

MURRAY AFTER FIFTY YEARS:
REFLECTING ON AMERICA AND ITS PROPOSITION¹

Michael D. Torre

1. Introduction

I will attempt to do three things in this paper: first, give the salient lines of Murray's argument in his richly textured classic *We Hold These Truths*;² second, note how that argument was immediately received by thoughtful Protestant thinkers; third, ask how we ought to view his project today: is it merely unfinished or flawed, and, if so, how deeply?

One can begin with Murray's conscious embrace of American pluralism, and religious pluralism in particular. It had ever been a part of the American experiment, was fundamental to its self-identity, and was here to stay. He naturally deplores the Christian division behind the pluralism—"religious pluralism is against the will of God" (23)—but he accepts the civil reality: "The United States...is a civil community, whose unity is purely political, consisting in 'agreement on the good of man at the level of performance without the necessity of agreement on ultimates,' to adopt a phrase from the 1945 Harvard Report on General Education in a Free Society" (54). He further argues that a Catholic can and should defend the civil right to religious freedom America supposes and defends (63): a position that he and others helped ensure

¹ For Father Joseph D. Fessio, S.J.—who hired me to teach at the University of San Francisco—for Father John Lo Schiavo, S.J.—who offered me a tenure-track position there—and for Father John P. Schlegel, S.J.—who then granted me tenure: in gratitude.

² John Courtney Murray, S.J., *We Hold These Truths: Catholic Reflections On The American Proposition* (New York: Sheed and Ward, 1960). Hereafter, all page references in the text are taken from this work. All of its chapters—save the two on the "public consensus" (2 and 3)—had been previously published as articles, between 1950 and 1960: see the selection of Murray's writings made by J. Leon Harpers, S.J., in *Bridging The Sacred and The Secular* (Washington, D.C.: Georgetown University Press, 1994), p. 350.

became part of the Church's express doctrine in Vatican II's Declaration on Religious Freedom.³ If the Church had opposed 19th century democracy (e.g. in France), this was due to its particular form and hostility to the Church, and not to democracy or pluralism *per se* (68).

Yet every plurality poses a challenge to civil discourse. Were the country to splinter into an irreducible cacophony of opposing voices, then there could be no society. A commitment to a common constitution and law is essential. This allows the pluralism to be (at least potentially) a conversation, rather than a verbal war. Now, every conversation supposes its parties hold truths in *common*; otherwise there is no basis to conduct the conversation or the quarrel (4). This common basis is what Murray, following Lincoln, calls its "Proposition" (vii). America, he argues, has been and necessarily must be committed to a series of truths, upon which all its civil discourse is based and which also guide its undertakings (viii); for the truths at stake (e.g. that "all men are created equal") mandate *civil action*, that they might be rendered meaningful in the fabric of American institutions and life (e.g. so that its citizens might enjoy the *fruits of equality*).

2. Murray's analysis

Murray thus argues that the *implicit* basis of the American Proposition is a commitment to the natural law tradition. He means something specific by this, but also something very general. Specifically, he argues that the American Founders were committed to *discernible truths*. Here is a typical passage: "our Fathers...thought the life of man in society under government is founded on truths, on a certain body of objective truth, universal in its import, accessible to the reason of man, definable, defensible. If the assertion is denied, the

³ Murray's involvement in Vatican II's *Declaration on Religious Freedom (Dignitatis Humanae)* is of course well known. He spent the few years left to him after the Council chiefly explaining and defending its doctrine on the civil right of religious freedom. See his *The Problem of Religious Freedom* (Westminster, Maryland.: Newman, 1965) and "The Vatican Declaration on Religious Freedom," in *The University in the American Experience* (New York: Fordham University Press, 1966), and a discussion he edited: *Religious Liberty: an end and a beginning, the declaration on religious freedom, an ecumenical discussion* (New York: Macmillan, 1966).

American Proposition is...eviscerated at one stroke....The American Proposition rests on the...traditional conviction that there are truths; that they can be known; that they must be held; for, if they are not held, assented to, consented to, worked into the fabric of institutions, there can be no hope of founding a true City, in which men may dwell in dignity, peace, unity, justice, well-being, freedom" (ix). As the last words indicate, the truths he has in mind chiefly concern the human good: that it consists in justice and dignity, in freedom and peace. These goods are grounded in human nature and discernible to reason. And this is what the natural law tradition asserts.

Murray's claim is that the American Proposition implicitly rests on that tradition; he will allow that the foundation might not have been *explicit*, and that the Founders could have built "better than they knew" (30).⁴ He does not want to claim that the details of that tradition were explicit and clearly part of its foundation. America had, after all, fought a Civil War precisely because its commitment to freedom (e.g. states' rights) had clashed with its commitment to justice and equality for all. Just how conflicting claims should be adjudicated is often not clear. The tradition only provided the argument's general principles, and the commitment to reasoning from them to what they entail.

Such a "gentlemanly" approach to civil discourse, however, is only a hope and not a present reality. It is blocked first by the fact that even the most basic terms of the discussion are understood differently: "we have no common universe of discourse. In particular, diverse mental equivalents attach to all the words in which the constitutional consensus must finally be discussed—truth, freedom, justice, prudence, order, law, authority, power, knowledge, certainty, unity, peace, virtue, morality, religion, God, and perhaps even man. Our intellectual experience is one of sheer confusion, in which soliloquy succeeds to argument" (16). If this were not bad enough, the problem is compounded by the intractable weight of history and prejudice: "man is not only a creature of thought but also a vibrant subject of sympathies; and in the realm of philosophy and religion today the communal experiences are so divergent that they create not

⁴ He is here quoting from the American Catholic Church's Third Plenary Council of Baltimore (1884).

sympathies but alienations as between groups" (17). He cites the common Protestant suspicion of the natural law tradition itself as but one instance, among many possible.

