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American Catholics and the First Amendment: 1776-1840

THE CELEBRATION OF the bicentennial of the Constitution, and more specifically in 1989, of the Bill of Rights, demands that Americans reexamine the fundamental values they acknowledge in that document, even if they do not always practice them. Liberty is at the heart of the American value system and has become one of the principal sources of American identity. The First Amendment begins by protecting liberties relating to religion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The primacy of religious liberty in the Bill of Rights was more than a literary convention. The bill's framers understood that in a religiously plural society both American identity and republican stability hinged on the free expression of religious beliefs. Religious minorities also appreciated that the liberties secured in the Constitution meant that they would enjoy safeguards against interference from the state, but that they also would have to compete in a voluntaristic religious environment for adherents. Such an arrangement promised a freedom, though, that might loosen religious ties. Perhaps more than any other group in the early republic, Catholics recognized, and wrestled with, the tensions between religious liberty at large and the need to preserve dogma and discipline within a church.

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Catholics, like other religious groups in this country, have benefited from, contributed to, and supported in principle as well as in practice the American tradition of religious liberty and separation of church and state.[1] "Nowhere," Elwyn A. Smith argued in 1972, "has the Roman Catholic Church created a more distinctive national policy of church-state relations than in the United States, yet without any breach with the fundamental Catholic tradition."[2] By analyzing what some native mid-Atlantic and recent Irish immigrant American Catholics did between 1776 and 1840 to advance American liberties, what they said about their meaning, and how they reconciled what they did and said with Catholic beliefs, it becomes possible to chart with some precision the early rise and development of the distinctive American Catholic tradition regarding the first American liberties.[3] Some politically active Catholic laity during those years participated in defining America's first liberties and later contributed to the expansion of civil

[1] For studies of American Catholic perceptions of religious liberty and separation, see, for example, Anson Phelps Stokes, *Church and State in the United States* (3 vols., New York, 1950), *1*:784-853; *3*:454-85, 638-40; John T. Ellis, "Church and State: An American Catholic Tradition," *Harper's Magazine* 207 (Nov. 1953), 63-67; Ellis, "The Irish in Relation to Religious and Political Freedom," *Wiseman Review* 238 (1964), 328-42; Elwyn A. Smith, *Religious Liberty in the United States: The Development of Church-State Thought since the Revolutionary Era* (Philadelphia, 1972), 156-244; and James J. Hennesey, "An American Roman Catholic Tradition of Religious Liberty," *Journal of Ecumenical Studies* 14 (Fall 1977), 35-39.

[2] Smith, "The Catholic Tradition," 156.

[3] I have limited my study of the American Catholic tradition to the period 1776 to 1840. The year 1840 represents a logical *terminus ad quem* for the rise and early development of the Catholic position. In that year Bishop John Hughes of New York, although he accepted the First Amendment, made governmental aid to parochial schools a major public issue. Subsequently, some Protestants seized that issue as a demonstration of an official Catholic rejection of non-establishment. Although most Catholics in the post-1840 period continued to support both clauses of the First Amendment, their support was obfuscated by the issue of aid.

Although some recent historians, such as Elwyn Smith, have acknowledged the distinctiveness of the American Catholic tradition regarding the liberties protected in the First Amendment, few have examined closely the tradition's early rise and development. The one exception is Joseph P. Chinnici, "American Catholics and Religious Pluralism, 1775-1820," *Journal of Ecumenical Studies* 16 (Fall 1979), 727-46. Chinnici analyzes Catholic understandings of religious pluralism rather than the First Amendment. He argues, moreover, that after the 1830s American Catholics ceased to distinquish "civil toleration from religious indifference" (p. 745). In this essay I am demonstrating that the distinction continued until 1840 and would argue that it endured throughout the nineteenth and twentieth centuries in most American Catholic interpretations of religious liberty.

liberties in some state constitutions. Articulate laity and clergy accepted both the non-establishment and free exercise clauses of the First Amendment on the grounds of experience, a republican philosophy of the state, and religious principles—not mere expediency. American Catholics periodically asserted, furthermore, that their support for American liberties was consistent with and not opposed to the authentic Catholic tradition, even though their positions conflicted with clearly articulated early nineteenth-century papal statements.

During the constitution-making period (1776 to 1791), Catholics were significantly conscious of the tentativeness of America's legislative movements toward general toleration and religious liberty. The Maryland priest John Carroll, although enthusiastic about the gradual extension of religious liberty in the country, was apprehensive about the full extension of those rights to American Catholics. As early as 1784, he acknowledged in a published defense of Catholic teachings that the country was "blessed with civil and religious liberty" and predicted that if Americans had the wisdom to preserve this liberty, the country "may come to exhibit a proof to the world, that general and equal toleration, by giving free circulation to fair argument, is the most effectual method to bring all denominations of christians to an unity of faith."[4]

Carroll, however, also expressed to European correspondents his anxiety about the survival of the American experiments with religious liberty. In 1785 he told a Roman correspondent that he was not sure how long the most recent state acknowledgments of equal toleration would last for Catholics. Religious liberty was a new and revolutionary experiment, and it was on provisional ground as far as Catholics like Carroll were concerned.[5] After 1791 the American Catholic minority grew uneasy about the fragile nature of religious liberty as they faced legal restrictions against Catholics in some state constitutions and the social and cultural intolerance of the "Protestant Crusade."

These circumstances alone make it easy to understand why American Catholics during these years accepted and worked for religious

[4] Thomas O'Brien Hanley, ed., *The John Carroll Papers* (3 vols., Notre Dame, 1976), *1*:140 (hereafter, *JCP*).

