

Jacques Maritain's Embrace of Religious Pluralism and the *Declaration on Religious Freedom*

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In a book entitled *Friendship: The Art of Happiness*, John Cuddeback suggests that good conversation is essential to philosophy and that friends are most capable of good conversation.¹ Furthermore, friends desire to pursue the virtuous life together. For Giovanni Battista Montini (Pope Paul VI) (1897–1978) and Jacques Maritain (1882–1973), this friendship centered on Maritain's thoughts about Christian life and Christians in society, as expressed in several of Maritain's books.² Montini was himself a philosopher. He began to read Maritain very early on in life.³ Maritain's books spoke to the central concerns of Montini's life and ministry from the start. Maritain's ideas came to fruition as Montini's ecclesiastical influence grew, as archbishop of Milano, a diplomat in Rome, still later as a strong and major leader at the Second Vatican Council, and finally during the later sessions as Pope Paul VI, the head of the Second Vatican Council.⁴ How did the ideas in Jacques Maritain's books work in the life

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¹ JOHN CUDDEBACK, *FRIENDSHIP: THE ART OF HAPPINESS* 69 (2003).

² See, e.g., JACQUES MARITAIN, *INTEGRAL HUMANISM* (Joseph W. Evans trans., Charles Scribner's Sons, 1968) (discussing the philosophy and culture of society as it relates to a Christian life); JACQUES MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* (Doris C. Anson trans., Gordian Press, 1971) (examining the society of humans and natural rights and comparing with Christian society and life); JACQUES MARITAIN, *CHRISTIANITY AND DEMOCRACY* (Doris C. Anson, trans., The Centenary Press, 1945),

³ See PETER HEBBLETHWAITE, *PAUL VI* 85, 122 (1993).

⁴ The Second Vatican Council (1962–1965) was concerned with the role of the Church in the world, as well as internal renewal and reform. See generally GERHARD B.

and actions of Giovanni Battista Montini? In directing the philosophy of the church at the Council, Paul VI drew on the ideas of human dignity, society, and the state that he developed through his friendship with Jacques Maritain and used these ideas to support the Declaration *on Religious Freedom (Dignitatis Humanae)* (the “Declaration”), which was promulgated at the end of the Council.⁵

Dignitatis Humanae is “the centerpiece of the Second Vatican Council’s reflections on the political-juridical order, the nature of constitutional government, and the proper foundations for religious freedom in the modern world.”⁶

The council . . . declares that the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself. This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.⁷

The Declaration started out, especially in the discussions leading up to its promulgation, by attempting to improve Catholic relations with other Christians.⁸ Those principles then became part of the background rules of engagement setting forth the respect necessary in inter-church dialogue. The Declaration continues to provide the foundation for these much-improved relationships.

Dignitatis Humanae is one of a number of documents issued by the Council (1962–1965) addressing different aspects of the Roman Catholic Church’s interactions with its own members, with members

LADNER, THE IDEA OF REFORM (1959) (discussing concepts involved in calling the Council and noting that Jacques Maritain offered comments on portions of the draft that dealt with the history of philosophy and theology).

⁵ POPE PAUL VI, DECLARATION ON RELIGIOUS FREEDOM: DIGNITATIS HUMANAЕ (1965), available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html. In the first two paragraphs, the Council fathers stated that “[a] sense of the dignity of the human person” and the right to “religious freedom” were linked ideas. *Id.* at 1, 2.

⁶ Robert P. Hunt, *Two Concepts of Religious Liberty: Dignitatis Humanae v. the U. S. Supreme Court*, in CATHOLICISM AND RELIGIOUS FREEDOM 19, 34 (Kenneth L. Grasso & Robert P. Hunt eds., 2006). The Declaration recognizes “that Catholics must acknowledge religious freedom as the right of every human person, a right that must be protected by the limited constitutional state.” Leslie Griffin, *Commentary on Dignitatis Humanae (Declaration on Religious Freedom)*, in MODERN CATHOLIC SOCIAL TEACHINGS: COMMENTARIES AND INTERPRETATIONS 244, 261 (Kenneth R. Himes et al. eds., 2005).

⁷ POPE PAUL VI, *supra* note 5 at 2.

⁸ *Id.* at 4.

of other faith groups, and with human beings throughout the world.⁹ While the Declaration primarily addressed concerns about relations with other Christian denominations, other related Council documents addressed ecumenism and the much more difficult problem of the Roman Catholic relationship with the Jews in *Nostra Aetate*.¹⁰ The popes themselves have led the very large and on-going project of placing Jewish-Christian relations on a new foundation. These popes have had a special concern for both Jewish flourishing—especially in the wake of the mid-twentieth-century experience of the Holocaust—and in reforming the Church's own contributory behavior to the world's failure to honor God's chosen people.¹¹ Moreover, American scholars interpreting the First Amendment's religion clauses and other constitutional roles of religion in American society have cited the Declaration.¹² This Essay examines the intellectual friendship between Montini and Maritain in terms of the concept of human dignity underlying both Jacques Maritain's work and *Dignitatis Humanae*. The Essay then sets forth the vision of society and the state required

⁹ *Unitatis Redintegratio* is the decree on ecumenism. POPE PAUL VI, DECREE ON ECUMENISM: UNITATIS REDINEGRATIO (1964), available at http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/card-kasper-docs/rc_pc_chrstuni_doc_20041111_kasper-ecumenism_en.html. *Lumen Gentium* is the constitution of the Church's dogma. POPE PAUL VI, DOGMATIC CONSTITUTION ON THE CHURCH: LUMEN GENTIUM (1964) [hereinafter POPE PAUL VI, LUMEN GENTIUM], available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html. *Nostra Aetate* concerns the relationship between the church and non-Christians, including the Jews. POPE PAUL VI, DECLARATION ON THE RELATION OF THE CHURCH TO NON-CHRISTIAN RELIGIONS: NOSTRA AETATE (1965) [hereinafter POPE PAUL VI, NOSTRA AETATE], available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html. *Gaudium et Spes* concerns the Church constitution as it relates to the modern world. POPE PAUL VI, PASTORAL CONSTITUTION OF THE CHURCH IN THE MODERN WORLD: GAUDIUM ET SPES (1965) [hereinafter POPE PAUL VI, GAUDIUM ET SPES], available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html.

¹⁰ See POPE PAUL VI, NOSTRA AETATE, *supra* note 9. The pre-conciliar discussion began with Christian ecumenism and the Church and did not consider religious freedom or relationships with other religions. Eventually, all were treated but in separate documents. Griffin, *supra* note 6, at 247–48; see also *supra* note 9.

¹¹ See, e.g., Philip A. Cunningham, *Official Ecclesial Documents to Implement the Second Vatican Council on Relation with Jews*, 4 STUD. CHRISTIAN-JEWISH REL. 1, 1–2 (2009).

¹² For interpretations of the Declaration in the context of American constitutional law, see generally Gregory A. Kalscheur, S. J., *Moral Limits on Morals Legislation: Lessons for U.S. Constitutional Law from the Declaration on Religious Freedom*, 16 S. CAL. INTERDISC. L.J.1 (2006) (discussing the role played by the concept of public order in the Declaration). See also Angela C. Carmella, *Religion-Free Environments in Common Interest Communities*, 38 PEPP. L. REV. 57 (2011) (arguing that the ban on the display of religious symbols in common interest communities violates public policy); Hunt, *supra* note 6 (discussing the Declaration in the context of the U.S. Supreme Court).

to serve human dignity. It also briefly examines the effects of the Declaration, insofar as they are measurable,¹³ on inter-church and inter-religious relationships as well as on scholars working in the field.

I. CHRISTIANIZING THE ENLIGHTENMENT LEGACY: THE SELFISH INDIVIDUAL ACTOR PERSONALIZED

The Roman Catholic Church, which had been estranged from modern governmental developments during the Council because of determined and hostile continental government secularity, responded favorably to the possibility of cooperation between modern liberal states and the church. Montini was among those who approved of such a rapprochement.¹⁴ It was Maritain's writing that, at least in part, contributed to this positive response. Maritain looked at the whole person, not the individual acting only for himself and his own self-interest, and examined rights in the context of the community. Jacques Maritain's *Integral Humanism* put the values of the Enlightenment and the French Revolution into a Christian framework of human personality, much the same as Thomas Aquinas had interpreted Aristotelian principles in a Christian way.¹⁵

Maritain's works on philosophy were actively read in seminaries.¹⁶ It is no surprise that from his first foreign posting in Poland in September 1923, young Father Montini sent home for, among other books, Maritain's *Introduction to Philosophy*.¹⁷ Montini was deeply interested in art and "trying to develop an aesthetic based on Thomistic principles" when he read Maritain's *Art and Scholasticism*, written in 1927.¹⁸ This mutual interest in art brought their parallel lives into closer conjunction. Although Peter Hebblethwaite, the late Pope's

¹³ See Martin E. Marty, *Never the Same Again: Post-Vatican II Catholic-Protestant Interactions*, 52 SOC. ANALYSIS 13, 20 (1991) (explaining that some changes after Vatican II are a result of the Council and others simply occurred afterwards).

¹⁴ See HEBBLETHWAITE, *supra* note 3, at 203.

¹⁵ MARITAIN, *INTEGRAL HUMANISM*, *supra* note 2. According to Maritain, Christian personalism includes man's transcendent and spiritual nature, as distinguished from egoistic individualism and the materialism of liberalism. MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW*, *supra* note 2, at 5-6, 20-22. The person is important in more than the individualist sense of pursuing only one's own interests because a person has a spiritual side and a concern for the good of all. See JACQUES MARITAIN, *LA PERSONNE HUMAINE ET LA SOCIÉTÉ* (1939); MARITAIN, *INTEGRAL HUMANISM*, *supra* note 2; see also JACQUES MARITAIN, *SCHOLASTICISM AND POLITICS* 70-88 (1940) (treating personalist democracy, not the individualist (self-interested) democracy of the Enlightenment).

¹⁶ See HEBBLETHWAITE, *supra* note 3, at 75.

¹⁷ See *id.* at 75 (1993).

¹⁸ *Id.* at 107.

