

# Religious Liberty:

Protecting our Catholic Conscience in the Public Square

# Scripture on Church and State

- [Jesus] said to them, “Then repay to Caesar what belongs to Caesar and to God what belongs to God” (Mt. 22:21).
- The high priest questioned [the apostles] saying, “We strictly charged you not to teach in this name, yet here you have filled Jerusalem with your teaching and you intend to bring this man's blood upon us.” But Peter and the apostles answered, “We must obey God rather than men” (Acts 5:28-29).

# Scripture on Church and State

- Festus said to Paul, “Do you wish to go up to Jerusalem, and there be tried on these charges before me?” But Paul said, “I am standing before Caesar's tribunal, where I ought to be tried; to the Jews I have done no wrong, as you know very well. If then I am a wrongdoer, and have committed anything for which I deserve to die, I do not seek to escape death; but if there is nothing in their charges against me, no one can give me up to them. I appeal to Caesar” (Acts 25:9-11).

# Historical Overview of Church-State Conflicts

- Persecution of Christians under the Roman Empire before the Edict of Milan (313 AD) granting religious toleration. Christianity became the official religion of the Roman Empire (late 300s AD) and a Holy Roman Emperor was crowned (800 AD).
- The controversy of Lay Investiture dealt with the selection of bishops by lay rulers. Gregory VII confronted Henry IV in 1076, denying the right of civil rulers to appoint bishops.
  - Various privileges have existed historically by which civil rulers may nominate a bishop or veto an election of a bishop. These privileges have been gradually withdrawn and became practically extinct in the 20<sup>th</sup> Century.

# Historical Overview of Church-State Conflicts

- In the Protestant Reformation, Martin Luther led the movement for separation in 1517. However, he held that religious authority should be separated from civil government.
- In England, however, the King of England assumed the leadership of the Church in 1534. King Henry VIII ordered the administration of the oath of supremacy, banned Peter's Pence, assumed the right to appoint bishops, and ordered the dissolution of monasteries.

# Historical Overview of Church-State Conflicts

- The French Revolution began in 1789 primarily as a rebellion of the people against the King of France, Louis XVI. The focus of the Revolution also turned to the Catholic Church.
- In 1790, a law ordered the Church to be subordinate to the French Government. In 1793, the Cult of Reason led to the destruction of many crosses, statues, and churches. In the late 1790s, many priests were imprisoned or deported, especially during the Reign of Terror. Napoleon and Pope Pius VII eventually signed the Concordat of 1801.

# Historical Overview of Church-State Conflicts

- After German Unification in 1871, anti-Catholic laws were enacted during the period of *Kulturkampf*. Clerics could be imprisoned if they spoke from the pulpit against the state. Church oversight over schools was abolished. Jesuits were considered emissaries of Rome and were banned. Religious orders were banned. The State assumed the supervision of all Church assets.
- Following the Bolshevik Revolution of 1917, the Communists assumed control of Catholic dioceses. Land and buildings were confiscated. The clergy were required to make an oath of allegiance.

# U.S. Constitution

- **Amendment I of the US Constitution:** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
- The Constitution imposes a limitation on the Federal Government which cannot establish a religion or prohibit the exercise of religion.



# U.S. Constitution

- **Amendment XIV, Section 1:** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (adopted in 1868).
- By this Amendment, State Governments are also prohibited from passing a law limiting the free exercise of religion by the “privileges and immunities” clause.

# Separation of Church and State

- The Doctrine of Separation of Church and State is attributed to a letter of Thomas Jefferson written in 1802 in which he spoke of a wall of separation.
- This doctrine has often historically been cited as imposing a strict and absolute separation that must never be crossed by government.
- **Engel v. Vitale**, 370 U.S. 421 (1962) dealt with the prohibition of prayer in public schools. In the lone dissent, it was observed, “I think that the Court's task is not responsibly aided by the uncritical invocation of metaphors like the ‘wall of separation,’ a phrase nowhere to be found in the Constitution.”
- More recently, the more secular trend has been to keep the Church strictly separated from the State.

