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LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW
INAUGURAL LECTURE OF THE JOHN COURTNEY MURRAY CHAIR
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John Courtney Murray, S.J.: A Citizen of Two Cities

Remarks of Robert John Araujo, S.J.*

Charles Dickens began his *Tale of Two Cities* with the memorable line, “It was the best of times; it was the worst of times.”¹ Dickens’ great saga takes us back and forth between two very different worlds, one in England and the other in France, during the bloody turmoil of the French Revolution. The juxtaposition of such diverse places existing in parallel fashion suggests something about the times in which Fr. John Courtney Murray lived—in a world of depression, of two global wars, and of a new kind of tension called the Cold War. And how did he address the challenging era in which he lived? It may have been Murray’s training as a theologian that made him understand the best and worst of his times; it may have been the fact that he was a lawyer’s son who understood the importance of the rule of law in governing a society

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Upon completing military service as an officer in the United States Army, Fr. Araujo served as a trial attorney and attorney advisor in the Solicitor’s Office of the United States Department of the Interior (1974–1979). In 1979, he joined the Law Department of the Standard Oil Company (Ohio) and served in a variety of capacities until 1985. After corporate service, he joined the general corporate department of a New England law firm and remained there until entering the Society of Jesus in 1986. Since 1997, he has served as an advisor to the Holy See providing counsel on issues dealing with public international law.

He was also a member of the law faculty at Gonzaga University from 1994–2005 and became the Robert Bellarmine, S.J. University Professor in American and Public International law. He then became Ordinary Professor at the Pontifical Gregorian University from 2005–2008. He has been a visiting Professor at Georgetown University Law Center, St. Louis University School of Law, and Boston College School of Law. In the academic year 2000–2001, he was the Stein Fellow at Fordham University Law School. During his graduate legal studies in New York, he was the Chamberlain Fellow at Columbia University School of Law.

1. CHARLES DICKENS, *A TALE OF TWO CITIES* 3 (Huber Gray Buehler & Lawrence Mason, eds., The MacMillan Co. 1922) (1859).

of ordered liberty; it may have been his priesthood which helped him put all of the tumult of his life and times into context. But he was largely a man of hope who was fortified jointly by reason and faith. Perhaps he took to heart Saint Augustine and realized that he was a citizen of—a participant in—two cities: the City of God and the City of Man.

In essence, the dual citizenship concept suggests that Murray was both a contributing member to the public square and an ardent American citizen. But he was also a faithful Catholic and obedient son of the Church. For some individuals, it is hard to imagine that such a person could exist, yet this is how he served the common good and the public interest during his relatively brief life. But because of his formation as an American and a Catholic, Murray demonstrated that American Catholics can simultaneously be faithful members of the Church and contributing members of the American republican democracy. Indeed, their greatest contribution to our democracy may be in recalling America to the understanding of the human person and human institutions that animated the founding of the country—an understanding whose greatest expositors include Fr. Murray, John Paul II, and Benedict XVI.

In order to better understand Murray, a bit of background is in order. He was born in New York City in 1904, the son of an Irish-American mother and a Scottish-American lawyer-father. He entered the Society of Jesus at the age of sixteen. After his theological studies and ordination in the United States, he pursued doctoral studies at the Pontifical Gregorian University in Rome. His doctoral studies concentrated on the doctrines of the Trinity and grace. Upon successful completion of these studies in 1937, he returned to the United States to teach at the Jesuit theologate in Woodstock, Maryland. In 1941, he was appointed as the editor of the journal *Theological Studies*. Notwithstanding his own theological expertise, he was drawn into various projects with different Catholic groups and organizations, including the predecessor of the U.S. Catholic Bishops' Conference.

Some of these projects intersected with the relationship between the Church and the state. Others drew on his understanding of how the moral perspective might or ought to intersect with public policy. His writing on church-state matters (largely influenced by his living in a “non-Catholic country”) brought him into conflict with several American authors and the prefect of the Holy Office, Alfredo Cardinal Ottaviani. In 1954, he was instructed by his Jesuit superiors that he was not to write and publish in this field anymore. However, in 1963, fortune again changed for him in this regard, and he was invited to

attend the Second Vatican Council, then in progress, as a *peritus* [an advisor] (largely at the insistence of Cardinal Spellman of New York), where he contributed enormously to the Declaration on Religious Freedom, *Dignitatis Humanae Personae*. His best-known publication was the book *We Hold These Truths: Catholic Reflections on the American Proposition*, which contained thirteen essays written between 1950 and 1960, the year the book was published. At the age of sixty-three in 1967, Murray died of cardiac arrest. Despite his early death, his impact on many issues, including religious liberty, lives on to the present day.

