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Address of U.S. Ambassador (ret.) Douglas W. Kmiec

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Using social media to advance religious freedom and democratic governance – the necessary distinction between secularism and secularization

This is my third visit to Malta -- each one more appreciated than the last; each one embraced as my great good fortune. On this occasion, I am very grateful to His Grace, Archbishop Paul Cremona for the invitation. These remarks respond to the Archbishop's inquiry into the difference between secularism and secularization and how that differentiation has an impact upon the relationship between church and state in a mature democracy as well as implications for hoped-for democratic growth in the "Arab Spring" nations.

Confused usage

In academic and popular literature, there is confusion over the basic concepts of secularism and secularization. Indeed, at different times one or the other word is used in directly contrary ways: one term is hostile to faith seeking its exclusion or disregard; the other word is more or less descriptive suggesting in a neutral fashion how a cultural practice may have begun as a faith expression, but has lost its overt faith reference (e.g., the common law purpose of taking an oath reflecting an original effort to codify the precept against "bearing false witness" before God, while today oaths are administered to introduce a reminder of the need for integrity in a judicial process irrespective of the original religious purpose). Secularization is used herein also as a neutral reference to all religious (as opposed to a denigration of all religions). Secularism is said to be the natural consequence of an informed 21st century mind desiring to strip ethical systems of any and all reliance upon "myth or the irrational." By contrast, as used herein, secularization has been assigned the the more benign definition; it is an understanding of the process by which one or more ethical precepts have become so embedded in the culture that their religious origin is seldom if ever contemplated.

Why are these concepts important?

These concepts define the character of a people, and hence, the character of a nation; in particular, the concepts help us evaluate the sufficiency of constitutional systems. Constitutions, we are told by James Madison, are an attempt to accurately depict the truth of the human person. Today, a grasp of that truth is ever being contested. At the highest level of generality, if a human person possesses inalienable rights, they may not be relinquished at will:

a. By the terminally ill, seeking to withdraw nutrition and hydration to save his or her family the cost of the final illness;

b. By the suicide bomber;

c. By the mother of a child in utero;

d. By a male mob in Egypt celebrating the imposition of a new military strongman by multiple assaults upon a female.

Grasping the truth of the human person entails honoring that truth in the design of the cultural /constitutional institutions such that the concepts of family, town, community, or nation state are secured against doctrines that undermine these concepts.

Since the time of Aristotle, democracy as a form of government has been found the most acceptable, with that acceptability being greater the more open the government is to freely expressed ideas, including those with a religious base.

Given the importance of free speech and unfettered religious freedom to democracy, the subject matter that we are discussing today would be important at any time but it has unique significance now because of the uncertain prospects of transition governments in north Africa and the extent to which the fragility of those troubled nations could have been avoided or still might be mitigated by a greater understanding of the demands of religious freedom, especially as that greater understanding might be expressed by means of social media or communication.

Who is to judge?

Before getting into the distinction between secularism and secularization, the former being hostile to faith; the latter being so influenced by faith in a positive way that a once-religiously particular practice has become part of the larger cultural framework, it is useful to make note of an informal comment made by the Holy Father with respect to sitting in judgment of our fellow Catholics over issues like divorce, same-sex marriage, abortion. When Pope Francis articulates that it is not for him to judge, he is not saying that our actions avoid God's judgment. Yet, clearly Francis views it as an evangelical strength of Catholicism that the faith is neither relativistic-ally empty nor at the other extreme so judgmental as to deny those of us who are not perfect the grace of sacramental restoration by means of reconciliation. The Holy Father reminds us that Christ is in constant pursuit of us with a love so sublime that it never tires of our tiresome and repeated rejection of it.

Religious freedom means, at times, being "freed" of otherwise generally applicable rules

Appropriately, the U.S. Supreme Court has affirmed that there is value in allowing faith communities the freedom to apply their own unique standards to those who voluntarily come within their number as its spiritual leaders or ministers. The so-called ministerial exemption thus allows religious communities the ability to hire or fire a clergyman on the religious community's own terms even in cases where a non-religious employer would be under a different mandate.

Thus, the Holy Father's recent reaffirmation that the priesthood is limited to the male gender is an absolute defense to a claim of gender discrimination by a female excluded from the seminary.

Is it carrying religious exemptions too far to extend them to the owners of for-profit companies?

