An Ambrosian Right: Church and State after *Evangelium Vitae*

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Introduction

The question of the relationship which should obtain between Church and State has vexed Christians for two millenia and will probably go on doing so for another two. Nonetheless this problem has become the subject of renewed debate following the publication of the recent papal encyclical *Evangelium Vitae*. Towards the end of the encyclical the Pope urges that those in public office are obliged unequivocally to defend the rights of the unborn. A practical conundrum is, therefore, posed for those who exercise public office in *lay* States and who at the same time consider themselves to be members of the Christian faithful. Put very concretely, the question may be posed like so: Is there a conflict between my responsibilities to the Church and my duties to a democratically elected government which espouses laws that do not cohere with the Church's positions on human rights? At times the potential conflict of allegiances that may result poses the broader theological problem of the autonomy of the lay sphere. More specifically, in the case of *Evangelium Vitae*, it raises the problem of the relationship between the civil law and the moral law and the claims of the magisterium to interpret the latter as a criterion of legitimacy for the former. In the short space available to us we cannot hope to explore both of these questions comprehensively. The following thoughts are offered as reflections on the current problems which vex the theological and legal statement of the Church's relationship to the State and of the allegiances of the faithful owed to the civil legislature.

Ambrose and the Emperor

Four episodes from the life of Ambrose Bishop of Milan (374–397) demonstrate the problem posed by conflicts of competence between the Church and State, between the powers spiritual and temporal, as Gelasius would later have it.

In AD 388 the emperor Theodosius I (379–395) ordered that the bishop of Kallinikon (on the Euphrates) should finance a Jewish synagogue which had been set on fire by Christians. Ambrose thought

https://doi.org/10.1111/j.1741-2005.1996.tb01539.x Published online by Cambridge University Press

this exceeded the emperor's competence. If there was a conflict between Judaism and Christianity this was a conflict between truth and error. Here the Church had competence and only truth counted. In fact Ambrose forced the emperor to rescind the order and the episode gave rise to one of the more momentous axioms of the Bishop. He argued:

> Your motive, emperor, is a concern for public order. But which is more important, the ideal of public order or the cause of religion? The state's duty of supervision has to be subordinate to the claims of worshipping God.[1]

Here social peace and *tranquillitas ordinis* are left behind in the defence of a doctrinaire interpretation of the rights of the Church. The absolute primacy of the claims of religion on the person are set above the political or social concerns of the State.

Ambrose went further in delineating the sphere of dogma which was the competence of the Church. Under pressure from the Bishop, the emperor Gratian (367–383) rejected the pleas for tolerance from the pagan opposition to restore the altar to the goddess of Victory which had stood in the senate hall from 29 BC. The emperor was also persuaded by the zealous prelate to rescind a provisional edict of tolerance for all the different Christian tendencies then around.

On another occasion, Ambrose found himself in conflict with the State. In line with an official policy of tolerance, the emperor Valentinian II (375/383–392) required catholics to find room in their churches for the Arians in cities everywhere, including Milan. In what came to be called the dispute over the basilicas, Ambrose rejected the emperor's proposal, claiming that in matters of faith, bishops had to make the decisions and not emperors who were simply laymen and sometimes only catechumens.[2] When imperial troops besieged his basilica in 386 Ambrose delivered a passionate address to them making the point that "the emperor is *in* the Church, not *over* the Church"[3]

Finally another incident is worth reporting. An imperial official had been killed in the city of Thessalonika as a result of local quarrels. Theodosius inflicted a draconian punishment on the population by military force in the course of which there were many fatalities. The unbelievable happened, the bishops asked the emperor to acknowledge his guilt and do penance in public. That meant that the emperor was a layman in the church and was subject to ecclesiastical discipline just like any other Christian. Tradition has it that Theodosius submitted to the penance.[4]

In contrast to the Eastern Byzantine pattern of total linkage between church and emperor, the Western Church developed a high profile

pattern of relative detachment with relative equality. Not only was the sacred role of the emperor reduced (Theodosius I rejected the title *pontifex maximus* in 379 and Gratian in 382) but there developed spheres where the emperor had no competence. In Ambrose we see the beginnings of a terminology to reflect this changed state of affairs. He distinguished between the *imperium* of the emperor and the *sacerdotium* of the bishops in order to establish a strict division between their spheres of authority.

