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JOHN COURTNEY MURRAY AND THE ORTHODOXY OF FREEDOM: AN APPLICATION TO ECONOMIC LIFE

“The Vatican Council declares that the human person has a right to religious freedom.”¹ Thus begins the first chapter of the *Declaration of Religious Liberty* approved by the Second Vatican Council on 7 December 1965. What follows from this dramatic statement is a powerful and affecting argument on behalf of legal structures and social orders that permit the civic flourishing of political freedom with regard to religious faith.

All men should be immune from coercion on the part of individuals, social groups, and every human power so that, within due limits, nobody is forced to act against his convictions nor is anyone to be restrained from acting in accordance with his convictions in religious matters in private or in public, alone or in associations with others.²

The basis of this assertion is not in a vague appeal to tolerance or pluralism, or the absolute freedom of the conscience, as we have become accustomed to hearing in the post-modern age, but rather the appeal is rooted in the very nature of man, by which we are bound by conscience to adhere to known truths and to seek that truth in absence of formal coercion by the state or the church.

In the background of this conciliar statement stands a towering monument of Christian scholarship in this century. It is John Courtney Murray’s *We Hold These*

¹ *Vatican Council II*, general ed. Flannery OP, Boston 1988, *Dignitatis Humanae*, par. 2.

² *Ibidem*.

*Truths: Catholic Reflections on the American Proposition.*³ It is a hugely significant work, not only for having exercised influence on the writing of the Council's declaration on religious liberty, but also because it represented a fundamental challenge to Catholics the world over who were being forced by world events, for better and/or worse, to come to terms with the age of democracy that this century represents. And what country in 1960 had more experience with modern democracy than America, whose Catholics were a minority in a largely Protestant Republic, and who had even experienced some measure of religious persecution?

Murray was born in New York, studied at seminaries in Massachusetts and Maryland, and received his doctorate in theology from the Gregorian University in Rome. As a widely published author in both scholarly and popular media, he taught at Woodstock College since 1937. Murray is also distinguished for having made the first fully Catholic argument on behalf of the American system of religious liberty, and his book was to exercise a profound influence on Catholics not only in America but the world over. It was Murray who helped Catholic Christendom to make the transition from the age of monarchy to the age of democracy, and it was his political theology of freedom, which of course had a long history in church teaching, dating most explicitly from St. Bellarmine onwards⁴, that provided the foundation for modern American Catholics to understand the place of their faith in the public in a manner altogether different from the one they had become accustomed to. American Catholics had known since the founding, even if they did not entirely understand its implications, that it was futile to hope for Catholicism to acquire any form of legally privileged status in the American republic, but it had not been until the 1960s that they began to understand the moral reasoning behind the idea of the freedom of religion. The thrust of Murray's argument was that Catholics could fulfill their responsibilities to exercise social influence via cultural institutions, which he regarded as ultimately having a more profound influence on the social order and on souls than political institutions ever could.

Murray's case for the freedom of religion – which he argues is not a departure from but rather a development of Catholic social ethics – reads as well today, and has as much persuasive power, as it had in 1960. It is my contention, in addition, that Murray's argument on behalf of religious liberty can also be made on behalf of economic liberty, which involves the domain in which society provides material wellbeing for its members. Here too, conscience, choice, and human nature all play important roles in the moral drama of social life. As central as the idea of freedom is to spiritual development, so too is economic liberty, with its attendant moral foundations, a central part of the material development of the world. And human development itself – in a thoroughly Christian understanding of that term – goes beyond the gnostic disparagement of things material to embrace fully the goodness

³ J. C. Murray SJ, *We Hold These Truths: Catholic Reflections on the American Proposition*, New York 1960.

⁴ Rev. J. C. Rager, *The Political Philosophy of Robert Bellarmine*, Spokane 1995 [1926].

of the world and responsibility of men and women to exercise stewardship over the material order (Genesis 1: 28–30).

What follows is an effort at a defense of the classical liberal economic order that makes its case along Murrayian lines. I argue that the free economy based on private property and free contract can be considered the economic formalization of the general principle of civic liberty, a principle that Murray applied (but not restrictively) to the idea of political democracy. In addition, I would like to make a similar argument to the one Murray offers on the issue of censorship to the question of how society should treat morally dubious economic actions on the part of its members. Murray holds that Americans need to develop a more “European” sense of how the law relates to society generally (just as all that is legal is not moral, vices are distinguished from crimes); similarly, Americans need to develop a broader sense of their responsibility to behave virtuously in the absence of coercive power.

