

JACQUES MARITAIN AND FREEDOM OF CONSCIENCE

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1. Introduction

The Universal Declaration of Human Rights, promulgated by the United Nations on December 10, 1948, is one of the key documents in the history of freedom of religion and freedom of conscience. It was the product of intensive work by an international committee of diplomats and public figures (including René Cassin, John Humphrey, Eleanor Roosevelt, Chang Peng-chun, and Charles Habib Malik),¹ but among those who not only defended it but inspired it was Jacques Maritain. Beginning in the mid-1930s, Maritain was the author of a number of books, lectures, and essays on the nature of political community, the dignity of the human person, and the centrality of human rights and freedoms.

Among the most fundamental of these rights was ‘freedom of conscience’ – a freedom “that cannot be tampered with by the state,” and that was ascribed to persons simply so far as they are persons. This emphasis is not surprising given Maritain’s ‘personalism’. Yet, Maritain recognized that human beings were also essentially social beings, that they lived in communities and states, and that they had duties to them.

This raises, however, some important questions. What are we to do when the individual right to conscience and the demands of the community (seem to) conflict? If freedom of conscience – and, indeed, all basic freedoms – cannot be “tampered with” or limited by the state, can they be limited at all? These are matters that concerned Maritain, though his views here are not always fully spelled out.

To help address these issues, in the first part of this paper, I want to present Maritain’s views on freedom of conscience and on one’s obligations to the community. In the second section, I want to raise the

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¹See Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Creation of the Universal Declaration of Human Rights*, New York: Knopf, 2000.

questions: ‘What is the source of this freedom?’ and ‘Why does Maritain rank freedom of conscience where he does?’ In the third section, I want to discuss not only what Maritain would see as the limits imposed by freedom of conscience, restrictions on what an institution (such as the community or the state) may do in carrying out its responsibilities, but also whether this freedom itself can be limited. I will make some suggestions on how Maritain can justify limiting such freedom, as it would be instructive for debates both within contemporary political communities and within the Catholic Church.

2. Freedom of Conscience and Obligations to Community

Maritain counts freedom of conscience among the most fundamental rights of the human person; it is “the first of these rights,”² or, perhaps more precisely, it follows immediately after the right to existence. It is a right that is central to charters or bills of rights throughout the world, i.e., documents that constitute the constitutional foundation of many states and international organizations. The “right to freedom of thought, conscience and religion” is, for example, proclaimed in Article 18 of the Universal Declaration of Human Rights. It is implied in the First Amendment to the United States Constitution (and appears explicitly in various drafts of that amendment).³ It is the first of the “fundamental freedoms” articulated in

²William Sweet ed., *Natural Law: reflections on theory and practice*, South Bend, IN: St Augustine’s Press, 2001; henceforth abbreviated as *Natural Law*; this volume reprints material from Maritain, *The Rights of Man and Natural Law*, New York: Scribner’s, 1943, 79. See also Pope John Paul II, *Message for the XXIV World Day of Peace: “If You Want Peace, Respect the Conscience of Every Person”* (1 January 1991): “rather, [freedom of conscience] is the most fundamental, since the dignity of every person has its first source in his essential relationship with God the Creator and Father, in whose image and likeness he was created, since he is endowed with intelligence and freedom.” (See http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121990_xxiv-world-day-for-peace_en.html)

³See, for example, the drafts by James Madison (7 June 1789) affirmed: “The Civil Rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, nor on any pretext infringed. No state shall violate the equal rights of conscience or the freedom of the press, or the trial by jury in criminal cases.” The House Select Committee, (28 July 1789) stated: “No religion shall be established by law, nor shall the equal rights of conscience be infringed.” Samuel Livermore (15 August 1789) wrote: “Congress shall make no laws touching religion,

Section 2 of the *Canadian Charter of Rights and Freedoms* (1982).⁴ It is akin to the second of Franklin Roosevelt's "Four Points."⁵ It has been repeatedly referred to in the preceding century by the Catholic Church, in documents of the Vatican Council II, and particularly in the writings of the late Pope John Paul II.⁶ It is a freedom that is signalled elsewhere, as well.