Sacerdotium and Imperium

While Ambrose may be regarded as the first of the Western Fathers to attempt some theoretical framework for the questions that dogged the relationship of Church and State, Augustine (354–430) too, is important for the field because his work is frequently cited by the medievals. In particular his distinction between the *civitas Dei* and the *civitas terrena* had obvious ramifications for later concerns to establish separate competencies. But for Augustine the two cities described did not correspond to Church and State for the two cities could not be distinguished before the end of time since the boundary between them ran through all institutions. Later medieval commentators, however, interpreted the doctrine along socio-political lines, particularly with regard to the question of lay investiture. Pope Leo (449–461) returned to the two spheres of Ambrose and enforced the distinction politically. Pope Gelasius (492–496) formulated the idea of two powers (*utraque potestas*), one of the priesthood (*sacerdotium*) and the other of the ruler (*imperium*), which came to be normative for subsequent history.[5] After Leo and Gelasius the detachment of the Western Church from the emperor (who now ruled from Byzantium) was reinforced by a vigorous Papacy, whereas the Eastern Church remained subordinate to the emperor as the supreme head of the Christian imperium. Pope Gregory the Great (590-604) sealed the process of detachment by distancing the See of Rome from the emperor in the East and establishing independent relations with the Franks and West Goths.[6]

The papal revolution of the Eleventh Century, arguably initiated by the reforms of Pope St Leo IX (1049–1054) but achieving its full vigour under St. Gregory VII (1073–1085), is also significant for the history of the relationship between Church and State, for as a result of a strenuous assertion of the rights of the Church, sometimes leading to bloody conflict, as in the case of Becket and Henry II, the traditional concept of the freedom of the Church achieved a new expression.[7] This was not simply a legal dispute over lay investiture but it engulfed the whole gamut of ecclesial life as the pope's lawyers sought corroboration in

tradition for the assertion of papal supremacy and prerogative. The papal revolution actually overturned the doctrine of *utraque potestas*, particularly when Gregory claimed that the pope could depose not only bishops but princes and even emperors.[8] The primacy of the power spiritual and its concentration in the papal *sacerdotium* had immediate implications for the duties of the believer to his secular ruler. Proposition 27 of Gregory's *Dictatus Papae* consisted of the assertion: *That the Pope may absolve subjects of unjust men from their [oath of] fealty.*[9] The revolution was essentially concerned with authority. By the end of Gregory's reform secular rulers were being demoted from their position as God's anointed while the pope assumed a new power of intervention in both spiritual and secular affairs. Gregory VII represented the triumph of *sacerdotium* over *imperium*. The overall effect was a certain de-mythologisation of the sacerdotal character of the *princeps* which would not recover until the assertion of absolute monarchy in the Sixteenth Century, most graphically expressed in Henry VIII's usurpation of the powers spiritual and his proclamation as *caput supremum Ecclesiae*.[10] Historically then it would appear that the interplay between *sacerdotium* and *imperium* has been characterised by oscillation with first one power and then the other gaining the upper hand in terms of the loyalties of their subjects.

In the Catholic world the intervention of popes in the temporal sphere continued to be justifiable on the legal grounds of *ratio peccati* and the prerogative was paradoxically re-asserted as the papacy suffered the loss of its temporal acquisitions. The unification of Italy which was won at the cost of the papal states increasingly brought pressure to bear on the papacy to reduce its traditional claims as a temporal force and to accept a role as a moral force in international affairs. The diplomatic activity that followed their loss confirmed rather than undermined this moral status. Nevertheless from a doctrinal point of view the dawn of the Twentieth Century saw the retention of a weighty legacy of papal claims as represented in Gregory XVI's *Mirari Vos* and Pius IX's *Syllabus Errorum*. This legacy acted as an ambiguous witness in the tradition which had to be negotiated when the question of Church and State came up for discussion at the Second Vatican Council.

