take part in religion- or belief-related activities, then it is correct to say that the Strasbourg case law supports a right to be free from religion or belief. However, if 'freedom from religion', or the right to be 'free from religion', is interpreted broadly to include a right to be free from exposure to manifestations of religion or belief in the public sphere, since *Lautsi II*, it is incorrect to say that there is clear support for a right to be free from religion in the Strasbourg case law.

Given the nuanced distinction between the two interpretations and the ongoing popularity of the latter interpretation of freedom from religion or belief, it would, therefore, be sensible to avoid using the unhelpful and ambiguous language of 'freedom from' altogether when discussing the negative right not to hold a religion or belief under Article 9.

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Religious Freedom: The Catholic Approach

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I should make plain at the beginning that I am neither a theologian nor a church historian, and I do not represent the Catholic Church. What follows is merely my understanding of the key documents and some of the key interventions by the Church on the topic of religious freedom over the last fifty years. In writing this comment, I have used a collection of the Church's statements on religious freedom published by the Caritas in Veritate Foundation in Geneva.[2] This foundation is concerned with the social doctrine of the Church and seeks to support the work of the Holy See and other Roman Catholic bodies at the United Nations. Anybody interested in the Church's position on this and related issues will find some useful material on the foundation's website.[3]

1 This Comment is based on the text of a paper given at the Conference of the Ecclesiastical Law Society on 12 March 2016.
2 *Caritas in Veritate* is also the title of Pope Benedict's last encyclical and translates as 'Charity in truth'.
3 See <http://www.fciv.org>, accessed 11 October 2016.

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HISTORY

The church has been reflecting on the proper relationship between religion and the state since its earliest times. Tertullian (c 155–240), who is said to have coined the expression '*libertas religionis*' ('religious freedom'), wrote at the beginning of the third century that 'it is a fundamental human right, a privilege of nature, that every man should worship according to his own convictions'.[4] And some of the statements by early Christians (when trying to persuade their fellow citizens that their Christian faith was an asset which made them trustworthy candidates for public office rather than people to be feared) show that there may not be many new problems in this area.

In more recent times and in Europe the upheavals of the last few centuries complicated the Catholic Church's position vis-à-vis the wide variety of states in which it existed. One reaction to this was a strain of thought within Catholicism which came to be labelled 'error has no rights' (an unfortunately all too common temptation for all 'causes' or belief systems). This strain of thought came under serious pressure from the great theological movements of the twentieth century (and, indeed, although I am by no means an expert, from the writings of our own John Henry Newman in the nineteenth century). In so far as religious freedom was concerned, these culminated in the great statement by the Second Vatican Council in 1965, *Dignitatis humanae* (literally, *On the dignity of the human person*).

Interestingly, for those of us raised in the Anglo-Saxon tradition of liberal democracy and the rule of law, this new statement on religious freedom owed much to the writings of an American Jesuit (who was also involved in drafting *Dignitatis humanae*), John Courtney Murray SJ, the title of one of whose works was *We Hold These Truths: Catholic reflections on the American proposition*. Courtney Murray's view was that the church should learn from the United States' First Amendment tradition of religious liberty and that this approach provided a firmer basis for a healthy relationship between church and state.

This debt to the US experience and tradition was acknowledged again by the Holy See's permanent observer to the United Nations and other international organisations in Geneva, Archbishop Silvano Tomasi, in a speech he gave in Washington, DC in 2012. As we shall see, while it is emphatically not for the Church to say how her general principles should be reflected in particular laws, there is at least a reciprocal echo between some of the statements by the Church and the approach taken by the US Supreme Court under the Religious Freedom Restoration Act 1993.[5]

4 Tertullian, *To Scapula*, ch 2.

5 This prohibits the US Government from substantially burdening a person's exercise of religion, even if the burden results from a rule of general applicability, unless the Government 'demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest;

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Of course, many of those attending the Second Vatican Council, particularly from continental Europe, would also have been influenced by their recent experience of living directly with atheist ideologies of various kinds and by those thinkers who attributed the cataclysms of the twentieth century to the specifically atheistic elements in these movements. One can think of Henri de Lubac's *Drama of Atheist Humanism* of 1944. This was a tradition, of course, which would find its most pithy expression much later in Alexander Solzhenitsyn's Templeton prize speech, 'Men have forgotten God'.[6]

A CATHOLIC APPROACH

The starting point for a discussion on the Catholic approach to religious freedom must be *Dignitatis humanae* itself. This document has two broad themes. It addresses the state and sets out the limits of state power (what could be called a vertical aspect) but it also addresses every Christian and demands that all Christians respect the consciences of others, both inside and outside their communities (what could be called the internal *and* horizontal aspect).