It should not be surprising that this cascading of freedom upon freedom has invited a claim of religious freedom by a wholly secular private, for-profit corporation. But is this claimed freedom within the limit or beyond it? Insofar as the typical corporation is the coming together for profit-making or liability-limiting purpose, such claims may bring resentment, confusion and uncertainty to religious liberty. In this respect, a good many employees of a publicly traded corporate firm could easily be envisioned as unaware, and potentially dissenting, from the pieties of managers and even owners – all of whom may have their own individual and different religious claims. Which set or subset of these views represents the religious thinking of the corporation? No one seems to know suggesting this may well be beyond freedom's reach or at least the point at which individual religious freedom claims need to be differentiated and preserved against the confusions that accompany an over-reach. Those confusions or uncertainties are both internal and external.

Is the nature of religious freedom greater when a for-profit business is resisting a disagreeable unfunded mandate than when the government is supplying a partial or total subsidy for the objectionable practice, or vice versa? It can be argued both ways: a pious, for profit business required to supply an objectionable option seems less morally culpable than one providing the option after it accepted an economic benefit or advantage from the government.

To date, the prelates of the American Catholic Church have argued for this newly-minted, broader claim of religious freedom for a privately held, for-profit corporation may not have fully perceived how stretching the freedom of religious entities to cover for-profit business corporations tends to flatten the religious freedom claim for all leaving tears in the fabric of religious freedom available for the Church, herself.

At the moment, the Church and the for-profit pieties of the corporate ownership are aligned, but it is conceivable to find them differing at some point over some question of orthodoxy. When that happens, one can expect that the Church will be cautious about accepting the proposition that freedom of religion is equally muscular whether one is making the claim from rectory or boardroom. These speculations are left unanswered for now as the cases wend their way through the judiciary.

Broad claims for religious exemption can trigger push back

In what may be a retaliatory move against religious exemption claims perceived to be too expansive, those fashioning public policy have defined religious entities so narrowly that few such entities qualify. For example, some recent laws limit exemption claims to organizations

that only hire people of the same faith, are actively involved in inculcating the faith, and limit their provision of beneficial services to people of the same faith. By this measure, a large Catholic charity that fed the homeless regardless of the denomination of the person being fed would be disqualified from eligibility for exemption. Obviously, these eligibility limits are hostile to faith and cut against the ecumenical outreach of religious bodies.

Secularism vs. Secularization—another look

Scholarly study reveals that there is a difference and indeed I've spent the last year or so authoring a book for the Oxford University press tentatively entitled *Secularism Crucified* illustrating aspects of that difference.

My personal inquiry actually began during my earlier foreign service here in Malta. I was intrigued by a European Court of Human Rights decision approving of a mandate that the crucifix be affixed to the walls of Italian public schools. The American Supreme Court had reached the opposite conclusion decades earlier excluding the Ten Commandments from being posted in the public schoolhouse and there are legions of similar cases excluding prayer (or even a moment of silence that might be used for prayer), or any meaningful direct funding of religious schools. Exceptions started to develop allowing remedial publicly-funded English and mathematics instruction in Catholic or as we tend to call them "parochial or parish schools," if that study took place off the Catholic property usually in a portable trailer at the curb. In the 1970s and early 1980s additional exceptions allowing for tax credits and specialized services such as language interpreters were permitted and ultimately the Court decided that so-called school vouchers or scholarships could be awarded the parents or the student for their discretionary allocation to either a public or private, including a private religious, school so long as the allocational formula did not favor the private religious school. Once this was established, the Court turned its attention to limiting the number of challenges it would hear claiming that one public subsidy or another was constitutionally impermissible.

Under American jurisprudence, how could a subsidy be constitutionally impermissible? To give adequate answer to this question, I must allude to something not found in the Maltese Constitution – namely, the no establishment clause. As drafted and intended, the no establishment clause was an important partner with the free exercise clause securing religious freedom; it was subsequent judicial interpretation that for a half-century turned it into a secularism weapon of exclusion hostile to religion.

By this clause, our founders of our Republic meant no national church and they further meant that any state church -- that is a church that had been given special acknowledgment by a state -- would not be disestablished by the creation of the national government. In other words it was a two-pronged protection for religious belief. On one level, the national government would not create a church that would compete with the state established church. And on the second

level, the national government would not interfere with a state's choice to have an established religion.

While that was the original meaning of our Constitution, it came to mean something else in litigation. First of all, the principle came to mean not just no national church but no state church either and hence a promise on the part of the government not to make any law "respecting an establishment" of religion – especially one that was already established at the state level was simply a promise broken. Instead, the national government – through the judiciary – made a new promise that there would be no established church either at the national or the state level of governments. This, in essence, broader promise to avoid religious establishment was a diminishment of the sovereign power of the states, but since it was conferring a larger field of freedom for an individual, it was accepted.