Although Murray was a theologian, he astutely studied the relationship between the Church and the state—or, as his predecessors in the Society of Jesus, Francis Suárez and Robert Bellarmine called them—the two swords. Following their lead, Murray largely agreed that there are two distinct sovereigns or authorities. The first is the temporal, as represented by the civil authorities and the state. The second is the spiritual—and for Suárez, Bellarmine, and Murray, this was the Catholic Church with the pope as the Vicar of Christ. While each of these authorities enjoyed distinctive realms of influence, they were not—and cannot be—hermetically insulated from one another. It was an essential part of Murray's work, both before his silencing in 1954 and after he was brought to the Second Session of Vatican II in 1963, to demonstrate that there is an area—which I shall identify as the public square—where the two sovereigns often do, indeed must, encounter one another. The reason for this is that both the Church and the state can and ought to claim in legitimate and proper fashion their respective roles in this public place where they exercise in due and authentic fashion their respective authorities. With regard to the Church, Murray intensely defended her right, indeed her obligation, to enter the public square to present her message and wisdom to the world through proposition, not imposition. And it is equally inevitable that the state, as it naturally tends to expand its authority to address the many concerns of the human family, will touch—sometimes inadvertently, but sometimes quite consciously—upon the place where the person is compelled by a well-formed conscience to render unto God what is God's and not unto Caesar.

As a principal contributor to the Second Vatican Council's Declaration on Religious Freedom, *Dignitatis Humanae Personae*, Murray agreed with Pope Paul VI who, in his final exhortation at the conclusion of the Council in December 1965, rhetorically asked of the civil authorities of the world the question: what does the Church ask of you today? The Pope offered his answer: "She asks of you only liberty,

the liberty to believe and to preach her faith, the freedom to love her God and serve Him, the freedom to live and to bring to men her message of life. Do not fear her.”² Undoubtedly, Paul VI saw the faithful not only as members of the Church but also as members of and participants in civil society who must have their freedom to do what properly belongs to the Church. For after all, they are her members in the world who have the capacity to deal with and participate in the temporal affairs of the world. They are citizens of the temporal realm, but they are also disciples of Christ who enjoy citizenship in His realm as well. The freedom of the Church, therefore, is their freedom as well.

It is vital to understand how Fr. Murray approached freedom. I doubt that he would adopt as his perspective the “mystery of life” passage from the U.S. Supreme Court plurality opinion in *Planned Parenthood of Southeastern Pennsylvania v. Casey*:

It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.

.....

... At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and the mystery of human life.

Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.³

My reason for making this point is that in his commentary to the Declaration on Religious Freedom, Murray insisted that harmony must exist between a person’s duty of freely given obedience to what is true *and* his or her right to the freedom that one exercises within civil society. For him, this duty does not diminish the right nor does the right diminish the obligation. Nonetheless, this right to freedom as a religious person and as a member of the Church is a civil right that is to be respected by the temporal authority. It is not a right that the temporal power establishes or makes or confers; it is a right that exists due to the nature of the human person—or, as Jacques Maritain acknowledged, what is due to man because he is man. And, surely, the state did not create man—God did.

As a citizen of two cities—as an American and as a Catholic—Fr. Murray saw the rights of the religious believer, being defined by the Declaration on Religious Freedom, and those of the American citizen, being defined by the U.S. Constitution. Given this context, he was of the opinion that the American legal order did not and could not restrain the believer from holding and exercising this dual citizenship in an

2. THE DOCUMENTS OF VATICAN II 730 (Walter Abbott, S.J. ed., Guild Press 1966).

3. 505 U.S. 833, 847, 851 (1992).

active and public fashion. However, he further contended that the dual citizen does not have a tenable claim to believe what is false or to engage in what is wrong—as determined objectively, honestly, and truthfully. To do otherwise would be, as he said, to engage in “moral nonsense.” In confirmation of this point, he contended that: “Neither error nor evil can be the object of a right, only what is true and good.” Yet, Murray also staked the position that a person who entertains false religious views must not be coerced into believing that which he or she elects not to believe. Nor did Murray contend that the line between clear error and a mistaken opinion is an easy one to define.