[5] John Carroll to Cardinal Antonelli, Feb. 27, 1785, ibid., *1*:170; see also *1*:259, 365-68, and 410.

liberty and separation. They were a tiny minority of primarily English-speaking Catholics[6] who were located along the eastern seaboard and who had their own memories of past religious oppression and even current reminders that constitutional religious liberty did not always mean cultural or social religious toleration. For these Catholics, past experience clearly demonstrated that unions of church and state had been detrimental to their own political, civil, and religious interests. John Carroll informed an English correspondent in 1785 that Catholics "have all smarted heretofore under the lash of an established church and shall therefore to [*sic*] on our guard against every approach towards it."[7] Charles Carroll, Mathew Carey, and numerous others kept alive Catholic memories of the evil effects of established churches and what Carey called the horrors of bloody intolerance.

For Carey, "religious persecution is the real and genuine Antichrist."[8] In the past, persecution had obtained a "glorious triumph over the spirit of Jesus" in Catholic Madrid, Anglican London, and Puritan Boston. It had been almost universal wherever any Christian sect was in the majority. The Quakers, according to Carey, "are almost the only body of Christians, who ever possessed power without persecuting their fellow Christians."[9]

Enlightened Catholic laymen, like Charles Carroll and Carey, freely admitted and deplored the fact that Catholics in Europe had been and were guilty of the crime of religious persecution, even though they had no monopoly on it. In 1774 Carroll wrote: "I execrate ye intolerating spirit of ye Church of Rome, and of other Churches, for she is not singular in that."[10] Whether in the hands of Protestants or Catholics, religious intolerance could produce "only martyrs or hypocrites."[11] Carey, like many others, wanted to bury these past

[6] In 1776 Catholics represented about 1 percent of the United States population; in 1840, although significantly increased by means of immigration, they still represented only about 4 percent of the total population.

[7] John Carroll to Charles Plowden, Feb. 27, 1785, *JCP*, *1*:168.

[8] Mathew Carey, *Vindiciae Hibernicae; Or, Ireland Vindicated* (Philadelphia, 1819), 480. See also Carey, *A Roland for an Oliver. Letters on Religious Persecution* (2nd ed., Philadelphia, 1826), ix.

[9] Carey, *A Roland*, 17.

[10] Charles Carroll to William Graves, Aug. 15, 1774, quoted in Ellen Hart Smith, *Charles Carroll of Carrollton* (Cambridge, 1942), 122. See also Carey, *A Roland*, 17.

[11] Carey, *Vindiciae Hibernicae*, 94.

crimes "in eternal oblivion" and engage in mutual forgiveness.[12] Religious persecution was a disorder of the past, and he did not want his own generation of American Catholics to be vilified and held responsible for the "cruelty of their ancestors." For Carey, persecution was a devastating historical practice, not a religious principle. Catholics as well as Protestants and Jews suffered under those practices which were inconsistent with natural rights and the gospel.

If experience had demonstrated the evil effects of established churches, it also had demonstrated the beneficial effects of religious toleration. American Catholic leaders like Bishops John Carroll, John England, and a host of lay and clerical elites periodically appealed with pride to the early Maryland Catholic tradition on religious toleration.[13] Until the Glorious Revolution, the argument went, Catholics and Protestants enjoyed religious liberty and lived together in social peace. After the American Revolution, the earlier tradition of general toleration was revived.

In 1783, eight years before the ratification of the First Amendment, John Carroll pointed out to a Roman correspondent the benefits of the American Revolution for American Catholics in particular. "You are not ignorant, that in these United States our Religious system has undergone a revolution, if possible, more extrordinary [*sic*], than our political one." Free toleration, if not full religious liberty, was allowed for all Christians in all states of the union, and in Pennsylvania, Delaware, Maryland, and Virginia Catholics were able to enjoy all civil rights. Such freedom, Carroll explained, was "a blessing and advantage" that Catholics had the duty to preserve and to improve.[14]

Catholics tried to do just that. Prominent American Catholic laymen, motivated by a zeal for the public good as well as their own self-interests, helped initiate and extend legislation on religious liberty

[12] Carey, *A Roland*, ix, 21.

[13] See, for example, *JCP*, *1*:403, 405; Ignatius Aloysius Reynolds, ed., *The Works of the Right Rev. John England, First Bishop of Charleston* (5 vols., Baltimore, 1849), *4*:18 (hereafter, *Works of John England*). On the Maryland tradition, see Gerald P. Fogarty, "Property and Religious Liberty in Colonial Maryland Catholic Thought," *Catholic Historical Review* 72 (1986), 573-600; James J. Hennesey, "American and Catholic: The Bicentennial Years," *Theology Digest* 34 (1987), 317-25; Hennesey, "Roman Catholicism: The Maryland Tradition," *Thought* 51 (1976), 282-95.

[14] John Carroll to Vitaliano Borromeo, Nov. 10, 1783, *JCP*, *1*:80.

and separation at both the state and federal levels. Even moreso than Pennsylvania's, the eighteenth-century Maryland Catholic experience is particularly instructive in this regard. Charles Carroll was the most significant Catholic proponent of general toleration and religious liberty. In 1774 he defended the rights of Catholics to speak out on political matters in Maryland and protested the irrational system that made religious affiliation a civil disability. In 1776 he helped write the Maryland state constitution which provided for general religious liberty, but only for Christians.[15]

Charles Carroll also signed the Declaration of Independence, an act which he later interpreted as the first step in a movement toward universal religious liberty. He told a friend in 1829 that, when he signed that document, he had in view "not only our independence of England but the toleration of all sects, professing the Christian Religion, and communicating to them all great rights."[16] Carroll's 1829 recollection may not have been historically accurate, but it was consistent with his general perspectives.

Daniel Carroll of Maryland and his fellow Catholic Thomas Fitzsimons of Philadelphia[17] were elected to the United States House of Representatives and took part in and approved the formation of the United States Constitution and the Bill of Rights. Although their contributions were not singularly significant, they did participate, more as American citizens than as Catholic laymen, in the establishment of religious liberty and separation of church and state. In 1789 Carroll was appointed to a congressional committee assigned to frame the first amendment. He supported an amendment that would secure the equal rights of conscience and explicitly forbid any establishment of religion at the national level. Such an amendment, he asserted, would be the most helpful measure the Congress could enact to attach

[15] Eighteenth-century Maryland Catholics, according to John Carroll, approved the 1776 Maryland constitution because it provided religious liberty for all Christians. See *JCP 1*:168. As a Maryland state senator, Daniel Carroll fostered this Maryland tradition and periodically sought legal measures to assist all Christian sects in the state. On this, see Sister Mary Virginia Geiger, *Daniel Carroll: A Framer of the Constitution* (Washington, 1943), 83-84.