The document begins with a definition:

> The Vatican Council declares that the human person has a right to religious freedom. This freedom *means* that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, *within due limits*.[7]

And then, crucially, it says why this is so:

> It is in accordance with their dignity as persons – that is, beings endowed with reason and free will and therefore privileged to bear personal

and (2) is the least restrictive means of furthering that compelling governmental interest' (s 3) and that the Government's burden is a substantial one.

6 The full speech, delivered in 1983, is available at <http://www.roca.org/OA/36/36h.htm>, accessed 1 October 2016. The opening paragraphs read: 'More than half a century ago, while I was still a child, I recall hearing a number of older people offer the following explanation for the great disasters that had befallen Russia: Men have forgotten God; that's why all this has happened. Since then I have spent well-nigh fifty years working on the history of our Revolution; in the process I have read hundreds of books, collected hundreds of personal testimonies, and have already contributed eight volumes of my own toward the effort of clearing away the rubble left by that upheaval. But if I were asked today to formulate as concisely as possible the main cause of the ruinous Revolution that swallowed up some sixty million of our people, I could not put it more accurately than to repeat: Men have forgotten God; that's why all this has happened.'

7 *Dignitatis humanae*, para 2, emphasis added; available at <http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html>, accessed 11 October 2016.

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> responsibility – that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion *as well as psychological freedom*. Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, *but in his very nature* ... the exercise of this right is not to be impeded, *provided that just public order be observed*.[8]

The document next sets out the contents of the right:

i. It is a right of individuals but, because of the very nature of religious belief, it is also a group right;
ii. It should give absolute freedom to religious groups to choose their own ministers and to have their own buildings;
iii. There is a right not to be hindered in teaching and witness;[9]
iv. There must be no prohibition on religious people freely expressing their views in the public square;
v. The rights of the family, in particular, as regards the education of their children and choice of schools should be respected.

It must be clear from the above that the focus of the document is not only on the state. It also says that everyone has an obligation to uphold religious freedom and it is religious freedom for all:

> Therefore the care of the right to religious freedom devolves upon the whole citizenry, upon social groups, upon government, and upon the Church and other religious communities, in virtue of the duty of all toward the common welfare, and in the manner proper to each ...
>
> Men are to deal with their fellows in justice and civility. Furthermore, society has the right to defend itself against possible abuses committed on the pretext of freedom of religion.[10]

8 Ibid, emphasis added.
9 Ibid, para 4 states: 'However, in spreading religious faith and in introducing religious practices everyone ought at all times to refrain from any manner of action which might seem to carry a hint of coercion or of a kind of persuasion that would be dishonourable or unworthy, especially when dealing with poor or uneducated people. *Such a manner of action would have to be considered an abuse of one's right and a violation of the right of others*' (emphasis added).
10 Ibid, paras 6 and 7.

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These precepts are biblically based:

> It is one of the major tenets of Catholic doctrine that man's response to God in faith must be free: no one therefore is to be forced to embrace the Christian faith against his own will … God calls men to serve Him in spirit and in truth, hence they are bound in conscience but they stand under no compulsion. God has regard for the dignity of the human person whom He Himself created and man is to be guided by his own judgment and he is to enjoy freedom … [Christ] refused to be a political messiah, ruling by force.[11]

RECENT STATEMENTS

It seems to me that the following themes emerge from the more recent statements by the Catholic Church on this issue:

i. That religious freedom has a special position in the protection of human rights;
ii. That religious freedom is essential to peace and the fight against extremism;
iii. That religion has an important function in any society and society is impoverished if it is not allowed its proper space;
iv. That there is a difference between a healthy secularism and pluralism, which the Church advocates, and an aggressive secularism, which the Church opposes as being of the same nature as other forms of extremism, such as religious extremism.

The centrality of the right to religious freedom

To me at any rate, and I imagine to many who come from the Western liberal tradition, some of the statements by the Church as to the centrality of this right in the calendar of rights seemed surprising when I first read them. However, when I analysed the statements, the content of the right (both its vertical and horizontal aspects) and ordinary human experience, I began to see that the Church might have a hint of a point. It may not be a coincidence that arguably the most freedom-loving nation on earth, the United States, has taken a robust approach to this topic.