What does Maritain mean by 'freedom of conscience'? Maritain explains that it is "the right of conscience to hearken unto God, and to make its way to Him."⁷ He also describes it as the right "of the human person to make its way towards its eternal destiny along the path which its conscience has recognized as the path indicated by God."⁸ More specifically, it is "the right to personal freedom or to conduct one's own

or infringing the rights of conscience." The final House version (20 August 1789) read: "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." See B. A. Robinson, "The First Amendment to the U.S. Constitution: Religious Aspects," 2002, at: http://www.religioustolerance.org/amend_1.htm.

⁴Among the fundamental freedoms of the Canadian Charter are "(a) freedom of conscience and religion" and "(b) freedom of thought, belief, opinion and expression." See *Canadian Charter of Rights and Freedoms* at <http://lois.justice.gc.ca/en/charter/index.html>.

⁵These "four essential human freedoms" were articulated by President Franklin D. Roosevelt in his Annual Message to the United States Congress, on 6 January 1941. They are: "(1) Freedom of speech and expression everywhere in the world. (2) Freedom of every person to worship God in his own way everywhere in the world. (3) Freedom from want which, translated into world terms, means economic understanding which will secure to every nation a healthy peace-time life for its inhabitants everywhere in the world. (4) Freedom from fear which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of aggression against any neighbour anywhere." See Maritain, *The Rights of Man and Natural Law*, New York: Scribner's, 1943, 72, note 1.

⁶For example, in the papal messages on 1 September 1980 ("The Freedom of Conscience and of Religion" [http://www.vatican.va/holy_father/john_paul_ii/messages/pont_messages/1980/documents/hf_jp-ii_mes_19800901_helsinki-act_en.html]), and for the celebration of the World Days of Peace, 1 January 1991 ("*For the XXIV World Day of Peace: 'If You Want Peace, Respect the Conscience of Every Person'*") and in 1998 ("Religious Freedom: Condition for Peace" [http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19871208_xxi-world-day-for-peace_en.html]).

⁷Maritain, *Natural Law*, 76.

⁸Maritain, *Natural Law*, 79.

life as master of oneself and of one's acts, responsible for them before God and the law of the community; the right to the pursuit of the perfection of moral and rational human life; the right to the pursuit of eternal good (without this pursuit there is no true pursuit of happiness)."⁹ In general, we may see it as "the right freely to believe the truth recognized by one's conscience."¹⁰

Now, for Maritain, this freedom is not the same as freedom of thought or of opinion. The distinction may seem to be a fine one, but it is not an insignificant one. Freedom of conscience is not just a freedom to think or consider, but more like a freedom to commit oneself to a way of life, and it presumes that one is seeking the truth (e.g., how to lead one's life) and not just pursuing some other purpose (e.g., avoiding military service). It is also not a freedom of opinion or belief; it is a particular kind of belief that it defends, one that has a special place in a person's life.

3. Source and Ranking of Freedom of Conscience

What is the source of this freedom? Broadly speaking, for Maritain, the source is "the conception of man and of natural law established by centuries of Christian philosophy,"¹¹ though we should note that the reference to "centuries of Christian philosophy" pertains only to how we have come to know what the source is; it is not the source itself. For Maritain, this freedom is rooted in the value human beings have as persons – as beings of dignity. But there is more involved here than this. For, though Maritain does not say this explicitly, he appears to hold that freedom of conscience has a distinctive moral weight because of something about conscience itself. To understand this, something must be said about conscience, particularly because of the possible misunderstanding concerning what it is.

In contemporary standard usage, 'conscience' means "the feeling or sense that one's conduct or intentions are inconsistent or consistent with what one feels to be right or be good." Similarly, the *Runes Dictionary of Philosophy* defines 'conscience' as "Any emotionally-toned experience in which a tendency to act is inhibited by a recognition, socially conditioned, that suffering evil consequences is likely to result from acting on the

⁹Maritain, *Natural Law*, 77-78; see also 97.

¹⁰Maritain, *Man and the State*, Chicago: University of Chicago Press, 1951, 150.