[16] Charles Carroll to G.W.P. Custis, Feb. 20, 1829, quoted in Smith, *Charles Carroll*, 274.

[17] On Thomas Fitzsimons, see Richard J. Purcell, "Thomas Fitzsimons, A Framer of the American Constitution," *Studies* (Dublin) 27 (1938), 273-91.

the American people to the federal government. He was not particularly concerned about the precise wording of the amendment as long as it secured the rights of conscience.[18]

After the ratification of the Bill of Rights, a few American Catholic politicians expanded the meaning and application of religious liberty when they helped remove from some state constitutions clauses that had severely restricted civil rights for Catholics. The Catholic layman Francis Cooper (1764-1850), a Jeffersonian Republican, was elected to the New York State Assembly in 1806, but he refused to take the constitutional oath of office because, he claimed, it violated his religious freedom, requiring as it did a renunciation of foreign allegiance "in all matters ecclesiastical as well as civil."[19]

Cooper's fellow parishioners at St. Peter's in New York City petitioned the legislature to remove the odious clause against Catholics, because it violated the liberal principle of the First Amendment and New York State's constitutional acknowledgment of equal religious liberty. The prescribed oath, they argued, subjected Catholics "to a religious test, to which their consciences are opposed" and which "operates upon them as an absolute disqualification" for office. Catholic allegiance to the bishop of Rome was purely spiritual and had nothing to do with American civil liberties.[20] The petition succeeded. Once the odious clause was removed, Cooper took the revised oath and assumed his seat in the Assembly.

A North Carolina Catholic layman, Judge William Gaston (1778-1844), also helped remove legislative disabilities against Catholics.[21] In 1835 he argued before the North Carolina Constitutional Convention for a "total abrogation of Religious Tests" from the state's constitution.[22] The state's constitution declared that "no man who

[18] Geiger, *Daniel Carroll*, 164.

[19] On Cooper, see William H. Bennett, "Francis Cooper: New York's First Catholic Legislator," *Historical Records and Studies* 12 (1918), 29-38.

[20] Petition reprinted in Leo Raymond Ryan, *Old St. Peter's: The Mother Church of Catholic New York (1785-1935)* (New York, 1935), 84-85.

[21] On Gaston, see Edward F. McSweeney, "Judge William Gaston," *Historical Records and Studies* 17 (1926), 172-88.

[22] *Speech on Religious Toleration by Judge William Gaston of Craven at the Constitutional Convention Held at Raleigh, North Carolina, June 4, 1835. Reproduced from the Proceedings and Debates* (Raleigh, 1836), reprinted in *Historical Records and Studies* 17 (1926), 235.

shall deny the being of God, or the truth of the Protestant religion, or the divine authority of either the old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit, in the civil department within this State."[23] Gaston asserted in opposition to this religious test that "anyone who is prohibited from certain civil rights because of the exercise of his religious opinions suffers a grievous wrong."[24] Even if the clauses never had previously affected anyone, still they were tyrannical: "All unnecessary restraint on freedom of thought or action, is tyranny, and all unmeaning and inoperative restraint, folly."[25] A majority of the state legislature considered Gaston's arguments for a "total abrogation" of the religious clauses and his support for religious freedom dangerously "latitudinarian."[26] The legislature, however, voted to replace "Protestant" with "Christian" to provide room for Gaston and his fellow Catholics in public offices. It was not the "total abrogation" that Gaston had in mind, but, given the circumstances, it was the most he could obtain.

A few Catholics, although active in promoting their own rights to full religious liberty in this country, also lobbied publicly for the eradication of civil disabilities for all religious groups, not just for Catholics. Mathew Carey of Philadelphia and Bishop John England of Charleston, South Carolina, in particular, argued periodically that the principle of religious liberty was universal and should be universal in application. Both condemned the abominable persecution of the Jews throughout Christendom, abhorred Maryland's exclusion of Jews from office-holding, and called for a repeal of Maryland's legal restrictions against the Jews.[27] Bishop England also supported the emancipation of Jews in England, Bavaria, Damascus, and Rhodes, and initiated or joined numerous committees in Charleston to promote these causes.[28]

[23] Ibid., 192.
[24] Ibid.
[25] Ibid., 208.
[26] Ibid., 243.
[27] Carey, *Vindiciae Hibernicae*, 480.
[28] *United States Catholic Miscellany*, July 17, 1830, p. 18; Feb. 25, 1832, p. 279; July 18, 1835, p. 22; Sept. 5, 1840, p. 65f; *Works of John England*, *1*:16.

Catholics accepted neither the Protestant evangelical nor the exclusively rationalist arguments for religious liberty; nonetheless, they shared much with both traditions in the United States.[29] Although Catholics accepted the individual's natural rights to liberty, their particular constellation of arguments for religious liberty was not exclusively based upon individualism nor autonomy in regard to religion. Revelation and reason combined to provide arguments for religious liberty in society and for a communal tradition in religion that respected the individual's rights within the context of a magisterial churchly tradition.

John Carroll was well aware, as he admitted in his private correspondence of 1784, that few in the Catholic communion outside of the United States had spoken out vigorously to support religious liberty. He wanted Catholic theologians in Europe to argue the case for universal toleration—as had Joseph Berington in England and Arthur O'Leary in Ireland. He supported the principle and practice of religious liberty and occasionally indicated the reasons for his support, but he never developed any systematic arguments.[30] Bishop England gave the clearest American Catholic definition and defense of religious liberty. For him, it was "the right of every man to follow the dictates of his conscience in the belief of doctrines purely religious *without being subject, on that account*, to civil pains and disabilities."[31] Catholic arguments for religious liberty were based upon experience, revelation, and reason.

