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Gerald J. Beyer

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ARTICLES

FREEDOM, TRUTH, AND LAW IN THE MIND AND HOMELAND OF JOHN PAUL II

GERALD J. BEYER, PH.D.*

INTRODUCTION

The tension between avoiding the moral vacuum of relativism and respect for the freedom and rights of the individual in a democratic order has been the subject of great controversy in Poland since 1989. Issues such as abortion legislation and mandatory religious education in public schools provided an impetus for this debate. The late Pope John Paul II stirred controversy on numerous occasions by expressing his views on this matter. During his pilgrimages to his homeland, Pope John Paul II repeated pronouncements concerning “true” freedom, which is always “freedom in the service of truth.” The Pope’s denunciation of “false freedom” caused dismay among many defenders of liberal democracy, perhaps reminding them of the Roman Catholic Church’s pre-Vatican II insistence that “error has no rights.” Some of Poland’s most prominent intellectuals, such as Adam Michnik, Leszek Kolakowski, and Czeslaw Milosz, worried that the Roman Catholic Church wanted the government to “legislate morality.” Some even surmised that the Roman Catholic Church sought to create a “theocracy.”¹

* Assistant Professor of Theology, Saint Joseph’s University. A version of this essay was presented at the Oxford Round Table on Religion, Education, and the Role of Government, Oxford University on July 31, 2006. Many thanks are due to the participants who made a number of helpful comments and stimulated further thought on the concerns of this essay.

1. See, e.g., Leszek Kolakowski, “Krotka Rozprawa o Teokracji” and Czeslaw Milosz, “Panstwo Wyznaniowe?” in *SPOR O POLSKE* (Pawel Spiewak, ed., 2001). See ADAM MICHNIK, *LETTERS FROM FREEDOM: POST-COLD WAR REALITIES AND PERSPECTIVES* 178–83, 286–305 (Irena Grudzińska Gross ed., Jane Cave trans., 1998) [hereinafter *LETTERS FROM FREEDOM*]. For helpful discussions of both sides of this debate, see JAROSLAW GOWIN, *KOSCIOL W CZASACH WOLNOSCI 1989–1999*, 106–12 (1999) and JÓZEF TISCHNER, *NIESZCZESNY DAR WOLNOSCI* 130–41 (1996). For general discussions of the role of the Roman Catholic church in Polish politics after 1989 in English, see Sabrina P. Ramet, *Thy Will be*

Proponents of liberal democracy feared that the Church demanded all of its moral teaching be enshrined in law, thus blurring the distinction between moral norms and civil law. In response to this putative demand, political liberals have claimed that “freedom grants equal rights to sinners and the virtuous, to wisdom and idiocy, truth and chicanery, love and hate,” as Michnik put it.² Michnik and others argued that the Church must accept this tenet of liberal democracy. However, many of these same critics of the Church also contended it must challenge this tenet so that the “world of values” does not collapse.³ Can these two ideals be upheld simultaneously? If so, how can they be reconciled?

Using the Polish context, this paper attempts to reach an understanding of how the values of freedom and truth can inform civil law, while respecting the rights of the individual. In doing so, it utilizes Catholic social thought’s understanding of the relationship between morality and civil law, in particular the distinction between the public order and the common good. The argument of the paper unfolds in three parts. First, the paper describes the debate in Polish discourse concerning the relationship between freedom and truth and how these values should shape society. This section highlights John Paul II’s role in this discussion. The second part of the paper uses the abortion controversy to illustrate how talk of “freedom” and “truth” functioned in public policy debates in Poland’s fledgling democracy. Finally, it applies aspects of Catholic social thought in order to relax the tension between respect for the rights of the individual in the democratic order and the need for civil law to acknowledge the relationship between freedom and truth. In doing so, this paper argues that while John Paul II’s emphasis on the relationship between freedom and truth remains vital to democratic societies, the category of public order provides a helpful and necessary clarification about the degree to which church teaching and civil law should correspond.⁴ Put another

Done: the Catholic Church and Politics in Poland since 1989, in RELIGION IN AN EXPANDING EUROPE 117–47 (Timothy A. Bytnes & Peter J. Katzenstein eds., 2006) and Philipp Steger, *The Long Good-bye to the Catholic Country or How Powerful is Poland’s Roman Catholic Church?*, in 7 PARADIGMS AND CONTENTIONS: IWM JUNIOR VISITING FELLOWS CONFERENCES 1–26 (Maria Gomez et al. eds., 1999), available at <http://www.iwm.at/publ-jvc/jc-07-10.pdf>.

2. ADAM MICHNIK, KOSCIOL, LEWICA, DIALOG 302 (1998); see also MICHNIK, LETTERS FROM FREEDOM, *supra* note 1, at 178–83.

3. See MICHNIK, KOSCIOL, LEWICA, DIALOG, *supra* note 2, at 302; see also MICHNIK, LETTERS FROM FREEDOM, *supra* note 1, at 300–01.

4. This paper assumes that religious arguments in deliberations concerning civil laws do not violate the First Amendment. For cogent arguments

way, the argument here attempts to chart a middle-course between those who wish to jettison all talk of “freedom and truth” in discussions about civil law and those who lean towards seeing Catholic moral doctrines and civil law as coextensive.

I. FREEDOM AND TRUTH IN CONTEMPORARY POLISH DISCOURSE

If I had to place one of the values cherished in Poland first in lexical order, I would choose freedom.⁵

—Józef Tischner

According to social ethicist Aniela Dylus, Poles love freedom. She points out that they fought for it throughout their entire history, with the Roman Catholic Church as their main ally.⁶ Indeed, one survey in 1995 revealed that 83% of adult Poles view freedom as always being important, while a small minority see it as important only sometimes or never.⁷ Moreover, “freedom” ranks higher than other values such as social justice, welfare, and equality before the law.⁸ Thus, the fact that Poland’s most prominent philosopher Józef Tischner entitled a book *The Unfortunate Gift of Freedom* after Poland’s transformation to democracy in 1989 may seem confounding.⁹ However, “freedom” represents one of the most highly controversial categories in Poland today. A great deal of consternation stems from its myriad, often conflicting interpretations. For example, according to Polish neoliberals (i.e. proponents of economic liberalism) freedom amounts to “negative” freedom, or freedom from coercion, particularly in the economic sphere.¹⁰ This paper can-

against this popular misconception, see RONALD F. THIEMANN, *RELIGION IN PUBLIC LIFE: A DILEMMA FOR DEMOCRACY* (1996) and Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L. REV. 1, 1–6 (2002).

5. ADAM MICHNIK, JÓZEF TISCHNER, & JACEK ZAKOWSKI, *MIEDZY PANEM A PLEBANEM* 42 (1995).

6. See ANIELA DYLUŚ, *GOSPODARKA, MORALNOŚĆ, CHRZEŚCIJAŃSTWO* 95 (1994); see also TIMOTHY GARTON ASH, *THE POLISH REVOLUTION: SOLIDARITY* (1984).

7. Janusz Mariański, *Kryzys Moralny Czy Transformacja Wartości? Na Przykładzie Wartości “Wolność”*, in *ZIARNO CZYNU: REFLEKSJE PO V PIELGRZYMCE JANA PAWEŁA II DO OJCZYZNY: PRACA ZBIOROWA*, ED. FRANCISZEK KAMPKA 117 (Franciszek Kampka ed. 1998).

8. *Id.*

9. TISCHNER, *NIESZCZESNY DAR WOLNOŚCI* (1996).

10. See Andrzej Walicki, *Ideolog Epoki Postchłubnej*, *GAZETA WYBORCZA*, NOV. 8, 2003 at 18. Cf. ANDRZEJ WALICKI, *POLSKIE ZMAGANIA Z WOLNOŚCIĄ* 230–31 (2000). Wojciech Orlinski claims that Polish liberals accept the designation “neoliberal” and follow Hayek and Friedman, the heralds of economic freedom, as opposed to Mill and Berlin, the defenders of political freedom. Wojciech Orlinski, *Wolność, Równość, Liberalizm*, *GAZETA WYBORCZA*, July 25, 1999 at 16.

not address all of the debates concerning the nature of freedom in Poland after 1989.¹¹ Rather, it focuses on freedom understood as license, or what might be called moral permissivism. This understanding of freedom, highly prevalent among Poles today, clashes with John Paul II's repeated claim that freedom must serve truth. As shall become clear, the tension between the Pope's understanding of freedom and that of freedom construed as license generates disagreement concerning the degree to which civil law should curtail individual freedom.

On his last pilgrimage to his homeland, John Paul II decried the fact that many people in contemporary Polish society make decisions according to a "false ideology of freedom."¹² In his homily on August 18, 2002, he stated:

When the noisy propaganda of liberalism, freedom without truth and responsibility, gains sway in our country as well, the shepherds of the Church cannot refrain from preaching the only and unfailing philosophy of freedom, which is the truth of the cross of Christ. That philosophy of freedom is in essence related to the history of our country.¹³

John Paul II, along with many others, located the root of a misguided perspective on freedom in a kind of liberalism extant in Poland today. The Pope may not have attacked liberalism *per se* in his above-cited homily. However, he was certainly castigating those who espouse moral permissivism (freedom as license).¹⁴ Moral permissivism (which does not necessarily subscribe to or conflict with economic neoliberalism) is mainly concerned with freedom in "private" moral matters, such as sexual behavior, reproductive rights, freedom of expression, etc. John Paul II decried moral permissivism in democratic Poland on many occasions. His homily at the International Eucharistic Congress in Wroclaw epitomizes his critique of moral permissivism's underlying notion of freedom:

11. For a full treatment of this issue, see Gerald J. Beyer, *The Unfinished Revolution: Solidarity, Freedom and participation in Poland Through the Lens of Catholic Social Thought* (May 13, 2005) (unpublished Ph.D. dissertation, Boston College). A shorter treatment can be found in Gerald J. Beyer, *What Ever Became of Solidarity?*, AM., Jan. 16–23, 2006, at 11–14.

12. Pope John Paul II, *Misterium Nieprawosci I Wyobraznia Milosierdzia*, TYGODNIK POWSZECHNY, Aug. 25, 2002.

13. *Id.*

14. He also clearly had in mind neoliberal economic thought. See Marcin Krol, *Liberalizm: Co to Wlasciwie Znaczy?* TYGODNIK POWSZECHNY, Sept. 1, 2002. For an overview of Catholic critiques of liberalism in Poland, see JERZY SZACKI, *LIBERALISM AFTER COMMUNISM* 177–206 (Chester A. Kisiel trans., Central European Univ. Press 1995) (1994).

