

Issue Three

Religious Liberty and the Reality of the Christian Tradition

D. C. SCHINDLER

When thinking about religious liberty in the United States, we typically ask how religious faith may best be protected and fostered within the American legal system, whether as that institution was originally conceived or as it has lately become. But it is possible to reverse the perspective and the standard by which religious liberty is measured. Instead of assessing the status of religion from within the horizon set by law, we might instead assess the law on this question from within the horizon of religion, interpreted first according to its own measure. This is what I propose to do in this brief reflection, taking the classical Christian tradition rather than the contemporary American situation as the given starting point. The very fact that both the question and the nature of religious freedom proves to be so radically different (as we will see) whether it is viewed from the one starting point or the other is itself something already worthy of serious reflection, even if we cannot pursue this particular reflection here. Instead, in this brief essay, we will begin with an observation made by St. Augustine, in the early days when the question of religious freedom first became an issue in the Christian world. Then I will expand on aspects of his observation insofar as it concerns more generally the significance of political institutions for religion, before turning directly to the question of what all of this has to do specifically with the legal issue of religious freedom.

In the world of political theology, St. Augustine is often thought of as the one who definitively separated the theological order from the political in the radical distinction he drew between the City of God and the City of Man. According to a common interpretation, the former, constituted by a love of God to the point of contempt for the self, lies most basically in the mysterious depths of the human heart. The citizens of this City are ultimately known only to God. The City of Man, by contrast, built up by the love of self to the point of contempt for God, is essentially *visible* and makes its presence felt *in this world*. In Augustine's age, the City of Man was manifest, above all, in the Roman empire, which had established itself by violence in the pursuit of worldly glory. In this view (leaving aside the question of whether it accurately represents Augustine's understanding or not), a person could find himself subject to the earthly city as a result of coercive force, but membership in the City of God can never come about by such means. Instead, as an essentially spiritual reality, one's belonging to God in and through Christ can occur only through the interior act of freedom elicited by grace.

In the middle of his episcopal career, St. Augustine underwent a "second conversion," less dramatic and epoch-making than his well-known conversion to Christianity, but more immediately related to our present theme. Over the course of his involvement with the Donatist controversies in which the Church was embroiled in the fourth through the sixth centuries, Augustine experienced a significant change of opinion regarding how best to deal with the heresy, which had affected not just isolated individuals but entire populations. The nature of the controversy itself is already profoundly significant for the question of the political implications of Christianity. The Donatists believed that the sacraments

confected by priests who had apostasized during the Diocletian persecutions, and then returned to the faith when the danger had passed, were invalid, but the Church eventually determined that the efficacy of the sacraments did not depend on the purity of the priest. One of the questions raised by the heresy is whether the subjective condition of the priest determines the validity of the sacraments he confects. What is at stake, here, is the extent to which the redemptive deed of Christ, which is the origin of the Church, has an *objective* reality that transcends the *subjective* faith of believers, whether that faith be considered individually or collectively as a whole.

Christ assumed the whole of humanity in his assumption of the individual human nature received from and through his mother Mary. Politics is about the final end of human existence, and so politics has an essential relation to the Christian claim. The claim cannot be avoided; it can only be affirmed or denied.

The change in Augustine's thinking concerned the question of how best to deal with the influence of this heresy in the relatively newly-established Christian culture of the Roman empire: ever convinced of the essential freedom of faith, he came to see that this essential freedom does not mean that the faith ought to be approached merely as a matter of interior conviction; instead, he realized that the institutional dimension can have a significant bearing on the exercise of the freedom of faith. In his words:

originally my opinion was that no one should be coerced into the unity of Christ, that we must act only by words, fight only by arguments and prevail by force of reason, lest we should have those whom we knew as avowed heretics feigning themselves to be Catholics. But this opinion of mine was overcome not by the words of those who controverted it, but by the conclusive instances to which they could point. For in the first place there was set over against my opinion my own town, which, although it was once wholly on the side of Donatus, was brought over to the Catholic unity by fear of the imperial edicts, and which we now see filled with such detestation of [that] ruinous perversity that it would scarcely be believed that it had ever been involved in [the Donatist] error. (*Letter 93*, from *A Sourcebook*, ed. O'Donnell, 132)

