

The Purpose and Extent of Religious Liberty: Locke's *Letter Concerning Toleration* and the Second Vatican Council's *Declaration of Religious Freedom*

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Why permit religious freedom? In our era where all things seem to be permitted and where toleration is often regarded as *the* social virtue (or at least one of the most important social virtues), it is a question often begged.¹ At present it appears to be generally assumed that religious freedom and other social freedoms, such as the right of free expression, are unqualified goods. Contemporary American liberals and conservatives—and even European social democrats—would all assert that they support religious liberty. As example of the broad support for religious freedom, one could cite the UN's Universal Declaration of Human Rights (1947), which asserts that “everyone has the right to freedom of thought, conscience, and religion,” and this includes the right “to manifest his religion or belief in teaching, practice, worship and observance” (Article 18).² The United Nations even had 1995 dedicated to toleration, and related to that, UNESCO issued the Declaration of Principles of Tolerance, which begins with the proposition that “toleration is not only a cherished principle, but also a necessity for peace and the economic and social advancement of all peoples.”³ It seems vital to characterize religious freedom as essential only upon carefully considering the reasons for it, and the implications of it.

The Case Against Religious Freedom

Before reminding ourselves of the reasons for religious freedom, it is worth reconsidering arguments against religious freedom. Thomas Hobbes's *Leviathan* (1651) presents religion as one of the major causes of disorder and therein asserts that after all, there should be only one

¹ Toleration and “fair social cooperation” are presented as **the** social virtues in John Rawls' final presentation of his political philosophy, *Political Liberalism* (New York: Columbia University Press, 1996), 194-195.

² “The Universal Declaration of Human Rights,” United Nations. <http://www.un.org/en/documents/udhr/> (accessed November 26, 2013).

³ “Declaration of Principles on Toleration,” United Nations Web site, <http://www.un-documents.net/dpt.htm> (accessed November 26, 2013).

religion in a political order. It should be noted that Hobbes saw the social problems caused by competing religious groups as he lived through the English civil conflict of the 1640s. The religion of the Hobbesian political order would not even be one of the people's choosing either; the religion would be explicitly formulated by the political leader so as to support the political order. Hobbes, perhaps better than anyone else, expressed the political difficulty with permitting multiple religious groups.

Another argument against religious freedom can be seen in the work of Thomas Aquinas (1225-1274). While Aquinas does not believe that all people should be coerced into professing Christianity, he does not grant religious freedom to all religious groups. Jews and other non-Christians could be tolerated, but heretics are not to be tolerated by the political order that is governed by Christians. He writes that "there are some unbelievers who never embraced the faith (e.g., Jews and pagans) . . . and such unbelievers should never be compelled to embrace the faith . . . since belief is proper to the individual's will."⁴ People who previously expressed belief in "official" Christianity, however, but who then recanted those views and expressed others—a category of individuals that Aquinas calls "heretics or any other kind of apostates"—should not have their religious views tolerated. He says that "we should compel such unbelievers, even by physical force, to fulfill what they promised."⁵ For Aquinas religious freedom in the contemporary sense is not to be permitted because it would harm the integrity of the Christianity practiced in the area governed by a Christian ruler.

In the time following Aquinas, it was generally accepted by Catholics that there should be political support for Catholicism as the official religion in Catholic countries. Southern Europe was not subject to the strife found in northern Europe during the period following the

⁴ Thomas Aquinas, *On Law, Morality and Politics*, 2nd ed., trans. Richard Regan (Indianapolis: Hackett, 2002), 191.

⁵ Aquinas, *Law, Morality*, 191.

Reformation. It wasn't until the nineteenth century that there were official Catholic statements condemning religious freedom. Perhaps the best known recent strictures against religious freedom in the Catholic theological tradition are those found in Pius IX's *Syllabus of Errors* (1864) and Pope Leo XIII's *Testem Benevolentiae Nostrae* (1899).⁶ It can be said that the Catholic Church during the late 19th and early 20th centuries associated religious liberty with anti-clerical and anti-religious dispositions expressed in Europe during the late nineteenth century.