Murray sets up his case for religious freedom by pointing to the reason it becomes necessary to deal with, namely the existence of religious diversity. For starters, Catholics and Protestants distrust each others’ political intentions, and “this problem is particularly acute in the United States.”⁵ America deals with the two forces of secularism and Judaism. Each has its own religious, cultural, and political agenda and cultural tendencies.⁶ Murray calls these the four “great conspiracies” – groups whose members cohere on the fundamental issues involving values and the political order – and says the central issue that American liberty attempts to deal with is how to make them “conspire into one conspiracy that will be American society – civil, just, free, peaceful one.”⁷ Of course, it is not the will of God that there be religious division. God desires that his Church be one; therefore religious pluralism is, in the strict sense, “against the will of God”, Murray writes, since there is only one truth. In this sense, religious pluralism is a dissent against God. How, then, can pluralism as a social institution be tolerated? Because society must deal with realities, and not only with ideals:

[Pluralism] is the human condition; it is written into the script of history. It will not somehow marvelously cease to trouble the City.⁸

He argues that it is a vain hope, in any religiously heterogeneous society, that there can be unanimous consent in the political arena. So he urges us to rank our

⁵ *Ibidem*, p. 20.

⁶ *Ibidem*. Murray wrote in 1960; now nearly 40 years later these differences are real but have been mitigated by the rise of secularism which is afflicting both camps from within and without. The extent of cooperation between orthodox elements in all camps has been greatly enhanced by the pro-life, anti-abortion political movement, for example, and the growing realization that the secular world desires that we live public lives as if God did not exist. In opposition to such trends, the meeting ground has been enlarged for people of all camps to cooperate. Conservative Jews often find themselves in alliance with orthodox Christians on a variety of political and cultural issues.

⁷ *Ibidem*, p. 23.

⁸ *Ibidem*.

goals in terms of their priorities, and consider the necessity of two proximate goals: limiting formal and informal religious warfare and enlarging social conversation between all groups, as a means toward the transmission of truth to the broadest possible audience.⁹

Murray proceeds to spell out a series of parallels between the liberal notion of self government, the Catholic tradition of subsidiarity and the rule of law. The principles that everyone is treated equally by the law with no privilege or disparagement, and that the government which governs best governs least are both American and Catholic. As Murray puts it,

the American thesis is that government is not juridically omnipotent. Its powers are limited, and one of the principles of limitation is the distinction between state and church, in their purposes, methods, and manner of organization.¹⁰

Murray's idea is authoritatively elaborated in the Second Vatican Council's document *Gaudium et Spes*, which says:

As for public authority, it is not its function to determine the character of civilization, but rather to establish the conditions and to establish the means which are capable of fostering the life of culture among all...¹¹

Moreover,

government should take care not to put obstacles in the way of family, cultural, or social groups, or of organizations and intermediate institutions, not to hinder their lawful and constructive activity...¹².

The first idea that ties the traditions of freedom and subsidiarity together relates directly to the economic order: the "principle of consent".¹³ The principle of consent was inherent in the medieval idea of kingship. The king is bound to rule according to the wishes, or at least without the severe objection, of his subjects; that is, with their consent.¹⁴ The American tradition "reaffirmed this principle, at the same time that it carried the principle to newly logical lengths".¹⁵ The government is

⁹ *Ibidem*. It is immaterial for Murray whether this proposition is the ideal or if it is merely instrumental; the point is that it is necessary for dealing with the reality before us. If we value social peace, as Catholics do, then it becomes a useful moral means of dealing with religious differences within society without compromising the demands of evangelization.

¹⁰ *Ibidem*, p. 68.

¹¹ *Gaudium et Spes*, No. 59.

¹² *Ibidem*, No. 75.

¹³ *Ibidem*, p. 33.

¹⁴ St. Robert Bellarmine: "In a commonwealth all men are born naturally free; consequently, the people themselves, immediately and directly, hold the political power so long as they have not transferred this power to some king or ruler." Cited in: J. C. Rager, *op. cit.*, p. 6.