There are some who take this change of heart to be a sign of cynical old age and a growing pessimism regarding human nature. But it is crucial to see that Augustine *did not* change his mind about the essential freedom and non-coercibility of the act of faith; he just saw that what we might call external conditions in which such an act happens to occur can have a profound effect on that act, whether suffocating or liberating it. This should not surprise someone who has studied carefully Augustine's *Confessions*. In that book, Augustine argues that objective conditions in which a person finds himself, one's actual state of being, can help or hinder one's act of freedom. The will does not operate in a vacuum; instead, it is enacted always within the antecedently given actuality, the given history, of the person, with his established habits and the institutionalization of his soul in his body, so to speak. A life of sin can create an ingrained reluctance, in spite of oneself and what one otherwise wills, so that genuine freedom requires a rehabilitation of the whole person. The objective conditions out of which the act of freedom arises are either disposed to the assent to God or disposed against that assent; there is no neutral state. It is not difficult to see that there is an analogy between the way Augustine interprets his own act of freedom in the *Confessions* and his eventual interpretation of the acts of faith within the established law of the city in *Letter 93*. The reasons he offers in this letter for the success of this redemption of his hometown from Donatism are illuminating, even if he provides little explanation in that context for his judgments. The "fact" of the institutional recognition of the Catholic truth, he

says, helped those who privately saw the truth, but were reluctant to affirm it for a variety of reasons: some had a fear of offending their neighbors; others had been held back from the truth by custom; others found the common practice of Donatism the path of least resistance. Generally, people had remained Donatist because that's just the way things were done, so to speak, or because they had been born into it (132–33). His description of the obstacles to the assent to truth generated by the city's established rule of life generated by the city's established rule of life sound very much like the story of the internal resistances to his own personal assent to truth he wrestled with in the *Confessions*.

There is no space in the present context to work out this analogy between Augustine's coming to faith in the *Confessions* and the town's returning to faith after Donatism and its implications for political theology, though I think this would be fascinating and eminently worthwhile. Instead, what I want to do here is to make a *stronger case* for the political recognition of the truth of the Church than the case Augustine makes in this letter, though it follows the thrust of his point. A great deal of matter for reflection, inquiry, and analysis is opened up in what Augustine wrote to the Donatist bishop Vincentius, but in this abbreviated forum, I want to limit myself to making three basic claims, two descriptive and one prescriptive. In the centuries that have passed from Augustine to the Middle Ages and into modernity, first of all, we have deepened the sense of the significance of law. Secondly, we have deepened the sense of why the cultural and indeed the political dimension of existence is essential to the faith, why it is an indispensable implication of the ontological reality of Christian truth. The third point is that the legal question of religious freedom that confronts us today ought to be considered from the perspective of this deepened vision, for reasons I will propose at the end.

1) Augustine, in the passage quoted, seems to identify law and political establishment with coercive power. It is perhaps not surprising that he does so, given that he is writing in the time of the late Roman Empire, and it is a common enough assumption in our own age, which tends to recognize only a pragmatic function of law. But the possibility for a more substantial understanding of legal institutions emerged, in principle if not also in practice, in the Middle Ages. Through a more ample appropriation of the Greek sense of nature as order, the Roman sense of authority and the common good, and the Jewish sense of law as an essential mediator of the presence of God, we have the resources to understand that law has a pedagogical and indeed *revelatory* dimension, which is more basic than its coercive function. In this context only the basic thesis can be stated, but the necessary argument cannot be given. What I mean by “revelatory dimension” is this: the law is inevitably and willy-nilly an enactment of a particular understanding of the nature and destiny of man, whether it intends to be or not. The law cannot but give expression to a positive conception of the meaning of human existence. It is not accidental that law has always originally grown out of religion and cannot fail to give evidence of its roots. Severance from those roots means death. On this general theme, we may consider a fascinating passage from the great legal historian Harold Berman, whose work was largely devoted to showing the connection between law and religion. If we were to ask today why one should obey the law, Berman writes, the answer usually given

is that people generally observe the law because they fear the coercive sanctions which will otherwise be imposed by the law-enforcing authority. This answer has never been satisfactory. As psychological studies have now demonstrated, far more important than coercion in securing obedience to rules are such factors as trust, fairness, credibility, and affiliation. It is precisely when law is trusted and therefore does not require coercive sanctions that it is efficient; one who rules by law is not compelled to be present everywhere with his police force. Today this point has been proved in a negative way by the fact that in our cities that branch of law in which sanctions are most severe—namely, the criminal law—has been powerless to create fear where it has failed to create

respect by other means. Today everyone knows that no amount of force which the police are capable of exerting can stop urban crime. In the last analysis, what deters crime is the tradition of being law-abiding, and this in turn depends upon a deeply or passionately held conviction that law is not only an instrument of secular policy but also part of the ultimate purpose and meaning of life. (*Interaction of Law and Religion*, 28–29)