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biographer, does not mention when the two met, and probably could not determine the date for lack of sources, Hebblethwaite doubted the suggestion of Josef Coppens that the two first met during Montini's visit to Paris in August 1924.¹⁹ Hebblethwaite noted that since August is the French national vacation month, most Parisians could be presumed to be away.²⁰ Meanwhile, Maritain's biographer says of this time period only that a friend of Jean Cocteau brought Montini to the Maritains' home in July 1924, and that Maritain had a private audience with Pope Pius XI on November 19, 1927.²¹ Montini had translated Maritain's *Three Reformers* into Italian in 1928, and in 1936, he wrote the introduction to the Italian version of Maritain's magisterial philosophy of history, entitled *True Humanism* in one translation and *Integral Humanism* in another.²² Much later, as Pope Paul VI, Montini cited this book in his first social encyclical, *Populorum Progressio*.²³

While the Maritains held salons and seminars on everything from art to Thomism in their home at Meudon, just outside Paris, Montini and his friends organized study weeks at Fiesole, just outside Florence, which were directed at leadership and democracy: "The common good was to be the norm, genuine democracy the means, and Jacques Maritain the prophet."²⁴ Maritain engendered a hostile

¹⁹ See *id.* at 83.

²⁰ *Id.* (citing Josef Coppens, *Sa Sainteté Paul VI: In Memoriam*, in 9 NOTIZIARIO DELL'ISTITUTO PAOLO VI 173 (1984)).

²¹ JEAN-LUC BARRÉ JACQUES & RAISSA MARITAIN: BEGGARS FOR HEAVEN 176, 186 (Bernard E. Doering trans., 2005).

²² Giorgio Campanini, *Montini e Maritain*, in G.B. MONTINI E LA SOCIETÀ ITALIANA 1919–39 83, 92 (1983). In the preface to the Italian edition of *Three Reformers*, Montini underlined the importance of always uniting truth to charity, even in a polemical situation. Franco Molinari, *Le Letture del Giovane Montini*, in G.B. MONTINI E LA SOCIETÀ ITALIANA 1919–39 59, 70 n.32 (1983). JACQUES MARITAIN, RELIGION AND CULTURE (J.F. Scanlon trans., 1931), was therefore important to Montini and was already reviewed by the Federazione degli Universitari Cattolici Italiani (FUCI) in Azione Fucina in 1931. See HEBBLETHWAITE, *supra* note 3, at 121. Montini, a Christian humanist and dedicated Thomist, was profoundly appreciative of the role of culture in Christian humanism. Bishop Carlo Manziana, *Intervento*, in G.B. MONTINI E LA SOCIETÀ ITALIANA 1919–39 209, 211 (1983); Giorgio Campanini, *Replica agli Interventi*, in G.B. MONTINI E LA SOCIETÀ ITALIANA 1919–39 101, 102 (1983).

²³ See *infra* note 78 and accompanying text.

²⁴ HEBBLETHWAITE, *supra* note 3, at 121 ("They appealed to Maritain partly for tactical reasons: Luigi Sturzo and Alcide De Gasperi shared the same ideas. But both had been silenced by the Fascists."). Montini had been involved with education, and from 1926–33 he was the national chaplain of the FUCI, which provided "the only serious opposition to the Fascists in the university." *Id.* at 94. Montini and his close associates had a different view of how Christians should relate to the secular world.

reaction from the Fascists in Italy. As a foreigner, Maritain could not return to Milano after lecturing there in 1930, and he could not return to Rome after he lectured on religion and culture there in 1934.²⁵ These lectures provide an early blueprint of the themes developed more fully in *Integral Humanism*.²⁶ According to Hebblethwaite, “Maritain provided Montini and his friends with a vision” of a new Christian civilization that was

lay rather than clerical, democratic rather than authoritarian, and capable of inspiring a mass political party in which all who shared ‘Christian values’ could participate. The Church’s influence would be indirect rather than direct, accepting autonomous institutions (like political parties and trade unions) and imbuing them with a Christian spirit.²⁷

Integral Humanism is a seminal book because it served as a working document for Christian Democrats as they waited for the Fascists and Nazis to be thrown out of power and as a guideline for Christian Democratic parties after the war. Looking forward to building a new Christian democratic society after the atheistic dictators were overthrown was as central to Montini as it was to Maritain. This common goal bound Montini to Maritain in friendship. Envisioning the new Christian society kept their focus on the future during the disastrous days of dictatorial and totalitarian rule, which led to the extremely bloody Second World War that saw some 50 million people die.²⁸ It is no wonder that *Integral Humanism* was the blueprint, or in the French phrase “*petit livre rouge*” (“little red book”), of a whole generation of Christians.²⁹ This same generation, arriving in responsible positions

The Church for them was not a mass movement in which individuals were lost [in the crowd]. It was rather a community of common endeavour in the intellectual and spiritual sphere. Priests like Montini preferred to tutor talented individuals than to address vast crowds in demagogic fashion. *Witness* rather than *conquest* was their watchword.

Id. at 243.

²⁵ *Id.* at 121.

²⁶ *See id.* at 121–22.

²⁷ BARRÉ, *supra* note 21, at 122 (citing Campanini, *supra* note 22).

²⁸ RANDALL LESAFFER, EUROPEAN LEGAL HISTORY: A CULTURAL AND POLITICAL PERSPECTIVE 484–85 (Jan Arriens trans., 2009).

²⁹ *See* PHILIPPE CHENAUX, HUMANISME INTÉGRAL (1936) DE JACQUES MARITAIN 7, 96–97, 101 (2006). The Vatican II decree on the Apostolate of the Laity (*Apostolicam Actuositatem*) reflects Maritain’s philosophy:

Christ’s redemptive work, while essentially concerned with the salvation of men, includes also the renewal of the whole temporal order. . . . The temporal order must be renewed in such a way that, without detriment to its own proper laws, it may be brought into conformity with

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after 1945, constructed a new Christianity according to Maritain's inspiration.

Integral Humanism deals with the "new Christianity" in the circumstances of the secular dictatorships of twentieth-century Europe.³⁰ In such circumstances, Christians had to be ecumenical and share their point of view indirectly through their memberships in social, political, and professional organizations.³¹ Christian Democratic parties in various European countries only had hopes for a future after the dictators were defeated, since they could not oust the dictators politically.³² This new Christianity was designed to avoid the pitfalls of socialism, extreme capitalism (as we have been experiencing recently), and fascism. Maritain argued that Catholics had to work with all people of good will to develop a Christian social order without, on the one hand, equivocating on eternal truths or, on the other, rigidly adhering to language that does not fit the times.³³ Maritain saw that society in the twentieth century was to be led by lay people and oriented toward the common good.³⁴ The church, political society, and the state had to cooperate. As Maritain contrasted the new Christianity with the Middle Ages, in which the medieval paradigm had been a German emperor seeking both secular and ecclesiastical power.³⁵ The new temporal order of the 1930s was held together by citizens who had learned that they must respect each other's rights. Therefore, political uniformity was neither a goal nor a necessity of society.

Unity comes through sharing in the achievement of the common good. In effect, this means that pluralism should exist in religion, economic systems, and juridical structures. Moreover, conscience rather than doctrinal uniformity should be recognized. Temporal society and the state have authority in civic matters. Moral influence, rather than legal compulsion, characterizes Maritain's new

the higher principles of the Christian life and adapted to the shifting circumstances of time, place, and peoples.

POPE PAUL VI, APOSTOLICAM ACTUOSITATEM (1965) ¶¶ 5–7, available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19651118_apostolicam-actuositatem_en.html.

³⁰ MARITAIN, INTEGRAL HUMANISM, *supra* note 2.

³¹ See *id.* at 118–22.

³² See HEBBLETHWAITE, *supra* note 3, at 122.

³³ See ROBERT SONG, CHRISTIANITY AND LIBERAL SOCIETY 134 (1997).

³⁴ See JACQUES MARITAIN, POUR LE BIEN COMMUN, LES RESPONSABILITÉS DU CHRÉTIEN ET LE MOMENT PRÉSENT 23, 26 (1934); JACQUES MARITAIN, THE PERSON AND THE COMMON GOOD 31–46 (John J. Fitzgerald trans., 1947).

³⁵ MARITAIN, INTEGRAL HUMANISM, *supra* note 2, at 139–53.

Christianity because the lay leader represents Christian values to the society at large. The state will be guided by democratic votes and popular consensus. Furthermore, the state itself can no longer afford to be so imperial. People of different views must work together to achieve governmental objectives. The value of religious freedom was centrally important in the struggle against both fascism and communism. The new Christianity depicted in *Integral Humanism*, in which the individual Christian acts in the immediate community and the larger society, contributing to the common good, was later reflected in the vision of society set forth in the Declaration.³⁶

During Maritain's ambassadorship to the Holy See beginning in 1945, Montini, working in the Vatican Secretariat of State, and Maritain had the opportunity to meet at dinner for conversation about the reconstitution of European society in the post-War period.³⁷ Maritain found Montini's expansiveness congenial because of his openness "to all forms of renewal and progress."³⁸ Maritain was among those who approved of a rapprochement between the church and the modern representative, if not democratic, state.³⁹ The future pope and Jacques Maritain shared the same outlook on solving problems and expressing the role of the Christian in society and in the church. In 1954, Monsignor Montini became archbishop of Milano, and during the papacy of John XXIII, he became Cardinal.⁴⁰ As archbishop, Montini "undertook to put into practice much of Maritain's social philosophy as he devoted himself to the workers and the poor."⁴¹ Deeply interested in philosophy throughout his life, Montini favored "a school of mediation between the ancient and the modern, tradition and revolution, order and adventure."⁴² The continuing evolution of Jacques Maritain's thought made his ideas particularly useful at the time of the Second Vatican Council. The shared outlook of

³⁶ See, e.g., *id.* at 174–75, 192–94; POPE PAUL VI, *supra* note 5.

³⁷ BARRÉ, *supra* note 21, at 389.

³⁸ *Id.* at 397.

³⁹ See MARITAIN, CHRISTIANITY AND DEMOCRACY, *supra* note 2 (discussing the harmonization of a the Christian faith and democracy).

⁴⁰ See HEBBLETHWAITE, *supra* note 3.

⁴¹ JULIE KERNAN, OUR FRIEND JACQUES MARITAIN: A PERSONAL MEMOIR 170 (1975). As archbishop of Milano from 1954 to the death of Pope John XXIII in 1963, Montini "took up the challenge of winning back working-class people who had come under the influence of the burgeoning Italian Communist Party." Allan Figueroa Deck, S.J., *Commentary on Populorum Progressio* (On the Development of Peoples), in MODERN CATHOLIC SOCIAL TEACHINGS: COMMENTARIES AND INTERPRETATIONS 292, 296 (Kenneth R. Himes et al. eds., 2005).

