

## AMERICAN CONVERSATIONS WITH(IN) CATHOLICISM

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CATHOLICISM AND AMERICAN FREEDOM: A HISTORY. By *John T. McGreevy*. New York and London: W.W. Norton & Co. 2003. Pp. 431. \$26.95.

### INTRODUCTION

The jacket photo for John T. McGreevy's *Catholicism and American Freedom*<sup>1</sup> is striking. In the foreground, a young and vigorous Pope John Paul II, censer in hand,<sup>2</sup> strides across an altar platform on the Mall in Washington, D.C. His attention is fixed off-camera, presumably at the altar he is about to reverence with incense. At the bottom of the picture, gathered around and below the platform, sits a grainy group of mitre-wearing bishops.<sup>3</sup> Looming directly over the scene, in the background yet dominating the photograph, is the towering dome of the U.S. Capitol Building.

This picture is worth many thousand words; it evokes and captures many of the events described, themes developed, and debates presented in this excellent book. The crowd of faceless bishops, lurking beneath the foundations of the Capitol, recalls the famous Thomas Nast cartoon depicting a mass of crawling crocodile-like prelates who, with toothy, gaping mitres, stalk Tammany-abandoned schoolchildren cowering in the ruins of the public schools and armed only with the Holy Bible.<sup>4</sup> That the Church's rituals are proceeding in

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1. John T. McGreevy is the John A. O'Brien Associate Professor of History at the University of Notre Dame.

2. A "censer" (also called a "thurible") is a bowl-like vessel, suspended from a chain, which is used for burning incense in many Roman Catholic and other religious liturgies.

3. A "mitre" is the pointed folding-cap often worn by bishops in the Roman Catholic and some other churches.

4. This Nast illustration, "The American River Ganges — The Priests and the Children" (Sept. 30, 1871), is reproduced on the cover of LLOYD P. JORGENSON, *THE STATE AND THE*

our most public of public squares, in the shadow of the unmistakably churchlike seat of our national government, reminds us that our “separation of church and state” has long been anything but strict, and perhaps also that even our professedly secular state has at times demanded faithlike loyalty to its own political orthodoxies.<sup>5</sup> That the Capitol dome so resembles that of St. Paul’s Cathedral in London highlights the tension between Catholicism and America’s Protestant origins, traditions, and premises. In the picture, the Pope occupies an in-between place, as Catholics in America often have: he appears both suspended and intent on mediating between the ancient, hierarchical Church he leads and the modern, democratic nation he is addressing. His posture is neither defensive nor defiant, but confident. It is as if his aim is not to impose a conclusion, but to propose a claim and to initiate a conversation.

*Catholicism and American Freedom* is about, and part of, that conversation. This book is relevant and important reading for anyone who aspires to understand American culture, history, and politics. It should also be of particular interest to lawyers and legal scholars. And, the book is welcome, given the appallingly widespread ignorance of the themes and topics it explores.<sup>6</sup>

## I.

John T. McGreevy is the author of *Parish Boundaries: The Catholic Encounter With Race in the Twentieth-Century Urban North*, a respected history.<sup>7</sup> His latest book, *Catholicism and American Freedom*, confirms McGreevy’s skill and sensitivity. It is timely, engaging, provocative, and entertaining. It is carefully researched and annotated, but never pedantic or tedious. McGreevy’s prose is clear and accessible; his tone is warm and charitable, balanced but not

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NON-PUBLIC SCHOOL: 1825-1925 (1987), and is also available online at <http://historyproject.ucdavis.edu/imageapp.php?Major=RE&Minor=D>.

5. See generally, e.g., Steven D. Smith, *Barnette’s Big Blunder*, 78 CHI.-KENT L. REV. 625 (2003).

6. It is unfortunate that not only most Americans, but probably most historians as well, know little if anything about the conflicts and characters McGreevy portrays, other than what they might have absorbed from films such as *FAR AND AWAY* (1992), *THE GANGS OF NEW YORK* (2002), or *ONE MAN’S HERO* (1999). See, e.g., Michael J. Lacey, *That Old-World Religion*, N.Y. TIMES, Aug. 3, 2003, § 7, at 13 (reviewing JOHN T. MCGREEVY, *CATHOLICISM AND AMERICAN FREEDOM* (2003) and noting that “most serious readers of American history know a good deal about the Protestant past, but next to nothing about Catholicism”). *ONE MAN’S HERO* (1999), an undeservedly overlooked film, is the story of the St. Patrick’s Battalion (or “San Patricios”), Irish Catholics who fled the U.S. Army during the Mexican-American War and ended up fighting for Mexico. Many were eventually executed as traitors.

7. JOHN T. MCGREEVY, *PARISH BOUNDARIES: THE CATHOLIC ENCOUNTER WITH RACE IN THE TWENTIETH-CENTURY URBAN NORTH* (1996).

bland. He is unobtrusive — though not disingenuously disinterested — and, with only a few exceptions, steers clear of soapboxes and heavy-handed editorializing.<sup>8</sup> His project seems not to steer, let alone drag, his readers to particular conclusions.<sup>9</sup> It is, instead, to call their attention to the dynamics of a close, complicated, and continuing relationship, one whose role in shaping Americans' arguments about America is often overlooked.

*Catholicism and American Freedom* is not a “Catholic” book. It is not a work of devotion, apologetics, or catechesis; nor is it a study of the Catholic Church’s divisions, crises, or future.<sup>10</sup> It is not a tendentious chronicle of Catholic misdeeds and corruption or an overwrought pseudo-historical indictment,<sup>11</sup> nor is it a crusading, triumphalistic romp.<sup>12</sup> McGreevy braves the waters of interminably controversial matters like abortion, parochial-school vouchers, and sexual ethics, but this work is not *about* these issues. He is not a “culture warrior”<sup>13</sup> and this book is nothing like a polemic or a jeremiad. He calls our attention to the reality and role of anti-Catholicism in the American experience, but his book is not an accusation or a complaint, and its concern is not with the question whether anti-Catholicism is a persistent or spent force in American

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8. Thus, this book has received generous praise in both *The Nation* and *The New York Times*; in *America* and *Commonweal*, but also in *First Things*. See Neil Coughlan, *The Odd Couple*, *COMMONWEAL*, May 9, 2003, at 26 (stating that the work is “splendid”); Lacey, *supra* note 6, at 13 (stating that *Catholicism and American Freedom* is “brilliant”); Thomas Murphy, *A Church Aloof or Engaged?*, *AMERICA*, July 21-28, 2003, at 27 (stating that McGreevy provides “a vital corrective”); Richard John Neuhaus, *A Continuing Survey of Religion and Public Life: Catholics, Protestants, and the Meanings of Freedom*, *FIRST THINGS*, Aug./Sept. 2003, at 66, 71 (observing that McGreevy’s book is a “gift” and a “pleasure to read”); JoAnn Wypijewski, *Liberal Pieties*, *THE NATION*, Sept. 22, 2003, at 40 (calling it “fascinating” and “valuable”).

9. See Wypijewski, *supra* note 8, at 43 (“Whatever arguments may arise for or against liberalism or Catholicism, he leaves them largely to the reader.”).

10. *Cf.*, e.g., DAVID CARLIN, *THE DECLINE AND FALL OF THE CATHOLIC CHURCH IN AMERICA* (2003); DONALD B. COZZENS, *SACRED SILENCE: DENIAL AND THE CRISIS IN THE CHURCH* (2002); DAVID GIBSON, *THE COMING CATHOLIC CHURCH* (2003); PETER STEINFELS, *A PEOPLE ADRIFT: THE CRISIS OF THE ROMAN CATHOLIC CHURCH IN AMERICA* (2003); JOSEPH A. VARACALLI, *BRIGHT PROMISE, FAILED COMMUNITY: CATHOLICS AND THE AMERICAN PUBLIC ORDER* (2000); GEORGE WEIGEL, *THE COURAGE TO BE CATHOLIC* (2002); GARRY WILLS, *WHY I AM A CATHOLIC* (2002).

11. *Cf.*, e.g., JAMES CARROLL, *CONSTANTINE’S SWORD: THE CHURCH AND THE JEWS* (2001); JOHN CORNWELL, *HITLER’S POPE* (1999); DANIEL JONAH GOLDHAGEN, *A MORAL RECKONING* (2002); DAVID I. KERTZER, *THE POPES AGAINST THE JEWS* (2001); GARRY WILLS, *PAPAL SIN* (2000). For a useful corrective to these disappointing and often reckless works, see, for example, RONALD J. RYCHLAK, *HITLER, THE WAR, AND THE POPE* (2000).

12. *Cf.*, e.g., H.W. CROCKER III, *TRIUMPH: THE POWER AND THE GLORY OF THE CATHOLIC CHURCH — A 2,000-YEAR HISTORY* (2001).

13. *Cf.*, e.g., JAMES DAVISON HUNTER, *CULTURE WARS* (1991).

culture, law, or politics.<sup>14</sup> And, he concludes not with a strident call to ideological arms, or a bullet-point litany of policy recommendations, but with the cautious, modest suggestion that we temper our “romantic view of individual autonomy” with a corrective appreciation for associations, communion, and solidarity (p. 295).

McGreevy’s subject, in a nutshell, is the story of how “America” — or, more particularly, American liberalism<sup>15</sup> — has reacted and responded to Catholic claims about the nature and purpose of “freedom,” and how these claims were, in turn, shaped by Catholicism’s interactions with, internal conversations about, and adjustments to American liberalism. This “interplay between Catholic and American ideals of freedom” — a dynamic that “remains poorly understood” — is the book’s unifying storyline (p. 14). Thus, the challenge for McGreevy is “to capture two traditions in motion, not one: to explore American ideas about Catholicism along with the predispositions (at times blinders) framing the mental landscape of American Catholics” (p. 15). This book — like John Courtney Murray’s, more than forty years earlier — considers Americans’ efforts to work through the questions “whether Catholicism is compatible with American democracy” and “whether American democracy is compatible with Catholicism.”<sup>16</sup>

Throughout the nineteenth century, and well into the twentieth, it was regularly charged and widely believed by American intellectuals and leaders that there was something un-American about Catholicism’s clergy, claims, teachings, practices, structures, traditions, and adherents.<sup>17</sup> For many people and for many years, the Roman

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14. Cf., e.g., PHILIP JENKINS, *THE NEW ANTI-CATHOLICISM* (2003); MARK S. MASSA, *ANTI-CATHOLICISM IN AMERICA* (2003); *ANTI-CATHOLICISM IN AMERICAN CULTURE* (Robert P. Lockwood ed., 2000).

