

NOTE**“THE INDISPENSABLE BASIS OF DEMOCRACY”:
AMERICAN CATHOLICISM, THE CHURCH-STATE
DEBATE, AND THE SOUL OF AMERICAN LIBERALISM,
1920–1929**

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Thus the leaven of the Gospel has long been about its quiet work in the minds of men, and to it is due in great measure the fact that in the course of time men have come more widely to recognize their dignity as persons, and the conviction has grown stronger that the person in society is to be kept free from all manner of coercion on matters religious.¹

Dignitatis Humanae

But freedom attains its full development only by accepting the truth. In a world without truth, freedom loses its foundation and man is exposed to the violence of passion and to manipulation, both open and hidden.²

Centesimus Annus

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¹ Vatican II, Dignitatis Humanae (Declaration on Religious Freedom) § 12 (1965).

² Pope John Paul II, Centesimus Annus § 46 (1991).

I. ANTI-CATHOLICISM AND ESTABLISHMENT CLAUSE
JURISPRUDENCE

Dean John C. Jeffries and Professor James E. Ryan argue that the United States Supreme Court's Establishment Clause cases should be understood "as if they were products of political contests among various interest groups, both religious and secular, with competing positions on the proper relation of church and state."³ Establishment Clause jurisprudence therefore must be read as the product of a "subconstitutional—which is to say, political—contest among religious and secular interests with . . . ideological commitments to separation of church and state."⁴ This jurisprudence, in other words, is not a hermetically sealed body of constitutional law. Beneath the appeals to history, original intent, and constitutional necessity that inform readings of the Establishment Clause lie normative assumptions about the proper relationship of religion to the state. Constitutional interpretation is thus subsumed into a larger political debate about the meaning of American liberalism and the role of religion in shaping the meaning of democracy.

The political roots of Establishment Clause jurisprudence were evident in the earliest cases. In the postwar period it was opposition to the Catholic Church that most informed the development of church-state law. The Catholic question was among the most discussed issues of the 1940s and 1950s. Liberals saw Catholicism as a dangerous element that had to be purged from public life. Behind this aggressive anti-Catholicism was the belief that the Church's hierarchical, authoritarian, and dogmatic structure stood opposed to American political values of freedom and individuality. The fact that Catholics were subjects of a foreign sovereign meant they could never be loyal citizens of the United States.

Such views were not the province of an extremist fringe. The Catholic question filled the air of postwar political discourse. Paul Blanshard's *American Freedom and Catholic Power*, first published in 1949, was a wildly popular bestseller that attracted praise from such luminous thinkers as John Dewey, Bertrand Russell, Albert

³ John C. Jeffries, Jr. & James E. Ryan, A Political History of the Establishment Clause, 100 Mich. L. Rev. 279, 280 (2001) (emphasis omitted).

⁴ Id. at 281.

Einstein and Henry Sloane Coffin.⁵ A 1950 debate at Harvard Law School between Blanshard and Father George Dunne, author of *Religion and American Democracy*, produced such a “record turnout” that “hundreds milled about outside [the] auditorium” while “those admitted sought seats on stage, in the wings and along the sides of the theatre.”⁶ Many believed that the fate of American freedom stood in the balance. Opposition to Catholicism was as important as opposition to racial segregation, fascism, and Communism in defining “the terms of mid-twentieth-century American liberalism.”⁷ “From the mid-1930s through the 1950s,” writes Professor John McGreevy, “intellectuals labored to demonstrate the nonhierarchical sources of American culture, a project in which Catholicism played a strategic, antithetical role.”⁸

This fear of the Catholic Church directly informed the birth of postwar Establishment Clause jurisprudence, as liberals urged the use of the First Amendment as a tool to protect democracy from Catholic power.⁹ Paul Blanshard, for instance, unqualifiedly urged Americans to promote “[i]n the field of politics and law . . . ‘a wall of separation between church and state’ . . . [that was] real with no compromise.”¹⁰ It was no coincidence that the issues before the Court during the formative period of modern Establishment Clause jurisprudence involved the Catholic Church, especially in the school context. First in *Everson v. Board of Education*, the Court voted 5-4 to uphold a New Jersey statute funding the transport of Catholic schoolchildren to parochial schools.¹¹ Liberals were incensed by this decision and in response formed the lobbying group Protestants and Other Americans United for the Separation of Church and State.¹² The Court responded a year later by holding in *McCollum v. Board of Education* that religious teachers em-

⁵ See John T. McGreevy, *Thinking on One's Own: Catholicism in the American Intellectual Imagination, 1928-1960*, 84 *J. Am. Hist.* 97, 97 (1997) [hereinafter *Thinking on One's Own*].

⁶ Dunne Replies to Blanshard on Catholicism, *Harvard Law Record*, Feb. 15, 1950, at 1.

⁷ McGreevy, *Thinking on One's Own*, supra note 5, at 98.

⁸ *Id.* at 111.

⁹ *Id.* at 281-82.

¹⁰ Paul Blanshard, *American Freedom and Catholic Power* 305 (1949).

¹¹ 330 U.S. 1, 3, 18 (1947). See also John T. McGreevy, *Catholicism and American Freedom: A History* 183 (2003) [hereinafter *Catholicism*].

¹² McGreevy, *Catholicism*, supra note 11, at 183.

ployed by private religious groups could not come into public school buildings during regular business hours.¹³

Scholars have increasingly noted the profound influence of postwar anti-Catholicism on the development of early Establishment Clause jurisprudence. Professor Thomas Berg has argued that “widespread distrust of Catholicism was almost certainly a factor, though not the only one, in how the justices of the Supreme Court decided the first modern Establishment Clause cases.”¹⁴ Professor Stephen L. Carter has observed that “nobody seriously argued that aid to religious schools was unconstitutional until the argument became a useful tool in the nativist campaign against Catholicism.”¹⁵ Professor John McGreevy has likewise documented the centrality of anti-Catholicism in the Court’s movement towards separation.¹⁶ Finally, Professor Philip Hamburger’s *Separation of Church and State* provides a rich historical account of the process by which “vast numbers of Americans from remarkably diverse backgrounds” came to view separation as “an ‘American’ constitutional right, which protected Americans from Catholic or, more broadly, ecclesiastical subjugation.”¹⁷

Scholars considering the role of anti-Catholicism in shaping Establishment Clause jurisprudence have appropriately focused on these early postwar cases.¹⁸ Yet, despite the importance of the anti-Catholicism in this period, the issues that defined postwar church-state politics had already taken shape several decades earlier. As Dean Jeffries and Professor Ryan have noted, “[b]y the time the Court decided *Everson* in February of 1947, the Protestant-Catholic battle over church and state . . . was well underway.”¹⁹ The

¹³ 333 U.S. 203 (1948).

¹⁴ Thomas C. Berg, *Anti-Catholicism and Modern Church-State Relations*, 33 *Loy. U. Chi. L.J.* 121, 127 (2001).

¹⁵ Stephen L. Carter, *The Dissent of the Governed: A Meditation on Law, Religion, and Loyalty* 128 (1998).

¹⁶ McGreevy, *Catholicism*, supra note 11, at 183–85; McGreevy, *Thinking on One’s Own*, supra note 5, at 120–25.

¹⁷ Philip Hamburger, *Separation of Church and State* 391 (2002).

¹⁸ The case law of the 1960s and 1970s, which Professor Berg describes as inaugurating “high-water separationism,” are also important to the story. Church-state separation became more severe during this period and, even though important social, political, and intellectual changes were taking place in the Catholic community, a residual concern about the Church still lingered. Berg, supra note 14, at 151–63.

¹⁹ Jeffries & Ryan, supra note 3, at 314.

most important precursor to postwar Establishment Clause politics was a vituperative church-state debate between liberals and Catholics in the 1920s. While the church-state imbroglio of the 1920s did not directly inform constitutional jurisprudence, this earlier debate established the political framework within which later interpretations of the Establishment Clause took place.

In examining the church-state debate of the 1920s, this Note will add to the understanding of anti-Catholicism's role in shaping church-state politics and will offer a prehistory to the issues that proved of import in early Establishment Clause cases. The story of the 1920s also bolsters the claim of Dean Jeffries and Professor Ryan that church-state law has been ineluctably steeped in broader political debates about the place of religion in American democracy. In addition to providing a prologue to the historical narrative developed by Dean Jeffries and Professor Ryan, this Note will argue that the history of the 1920s stands on its own as an important moment in the history of church-state politics.

The thought of American Catholics during this decade was of particular importance. While the place of anti-Catholicism in American political history is widely documented,²⁰ less historical attention has been given to the Catholic response.²¹ By so doing, this Note will challenge the assumption that Catholics were mere victims of a hegemonic push by liberals to circumscribe the Church's political power. Far from being passive victims, Catholics actively challenged the argument that Catholicism could not be reconciled with the Constitution. The tactic Catholics adopted was to shift the locus of the church-state debate from the question of Catholicism's compatibility with the Constitution towards the broader question of the role of religion in the liberal society. Thus, far from trying to depoliticize the church-state fracas, American Catholics drove the issue ever more fully into the realm of politics and culture. In the process, Catholics developed a position that now stands at the heart of Establishment Clause politics. Thus, while the Church is often portrayed as the object against which Establishment Clause politics took shape in the postwar period, this Note will argue that

²⁰ See John Higham, *Strangers in the Land: Patterns of American Nativism, 1860–1925*, at 77–87, 175–82 (1955). See generally Ray Allen Billington, *The Protestant Crusade, 1800–1860* (1963).

²¹ See generally David J. O'Brien, *Public Catholicism* (2d ed. 1996).

Catholics, even more so than their critics, inaugurated and advanced the idea of church and state as a fundamentally political contest for the soul of the liberal society. Establishment Clause politics began not with postwar jurisprudence but with an earlier debate in the 1920s. And the source of these politics was not anti-Catholicism, but the creative thought about church and state that took place within the American Catholic mind.