Indeed, law exists, not just to deter crime, but in the most basic instance to make real a form of existence, and, in so doing, to manifest “the ultimate purpose and meaning of life” in the order of actuality. In fact, the institution of law cannot avoid determining some fundamental purpose as proper, however unintentional this may be. The legal political order sets the horizon of meaning and so communicates an interpretation of reality and the purpose of life coincident with, but in addition to, its regulation of behavior. The practical and the revelatory dimension of law cannot be separated.

2) In the letter I cited, Augustine makes what we might describe as an essentially *pragmatic* argument for the legal enshrining of “the Catholic truth.” The political establishing of this truth, and the critique of Donatism, helps “the many” to make a proper and free act of assent, which would otherwise have been difficult and perhaps for some even impossible. While I think there is an important truth to the pragmatic argument, given the claim we have just made above, I would want to formulate the point in a more essential way: it belongs to the *nature* of Christianity to be established in the real world and officially recognized by the institutions that constitute and order the political community. To say this is not improperly to immanentize the eschaton, make Christianity dependent on the temporal, political order, or compromise the transcendence of the kingdom of God—any more than God’s generous assumption of human nature compromises his eternal divinity. The official recognition of the Church’s authority, moreover, does not imply a denial of what is called “Gelasian dyarchy,” the doctrine that the pope and the king represent two distinct ruling powers. The ultimate reason for institutionalizing the Church’s presence in the political order is not just because it represents or provides an effective way of regulating practice. In other words, the point is not just that this institutionalizing is helpful for behavior, a good means to the faith, which is ordered ultimately to a strictly eschatological fulfillment. Instead, it belongs to the logic of the Incarnation of Christ to be so embodied in the flesh of the world, as it were. There is an analogy, then, between this point and the point at issue in the Donatist controversy. The faith is not a purely interior, subjective transaction, so to speak, between the private individual and God, and not even such a private faith given public expression in consort with others. Instead, the faith is itself an incarnate reality. The Christian truth lays claim to the *whole* person, body and soul, and the whole person includes the person’s life in the world, in the public order. Indeed, it not only includes this, but arguably attains a certain culmination in this order: as the classical Christian tradition recognized, through that tradition’s appropriation of the Greek wisdom, man is by nature *a political animal* (and not just a social animal). Moreover, politics is properly determined by the truth of man—the *whole* truth. If Christianity lays claim not just to the interior assent of the heart, but to the whole person, body and soul, then it necessarily belongs in the political sphere *as* political. We cannot affirm the reality of the sacraments as essential to Christian life without also affirming the political extension of the Church, insofar as these both concern the trans-subjective aspect of the faith. This claim can be shown to be true both in principle and historically.

The question of the political establishment of Christianity is of course quite controversial, and it is evaluated quite differently by Catholics, the Orthodox, and Protestants. One of the things that the growing contemporary crisis has made increasingly clear is that we need to recover the properly *cosmological* weight of the Christian vision, and this means its cultural and even political dimension. Christ assumed the whole of humanity in his assumption of the individual human nature received from and through his mother Mary. Politics is about the final end of human existence, and so politics has an

essential relation to the Christian claim. The claim cannot be avoided; it can only be affirmed or denied. In this sense, the question of the legal recognition of the truth of Christianity is not simply a matter of utility—how do we best foster Christian faith—but about the truth of the Incarnation, and it will bear on the quality of faith precisely insofar as it recognizes or fails to recognize the intrinsic significance of the political order for the Church’s mission. I hasten to add that arguing for an official and legally enshrined recognition of the truth of the Christian faith does *not* mean coercing membership in the Church. As we have seen, law is not simply the articulation of coercive force, but more fundamentally an expression of ultimate purpose. Moreover, if the Christian faith is essentially free, then insofar as law serves the Church it must seek to establish conditions that precisely prevent the coercion of faith.

