommodation of religious practices within a framework for understanding the purposes of government and the requirements of faith. To keep these discussions going, in Part Two of *We Hold These Truths*, Murray addresses "the school question," censorship, humanism, and religious freedom.⁴⁶ He often frames his position with a question, like "Is it justice?" or "Should there be a law?"⁴⁷ Indeed, the title of Part Two as a whole is "Four Unfinished Arguments."⁴⁸ His point seems to be that

economic policy and Communism).

43. *See id.* ("It may possibly be true to say that an individual man can survive the tests of human life without religion; I mean, of course, the tests of terrestrial life, not the definitive tests put by ultimate truth, which are met in the internal forum of the mind and the moral conscience. In any case, it is not true to say that a nation can survive the tests of terrestrial life without a public philosophy, least of all in this our day when the very bases even of terrestrial life are being called into question.").

44. *See id.* at 103–09 (explaining that public consensus in America was "essentially a body of doctrine which has attained wide, if not general acceptance," but that this wide acceptance originated within many individuals). *See also* HUDOCK, *supra* note 2, at 130 ("When it became clear to the American bishops—probably through communication with Murray, who was leading the task of evaluating all of the submitted interventions—that the religious freedom text was receiving heavy criticism, they mobilized.").

45. MURRAY, *supra* note 3, at 143–44.

46. *Id.* at 139–99.

47. *Id.* at 139, 149.

48. *Id.* at 139–99.

arguments of this scope are supposed to be unfinished.

Murray's early death in 1967 at age sixty-two lends poignancy to his unfinished arguments, and scholars have been trying ever since to bring them to a conclusion. Conferences on the "unfinished agenda" of John Courtney Murray have been popular since the 1970s,⁴⁹ and variations on the policy questions he addressed continue to occupy public attention. But, there is a difference between an interminable argument and an unfinished one. In an interminable argument, the parties are no longer listening to one another. Arguments remain unfinished when there are still unanswered questions that the parties share. Following Murray, then, I will state my case for the public consensus in two questions: "Is it good?" and "Is it politics?" Continuing the argument about religious freedom on Murray's terms requires us to answer both questions, and to recognize the difference between them.

IV. IS IT GOOD?

First, "Is it good?" For Murray, this was a background question, perhaps the most basic background question, in all public discussions about liberty and policy. In his work, the question about the good provided a connection between the Catholic conception of the common good and the public goods of justice, domestic tranquility, common defense, general welfare, and durable liberty articulated in the preamble to the Constitution. However deep the disagreements might go, the argument was about what is good, and it could not be reduced to a question of who has the power or settled by a trade-off between competing interests. Since Murray wrote, however, the background question has itself become the subject of argument. We have already seen how Rawls's theory of justice at least postpones questions about the good until after the principles of justice have been settled.⁵⁰ This "lexical" priority of questions about justice over questions about the good may seem a modest proposal, but as David Hollenbach has pointed out, it calls into question the central place that the idea of the common good has in Catholic social thought: "John Rawls speaks for many observers in the West today when he says that the pluralism of the contemporary landscape makes it impossible to envision a social good on which all can agree."⁵¹ The development of a complete account of the good may be theoretically permissible once the requirements of justice are in place. But the persistent questions about justice in modern society make it

49. See, e.g., David Hollenbach et al., *Theology and Philosophy in Public: A Symposium on John Courtney Murray's Unfinished Agenda*, 40 THEOLOGICAL STUD. 700, 701 (1979) (explaining how Murray's death led scholars to question the adequacy of his methods in the current context).