Far more controversial is what followed: namely, that the no establishment clause meant imposing constitutional disfavor on religion. It is not normally put in those stark terms, but that is what it came to mean. This hostility to religion is normally described as maintaining strict neutrality between religion and no religion, and at first blush, that does seem neutral, but what results is anything but that. Instead, the recital of neutrality between religion and no religion imposes an affirmative duty to remove all evidence of faith and religious belief from the public space. Obviously, crucifixes on classroom walls would be disfavored but so would organized prayers, Christmas displays, and even religious symbols on the seals of some of our most distinguished cities (e.g. the city and County named for Our Lord's Angels (Los Angeles) was instructed to remove from the seal of the county and city government all religious references be it a cross or other symbol. While it never came to this extreme, the same principle would require the renaming a good number of American cities, such as one honoring St. Francis (San Francisco) or St. James (San Diego) could hypothetically be told to remove references about those saints. It was only a matter of time before someone would challenge the words under God in America's Pledge of Allegiance to be "one nation under God indivisible with liberty and justice for all." That challenge made it to the Supreme Court but ultimately ended with no definitive ruling because of the lack of jurisdictional standing by the noncustodial father who argued that his daughter ought not to be exposed to that Pledge of Allegiance at the start of the school day.

By contrast to the exclusionary force of secularism, are references to the secularization of society which is quite different. Secularization is a natural outgrowth of the recognition of religious freedom as an aspect of human dignity. The principal Vatican document on religious freedom is *Dignitatis Humane*, wherein the second Vatican Council makes clear that the protection of religious freedom is not a protection hinged on the correctness or the legitimacy of one's freely chosen faith but simply upon the created nature of the human person who must be allowed to determine and ascertain for himself or herself what faith traditions to follow. Thus, it is no affront to religious belief if society chooses to rest on a day that largely coincides with the majority Sabbath. The practice has been undertaken so long that its religious origin has receded

into cultural tradition. By contrast, when no establishment is interpreted as giving no preference to religion over non-religion that is an endorsement of an agnostic or atheistic ideal which is directly in competition with religious belief, even religious belief.

Secularism is not an exercise of freedom, but its antithesis because it denies the ability of men and women to choose faith. Secularization is the outgrowth of multiple people making a cultural choice based upon faith which becomes over time a cultural practice with its own independent purpose beyond its original religious origin. Secularization as a concept is neutral among religions; it does not obligate the law to be neutral between religion and no religion. It is within the ambit of individual human right to ascertain whether to pursue the path of faith; it is not the government's choice. Moreover, individual religious freedom is not offended by whether a government chooses to name an established faith (as Malta has), made reference to the corporate, self-evident principle that rights flow from a transcendent Creator (as the United States does) or says nothing about the origin of human rights (as does the EU). With careful drafting that honors the free exercise of different faiths, the only model of governance that truly offends religious freedom is either one that prohibits belief (as some Communist regimes did) or by the false neutrality of secularism effectively denies religious reference.

Before leaving the relationship between the misinterpretations of the American no establishment clause and secularism, I need to make reference to a very recent U.S. Supreme Court decision. The no establishment clause case of note is: *Town of Greece v. Galloway* decided May 2014 dealing with the constitutionality of prayer before local decision-making bodies, such as town or city councils which normally concern themselves with matters of land-use planning, traffic congestion, building safety and other permitting or licensing matters related to common occupations. A lower court had interpreted the no establishment clause as denying a local council the right to begin proceedings with a prayer -- at least under the circumstances where the prayers offered were overwhelmingly Christian in content and the lower court had felt the Council had made little effort to be inclusive of other faiths.

The U.S. Supreme Court, 5 to 4, reversed allowing prayer except where it was used to denigrate other beliefs, or as a proxy for a hidden favoritism, or to manifest coercion or a desire to proselytize. While prayer before state legislatures had long been allowed as a matter of history and tradition, it was argued that town councils which involve more give-and-take between citizen and official presented a context that inherently coerce non-believers. On the record before them, the Court found none of this subtle coercion though it admitted that the matter was "fact sensitive." That fact sensitivity however should not be taken to mean that the Court will involve itself as a censor to remove even particular sectarian reference to pray to Jesus or Yahweh or Allah (praise be unto him), for example.