Defending Religious Freedom

We can turn to what are arguably two of the most important defenses of religious liberty in the Western intellectual tradition, John Locke's *A Letter Concerning Toleration* and Vatican II's *Declaration on Religious Liberty* (generally referred to as *Dignitatis Humanae*). Locke's *Letter* was written in 1685 while he was in exile in Holland and published in 1689 after the restoration of the Protestant English throne with King William and Queen Mary and the passage of the Toleration Act. It was followed by three additional letters on toleration (although the "fourth" letter was never finished) to respond to critics; Locke was not the first to argue for allowing other religious groups to practice their beliefs besides the established church of a particular government. While there were several Protestant religious writers arguing for religious liberty during the early 17th century, it should be noted that these writers only wanted selected

⁶ In the *Syllabus of Errors*, the following propositions are condemned: (77): "In the present day it is no longer necessary that the Catholic religion shall be held as the only religion of the State, to the exclusion of all other modes of worship." (78): "Whence it has been wisely provided by the law, in some countries called Catholic, that persons coming to reside therein shall enjoy the free exercise of their own worship." (79): "Moreover it is false that the civil liberty of every mode of worship and the full power given to all of overtly and publicly manifesting their opinions and their ideas conduce more easily to corrupt the morals and minds of the people, and to the propagation of the pest of indifferentism."

Protestant groups to be free from political persecution and the others to be subject to it.⁷ Locke's *Letter* is the most important of this period because Locke argues for more religious freedom than earlier writers, and his argument is not based on a theology connected to a Protestant sect. Moreover, his work was widely circulated among the intellectuals both in England and on the European continent of his day. Also, Locke is important, at least for Americans, because he was prominently considered by the American Founders. Locke's language of toleration is used by Jefferson in "An Act for Establishing Religious Freedom" (1777) and by Madison in "Memorial and Remonstrance against Religious Assessments" (1785). Locke's influence in early America has led some scholars, such as Louis Hartz, to characterize the American Founding as Lockean.⁸

The Second Vatican Council's *Dignitatis Humanae* (DH), promulgated on December 7, 1965, is one of the most important defenses of religious freedom in recent times, even though it contains only fifteen short sections. It is also important because it is an official document of a world-wide church whose membership includes nearly twenty percent of the world and which was not hitherto known to be a supporter of religious freedom. While it was a significant development as an official document, it should be noted that there were important Catholic theologians and philosophers, such as the John Courtney Murray and Jacques Maritain, who had been offering arguments that Catholicism should embrace limited, Constitutional government where religious liberty was protected.⁹ In some ways, *Dignitatis Humanae* can be seen as the outcome of moral and philosophical reasoning and reflection upon changing circumstances in the

⁷ Cf. Thomas Helwys, "Persecution For Religion Judged and Condemned" (1614); Leonard Busher, "Religious Peace: Or A Plea For Liberty of Conscience" (1614); William Jeffrey and George Hammond, "A Humble Petition and Representation of the Anabaptists" (1660) and "Sion's Groans for Her Distressed: Or Sober Endeavors to Prevent Innocent Blood" (1661) in *Tracts On Liberty of Conscience and Persecution 1614-1661*, ed. Edward Bean Underhill (New York: Franklin, 1966). All of the writers argue that Protestant groups should be tolerated because they are only slightly different variations of the gospel, while Catholics should not be tolerated.

⁸ Louis Hartz, *The Liberal Tradition in America* (New York: Mariner, 1991).