15. “Liberalism” is, I realize, “a term so protean that it risks becoming useless.” Steven D. Smith, *The Restoration of Tolerance*, 78 CAL. L. REV. 305, 306 n.4 (1990). For present purposes, the term describes “a family of political ideas and practices that emphasize the importance of individual freedom and of preserving space for personal autonomy free from collective control.” *Id.*

16. JOHN COURTNEY MURRAY, S.J., *WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION ix-x* (1960).

17. This book’s title is a play on Paul Blanshard’s now-infamous but once-best-selling work, *American Freedom and Catholic Power*, a sustained warning about the threat posed by Catholicism to American ideals and values. PAUL BLANSHARD, *AMERICAN FREEDOM AND CATHOLIC POWER* (1949).

There is some reason to think that Blanshard’s arguments may be returning to respectability, at least in some quarters. See, e.g., SUSAN JACOBY, *FREETHINKERS: A HISTORY OF AMERICAN SECULARISM* 302 (2004) (stating that Blanshard’s book had “a refreshing integrity . . . because [it begins] with the premise that religious differences are as important as religious commonalities.”)

McGreevy addressed Blanshard’s arguments, along with their context, genealogy, and effects, in an earlier work. John T. McGreevy, *Thinking on One’s Own: Catholicism in the American Intellectual Imagination, 1928-1960*, 84 J. AM. HIST. 97 (1997) [hereinafter McGreevy, *Thinking on One’s Own*].

Catholic Church served as a foil for “American” values and ideals — and vice versa. Indeed, it is no exaggeration to say that American liberalism often defined and constructed itself precisely in opposition to its image of Catholicism.<sup>18</sup> At the same time, Catholic institutions, practices, and beliefs developed in response to American and liberal challenges, and American Catholics have oscillated uneasily between sectarianism, segregation, and counter-culture, on the one hand, and engagement, accommodation, and assimilation, on the other.<sup>19</sup>

Thus, American liberals often wondered with John Adams whether “a free government [can] possibly exist with a Roman Catholic Religion.”<sup>20</sup> In turn, many Catholics in America responded to liberal anti-clericalism and nationalism by “defin[ing] themselves against dominant ideas of freedom [and] individual autonomy” (p. 13), while others followed Tocqueville in regarding “Catholicism [as] a powerful contributor to the ‘maintenance of a Democratic Republic in the United States.’”<sup>21</sup> And while many intellectuals charged that Catholicism was un-American to the extent it rejected, or was incompatible with, Americans’ individualistic understandings of “freedom,” underappreciated but enormously significant American figures such as Orestes Brownson, John Ryan, and John Courtney Murray contended not only that Catholicism was consonant with the best of American traditions, it might best embody and transmit America’s founding values.<sup>22</sup> Echoing Archbishop John Purcell’s 1863 case for the “moral necessity of emancipation” (p. 82), they insisted that “[t]he Catholic Church has ever been the friend of human freedom[,] [because] [i]t was Christ’s mission to set men free.”<sup>23</sup>

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18. P. 168 (“[D]iscussion of Catholicism, along with criticism of racial segregation and opposition to fascism and communism, helped define the terms of post-war American liberalism.”).

19. For further exploration of this dynamic, see generally, for example, JAY P. DOLAN, *IN SEARCH OF AN AMERICAN CATHOLICISM: A HISTORY OF RELIGION AND CULTURE IN TENSION* (2002), and JAY P. DOLAN, *THE AMERICAN CATHOLIC EXPERIENCE* (1985).

20. P. 33 (quoting Letter from John Adams to Thomas Jefferson (May 19, 1821), in *2 THE ADAMS-JEFFERSON LETTERS* 573 (L. Cappon ed., 1959)).

21. P. 21 (quoting ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 287 (G. Lawrence trans., 1988)).

22. P. 21 (noting that Alexis de Tocqueville “convinced himself that he had discovered a new Catholic style, terming Catholicism a powerful contributor to the ‘maintenance of a Democratic Republic in the United States’ ”); see also, e.g., Orestes Brownson, *Catholicity Necessary to Sustain Popular Liberty* (October 1845) (“The thesis we propose to maintain is, therefore, that without the Roman Catholic religion it is impossible to preserve a democratic government, and secure its free, orderly, and wholesome action.”), available at <http://www.catholicism.org/pages/liberty.htm> (last visited Aug. 18, 2004); MURRAY, *supra* note 16, at 41 (“Catholic participation in the American consensus has been full and free . . . because the contents of this consensus . . . approve themselves to the Catholic intelligence and conscience . . . The ideas expressed are native to his own universe of discourse.”).

23. P. 83 (quoting *Archbishop Purcell’s Lecture at Mozard Hall Last Sunday Nov. 1*, CATH. TELEGRAPH, Nov. 4, 1863, at 860).

One particularly effective feature of McGreevy's guided tour through the Catholic-American dialogue is the way he frames his story around particular, noteworthy participants. Take, for example, the muscular anti-liberalism of the nineteenth century's simultaneously self-confident and reactionary Catholic revival: McGreevy explores it through the exploits and arguments of the charismatic and confrontational Jesuit, Fr. Bernadine Wiget, who worked in Boston's North End and was a refugee from the anticlericalism then sweeping across Europe. Similarly, the arc of Orestes Brownson's dauntingly prolific career tracks the efforts of mid-century Catholics in America who opposed slavery and secession, but also perceived liberal revolution, nationalism, and individualism as threats to authentic human freedom. Brownson was determined to resist the common assumption of liberals and Catholic revivalists that Catholics opposed the American experiment.<sup>24</sup> His work helps McGreevy to explore the "tricorned dynamic" of "liberal intellectuals and politicians convinced of Catholicism's hostility to freedom and progress, ultramontane Catholics determined to resist liberalism's insistence on individual autonomy in all spheres, and a loose assemblage of liberal Catholics tacking between the two groups" (p. 67).<sup>25</sup>

Fr. John Ryan, a Catholic University professor, brought Catholic thinking on solidarity and human dignity to bear on twentieth-century labor and economic questions, but also scorned the "selfishness" of contraception. He embodies in McGreevy's study both the *rapprochement* between Catholic and liberal social reformers who embraced economic planning, trade unionism, and Franklin Delano Roosevelt, and the divisions to come on matters of sexual morality and abortion (p. 158). John Courtney Murray's work illustrates the efforts of Catholic intellectuals in the middle-twentieth century "to move Catholic theology and philosophy toward a more nuanced understanding of the challenges posed by modernity" (p. 191), to retrieve a Catholic account of democracy and human rights, and to articulate a robust, Catholic understanding of religious freedom that avoided the errors of both nineteenth-century popes and strict-separationist Supreme Court justices.

*Catholicism and American Freedom* is not a work of legal theory or an analysis of legal doctrine, but it has a lot to say about law and to

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24. Brownson urged Catholic immigrants to avoid sectarian self-ghettoization, to become "nationalized as well as naturalized, and [to] merge themselves in the great American people." P. 45. And, he expressed "frustration at being pinned between an 'anti-Catholic sentiment . . . shared . . . by the majority of our countrymen' and coreligionists creating the impression that a Catholic must make 'himself a foreigner in the land of his birth.'" P. 47. For more on Brownson, see, for example, ROBERT A. HERRERA, ORESTES BROWNSON (1999); THEODORE MAYNARD, ORESTES BROWNSON (1943); ARTHUR M. SCHLESINGER, JR., ORESTES A. BROWNSON (1939).

25. For more on ultramontane Catholics, see *infra* note 37.

lawyers. It provides, for instance, the cultural background that is essential for understanding the development and current state of the Supreme Court's Establishment Clause doctrine. Law both follows and shapes culture, and so it should come as no surprise that our constitutional law concerning religious freedom has been shaped by arguments about religion — in particular, about Roman Catholicism — and freedom.<sup>26</sup> This book therefore serves as a useful and worthy companion to other recent and important works by Philip Hamburger, John Witte, John Noonan, Steven Smith, and others.<sup>27</sup> Similarly, the “radical” nature of the Court's decision in *Roe v. Wade*, and the much-remarked effects of that decision on America's political alignment and discourse, are better understood when considered in the context of a broader narrative about liberalism and Catholicism, autonomy and authority.<sup>28</sup> McGreevy's account should also enrich lawyers' studies and conversations about education, citizenship, and loyalty.<sup>29</sup> His history could improve academic debates about the place of “public reason” and religious argument in political life,<sup>30</sup> the role of mediating associations in constitutional law and civil society,<sup>31</sup> and the dangers of what the Court

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26. For more on the connection between arguments about Catholicism, on the one hand, and the historical and other arguments constitutionalized by Justice Black in *Everson*, on the other, see, for example, pp. 183-86; PHILIP HAMBURGER, SEPARATION OF CHURCH AND STATE 449-78 (2002); Thomas C. Berg, *Anti-Catholicism and Modern Church-State Relations*, 33 LOY. U. CHI. L.J. 121 (2001); John Courtney Murray, *Law or Prepossessions?*, 14 LAW & CONTEMP. PROBS. 23 (1949).

27. GERARD V. BRADLEY, CHURCH-STATE RELATIONSHIPS IN AMERICA (1987); DANIEL L. DREISBACH, THOMAS JEFFERSON AND THE WALL OF SEPARATION BETWEEN CHURCH AND STATE (2002); TIMOTHY D. HALL, SEPARATING CHURCH AND STATE (1998); HAMBURGER, *supra* note 26; MARK A. NOLL, AMERICA'S GOD (2002); JOHN T. NOONAN, JR., THE LUSTRE OF OUR COUNTRY: THE AMERICAN EXPERIENCE OF RELIGIOUS FREEDOM (2000); STEVEN D. SMITH, FOREORDAINED FAILURE (1998); JOHN WITTE, JR., RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT (2000).

28. Pp. 277-78 (quoting Professor (and Judge) John T. Noonan's characterization of *Roe* and its companion case, *Doe v. Bolton*, as the “most radical decisions ever issued by the Court”); cf. John Hart Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 YALE L.J. 920 (1973).

29. See generally, e.g., STEPHEN L. CARTER, THE DISSENT OF THE GOVERNED: A MEDITATION ON LAW, RELIGION, AND LOYALTY (1998); WILLIAM A. GALSTON, LIBERAL PLURALISM: THE IMPLICATIONS OF VALUE PLURALISM FOR POLITICAL THEORY AND PRACTICE (2002); STANLEY HAUERWAS & WILLIAM H. WILLIMON, RESIDENT ALIENS: LIFE IN THE CHRISTIAN COLONY (1989); STEPHEN MACEDO, DIVERSITY AND DISTRUST: CIVIC EDUCATION IN A MULTICULTURAL DEMOCRACY (2000).