Murray was a careful thinker and an astute writer and speaker. Hence, he took those extra steps to ensure that he would be understood as he intended. In this Jesuit there was little guile. It is clear that the religious freedom that he had in mind, being an important contributor to the Declaration on Religious Liberty, is manifold: the right encompasses the freedom of the Church for herself and the freedom of the individual believer whose very dignity mandates religious freedom. In his discussion of the Declaration’s text, Murray explicitly stated that the Declaration was not about personal conscience; rather, it was about religious freedom. He elaborated this point by indicating that the right to the free exercise of religious freedom is not founded on freedom of conscience. In essence, the Declaration was not intended to advance the claim that a person has the right to follow one’s conscience in the matters that the Declaration addresses simply because one’s conscience is the justification for doing one thing and not another. Neither does the language of the Declaration’s text itself further this notion. Murray bluntly pointed out that this approach was based on a “perilous theory”—the peril being the reliance on subjectivism where individual conscience rather than objective truth determines what is right and what is wrong, what is true and what is false.

The freedoms addressed by the Declaration, which contains major elements penned by John Courtney Murray, provide some insight into the notion of dual citizenship of which I have been speaking. The individual, according to Murray—and, I hasten to add, yours truly—is entitled to expect certain protections from the servant state. In the context of the religious believer, especially the Catholic addressed in the Declaration, the believer is a participant in the common good. As the Second Vatican Council defined this in the Pastoral Constitution on the Church in the Modern World, the common good is “the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment, today takes on an increasingly universal complexion and consequently

involves rights and duties with respect to the whole human race.”⁴ This translates into a two-fold duty of the state. The first obligation entails the protection of religious freedom as a civil right. The second follows the first: this is the duty to cultivate an environment in which religious persons can fulfill their religious obligations without hindrance. One need only think of the methods employed by National Socialism in Germany, as described by the Oxford don Nathaniel Micklem in his book *National Socialism and the Catholic Church*, where the state delighted in erecting constant challenges to the Church by violating these two important principles.⁵ Governments do have a proper authority in directing the temporal sphere, but this does not include jurisdiction over public worship and religious practices, including the rights of religious individuals to participate in government through their citizenship. States have the fundamental responsibility of ensuring that freedoms are exercised in an ordered fashion so that the common good is both protected and promoted. However, the state must not intrude upon the exercise of the rights of its citizens, many of whom are dwellers and participants in the City of God and the City of Man.

Murray understood that each citizen and each Catholic who claims dual citizenship must avoid a problematic condition of modern times. He noted in the early 1960s that the “barbarian” lived in our midst. The barbarian of whom he spoke was not clad in bearskins and carrying a club but could be wearing elegant business attire or an academic robe and using a fine writing instrument. But if this person failed to exercise civility, he or she risked becoming the barbarian of the modern age. This does not mean that the citizen or the dual citizen had to be a milquetoast; rather, it means that one must avoid the lures of nihilism and the tendency to undermine rational and objective standards of judgment. For Fr. Murray, the citizen of both cities must desire to live together with others and to talk with others in order to both understand others and be understood by others. He knew that “[c]ivility dies with the death of the dialogue.”⁶ He acknowledged the appropriateness of John XXIII’s “four pillars” for society—truth, love, justice, and

4. SECOND VATICAN COUNCIL, GAUDIUM ET SPES: PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD ¶ 26 (1965) [hereinafter GAUDIUM ET SPES], available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html.

5. See generally NATHANIEL MICKLEM, NATIONAL SOCIALISM AND THE ROMAN CATHOLIC CHURCH (1939) (discussing the barriers to religious freedom erected by the National Socialist government of Germany between 1933 and 1938).

6. JOHN COURTNEY MURRAY, S.J., *The Civilization of the Pluralist Society*, in WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION 31 (Sheed & Ward 1960).

freedom—as being essential virtues of the good citizen who lives civility.