⁹ See in particular, John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition*. (New York: Sheed and Ward, 1960) and Jacques Maritain, *Christianity and Democracy* (New York: Charles Scribner's Sons, 1943).

world. Kenneth Grasso argues that reflecting on the struggle against totalitarianism in the world and seeing that religion could flourish within the “American experiment in democracy” helped to lead the Catholic Church to embrace religious liberty.¹⁰

Similarities between the *Letter* and the *Declaration*

Although separated by a few centuries and great theological differences between the authors of these respective documents, there are some significant similarities between these approaches to religious toleration. Both Locke’s *Letter* and *Dignitatis Humanae* assert that political orders **at times** can limit religious practices in order to protect the rights of individuals and, when necessary, to preserve political order. According to *Dignitatis Humanae*, religion ought never to be exercised so that the rights of others are not respected. It states that “in exercising their rights, individual men and social groups are bound by the moral law to have respect for others” (DH #7).¹¹ Moreover, *Dignitatis Humanae* affirms that religious practice can be limited in order to protect political order, saying that “civil society has the right to protect itself against possible abuses committed in the name of religion” (DH #7). The implication is that true religion, with its related proper religious practice, will not be harmful to political order; abuses, it should be noted, are not seen to be always dangerous but only potentially dangerous. The polity is given power over abuses in the name of religion because it is charged with preserving the political order which is essential to the common good. *Dignitatis Humanae* emphatically asserts that the power to restrict religion should not be applied arbitrarily, and this power is only to be used when absolutely necessary because in all other cases “the integrity of

¹⁰ Kenneth Grasso, “A Special Kind of Liberty: *Dignitatis Humanae* (1965),” in *Building the Free Society: Democracy, Capitalism and Catholic Social Teaching*, eds. George Weigel and Robert Royal, 109 (Grand Rapids, Michigan: Eerdmans, 1993).

¹¹ All citations of *Dignitatis Humanae* are from “Declaration on Religious Freedom,” Vatican Web site. http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html (accessed November 26, 2013). Hereafter the work is cited in text by section number.

freedom in society should continue to be upheld” (#7). While it could be useful for this document to see specific examples of appropriate times when religious liberty could be restricted, *Dignitatis Humanae* refrains from giving such examples and only offers the basic precept.

The ability of the state to limit religious practice in order to preserve public peace is important in Locke’s teaching on toleration, and at the same time, Locke also argues in the *Letter* that various religious groups can be tolerated because this promotes public peace more effectively than permitting only one religious group. This is not the position that Locke held throughout his life; this position only comes about through a development in his later thinking.

To understand fully Locke’s final position, it is necessary to see the development in his views on toleration. During the years 1660-1662, while a young teacher at Oxford, Locke wrote two tracts on the relationship between politics and religion, both of which remained unpublished during his lifetime.¹² Locke scholar Mark Goldie says that “they reveal a Locke deeply fearful of civil anarchy driven by religious fanaticism.”¹³ In both of these writings, Locke asserts that magistrates could intervene in the religious worship of various religious organizations. These early tracts could be characterized as defenses of the recent re-establishment of the Church of England under William and Mary.¹⁴

Locke argues in the *First Tract* that the magistrate may interfere in indifferent things which are a part of religious worship. This tract is directed against a colleague at Christ Church of Oxford, Edward Bagshaw, who had argued in a pamphlet published in 1660 that the civil

¹² Although the preface to the *First Tract of Government* suggests that Locke was very close to publishing the text. These were first published as *Two Tracts Concerning Government*, ed. Philip Abrams (Cambridge: Cambridge University Press, 1967).

¹³ John Locke, *A Letter Concerning Toleration and Other Writings*. Edited and with an introduction by Mark Goldie (Indianapolis: Liberty Fund Press, 2010), xx. Hereafter referred to as Goldie.

¹⁴ John Marshall, “Locke and Latitudinarianism,” in *Philosophy, Science, and Religion in England 1640-1700*, eds. Richard Egron, Richard Ashcraft, and Prez Zigorim 254 (Cambridge: Cambridge University Press, 1992).

magistrate could never interfere in any religious matter because of liberty of conscience.¹⁵

Bagshaw's absolutist position, inspired by the Puritan divines, seemed to Locke to be dangerous to peace and political stability. In response to Bagshaw, Locke asserts that citizens can depend upon the prudence of the ruler to make proper decisions regarding state interference in religious matters. Locke expects citizens to understand that it is possible for the magistrate to have some involvement with religion without being an absolute tyrant. In this early work Locke asserts that ills of unregulated religious passion are great and cause much social distress. He says that "all those flames that have made such havoc and desolation in Europe, and have not been quenched but with the blood of so many millions, have been at first kindled with coals from the altar."¹⁶ Locke, it seems, wants to prevent the harmful effects of religious zeal, and in order to do this, he must give some power over religious matters to the civil magistrate.