# Separation of Church and State

- **Reynolds v. United States**, 98 U.S. 145 (1878) addressed the practice of polygamy by the Church of Jesus Christ of Latter-Day Saints. The ban on polygamy was upheld as it was not the prohibition of a religious practice, but the public interest in the institution of marriage.
- **Everson v. Board of Education**, 330 U.S. 1 (1947) addressed using taxpayer funds to transport children to a parochial school. The ruling permitted the use of public moneys for this purpose, because the benefit passed to the students and not the religious entity.

# Separation of Church and State

- In **Lemon v. Kurtzman**, 403 U.S. 602 (1971), the Supreme Court dealt with the question of the use of public funds in religious schools. The Court held that a total separation is not possible in an absolute sense. Rather, a three-pronged “Lemon Test” is applied:
  1. The law must have been adopted with a neutral or non-religious purpose.
  2. The principle or primary effect must be one that neither advances nor inhibits religion.
  3. The law must not result in an “excessive entanglement” of government with religion.

# Three types of Church State Cases

- 1) Questions regarding the **Establishment of religion**: The role of the government or a public official in a religious matter. For example, the use of public funds, a public official leading prayer, or the establishment of a religious public display or monument.
- 2) Questions regarding the **Free exercise of religion**: The limitations on the government by which religions should be free and unburdened by laws or regulations in the practice of religion. For example, exemptions granted to religious organizations who can discriminate when selecting ministers or administering rites of worship.

# Three types of Church State Cases

- 3) Lately, the government has sought to use regulation to dictate to religions what they must do,
- a. by expanding the reach of what is considered “**public policy**” and
  - b. by pitting the rights of an individual against the rights of an institution.
- For example, the individual right to abortion, contraception, same sex marriage, or transgenderism can be contraposed against religious institution’s right to religious expression.
  - The concept of “Freedom of Religion” has undergone a shift to a much more secular approach. “Freedom to practice Religion” vs “Freedom from Religion.”

# The expansion of Public Policy

- The civil concept of public policy is an evolving reality that is redefined according to time and circumstances. Examples include:
- In California, the state Department of Managed Health Care in 2014 began demanding that all health plans under its jurisdiction—even those purchased by churches and other religious organizations—must cover elective abortions for any reason, including late-term abortions and those performed for “sex selection.” A similar law was passed in Illinois in 2017 but was enjoined.
- In Illinois, Catholic Charities had to withdraw from adoption services because all adoption agencies were required to adopt to same sex couples. A religious exemption which was granted in New York was not included in the Illinois legislation.

# The expansion of Public Policy

- Some general issues related to public policy include:
- Regarding gay marriage: The obligation to solemnize a same-sex wedding. The obligation to provide goods or services for a same-sex wedding. The obligation to adopt to same sex parents.
- Regarding contraception: The obligation of an employer to pay for morally objectionable services.
- Regarding abortion: The use of public funds to pay for abortions. The obligation of an employer to pay for an abortion.
- The limitation of a church because of its tax exempt status of a church. The selective limitation of a person or group's application for tax exemption.



# Cooperation with evil

When must the Church oppose a restriction of religious liberty, and when can the restriction be tolerated?

Moral cooperation with an evil act can be Formal or Material.

- Formal cooperation occurs when the person takes part directly in the evil act.
  - Formal cooperation with an evil is never moral.
- Material cooperation occurs when the person provides material support for the evil act.
  - Material cooperation can be tolerated in certain circumstances.

# Cooperation with evil

Material cooperation can be Immediate or Mediate.

- Immediate Material cooperation occurs when the person directly supports the evil act. The participation of the cooperator may be necessary to carry out the evil act.
  - Immediate Material cooperation with an intrinsic evil is never moral.
- Mediate Material cooperation occurs when the person provides some peripheral support for the evil act.
- Mediate Material cooperation can be proximate or remote, depending on how close the cooperator is to the evil act.
  - Mediate Material cooperation can be tolerated in certain circumstances.

# Cooperation with evil

Types of Cooperation	Formal		
	Material	Immediate	
		Mediate	Proximate
			Remote

Mediate Material cooperation can be permitted depending on the circumstances:

- Whether the act is intrinsically evil
- Whether the cooperation is necessary to avoid other serious damage
- The proportion between the good to be achieved and the evil to be tolerated

# USCCB on Religious Liberty

- The USCCB regularly posts notices regarding upcoming legislation and timely information about matters of religious liberty and freedom of conscience.
- In March, 2012, the Committee on Religious Liberty of the USCCB issued the document, “Our First, Most Cherished Liberty: A Statement on Religious Liberty.”
- A fundamental thesis is that we are both true Americans and faithful Catholics, that we take pride in both of these aspects, and that we want the freedom to be true to each of these characteristics.

