

EDUCATION AND RELIGIOUS FREEDOM IN THE TOLEDO GUIDING PRINCIPLES*: A COMPARATIVE ANALYSIS BETWEEN THE HOLY SEE AND THE UNITED STATES

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I. INTRODUCTION

There is an emerging consensus that teaching *about* religions and beliefs helps to foster mutual understanding between people and an appreciation for human rights, especially the right to freedom of religion or belief.² This paper will analyze the Toledo Guiding Principles from the competing perspectives of the Holy See³ and the United States of America.⁴ Moreover, it will offer insight into how each of

² “Religion and beliefs are important forces in the lives of individuals and communities and, therefore, have great significance for society as a whole. Understanding these convictions is necessary if people are to understand one another in our diverse societies, and also if they are to appreciate the significance of the rights that protect them.” ODIHR ADVISORY COUNCIL OF EXPERTS ON FREEDOM OF RELIGION OR BELIEF, TOLEDO GUIDING PRINCIPLES ON TEACHING ABOUT RELIGIONS AND BELIEFS IN PUBLIC SCHOOLS 19 (2007), <https://www.osce.org/odihr/29154?download=true> [hereinafter TOLEDO GUIDING PRINCIPLES].

³ The Holy See is comprised of the Pope, the Secretariat of State, and the other offices of the Roman Curia, and it is a juridical personality in the international community. Jean-Louis Tauran, Archbishop, Lecture at the Catholic University of the Sacred Heart, Milan: On the Theme “The Presence of the Holy See in the International Organizations” (Apr. 22, 2002). Inevitably, one reaches the inescapable conclusion that the Holy See has international personality and is a subject of international law. This also demonstrates that the Holy See has a sovereignty that can be and is recognized under international law.” Robert John Araujo, *The International Personality and Sovereignty of the Holy See*, 50 Cath. U. L. Rev. 291, 323 (2001). However, the primary caveat to this assertion is that “the Holy See’s international personality materializes from its religious and spiritual authority and mission in the world as opposed to a claim over purely temporal matters.” *Id.* This spiritual and moral mission of the Holy See transcends geographic locations, such that the Holy See would continue to exist apart from Vatican City State just as it continued to exist when the Papal States were taken away from the Holy See. *Id.* at 302. Even still, the spiritual and moral mission of the Holy See necessarily requires its intervention in temporal matters “whenever basic personal rights or the salvation of souls” requires such intervention. *Id.* at 331.

⁴ The United States’ approach to the Toledo Guidelines and, in fact, all international agreements is rooted in its domestic law, since Article VI, clause 2 of the U.S. Constitution relates, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary

these international personalities can respond to the Guiding Principles in an authentic way consistent with its overall mission. Emphasis will be placed on the fundamental principles of the document and its overall approach to the interrelationship between education and religious freedom. To this end, the paper will be divided into three main sections: (1) the respective roles of non-state actors in an educational system, i.e., parents and students; (2) the theory and practice behind teaching *about* religions in a *neutral* way; and (3) an authentic understanding of education within the context of human development.

II. THE RESPECTIVE ROLES OF THE NON-STATE ACTORS IN AN EDUCATIONAL SYSTEM

The international community has recognized that parents have liberty “to ensure the religious and moral education of their children in conformity with their own convictions.”⁵ Given the pluralistic societies that characterize Office for Security and Cooperation in Europe participating states, this principle is necessary to preserve the religious rights of parents. However, as the Toledo Guiding Principles make clear, the control of parents over the religious or philosophical teaching of their children in public schools is limited. There are two primary limitations referenced in the Toledo Guiding Principles: (1) the liberty of parents to ensure the religious education of their children in public schools “does not mean that the state is bound to provide a system of education that accords with parental beliefs”⁶ What the liberty of parents requires is that parents have the right to opt their children out of certain religious or philosophical instruction provided in

notwithstanding.” Although “there is a textual distinction in the clause between laws ‘made in pursuance [of the Constitution]’ and treaties ‘made under the authority of the United States,’” EDWIN MEESE III, *THE HERITAGE GUIDE TO THE CONSTITUTION* 293 (Matthew Spalding & David Forte eds., 2005); *see also* *Missouri v. Holland*, 252 U.S 416, 432 (1920), the Supreme Court has declared that neither a treaty approved by the Senate nor an executive agreement made under the President’s authority can create obligations that violate constitutional guarantees such as found in the Bill of Rights. *Reid v. Covert*, 354 U.S. 1, 17–19 (1957). Moreover, “the courts will not enforce ‘non-self executing treaties’ until they are carried into law by an Act of Congress.” MEESE III, *supra*. This further insulates U.S. domestic law from international agreements entered into by the United States. The mission of the United States is essentially a temporal mission and is expressed as follows: “We the People of the United States in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” U.S. CONST. pmbl.

⁵ G.A. Res. 2200A (XXI), art. 18(4) (Dec. 16, 1966) [hereinafter G.A. Res. 2200A (XXI)]; *see also* *Concluding Document of the Vienna Meeting 1989 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe*, §16.7 (Jan. 17, 1989).

⁶ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 35.

public schools.⁷ But even this right of parents to opt their children out of religious or philosophical instruction may be limited under the Toledo Guiding Principles. (2) The opt-out rights of parents apply only when “states provide for the *teachings of religions or beliefs*”⁸ and parents object to the teaching on a “conscientious basis.”⁹ When states provide for “*teaching about religions or beliefs*” in “an appropriate manner,” states may make such teaching “compulsory,” denying parents any opt-out rights.¹⁰

A. The Holy See’s Position Regarding Non-State Actors

Parents’ rights to ensure the religious and moral education of their children in conformity with their own convictions should be commended since parents are primarily “responsible for the education of their children.”¹¹ That is, “[p]arents have the first responsibility for the education of their children.”¹² This teaching of the Church is rooted in “the fecundity of conjugal love.”¹³ Moreover, it is impossible to replace the role of parents in the education of their children.¹⁴ The purpose of the education Catholic parents provide to their children is to enable them to “fulfill God’s law.”¹⁵ Accordingly, parents’ rights over their children’s education

⁷ “[P]arents can object to the nature and content of the education and teaching given to their children where religious instruction is predicated upon, is intended to or has the effect of projecting the truth (or falsity) of a particular set of beliefs. In consequence, parents must have the right to withdraw their children from such forms of teaching.” TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 35.

⁸ This phrase refers to “instruction in a particular religion or belief.” *Id.* at 69.