The experience of religious liberty provided a powerful and perhaps widely shared Catholic argument for religious liberty. It operated like a self-evident principle upon most Catholics. Principles must be tested by their effects, the pragmatist would say, and American Catholics were pragmatists when it came to religious liberty. Experience dem-

[29] What American Catholics meant by religious liberty and separation and how they interpreted these American constitutional provisions in light of their Catholic tradition are difficult to determine with much precision because no American Catholic wrote a systematic treatise upon the subject. Their views, therefore, have to be abstracted from occasional statements in their apologetical tracts.

[30] John Carroll to Joseph Berington, July 10, 1784, *JCP*, *1*:148. On Carroll's approach to religious liberty, see Joseph M. McShane, "John Carroll and the Appeal to Evidence: A Pragmatic Defense of Principle," *Church History* 57 (1988), 298-309.

[31] *United States Catholic Miscellany*, Jan. 27, 1827, p. 212.

onstrated that religious liberty was beneficial not only for Catholics but for all in society. It achieved, in other words, *salus populi* (i.e., public peace and prosperity), the ultimate purpose of the state.

American Catholics also periodically invoked three traditional Christian principles to support American religious liberties. First, they had recourse to the traditional distinction between the spiritual and the temporal realms. The spiritual realm generally referred to the church's powers to provide means for eternal salvation. The temporal referred to the state's powers to provide for public peace, justice, and material prosperity. Catholics, like other Christians, found support for this traditional distinction in the Bible: "Give to Caesar the things that are Caesar's, and to God the things that are God's" (Matt. 22:21), and "My kingdom is not of this world" (John 18:36). Of the two realms, the spiritual was superior to the temporal. Christianity had refused to recognize the state's powers as ultimate. It placed God beyond and indeed over the power of the state, repeatedly asserting that it was better to obey God than man in cases of conflict between the two realms.

American Catholics also frequently appropriated the traditional Catholic principle of the freedom of the church (i.e., *libertas ecclesiae*) to justify their support for religious liberty and separation. The church, constituted by divine design, so the Catholic argument went, had been given its independence from the state, and, therefore, no state had the power to arrest from the church what God had given it.

The three traditional principles provided the general theoretical context for American Catholic arguments. The principles themselves and the biblical passages that supported them had been variously interpreted and applied in the long history of the Christian West. They were repeatedly used, for example, to defend the various unions of church and state throughout history. In the United States, however, these traditional principles began to be interpreted in new ways as the American experience itself became a testing ground where the principles were reinterpreted and reapplied. The ancient distinction between the spiritual and the temporal was applied to the American separation of church and state. The superiority of the spiritual reinforced the American constitutional view of the state. This superiority did not mean, as it had in some previous periods of Christianity, that the church was superior to the state in all things, but only in reference

to the ultimate salvific end of humankind. The state had its own autonomy in reference to the temporal ends of human existence.

American Catholic constitutional views of the state, although reinforced by the three traditional principles, had their most immediate source in Enlightenment ideals. American Catholics, like other Americans, had been significantly influenced by Enlightenment ideas of natural rights and a compact view of the state. While still in Europe as a young priest, John Carroll, using natural rights language, spoke of the "idea of an original equality, or of the common rights of mankind" when criticizing the slavish dependence of the citizens he observed in some states in Europe.[32] Whether Federalists or Jeffersonian Republicans, American Catholics accepted a constitutional view of the state, and that meant in particular that the state had no divinely established powers to determine heresy or to defend orthodoxy.

The state's powers were limited by the divinely constituted natural rights of conscience, by the spiritual constitution of the church, and by the people as the only source of political power. The U.S. Constitution, John England argued, explicitly acknowledged the government's incompetence "to legislate upon religion or morals, directly or indirectly."[33] It simply had no power over opinion and religious persuasions. It protected the rights of individuals and minority religious groups—no matter what religious denomination was in a majority in the country. "If ninety-nine hundredths of the present population," England argued, "were to become Catholics to-morrow, they would be morally criminal did they exclude the remaining hundredth portion from any civil, or political, or religious right; and under our constitution the attempt would be usurpation, and therefore invalid."[34]

Catholic apologists like England argued repeatedly that their acceptance of a constitutional view of the state was not inconsistent with their religious beliefs, as some Protestants had charged. In the past Catholics had lived under a variety of forms of government and

[32] "Journal of European Tour, 1771-72," *JCP*, *1*:19.

[33] *Works of John England*, *4*:53. For England's views of religious liberty, see Patrick Carey, *An Immigrant Bishop: John England's Adaptation of Irish Catholicism to American Republicanism* (New York, 1982), 47-53, 83-93.

[34] *Works of John England*, *4*:58-59.

had entertained various philosophies of the state. There was no such thing as an authentic Catholic doctrine of the state because there was no divine revelation on the subject. Catholics were free to live under and construct whatever philosophy of the state that the mind could devise. A constitutional view of the state, however, was consistent with Catholic principles and a Catholic understanding of revelation, even though it did not have its source in revelation.

A natural rights philosophy also informed the American Catholic view of religious liberty. The right to worship, John Hughes noted, was grounded in "a spiritual concern between man and his God" and that right, because it was inherent in nature, was indefeasible, inviolable, inalienable, and common to all men. "The rights of *conscience*, in their personal relation, are as inalienable as the rights of *memory*; and it is just as absurd to talk of 'surrendering' the one as the other." The prerogative of believing, "*as an act of the mind*, bids defiance of all *external power*." Demetrius Augustine Gallitzin, a Pennsylvanian like Hughes and a pastor of Loretto, argued in *A Defence of Catholic Principles* (1815) that Catholics as well as Protestants were agreed "in believing that no authority merely human possesses any right in controlling the consciences of men."[35] The U.S. Constitution, unlike civil constitutions in many Protestant as well as Catholic countries, had simply acknowledged, not granted, that right.