¹¹Maritain, *Natural Law*, 79.

impulse to act.”¹² Some see conscience, then, as “no more than the result of social pressures or customary rules of society which have become a part of our mental habits,” and that “the fundamental sense of moral obligation can be explained by social pressure and collective perceptions.”¹³

But this is *not* the sense in which Maritain would understand it. For Maritain sees ‘conscience’ as a characteristic of the practical intellect “inasmuch as it considers right and wrong in conduct.”¹⁴ Specifically, one’s (practical) reason issues a judgement of conscience: “The judgement of conscience is a speculative-practical judgement.”¹⁵ But for the practical reason to arrive at such a judgment, the natural law must be present: the “Natural Law has to be interiorized [or internalized], in order for my practical reason to exercise its function of measuring my will and my acts.”¹⁶ So it is clear that ‘conscience’ (as noted above) is not just ‘thought’ or ‘opinion’, but involves making a determination about how to act in accordance with an objective moral principle.

Conscience, then, is not just something one ‘feels’ or ‘finds’. It is a moral capacity that can grow and progress; this is why human beings need freedom. Moral conscience is something that progresses with our awareness and understanding of the natural law, and this “Progressive awareness of the Law” occurs at both an individual and a cultural level. Thus, Maritain refers to (past) cultures where there is a “Twilight state of moral conscience” (where natural law is “roughly or rudimentarily known”) and, later, a “Daylight state of moral conscience” (where natural

¹²*Dictionary of Philosophy*, 1942 edition, s.v. “Conscience,” by Archie J. Bahm.

¹³See Maritain, *Introduction to the Basic Problems of Moral Philosophy*, trans. Cornelia N. Borgerhoff, Albany, NY: Magi Books, 1990, 13-14; see also Maritain, *Moral Philosophy*, ed. Joseph W. Evans, London: G. Bles, 1964, Ch. 14, sect. 12.

¹⁴*The Catholic Encyclopaedia*, 1914 edition, s.v. “Conscience,” by John Rickaby. Similarly, the *Catechism of the Catholic Church* states: “Conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed.” *Catechism of the Catholic Church*, Vatican City: Libreria Editrice Vaticana; Chicago, IL: Loyola University Press, 1994, §1778.

¹⁵Maritain, *Loi naturelle ou loi non-écrite*, texte inédit, établi par Georges Brazzola, Fribourg, Suisse: Éditions universitaires, 1986, 68. See also Maritain, *Introduction to the Basic Problems of Moral Philosophy*, 173.

¹⁶Maritain, *Loi naturelle ou loi non-écrite*, 65.

law is “better known”¹⁷). He also refers to “the crucial moment of the awakening of the moral conscience” in individuals that takes place at “the end of childhood.”¹⁸

But while conscience can grow and develop, it can also be corrupted. Maritain refers to the possibility that “my conscience has perhaps been deflected or obscured by my own fault,”¹⁹ and notes that “deviations and warpings due to error and hardening of conscience yielding to passions and perverted habits are also possible.” Conscience can also be corrupted by “social pressure and collective perceptions.”²⁰

Conscience can develop, then, for good or ill, but it needs opportunities to do so. This is why freedom is necessary. Indeed, we need not only (metaphysical) freedom in order to act morally, but *political* freedom – a political right to conscience. Conscience is a necessary characteristic of a free, fully-human, agent.

Thus, it can be said, after a fashion, that the nature and value of conscience is a source and justification of freedom of conscience, and perhaps of political freedom generally. But there are other explanations or justifications of this freedom as well. We can see the importance of freedom of conscience in at least four respects.

(1) Conscience, first, relates *me* to *my* actions in the most fundamental way. When I act from conscience, or when my conscience is brought to bear on my actions, it reflects my engagement or commitment in my action.

The ability of acting from conscience is, therefore, characteristic (if not the very basis) of my dignity as a person. The late Pope John Paul II, for example, has written that “To obey it [i.e., conscience] is the very dignity of man”²¹ and that “To deny an individual complete freedom of

¹⁷See the ‘tableau’ in *Loi naturelle ou loi non-écrite*, 196-7.

¹⁸Maritain, *Introduction to the Basic Problems of Moral Philosophy*, 121; see also *Loi naturelle ou loi non-écrite*, 72: “The intellectual ‘virtue of the practical intellect or reason ... is at work in the first stage: examining, discussing, appraising circumstances in order to have the law manifested to us in the face of a given situation. In other terms, helping to form a right judgement of conscience in the detailed state [à l’état circonstancié.]”

¹⁹Maritain, *Loi naturelle ou loi non-écrite*, 70.

²⁰Maritain, *Introduction to the Basic Problems of Moral Philosophy*, 14.