⁹ *Id.*

¹⁰ *Id.*

¹¹ “As those first responsible for the education of their children, parents have the right to choose a school for them which corresponds to their own convictions. This right is fundamental. As far as possible parents have the duty of choosing schools that will best help them in their task as Christian educators. Public authorities have the duty of guaranteeing this parental right and of ensuring the concrete conditions for its exercise.” POPE JOHN PAUL II, CATECHISM OF THE CATHOLIC CHURCH 538, ¶ 2229 (2d ed. 2000) [hereinafter CATECHISM OF THE CATHOLIC CHURCH].

¹² *Id.* at 537, ¶ 2223. In addition, “The right and the duty of parents to educate their children are primordial and inalienable.” *Id.* at 536, ¶ 2221.

¹³ “The fecundity of conjugal love cannot be reduced solely to the procreation of children, but must extend to their moral education and their spiritual formation.” *Id.* ¶ 2221.

¹⁴ *Id.*

¹⁵ CATECHISM OF THE CATHOLIC CHURCH, *supra* note 11, ¶ 2222. Note that there is a presumption that fulfilling God’s law is in the best interest of every human person. “The desire for God is written in the human heart, because man is created by God and for God; and God never ceases to draw man to himself. Only in God will he find the truth and happiness he never stops searching for.” *Id.* at 13, ¶ 27.

facilitates the “best interests of the child.”¹⁶ In addition, one of the means adopted by the Toledo Guiding Principles for protecting the rights of parents to ensure a religious and moral education for their children—the right to opt-out their children from certain instruction that violates their conscience¹⁷—appears to be commensurate with the important role fulfilled by parents in the education of their children.¹⁸

However, the problem from the Holy See’s perspective arises because the Toledo Guiding Principles allow for another means of protecting parents’ rights to ensure the religious and moral education of their children that is not commensurate with the Church’s teaching on the role of parents in the education of their children. In particular, this other means that does not adequately protect the rights of parents requires only that “compulsory courses teaching about religions and beliefs are sufficiently neutral and objective.”¹⁹ In theory, a truly neutral course may not

¹⁶ “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration,” TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 36 (quoting G.A. Res. 44/25, art. 32(1) (Nov. 20, 1989)).

¹⁷ *Id.* at 69.

¹⁸ This assumes that the structuring of opt-out arrangements will comply with the Toledo Guiding Principles. In particular, “An approach needs to be found that does not stigmatize or discriminate against the student. For example, an opt-out that sends pupils to the same room that others are sent to as a punishment sends the wrong signal.” *Id.* at 73 (Even further, “the exemption scheme should address the problem, as far as possible, in a satisfactory way from the perspective of the parents and the pupils. Second, the exemption scheme needs to be workable both from the perspective of the parents and the teachers, avoiding unnecessary complexities. Third, the operation of the exemption scheme should not lead to adverse consequences for the pupil involved or be experienced as discrimination by the student. Fourth, once exemptions are granted, alternative and appropriate learning opportunities should be available. Finally, while a party claiming an exemption needs to be able to demonstrate entitlement to it, care should be taken to avoid compelling disclosures of intimate matters of personal belief in insensitive ways in order to obtain the exemption.”)

¹⁹ *Id.* at 72. This position is also advocated by the larger international community. “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.” G.A. Res. 2200A (XXI), art. 18(4). But this language has been interpreted in this way by the Human Rights Committee: “The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.” U.N. Hum. Rts. Comm., CCPR/C/21/Rev.1/Add.4 (30/07/93), Art. 18 (July 30, 1993) [hereinafter U.N. Hum. Rts. Comm. Gen. Comment 22].

violate the rights of parents to ensure the proper education of their children, but in actuality, who determines whether a course is neutral? Even more to the point, the Toledo Guiding Principles admit that “in a strict sense, no course—whether on religion or on any other subject—is absolutely neutral or objective.”²⁰ Accordingly, the relevant inquiry under the Toledo Guiding Principles examines whether a course is “sufficiently neutral.”²¹ Since states are the enforcers of international law, the objectivity or neutrality of a course is decided, *de facto*, by states themselves. Consequently, parents may be denied the right to ensure that their children receive an appropriate religious and moral education.

Therefore, the Holy See should make this argument: Based on the Toledo Guiding Principles, there are compelling reasons to allow parents unconditional opt-out rights irrespective of the state’s decision that a particular course is “sufficiently neutral.”²² Parents may, for example, identify problems that school officials do not perceive as an issue.²³ In that case, the Toledo Guiding Principles admit that parental opt-out rights “may be necessary for an extended period, pending resolution of the problem.”²⁴ Even the idea of “teaching about religions” may be viewed as an “indoctrination in relativism or secularism.”²⁵ Additionally, allowing parents unconditional opt-out rights will relieve the states of the difficult obligation to ensure that administrators at public schools “determine in advance and in the abstract whether a course or other teaching about religions and beliefs is sufficiently impartial and objective.”²⁶ As the Toledo Guiding Principles admit, “states may conclude that there is some advantage in allowing sensitive opt-out rights, since this

²⁰ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 69.

²¹ *Id.* at 70.

²² *Id.*

²³ *Id.* at 70. In particular, “Various kinds of malfeasance may be occurring that have not come to the attention of the officials. The content of the curriculum may have a proselytizing or indoctrinating character that was not envisioned or anticipated, or it may be offensive or misleading in ways that only believers in a particular tradition would recognize. The teacher responsible for providing the instruction may not be sufficiently sensitive.” *Id.*

²⁴ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 70.

²⁵ “Some parents may have religious or non-religious beliefs that lead them to object to exposing their children to alternative interpretations of reality. For example, teaching about religions and beliefs may be perceived as indoctrination in relativism or secularism by some religious believers” *Id.* at 71. Also, the Congregation for Catholic Education relates, “if religious education is limited to a presentation of the different religions, in a comparative and ‘neutral’ way, it creates confusion or generates religious relativism or indifferentism.” Circular Letter from Zenon Card. Grocholewski, Prefect and Jean-Louis Brugues, O.P., Secretary, to the Presidents of Bishops Conferences on Religious Education in Schools, CONGREGATION FOR CATH. EDUC., (May 5, 2009) ¶ 12, http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20090505_circ-insegn-relig_en.html [hereinafter Circular Letter to the Presidents of Bishops’ Conferences].

²⁶ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 72.

will make it more likely that the course will meet international standards.”²⁷ The Holy See should ask the Office for Democratic Institutions and Human Rights Advisory Panel of Experts on Freedom of Religion or Belief to extend this logic such that states are not only permitted to adopt “sensitive opt-out rights,” but would be required to provide unconditional opt-out rights to parents to be in full compliance with the Toledo Guiding Principles.