Does fact sensitivity and a new appreciation for the tradition and history of prayer in public places mean that the United States and Europe in the same inclusionary category? Would the U.S. and the EU now decide the crucifix or particularistic religious symbol case in the same

way? Not quite. It is premature to place United States in a category different than the exclusionary one suggested in the main essay:

Nevertheless, there is little question but that the decision represents a course correction for the Supreme Court aligning it more closely with the side of U.S. culture that welcomes an inclusionary attitude more easily. Where or when or over what topics might this more inclusionary attitude manifest itself and where will it be resisted? Its manifestation will be found in the symbolic matters and not the perennial trouble spots of: abortion, divorce, bioethics and embryonic stem cell research.

To recap, the divergence between the US and the EU over religious displays in public has narrowed in favor of including even particularistic religious reference. The Court is likewise in agreement that the no establishment principle does not demand neutrality between religion and no religion. That is not neutrality at all, but disguised anti-religious secularity. That said, the dissent by Justice Kagan should not be overlooked. It raises the commitment behind the First Amendment protection of religious freedom that in the republic of the United States all citizens are equal. That equality, even the dissent conceded, “did not necessitate that town councils be a “religion free zone,” but it did require sensitivity to the promise of the First Amendment that “every citizen, irrespective of her religion, owns an equal share in her government.” This is a principle of great importance insofar as journalists pointed up that all of the justices in the majority of the recent opinion were Catholic and the dissent Jewish. Thus far, this mention of the denominational personal preferences of the Justices is only a softly spoken point of interest and not a matter of public alarm, nor should it be.

Social Media and Freedom

Pope Francis reflected just a few weeks ago that “Christians in social media are becoming citizens of a digital continent.” And how is this citizenship to be used: “To listen; to converse and to encourage,” said the Holy Father. The digital arena challenges us – the body of Christ – to engage in ways that only the Holy Spirit has a grasp of where it might end up.

No one should underestimate the power of Facebook to create an opportunity to organize an oppressed people to rise up against their oppressor. The Pope himself illustrates how authority and celebrity can come together to move the unmovable.

At the beginning of this paper, I recalled the events of the Arab Spring. Malta, of course, by proximity has had a front seat witnessing the ups and downs of the Arab Spring. As much uncertainty as these uprisings triggered we cannot forget that they followed years of authoritarian oppression in Libya Tunisia and Egypt. These denials of basic freedoms led to the unsurprising consequence that few corporate entities around the world were willing to invest long-term where at any given moment economic opportunity might become the fund of an entrenched dictator.

It is said that it was social media that brought thousands into Tahir square in Egypt and the equivalent places in Tunis and Tripoli. If social media was the proximate cause (or more precisely, means) in bringing the people to confront reality, it clearly demonstrated that there can be but a short distance from an invincible virtual reality and a deadly actual one.

Prior to the events of spring 2011, none of the oppressors likely gave the time of day to social media and likely would have scoffed at the notion that their earthly kingdoms could so easily topple in the face of a few keystrokes and accompanying human passion for freedom. But Qaddafi is in the grave; Mubarak in his cell; and other ruthless strongmen deposed. The power of the social media can be great.

Yet, as suggested earlier, the power of removal is not to be considered apart from the question of “what next?” It is not clear that the medium invited that discussion in the same way that face to face planning to topple a dictatorial regime might have. The distortions of social media may even partially account for the misreading of actual human intelligence. This misreading likely contributed to the loss of life on both sides – the tragic death of my friend and colleague, Ambassador Chris Stevens being one such victim.

Pope Francis gives no quarter as he says himself to “sourpusses” who see injustice and do not act to correct it. So I shall not be one. What does a non-sourpuss do with social media that has proven itself capable of taking apart the playgrounds of strongmen but has yet to demonstrate the strength of the gentlest man to form community. Again, this instruction from the Holy Father is that we are to “give the soul to the Internet” and in so doing challenge the modern culture to be a true invitation to service in the fullness of friendship.

Facebook is often mocked, rightly so, for applying the terminology of friend to someone who has casually bumped into another’s assembly of pictures and other memorabilia and requested to be named a “friend.” If one becomes a friend by the click of a mouse but is incapable of empathy one is hardly much of a friend. Such a concept of friendship might suit the untrustworthy politician and sales personnel where a friendly demeanor need last only as long as the need for votes or the 90 day warranty is still in effect. Likewise, the heart of a friend usually wants to say more than 140 characters on twitter. There’s just simply more to be said from the human heart even to a stranger, let alone someone labeled friend. In this regard, it is said that a “like” on Facebook is nice but it is not a donation nor is it a commitment to emerge from one’s social cave or protective shell and to be animated too be of service to others.