Christian revelation, too, supplied Catholics with explicit arguments in support of religious liberty. Christian faith and church membership was of its very nature voluntary. In Catholic theology faith was indeed a gift of God's grace, but it was also a free act of human response. No temporal force should be used to change, promote, or sustain religious opinions. Christians, John England maintained, should follow the Jesus who "taught truth, and gained converts by persuasion." He used no temporal pains, penalties, or promises to communicate his truth to his followers. He used only spiritual means. And if the church itself should find anyone in error, it should follow Christ's

[35] John Hughes and John Breckinridge, *A Discussion: Is the Roman Catholic Religion Inimical to Civil or Religious Liberty? Is the Presbyterian Religion Inimical to Civil or Religious Liberty?* (Philadelphia, 1836), 45, 46, 49, 51. See also *Works of John England*, 4:55. On Gallitzin, see *Gallitzin's Letters: A Collection of the Polemical Works of the Very Reverend Prince Demetrius Augustine Gallitzin (1770-1840)* (Loretto, 1940), 96.

example and "endeavor to reclaim him by argument and persuasion," not by force.[36]

The Christian principle of universal charity was another reason for accepting religious liberty. In civil life, John England wrote, we should respect and love all persons, "forget the distinctions of Religion, and look upon every child of Adam as a brother."[37] The unity of all humanity in one blood and the evangelical admonition to love one's neighbors imposed upon all citizens a duty to respect each person's God-given right to believe and to express what was considered true. Civil respect was not just a matter of putting up with one another, it was a positive Christian principle of love.

England also periodically appealed to an argument from Christian eschatology to demonstrate his acceptance of religious liberty. A society in which there was a mixture of religions was very much like the gospel parable of the wheat and the tares. Only God could distinguish between the two. In the time before His final judgment, therefore, Christians should live together in peace and love, and "leave the final judgment [about errors in matters of religion] always to God."[38]

American Catholic support for religious liberty can sound very much like religious "indifferentism"—i.e., the view that all religions were equal and that all religious doctrines were indeed relative. This was not the case. John Carroll and John England distinguished between religious liberty as a principle that should guide persons in civil life and a religious indifferentism that had no regard for doctrinal truth in religious life. The constitutional state had a duty to be perfectly neutral and indifferent to religious truth. The Christian, however, could never be neutral with regard to religious truth. The same creator who gave all humans the gift of liberty also gave them the duty to search for the truth and to preserve it when they found it. Although all Christians had the freedom to search for the grounds of their Christian beliefs, no Christian had the liberty to depart from what God had revealed. The Christian understanding of freedom, unlike the rationalist, was not based upon neutrality in the search for truth. John Carroll approvingly quoted the Baptist John Leland to

[36] *Cork Mercantile Chronicle*, April 29, 1816; Sept. 5, 1814.
[37] Ibid., April 26, 1816; see also Feb. 15, 1815.
[38] *Works of John England*, *4*:229, 55.

argue that the Christian must be open to rational conviction in his or her search for the truth of doctrines and facts, but this did not mean that he or she had to be "absolutely indifferent to them, before he begins that inquiry."[39] For the Christian, faith seeks understanding. Freedom of inquiry starts with a basic commitment to the truth that is in Christ. It is that truth, in turn, that makes the Christian free.

Liberty within religious life was not a license to believe whatever suited one's fancy or whatever was most useful. It was the means that led toward truth. Truth had to be based upon either the authority and testimony of God or the evidence of reason. Any religious person who maintained opinions for which he could show neither the evidence of revelation or reason was not acting responsibly. Catholics, like many other Christians of the era, had a supreme confidence in reason's ability to discover evidence for particular religious beliefs.

Enlightened Catholic apologists like Carroll and England argued that a reasonable search for the truth would lead individuals to accept the Catholic church as the true Christian church.[40] Investigation of all the evidence, moreover, would demonstrate that the Catholic church alone had the divinely constituted means to judge infallibly between true and false Christian doctrines. This did not mean that Catholicism should have exclusive rights in the political and civil order. It meant that the determination of what constituted Christian doctrine was the prerogative of the spiritual not the civil realm.

American Catholics could accept religious liberty and American religious pluralism, work with believers and non-believers toward the general welfare of society, believe that persuasion was the only means of propagating religious truth, and still maintain that Catholicism was

[39] *JCP*, *1*:84; see also *1*:88.

[40] England quoted a declaration of the Irish bishops to demonstrate that the term "true church" did not mean that salvation was exclusively available in Catholicism:

> Catholics hold, that, in order to attain salvation, it is necessary to belong to the true church, and that heresy, or a wilful and obstinate opposition to revealed truth, as taught in the Church of Christ, excludes from the kingdom of God. They are not, however, obliged to believe, that all those are wilfully and obstinately attached to error, who, having been seduced into it by others, or who, having imbibed it from their parents, seek the truth with a cautious solicitude, disposed to embrace it when sufficiently proposed to them; but leaving such persons to the righteous judgment of a merciful God, they feel themselves bound to discharge towards them, as well as towards all mankind, the duties of charity and a social life.

See *Works of John England*, *5*:94; see also *JCP*, *1*:87.

the true religion. Religious indifference, therefore, was not the basis of their acceptance of religious liberty. They accepted it as a natural right and a constitutional principle that had foundations in reason, revelation, and experience.