B. The United States’ Position Regarding Non-State Actors

Similar to the Holy See, the jurisprudence of the US Supreme Court recognizes the liberty of parents to ensure an education for their children in conformity with their religious convictions. In *Meyer v. Nebraska*,²⁸ an instructor at a public school taught German to a student on school premises in contravention of a Nebraska law prohibiting the teaching of “any subject to any person in any language other than the English language” prior to that person’s completion of eighth grade.²⁹ The Supreme Court was asked to determine whether this Nebraska law violated the Fourteenth Amendment to the United States Constitution which provides: “nor shall any state deprive any person of life, *liberty*, or property without due process of law”³⁰ The Court noted that the American people have always considered education to be important.³¹ Furthermore, the Court connected education with the liberty of parents, commenting that “it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the states . . . enforce this obligation by compulsory laws.”³² According to these principles, the Court held that the *liberty* protected by the Fourteenth Amendment includes the liberty of parents to have their children instructed in a modern foreign language such as German.³³

Adding to the precedent set forth in *Meyer* and *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*³⁴ concerned a compulsory school attendance law in Oregon that required parents to send their children between 8 and 16 years old to a public school.³⁵ The Sisters maintained “orphanages for the custody and control of children between 8 and 16” and other primary schools.³⁶ The primary schools, besides teaching the standard subjects taught in public schools,

²⁷ *Id.*

²⁸ *See generally* 262 U.S. 390 (1923).

²⁹ *Id.* at 396–97.

³⁰ U.S. CONST. amend. XIV (emphasis added).

³¹ *Meyer*, 262 U.S. at 400.

³² *Id.*

³³ *Id.*

³⁴ *See generally* 268 U.S. 510 (1925).

³⁵ *Id.* at 530.

³⁶ *Id.* at 532.

also provided instruction in the tenets of the Roman Catholic faith.³⁷ Because of the compulsory school attendance law, students were forced to withdraw from the schools run by the Sisters.³⁸ The Court was asked to determine the constitutionality of the Oregon compulsory school attendance law—whether the law conflicted with the liberty guaranteed to parents under the Fourteenth Amendment.³⁹ The Court held that the compulsory attendance law was in violation of the Constitution because it deprived parents of their Fourteenth Amendment liberty to educate their children without the interference of the state.⁴⁰ Using strong language, the Court went so far as to declare: “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”⁴¹

To cite a more recent example that connects the liberty of parents to educate their children with the free exercise of religion, *Wisconsin v. Yoder*⁴² concerned Amish parents who did not want their children to continue attending a public or private school after eighth grade.⁴³ There was a Wisconsin law that made school attendance in a public or private institution, even after eighth grade, mandatory.⁴⁴ The Amish parents were charged with violating this “compulsory attendance law.”⁴⁵ They asserted their rights to educate their own children by appealing to the First⁴⁶ and Fourteenth Amendments⁴⁷ of the United States Constitution.⁴⁸ Their invocation of the First Amendment was appropriate because they believed that sending their children to a public or private school endangered the salvation of their children, and their own salvation.⁴⁹ The Court found that “Amish objection to formal education beyond the eighth grade is firmly grounded” in “central religious concepts” proper to the Amish faith, such as a separation from the world and harmony with nature.⁵⁰ The Court also stated, “the values of parental direction of the religious upbringing and education of their children in their early

³⁷ *Pierce*, 268 U.S. at 532.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 534–35.

⁴¹ *Id.* at 535.

⁴² *See generally* 406 U.S. 205 (1972).

⁴³ *Id.* at 207.

⁴⁴ *Id.*

⁴⁵ *Id.* at 208.

⁴⁶ U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”).

⁴⁷ *See* U.S. CONST. amend. XIV (The Fourteenth Amendment applies the protections of the First Amendment to the states through the doctrine of incorporation).

⁴⁸ *Yoder*, 406 U.S. at 208–09.

⁴⁹ *Id.* at 209.

⁵⁰ *Id.* at 210.

and formative years have a high place in our society.”⁵¹ To prevent the Court from striking down the Wisconsin law, Wisconsin argued that actions are not covered by the First Amendment, so the action of the Amish parents in sending their children to school was not, therefore, entitled to First Amendment protection.⁵² However, the Court rejected this argument, asserting that “religiously grounded conduct” may fall within the purview of the First Amendment.⁵³ In particular, the Court held that the right of parents to freely exercise their religious convictions under the First Amendment prevented the state from forcing parents to send their children to formal high school, whether public or private.⁵⁴

Applying this jurisprudence to the Toledo Guiding Principles, the United States is in substantive agreement with the Holy See that parents should have unconditional opt-out rights under the Principles. Moreover, as indicated by this jurisprudence, the United States is also in accord with the Holy See in viewing the rights of parents to educate their children as a manifestation of their own religious convictions. This link between freedom of religion and the parental duty to educate children is a critical link that must continue to be honored by the Toledo Guiding Principles. By denying parental opt-out rights when classes are “sufficiently neutral,” the Principles ironically deny the very same religious freedom that they are intended to advance.⁵⁵ Thankfully, the Holy See and the United States can agree to correct this harmful situation by eliminating all qualifications for parental opt-out rights.

III. THE THEORY AND PRACTICE BEHIND TEACHING ABOUT RELIGIONS IN A NEUTRAL WAY

Under the Toledo Guiding Principles, there is a critical distinction between “teaching *about* different religions and beliefs” and “instruction in a specific religion or belief.”⁵⁶ This distinction is a conceptual starting point for authentically interpreting the Toledo Guiding Principles.⁵⁷ The primary reason for this

⁵¹ *Yoder*, 406 U.S. at 213–14.

⁵² *Id.* at 219.

⁵³ *Id.* at 219–20.

⁵⁴ *Id.* at 234. Also, “[c]ontrary to the suggestion of the dissenting opinion of Mr. Justice DOUGLAS, our holding today in no degree depends on the assertion of the religious interest of the child as contrasted with that of the parents. It is the parents who are subject to prosecution here for failing to cause their children to attend school, and it is their right of free exercise, not that of their children, that must determine Wisconsin’s power to impose criminal penalties on the parent.” *Id.* at 230–31.

⁵⁵ See TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 14.

⁵⁶ *Id.* at 12.