50. See generally RAWLS, *supra* note 10.

51. DAVID HOLLENBACH, THE COMMON GOOD AND CHRISTIAN ETHICS 9 (2002).

unlikely that a public argument carried out on Rawls's terms will get much beyond the "thin" theory of the good that is necessary to launch the inquiry about justice in the first place. Indeed, Rawls's later work, in which he is more attentive to the actual conditions of political discourse, makes it clear that the development of a full theory of the good could not be carried out on any large scale in a society that is both pluralistic and free.⁵² Isaiah Berlin regards a full theory as impossible, since the goods that people seek are, even after careful reflection, incommensurable.⁵³ They cannot be brought together in a single, unified account of the good.⁵⁴

With this, of course, the ultimate goal of moral inquiry in both Aristotelian and Thomistic ethics is abandoned, at least for public purposes, and a reconciliation of the requirements of moral theology and public discourse becomes impossible. But one need not go that far to call Murray's aspirations for public argument into question. Disagreements about the good will persist, and the practical problem for a modern society is not to resolve them, but to construct rules for public, political discourse that keep such disagreements out of elections, legislation, and judicial decisions, and avoid deploying the coercive power of the state for reasons that cannot be generally understood and evaluated.⁵⁵

John Courtney Murray's acknowledgement in *We Hold These Truths* that the public consensus was a need rather than a fact suggests in its own way the importance of the renewal of political philosophy that has occurred in the half century after he wrote. However, the effect of many of these developments has been to question whether there can be a public discussion of the human good, especially one in which religious ideas play a large role in shaping our understanding of what that good is.⁵⁶ Murray's natural law tradition and, more broadly, the idea of a "common good," assumes that such discussions are both possible and necessary. His own case for the public consensus largely involves drawing on a wide range of historical figures who, on his account, share those assumptions.⁵⁷ But the new case for the public consensus after Murray wrote often argues that it can best be constructed by bypassing the questions of human good. Steven Pinker's currently popular defense of Enlightenment rationalism adds the point that when religious convictions

52. JOHN RAWLS, *POLITICAL LIBERALISM* 201 (1993).

53. ISAIAH BERLIN, *LIBERTY* 212–17 (Henry Hardy ed., 2002).

54. *Id.*

55. RAWLS, *supra* note 52, at 223–27; ROBERT AUDI & NICHOLAS WOLTERSTORFF, *RELIGION IN THE PUBLIC SQUARE: THE PLACE OF RELIGIOUS CONVICTIONS IN POLITICAL DEBATE* 16–17 (1997).

56. MURRAY, *supra* note 3, at 93–95.

57. *Id.* at 44–48.

are mixed with public choices, they are positively dangerous to the justice, tranquility, and liberty that a democratic argument is supposed to establish.⁵⁸

Behind many of these theories, there is a pragmatic wisdom that resists constructing a more elaborate metaphysical foundation for the public consensus than is strictly necessary for the occasion. And more recent commentators remind us how deeply the work of Rawls and Berlin are rooted in their own experiences of war, intolerance, and political repression.⁵⁹ The tragedies of the twentieth century heightened awareness among today's liberal theorists are that they are the heirs of Locke, Hume, and Rousseau, whose demands for tolerance and freedom were a response to a century of European religious conflict.⁶⁰

Murray certainly understood the importance of freedom of conscience and religious liberty. But he might ask today whether we can advance the public argument without risking some quite specific claims about the human good in relation to the matters that are under discussion, whether this involves human sexuality, or economic security, or health care, or educational opportunity. And he might well have argued that one thing the Catholic tradition brings to the public discussion is the Augustinian idea that all goods are ordered in relation to one another by the relation that all of them have to God, and the idea that over a lifetime of experience, people can develop a reasonable apprehension of what that order is.⁶¹

In a time when intolerance and intimidation are powerful forces in politics everywhere, the public theologian needs to speak up for freedom of thought and freedom of speech, and for individual rights and political equality. But, where those conditions are met and the political argument is well underway, there is surely also a place for the question, "Is it good?" What vision of human flourishing does a particular course of action imply? And what claims does this good make against the other goods and resources that would be required to realize it? A thin theory of the good will either leave those questions unanswered or insist that the claims of the good extend only to the minimal requirements of survival

58. STEVEN PINKER, *ENLIGHTENMENT NOW: THE CASE FOR REASON, SCIENCE, HUMANISM, AND PROGRESS* 30–31 (2018).

59. See JOHN RAWLS, *A BRIEF INQUIRY INTO THE MEANING OF SIN AND FAITH: WITH "ON MY RELIGION"* 261–63 (Thomas Nagel ed., 2009) (discussing Rawls's various phases of religiosity); see generally MICHAEL IGNATIEFF, *ISAIAH BERLIN: A LIFE* (1998).