In a situation where a vacuum of values exists, where chaos and confusion reigns, freedom perishes. The free human person becomes a slave, a slave to instincts, passions and pseudo-values. It is true that the order (lad) of freedom can only be created with difficulty. Freedom always comes at a cost.¹⁵

In this homily, John Paul II criticized the “liberal ideology” that denies freedom’s relationship to truth. He also articulated a positive notion of freedom that is measured by the degree to which one is ready to serve others and give of one’s self.¹⁶

The Pope’s worries appear to have some empirical basis. Marian Filar, a self-described liberal politician, claims that “there is nothing more important in an individual’s existence and in society’s than the proper understanding of freedom.”¹⁷ However, he worries that “Poles are generally fans of freedom, but only one half of it, which says ‘do what ever you want.’”¹⁸ In his view, they forget about the other dimension of freedom, namely its relationship to responsibility. Several sociological studies conclude that while Poles do not espouse moral relativism, they seem to adopt a live and let live attitude. As one author puts it, “universal agreement exists concerning a great deal of the scope of ‘good and evil,’ but the majority of evil acts are acknowledged as justifiable in practice.”¹⁹ While it would be imprudent to stereo-

15. POPE JOHN PAUL II, JAN PAWEŁ II W POLSCE, 31 MAJA–10 CZERWCA 1997: PRZEMOWIENIA I HOMILIE 34 (1997).

16. He often repeated this idea on his pilgrimages in Poland, in addition to mentioning it in his official encyclicals. John Paul II’s teaching as pastor of the universal church concerning this issue will be discussed in the final part of this essay.

17. Krzysztof Hajdamowicz & Marian Filar, *Najpiękniejsza Jest Wolność*, GAZETA WYBORCZA, Nov. 25, 2003 at 21.

18. *Id.*

19. Hanna Swida-Ziemba, *Permisywizm Moralny a Postawy Polskiej Młodzieży*, in KONDYCJA MORALNA SPOŁECZYSTWA POLSKIEGO 439 (Janusz Mariński ed., 2002). For similar claims based on research, see Anita Miszalska, *Moralność a Demokracja—Uwagi O Stylu Moralnym Współczesnego Społeczeństwa Polskiego*, in KONDYCJA MORALNA SPOŁECZYSTWA POLSKIEGO 164, 169–72 (2002); Krzysztof Kiciński, *Orientacje Moralne Społeczeństwa Polskiego*, in KONDYCJA MORALNA SPOŁECZYSTWA POLSKIEGO 375–77 (2002); Janusz Mariński, *Religia i Moralność w Społeczeństwie Polskim*, in KONDYCJA MORALNA SPOŁECZYSTWA POLSKIEGO 492–501 (2002). Interestingly, Mariński, who shares the view that permissivism is growing in Poland, shows that social acceptance of abortion (for any reason) has fallen in the last decade. Nonetheless, it remains at a relatively high number (roughly half) given that more than 90% of Poles are Roman Catholics. Agnieszka Graff contends, however, that only 26% of women are against the right to abortion. See AGNIESZKA GRAFF, *ŚWIAT BEZ KOBIET: PLEC W POLSKIM ŻYCIU PUBLICZNYM* 112 (2001). A nuanced discussion of this issue cannot be undertaken here. See GOWIN, *KOSCIÓŁ W CZASACH WOLNOŚCI*, *supra* note 1, at

type the entire Polish people as “morally permissive,” it appears that there is a tendency among many Poles to understand freedom individualistically and as license. Janusz Marianski, a renowned sociologist from the Catholic University of Lublin, notes that one-third of adults and two-fifths of young Poles understand freedom as the ability to act as one wishes, regardless of objective norms.²⁰ He states one of his conclusions as follows: “[T]he perception of freedom as the license to act without barriers is growing. A radically permissive society fosters indifference to the fate of others.”²¹ Is Poland radically permissive? One should not jump to rash conclusions based on limited sociological data. Moreover, Marianski’s research shows that a majority of Poles do not see freedom as license.²² However, it is difficult not to see that consumerism and moral permissivism play a negative role in Polish society today. After years of Communist control of goods, which often led to material deprivation and censorship, Poles now experience the “freedom to choose” from among fully stocked store shelves. They also have the freedom to express their views in the public square. This new situation obviously has positive and negative aspects. For example, great technological advances have made their way to Poland. Poles rightly highly value their right to free speech and freedom of association.²³ Polish society is beginning to address many subjects that were once “taboo,” such as spousal abuse, infertility and homosexuality. However, as Aniela Dylus points out, there is a great temptation to equate freedom with the unfettered ability to consume goods, among them pornography, drugs, etc. In her words, “at the moment, not everyone realizes that the challenging freedom in post-Communist Poland should not be equated with postmodern free-reign.”²⁴ The Polish bishops condemned the growing culture of consumerism in Poland in several Synod documents, linking it with freedom “experienced as following one’s

150–94 for the church’s stance on it and GRAFF, *SWIAT BEZ KOBIEC: PLEC W POLSKIM ZYCIU PUBLICZNYM* 111–51 for an alternative point of view. For discussions of the abortion debate in Poland in English, see Urszula Nowakowska & Maja Korzeniewska, *Women’s Reproductive Rights, in POLISH WOMEN IN THE 90’S: THE REPORT BY THE WOMEN’S RIGHTS CENTER* 219 (Urszula Nowakowska ed., 2002); Ramet, *supra* note 1, at 130–33; and Steger, *supra* note 1, at 14–23.

20. Marianski, *supra* note 7, at 120.

21. *Id.* at 121.

22. *Id.*

23. See JADWIGA KORALEWICZ & MAREK ZIOLKOWSKI, *MENTALNOSC POLAKOW: SPOSOBY MYSLANIA O POLITYCE, GOSPODARCE I ZYCIU SPOLECZNYM 1988–2000*, 200 (2003).

24. DYLUS, *supra* note 6, at 98.

instincts” and selectively following or abandoning objective moral norms.²⁵

This situation has caused the Polish bishops to fear that many Poles believe democracy grants equal rights to “saints” and “sinners.”²⁶ In other words, all citizens have the freedom to do whatever they choose, regardless of the moral status of their actions. This line of thinking equates liberal democracy with libertarianism. Accordingly, the church cannot formally impose its moral teachings on citizens via civil law reflecting those teachings. It is important to note, however, that many Polish defenders of liberal democracy do not unequivocally endorse libertarianism. For example, Adam Michnik embraces a notion of freedom understood as the freedom to choose, even to choose sin. “Every freedom, even sinful and disfigured, is better than any kind of dictatorship,” he argues.²⁷ By the same token, he lauds John Paul II’s critique of the “postmodern nihilism and crisis of life and thinking according to values.”²⁸ Roman Graczyk, a Roman Catholic journalist and author of *Polski Kościół—Polska Demokracja* [The Polish Church and Polish Democracy], reaches similar conclusions. He maintains that John Paul II does not differentiate between legal norms and moral norms and that “liberal democracy treats evil as the price of freedom.”²⁹ Yet, it is the church that must teach Poles respect for authentic freedom, not freedom conceived as license. According to Graczyk, it has not yet done so in word or deed.³⁰ In the end, however, both Michnik and Graczyk fear that democratic freedom in Poland is threatened more by religious fanaticism and/or the desire for theocracy than by moral permissivism or moral relativism. Polish literati such as renowned philosopher Leszek Kolakowski and

25. Polish Bishops Conference, *Potrzeba I Zadania Nowej Ewangelizacji Na Przełomie II I II Tysiąclecia Chrześcijańskiego* paras. 26, 27 (Feb. 27, 2001), available at <http://www.episkopat.pl/dokumenty/files/synoddokumenty.pdf>. See also Polish Bishops Conference, *Kościół Wobec Życia Społeczno-Gospodarczego* para. 52 (2001), available at <http://www.episkopat.pl/dokumenty/files/synoddokumenty.pdf>.

26. See *supra* note 25. See also TADEUSZ PIERONEK, *KOŚCIÓŁ NIE BOI SIĘ WOLNOŚCI* 92–93 (1998).

27. MICHNIK, *KOŚCIÓŁ, LEWICA, DIALOG*, *supra* note 2, at 308. See also MICHNIK, *LETTERS FROM FREEDOM*, *supra* note 1, at 178–83.

28. MICHNIK, *KOŚCIÓŁ, LEWICA, DIALOG*, *supra* note 2, at 310. See also MICHNIK, *LETTERS FROM FREEDOM*, *supra* note 1, at 300–01.

29. ROMAN GRACZYK, *POLSKI KOŚCIÓŁ—POLSKA DEMOKRACJA* 20–21 (1999).

30. *Id.* at 15–22, 44.

Nobel poet laureate Czeslaw Milosz have expressed similar concerns.³¹

II. FREEDOM, TRUTH, AND THE ISSUE OF ABORTION

The abortion controversy in Poland after 1989 brought disagreements about “freedom” and “truth” sharply into relief. It also illustrated how these disagreements about the nature of freedom and truth in turn lead to quarrels about the relationship between moral norms and civil law.³² It is true that a range of arguments for and against the banning of abortion in Poland existed, which did not explicitly appeal to the “freedom” of the individual or freedom’s relationship to truth. For example, while some people acknowledged that abortion is a moral evil, they maintained that making it illegal would not actually stem the number of abortions performed annually in Poland.³³ This kind of argument has little to do with a notion of freedom that grants a woman the right to choose, which is based on either moral relativism or moral permissivism.³⁴ Rather, it is simply an attempt to mitigate actions and their consequences, both of which are perceived to be objectively evil. In addition to this type of argumentation, however, many opponents and defenders of the right to abortion employed different understandings of freedom and its relationship to truth to make their cases.

As was mentioned earlier, John Paul II bemoaned moral permissivism in Poland on many occasions, often portraying abortion as its worst manifestation. During his first visit to democratic Poland in 1991, a rancorous debate concerning abortion legislation was underway.³⁵ John Paul II expressed his views unabashedly in a series of homilies and speeches. For example, after a diatribe against abortion in one homily, he argued:

31. See Kolakowski, *supra* note 1; Milosz, *supra* note 1.

32. See, e.g., TADEUSZ PIERONEK, *KOSCIOL NIE BOI SIE WOLNOSCI* 27 (1998) (stating that the three most important issues concerning the “use of freedom” in Poland were the return of religion classes to public schools, abortion, and respecting Christian values in mass media).

33. GOWIN, *KOSCIOL W CZASACH WOLNOSCI*, *supra* note 1, at 170–79. This is in fact what happened after the restrictive law was passed. See Steger, *supra* note 1, at 21–22; Ramet, *supra* note 1, at 132–33.