Dignitatis Humanae

Constitutional for the question of the relationship between Church and State was the Council's Declaration on Religious Freedom, *Dignitatis Humanae*, which has been hailed as possibly the single most important dogmatic innovation of the Second Vatican Council.[11] Apart from its invocation by those seeking to vindicate rights within the Church, the

document is still to a large extent neglected, perhaps because it essentially deals with questions of a juridical nature. The final promulgated text is the product of a conflict between the two dominant approaches to the question during the debates, *separationism* (the progressive view) and *confessionalism* (the conservative view). The former approach, which argued that the Church was not intrinsically attached to one model of secular government, was pioneered by the American theologian, John Courtney Murray.[12] The latter approach, in which the Church was seen as favouring the establishment of Catholic claims in the constitution of secular governments, was favoured by those Fathers who came from countries where a strong Concordatarial tradition flourished. The final format of the document did not emerge without a struggle, having survived some extraordinary machinations on the part of that group of Council Fathers who sought to preserve a preferential option for confessionalism.

The confessionalist approach saw the Catholic State as the ideal expression of the Church-State relationship. According to this approach the Church, because of its divine mandate and supernatural origin, possessed the right to be legally established as the one and only recognised religion in a given country. The State then became its secular arm given the traditional claim of the superiority of the powers spiritual. "Error has no rights" becomes the catch-cry of this approach and the writings of Nineteenth Century Popes could be amply cited in its support. The object of the Church's diplomatic and political activity, therefore, is her legal establishment as the one true religion of the State, with its juridical consequence, legal intolerance.

The other approach, separationism, did not regard this situation as ideal for a number of reasons: a) it did not actually reflect the political situation in many countries; b) it did not guarantee rights to believers of other faiths; c) it made the object of faith and the object of rights the same; d) it canonised a particular set of historical circumstances, i.e. the confessional State, as ideal. The seaparationist approach approved of the idea that the Church would prosper in the contemporary situation under pluralist forms of Government. Without wishing to undermine this second approach, its chief proponents were American. Yet this school of thought also cited Nineteenth Century Popes in its support. According to Courtney Murray separationism was the logical evolution of the doctrine of Leo XIII while confessionalism was the denial of any further evolution in Catholic doctrine.[13]

These two positions emerged in the discussions of the Council concerning religious freedom. The Theological Commission, headed by Ottaviani, presented a centrifugal model: one begins with the Church

and works outward from ecclesial principles. The Secretariat for Christian Unity presented an extra-ecclesial model: the Church is central, yes, but in this area, i.e. of political realities, one must begin from the perspective of other religions and societies in order to determine the right model for a statement of the Church-State relationship.

In fact there were two basic problems which the Fathers of Vatican II wrestled with in the production of *Dignitatis Humanae*. The first was what we may call the *political* problem: how could one justify the principle of religious liberty given the conflict between confessionalism and separationism? This meant finding a formula which all could agree on and which would deal with the different political systems the Fathers came from in their respective countries. There was the added question posed by the conferment of the competence for the preservation of religious liberty on governments: surely this amounted to the jettisoning of the Church's own responsibilities to safeguard religion as taught and insisted upon by the Popes of the Nineteenth Century?

The second problem was the *theological* problem. How could one square the doctrine of the right to religious liberty with the teaching of Pius IX, Leo XIII and Gregory XVI? One should recall that Gregory XVI (1831–1846) responded critically to the initiative of three French men who, in 1830, founded a radical newspaper, *L'Avenir* which argued that instead of returning to the *ancien regime* before the French Revolution the Church should open itself up to modern thinking and embrace the enlightened ideas of post-Revolutionary political theory. Gregory XVI responded in 1832 with *Mirari Vos* which condemned the ideal of liberty of conscience as encouraging religious indifferentism.[14] That same year the newspaper was suppressed.