60. See PINKER, *supra* note 58, at 200–01 (discussing the wars and conflict of Europe throughout the twentieth century and how some liberal theorists concluded that the end of these conflicts meant the world had generally decided that democracy was the best form of government).

61. Augustine of Hippo, *The Catholic Way of Life and the Manichean Way of Life*, in 19 *THE WORKS OF SAINT AUGUSTINE: THE MANICHEAN DEBATE* 16, 49 (Boniface Ramsey ed., 2006).

and human dignity. An Augustinian understanding of human good will insist that if public argument means anything, it has to be able to take on more complex questions than the thin theories will allow.⁶²

Public argument about these complex questions will always be unfinished, as Murray understood, but what we learn from the history of modern thought is that the attempt to reduce either doctrinal or political truth to a set of universal, rational principles does not provide the resolution that the theorists promise. Contextualized skills of interpretation and understanding—hermeneutics, rather than logic—are required. Paradoxically, these skills secure peace because they keep the argument going. It is the attempts to end the argument, whether by force or by logic, that lead to polarization, or to smoldering resentments that break out into civic wildfires.

Beyond reasserting a historical claim that the liberal critics are mistaken because questions about the good have always been part of the public consensus that grounds American constitutionalism in natural law thinking, Murray might today feel constrained to argue that raising these questions about the human good is itself an assertion of religious freedom. Even if the prevailing case for the public consensus insists on a thin theory of the good or shrugs off attempts to order incommensurable goods in relation to one another, the Christian theologian must articulate in public this idea of an ordered, coherent good, which is the natural destination of human life. In Murray's thought, however, this exercise of religious freedom is never asserted simply for its own sake or solely in the interest of the church. To ask, "Is it good?" is to assert the need for a public consensus of a certain kind, one that does not regard the public argument as finished when the relevant interests have been balanced and the parties announce that they are satisfied. To ask, "Is it good?" suggests that the public discussions are always oriented beyond the immediate problems to be solved. To ask, "Is it good?" inquires into what kind of persons this choice will make us and suggests a distinction between the kind of persons we ought to be, and the kind we are, or say we want to be. To ask, "Is it good?" claims the freedom to set public discussions in that framework, even when it might be more conclusive or less contentious if we restrict the ultimate questions to more private settings. So that is the first background question behind all the more specific

62. This point is not made only by those who have an explicit theology of the good. William Galston and Michael Sandel have suggested that revisions of liberalism are necessary to allow more political consideration of the human good, and Galston emphasizes that these have made their way into our public discourse at crucial points in history, whether our political theories allow for it or not. See WILLIAM A. GALSTON, *LIBERAL PLURALISM: THE IMPLICATIONS OF VALUE PLURALISM FOR POLITICAL THEORY AND PRACTICE* 41 (2002); see also MICHAEL J. SANDEL, *PUBLIC PHILOSOPHY: ESSAYS ON MORALITY IN POLITICS* 224–30 (2005).

questions about religious freedom and social policy: “Is it good?”

V. IS IT POLITICS?

Nevertheless, if a contemporary John Courtney Murray were to assert the importance of questions about the good as part of the public consensus, a chorus of liberal theorists from all sorts of contractarian, communitarian, and utilitarian perspectives might immediately reply, “This is exactly what we were afraid of.” They would insist that once you admit those claims into public discourse, you create a situation in which proximate questions about public policy get subordinated to ultimate questions about human destiny. The theologians and religious leaders who insist on raising such questions, they might add, are precisely the ones who will not be satisfied with leaving those questions open. First, they will insist on the freedom to raise the questions. Then, they will insist on imposing their own answers.