34. In other words, arguing for the right to abortion as a woman’s right to choose must either hinge on the belief that abortion cannot be declared objectively evil, or that abortion is objectively evil, yet justified if a woman sees it fitting.

35. A detailed and chronological description of this debate exceeds the scope of this essay. For such an account, see GOWIN, *KOSCIOL W CZASACH WOLNOSCI*, *supra* note 1, at 150–89; Steger, *supra* note 1, at 14–23; Ramet, *supra* note 1, at 130–33; Nowakowska & Korzeniewska, *supra* note 19.

You cannot speak of freedom here, because this is freedom that enslaves. Yes, maturing to freedom is necessary, mature freedom is necessary. Society, the nation and all aspects of family life can only be founded on this kind of freedom. But we cannot create the falsehood of freedom, which allegedly frees the human person, but actually enslaves and depraves the human person. The Republic of Poland needs to undergo an examination of conscience!³⁶

In his speech to the Polish Parliament, he spoke of “integral solidarity,” which extends to all persons—including the unborn—and its link to freedom.³⁷ He called on Polish leaders to remember that freedom must be used to promote solidarity and that freedom must be “grounded in the truth.”³⁸ It is clear from the context that John Paul II was calling for the “responsible use of freedom” in order to protect the rights of the unborn.³⁹ In a separate speech on that pilgrimage, he lauded a group of legislators working on a bill to ban abortion in all situations.⁴⁰ In short, John Paul II attempted to convince his compatriots that the decision to justify abortion is rooted in a false understanding of freedom during several of his pilgrimages.⁴¹ The Polish bishops echoed this theme in several statements and pastorals.⁴² Fr. Józef Tischner, one of Poland’s most prominent public intellectuals, defended John Paul II’s insistence on the

36. Pope John Paul II, *Homilia W Czasie Mszy Sw.Odprawionej Na Lotnisku W Maslowie* (June 3, 1991), available at http://www.opoka.org.pl/biblioteka/W/WP/jan_pawel_ii/homilie/14kielce_03061991.html.

37. *Id.*

38. *Id.*

39. Pope John Paul II, *Przemówienie Do Przedstawicieli Władz Państwowych Wygłoszone Na Zamku Królewskim* (June 8, 1991), available at http://www.opoka.org.pl/biblioteka/W/WP/jan_pawel_ii/przemowienia/34warszawa_08061991.html. For a discussion of the relationship between freedom and truth, with some mention of contemporary Polish society, see POPE JOHN PAUL II, *MEMORY AND IDENTITY* 33–55 (2005).

40. See Pope John Paul II, *Słowo Do Parlamentarzystów—Inicjatorów Ustawy Dotyczącej Prawnej Ochrony Dziecka Poczeteego* (June 8, 1991), available at http://www.opoka.org.pl/biblioteka/W/WP/jan_pawel_ii/przemowienia/36warszawa_08061991.html.

41. See, e.g., POPE JOHN PAUL II, *JAN PAWEŁ II W POLSCE, 31 MAJA–10 CZERWCA 1997: PRZEMÓWIENIA I HOMILIE 102–04*; POPE JOHN PAUL II, *PROGRAM DLA KOŚCIOŁA W POLSCE: JAN PAWEŁ II DO POLSKICH BISKUPOW, WIZYTA AD LIMINA 1998*, at 31 (Znak 1998).

42. See, e.g., Polish Bishops Conference, *Potrzeba I Zadania Nowej Ewangelizacji Na Przełomie II I II Tysiąclecia Chrześcijańskiego* (2001), available at <http://www.episkopat.pl/dokumenty/files/synoddokumenty.pdf>; Polish Bishops Conference, *Powołanie Do Życia W Matrzeństwie I Rodzinie* (2001), available at <http://www.episkopat.pl/dokumenty/files/synoddokumenty.pdf>; PIERONEK, *supra* note 32, at 94.

relationship between freedom and truth, adding his own nuances to the discussion.⁴³ Tischner, who advocated “positive liberalism,” which he also referred to as Christian liberalism, maintained that liberal democracy need not grant a monopoly to negative freedom in its legal structures. However, he acknowledged more clearly than John Paul II that democracies “can never fully reflect Christian ideals.”⁴⁴ While he condemned abortion as a moral evil, one to be eradicated over time, he supported a compromise bill that would have limited, but not eliminated abortion in Poland in the 1990’s.⁴⁵

Opponents of the Pope also appealed to a conception of freedom to make their case for the right to abortion. For example, Graczyk claims that John Paul II most blatantly equates moral and legal norms in his statements about abortion.⁴⁶ Graczyk goes on to say that in liberal democracy “freedom permits evil, while a system antithetical to freedom, which systematically fights evil, cannot eliminate it.”⁴⁷ Graczyk’s emphasis on “negative freedom,” the hallmark of liberal democracy according to Jerzy Szacki,⁴⁸ leads him to justify permitting abortions. In his view, if social consensus demands the legalization of abortion, it should be legal, even if abortion is an objective moral evil.⁴⁹

While Graczyk and others defend the right to abortion as part of a larger, philosophical case for liberalism, others do so primarily to advocate women’s rights and the right to abortion.⁵⁰ According to Jaroslaw Gowin, the argument for a woman’s right to an abortion was primarily grounded in claims about freedom, with concerns such as the health of the mother and financial hardship playing a secondary role.⁵¹ A declaration signed by

43. See, e.g., JÓZEF TISCHNER, *MYSLENIE WEDLUG WARTOSCI* 196 (2000); JÓZEF TISCHNER, *W KRAJNIE SCHOROWANEJ WYOBRAZNI*, 137–49 (1997). Cf. JAROSLAW GOWIN, *RELIGIA I LUDZKIE BIEDY: KSIEDZA TISCHNERA SPORY O KOSCIOL* 183–89 (2003).

44. TISCHNER, *NIESZCZESNY DAR WOLNOSCI*, *supra* note 1, at 139.

45. *Id.* at 139–41. Cf. *Id.* at 10–12. John Paul II permits such a toleration of a “lesser evil” in POPE JOHN PAUL II, *EVANGELIUM VITAE: THE GOSPEL OF LIFE* para. 73 (1995) [hereinafter *EVANGELIUM VITAE*]. However, John Paul II did not allow for such a compromise in his discussions in Poland in the early nineties. See Pope John Paul II, *supra* note 36; Pope John Paul II, *supra* note 39; Pope John Paul II, *supra* note 40, and POPE JOHN PAUL II, *supra* note 41.

46. GRACZYK, *supra* note 29, at 18.

47. *Id.* at 21.

48. SZACKI, *supra* note 14, at 196.

49. GRACZYK, *supra* note 29, at 18–21.

50. In other words, they are not arguing that one political system (liberal democracy) promotes women’s rights better than another (such as social democracy, socialism, etc.).

51. GOWIN, *supra* note 1, at 173–74.

numerous groups that appeared in the Polish journal *Bez Dogmatu* reveals this tendency: "Parliament should adapt Polish abortion law in accordance with the most important principle for creating democratic laws: respect for the freedom of individuals. Practically speaking, this means passing a bill that makes terminating pregnancy (in its early stages) dependent on the sovereign decision of the woman."⁵² In likewise fashion, a report on women's rights in Poland begins its chapter on reproductive rights as follows: "Women must have reproductive control over their bodies in order to exercise basic rights due to every human being. Limited access to family planning, including the right to terminate an unwanted pregnancy, violates basic human rights, as well as the right to freedom, protection of health, and life."⁵³

Agnieszka Graff, one of Poland's foremost feminist writers, also uses this kind of argumentation. She juxtaposes terms such as "freedom" and "freedom to choose" with the language of her opponents, who use terms like "defense of life."⁵⁴ In her critique of the abortion debate in Poland, she claims the term "life" has inappropriately dominated the discussion.⁵⁵ She wants the focus to return to a discussion of a woman's freedom. In her view, Poland's restrictive abortion laws obviate a woman's right to determine choices that affect her "personally and intimately."⁵⁶ She detests the fact that lawmakers believe they have the right to encroach on a woman's privacy, imposing laws that are rooted in their worldview.⁵⁷

Whether explicitly or implicitly, the classic conception of "negative freedom" undergirds these arguments for the right to abortion. As Szacki states, freedom is thus understood as the "removal of the obstacles that rise up on the way to realization of the innate rights of the individual, not to decide what the individual should do to be good, wise and happy."⁵⁸ To put it another way, the understanding of freedom as "freedom from" coheres with an understanding of human rights as negative rights. A person is free when no other person or institution coerces her, i.e., when the principle of noninterference is upheld. Rights are like

52. *Id.* at 174.

53. Nowakowska & Korzeniewska, *supra* note 19, at 219.

54. *See* GRAFF, *supra* note 19, at 120.

55. *Id.*

56. *Id.* at 118.

57. *See id.* at 118–20. For interesting examples of art works depicting this motif, see Federation of Women and Family Planning, <http://www.federa.org.pl/konkurs/wyniki%20konkursu-16.03-%20B.htm>. These images are the result of a contest to produce a work of art depicting the theme "my life, my decision."

58. SZACKI, *supra* note 14, at 196.

signposts, demarcating areas in which one's personal freedom should not be impinged upon.⁵⁹ Positive freedom, i.e. "freedom for," corresponds to an understanding of human rights as that which enable human persons to participate in fostering the common good and benefiting from it.⁶⁰ Human rights in this sense are "positive" in that they empower people to strive towards some end.⁶¹

To summarize, the abortion debate in contemporary Poland exemplifies how champions of "freedom for" in the service of truth are pitted against proponents of negative freedom. The latter have often viewed the former as enemies of liberal democracy, echoing Sir Isaiah Berlin and his claim that efforts to promote "positive freedom" or "true freedom" and its inherent relationship to the truth lead down the road to totalitarianism.⁶² They therefore argue that civil law should remain completely divorced from discussions of "freedom and truth." They claim that the church lumps all moral vices "into one basket," to be eliminated in toto by restrictive civil laws. Accordingly, they imply the Church deems acts such as viewing pornographic materials, use of artificial contraception, homosexual relations,

59. See H.L.A. HART, *Are There Any Natural Rights?*, in THEORIES OF NATURAL RIGHTS 77 (Jeremy Waldron ed., 1984). See also HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY* 35–64 (2d ed. 1996).