II. CHURCH-STATE SEPARATION AND THE PROBLEM OF CATHOLIC LIBERALISM

In a 1927 editorial, *The New Republic* denounced the Catholic Church as an “alien guest in the American body politic.”²² This point of view, deeply rooted in the American experience,²³ reflected the conviction that Catholicism and democracy stood in profound tension. The widespread assumption was that Catholics posed a “threat to democratic institutions” because they were “ostensibly unfamiliar with American conceptions of liberty and subservient to the Roman Catholic Church.”²⁴

The Church had long sought to overcome this prejudice and accommodate itself to the American situation but continually ran up against a stubborn anti-Catholicism aimed at denuding Catholic influence.²⁵ The common school movement, the Blaine Amendment, the immigration restriction movement, and efforts to close parochial schools all had as their fundamental aim the circumscription of Catholic political power.²⁶ Yet, in spite of this longstanding tradition of anti-Catholicism, the American Catholic community entered the 1920s believing that a rapprochement between Catholicism and American democracy was finally emerging.

²² More about Catholicism and the Presidency, 50 *New Republic* 315, 316 (1927).

²³ See generally Jenny Franchot, *Roads to Rome: The Antebellum Protestant Encounter with Catholicism* (1994). On expressions of anti-Catholicism at various points in American history, see generally Billington, *supra* note 20.

²⁴ Eric Foner, *The Story of American Freedom* 79 (1998).

²⁵ See David J. O'Brien & Isaac Hecker: *An American Catholic* 85–99 (1992); Marvin R. O'Connell & John Ireland and the American Catholic Church 440–41, 464–65 (1988). See generally Robert D. Cross, *The Emergence of Liberal Catholicism in America* (1958).

²⁶ James Hennesey, *American Catholics: A History of the Roman Catholic Community in the United States* 172–203 (1981).

This confidence emerged from the Church's experience in World War I, during which the faithful had unqualifiedly supported the nation's war effort. The Church's leadership had identified the war as an ideal opportunity to demonstrate that Catholic commitment to democratic ideals trumped all other loyalties. To this end the Church pledged its "most sacred and sincere loyalty and patriotism toward our country, our government, and our flag."²⁷ Catholic leaders marshaled opinion in support of the war, as the Catholic press urged the faithful to "fight and pray,"²⁸ battle "for God and country,"²⁹ and give "active, loyal, faithful support and service" to the war effort.³⁰ They made no distinction between Catholic values and American values. As historian Douglas J. Slawson observes, the "bishops agreed that the fight was just, that Americanism and Christianity were virtually synonymous . . . and that Catholics had not just a patriotic, but a religious duty to serve the nation in its hour of need."³¹

At the conclusion of the war, Catholics engaged in a vigorous campaign to remind the nation of their "record as patriotic citizens."³² American bishops issued a pastoral letter pronouncing that the Church had fulfilled its pledge to support the war with "unselfish patriotism."³³ Michael Williams, founder of the lay journal *Commonweal*, penned *American Catholics in the War* in order to document the ways in which "American Catholics fought and

²⁷ Michael Williams, *American Catholics in the War: National Catholic War Council, 1917–1921*, at 3–4 (1921) (quoting a letter from the American Archbishop to President Woodrow Wilson).

²⁸ Catholics Urged to "Fight and Pray," *The Pilot*, July 13, 1918, at 1 (on file with Hesburgh Library, University of Notre Dame).

²⁹ For God and Country, *Catholic Standard and Times*, Nov. 16, 1918 (on file with Hesburgh Library, University of Notre Dame).

³⁰ Michael Williams, *Catholicism and Democracy*, *The Tablet*, Feb. 2, 1918, at 8 (on file with Hesburgh Library, University of Notre Dame).

³¹ Douglas J. Slawson, *The Foundation and First Decade of the National Catholic Welfare Council* 16 (1992). Anthony M. Benedik captured the spirit of the times in writing that "for us Catholics in America our Catholic duty to God and our patriotic duty to the Republic are so closely intertwined that the two elements, religious and patriotic, must be combined to make a full man." Anthony M. Benedik, *American and Catholic: The Basis of True Americanization*, 6 *Sign* 405, 405 (1927).

³² John A. Ryan, *The Catholic Citizen* 3 (unpublished manuscript, Ryan Papers, Box 11/24, Department of Manuscripts, Catholic University of America).

³³ Williams, *supra* note 27, at 7.

worked for God and for country during the Great War.”³⁴ Catholics pointed not only to their patriotism but also to the immensity of their wartime contributions, leading the *Catholic Bulletin* to announce that “Catholics are more than any other creed responsible for the winning of the present war”³⁵

This outpouring of propaganda reflected the Church’s hope that its wartime efforts would finally persuade the nation that Catholics were loyal and committed citizens devoted to upholding democracy. A sense of expectation, even entitlement, pervaded the Catholic community in the early 1920s as wartime enthusiasm transformed into postwar optimism and the belief that anti-Catholicism was finally withering. *The Pilot*, for instance, concluded that

by association with Catholics, Protestants have come to realize that many of their former fears and prejudices were overdrawn and even absurd. They have witnessed in the lives of their Catholic companions in arms a zeal for the defence of American honor and a dash and patriotism that have opened their eyes to those who were painted to them as schemers and disloyal citizens of the land.³⁶

In spite of such confidence, the anticipated embrace from non-Catholic America never materialized. Rather than abating, “prejudice against Catholics reemerged in the 1920s in new and vicious forms.”³⁷ *Proof of Rome’s Political Meddling in America*, a small book published in 1927, was typical of the anti-Catholic sentiment of the time. The book contained a pull-out map of Washington, D.C., complete with markings to show “the strategic location of important Roman Catholic institutions with reference to their accessibility to the Capitol, the White House and the Government Departments.”³⁸ Like battalions poised to attack, the Catholic Church was thought to be on the verge of seizing control of the na-

³⁴ Id. at 7–8.

³⁵ Catholics and the Great War, *Catholic Bull.*, Jan. 25, 1919 (on file with Hesburgh Library, University of Notre Dame).

³⁶ A Lesson of War, *The Pilot*, July 27, 1918 (on file with Hesburgh Library, University of Notre Dame).

³⁷ Timothy Walch, *Catholicism in America: A Social History* 67 (1989).

³⁸ James Scott Vance, *Proof of Rome’s Political Meddling in America* (1927) (map caption).

tion's political institutions and making America a Catholic country subject to the dictates of the Pope.

Much of the renewed opposition to the Church in the 1920s was an expression of what John Dewey called "the narrow bigotry" of populist anti-Catholicism.³⁹ The Ku Klux Klan underwent a revival, Protestant fundamentalists railed against the evils of popery, Congress restricted immigration from Catholic countries, and several states moved to close parochial schools.⁴⁰ These expressions of hostility marked another incarnation of the nativism that had targeted Catholics in the past. But what distinguished anti-Catholicism in the 1920s was the participation of "more respectable Americans."⁴¹ At the same time Dewey was dismissing crass forms of anti-Catholicism, other respectable liberals were joining the movement against the Church. One of the leading critics of Catholicism was New York attorney Charles C. Marshall, a lay Episcopalian, who argued throughout the 1920s that the two "supremacies" of the Papacy and the Constitution could not be reconciled.⁴² Catholicism, Marshall claimed, could never be fully at home in America. The Church's authoritarianism, hierarchical structure, and subservience to "an organization and a system of authority of foreign origin and with foreign interests" stood at odds with the most fundamental ideals and institutions of American democracy.⁴³

At the heart of this liberal campaign against the Church was the claim that Catholic doctrine could not be harmonized with the First Amendment. To make this case, critics pointed to a litany of papal statements opposing church-state separation. The anti-Catholic crusade became increasingly intellectual, as the Pope's teachings were made "an explicit political issue."⁴⁴

The claim that Catholic teaching opposed church-state separation was not without foundation. From the French Revolution onward, the Vatican had adopted a solidly negative attitude toward

³⁹ John Dewey, *Why I Am for Smith*, 56 *New Republic* 320, 321 (1928).

⁴⁰ Walch, *supra* note 37, at 61–63.

⁴¹ O'Brien, *supra* note 21, at 163.

⁴² See, e.g., Charles C. Marshall, *An Open Letter to the Honorable Alfred E. Smith*, 139 *Atlantic Monthly* 540, 544 (1927).

⁴³ More about Catholicism and the Presidency, *supra* note 22, at 316.

⁴⁴ Philip Gleason, *American Catholicism and Liberalism, 1789–1960*, in *Catholicism and Liberalism: Contributions to American Public Philosophy* 45, 60 (R. Bruce Douglass & David Hollenbach eds., 1994).

modernity in general, and political liberalism in particular, with church-state separation a favorite target.⁴⁵ The strongest condemnation of separationism came in the writings of Pope Pius IX, particularly his 1864 *Syllabus of Errors*.⁴⁶ The *Syllabus* lists eighty propositions anathema to Catholic teaching, including proposition 55 (“The Church ought to be separated from the State, and the State from the Church.”);⁴⁷ proposition 77 (“In the present day it is no longer expedient that the Catholic religion should be held as the only religion of the State, to the exclusion of all other forms of worship.”);⁴⁸ and proposition 80 (“The Roman Pontiff can, and ought to, reconcile himself, and come to terms with progress, liberalism, and modern civilization”).⁴⁹

Pope Leo XIII defended church-state union in a more nuanced way than his predecessor Pius, but his position was no less uncompromising.⁵⁰ In repeated statements, Leo defended the necessity of church-state union.⁵¹ For American Catholics, Leo’s most important statements on church-state union were two encyclicals directed specifically at the Church in the United States, *Testem Benevolentiae Nostrae*⁵² in 1899 and *Longinqua*⁵³ in 1895. *Testem* criticized modernist theology, which aimed to reconcile Catholic doctrine with developments in science, biblical criticism, and political theory.⁵⁴ The modernist movement had only a modest influence

⁴⁵ John Witte, Jr., Law, Religion and Human Rights, 28 Colum. Hum. Rts. L. Rev. 1, 10 (1996).