St John Paul II, a man with deep personal experience of both of the totalitarian ideologies of the twentieth century, said that 'in a certain sense, the defense of

11 Ibid, para 10.

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this right is the litmus test for the respect of all the other human rights'.[12] Pope Benedict XVI, in an important speech for the World Day of Peace in 2011, said:

> Respect for essential elements of human dignity, such as the right to life and the right to religious freedom, is a condition for the moral legitimacy of every social and legal norm … Religious freedom is not the exclusive patrimony of believers, but of the whole family of the earth's peoples … it cannot be denied without at the same time encroaching on all fundamental rights and freedoms, since it is their synthesis and keystone.[13]

In speaking to the UN Human Rights Council, Archbishop Tomasi described religious freedom as 'a bridge for and to all human rights … [because] human dignity … is rooted in the unity of the spiritual and material components of the person'.[14] Two years later, in Washington, DC, Tomasi said that 'Democracies are built by respecting, through personal and institutional choices, this freedom of conscience and religion … The United States *Bill of Rights* embodies a principle that remains a test for genuine democracy: the free exercise of religion'.[15] Indeed, the Church appears to be fond of quoting Alexis de Tocqueville's aphorism that 'despotism may be able to do without faith but freedom cannot'.

When one reflects on the nature of a healthy religious belief (and it is to be remembered that the Church's teaching in this area is predicated on the belief being a healthy one and to some extent defining what a healthy religious belief should look like), one can see where these statements might come from. If human beings are both spiritual and material, if they are also moral beings whose nature impels them to search for truth by reason and experience, if all cultures worth the name admire and protect those who act according to their honest conscience no matter who might disagree, and if religion has social, familial and community aspects which imprint themselves on the very identity of

12 Address of John Paul II to the participants in the Parliamentary Assembly of the Organization for Security and Co-Operation in Europe, 10 October 2003, available at <https://w2.vatican.va/content/john-paul-ii/en/speeches/2003/october/documents/hf_jp-ii_spe_20031010_osce.pdf>, accessed 1 October 2016.

13 Message of His Holiness Pope Benedict XVI for the celebration of the World Day of Peace, 1 January 2011, available at <http://w2.vatican.va/content/benedict-xvi/en/messages/peace/documents/hf_ben-xvi_mes_20101208_xliv-world-day-peace.html>, accessed 1 October 2016.

14 Statement by Archbishop Silvano Tomasi, Permanent Representative of the Holy See to the United Nations and Other International Organizations in Geneva, 23 March 2010, available at <http://www.holyseemissiongeneva.org/index.php?option=com_content&view=article&id=1861:hrc-13th-session-item-9-racism-racial-discrimination-xenophobia-and-related-forms-of-intolerance&catid=57:human-rights&Itemid=82>, accessed 11 October 2016.

15 S Tomasi, 'International religious freedom: an imperative for peace and the common good', keynote address, Catholic University of America, Washington, DC, 12 September 2012, available at <http://iprcua.com/archbishop-silvano-m-tomasis-keynote-address/>, accessed 11 October 2016.

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individuals, then one can see the wide variety of rights and freedoms that are affected once freedom of religion is denied or reduced.

Religious freedom and peace

Once it is understood that the Catholic approach to religious freedom is an obligation both of the state (what might be termed its vertical aspect) and of religious people themselves (what might be called its internal and horizontal aspect), its role in ensuring peace and stability can be seen. Respect for religious freedom by the state is crucial in order to protect the state from the feelings of injustice and disenfranchisement that inevitably (and probably rightly) arise when one's most deeply held convictions (both in their internal and in their external aspects) are interfered with. However, this vertical aspect also assists the internal and horizontal aspects by respecting open expressions of different religions, so that the two together can encourage harmony and guard against what Pope Benedict in his Westminster Hall speech called: 'distorted forms of religion, such as sectarianism and fundamentalism'.[16]

I would argue that it is when religious belief is not allowed its proper oxygen or can be linked to feelings of injustice that it begins to be used for ends foreign to its authentic nature. The Church's statements to this effect have been frequent. Pope John Paul II described religious freedom as 'a strong deterrent to the violation of human rights by communities that exploit religion for purposes that are foreign to it ... [It] is therefore seen to be a most effective means for guaranteeing security and stability'.[17] Pope Benedict called it 'an authentic weapon of peace'.[18]

The important place of religion in society

It seems to me that the view that religion is generally a bad thing and a threat to everything we are supposed to hold dear has gained a degree of respectability in public discourse. This is not a new phenomenon: the early Christians faced similar views and, to pick a spot in history, we find writers such as Chateaubriand, in his great work *The Genius of Christianity* (1802), attempting to answer such charges.