60. While the negative/positive freedom distinction predates him, Isaiah Berlin is mainly responsible for its currency today. See Isaiah Berlin, *Two Concepts of Liberty*, in LIBERTY: INCORPORATING FOUR ESSAYS ON LIBERTY 166 (Henry Hardy ed., 2002); Gerald MacCallum cogently revealed the inherent flaws of the negative/positive freedom dichotomy in Gerald C. MacCallum, *Negative and Positive Freedom*, 76 THE PHIL. REV. 312 (1967). Although MacCallum is persuasive, this paper uses the distinction because it functions in the minds of many people today and is still used in many types of discourse. The terms may point to different aspects of a unitary freedom, but many people sever them, thereby conceiving of two different kinds of freedom.

61. For a fuller elaboration of this understanding of human rights, see David Hollenbach, *A Communitarian Reconstruction of Human Rights: Contributions from Catholic Tradition*, in CATHOLICISM AND LIBERALISM 127 (R. Bruce Douglass & David Hollenbach eds., 1994).

62. Berlin, *supra* note 60, at 179–80. See also Isaiah Berlin, *Liberty*, in LIBERTY: INCORPORATING FOUR ESSAYS ON LIBERTY 283, 286 (Henry Hardy ed., 2002). In Poland, Leszek Kolakowski has said that seeing "true" freedom as "positive" freedom led St. Augustine to justify oppressive regimes if they prohibit sinners from sinning. By limiting one's ability to do illicit acts, the oppressive regime creates the conditions for true freedom, which develops as one continues to avoid sin and to do "the good." In Kolakowski's view, this lies as that basis of totalitarian ideologies, including Soviet Communism. See Leszek Kolakowski, *Laik Nad Katechizmem Sie Wymadrza*, 62 PULS (1992), cited in TISCHNER, W KRAINIE SCHOROWANEJ WYOBRAZNI, *supra* note 43, at 144–45.

and abortion equally reprehensible.⁶³ All such immoral behaviors should be banned by law.

The Church contributes to this misunderstanding of its teaching when it denounces false freedom and liberal democracy tout court, giving the impression that it wants all of its moral teaching to be the law of the land. John Paul II may have unwittingly conveyed this in his speeches and homilies in Poland, even though, as shall be discussed below, he disavowed this idea in his encyclical *Evangelium Vitae*. Should viewing pornography be outlawed? Should the distribution and use of artificial contraception be illegal? Should homosexual activity be banned by the state? While such behaviors are immoral in the eyes of the church, should individuals who do not espouse the Catholic Church's views have a right to engage in them in a liberal democracy? Talk of freedom and truth as bases of civil law may be construed as an endorsement of the old "error has no rights" dictum, which would proscribe all behaviors contrary to Catholic doctrines.

Yet, much of the Catholic tradition has eschewed "legislating morality," i.e. enshrining the full panoply of the church's moral teachings in civil law. Can the Church persuasively talk of freedom and truth, stemming the tide of relativism, as Michnik would like, while circumventing the accusation that it disdains liberal democracy and individual rights?⁶⁴ The next section of this paper will attempt to answer this question by providing a more nuanced account of the Catholic understanding of morality and its relationship to civil law.

First, it will explain John Paul II's teaching on freedom and truth in more detail to reveal its enduring importance to modern democracies. In other words, it will offer a defense of John Paul II's position. Then, this paper will introduce the concept of the public order to demonstrate that while the Church must speak of freedom and truth and their relationship to civil law, it also upholds respect for the rights of the individual. Such clarifica-

63. This does not intend to trivialize the negative aspects of the pornography industry, treatment of those in it and the negative effects of viewing it on the human person and his or her relational partners. Moreover, certain kinds of pornography, such as that involving children or violence, are more morally problematic than others. At the risk of stating the obvious, the point here is to demonstrate that not all morally reprehensible acts are equally grave and harmful.

64. The accusation has obvious historical roots. The Roman Catholic Church did not fully accept democracy until the pontificate of Pius XII after World War II. In earlier times it was very critical towards liberal democracy. See, e.g., CHARLES E. CURRAN, *CATHOLIC SOCIAL TEACHING 1891–PRESENT: A HISTORICAL, THEOLOGICAL, & ETHICAL ANALYSIS* 215–22 (2002).

tions might quell the fears of some Poles (and commentators beyond Poland) that the Church, particularly John Paul II, returned to the “error has no rights” teaching. John Paul II’s teaching on religious freedom reveals that he did not embrace this dictum. Far from advocating the suppression of believers outside the Catholic faith, the Pope claimed that “religious freedom . . . constitutes the very heart of human rights.”⁶⁵ However, in light of the debates described in this essay, it remains necessary to introduce some clarifications to his discussion of freedom, truth, and civil law.

III. FREEDOM, TRUTH, PUBLIC ORDER, AND CIVIL LAW

While John Paul II stressed the relationship between freedom and truth on his trips to Poland, he expounded this teaching more methodically in his encyclicals, such as *Evangelium Vitae*⁶⁶ and *Veritatis Splendor*.⁶⁷ In order to understand his thought more fully, it is important to look to these more carefully crafted arguments. In *Veritatis Splendor*, *Evangelium Vitae*, and elsewhere in his official teaching, John Paul II claimed that denying the link between freedom and truth can lead and has led to totalitarianism. When the objective demands of natural law on persons and states are not recognized, social life becomes a war of all against all, to paraphrase Hobbes.⁶⁸ Nothing guarantees just relations among people. A tyranny of the majority often promotes its interests against the rights of the weak and disenfranchised.⁶⁹ In *Evangelium Vitae*, he spoke of a false conception

65. Pope John Paul II, Message of His Holiness Pope John Paul II for the Celebration of the World Day of Peace: “Respect for Human Rights: The Secret of True Peace, para. 5 (Jan. 1, 1999), available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_14121998_xxx_ii-world-day-for-peace_en.html. However, in light of the debates described in this essay, it remains necessary to introduce some clarifications to his discussion of freedom, truth and civil law. For an example of an American commentator who appears to share this fear, see Leslie Griffin, *Commentary on Dignitatis Humanae (Declaration on Religious Freedom)*, in *MODERN CATHOLIC SOCIAL TEACHING* 244, 256–60 (Kenneth Himes et al. eds., 2003).

66. *EVANGELIUM VITAE*, *supra* note 45.

67. POPE JOHN PAUL II, *VERITATIS SPLENDOR* (1993) [hereinafter *VERITATIS SPLENDOR*].

68. THOMAS HOBBS, *LEVIATHAN* 76 (Edwin Curley, ed., 1994).

69. *VERITATIS SPLENDOR*, *supra* note 67, at para. 4; *EVANGELIUM VITAE*, *supra* note 45, at para. 70. This resembles Martin Luther King’s appeal to an eternal and natural law in “A Letter from a Birmingham Jail.” See Martin Luther King, Jr., *Letter From Birmingham Jail* (1964), reprinted in S. JONATHAN BASS, *BLESSED ARE THE PEACEMAKERS* 237–56 (2001). King explicitly cites Thomas Aquinas’ claim that an unjust law is a human law not rooted in eternal and natural law. *Id.* at 244.

of freedom lying at the root of the “culture of death” that condones contraception, sterilization, abortion, and euthanasia.⁷⁰ It is an understanding of freedom that exalts the individual, precludes solidarity with others, and denies the existence of any absolutely binding truth. In the Pope’s view, this leads to a society in which individuals feel free to assert their interests against one another, without any concern for the rights of others.⁷¹ This, according to the late pontiff, spells the “death of true freedom.”⁷² To quote David Hollenbach’s summary of the pope’s message, “[f]reedom that is not anchored in . . . [basic] truths about the person is not freedom at all.”⁷³

Herein resides one of the confusions regarding the Pope’s teaching concerning freedom and truth. John Paul did not always elucidate the nature of “the truth” that he proclaimed. In addition, his opponents often did not attempt to discern the meaning behind his iterations of “truth.” First and foremost, John Paul II stressed freedom in the service of the truth about the human person.⁷⁴ What truth or truths about the human person? Józef Tischner provides an important hermeneutic key: “You cannot understand John Paul II’s thought if you do not realize that it arose from the world of Auschwitz and Kolyma.”⁷⁵ Tischner’s observation clues us in to John Paul II’s primary con-

70. EVANGELIUM VITAE, *supra* note 45, at para. 19.

71. *Id.* at para. 18.

72. See EVANGELIUM VITAE, *supra* note 45, at paras. 18–21. On the link between freedom and truth, see also POPE JOHN PAUL II, REDEMPTOR HOMINIS: THE REDEEMER OF MAN paras. 12, 16 (1979) [hereinafter REDEMPTOR HOMINIS]; POPE JOHN PAUL II, CENTESIMUS ANNUS: ON THE HUNDRETH ANNIVERSARY OF RERUM NOVARUM paras. 4, 41, 44, 46 (1991) [hereinafter CENTESIMUS ANNUS]; POPE JOHN PAUL II, FAMILIARIS CONSORTIO: THE CHRISTIAN FAMILY IN THE MODERN WORLD paras. 1, 4, 13, 30, 31, 32, 34 (1981).

73. David Hollenbach, *Tradition, Historicity and Truth in Theological Ethics*, in CHRISTIAN ETHICS: PROBLEMS AND PROSPECTS, 60, 63 (Lisa Sowle Cahill & James F. Childress eds., 1996). This section is indebted to Hollenbach’s linking of John Paul II’s emphasis on freedom and truth to the dissident movements of Central and Eastern Europe.

74. See REDEMPTOR HOMINIS, *supra* note 72, at para. 12; EVANGELIUM VITAE, *supra* note 45, at para 71. Cf. TISCHNER, W KRAINIE SCHOROWANEJ WYOBRAZNI, *supra* note 43, at 196.

75. TISCHNER, W KRAINIE SCHOROWANEJ WYOBRAZNI, *supra* note 43, at 157. Located in Northeastern Siberia, Kolyma was the largest of the Soviet work camps. It is estimated that more than two million people died in Kolyma alone. See ROBERT CONQUEST, THE GREAT TERROR: A REASSESSMENT 325 (1990). While an exact accounting is impossible, some approximate that more than one million Poles were deported to these camps, most of whom never returned to their homeland. See STÉPHANE COURTOIS ET AL, THE BLACK BOOK OF COMMUNISM 209 (1997); NORMAN DAVIES, 2 BOZE IGRZYSKO: HISTORIA POLSKA 492 (Elzbieta Tabakowska, trans. 1997).

cerns regarding “truth.” When the truth about the dignity of every human person is silenced, as it was by the Nazis and the Soviet regime, the very basis for human rights is undercut. If the human person does not possess inviolable dignity, one of the core truths about the human according to Catholic thought, the bulwark against the totalitarian state’s squashing of the individual vanishes. The inherent rights of the human person become subordinated to the “greater good” of the whole.⁷⁶ Sometimes this takes the form of discrimination against minorities in the interest of the majority. It may also entail the economic, political, and cultural oppression of the weak by the powerful. In more extreme cases such as Nazism and Stalinism, the ideological goals of Aryan supremacy and Communist utopia demanded the extermination of all those who stood in the way of their realization.