We have to concede that their point has some relevance in the present era of global religious extremism. In the United States, too, religious polarization means that those who enter the public argument with their religious identity on full display often demonstrate the risks of religious conflict more clearly than the rewards of consensus. The reasons to worry about what will happen if public discussions are opened to religious arguments are perhaps more obvious than they were when political philosophers first began to construct the case for a minimalist public consensus around various “thin” theories of the good. But, the most recent versions of liberal theory read this argument back into history in a way that has the odd effect of polarizing the argument about polarization. Neither liberal theorists nor Christian theologians seem to think that a public argument of the sort that Murray had in mind is possible, or ever has been possible. And each side blames the other for the problem.

On what we may, for the moment, call the “liberal” side, the claim is that modern politics only became possible when people stopped taking religion seriously and agreed to refer the traditions and beliefs that divided them to reason and common human experience.⁶³ The most recent liberal thinkers, developing the historical side of this argument, will acknowledge that it was a fine thing when people stopped persecuting one another for their beliefs and started talking about tolerance and religious freedom. But, they will add, it is a mistake to think that there is anything about religious belief in particular that deserves special consideration. Everything that it is important to protect can be encompassed within freedom of speech, freedom of choice, freedom of association, or other generally recognized rights, without making a

63. See generally PINKER, *supra* note 58.

special case for religious freedom, which has a troublesome genealogy that ties it too closely to unreasoned and unreasonable commitments for courts and legislatures to balance claims for religious freedom against other freedoms and public purposes.⁶⁴

But there is also a theological version of this reading of liberal theory back into political history. In this version, modernity, even before it gave rise to political liberalism, was hostile to Christian truth and the virtues it sustains.⁶⁵ What becomes more and more clear over the course of modern history is that Christian truth is not only contested, it is basically incomprehensible to those who do not share it.⁶⁶ A public argument of the sort that Murray conceived, in which there is a dialogue between Catholic faith and constitutional democracy about the requirements of justice, the scope of law, and the limits of freedom, turns out to be as illusory from this theological perspective as a serious treatment of religious freedom is for the recent theorists of liberalism. Understandably, there are major disagreements among those who hold this position about what we are supposed to do about it. Some seem to hope for a restoration of a unified Christian worldview, or at least want to talk about what the world would be like if such a restoration could be achieved. Others, ironically, appear to claim the protections of liberal religious liberty to ensure that they can live according to the requirements of their Christian faith in a society that does not share it. Still others, perhaps most consistently, suggest withdrawal into communities of Christian identity.⁶⁷

In various ways, then, the recent polarization in thinking about religious freedom and the public role of religion challenges Murray's effort to construct the case for a public consensus. It is not just that the public consensus is not a fact. According to these new versions of both the secular and the theological critiques, the public consensus is not a

64. See, e.g., BRIAN LEITER, *WHY TOLERATE RELIGION?* (2014).

65. See PATRICK J. DENEEN, *WHY LIBERALISM FAILED* 21–30 (2018) (describing the three main efforts that supported the revolution in thought and practice, which include a description of hostility to Christian truth and virtues).

66. STANLEY HAUERWAS, *WITH THE GRAIN OF THE UNIVERSE: THE CHURCH'S WITNESS AND NATURAL THEOLOGY* 15 (2001) ("From the perspective of those who think we must first 'prove' the existence of god before we can say anything else about god, the claim by Christians that God is Trinity cannot help but appear a 'confessional' assertion that is unintelligible for anyone who is not already a Christian.")

67. See ROD DREHER, *THE BENEDICT OPTION: A STRATEGY FOR CHRISTIANS IN A POST-CHRISTIAN NATION* 123 (2017) (discussing how authentic renewal must be achieved through families and local church communities, not through politics). Alasdair MacIntyre closes his indictment of modern moral thought in *After Virtue* with this memorable image: "We are waiting not for a Godot, but for another – doubtless very different – St. Benedict." MACINTYRE, *supra* note 20, at 263.

need. Indeed, a public consensus that would provide a framework in which faith could engage the important problems of contemporary society may not even be possible.