30. See generally, e.g., MICHAEL J. PERRY, UNDER GOD? RELIGIOUS FAITH AND LIBERAL DEMOCRACY (2003); Michael W. McConnell, *Five Reasons to Reject the Claim that Religious Arguments Should Be Excluded from Democratic Deliberation*, 1999 UTAH L. REV. 639; Symposium, *Religion in the Public Square*, 42 WM. & MARY L. REV. 647 (2001); Symposium, *Religiously Based Morality: Its Proper Place in American Law and Public Policy?*, 36 WAKE FOREST L. REV. 217-570 (2001).

31. See generally, e.g., Richard W. Garnett, *The Story of Henry Adams's Soul: Education and the Expression of Associations*, 85 MINN. L. REV. 1841 (2001); John O. McGinnis, *Reviving Tocqueville's America: The Rehnquist Court's Jurisprudence of Social Discovery*, 90

in *Lemon v. Kurtzman* called “political division along religious lines.”<sup>32</sup> He takes us to the heart of perennial questions — questions that lawyers and legal scholars cannot and should not avoid — about the prerogatives of the liberal state, the scope and content of religious obligations, and even the nature and end of the human person.

## II.

In the Spring of 1859 (as in the Summer of 2003), the Ten Commandments were at center stage.<sup>33</sup> Thomas Whall, a ten-year-old Catholic schoolboy, was badly beaten by the assistant principal of Boston’s Eliot School, and ultimately expelled, for refusing to recite the Commandments in their “usual form,” i.e., the form recorded in the King James Version of the Bible.<sup>34</sup> Quickly, young Whall’s “Filial piety, manly Fortitude, and Heroic Faith Under Torture” became more than an intramural disciplinary matter.<sup>35</sup>

Whall’s parish priest — the above-mentioned Fr. Wiget — challenged local Catholic boys to follow Thomas’s example in resisting “infidelity and heresy,” shamed from the altar those who did not (p. 8), and publicly criticized the more conciliatory stance of his American-born fellow priests (p. 42). The pillars of the Boston establishment were outraged by Whall’s impudence, warning that “[i]f Protestant Christianity is to be abandoned in our public educational system, we shall convert the schools of the Puritans into heathen temples” (p. 9). They rallied to the “general and common doctrines of Christianity” as a necessary defense to a “Romanism” that “allies

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CAL. L. REV. 485 (2002); Robert K. Vischer, *The Good, the Bad, and the Ugly: Rethinking the Value of Associations*, 79 NOTRE DAME L. REV. 949 (2004).

32. 403 U.S. 602, 622 (1971).

33. On Thursday, Nov. 13, 2003, Alabama’s Chief Justice Roy Moore was removed from office by that State’s judicial-ethics panel for defying a federal court order that he remove a monument to the Ten Commandments from the rotunda of that State’s courthouse. The United States Court of Appeals for the Eleventh Circuit affirmed the federal trial court’s conclusion that the installation and display of the monument violated the First Amendment’s Establishment Clause. *Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003).

34. P. 9. The “Ten Commandments” are recounted differently in a number of Christian and Hebrew sources. Compare, e.g., *Exodus* 20:1-17 (King James Version), with *Deuteronomy* 5:5-21 (King James Version), and *Exodus* 20:1-17 (Douay-Rheims Version). In the Catholic, Douay version, for example, the King James prohibition on making “graven image[s]” does not appear. As Professor Lubet has noted, this feature of the Catholic presentation has long been a subject of anti-Catholic polemic. Steven Lubet, *The Ten Commandments in Alabama*, 15 CONST. COMMENT. 471, 475-76 (1998). For a fascinating account of the translation and production of the King James Version of the Bible that explores, among other things, its royalist and Anglican agendas, see ADAM NICOLSON, *GOD’S SECRETARIES: THE MAKING OF THE KING JAMES BIBLE* (2003).

35. P. 10. This was the inscription on a goblet sent to Thomas Whall — along with other tributes from “admiring Catholics across the country” — by the Catholic community in Covington, Kentucky. *Id.*



itself with every false and anti-republican institution which is yet tolerated in our glorious country” (pp. 9, 11). Likewise, the trial court in Whall’s father’s (unsuccessful) excessive-force lawsuit concluded that the refusal to participate in the recitation from the Protestant Bible threatened the good order and “stability of the public school,” “the granite foundation on which our republican form of government rests.”<sup>36</sup>

Thomas Whall’s beating was not “the last gasp[] of the Reformation”; rather, the “Eliot School Rebellion” was a “Boston variant on a nineteenth-century struggle shaping religion and politics” around the world (p. 12). By the same token, Fr. Wiget’s belligerence was not the idiosyncratic response of one truculent priest, but was instead of a piece with a broader, “ultramontane”<sup>37</sup> Catholic “revival.”<sup>38</sup> To be sure, anti-Catholicism in America was nothing new, and went well beyond the legal penalties imposed upon, and disabilities endured by, Catholics in the American colonies and states.<sup>39</sup> From the Puritans to the Framers and beyond, anti-“popery” was thick in the cultural air breathed by the early Americans, who were raised on tales of Armadas and Inquisitions, Puritan heroism and Bloody Mary, Jesuit schemes and Gunpowder Plots, lecherous confessors and baby-killing nuns.<sup>40</sup> Thomas Paine’s diagnosis would

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36. P. 8 (citation omitted); *see also, e.g.*, John C. Jeffries, Jr. & James E. Ryan, *A Political History of the Establishment Clause*, 100 MICH. L. REV. 279, 300 (2001) (“Catholic students suffered beatings or expulsions for refusing to read from the Protestant Bible, and crowds . . . rioted over whether Catholic children could be released from the classroom during Bible reading.”) (citation omitted).

37. “Ultramontane,” or “beyond the mountains,” in this context denotes support for papal supremacy in the Roman Catholic Church, and is usually contrasted with “Gallican,” which refers to a nineteenth-century movement in the Church favoring national autonomy and restrictions on papal power. *Cf.* pp. 12-13 (noting that “ultramontane” is “shorthand for a cluster of shifts that included a Vatican-fostered move to Thomistic philosophy, a more intense experiential piety . . . an international outlook suspicious of national variations with Catholicism, and a heightened respect for church authorities . . .”); p. 26 (describing “Gallicanism” as “the notion that national customs might trump Roman regulations”).

38. The nineteenth century Catholic “revival” was “philosophical, theological, and organizational”; it included an emphasis on the philosophy of St. Thomas Aquinas, on more pietistic forms of devotion, on “Catholic parishes, schools, and organizations as refuges in an increasingly secular, even hostile, world.” P. 25.

39. *See, e.g.*, THOMAS J. CURRY, *THE FIRST FREEDOMS: CHURCH AND STATE IN AMERICA TO THE PASSAGE OF THE FIRST AMENDMENT 80* (1986):

In every American colony . . . specific test laws or the possibility of being challenged to subscribe to a test or oath of abjuration, with refusal leading to prosecution as a ‘popish recusant,’ ensured the exclusion of Catholics from public life. Even more than these statutes, a pervasive opinion that ‘Popery’ was synonymous with tyranny relegated Catholics to a position beyond the realm of acceptability.

40. McGreevy has observed elsewhere that, “[i]n a certain sense . . . anti-Catholicism is integral to the formation of the United States.” John McGreevy, *A History of the Culture’s Bias*, Remarks at the Anti-Catholicism: The Last Acceptable Prejudice Conference (May 24, 2002). *See also, e.g.*, RAY ALLEN BILLINGTON, *THE PROTESTANT CRUSADE 1800-1860*, at 1 (1938) (“Hatred of Catholics and foreigners had been steadily growing in the United States

have enjoyed broad support when he lamented that those in the “popish world at this day by not knowing the full manifestation of spiritual freedom, enjoy but a shadow of political liberty.”<sup>41</sup>

In the mid-nineteenth century, as waves of immigration and the muscular claims of the Catholic revival collided with America’s nascent nationalism, long-running theological disputes became political and cultural arguments. Liberal Protestants warned that Jesuit refugees and other newcomers from Europe were “indefatigable enemies of democracy and enlightenment” (p. 23) and that Catholicism “retarded” “human progress and freedom” (p. 33), while Catholics emphasized the dangers of an excessive and “destructive individualism” and proposed a more “communal vision of church, state, and society” (p. 26). McGreevy’s exploration of the “interplay between Catholic and American ideas of freedom” (p. 14) begins with this collision, and then follows the course of the resulting relationship through a century-and-a-half of American history.

For starters, he situates the Common School Movement in the context of this clash between the anti-liberal understanding of freedom embraced in the Catholic “revival,” on the one hand, and the anti-clericalism and nationalism of the mid-century revolutions, on the other.<sup>42</sup> The perceived excesses of these revolutions had caused many Catholic intellectuals to “define[] themselves against dominant ideas of freedom” and “individual autonomy” (p. 13), and to emphasize “Catholic parishes, schools, and organizations as refuges in an increasingly secular, even hostile, world” (p. 25). And so, as “American liberals relied upon schools to produce citizens worthy of a democratic republic,”<sup>43</sup> Catholics insisted that “the work of education [was] a principally religious work,”<sup>44</sup> with ultramontanes like Fr.

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for more than two centuries before it took political form with the Native American outburst of the 1840’s and the Know-Nothingism of the 1850’s.”).

41. P. 11 (quoting Thomas Paine, *Thoughts on Defensive War*, in COMMON SENSE AND RELATED WRITINGS 68 (Thomas P. Slaughter ed., 2001)).

42. See generally, e.g., BILLINGTON, *supra* note 40; CHARLES LESLIE GLENN, JR., THE MYTH OF THE COMMON SCHOOL (1988); ROSEMARY C. SALOMONE, VISIONS OF SCHOOLING (2000).

43. P. 38. Similarly, in *Donahoe v. Richards*, 38 Me. 379 (1854), another mandatory-Bible-reading case, the court observed that

[l]arge masses of foreign populations are among us, weak in the midst of our strength. Mere citizenship is of no avail, unless they imbibe the liberal spirit of our laws and institutions, unless they become citizens in fact as well as in name. In no other way can the process of assimilation be so readily and thoroughly accomplished as through the medium of the public schools . . . .

*Id.* at 413.

44. P. 39 (quoting N.J. Perché, *De l’éducation*, PROPAGATEUR CATHOLIQUE, Apr. 3, 1858, at 81). *Cf.*, e.g., Pope John Paul II, *Letter to Families* ¶ 16 (1994) (writing that the education of children should “be considered a genuine apostolate” and that an educator is “a person who ‘begets’ in a spiritual sense”).

