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THE LIBERAL POLITY AND ILLIBERALISM IN RELIGIOUS TRADITIONS

Paul E. Salamanca*

It is in the nature of religious traditions to be somewhat illiberal. Indeed, a religion that does not require its adherents to affirm at least some belief is probably a logical impossibility.¹ Christians, for example, must believe something about the nature of Christ.² Even Unitarians, who advocate tolerance of all religions, must affirm a belief in tolerance.³

Recently, and largely because of the events of September 11, 2001, enhanced attention has been paid to certain potentially illiberal aspects of Islam in the United States. The journalist Daniel Pipes, for example, has written about certain Moslem Americans who, according to his research, have called for the formal establishment of Islam in this country.⁴ Indeed, he has quoted one such individual as arguing that “Muslims *cannot* accept the legitimacy of the American secular system, which is against the orders and ordainments of Allah.”⁵

I do not seek to defend or refute Pipes’ thesis. Given Islamic establishmentarianism elsewhere in the world,⁶ and given the significant number of Moslems in the

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1. See generally Michael Peterson, William Hasker, Bruce Reichenbach & David Basinger, *Reason and Religious Belief: An Introduction to the Philosophy of Religion* 36 (Oxford U. Press 1991) (noting that even scientific naturalism, the idea that science and reason fully explain the nature of reality, is simply a theory, and not one that is universally accepted); Michael J. Gerhardt, *Essay: On Revolution and Wetland Regulations*, 90 Geo. L.J. 2143, 2146 n. 16 (2002) (discussing and quoting Thomas S. Kuhn, *The Structure of Scientific Revolutions* 109 (3d ed. 1996) (“Whether [a] new [scientific] paradigm succeeds in a revolution depends more on the power of conversion than logical argument. No ‘logical’ choice is available between competing paradigms that ‘disagree about what is a problem and what a solution.’”)).

2. See e.g. *Congregation for the Doctrine of the Faith, Declaration “Dominus Iesus” on the Unicity and Salvific Universality of Jesus Christ and the Church* ¶ 6 <http://www.vatican.va/roman_curial_congregations/cfaith/documents/rc_con_cfaith_doc_20000806_dominus-iesus_en.html> (Aug. 6, 2000) (affirming the exclusive role of Christ and the Roman Catholic Church as the means of salvation) (“[T]he theory of the limited, incomplete, or imperfect character of the revelation of Jesus Christ, which would be complementary to that found in other religions, is contrary to the Church’s faith.”). See also Philip Jenkins, *The Next Christendom: The Coming of Global Christianity* 197 (Oxford U. Press 2002) (discussing *Dominus Iesus*); Paul E. Salamanca, *Choice Programs and Market-Based Separationism*, 50 Buff. L. Rev. 931, 966 (2002) (discussing *Dominus Iesus*).

3. Unitarian Universalism justifiably emphasizes its tolerance for other religions. See *Unitarian Universalist Association, About Unitarian Universalism* <<http://www.uua.org/aboutuu/>> (accessed Apr. 9, 2003) (“With its historical roots in the Jewish and Christian traditions, Unitarian Universalism is a liberal religion — that is, a religion that keeps an open mind to the religious questions people have struggled with in all times and places.”). It may seem odd to describe this statement as including even a scintilla of illiberalism, but complete liberalism requires neutrality in the face of all choices — including the choice to be illiberal. Thus, to be completely liberal, a Unitarian Universalist congregation would have to be willing to accept as a fellow congregant an individual who affirms the divinity of Christ, who wants to lead the congregation, who intends to preach on the divinity of Christ, and who will insist that others join him or her in affirming that principle.

4. See Daniel Pipes, *The Danger Within: Militant Islam in America*, Commentary 19-20 (Nov. 2001).

5. *Id.* (internal quotation marks omitted, emphasis original).