Pius IX attached a syllabus of eighty errors of the age to his letter of 1864 entitled *Quanta Cura* in which he condemned, among others, the errors of indifferentism, liberalism and latitudinarianism. The identity between *imperium* and *sacerdotium* which many espoused at the time with regard to the papal states led to some extraordinary acts of faith. Such was the confidence of the Jesuits in the identity at the time that they firmly believed that on 20 September 1870 God would intervene to stop the Italian Army entering the Porta Pia. The pronouncements of popes seemed to be consistently cited in support of the *status quo antea*. Yet there were other voices which adopted a more radical view of things. One of the three founders of *L'Avenir*, Fr. Montalambert, gave a lecture on a saying attributed to Cavour (ob. 1861), *A Free Church in a Free Country* in which he quoted from the liberal Bishop Dupanloup of Orleans:

> You made the revolution of 1798 without us and against us, but you made it for us, God wishing it so, in spite of you.

The German theologian Döllinger gave a talk in Munich suggesting that Catholic Universities open up to academic freedom with regard to Science, History and Theology. In spite of these occasional calls for religious freedom within and without of the Church the central organs of the Church seemed to seek refuge in restorationism. Despite the official stance for the *status quo*, there was a revolution in the papal states in 1848 during which the Pope's prime minister was shot dead in Rome and in the same year the Archbishop of Paris was also shot in violence in France. The Pope fled to Gaeta to stay with the King of the Two Sicilies. So although *Mirari Vos* and *Quanta Cura* could be said to mark the high point of restorationism, in fact they represented the sunset of papal temporal claims. There were a few voices which discerned a positive side to these developments, notably Antonio Rosmini who wrote a book called the *Five Wounds of the Church* one of which he identified as confessionalism, and John Henry Newman who held that loyalty to the See of Peter was not necessarily concomitant with loyalty to the papal states. Newman may be said to be the progenitor of separationism insofar as he held to the recognition of the dictates of conscience over the demands of temporal loyalties.[15] Leo XIII's *Rerum Novarum* (1888) represented a more positive attempt to reconstruct a model of the Church-State relationship, basing the rights of religion on natural law. This proved a more fruitful starting point for the doctrine of Vatican II.

In *Dignitatis Humanae* one sees an attempt not only to defend the rights of the Catholic Church but also the religious rights of mankind in general. Courtney Murray, who was invited as a *peritus* to the second and third sessions, September-November of 1963 and 1964, strove to open a debate between the two approaches to religious freedom and the Church-State problem. He saw his task as twofold: a) to present the arguments for the affirmation of religious freedom; b) to review the tradition, within the perspectives of today, in order to show that the affirmation represents a valid growth in the understanding of the tradition. He educes four arguments for this affirmation, *theological, ethical, political* and *juridical*:

> The theological argument is the tradition with regard to the necessary freedom of the act of faith which runs unbrokenly from the text of the New Testament to the Code of Canon Law (can. 1351) ... The ethical argument is the immunity of conscience from coercion in its internal religious decisions. ... The political argument

https://doi.org/10.1111/j.1741-2005.1996.tb01539.x Published online by Cambridge University Press

> is the common conviction that the personal internal forum is immune from invasion by any powers resident in society and state. ... The juridical argument enforces the same conclusion; it is contrary to the nature of civil law to compel assent to any manner of religious truth or ideology.[16]

This perspective found its way into the final formulation of chapters 1, 3, 7, 11, and 13 of *Dignitatis humanae* even if the promulgated texts avoid an explicit canonisation of separationism as the preferred model of the Church-State relationship. There is, however, the rather delicate matter of the competence of the State in matters of religion. Courtney Murray is forced to deal with the question and arrives at a formula. He states:

> The exact formula is that the state, under today's conditions of growth in the personal and political consciousness, is competent to do only one thing in respect of religion, that is, to recognize, protect, and promote the religious freedom of the people. This is the full competence of the contemporary constitutional state. From another point of view, constitutional law has done all that is necessary and all that is permissible, when it vindicates to the people what is due to them in justice, namely, their religious freedom.[17]

How then may the State limit the free exercise of religious freedom? Murray responds:

> ... the public powers are authorised to intervene and to inhibit forms of religious expression (in public rites, teaching, observance or behaviour), only when such forms of public expression seriously violate either the public peace or commonly accepted standards of public morality, or the rights of other citizens.[18]

Accordingly, the final text of the document, *Dignitatis humanae*, states that the State may only intervene to regulate matters of religion when public order is threatened and the State is obliged to defend the common good (DH 7b). Clearly one may argue that the theses of Courtney Murray find a favourable echo in the promulgated text of the Declaration. Perhaps the most significant contribution Courtney Murray makes to the debate is to establish the principle that "there is no such thing as an *ideal instance* of Catholic constitutional law''.[19] The rejection of the theory of the ideal instance constitutes one of the main pillars of separationism's interpretation of papal documents and its synthesis of the tradition. This is accomplished through the medium of historical consciousness as the unfolding hermeneutic for the

interpretation of ecclesiastical pronouncements on the Church-State relationship in ages past. With this end in mind Courtney Murray repeats the adage of Leo XIII, *Vetera novis augere* (to make new things grow out of old things).[20]

Evangelium Vitae

The present Pope has had occasion to comment on the question of the prerogatives of the Church in relation to the State in recent years. Thus, according to the *Puebla* document, the Church enjoys a competence to proclaim and interpret the truth about man which comes to her from a divine mandate. Consequently, the Church possesses a supernatural right to proclaim the truth about man without interference or coercion from any individual, corporate body or civil administration.

It is only when one arrives at the third chapter of the recent encyclical, concerning the commandment "thou shalt not kill", that the Pope sets forth the logic of a natural law position with regard to the legitimacy of civil laws that permit abortion and euthanasia.[21] In n. 73, he states:

> Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a *grave and clear obligation to oppose them by conscientious objection.*[22]

The Pope explains that the legitimacy of laws must be evaluated in the light of the doctrine of fundamental rights. The most fundamental of human rights is the right to life so a law which legitimizes the direct killing of innocent human beings undermines this right.[23] He cites the traditional position of Aquinas on the legitimacy of human laws,[24] who was in turn quoting Augustine's principle that *non videtur esse lex, quae iusta non fuerit.*[25] Thus a civil law authorizing abortion or euthanasia ceases by that very fact to be a true morally binding law (§72). For the rationale behind this conclusion one need look no further than the classical doctrine of natural law in the Catholic tradition. Indeed in the Pope's exposition of his teaching he explicitly employs the argument of the priority of natural law.[26] One commentator on this passage has suggested that it contradicts the autonomy of the lay sphere and threatens the democratic freedom of Western societies.[27]

The Pope actually confronts an opinion that is widely accepted, particularly in Western societies, namely that the legal order of a society must limit itself to actuate and embody only the convictions of the majority (§69). Since truth will not be accepted unequivocally by everyone, the politician must rely on the criterion of the majority vote. This kind of practical relativism is the only way of arriving at freedom

https://doi.org/10.1111/j.1741-2005.1996.tb01539.x Published online by Cambridge University Press

and tolerance while to hold oneself to objective moral norms would lead to authoritarianism and intolerance (§70). The Pope addresses this problem by showing up the internal contradictions of such a position. Most importantly he identifies a contradiction regarding the understanding of conscience. While individuals seek full personal autonomy in such societies, the politician is expected to put aside his own convictions and submit himself to the opinions of the majority. For majority, read the most powerful. In effect the democratic formulation of law comes to grief in the compromise of a theoretical balance between opposed interests. Often the stronger interests prevail (§70). The absolute application of the principle of the majority, particularly to constitutional questions of law, can easily become — if there is no binding concept of a morality for all — a tyranny which is exercised, in the case of abortion, to the detriment of the weakest in society. "Democracy cannot become a surrogate for morality" the Pope states, insisting that the value of a democracy stands or falls on the values which it is seeking to embody. These fundamental values, which a democracy presupposes, must coalesce in the dignity of every human person, a respect for his or her rights and the assumption of the principle of the common good as a moderating end and criterion for their application (§70). In this sense the Pope seems to be advocating a new critique of the problem posed by democratic states which pass laws that the Church finds irreconcileable with its doctrine of fundamental human rights.