Most articulate Catholics agreed on the meaning of religious liberty and saw the separation of church and state as an instrumental means to achieve that liberty. Thadeus O'Meally, a priest of St. Mary's in Philadelphia, reflected the views of many Catholics when he wrote in 1852 that the "peculiar situation" of the American separation of church and state was the "only natural order of things." Richard Meade, a lay trustee at St. Mary's, agreed. For him, Christ repeatedly told his disciples that "His Kingdom is not of this world" and Saint Paul reaffirmed this when he argued that priests were ordained for things "pertaining to God." O'Meally and Meade employed these arguments ideologically to foster the trustees' causes in Philadelphia, but the arguments they and numerous other lay Catholic trustees throughout the country used illustrated their commitment to the American proposition.[41]

American Catholics, however, did not understand the non-establishment clause of the First Amendment in the same way. Some, like the Maryland Carrolls, saw in the non-establishment clause a restriction upon the government's preferential support for one religion. Others, like John England, saw in it an almost total restriction upon the government's support for any religion.

The Maryland Carrolls opposed the establishment of a specific national or state religion. Although they accepted Maryland's constitutional preference for Christianity, they did not consider this an attempt to establish religion.[42] It did not seem to bother them that the constitution restricted the civil rights of Jews.

[41] For O'Meally's comments, see *A Series of Letters Relating to the Late Attempt at a Reconciliation between the Members of the Congregations of St. Mary's and St. Joseph's with a Brief Notice of the Present State of the Controversy between Them* (Philadelphia, 1825), 33. For Meade's statement, see *An Address to the Roman Catholics of the City of Philadelphia, in Reply to Mr. Harold's Address* (Philadelphia, 1823), 10. On trusteeism, see Patrick W. Carey, "The Laity's Understanding of the Trustee System, 1785-1855," *Catholic Historical Review* 64 (1978), 355-76.

[42] On the use of non-preferential language in the eighteenth century, see Thomas J. Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* (New York, 1986), 211-13; see also 154-58.

John Carroll rejected church establishments like those in England and France because he believed that they always involved a surrender or forfeiture of a divinely endowed ecclesiastical independence.[43] Establishments destroyed *libertas ecclesiae*. Carroll's views of non-establishment, like those of many Maryland Christians, were not absolutist. Catholics like Carroll approved, for example, the 1776 Maryland constitutional provision that granted the state legislature a discretionary power to oblige all citizens to contribute to the support of the religion and minister of their choice or to designate the funds for the poor. In 1785, however, Carroll indicated that Catholic citizens joined together with Presbyterians, Methodists, Quakers, and Baptists to oppose a minister's salary bill that would have activated the legislature's discretionary power. They were unwilling in this case even to accept a non-preferential approach to state aid to religion because they believed the bill would in fact give the Protestant Episcopal church a "predominant and irresistible influence."[44] In principle, if not always in practice, however, they could and did accept a non-preferential approach to governmental aid.

Daniel and John Carroll in particular reflected this Maryland Catholic tradition. They simultaneously rejected a state establishment and supported non-preferential state aid to the churches. As a Maryland state senator in 1788, Daniel Carroll introduced legislation that would protect without partiality or preference the rights of all Christian churches to incorporate and govern their own temporalities. Like many of his contemporaries, he believed that state aid could legitimately be given to all Christian sects as long as it was given without discrimination.[45]

After his consecration as the first bishop of Baltimore and after the ratification of the First Amendment, John Carroll twice (once in 1796 and once in 1800) supported a Catholic Indian missionary's appeal to the federal government for financial support for the missionary's work among the Indians on the Wabash. The missionary had been granted an annuity by the federal government to serve in the Indian community there, but the government had failed to provide

[43] John Carroll to Charles Plowden, Sept. 3, 1800, *JCP*, *2*:319-20.
[44] John Carroll to Charles Plowden, Feb. 27, 1785, ibid., *1*:168.
[45] Geiger, *Daniel Carroll*, 83-84.

the annuity for at least two years. Carroll wrote to the United States Secretaries of War on both occasions and simply requested that the government comply with its contract with the priest. President George Washington had recommended to the Congress that the federal government enact a beneficent policy towards the Indians that would tend to their "civilization" and teach them the advantages of the Christian religion. Some clergymen, Catholics among them, offered to take part in this work and were granted a yearly allowance by the government. The missionaries' functions were twofold: to render important services to the United States by "humanizing & *moralizing*" the Indians and by fostering in them friendly dispositions to the United States. Like many in the United States, John Carroll saw no contradiction between the First Amendment and governmental financial support for works that combined religious and public benefits.[46]

John England articulated a very different understanding of nonestablishment, particularly at the federal level of government.[47] He printed the First Amendment on the masthead of his diocesan newspaper, the *United States Catholic Miscellany*, and generally understood it to put severe restrictions upon governmental aid to any and all religions. He held that

> There never was a union of church and state which did not bring serious evils to religion . . . . But I do know that the Founder of our faith did not unite the church and state; . . . Without writing harshly of thousands of good and better men who differ from me in opinion, I am convinced that a total separation from the temporal government, is the most natural and safest state for the church in any place where it is not, as in the papal territory, a complete government of churchmen.[48]

What did a "total separation" mean? For England, government had no competence to legislate for religious purposes, either to prohibit meat on Fridays, the drinking of whiskey, or the distribution of mails on Sundays. It had no powers to regulate religion, nor morals; its

[46] John Carroll to [Samuel Dexter], Sept. 15, 1800, *JCP*, *2*:320-21; see also *2*:181-83. On the subject generally, see Annabelle M. Melville, *John Carroll of Baltimore: Founder of the American Catholic Hierarchy* (New York, 1955), 166-68.

[47] On England's views of separation, see Carey, *Immigrant Bishop*, 53-63, 93-97.

[48] *Works of John England*, *3*:511.

only power was to manage civil and political concerns. Government was not to be, as some would have it, a nursing father to the church.[49] A Roman Catholic legislator, like all legislators, was to be regulated by the political powers that were conferred upon him. His duty "is to legislate only for the temporal welfare of the state, not upon the religious concerns of the people." It would be "criminal" for him to "use his power openly or covertly for the checking of heresy, or the elevation of his own Church."[50]

Nor did the government have the power to use taxes to support, directly or indirectly, any religious purposes.