¹⁵ *Ibidem*, p. 33.

limited both by law and by the will of the people who live under the law. In the truest sense, government is of the people, by the people, and for the people; society is not governed from the outside, but rather governs itself. This American proposition “includes a great act of faith in the capacity of the people to govern themselves”.¹⁶

The second principle is that of “free institutions”, a phrase Murray sees to be bound up with the strict distinction between society and state.¹⁷ Murray writes:

This principle too was inherent in the Great Tradition. Before it was canceled out by the rise of the modern omnicompetent society-state, it had found expression in the distinction between the order of politics and the order of culture, or, in the language of the time, the distinction between *studium* and *imperium*

– a distinction traced to the much older dividing line between priestly and civic courts.

The whole order of ideas in general was autonomous in the face of government; it was immune from political discipline, which could only fall upon actions, not ideas.¹⁸

Murray points out, with some sense of irony, that though America understands itself as a Protestant country, this tradition of free institutions “has found, and still finds, its intellectual home within the Catholic Church”.¹⁹

Among the implications of this discussion is that the idea of central planning – in politics, culture and/or economics – is ruled out as a violation of both foundational principles. “Order should not be imposed from the top down”, Murray writes, “but should spontaneously flower outward from the free obedience to the restraints and imperatives that stem from inwardly possessed moral principle”.²⁰ The term spontaneous used here has deep meaning in the modern history of liberal scholarship, especially in the work of F.A. Hayek, who used the notion of “spontaneous order” to describe the type of order generated by the market process based on respect for property rights, contract, and the rule of law.²¹ The “fundamental

¹⁶ *Ibidem*, p. 34, and, Murray continues, “the faith was not unrealistic [...] the supposition was that the people could understand the general objectives of governmental policy, the broad issues put to the decision of government, especially as these issues raised moral problems. The American consensus accepted the premise of medieval society, that there is a sense of justice inherent in the people, in virtue of which they are empowered, as the medieval phrase had it, to ‘judge, direct, and correct’ the processes of government.”

¹⁷ *Ibidem*, p. 35. Note that the separation between society and state does not contradict the principle of the unity of government and people. State is a term that delineates the enforcement of statutory law and is necessarily apart from the people and the government; government is the whole of civic institutions defined and protected by both law and the consent of the people.

¹⁸ *Ibidem*. See also: *Religious Liberty: Paul VI and Dignitatis Humanae: A Symposium Sponsored by the Institute Paolo VI and the Catholic University of America*, Brescia 1995, pp. 54–55, 63, 98.

¹⁹ *Ibidem*, p. 41. He goes further to praise the elements of American government that are “alien to current intellectualized versions of the Protestant religion” on grounds that they might not permit such a wide sphere for the development of free institutions.

²⁰ *Ibidem*, p. 36.

²¹ See: F. A. Hayek, *The Fatal Conceit: The Errors of Socialism*, Chicago 1988, p. 83.

principle” of the classically liberal economic order, writes Hayek,

is that in the ordering of our affairs we should make as much use as possible of the spontaneous forces of society, and resort as little as possible to coercion;

here lies a principle “capable of an infinite variety of applications”.²² Among the many profound dimensions of this discussion is the way in which Murray links the idea of religious freedom with the idea of freedom generally.²³ He does not concede even the possibility that religious pluralism could somehow coexist in the long run with a government that violates the principle of consent and the principle of free institutions. To the same extent that an intrusive government will tend to choose sides in sectarian struggles, varieties of freedom are bound up with each other and, as well, are mutually reinforcing. The more intrusive the government becomes in civil society, the less room for religious freedom does the state allow. Indeed, the preeminent argument for free political institutions is that they are the best and most reliable guardians of the rights of religion.

Today, however, there is a tendency among those who make incessant demand for the absolute separation of church and state (which, more often than not, becomes the separation of society and religion, which is contrary to Murray’s position) also to favor an enlarged public sector that cares little, if at all, for the idea of consent, marginalizes religious institutions, and enshrines in law a kind of secular religion. It would also be a misrepresentation of Murray’s argument to separate his position in favor of institutions that guard religious pluralism from the general American propositions concerning self government and free institutions. All of these freedoms co-exist. With government always in a subordinate position *vis-à-vis* the spontaneous flowering of society, political institutions are likely to reflect the principles of consent and freedom and flow organically from the values of the community rather than be imposed from above. “Government submits itself to judgment by the truth of society; it is not itself a judge of the truth in society”.²⁴ In this respect, the American Bill of Rights differs radically from the Rights of Man of the French Revolution, which was „a top-of-the-brain concoction of a set of men who did not understand that a political community, like man himself, has roots in history and in nature”. In contrast, the men who framed the Bill of Rights “understood history and tradition, and they understood nature in the light of both”. They were individualists, “but not the point of ignoring the social nature of man”. Their thinking was in the Catholic tradition of *homo liber et legalis*, the medieval notion of man whose

²² *Idem*, *The Road to Serfdom*, Chicago [1944] 1977, p. 17.