The theme of Locke's *Second Tract on Government*, written in 1662, is much the same as the *First Tract*, although the structure of the work is different. There is, however, at least one additional point in the *Second Tract*. Therein Locke discusses the positive duty of Christians to obey their civil magistrates. In this work Locke gives power to the civil magistrate so that "dignity, decency and order be aimed at."¹⁷ Locke then argues that the liberty of the Christian should only be understood as spiritual liberty and not political liberty. The *Second Tract* can then be characterized as a positive presentation of Locke's early arguments against religious liberty while the *First Tract* can be viewed as a critique of arguments based on the so-called 'liberty of conscience.' Both, however, deny religious freedom because of political concerns, not because of

¹⁵ The Title of Bagshaw's pamphlet was "The Great Questions concerning Things Indifferent in Religious Worship Briefly Stated." See J.W. Gough, "The Development of Locke's Belief in Toleration" (57-77, especially 60-63) and P.J. Kelly, "John Locke: Authority, Conscience, and Religious Toleration" (125-146, especially 128-129) in *John Locke: A Letter Concerning Toleration in Focus*, eds. John Horton and Susan Mendus (London: Routledge, 1991).

¹⁶ David Wootton, ed., *The Political Writings of John Locke* (New York: Mentor, 1993) 144.

¹⁷ Wootton, *Writings*, 157.

theological argument. To put it another way, for Locke at that time religious conformity should primarily preserve the political order, and only secondarily preserve religious order.

Locke's views on religious freedom develop from this early establishmentarian position. In 1667 he writes the "Essay Concerning Toleration," which was unpublished during Locke's lifetime. Prior to writing this work, he had left Oxford University as there were few permanent positions for non-Anglican clergy. He became associated with Lord Ashley, the Earl of Shaftesbury, who was known as a defender of religious non-conformity in the 1670s and 1680s.¹⁸ Goldie also cites Locke's 1666 visit to Cleves in Germany as being formative because Cleves permitted the worship of Lutherans, Calvinists and Catholics. Locke's basic concern for the political order remains the same as that found in the Two Tracts, although in this work, he asserts that some religious liberty can be permitted. He rejects both his earlier position of absolute authority of the civil magistrate in religious matters as well as the Puritan position recognizing liberty of conscience. Instead, he opts for a middle position. He suggests that there can be unlimited freedom in those opinions and practices which are not concerned with human society. In regards to speculative religious opinions, such as transubstantiation or the Trinity, Locke asserts that one can have unlimited religious freedom because "bare speculations give no bias to my conversation with men nor having any influence on my actions as I am a member of any society."¹⁹ While most religious practices can be permitted, Locke does not give blanket approval to all because the magistrate must be concerned with behavior. This concern with behavior is not because the magistrate is concerned with the souls of his subjects, rather he as magistrate because he is not. Public behavior is the concern of the magistrate because "virtue is

¹⁸ Goldie, *Letter, Writings*, xx.

¹⁹ Goldie, *Letter, Writings*, 187.

so necessary a prop to a state, and the allowances of some vices brings a certain disturbance and ruin to society.”²⁰

It is worth noting that in this essay Locke emphatically states that Catholics should not be tolerated. Catholic doctrine, according to Locke, is destructive of human government because it calls for obedience to the Pope and does not permit toleration of other religions. Locke also believes that ‘fanatics’ or other radical opponents of the established Church of England should not be tolerated if they are united in opposition to the established Church.