Yet, in a busy world and on a busy day even 140 characters can change a person’s attitude toward seeking medical care in the face of nagging illness, to be inspired to make a meal for another in one’s own household or simply to find the right words to thank a person who walks alongside us through life saving us from being alone. The Holy Father’s proposition is that we give a soul to the internet and in this way, social media can be an invitation toward community and service.

It is a noble and practical thought to view social media as a means to make the world better and better understood, as capable of being remade in the image of Christ. Likes and friend affirmations may be thin, but the pictures and videos and music there assembled can be an offering of self to others in complete freedom that is also often evidence of some of the best of our talent.

In this respect, social media also expands our horizon. We can assume a great composer in earlier times also indulged in painting or sculpture as a means of living life to the full; it is not farfetched to see social media as giving a person of average abilities the chance to experience the joy of creative pursuits that would otherwise be out of reach. Those who would have otherwise suffered from stage fright face to face are likewise encouraged by the semi-anonymous nature of most postings to speak one's mind.

Again, having been the victim of more than one hurtful blog expression one has to always appreciate parallel risk of abuse. The comments of the Pope remind us of the importance of being welcoming as Catholics and Christians in social media. To be welcoming, of course, means observance of editorial limits where none are present or legally capable of being imposed without tripping over free speech protection.

The Vatican has a new social media site (<http://w2.vatican.va/content/vatican/it.html>) and this most certainly will teach by example, but a few things warrant special note even for the Church. Writers generally are admonished to know their audience. This is more difficult with social media, but it is certainly not impossible as social media entrepreneurs and commercial advertisers are obviously targeting us based on free information we supply as a condition of registration for desired websites. The Church will need to tap into our profiles if it is going to make full use of social media. Moreover, given the capability of the web to trigger unemployed men in internet cafes to answer almost any call to come to the square to protest both oppression and lack of economic opportunity, the Church must exercise caution even in its proper denunciation of injustice.

In the "Arab Spring" context by means of social communication and notification, the virtual reality of large numbers in revolt became the actual reality. But that actual reality is under no obligation to follow the internet script. At one point, Secretary of State Clinton was invited to walk among those demonstrating in Egypt in Tahir Square; from the perspective of advancing freedom, Mrs. Clinton had little choice but to accept, even as by accepting of this opportunity she placed herself in considerable danger, and to some extent, this was evident in her demeanor and swift exit.

Others, like my colleague Chris Stevens were not as fortunate. Chris' optimism was an in-born trait, aided and abetted by a love of the Arabic language and people, much of it derived from a tour in the Peace Corps in Morocco. Having given his own green light to the unlimited potential of the Arab land, the State Department used both social media and a magazine spin off,

to echo Stevens' optimism. Shortly before reporting for duty as ambassador to Libya, the State Department had Chris prepare a video announcing his high hopes for democratic principles to take root and his intent to give emphasis to both economic growth and political stability.

Yet, social media can talk of these things; it cannot deliver them. Social media is good at gathering a mob; it is far less capable of assisting in the drafting of the kind of nuanced constitutional document that can accommodate diverse religious and political freedom. If the Church wants its social media efforts to fulfill the goals of social justice, it would be highly advantageous to follow up its web instruction with the offer of guidance from constitutionalists who can design systems that honor human rights. The Church's role here would be singularly valuable as the advice of other nation states, even those perceived as allies, is frequently untapped or rejected as diplomatic interference in another nation's internal policies. The Church's commitment to social justice should encounter less resistance if offered honestly and not disinterestedly but with the concentrated personalist interest of the love of Christ.

Can social media really assist in the transformation of culture?

Thus far, except in tiny, homogenous Tunisia, the new governments conceived in the Arab Spring are surviving, but not always by means either compatible with democracy or human right. Consider for example the mass trials of nonviolent protesters in Egypt being sentenced to death for little more than being members of the Muslim brotherhood. President Morsi made numerous television appearances and posted an equal number of claims that the brotherhood was no longer a terrorist organization or one that was disregarding of Coptic Christian or other religious beliefs and practices. The Constitution that the Morsi government proposed however contained a one-sided endorsement of Islam, the requirement that all legislative enactment reflect sharia law, and except for a vague and lame promise to observe the religious prayer practices of others, no real defense for a non-Muslim to avoid culturally imposed sharia-based outcomes. This not unsurprisingly was found to be unacceptable as a matter democratic principle.