²³ Indeed Murray’s discussion of the limited powers of government precedes his detailed argument for religious freedom.

²⁴ J. C. Murray SJ, *op. cit.*, p. 35.

freedom rests on law, whose law was the age-old custom in which the nature of man expressed itself, and whose lawful freedoms were possessed in association with his fellows.²⁵

Thus it is not only religious freedom that is protected, but also “freedom of speech, assembly, association, and petition for the redress of grievance,” and, most crucially for purposes of the economic order, “security of person, home, and property”. These were the “great historical as well as civil and natural rights”.²⁶ The freedom of religion, in the American context, is legally enshrined in the First Amendment, which is rightly considered to be “a law, not a dogma”. It answers none of the

eternal human questions with regard to the nature of truth and freedom or the manner in which the spiritual order of man’s life is to be organized or not organized... It is not necessary to give [it] a religious assent but only a rational civil obedience.

The Bill of Rights contains “not articles of faith but articles of peace”.²⁷ The advantage of this arrangement for the church is that she is “entirely free” to define herself and to exercise her spiritual jurisdiction to the fullest.

It is legally recognized that there is an area which lies outside the competence of government. This area coincides with the area of the divine mission of the church, and within this area the Church is fully independent, immune from interference by political authority.²⁸

With no fundamental change in the basic framework described above, similar arguments can be made in the realm of economic freedom. The market economy, as Pope John Paul II has repeatedly emphasized, is not an ultimate value. It is not an article of faith; it has limits. The “invisible hand” of the market is not identical to the hand of God working in the world (although in the products produced by economic actors we may see a creativity that is analogous to the creativity of God²⁹). The free economy or business economy is merely the outgrowth, or the logical institutional arrangement, following from the protection of certain rights, namely that of property, contract, and free association. With the growth of the division of labor and competitive enterprise comes the widening of economic opportunity for work, saving, investment, innovation, and prosperity. It is right to regard capitalism, not as a constructed system of economics, but merely as the institutional and unplanned

²⁵ *Ibidem*, p. 38. See also: F. A. Hayek, *The Fatal Conceit...*

²⁶ *Ibidem*, p. 38.

²⁷ *Ibidem*, pp. 48–49. This is in contrast to the way they have been read more recently, that is, as “ultimate beliefs, certain specifically sectarian tenets with regard to the nature of religion, religious truth, the church, faith, conscience, divine revelation, human freedom, etc.” A secondary literature has developed criticizing Murray for failing to place enough significance on the Enlightenment and classical origins of the founder’s view of rights. See e.g., K. Craycraft, *The American Myth of Religious Freedom*, Dallas 1999, p. 104. Without entering this controversy, it is enough observe, with Craycraft, that Murray was taking the meaning of the Constitution at face value (*ibidem*, pp. 106–107).

²⁸ *Ibidem*, p. 70.

²⁹ See: *Centesimus Annus*, No. 32.

product of the social order in which human rights are protected. Moreover, in keeping with the principle of consent, the market process rests on the idea of voluntary engagement based on mutual advantage and cooperation. It is a peaceful means for social resources to be allocated among the endless variety of keeping ends. Like the freedom of religion, the market is not an article of faith, but an article of peace. The advantage for the commercial classes and the consumers (who in a market economy are the ultimate and sovereign agents determining the direction of the economic process) is that they are free to define themselves, their purchases, and their production decision according to the principle of mutual advantage. It is legally recognized that the arena of economics generally lies outside the competence of government authorities. This permits full freedom for economic creativity and complete reliance on the individual and familial responsibilities and initiatives that are an inescapable dimension of material provision in a free society.