Murray locates four main groups in the American conversation: Protestant, Catholic, Jew, and Secular (18-22). Of these, the furthest from the Catholic point of view is clearly the secular; for the other two share the conviction that there is a level of religious truth transcendent to the secular, whereas the latter opposes this. He has little good to say of the "pseudo-morality of secular liberalism,"⁵ regarding its innate relativism as already discredited (293). He also has little to say of the Jewish tradition, and focuses instead on the Protestant, as being, historically, the American "majority view." Until recently, this view could be characterized by four traits (276-77): it was *voluntarist*—the good was based on God's commands or will (and not on His wisdom, or what was intrinsically the case); it was *scriptural*—what the Bible enjoined was sufficient, and should be accepted in its literal sense; it was *subjective*—what one did was less important than why one did it (one's intentions or motives); and it was *individualistic*—social ills could be solved by each individual loving his neighbor as himself. Yet he finds that Protestants have seriously called this ethic into question in his time, as being unduly simplistic. Social ills required social solutions, not just well-intentioned individuals; and politics and the public sphere were different from the private, and far more ambiguous, thus requiring an emphasis upon differing contexts and pragmatic solutions, which could not be reduced to Biblical injunctions (277-78). The former morality was "still around" (278), but it was now on the defensive, and with good reason (277).

As he looks at the American scene, Murray finds a most uncertain landscape. His work is filled with sober remarks: "The work of the barbarian [is] to undermine rational standards of judgment, to corrupt

⁵ Murray's work seems rather dated in his easy dismissal of a tradition that has proven stronger than he seems to have supposed it would. In particular, he does not distinguish an ideological secularism—in principle opposed to an Absolute and inevitably committed to relativism—from a political secularism that seeks to construct a polity in separation from any religious faith or moral tradition. This latter view seems to be more in continuity with the Deism of many Founders and remains a force to be reckoned with.

the inherited intuitive wisdom by which people have always lived, and to do this...by spreading a climate of doubt and bewilderment in which clarity about the larger aims of life is dimmed and the self-confidence of people is destroyed ...[as is] now presently appearing on university campuses" (12). Or "we are not really a group of men singly engaged in the search for truth...[but] the variant ideas and allegiances among us are entrenched as social powers; they occupy ground; they have developed interests; and they have persons to fight for them" (19). Again, "there is no public philosophy in America. By one cause or another it has been eroded" (86). And, "the vacuum in public life...is a vacuum in philosophy, a public philosophy with affirmative tenets that determine positive goals" (94). Thus, "the general uneasiness among the public—here at home and abroad—derives from an instinctive sense that America does not know what it is trying to do" (246). Finally, in sum, "the ethic which launched Western constitutionalism and endured long enough as a popular heritage to give essential form to the American system of government has now ceased to sustain the structure and direct the action of this constitutional commonwealth" (293).

When Douglas Auchincloss wrote his excellent summary of Murray and his work for his *Time* cover story of December 12, 1960,⁶ he began as follows: "John Courtney Murray sees his native America entering a new era of 'post-modern man' in a sorry state of ideological impoverishment that, unless repaired, must doom the best political skill and dedication."⁷ And he "summed up" Murray's view of America in the following terms: "The modern rationalistic and pragmatist experiment he feels has failed. That experiment tried to carry on Western liberalism, whose roots are Christian, without Christianity. The individual conscience, lacking religion to inform and support it, is collapsing under the burden—'poor little conscience,' says Murray. Only the monistic state threatens to remain. If this goes on, a spiritual vacuum will grow at the heart of life and into it will rush violence, 'the mark of the Architect of Chaos, the Evil One.'"⁸ This is a sobering

⁶ Douglas Auchincloss, "City of God & Man" (*Time*, December 12, 1960): 64-70.

⁷ *Ibid.*, p. 64.

⁸ *Ibid.*, p. 70.

conclusion indeed, and all the more evidently so next to Maritain's more optimistic assessment.⁹

Given this intellectual situation, the aim of Murray's work is modest: to lessen the "warfare" that lies hidden under the surface of civil discourse and to help us dedicate ourselves to the project of finding common ground and attempting an argument (23). In his judgment, the Catholic community was uniquely placed to attempt such a project. For, as he saw it, "the American university [had] long since bade quiet goodbye to the whole notion of an American consensus, as implying that there are truths that we hold in common, and a natural law that makes known to all of us the structure of the moral universe in such ways that all of us are bound by it in common obedience" (40). The Catholic community, on the other hand, still adhered to this tradition (41). Thus, by an irony of history, it could now reinvigorate and defend a polity founded first mainly by Protestants. In words that echo Maritain's call for an integral humanism—but without ever once referring to him—Murray argues for a Christian humanism of the temporal order:¹⁰ "The Christian heart must cultivate a contempt for the world, but diligently cherish its reverence for the work of the Creator, who is Creator not only of heaven but of earth, of the visible as well as the invisible" (189-90). Yet—even more than Maritain—he remains dubious of the success of this project, for a broad American commitment to such a theistic humanism has been much eroded. Throughout, he finds the American Proposition deeply menaced from within.