In advocating conscientious objection to laws that contradict fundamental rights like the right to life, the Pope urges that States recognise this as a right too so that those who exercise it may not be penalised by legal, disciplinary, economic or professional sanction (§74). Here we see in action the principle envisaged by Newman, namely that the Church itself becomes a defender of the legitimate claims of conscience. This marks an evolution in the formulation of the problem of religious and moral freedom within the Church-State relationship.

The Pope also touches on a practical moral problem, that of the politician who is faced with an unjust law that represents a threat upon the right to life, but who may only oppose it by advocating the passing of some modifications to the law concerned.[28] Is he or she not thereby cooperating in an unjust law and therefore in the destruction of human life? The Pope responds by saying that the politician must leave others in no doubt about his or her opposition to abortion but that he or she may propose measures that limit the damage or diminish the negative effects of such an unjust law (§73). This does not amount to cooperation in an evil cause. In this way the Pope avoids the fundamentalism which may characterise applications of the traditional principle of the priority of the

natural law over the civil. The Pope, for example, would appear to reject the hypothesis that because a legislature passes unjust laws on a single issue the faithful are thereby absolved of all obedience with respect to other laws passed by the same legislature. In refusing this option, the Pope adopts a specificist approach to the problem posed by unjust civil laws, i.e. the prior claims of the natural law with regard to the civil legislature respects only the law concerned and not the validity of the whole legal regime.

Conclusion

The encyclical *Evangelium Vitae*, when viewed through the optic of the teaching behind *Dignitatis humanae*, does not seek to threaten the legitimate freedom guaranteed to lay action in the political sphere but it does lay down certain moral principles according to which Christian action may be better coordinated in the political sphere as well as resolve doubts about the moral status of political cooperation with the passing of laws that run contrary to the Church's doctrine of fundamental human rights. In this respect the Pope shows himself to be a reliable guide for the moral life, provides new interpretations of the force of natural law, suggests new applications for his teaching on human rights, but most of all, exercises a much neglected feature of the life of the ecclesiastical pastor, namely as defender of the common good (*boni communis defensor*) (*Presbyterorum ordinis*, 9). In this respect the distinct competencies of *sacerdotium* and *imperium* are set forth not as opposing forces but as complementary functions of a unitary concept of the common good, even if there is not always unanimity regarding the interpretation and application of that good in determinate historical circumstances.

What may we conclude from this latest encounter between Church and State in the pages of a papal encyclical? The purpose of the Church is the maintenance of a social and juridical dualism under the primacy of the spiritual (Two there are) vis-à-vis the State's inevitable tendency toward a social and juridical monism under the primacy of the political (One there is). The accomplishment of this purpose requires three principles: a) freedom of the Church; b) harmony of laws; c) cooperation; each of which presumes the primacy of the spiritual and the distinction of societies as two Cities.

1 Cfr. Ambrose, Ep. 11 (PL 16, 944–947), 40 (PL 16, 1101–1113).
2 Cfr. Ambrose, Ep. 21 (PL 16, 1002–1018).
3 Cfr. Norbert Brox, *A History of the Early Church*, London: SCM, 1994, 60.
4 Cfr. Brox, *A History of the Early Church*, 61.
5 Cfr. Gelasius, Ep. 12 (PL 59, 60).
6 Cfr. Brox, *A History of the Early Church*, 63.