The only safeguard against such pernicious ideologies is a commitment to truth, above all the truth about the human person. Thus, for example, the Solidarity movement in Poland called for “life in truth.”⁷⁷ Life in truth required having an understanding of the human person as one imbued with inviolable dignity having the capacity for freedom realized in solidarity, and called to participation. This shared anthropology allowed for the unity in a common cause, which became known as Solidarity, among Christians, Jews, atheists, and agnostics.⁷⁸ It was the basis for uncovering the anthropological lie of Communism and the source of a potent critique against totalitarian regimes throughout Central and Eastern Europe.

In contrast to the anthropology held by members of the Solidarity movement, John Paul II described the anthropological fallacy of socialism as follows:

Socialism considers the individual person simply as an element, a molecule within the social organism, so that the good of the individual is completely subordinated to the functioning of the socioeconomic mechanism. Socialism likewise maintained that the good of the individual can be realized without reference to his free choice, to the unique

76. CENTESIMUS ANNUS, *supra* note 72, at para. 44. See JACQUES MARITAIN, *THE PERSON AND THE COMMON GOOD* 90–97 (John J. Fitzgerald trans., 1947).

77. See Gerald J. Beyer, *A Theoretical Appreciation of the Ethic of Solidarity in Poland Twenty-Five Years After*, 35 J. RELIGIOUS ETHICS 207–32 (forthcoming June 2007).

78. Jaroslaw Gowin, *Kosciol a “Solidarnosc”*, in *Lekcja Sierpnia: Dziedzictwo “SOLIDARNOSCI” PO DWUDZIESTU LATACH* 28 (Dariusz Gawin ed., 2002). Gowin argues against those who claim solidarity requires explicit belief in God. He appeals to the example of Albert Camus and his “heroic atheism.” For a fuller discussion of Solidarity’s notion of “life in truth,” see Beyer, *supra* note 77.

and exclusive responsibility which he exercises in the face of good and evil.⁷⁹

By contrast, the anthropology espoused by the Solidarity movement, which characterized the human person as one of dignity, freedom, solidarity, and participation, represents the basis of the Catholic understanding of human rights. The authentic exercise of freedom entails recognizing this truth about the human person and acting in accordance with it, i.e. acting in accordance with human nature itself. This means acting in order to respect and promote the rights of all persons because all humans possess inviolable dignity. Protecting human dignity requires fostering human rights. Protecting human dignity can only be achieved in freedom and solidarity.⁸⁰

Thus, while thinkers such as Berlin and Kolakowski warned that talk of positive freedom often leads to political and legal structures that demolish individual rights, John Paul II maintained that in our era an equally potent threat to human rights resides in the denial of the relationship between freedom and the truth. Who was right: the esteemed philosophers or John Paul II? It is not possible here to determine which “road” leads to totalitarianism faster. Furthermore, these two theses need not be mutually exclusive. Indeed, John Paul II admitted that evils have been committed in the name of “truth.”⁸¹

Józef Tischner pithily framed the problem as follows: “[H]ow can one respect human rights, not knowing the truth about the human person and the truth about the rights of the person?”⁸² If we cannot claim that certain, basic truths about the human person are unchanging, we cannot argue that all human beings share the same basic rights. If human nature is entirely “malleable,” human persons correspondingly have “malleable” worth, social utility, etc. This is not to deny that many characteristics of human personhood are socially and historically conditioned. In addition, knowledge from human experience and the sciences continues to contribute to an ever greater understand-

79. CENTESIMUS ANNUS, *supra* note 72, at para. 13.

80. For a fuller explanation of the link between theological anthropology and human rights in Catholic thought, see Gerald J. Beyer, *Beyond “Nonsense on Stilts”: Towards Conceptual Clarity and Resolution of Conflicting Economic Rights*, HUM. RTS. REV., July–Sept. 2005, at 5–32.

81. EVANGELIUM VITAE, *supra* note 45, at para. 70.

82. TISCHNER, W KRAINIE SCHOROWANEJ WYOBRAZNI, *supra* note 43, at 75. For a similar perspective, see POPE JOHN PAUL II, MEMORY AND IDENTITY, *supra* note 39, at 33–55.

ing of human personhood.⁸³ Such insights can and should inform reflection on how human dignity should be protected. For example, in a recent article, Cristina Traina has argued that despite the well-founded admonitions and legal prohibitions of adults touching children in a variety of contexts, a growing body of psychological research has shown that children need the firm touch of adults for healthy development, i.e. for their flourishing as humans.⁸⁴ On this basis, she argues for a “right to be touched in an appropriate manner.”⁸⁵ Thus, we must recognize the cultural and historical relativity of certain anthropological assumptions and admit the need for the continued analysis of human personhood. However, if we cannot acknowledge certain “core” truths about the human person that exist across time and cultures, it makes little sense to talk of universal human rights. It is no accident, therefore, that the idea of natural law regained currency during the Nuremberg trials.⁸⁶ It is also no surprise that the Universal Declaration of Human Rights was drafted in the wake of the Holocaust, which egregiously denied the fundamental dignity of every human person.⁸⁷

The social psychologist Erich Fromm has also provided support for the Pope’s thesis. Drawing on Fromm, Tischner argued that ignoring the truth about the human person, her freedom, her rights, and her responsibilities prompted Germans during the Third Reich and people in post-Communist societies such as Poland to “escape from freedom.”⁸⁸ Based on his clinical experience as a psychoanalyst and his reading of modern history, Fromm concluded that the reluctance and inability to “live into” one’s freedom, which for Fromm was intrinsically related to making choices and taking responsibility, led people to abrogate their duties as humans and citizens and seek solace in authoritarian figures.⁸⁹ This is why people allowed authoritarian regimes

83. Many readers will notice the indebtedness here to Jacques Maritain’s understanding of the evolution of human awareness of natural law. See JACQUES MARITAIN, *NATURAL LAW: REFLECTIONS ON THEORY AND PRACTICE* 25–74 (1982).

84. Cristina Traina, *Touch on Trial: Power and the Right to Physical Affection*, 25 J. SOC’Y CHRISTIAN ETHICS 3 (2005).

85. *Id.*

86. See Eric D’Arcy, *Natural Law*, in 3 THE ENCYCLOPEDIA OF BIOETHICS 1131, 1135 (Warren T. Reich ed., 1978) (highlighting the varying views on Natural Law and its contemporary revival in the postwar trials of Nazi war criminals).

87. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 183d plen. mtg., U.N. Doc A/810 (Dec. 10, 1948).

88. TISCHNER, *W KRAINIE SCHOROWANEJ WYOBRAZNI*, *supra* note 43, at 75.

89. ERICH H. FROMM, *ESCAPE FROM FREEDOM* 150–51 (First Owl Books 1994).

and dictators to control their lives.⁹⁰ The inability to embrace one's freedom (in the positive sense) arises from the "unbearable feeling of aloneness and powerlessness" encountered by modern individuals, who have largely obtained negative freedom in liberal democracies, but are also "free" from community.⁹¹ This sense of alienation leads to masochistic behaviors in an attempt to "get rid of the burden of freedom."⁹² Fromm saw this type of psychological mechanism at work in the rise of Fascist movements in Germany and Italy in the first half of the twentieth century.⁹³ The Nazis capitalized on the malaise of the German masses by propagating an anthropological lie similar to that of Communism. As evidenced in the writings of Hitler and Goebbels, Nazism proclaimed that the domination of people is for their own good, and that eventually the dominated will come to recognize their need to sacrifice themselves, their beliefs, their ambitions, and their desires for the good of the whole.⁹⁴ Fromm states that being repeatedly told "the individual counts for nothing" in the midst of the alienation experienced by the modern masses fostered the desire to "annihilate the self," succumb to a "higher power," and then "feel proud in participating in the strength and glory of this higher power."⁹⁵ In other words, the escape from freedom into the hands of an authoritarian master functions as a way of coping with the modern predicament, marked by freedom from the constraints experienced by those of the medieval world on the one hand, and the loneliness and anxiety of those left to their own devices on the other.

According to Fromm, these dynamics occur not only in authoritarian regimes, but also in capitalist democracies, where vast swaths of people become "automatons."⁹⁶ In contemporary democracies, human beings are faced with an alternative: "either to escape from the burden of freedom into new dependencies and submission, or to advance to the full realization of positive freedom which is based upon the uniqueness and individuality of man."⁹⁷ Positive freedom "consists in the spontaneous activity of the total, integrated personality."⁹⁸ In this freedom, the individ-

90. *Id.*

91. *Id.* at 150.

92. *Id.* at 205-08.

93. *Id.* at 3-4, 205-39.

94. *Id.* at 222-25.

95. *Id.* at 231; *cf. id.* at 267 (looking at two different perspectives of individual freedom).

96. *Id.* at 240.

97. *Id.* at x.

98. FROMM, *supra* note 89, at 84.

ual retains her individuality, but overcomes the isolation of negative freedom by spontaneously loving and being in solidarity with others.⁹⁹

If Fromm was right, John Paul II stands on solid ground by claiming that decoupling freedom from the truth about the human person creates fertile soil for totalitarianism. Fromm, like the former Pontiff, maintains that all authoritarian philosophies are “essentially relativistic and nihilistic.”¹⁰⁰ They are rooted in “extreme desperation, in the complete lack of faith” and ultimately lead to the “denial of life.”¹⁰¹ In other words, they deny the truth about the human person. Although he resists talk of an immutable human nature, Fromm states that human nature should not be seen as “infinitely malleable” and that psychology must discover the “inherent laws and mechanisms” of the human person.¹⁰² While he eschews any metaphysical bases for determining the truth about human persons, he argues that empirical observation can reveal to us what promotes or denigrates life. Accordingly, we know that states such as poverty, isolation and powerlessness are “directed against life,” while those things that foster freedom, spontaneity, relationality, creative and critical thinking and certain emotional and sensuous experiences are good for human life.¹⁰³ Frustration of these human potentialities generates “destructive and symbiotic impulses.”¹⁰⁴ While Fromm accentuates the “realization of the self” more than John Paul II, like the Pope he ultimately sees “active participation” in the creation of the social good as the remedy to the alienation, anxiety, and despair that give rise to the modern tendency to escape from freedom.¹⁰⁵ Fromm also mentions that examination of the history of humanity reveals that the pursuit of truth and justice are inherent in human nature and has served as “the most important weapon” of the oppressed in their struggle for “freedom and growth.”¹⁰⁶ Ultimately, Fromm claims that if humans do not listen attentively to the knowledge and insight we have

99. *Id.* at 257–59; *cf. id.* at 267 (discussing the sacrifice man makes integrating with society while still maintaining his individuality). The distinction between positive and negative freedom is at the heart of Fromm’s inquiry, as evidenced by his introductory query, “Is freedom only the absence of external pressure or is it the *presence* of something—and if so, what?” *Id.* at 4.