He nevertheless takes up and argues cases, thereby displaying what such an argument might look like. For example, on the basis of distributive justice, he argues that the state ought to aid *parochial*

⁹ Thus, the concluding chapter of *Reflections on America* (New York: Scribner, 1958) reads "America is Promise," a title that accurately conveys the abiding hope for America that runs throughout this work. (Of course, it could be argued that Maritain saw America as "promise" relative to Europe. Given the latter's recent inability to acknowledge, much less defend, its Christian heritage, that seems more prescient.)

¹⁰ For his forthright advancement of this project, see his early (1940) "The Construction of a Christian Culture," in Harpers, *Bridging the Sacred and the Secular*, pp. 101-23.

schools (148). In relation to *censorship*, he argues the need to distinguish the moral from the legal and the private from the public: thus, contraception may be a sin, but that need not make it a crime (158). Repression of *pornography* is reasonable, but the standard should be the maintenance of “that minimum of actualized morality that is necessary for the healthy function of the social order” (166), and he defends the American presumption in favor of freedom, the burden of proof rightly resting on the advocate of restraint (164). He argues that thinking on the American *economy* lacks a clear set of political principles to guide its policies (180-01). And he long ponders communism and America’s opposition to it, and finds the country’s thought on *war and peace*—and on its international commitments and responsibilities—to be confused, and its course adrift. He argues for a sensible theory of just war (272), while lamenting its virtual absence from discourse on public policy (265).

I raise these cases only to remind us of what can be found within Murray’s pages. And with these I am done: I have only desired to remind us of his fundamental argument.

3. Protestant and Jewish assessment of Murray’s position

Before giving my own assessment of what Murray proposes, I would like to examine its reception by Protestant intellectuals. Their critiques will lead to my own.

I turn first to George Lindbeck, of Yale University, who offers a sympathetic and highly intelligent review.¹¹ He points out that Murray was hardly the first Catholic to argue in favor of religious freedom.¹² He claims that it has recently been argued even more ably by various European theologians (*inter alia*, he cites Rahner, von Balthasar, and de

¹¹ George A. Lindbeck, “John Courtney Murray, S.J.: An Evaluation,” *Christianity and Crisis* 21 (1961): 213-16.

¹² *Ibid.*, p. 213. Indeed, this tradition seems to go back at least to that great American Catholic of the 19th century, Orestes Brownson: see his “Civil and Religious Freedom,” in *Brownson’s Quarterly* (July, 1864), reprinted in *The Brownson Reader*, edited by Alvan S. Ryan (New York: P. Kennedy & Sons, 1955), pp. 350-56, and his “magnum opus”: *The American Republic* (New York: O’Shea, 1866).

Lubac),¹³ and affirms “the theological issue is no longer in doubt.”¹⁴ Harvey Cox, writing from Harvard,¹⁵ goes even further, noting that a European such as the Belgian Catholic Augustin Leonard, O.P., had argued that religious freedom was a “religious concern” and a “sacred duty,”¹⁶ thereby seconding the Protestant commitment that it was “one of the rights conferred by God on man.”¹⁷ Cox worries that Murray’s commitment to it may be more shallow (although Vatican II was to demonstrate that his worry was unnecessary).

In general, the reviews of his stance on religious freedom are (not surprisingly) favorable, with Martin Marty from Chicago adding his own praise to that of Cox and Lindbeck.¹⁸ The latter, however, goes further, even supporting the nature of Murray’s reasoning, and comparing his talents to “those of a first-rate constitutional lawyer.”¹⁹ He recognizes Murray’s right to read magisterial directives narrowly, without being bound by the personal opinions of popes (e.g. their views about democracy, in the 19th century). Indeed, not only has that been the standard way of reading such directives, but he argues that “no other procedure is possible”²⁰ for one who thinks within a particular

¹³ Ibid., p. 215.

¹⁴ Ibid., p. 214.

¹⁵ Harvey Cox, “Notes and Reviews: We Hold These Truths,” *Cross Currents* 11 (1961): 79-83.

¹⁶ Ibid., p. 81.

¹⁷ Ibid., p. 79.

¹⁸ Martin E. Marty, *The Christian Century* 77 (November 9, 1960): 1315-17, especially its first page.

¹⁹ Lindbeck, op. cit., p. 215.

²⁰ Ibid., p. 214. For a counter-argument--that Murray distorted, rather than developed, papal teaching (e.g. Leo XIII’s)--see Michael J. Schuck’s “John Courtney Murray’s Problematic Interpretations of Leo XIII And The American Founders,” *Thomist* 55 (1991): 592-612. However, any theory of development requires that the essential be separated from the accidental and the implicit discovered beneath the explicit, even though such distinctions would have not been made by an earlier figure within the tradition. Thus, it is indisputable that Murray and Vatican II both advance a more limited role for the State than that advocated by Aquinas or by Leo XIII.

tradition. Thus, he accepts that it is not special pleading to argue that the Church can be consistent in its support of American democracy, even though it was not of its Jacobin form.²¹

When it comes to Murray's argument in favor of natural law, however, his admiration (again not surprisingly) is only lukewarm. Interestingly, what concerns him is less the idea of natural law itself as it is Murray's apparent "unreconstructed and rationalist" version of it.²² He again notes that some European Catholic theologians, while remaining within a Thomistic framework, recognize that, "without the support of revelation, our rational knowledge of the normative structure of human nature is likely to be dangerously inadequate and confused."²³ He does not find Murray as cautious; on the contrary, he seems to assume "that all major precepts and conclusions of the natural law as traditionally set forth can be demonstrated in such a way as to be objectively convincing to any man of sufficient intelligence."²⁴ If so, he must disagree. The same complaint can be found in Marty, who says that "the Catholic 'natural law' argument on birth control ...looks to non-Catholics for all the world like particular, positive, 'revealed' law."²⁵

The problem these three theologians raise is less with general principles than with cases. While Lindbeck finds him thoughtful on the issue of censorship, he finds him again too rationalistic in his distributive justice argument for public aid to private schools: this is to forget the importance of political prudence, for such aid could lead to

That does not mean that the past role assigned a Christian Emperor, King, or State was essential to Catholic doctrine, nor does it exclude the doctrine that these should have a more limited role from being implicit in the principles of an earlier Doctor or nascent in the ideas of an earlier Pope.