⁴² PHILIPPE CHENAUX, PAUL VI ET MARITAIN: LES RAPPORTS DU 'MONTINIANISME' ET DU 'MARITAINISME' 31–32 (1994); see also BARRÉ, *supra* note 21, at 389.

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Montini and Maritain forged strong bonds that facilitated the work of the Council in drawing up the *Gaudium et Spes* and other declarations.

After the death of Pope John XXIII, Cardinal Montini, now Pope Paul VI, presided over the Council and invoked Maritain's work. This was especially true with regard to *Gaudium et Spes*, which embodied some of the same principles, and in the dialogue within the Church leading to *Dignitatis Humanae*, which also had direct American input from the draftsmanship of John Courtney Murray.⁴³ *Gaudium et Spes* stated that the Church proclaims the rights of man "in virtue of the Gospel entrusted to the Church."⁴⁴ The government exists to promote the common good, which means the protection of the rights and performance of the duties of the human person. The government must not "hamper the development of family, social or cultural groups, nor that of intermediate bodies or organizations, and [it must] not [] deprive them of opportunities for lawful and constructive activity Citizens . . . must be careful not to attribute excessive power to public authority."⁴⁵ As *Dignitatis Humanae* recognizes, government must act in accordance with human dignity and the common good: "The welfare of society . . . consists chiefly in the protection of the rights, and, in the performance of the duties, of the human good."⁴⁶ These concepts are clear and recurrent themes in the thought of Jacques Maritain. The notions of the centrality of the lay person as a prime Christian actor in society, the dignity of the human person regardless of his or her personal merit (or lack of it), pluralism in religion, and the limitation on the powers of the state to act in society and against individuals had long been explained and

⁴³ See Angela C. Carmella, *John Courtney Murray, S.J. (1904-1967)*, in 1 THE TEACHINGS OF MODERN CHRISTIANITY: ON LAW, POLITICS, AND HUMAN NATURE 115 (John Witte Jr. & Frank S. Alexander eds., 2006); see also HERMINIO RICO, S.J., JOHN PAUL II AND THE LEGACY OF *DIGNITATIS HUMANAЕ* 120–21 (2002); Robert T. Kennedy, *Contributions of Dignitatis Humanae to Church-State Relations in the United States*, in RELIGIOUS LIBERTY: PAUL VI AND *DIGNITATIS HUMANAЕ* 103 (John T. Ford ed., 1995).

⁴⁴ PAUL VI, *GAUDIUM ET SPES*, *supra* note 9, at ¶ 41 ("By no human law can the personal dignity and liberty of man be so aptly safeguarded as by the Gospel of Christ which has been entrusted to the church."); see also Deck, *supra* note 41, at 295–96 ("Vatican II's vision of a Church on the move in ongoing and productive dialogue with the world was affirmed perhaps more than anywhere else in *Gaudium et Spes*. . . . As never before, a humanistic understanding of the Church's purpose, identity, and mission was asserted in terms of an anthropological concept of culture."). Indeed, *Gaudium et Spes* blended "biblical, theological, and natural law approaches." David Hollenbach, S.J., *Commentary on Gaudium et Spes* (Pastoral Constitution on the Church in the Modern World), in MODERN CATHOLIC SOCIAL TEACHINGS: COMMENTARIES AND INTERPRETATIONS 266, 270 (Kenneth R. Himes et al. eds., 2005).

⁴⁵ PAUL VI, *GAUDIUM ET SPES*, *supra* note 9, at ¶ 75.

⁴⁶ PAUL VI, *supra* note 5, at ¶ 6.

elaborated in Maritain's books.⁴⁷ These ideas became a part of the mix that inspired the Council.⁴⁸

II. THE DECLARATION AND HUMAN DIGNITY: A VISION FOR THE PERSON'S ACTION IN SOCIETY AND THE STATE

Dignitatis Humanae echoes. One hears within it echoes of John Locke ("constitutional limits . . . to the power of government"), Immanuel Kant ("duty" and "freedom of the person"); Max Weber ("quest for values"), and the American Founders ("free exercise of religion"). It seems also to reflect the neo-Thomism of Jacques Maritain. . . . The echoes . . . seem central as a means to understand the intentions and impact of *Dignitatis Humanae* and of the several related encyclicals that are all the products of the Second Vatican Council (1962–1965).⁴⁹

The Declaration on Religious Freedom itself eschews use of force in matters of conscience.⁵⁰ Freedom of conscience in religious matters is central to the Declaration. Legally, the state protects public order and justice, including human rights.⁵¹ Thus, the person's freedom of conscience is recognized as something that cannot be in-

⁴⁷ See, e.g., MARITAIN, CHRISTIANITY AND DEMOCRACY, *supra* note 2; MARITAIN, INTEGRAL HUMANISM, *supra* note 2.

⁴⁸ René Mougel, *Maritain et l'Église du Concile*, 40 CAHIERS JACQUES MARITAIN 21 (2000); Philippe Chenu, *Paul VI et Maritain*, in JACQUES MARITAIN ET SES CONTEMPORAINS 323–42 (Bernard Hubert & Yves Floucat eds., 1993).

⁴⁹ Thomas Heilke, *The Promised Time of Dignitatis Humanae: A Radical Protestant Perspective*, in CATHOLICISM AND RELIGIOUS FREEDOM 87, 87 (Kenneth L. Grasso & Robert P. Hunt eds., 2006) (citing JACQUES MARITAIN, MAN AND THE STATE (1951)). In *Man and the State*, Maritain discussed the human person and what is important to a human being who acts in society according to his moral values and the religious sensibilities he does (or does not) possess. "[T]he basic political reality is not the state, but the body politic with its multifarious institutions, the multiple communities which it involves, and the moral community which grows out of it." JACQUES MARITAIN, MAN AND THE STATE 202 (1951). Similarly, the Church acts in society through its association and heritage and contributes its insights about truth, beauty, and other aspects of the spirit to the common good as the moral heritage of mankind, the spiritual with the good of civilization or the community of minds, which requires freedom of religion. *Id.* at 150.

⁵⁰ See PAUL VI, *supra* note 5, at ¶¶ 1–2.

On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity a man is bound to follow his conscience in order that he may come to God, the end and purpose of life. It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.

Id. at ¶ 2.

⁵¹ *Id.* at ¶ 6.

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terfered with, but the person must assume responsibility for his views.⁵² Jacques Maritain, with his ideal of a pluralist society, was uniquely positioned to interpret these ideals for the Church.⁵³ According to some philosophers, bestowal of human rights is the right of the government,⁵⁴ but for Jacques Maritain, each person possesses an absolute dignity by virtue of being human.⁵⁵ Jacques Maritain contributed to this dialogue about freedom of religion over the years by thinking deeply about the problems of his time as he saw them and by developing a body of writings in response. Some of Maritain's topics that later proved important to the Council included "ecumenism and religious liberty, the dignity and rights of the human person, fraternal feeling for the Jewish people and their exculpation from the age-old charge of deicide, the highlighting of the status of the laity, [and] the recognition of the values of science, art and democracy."⁵⁶

Robert Song has compared Maritain's *Integral Humanism*, which covers some of the same principles addressed in the Declaration, with the language of the Declaration itself.⁵⁷ Song sets forth Maritain's new Christianity as

the goal of a vitally Christian lay polity appropriate for contemporary historical conditions. The historical ideal of medieval Christendom is no longer plausible, he argues: Catholics should work with all people of good will towards a Christian social order which will succeed capitalist social and economic structures and will avoid the errors of individualism, communism[,] and fascism.⁵⁸

When Maritain wrote *Integral Humanism* during the mid-1930s, many Roman Catholics had been satisfied with the legacy of the medieval church as focused through the Council of Trent (1545–1563). The Council of Trent was still the dominant Council for the age as far as interdenominational relationships were concerned (tempered by the nineteenth-century centralization and closer association with governments in Vatican I) until the calling of Vatican II itself.⁵⁹ Maritain, however, had developed different ideas and had traveled more than

⁵² See *id.* at ¶ 7–8.

⁵³ See Hank E.S. Woldring, *The Quest for Truth and Human Fellowship in a Pluralist Society*, in TRUTH MATTERS: ESSAYS IN HONOR OF JACQUES MARITAIN 284, 284 (2004).

⁵⁴ See, e.g., PAUL GORDON LAUREN, THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS 15, 20–23 (1998).

⁵⁵ See JACQUES MARITAIN, THE RIGHTS OF MAN AND NATURAL LAW 65–66, 89 (Doris C. Anson trans., 1943).

⁵⁶ KERNAN, *supra* note 41, at 172.

⁵⁷ See SONG, *supra* note 33, at 144–45.

⁵⁸ *Id.* at 134.

⁵⁹ See LESAFFER, *supra* note 28, at 301–02.

most intellectuals during the 1930s.⁶⁰ Having been a graduate student in embryology in Heidelberg, Germany in 1906, Maritain became interested in Germany and later made many friends there.⁶¹ He was told in 1934, that about one thousand members of the clergy had been sent to a new concentration camp (at Dachau), and he joined the first committee to help refugees.⁶² He began thinking and lecturing about the common good, human rights, and an alternative to fascist and communist totalitarian governments.⁶³ In one instance, Maritain asked the public for prayers for all the victims of the riots in Paris in February 1934, angering people who did not think prayers should be said for communists.⁶⁴ Wanting to be heard by all, however, Maritain was willing to meet people on the left and publish his views in a new leftist publication.⁶⁵ He began the published work on what later became *Integral Humanism* with a contribution to the new magazine.⁶⁶ Various people admonished him and in response to a “pastoral” letter, Maritain answered that he saw much division about religion itself and wanted to be able to explain his position to people who would otherwise never have exposure to his point of view.

But if the communists are the only ones speaking to these Frenchmen, it is they who will walk off with everything, at least for a time, because they have a doctrine that is firm, bold, and rigorous, against which the conservative liberal ideology is without force; only Christians can present a doctrine that is firm, bold, and rigorous enough to challenge them for these souls: if only they can be heard by these souls. . . .

That is why, when they came to ask me to collaborate on *Vendredi*, I thought that if I refused the chance they offered me, my conscience would reproach me. . . .

I think I have enough discernment and enough firmness to make a decision on my own, and in the way that would appear to me the most opportune. But it is certain . . . that if an attempt were made to deprive me of my freedom the whole thing would

⁶⁰ See generally BARRÉ, *supra* note 21, at 313–14 (arguing that Maritain was one of the few French intellectuals capable of judging the state of the world outside their private studies).

