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CATHOLICS, HISTORY, AND CONSCIENCE

JOHN T. MCGREEVY*

I first encountered the work of Martha Nussbaum fifteen years ago, in the memorable opening chapter of *Love's Knowledge*.¹ There, she described her desire as a young scholar to ask the big questions of literature and philosophy, to ask what guidance these literatures provided for the quest to live a good life.² Nussbaum's new book, *Liberty of Conscience*,³ reminds us that she continues to ask big questions, and it's a pleasure to have the opportunity to respond to her big questions with more modest questions of my own.

It's a pleasure, but it's not easy. The job of a historian in this sort of situation is to play the scold, to chastise the big picture legal scholar for missing this detail over here, misconstruing that incident over there. I could do that this afternoon. I don't think, for example, that Roger Williams bracketed his religious convictions in quite the way that Nussbaum suggests.

But I want to focus on Nussbaum's analysis of Roman Catholicism in the United States simply because that's the subject that I know best. Nussbaum's attention to this topic is heartening for those of us who toil in this particular vineyard, her recognition that Catholicism shapes and is shaped by American history. But I worry that Nussbaum's narrative of Catholicism in the United States distorts dimensions of the historical record, and in so doing, raises questions about Nussbaum's programmatic agenda.

Two examples: first, Nussbaum rightly emphasizes the importance of anti-Catholicism in the formation of nineteenth century educational policy and what we might call the social history of religious freedom in the United States. The millions of Catholic immigrants who streamed into the United States in the mid-nineteenth century provoked this country's earliest, and still most profound, encounter with religious diversity. Nussbaum gracefully acknowledges this, and indeed, spends a good bit of energy denouncing the anti-Catholicism that often accompanied this migration. But she makes a telling error when she off-handedly castigates ultramontane Catholics in the nineteenth century for paying insufficient attention to the poor, wishing instead that these ultramontane Catholics had been

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1. MARTHA C. NUSSBAUM, *LOVE'S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE* 10-23 (1990).

2. *See id.*

3. MARTHA C. NUSSBAUM, *LIBERTY OF CONSCIENCE: IN DEFENSE OF AMERICA'S TRADITION OF RELIGIOUS EQUALITY* (2008).

more like the liberal Catholics that she admires.⁴ The problem is that modern Catholic social thought—particularly in the nineteenth century and including Leo XIII's 1891 papal encyclical, *Rerum Novarum*—emerged from an ultramontane, not liberal Catholic milieu. The same Catholics, acutely aware of the social disruptions caused by industrial capitalism, supportive of trade unions, and eager to provide assistance to the bedraggled masses of the Catholic Diaspora were dismissive of American ideas of religious freedom and reluctant to view the abolition of slavery as a human rights priority.⁵

How do we explain these Catholics, including, I suppose, the founders of Villanova University, so “good” to a modern liberal sensibility on the economy yet so bad on religious freedom? Both positions—good and bad—made sense within an intensely social view of the world, one where the isolated individual remained a tragic figure, and where he or she was assumed capable of flourishing only in a tight web of familial, communal, and religious structures. Industrial capitalism disrupted these structures; but so too did a religious marketplace structured around religious choice.

The story of Catholic social thought in the nineteenth and twentieth centuries is in some sense the development of this vision, with its concomitant network of catholic schools, parishes, hospitals, and charitable organizations. The crisis of the 1930s and 1940s, and Catholic complicity in the European and Latin American fascist regimes of that period, only reinforced among influential Catholic theologians the importance of a public religion, a faith more meaningful than acts of private devotion mixed with resigned acquiescence to a corrupt, or worse, political regime. One of those theologians, Henri De Lubac, published a plea to view Catholic dogma as irretrievably social in 1938, a book that became one of the two or three most influential texts in the run-up to the Second Vatican Council, a book that permanently altered the theological trajectory of a young Bavarian priest, Joseph Ratzinger, and a book that the priest, now Benedict XVI, has referenced multiple times as Pope. And as Benedict XVI himself readily admits, in this emphasis on the social, Catholicism resembled another nineteenth century tradition, socialism, more than classical liberalism.⁶

Nussbaum's task is not to trace the history of twentieth century Catholic theology or social thought; but this history does complicate a second dimension of her history. She admires John Courtney Murray, Jacques Maritain, and other figures central to the Declaration of Religious Liberty

4. See *id.* at 216.

5. JEAN-MARIE MAYEUR, CATHOLICISME SOCIAL ET DÉMOCRATIE CHRÉTIENNE: PRINCIPES ROMAINS, EXPÉRIENCES FRANÇAISES 47-65 (Cerf 1986); JOHN T. MCGREEVY, CATHOLICISM AND AMERICAN FREEDOM: A HISTORY 19-67 (2003).