⁵⁷ “The starting point [for interpreting the Toledo Guiding Principles] is the understanding that teaching about religions and beliefs is not devotionally and denominationally oriented. It strives for student awareness of religions and beliefs, but does

distinction is rooted in the very purpose of the Toledo Guiding Principles: “To assist OSCE participating States whenever they choose to promote the study and knowledge about religions and beliefs in schools, particularly as a tool to enhance religious freedom.”⁵⁸ Under this formulation, the function of religion in public schools is to advance religious freedom through helping to foster “respectful behavior and enhance social cohesion.”⁵⁹ Since a person need not live out a particular religious/philosophical conviction to develop an appreciation and understanding for persons who hold different religious or philosophical convictions, conversion or evangelizing is external to the central purpose of the Toledo Guiding Principles. Nevertheless, the exclusion of religious formation in any given religion from public schools does not imply that conversion to a particular religion breeds intolerance and leads to conflict.⁶⁰ The Toledo Guiding Principles recognize the presence of religion as a social fact without affirming whether religion is good or bad for humanity,⁶¹ such that any attempt to oppose religion as such to the common good is not rooted in a juridical interpretation of the Toledo Guiding Principles.

A. The Holy See’s Position Regarding Teaching Religion

Insofar as the purpose of the Toledo Guiding Principles is to promote religious freedom, the Holy See fully supports that goal.⁶² In fact, religious freedom

not press for student acceptance of any of them; it sponsors study about religions and beliefs, not their practice; it may expose students to a diversity of religious and non-religious views, but does not impose any particular view; it educates *about* religions and beliefs without promoting or denigrating any of them; it informs students about various religions and beliefs, it does not seek to conform or convert students to any particular religion or belief.” *Id.* at 21. See Eur. Parl. Ass. Recommendation 1396, ¶ 10 (Jan. 27, 1999) (“Religious instruction should not be given at the expense of *lessons about religions* as an essential part of the history, culture, and philosophy of humankind.”).

⁵⁸ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 12.

⁵⁹ *Id.*

⁶⁰ “At the dawn of the twenty-first century, a casual glance at world affairs would suggest that religion is at the core of much of the strife around the globe. Often, religion is a contentious issue. Where eternal salvation is at stake, compromise can be difficult [to achieve] or even sinful. Religion is also important because, as a central part of many individuals’ identity, any threat to one’s beliefs is a threat to one’s very being. This is a primary motivation for ethno-religious nationalists.” Eric Brahm, *Religion and Conflict*, BEYOND INTRACTABILITY (Nov. 2005), https://www.beyondintractability.org/essay/religion_and_conflict%20 (last visited May 1, 2018).

⁶¹ “Religions and beliefs are important forces in the lives of individuals and communities and, therefore, have great significance for society as a whole. Understanding these convictions is necessary if people are to understand one another in our diverse societies, and also if they are to appreciate the significance of the rights that protect them.” TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 19.

⁶² “[T]he political community and the Church are autonomous and independent of each other in their own fields, and both are, even if under different titles, ‘devoted to the

is so central to the social teaching of the Catholic Church that it is referred to as a “civil right.”⁶³ Moreover, the Toledo Guiding Principles and various other international laws are to be commended for extending the freedom of religion to cover the manifestation of religion in the public sphere.⁶⁴ This is an acknowledgement by the international community that religion should not be relegated strictly to the private realm.⁶⁵ In addition, the Toledo Guiding Principles’ promotion of “social cohesion”⁶⁶ is a praiseworthy goal that finds expression in the Catholic understanding of “solidarity.”⁶⁷

The Holy See’s critique of the role of religion in public schools under the Toledo Guiding Principles must be understood in light of practical considerations.

service of the personal and social vocation of the same human beings’ [quoting Second Vatican Ecumenical Council, *Gaudium et Spes* § 76]. Indeed, it can be affirmed that the distinction between religion and politics and the *principle of religious freedom* constitute a specific achievement of Christianity and one of its fundamental historical and cultural contributions.” PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH* ¶ 424 (2004), http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html [hereinafter *COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH*].

⁶³ “The [second] Vatican council declares that the human person has a right to religious freedom. Freedom of this kind means that everyone should be immune from coercion by individuals, social groups and every human power so that, within due limits, no men or women are forced to act against their convictions nor are any persons to be restrained from acting in accordance with their convictions in religious matters in private or in public, alone or in association with others. The council further declares that the right to religious freedom is based on the very dignity of the human person as known through the revealed word of God and by reason itself. This right of the human person to religious freedom must be given such recognition in the constitutional order of society as will make it a *civil right*.” POPE PAUL VI, *DECLARATIONS ON RELIGIOUS FREEDOM: DIGNITATIS HUMANAE (DECLARATION ON RELIGIOUS LIBERTY)* 552–53 (Austin Flannery ed., 2007).

⁶⁴ “Vital though the protection of freedom of choice is, it is not sufficient to properly protect the interests at stake. Therefore, international human rights law also protects the manifestation of religion or belief by individuals and by collectivities.” TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 30; *see also* G.A. Res. 2200A (XXI), art. 18(1) (“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, *to manifest his religion or belief in worship, observance, practice, and teaching*”; Eur. Conv. On H.R. (ECHR), art. 9(1) (June 1, 2010) (“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, *to manifest his religion or belief, in worship, teaching, practice and observance.*”).

⁶⁵ “The duty of offering God genuine worship concerns man both individually and socially.” CATECHISM OF THE CATHOLIC CHURCH, *supra* note 11, at 511, ¶ 2105.

⁶⁶ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 13.

⁶⁷ Solidarity is best understood as “communion with others,” for that is how God intended human beings to live. *COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH*, *supra* note 62, ¶ 333.

Theoretically, a distinction can be drawn between parish catechesis and religious education in schools. The religious education is oriented towards imparting knowledge about the doctrines of Christianity, while the catechesis is oriented towards the imitation of Christ.⁶⁸ At first, this distinction appears virtually equivalent to the Toledo Guiding Principles' distinction between teaching about religions and instruction in a particular religion—Catholicism. A more careful inquiry into the specifics of this distinction renders a direct correlation with the Toledo Guiding Principles untenable. Canon 804 of the 1983 Codex Iuris Canonici (Code of Canon Law) affirms:

§1 The formation and education in the Catholic religion provided *in any school* [necessarily includes public schools], and through various means of social communication, is subject to the authority of the Church. It is for the diocesan Bishop to regulate and watch over it.

Under Section 1 of this canon, it is the Church's responsibility to design the curriculum for religious education in all schools.⁶⁹ In contrast, the Toledo Guiding Principles suggest that in public schools, the state has "exclusive responsibility" for teaching about religion.⁷⁰ This means that the state can design curriculum for

⁶⁸ "Religious education in schools fits into the evangelizing mission of the Church. It is different from, and complementary to, parish catechesis and other activities such as family Christian education or initiatives of ongoing formation of the faithful. Apart from the different settings in which these are imparted, the aims that they pursue are also different: catechesis aims at fostering personal adherence to Christ and the development of Christian life in its different aspects, whereas religious education in schools gives the pupils knowledge about Christianity's identity and Christian life." Circular Letter to the Presidents of Bishops' Conferences, *supra* note 25, ¶ 17.