⁶¹ See *id.* at 76.

⁶² See *id.* at 314–15.

⁶³ See *id.* at 314–17.

⁶⁴ See *id.* at 15.

⁶⁵ See *id.* at 315–16.

⁶⁶ See BARRÉ, *supra* note 21, at 314–15.

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be made impossible to carry out, for it is not under threat or pressure that such things can be carried out.⁶⁷

Maritain published *Integral Humanism* the next year, in 1936.⁶⁸ Maritain's biographer, Barré, opined that the new Christianity of Maritain's *Integral Humanism*, "based above all on the competence and the vocation of laymen," was too prophetic "not to unleash extreme passions against it from the very first" so that it would not "find its ratification [until] the time of the Second Vatican Council."⁶⁹ In the summer of 1956, around the twentieth anniversary of the publication of *Integral Humanism*, Father Antonio Messineo, S.J., wrote an article in the Roman Jesuits' review, *La Civiltà Cattolica*, attacking the work.⁷⁰ Just as a second critical article was about to appear, Pope Pius XII prevented its publication because Montini, who had worked in the Secretariat of State in the Vatican directly for Pope Pius XII, was also attacked in the text.⁷¹

In October 1957, Monsignor Montini, then the Archbishop of Milano, invoked Maritain's *Integral Humanism* at the second World Congress for the Apostolate of the Laity, thus defending Maritain against the attack of important Italian prelates who did not like his vision of a new Christianity based on the action of the individual Christian lay person in society.⁷² At the conference, Montini had said that "the works of Catholic philosophers on Christian humanism, such as those of Maritain for example, can make a good contribution

⁶⁷ See *id.* at 317–18. Maritain followed up this private stance on the importance of liberty of conscience by publishing *Lettre sur l'Indépendance* in 1935, which affirmed Maritain's commitment as a philosopher outside any political party. Cf. PAUL VI, GAUDIUM ET SPES, *supra* note 9, at ¶¶ 41–42 (The Church can "anchor the dignity of human nature against all tides of opinion" because it is "bound to no particular form of human culture, nor to any political, economic or social system.").

⁶⁸ See BARRÉ, *supra* note 21, at 321 ("Carried in his mind for ten years, this grand design [*Humanisme intégrale*] for a pluralist, fraternal Christian civilization, completely centered on the human, came to maturity at the very moment when the world was getting ready to sink into a bloody twilight.").

⁶⁹ *Id.* at 322; see also Griffin, *supra* note 6, at 248 (Rossaire Gagnebet's "drafted condemnation of Murray and [Maritain] . . . for their writings on Church and state was halted by the death of Pope Pius XII in 1958.").

⁷⁰ Roberto Papini, Jacques Maritain e il Concilio Vaticano II 2 (Mar. 16–18, 2005) (unpublished manuscript), available at <http://www.stthomas.edu/cathstudies/cst/conferences/gaudium/papers/Papini%20French%20text.pdf>; see also Deck, *supra* note 41, at 311 n.17 ("The influence of Maritain's humanism on the thought of Montini was a red flag for a conservative group of cardinals that included Pizzardo, Ottaviani, and Siri. . . . Some Jesuits in Rome acted as 'attack dogs' for these prelates.").

⁷¹ HEBBLETHWAITE, *supra* note 17, at 287.

⁷² Jean-Dominique Durand, *Jacques Maritain et l'Italie*, in JACQUES MARITAIN EN EUROPE 13, 71 (1996).

to our reflections and to our actions.”⁷³ That remark continued to hurt Montini and in fact weakened Montini’s position in the Roman Curia during the early years of the papacy of John XXIII, to whom Montini (but not Maritain) was close.⁷⁴

Then, in 1960, Archbishop Montini used Maritain’s arguments in *Integral Humanism* in his presentation to the Commission preparing for the Council.⁷⁵ In his advice, Montini treated the most common questions and errors and urged:

That the doctrine on the principal questions of relationships between the supernatural order and human realities ought to be put clearly and defined, that is, the human problems which anguish the people of today. It seems to me that in the Council sessions, the following subjects ought to be treated: a) the relationship between political life and religious life, affirming the accomplishments of the Church as well as its limits in order that a clear and worthwhile doctrine may be proposed to Christians; b) the value of temporal things and actions in their relationship with supernatural ends through which the true religious sense of all human temporal activities may be set forth; c) Christian charity and its logical consequences in social life so that Christian life may be presented as the true ferment of all good, even the temporal good, of the human being, a ferment which nothing can replace.⁷⁶

These ideas were publicized in *Integral Humanism*, and Maritain’s later works echo through Cardinal Montini’s proposals for discussion during the Council.

Song discusses discursive passages from *Integral Humanism* about Maritain’s vision of a new Christianity, and he treats these passages from the point of view of a syllogism for purposes of their theological

⁷³ *Id.*

⁷⁴ BARRÉ, *supra* note 21, at 419. The controversy prevented Maritain from receiving an honorary degree from the Catholic University of Milano. CHENAUX, *supra* note 29, at 77; Durand, *supra* note 72, at 74. The excuse was that Maritain was physically not in Milano but at Princeton. Durand, *supra* note 72, at 74 (citing L’OSSERVATORE ROMANO, Dec. 7, 1958). Soon thereafter, the Archbishop of Milano succeeded in obtaining an honorary degree for Maritain in a different field, in recognition of Maritain’s “philosophical thought and the great service rendered by your special doctrine, which adheres to the great Thomistic tradition, to modern Catholic thought.” *Id.* at 76. Montini and Maritain were both Christian humanists building on Thomism. Montini was both protecting the orthodox status of his friend Maritain and protecting the Thomistic tradition from conservatives.

⁷⁵ Papini, *supra* note 70, at 2 n.6 (citing G.B. Montini, *Pareri e voti per la Buona Riuscita del Concilio*, in I SCRITTI E DISCORSI MILANESI 3582–88 (1998)).

⁷⁶ *Id.* (author’s translation); see also CHENAUX, *supra* note 29, at 77–79.

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implications.⁷⁷ Maritain, as Song put it, may have engaged in historical relativism by writing of the Middle Ages merely as standing in contrast to the new Christianity Maritain wished to see realized without condemning any historical Christian failings.⁷⁸ Song suggests that nearly thirty years later, the Declaration avoided many of the historical and political problems that Maritain saw but left in a contradictory state without resolution.⁷⁹ Song summarizes the Declaration's overlap with Maritainian concerns, as follows: the central statement of the Declaration, "that the right to religious freedom belongs to the inalienable dignity of the human person (Article 2), is regarded as applying without historical qualification."⁸⁰ The other major accompanying principles of the Declaration also found in Maritain's works are the standard of "personal and social responsibility" in Article 7 and public order—the juridical concept of the police powers.⁸¹ For the

⁷⁷ SONG, *supra* note 33, at 132–37.

⁷⁸ *Id.* at 140–41.

An ideal must, then, be realizable and relative to its age. But it might be wondered why there is a difference in kind, rather than just a difference of degree, between realizing the new Christendom and returning to the ideals of medieval civilization: after all, however propitious the circumstances, incarnating ideals is no simple matter.

Id. In light of this criticism, it is particularly interesting that Maritain's philosophy of history "deeply influenced the Pope." Joseph W. Evans, *Jacques Maritain: Philosopher Was Pope's Teacher*, NAT'L CATHOLIC REP., May 11, 1973, at 5. Compare this to Montini's views of pastoral work, which involves a relativism where "means are less important than the goals." HEBBLETHWAITE, *supra* note 17, at 257. As Martha Nussbaum argued,

It is right at times for nations to interpret general values differently, as befits their special history and problems. Thus a free-speech right that suits the U.S. well (permitting anti-Semitic demonstrations and speech) is probably too permissive for Germany, with its particular history, and Germany is probably right to impose restrictions on anti-Semitic speech.

MARTHA C. NUSSBAUM, LIBERTY OF CONSCIENCE: IN DEFENSE OF AMERICA'S TRADITION OF RELIGIOUS EQUALITY 31 (2008). When two conflicting values are deeply embodied within one tradition, "the enterprise of historical study take[s] on a particularly close and intimate relationship to normative inquiry. But it can also generate confusion." *Id.* at 32.

⁷⁹ SONG, *supra* note 33, at 139–40. Of course, contemporaries on both the right (Maritain did not stay literally faithful to arguments Thomas Aquinas made) and the left (he failed to condemn past ecclesiastical transgressions as normatively wrong) criticized Maritain's stances. See Sidney Hook, *Integral Humanism*, in REASON, SOCIAL MYTHS, AND DEMOCRACY 76, 80–83 (1940) (noting that although Maritain in *Integral Humanism* condemns religious coercion in the present day, he did not state that prior use of force against heretics was wrong).

⁸⁰ SONG, *supra* note 33, at 144–45.

⁸¹ *Id.* at 145. That does not mean that the Declaration has escaped without inadequacies of its own. Noonan, for example, lists three: "the failure to deal with history, the failure to deal with implications of an establishment, the vague and tangled

purpose of theological critique of Maritain's philosophy, Song parsed the shortcomings of these passages.

On the one hand, Maritain was setting forth a vision for Christian society in an era of lay responsibility after reflecting on the history of the Church. On the other, the Declaration was giving guidance on how the Church would henceforth act when engaging in dialogue with non-Roman-Catholic Christians. Accompanying documents also indicated how the Church would act when engaging with people of other religions. Song states that the wisdom of the Council avoided some of the difficulties Maritain had to confront during the previous generation, but he acknowledges that different conditions existed when Maritain published his visionary blueprint for a new Christianity in *Integral Humanism* and while dictators were growing stronger throughout Europe and Russia.⁸² For the legislative group drafting the Declaration, a different set of requirements held. Indeed, Maritain did welcome these advances.⁸³ Maritain's possible historical relativism nevertheless does not take away from the inspiration his work provided to those who envisioned the Declaration. When like-minded thinkers (such as Pope Paul VI) came to address the prob-

treatment of the civil power's right to limit actions based on religious convictions." JOHN T. NOONAN, JR., *THE LUSTRE OF OUR COUNTRY: THE AMERICAN EXPERIENCE OF RELIGIOUS FREEDOM* 351 (1998).

⁸² SONG, *supra* note 33, at 145–48.