The Church's approach to religious freedom is supported by its assertion that, while there are great wrongs committed in the name of religion (and its horizontal approach addresses that), the balance sheet is overwhelmingly in favour of the positive effect that religion has had and continues to have on society. The Church has focused on three main areas: the charitable work of religions and

16 Pope Benedict's address, Westminster Hall, 17 September 2010, available at <http://www.thepapalvisit.org.uk/Replay-the-Visit/Speeches/Speeches-17-September/Pope-Benedict-s-address-to-Politicians-Diplomats-Academics-and-Business-Leaders>, accessed 1 October 2016.
17 Address of John Paul II (see n 12).
18 Message of His Holiness Pope Benedict XVI (see n 13).

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religious people, the contribution of religion to culture, and the contribution that the Church can make to the major questions with which any society has to grapple.

One does not have to travel too far or go back too far in history to see the role of the Catholic Church in educating the poor, caring for the sick and helping the poor and marginalised. The centrality of church groups in the provision of social care comes across clearly in the much-maligned report by the Commission on Religion and Public Life in 2015. Regarding religion's contribution to culture, Pope Benedict said in 2011, 'How can anyone deny the contribution of the world's great religions to the development of civilization?'[19] Who can imagine European high culture without the Catholic Church or the paintings of Rembrandt without Dutch protestantism or the Islamic world without the sublime beauty of its mosques and religious arts and architecture?

Finally, the Church would say that it has been around a long time and has engaged with all cultures and intellectual currents; at the same time it has real contact with all categories of people in virtually every place. In the words of Pope Paul VI, it is 'an expert in humanity'.[20] The Church's role in this area, again if properly understood, is a positive rather than a negative one. The proper role of religion, in this respect, in the Catholic view, is to be found in Pope Benedict's speech in Westminster Hall:

> The Catholic tradition maintains that the objective norms governing right action are accessible to reason, prescinding from the content of revelation. According to this understanding, the role of religion in political debate is not so much to supply these norms, as if they could not be known by non-believers – still less to propose concrete political solutions, which would lie altogether outside the competence of religion – but rather to help purify and shed light upon the application of reason to the discovery of objective moral principles … This is why I would suggest that the world of reason and the world of faith – the world of secular rationality and the world of religious belief – need one another and should not be afraid to enter into a profound and ongoing dialogue, for the good of our civilization.
>
> Religion, in other words, is not a problem for legislators to solve but a vital contributor to the national conversation.[21]

19 Ibid.
20 Pope Paul VI, Address to the United Nations General Assembly, 4 October 1965, available at <http://www.christusrex.org/www1/pope/UN-1965.html>, accessed 11 October 2016.
21 Pope Benedict's address, Westminster Hall (see n 16).

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The nature of secularism

In the Catholic view, a healthy secularism or a healthy pluralism is a positive good. I will not go through the many statements on this, but suffice it to say that religious freedom is regarded as essential to both. However, in recent times, the Church has also made statements about what constitutes a 'healthy' secularism (what Pope John Paul II described as states being 'disciplined and balanced in the expression of their secular nature'[22]) and has warned against what it has come to see as an 'aggressive secularism'. These are my words, but it might be that there is a distinction between secularism as a healthy political principle and secularism as an ideology. As we have seen, Pope Benedict, a man whose approach to religion in the public square is one of dialogue and respect for the different competencies of the state and religions, would, it seems to me go, so far as to say that some forms of 'ideological atheism' have characteristics that one also finds in religious extremism, and both are to be condemned. In his 2011 World Day of Peace address, he said:

> The same determination that condemns every form of fanaticism and religious fundamentalism must also oppose every form of hostility to religion that would restrict the public role of believers in civil and political life.
>
> It should be clear that *religious fundamentalism and secularism are alike in that both represent extreme forms of a rejection of legitimate pluralism and the principle of secularity*. Both absolutize a reductive and partial vision of the human person, favouring in the one case forms of religious integralism and, in the other, of rationalism. *A society that would violently impose or, on the contrary, reject religion is not only unjust to individuals and to God, but also to itself.*[23]

CONCLUSION

In conclusion, the Catholic Church has a rich tradition of teaching on religious freedom. This tradition is based on the essence of what it is to be a human being, the inviolability of conscience and the good of society. In the Catholic view, a healthy secular or pluralistic state must take a robust approach to religious freedom if it is to be true to itself. And, importantly, the Church warns (from her own experience) that extremism is not only to be found among those who profess religious belief but also in ideologies, and that freedom of religion, properly understood, is the best antidote to these.

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22 Address of John Paul II (see n 12).
23 Message of His Holiness Pope Benedict XVI (see n 13), emphasis in original.

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