As with religious liberty, economic liberty is necessarily bound up with political liberty. We do not have the luxury of combining a collectivist, socialistic, or interventionistic economic policy³⁰ with political and religious liberty because once the principle of coercion is introduced into one sphere it tends of necessity to invade the others; ultimately, this century has taught us, we are in the position of choosing liberty in every sphere of society or rejecting it in every sphere.³¹

There is a basis in American history for viewing the link between economic and religious liberty as direct. As Murray writes,

the merchants of New Jersey, New York, Virginia, and the more southern colonies were as emphatically on the side of religious freedom as on the side of commercial profits. Persecution and discrimination were as bad for business as they were for the affairs of the soul.³²

It would prove a difficult and lengthy process to discover how it was that this link was broken down in the modern age, with advocates of religious liberty opposing commercial liberty and the commercial classes caring less for protection of the church against the encroachments of state than they should. But the answer surely relates directly to the growth of the interventionist state, which has compromised and corrupted both the freedom of enterprise and the freedom of the church, thereby breaking down the natural and mutually reinforcing ties that bind the two intellectually and practically.

Although Murray's treatise on religious liberty does not discuss economic questions at any length (besides describing the basic institutional protections ne-

³⁰ For the fallacies and inherently irresolvable contradictions of the mixed economy, see F. A. Hayek, *The Constitution of Liberty*, Chicago 1960, pp. 220–233; L. von Mises, *Critique of Interventionism*, Irvington 1996 [1929].

³¹ See, generally: W. Roepke, *The Humane Economy: The Social Framework of the Free Market*, South Bend 1960, in particular pp. 90–150. This extraordinary work was published in English in the same year as John Courtney Murray's work and F. A. Hayek's great treatise *The Constitution of Liberty* (Chicago 1960).

³² J. C. Murray SJ, *We Hold These Truths...*, p. 59.

cessary for property inherent in a regime respecting the natural law), his book does contain a basic endorsement of the free economy in particular.

The most obvious growing end of the free society has been its business system... Behind its enormous growth has lain the pressure of the people's needs, wants, desires, dreams, passions, and illusions...³³

The Catholic Church in America (in 1960) "has accepted this thing which is the American economy. Her life, the life of grace, is tied to it in multiple respects." In particular, Catholic charities and schools are wholly dependent on the productive energies of the free market. This market has created enormous wealth, and "a wide distribution of wealth", without which the exercise of these Catholic virtues would be "impossible".³⁴ Murray further warns that "alterations in the structure of the economy, in the direction of 'state socialism'" would "subtly alter the relation of the Christian people to the institutions of the Church".³⁵

For a deepening of Murray's insights into economic relations, we do well to turn to F.A. Hayek's *Constitution of Liberty*, which might even be thought of as a companion volume to *We Hold These Truths*. It is here that the institutions and workings of the free economy are described and defended to their fullest extent, in the context of the liberal society. The object of the treatise is to understand more fully the social order in which coercion is minimized and the principle of consent informs all aspects of social life. "Coercion can be prevented", writes Hayek, "by enabling the individual to secure for himself some private sphere where he is protected against such interference".³⁶ This requires, above all, the protection of private property rights. This is the first step in the delimitation of the private sphere. With the dispersion of property title comes the necessity of contract, which allows other people's property to be serviceable in the achievement of everyone's goals.³⁷ Nobody has to be dependent solely on his own property ownership, or that of only

³³ *Ibidem*, p. 99. However, Murray adds, with characteristic humility, that he "has no competence" to engage in economic theorizing. He does so only briefly, but then with an uncharacteristic lack of clarity. He uses the language of "power" to describe the role of corporations in society that "direct" the activities of the "economic-political system". These passages could be understood on behalf of economic liberty if we construe these corporations as those that enjoy a privileged legal status from the state, and thereby do indeed exercise unwarranted power. But I make no claim that this is in fact what Murray meant to describe. If he meant to suggest that the corporation itself exercises "power" merely because it provides consumers with goods and services they desire, and investors with a return on their savings, then he is adequately answered by M. Novak, *The Spirit of Democratic Capitalism*, Washington 1982, pp. 237–358.

³⁴ *Ibidem*, p. 180. To quote *Centesimus Annus* says, "not only is it wrong from the ethical point of view to disregard human nature, which is made for freedom, but in practice it is impossible to do so" (No. 25).

³⁵ *Ibidem*, p. 181. On the other hand, he declines to elaborate on what form that alteration could take.