In addressing what the dual citizen needs to take stock of, Murray anticipated the question asked by the Second Vatican Council in the Pastoral Constitution: “*Quid est homo*—what is man?”⁷ As he recognized, this is the question of the present age of rapidly advancing technological development, instantaneous communication, and increasing tensions, exemplified by the era of the Cold War that had not even reached its apogee during Murray’s lifetime. The answer to the question “*quid est homo?*” requires understanding human ontology by investigating a series of related issues. Two of the most fundamental are these: what is the origin of the human person, and what is the destiny of the human person? From these two realms of investigation comes a third closely related matter: what can the human person know or come to know? For the Catholic, these questions ultimately bring the individual person into acknowledgment of relationship—that is, relationship with God and relationship with one another, meaning whomever God sends our way. At the crux of these relationships is human salvation and achieving our proper destiny—meeting and being with God one day.

Murray knew that many persons were skeptical of this understanding of human nature. Some even ridiculed the idea. But he was a man of grace and graciousness who would not let skepticism or ridicule deter him from proclaiming that dual citizenship is the calling of the religious believer—and certainly the person who put on Christ through his or her baptism. Murray surely spoke to Catholics, but, like the Church, he addressed people of all faiths or no faith, who were honest enough to acknowledge that these questions about human origin and destiny were—and remain—central to the formulation of sound public policy. That is why he understood so well the pluralist world in which Christians live and why they must be good citizens of two cities.

And how does the dual citizen prepare oneself for the tasks at hand? Murray returned to the four notions developed by John XXIII in *Pacem in Terris*: truth, love, justice, and freedom. It is critical to note that these four principles were not narrowly parochial, but rather, universal to the human condition. Let me offer what I consider an accurate assessment and explication of each.

Truth emerges from faith, *and* it must also come to light from reason. Given this framework, truth for the Catholic emerges from a number of

7. GAUDIUM ET SPES, *supra* note 4, ¶¶ 10, 12.

important matters of faith that relate to reason. The most fundamental principle here is Jesus Christ who is “the way, the truth, and the life.” Building upon the nature of the Church as the Body of Christ, we recall that the Church is the witness to the truth—especially God’s truth—in the world. The Church is also a teacher who proposes to her sons and daughters and all people of good will the truth about human nature and the destiny of each member of the human family. To reiterate a point made earlier, the Church addresses this matter with the question from the Pastoral Constitution of the Church in the Modern World, asking, “*Quid est homo?*” The Church and her individual members are also pilgrims who are on the road searching for the truth of issues that the human family encounters more deeply on a recurring basis or for the first time. Of course, a longstanding quest concerning truth is the path of each person toward individual salvation promised by God, who loved the world so much that He gave us His only Son so that we might live with Him forever. But the truth about man is that he is not alone; he lives in society, a society that must sustain the individual person by being well-ordered, protective of human dignity, and rooted in the truth of God’s plan for the human family. These are necessary conditions for truth to be pursued and known.

Something that must have crossed Murray’s mind on more than a few occasions is the foundation of truth on which society and the state are constructed. So, in order to be acting in harmony with their respective missions, society and the state must avoid any unjust discrimination that undermines the dignity of the human person. This principle surfaces on many fronts of human existence. Thus, the fashion in which society and the state treat each member of the human family must be guided by the truth that is God’s plan for His most beloved creation. As John XXIII reminded us about the truth of human nature, all persons are equally noble in their natural dignity regardless of their status in society, which demonstrates some aspects of human differences.

As one contemplates the essence of truth from a Christian perspective, the following understanding emerges: God inclines the human person, his society, and his government in dealing with other persons, societies, and states in a fashion that should promote understanding and cooperation rather than suspicion and conflict. This truth does not require or expect the sacrifice of individual identities of persons and their cultures, but it does mandate the conscious abandonment and rejection of those beliefs and practices which are injurious to other persons and their societies.

The truth that is God also cultivates a strong appreciation and desire for the principles of subsidiarity and solidarity. For those unfamiliar

with these core principles of Catholic social doctrine, the concept of subsidiarity begins to take shape in the encyclical letter of Pope Pius XI entitled *Quadragesimo Anno*. In this letter, Pius XI defined the principle of subsidiarity as that which provides the proper relationship among the individual, the family, the local society, the nation, and the world.⁸ In essence, the principle of subsidiarity reminds us that most decisions and the actions that emerge are best made or conducted at the lowest level, i.e., the level closest to where the result of the decision or action is to be implemented.