From our side of the Atlantic it looks like the social media abetted revolution has run its virtual reality course and crashed into the real reality of the people of Egypt to have stability over democracy in the hope that stability will invite investment and greater prosperity.

Why might social media disappoint the Holy Father?

In part, it is because as he recognizes in his own apostolic exhortation, we live in a world where we have abundant information, but far less thought. Prior to the advent of the Internet, the world looked to traditional elites for guidance. These elites could be found mostly in academic circles, the leadership of major corporations, and of course the fathers of the church. Have these sources disappeared? No, it is not so much that they have disappeared but that they have been submerged into a sea of relative mediocrity. Oh to be sure, there are still authoritative voices that make their way onto the social media but if one actually looks closely, popular authoritarian voices are often not those holding an advanced theology STL or business MBA, but rather those

who have become a celebrity in sport, movie or song. Such celebrity may come with great wealth, but it is far from a guarantee of great wisdom. Not infrequently it is the opposite where wealth has its usual distortions of consumerism and materialism.

Concluding thoughts

This may sound as if I'm laying blame for the world's economic and political dysfunction upon the social media and if it does I want to be careful not to fall into that category of sourpusses, as the Holy Father describes those who are unduly pessimistic about the human condition. Moreover, it is not fair to assign blame for cultural dysfunction to the social media if the root is that this function is in a failure to appreciate a deeper cause. One such deeper cause suggested by the Archbishop in his invitation to me is the failure of society to distinguish between secularism and secularization.

In its recent local council prayer decision, the United States Supreme Court has caught the drift of the secularism/secularization distinction revealing that it now understands how the recital of neutrality between religion and no religion wrongfully imposes an affirmative duty to remove all evidence of faith and religious belief from the public space. Social media can play a constructive role in advancing religious freedom beyond the U.S. if the Vatican's web efforts underscore how secularism excludes rather than invites all faiths to participate; it suppresses or lessens freedom by putting religion off-limits as a choice of that freedom. Secularism pretends to neutrality when in actuality it is committing us to deny faith; to be deeply skeptical.

That same level of skepticism is not shown in the United States or elsewhere today toward the teaching of nonreligious "gods" that are held out as the source of morality – be it the morality of greatly accumulated wealth; the worship of the free market and its admitted capability to allocate resources to the highest valuing user, or demonstrating that secularism can choose as its measure of morality progressive as well as conservative values as its definitional source of morality.

Whither Islam?

Brief mention should be made of the general inquiry of whether Islamic belief is compatible with democratic government. Because of discriminatory teaching against women and its rigid rather than dynamic nature, the jihadist, fundamentalist strain of Islamic belief was held by the ECHR to be not compatible with democracy. The coup which displaced President Morsi also suggests incompatibility. There is no democratic justification for discrimination against women or the arrest and prosecution of nonviolent political opposition. But radical fundamentalism is not the singular interpretation of Islamic teaching. Others more expert than myself will need to comment upon what constitutes the full and accurate scope of Islamic belief, but some Muslim adherents do advance instruction from the Quran that is neither discriminatory on invidious grounds nor an imposition of coerced belief. For this reason the case that religious freedom and democracy cannot coexist with Islamic belief would not seem to be made. Having

this more generally understood by means of social media refutation would be a constructive step, but as noted, this will need to be matched with a more balanced constitutional document than President Morsi tried to impose.

The proponents of religious freedom by means of social media and constitutionalism will not be surprised to find that secularist opposition is fueled by the usual sources of atheist challenge. For example, Richard Dawkins has used his Nobel Prize in the sciences to advocate against the continued cultural significance of religion generally, though his writing reserves special denigration for Islamic belief. Like a movie actor who seeks to use celebrity to enlighten well beyond the actor's field of special competence, Dawkins has borrowed from his obvious gifts in the biological sciences to indulge in a broadside attack on Muslims. For example, Dawkins chastised Muslims for not being well represented in the ranks of his fellow Nobel recipients. Nathan Lean, who has published an insightful book on the subtle and not so subtle aspects of Islamophobia countered that even putting to one side the lack of Muslim presence on the Nobel section committee, there has been a half dozen prizes given to Islamic believers for peace. Lean's response to Dawkins is witty and often cutting, sometimes painfully so. What cannot possibly pass for reasoned judgment, however, is the categorical supposition that all error has religious origin in general or Islamic root in particular.