6. See Jenkins, *supra* n. 2, at 170 (“Over the past twenty years, the Muslim world has been caught up in a massive religious revival, and this movement has expressed itself in calls for pure religious states upheld by the

United States,⁷ it would not be surprising if at least some Moslem Americans supported the formal establishment of Islam in this country.⁸ But without regard to whether Pipes is factually correct, I submit that Moslem establishmentarianism in the United States, to the extent it exists, is no more a threat to the primarily liberal ideals of this country than was Roman Catholic establishmentarianism some fifty years ago. Indeed, some of the parallels between perceptions of Islam in the United States today and perceptions of Roman Catholicism in the United States fifty years ago are revealing.

As noted earlier, any religion worthy of the name must advocate at least some form of illiberalism. This is inherent in the function of identifying some version of the Good and promoting its attainment over others. A life devoid of such an effort would be incoherent and meaningless.⁹ In addition, scholarship suggests that the global trend among religions may be in the direction of illiberalism. Sociologists of religion report that there is a fairly direct correlation between the exclusivity of a religion and the degree of commitment its adherents display.¹⁰ Similarly, the historian Philip Jenkins has argued the world's fastest growing Christian denominations have a distinctly other-worldly and orthodox approach to doctrine:

Within a few decades, such denominations will represent a far larger segment of global Christianity, and just conceivably a majority. These newer churches preach deep personal faith and communal orthodoxy, mysticism and Puritanism, all founded on clear scriptural authority. They preach messages that, to a Westerner, appear simplistically charismatic, visionary, and apocalyptic. In this thought-world, prophecy is an everyday reality, while faith-healing, exorcism, and dream-visions are all basic components of religious sensibility.¹¹

Notwithstanding the apparent correlation between growth in religious traditions and exclusivity of belief, it is nevertheless the case that religious traditions

full apparatus of Islamic law.”); John Witte, Jr., *Religion and the American Constitutional Experiment: Essential Rights and Liberties* 227 (Westview Press 2000) (noting that, like Roman Catholic groups in Europe and Latin America, “Islamic revivalists in various countries ... urge arrangements to enhance the ‘Islamicization’ of the community”).

7. The number of Moslems in the United States is not precisely known, but the Department of State puts the figure at approximately six million. See *U.S. Department of State, International Information Programs, Fact Sheet: Islam in the United States* <<http://usinfo.state.gov/usa/islam/fact2.htm>> (accessed Apr. 12, 2003).

8. Pipes suggests that many Moslem leaders in the United States are establishmentarian. See Pipes, *supra* n. 4, at 24 (quoting one Moslem American as estimating that “‘extremists’ have ‘taken over 80 percent of the mosques’ in the United States”).

9. Cf. Larry Alexander, *Illiberalism All the Way Down: Illiberal Groups and Two Conceptions of Liberalism*, 12 *J. Contemp. Leg. Issues* 625, 626 (2002) (“At the individual level, no one lives the life of a neutral liberal, no one does not side with any particular points of view, values, or persons. There is no such life.”).

10. See Rodney Stark & Roger Finke, *Acts of Faith: Explaining the Human Side of Religion* 141-54 (U. Cal. Press 2000) (explaining how religious traditions with high costs of participation and high degrees of exclusivity tend to eliminate the uncommitted and “free riders,” tend to promise greater and more palpable rewards, and tend to generate greater commitment among adherents).