Wiget warning that the common-school system “was the most complete and most ingenious system that could be devised for perverting Catholic youth.”<sup>45</sup>

McGreevy turns next to slavery, abolitionism, and the Civil War, focusing on the intra-Catholic debates about these matters,<sup>46</sup> and also on Catholics’ more general concerns about liberal individualism and the centralization of state power. He is therefore able to provide a new and nuanced discussion of the antebellum role and stance of Catholics, north and south. In particular, McGreevy reveals how “[u]neasiness about liberal individualism proved as powerful in shaping Catholic views on slavery as in affecting the conflict over education.”<sup>47</sup> Like every other religious denomination and social group, Catholics were divided on the questions of secession, union, and abolition. Thus, Archbishop Purcell of Cincinnati could pronounce that “Christian people disregard [Christ’s] precepts and principles and example, when they seek to uphold or perpetuate involuntary human servitude” (p. 83; footnote omitted), while his episcopal colleague across the Ohio River, Bishop Martin Spalding of Louisville, was no less adamant that Republicans and abolitionists were possessed of a “‘satanic’ hatred of Catholicism” that “would soon turn against the church” (p. 87; footnote omitted). Even Catholics who loathed slavery worried about aligning themselves with an abolitionist movement that often “threw Catholicism and slavery together in a completely unjust manner” (p. 78; footnote omitted), and were “sympathetic to the charge that the nationalism of the Lincoln administration bordered on dictatorship” (p. 73; footnote omitted).

As if to confirm liberal Catholics’ antebellum worries, President Grant warned in a famous 1875 speech to Union Army veterans that:

[I]f we are to have another contest in the near future of our national existence, I predict that the dividing line will not be Mason and Dixon’s

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45. P. 42; cf., e.g., John E. Coons, *School Choice as Simple Justice*, FIRST THINGS, Apr. 1992, at 15, 19 (“The machinery of public monopoly was chosen specifically by brahmins . . . to coax the children of immigrants from the religious superstitions of their barbarian parents.”).

46. For a recent discussion of similar debates in Protestant communities and traditions, see MARK A. NOLL, *AMERICA’S GOD* (2002).

47. P. 49. The Catholic view on slavery and abolition “certainly included racism, but did not wholly depend upon it.” Pp. 54-55. Many Catholics “lumped immediate slave emancipation with a religious and political radicalism that threatened the foundations of society.” P. 56. Thus, McGreevy contends, Catholic objections to abolitionism, such as there were, “cannot be reduced to the particular American racial dynamic. . . . This acceptance [of slavery] rested upon the pervasive fear of liberal individualism and social disorder that so shaped Catholic thought during the nineteenth century, along with the anti-Catholicism of many abolitionists.” P. 52.

but between patriotism and intelligence on one side, and superstition, ambition and ignorance on the other.<sup>48</sup>

Everyone knew what the President was talking about, and Grant's fears tracked broader adjustments in American anti-Catholic polemics. Increasingly, the nature, ambitions, and errors of Catholicism were seen as political, as well as theological; they threatened not only the conscience liberated by Luther, but also the Nation unified by Lincoln (p. 96). The vice of Catholicism was not simply religious heresy, but dissonance with "national organic unity".<sup>49</sup>

These concerns about unity and Catholics' objections to "the pretensions of the modern nation-state" "collided with extraordinary force in the discussion of public education."<sup>50</sup> In part because of recent cases like *Mitchell v. Helms*, *Zelman v. Simmons-Harris*, and *Locke v. Davey*,<sup>51</sup> the "school wars" of the late nineteenth century are better and more widely understood than they once were. McGreevy advances the debate by placing controversies about the Blaine Amendments, parochial-school funding, etc., against the backdrop of the broader liberal-Catholic conflict, showing that "[t]he desire for a state monopoly on education escalated in tandem with nineteenth century nationalism throughout Europe, with schools increasingly understood as the crucible of citizen formation" (p. 112).

From tension and conflict, McGreevy turns to convergence and agreement, on policy if not on fundamental premises. With the "surge in labor unrest," the "intensely communal and international vision fostered by nineteenth-century ultramontane Catholics became more appealing to a new generation of non-Catholic intellectuals and reformers struggling to understand a society racked by poverty and labor unrest" (p. 126). True, in many quarters, anti-Catholicism as a social or cultural phenomenon remained as strong as ever (pp. 124-25). Nonetheless, the Church-as-implacable-foe-of-modernity served even for many of its liberal critics as a useful bulwark against socialism

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48. P. 91. Similarly, after Democratic gains in the 1876 election were chalked up to "the combined power of rebellion, catholicism, [stet.] and whiskey," James Garfield worried about a "hard, uncomfortable struggle . . . to save the fruits of the great war." P. 93 (quoting THEODORE CLARKE SMITH, 1 THE LIFE AND LETTERS OF JAMES ABRAM GARFIELD 613 (1925)). For more on the 1876 election, see generally ROY MORRIS, JR., FRAUD OF THE CENTURY (2003); WILLIAM H. REHNQUIST, CENTENNIAL CRISIS (2004); and MARK WAHLGREN SUMMERS, RUM, ROMANISM, AND REBELLION (2000).

49. P. 101 (quoting FRANCIS LIEBER, FRAGMENTS OF POLITICAL SCIENCE ON NATIONALISM AND INTER-NATIONALISM 12 (1868)).

50. Pp. 105, 112; see also, e.g., Michael W. McConnell, *The New Establishmentarianism*, 75 CHI.-KENT L. REV. 453, 460 (2000) (quoting testimony before Congress in 1889, by an opponent of parochial schools, to the effect that the "task of absorbing and Americanizing these foreign masses . . . can only be successfully overcome by a uniform system of American schools, teaching the same political creed").

51. *Locke v. Davey*, 124 S. Ct. 1307 (2004); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Mitchell v. Helms*, 530 U.S. 793 (2000).

(p. 123). On the Catholic side, the publication in 1891 of Pope Leo XIII's encyclical, *Rerum novarum* — today regarded as the fountainhead of Catholic social teaching<sup>52</sup> — confirmed Catholics' more communal vision of society without embracing radical attacks on private property. To be sure, the encyclical was more than a baptism of progressive assumptions about the state, economy, and society. It framed the reformers' questions, and the moral significance of their ends, in a specifically Catholic vocabulary, emphasizing the primacy of the family, the importance of mediating associations, and so on. In any event, it appeared, in the early decades of the twentieth century, that Catholics and Americans — progressive, liberal, right-thinking Americans — could agree on any number of ends. The “high point” for this new “Catholic-Liberal alliance” came with the publication and reception in 1931 of Pope Pius XI's *Quadregesimo anno*, which emphasized the “social character” of ownership and was hailed by President Roosevelt as “one of the greatest documents of modern times.”<sup>53</sup>

Still, even as Catholics and liberals agreed “that the classical liberal economic vision of a minimal state and an open economic playing field had proved unworkable,” it was clear that they “worked from starkly different philosophical premises” (p. 138). While Catholic thinking had been energized by Pope Leo XIII's call for a renewed emphasis on the moral and epistemological realism of St. Thomas Aquinas, liberals had turned instead to skepticism, pragmatism, and empiricism.<sup>54</sup> Moreover, a “cluster of issues” — social and moral issues, newly ascendant — “signaled conflict” (p. 153), given that Catholics' reservations about atomistic individualism pushed them toward the economic reforms championed by Roosevelt, but also toward an increasingly solitary conservatism on such matters as divorce, censorship, and contraception. Reactions to the presidential campaign of Al Smith and Klan-sponsored attacks on Catholic schools

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52. For more on the post-*Rerum novarum* tradition of Catholic Social Thought, see, e.g., GEORGE WEIGEL & ROBERT ROYAL, BUILDING THE FREE SOCIETY (1993); CATHOLIC SOCIAL TEACHING (Edward P. DeBerri et al. eds., 2003); ONE HUNDRED YEARS OF CATHOLIC SOCIAL THOUGHT (John A. Coleman ed., 1993). In the Fall of 2003, the Villanova University School of Law inaugurated a new law journal, *The Journal of Catholic Social Thought*. And a number of legal scholars explore the implications of the Catholic Social Thought tradition for legal problems at the “Mirror of Justice” web log, at <http://www.mirrorofjustice.com> (last visited August 18, 2004).

53. Pp. 150, 151, 153 (citing and quoting Pius XI, *Quadregesimo Anno*, in THE PAPAL ENCYCLICALS, 1903-1939, at 422, 429, 430 (Claudia Carlen ed., 1981); Geza B. Grosschmid, *Pech's Concept of the Living Wage in Quadregesimo Anno*, 12 REV. SOC. ECON. 146; 1 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 778 (Samuel I. Rosenman ed., 1938)).

54. See generally, e.g., LOUIS MENAND, THE METAPHYSICAL CLUB (2001).

confirmed the hardiness of fears about Catholics' Americanness.<sup>55</sup> As liberals' fears turned in the 1930s from socialism to fascism, Catholic sympathy for Italy and Spain caused many Americans to ask again, "Is there a Catholic problem?"<sup>56</sup>

The answer, for many prominent mid-century liberal intellectuals, was "yes."<sup>57</sup> Accordingly, McGreevy explores the foundations and implications of Paul Blanshard's claim — advanced sensationally in his bestseller, *American Freedom and Catholic Power* — that "the Catholic problem is still with us," and required "resistance" to "counter the antidemocratic social policies of the hierarchy."<sup>58</sup> While not "a cautious monograph," Blanshard's book "correctly assessed the intellectual mood" (p. 166). It was not simply cranks or Protestant doctrinal disputants who embraced Blanshard's diagnosis and prescription — Mumford, Neibuhr, Einstein, Russell, Dewey, and others all agreed. In sum, "[d]iscussion of Catholicism, along with criticism of racial segregation and opposition to fascism and communism, helped define the terms of post-war American liberalism" (p. 168).

As McGreevy shows, the debate was as much about "America" as it was about Catholicism.<sup>59</sup> True, tens of thousands of Catholic soldiers had proved their "loyalty" to America during the Second World War, but to observe that "Catholics would remain loyal citizens was to miss the point. Democracy was a culture, not a set of propositions. Catholics obviously lived *among* Americans, but were they *of* them?" (p. 169). In *The New Republic's* words:

[T]he real conflict is not between a Church and State or between Catholicism and Americanism, but between a culture which is based on absolutism and encourages obedience, uniformity and intellectual subservience, and a culture which encourages curiosity, hypothesis, experimentation, verification by facts and a consciousness of the processes of individual and social life as opposed to conclusions about it.<sup>60</sup>

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55. See, e.g., *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); see generally, e.g., Stephen L. Carter, *Parents, Religion, and Schools: Reflections on Pierce, 70 Years Later*, 27 SETON HALL L. REV. 1194 (1997).