Neither Islam nor any other faith can be tendered as the direct cause for the ills of the world – be they violence, poverty, illiteracy, public or private corruption—nor can faith lay claim to being the singular antidote erasing those deficiencies, as Western believers have on occasion bragged. The human condition does not lend itself to simplistic summation and any effort to give it one will be ill-fitting and necessarily stereotypical. Nevertheless, as Lean has sagely observed:

“the debate over New Atheism and Islamophobia often attracts polar extremes. At one end are those who claim that identifying prejudices towards Islam in the statements of people like Dawkins and calling them out in spaces such as this implies a love for, and defense of, everything related to that faith. At the other end are those who object to any critique of Islam and in knee-jerk fashion render any inquiry of the religion or its tenets as Islamophobic. Yet, it can be possible to detest discrimination towards Muslims and also disagree with some, or even all, of Islam's teachings. It can also be possible to unpack and criticize Muslim positions on issues like women's rights or minority rights or other topics without resorting to tired generalizations and stereotypes.”

In example, the Islamic perception of human right emphasizes that right first belongs to Allah, then to the community and then to individuals. Moreover, Islamic conceptions of right cannot be easily divorced from responsibility or duty. Rights and duty are correlative. And in an echo to the proclamation of rights being derivative of a Creator or transcendent source as in the Declaration of Independence, Islamic conceptions of right give priority to their divine origin as a

means of ensuring the right priority of rights such that the basic right to life cannot be subordinated in any fashion to rights of property or economic advantage.

The Joyful Wisdom of Franciscus

The election of Pope Francis is further sensitizing us to the need to get beyond the deadening forces of materialism that the people of every country, whether a new or old democracy, needs to rethink. The papal message responding to the yearning of all human persons asks us how cultures might be alternatively measured. The substitution of consumerism, however robust, for personal excellence and an ethic of service and empathy for those with struggles greater than our own is a fool's game. The Islamist is misled if he or she thinks that either democracy or Christianity is satisfied with these thin economic reports.

The Holy Father's use of social media can enliven this reorientation away from mere economics to justice, but it must be matched, in my judgment, by a Church-inspired constitutional effort. The present constitutional drafting is not proceeding in this way – at least not entirely. In Libya, which is the last nation of the Arab spring revolt, there is a “draft constitutional charter for the Transitional Stage.” There are operational or process provisions protecting property. For example, Article 16 provides that “property shall be inviolable. No one owner may be prevented from disposing of his property except within the limits of the law.” Power is located in a more or less executive arm of the transitional national council, which is elected from local councils, with the voting strength of the local councils determined by population. There are provisions for fair trial and independent judges, though the appointment of same is a bit unclear. Most noticeable is the following; “Islam is the Religion of the State and the principal source of legislation is Islamic Jurisprudence (Sharia)”. Perhaps this is not surprising, but it is a proposition that Turkey has rejected, with the affirmation of the ECHR. It is also a radical departure from the 1951 constitution when the pre-Qaddafi country was clearly a democratic parliamentary system. Article 21 of the old constitution provided: “Freedom of Conscience shall be absolute. The State shall respect all religions and faiths and shall ensure to Libyans and foreigners residing in its territory freedom of conscience and the right freely to practice religion so long as it is not a breach of public order and contrary to morality.”

The draft constitution – not for better, but only for worse -- thus inserts itself unhelpfully and divisively into cultural matters. At a time when more prosaic legal infrastructure is still under construction and basic civil order is still in doubt, the draft constitution presumes to referee competing faith traditions from a Sharia-based perspective in preference to all other faiths. No disrespect is meant when it is observed that the many differences among and within Christian and Judaic denominations or sects (the other Abrahamic descendants) exist and that resolving the definitive meaning of one's faith tradition has frequently complicated its usefulness to address the secular philosophical claims of utility, libertarianism and autonomy and corresponding duties to families and the public community that swirl about public debate. It remains to be seen how this will work out and whether the weak promise in the transitional

document allowing “non-Moslems the freedom of practicing religious rituals” ensures religious freedom for all.

There has always been a vibrant debate about the relation of constitutionalism and justice. The American constitution recites as one of its purposes the establishment of justice, but does little to define the concept. If one took the call for justice seriously, however, governance would be anchored, in Catholic terms, less on the material (maximizing wealth) or the libertarian conceit (maximizing freedom from—usually obligations to another) and more on what Aristotle and Aquinas would associate with governing structures, namely, the pursuit of friendship, the common good, virtue and a life well lived. American legal education, unfortunately for the last thirty or more years has been dominated by the law and economics nostrums of laissez faire, trickle down, and similar reasons to disfavor distributive justice. Libertarians have made efforts, most recently through the Tea Party, to confine human freedom to the Revolutionary slogan of “don’t tread on me.”