²¹John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 1; see also *Gaudium et spes*, section 16.

conscience – and in particular the freedom to seek the truth – or to attempt to impose a particular way of seeing the truth, constitutes a violation of that individual’s most personal rights.”²²

(2) Freedom of conscience is necessary for the integral development of the person. It is the pursuit of the truth as one sees it and the engagement in activities necessary to it that makes people who they are. The development of conscience, then, is essential to being a fully developed person. According to Maritain, for me to be a person, “I have to introduce in the world something unique and new for which I alone am responsible, and the rightness of which is my own business, for which I have to know the law, and to appraise circumstances, yes, but also to commit all what is good in my own subjectivity. Judgement of prudence, or judgement of fully individualized conscience, is absolutely necessary.”²³

(3) Freedom of conscience is also important because the support or the violation of that freedom seldom occurs in isolation; its recognition and respect are indicative of a number of other freedoms, such as freedom of association, freedom of speech, and so on.

(4) Finally, freedom of conscience is also necessary for peace; it is by assuring this freedom, particularly for minority groups in states, that toleration and peace can be achieved. This is also reflected in John Paul II’s remark: “It is essential that the right to express one’s own religious convictions publicly and in all domains of civil life be ensured if human beings are to live together in peace.”²⁴

4. Limits to Freedom of Conscience?

Freedom of conscience, then, is a fundamental right, and recall that, in charters and bills of rights, freedom of conscience is generally associated with freedom of religion (as it is in the United States Bill of Rights). But are there any limits to freedom of conscience? If such a freedom is inextricably linked with human dignity, it may seem that it can never be

²²John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 1. John Paul II continues in the same section: “freedom of conscience finds its justification, inasmuch as it is a necessary condition for seeking the truth worthy of man, and for adhering to that truth once it is sufficiently known.”

²³Maritain, *Loi naturelle ou loi non-écrite*, 75.

²⁴John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 1; see also John Paul II, *Message on the World Day of Peace (1988)*.

limited and is absolute. Maritain notes that “the right of conscience to hearken unto God, and to make its way to Him – all these things, in the natural as in the supernatural order, cannot be tampered with by the State nor fall into its clutches.”²⁵ Maritain also writes that “with respect to the State, to the temporal community and to the temporal power, [the person] is free to choose his religious path at his own risk,²⁶ his freedom of conscience is a natural, inviolable right.”²⁷ This is a key point of Catholic doctrine. According to John Paul II, “No human authority has the right to interfere with a person’s conscience. Conscience bears witness to the transcendence of the person, also in regard to society at large, and, as such, is inviolable.”²⁸ The *Catechism of the Catholic Church* states that “Man has the right to act in conscience and in freedom so as personally to make moral decisions. ‘He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters.’”²⁹ Indeed, given the distinction between the person and the individual – characteristic of Maritain’s political philosophy – this freedom belongs to the human being *qua* person, it exists on a plane higher than that of the political community, and therefore it can never be limited by the community.

Nevertheless, Maritain would hold that, while this freedom is inalienable, it is not absolute. (The way in which Maritain deals with this issue tells us not only about freedom of conscience, but also about how he regards all freedoms.)

First, this right is conditioned by the truth. “With respect to God and truth, one has not the right to choose according to his own whim any path whatsoever, he must choose the true path, in so far as it is in his power to

²⁵Maritain, *Natural Law*, 76.

²⁶Maritain adds: “If this religious path goes so very far afield that it leads to acts repugnant to natural law and the security of the State, the latter has the right to interdict and apply sanctions against these acts. This does not mean that it has authority in the realm of conscience.” *Natural Law*, 79, n. 40.

²⁷Maritain, *Natural Law*, 79. Maritain adds: “This is how we must understand the right which President [Franklin D.] Roosevelt describes as the ‘freedom of every person to worship God in his own way everywhere in the world.’” *Natural Law*, n. 41.

²⁸John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 1.

²⁹See *Catechism of the Catholic Church*, §1782. The internal quotation here is to *Dignitatis humanae*, 3 § 2.

know it.”³⁰ Freedom of conscience, then, requires a simultaneous commitment to the pursuit of truth – and this truth cannot be subjective. This is a formal or analytical restriction on freedom of conscience; since this freedom is by definition a freedom to pursue the truth, and is therefore limited by it.