56. P. 165 (citing *Is There a Catholic Problem?*, THE NEW REPUBLIC, Nov. 16, 1938, at 32-33).

57. See generally, McGreevy, *Thinking on One's Own*, *supra* note 17.

58. P. 166 (quoting BLANSHARD, *supra* note 17, at 9, 303).

59. P. 175 ("Defining 'Americanism' . . . was . . . the issue.").

60. P. 170 (quoting *More About Catholicism and the Presidency*, NEW REPUBLIC, May 11, 1927, at 315-17).

Thus, Catholicism was again pressed into service in a “strategic, antithetical role” for intellectuals eager to “demonstrate the non-hierarchical sources of American culture.”<sup>61</sup>

McGreevy situates the Supreme Court’s landmark *Everson* and *McCullum* decisions, and the parochial-schools debate more generally, in the context of these concerns.<sup>62</sup> Although leading liberals had hailed the Court’s defense of non-state education in *Pierce v. Society of Sisters* as an “immediate service on behalf of the essential spirit of liberalism,”<sup>63</sup> by mid-century many had come to regard that case as a “dangerous inroad” on “the nation’s stake in having a common democratic education for all its children.”<sup>64</sup> Catholic schools, it was charged, “shielded young Catholics from the democratic way of life,”<sup>65</sup> while the public schools were celebrated by Justice Frankfurter in the *McCullum* case as “the symbol of our democracy and the most pervasive means for promoting our common destiny.”<sup>66</sup> At an even deeper level, the parochial-schools and church-state-separation debates were not only about American democracy, but also about the nature of religion itself. Religion in a democracy, it was often argued, is and must be a private matter, a product of individual choice, and the end of an “individual quest.”<sup>67</sup> That Catholicism appeared unable, or unwilling, to offer an account of religion and religious liberty that was consonant with democracy and individualism made it all the more suspect.

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61. P. 175. Increasingly, it was not only the politics and structure of the Catholic Church, but also its moral teachings on such matters as divorce and re-marriage, that were criticized as anti-democratic. “Democracy is a penetrating principle,” one writer insisted, “extending into the most intimate relations of life. . . . Obviously, the Catholic procedure in mixed marriages inhibits this spiritual freedom.” P. 181 (quoting CHARLES CLAYTON MORRISON, CAN PROTESTANTISM WIN AMERICA? 73-74 (1948)).

62. P. 184 (noting that much of the “voluminous” commentary “neglects to place *Everson* and *McCullum* within the context of an ongoing discussion about Catholicism and democracy”). My colleague Bob Rodes recalls Mark de Wolfe Howe’s in-class statement that “what you think of these cases depends on what you think of the Catholic Church.” Letter from Robert Rodes, Professor, to Richard Garnett, Professor (on file with author).

63. P. 182 (quoting *Can the Supreme Court Guarantee Toleration?*, THE NEW REPUBLIC, June 17, 1925, at 85-86).

64. P. 182 (quoting MAX LERNER, NINE SCORPIONS IN A BOTTLE 195 (Richard Cummings ed., 1994)).

65. P. 186 (quoting, *inter alia*, one then-prominent scholar’s observation that “[y]ou cannot practice democratic living . . . in segregated [Catholic] schools”) (quoting Joseph L. Blau, *Democracy and Parochial Schools*, JEWISH FRONTIER, Apr. 1954, at 10, 13).

66. *McCullum v. Bd. of Educ.*, 333 U.S. 203, 231 (1948) (Frankfurter, J.); *cf.*, *e.g.*, *Everson v. Bd. of Educ.*, 330 U.S. 1, 23-34 (1947) (Jackson, J., dissenting) (“Our public school, if not a product of Protestantism, at least is more consistent with it than with the Catholic culture and scheme of values.”).

67. P. 187 (quoting Agnes E. Meyer, *The School, the State, and the Church*, ATLANTIC MONTHLY, Nov. 1948, at 45, 50).

John Courtney Murray, Jacques Maritain, and other like-minded thinkers worked to deflect and respond to these suspicions. The task taken on by these mid-century Catholic intellectuals was to “bind Catholic social thought to democracy, human rights, and religious freedom” in a manner consistent with notions of authentic doctrinal development,<sup>68</sup> and to “allay doubts as to whether ‘the Catholic Church can adapt herself vitally, on principle, and not merely on grounds of expediency, to what is valid in American democratic development.’”<sup>69</sup> These efforts appeared to bear fruit, with Pope Pius XII observing, during the Second World War, that “the democratic form of government” now appeared “as a postulate of nature imposed by reason itself”,<sup>70</sup> with the Church’s promiscuous post-war embrace of the language of human rights;<sup>71</sup> and with the endorsement at the Second Vatican Council of Murray’s human-dignity-based defense of religious freedom.<sup>72</sup> Even Paul Blanshard had to concede that Catholicism “could no longer be described as a monolithic glacier of reactionary thought.”<sup>73</sup>

And so, “fears among American intellectuals about Catholic power diminished” (p. 208). As during the turn-of-the-century reform movements, liberalism and Catholicism seemed to act in common cause. Catholic leaders were in the “vanguard” of the fight for racial equality and civil rights (p. 211), Catholics enthusiastically embraced liberal anti-communism, and the public faces of American Catholicism for Americans were Fulton Sheen and John F. Kennedy,<sup>74</sup> not Bernandine Wiget or Charles Coughlin. At the same time, what Reinhold Niebuhr called the Catholics’ “ridiculous prohibition of

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68. P. 194; *see also* pp. 195-96 (discussing, *inter alia*, John Henry Newman’s writings on the “development of doctrine”). *See generally, e.g.*, John T. Noonan, Jr., *On the Development of Doctrine*, AMERICA, Apr. 3, 1999, at 6; JOHN HENRY CARDINAL NEWMAN, AN ESSAY ON THE DEVELOPMENT OF CHRISTIAN DOCTRINE (6th ed., Univ. of Notre Dame Press 1989) (1845).

69. P. 192 (quoting Joseph A. Komonchak, “*The Crisis in Church-State Relationships in the U.S.A.*”: A Recently Discovered Text by John Courtney Murray, 61 REV. OF POL. 675, 692 (1999)).

70. P. 202 (quoting *Pope’s Christmas Message, 1944*, CATHOLIC MIND 68 (Feb. 1945)).

71. Pp. 200-03. *See generally, e.g.*, MARY ANN GLENDON, A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (2001).

72. *See, e.g.*, Second Vatican Council, *Dignitatis Humanae* [Declaration on Religious Freedom] ¶ 2 (1965) (“It is in accordance with their dignity as persons . . . that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth.”).

73. P. 214 (quoting PAUL BLANSHARD, PAUL BLANSHARD ON VATICAN II, at x (1966)).

74. The “genuine irrelevance” of religion to Kennedy’s administration made him all the more palatable to American elites, though his “rigid distinction between religion and public life” worried many Catholic leaders. P. 213. Senator John Kerry’s 2004 presidential bid prompted discussions about the suitability of professing Catholics for political office and the authenticity of Kerry’s Catholicism.



contraception,” and the developing clash in the abortion-rights context between liberals’ increasingly “radical defense of individual autonomy” and Catholics’ “determin[ation] to protect human life,” pointed toward continued conflict.<sup>75</sup>

McGreevy covers in some detail both the debates *within* the Catholic Church about contraception and abortion and, more generally, the political, legal, and social developments involving these issues. Two themes receive special emphasis. First, the Catholic position on these and other controversial matters came to be regarded not only as incorrect and out-of-date, but also as *out of place* in public discourse.<sup>76</sup> Many Catholics at mid-century were convinced that Catholic moral realism and the Church’s unbending insistence on the “*absolute inviolability* of the right of an innocent human person to life”<sup>77</sup> had been validated and vindicated by the Second World War, Nazi atrocities, and abuses at home of euthanasia and sterilization.<sup>78</sup> Nevertheless, as the Catholic Church seemed increasingly to be standing alone on questions of sexual and reproductive morality,<sup>79</sup> it became possible for those advocating liberalization to complain that the “religious beliefs of some should not be forced upon all.”<sup>80</sup> Supreme Court Justices warned of “sectarian religious propagandists”

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75. P. 214-15 (quoting Letter from Reinhold Niebuhr to Will Scarlett (Jan. 9, 1960)).

76. When my colleague, Tom Shaffer, wrote to the American Civil Liberties Union to complain that the organization had abandoned the “first principle of secular ethics . . . that life is an absolute value,” the ACLU’s director stated in response that he regarded restrictions on abortion as “an effort to enact theological positions into law.” Pp. 260-61 (quoting Letter from Thomas L. Shaffer to John de Pemberton, March 1, 1967; Letter from John de Pemberton to Thomas L. Shaffer (March 27, 1967)).

77. P. 221 (quoting Fr. John Ford).

78. Pp. 227-28 (“Catholics also reminded American liberals of Nazi enthusiasm for involuntary sterilization and forced euthanasia, helping to discredit once popular liberal causes.”).

79. By mid-century, Protestant theologians had “almost uniformly rejected natural law arguments [against] contraception.” P. 234. And, on the abortion front, by the late 1960s and early 1970s, “only Catholics seemed willing to defend restrictions on abortion.” P. 261. It should be noted, however, that evangelical Protestants had, for the most part, long since retreated from the political arena. Thomas C. Berg, *Religious Conservatives and the Death Penalty*, 9 WM. & MARY BILL RTS. J. 31, 48 (2000) (noting that “evangelicals withdrew from social and political activism during some periods”). See generally, e.g., GEORGE M. MARSDEN, UNDERSTANDING FUNDAMENTALISM AND EVANGELICALISM (1991); Robert Wuthnow, *The Future of the Religious Right*, in NO LONGER EXILES 27 (Michael Cromartie ed., 1993).