It seems, then, that the *Two Tracts* differ from the *Essay Concerning Toleration* in terms of policy implications, as one permits religious freedom and the other does not. It seems, however, that there is an underlying principle which connects Locke’s writings from the 1660s. Political stability is the important aim for both. For Locke, varieties of religious expression are tolerated only insofar as they comport with political stability.²¹

This brings us to the *Letter* where Locke is quite clear that the demands of political order can lead to a restriction on religious activity. To state it again, Locke is in agreement with *Dignitatis Humanae* that there are some instances where religion can be limited. Locke indicates four types of things which the political order must not tolerate. First, no opinions contrary to human society are to be tolerated. For any group to promote such doctrines, Locke asserts they have arrived at a great degree of madness.²² Second, according to Locke, magistrates should not tolerate groups who, because of their religious beliefs, believe that they can violate some rule which properly binds the rest of society, such as keeping oaths. Locke may have had in mind some fanatical, separatist religious groups who believed that they did not have to obey the king

²⁰ Goldie, *Letter, Writings*, 194.

²¹ For a further elaboration on the similarity between these writings, see Robert Kraynak, “John Locke: From Absolutism to Toleration,” *American Political Science Review* 74 (March 1980): 53-69.

²² Locke, *A Letter Concerning Toleration* (New York: MacMillan, 1950), 50.

because he was a member of the Church of England, and thus, an infidel; we have to speculate regarding an example because he does not provide any examples. Goldie suggests that Locke may have had in mind here that some Protestants believed that Catholics held to the premise that they didn't need to keep faith with heretics, although such a teaching cannot be found in Catholic theology.²³ Locke considered any radical antinomian group (against the government) to be deeply problematic for political society. Third, Locke asserts that one should not "ipso facto deliver themselves up to the protection and service of another prince."²⁴ In the text, Locke specifically cites those who practice Islam. In the *Letter*, Locke never explicitly says that Catholics should not be tolerated as he does in his earlier writings, but here he seems to be at least referring to Catholics. The fourth group that Locke believes should not be tolerated is atheists because they cannot be relied upon to fulfill contracts. Locke, it is clear, and *Dignitatis Humanae* both agree that religious practice may be limited in order to preserve the political order.

An additional similarity between Locke's *Letter* and *Dignitatis Humanae* is that both assert that there can be religious freedom and an established church at the same time. *Dignitatis Humanae* says that "the circumstances of a particular people [may lead to] special civil recognition given to one religious community in the constitutional organization of a State" (DH #6). The Second Vatican Council document, then, says that in such a polity, the governing authority must see that the citizens who do not belong to the established church be permitted to practice their religion without interference. Moreover, in such a political order, all citizens, regardless of their religious affiliation, must be treated equally before the law. Most

²³ Goldie, *Letter, Writings*, 50. According to Goldie, some English Protestants may have had in mind the 1570 excommunication and deposing of Queen Elizabeth by Pope Pius V, which led to the 1606 English Oath of Allegiance, which specifically rejected the idea that excommunication could lead to being deposed.

²⁴ Goldie, *Letter, Writings*, 51.

contemporary liberals—whether classical or progressive liberal—would argue that religious freedom can only be realized where no church is established. In this respect, the teaching of *Dignitatis Humanae* clearly differs from modern liberalism.

Locke certainly does not argue for the disestablishment of the Church of England in any of his letters on toleration, but he also doesn't argue for it, and it seems that the logic of Locke's argument would lead to disestablishmentarianism. Perhaps he may have favored such a position but chose not to make such an opinion known because of fear of political persecution. While we do not know that, we do know that he never wrote, in published or unpublished writings, against the establishment of the Church of England. More importantly, Locke is not calling for equal public status of religious groups. On the contrary, Locke is simply arguing that the non-established religious groups should be tolerated. Religion, for Locke, needs to be privatized and tamed, so that it is not harmful.