100. *Id.* at 171.

101. *Id.* See *EVANGELIUM VITAE*, *supra* note 45, at para. 70.

102. FROMM, *supra* note 89, at 13. Fromm also argues that relativism stifles “original thinking.” *Id.* at 247.

103. *Id.* at 265; *cf. id.* at 267.

104. *Id.* at 286–87.

105. *Id.* at 274.

106. *Id.* at 286.

about our humanity and accept the challenge and the gift of our freedom, the gains of democracies will vanish and societies will revert to authoritarianism to overcome the loneliness, anxiety, and despair of contemporary life.¹⁰⁷

In addition to Fromm's analysis, the history of genocides attests to the importance of John Paul's insistence that the truth about the human person must be acknowledged. The planners of these genocides convinced ordinary people to become perpetrators by denying the humanity of the victims. For example, the Germans depicted Jews as "rats" and the Poles as "pigs."¹⁰⁸ The Khmer Rouge slaughtered 2,000,000 Cambodians in accordance with their maxim, "to keep you is no gain; to kill you is no loss."¹⁰⁹ The Rwandan genocidaires, mainly ethnic Hutus, referred to the Tutsis as "cockroaches" in their massive propaganda campaign.¹¹⁰ Going further back, one can read the chronicles of Cristobal Colón and Amerigo Vespucci to see how their depictions of Native Americans as savages set the stage for their annihilation at the hands of European settlers. Repressive laws that denied the full humanity of the Native Americans persisted well into the 1970s in the United States. Some of the laws continue to exist.¹¹¹ The same can obviously be said of the African peoples brought to the "New World" as slaves, who legally counted as three-fifths human and were not accorded the right to participation until relatively recently. In other words, when the basic anthropological truth about the equal worth and dignity of every human person is eclipsed, the exercise of "freedom" can easily degenerate into "unfreedom." Only a "slave" shackled

107. *Id.* at 295–96.

108. For examples of this and other German anti-Semitic material, see German Propaganda Archive, Nazi Propaganda: 1933–1945, <http://www.calvin.edu/academic/cas/gpa/ww2era.htm>. Calvin College has created an online archive of German propaganda to help people understand totalitarianism. Of particular interest are the discussion and links pertaining to the film *Der Ewige Jude* [The Eternal Jew], which was said to have an impact on Hitler's decision to launch his "final solution." See German Propaganda Archive, A Nazi Review of "The Eternal Jew," <http://www.calvin.edu/academic/cas/gpa/ewig.htm>.

109. SAMANTHA POWER, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE* 119, 143 (2002).

110. *Id.* at 330.

111. Professor Michelle Grijalva brought this home vividly in her paper entitled *The Dawn of a Renaissance? The Image of the "Noble Savage" and its Impact on American Indian Education and Religion* (July 30, 2006) (unpublished manuscript, on file with author), which she delivered at the Oxford Round Table. Professor Richard Shiels described the discriminatory laws in his paper entitled *Native American Religious Freedom in the United States* (Aug. 2, 2007) (unpublished manuscript, on file with author). I am grateful to both for their insights.

by his perverted passions and utter ignorance would kill another human being because of his ethnicity, skin color, religion, political beliefs, or sexual orientation. The brutalization of human beings is not an act of a free person, but one blinded to the truth about the human person and imprisoned in avarice, nihilistic despair, and self-deception.¹¹² While the disfigured “truth” of imperialists and supremacists is dangerous to oppressed peoples, only by insisting on the truth of their humanity can we condemn their desecration and conquest.

Succinctly stated, relativism, or the belief that there are no moral absolutes, opens the door to grave human evils, such as genocide, torture, rape, political oppression, discrimination, exploitation, and the annihilation of one’s ideological opponents.¹¹³ As former National Security Adviser Zbigniew Brzezinski argues, the century of “megadeath,” which claimed the lives of more than 167,000,000 people in the name of political ideologies, was possible because of the predominance of a radical moral relativism that denied the absolute value of the human person.¹¹⁴ Brzezinski traces the development of twentieth century “metamyths,” which undergirded totalitarianisms, to trends in the nineteenth century. He writes:

[T]he assault on religion produced also the rejection of moral norms as limits on political action. As a result, the nineteenth century saw the essentially aristocratic concept of personal moral responsibility for political conduct gradually supplanted by the supremacy of moral relativism in political demagoguery designed to activate the masses.¹¹⁵

In this connection, Brzezinski also underscores the extraordinary skill of dictators like Hitler and Lenin at “depersonalizing the enemy.”¹¹⁶

112. Cf. JÓZEF TISCHNER, SPOR O ISTNIENIE CZLOWIEKA 298 (1998). According to Tischner, freedom is by nature “dramatic” or “dialogical.” He opposes the “monological” notion of freedom held by certain strands of liberalism. For example, he states, “[t]he problem of freedom is: respond or not to respond to the question asked of me, to undertake or not to undertake the challenge posed to me, to share bread or not to share it, to kill or not to kill.” See also TISCHNER, NIESZCZESNY DAR WOLNOSCI, *supra* note 1, at 11; JOZEF TISCHNER, KSIADZ NA MANOWCACH 208 (1999). For an overview of Tischner’s philosophy of freedom, see Gerald J. Beyer, *Fr. Józef Tischner (1931–2000): Chaplain of Solidarnosc and Philosopher of Hope*, 21 RELIGION IN EASTERN EUROPE 17 (2001).

113. Cf. VERITATIS SPLENDOR, *supra* note 67, at para. 99.

114. ZBIGNIEW BRZEZINSKI, OUT OF CONTROL: GLOBAL TURMOIL ON THE EVE OF THE TWENTY-FIRST CENTURY 17 (1993).

115. *Id.* at 29.

116. *Id.* at 30.

The passing of Fascism and Communism, however, has not brought an end to this problem. Rather, we now live in what Brzezinski calls a “permissive cornucopia,” a society in which “the progressive decline in the centrality of moral criteria is matched by heightened preoccupation with material and sensual self-gratification.”¹¹⁷ This “anything goes” outlook is creating a “global crisis of the spirit”¹¹⁸ and has the potential to engender violent frustration among the “have-nots” towards the “haves” of our globalized world. The promise of “salvation” through material goods cannot be realized for large tracts of the world’s impoverished, who therefore are likely to be “manipulated by demagogic extremists.”¹¹⁹ More immediately, we have witnessed the atrocities of Abu Ghraib and “Gitmo,” symptoms of today’s virulent moral relativism. The justification of torture relies on consequentialist reasoning, which focuses on the potential benefits of the act, such as obtaining information that might thwart future terrorist plots and save thousands of lives.¹²⁰ It is certain that contemplating the consequences of one’s actions properly belongs to the moral life of every person. However, consequentialist reasoning overlooks the fact that some acts are inherently and always wrong, regardless of their potentially beneficial outcomes. Torture, like genocide, denies the humanity of the victim.¹²¹ It fails to acknowledge the moral absolute that prohibits the violation of the dignity of the human person for any reason whatsoever. It does not accept the anthropological truth that all people, regardless of race, nationality, creed, or social status possess inviolable dignity, the capacity for freedom realized in solidarity, and the calling to participation. This includes criminals and “unjust aggressors,” as the Pope maintained in *Evangelium Vitae*.¹²² For this reason, John Paul II named torture among those acts that are intrinsically evil, i.e., under no circumstances

117. *Id.* at 65.

118. *Id.* at 54.

119. *Id.* In a similar vein, William Greider argues that the patterns of economic development and inequality today mirror those that gave rise to Fascism. See WILLIAM GREIDER, *ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM* (1997).

120. Many, including Senator John McCain, a survivor of torture, claim it is ineffective. John McCain, *Torture’s Terrible Toll*, NEWSWEEK, Nov. 21, 2005, at 34.

121. See ELAINE SCARRY, *THE BODY IN PAIN: THE MAKING AND UNMAKING OF THE WORLD* 27–28 (1985) (characterizing torture as “objectification” of the victim). For an account of the dehumanizing torture tactics used in Abu Ghraib and other American prisons, see Mark Danner, *Torture and Truth*, N.Y. REV. BOOKS, Jun. 10, 2004, at 46; Mark Danner, *The Logic of Torture*, N.Y. REV. BOOKS, Jun. 24, 2004, at 70.

122. *EVANGELIUM VITAE*, *supra* note 45, at para. 57.

justifiable.¹²³ The same distortion of the truth about the human person lies at the root of the massive exploitation of the world's poor. Seen as "expendable," many of them slave away in factories with sub-human conditions, while the corporations they work for enjoy generous profit margins.¹²⁴ According to John Paul II, this type of dehumanizing treatment of workers is also intrinsically evil.¹²⁵ In addition, it is an "abuse of freedom." The "abuse of freedom" by people who are never satiated by what they have leads to the denials of the freedom of those who lack basic necessities and to conditions of ever greater "misery and destitution."¹²⁶

Thus, for the reasons articulated herein, stressing the relationship between freedom and truth is both timely and necessary. Absent the recognition of basic anthropological truths, "things fall apart."¹²⁷ John Paul II's critics in Poland and elsewhere have underestimated the enduring value of this aspect of his teaching, perhaps mistakenly believing that nefarious assaults against human dignity like Auschwitz and Kolyma belong to the past.¹²⁸ Even if, however, all people concur with the basic anthropological truths described above, moving to the realm of civil laws designed to protect them raises important juridical questions. Beyond obviously illicit assaults against human dignity like genocide, ethnic cleansing, rape, slavery, and torture, what other behaviors or practices so egregiously affront human dignity that the law must forbid them? When does the state have an obligation not to tolerate the behavior of "sinners"? In other words, where should societies, in particular, legislators, draw the line between recognizing moral absolutes rooted in the truth about the human person and the ability to live one's life as one sees fit? To move towards greater clarity regarding this issue, this Article will now turn to the Catholic tradition's concept of public order. While the concept of "public order" is not free of problems, it may serve its function well when kept in tandem with the injunction to see freedom in relation to truth.

As was mentioned earlier, some of the most salient expositors of the Christian tradition have denied the possibility of

123. VERITATIS SPLENDOR, *supra* note 67, at para. 80.

124. See GREIDER, *supra* note 119, at 333-59 (discussing the severity and extent of worker exploitation in today's global economy).