The principle of solidarity is founded on the intrinsic social nature of the human person and this person's equality in dignity and rights with all other persons. This principle mandates at some level a unity that brings together all persons and their societies in such a way that interdependence becomes both essential and real. Unlike the strains of exaggerated individualism that are sometimes claimed to be the basis of the American experiment, Murray recognized and affirmed two principles of our social nature, i.e., subsidiarity and solidarity, as fundamental elements of the Church's social doctrine and essential to the democratic processes that enable citizens to participate in the formulation of their law and the legal system in which the law functions. And democratic processes surely were of an interest to John Courtney Murray, not simply as an instrumental means of governance but as an expression of the social nature of the human person.

For the purposes of this presentation, one further word must be offered about truth. Toward the end of Murray's life, as well as during the present age, truth encountered an especially durable antithesis, that is, relativism. Skeptical minds and a skeptical world never tire of fomenting the doctrine that there is no truth. As Pilate suspiciously retorted to Christ during the trial that preceded his crucifixion: "What is truth?" This commonly held attitude labors to replace truth with relativism on many fronts. Regardless of where relativism surfaces, its common denominator typically denies the universal nature and essence of the human person; it advocates that all views on any issue have equal merit; and it often urges the acceptance of the view that human freedom means allowing the person to believe in and do whatever he or she wishes because one's personal justification for doing or not doing something is what matters. Murray steadfastly maintained the

8. See PIUS XI, ENCYCLICAL LETTER *QUADRAGESIMO ANNO*: ON RECONSTRUCTION OF THE SOCIAL ORDER ¶ 79 (1931), available at http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html (discussing the need for social order concerning the activities of people and organizations).

proposition—again, one with which people of all faiths, or no faith, can agree—that to speak of *my* truth rather than *the* truth is antithetical to meaningful dialogue that leads to the discovery of what is true and what is not.

And so, we must now turn to this important subject involving human freedom. What is it? What is authentically constitutive of it? These are questions that Fr. Murray had the appetite to pursue. The place of beginning is the genesis of humanity. God conferred upon Adam and Eve freedom. He gave them one proscription, but He also endowed them with free will, consciousness of right and wrong, and intelligent reason. A part of this gift was the freedom to investigate and pursue the truth over falsehood. This freedom gives the human person the liberty to speak, to engage others in respectful encounter, to associate with like- and unlike-minded, and to pursue those vocations in life that are attractive to the individual while mindful of the common good. Eventually for the Christian, freedom must be *for* God and His commands; it cannot be a freedom *from* God, for that leads a person, perhaps unknowingly, into a dependence on the lures that tempt the human person to follow some course in life that is incompatible with what God asks. In short, the freedom of the human person is meaningless except in light of a freedom for the truth. To speak of freedom without relating it to the truth is to speak of a form of slavery, not authentic freedom. Of course, one of the greatest freedoms of all is that of worshipping God—it is a freedom that the American Constitution, so important to Murray, protects in both printed word and intent. This freedom belongs to the individual believer and it belongs to the universal Church. As Pope Paul VI noted at the conclusion of the Second Vatican Council, it is the one thing that the Church asks of the temporal authorities. It is the very thing that so many of her martyrs have sought: the freedom to follow and praise God.

Murray agreed that the individual person who seeks the truth and exercises authentic freedom must still have societies—the family, the community, the nation—in order to flourish. But each society must have respect for the dignity of its individual members. It is society's responsibility to promote the common good, which ensures that each person's freedom is always accompanied by its natural and authentic companion, i.e., taking responsibility for one's actions. This is why the individual, when making choices for himself or herself, cannot neglect the reality that many of these choices have or can have an impact on others whose human dignity must enter the consideration of how freedom is to be exercised and enjoyed. The authentic restraint on one's freedom, then, is not the force of the power of authority but of the

individual's own prudence, reason, and charity for the other. Authentic freedom is essential to aiding each person to come to know the truth about the rights he or she possesses and the corresponding responsibility and obligations that serve as guarantors of the rights of each and every person. In this regard, it is the City of Man that should help each person acknowledge this dual role of personal freedom. With this assistance at hand, the common good is both achievable and sustainable.