It is hard to know what John Courtney Murray would make of this. After all, he spent decades trying to convince his Catholic critics that the idea of religious freedom and human dignity that “has been impressing itself more and more deeply on the consciousness of contemporary man” was compatible with Catholic truth and historically grounded in Catholic thought.⁶⁸ Today, he might again have to argue with theologians who find these humanitarian ideals alien to the claims of Catholic truth, while he would encounter secular thinkers who would be happy to embrace his account of the religious origins of human dignity precisely because they think this provides an excellent reason to reject the idea and reconstruct public discourse instead around some other, more secular starting point.

Murray might respond to these broad challenges to his theological perspective by turning the debate to more specific, contemporary problems, as he did with his interlocutors in the 1950s.⁶⁹ It is a curious fact that both sides in our recently polarized debate about structure of public argument rely heavily on broad generalizations about modern history.⁷⁰ Their arguments are engaging, particularly for theologians, who can rather easily be drawn into an argument about whether Martin Luther or William of Ockham is most to blame for the collapse of liberal democracy. But readers who have worked their way through both Steven Pinker’s *Enlightenment Now* and Patrick Deneen’s *Why Liberalism Failed* could be excused for thinking that these two interesting books must be about the intellectual histories of two different planets.⁷¹

Murray was far better prepared than most theologians today to participate in this kind of historical speculation, but he was more concerned with understanding the questions his contemporaries were really asking. The first reformulations of political liberalism that took shape in the decades just after Murray’s death were not so much Enlightenment critiques of religion as they were cases for a pragmatic politics. Rawls, Berlin, and Audi did not set out with a specific purpose

68. The quotation is from the opening sentence of *Dignitatis Humanae*, the Declaration on Religious Liberty issued by the Second Vatican Council. Murray played an important role in drafting this document and offered his own interpretation of it in JOHN COURTNEY MURRAY, RELIGIOUS LIBERTY: CATHOLIC STRUGGLES WITH PLURALISM 205–17 (J. Leon Hooper ed., 1993). See also HUDOCK, *supra* note 2, at 150 (explaining various cardinals’ and bishops’ viewpoints on the schema on religious freedom).

69. See MURRAY, *supra* note 3, at 139 (beginning his discussion of “the school problem”).

70. See PINKER, *supra* note 58, at 227–28 (noting how all parts of the world have generally become more liberal since the 1960s).

71. Compare PINKER, *supra* note 58, with DENEEN, *supra* note 65.

to exclude religious thought from public discussions. But they were worried on some good evidence that people who enter these discussions with the conviction that they already have all the answers will also be quick to impose their answers on others who happen not to know for sure that they believe. John Rawls called these systems of belief “comprehensive” doctrines.⁷² He acknowledged that a lot of people hold them and that they are unlikely to disappear, but he thought that the task of a liberal democracy is to make sure that they do not become an issue in political life.⁷³ If that seemed to be an exaggerated concern in the early 1970s, subsequent decades of religious activism for both conservative and progressive causes suggest that Rawls was on to something.

So, Murray might have allowed the liberal theorists to pose their own question in the unfinished argument. If we allow the public theologian to ask, “Is it good?,” we must also allow the secular critic to ask, “Is it politics?” That is, are we here within the realm of contingent truths that might be otherwise, where shared experience is important, and all solutions are imperfect, impermanent, and subject to what Reinhold Niebuhr called “the irony of history?”⁷⁴ Or are we dealing with truths that cannot be questioned? Religious activists sometimes seem to avoid questions about the details of policy by grounding their claims in biblical images and language, so that it becomes more and more difficult to distinguish their political program from an altar call. But it is not religion alone that pushes our public discourse in that direction, perhaps not even religion chiefly. In place of a theology that is overtly political, we now have politics that is quasi-theological. Party programs have taken on a kind of ideological rigidity that makes them invulnerable to criticism or refinement. If there is no “growing end” to the public argument and no place where we are figuring out new solutions to changing problems, then the task of political leadership is to mobilize the “base,” reinforce the core convictions, and hope that intimidation or indifference will lead those who think differently just to stay home on election day. This polarization is the political counterpart to the particularized theology that regards Christian truth as incomprehensible to those who do not share it.