125. VERITATIS SPLENDOR, *supra* note 67, at para. 80.

126. REDEMPTOR HOMINIS, *supra* note 72, at para. 16.

127. The reference is to Chiuna Achebe's well-known novel by the same name, CHINUA ACHEBE, THINGS FALL APART (1967).

128. For examples of American critiques of John Paul II on this issue, see CURRAN, *supra* note 64, at 241-43; Griffin, *supra* note 65, at 256-60.

inscribing the whole of its moral teaching in civil law. Thomas Aquinas, for example, argues that human law (i.e. civil law) is not obliged to “repress all vices,” nor must it enjoin all possible virtuous acts.¹²⁹ He states that human law must proscribe only the “more grievous vices,” which most people can avoid.¹³⁰ The litmus test for Aquinas resides in whether or not the action has any effect on the common good. Civil law should prohibit only those acts that injure others and preclude the functioning of society. For Aquinas, murder and theft are examples of such acts.¹³¹ Likewise, civil law should only prescribe acts of virtue that are necessary for the preservation of the common good. Civil law should not mandate acts that are morally praiseworthy but only contribute to one’s “private good.”¹³²

Importantly, Aquinas argues that a society which prohibited every immoral act “would break out into yet greater evils.”¹³³ Because the majority of people in a society are “imperfect,” they will not be able to bear the strict demands of the moral law, which only the few virtuous can master.¹³⁴ If this imperfect majority is forced to abide by laws they cannot possibly keep, their contempt for those laws will cause them to commit even greater evils, according to Aquinas.¹³⁵ Elsewhere, Aquinas maintains that just as God allows some evils to exist in the universe, government should “tolerate certain evils, lest certain goods be lost, or greater evils be incurred.”¹³⁶ Accordingly, Jews and members of other faith traditions should be able to practice their rituals, as good may arise from them. To bolster his argument concerning the avoidance of greater evils, Aquinas cites Augustine’s toleration of harlots because banning them will incite even more potent lust throughout society.¹³⁷

Thus Aquinas, one of the most important figures of Catholic moral theology, clearly did not espouse the “error has no rights” doctrine. In many ways, Aquinas presented the seeds of the concept of public order that Vatican II adopted centuries later. The American Jesuit John Courtney Murray developed this idea in his

129. THOMAS AQUINAS, *SUMMA THEOLOGICA* Pt. I-II, Q. 96, Art. 2-3 (English Dominican Fathers trans., Benziger Brothers 1947).

130. *Id.* at Pt. I-II, Q. 96, Art. 2.

131. *Id.*

132. *Id.* at Pt. I-II, Q. 96, Art. 3.

133. *Id.* at Pt. I-II, Q. 96, Art. 2.

134. *Id.*

135. *Id.* As shall be discussed below, John Paul II agrees with this stipulation, explicitly citing Aquinas. See *EVANGELIUM VITAE*, *supra* note 45, at para. 71.

136. AQUINAS, *supra* note 129, at Pt. II-III, Q. 10, Art. 11.

137. *Id.*

writings on religious freedom prior to Vatican II.¹³⁸ It was taken up in Vatican II's Declaration on Religious Freedom, which Murray helped draft.¹³⁹ The idea is predicated upon the distinction between society and the state, with the former being responsible for the whole of the common good and the latter responsible for the narrower public order. According to the Declaration, in order for the state to maintain the public order, it must provide for three things: the safeguarding of the rights due to all citizens in accordance with justice, public peace, and public morality.¹⁴⁰

This triadic concept delineates the sphere in which government should properly intervene in human affairs. Although it attempts to differentiate between governmental and non-governmental responsibilities, it is not specific enough to overcome the myriad possible impasses regarding the nexus between morality and civil law.¹⁴¹ Because of its ambiguous nature, it is open to different interpretations, which in turn generate varying applications. For example, what constitutes "public morality?" What are its sources? For his part, Murray maintained that public morality is "determined by moral standards commonly accepted among the people."¹⁴² What shall we say, therefore, of those standards adopted by, or at the very least tacitly accepted by, the majority of the German people during the Third Reich? Did the Third Reich not promote a kind of public peace and public morality, as it understood them? As Leslie Griffin has observed, John Paul II, then Cardinal Karol Wojtyła, rejected the notion of public order at the Second Vatican Council precisely because the Communist regime in Poland used this notion to suppress dissidents.¹⁴³ In fact, some members of the Polish episcopate appealed to "public order" (*ład społeczny*) and "public peace" (*pokój społeczny*) to argue that Solidarity was harming Polish society through labor strikes (something that John Paul II himself never maintained).¹⁴⁴ Seen

138. See, e.g., John Courtney Murray, *The Problem of Religious Freedom*, 25 THEOLOGICAL STUD. 503 (1964) [hereinafter Murray, *Religious Freedom*].

139. SECOND VATICAN COUNCIL, DIGNITATIS HUMANAE: DECLARATION ON RELIGIOUS FREEDOM (1965) [hereinafter DIGNITATIS HUMANAE]. For Murray's elaboration of the concept of public order, see Murray, *Religious Freedom*, *supra* note 138, at 520–21. On his role in developing DIGNITATIS HUMANAE, see CURRAN, *supra* note 64, at 224–34. See also Griffin, *supra* note 65, at 245–54.

140. DIGNITATIS HUMANAE, *supra* note 139, at para. 7.

141. Cf. Griffin, *supra* note 65, at 254, 258. Griffin cites Judge John T. Noonan, one of the foremost American writers on the relationship between religion and civil law. Noonan deems the concept "vague." *Id.* at 261.

142. Murray, *Religious Freedom*, *supra* note 138, at 521.

143. Griffin, *supra* note 65, at 258.

144. See TIMOTHY GARTON ASH, THE POLISH REVOLUTION: SOLIDARITY 280–81 (3d ed. 2002) (maintaining that at the dawn of martial law in Poland in

in this light, it should come as no surprise that John Paul II did not accept the concept of public order at Vatican II and did not utilize it in his papal teaching.¹⁴⁵ Even though it presupposes limited state powers, by itself public order does not have enough substantive content to protect against the tyrannical vicissitudes of the totalitarian state. Its “thin” conception of the human person does not provide enough “anthropological data,” or truth about the human person, to ward off encroachments on the dignity of the individual in the name of some “greater good.” Public order alone does not have the explanatory power to prevent the horrors of Auschwitz, Kolyma, Rwanda, Darfur, and Abu Ghraib. It may appear at first glance that public order’s requirement that the state safeguard the rights of all suffices to deny the ability of totalitarian regimes to obliterate the individual. However, as Maritain and others have argued, how human rights are interpreted depends largely on the underlying conception of the human person. After all, Marxist, liberal and Christian understandings of human rights and how they should be procured differ greatly in accordance with the various anthropologies at work in each school of thought.¹⁴⁶ Thus, even if the concept of public order is utilized, the discussion returns full circle, back to considerations of the “truth” about the human person.

In addition to the abuse of the notion of public order by authoritarian regimes, John Paul II may not have accepted the concept of public order because it does not definitively rule out laws permitting morally illicit behaviors such as abortion.¹⁴⁷ One could argue, of course, against the legality of abortion according to the first criterion of public order, appealing to the inviolability of the rights of the unborn. However, one might also contend that public peace and public morality demand that abortion be permitted in a society. For example, in a society where there is an overriding social consensus in favor of abortion, one might argue that public morality commends the practice. Or, one might argue that the consequences of outlawing abortion would be so grave and divisive in a given society that it must remain

1981, many of the Solidarity leaders felt abandoned by Archbishop Glemp, the Primate of Poland). Although Glemp was criticized for being too conciliatory toward the regime and not unequivocally endorsing Solidarity, particularly its method of Solidarity strikes, the Catholic Church did play a positive role in the Solidarity movement. See GEORGE WEIGEL, *THE FINAL REVOLUTION: THE RESISTANCE OF THE CHURCH AND THE COLLAPSE OF COMMUNISM* (1992).

145. CURRAN, *supra* note 64, at 240–41.

146. See JACQUES MARITAIN, *MAN AND THE STATE* (1951).

147. Curran posits this as one of the possible reasons why John Paul II did not use the category of public order. See CURRAN, *supra* note 64, at 241–43.

legal, at least temporarily, for the sake of “public peace.”¹⁴⁸ John Paul II went as far as acknowledging this latter possibility in *Evangelium Vitae*, his most developed teaching on abortion.¹⁴⁹ While his opposition to a law permitting abortion under any circumstances was unequivocal in the Polish debate, his position is more nuanced in this later encyclical. In no uncertain terms the Pope argued that there is no “right” to abortion, just as rights to any other intrinsically evil act do not exist.¹⁵⁰ A putative right to abortion cannot be justified by appealing to respect for one’s conscience or freedom; it is rather an “abuse” and perversion of conscience and freedom.¹⁵¹ If the best a legislature can do to limit the evil of abortion is to create a more restrictive law, rather than a ban, this lesser of two evils can be tolerated.¹⁵² This in no way denies the morally evil nature of the act of abortion.¹⁵³ Citing Aquinas, the Pope admits that moral law and civil law are not coextensive.¹⁵⁴ However, any law that contradicts natural law is an unjust law. Any law that permits abortion is an unjust law, as it stands in contradiction with the most fundamental right flowing from natural law, namely, the right to life.¹⁵⁵ Supporting a law that attempts to limit the evil of abortion, when the ability to outlaw abortion entirely does not exist, is not an act of complicity in that unjust law, however. It is rather an attempt to mitigate “its evil aspects.”¹⁵⁶ For John Paul II, it is of the utmost importance that abortion be recognized as a fundamental violation of the dignity of the human person. Thus, the legislator who finds herself or himself in this position may support “the lesser evil” only if she or he makes this recognition known publicly.¹⁵⁷ To reiterate what was said earlier, to grant that abortion can be a right, or an act of freedom, is to contend that respect for the dignity of every human person is contingent, when it is clearly not negotiable. If such moral relativism gains a foothold, “things fall apart.” Evil must be named evil, even when one is forced to tolerate it in order to mitigate it.

148. For a fuller exposition of a similar position, see Gregory A. Kalscheur, *American Catholics and the State*, AM., Aug. 2, 2004, at 15 (applying Murray’s theory to the contemporary American debate concerning Catholic politicians and abortion laws).

149. *EVANGELIUM VITAE*, *supra* note 45, at para. 70.

150. *See id.* at para. 62.

151. *EVANGELIUM VITAE*, *supra* note 45, at para. 71.