⁸³ See JACQUES MARITAIN, *THE PEASANT OF THE GARONNE: AN OLD LAYMAN QUESTIONS HIMSELF ABOUT THE PRESENT TIME 2* (Michael Cuddihy & Elizabeth Hughes trans., 1968) ("It is a joy to think that religious freedom has now been proclaimed."); Griffin, *supra* note 6, at 250 (explaining that Maritain along with the French theologians had wanted to recognize the right of conscience). Maritain had contributed four memoranda, including one on freedom of religion, in response to questions of interest to the Council put by Pope Paul VI to several thinkers. See *infra* note 140 and accompanying text; see also Mary Ann Glendon, *International Law: Foundation of Human Rights—the Unfinished Business*, in *RECOVERING SELF-EVIDENT TRUTHS* 317, 330 (Michael A. Scaperlanda & Teresa Stanton Collette eds., 2007). Human dignity and conscience go hand in hand.

[Maritain] wants a society that extends liberty to all its citizens' consciences—not on the ground that their views are correct, since many believe that their neighbors' views are incorrect, and we need to show respect for their convictions, but on the ground that we respect them as human beings and beings whose consciences are striving after understanding.

NUSSBAUM, *supra* note 78, at 333. As Nussbaum concludes, "Accepting the principle of civil toleration does not burden the conscience of the believer, because it does not ask him to qualify his belief or to affirm that his neighbors are not in error." *Id.* (noting that respect for another's views, though opposite to one's own, is based on respect for conscience).

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lems with solutions, Maritain's work stood as a perspective and resource for the fathers of the Council.⁸⁴

On September 11, 1965, just before coming to New York to address the United Nations, Pope Paul VI received Maritain at Castelgandolfo.⁸⁵ In addition, Maritain was given a special invitation to come to Rome for the closing-day ceremonies of the Council in December when the Council's message to Seekers of Truth was presented to Maritain.⁸⁶ It was appropriate that at the close of the Council the Pope "made a gesture of gratitude to the slight, elderly man in St. Peter's that day."⁸⁷ According to Brooke Williams Smith,

More than any other Catholic, it was Maritain who prepared the way for

the Roman Catholic renewal. Following the lead of Pope Leo XIII, Maritain's social writings appeared to many, before the Council, to be revolutionary. He developed a philosophy of Christian openness to the world that was significant in creating the intellectual conditions that led to Vatican II. Indeed, if there be any point on which his critics agree, it is that the influence of his writing on Vatican II was overwhelming.⁸⁸

Maritain only indirectly influenced Pope John XXIII, who, prior to being named pope, had been named *apostolic nuncio* to Paris in December 1944 and had not developed a relationship with Maritain, despite the fact that Maritain served as French papal ambassador at Vatican City while Roncalli was posted at Paris.⁸⁹ On the other hand, Maritain's ideas directly influenced Pope Paul VI. Maritain's philosophy was not only frequently invoked at the Council, but Pope Paul VI also credited him for his part in inspiring the encyclical *Populorum Progressio* in 1967.⁹⁰ In *Populorum Progressio*, the Pope wrote,

⁸⁴ See SILVIA SCATENA, LA FATICA DELLA LIBERTÀ: LA ELABORAZIONE DELLA DICHIARAZIONE: *DIGNITATIS HUMANAE* 12 (2003).

⁸⁵ See BARRÉ, *supra* note 21, at 422.

⁸⁶ See *id.* at 426.

⁸⁷ BROOKE WILLIAMS SMITH, JACQUES MARITAIN, ANTIMODERN OR ULTRAMODERN 21 (1976) (noting that Maritain was "summoned to Rome in December 1965, at the close of the Second Vatican Council, to receive from Pope Paul VI unprecedented credit for his major role in inspiring the reforms of the Council").

⁸⁸ *Id.* at 24–25.

⁸⁹ See BARRÉ, *supra* note 21, at 385.

⁹⁰ POPE PAUL VI, *POPULORUM PROGRESSIO* (1967), available at http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_26031967_populorum_en.html; see also Deck, *supra* note 41, at 292 (explaining that the encyclical *Populorum Progressio* "vigorously asserted the connection between Christian faith and the pursuit of economic justice for all. Pope Paul VI took the term development in its social and economic sense and sought to link it intimately with a

Each man is also a member of society; hence he belongs to the community of man. It is not just certain individuals but all men who are called to further the development of human society as a whole. Civilizations spring up, flourish and die. As the waves of the sea gradually creep farther and farther in along the shoreline, so the human race inches its way forward through history.⁹¹

Furthermore, “development . . . cannot be restricted to economic growth alone. To be authentic, it must be well rounded; it must foster the development of each man and of the whole man.”⁹² He urges laymen to take the initiative freely and to “to infuse a Christian spirit into [their] mental outlook and daily behavior, [and] into the laws and structures of the civil community.”⁹³ The resonance of Maritain’s work for the Pope’s vision is clear in this quotation: “I am a disciple of Maritain,” the Pope said, “I will call him my teacher.”⁹⁴ The Pope thus used Maritain’s formulations relating the church to secular society in order to advance the Church’s position and understanding of its outreach to all Christians and persons of other faiths.

Maritain’s most important contribution was to link democracy and human rights to the Roman Catholic tradition, ending the hostility of Catholicism to liberal, individualist, and secular democracy in Europe and Latin America. His major contribution in political philosophy was to provide a religious and philosophical justification for liberalism, understood as the defense of human freedom:

Maritain was responsible for a new development in Catholic political thought that had been anticipated but never articulated in terms of the Catholic tradition by earlier French and Italian writers—the argument that democracy was not simply one of several forms of government, all of which were acceptable provided that they promoted “the common good,” but was the one form that

Christian understanding of the human person in community”). Pope Paul VI did not, however, want to eliminate the free market, but rather, he sought to regulate it “in such a way that social justice is achieved.” Deck, *supra* note 41, at 304. Finally, an “example of Maritain’s ‘new humanism’ is clearly present” in *Populorum Progressio* ¶ 20. *Id.* at 311 n.17.

⁹¹ POPE PAUL VI, *POPULORUM PROGRESSIO*, *supra* note 90, at ¶ 17.

⁹² *Id.* at ¶ 14. The Pope returned to the theme of the primacy of the spiritual: “If development calls for an ever-growing number of technical experts, even more necessary still is the deep thought and reflection of wise men, in search of a new humanism, one which will enable our contemporaries to enjoy the higher values of love and friendship, of prayer and contemplation.” *Id.* at ¶ 20.

⁹³ *Id.* at ¶ 81.

⁹⁴ Evans, *supra* note 78, at 5.

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was most in keeping with the nature of man and with Christian values.⁹⁵

Maritain envisioned the Christian engaging in society and politics acting as a leaven and sharing Christian insights, persuading voters in a pluralist society with the rightness of his positions.⁹⁶ What made Jacques Maritain's fluid yet timeless philosophy so useful to the spirit of Vatican II? His book entitled simply *Antimoderne* explains the importance of the notion of keeping timeless truths in mind (i.e., antimodern) in the atmosphere and language of the moment (i.e., ultramodern).⁹⁷ The title *Antimoderne* responded to the then current cultural linking of modernism to the end of Christian influence.⁹⁸ In different terms, Gerhard Ladner explained that at the beginning of the call for a Council is the need for an idea of ongoing reform, or eternal principles in dialogue with the circumstances of each generation.⁹⁹ A renewal or an updating of a religious council must reach a delicate balance between timeless, fundamental truths and the fashionable forms of the day.

Stephen Schloesser credits Maritain's dexterity in taking the unchanging truths that must be preserved and finding evidence of their continuity in current expressions of culture, society, and civilization.¹⁰⁰ In Jacques Maritain's works, the rights of the Jews¹⁰¹ and other human rights¹⁰²—including freedom of religion through the juridical value of pluralism¹⁰³—realigned the relationship of the state and the

⁹⁵ Paul Sigmund, *The Catholic Tradition and Modern Democracy*, in RELIGION AND POLITICS IN THE AMERICAN MILIEU 3, 13 (Leslie Griffin ed., 1986) (noting that the person acts in the context of society, not only individually, which can lead to each one pursuing his or her own self-interest).

⁹⁶ See *id.* at 12–13.

⁹⁷ See STEPHEN SCHLOESSER, JAZZ AGE CATHOLICISM: MYSTIC MODERNISM IN POSTWAR PARIS, 1919–1933 162–63 (2005).

⁹⁸ According to Ezra Pound, 1922 started the new calendar of the post-Christian era. SCHLOESSER, *supra* note 97, at 162.

⁹⁹ See LADNER, *supra* note 4, at 9–34.

¹⁰⁰ SCHLOESSER, *supra* note 97, at 162–67.

¹⁰¹ See generally JACQUES MARITAIN, LES JUIFS PARMIS LES NATIONS (1938) (translated as A CHRISTIAN LOOKS AT THE JEWISH QUESTION (1939)) (discussing the need to reject Anti-Semitism); JACQUES MARITAIN, LE MYSTÈRE D'ISRAËL (1965) (translated as THE MYSTERY OF ISRAEL).

¹⁰² See discussion *supra* note 49; see also Catherine M. A. McCauliff, *Cognition and Consensus in the Natural Law Tradition and in Neuroscience: Jacques Maritain and the Universal Declaration of Human Rights*, 54 VILL. L. REV. 435 (2009) (discussing Maritain's role in promoting the Universal Declaration of Human Rights).

¹⁰³ See *id.* Juridical pluralism merely recognizes the equally human dignity of each and every person in their beliefs, but it does not proclaim the theological truth of

church. Jacques Maritain, a refugee in the United States during and after World War II, helped to interpret the U.S. Constitution in a manner in which the Church could relate.¹⁰⁴ The democratic rights of individuals in the United States were not divorced from religious exercise as they had been in European Enlightenment philosophy.¹⁰⁵ The Church profited from this knowledge when writing its own constitution, *Gaudium et Spes*.¹⁰⁶ Maritain's reflections played a significant role when the Roman Catholic Church came to accept ideas of human rights, to recognize the contribution of the republican form of government, and to value freedom of conscience.

III. THE DECLARATION IN PRACTICE: RELATIONSHIPS WITH OTHER CHRISTIANS, JEWS, AND OTHER RELIGIONS SINCE 1965

How has the Declaration affected the relationships between Roman Catholics and other Christians? Enormous changes have taken place after Vatican II, from dialogue with Lutherans on the priesthood of all believers to the present Pope Benedict XVI's invitation (or poaching, depending on one's perspective) to conservative rebel Anglican parishes to come over to Rome, taking their married rectors and Book of Common Prayer (to be called by the Romans "the Anglican use").¹⁰⁷ Will those conservative Episcopalians liberalize the wider

any speech. See, e.g., Lizette Alvarez & Don Van Natta, Jr., *Pastor Who Burned Koran Seeks Retribution for Deaths*, N.Y. TIMES, Apr. 2, 2011, at A10 (burning of the Koran).