# USCCB on Religious Liberty

- Our religious liberty does not come from Government, but rather is a gift from God.
  - We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness (Declaration of Independence).
- The freedoms we enjoy must always be actively defended. It is not enough to passively assume that our rights will be defended. To do so is to put at risk the right of conscientious objection on the part of Catholic individuals.

# USCCB on Religious Liberty

Several examples were given of attacks on our religious liberty.

- For example, some states have placed restrictions on the rights of Catholic adoption agencies who do not wish to place children with same sex couples.
- The primary example is the HHS mandate for contraception, sterilization, and abortion inducing medication under the Affordable Care Act.
  - “This is not a matter of whether contraception may be prohibited by the government. This is not even a matter of whether contraception may be supported by the government. Instead, it is a matter of whether religious people and institutions may be forced by the government to provide coverage for contraception or sterilization, even if that violates their religious beliefs.”

# USCCB on Religious Liberty

- Religious Liberty is more than the freedom to worship. Catholics want to be able to live their faith both in church and in the public square, both on Sunday and on every other day of the week.
- The heritage of our country is strongly rooted in religious freedom, citing the history of those coming to America and the strong commitment to incorporating the Bill of Rights into the Constitution at its ratification.
- Our tradition of religious freedom is also reflected in the writings of Martin Luther King, Jr. who worked for laws that are in accord with true justice.

# USCCB on Religious Liberty: Hosanna-Tabor

- In the past several years, several unanimous decisions of the Supreme Court have imposed limits on the regulatory powers of the Government.
- The USCCB highlighted one particular Supreme Court decision on religious liberty: **Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission**, 565 U.S. 171 (2012).



# USCCB on Religious Liberty: Hosanna-Tabor

- This case dealt with a teacher in a religious school who left on disability in 2004, but who wished to come back in 2005 after being cleared to return to work. As her position was filled, she sued under the Federal Americans with Disabilities Act.
- The Justice Department argued before the Supreme Court that the right of the Government to prevent discrimination on the basis of a disability supersedes the right of a religious organization to hire its own employees.
- The Court viewed the teacher, who was responsible for leading prayer, as a kind of “minister,” meaning that the Government has no right to interfere in the choice of a religion to choose its own representatives.

# The Church's perspective on civil authority

- Can. 22 Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.

# The Church's perspective on civil authority

- The Church exerts its independence from civil authority in some matters:
- Can. 747 §1. The Church, to which Christ the Lord has entrusted the deposit of faith so that with the assistance of the Holy Spirit it might protect the revealed truth reverently, examine it more closely, and proclaim and expound it faithfully, has the duty and innate right, independent of any human power whatsoever, to preach the gospel to all peoples, also using the means of social communication proper to it.
- Can. 1254 §1. To pursue its proper purposes, the Catholic Church by innate right is able to acquire, retain, administer, and alienate temporal goods independently from civil power.

# The Church's perspective on civil authority

- The Church also asserts the right to freely name bishops.
- Can. 377 §1. The Supreme Pontiff freely appoints bishops or confirms those legitimately elected.

§5. In the future, no rights and privileges of election, nomination, presentation, or designation of bishops are granted to civil authorities.

# The difference between Church and State

- The Church's teaching is based on Divine Law, obeying principles that are eternal and derived from Divine Revelation.
- As such, the principles of Church teaching are immutable. Adaptation may be necessary in their application.
- The State is based on the social contract whose principles are articulated in the US Constitution.
- The principles of the State are subject to adaptation as legislation is passed, judicial precedence is established, and circumstances affect the principles of public policy.

# The difference between Church and State

- History gives witness to the changing and sometimes turbulent relationship between Church and State.
- Vigilance is always necessary to actively safeguard the rights of the Church and of individuals in the practice of the faith.
- The Kingdom of God on earth is not a static reality that is achieved and then endures. It is dynamic, requiring constant effort to sustain and grow.