⁶⁹ Commentary to Canon 804 of CIC 1983: Catholic religious education and instruction—i.e., the religion lessons and the pastoral service which habitually exist in educational institutions—are subject to ecclesiastical authorities, even in the case of non-Catholic schools. This also applies to the syllabi for religious education and instruction." ERNEST CAPARRÓS ET AL., CODE OF CANON LAW ANNOTATED 622 (2nd ed. 2004) (This commentary on the Code of Canon Law, the internal law of the Roman Catholic Church, further supports the assertion that all Catholic instruction is to be under the direction of the local ordinary, the Bishop).

⁷⁰ "Teaching about religions and beliefs may occur in schools and programmes that are under the exclusive responsibility of the state or other public bodies, in private schools . . . The Toledo Guiding Principles may be relevant in all of these settings, but in the case of private schools or other schools in which teaching about religions is not the exclusive responsibility of the state, religious autonomy rights should be respected." TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 20. The Guidelines further explain, "[T]eaching about religion should be based on sound scholarship, and not merely on what religious communities want said about themselves and others. Furthermore, while it is important to ensure that representatives of religious communities are allowed to give input and advice, this should

religious education and determine how to best teach that curriculum without consulting the Church. Consequently, the canon law model of the Church designing and ensuring the implementation of the religious curriculum falls outside the Toledo Guiding Principles. While it is true that the Toledo Guiding Principles prefer teaching about religion as opposed to instruction in a particular religion,⁷¹ they nevertheless suggest a model of teaching about religion that excludes the Catholic Church from public schools. As the Toledo Guiding Principles insist, within the educational context, the state must act in a “neutral and objective way.”⁷²

Secondly, the practical effect that ensues from teaching about religions and beliefs in a “neutral and objective way,” i.e., without the influence of the Church, is religious syncretism. States are, for example, instructed that “curricula should be sensitive to different interpretations of reality,” to the “principle of multi-perspectivity.”⁷³ While multi-perspectivity is not defined in the Toledo Guiding Principles, it essentially means that one cannot insist that there is one, authentic interpretation of reality, or that there is one Truth.⁷⁴ All religions become equally good, without any critical thinking as to whether a particular religion reflects the Truth about God and the human person made in His image.⁷⁵

Given these problems presented by the Toledo Guiding Principles, the Holy See should insist on greater cooperation between the Church and public schools in OSCE participating states.⁷⁶ There is already support for this position advanced by

not be taken to the extreme of giving them too much decision-making power at the cost of abdicating state responsibility.” TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 64–65.

⁷¹ *Id.* at 20.

⁷² “Regardless of the particular model of church-state relations within a country, the state has important responsibilities in the field of education and, in exercising these, it has a duty to act in a neutral and impartial fashion where matters of religion and belief are concerned—a duty that is incompatible with any power on the state’s part to assess the legitimacy of religious beliefs, and thus should not take a stand on the truth or falsity of any form of religion or belief.” *Id.* at 33; *see generally* U.N. Hum. Rts. Comm. Gen. Comment 22.

⁷³ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 41.

⁷⁴ “[M]ulti- perspectivity is not just a process or strategy, it is also a predisposition, [it] means to be able and willing to regard a situation from different perspectives. The preconditions for this are, first, a willingness to accept that there are other possible ways of viewing the world than one’s own and that these may be equally valid and equally partial; and, second, a willingness to put oneself in someone else’s shoes and try and see the world as they see it, that is, to exercise empathy.” DR. ROBERT STRADLING, MULTIPERSPECTIVITY IN HISTORY TEACHING: A GUIDE FOR TEACHERS 14 (2003).

⁷⁵ “[I]f religious education is limited to a presentation of the different religions, in a comparative and ‘neutral’ way, it creates confusion or generates religious relativism or indifferentism.” Circular Letter to the Presidents of Bishops’ Conferences, *supra* note 25, ¶ 12. For the proposition that man is made in the image of God, see *Genesis* 1:27.

⁷⁶ In contrast to the position that the Holy See should advocate for, the Toledo Guiding Principles relate, “In the process of involving stakeholders [in public education], it is vital to strike an appropriate balance. A fundamental consideration is that teaching about religion should be based on sound scholarship, and not merely on what religious communities

the Toledo Guiding Principles.⁷⁷ The Holy See should make the argument that allowing churches to have more control over how their religious tenets are presented to students furthers the primary mission of the Toledo Guiding Principles: the promotion of religious freedom via increased tolerance.⁷⁸ The reasoning behind this argument is that tolerance and religious freedom will only result from an authentic understanding of different religions,⁷⁹ and this authentic understanding becomes virtually impossible when the state excludes those in society who have a vested interest in public religious education—churches and religious communities, e.g., the Catholic Church.⁸⁰ The state’s “neutrality and impartiality” will only lead to increased tolerance and religious freedom if “neutrality and impartiality” are interpreted as allowing all religions to be promoted in public schools by churches

want said about themselves and others. Furthermore, while it is important to ensure that representatives of religious communities are allowed to give input and advice, this should not be taken to the extreme of giving them too much decision-making power at the cost of abdicating state responsibility. The European Court of Human Rights has made it clear that excessive involvement of religious authorities from one community in decisions that affect the rights of those belonging to another community may itself amount to a violation of the right to freedom of religion or belief.” TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 64–65.

⁷⁷ “[I]nternational norms do not rule out [a state’s] various forms of cooperation with religions and belief systems.” *Id.* at 34. Even further, “Given the distinctive nature of teaching about religions and beliefs, religious and belief communities should be consulted and given the opportunity to give their expert advice and express their concern.” *Id.* at 51. Also, by analogy, the Toledo Guiding Principles already encourage a significant extent of cooperation between minorities and the state. “States should create conditions allowing national minorities to participate, in a meaningful way, in the development and implementation of policies and programmes related to minority education.” *Id.* at 37–38. This level of cooperation should be extended to cover all religious groups, whether they are in the minority or not.

⁷⁸ “The primary purpose of the Toledo Guiding Principles is to assist OSCE participating States whenever they choose to promote the study and knowledge about religions and beliefs in schools, particularly as a tool to enhance religious freedom.” *Id.* at 12.

⁷⁹ This understanding is implied by the Toledo Guidelines. “Religions are frequently perceived and depicted in the media and other social settings in a way that does not properly reflect their complex, diverse, and dynamic nature. While a better knowledge of religions and beliefs will not automatically foster tolerance and respect, it has the potential to have a positive effect upon the perception of other’s religions and beliefs and their adherents.” TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 18. Since the media cannot properly reflect the “complex, diverse, and dynamic nature” of different religions, it is naïve to suppose that the state can present an accurate view of various religions. The religious stakeholders themselves must be enabled to operate within the state.