²¹ This argument had likewise been made earlier by Brownson: see, especially, the final chapter of *The American Republic*.

²² Lindbeck, *op. cit.*, p. 215.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Marty, *op. cit.*, p. 1316.

“a chaos of competing sectarian educational systems.”²⁶ Likewise, he thinks his analysis of communism, and American responses to it, may be inadequately informed by political experience and prudence.²⁷ Marty seems to object not only to contraception, but to his views on public aid to private schools and censorship (although he gives no reasons for his objections).²⁸ Cox argues that Murray’s description of public policy decisions as “merely complicated, and not ambiguous” may be unduly “sentimental about the efficacy of reason.”²⁹ “Would that it were so!” he exclaims, but this would be to forget that “moral problems are more than intellectual,” and that our fallen will and self-deception will surely skew our deliberations.³⁰ Lindbeck is also puzzled over Murray’s objection to moral ambiguity, since human fallibility and sinfulness are consonant with natural law, and he regrets what he sees as an unfair attack on Reinhold Niebuhr³¹ (although George Weigel plausibly suggests that the probable target of Murray’s attack on “ambiguists” is not Niebuhr—his personal friend—but “political realists” such as Hans Morgenthau).³²

In any event, one can fairly summarize these Protestant reviewers as exhibiting a common tendency of the Reformers: they argue that our fallen condition should make us ready to suspect that unaided reason cannot get us as far as Murray seemingly implies.

²⁶ Lindbeck, *op. cit.*, p. 215.

²⁷ *Ibid.*, p. 216.

²⁸ Marty, *op. cit.*, p. 1316. Marty seems the least sympathetic to Murray, finding him rather “removed” from common Protestant convictions. For example, he notes Murray’s facile dismissal of the nominalism that is common to much modern Protestant thinking (p. 1316). Murray’s work does seem somewhat “dated” in the ease with which he dispenses with this position: a sign, perhaps, of an overly confident Thomistic realism.

²⁹ Cox, *op. cit.*, p. 82.

³⁰ *Ibid.*

³¹ Lindbeck, *op. cit.*, p. 216.

³² George Weigel, *Tranquillitas Ordinis: The Present Failure and Future Promise of American Thought on War and Peace* (Oxford: Oxford University Press, 1987), chapter 4—“The John Courtney Murray Project”—p. 124.

Before offering my own assessment, I'd like to bring in a Jewish voice, that of Rabbi David Novak, who is quite familiar to Maritainians.³³ He is himself a defender of natural law³⁴ and thus a natural ally of Murray. Indeed, his 1992 essay on Murray is basically quite sympathetic.³⁵ Nevertheless, he argues that the Aristotelian metaphysics that undergirds Murray's account of natural law will not be regarded as plausible by our contemporaries. Murray's idea "that there is a definable human nature to which everyone can refer without prior allegiance to any religious tradition, and from which natural law precepts can be derived," is simply not convincing.³⁶ Instead of requiring such an impractical standard, one should appeal to the *ius gentium*, to what the community "constitutes as generally normative in and for the world....one will have to appeal to historically evident data, rather than to the type of metaphysics Murray suggested."³⁷ Thus, a religiously-based political ethic ought to begin by acknowledging its own faith commitments and its own embrace of natural law within that commitment. It can then offer its tradition to the larger and broader community, as a means of illumining and supporting what that larger community's historic commitments have been. There will be no need for any member of that community to accept the philosophical truths

³³ He gave a fine speech to the 1991 American Maritain Association conference, which unfortunately could not be included in the volume devoted to that year's papers: see *Jacques Maritain and the Jews*, edited by Robert Royal (Notre Dame: University of Notre Dame Press, 1994), p. 1, footnote #1.

³⁴ See his *Natural Law in Judaism* (Cambridge: Cambridge University Press, 1998).

³⁵ David Novak, "John Courtney Murray, S.J.: A Jewish Appraisal," in *Jewish Social Ethics* (New York: Oxford University Press, 1992), pp. 67-83.

³⁶ *Ibid.*, p. 76.

³⁷ *Ibid.*, p. 77. Orestes Brownson had much earlier made use of the *ius gentium*, but precisely because it grounded law not in mere convention—which was potentially subject to abuse and tyranny—but in God Himself. (For one example, see *The American Republic*, p. 135.) Indeed, absent an ultimate appeal to the Lawgiver implicit in the concept of *ius gentium*, it is hard to see how this can supply the basis for the agreed-upon laws that Novak desires to establish or how it will not be vulnerable to the charge of being merely conventional. International agreements, like natural law, finally rest on the authority of a Lawgiver.

that undergird the natural law tradition. It will be sufficient for the community that this tradition renders its own commitments more coherent. In this way, natural law can be defended without an appeal to Aristotle, or even without a commitment to certain fundamental ideas, such as human nature itself.³⁸

Novak's critique indicates that the Jewish tradition (at least as he understands and defends it) is quite close to the Catholic one (just as Maimonides is close to Aquinas).³⁹ Indeed, his assessment of Murray is more positive even than Lindbeck's. Yet, as with the Protestant critics, so here the criticism is that Murray is too "rationalistic," too inclined to argue for an abstract natural law theory accessible to all, rather than seeing that such an argument is bound to be a non-starter for many contemporaries, and that it will make them suspicious that a religious tradition is surreptitiously being smuggled in under the guise of a "neutral philosophy," based upon the "common light of reason."