But this is not the only constraint on this freedom. Aside from requiring a commitment to pursue the truth, the exercise of this freedom must be consistent with natural law and with public order. Maritain writes that, while the state does not have “authority in the realm of conscience,” if one’s pursuit of truth – for example, in following a “religious path” – “goes so very far afield that it leads to acts repugnant to natural law and the security of the State, the latter has the right to interdict and apply sanctions against these acts.”³¹ Maritain also holds that “the State has the right to punish me if, my conscience being blind, I follow my conscience and commit an act in itself criminal or unlawful.”³² It does not matter whether my intention is to do good or to do evil. Obeying one’s conscience is not intrinsically good. One’s conscience should reflect the natural law. This is as it should be. As noted above, there can be “deviations and warpings due to error and hardening of conscience yielding to passions and perverted habits”³³ and, therefore, limitations on it.

Thus, to begin with, the state – in virtue of its position as a guardian of order in the community, and when it is necessary – can restrict this freedom in the name of security.³⁴ The limits or restrictions involved,

³⁰Maritain, *Natural Law*, 79. To put it slightly differently, John Paul II writes: “To claim that one has a right to act according to conscience, but without at the same time acknowledging the duty to conform one’s conscience to the truth and to the law which God himself has written on our hearts, in the end means nothing more than imposing one’s limited personal opinion.” *Message for the XXIV World Day of Peace (1991)*, section 3.

³¹Maritain, *Natural Law*, 79, n. 40.

³²Maritain, *Natural Law*, 76.

³³Maritain, *Loi naturelle ou loi non-écrite*, 194-195.

³⁴John Paul II adverts, as well, to “*the inalienable right to follow one’s conscience and to profess and practise one’s own faith*, individually or within a community, [that] is to be acknowledged and guaranteed, always provided that the demands of public order are not violated.” John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 4. He further adds: “It should be noted that freedom of conscience does not confer a right to indiscriminate recourse to conscientious

however, may be rather minimal. As we have seen, Maritain holds that “This does not mean that [the State] has authority in the realm of conscience;”³⁵ “the State has not the authority to make me reform the judgment of my conscience, any more than it has the power of imposing upon intellects its own judgment of good and evil, or of legislating on divine matters, or of imposing any religious faith whatsoever.”³⁶ Nevertheless, Maritain would likely agree with the “Berlin Joint Declaration on Religious Freedom” (1998), and insist that there can be ‘restrictions’ or limits on freedom of religion in certain circumstances. These are “restrictions on religious freedom based on public order, safety, health or morals or the fundamental rights and freedoms of others,” though Maritain would also add that these limits “should be imposed *only* if the state interest is demonstrated to be compelling and based on generally applicable neutral law and the restriction imposed is the least restrictive means of satisfying the state interest.”³⁷

Moreover, Maritain allows that the exercise of freedom of conscience can be restricted when it leads to actions that grossly violate the natural law. He does not give examples, but such actions would seem to include the murder or the sacrifice of newborns, slavery, the sterilization of minority groups, and the like. This, again, is a formal restriction of this freedom because, as Maritain insists, the natural law must be present and internalized for judgements of conscience to be possible. Should the state limit the exercise of freedom of conscience on this ground, it is not acting just in virtue of its unique position as a guardian of order; natural law provides the authority for anyone, including the state, to restrain certain acts.

Are there other restrictions that Maritain might allow to be imposed on the freedom of conscience? Perhaps yes. One seems to be that

objection. When an asserted freedom turns into licence or becomes an excuse for limiting the rights of others, the State is obliged to protect, also by legal means, the inalienable rights of its citizens against such abuses” (section 6).

³⁵Maritain, *Natural Law*, 79, n. 40.

³⁶Maritain, *Natural Law*, 76.