⁴⁶ Pope Pius IX, *Syllabus of Errors* (1864).

⁴⁷ *Id.* § VI.

⁴⁸ *Id.* § X.

⁴⁹ *Id.*

⁵⁰ See Pope Leo XIII, *Sapientiae Christianae* § 10 (1890) [hereinafter *Sapientiae Christianae*] (defending the right to resist laws that are “hurtful to the Church” or which “violate in the person of the supreme Pontiff the authority of Jesus Christ”); Pope Leo XIII, *Immortale Dei* § 6 (1885) [hereinafter *Immortale Dei*] (“[T]he State . . . is clearly bound to act up to the manifold weighty duties linking it to God, by the public profession of religion.”).

⁵¹ Pope Leo XIII, *Immortale Dei*, supra note 50, § 6; Pope Leo XIII, *Sapientia Christianae*, supra note 50, § 10.

⁵² Pope Leo XIII, *Testem Benevolentiae Nostrae* (1899).

⁵³ Pope Leo XIII, *Longinqua* (1895).

⁵⁴ See R. Scott Appleby, “Church and Age Unite!”: The Modernist Impulse in American Catholicism 3 (1992) (describing the modernist project as creating “a new synthesis between the claims of faith and science, dogma and history” by utilizing “new methods of reading and interpreting creation, history, and the Bible”).

on American Catholic intellectual life. Professor Gerald Fogarty, in fact, has argued that “[p]roperly speaking, there was no real Modernism in the United States.”⁵⁵ Nevertheless, the bold challenge modernism posed to traditional Catholic teachings, including those on church-state union, attracted this warning from the Vatican.

Leo’s encyclical *Longinqua Oceani* more directly addressed the church-state question. Confronting an American church disinclined to toe the papal line on church-state union, Leo wrote that while “the equity of the laws which obtain in America” have allowed the church to operate “unopposed by the Constitution” and “hostile legislation,” it is “erroneous to draw the conclusion that in America is to be sought the type of the most desirable status of the Church, or that it would be universally lawful or expedient for State and Church to be, as in America, dissevered and divorced.”⁵⁶ *Longinqua Oceani* was certainly intended to chill American Catholic enthusiasm for the separationism.⁵⁷ Though the encyclical did not oppose outright the American constitutional order, the Pope left no doubt that no imprimatur for separationism would be forthcoming. American Catholic aspirations and official Catholic teaching stood deeply and increasingly at odds. As one American Protestant noted, “Pope Leo XIII was particularly annoyed with the American way of things.”⁵⁸

These statements from the Popes persuaded non-Catholic America of the need to mobilize politically against the Church. Non-Catholic America, already wary, was now all the more persuaded of the need to mobilize against a Catholic threat to freedom. Critics seized on the encyclicals as proof that Catholics could not faithfully endorse the separation of church and state. The journalist James Cannon, for one, concluded that “a loyal Roman Catholic” could not “believe in the separation of Church and State,”⁵⁹ while Charles Angoff asserted that “the Pope, an alien,

⁵⁵ Gerald P. Fogarty, *The Vatican and the American Hierarchy from 1870 to 1965*, 191 (1982).

⁵⁶ Pope Leo XIII, *Immortale Dei*, supra note 50, § 6.

⁵⁷ Fogarty, supra note 55, at 137.

⁵⁸ Charles Angoff, *Catholicism Vs. Democracy*, *The Lowdown* 26 (1931).

⁵⁹ James Cannon, Jr., *An Open Letter to Governor Alfred E. Smith* (Oct. 31, 1928) (news clipping, Ryan Papers, Box 11/43, Department of Manuscripts, Catholic University of America).

urged American Catholics, most of them citizens, to agitate for the nullification of one of the articles in the Bill of Rights, forbidding Congress to make any law ‘respecting an establishment of religion, or prohibiting the free exercise thereof’⁶⁰ Winfred Ernest Garrison of the *Christian Century* argued likewise that Catholicism was “opposed to the separation of church and state wherever and whenever it [could] gain any advantage by the union of the two.”⁶¹

American Catholics responded to these attacks by reiterating their support for church-state separation.⁶² Some of the strongest statements in support for separationism in fact came from hierarchy. St. Paul Archbishop John Ireland wrote of the “inestimable advantage” enjoyed by the American Church under the Constitution,⁶³ while Baltimore’s James Cardinal Gibbons announced that “I do not desire . . . that a union of Church and State be had in our country.”⁶⁴ The Catholic Press also gave its endorsement to church-state separation. *The Tablet* reported in 1923 that American Catholics “glory in the wording of the Constitution.”⁶⁵ Another article in *The Tablet* went so far as to claim that “the attitude of the Vatican towards our government” was characterized by “cordial benignity and . . . heartfelt wishes of prosperity.”⁶⁶ In the midst of this outpouring of enthusiasm Professor John Ryan declared that

⁶⁰ Angoff, *supra* note 58, at 26.

⁶¹ Winfred Ernest Garrison, *Catholicism and the American Mind* 107 (1928).

⁶² Frederick Joseph Kinsman, *Americanism and Catholicism* 145–46 (1924).

⁶³ John Ireland, *The Mission of Catholics in America*, in 1 *Church and Modern Society* 82–83 (1905).

⁶⁴ James Cardinal Gibbons, *The Pope and Our Country*, *The Tablet*, Aug. 3, 1918, at 5 (on file with Hesburgh Library, University of Notre Dame); see also *The Cardinal Proud of His Nationality*, *Catholic Register*, June 23, 1905, at 1 (on file with Hesburgh Library, University of Notre Dame). American Catholics had long defended church-state separation by noting that the Church in America was flourishing and growing at the very time secularism was sweeping across Europe. *The Catholic Register*, for instance, argued that America “has disproved the maxim that the law is atheistic . . . by declaring that she would stand for religious liberty, she by no means declared for atheism, as certain European nations have done.” *Growth of a Century*, *Catholic Register*, Oct. 26, 1906, at 1 (on file with Hesburgh Library, University of Notre Dame).

⁶⁵ *Catholics in America*, *The Tablet*, Aug. 4, 1923 (on file with Hesburgh Library, University of Notre Dame).

⁶⁶ *The Church and State*, *The Tablet*, Jan. 9, 1909, at 8 (on file with Hesburgh Library, University of Notre Dame).

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“[p]ractically all American Catholics,” agree “that separation of church and state is the best arrangement for the United States.”⁶⁷

III. AN AMERICAN CATHOLIC APOLOGIA FOR CHURCH-STATE SEPARATION

The American Church repeatedly announced its support for separation, but few within the Catholic community addressed head-on the manifest tension between papal pronouncements and the American Constitution. Problematic teachings on church and state were simply ignored. To publicly support separation was thought to be enough. Presidential candidate Al Smith captured this lack of engagement most famously. Asked in 1927 to explain how he could reconcile a duty to uphold the Constitution with the teachings of the encyclical *Immortale Dei*, Smith responded by asking, “Will somebody please tell me what in the hell an encyclical is?”⁶⁸ But this approach proved increasingly untenable during the 1920s. Faced with rising anti-Catholicism rooted in papal teachings on church-state relations, American Catholics had no choice but to engage the Church’s regnant illiberalism. Thus moving beyond mere declarations of political loyalty, American Catholics began to work within their intellectual tradition to defend church-state separation.

The leading voice in this movement was Professor John A. Ryan, Professor of Moral Theology at the Catholic University of America and Director of the Social Action Department of the National Catholic Welfare Conference. He developed a reputation during the Progressive Era as the leading Catholic advocate of economic reform, most notably through writings on the living wage.⁶⁹ During the 1920s, however, Ryan also wrote extensively on the church-state question. During this period, he authored numerous articles, pamphlets, and speeches, along with three books—*The State and the Church*,⁷⁰ *Declining Liberty and Other Papers*,⁷¹ and

⁶⁷ John A. Ryan, Church, State and Constitution, 5 *Commonweal* 680, 681 (1927) [hereinafter *Church, State*].

⁶⁸ Hennesey, *supra* note 26, at 252.

⁶⁹ *Id.* at 137–47.

⁷⁰ John A. Ryan, *The State and the Church* (1930).

⁷¹ John A. Ryan, *Declining Liberty and Other Papers* (1927).

*The Catholic Church and the Citizen*⁷²—that together constitute one of the most important set of reflections by an American Catholic on the topic of religious liberty, church-state separation, and the relationship of Catholicism and political liberalism more generally.⁷³

Ryan acknowledged the tension between Catholic political thought and the American separation of church and state, but he denied that these traditions were irreconcilable. Ryan developed three arguments to defend the compatibility of Catholicism and church-state separation. The first argument sought to narrow the gap between Catholicism and American liberalism by distinguishing different forms of liberalism. Ryan identified that liberalism which was fundamentally incompatible with Catholicism as “continental liberalism.” Continental liberalism was a secular ideology that “[did] not accept the Christian Revelation, nor any commands issuing from organized religion.”⁷⁴ Ryan argued that the Vatican’s hostility to church-state separation reflected the Church’s experience in continental Europe, particularly with the anti-clericalism of the French Revolution.⁷⁵ He argued that the Church properly maintained that this variety of liberalism “cannot be accepted by any Catholic.”⁷⁶ Continental liberalism “denies or minimizes the authority of God and of the church over human conduct.”⁷⁷ It was a political ideology allied with the forces of secularism and irreligion. Catholics were thus bound to reject this anti-clerical form of liberalism, which sought to separate not only church from state but religion from politics.

That Catholics were bound to oppose continental liberalism, however, did not mean that Catholicism and liberalism were irreconcilable. Rather, Ryan argued that because the papal condemnation was directed only at continental liberalism, it followed that liberal political regimes not sharing the characteristics of continental liberalism, including those that separated church and state,

⁷² John A. Ryan, *The Catholic Church and the Citizen* (1928).