¹⁰⁴ See generally JACQUES MARITAIN, REFLECTIONS ON AMERICA (1958) (discussing American society and the Constitution in light of Christian principles).

¹⁰⁵ See, e.g., U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion . . . or prohibiting the free exercise thereof.").

¹⁰⁶ See POPE PAUL VI, GAUDIUM ET SPES, *supra* note 9.

¹⁰⁷ Stacy Meichtry & Amy Merrick, *Vatican in Bold Bid to Attract Anglicans*, WALL ST. J., Oct. 21, 2009, at A1 (reporting on the new canon law, known as an Apostolic Constitution, announced by Cardinal William Levada, head of the Vatican office on doctrine); George F. Will, *Perils of the Pope's Anglican Outreach*, N.Y. POST, Dec. 26, 2009, at 21 (explaining that such changes to the Roman Catholic Church as experience with a married clergy—which "may remind Catholics that for its first thousand or so years, the church had married priests and bishops"—and the Book of Common Prayer accompanied by Anglican chant may follow from the Anglican initiative); Kenneth J. Wolfe, *Latin Mass Appeal*, N.Y. TIMES, Nov. 29, 2009, at WK 8 (noting that the Anglican use "often features the priest facing in the same direction as the congregation" toward the altar); see also Rachel Donadio & Laurie Goodstein, *Vatican Bidding to Get Anglicans to Join Its Fold*, N.Y. TIMES, Oct. 21, 2009, at A1 (reporting on the plan announced at simultaneous news conferences at the Vatican and in London preserving the Anglican liturgy and hymns, according to Archbishop J. Augustine Di Noia, the Vatican's deputy liturgical officer); Francis X. Rocca, *The Pope Lets a Thousand Liturgies Bloom*, WALL ST. J. Oct., 23, 2009, at W13 (Catholic "Anglican Use" liturgy has been designed to draw back a departed group.). In just over a year, it appears that five bishops will take an English Ordinariate when it is set up by the Vatican under the Apostolic Constitution *Anglicanorum coetibus*. See Anna Arco, *Five Anglo-*

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Catholic Church by showing them a married priesthood? It is difficult to trace what may be attributed directly to the spirit of Vatican II. Besides the Declaration, which reaches out to other Christians and changes the attitude within the Roman Catholic communion toward other Christians, accompanying Vatican II documents seek dialogue with the two other Abrahamic religions and ecumenical engagement more generally. The very short but monumental document, *Nostra Aetate*, is the Conciliar Declaration on the Relationship of the Church to Non-Christian Religions.¹⁰⁸

A. *Roman Catholic Relationships with the Other Abrahamic Religions and Other Religions*

It is appropriate that the documents of Vatican II considered the role of the laity, which was growing in importance in the Roman Catholic Church, as the work of Jacques Maritain and others shows.¹⁰⁹ The role of the laity was an important impetus in propelling the Reformation during the sixteenth century.¹¹⁰ The Roman Catholic Church had absorbed these experiences and sought to show that it was indeed eager to embark on extended dialogue with the world, group by group.

1. Reformed Churches

Reflecting on a quarter of a century of inter-Christian dialogue after Vatican II, Martin Marty, the prominent Chicago historian of Protestantism who had been an observer at the Council itself, summed up the life-changing aspects of some of the positions that the Council took in its documents:

Protestant-Catholic interaction is 'never the same again' where both parties realize *Dignitatis humanae*, Religious Liberty, on the right of error. It is 'never the same again' where both communions re[alize] the recognition of 'separated brothers and sisters' that come with *Unitatis redintegratio* to say nothing of *Nostra aetate*, decrees on ecumenism and non-Christian religions.¹¹¹

Catholic Bishops Resign, THE CATHOLIC HERALD, Nov. 8, 2010, at 1, available at <http://www.catholicherald.co.uk/news/2010/11/08/five-anglo-catholic-bishops-resign>.

¹⁰⁸ POPE PAUL VI, *NOSTRA AETATE*, *supra* note 9.

¹⁰⁹ See J. Robert Nelson, *The Ecumenical Reception of the Dignitatis Humanae Declaration of the Second Vatican Council*, 24 ECUMENICAL TRENDS 67, 67 (1995) (noting the positive reaction of Protestant Christians to the Declaration and other documents from the Vatican).

¹¹⁰ See DIARMAID MACCULLOCH, REFORMATION 130 (2003).

¹¹¹ Marty, *supra* note 13, at 20.

During the Reformation and well into the nineteenth century, Protestants, such as Presbyterians and Lutherans, modeled their kingship theory on the Hebrew Scriptures.¹¹² Thus, Protestants relied on the State to maintain religious and moral practices while Roman Catholics sought to influence the government. Since the middle of the nineteenth century, however, “there has been a remarkable convergence on issues of religious freedom between the Roman Catholic and Reformed churches, as exemplified by the Second Vatican Council’s *Dignitatis Humanae* . . . and the writings and practical efforts of neo-Calvinists, particularly in North America.”¹¹³

The Roman Catholic Church changed the locus of political action from the Church itself to individual lay members of the church acting as citizens and placed the emphasis on the lay person’s journey in holiness.¹¹⁴ These changes reflected the stances already assumed to some extent by other Christians. *Lumen Gentium* states:

[The laity] are by baptism made one body with Christ and are constituted among the People of God[.] . . . [T]he laity, by their very vocation, seek the kingdom of God by engaging in temporal affairs and by ordering them according to the plan of God. They live in the world, that is, in each and in all of the secular professions and occupations. They live in the ordinary circumstances of family and social life, from which the very web of their existence is woven.¹¹⁵

Leslie Griffin, putting the various documents of Vatican II into dynamic relationship with prior positions the Church had taken as well as with the developments following from the Council, shows that human persons (rather than institutions) are the proper actors to integrate the spiritual and temporal realms in the contemporary Church.¹¹⁶

¹¹² See David T. Koyzis, *Persuaded, not Commanded: Neo-Calvinism, Dignitatis Humanae, and Religious Freedom*, in CATHOLICISM AND RELIGIOUS FREEDOM 115, 115 (Kenneth L. Grasso & Robert P. Hunt eds., 2006).

¹¹³ *Id.* Compare this to the suggestion that the recent Roman Catholic distrust of governments’ ability “to adjudicate questions of religious truth” led the Church to embrace religious freedom. Michael J. Perry, *Liberal Democracy and the Right to Religious Freedom*, 71 REV. POLS. 621, 621 (2009); see generally Richard W. Garnett, *Assimilation, Toleration and the State’s Interest in the Development of Religious Doctrine*, 51 UCLA L. REV. 1645 (2004) (suggesting that government has an interest in the content of religious doctrine).

¹¹⁴ See POPE PAUL VI, LUMEN GENTIUM, *supra* note 9, at ¶ 31.

¹¹⁵ *Id.*

¹¹⁶ Leslie Griffin, *The Integration of Spiritual and Temporal: Contemporary Roman Catholic Church-State Theory*, 48 THEOLOGICAL STUD. 225, 244–45 (1987) (quoting POPE PAUL VI, LUMEN GENTIUM, *supra* note 9, at ¶ 31).

2. The Chosen People

Given the history of Jewish-Christian relations and the Holocaust, the Council's statement in October 1965, *Nostra Aetate*, aiming to build a new foundation for dialogue, was a mild beginning with no admissions of Christian shortcomings. Instead, based on St. Paul's letter to the Romans, it absolved all Jews from responsibility for the crucifixion of Jesus and it did set forth the Council's desire to foster dialogue.¹¹⁷ Even in January 1997, Jonathan Gorsky could very plausibly write that "Christian-Jewish dialogue is still in its infancy," but it was nevertheless a dialogue "in the presence of God, in prayer and silent meditation," as *Nostra Aetate* encouraged.¹¹⁸ The difference between divine incarnation and the longing for the transcendent God is only part of the story because of the "equally powerful sense of the intimacy of God with his people Israel, a sense that reflects a knowledge of the divine love."¹¹⁹ Instead of monasteries cloistered from the world, Jewish law (Halakha) brings holiness to everyday life.¹²⁰ Today, Christian emphasis on holiness in the grasp of the lay person's everyday life, expressed in such groups founded in the twentieth century as Focolare ("the hearth") and Opus Dei ("God's work"), have made available more ways to recognize spiritual bridges to each other. These groups actively include members of other faiths in their own work.¹²¹

These "pioneering views" of a generation now retiring have given way to much more ambitious goals, and "the presence of Islam in Europe has led to the concept of Abrahamic ecumenism, opening new doors to the connections among the three monotheistic reli-

¹¹⁷ See POPE PAUL VI, *NOSTRA AETATE*, *supra* note 9, at ¶ 4.

¹¹⁸ Jonathan Gorsky, *A Jewish Perspective*, *PRIESTS & PEOPLE*, Jan. 1997, at 491, 493. For Jacques Maritain's strong commitment to the Jewish people, see *supra* note 101; JAMES V. SCHALL, *MARITAIN: THE PHILOSOPHER IN SOCIETY* 181–99 (1998); Leon Kle-nicki, *Jacques Maritain's Vision of Judaism and Anti-Semitism*, in *JACQUES MARITAIN AND THE JEWS* 72–88 (Robert Royal ed., 1994).

¹¹⁹ Gorsky, *supra* note 118, at 493 (citing Jonathan Gorsky, *A Jewish Response to the Decade of Evangelism*, in *THE WAY* 283 (1994) (offering a Jewish commentary on *Nostra Aetate*). While the covenant between God and his chosen people cannot be abrogated by others, the perceptions of Christians, Muslims, other religions, and agnostics about Jews were arguably not based on the covenant. See Cunningham, *supra* note 11, at 7.

¹²⁰ See Gorsky, *supra* note 118, at 494–95.