⁸⁰ The Toledo Guiding Principles admit that “[t]he use of reliable source materials, including interpretations by adherents of given religions or belief systems, is highly important.” *Id.* at 51. This connection between “reliable source materials” and “interpretations by adherent of given religions” furthers the argument that local churches and religious communities who adhere to particular religions should have more control over religious education in public schools.

and religious communities on an “equal basis,”⁸¹ rather than excluding religious devotions and reducing “religion”⁸² to a mere set of beliefs about the world.⁸³

B. The United States’ Position Regarding Teaching Religion

Essentially, the Supreme Court’s First Amendment jurisprudence is in full accord with the Toledo Guiding Principles. The First Amendment relates: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The Establishment Clause⁸⁴ has been interpreted to affect a separation between the state and religion,⁸⁵ to prohibit state coercion of

⁸¹ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 34 (International norms require “neutrality and impartiality” in the sense of ensuring the tolerance that is vital to pluralism, and in the sense of *protecting freedom of religion or belief for all individuals and groups on an equal basis.*) (emphasis added).

⁸² *Id.* at 40 (“Teaching about religions and beliefs should be . . . *non-doctrinal.*”) (emphasis added). But telling a Catholic teacher to teach religion in a non-doctrinal way is similar to telling a philosophy professor to teach Aristotle’s philosophy in a non-philosophical way. There are doctrines in the Catholic Church, and Catholicism cannot be taught without referring to those doctrines. See COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, *supra* note 62, ¶¶ 7–9.

⁸³ COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, *supra* note 62, ¶ 425 (“*The mutual autonomy of the Church and the political community does not entail a separation that excludes cooperation.* Both of them, although by different titles, serve the personal and social vocation of the same human beings. The Church and the political community, in fact, express themselves in organized structures that are not ends in themselves but are intended for the service of man, to help him to exercise his rights fully, those inherent in his reality as a citizen and a Christian, and to fulfil[] correctly his corresponding duties. The Church and the political community can more effectively render this service for the good of all if each works better for wholesome mutual cooperation in a way suitable to the circumstance of time and place.”) (emphasis added); TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 29 (The state’s role is to “protect the enjoyment of the freedom of religion and belief by all individuals and groups.” The state’s promotion of religious convictions is, then, in accord with its respective role, and should not be confused with coercion—anything which “impair[s] [the] . . . freedom to have or to adopt a religion or belief of [one’s] . . . choice or to change [one’s] . . . religion or belief.”).

⁸⁴ In actuality, there is only one clause. As the clause is set forth in the Constitution, the prohibition against establishing a religion helps to protect the free exercise of religion, or in other words, the prohibition against establishing a religion is at the service of protecting the free exercise of religion.

⁸⁵ See *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (“Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion.”).

individuals' religious beliefs,⁸⁶ and to prohibit state endorsement of religion.⁸⁷ The practical application of these jurisprudential positions has resulted in public school systems in the United States in which the fifty states⁸⁸ act in a "neutral and impartial fashion where matters of religion and belief are concerned."⁸⁹ The US Department of Education has also confirmed this approach to public education that is in accord with the Toledo Guiding Principles.⁹⁰ However, public schools in the United States may "teach about religion,"⁹¹ just as OSCE participating states may teach "about different religions and beliefs"⁹² under the Toledo Guiding Principles.

In accordance with the political mission of the United States provided in the Preamble to the US Constitution,⁹³ there are serious consequences that are a direct result of the Supreme Court's First Amendment jurisprudence. Primarily, by interpreting the Establishment Clause so broadly to the effect that the Government must be neutral between religion and irreligion, the Supreme Court has denied the free exercise of religion in the public sphere by denying students the opportunity to have a moment of silence for prayer in public schools.⁹⁴ Secondly, the Supreme

⁸⁶ See generally *Lee v Weisman*, 505 U.S. 577 (1992) (for an illustration of this construction).

⁸⁷ See generally *Lynch v Donnelly*, 465 U.S. 668 (1984) for an illustration of this construction; see also MEESE III, *supra* note 4, at 304.

⁸⁸ "[T]he Supreme Court has firmly adhered to the incorporation of the Establishment of Religion Clause against the states. As a result of the incorporation of the Religion Clause into the Fourteenth Amendment, almost all of the federal cases compelling 'separation of church and state' have been applied against state laws." See MEESE III, *supra* note 4, at 304.

⁸⁹ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 33.

⁹⁰ "Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the Establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students." Letter from Peter Kickbush, U.S. Dept. of Educ., to all U.S. school superintendents, Religious Expression in Public Schools, U.S. GOV'T (Aug. 29, 1995), <http://listserv.ed.gov/archives/edinfo/archived/msg00029.html> (last visited April 4 2018) [hereinafter Religious Expression in Public Schools].

⁹¹ "Public schools may not provide religious instruction, but they may *teach about religion*, including the Bible or other scripture; the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students." *Id.*

⁹² TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 49.

⁹³ "We the People of the United States in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." U.S. CONST. pmbl.

⁹⁴ See *Wallace v. Jaffree*, 472 U.S. 38, 106 (1985) (Rehnquist, J., dissenting) ("[T]he Establishment Clause of the First Amendment had acquired a well-accepted meaning: it

Court's interpretation of the First Amendment has led to confusing contradictions and arbitrary applications of that Amendment.⁹⁵ Perhaps, by returning to an original understanding of the Establishment Clause, the Supreme Court can set a positive example by showing the international community the way towards further cooperation between churches/religious communities and states.⁹⁶ In so doing, the Supreme Court would help to "ensure the blessings of liberty"⁹⁷ to all persons under US law.

IV. AN AUTHENTIC UNDERSTANDING OF EDUCATION WITHIN THE CONTEXT OF HUMAN DEVELOPMENT

To appreciate the full significance of the Toledo Guiding Principles, it is necessary to understand education as a fundamental aspect of human development.⁹⁸ The Toledo Guiding Principles refer to various dimensions of the human person such that the role of education in the development of the human

forbade establishment of a national religion, and forbade preference among religious sects or denominations.") Indeed, the first American dictionary defined the word 'establishment' as 'the act of establishing, founding, ratifying or ordaining,' such as in '[t]he episcopal form of religion, so called, in England.' *Establishment*, Webster American Dictionary of the English Language (1st ed. 1828). The Establishment Clause did not require government neutrality between religion and irreligion nor did it prohibit the Federal Government from providing nondiscriminatory aid to religion."