⁷³ See John W. Gouldrick, *John A. Ryan’s Theory of the State* (1979) (unpublished Ph.D. dissertation, Catholic University of America) (on file the Mullen Library, Catholic University of America).

⁷⁴ John A. Ryan, *What is Freedom?*, 12 *Catholic Charities Rev.* 240, 241 (1928).

⁷⁵ John A. Ryan, *Catholicism and Liberalism*, 131 *Nation* 150, 150–52 (1930).

⁷⁶ *Id.* at 150.

⁷⁷ *Id.*

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could be acceptable. Put simply, Ryan maintained that in rejecting continental liberalism, the papacy had not rejected liberalism in its entirety.⁷⁸

By distinguishing between continental and other forms of liberalism, Ryan created space to claim the American tradition as compatible with Catholic teaching. Ryan detailed the many benign qualities of American liberalism that distinguished it from other liberalisms. He described American liberalism as “an attitude of mind”⁷⁹ characterized by “tolerance toward opinions, customs, freedom of speech and changes in systems and institutions.”⁸⁰ An American liberal was “a tolerant person,” “a democrat,” “a person who is generous,” and one “who emphasizes freedom.”⁸¹ The First Amendment’s position on religious freedom likewise was nothing more than a “political policy.”⁸² The First Amendment was not an “ethical principle” that makes judgments about religious claims, it did not seek to remove religious influences from politics, and it shared nothing in common with continental liberalism’s ideological rejection of public religion.⁸³ Ryan made just this point in writing: “The principle (false) that all religions are equally right, or have equal moral rights, does not ‘underlie’ the First Amendment.”⁸⁴ It “merely prohibits Congress from making any law interfering with freedom of religion.”⁸⁵

In his second argument defending church-state separation, Ryan claimed that critics of the Church incorrectly interpreted papal texts. Ryan made this claim on a few occasions, most notably in a 1928 *Current History* article defending the possibility of presidential candidate Al Smith reconciling his faith with his duty to uphold

⁷⁸ Id. at 150–52.

⁷⁹ Id. at 150.

⁸⁰ John A. Ryan, *Liberalism and Liberals* 1 (unpublished manuscript, Ryan Papers, Box 11/24, Department of Manuscripts, Catholic University of America).

⁸¹ Id.

⁸² John A. Ryan, *The Civic Loyalty of Catholic Officials: Extracts from Letters to a Certain Objector*, 13 *Catholic Charities Rev.* 285, 286–87 (1929) [hereinafter *Civic Loyalty*].

⁸³ Id.

⁸⁴ John A. Ryan, *Review of Charles C. Marshall, The Roman Catholic Church in the Modern State*, *Forum*, June 1928, at 1, 2 [hereinafter *Review*].

⁸⁵ Id.

the Constitution.⁸⁶ Ryan was writing in response to the claim by Charles Hillman Fountain that the structure of authority within the Catholic Church required Catholics to accept the teachings of the Popes as infallible. Belief in papal infallibility, Hillman wrote, was “as obligatory on Roman Catholics as belief that Christ is divine.”⁸⁷ American Catholics therefore had to endorse the repeated papal condemnations of church-state separation. Even though American Catholics might believe and profess otherwise, Fountain argued, obedience to Church dogma required they participate in the papal project of making “all civil society, including that in America, Roman Catholic.”⁸⁸ Fountain thus concluded that “[i]t is wholly beside the point for Governor Smith to quote Archbishops and Cardinals to determine the faith of the Church [on matters of church-state separation] unless they agree with and echo the Pope’s inspired pronouncements.”⁸⁹

Fountain’s understanding of papal authority rested largely on a passage in the *Catholic Encyclopedia* establishing that encyclicals are invested with infallible authority when circumstances indicate that the Pope has spoken *ex cathedra*.⁹⁰ The various condemnations of modernism and separationism, Fountain concluded, left no doubt that the Popes intended their statements to be pronouncements “on the faith of the Holy Roman Church.”⁹¹

Ryan, however, turned to this same *Catholic Encyclopedia* in responding to Fountain. Quoting a section in the *Encyclopedia* on interpreting the *Syllabus of Errors*, Ryan wrote, “[t]he view held by the Church in opposition to each thesis is contained in the contradictory proposition of each of the condemned theses. The opposition is formulated in accordance with the rules of dialectics by prefixing to each proposition the words ‘it is not true that’”⁹² Ryan concluded that while the *Syllabus* indeed condemned the proposition that “[t]he Church ought to be separated from the State, and

⁸⁶ John A. Ryan, *The Catholic Reply to the Opposition*, 27 *Current Hist.* 778, 779 (1928) [hereinafter *Catholic Reply*].

⁸⁷ Charles Hillman Fountain, *The Case for the Opposition to a Catholic President*, 27 *Current Hist.* 767, 771 (1928).

⁸⁸ *Id.* at 774 (emphasis omitted).

⁸⁹ *Id.* at 770.

⁹⁰ *Id.* at 769–70.

⁹¹ *Id.* at 770.

⁹² Ryan, *Catholic Reply*, *supra* note 86, at 782.

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the State from Church,”⁹³ this condemnation “implic[d] no greater assertion of positive doctrine than that the State should not *always* prevail in a conflict between its laws and those of the Church, and the church should not *always* be separated from the State.”⁹⁴ Following this line of argument, Ryan concluded on another occasion that

[n]ot a single proposition in the Syllabus is condemned either explicitly or implicitly in the Constitution of the United States or in any of the State constitutions You think that the Federal or the State constitutions do affirm and require some things which Pope Pius IX condemned in the *Syllabus of Errors*. You are mistaken because you have not interpreted these propositions correctly.⁹⁵

Just as Ryan argued that the papacy’s rejection of continental liberalism did not imply a rejection of American liberalism, his claim here was that the papacy’s opposition to church-state separation under certain circumstances did not imply that church and state must always be separated.

Ryan’s third and final argument defended the compatibility of Catholicism with American-style church-state separation by distinguishing between the actual and ideal political orders. Ryan conceded that the encyclicals set forth church-state union as the ideal, but he argued that this ideal should be instituted only when the “political community . . . is either exclusively, or almost exclusively, made up of Catholics.”⁹⁶ American Catholics, Ryan argued, could accept church-state union as the ideal without being obliged to advocate church-state union for the United States. As he wrote:

Our industrial system is not ideal either, but most of us are not seeking its overthrow. And there is nothing in the Constitution of the United States which declares that the policy of separation is

⁹³ Pope Pius IX, *supra* note 46, at proposition 55.

⁹⁴ Ryan, *Catholic Reply*, *supra* note 86, at 782.

⁹⁵ Ryan, *Civic Loyalty*, *supra* note 82, at 286.

⁹⁶ John A. Ryan, Comments on “The Christian Constitution of States,” *in* *The State and the Church* 26, 37 (John A. Ryan & Moorhouse F. X. Millar, eds., 1930) [hereinafter *Comments*].

an ideal arrangement, or which forbids any American citizen to hold that it is not ideal.⁹⁷

In addition to Ryan, Catholic apologists made similar claims throughout the 1920s proposing this distinction. The *Catholic Standard and Times* spoke of the distinction between “the abstract concept of an ideal condition” and “the practical application of proper principles to actual conditions.”⁹⁸ John P. Carroll, Bishop of Helena, Montana, wrote similarly that the union of church and state is the “ideal condition,” but it is “not practical or desirable in America.”⁹⁹ Even the Protestant commentator William Adams Brown of the Federal Council of Churches wrote that “the Catholic Church in the United States accepts the traditional relation of church and state in this country as a satisfactory working arrangement, at the same time holding to its own traditional doctrine of the ideal relation.”¹⁰⁰

The ideal-actual distinction allowed Ryan and fellow Catholics to accept the theoretical validity of papal teachings on church-state union while at the same time embracing American separationsim. But a significant problem remained. In particular, Ryan had to concede as a matter of logic that the state might have to bestow political privileges on the Church if America ever became completely Catholic. “[N]on-Catholic sects,” Ryan wrote, “may decline to such a point that the political proscription [set forth by Leo XIII in *Immortale Dei*] may become feasible and expedient.”¹⁰¹ Yet, while he acknowledged the possibility that Catholics might want to amend the Constitution so as to grant political recognition to the Church, such an event was “so far off and so hypothetical” that it “will not be seriously considered by more than a small majority.”¹⁰² “While all this is very true in logic and in theory,” he added, “the event of its practical realization in any State or country is so remote in time and in probability that no practical man will let it disturb his equa-

⁹⁷ Ryan, Catholic Reply, supra note 86, at 783.

⁹⁸ Mutual Relations of Church and State, *Catholic Standard and Times*, June 15, 1929 (on file with Hesburgh Library, University of Notre Dame).

⁹⁹ John P. Carroll, Is there a Conflict between the Church and the State?, *The Tablet*, Nov. 22, 1924 (on file with Hesburgh Library, University of Notre Dame).

¹⁰⁰ William Adams Brown, Church and State in Contemporary America 207 (1936).

¹⁰¹ Ryan, Comments, supra note 96, at 38.

¹⁰² Ryan, Review, supra note 84, at 2–3.

nimity or affect his attitude toward those who differ from him in religious faith.”¹⁰³

Ryan’s disclaimer did little to satisfy the Church’s critics.¹⁰⁴ Because Ryan upheld church-state union as a theoretical possibility, some critics painted him as standing shoulder to shoulder with the Pope in a plot to overturn the Constitution. But while Ryan did not endorse church-state separation as universally normative, he significantly undermined the conservative Catholic position. Ryan’s use of the ideal-actual distinction did not preserve the integrity of the ideal so much as it allowed Catholics to give lip service to the encyclicals while proceeding as if they made no meaningful claim on the Church’s relationship to the American political order. Ryan did not want his liberal sympathies to “get boxed in by Rome.”¹⁰⁵ In a remarkable statement, Ryan even declared that Leo XIII’s teachings meant American Catholics were not “under any sort of obligation” to alter the existing Constitutional order.¹⁰⁶ “The reference to the Pope as a temporal sovereign,” he wrote, “is entirely irrelevant. Catholics in the United States owe him no allegiance as a temporal sovereign. Their obedience to him is entirely in the spiritual or-

¹⁰³ Ryan, Comments, *supra* note 96, at 38–39.