80. P. 229. On this point, noted Protestant bioethicist Paul Ramsey “opposed legal abortion and warned American liberals not to succumb to an ‘anti-Catholicism still there beneath the surface in our generally Protestant culture.’” P. 262. It is telling, perhaps, that the Southern Baptist Convention hailed *Roe v. Wade* as “advancing the cause of ‘religious liberty,’” a tribute that “seemed directed at Catholics arrogant enough to presume that their own views should be law.” P. 262.

and the “hazards of religion’s intruding into the political arena.”<sup>81</sup> John Rawls’s “suspicion of religious arguments became legal orthodoxy” (p. 263), and Professor Tribe asserted that Catholic opposition to abortion represented “efforts to legislate ‘religious faith upon which people will invariably differ widely.’”<sup>82</sup>

Second, this discussion places in stark relief the central tension around which the book is organized, namely, the divide between Catholic and liberal understandings of human freedom: “The Catholic understanding of the human person clashed with this new liberal emphasis on autonomy, as well as with the idea that theological arguments were unacceptable in public debate.”<sup>83</sup> For many liberals, influenced perhaps by an increasingly popular European existentialism, “[t]he substantive outcome of any particular decision . . . mattered less than protecting the autonomy of the decision-making agent” (p. 253), while prominent Catholic moralists worried about “the modern tendency to make the ‘individual himself [the] sole norm of action when the chips are down.’”<sup>84</sup> In the abortion debate, but also more generally, “[e]ven as non-Catholic liberals placed more emphasis on individual autonomy, Catholics were drawn to a different vocabulary. Solidarity . . . became important not just with the poor but with the unborn” (p. 272). Charles Taylor’s powerful and prescient warning captures well the Catholic concern: “A romantic view of individual autonomy, often commingled in the United States with anti-Catholicism, may weaken the solidarity needed to ensure dignity for society’s most vulnerable members.”<sup>85</sup>

### III.

McGreevy’s concluding chapter includes a survey of the present-day fallout, both in the Catholic Church and in American politics more generally, of the rifts that opened during the 1960s and 1970s: the substantial realignment of Catholic voters as abortion rights became a fundamental tenet of Democratic Party orthodoxy (pp. 278-

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81. *Bd. of Educ. v. Allen*, 392 U.S. 236, 251 (1968) (Black, J., dissenting); *Lemon v. Kurtzman*, 403 U.S. 602, 623 (1971).

82. P. 264 (quoting Laurence H. Tribe, *Foreword: Toward a Model of Roles in the Due Process of Life and Law*, 87 HARV. L. REV. 1, 21 (1973)).

83. P. 265. Indeed, McGreevy concludes that the “abortion debate shattered [the] Catholic-liberal rapprochement. Whereas in the 1940s liberals had accused Catholics of producing citizens incapable of loyalty to American institutions, they now accused Catholics of refusing to recognize the moral importance of autonomy.” *Id.* Likewise, a century earlier, abolitionists and “liberal reformers [had] stressed the cultural consequences of Catholicism’s seeming disregard for individual autonomy.” P. 13.

84. P. 255 (quoting JOHN C. FORD & GERALD KELLY, 1 CONTEMP. MORAL THEOLOGY 138 (1958)).

85. P. 295 (citing, *inter alia*, CHARLES TAYLOR, SOURCES OF THE SELF (1989)).

81, 284, 294); the increasingly salient divisions among American Catholics on the political, economic, and social implications of Catholic social teaching (pp. 287-89); and the bracing condemnation by many Catholic bishops of what John Paul II insisted was a “culture of death” (pp. 288-89). McGreevy also treats quickly — too quickly, perhaps — the recent revelations concerning sexual abuse and misconduct by Catholic priests and the shamefully poor response to it by many Catholic bishops (pp. 289-93).

Now, it is a truism — but true nonetheless — that what’s past is prologue. And so, these final, “current events” pages are valuable not so much because they tell us anything new about the state of play in abortion politics, the clergy-sex-abuse scandals, or intra-Catholic squabbles, but rather because they confirm and illustrate several recurring themes in Americans’ conversations about Catholicism, democracy, and freedom. They remind us that, although *Catholicism and American Freedom* is billed as “a history,” its subject is a relationship between “two traditions [still] in motion” (p. 15). By highlighting the salient flashpoints of that relationship over the past century-and-a-half, McGreevy helps scholars and engaged citizens to understand its current state and difficulties.

For example: the recent revelations about sexual abuse by Catholic clergy, and the shocking failure of Catholic leaders and bishops to respond candidly and charitably to it, have prompted appropriate and understandable outrage, and also demands for safeguards and reform.<sup>86</sup> No reasonable observer, even if educated about and sensitive to the past and present reality of anti-Catholicism in American culture, could blame the Church’s current crisis simply on the hostility or prejudices of the press. And yet, it is hard to deny that, although the Church’s gross failures prompted much sound and measured criticism, they also gave new life to, and were frequently evaluated in light of, “venerable anti-Catholic tropes” about authority, hierarchy, celibacy, and sexuality (p. 290). When a perhaps overwrought Attorney General of Massachusetts emphasized that the state “‘must’ play a central role in dictating internal governance reforms that the church ‘must’ adopt,”<sup>87</sup> and even presumed to instruct the Church concerning the selection, training, and ordination of its priests, those familiar with

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86. See generally, e.g., THE BOSTON GLOBE, BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH (2002). It should be noted — as Professor Jenkins has shown — that, notwithstanding the tone and volume of the relevant press coverage, sexual abuse by clergy is not as widespread as the headlines suggest and also that such abuse is not uniquely, or even particularly, a Roman Catholic problem. See PHILIP JENKINS, PEDOPHILES AND PRIESTS (paperback ed., 2001); see also, e.g., Michael Paulsen & Kevin Cullen, *Other Denominations Report Abuse Charges*, BOSTON GLOBE, July 19, 2002, at A1.

87. Harvey Silverglate, *Pastors and Prosecutors*, WALL ST. J., July 29, 2003, at A14 (citing MASS. ATT’Y GEN. REP., *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston* (2003), at <http://www.ago.state.ma.us/filelibrary/archdiocese.pdf>).

McGreevy's story must have been reminded of that State's earlier experiments with nunnery inspections (p. 62), if not the investiture crises of the eleventh and twelfth centuries.<sup>88</sup> McGreevy's work gently but firmly confronts these "tropes," and underscores the long-standing liberal temptations to exploit myths about Catholic clergy and to counter through intrusive regulation and supervision the Church's perceived political and cultural influence. This book should therefore be of great value to lawyers, legislators, and scholars working to respond to priests' crimes and bishops' failures in a manner consistent with religious freedom.<sup>89</sup>

Similarly, McGreevy's discussion of the early twentieth-century liberal-Catholic alliance on the "social question" and economic reform is helpful in assessing present-day discussions about capital punishment. The evolution during the last few years of America's death-penalty debate<sup>90</sup> — for example, the Supreme Court's decision in *Atkins v. Virginia*<sup>91</sup>, or Governor Ryan's wholesale grant of clemency to those on death row in Illinois<sup>92</sup> — has included the Catholic Church's highly visible re-examination of capital punishment. McGreevy discusses, for example, the efforts of Cardinal Joseph Bernardin and others to articulate a comprehensive "pro-life" ethic, one in which issues such as abortion, euthanasia, violence, and the death penalty are linked in a seamless garment (pp. 285-87). And, prominent Catholics from Sr. Helen Prejean to Pope John Paul II have become some of the world's leading voices against the death penalty,<sup>93</sup> a fact that is probably curious to those who are conditioned to regard the Catholic Church as "conservative."

Recall, though, McGreevy's observation that agreement and concert on the rights of labor, and shared criticisms of *laissez faire* capitalism, obscured the fact that Catholic and liberal reformers often worked from radically different *premises* (pp. 138, 153-54): that is, the work and writings of Fr. Ryan and Pope Leo XIII proceeded not from statist collectivism, ideological hostility to private property, or an

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88. See generally, e.g., HAROLD J. BERMAN, LAW AND REVOLUTION 85-119 (1983).

89. See generally, e.g., Symposium, *The Impact of Clergy Sexual Misconduct Litigation on Religious Liberty*, 44 B.C. L. REV. 947 (2003).

90. For one interesting, personal account of this evolution, see, for example, SCOTT TUROW, ULTIMATE PUNISHMENT (2003).

91. 536 U.S. 304 (2002) (concluding that the Constitution does not permit the imposition of capital punishment upon "mentally retarded" criminals).

92. On January 23, 2004, the Supreme Court of Illinois agreed that Governor George Ryan acted within his power when, in January 2003, he commuted the death sentences of 167 inmates and pardoned four others. See *People ex rel. Madigan v. Snyder*, 804 N.E.2d 546 (Ill. 2004).

93. See, e.g., HELEN PREJEAN, DEAD MAN WALKING (1993); POPE JOHN PAUL II, EVANGELIUM VITAE [THE GOSPEL OF LIFE] § 56 (1995). See generally E. CHRISTIAN BRUGGER, CAPITAL PUNISHMENT AND ROMAN CATHOLIC MORAL TRADITION (2003).

uncritical embrace of individual autonomy; but rather from distinctly Catholic claims about work, the family, and the structure of civil society. Similarly, it is worth remembering today that the Catholic Church's opposition to capital punishment is built not on moral relativism or skepticism about the reality of evil and of human agency, but on fundamental claims about the implications for punishment of our status as creatures made in the image and likeness of God.<sup>94</sup>

And, of course, it is hardly possible to avoid the continuity, across more than 150 years, in our arguments about education, religion, citizenship, and democracy. If the animating aspiration of the Common School movement and its progeny was the "produc[tion] [of] citizens worthy of a democratic republic" (p. 38), leading political theorists today likewise insist that education must be structured and regulated in a way that renders "liberal citizens . . . capable of their great office."<sup>95</sup> No participant in the contemporary school-choice arena can help but hear the echoes of earlier liberals' worries about the destabilizing and anti-democratic effects of Catholicism and Catholic education. If common-school partisans once saw their mission as one of liberating children and the Republic's future from the prejudices and superstitions of Catholicism, some call today for increased regulation of private and religious education in the name of children's autonomy<sup>96</sup> and the liberal state's commitment to "conscious social reproduction."<sup>97</sup> Again, the dynamics and debates that McGreevy identifies and explores seem helpful, even essential, to a well-developed understanding of school vouchers and education reform, of First Amendment problems involving the "Blaine Amendments" and "pervasively sectarian" schools,<sup>98</sup> and of "civic education" and political liberalism more generally.<sup>99</sup>

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94. Cf., e.g., Antonin Scalia, *God's Justice and Ours*, FIRST THINGS, May 2002, at 17-21 (suggesting that contemporary abolitionism in the West has very little to do with the influence of Christianity). See generally Richard W. Garnett, *Christian Witness, Moral Anthropology, and the Death Penalty*, 17 NOTRE DAME J.L. ETHICS & PUB. POL'Y 541, 559 (2003) (contending that the "challenge" for Christian believers in the capital-punishment context is to "propose a truthful vision of the human person as 'the noblest work of God — infinitely valuable, relentlessly unique, endlessly interesting,' and to propose that the question of the death penalty stand or fall on that").