4. Conclusion

I come, then, to my own assessment of Murray. How should we see the judgment of his critics? How viable or how flawed is his own defense of natural law reasoning, as the indispensable "*lingua franca*" that America needs to recover, to be true to its traditions?

We should probably begin by acknowledging that America has changed considerably in 50 years. To hear Murray chastising Protestants for criminalizing contraception (157) is to measure some of the distance we have come!⁴⁰ He wrote before the media and feminist revolutions, the race riots, the quagmire of Vietnam and Watergate, before Vatican II and its aftermath, *Roe vs. Wade*, and the gay revolution. The public conversation has shifted, and its tone is quite different. For example, save in the South, or perhaps in the Midwest, the Protestant ethic he regarded as previously dominant, if challenged,

³⁸ *Ibid.*, p. 76 ff.

³⁹ Novak himself notes the similarity, precisely in relation to American Jews and Catholics: *Ibid.*, pp. 68-70.

⁴⁰ For his fine and most careful analysis of the issue of contraception, see his "Memo to Cardinal Cushing on Contraception Legislation," in Harpers, *Bridging the Sacred and the Secular*, pp. 81-86.

seems much less in evidence. And it would no doubt surprise—and perhaps even shock—him to find a Catholic candidate for the White House publicly disputing and actively attacking the Catholic Church's clear and constant defense of the unborn and its equally evident rejection of contraception and "homosexual marriage." Again, since 1989, America seems even less clear of its vision for the world, or how it should lead in it. Certainly, the landscape of our public discourse has altered, and seemingly not for the better.

Yet one could, I think, also point to certain gains. For example, the just war tradition seems to inform our public discourse about war and peace more than it did in his day. No doubt one of the reasons is that our present thinking—ever since Vietnam—has been more about conventional than nuclear war. It is easier to employ just war arguments when you are not contemplating a 'nuclear exchange'! Still, the difference is notable. Also, it seems that Murray might be surprised—but this time surely pleased—that the American bishops have taken stands on war and peace, and the economy, and that their voice is a more accepted part of our "national debate." Finally, the plight of the unborn since *Roe vs. Wade* has kept the American Proposition's commitment to equality for all as alive for our time as the plight of slaves did after *Dred Scott*.

Granting that the nation's discourse is in another, and perhaps more dire, "key" than 50 years ago, the question earlier posed still remains: what should we make of Murray and his project today? I have two evaluations to offer: one positive, the other more critical.

In the first place, then, it seems to me that Murray is entirely correct in asserting both that America has historically stood for certain discernible truths, and that this is implicitly to embrace the natural law tradition. It is to do so, that is, in relation to its most general principles. Rightly, Americans regard human beings as naturally engaged in "the pursuit of happiness." Rightly, they see them as fundamentally social and committed to the enterprise of living together co-operatively for the common good. Rightly, they remain committed to the search for and support of human dignity, to an "ever more perfect" union based on justice and equality for all. A commitment to the highest level of natural law precepts is one that remains common, and for which a convincing case can be made.

Of course the “clerks,” the university professors (85), are bound to raise the usual objections. Nominalists may question the existence of a common human nature. Skeptics may attack our ability to discern even its broadest outlines. And radicals of all stripes may find the limits imposed by nature an affront to their independence. There is nothing new about these arguments and the natural law tradition has weapons in its armament sufficient to take on such challenges. It is here, in the discourse of academe, that I believe we should understand Murray’s claim that the natural law tradition is rooted in a larger philosophy. Contrary to what Novak says, that tradition need not depend on Aristotle’s outmoded “astrophysics,” although it will require much of his anthropology.⁴¹ The intellectual in-fighting will continue, but the natural law tradition appears as vigorous today as ever, as ready to enter the fray. In fact, the University since his day has seen the renewal of “virtue ethics,” and the natural law tradition itself is less marginalized in current ethical debates. Yet Murray was right to distinguish *this* contest from the task of convincing ordinary citizens of the basic terms of public discourse and policy. This remains no easy task, yet it is still possible, for University arguments—some sophistic, some more reasonable—hardly touch the common sense of the intelligent public.

Indeed, it seems possible not merely to defend our innate grasp of the basic precepts to preserve our life, to educate our children, to seek the truth, and to live sociably, but the next level of precepts, the *ius gentium*. The bases of our law and polity remain the truths given in the Ten Commandments, which are accessible to human reason unaided by such revelation: injunctions against murder, adultery, theft, and perjury remain basic and defensible, as do the positive injunctions to

⁴¹ Novak rather curiously asserts that “physical teleology...is normative in the Aristotelian system because it is primarily seen in astrophysics” (“John Courtney Murray,” op. cit., p. 71). I say “curious,” because Aristotle’s reflection on the heavenly objects (e.g. in *De Caelo*) is expressly taken up *consequent* upon his analyses in the *Physics* that establish the necessity of the teleology at issue. Teleology is normative by virtue of a philosophical analysis of all natural activity (including man’s), not primarily because instanced in some “astrophysics.”

honor God and parents.⁴² At the level of the *professor*, it will be necessary to avert to a sound anthropology; but, at the level of *public policy* and political discourse, this is hardly necessary. Here what we need instead, as Novak rightly claims, is to argue from the nation's historic commitments. Let the professors argue about ultimate foundations or their absence! For the argument to advance at the level of common discourse, it is enough to draw attention to past and present commitments in law and the national ethos and to argue that not to support the truths enshrined in these is to undermine what most citizens hold most dear. It seems to me that a defender of Murray can be entirely sympathetic to Novak's public strategy.