³⁶ F. A. Hayek, *The Constitution of Liberty...*, p. 139, 142, 207–208. Hayek calls this "the conception that a man's house is his castle... [...] What distinguishes a free from an unfree society is that in the former each individual has a recognized private sphere clearly distinct from the public sphere, and the private individual cannot be ordered about but is expected to obey only the rules which are equally applicable to all".

³⁷ *Ibidem*, pp. 140–141, 263–264. This dispersion of knowledge also applies in the political sphere. Hayek's endorsement of decentralization in politics is entirely in keeping with the Catholic idea of subsidiarity.

a few others, to provide for his material needs and desires. Everyone in society, through the division of labor and the principle of specialization³⁸, can participate in the market process, benefit from the productive activities of others, rely on the system of competition to guard against social waste, and be rewarded for the exercise of traditional virtues such as prudence, thrift, creativity, and work. Private property in a market economy has a public, or universal, destination.³⁹

Even such seemingly mundane institutions as prices, profit, and interest rates provide signals to behave in ways most in keeping with the common good. Prices work to apportion resources in the most socially efficient manner possible (the principles of supply and demand being the best agents of conservation mankind has every discovered). Profits are the signals of success, and provide more than just financial reward; they are the essential feedback mechanism to tell entrepreneurs whether or not they are serving the public good. Interest rates are the crucial mechanism that allow investors and savers to apportion and coordinate the application of resources across extensive periods of time. Experience suggests that government encroachments on these signals end up distorting them and causing dislocations of resources (artificial shortages), skewing of market signals (leading producers to waste resources), and discoordination of plans (excessive or insufficient consumption relative to investment).⁴⁰

Pope John Paul II spoke emphatically of the market economy, even while he warned of the dangers of materialism, consumerism, economism, immoral investment, and using the market in pursuit of vice. "It is not wrong to want to live better", the Pope wrote,

what is wrong is a style of life which is presumed to be better when it is directed at 'having' rather than 'being' and which wants to have more not in order to be more, but in order to spend life in enjoyment as an end in itself.⁴¹

In the American context, this is seen in excessive materialism (for example, Advent is far more a purely capitalistic than a religious occasion) and in the thriving traffic in immorality (illicit drugs, pornography, prostitution, etc.). These signs of the ethic of having are not to be blamed on the market as such but rather on the poor values and immoral choices, which is to say, the declining culture, of

³⁸ *Centesimus Annus* echoes the teaching of the classical economists: "many goods cannot be adequately produced through the work of an isolated individual; they require the cooperation of many people in working toward a common goal" (par. 32).

³⁹ *Centesimus Annus* cites *Rerum Novarum*: "Private property or some ownership of external goods affords each person the scope needed for personal and family autonomy and should be regarded as an extension of human freedom... Of its nature private property also has a social function, which is based on the law of the common purpose of goods" (No. 30). By the same token, publicly owned goods, that is, property owned by the state, often ends up having a purely private destination (accruing mainly to special interests connected with the regime).

⁴⁰ For a full defense of the social advantage of these technical but crucial institutions of the market economy see: L. von Mises, *Human Action*, Chicago [1949] 1963 and F. A. Hayek, *Profits, Interest, and Investment*, Clifton [1939], 1969 & 1975.

⁴¹ *Centesimus Annus*, No. 36.

the actors who make up one part of the market economy, as the pope argues in *Centesimus Annus*.⁴² The sin is less institutional than individual and cultural, but it is nonetheless real and destructive of the social order.

How does John Courtney Murray deal with these deleterious byproducts of freedom, especially of the American variety? He provides a profoundly insightful answer that rests on a fundamental criticism of the American character as it relates to its legal institutions. The “American mind”, he writes, “has never been clear about the relation between morals and law. These two orders of reality are frequently confused”, and in one of two ways.⁴³ Americans do not understand the meaning of the medieval adage that “whatever is right ought to be law”. By law, the medieval meant not codified law, enforced through coercion, but the structure of behavior and culture in society, including custom, manners, habits, and values of the individuals who make up the society. Americans have turned the adage around to be “whatever is custom ought to be right”. Thus, in American culture, it is somehow assumed to be a defense of one’s immoral conduct to “this is a free country”. Some reason as follows: I can get away with this, everyone else does this, the government does not punish me for this behavior, and therefore there is nothing wrong with it; no one has any right to complain. This attitude in a free society will not do. Such traditions as shunning, public disapproval, boycotts, and social marginalization are essential to keeping the free society a virtuous one. Yet, these practices have no force if the culture has confused freedom with absolute license and thereby conflated the liberal society with the libertine society. It is Murray’s opinion that this is a confusion in American culture, and he certainly seems to be correct. Instead, what is right ought to be part of custom and daily practice, whether or not it is part of the formal legal code. The second American confusion is directly related and summed up in the slogan “there ought to be a law” against any behavior that is deemed inappropriate, immoral, irritating, or against community norms in any respect. “The simplism of the adage reveals the failure to grasp the difference in order between moral precepts and civil statutes.”⁴⁴ This confusion reflects an exaggerated emphasis on positive law, as opposed to custom, as a guide for personal conduct and social standards of behavior.