6. HENRI DE LUBAC, S.J., CATHOLICISM: A STUDY OF DOGMA IN RELATION TO THE CORPORATE DESTINY OF MANKIND (1964); Benedict XVI, Europe and Its Discontents, FIRST THINGS, Jan. 2006, available at http://www.firstthings.com/article.php3?id_article=70.

at the Second Vatican Council in 1965. So should we all. But these figures did not share Nussbaum's enthusiasm for "conscience." For Nussbaum, protection of conscience is one of the central tasks of a well-ordered state. Murray and Maritain desired religious freedom just as much as Nussbaum. And they would be as disheartened as other Catholics by Benedict XVI's recent lifting of the excommunication of those priests and bishops who explicitly reject hard won intra-Catholic battles over religious liberty. But Murray avoided the term "conscience" precisely because it seemed too individualist, too fragile an anchor for something so fundamental.⁷ Instead, these theologians grounded religious liberty in human dignity, a human dignity formed, in their view, not simply by the individual acting alone but by the structures such as families and communities that shape conscience. That Catholics in the 1980s, that dawning of a new individualist era in American social thought, tried to construct a consistent ethic of life, a vision of solidarity, suggests the enduring power of this modern Catholic vision.⁸

The implications of this more complex, more social view of conscience are significant. Nussbaum stresses that much religion does not involve "a group and some organized structure of authority."⁹ But what if it does? Then, Nussbaum's assumption that American customs of religious liberty should inform European practice is less convincing. Are we sure that a Canadian or German pattern—where states provide some financial assistance to religious institutions doing a public good such as education or social service—is less preferable than a more studied American neutrality? This is not to evade tough questions: notably, how states choose which religious structures to assist, and how religious traditions with rapidly falling numbers of adherents, such as Roman Catholicism, adjust to new realities. Or how, in European countries, to simultaneously respect Muslim consciences but provide some measure of assimilation to the values and ideals of the host nation state.

But Nussbaum's focus on the individual believer and the individual conscience, while welcome, has its own limits. It strikes me as unusually, even narrowly American, a surprising statement to make about a scholar whose work on religion and social structure in India has taught us so much.¹⁰ That each believer has the right to practice and express her religious beliefs is now part of our global currency, and even states that do not protect this right in practice, such as Turkey, pay homage to it in theory, rather like the ways in which East Germans used to call theirs a Democratic Republic. That Saudi Arabia does not even pretend to honor relig-

7. DOMINIQUE GONNET, S.J., *LA LIBERTÉ RELIGIEUSE À VATICAN II: LA CONTRIBUTION DE JOHN COURTNEY MURRAY*, S.J. 354 (Éditions du Cerf 1994).

8. JOSEPH CARDINAL BERNARDIN, *CONSISTENT ETHIC OF LIFE* (Thomas G. Fuechtman ed., 1988).

9. NUSSBAUM, *supra* note 3, at 167.

10. MARTHA C. NUSSBAUM, *THE CLASH WITHIN: DEMOCRACY, RELIGIOUS VIOLENCE, AND INDIA'S FUTURE* (2007).

ious liberty is a scandal. To defend religious liberty and conscience in this sense is not to court controversy, but the absence in Nussbaum's lecture of a vocabulary to think about church or synagogue or mosque as something more complicated than a voluntary association dedicated to the private worship of believers is more interesting. Nussbaum's defense of America's tradition of religious equality is all to the good. But the historian in me thinks that this defense is less necessary, less vital to the current moment, than a serious comparative examination of what government structures allow global religious traditions such as Catholicism and Islam to at once contribute to the larger communal good and remain true to their own religious and political destinies. Given Nussbaum's remarkable productivity, I'll cheerfully take this opportunity, then, to suggest the subject of her next book: on the relationship between global religions and the twenty-first century nation state.