Murray, then, would continue to press the need for a public consensus that could admit a rich, “thick,” and detailed account of human goods into public arguments. But he would also understand the concerns that lead secular theorists to wonder whether the ideologues—religious and political—who demand enactment of their doctrines in their comprehensive entirety are really serious about politics. Murray saw

72. RAWLS, *supra* note 52, at 13.

73. *Id.* at 13–15.

74. REINHOLD NIEBUHR, *THE IRONY OF AMERICAN HISTORY* 2 (1952).

politics as a locus of Christian service, rather than as a locus of truth. He never read Rawls's *Theory of Justice*, let alone the later works in which Rawls tried to accommodate and restrain what he called "comprehensive doctrines," but he might ask whether the very idea of a "comprehensive doctrine" mistakes the nature of Christian political convictions.⁷⁵ Christian traditions, and perhaps religious traditions generally, are full of fine distinctions between the temporary and the eternal. They follow in various ways Saint Thomas Aquinas's principle that as our practical conclusions get more remote from first principles, they become less certain.⁷⁶ In Murray's account of the public argument, doctrine provides a framework in which pressing questions of policy can be discussed and limited, but appropriate versions of a just resolution can be agreed. Murray himself coupled his discussion of the "school question" with a candid admission that, although he could make a case for the goods at stake, he did not know, in detail, what justice requires.⁷⁷ He could hardly have regarded any political solution to the problem as part of a comprehensive doctrine. Rather than the thin theory of the good being a practical restraint on the excessive claims of comprehensive doctrines, the idea of a "comprehensive doctrine" may itself be dependent on a thin theory of the good.

CONCLUSION

The theological task that John Courtney Murray set for himself, beginning in the 1940s, was to understand Catholic doctrine in relation to the changing conditions of Christian life. For him, this was never a matter of seeing how far social reality could be brought into conformity with some pre-existing religious ideal. He was a participant in a public argument, involved in an ongoing process in which he learned new things about both the possibilities of politics and the truths of faith.

What he learned that was most important for the future of the Church was to see religious freedom as a requirement of human dignity, rather than a right derived from possession of the truth. But he also came to see how that freedom and dignity come to full expression through participation in that public argument. Freedom of religion is not just something that must be protected from politics. When human dignity is respected, faith is strengthened, and religious life is empowered by the contributions Christians make to the common good. Freedom of belief, and even freedom for religious practice, fall short of the freedom to bring

75. See generally RAWLS, *supra* note 10; RAWLS, *supra* note 52, at 13.

76. ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, Pt. I-II, q. 94, art. 4 (R.J. Henle trans., 1993).

77. MURRAY, *supra* note 3, at 139.

a rich, “thick,” and detailed account of human goods into the public argument, to see those ideas take root and be transformed, and thus over time to achieve what Augustine called “the way of life by which we may merit to know what we believe.”⁷⁸

There are many threats to religious freedom in today’s world, and it is important to be concerned about the uses of coercion, discrimination, and intimidation that make religious life impossible for millions of people who live as refugees, suffer exploitation, or struggle for dignity as members of a religious minority. But where a measure of religious freedom and political order has been secured, the question of religious freedom is also about whether political discourse can accommodate serious reflection about what makes for a good life, what makes a good person, and what a society needs to make good lives and good persons possible. For that discourse to be possible, in turn, those who have ideas about these goods must be prepared to join the argument, to act and not just to proclaim, to put their ideas to the test and not just demand the freedom to hold them. The two questions posed by Murray’s understanding of religious freedom—“Is it good?” and “Is it politics?”—remain relevant even under the quite different terms on which we live our religious and political lives today, and both questions must be answered.

78. Augustine, *supra* note 61, at 49.