As any natural law theorist knows, however, the greater the particularity of the precept, the greater its uncertainty. Indeed, as any Thomist knows, Aquinas famously allowed that a society could even be mistaken at the very high level of the *ius gentium*: the Germans of old, he supposed, did not even recognize that theft was wrong!⁴³ It seems to me, then, that some of the criticism of Murray is misplaced. He can hardly have supposed that all precepts of the natural law could be set forth in a way that would convince "any man of sufficient intelligence[!]"⁴⁴ To take but one instance, if the Theological

⁴² The fact that the Third Commandment specifies the Sabbath rest, as a means of honoring God, poses a thorny political problem for a pluralist society: how to honor God without unduly favoring one religion. The present policy (of differing nations and religious traditions) is to favor holy days of the main religion within that society, while seeking to make some allowance for the observance of other traditions. However this political problem is solved, it is separable from the almost universally felt need to honor the sacred. (Furthermore, contrary to what many today seem to assert, affirming the existence of one God is neither the prerogative of religion nor does it enjoin any religious behavior, as Deists among America's Founders well knew. That Theism is a philosophical position is historically obvious. To assert that God's existence has no relevance for the law of a pluralist society, because this would mean affirming the basis of a religion, would be as misguided as not to criminalize murder because one of the Ten Commandments condemns it.)

⁴³ Thomas Aquinas, *ST I-II.94.4*.

⁴⁴ Not only is this *prima facie* improbable, requiring as it does an unreasonably virtuous and educated populace, but it can hardly be squared with his many

Commission on contraception could disagree about whether each contraceptive act was intrinsically wrong, we are obviously dealing with a level of precept that is bound to be dubious and contested. After all, if the truth was not clear to a majority of Roman Catholic natural law theologians, it is hardly likely to be so for a non-Catholic population of ordinary citizens! And if one society could miss the truth that theft is wrong, another obviously could miss this truth. In a similar vein, when Lindbeck says that political prudence may argue against Murray's views on parochial education and his tactics to oppose communism, it is hard to imagine him not welcoming such criticism. This, after all, is precisely to "engage in the quarrel," as we should, and Lindbeck's arguments do have some merit.

In addition, Protestant insistence on man's sinfulness, fallibility, and "moral ambiguity" seems to misunderstand Murray's concern. Surely (as Lindbeck himself suggests), Murray could concur with this assertion (even if Jesuits as a group have tended to be more optimistic about fallen human nature). His target is not such a view of nature, but a political "realism" that reaches back to thinkers such as Thucydides or Machiavelli, and that is predictably trotted out to justify a willingness to sacrifice moral principle in the face of hard political choices. However tempting, this will not do. He is right to argue this, and I suspect that his Protestant critics might concur. On the whole, it seems to me that they do in fact engage Murray in "gentlemanly converse." I believe he could welcome their very critique, as implying a natural law conversation.

We come, then, to my criticism of his argument, which demonstrates some sympathy for the concern that he is overly "rationalistic." Having argued persuasively for the salutary impact of the Catholic natural law tradition upon America, he seems all too blind to the deleterious impact of "American confusion" upon the Catholic community. He is too ready to assume that the Catholic community will happily embrace its own tradition, and will be impervious to the

sober—not to say dire!—critiques of America. For confirmation of what he expected of the general populace, see his "Memo" cited above (note #40).

corruptive influences of the culture.⁴⁵ He makes this assumption even while Catholics migrated from “Catholic ghettos” to mixed suburbs and made ready to assume their rightful place in the American firmament, with the first Catholic president. I realize that it would be unfair to require Murray to foresee, in the 1950s, the ferment and chaos that was to beset the Church after Vatican II. Nevertheless, from his own diagnosis of the “American malaise,” some of this was predictable; yet he almost entirely misses it.

For, consider this. In the first place, it is a natural human reaction to find common ground with our neighbor and friends, and to minimize what divides us. It is a hard command that we should hate sin while loving the sinner, and living closely with our neighbors will make it hard to find their differing views wrong. In the second place, the Catholic commitment to certain acts being unexceptionably bad will be met by hard cases that call this into question. Thus, when Lambeth broke with the previous “Christian consensus” on *contraception*, it did so because of the legitimate concern that a family might not be able to afford more children. *Abortion* is pushed for the cases of rape or incest. *Euthanasia* is urged for the few terminal cases where pain killers cannot be employed. *Harvesting embryos* is to be permitted, because stem cells are believed to be able to save lives. *Homosexual marriage* is demanded for those who love each other (and who may desire to raise children). It will be impossible for Catholics not to have some sympathy for such

⁴⁵ He is not without some recognition of this influence, as this passage from his “Memo” indicates: “Catholics themselves must be made to understand that, although contraception is not an issue of public morality to be dealt with by civil law, it remains for them a moral issue in their family lives, to be decided according to the teaching of the Church. Because contraception is made legal it is not therefore made moral, any more than it should be made illegal simply because it is immoral” (p. 84). Yet, in arguing against its being a matter of public morality, it never occurs to him that it might develop from being a matter of a doctor’s prescription to being advertised and dispensed by vending machines or that one of the effects of a likely increase in extra-marital sexual activity and likely increase in unwanted pregnancies would be an increase in public pressure for abortion on demand: in short, that its legalization could have public consequences that indirectly did plausibly argue for its being an issue of public morality. He misses, or underestimates, the potentially revolutionary impact of contraception on society.

hard cases, yet they all undermine the Church's stand on such matters.⁴⁶ Thirdly, this will be especially hard to maintain in a culture that has traditionally looked to motive more than act to determine personal morality. Finally, as Murray himself both noted and endorsed, the American "default position" is to favor freedom over restraint, and thus to place the initial burden of proof on the Catholic limitation of one's freedom in such cases. This historical commitment is bound to put Catholic teaching on the defensive and will likely undermine the Catholic community's confidence in some of its traditional moral teaching.