There is a counter-push. John Rawls made a decent run, for example, at justifying greater equality by cleverly appealing to life’s uncertainty and thereby securing our willingness to be put behind a “veil of ignorance.” Not knowing whether we would be the son of Mitt Romney or the daughter of a homeless, single mother would ensure our own minimum care or resource fairness along with others who are less fortunate if that be our lot. Note, however, that none of these prevailing worldviews address virtue in the Aristotelian sense. Rawls in his later work even prohibits that discussion of virtue from a religious perspective, or at least boxes it in, to prevent belief from being relied upon directly. Instead, Rawls urges that we speak in the secular terms of so-called “public reason.” Rawls, of course, meant well intending the exclusion of religious insight as a means of avoiding religious hatreds. As discussed in the main paper, however, this also results in censorship and too great a loss of the capacity of faith to guide and enrich this life.

Is there a constitutional structure that can avoid the secular and sectarian extremes? Frankly, there has to be a better alternative than either the favoritism of one faith or the exclusion of them all. Libya’s draft secures the vesting of property and contract rights, while also proclaiming the establishment of Islam as the religion of the country, with Sharia “the principal source of legislation while guaranteeing for non-Muslims “freedom of practicing religious rituals.” On the surface, this may turn out to be comparable to Malta with its establishment of Catholicism and robust guarantee of religious freedom for non-Catholics, but it remains to be seen if the freedom of “religious ritual” is broad enough to secure religious pluralism. Quite obviously, neither Libya in transition nor Malta have chosen the American model of a dual security for religious freedom: with the government neither establishing nor prohibiting matters of faith.

This is not to proclaim the American Constitution best for all times and circumstance. In this regard, Robert Kennedy once thoughtfully questioned: “why does the GNP include bullets and emergency rooms, and not an accurate measure of the health of children, the quality of their

education, the strength of marriages,” and so forth. These aspects of human happiness are what we dearly desire, but we have created constitutional governments that measure and give us much less. Could this inquiry into human happiness or satisfaction be more directly addressed in the newly drafted constitutions , rather than imposing Sharia – or for that matter, the Catholic Catechism -- on those who do not believe?

This is not the place to make further detailed findings of the constitutional drafting efforts in the Arab Spring nations, but Dr. Calleya reveals that democracy has been transplanted outside the West pointing to the existence of democratic regimes in Asia where western ideas do not dominate. Perhaps by attempting to anchor constitutional democracy on something more noble than wealth and autonomy, the higher calling and expectation would be the nutrient necessary for democracy to take root in Arab lands and avoid the violent ineffectiveness of near failed states.

It is not just the fate of the Arab spring nations that depends upon successful constitutional drafting. President Obama in Cairo launched an inter-faith initiative to promote mutual understanding and respect. Much remains to be done, and this can be witnessed (as I have) in the distress and persecution felt by migrants from Eritrea, Somalia, and Nigeria as they flood into Malta and Italy. Efforts to integrate these migrant populations into larger Europe have encountered resistance, in part traceable to the sour economic conditions in parts of the EU. As a matter of humanitarian assistance and good will, the State Department authorized us to resettle roughly 800 migrants and their families in the United States. I assume this effort continues.

Economic and cultural integration will always meet with resistance, especially in times of scarcity. Would it not be better to establish the rule of law and thereby invite more fully the economic trade and investment it warrants in order to give the populations of these African nations not the desire to leave behind dear family and the familiarities of home, but to transform that home into a venue of economic opportunity and personal freedom, including that of the religious kind?

As Robert Kennedy once reflected about the United States, measures of GNP that do not value the quality of a child’s education, the strength of marriages, or the intelligence of public debate is to say a great deal about except what makes life worthwhile.

The luxury of looking down upon Tahrir Square from the ivory tower is no longer available. The blood is flowing into that square and many others around the globe. The tourniquet needed to stop the bleeding is at least, in part, the hard work of creating an edifice of a government that doesn’t presume to know the answer to why we are here and where we’re going, but is encouraging, in freedom, of every religious tradition that is willing to instruct and to propose on these perennial matters of humanity without coercion or violence. It is by means of statecraft and resulting governing structure that we are able to check secularism’s effort to reduce the faith to triviality, irrationality, and privacy . The private sphere is essential not because that is

where religion is to be consigned, but that is where its persuasiveness can be assayed in relation to human truth in its continuing dialogue and influence upon the public sphere