Another similarity between these two approaches is that both *Dignitatis Humanae* and Locke's *Letter* assert that religious positions should be reached freely and without coercion and that this is consistent with the teaching of divine revelation. Nearly half of *Dignitatis Humanae* is dedicated to showing that the recognition of religious freedom is consistent with that teaching period. According to *Dignitatis Humanae*, "Religious freedom is in complete harmony with the act of Christian faith" (DH #9). It then looks to the example of Jesus and speaks of Jesus freely calling his disciples and confirming his teaching by performing miracles. Regarding treatment of unbelievers, the Declaration on Religious Liberty states that Christ "did indeed denounce the unbelief of his listeners, but left vengeance to God until the day of judgment" (DH #11). The document further asserts that the apostles followed the example of Christ's teaching with boldness but not by forcing belief upon others.

Locke also cites the example of Christ in the *Letter*. The positive ground for toleration and that which makes toleration the characteristic mark of Christianity is that toleration of other beliefs ought to come from the Christian virtue of charity and the example of Christ. Locke first asserts that those who attempt to destroy men on account of religious beliefs do not do so on account of love, but because of hate. Locke says that “if the gospel and apostles may be credited, no man can be a Christian without charity, and without that faith which works, not by force, but by love.”²⁵ Locke also says that those who are intolerant lay aside “peace and charity.”²⁶ The most important reason for the use of persuasion rather than force, for Locke, is the example of Christ. Locke says that the “Prince of Peace . . . sent out his soldiers . . . not armed with the sword . . . but prepared with the gospel of peace.”²⁷

While the similarities between these documents of religious toleration are significant, the differences are more important. The three most significant differences are in their understandings of the status of the church, the importance of conscience, and the basis for religious toleration.

First, the understanding of the Church is an important difference between these models of toleration. *Dignitatis Humanae* does not provide, nor should it, an explicit teaching on the meaning of the Church. It does say that “it leaves intact the traditional Catholic teaching on the moral duty of individuals and societies toward the true religion and one Church of Christ” (DH #1). There are also references to the Church being “faithful to the truth of the Gospel” and the Church as an authoritative teacher to the faithful (DH #14). The Vatican Council Fathers had proclaimed a year earlier, in November 1964, a teaching on the Church in its *Dogmatic Constitution on the Church (Lumen Gentium)*. In this document, the Church is presented as being instituted by Jesus Christ for the salvation of men. It says, “The mediator, Christ, established and

²⁵ Goldie, *Letter, Writings*, 14.

²⁶ Goldie, *Letter, Writings*, 26.

²⁷ Goldie, *Letter, Writings*, 16.

ever sustains here on earth his holy Church, the community of faith, hope, and charity, as a visible organization through which he communicates truth and grace to all men.”²⁸ For the Council fathers there is one true church, the church founded by Jesus and other religious communities. *Dignitatis Humanae* is seeking to have religious freedom while not relegating the church to merely one of many voluntary associations that exist in the world.

Locke’s understanding of the meaning of church is useful to reconsider as it undergirds Locke’s defense of religious toleration and the place of churches in civil society. For Locke, “a church is . . . a voluntary society of men, joining themselves together of their own accord in order to the public worshipping of God in such manner as they judge acceptable to him and the effectual salvation of their souls.”²⁹ A church, for Locke, is a voluntary organization and as such can make its own rules and can include or not include whomsoever it wishes. To be a church, one does not need to make a claim to a special authority. Some in Locke’s time (and even our own) might have argued that only the Presbyterian, the Catholic, the Anglican or one of many other groups is the legitimate church because of some allegedly distinctive characteristic of their theology, and all other churches are not true churches. Locke denies this claim outright. No claim can be made to the truth of one church over another. Also, as a purely private organization, the church must use persuasion rather than force; only the state has the power of coercion.

Related to this understanding of church is Locke’s criticism of orthodoxy which could be characterized as “doctrinal relativism.” It is not complete relativism because truth about politics or nature could be known, but the outward religious practices and the speculative doctrines of theology are beyond final determination in this life. For Locke, only God, who seems to have no representative on earth, can be the final judge of these things. In the *Letter*, Locke says, “Some

²⁸ *Lumen Gentium*, Vatican Website. http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html (accessed February 20, 2014).