7 Cfr. Harold Berman, *Law and Revolution. The Formation of the Western Legal Tradition*, Cambridge Mass.: Harvard University Press, 1983, 94–113. For reviews, see J.L. Soria, "Religion, History and the Growth of Law ", in *Studia Canonica* 28 (1994) 487-519; C.J. Reid, "The Papacy, Theology and Revolution", in *Studia Canonica* 29 (1995) 433-480.

8 Cfr. Brian Tierney, *The Crisis of Church and State, 1050–1300*, with Selected Documents, Englewood Cliffs N.J., 1964, 49–50.

9 For the Latin text of the *Dictatus Papae* see Karl Hoffmann, *Der Dictatus Papae Gregors VII*, (Paderborn: 1933), 11. For the English translation see J. B. Morrall, *Church and State through the Centuries*, (London: 1954), 43–44.

10 Cfr. Yves Congar, "The Historical Development of Authority in the Church: Points for Christian Reflection," in *Problems of Authority: An Anglo-French Symposium*, (ed. John M. Todd, London - Baltimore, 1962), 139-14; R. W. Southern, *Western Society and the Church in the Middle Ages*, Harmondsworth, 1970, 34.

11 Cfr. Walter Kasper, "The Theological Foundations of Human Rights," in *The Jurist* 50 [1990] 148-166.

12 Cfr. John Courtney Murray, "On the Structure of the Church-State Problem," in *The Catholic Church in World Affairs*, (ed. Waldemar Gurian and M. A. Fitzsimons), 23–24; ID., "On Religious Liberty," in *America* 109 (January 30, 1963), 706; ID., "A Theologian's Tribute," in *America* 107 (June 15, 1963), 854; ID., "The Problem of Religious Freedom," in *Theological Studies* 25 (1964) 503–575.

13 Cfr. Murray, "The Problem of Religious Freedom," 512.

14 Cfr. DS 1613/2730; 1614/2731.

15 For a discussion of the debate between Gladstone and Newman on Catholic loyalties, see James D. Bastable, "Gladstone's Expostulation and Newman" in *Gladstone and Newman. Centennial Essays*, ed. J. D. Bastable, Dublin: Veritas, 1978, 9–26.

16 Cfr. Murray, "The Problem of Religious Freedom," 523–524.

17 Cfr. Murray. "The Problem of Religious Freedom," 528.

18 Cfr. Murray, "The Problem of Religious Freedom," 530.

19 Cfr. Murray, "The Problem of Religious Freedom," 566.

20 Cfr. Murray, "A Theologian's Tribute," in *America* 107, June 15, 1963, 854.

21 For a restatement of natural law theory applied to jurisprudence, see John Finnis, "Natural Law and Legal Reasoning," in the collection, *Natural Law Theory. Contemporary Essays*, ed. Robert P. George, Oxford: Clarendon, 1992, 134–157.

22 Cfr. Pope John Paul II, *Evangelium Vitae*, §73, [tr. Lib. Ed. Vat. 1995], 105.

23 For a presentation of the present status of the teaching of this pontificate on fundamental rights, see *Droits de Dieu et droits de l'homme*, Actes du IX[e] Colloque national des Juristes catholiques, Paris, des 11–12 novembre 1989, [Paris: Tequi, 1989], 5f.

24 Cfr. Thomas Aquinas, *Summa Theologiae*, I-II, q. 93, a. 3, ad 2um.

25 Cfr. Augustine, *De Libero Arbitrio*, I, 5, 11, in PL 32, 1227.

26 For an application of this principle see Deryck Beyleveld & Roger Brownsword, *Law as a Moral Judgment*, Sheffield: Sheffield Academic Press, 1994, 120–157.

27 Cfr. Alain Woodrow, "The Pope's Challenge to Western Democracy," in *The Tablet* 249 [1995] 448–450.

28 Neil MacCormick discusses a similar situation with regard to the formation of the Union and the issue of slavery, in "Natural Law and the Separation of Law and Morals," in *Natural Law Theory*, 115.