This objective for freedom and its sustainability logically brings us to a third principle of concern to Fr. Murray: charity, or love. Basic to the human condition is a longing, a natural inclination for genuine solidarity. Authentic freedom, as just explained, inevitably leads the person who exercises it to the realization that there is Another, that there are others, and that it is in relationship with others that we exercise our true freedom. Charity begins with consciousness of the other and then leads to attentiveness for the other. It becomes the foundation of relationships that deepen with the passage of time. Just as true freedom is contrasted with the shadow of freedom, charity is contrasted with exploitation of the other, rather than recognition of the other as having correlative value and dignity. Charity does not preclude necessary fraternal correction, but at the same time it necessitates concern and respect for the other that include the readiness to extend the helping hand. Charity is not alien to citizenship; it is its cornerstone. Charity acknowledges the existence of the other by seeing in the other the brother or sister rather than the adversary or outsider. There is no doubt that John Courtney Murray acknowledged and accepted the reality of citizenship in both the City of God and the City of Man—that there is no greater love than to give of oneself for those in greater need. Charity—love—is the cohort of solidarity. It is the animator of citizenship regardless of the city in which the citizenship is practiced. And it is charity that elevates one's consciousness toward the final principle so vital to citizenship: justice.

Justice is, at its core, the right relation between the person and the other; moreover, it is the guarantor of the *suum cuique*, to each his due. It is also the vital mechanism that regulates every society so that it is well-ordered yet tempered by charity, freedom, and the truth. Inevitably, justice is that which determines the path to the common good and provides for its sustenance. It ensures the proper relationship between the exercise of responsibility and the preservation of rights given by the Creator. It is also the fundamental command for those who exercise authority in the temporal sphere—as Scripture reminds us,

“love justice, you that are the judges of the earth.”⁹ The civil authority that is just and practices justice is most competent in its craft; the civil authority that varies from this path makes itself a candidate to forfeit its authority, as Francis Suárez and Robert Bellarmine reminded us many years ago.

For justice to be effective *and* eternal, it must be tempered with equity and mercy for all. Those charged with its administration must never forget the fundamental precepts of the common good and the *suum cuique*. For justice to be true to its vocation, it must be incorrupt, objective, and devoid of partisanship. Those who contend that justice can exist apart from moral considerations do not know justice in its true form. Justice has the further vocation of installing and preserving right relations between parties who are in dispute with one another. Justice is the solution to their dispute, and it must make the distinction between right and wrong and install the former and ban the latter. Those who know justice also know reciprocity. Murray understood well the counsel of St. Augustine of Hippo: “In the absence of justice, what is sovereignty but organized brigandage?”¹⁰ The just authority is the one that not only permits but encourages the practice of subsidiarity and promotes solidarity. Justice is ever vigilant and eternal and calls as its friends and collaborators truth, freedom, and charity.

These four principles had a significant bearing on the thought of Murray and his answer to the question “*quid est homo?*” He proceeded to address this question, I believe, in the context of the relation between the Church and the state, and he did so with zeal, wit, patience (especially during his period of being silenced from 1954 to the early 1960s), and determination. As he once told a then young Jesuit, Charles Whelan (who would become a longtime professor of law at Fordham University and an associate editor of *America* magazine), “Do not repeat what I have said. Improve on it. Extend it. Correct it. Attack problems that remain unsolved.”¹¹ Although trained in theology rather than constitutional law, he astutely comprehended the 1787 text of the Constitution given to the American republic by its founders and that of the First Amendment adopted a few years later in 1791. In this regard, he became troubled by the U.S. Supreme Court’s growing emphasis on “separation” and diminishment regarding the free exercise of religion.

9. *Wisdom* 1:1 (Douay-Rheims).

10. St. Augustine, *The City of God: Book IV*, in THE FATHERS OF THE CHURCH: SAINT AUGUSTINE THE CITY OF GOD, BOOKS I–VII 189, 195 (Demetrius B. Zema, S.J. & Gerald G. Walsh, S.J., trans., Cath. Univ. of Am. Press, Inc. 2008) (1950).

11. Charles M. Whelan, S.J., *The Enduring Problems of Religious Liberty*, 153 AM. MAG. 368, 369 (Nov. 30, 1985).

He knew well that the First Amendment to the Constitution spoke against establishment of religion by the national government, *not* the separation of religion from the life of the American people. Why did he make this distinction? Was he simply quibbling over the meaning and use of particular words? An affirmative or negative answer to this question without further ado would miss an important point about Murray and his work. After all, he was occupied with truth, freedom, *caritas* (charity), and justice!