95. MACEDO, *supra* note 29, at 275; see also *id.* at ix (noting that public schools are "instruments for the most basic and controversial of civic ends[.] . . . [t]he project of creating citizens").

96. See, e.g., JAMES G. DWYER, *RELIGIOUS SCHOOLS V. CHILDREN'S RIGHTS* (1998); cf., e.g., Stephen G. Gilles, *Hey, Christians, Leave Your Kids Alone!*, 16 CONST. COMMENT. 149 (1999); Michael A. Scaperlanda, *Producing Trousered Apes in Dwyer's Totalitarian State*, 7 TEX. REV. L. & POL. 175 (2002).

97. AMY GUTMANN, *DEMOCRATIC EDUCATION* 39, 42 (1987).

98. See generally, e.g., Richard W. Garnett, *The Theology of the Blaine Amendments*, 2 FIRST AMENDMENT L. REV. 45 (2003).

99. There is a rich scholarly literature on "civic education," and on the challenges posed by religious faith, teachings, and communities to certain conceptions of political liberalism.

In addition to these and many other instructive links between McGreevy's narrative and contemporary questions of policy, several of the book's themes resonate with provocative developments and arguments in constitutional law and political theory. For example, as many scholars have observed (or complained), at the heart of Chief Justice William Rehnquist's legacy is a version of "federalism" that emphasizes the connections between the protection and vitality of individual freedoms and the Constitution's structural features. These structural features both preserve and clear out the "space" of civil society in which associations and mediating institutions do their work of creating norms, forming citizens, and protecting freedom. As Professor McGinnis has explored in great detail, a powerful and pervasive theme in the Rehnquist Court's decisions is a recognition, and even a celebration, of the place in civic life of mediating associations, their expression, and their diversity.<sup>100</sup>

It is worth reflecting, then, on the fact that many of the differences that McGreevy identifies and describes between Catholic and liberal understandings of "freedom" stem from different understandings of the relation between individual freedom and autonomy, on the one hand, and the freedom and autonomy of groups and mediating institutions, on the other. The claim that, perhaps more than any other, animates McGreevy's account is that the Catholic view was and remains less individualistic, and more communal or communitarian, than the liberal one.<sup>101</sup> It should be emphasized, though, that Catholic social teaching is not reducible to the amorphous "communitarianism" that is fashionable in many circles, to statist collectivism, or even to centralization generally.<sup>102</sup> What is distinct about Catholic social

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*See, e.g.,* MEIRA LEVINSON, *THE DEMANDS OF LIBERAL EDUCATION* (1999); MACEDO, *supra* note 29; *MAKING GOOD CITIZENS: EDUCATION AND CIVIL SOCIETY* (Diane Ravitch & J. Viteritti eds., 2001); *NOMOS XLIII: MORAL AND POLITICAL EDUCATION* (Stephen Macedo & Yael Tamir eds., 2002); William Galston, *Civic Education in the Liberal State, in LIBERALISM AND THE MORAL LIFE* 89 (Nancy Rosenblum ed., 1989); Stephen G. Gilles, *On Educating Children: A Parentalist Manifesto*, 63 U. CHI. L. REV. 937 (1996); Michael W. McConnell, *Multiculturalism, Majoritarianism, and Educational Choice: What Does Our Constitutional Tradition Have to Say?*, 1991 CHI. LEGAL F. 123 (1991).

100. *See* McGinnis, *supra* note 31, at 526-43; *see also* Garnett, *supra* note 31, at 1853-54; Jason Mazzone, *The Social Capital Argument for Federalism*, 11 S. CAL. INTERDISC. L.J. 27, 27 (2001) (arguing that "[f]ederalism promotes social capital because dividing power between the national government and the states provides greater opportunities for citizen groups to influence politics and for individual citizens to participate in public life"). *But see, e.g.,* Daniel A. Farber, *Speaking in the First Person Plural: Expressive Associations and the First Amendment*, 85 MINN. L. REV. 1483, 1506 (2001) ("Many of America's Founding Fathers . . . didn't think much of voluntary associations.").

101. *See, e.g.,* Lacey, *supra* note 6 (stating that McGreevy "pits a long-sustained but eroding Catholic communitarian vision of the uses of freedom against a more pervasive, individualistic view that issued from Protestant doctrines of liberty of conscience and the rights of private judgment").

102. *Cf.* Stephen M. Bainbridge, *Catholic Social Thought and the Corporation 2* (Oct. 22, 2003) (unpublished manuscript, at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=)

thought is not simply that it emphasizes “community” rather than individual “autonomy,” but *why* it emphasizes community.

Accordingly, the principle of “subsidiarity” serves as a bulwark against both excessive individualism and stultifying centralization. “Subsidiarity,” in a nutshell, is the “principle of limited government” according to which “[t]he state should do only what cannot effectively be done by private action, and whenever possible the individual should make his own decisions.”<sup>103</sup> Like American federalism, the principle recognizes the connection between associational freedoms and the authentic freedom and flourishing of persons.<sup>104</sup> However, its end is not devolution for its own sake, any more than the Catholic critique of individualism that McGreevy traces supports centralization for its own sake.<sup>105</sup> The Catholic notion of subsidiarity, like Catholics’ assertedly more “communal” orientation, aims ultimately not at the good of the state, or at the greatest good for the greatest number, but at the “common good” of persons, *i.e.*, at achieving “those conditions of social life by which individuals, families, and groups can achieve their own fulfillment in a relatively thorough and ready way.”<sup>106</sup> Thus, the different ideas of “freedom” running through McGreevy’s account are not reducible to the claim that “liberals talk about the individual, while Catholics talk about community.” Yes, as McGreevy describes, “Catholics talk about community,” but this is *because* of its asserted connection to human “freedom.” After all, the authentic freedom of

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461100). (criticizing the “persistent error” in the “collectivist moral strain” of many writing in the tradition of Catholic social teaching). Indeed, as McGreevy observes, the “reluctance of nineteenth-century Catholics to view the nation-state as the end of human history now seems prescient.” P. 294.

103. David P. Currie, *Subsidiarity*, 1 2D SER. GREEN BAG 359, 359 n.1 (1997); *see also* Pope John Paul II, *Centissimus annus* [Encyclical Letter on the Hundredth Anniversary of *Rerum novarum*] ¶ 48 (1991) (noting that subsidiarity is the principle according to which “a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good.”); Mary Ann Glendon, *Civil Service*, NEW REPUBLIC, Apr. 1, 1996, at 39, 40 (“Subsidiarity [is] the principle of leaving social tasks to the smallest social unit that can perform them adequately.”) (reviewing MICHAEL J. SANDEL, *DEMOCRACY’S DISCONTENT* (1996)).

104. This is not to say that subsidiarity is entirely co-extensive with American federalism, or vice versa. *See generally* Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103 (2001) [hereinafter Vischer, *Subsidiarity as a Principle of Governance*].

105. Vischer, *Subsidiarity as a Principle of Governance*, *supra* note 104, at 116 (“Subsidiarity is not a knee-jerk shunning of government authority . . . . Rather, subsidiarity is a principled tendency toward solving problems at the local level and empowering individuals, families and voluntary associations to act more efficaciously in their own lives.”).

106. Pope Paul VI, *Gaudium et spes*, in *THE DOCUMENTS OF VATICAN II* 283-84 (Joseph Gallagher trans., Walter M. Abbott ed. 1966). *See* Richard W. Garnett, *Common Schools and the Common Good: Reflections on the School-Choice Debate*, 75 ST. JOHN’S L. REV. 219 (2001).

persons is no less fundamental to Catholic thinking than it has been to the liberal tradition.<sup>107</sup> McGreevy performs a valuable service in pushing us to realize that the Catholic tradition in America has not so much *opposed* freedom as proposed a different *kind* of freedom, or — as Professor Rodes puts it, “a deeper understanding of freedom.”<sup>108</sup>

Also running through both of these traditions is an argument about Catholics’ *loyalty*. The “Catholic problem,” in the imagination of American liberals, has often been conceived in terms of loyalty to democracy, to nation, and — more recently — to autonomy-based morality.<sup>109</sup> The charge, in Murray’s words, has been that “You are among us but you are not of us.”<sup>110</sup> It is no longer (as it once was) that Catholics’ political allegiances might lie in Rome, or with Italy or Spain, but rather that they ostentatiously, and increasingly anomalously, dissent from what are widely regarded as foundational normative premises. On this point, Professor Carter’s 1995 Massey Lectures provide a provocative meditation on the competing demands of “loyalty” made by the state and by mediating associations, including religious communities, and also on the state’s efforts to instill such loyalty via education and other means.<sup>111</sup> It is important to recognize, Carter reminds us, that religious traditions seek to “project into the future an understanding of the world that may be quite different from that of the sovereign majority of . . . citizens.”<sup>112</sup> It is because they “demand forms of allegiance and thus of loyalty”<sup>113</sup> that their claims pose an obstacle to what Carter calls the “project of liberal

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107. See, e.g., Bainbridge, *supra* note 102, at 1 (“If a concern for human freedom is not at the center of Catholic social teaching, it is at least very near.”).

108. ROBERT E. RODES, JR., *PILGRIM LAW* 13 (1998) (noting that “[i]n a good deal of medieval thought, freedom is seen as the power of a created being to move without hindrance in the way God intended”).

109. As McGreevy puts it, discussing European anti-clericalism, “[p]articlar targets . . . were the men’s religious orders, precisely because members of the orders emphasized loyalty to the pope above national allegiance.” P. 21. He notes also that many American liberals cheered Bismarck’s *Kulturkampf*, and nodded when Gladstone insisted that “British Catholics could [not] simultaneously be loyal to the papacy and to the nation.” P. 98.

110. MURRAY, *supra* note 16, at 20 (“The neo-Nativist . . . addresses to the Catholic [this] charge: ‘You are among us but you are not of us.’ . . . To this charge the Catholic . . . will politely reply that this is Jacobinism, *nouveau style*, and that Jacobinism, any style, is out of style in this day and age.”).

111. STEPHEN L. CARTER, *THE DISSENT OF THE GOVERNED* (1998).

112. *Id.* at 141; *id.* at 30 (“[A] principal purpose of religious narrative and religious observance is to preserve the tradition of the past and project it into the future.”); *id.* at 27 (“[T]he meanings that they discover and assign to the world may be radically distinct from those that are assigned by the political sovereign.”). See also, e.g., Charles Taylor, *Religion in a Free Society*, in *ARTICLES OF FAITH, ARTICLES OF PEACE* 93, 100 (James Davison Hunter & Os Guinness eds., 1990) (“[T]he Christian church gave its members a universal allegiance, which could easily conflict with, or at least rival their political ties.”).