⁹⁵ See *Wallace*, 472 U.S. at 91 (White, J., dissenting) ("The contradictory decisions of the Supreme Court on the Establishment of Religion Clause render the area inchoate if not incoherent. A 'moment of silence for meditation and prayer' in school is contrary to the Constitution (only if the motive is religious) . . .") But see *Marsh v. Chambers*, 463 U.S. 783 (1983) (where a paid chaplain in Congress or state legislatures is not); see generally *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973) (religious schools may not receive funds for maintenance expenses); see generally *Walz v. Tax Comm. of City of N.Y.*, 397 U.S. 664 (1970) (but places of worship can enjoy a tax exemption); see generally *Santa Fe Indep. School Dist. v. Doe*, 530 U.S. 290 (2000) (where prayers at high school football games are invalid); see also MEESE III, *supra* note 4, at 304 (but the bailiff's call, 'God Save this Honorable Court,' may be heard within the chambers of the Supreme Court.").

⁹⁶ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 65 (noting that there is reason to believe that the Toledo Guidelines have already been influenced by U.S. courts. The Toledo Guidelines, for example, mention that "courts have recognized that mere involvement of religious representatives in bodies formulating public educational policies does not constitute excessive entanglement of religious authorities in public decision making."); see MEESE III, *supra* note 4, at 304 (noting that this language is identical to the third prong of the Lemon test mentioned earlier: a law cannot create "excessive entanglement" with religion).

⁹⁷ U.S. CONST. pmbl.

⁹⁸ "The education of the child shall be directed to a) the development of the child's personality, talents and mental and physical abilities to their fullest potential." TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 39 (quoting G.A. Res. 44/25, art. 29).

person must reflect the integral wholeness of the human person.⁹⁹ Consequently, although education may serve to promote tolerance,¹⁰⁰ understanding, and peace between peoples, it must never become detached from overall human development. There is an implicit danger in the Toledo Guiding Principles that the state's use of education for the promotion of tolerance, understanding, and peace will supplant the true purpose of education: the authentic development of the human person.¹⁰¹ To what extent then, OSCE participating states should ask, do the Toledo Guiding Principles promote the authentic development of the human person?

A. The Holy See's Position Regarding Education and Human Development

Approaching the question of human development from the perspective of the Holy See, "charity in truth, to which Jesus Christ bore witness by his earthly life and especially by his death and resurrection, is the principal driving force behind the authentic development of every person and of all humanity."¹⁰² The end of human development is the good of the person—God's plan for his life.¹⁰³ Given this understanding of human development, a particular expression of charity in truth is the celebration of a feast day, or in more secular terms, a holiday.¹⁰⁴ From the Holy See's perspective then, the Toledo Guiding Principles' treatment of holidays

⁹⁹ OSCE participating states "will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development." TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 28 (quoting Helsinki Final Act of the Conference on Security and Co-operation in Europe, n. 7 (Aug. 1, 1975)). As manifested throughout the Toledo Guiding Principles, one of the ways that states "promote and encourage the effective exercise" of these rights is through education.

¹⁰⁰ *Id.* at 29.

¹⁰¹ "The harmonious development of the human person progressively reveals in each of us the image of a child of God. True education aims at the formation of the human person with respect to his ultimate goal." Letter from Antonio M. Javierre, Secretary, Titular Archbishop of Meta, to William Card Baum, Prefect, SACRED CONGREGATION FOR CATH. EDUC. (Nov. 1, 1983) ¶ 1 http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_19831101_sexual-education_en.html [hereinafter Educational Guidance in Human Love: Outline for Sex Education].

¹⁰² Encyclical Letter from Pope Benedict XVI, *Caritas in Veritate*, to the Priests and Deacons, VATICAN (June 29, 2009) at 1, http://w2.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html [hereinafter *Caritas in Veritate*].

¹⁰³ "Each person finds his good by adherence to God's plan for him." *Id.*

¹⁰⁴ CATECHISM OF THE CATHOLIC CHURCH, *supra* note 11, at 528, ¶ 2188 (this is intimated by the Church herself: "In respecting religious liberty and the common good of all, Christians should seek recognition of Sundays and the Church's holy days as legal holidays. They have to give everyone a *public example of prayer, respect, and joy and defend their traditions as a precious contribution to the spiritual life of society.*") (emphasis added).

is indicative of the extent to which that document promotes the integral development of the human person.

Christmas, for example, expresses the truth that our Lord became incarnate and was born of the Blessed Virgin Mary.¹⁰⁵ This reminds Christians of God's love or charity toward humanity in becoming fully human as we are,¹⁰⁶ and that we are instructed to love others as Christ loved us.¹⁰⁷ This message is for the good of the human person.¹⁰⁸ But under the Toledo Guiding Principles, Christmas or any other holiday cannot be "celebrat[ed],"¹⁰⁹ that is, lived out as a spiritual reality. Holidays can be taught to students as an "acknowledgment of cultural realities,"¹¹⁰ but "celebrating"¹¹¹ a holiday is regarded as an "imposition of religious values."¹¹² Insofar as Christians are prohibited from celebrating Christmas, Easter, or even their patron saint's feast day, they are denied the opportunity to exercise charity (love) in Truth, and thus, denied the opportunity to foster the good of the human person—

¹⁰⁵ "It does not matter that on this first night, the night of God's birth, the joy of that event should have reached only a few hearts: it does not matter. It is destined for every human heart! It is the joy of the whole human race, a superhuman joy! Could there be any greater joy than this, any greater Good News than this: man has been accepted by God so as to become his son in this Son of God who has become man?" FRANCIS FERNANDEZ, IN CONVERSATION WITH GOD: MEDITATIONS FOR EACH DAY OF THE YEAR 244 (Vol. 1, 1986).

¹⁰⁶ *Philippians* 2:5–8 ("Have this mind among yourselves, which was in Christ Jesus, who, though he was in the form of God, did not count equality with God a thing to be grasped, but emptied himself, taking the form of a servant, being born in the likeness of men. And being found in human form he humbled himself and became obedient unto death, even death on a cross."); *1 John* 4:8 (since "God is love," this humility is a manifestation of God's love for humanity).

¹⁰⁷ "A new commandment I [Christ Jesus] give to you, that you love one another; even as I have loved you, that you also love one another. By this all men will know that you are my disciples, if you have love for one another." *1 John* 13:34–35.

¹⁰⁸ "In the communion of love that is God, and in which the Three Divine Persons mutually love one another and are the One God, the human person is called to discover the origin and goal of his existence and of history." See COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, *supra* note 62, ¶ 34.