¹⁰⁴ Ryan’s ideal-actual distinction set forth in *The State and the Church* gained political attention during the 1927 presidential campaign when Charles Marshall referenced it in an open letter to Al Smith in the *Atlantic Monthly* as evidence of Catholicism’s inability to fully accept separation. Marshall challenged Smith to reconcile *Immortale Dei* with the Constitution. In a response published in the subsequent issue, Smith asserted that “I believe in the absolute separation of Church and State and in the strict enforcement of the provisions of the Constitution that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” Marshall, *supra* note 42, at 540. Though he praised Smith’s reply, Reverend Justin Nixon, a Presbyterian minister, claimed that Smith was only able to claim what he did by minimizing “the influence and power behind the traditional Catholic theory of the State.” See *Finds Catholic Ideal Of Church And State Disavowed By Smith*, Rochester Times Union, Apr. 25, 1927 (news clipping, Ryan Papers, Box 11/43, Department of Manuscripts, Catholic University of America). For the Church’s ardent critics, Ryan’s relegating church-state union to the realm of the ideal only provided further evidence that the “traditional Catholic theory of the state” could not be reconciled with the Constitution. *Id.*

¹⁰⁵ Francis L. Broderick, *The Encyclicals and Social Action: Is John A. Ryan Typical?*, 15 *Catholic Hist. Rev.* 1, 3 (1969).

¹⁰⁶ John A. Ryan, *The Catholic Church and the Citizen* 32 (1928); see also Ryan, *Church, State*, *supra* note 67, at 680–82.

der.”¹⁰⁷ Far from being a covert Constantinian, Ryan’s position rendered the conservative position on church-state relations inapplicable in the modern world. Ryan had restricted the authority of the Church to the “spiritual” thereby creating an autonomous political order free from the impositions of theology. In this “temporal” world it was the principles of American liberalism, not the teachings of the Pope, to which Catholics owed their allegiance.

IV. THE CATHOLIC CLAIMING OF CONSTITUTIONAL VALUES

Ryan’s arguments in support of church-state separation played an important role in the American Church’s response to anti-Catholicism. But these arguments alone were of limited effectiveness because they did not address how, given this affirmation of separationism, Catholics ought to relate to the American political order. Recognizing this limitation, American Catholic social thinkers began to explore ways to re-imagine the Church’s social thought tradition in order to construct a tradition of Catholic political thought suited to the American situation. This emerging American tradition of social thought was based on the premise that a relevant public Catholicism had to adapt itself to the institutional and ideological precepts of American political liberalism. Above all, the Church had to move from being a critic of liberal political institutions to accepting, and even embracing, them.¹⁰⁸ To this end, American Catholics during the 1920s advanced the argument that Catholicism was not only compatible with liberalism but also uniquely able to contribute to its flourishing. By the end of the decade, the rudiments of a unique American Catholic political theory based on this objective had emerged. A decade that began with Catholics defending their loyalty to the principles of liberalism and

¹⁰⁷ John A. Ryan, *The Civic Loyalty of Catholics*, National Welfare Conference Bull., Nov. 1924, at 28 (on file with Mullen Library, the Catholic University of America).

¹⁰⁸ As Michael Baxter writes, “there was constant activity in the area of political theory among Catholic scholars, and it served to reinforce the central assumption of the Americanist tradition, that there exists a fundamental harmony, a theoretical harmony, between Catholicism and the United States of America.” Michael John Baxter, *In Service to the Nation: A Critical Analysis of the Formation of the Americanist Tradition in Catholic Social Ethics* 276 (1996) (unpublished Ph.D. dissertation, Duke University) (on file with Duke University).

separationism ended with Catholics having defined themselves as saviors of American political ideals.

A cornerstone of this movement was an ambitious project to establish connections between early modern Catholic political thought and the development of democratic ideas. The most widespread variant of this argument held that American democracy had its roots in Catholic writings on political authority, particularly the work of the sixteenth-century Jesuit theologians Robert Bellarmine and Francisco Suarez. This “Bellarmine argument” appeared widely in both academic journals and the popular press. New York Archbishop Patrick Hayes, in a speech before the National Council of Catholic Men, claimed that “the principles, almost the very language of our Declaration of Independence, were written by the Venerable Bellarmine.”¹⁰⁹ Historian Peter Guilday wrote that had the Church’s “great scholars, of whom Bellarmine is foremost, not fought for the preservation of the democratic ideal of government and in the Constitution the United States would never have been given voice and authority in the birth of our nation.”¹¹⁰ Bertrand Conway similarly asserted that “[t]he men chiefly responsible for the framing of our Constitution:—George Mason, Thomas Jefferson and James Madison—certainly were influenced by the views of the Jesuit Cardinal.”¹¹¹ Even Ryan noted in a 1918 article the “obvious and striking” resemblance between Catholic teaching and well-known clauses in the Virginia Declaration of Rights and the Declaration of Independence.¹¹²

Ryan also attempted to reconcile Catholicism and democracy. In order to advance this goal, he wrote extensively during the 1920s about traditional Catholic teachings on the authority and limits of the state. Because of the illiberal impulse in much nineteenth-century Catholic thought, Ryan turned instead to older aspects of the tradition to establish that compatibility of Catholic political

¹⁰⁹ The Champion of Liberty, Catholic Bull., Nov. 5, 1927 (Patrick Hayes) (on file with Hesburgh Library, University of Notre Dame).

¹¹⁰ Peter Guilday, The Catholic Question in the United States, The Tablet, Mar. 24, 1928, at 13 (on file with Hesburgh Library, University of Notre Dame).

¹¹¹ Bertrand L. Conway, The Pope and the Constitution, 77 Catholic World 319, 327 (1928); see also James M. Gillis, This Our Day: Approvals and Disapprovals 5 (1933).

¹¹² John A. Ryan, Catholic Doctrine on the Right of Self Government, 108 Catholic World 314, 324 (1918).

thought and American principles of democracy and the limited state.

Ryan's work in this area, much like his writings on the papal encyclicals and church-state separation, was an attempt to foster a dialogue between Catholic social thought and American political liberalism. Ryan advanced several theses aimed at reconciling these distinct political and philosophical traditions. First, Ryan proposed that the Catholic understanding of political power was fundamentally democratic. Going even further than proponents of the Bellarmine project, who saw the emergence of a Catholic democratic theory in the sixteenth century, Ryan identified the roots of these ideas in the Church's long-accepted view, derived from scripture, that "the ruler derives his right to rule from God, Who is the source of all authority."¹¹³ "While the Church has made no pronouncement for or against the right of national self government," it is through the "consent of the people" that political authority is legitimately transferred from God to a ruler.¹¹⁴ Democracy, in this scheme, was not the by-product of a social contract or the exaltation of the people as the supreme political authority. Rather, democracy was the mechanism by which the people participated in the transference of justly derived political authority from God to a ruler.

Secondly, Ryan proposed that Catholics had a moral obligation to obey the state because they understood legitimate political authority as having been endowed by God. "Civil law," Ryan wrote, "has moral validity on its own account because the state possesses original moral authority."¹¹⁵ While an unjust law does not have "any binding force in conscience," there "is always a presumption in favor of the moral constraint of civil law."¹¹⁶ Therefore, Ryan concluded, "citizens are obliged to obey civil laws, even those that they do not like."¹¹⁷ At the same time, Ryan stressed that while Catholic thought emphasized the inviolability of legitimate political

¹¹³ Id. at 315.

¹¹⁴ Id. at 315, 318.

¹¹⁵ John A. Ryan, *The Binding Force of Civil Law*, 12 *Catholic Charities Rev.* 17, 20 (1928).

¹¹⁶ Id. at 20; see also John A. Ryan, *Do the Prohibition Laws Bind in Conscience?*, 121 *Catholic World* 145, 145 (1925).

¹¹⁷ John A. Ryan, *Who Shall Obey the Law?*, 9 *Commonweal* 616, 616 (1929).

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authority, the Church also acknowledged firm limitations on the proper reach of the state. Catholicism, thus, not only supported existing democratic institutions but also stood as a bulwark against the encroachment of socialism and other forms of radicalism. While Catholics should respect the state because of its God-given authority,

[i]f the end of the State be coextensive with man's whole life and interests, if it may regard as its proper and exclusive field, not merely the maintenance of peace, security, order and justice, but all the details of man's welfare in his religious, moral, domestic, economic, and purely "social" relationship, the State will sooner or later come to regard its own prosperity and aggrandizement as the final end of all its policies and actions.¹¹⁸

Like his fellow churchmen, Ryan promoted these ideas in order to stress that Catholicism strengthened, rather than undermined, the American constitutional regime.

The project of historical reconstruction sought to overcome the church-state problem by demonstrating the common intellectual roots of Catholic and American ideals.¹¹⁹ Finding few resources in contemporary papal teaching, American Catholics looked elsewhere in the tradition to inaugurate a dialogue between the Church and American liberalism. Widespread interest in earlier modes of thought thus marked an attempt to discover a counter-narrative to the antimodernism of the nineteenth-century papacy. The Catholic claiming of American political principles, however, did not end with professions of ideological harmony. Catholics were drawn to a bolder agenda that sought not only to persuade the nation that Catholicism and liberalism could coexist, but also that Catholicism was necessary for the flourishing of liberal values. For this reason, Catholics did not shy away from politicizing the church-state issue. In fact, they embraced the debate of the 1920s as an opportunity to redefine the political mission of Catholicism and the role of the Church in American public life.

¹¹⁸ John A. Ryan, *The Purpose of the State*, 113 *Catholic World* 803, 805 (1921).

¹¹⁹ These arguments gained little credence outside the Catholic community. See, e.g., Garrison, *supra* note 61, at 167, 171.