He knew that the individual person who is also a believer is a member of civil society where the non-establishment of religion is vital to the freedom of one and all in the United States. But he also knew that the religious believer is simultaneously a citizen of the City of God, for whom the free exercise of religion, not just in private but in public as well, is equally imperative. This is a truth, pure and simple, about the American Constitution. But he saw some members of the judiciary—perhaps inspired by a particular anti-religious sentiment incongruous with the meaning of the Constitution—forgetting that the First Amendment had two elements dealing with religion that had to be understood together, applied together, and, most important of all for all citizens, lived together. To illustrate his position, as Fr. Whelan has suggested, Murray saw no constitutional problem with the City of Man subscribing to “in God we trust,” but he would have shied away from “in Father, Son, and Holy Spirit we trust.” As Fr. Whelan concludes, reason would necessitate why one was appropriate in the City of Man and the other was not.

The justification underlying his reason most assuredly was based on the fact that the human person, and the dignity that accompanies existence in two cities, cannot separate himself into components that can only be lived in one city and not the other. But when separation is emphasized at the expense of religious exercise in the public sphere, society and its state become either Jacobin, for the traditional student of history, or totalitarian, for the contemporary one. It is true that the American society is religiously pluralist, but it is equally true that it is also religious. Hence, the concurrent need for both non-establishment and protection of the free exercise of religion becomes all the more apparent. The human person is a whole and organic being. It would be unreasonable and illogical, then, to ask the person to separate his or her religious nature from his or her civil nature.

Here, I must borrow from, but also extend Murray: while truth may be disagreeable, it is still true. And this is the truth about the nature of the human person who finds himself or herself concurrently a citizen of two cities. But for anyone who might scoff at the suggestions I have

made about the duality of citizenship, he or she might wish to consider the possibility that an aspect of this thesis is contained in the motto often used to describe the American experiment: “*E Pluribus Unum*”—from many, one. In the context of this discussion: “*E Duobus Unum*”—from two, one. Perhaps my suggestion gains a bit of credibility if we recall that one of Fr. Murray’s essays was entitled *E Pluribus Unum: The American Consensus* (originally published in 1954).¹² Knowing that truth was a matter of great interest to Murray, we may bear in mind that the Declaration of Independence recalls a number of vital and self-evident truths about fundamental human nature. And surely one such truth about the nature of the person not only in the United States but in many other nations is that many individuals consider themselves holders of citizenship in the City of God and the City of Man. Clearly Fr. Murray was familiar with the Supreme Court dicta of Justice Douglas in *Zorach v. Clauson*, decided in 1952, wherein Douglas stated: “We are a religious people whose institutions presuppose a Supreme Being.”¹³ For those not familiar with *Zorach*, it decided that the New York State program designed to overcome the problem in *McCullum v. Board of Education*¹⁴ by allowing release of students during school time to receive religious instruction was constitutional.¹⁵ However, for a few members of the Supreme Court, this recognition likely constituted a breach of the infamous “wall of separation” first used by Justice Hugo Black in *Everson v. Board of Education* in 1947.¹⁶ While Justice Black’s understanding of the language of the Constitution regarding no establishment and free exercise was, in my estimation, muddled, John Courtney Murray’s understanding was clear because he, too, acknowledged the reality that there are religious people who are at the same time patriotic citizens.

There is no doubt that John Courtney Murray would not want to see the atheist or the agnostic deprived of his or her participation in the *res publicae* because their arguments are based on purely secular grounds. But we must not forget that it would be equally obnoxious to him to demand that the religious person make arguments about public policy

12. JOHN COURTNEY MURRAY, S.J., *E Pluribus Unum: The American Consensus*, in WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION, *supra* note 6, at 43.

13. 343 U.S. 306, 313 (1952).

14. See *McCullum v. Bd. of Educ.*, 333 U.S. 203, 211–12 (1948) (holding that allowing religious teachers to come into public schools to offer religious instruction violated the Constitution).