> Now I deny at once, that Congress has any power whatever to interfere directly or indirectly with the temperance societies or education, or missionary societies, or with the conduct of individuals in respect to either. Any legislative action of Congress upon either of those subjects would be direct usurpation, palpably invalid, and dangerous to the liberties of the republic: and as such, it would, and it ought to be resisted . . . . Congress has no power to nurse the Evangelist, nor to frown upon the Papist; it cannot prefer the Christian to the Jew; nor bestow one cent either to plant the Gospel in Monrovia, to build a synagogue at Grand Island, or a mosque in New York.[51]

As a young priest in Ireland and as a bishop in the United States, England had vehemently opposed all state financial aid to religion because he believed the church would, by accepting such aid, lose its freedom. It was a violation of political justice, too, he believed, for Great Britain to "give to an hierarchy with which one third of the nation is not in communion a revenue drawn from the whole people."[52] For Bishop England, religious liberty could be fully and adequately protected only by a "total separation" of religion from government.

As a young priest in Philadelphia, John Hughes also rejected the idea of government aid for religious purposes. In an 1833 polemical debate, Hughes chided John Breckinridge and the Presbyterians whose religious schools and colleges "feed at the public treasury of the

[49] Ibid., *4*:49, 53.
[50] Ibid., *1*:180.
[51] Ibid., *4*:49, 57.
[52] Ibid., *1*:178.

State." He claimed that "the Catholic colleges, and houses of education never beg at the doors of government for any such aid. They hold that the institution which, in this country, is not able to support itself by its own intrinsic merit, ought not to exist."[53]

In the early antebellum period, when they had few developed institutions, Catholics like England and Hughes had a more radical view of the non-establishment clause and of the voluntary nature of the church than they would later hold as the pressures of building multiple institutions tested their pocketbooks. The more radical interpretation, however, faded fast after 1840.

In 1840 Hughes experienced a severe case of amnesia regarding his earlier interpretation of non-establishment when, as bishop of New York City, he appealed to city government for non-preferential financial aid for his Catholic schools. His application reflected the exigencies of building a host of Catholic institutions that were deemed necessary to preserve Catholic separateness in a turbulent sea of anti-Catholicism. After the 1840s, American Catholic petitions for state funds increased as their school systems developed; their understanding of separation of church and state also tended to be uniformly in favor of non-preferential state aid. The tradition of England and the younger Hughes disappeared from Catholic consciousness and was replaced exclusively by the tradition articulated by the Carrolls.

American Catholics' participation in the advancement of religious liberty and separation and their assertions of their acceptance of the principle as well as the legal practice of both had very little influence upon the dominant American view that Catholicism was systematically opposed to both. Catholics could not in principle accept religious liberty and separation of religion and government, so the argument went, because they belonged to a church that not only favored the union of church and state, but in principle supported persecution for the sake of enforcing its own perception of truth and justice in society. It was, after all, the church of the Inquisition. It had used the arm of the state to extricate heresy, believing that error had no rights in society. How could Catholics, except from motives of expediency, accept American religious liberty?

[53] John Hughes, *Controversy Between Rev. Messrs. Hughes and Breckenridge, on the Subject: "Is the Protestant Religion the Religion of Christ?"* (Philadelphia, 1833), 237.

The force of this question came to haunt American Catholics. They were from conviction committed to the American proposition, but they were repeatedly called upon to answer for the weight of history. They could have escaped this task by separating from Rome because their communion with Rome was a continual reminder of the freight of the past, but none wanted to do that.

It was not only the past that Catholics had to answer for in the early nineteenth century. Pope Gregory XVI's 1832 encyclical *Mirari Vos* had opposed in principle and practice religious liberty, freedom of the press, and separation of church and state because he saw religious indifferentism as their source. Such liberties were a threat to civil as well as ecclesiastical unity and stability. The pope condemned religious indifferentism as that "perverse opinion" which held that it is "possible to obtain the eternal salvation of the soul by the profession of any kind of religion, as long as morality is maintained." From this "shameful font" arose "that absurd and erroneous position which claims that *liberty of conscience* must be maintained for everyone. It spreads ruin in sacred and civil affairs, though some repeat over and over again with the greatest impudence that some advantage accrues to religion from it." Liberty of conscience, the pope continued, provided "a pestilence more deadly to the state than any other." Experience had demonstrated the devastating damage to society that this "single evil" brings. Experience also demonstrated that the union of church and state was always "favorable and beneficial for the sacred and the civil order." He warned that the "shameless lovers of liberty" who desired to separate the church from the state want to break that mutual concord between the two.[54] The pope called upon princes and governmental officials to exercise their resources and authority to support his desire to restrict religious liberty, preserve the union of church and state, and defend the Catholic church. "Placed as if they [the princes] were parents and teachers of the people, they will bring them true peace and tranquility, if they take special care that religion and piety remain safe."[55]

Here were principles and a recourse to experience that were opposed to American ideals and indeed to the American experience itself. The

[54] Claudia Carlen, *The Papal Encyclicals* (5 vols., New York, 1981), *1*:237, 238, 239.
[55] Ibid., *1*:240.

pope did not aim his attacks directly at the American experience. The encyclical was meant to quiet liberal Catholics in France, but the sweep of his statements on modern freedoms clearly conflicted with American Catholic ideals and experiences. Protestants found in it proof positive that Catholicism was opposed to American liberties.