¹⁰⁹ "[T]eachers can often take advantage of holiday periods to teach about religions in culturally sensitive ways. They need to be careful to make the distinction between teaching about the holiday, and actually *celebrating* the holiday, or using it as an opportunity to proselytize or otherwise impose their personal beliefs. Drawing appropriate lines can be more difficult when music, drama or other programmes put on performances during holiday seasons. Programmes that involve a variety of selections and are not primarily of a devotional or religious nature help respect the line between acknowledgment of cultural realities and imposition of religious values." TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 74.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

love.¹¹³ This is an ironic result precisely because the Toledo Guiding Principles primarily aim to enhance religious freedom,¹¹⁴ and the celebration of holidays, an exercise of religious freedom, is being denied by that document. But such is the result of viewing education almost exclusively as an instrument for increasing tolerance and respect for various religions in society.¹¹⁵

Another indication of the extent to which the Toledo Guiding Principles promote the integral development of the human person concerns the qualifications for teaching religion. In particular, under the Toledo Guiding Principles, “An individual’s personal religious (or non-religious) beliefs cannot be sufficient reason to exclude that person from teaching about religions and beliefs.”¹¹⁶ Instead, “professional expertise” and “basic attitudes towards or commitment to human rights in general and freedom of religion or belief in particular” constitute the “most important considerations.”¹¹⁷ The problem with this approach is that it denies the state or a local community the opportunity to select a teacher based on their unique experience with God, that is, based on their religious convictions. If the state decides that a Catholic teacher would do the best job promoting the integral development of the human person via faith and reason,¹¹⁸ there is no reason why the Toledo Guiding Principles should pre-empt that state decision and require OSCE participating states to disregard the religious convictions of potential teachers. The best interests of children¹¹⁹ may require that states take into account the religious convictions of potential teachers.

Since states are involved with education, and education is intrinsically part of human development, the Holy See should insist that states have a duty to ensure that development does not exclude the spiritual dimension of the human person. By preventing the celebration of holidays at public schools and rendering the religious convictions of teachers immaterial to the job of teaching children, the spiritual dimension of the human person is suppressed by the Toledo Guiding Principles. States must allow for the integral development of the human person in his various

¹¹³ COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, *supra* note 62, ¶ 34. Also, “Only love is capable of radically transforming the relationships that men maintain among themselves.” *Id.* at 4.

¹¹⁴ TOLEDO GUIDING PRINCIPLES, *supra* note 2, at 18.

¹¹⁵ “While a better knowledge of religions and beliefs will not automatically foster tolerance and respect, it has the potential to have a positive effect upon the perceptions of other’s religions and beliefs and their adherents.” *Id.*

¹¹⁶ *Id.* at 14.

¹¹⁷ *Id.*

¹¹⁸ “Faith and reason are like two wings on which the human spirit rises to the contemplation of truth.” Encyclical Letter from Pope John Paul II, *Fides et Ratio*, VATICAN (Sept. 14, 1998), http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_14091998_fides-et-ratio_en.html.

¹¹⁹ G.A. Res. 44/25, art. 14(1).

dimensions, especially the most profound dimension of the human person—the spiritual dimension.¹²⁰

B. The United States' Position Regarding Education and Human Development

As the United States has a political mission unlike the spiritual and moral mission of the Holy See, it would be easy for it to treat education similar to the way the Toledo Guiding Principles treat education—in a utilitarian way that fosters the interests of the state. But the United States should be careful to link public education with authentic human development, and not primarily with the interests of the state. The human person is more sacred than the state.¹²¹

In *Brown v. Board of Education*,¹²² the Supreme Court recognized the importance of education for the state. Besides overruling the doctrine of “separate but equal” in the “field of public education,”¹²³ *Brown*'s central holding, the Court went to great lengths to emphasize the critical role of education in American society. The Court writes, “[E]ducation is perhaps the most important function of state and local governments.”¹²⁴ The reasoning behind the importance of education in *Brown* is not simply that education promotes authentic human development, but that “it is the very foundation of good citizenship.”¹²⁵ However, the Court does note that children need education to “succeed in life”;¹²⁶ so, education is also connected to the human person, and not simply to the interests of the state. *Brown* is typical of American jurisprudence: the utilitarian role of education in promoting the interests of the state is not ignored, but there is also a link between education and individual persons.

One of the distinguishing characteristics of the United States is that individual persons are not treated as instruments of the state, at least not jurisprudentially.¹²⁷ Rather, the rights of individual persons are highly prized, especially in the First Amendment context. It is tempting, for example, for a US federal court to hold that because education is essential to citizenship,¹²⁸ the interests of the state in educating children to be good citizens outweighs the interests

¹²⁰ “Religiousness represents the loftiest expression of the human person, because it is the culmination of his rational nature. It springs from man’s profound aspiration for truth and is at the basis of the free and personal search he makes for the divine.” COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, *supra* note 62, ¶ 15.

¹²¹ COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, *supra* note 62, ¶ 48. (“The human person cannot and must not be manipulated by social, economic or political structures, because every person has the freedom to direct himself towards his ultimate end.”); *id.* ¶ 47 (the ultimate end of every human person is God).

¹²² *See generally* 347 U.S. 483 (1954).

¹²³ *Id.* at 495.

¹²⁴ *Id.* at 493.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Pierce*, 268 U.S. at 535.

¹²⁸ *Id.* at 493.

of parents in educating their children to practice their faith. But the Supreme Court in *Wisconsin v. Yoder* did not hold that Wisconsin's compulsory education law was binding on the Amish, but that the rights of Amish parents to raise their children in the Amish faith superseded the interests of the state in training students for citizenship.¹²⁹ While the Court did recognize that the Amish education imparted to children does help them function in society, the state's interest in having good citizens is, nonetheless, secondary to the individual person's interest in the free exercise of his religion by educating his own children in accord with his religious convictions. This recognition by the Supreme Court of the right to educate one's children allows for authentic human development and resists the complete utilization of religion for mere state purposes. The Supreme Court's approach in *Yoder* is to be commended by the Holy See and serves as a model for the Toledo Guiding Principles, highlighting the relationship between education and authentic human development.

V. CONCLUSION

As exemplified throughout this paper, the approach of the Holy See to the Toledo Guiding Principles is similar in certain respects to the approach of the United States toward the Principles. By recognizing the role of parents in educating their children and connecting education to human persons, the Holy See and the United States serve as models for improving the Principles. However, regarding the role of religion in public schools, the Holy See does not have the assistance of the United States in promoting a closer interaction between religious groups and public educators. Hopefully, through cooperation between the Holy See and the United States, to the extent that such cooperation furthers the mission of each sovereign, the Toledo Guiding Principles can be reformed and make a real contribution to the flourishing of the human family.



¹²⁹ *Yoder*, 406 U.S. at 234.