Many factors encouraged this newfound boldness,¹²⁰ but an essential element was the intellectual confidence derived from the neo-Scholastic revival that dominated Catholic intellectual life at the time.¹²¹ The neo-Scholastic revival began with Pope Leo XIII's 1879 encyclical letter *Aeterni Patris* establishing that philosophical inquiry should be pursued according to the natural law principles of St. Thomas Aquinas.¹²² By the early twentieth century, Thomism dominated American Catholic intellectual life. New journals such as *The Modern Schoolman* (1925) and *The New Scholasticism* (1927) were established to promote Scholastic philosophy, Catholic universities were organized along a Scholastic model, and several centers for Thomistic and medieval studies were established. The fields of politics, law, sociology, and economics all came to be organized around natural law philosophy.¹²³ Challenging the epistemological uncertainty of modernism, the Thomistic worldview held that absolute truth existed and could be determined through human reason alone. The truths accessible through reason did not include those particular Christian beliefs necessary for salvation. Those beliefs lay within the province of revelation. But questions about the existence and nature of God, ethics and moral philosophy, and the proper ordering of the state, could all be answered through reason. No assistance from revelation was needed. Catholics increasingly identified the great threat of the modern world as atheistic, materialist, and secularist philosophies. The resources of neo-Scholastic epistemology allowed Catholics to engage these modern ideologies without recourse to theological presuppositions.

This confidence in the orderliness of the world and the capacity of the intellect to discern moral truth also insulated Catholics from the intellectual disillusionment of the postwar years. Walter

¹²⁰ For a description of changes in the Catholic community leading up to the 1920s, see generally Paula M. Kane, *Separatism and Subculture: Boston Catholicism, 1900–1920* (1994).

¹²¹ Philip Gleason, *In Search of Unity: American Catholic Thought, 1920–1960*, 65 *Catholic Hist. Rev.* 185, 185–200 (1979) [hereinafter *In Search of Unity*]; Philip Gleason, *Neoscholasticism as Preconciliar Ideology*, 7 *U.S. Catholic Historian* 401, 401–11 (1988).

¹²² Pope Leo XIII, *Aeterni Patris* § 17 (1879).

¹²³ Theology, on the other hand, was virtually untaught to undergraduates at Catholic universities. Philosophy was the governing discipline. See Gleason, *In Search of Unity*, *supra* note 121, at 194–205.

Lippman captured this malaise when he wrote in 1929 that “[b]y the dissolution of their ancestral ways men have been deprived of their sense of certainty as to why they were born, why they must work, whom they must love, what they must honor, where they may turn in sorrow and defeat.”¹²⁴ The effects of this crisis of certainty were nowhere more felt than in law and politics, where Professor Edward Purcell has argued that a “pervasive epistemological and ethical relativism” led to a crisis of democratic theory.¹²⁵ For many liberals, the foundational principles of American democracy—political freedom, individual rights, and the limited state—lacked any substantive philosophical basis. Standing against this intellectual malaise, Catholics promoted a view of politics steeped in the bedrock foundations of moral truth and the natural law. Catholics believed that they alone possessed the intellectual and moral resources to offer a coherent defense of American democracy. The neo-Scholastic movement not only insulated Catholics from the uncertainty of the age but provided Catholics with resources to confront the age.¹²⁶

The Catholic challenge to modern politics was to call for a return to a foundationalist theory of democracy rooted in moral truth. According to Catholic commentators, the greatest threat to liberalism came from abandoning the link between political freedom and belief in God and an ordered universe. To do so was to open the door to totalitarian regimes that did not acknowledge that rights and liberties inhere in persons by virtue of their having been created by God. “[W]e have surely seen the outcome of political and educational systems which had undertaken to rule the world without reference to God,” noted one Catholic editorialist.¹²⁷ Catholics

¹²⁴ Walter Lippmann, *A Preface to Morals* 21 (1929).

¹²⁵ Edward A. Purcell, Jr., *American Jurisprudence between the Wars: Legal Realism and the Crisis of Democratic Theory*, 75 *Am. Hist. Rev.* 424, 425 (1969); see also Edward A. Purcell, Jr., *The Crisis of Democratic Theory: Scientific Naturalism and the Problem of Value* 74–94 (1973).

¹²⁶ William Halsey has argued that Catholic confidence allowed the Church to present itself as defender of “the values and promises of American idealism which seemed threatened by various forms of irrationalism: probability in scientific thought, the subconscious in psychology, skepticism in literature, and relativism in law and morality.” William M. Halsey, *The Survival of American Innocence: Catholicism in an Era of Disillusionment, 1920–1940*, 2 (1980).

¹²⁷ *Democracy Based on True Education*, *The Pilot*, Mar. 27, 1920, at 1 (on file with Hesburgh Library, University of Notre Dame).

thus came to see themselves as the barrier protecting America from this same fate. The survival of Christian culture, moral truth, and ultimately democratic liberalism, depended on the Catholic Church.

Throughout the 1920s, Catholic commentators exhibited an exceptional interest in furthering the role of religion in American public life. The Catholic press was filled with editorials lamenting the flimsy state of national morality and the threat such degeneration posed to the political order. The *Catholic Standard and Times* declared that “[t]he sense of guilt has almost vanished from the modern mind. Expiation and atonement naturally seem unnecessary to one who does not regard violations of the moral order with genuine horror. Morally we have become a very soft people.”¹²⁸ One commentator lamented the culture’s “low moral codes,”¹²⁹ while another called for “more religion on the part of the public.”¹³⁰ But it was not a general slide towards immorality that most troubled Catholics. Their main concern was the “divorce of politics from ethics,” which revealed a failure to understand that freedom could not survive if it did not rest on an ethical, and more specifically religious, foundation.¹³¹ There existed no difference between “[a]utocracy and democracy without God,”¹³² for democracy without God must inevitably collapse into “licentious freedom.”¹³³ And licentious freedom could not long survive, for only when freedom was enveloped by the restraining influence of religion could authoritarian encroachments on liberty be prevented. There was no ground for securing rights and liberties unless a people acknowledged the existence of absolute truths that transcended the political order. Only a return to the “saving possibilities of sound ethics”

¹²⁸ Some Views of the Modern Mind, *Catholic Standard and Times*, Nov. 24, 1928 (on file with Hesburgh Library, University of Notre Dame).

¹²⁹ Causes of Low Moral Codes, *Catholic Standard and Times*, May 30, 1925 at 4 (on file with Hesburgh Library, University of Notre Dame).

¹³⁰ The Partnership of Capital and Labor, *The Tablet*, July 19, 1919 (on file with Hesburgh Library, University of Notre Dame).

¹³¹ The Modern Divorce of Politics from Ethics, *The Tablet*, Sept. 17, 1927 at 6 (on file with Hesburgh Library, University of Notre Dame).

¹³² Two Kinds of Democracy; One True and One False, *The Tablet*, Oct. 13, 1917 (on file with Hesburgh Library, University of Notre Dame).

¹³³ W.J. Engelen, Social Reflections: The Bonds of Reconstruction, *Central-Blatt and Social Justice*, September, 1920, at 151, 151.

could preserve society from the “false ethics” of modernity.¹³⁴ If public acknowledgement of God did not undergird democracy, then authentic freedom—that is freedom properly restrained by, and oriented towards, the dictates of the moral law—would inevitably succumb to tyranny.

Ryan developed a detailed body of thought on the relationship between religion and political rights. He argued in particular that human rights existed only as the by-product of a theological anthropology. Human rights not based in a religious understanding of the person had no ultimate justification. Only when human beings were recognized as having been created in the image of God did there exist a basis for asserting claims to equal and inviolable rights. In a 1921 lecture, Ryan argued that, “[w]ere it not for this doctrine of the essential equality of human beings, the intrinsic worth of every human soul and every human person in the eyes of God, we should have today neither political democracy nor aspirations toward industrial democracy.”¹³⁵ On another occasion, Ryan spoke of the relationship between political liberty, “character-development,” and the maturation of “personality,” again establishing links between political rights and a religious understanding of human nature.¹³⁶ In other words, only a view of rights rooted in religion could effectively counter the claim that “all individual rights, personal, political, religious, and economic, are created by

¹³⁴ John A. Ryan, *Unchanging Ethics in a Changing World*, in *Religion and the Modern World* 41, 42–43 (1941).

¹³⁵ John A. Ryan, *Address at the Third Triennial Convention of the Brotherhood of Locomotive Engineers 2* (May 15, 1921) (transcript available in Ryan Papers, Box 11/24, Department of Manuscripts, Catholic University of America).

¹³⁶ John A. Ryan, *Legislation and Liberty*, 6 *Commonweal* 462, 462–63 (1927); see also John A. Ryan, *Religion as the Basis of the Postulates of Freedom* (Jan. 30, 1940) (unpublished manuscript, Ryan Papers, Box 11/28, Department of Manuscripts, Catholic University of America) [hereinafter *Postulates of Freedom*] (stating that moral dignity and essential equality are two postulates of freedom based on religion). Ryan continued to develop this theme throughout his public life. His most adamant statements about the theological basis of human rights came amidst the tumult of World War II, when he wrote:

If man possess not a spiritual and immortal soul, if he is merely the highest form of animal, compact of flesh, blood and nerves, if he is merely more highly organized matter, then he has no more dignity, sacredness, intrinsic worth than a cow or an ape. He has no more rights than a dog or a pig.