113. Carter, *supra* note 111, at 29-30.



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constitutionalism,”<sup>114</sup> which includes an effort to “create[] a single, nationwide community with shared values and shared, enforceable understandings of how local communities of all descriptions should be organized.”<sup>115</sup>

But if McGreevy’s analysis of the relationship between American liberalism and Catholicism reveals a pattern of concern about the compatibility of the latter with the former, i.e., about the problem of Catholic dissent from liberal autonomy, there are also those who object to American Catholics’ excessive accommodations to America and American freedom. Although *Catholicism and American Freedom* is a work of history, not advocacy, it seems fair to read McGreevy as broadly sympathetic to the Brownson/Murray project of situating Catholicism within the American consensus, of framing America’s ends and ideals as consistent with Catholicism, and of searching for and emphasizing a fundamental harmony between Catholicism and the United States. Today, as before, arguments persist over the feasibility, and integrity, of that project.

My colleague, Professor Michael Baxter, along with theologian Stanley Hauerwas, has argued that the American set of “political arrangements” “present[s] a deep and intractable challenge” for “that community whose allegiance is first and foremost to the Kingship of Christ.”<sup>116</sup> It is widely supposed, Baxter and Hauerwas observe, that a “central purpose” of those arrangements “is the subordination of religion to the political order, meaning the primacy of democracy.”<sup>117</sup> Thus, “in their embrace of the American experiment, Catholics have learned to adapt to a political landscape marked by religious indifferentism.”<sup>118</sup> In Baxter’s view, the appropriate, authentic response to doubts about Catholics’ loyalty is not irenicism, but irresolution.<sup>119</sup> Certainly, this is a controversial position, and it is not obviously a weakness in McGreevy’s book that he fails to endorse it. The point here is simply that our public conversations about law, religion, citizenship, and loyalty would be improved if their

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114. *Id.* at 29.

115. *Id.* at 19.

116. Stanley Hauerwas & Michael Baxter, C.S.C., *The Kingship of Christ: Why Freedom of “Belief” Is Not Enough*, 42 DEPAUL L. REV. 107, 107 (1992).

117. *Id.* at 109 (quoting George F. Will, *Conduct, Coercion, Belief*, WASH. POST, Apr. 22, 1990, at B7).

118. *Id.* at 120. See generally, e.g., ALAN WOLFE, *THE TRANSFORMATION OF AMERICAN RELIGION* (2003).

119. *Id.* at 127 (noting that the life of Father Max Josef Metzger — a former German Army chaplain who became a peace activist — “demonstrates that ‘making peace’ with the politics of this world is not the first task of a Church that worships Christ the King.”).

participants acquired a greater sensitivity to the matter of religious believers' competing loyalties.<sup>120</sup>

Finally, as was just mentioned, running through this book is a claim that Catholic morality and political theory are more communitarian than individualistic, solidaristic than atomistic, and so on. This is a claim, however, that goes deeper than claims about how societies, governments, and economies should be organized. Even more important is the fact that Catholicism proposes a moral anthropology that is at odds with the one proposed by liberalism, and that this deeper difference is at the heart of the dynamic explored in this book.<sup>121</sup> That is, a fundamental, different claim about what the human being is and is for spins off the various disagreements about what government can, should, and should not do.

Now, by "moral anthropology," I mean "an account of what it is about the human person that does the work in moral arguments about what we ought or ought not to do and about how we ought or ought not to be treated."<sup>122</sup> In the Psalmist's words, "Lord, what is man . . . that thou makest account of him?"<sup>123</sup> This is not only a prayer, but a starting point for jurisprudential reflection. After all, as John Courtney Murray once observed, "[i]n the end, every structure of moral doctrine and decision rests on a concept of the nature of man."<sup>124</sup> All moral problems are anthropological problems, because moral arguments are built, for the most part, on anthropological presuppositions.<sup>125</sup>

For a recent example of anthropological reflection in the service of jurisprudential argument, consider a recent article by Professor Steven

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120. In a similar vein, my colleague and teacher, Tom Shaffer, commented to me that these conversations — and perhaps also McGreevy's own account — would be enriched by paying greater attention to the experiences and communities of the later Catholic immigrants. See generally THOMAS L. SHAFFER & MARY SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES* (1991).

121. See, e.g., Richard John Neuhaus, *An Argument About Human Nature*, in *A NEW WORLDLY ORDER* 132 (George Weigel ed., 1992).

122. Richard W. Garnett, *Christian Witness, Moral Anthropology, and the Death Penalty*, 17 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* 541, 543 (2003).

123. *Psalms* 143:3 (King James).

124. MURRAY, *supra* note 16, at 296; *id.* at 126 ("The basic question that modernity has come to, of course, is what is man?").

125. As Professor Elshtain has put it, our attempts at moral judgment tend to reflect our foundational assumptions about what it means to be human. Jean Bethke Elshtain, *The Dignity of the Human Person and the Idea of Human Rights: Four Inquiries*, 14 *J.L. & RELIGION* 53 (1999-2000). My colleague John Coughlin has noted that the "anthropological question" is both "perennial" and profound: "What does it mean to be a human being?" John J. Coughlin, *Law and Theology: Reflections on What it Means to Be Human*, 74 *ST. JOHN'S L. REV.* 609, 609 (2000); Steven D. Smith, *Believing Persons, Personal Believings: The Neglected Center of the First Amendment*, 2002 *U. ILL. L. REV.* 1233, 1235 [hereinafter Smith, *Believing Persons*] ("[E]very body of law and legal discourse will necessarily embrace some conception, or perhaps multiple conceptions, of the person.").

Smith, in which he “addresses how our conception of what it means to be a person influences First Amendment law.”<sup>126</sup> In his view, our law generally, and our First Amendment doctrine in particular, have “suffered by embracing conceptions of the person ill-advisedly imported from other disciplines or philosophical perspectives” and would “be strengthened and enriched by a more self-conscious recognition of . . . ‘the person as believer.’”<sup>127</sup> What is more, Smith contends, a law of religious freedom — or, more generally, a theory of political community — that proceeded from a “believer”-based anthropology would contrast markedly, and in important ways, from one that rested, say, on Rawlsian political liberalism, which encourages, and even requires, the radical privatization of religion.<sup>128</sup> Smith’s argument is important and provocative, and this is not the place for a detailed account or response. It is enough here to suggest that the kinds of examinations and reflections proposed and undertaken by Smith are promising, and that McGreevy’s history should assist them by showing how one particular set of arguments and experiences across time has been shaped not simply by different notions of “freedom,” but also by different views of who and what we really are who struggle for it.

#### CONCLUSION

The word “religion” comes from *religare*, which means to “tie fast” or bind together.<sup>129</sup> And yet, many today appear to regard religion’s purported capacity — even tendency — to “divide” as its near-defining feature.<sup>130</sup> True, few epithets in contemporary discourse are as biting, yet as tedious and vacuous, as the charge that a person, claim, argument, proposal, or belief is “divisive.” The term — like “controversial” and “partisan” — often seems to do little more than signal the speaker’s disapproval, and her desire that the offending target either be quiet, or change her tune. Nevertheless, American society is, we are told time and again, fractured, split, partisan; it is, about many things and in many ways, “divided.” We are, Gertrude

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126. Smith, *Believing Persons*, *supra* note 125, at 1233.

127. *Id.* at 1235; *id.* at 1241 (“[T]he believing person is central to First Amendment commitments and . . . First Amendment jurisprudence has suffered by neglecting this central concern.”).

128. *Id.* at 1284-85.

129. The Middle French derivative is *relier*, “to connect, fasten together.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (2002) (entry for “religion”).

130. *Cf.* John C. Danforth, *Leaders Can Find Unity in What Divides Us*, ST. LOUIS POST-DISPATCH, Nov. 10, 2002, at B3 (“The root meaning of the word suggests that religion is supposed to bind us together. If this is so, then those ‘religions’ that are divisive should be called by another name. To call a belief that is designed to be a wedge a religion is deceptive to the point of being fraudulent.”).

Himmelfarb contends, "One Nation, two cultures."<sup>131</sup> What is more, it is difficult to avoid the impression that social and political fault lines trace, even if they do not clearly result from, religious differences and disagreements. "[T]here is," several researchers have concluded, "a new religious order in American electoral politics, one characterized not only by the distinctive partisanship of religious traditions, but also by theological polarization within the nation's three largest traditions."<sup>132</sup> These divisions should not be overstated, but they are real.<sup>133</sup>

*Catholicism and American Freedom* opens and closes with divisions, both in the American political community and in the Roman Catholic Church.<sup>134</sup> Certainly, McGreevy does not celebrate these divisions. Nevertheless, one of this book's many lessons might be that, in the end, we should "cherish only modest expectations with regard to the solution of the problem of religious pluralism and civic unity."<sup>135</sup> At the same time, this work offers the attractive, unifying hope that as the "long Catholic encounter with American ideas of freedom" continues, all will come to appreciate "that associations and ties with the strangers in our midst satisfy our deepest, most common aspirations" (p. 295).

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131. See also, e.g., GERTRUDE HIMMELFARB, *ONE NATION, TWO CULTURES* (2001); David Brooks, *One Nation, Slightly Divisible*, ATLANTIC MONTHLY, Dec. 2001, at 86; see also STANLEY B. GREENBERG, *THE TWO AMERICAS* (2004).

132. James L. Guth et al., *America Fifty/Fifty*, FIRST THINGS, Oct. 2001, at 19 (noting that "[r]eligion played a key role in determining both the partisan polarization and the disengagement that characterized the public in 2000"); News Release: The Pew Forum on Religion & Pub. Life, *Religion and Politics: Contention and Consensus 1* (July 24, 2003) ("Religion is a critical factor these days in the public's thinking about contentious policy issues and political matters.").

133. But see, e.g., ALAN WOLFE, *ONE NATION, AFTER ALL* (1998).

134. The Eliot School Rebellion, remember, involved Catholic dissent from compulsory recitation of the King James Bible, a text that reflected, among other things, a rejection of the "Puritan error" of "social divisiveness." NICOLSON, *supra* note 34, at 90; see also *id.* at 121 (noting that radical Puritans were excluded from the company of translators because "[t]he heart of their thinking was divisive, not part of the unifying national project").

135. MURRAY, *supra* note 16, at 23.