15. See *Zorach*, 343 U.S. at 314–15 (discussing the separation-of-church-and-state standard).

16. 330 U.S. 1, 16 (1947).

from purely secular grounds. To do so would deprive the religious person from participation in the temporal sphere by making argument from the Divine Wisdom that can be known by right reason—or to use a term familiar with the Constitution’s framers: the natural law. When he tackled this theme in 1954, Murray knew that the natural law had become a stranger to most American universities of the time. What was familiar to the framers as the basis of the American consensus was now passé. And yet, for Murray, it remained the vibrant bulwark of the moral universe that has a binding effect on all persons because objective reason, not force, makes it so. It is, first and last, the “basis of the free *and* ordered political life.”¹⁷ In his words, “Catholic participation in the American consensus has been full and free, unreserved and unembarrassed, because the contents of this consensus—the ethical and political principles drawn from the tradition of the natural law—approve themselves to the Catholic intelligence and conscience.”¹⁸ But now in the early twenty-first century, Murray’s assessment appears to be accurate: the intellectual, i.e., the reasoned, underpinning of law has been succeeded by “the voluntarist idea of law as will.”¹⁹ When right reason and the moral instinct are supplanted by a utilitarian calculus that is not so much the product of reason as it is of the will, then the consensus so important to both Murray—a citizen of two cities—and the framers of the American republic would likely disappear.

This is why the hope of civil unity and religious integrity were simultaneously so important to John Courtney Murray. While they are of two distinct orders, they find home in individual persons who are good citizens of the temporal order as they are faithful believers in God. Freedom is essential to the person who lives in a democracy. That is why the freedom to be citizens of both cities must be cherished by the citizen and protected by the state. Otherwise, the latter will fall into a tyranny the kind about which Micklem spoke seventy years ago. Recent human history demonstrates that when the secular temporal authority neglects the universal truth about human nature and replaces it with a strong positivist or statist regime, the will rather than the intellect governs society, but the order that often results is not that of ordered liberty but something else. The dual citizen is equipped to recognize this danger and urge, through objectively reasoned argument, that individual and societal freedom require us to choose another path. The wisdom that the dual citizen is so capable of bringing to public

17. MURRAY, *supra* note 6, at 41.

18. *Id.*

19. *Id.*

discourse and decision-making is attuned to the common good (which Murray termed “normative for all law”),²⁰ to the *suum cuique*, and to the charity of which the statist view is all too often neglectful.

For John Courtney Murray, truth, freedom, justice, and charity merge into the essence and existence of the dual citizen—or as he called it, “the dualism of mankind’s two hierarchically ordered forms.”²¹ But when this dualism is denied or repressed, human dignity is harmed. While this dignity is sometimes a difficult mechanism to maintain, it is nonetheless a vital component of societies where truth, freedom, justice, and benevolence are valued because they, and the human dignity to which they are entitled, become the defense of civilized society. While the dualism is represented as two distinct yet compatible sovereignties in society, its components take residence in individual persons to whom the temporal authorities owe not only respect but also fortification. While the Church and the state are and must remain two, the person is and must remain one. The Church and the state may be separate from one another, but the human person who is a believer cannot be subdivided or compartmentalized, i.e., his religious nature must be private or secret and his civil nature must be the only dimension that is public. To demand a wall of separation of and within the human person is to ask the unreasonable, to expect the impossible, and to divide the indivisible.

A state that is a limited government understands this; however, one that fallaciously claims omni-competence probably will not. The dual citizen is not free to impose his or her will on the fellow citizen who participates in only one sovereignty; nevertheless, the dual citizen must remain at liberty to propose to fellow dwellers of the City of Man solutions to common problems that intensify ordered liberty and promote the common good while ensuring that each member of society receives his or her due. As to the individual person, to each his due, so too must we apply this wise counsel to the Church and the state: to each its due. John Courtney Murray was a man who strove incessantly to take the high ground in the proud display of his dual citizenship. He would not impose on others what he himself believed. Yet, by the same token, he would not cower from those who denied not only the propositions which gave him a distinctly Catholic view of the world but also those universal principles that constitute the basis of the American Proposition. He was a man who sought peace in a pluralistic society and world, and that is why he was a model dual citizen. He understood

20. *Id.* at 58.

21. *Id.* at 64.

well the competence of the state and why it could not succor a particular religion while at the same time acknowledging the need to protect the free exercise of religion in the public sphere. Perhaps he took his lead from another predecessor who also claimed dual citizenship and died the king's good servant, and God's first: St. Thomas More.