John A. Ryan, *The Dignity of Personality*, in *Democracy: Should it Survive?* 15, 17 (1943).

the State and can be modified or taken away by the State.”¹³⁷ Religion thus became “the indispensable basis of democracy.” As he stated, “[t]hose who do not accept God as the Creator and Ruler of the Universe can, indeed, profess themselves to be democrats but they cannot do so logically; they cannot vindicate their democratic beliefs by conclusive reasoning.”¹³⁸

Catholics paired this argument about the religious foundations of the free society with criticisms of Protestantism. Catholics spoke of religion in general non-confessional terms. In their opinion, democracy did not need a particular religion at its root in order to thrive; democracy simply needed religion. But given current cultural circumstances, Catholics believed that they alone could function as the public religion for American democracy. Catholics believed that while Protestantism had once been able to serve in this capacity, the acids of modernity had whittled away Protestantism’s moral resources. “The Reformation values have had their day and are ceasing to be” declared an editorial in *The Tablet*.¹³⁹ Biblical criticism and theological liberalism had left Protestantism so theologically compromised that it no longer could articulate a clear moral vision for society. According to its Catholic critics, Protestantism was lacking confidence and incapable of forming citizens for democratic life. American democracy had been able to survive on the “the capital reserve of moral strength” left over from an earlier period of Protestant cultural domination,¹⁴⁰ but the reserve was dwindling.

Catholic critics not only addressed the current weaknesses of Protestant theology, but they also maintained that the foundational theological precepts of Protestantism were unsuited for democracy. Protestantism’s inherent individualism, weak ecclesiology, and incapacity to confront modernity with a clear vision of Christian truth made it an inadequate source of public religiosity. Catholics

¹³⁷ Ryan, Postulates of Freedom, *supra* note 136, at 1.

¹³⁸ John A. Ryan, Religion, The Indispensable Basis of Democracy, Address at the University of Virginia 19 (July 13, 1939) (transcript available in Ryan Papers, Box 11/24, Department of Manuscripts, Catholic University of America) [hereinafter Indispensable Basis].

¹³⁹ The Modern Divorce of Politics from Ethics, *The Tablet*, Sept. 17, 1927 (on file with Hesburgh Library, University of Notre Dame).

¹⁴⁰ Robert F. Keegan, Democracy at the Crossroads, 20 *Catholic Charities Rev.* 164, 168 (1936).

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were particularly fond of identifying the Reformation as the genesis of an excessively individualistic concept of freedom. By promoting the authority of the individual over that of tradition, the natural law, and the church, the Protestant Reformation had created a form of political and economic freedom that lacked the internal moral resources to restrain itself. Protestantism had made important contributions to the development of the free society, but it was a freedom that had become loosed from its moorings in the Christian tradition. Ryan made just this argument: “The principles and traditions underlying our legal system,” he wrote, “are in some important matters more akin to Protestantism than to Catholicism.”¹⁴¹ He drew a straight line from the individualism of Protestant theology through the regnant individualism in American society to the emergence of a political and economic regime unrestrained by moral norms. “Had it not been for the Protestant Reformation and the subsequent social disturbances,” Ryan concluded, America’s social and political ills would not be so great.¹⁴²

In making these bold arguments, Catholics transferred to themselves the burden of upholding America’s constitutional principles. In a bold supersessionist move, Catholics had identified the Church as the greatest “champion of liberty,” claiming that it alone had the ability to protect democracy from the ideological errors of the modern world.¹⁴³ The very things Catholicism’s critics claimed most threatened democracy—institutional hierarchy, moral absolutism, dogmatic teaching—were needed to protect democracy from the ideological errors of the day. Not content simply to deny the proposition that Catholicism threatened democracy, Catholics redefined the Church as “the Savior of Society.”¹⁴⁴ True democracy could thus be found only where the Catholic church was the arbiter of social norms. As Lawrence Flick declared, “[i]f America is to

¹⁴¹ John A. Ryan, *Hilaire Belloc as Prophet of Woe*, 119 *Catholic World* 321, 322 (1924).

¹⁴² John A. Ryan, *Next Steps in Industrial Democracy* 6-7 (unpublished manuscript, Ryan Papers, Box 11/24, Department of Manuscripts, Catholic University of America).

¹⁴³ *Religion in the Social Order*, *Catholic Bull.*, Feb. 22, 1919, at 1 (on file with Hesburgh Library, University of Notre Dame).

¹⁴⁴ Joseph J. McAndrews, *Catholicism the Savior of Society*, 18 *Catholic Mind* 327, 327 (1920).

remain Christian it will have to be through the Catholic.”¹⁴⁵ Only the diffusion of Catholicism “throughout the laws, institutions and morals of the people” could keep America Christian, democratic, and free.¹⁴⁶

Long viewed suspiciously as resident aliens in the American body politic, Catholics had redefined themselves as the soul and savior of American political ideals. Long lambasted as the greatest threat to political freedom, Catholics now claimed that the American political and legal order could not survive without it. A decade that began with the Church struggling to defend its place in American public life concluded with the Church defining itself as the quintessential public religion for the liberal society. A new period in public Catholicism and American public religion was emerging. “Not since the fifteenth century, when the pagan Renaissance trumpeted rebellion against the fundamental laws of the Christian life,” declared a priest, “has the Catholic Church been given such an opportunity as it has to-day, ‘to restore all things in Christ.’”¹⁴⁷ The Catholic moment had arrived.

V. CHURCH-STATE POLITICS AND THE MORAL MEANING OF DEMOCRACY

Recognizing the need to “modernize . . . the old traditional Catholicism,” American Catholics in the 1920s reconstructed the Church’s political teachings in order to better accommodate the demands of liberal society.¹⁴⁸ Catholics rejected the papal insistence on church-state union and sought new ways to bring Christian principles into the political order.¹⁴⁹ By so doing, American Catholics freed themselves from the strictures of the Church’s conservative political tradition and developed a distinctive American Catholic political theology.

¹⁴⁵ Lawrence F. Flick, What the American Has Got out of the Melting Pot from the Catholic, 5 *Catholic Hist. Rev.* 407, 429 (1925).

¹⁴⁶ Donald A. MacLean, Christianity and the State, 7 *Catholic Hist. Rev.* 50, 61 (1927).

¹⁴⁷ Father Cuthbert, The Church and Reconstruction 3 (Nat’l Catholic War Council, Reconstruction Pamphlet No. 10, Mar. 1920) (on file in Ryan Papers, Box 11/46, Department of Manuscripts, Catholic University of America).

¹⁴⁸ José Casanova, Public Religions in the Modern World 181 (1994).

¹⁴⁹ John K. Sharpe, Americanism and Catholicism: Principles of State and Church Fundamentally Agree, 7 *Sign* 17, 17 (1927).

Far from seeing their project as a capitulation to modernity, American Catholics saw themselves engaged in transforming and saving the modern world by enveloping it within a moral narrative.¹⁵⁰ Even as it replaced a Constantinian political theology with a liberal political theology, American Catholic thought remained focused on establishing links between the religious and the political. The question for American Catholics was not whether religion should impinge on the political, but rather how. It was with this assumption in mind that Catholic thinkers addressed the church-state question. Church-state separation, they emphasized, should not be understood to mean that the public square must be denuded of religious influence. Church-state separation simply meant that religion must influence the political through more indirect means.

American Catholic thinkers recognized that political liberalism would be the dominant ideology of the modern world. A relevant Church had to find ways to work within the strictures of the liberal polity. The American Catholic struggle with the church-state question was thus part of a more ambitious project of defining for religion a “voice from within the achievements of modernity.”¹⁵¹ What then ought this voice be? The position developed by Catholic thinkers was that religion in the liberal society must assume the role of preserving and advancing the nation’s political ideals, but not simply to rubber stamp the dictates of liberalism. By means of political influence, religion was instead to bring about a liberalism whose “vital aims are in harmony with and safest under the protection” of moral truth.¹⁵² Religious communities had to become public religions so that, through the indirect means of politics and culture, they might call the political order to justice.¹⁵³

¹⁵⁰ On religion, modernity and narrative, see Robert W. Jenson, *How the World Lost Its Story*, 36 *First Things* 19, 19–24 (1993).

¹⁵¹ Charles Taylor, *A Catholic Modernity?*, Address at the University of Dayton (Jan. 25, 1996) in *Charles Taylor’s Marianist Award Lecture 36* (James L. Heft, ed., 1999).

¹⁵² John A. Ryan, *The Study of Social Problems in the Seminary*, 39 *Ecclesiastical Rev.* 113, 121 (1908).

¹⁵³ One scholar describes public religiosity as:

religious expression that seeks out the commonalities of the Judeo-Christian . . . religious traditions with its central conception of an all-powerful and all-merciful God, utterly and majestically transcendent, active in the affairs of human history, demanding of justice, love and obedience, and judging morally responsible individuals for their earthly involvements.

Catholic thinkers above all argued that the mission of public religions in the liberal society was to ensure that church-state separation did not turn into freedom from religion. Freedom must not become license but rather must always be directed towards just and proper moral ends. The debate about church and state was therefore political by its very nature. With the separation of church and state, the moral soul of the nation was laid bare. A contest necessarily had to ensue to fill the void.

In light of this complex of assumptions, it becomes clear why Catholics argued so strongly that the heart of the church-state debate was not Catholicism versus liberalism. Catholics made this claim not only out of self-interest. They also believed that orienting the church-state debate around a political-denominational battle only distracted from the more important battle against those who saw liberalism as requiring a “naked public square” bereft of religious influence.¹⁵⁴ The church-state debate was nothing less than a battle to define the moral core of the liberal society. If the public square was to be won for religion, then Catholics, Protestants, and others would have to work cooperatively to ensure religion remained at the center of American democracy.

These Catholic arguments gained little traction in the 1920s. Anti-Catholicism remained too intransigent and Americans’ self-conception as a Protestant nation too powerful. Protestant America saw no need to join hands with Catholics to preserve the moral fabric of the society. But important changes eventually came.

A thawing in Catholic-American relations finally began in the 1950s and 1960s. Public attitudes towards the Church began to shift, and Catholics gained greater political acceptance. For example, Professor Robert Wuthnow notes an eleven percent drop from 1952 to 1965 in the number of people who thought Catholics were trying to get too much power in the United States.¹⁵⁵ Amidst this sufficiently robust shift, John Kennedy was elected president in 1960.

Joseph A. Varacalli, *Toward the Establishment of Liberal Catholicism in America* 126 (1983).