3) My argument thus far is that, on the one hand, law as the institution of political order has an essential religious dimension, and that, on the other hand, Christianity is not just a “faith,” but also by its very logic implies a culture, or, better, a *form of common existence* that as such necessarily includes embodiment in law. The final point, then, is that, if this is true, it bears directly on the question of the nature of religious freedom as a legal matter. As we mentioned at the outset, one typically conceives the right to religious freedom as the protection that an otherwise secular government provides for the peaceful exercise of faith—whether that exercise be understood in the older sense of the public worship of God and respect for certain Christian values, or in the more recent sense of purely private belief of any sort whatsoever, faith in anything or nothing at all. From the classical Christian perspective, this understanding of the right to religious freedom gets freedom wrong, it gets religion wrong, and it gets the nature of rights as a fundamental political phenomenon wrong. In fact, it is not wrong on all of these counts only in the sense of affirming just a partial truth, which would need to be complemented culturally and in the sphere of civil society by a fuller context and set of justifications. Instead, it is wrong in the much more insidious sense of positively excluding the truth of the matter. Christianity is not a mere set of propositions, to which one might give or withhold one’s private assent, or a mere way of worshiping, which represents a sort of “side practice” juxtaposed to normal human life; instead, it is a form of existence that discloses the meaning of the whole of reality and bears on everything we think and do, both privately and as a people. To the extent that the right to religious freedom prohibits the recognition of the truth of religion, as a form that comprehends the whole of existence, antecedent to the exercise of individual choice, the very right to religious freedom excludes the possibility of religion. It is in this respect a self-contradiction. Freedom *for* religion can only be such if it in fact allows that to which it gives the right.

Interpreted positively, from the perspective of the classical Christian tradition, the right to religious freedom would have to mean the politically established conditions that enable individuals to participate in the real faith of the Church, which is the extension of the body of Christ into the space and time of the world in history. This formulation is of course radically different from the one implied in the conventional notion, so different that the two formulations may be said to be mutually exclusive. What, then, are we to do when the same words admit of opposite meanings, and the sense that monopolizes public discourse is the one that undermines a genuinely Christian interpretation? There is of course no simple solution. Instead of trying to present one, I will conclude in an open-ended way with three basic observations. First, we have to recognize that it is in fact more important to figure out, and attempt to understand, what is true than it is to determine practical measures. (Is belonging to the Church the true way to understand religious freedom or not?) Second, recognizing practical matters as secondary does *not* mean that any less attention needs to be given them. They do not become any less urgent. The point is simply that they may not be permitted to set the limits for the meaning of things. There is a kind of tragedy, for example, built into the task of providing legal defense for those who attempt to live fidelity in a culture and political system that holds such things in contempt, but acknowledging this does not mean surrendering to that system. The defense must be made, and given

current circumstances this inevitably means appealing, according to the principle of prudence, to the right to religious freedom, even as it is conventionally understood, but I propose we ought to think of this as something like treating cancer with chemotherapy. Such treatment may be in certain circumstances absolutely necessary to save a person's life, but we have to recognize that the means used is poisoning the body, and so we ought to proceed with caution, with a clear sense of limits, and with a great deal of regret. Finally, in our effort to recover a proper sense of religious freedom and indeed a healthy political order, it is not enough to go back to the Founding of America and its obviously Christian ethos. Instead, we need to regraft America, as far as possible, onto the deeper tradition from which it attempted to break, even while taking with it certain concepts and ideals. The organic image of "regrafting" is important: the tradition is a source of life, and the leaves and branches it produces, not to mention the fruits, have an inevitable tendency to wither and go bad when severed from the trunk and indeed the roots. One of the tasks in recovering religious freedom is interpreting America against herself, so to speak, by rethinking the ideals from their original roots. We thus relativize America and her world-historical significance, but we relativize her precisely to that which can give her genuine substance: namely, the truth of reality.

D. C. Schindler is Associate Professor of Metaphysics and Anthropology at the John Paul II Institute, an editor of Communio: International Catholic Review, and the author of The Catholicity of Reason (Eerdmans, 2013) and The Perfection of Freedom: Schiller, Schelling, and Hegel Between the Ancients and the Moderns (Cascade Books, 2012), among others.