152. *Id.* at para. 73.

153. *See id.* at paras. 68–71.

154. *Id.*

155. *Id.* at para. 72.

156. *Id.* at para. 73.

157. *Id.*

Adjudicating whether or not public order necessitates civil laws banning, restricting, or permitting abortion ultimately exceeds the scope of this article. Others have taken up that debate vigorously elsewhere.¹⁵⁸ For purposes of this analysis, it suffices to recognize that “public order” does not settle many controversial questions regarding the relationship between morality and civil law. This Article contends that public order, despite its weaknesses, can still be a useful concept for discussing the relationship between morality and civil law. Public order may not provide ready answers to a number of moral/legal dilemmas. However, it can at least help “set the right terms for rational debate.”¹⁵⁹ To return to the earlier described discussion of freedom, truth, and liberal democracy in contemporary Poland, many of the Pope’s critics contended, or at least implied, that John Paul II demanded that all of the Church’s moral teaching be translated into civil law. If John Paul had taken recourse to the concept of public order, he would have showed this to be false. Public order reveals that legislating morality is neither desirable nor necessary. For example, would public order demand a law banning artificial contraception? By applying the three norms of public order, it would seem that the answer is negative. Such a law would hardly seem to protect the rights of all citizens. Second, such a law does not seem necessary for the safeguarding of public peace. Finally, preserving the public morality, at least in Poland and in places like the United States, would not entail outlawing artificial contraception. In both societies, the majority of citizens condone its use. This says nothing, of course, about whether artificial contraception is objectively wrong. The conclusion that artificial contraception should be legal is reached because it meets all three criteria of public order. The issue becomes more nebulous when a particular practice meets some, but not all of the criteria of public order. Its application also becomes more ensnared in controversy and debate when application of the criteria depends on how one interprets either the criterion itself or the object to which it applies, such as in the case of the unborn. Here, the conclusion about the demands of the public order will depend on whether one con-

158. See CURRAN, *supra* note 64, at 238–41 (referring to arguments for and against legalized abortion that appeal to public order). For the record, the appeal to public order to justify abortion seems dubious, particularly if one accepts that the unborn is a human being. However, the issue is debatable within the framework of public order.

159. Murray used this phrase regarding the usefulness of just war theory for public debate concerning warfare. John Courtney Murray, *Remarks on the Moral Problem of War*, 20 THEOLOGICAL STUD. 40, 56 (1959).

ceives of the fetus as a human being imbued with inviolable dignity and rights. If one accepts this premise, abortion violates public order's first criterion, the protection of the rights of all. If not, application of the other two criteria might produce a different verdict in a given social and political context.

To repeat, the concept of public order is not a panacea. It does, however, seem to preclude the possibility of reverting to "error has no rights" and talk of making Catholic moral teaching coextensive with the law. It can, at least to some degree, delimit the sphere within which people can legitimately debate how behaviors, moral principles, and norms relate to civil law. In the case of Poland, recourse to this category may have dispelled questions about the legality of less serious ethical infractions of a private nature, freeing public discourse about serious issues such as abortion from undue bias and fears. In other words, adding it to the important claim that freedom should be seen in relation to truth about the human person would dissuade critics of John Paul II in Poland, and elsewhere, from raising cries of "theocracy." Debating the legality of abortion in Poland within the framework of public order would have unambiguously revealed that the Church does not seek to legislate all of its moral doctrines.¹⁶⁰ By acknowledging that the government should only legislate on moral issues that concern the public order, the Church would embrace, as it did in *Dignitatis Humanae*, liberal democracy's aim of as much freedom as possible and as much constraint as necessary.¹⁶¹ It would demonstrate that certain moral issues, albeit of significance to the Church, fall beyond the purview of the constitutional state. Other moral issues are of such gravity that the state must attempt to chart a legal course for the protection of individuals and the social good.

CONCLUSION: THE CATHOLIC "BOTH/AND"

Perhaps this article has attempted to do the impossible, conjoining what many commentators have set apart, namely John Paul II's perspective on freedom and truth and the concept of public order. In this sense, however, the argument reflects a broader tendency of Catholic social thought, which Charles Curran has described as the "both/and" of the Roman Catholic tra-

160. In the United States, Cardinal Bernardin took this approach, perhaps in an effort to more carefully differentiate between moral issues that should be of concern to civil law and those that should not. See Joseph Cardinal Bernardin, Address: Consistent Ethic of Life Conference (Oct. 4, 1986), in *CONSISTENT ETHIC OF LIFE* 87-95 (Thomas G. Fuechtmann ed., 1988).

161. See *DIGNITATIS HUMANAЕ*, *supra* note 139, at para. 7.

dition. He refers to the “all-embracing universality [of the Catholic tradition] that is wary of ‘either-or’ approaches.”¹⁶² He specifically suggests that Catholicism accepts the positive aspects of political liberalism and seeks to build on them.¹⁶³ In likewise fashion, this article has defended the value of John Paul II’s teaching on freedom and its relationship to truth and has underscored the value of the concept of public order. This article has argued that use of the category of public order does not obviate the Pope’s claim that democracies must acknowledge the relationship between freedom and truth. The two concepts can compliment one another. They can mutually reinforce and limit the scope and nature of the claims that flow from each one. Emphasis on the truth about the human person—that she is imbued with inviolable dignity, given the capacity to realize freedom in solidarity and solidarity in freedom, and entrusted with the right and duty of participation—provides indispensable substantive content to the somewhat vacuous notion of public order. It specifies, at least to a greater degree, what is due to each person in justice. Underscoring these basic truths about the human person precludes the kind of abuse of “public order” by authoritarian governments that John Paul II astutely perceived. It also disallows a minimalist, individualistic interpretation of the demands of public order, which would justify forms of “limited” government that allow the poor and marginalized to persist in their suffering.¹⁶⁴ John Paul II forcefully argued that the freedom and dignity of the poor require economic structures that enable their active participation in the economic, political and cultural life of society.¹⁶⁵ In this vein, the Pope revealed that his insistence on respect for the truth about the human person arises not only out of his opposition to abortion, as some of his critics imply. Rather, the Pope also had the fullness of the human person in

162. CURRAN, *supra* note 64, at 21.

163. *Id.* at 155.

164. Curran correctly states that, especially in the American context, “public order” may be interpreted this way. He therefore calls for amending public order to include the demands of justice and social justice. CURRAN, *supra* note 64, at 230. *Cf.* Murray, *Religious Freedom*, *supra* note 138, at 521 (curiously avoiding the issue by stating that public order excluded considerations of the role of the state regarding the material well being of its citizens).

165. See REDEMPTOR HOMINIS, *supra* note 72, at para. 16, CENTESIMUS ANNUS, *supra* note 72, at paras. 32–33, 39, 41. See also Pope John Paul II, Address for the Celebration of the World Day for Peace (Jan. 1, 1998), http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121997_xxxi-world-day-for-peace_en.html; John Paul II, Address for the Celebration of the World Day for Peace (Jan. 1, 2000), http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121999_xxxiii-world-day-for-peace_en.html.

mind, which includes the truth that freedom, including economic freedom, must be realized in solidarity. As mentioned earlier, it also means that, according to the Pope, human freedom can be assailed not only by authoritarian political regimes and illicit reproductive practices but also by oppressive economic structures.¹⁶⁶

By the same token, supplementing discussions of freedom and its relationship to truth with the concept of public order may spare public discourse of unnecessary agonizing over whether the Catholic Church has revived the “error has no rights” doctrine. If an act has no bearing on the vital good of society, as Aquinas stated and the doctrine of public order maintains, it is of no concern to civil law. On the other hand, the truth about the human person (the anthropology described above) must function in tandem with the notion of public order to avoid the vacuum of moral relativism while simultaneously respecting the rights of individuals. Generally speaking, democracy accepts “saints and sinners.” In this sense, Adam Michnik was right.¹⁶⁷ However, when “sinners” violate the fundamental dignity of the human person, thereby diminishing the common good, their acts cannot be tolerated in the name of “neutrality.” The “neutrality” of liberal democracy, is, in the end, an illusion. The moral relativism that undergirds “neutrality,” which some take to be a *sine qua non* of liberal democracy, is itself a truth claim. Moral relativism asserts absolutely that it is a truth that there is no absolute truth. Moreover, despite what John Rawls and others have argued, liberal democracy operates with a conception of the human person and vision of the good.¹⁶⁸ Citizens in a liberal democracy have only to argue therefore about which conception of the human person is true, not whether an anthropological vision should inform its laws. As diverse thinkers like Brzezinski, Fromm, Tischner, and John Paul II have reminded us, this is an exigent question.

The road to new forms of totalitarianism lurks just around the corner. Polish citizens and citizens of democracies every-

166. For a fuller explanation of this aspect of the Pope’s teaching on freedom, see POPE JOHN PAUL II, *SOLLICITUDO REI SOCIALIS: FOR THE TWENTIETH ANNIVERSARY OF Populorum Progressio* (1987).

167. See *supra* text accompanying notes 2–5.

168. For a compelling critique of Rawlsian political liberalism on this count, see MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1998). For a critique of the “neutrality” of liberalism in the Polish context, see ZDZISŁAW KRASNODEBSKI, *DEMOKRACJA PERYFERII* 113–54 (2005). In this connection also, Jeffrey Stout argues that not all adherents of liberal democracy view it as neutral, or “tradition-less.” See JEFFREY STOUT, *DEMOCRACY AND TRADITION* (2004).

where should not, therefore, fear John Paul II's call to freedom in truth and in solidarity. Of course, claims to possess the sole truth about every aspect of human nature with absolute certitude should be considered with caution. This is particularly the case regarding anthropological truth claims that do not cohere with or that apparently contradict the general characterization of humans as imbued with inviolable dignity, with the capacity for freedom and solidarity, and with the inclination towards and duty of participation.¹⁶⁹ Nonetheless, citizens of modern democracies should fear moral relativism in the disguise of "liberal democracy," which may lead them down a road they would certainly wish to avoid. As John Paul II argued, democracy has the potential to be "ethical." It has been and still can be a potent force for the protection of human rights. The question is whether democratic citizens will foster ethics or claim that democracy always grants equal rights to all "saints" and all "sinners." The answer depends on how freedom is understood and how its relationship to the truth about the human person is construed. In terms of civil law, attending to this issue, while adopting the notion of public order, seems to be the best way to ensure as much freedom as possible and as much constraint as necessary.

169. In a similar way, Aquinas argued that we can ascertain natural law and its precepts with less certitude as we descend into greater specificity. See AQUINAS, *supra* note 129, at Pt. I-II, Q. 96.