³⁷Maritain, *Natural Law*, 76, emphasis mine. See “Berlin Joint Declaration on Religious Freedom” prepared and signed at the International Coalition for Religious Freedom Conference on “Religious Freedom and the New Millennium” Berlin, Germany, 29-31 May 1998.

conscience has to conform broadly to what is reasonable.³⁸ (Presumably this, too, is a formal restriction.) This is consistent with requiring that one's conscience conform to what is true, at least to the extent that one can know it.³⁹

But another possible restriction on this freedom is that one must meet one's pre-existing obligations in this matter. One might propose, as John Paul II did, that, while no human institution has the right to limit or interfere with a person's conscience, the Christian Catholic can be advised – and required – to conform his conscience to the teachings of the Church.⁴⁰

The Catholic Church has the authority to impose such restrictions presumably because it is the repository of truth. (Since the value of conscience is in its relation to truth, it might be argued that this simply expresses just the first formal restriction on freedom of expression noted above.) The Church also has this authority because it reflects reason and the true good. (We might see this as expressing the second and third formal restrictions noted above, that of reason and of the natural law.) But a third possible reason for the restriction of freedom of conscience is that the Church is an aid to conscience. Here, the limits imposed are substantive rather than formal. We may say that a well-formed conscience, because it is a 'practical' thing, is dependent on its good use, and so on. Such a conscience benefits from and, indeed, needs all manner of external

³⁸However, "In order to be good or right, a judgement of conscience finally concretized to the highest degree of individualization or interiorization [the practical judgement] has to conform itself to the right will, as to the *final measure of reason*. This measure exists in the depths of subjectivity, at the very root of the subject and which is its own will, and, for so far as it is itself right, plays a decisive role in the moral dynamism (there is, to be sure, as mixed in a same measure, the eternal law, the natural law, and the rectitude of the will.)" Maritain, *Loi naturelle ou loi non-écrite*, 70-71.

³⁹Maritain, *Natural Law*, 79.

⁴⁰John Paul II, *Message for the XXIV World Day of Peace (1991)*, section 8: "More than anyone else, the Christian ought to feel the obligation *to conform his conscience to the truth*. Before the splendour of the free gift of God's revelation in Christ, how humbly and attentively must he listen to the voice of conscience! How modest must he be in regard to his own limited insight! How quick must he be to learn, and how slow to condemn! One of the constant temptations in every age, even among Christians, is to make oneself the norm of truth."

help (e.g., teachers, clergy, parents, and what it reads, sees, hears, etc.), and one of these external helps is the Church.

In the list of reasons why freedom may be limited, there is a mix of the logical and the contingent, of the formal and the substantive, which, since we are referring to the freedom of a being that is of this world but not restricted to this world, may be exactly what we should expect. But I do want to suggest that Maritain can have a philosophical, and not simply a theological, basis for the authority of the Church, one that may, as well, allow us to understand better the role of the state *vis à vis* freedom of conscience. This, however, requires a careful interpretation of a point that Maritain only hints at.

5. “Community of Minds” and the Common Good

In virtually all of the texts in which he discusses natural law, Maritain refers to three other kinds of law: eternal law, positive law, and the law of nations (*ius gentium*). When speaking of the last of these three, he often refers to a “common good of civilization” or an “order of civilization,” which is a terrestrial good, although not purely material and not simply the good of a particular state. This is consistent with a view that seems to be present in Maritain’s writings, that human beings are not just individuals (*qua* part of the State) and persons (in relation to God), but also ‘minds’ (i.e., persons in relation to one another as persons). In *The Person and the Common Good*, for example, Maritain refers to the existence of a “community of minds” which communicates in the love of truth and beauty.⁴¹

In describing this “community of minds,” we are still at a terrestrial level. What this notion indicates, however, is that there can be a relation among human beings independent of any political community. Indeed, what we see in the love of truth and the love or experience of beauty, is a relation to others through something that is beyond the interests of individuals that are found in the state. Thus, we have a reference to (i) a community that is immanent in the world, but in principle greater than any political community, and (ii) something that is more than the material (as we might find in reflecting on what is true or on examples of noble actions, or in having aesthetic experience).

⁴¹Maritain, *The Person and the Common Good*, trans. John J. Fitzgerald, New York: Charles Scribner’s Sons, 1947, 63, note.

While this “community” is a terrestrial institution, it is not limited by the needs or demands of a particular state, in just the same way that the common law of civilizations or *ius gentium* is not fixed or determined by the needs or demands of a particular state. Presumably, this community can have expectations of us, and impose duties on us, as ‘minds’. There may, in fact, be many such communities, but there is at least one, which Maritain calls “civilization,” that we might see as under the rule of the “law of nations,” which is an extension of the natural law.

If this notion of a “community of minds” is plausible, then we can see how the Church can impose restrictions on its members, for the Church is such a “community of minds” existing both at the terrestrial level and beyond. We can see how the state can have authority over, but also obligations to, its members as well, because the state is also such a community of minds.