¹²¹ See *About Us*, FOCOLARE MOVEMENT, <http://www.focolare.org/en/movimento-dei-focolari/storia> (last visited Mar. 17, 2011); *What Is Opus Dei*, OPUS DEI, <http://www.opusdei.us/sec.php?s=8> (last visited Mar. 17, 2011).

gions.”¹²² Furthermore, Pope John Paul II treated Judaism as “intrinsic to the self-understanding of Christianity.”¹²³ He visited the sites connected to the Shoah and went on pilgrimage to Mount Sinai during the Holy Year of 2000.¹²⁴ The most significant meetings were the Mass of Pardon in St. Peter’s Basilica on the First Sunday of Lent, March 12, 2000, and the prayer at the Western Wall, the holiest site in Jerusalem, where on March 26, 2000, the Pope—the first since Peter to visit Jerusalem—inserted a written prayer into the wall according to the Jewish custom.¹²⁵ John Paul II’s successor, Pope Benedict XVI, continued this acknowledgement of the people of the Covenant as brothers when he inserted his own prayer in the crevices of the Wall during his visit on May 12, 2009.¹²⁶ Whatever disputes may arise, enough of a foundation has been laid to continue, deepen, and broaden the relationships between these two Abrahamic faiths.

3. Muslims and Non-Abrahamic Religions

The Vatican set up an umbrella organization with more specific dialogue committees for particular faith groups such as Muslims (the third Abrahamic religion), Buddhists, Jains, Sikhs and Baha’is.¹²⁷ “[O]ne of the major achievements of Vatican II was its official acknowledgment and appreciation of other religious traditions and cultures . . . to a large extent it opened the doors to unprecedented dialogical possibilities between Muslims and Catholics.”¹²⁸ For this dialogue, the major consideration is the Qur’an’s emphasis on the role of God as deciding the fate of all creatures, thereby obviating the claim of any people or group to judge others. For Jewish-Roman Catholic dialogue, recognition of God’s continuing covenant with the people of Israel is key. As *Nostra Aetate* states, “the Catholic Church

¹²² Christian M. Rutishauer, *The Abiding Significance of Judaism for Christian Identity*, 2 *STUD. CHRISTIAN-JEWISH REL.* 140, 142 (2007).

¹²³ *Id.* at 145.

¹²⁴ See Cunningham, *supra* note 11, at 33.

¹²⁵ See *id.* at 34.

¹²⁶ See *id.*

¹²⁷ See *Pontifical Council for Interreligious Dialogue*, VATICAN, http://www.vatican.va/roman_curia/pontifical_councils/interelg/documents/rc_pc_interelg_pro_20051996_en.html (last visited Mar. 29, 2011).

¹²⁸ Qamar-Ul Huda, *The 40th Anniversary of Vatican II: Examining Dominus Iesus, and Contemporary Issues for Inter-Religious Dialogue Between Muslims and Catholics*, 15 *ISLAM & CHRISTIAN-MUSLIM REL.* 331, 331, 333–34 (2004). Objections to *Dominus Iesus*, a *Declaration of the Doctrine of Faith*, were raised concerning evangelization at the expense of the ecumenism of the *Declaration on Religious Freedom* “and its warning against proselytism.” Griffin, *supra* note 6, at 259.

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rejects nothing that is true and holy in these religions.”¹²⁹ Genuine dialogue obviates judgmental relationships and aims not to convert the dialogue partner but to understand both one’s own and others’ religion and call to holiness better. This stance enabled Pope John Paul II to criticize the “senseless waste of human life” in Sudan, Nigeria, and other Muslim areas with the aim of protecting the lives of refugees by bringing global attention to the need to protect human lives and dignity.¹³⁰

The future of Muslim-Catholic inter-faith dialogue is to bring minds and hearts together and primarily to teach all the participants in the dialogue that we need each other. . . . [I]n particular, the benefits of humanizing each other illuminate the moment when we acknowledge the other in our own religious landscape.¹³¹

In a striking image from his own tradition, Qamar-Ul Huda suggests that dialoguers transcend posturing and embrace “the mutual humble process of removing the veils that divide us from each other and from God.”¹³²

B. Looking to the Declaration as a Recognition of Conscience and the Relationship of the Person with Government and Society

According to Gregory A. Kalscheur, “[t]he *Declaration* deserves the attention of constitutional lawyers because of what it can teach us about the nature of constitutional government: government whose legitimate scope and power are limited by the demand for responsible freedom rooted in human dignity.”¹³³ It is perhaps natural for American constitutional scholars to compare and contrast the strong commitment of the Declaration to free exercise with the presently weak and almost non-constitutional position it occupies in U.S. Supreme Court jurisprudence, as reflected in such cases as *Employment Division, Department of Human Resources v. Smith*,¹³⁴ *Minersville School District v. Gobitis*,¹³⁵ and *Reynolds v. United States*.¹³⁶ Indeed, except for non-discrimination against a particular religious group as in *Church of*

¹²⁹ POPE PAUL VI, *NOSTRA AETATE*, *supra* note 9, at ¶ 2.

¹³⁰ Huda, *supra* note 128, at 335.

¹³¹ *Id.* at 344.

¹³² *Id.* at 345.

¹³³ Kalscheur, *supra* note 12, at 6.

¹³⁴ 494 U.S. 872 (1990), *reh'g denied*, 496 U.S. 913 (1990).

¹³⁵ 310 U.S. 586 (1940).

¹³⁶ 98 U.S. 145, 164 (1878).

Lukumi Babalu Aye, Inc. v. City of Hialeah,¹³⁷ it is difficult to state with certainty any definite role for the free exercise clause because whole areas have been committed to the Religious Freedom Reformation Act (RFRA), Religious Land-Use and Institutionalized Persons Act (RLUIPA), and state RFRA statutes.¹³⁸ The vibrancy of the works on the Declaration compares favorably with the moribund and confusing treatment of free exercise in the current jurisprudence of the Supreme Court on the same subject.¹³⁹ A representative sample of the invocation of the norms set forth in the Declaration in scholarly articles will demonstrate the promise that the Declaration has in illuminating free exercise in American society.

Kalscheur uses the Declaration as a normative document against which to assess the jurisprudence of the Supreme Court in the area of First Amendment freedoms. “The analytical framework articulated by the Declaration allows us to see that there are . . . moral limits on the state’s use of law.”¹⁴⁰ For example, public order provides a legitimate basis for governmental action through law. The moral concept of public order is a limit on the legitimate reach of law. This helps our understanding of what constitutes a legitimate governmental interest. The law’s role is morally limited to protecting the public order of society. In the Declaration, the dignity of the human person is that moral limit.¹⁴¹ The Declaration also clearly acknowledges that respect for the dignity of the human person in no way depends on whether or not the person’s beliefs or actions are in accord with reli-

¹³⁷ 508 U.S. 520 (1993).

¹³⁸ See 42 U.S.C. § 2000cc (2006); 42 U.S.C. § 2000bb (2006). For a fuller treatment of the decline of the availability of the free exercise clause, see generally Catherine M.A. McCauliff, *Religion and the Secular State*, 58 AM. J. COMP. L. 31 (2010).

¹³⁹ See *id.* at 36 (highlighting the Court’s “seemingly arbitrary” jurisprudence in recent Establishment Clause decisions).

¹⁴⁰ Kalscheur, *supra* note 12, at 7. Compare this to Maritain’s answer to written problems submitted by Paul VI at the end of 1964, in particular on religious freedom:

But the body politic or the state, which is the temporal realm of earthly common good, has no mission and no competence to teach the truth or guide people toward the truth. That’s the reason it has no power over souls and consciences. And it is in face of the state that religious liberty must be proclaimed and maintained as one of the fundamental rights of the human person.

Papini, *supra* note 70, at 4 (quoting Jacques Maritain, *Quatre memorandums*, in XVI OEUUVRES COMPLÉTES 1085, 1087 (1992)). The four questions were “on the truth,” “religious liberty,” “the apostolate of the laity,” and “prayer in common and private prayer.” *Id.*

¹⁴¹ See Kalscheur, *supra* note 12, at 8–11.

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gious or moral truth.¹⁴² The duty to seek and follow the truth helps to ground the Declaration's articulation of a right to a responsible freedom immune from coercion.¹⁴³ Kalscheur concludes that the dignity of the human person is injured if one's exercise of responsible freedom is restrained when the just demands of public order do not require the restraint.¹⁴⁴ He then applies these principles to the confusing enforcement of morals laws in U.S. Supreme Court cases.¹⁴⁵

To clear away the underbrush of establishment and free exercise cases, Robert Hunt relies on the magisterial study of the development of separationist jurisprudence by the legal historian Philip Hamburger.¹⁴⁶ After noting that the First Amendment itself does not invoke separation, Hunt summarizes the legal history of the separationist jurisprudence, set forth in *Everson v. Board of Education of the Township of Ewing*.¹⁴⁷ Separation was only one interpretation of the religion clauses of the First Amendment, but it left a permanent legacy of secularizing the public schools when the Court disallowed prayer¹⁴⁸ and reading the Bible¹⁴⁹ in public schools. This secularization gave rise in part to the opening of various types of Christian and other religious schools, as well as to the home schooling movement. Hunt sets forth the purpose of separationist jurisprudence as seeking to prevent free exercise of religion.¹⁵⁰

With this preparation, Hunt then uses the Declaration to analyze the normative difficulties in the Supreme Court's jurisprudence of separation of church and state, which disregards free exercise and enshrines the "secularist 'article of faith.'"¹⁵¹ This interpretation of the First Amendment religion clause contravenes the Declaration's later admonition that "the right of all citizens and religious communities to religious freedom [] be recognized and made effective in practice."¹⁵² The principle of free exercise expressed in the Declaration allows Hunt to define the separationist view as a secularist, En-

¹⁴² See *id.*

¹⁴³ See *id.* Cf. JACQUES MARITAIN, *ANTIMODERNE* 931 (1961).

¹⁴⁴ See Kalscheur, *supra* note 12, at 8–11.

¹⁴⁵ See *id.*

¹⁴⁶ Hunt, *supra* note 6, at 27 (citing PHILIP HAMBURGER, *SEPARATION OF CHURCH AND STATE* (2002)).

¹⁴⁷ *Id.* at 25 (citing *Everson v. Bd. of Educ. of the Twp. of Ewing*, 330 U.S. 1 (1947)).

¹⁴⁸ See *Engle v. Vitale*, 370 U.S. 421 (1962).

¹⁴⁹ See *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963).

¹⁵⁰ See Hunt, *supra* note 6, at 27, 31–33.

¹⁵¹ *Id.* at 28, 34–38.