The fact that so many of the issues just mentioned were non-issues for Murray's time marks the distance our society has traveled in the last 50 years. If he did not see how the Catholic community was likely to be challenged, perhaps we should not blame him. For America was not then ready to compromise on these matters, as it is today. Nevertheless, the fact of living closely with others, in a society with an ethic based on motive, and prejudiced in favor of personal choice, was bound to create difficulties for Catholics.⁴⁷ Furthermore, he held that many moral precepts are clear only to the few, who are wise: "society is rescued from chaos only by a few men, not by the many. It is only the few who understand the disciplines of civility and are able to sustain them in being and thus hold in check the forces of barbarism that are always threatening to force the gates of the City"(13). He noted that

⁴⁶ The Catholic position in relation to such hard cases acknowledges both the good motives and the hard circumstances involved, and the perplexity and pain these create, while maintaining we should still avoid the act in question. This is a complex position and one that requires strength of mind and will to maintain. (Indeed, it may even require the grace of God and a willingness to share in the suffering of the Redeemer.)

⁴⁷ Most of the controversial public issues of the day concern life and, centrally, our sexuality (which is not surprising, since it is intimately ordered to life). Murray certainly could have recognized that this was an area of likely controversy. From the beginning, the Reformers had taken a different view from Catholics on this subject: e.g. in rejecting the perpetual virginity of Mary, a celibate clergy, and the sacramentality of marriage, in permitting divorce, and in their more recent support of contraception. Given the historical strength of Protestant culture in America, it should not have been impossible to discern "trouble ahead."

Aquinas held the same: the laws “of more particular import reached the people through the lawgiver, Moses” (116).⁴⁸ Now, today’s debated issues are just at this level of precept. Thus, just as the prohibition of all lying is such a truth, so is the precept against all contraception, rightly held to be a kind of “bodily lie.”⁴⁹ He could have seen, then, that the times posed a significant problem for Catholic educators, above all for the bishops.

Several years ago, I heard an intelligent bishop claim that the Church had “lost the natural law argument” on contraception when it came to the laity, who found it unconvincing. His assertion was both remarkable and seriously erroneous for three reasons. First, contrary to what he may think, the Catholic community is likely to be more convinced by natural law argumentation than by any other. Not only is it true, and in touch with its common sense, but Catholics are predisposed to honor it as their own tradition, rather than to be skeptical of it. Second, the reason the bishops have failed to convince

⁴⁸ It is worth noting what precepts Aquinas claims (in *ST* I-II 100.11) are *not* evident to all, but only to the wise: amongst others, commandments against witchcraft, blasphemy, violence against one’s neighbor, prostitution, homosexual acts, fraud, robbery, and lying! It is precisely these “corollaries” to natural law precepts that we should expect to be contested in a democracy governed less by the wisdom of the few than of the many. And this is, in fact, just what we do find. Thomas’s list underlines what the Founders often argued: that a democracy absent the salutary impact of religious education—which in effect impresses the wisdom of the few upon the many—will end in license.

⁴⁹ Thus, in contraception, the body is made to “say” what is not the case: sexual union is an intimate act of self-donation...except that one’s greatest bodily power, to procreate (which, insofar as it can create a body prepared to receive a human soul, is a “co-creator” of something immortal and “divine”) is not given, but reserved; or, rather, this power of life is given, but then immediately taken back, the bodily equivalent of “double-speak.” Now, it is not hard to see that periodic abstinence respects the truth that sex is essentially ordered to life—sexual union being avoided when a new life is not wanted—whereas contraception does not respect this, but sterilizes the sexual union. However, it is much harder to see just why this difference is so important. In a similar way, it can be hard to see why lying is never justified, even in difficult circumstances.

the laity is that they have hardly tried. Not once in the last twenty years, for example, have I ever heard a sermon from the pulpit against contraception. They thus now find themselves belatedly arguing against homosexual marriage because it is an intrinsically sterile union, even though they have remained virtually silent about the sterilization of the sexual union systematically practiced by heterosexuals. But, leaving aside these two arguments, what most appalled me was that a bishop should think he needed to *persuade* the laity by such *argument*. The foundational reason why the Catholic laity should reject contraception is because this is what their Church teaches. They should hold Catholic doctrine out of their prior faith commitment and what it enjoins on them, not because they agree with a rational argument.