¹⁵⁴ Richard John Neuhaus, *The Naked Public Square: Religion and Democracy in America*, at ix (1984).

¹⁵⁵ Robert Wuthnow, *The Restructuring of American Religion: Society and Faith Since World War II* 93 (1988).

This growing acceptance of the Church reflected developments both in the Catholic community and the nation more generally. Catholics increasingly had entered the mainstream of American culture, politics and business. No longer was the Church a resident alien distanced from the main of American life. Theological tensions also lessened as Vatican II transformed Catholic intellectual life. Of particular importance was the promulgation of *Dignitatis Humanae* at the close of Vatican II in 1965. This statement gave the Church's support to religious freedom and thereby brought to a conclusion the long debate about Catholicism's compatibility with church-state separation.

The culture of American public religion also changed during this time. No longer was the public square the exclusive domain of Protestantism. Rather, the public religion of the nation had become a generalized Judeo-Christian ethic, a development famously captured in Will Herberg's *Protestant-Catholic-Jew*.¹⁵⁶ In the face of atheist communism abroad, Americans promoted the idea that democratic liberalism and religion were necessary bedfellows.¹⁵⁷ "In God We Trust" found its way onto the nation's currency, and "Under God" found its way into the Pledge of Allegiance. The White House Prayer Breakfast was inaugurated. And in that most famous of paeans to public religiosity, President Eisenhower commented in 1955 that "[o]ur form of government makes no sense unless it is founded on a deeply felt religious faith, and I don't care what it is."¹⁵⁸ Denominational and theological boundaries, at least in the public square, had moved into the background.

The collapse of the Protestant consensus and the transformation of religion's public role tell only one half of the story. Of equal import during this period was the rise of a secularism largely hostile to public expressions of religion. As Professor James Hunter notes, "[p]erhaps the most unnoticed but most momentous way in which religious and cultural pluralism expanded in the postwar period can be found in that part of the population claiming no particular reli-

¹⁵⁶ Will Herberg, *Protestant-Catholic-Jew: An Essay in American Religious Sociology* 240-65 (rev. ed. 1960).

¹⁵⁷ Foner, *supra* note 24, at 268.

¹⁵⁸ John F. Wilson, *Public Religion in American Culture* 45 (1979).

gious faith, those individuals that social scientists call *secularists*.¹⁵⁹ While secularists remained small in number through the early 1960s, “their growth was dramatic” during the rest of the decade.¹⁶⁰

Secularism came in many forms. In one form, it could involve a strident rejection of religion. Secularism, however, did not always condemn religion. It could also be based on the belief that a pluralist society ought not advance the views and practices of one religion.¹⁶¹ This form of secularism was encouraged by “[t]he splintering of a Protestant nation into three great faiths.”¹⁶² Finally, secularism at times referenced a commitment to the religion of democracy.¹⁶³ Yet, even as secularism remained small and diverse, it posed a strong challenge to long-regnant ideas about the relationship of religion and liberalism. Secularists viewed religion in much the same way as Protestants had previously viewed Catholics: as a problem for liberalism.

The decline of Protestant hegemony and the rise of secularism led to a reconfiguration of views on the public role of religion. On one side was a conservative position which upheld the importance of a robust public religiosity. Religion, according to this view, did not threaten liberalism but rather was, as Judge Michael McConnell recently wrote, “consistent with (and in many respects drawn from) major strains of Christian doctrine.”¹⁶⁴ On the other side was the belief that liberal politics ought be sealed from the influence of religious beliefs and symbols. Religion, according to this view, is not a necessary foundation or precondition of liberalism. Modern politics rather have within themselves the resources “to construct an authoritative locus of sacrality on a foundation of transcendental rather than transcendent dictates.”¹⁶⁵ Religious claims, according

¹⁵⁹ James Davidson Hunter, *Culture Wars: The Struggle to Define America* 75 (1991).

¹⁶⁰ *Id.* at 76.

¹⁶¹ Jeffries & Ryan, *supra* note 3, at 308.

¹⁶² *Id.*

¹⁶³ See, e.g., John Dewey, *A Common Faith* 1–28 (1934).

¹⁶⁴ Michael W. McConnell, *Old Liberalism, New Liberalism, and People of Faith*, in *Christian Perspectives on Legal Thought* 5, 24 (Michael W. McConnell et al. eds., 2001).

¹⁶⁵ Adam B. Seligman, *Modernity’s Wager: Authority, the Self, and Transcendence* 12 (2000).

to this perspective, are antithetical to the project of constructing an autonomous political order.

This redefinition of public religion played itself out in Establishment Clause politics as well. In particular, the focus of the church-state debate shifted from public Catholicism to public religiosity. Between the 1960s and the 1980s, church-state politics were increasingly ordered around differing views one held on the political and cultural import of religion for American democracy.¹⁶⁶ Separation in the 1940s and 1950s meant separation of the state from religious institutions, particularly schools. Separation in the 1960s and beyond, however, referred to separation of the state “from the generalized, shared religious values reflected in public school prayers, the Pledge of Allegiance, and other manifestations of the civil religion that promised to unite Americans.”¹⁶⁷ Not only did the wall of separation become more secure during this period, but Establishment Clause politics became the centerpiece of a battle to define the relationship of religion to American public life.

The meaning of American liberalism was again up for grabs but the dividing line was now cultural rather than denominational.¹⁶⁸ The position one held on the importance of public religion increasingly became a proxy for whether one was “conservative” or “liberal” in interpreting the Establishment Clause. Political coalitions consequently were restructured along these lines. Dean Jeffries and Professor Ryan note, for instance, that “[a]s the Protestant consensus on church-state relations fell apart” a “new landscape” of coalitions emerged.¹⁶⁹ Evangelicals, Catholics, Orthodox Jews and increasingly African Americans came to support a robust public religiosity that was paired with a conservative position on Establishment Clause jurisprudence.¹⁷⁰ On the other side of the debate

¹⁶⁶ See, e.g., R. Bruce Douglass & Joshua Mitchell, *A Nation Under God? Essays on the Fate of Religion in American Public Life* 111–12 (2000); Robert Booth Fowler, *Unconventional Partners: Religion and Liberal Culture in the United States* 3 (1989); Martin E. Marty, *Religion and Republic: The American Circumstance* 332–33 (1987); A. James Reichley, *Religion in American Public Life* 3–4 (1985); Wilson, *supra* note 158, at ix.

¹⁶⁷ Berg, *supra* note 14, at 151.

¹⁶⁸ On the collapse of New Deal liberalism and the rise of cultural politics, see Jonathan Rieder, *The Rise of the “Silent Majority,” in The Rise and Fall of the New Deal Order, 1930–1980*, at 243–68 (1989).

¹⁶⁹ Jeffries & Ryan, *supra* note 3, at 358–59.

¹⁷⁰ *Id.* at 359.

were the committed separationists and secularists, which included mainline Protestants, Jews, and those with no religious affiliation.¹⁷¹ Many groups formerly allied against the Catholic Church now joined the Church in protesting the disappearance of religion from the public square.

It is not surprising that this realignment of church-state politics took place, only that it was so long in coming. Perhaps only the stubborn residue of cultural Protestantism allowed America to avoid an earlier spat over the question of public religion and the meaning of the Establishment Clause. But with the decline of Protestant hegemony and the concomitant rise of secularism, the inherent moral instability of liberalism was laid bare. A battle to define the soul of liberalism now became inevitable and necessary.

Modernity had stripped religion from the altar of politics and “deposed political theology from the social role it had become accustomed to performing in Christendom.”¹⁷² By means of church-state separation religion was relegated to the private sphere of life.¹⁷³ Religion, however, resisted. It would not abandon the public square and allow itself to be privatized. Such is the nature of religious conviction. As Professor Eugene Rogers writes, “theology is always concerned with the question of life with God; life with God is a life in community, both with God and with other human beings; and politics is at best a reflection on what life in community ought to be.”¹⁷⁴ Those whose lives are informed by a theological narrative will thus continue to interpret the political in light of the moral and theological. For some, the encounter produces lament. David Hart, for one, writes of “the painful acknowledgment that neither we nor our distant progeny will live to see a new Christian culture rise in the Western world.”¹⁷⁵ Many others, however, remain confident that the modern liberal social order can be redeemed and brought under the moral directives of religion. The political need not be ceded to the secular. Rather, through the influence of religion there can occur a revitalization of “those public

¹⁷¹ Id. at 361.

¹⁷² Jeffrey Stout, *Democracy & Tradition* 103 (2004).

¹⁷³ Casanova, *supra* note 148, at 41.

¹⁷⁴ Eugene F. Rogers, Jr., *Sexuality and the Christian Body: Their Way into the Triune God* 29 (1999).

¹⁷⁵ David B. Hart, *Christ and Nothing*, 136 *First Things* 47, 55 (2003).

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virtues that the founders of the republic believed essential to the flourishing of our democratic form of government.”¹⁷⁶

The Catholic mind was drawn to this latter vision during the 1920s; conservatives adopted this same vision in the 1960s. Thus, in light of the current structure of church-state politics, the achievement of American Catholics in the 1920s becomes all the more relevant. Catholic thinking on church-state during this period did not directly shape constitutional jurisprudence, but the Church was remarkably prescient in identifying the church-state debate as a contest over the public role of religion in liberal politics. The Catholic struggle with the church-state question during this decade provides an important case study in understanding the issue that most animates contemporary church-state politics. Catholics were among the first to embrace the church-state issue as a necessary outgrowth of the clash between the religious impulse and liberal politics. Out of their dual confrontation with anti-Catholicism and papal conservatism, American Catholics developed a vision for the public role of religion that still resonates. The central question in Establishment Clause politics remains whether or not religion must be the “indispensable basis of democracy.”¹⁷⁷

¹⁷⁶ Ronald F. Thiemann, *Religion in Public Life: A Dilemma for Democracy* 141 (1996).

¹⁷⁷ Ryan, *Indispensable Basis*, supra note 138.