²⁹ Locke, *Letter*, 20.

people boast of the antiquity of places and names, or of the pomp of their outward worship; others, of the reformation of their discipline; all of the orthodoxy of their faith—for everybody—is orthodox to himself.”³⁰ Locke here asserts that religious groups (here referring to at least Lutherans, Calvinists or Puritans, and Catholics) all claim to be distinctive, while at the same time they all claim to be orthodox. For Locke this claim to orthodoxy is both meaningless and destructive. The claim to orthodoxy is destructive because the claims of orthodoxy are “marks of men striving for power and empire over one another.”³¹

Based on Locke’s view of church and orthodoxy, truth and freedom are not connected. In fact, freedom is secured when truth is not acknowledged or claimed. This distinction between truth and freedom, something not hinted at in *Dignitatis Humanae* and other related ecclesiastical documents, becomes dominant in the modern liberal tradition of toleration. This is evident in John Stuart Mill’s *On Liberty* which includes an even more radical teaching of relativism. A more recent example of this disjunction between freedom and truth is seen in Nobel Laureate and self-proclaimed classical liberal Milton Friedman’s reaction to John Paul II’s *Centesimus Annus* when he says, “Whose truth is at stake? Who defines what is true? For all the fine words about democracy and freedom, doesn’t the teaching of John Paul still echo with the horrors of the Spanish Inquisition?”³²

An additional difference between these views of toleration is the understanding of conscience. The Vatican II Council Fathers emphasize the role of individual conscience, but religious liberty is grounded not only in the conscience but in the larger sense of a human being

³⁰ Locke, *Letter*, 13.

³¹ Locke, *Letter*, 13.

³² As quoted in Maciej Zieba, “The Liberalism that We Need,” *First Things* 40 (February 1994): 23.

as a person capable of and ordered to religious expression.³³ The document states that “it is through his conscience that man sees and recognizes the demands of the divine law. He is bound to follow his conscience faithfully in all his activity so that he may come to God, who is his last end. Therefore he must not be forced to act contrary to his conscience” (DH #2). Some were critical of this reliance on conscience because it sounded much like the language used by post-Reformation Puritans whose use of liberty of conscience seemed to indicate that only private judgment was possible.³⁴ Francis Canavan writes regarding the use of conscience in this document that “religious freedom does not rest on the proposition that human reason or conscience is a law unto itself.”³⁵ In earlier drafts of *Dignitatis Humanae*, there was some distinction between true and erroneous conscience, but this distinction was left out of the final draft, perhaps because this notion was already clear in the *Constitution on the Church in the Modern World (Gaudium et Spes)*, which was promulgated on the same day.³⁶

Locke rejects the use of the phrase, “liberty of conscience,” because those who used this language in his day did not respect the needs of political order and he saw those individuals as radically antinomian. That is, the Puritan usage of conscience did not contain logical limits on religious belief and religious practice. Locke in the *Letter*, therefore, never speaks of the importance of the conscience allowed to be free.

³³ Some, including John Courtney Murray who participated in its writing, criticize the role given to conscience in the document and instead wish that the juridical aspect of religious liberty had been given greater emphasis. See John Courtney Murray, S.J., “The Declaration on Religious Freedom: A Moment in its Legislative History” in *Religious Liberty: An End and a Beginning*, ed. John Courtney Murray, S.J., 32-37 (New York: MacMillan, 1966).

³⁴ *Dignitatis Humanae* does not speak of liberty of conscience in the manner of the Puritans, the first who used this phrase to defend religious liberty. For Puritans, such as William Perkins, individuals are free in matters of religious belief and practice because the conscience must be free to choose whatever it wishes. For these early Puritans, however, the conscience was free when the individual could follow his own interpretation of the Bible. They say that this understanding of conscience was derived from the New Testament. In practice, this claim by Puritans became a trump card overcoming any and all state action which related to regulation of religion.