Murray points to the signs of this confusion between laws and morality, mentioning prohibition of liquor earlier this century, the tendency to censor by gover-

⁴² *Ibidem*: “A given culture reveals its overall understanding of life through the choices it makes in production and consumption. It is here that the phenomenon of consumerism arises. In singling out new needs and new means to meet them, one must be guided by a comprehensive picture of man which respects all the dimensions of his being and which subordinates his material and instinctive dimensions to his interior and spiritual ones... Of itself, an economic system does not possess criteria for correctly distinguishing new and higher forms of satisfying human needs from artificial new needs which hinder the formation of a mature personality. Thus a great deal of educational and cultural work is urgently needed...” For an argument that *Centesimus Annus* takes further steps toward the Anglo-American model of liberal institutions than any prior authoritative teaching of the Holy. See: R. Hittinger, *The Pope and the Liberal State*, „First Things” 1992, December, pp. 33–41.

⁴³ J. C. Murray SJ, *We Hold These Truths...*, p. 156.

⁴⁴ *Ibidem*, p. 156.

nment statute (as opposed to ecclesiastical code), and the failure of the American republic to deal properly with issues concerning the dignity of life. In the case of prohibition and censorship, we see an excessively restrictive attitude embodied in legal statute.⁴⁵ They both violate St. Thomas's rule, in Murray's summation, for whether a law is prudent:

will the ban be obeyed, at least by the generality? Is it enforceable against the disobedient? Is it prudent to undertake the enforcement of this or that ban, in view of the harmful effects in others areas of social life? Is the instrumentality of coercive law a good means for the eradication of this or that social vice?⁴⁶

In Murray's analysis, then, Americans need to broaden their own sense of what constitutes the public moral code, to include not just what the government commands but also social customs and a concern for virtue; this public moral code, then, is enforced primarily by social norms. Herein lies the realm between libertinism and coercion that Americans have often managed to miss. Also, in Murray's analysis, the American legal regime needs to resist the urge to codify into law everything it, or some special interest, regards as immoral or wrong. To the extent it does not censor, it deserves a Catholic defense. But to the extent society does not censure, it needs instruction in the moral obligation to use freedom in a virtuous manner. Murray provides no final answers on what should be legal or illegal in the sphere of public law, but we can suggest that his corrected American regime would be more socially restrictive than it is today (using as much private authority as is necessary) at the same time it is more legally libertarian (minimizing the use of "formal coercion").

Defenders of a free economy can take careful instruction from Murray's analysis. Not all investments are moral, even if a free market allows them. Not all purchases reflect virtue, even if our material means allow them. Not all uses of private property are in keeping with the common good, even if the state should not generally interfere with them. Social strictures that encourage virtue need to be strong enough so that the state does not have the excuse to go beyond the functions granted by the principles of consent and free institutions. Market economists need to develop this Catholic sensibility, just as Catholics need to develop a greater understanding of the practical virtue of the market itself.

The key is to broaden our understanding of the concept of moral behavior so that it goes far beyond merely what is legal, at the same time that we narrow our understanding of the applications of the law so that the state does not interfere with essential freedoms, be they political, economic or religious. The goal is to restore the institutions such as the Church that stand between the individual and the state to the rightful an authoritative place in society. It is these intermediating institutions which are the final guarantors of all our freedoms.

⁴⁵ *Ibidem*, p. 167.

⁴⁶ *Ibidem*, pp. 166–167.

Our hope should be with Murray's, that the

dynamic order of reason in man, that clamors for expression with all the imperiousness of law, has its origin and sanction in an eternal order of reason whose fulfillment is the object of God's majestic will.⁴⁷

⁴⁷ *Ibidem*, p. 336.