¹⁵² POPE PAUL VI, *DIGNITATIS HUMANAE*, *supra* note 5, at ¶ 6.

lightenment personalization of religion, removing its public role.¹⁵³ Justice Hugo Black's avowal in *Engle v. Vitale* that "religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate"¹⁵⁴ to continue to permit prayer in the public schools "constitutionally privilege[s] a liberal Protestant brand of religiosity."¹⁵⁵ Thus, Black violated the "sectarian" prohibition of the separationist jurisprudence itself.¹⁵⁶ Looking at the Declaration's commitment to free exercise, Hunt suggests that the goal of religious liberty in the religion clauses of the First Amendment can be restored.¹⁵⁷

In a similar fashion, Kenneth Grasso examines the Declaration for its "understanding of the role of the state in the overall economy of social life" and of "the political dimensions of religious liberty."¹⁵⁸ The distinction between state and society is "foundational" in Roman Catholic social thought. The Declaration is a part of this wider picture and comes from "the work of the generation of thinkers"—such as Pesch, Maritain, Rommen, and Messner—who "helped lay the groundwork for the broader development in Catholic social teaching of which [the Declaration] is a part."¹⁵⁹ The personalist aspects of human beings, as opposed to the sketchier, economically focused and self-interested individual of Enlightenment philosophy, are important to understanding "the nature and proper ordering of both social and political life" from personal dignity to "society's pluralist structure."¹⁶⁰ Grasso finds that Maritain's work is particularly important in this regard.¹⁶¹ Grasso does not, however, apply the structure reflected in the Declaration to particular problems of free exercise of religion but instead looks at religious liberty as an important cornerstone in the theory of the State.¹⁶²

¹⁵³ See Hunt, *supra* note 6, at 27–28.

¹⁵⁴ *Engle v. Vitale*, 370 U.S. 421, 432 (1962).

¹⁵⁵ Hunt, *supra* note 6, at 30.

¹⁵⁶ See Hunt, *supra* note 6, at 30.

¹⁵⁷ See *id.* at 38 (citing Angela C. Carmella, *Everson and its Progeny: Separation and Nondiscrimination in Tension*, in *EVERSON REVISITED: RELIGION, EDUCATION AND LAW AT THE CROSSROADS* 117 (Jo Renee Formicola & Hubert Morken eds., 1997)).

¹⁵⁸ Kenneth L. Grasso, *An Unfinished Argument: Dignitatis Humanae, John Courtney Murray, and the Catholic Theory of the State*, in *CATHOLICISM AND RELIGIOUS FREEDOM* 161, 162 (Kenneth L. Grasso & Robert P. Hunt eds., 2006).

¹⁵⁹ *Id.* at 186 (citing JOHANNES MESSNER, *SOCIAL ETHICS* (1945); HEINRICH ROMMEN, *THE STATE IN CATHOLIC THOUGHT* (1949); MARITAIN, *supra* note 30).

¹⁶⁰ *Id.* at 189.

¹⁶¹ See *id.* at 189, 193 (citing MARITAIN, *supra* note 20).

¹⁶² See *id.* at 185–88.

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By examining the role of the Declaration in establishing fairer guidelines for the restriction of free exercise, Angela Carmella addresses the problem of free exercise in the context of common interest communities, covering privately run housing tracts, condominiums, and other housing arrangements.¹⁶³ Professor Carmella invokes the dignity of the human person, the common good of society, and the availability of private property for the free exercise of the property owner's religion.¹⁶⁴ She derives the exercise of "responsible religious freedom" from the Declaration itself, which recognizes the dignity of the person to act in accord with his own beliefs in a responsible way.¹⁶⁵ Other members of society must respect religious freedom and not interfere with the person's right of free exercise, just as the person must not infringe on others' rights to free exercise. From those principles she provides guidelines for reasonable rules in common interest communities, designed to respect the rights of both the individual person and the community itself.¹⁶⁶ As her article becomes available to common interest communities, including their lawyers, advocacy groups, and individual members, her principles should remove much of the tension built into the blanket provisions that overprotect the communities at the unnecessary expense of the individual members of those communities.

The presentation of such norms and working principles to solve free-exercise problems in every-day communities and the development of limitations on government action in matters of morals non-threatening to others show the interpenetration of the principles of the Declaration in the consciousness and legal thought of a generation which grew up familiar with the categories and teachings of the Declaration. Such ingenious and pioneering use of these principles can only grow as members of civil society interact with each other in the familiarity and availability of the spirit and principles of the Declaration.

IV. THE FRUIT OF THE FRIENDSHIP: A BETTER VISION OF CHRISTIANITY ABLE TO CLAIM RIGHTS FOR ITSELF BECAUSE IT RESPECTS THE RIGHT OF CONSCIENCE

As we approach a half century of familiarity with the Declaration, the vision for religious freedom and confessional pluralism juridically

¹⁶³ Carmella, *supra* note 12, at 75–83.

¹⁶⁴ *See id.*

¹⁶⁵ *See id.* at 83 (citing *Declaration on Religious Freedom*, in *THE DOCUMENTS OF VATICAN II* 675, 687 (Walter M. Abbott, S.J., ed., 1966)).

¹⁶⁶ *Id.* at 85–91.

recognized by governments is becoming clearer. The use of the Declaration in examining the role of government in society is exactly what its inspirers (e.g., Maritain) and sponsors (e.g., Pope Paul VI and John Courtney Murray) would have wished for the integration of these principles in daily life. Schloesser attributes Maritain's ability to introduce this balance into the discussion to his insight that timeless ideas are expressed in terms of each generation's circumstance.¹⁶⁷ This perspective allowed Thomistic philosophy to serve as a vital force in the 1920s.¹⁶⁸ Furthermore, Maritain did not neglect theology, the sacraments, or the manifestations of the incarnation.¹⁶⁹ Maritain welcomed the new and saw that philosophy is "as much a thing of today as it is of yesterday."¹⁷⁰ In Maritain's view, the modern element does not replace or destroy the foundations of Christianity.¹⁷¹ Theologically speaking, Maritain used "the analogy of the Incarnation: the divine was capable of becoming something else without replacing it or destroying it, even as it remained itself without confusion."¹⁷² According to Schloesser, Maritain looked at the modern world as the essential constancy of dialectical images reprising eternal themes.¹⁷³ If "Maritain's transformation of Thomists into ultramodernists was one of the most important catalysts for the 1920s neo-Thomistic revival,"¹⁷⁴ his political philosophy—which remained true to the essentials of Christianity—certainly formed part of the groundwork that made the Council possible and contributed to the positions taken during the course of the Council itself.

The Roman Catholic conception of human rights developed from looking at foundational truths in the light of new democratic political possibilities.¹⁷⁵ Putting the human person at the center of church doctrine provided the focus of interpretation of these political conditions assessing the temporal role of the state and the securing of religious freedom, particularly freedom for the church itself in its relations with political society and not just its individual members.

¹⁶⁷ SCHLOESSER, *supra* note 97, at 163–64.

¹⁶⁸ *Id.* at 163.

¹⁶⁹ *Id.* at 165.

¹⁷⁰ *Id.* (citing MARITAIN, *supra* note 143).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ SCHLOESSER, *supra* note 97, at 166–67.

¹⁷⁴ *Id.* at 163.

¹⁷⁵ Kenneth L. Grasso, *Beyond Liberal*, in CATHOLICISM, LIBERALISM, AND COMMUNITARIANISM: THE CATHOLIC INTELLECTUAL TRADITION AND THE MORAL FOUNDATIONS OF DEMOCRACY 29, 50–51 (Kenneth L. Grasso et al. eds., 1995).

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In other words, the internalization and assimilation of these political conditions arose from an undertaking as extensive and fundamental as Aquinas's absorption of Aristotelian principles, which resulted in a transformation of our understanding of Aristotle as well. This renewal of Christianity took place over many years in many different Christian circles, culminating in the second Vatican Council. Maritain's philosophical thought was influential during both the Council's debates and in the Council's documents addressing the relationships between the church and the world, the church and the state, and religious liberty with its recognition of religious pluralism.¹⁷⁶ Friendship like that between Jacques Maritain and Paul VI proved crucial.

When Jacques Maritain died on April 28, 1973, Paul VI sent his secretary, Msgr. Pasquale Macchi, as his special delegate for the funeral and burial at Kolbsheim, near Strasburg.¹⁷⁷ On the twenty-ninth, the Pope himself, in St. Peter's Square for the feast of St. Catherine of Siena, remembered Maritain's life in the following way:

And the other voice which today draws our attention says this, in an unedited fragment: 'Each professor seeks to be as much as possible exact and well informed outside his own discipline. But he is called to serve the truth in a more profound way. He is enjoined to love the Truth above all as absolute and to which he is entirely devoted; if he is a Christian, it is God himself whom he loves.' Who speaks this way? It is Maritain, who died yesterday at Toulouse, a great thinker of our time, a master in the art of thinking, living and praying. He died alone and poor, associated with the Little Brothers of Charles de Foucauld. His voice, his person will endure in the tradition of philosophical thought and Catholic meditation. We won't forget his appearance in this place at the closing of the Council, to receive the message to men of culture in the name of Christ our Master.¹⁷⁸

¹⁷⁶ See Papini, *supra* note 70, at 1.

¹⁷⁷ BARRÉ, *supra* note 21, at 437–38.

¹⁷⁸ Paul VI, *Morceau Inédit extrait de la lettre Envoyée à Mgr. Pasquale Macchi*, 40 CAHIERS JACQUES MARITAIN 64 (2000) (author's translation). Many years before Maritain had written that genuine fellowship only exists

when a man is firmly and absolutely convinced of a truth, or of what he holds to be a truth, and when he at the same time recognizes the right of those who deny this truth to exist, and to contradict him, and to speak their own mind, not because they are free from truth but because they seek truth in their own way, and because he respects in them human nature and human dignity and those very resources and living springs of the intellect and of conscience which make them potentially capable of attaining the truth he loves . . .

JACQUES MARITAIN, *Truth and Human Fellowship*, in ON THE USE OF PHILOSOPHY: THREE ESSAYS 16, 24 (1961).

Not long before Pope Paul VI died on August 6, 1978, he talked about Christian friendship and quoted Cicero's *De Amicitia* to the effect that friendship is "perfect agreement on all things, divine and human, accompanied by benevolence and love."¹⁷⁹ Paul VI mentioned Christ as the perfect friend. Surely this passage from Cicero also describes the importance of the relationship between Paul VI and Jacques Maritain to the Church's recognition of religious freedom as one of the universal and fundamental human rights.

¹⁷⁹ HEBBLETHWAITE, *supra* note 17, at 707 (quoting Pope Paul VI).