³⁵ Francis Canavan, “The Catholic Concept of Religious Freedom as a Human Right” in *Religious Liberty: An End and a Beginning*, 69.

³⁶ *Gaudium et Spes*, 16.

The final difference to be noted is the most important difference between the two: the foundational reason for religious liberty. As stated above, Locke's writings on toleration indicate that there is no inherent right to religious freedom. Religious freedom is permitted insofar as it comports with public peace. Much religious freedom will permit many groups to exist, and this fragmentation of religious groups will limit the power that any one of these groups has in society. No one group will likely dominate, and thus, none will dominate over others. Moreover, if non-established religious groups are not tolerated, they and similar groups will constantly rail against the state for religious freedom.

Religious liberty is defended by the Vatican II Council Fathers not merely because it will lead to public peace, although it would seem that this lesser end is implied in the document. Religious liberty is promoted because it is in accord with the nature of man. In what is best described as a statement of Christian personalism, *Dignitatis Humanae* states that "it is in accordance with their dignity that all men, because they are persons, that is, beings endowed with reason and free will and therefore bearing personal responsibility, are both impelled by their nature and bound by a moral obligation to seek the truth, especially religious truth" (DH #2). Moreover, persons can only be fully responsible when "they enjoy both psychological freedom and immunity from external coercion" (DH #2). This truth is considered to be an objective and it is not "found in the subjective attitude of the individual." It is on this understanding of persons that the Council Fathers rest the right to religious liberty, and this understanding of persons leads to moral obligations for both individuals and political orders.

It is this understanding of the person which distinguishes *Dignitatis Humanae* from the earlier defenses of toleration. We can say, as did Jesuit scholar John Courtney Murray, that the "object or content of the right to religious freedom, as specified both in the *Declaration* and in

the American Constitutional system, is identical” to the view presented in *Dignitatis Humanae*.³⁷ At the same time we must realize how great a difference the reasons for religious toleration are. We might also add that while this document came late in the history of religious toleration, it is a most useful and necessary addition to the understanding of religious toleration.

Moreover, when one considers the different reason for religious toleration, it seems that the Lockean approach could lead to a devaluing of religious activity as a good in itself. That is, for Locke, religion is not tolerated; it is permitted when it is not dangerous. Religion is useful for Locke when it teaches moral rules, but religious activity that is separate from moral rules does not seem inherently worthy of respect. The Lockean approach might lead to the kind of jurisprudence offered by the United States Supreme Court in the second half of the 20th century where the state should not encourage general religiosity and should be neutral with respect to religion versus non-religion. So for Locke, the state should seek to encourage or even accommodate religious beliefs or practices because that would privilege religion over non-religion. It would seem that the approach to religious activity in *Dignitatis Humanae* would seek to accommodate religious practice so long as it did not hurt others. For example, individuals should not be forced to work on those days considered holy by particular traditions, or individuals could be exempt from some general rules for a society that wouldn't harm others or that would interfere with the religious practices of a group.

When one applies these two approaches to current questions of religious freedom, the approach in *Dignitatis Humanae* would not force an individual to provide a non-essential service, such as a wedding cake, to a same sex-couple, and it would make accommodations regarding health laws for food preparers in particular religious traditions so that they could

³⁷ John Courtney Murray, S.J. “Declaration on Religious Freedom: Commentary” in *American Participation in the Second Vatican Council*, ed. Msgr. Vincent A. Yzermans, 668 (New York: Sheed & Ward, 1967).

continue to operate in accord with the dictates of their consciences. This same approach would have no problem with providing tax-exempt status to religious organizations, while for the Lockean approach there is no such need to do so.

It's useful to reconsider the arguments for religious freedom. Looking back, we can see that the dominant approach in modernity has been one which tends to see religion as dangerous and such an approach seems to logically lead to the privatization—and even diminishing of religion. For people of faith, we need to seek an understanding of religious freedom that is grounded in more than political expediency. As *Dignitatis Humanae* teaches us, religious freedom can and should be grounded in an understanding of human beings for whom religion is integral and not merely one among many activities.