Natural law arguments function in two very different ways, depending upon who is being addressed. If we are seeking common ground with those of a different or no faith tradition, then these must stand on their own, without further appeal. Rightly, Murray urges this approach, as the legitimate basis of a public policy rooted in historic American commitments. But natural law arguments function quite differently for those within a faith community. For the *reason* why a person of that community holds a view (and this will be as true for one community as for another, as true for Jews as for Catholics, say) is because this view is part of their sacred community and its sacred commitments. For this person, the natural law argument is merely *supportive*, not *probative*. He or she should already hold the position, before encountering any argument: not because of the truth of the latter, but because of his or her adherence to the community's teaching.⁵⁰ A Catholic holds on faith that the Holy Spirit protects the

⁵⁰ Natural law argumentation, when philosophical, is based on the wisdom of God, who orders or provides for creatures according to what they are; thus, for example, it argues that we can see that we should act with justice towards our neighbor, because this accords with our social nature, our basic need to co-operate with others (an argument as old as Socrates' reply to Thrasymachus and the Ring of Gyges in the *Republic*). But natural law argumentation, when theological, is based on the holy will of God, who has commanded that certain acts be done. This is held on faith, and the natural law reasoning supplies an *ex post facto* justification of this; that is, it seeks to show that God's holy commands are truly wise, in accord with what is good for us. But it holds open the possibility that we may not be able to see fully

Church and leads it into the truth, even into truths that may be theoretically open to reason, but that may be quite difficult to see given both our fallen condition and our historical context. Thus, a Catholic should hold that contraception is wrong before ever attempting an account of why this is so, and he or she should continue to hold this position, even if finding all proposed arguments weak.

Today, we find ourselves confronted with the noxious—and truly scandalous—spectacle of Catholic politicians asserting that they “respect” the view of their Church that abortion is an intolerable crime, but that they will actively work against this view. This is a scandal not only because they dishonestly characterize a sin against the Fifth Commandment as one against the Sixth, and an anti-abortion stance as a private affair of faith. It is just as scandalous because of their apparent conviction that they can merely “respect” Catholic doctrine, while refusing it their assent, even regarding one of the few sins that incurs the Church’s automatic excommunication. Whatever comfort they may seek to draw from “minimalist” theologians, this is intolerable nonsense.⁵¹ The Catholic teaching is and ever has been that the Catholic laity owes Catholic doctrine a religious *assent* of their will and not merely intellectual “respect.” By rights, they ought to “respect” and take seriously the views of other traditions! The Church does not say and never has said that this is all they owe *Her* teaching! It may be hard, but so is holiness.⁵²

what really is good for us, just as a child may not fully appreciate the wise commands of his parents. One wonders whether making this distinction and point clear would not go a good ways towards relieving the uneasiness felt by Murray’s Protestant critics (and by Novak) concerning what is felt to be his undue “rationalism.”

⁵¹ Some Catholic theologians today claim that Catholics are free in conscience not to follow their Church’s moral teaching on matters with which they cannot agree. These theologians apparently think the Church does not mean what She says in authoritative documents, of Council or Catechism. This is sheer sophistry.

⁵² Indeed, one should go further: it is not merely hard to follow the Lord’s commands; without His aid, it is impossible (as He Himself declared in Matthew 19:26). The fundamental reason a non-Catholic society will likely reject certain of the Church’s harder moral precepts is that many in it reject

Now I do not say that Murray is responsible for the state of affairs presently besetting the Catholic community. However, I do say that there was and is one way of clearing up the confusions that confront us. And that is to begin by acknowledging two evident facts. First, a Catholic discovers the natural law tradition as part of his or her faith community. Second, as this tradition descends to details and to hard cases, it becomes more and more doubtful and will likely less and less persuade those outside that tradition. A Catholic should forthrightly acknowledge that what is theoretically open to the light of reason may fail to persuade, and that his own commitment to some particular conclusions of his tradition owes as much or more to his faith commitment than to his argument. Novak is right. Religious people need to be forthright about the fact that they are offering to the larger community a tradition of their own: one that they indeed believe illumines common commitments, but that comes from their context, not some "neutral ground."

Would Murray endorse such a position? It seems to me that he would. Yet this is evidently not the way he proceeded to make his argument. Otherwise, why are all his critics so worried about his rationalism, his confidence in deducing the details of the tradition as Catholics see them, and his apparent requirement that we hold a common philosophy in depth, in its metaphysical commitments? Had he argued his case as I believe it needs to be argued, and made more of the differing levels and certitude of natural law precepts, these kinds of misunderstandings and criticisms could hardly have been made. And, had he done what I have suggested he needed to do, he would have been more ready to warn his Catholic readers that their commitments to truths supported by natural law arguments did not derive first from them, but from their commitment to the Holy Spirit watching over their Church. The Catholic community in America has become seriously confused about its historic and present commitment to Catholic doctrine.⁵³ I do not say that John Courtney Murray helped cause this.

or do not have the divine faith that helps one fulfill them. Her standard is higher than that of paganism, and the best among the pagans recognized that only the wise few could meet even their standard of moral virtue.

⁵³ Since a Catholic believer's supposed right not to practice what the Church teaches undermines the ability to entrust oneself unreservedly to the

That indeed would not be true. But neither did his way of presenting his argument help waylay this confusion.

My conclusions, then, are twofold. First, his project remains as a task to be fully attempted and carried forward. It is sensible and right. But we must recognize that natural law argument—by its own admission—diminishes in its clarity and application as it descends to particulars. Catholics should therefore be prepared to find their own tradition far from convincing on some particulars to non-Catholics, and should be forthright about this. Second, the Catholic community needs to be quite clear that its faithful hold the views that they do not because of a natural law argument (however supportive and thus comforting some may truly find this as being), but because of their faith commitment to their sacred community and its traditions. They must hold themselves to their own standard, even when this seems too “high” or too unreasonable to others. Indeed, others are more likely to be persuaded by the holiness of their witness than by the strength of their arguments. I believe Murray himself would endorse both of these conclusions.

guidance of the Holy Spirit in the Church, as well as compromises the virtue of obedience to the Lord’s teaching that is essential to Catholic life, this crisis is particularly grave.