Although American Catholic bishops agreed with the pope's condemnation of religious indifferentism and licentious liberty, they did not agree with his views of religious liberty and separation, and, perhaps more importantly, they did not share his historical experiences. The pope had associated the ideas of religious liberty and separation with the French Revolution and with the devastating consequences it had upon the European Catholic church.[56] In 1837, five years after the publication of the encyclical, the American bishops issued a joint pastoral letter and, without any reference to the contrary opinions found in the papal encyclical, they reaffirmed their own understanding and acceptance of America's first liberties. Civil allegiance had nothing to do with spiritual allegiance, they wrote. They accepted the pope's spiritual supremacy and simultaneously denied that he had "any civil or political supremacy, or power over us [as Catholics]."[57]

From the days of John Carroll, American Catholics had understood their communion with the pope to be purely spiritual; it had nothing to do with politics. They repeatedly asserted that they were not responsible for past or present papal pretensions to and exercises of political powers. Although they did not make too much of it, they claimed that they had the right to reject papal teachings on political matters, because the pope had no divinely commissioned competence in the area of politics and there were no grounds in either scripture or tradition for these secular matters.[58]

Antebellum American Catholics did not attribute as much magisterial authority to the encyclical *Mirari Vos* that their successors

[56] Joseph A. Komonchak, "The Enlightenment and the Construction of Roman Catholicism," *Annual of the Catholic Commission on Intellectual and Cultural Affairs* (1985), 31-59, has argued that the official Roman Catholic resistance to the Enlightenment was governed by its fear of the social and political consequences of Enlightenment ideas. From the Roman perspective in particular the Enlightenment's political philosophy had reduced the church's influence in European society.

[57] Hugh J. Nolan, ed., *Pastoral Letters of the United States Catholic Bishops* (4 vols., Washington, 1984), *1*:90.

[58] Hughes and Breckenridge, *A Discussion*, 78, 117-18.

would attribute to post-Vatican I (1869-1870) papal encyclicals.[59] Before the definition of papal infallibility, most American bishops, unlike their Protestant opponents, did not look solely or primarily to the papal office for the definition of authentic Catholic doctrine.[60] The bishops considered themselves as an authentic part of the teaching church and believed that they could accept and promote America's first liberties without violating the essentials of the Catholic tradition.

The encyclical, Catholics like John Hughes argued, did not articulate authentic Catholic doctrine on modern constitutional freedoms. When Presbyterian John Breckinridge of Philadelphia, for example, charged that the papal rejection of civil and religious liberties was authentic Catholic doctrine, Hughes simply denied that what the pope taught was indeed Catholic doctrine. There was no Catholic "doctrine," for example, on the press because God made no revelation on the subject; consequently, "'*liberty*, or the *restraint* of the *press*' forms no 'principle or doctrine' of the Catholic religion."[61]

For Hughes, no infallible Catholic doctrine on civil and religious liberty existed: "No such doctrine *can even* become a portion of that [Catholic] creed, which would *forfeit* its claims to infallibility, the moment it should teach *as* a 'tenet revealed by Almighty God,' any article that had not been taught and believed from the beginning of Christianity." Past unions of the Catholic church and the state were historically conditioned arrangements that had nothing to do with revelation and Catholic doctrine. Catholic discipline in the past had certainly provided for these unions and had certainly denied religious liberty, but past disciplinary canons and the facts of history were not

[59] Prior to the definition of papal infallibility at Vatican I, papal encyclicals were rarely perceived as authoritative instruments of Catholic teaching. Although encyclicals, even today, are not considered in themselves infallible, they have, since 1870, assumed a much more authoritative role than they had in early nineteenth-century America. The bishops in union with the pope were generally considered the divinely ordained instruments of authentic teaching within the church. The bishops, moreover, considered their function in the church to be primarily that of witnesses and judges of the authentic tradition that had been handed down from the apostles. Papal pronouncements and actions, therefore, that did not bear the stamp of the apostolic tradition did not define authoritatively Catholic doctrine.

[60] On the American Catholic approach to tradition, see Gerald Fogarty, *Nova et Vetera: The Theology of Tradition in American Catholicism* (Milwaukee, 1987).

[61] Hughes and Breckenridge, *A Discussion*, 53, 57, 58.

infallible Catholic doctrine.[62] American Catholics made distinctions where their opponents did not.

Mirari Vos certainly contradicted American Catholic experiences and principles regarding church and state. It would be anachronistic, however, to expect early nineteenth-century American Catholics to see such papal pronouncements as an articulation of the authentic Catholic tradition. The pope's view of a confessional state was simply contradicted by the American Catholic constitutional view of the state. Neither view of the state was grounded in authentic Catholic doctrine. Plenty of room for freedom of opinion on this issue existed within the Catholic tradition. Nonetheless, the problem of Catholic allegiance to the American constitutional view of the state would continue throughout the nineteenth and early twentieth centuries because popes continued to maintain a confessional view of the state and, in American society, the pope continued to be perceived as the authentic and only interpreter of the Catholic tradition. The distinctions that the antebellum Catholics made between spiritual and temporal communion, doctrine and discipline, doctrine and theological opinion, principle and facts of history were simply lost in religious controversy.

The early American Catholic tradition on religious liberty and separation demonstrates how American Catholics reinterpreted their own Christian heritage in the light of their political and civil experiences in American society, how they relativized former Catholic understandings of church-state arrangements, and thus how they were enabled by experience, conviction, and principle to accept the first liberties. That they did not share the same interpretation of the non-establishment clause will come as no surprise to those who are aware of the variety of interpretations that clause has received in American history. What may be of some surprise is that there was a radical American Catholic interpretation of non-establishment that has generally remained buried in dusty tomes. Some would undoubtedly prefer to leave it there.

This early tradition also demonstrates something of the tensions involved in American Catholic identity throughout the nineteenth

[62] Ibid., 82, 90, 269-70.

and early twentieth centuries.[63] Convinced by experience and by principle of the rightness of the American proposition, American Catholics were nonetheless simultaneously in tension with Rome and some of their Protestant and secular opponents in American society over the Catholicity of their convictions. That tension continued until the *Declaration on Religious Liberty* at the Second Vatican Council in 1965.

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[63] For the internal ecclesiastical tensions created by some Catholic laymen's interpretations of the ecclesiological implications of religious liberty and separation, see Patrick W. Carey, *People, Priests, and Prelates: Ecclesiastical Democracy and the Tensions of Trusteeism* (Notre Dame, 1987), 156-72.