The state, as an external authority – the topmost part of the body politic, concerned with providing mechanisms for the respect of the natural law and with articulating and enforcing positive law – does not have a right to interfere with freedom of conscience. In this respect, the state is simply directed to a terrestrial, common good.

But the state can sometimes be a representative or an instantiation of the order of civilization or of the community of minds. Its relation to its members is, then, also internal; it is involved in our very self-understanding. In this capacity (i.e., not in its capacity as the particular authority in a particular place), then, it can impose limitations on human freedoms – even on freedom of conscience – when, for example, these freedoms or their exercise are inconsistent with other human freedoms, and with the rights of other human beings.

It also follows, however, that the state may also have an obligation to provide the means for freedom, such as freedom of conscience. It has this obligation, I suggest, not because it is a means to the good of an individual, but simply because it is representative of this order of civilization or community of minds. This is why Maritain can say that the state is made for man (i.e., human beings), and not just men (i.e., individuals). On this view, then, Maritain could even hold the view that the state must provide the means for the exercise of freedom of conscience as a positive freedom. Certainly this is the claim of John Paul II: “I wish to repeat what I stated in the Message for the 1988 World Day of Peace: ‘Even in cases where the State grants a special juridical position to a

particular religion, there is a duty to ensure that the right to freedom of conscience is legally recognized and effectively respected for all citizens, and also for foreigners living in the country even temporarily for reasons of employment and the like'..." "The State is obliged not only to recognize the basic freedom of conscience, but also to foster it..."⁴²

This notion of a "community of minds," then, can explain how the Church, the state, or any similar institution can have authority over its members, and that it can restrict even our fundamental freedoms in view of some values or non-material ends. Maritain only hints at such a view, but it provides him with a philosophical, rather than a theological, defence of his position that freedom of conscience does not entail "the right to choose according to [one's] own whim any path whatever."⁴³

6. Conclusion

For Maritain, freedom of conscience is a fundamental freedom because (among other reasons) conscience is fundamental to the very possibility of human moral personality. Indeed, freedom of conscience – and specifically religious freedom – has an almost unique status among human rights, since it involves one's freedom to commit oneself to a way of life. Maritain sees it as among the very first of human rights, and in the *International Covenant on Civil and Political Rights* (1966, where, again, it is Article 18), it is "non-derogable."⁴⁴

Still, this freedom, Maritain would note, has its limits, limits determined by the nature and value of conscience and by the truth that it seeks. There are other limits as well, limits that recognize, despite the distinction between the person and the individual, that we are essentially

⁴²John Paul II, *Message for the XXIV World Day of Peace (1991)*, sections 4 and 6. In a recent court decision in Canada, for instance, the Québec Superior Court ruled that "[w]here there is a conflict between the exercise of a Charter right and some perceived public interest or private concern, reasonable accommodation, meaning accommodation up to the point of undue hardship, must be shown to *facilitate* the exercise of the Charter right; "(Rosenberg vs. City of Outremont, unreported decision of the Québec Superior Court, 21 June 2001, No. 500-05-060659-008, pages 7-8, [emphasis added]). See Brad Miller, "Religious Intolerance at City Hall," *Lex View 47.0* at <http://www.culturalrenewal.ca/lex/lex-47.htm>.

⁴³Maritain, *Natural Law*, 79.

⁴⁴See *International Covenant on Civil and Political Rights*, General Assembly resolution 2200A (XXI) of 16 December 1966, art. 4.

social beings and part of a community of minds. The Church and the state, therefore, have a place in this freedom, and we can find reasons in Maritain's work to explain how one can arrive at this view. This also explains how freedom of conscience is a positive right – i.e., a right that the state must not only accede to, but provide the means to, and guarantee by means of the creation and support of related institutions (such as religious education).

For Maritain, then, the individual right to freedom of conscience and the demands of the community need not conflict. To see this, however, requires understanding not only the formal and substantive limitations of such a right, but also something about what a person is, and how persons are related to other persons. Without such an understanding, however, neither political communities nor the Church can appreciate the precise nature and force of this fundamental freedom and, indeed, the nature and value of human dignity itself.⁴⁵

⁴⁵An earlier version of this paper was read at Princeton University, on 18 October 2002, to the American Maritain Association conference on “Jacques Maritain and America.”