11. Jenkins, *supra* n. 2, at 7-8.

vary significantly in the degree of illiberalism they demand.¹² Some, like Unitarian Universalism, are broadly tolerant of all religions and all religious precepts, demonstrating illiberalism only in the (perhaps paradoxical) sense of rejecting illiberalism as a choice.¹³ Others, like Roman Catholicism, are tolerant of other faiths in the sense of wishing to find common cause with them, but nevertheless insist upon the ultimate exclusive truth of their own beliefs.¹⁴ Islam, for its part, tolerates certain other religions to a high degree, particularly Christianity, and particularly in the sense of adopting many aspects of Christian theology as its own. As Philip Jenkins has noted:

Islam is after all the only one of the major religions that enshrines in its scriptures a demand to tolerate other religions, other “peoples of the book.” Scarcely known to most Christians, the Muslim scriptures are almost entirely focused on the same characters who feature in the Christian Bible. The Quran has much more to say about the Virgin Mary than does the New Testament, and Jesus is, apart from Muhammed, the greatest prophet of Islam. It is Jesus, not Muhammed, whose appearance will usher in the Day of Judgment.¹⁵

Nevertheless, Islam has its illiberal aspects. The First Pillar of Islam, for example, calls upon Moslems to affirm a belief in the divinity of God, and to reject a belief in the divinity of any other being.¹⁶ In setting forth this requirement, of course, the First Pillar simply undertakes to accomplish something that any religion, by definition, must do — require its adherents to affirm a particular belief and to reject oth-

12. The sociologists Rodney Stark and Roger Finke suggest that, as people become more involved with worldly matters, they become less comfortable with demanding religious traditions. See Stark, *supra* n. 10, at 204 (discussing this development among Methodists in the United States) (“At the turn of the twentieth century, it was rich Methodists who bore the heaviest burden of rules such as those against drinking, gambling, dancing, card-playing, and theater-going — for these rules hindered their association with others of their class.”). When the critical mass of a particular religion’s adherents undergo this process, the tradition as a whole tends to become less exclusive, often losing its capacity for dynamic growth. See *id.* at 206 (Proposition 85) (“As moderate religious bodies continue to reduce their tension, they move away from the larger niches [in the religious economy] and cease to grow.”). See also Roger Finke & Rodney Stark, *The Churching of America, 1776-1990: Winners and Losers in Our Religious Economy* 18 (Rutgers U. Press 1992) (“We will repeatedly suggest that as denominations have modernized their doctrines and embraced temporal values, they have gone into decline.”).

13. This point is illustrated *supra* n. 3 and accompanying text.

14. See *Dominus Iesus*, *supra* n. 2, at ¶ 7 (internal quotation marks and footnote omitted):

[T]he distinction between *theological faith* and *belief* in the other religions, must be *firmly held*. If faith is the acceptance in grace of revealed truth, which makes it possible to penetrate the mystery in a way that allows us to understand it coherently, then belief, in the other religions, is that sum of experience and thought that constitutes the human treasury of wisdom and religious aspiration, which man in his search for truth has conceived and acted upon in his relationship to God and the Absolute.

15. Jenkins, *supra* n. 2, at 168.

16. See *Religions of the World* 441 (Niels C. Nielson, Jr. et al. eds., 3d ed., St. Martin’s Press 1993) (“There is no God but God, and Muhammad is his apostle.”).

ers.¹⁷ Nonetheless, this is an example of illiberalism. Other examples of illiberalism in Islam include or have included severe punishment for apostasy and blasphemy.¹⁸

One form of illiberalism that adherents of many religions — including Islam — have historically displayed is establishmentarianism.¹⁹ This pertains to a desire to establish a religion on a formal basis — that is, to give it some degree of legally protected status. Establishmentarianism is inherently illiberal in the sense that it promotes a particular conception of the Good — namely, the conception institutionalized in the religion or religions at issue — over others.²⁰ Complete liberalism, by contrast, requires neutrality in the face of all decisions as to the character of the Good. As the political philosopher Michael Sandel has noted with regard to classic liberalism (which he ascribes to the thinking of Immanuel Kant):

On the Kantian view, the priority of right [meaning the right to choose] is both moral and foundational. It is grounded in the concept of a subject given prior to its ends, a concept held indispensa-

17. This point is illustrated *supra* n. 2 and accompanying text (discussing the Roman Catholic Church's requirement that its adherents affirm their faith in the role of Christ and the Church in ensuring salvation). See also *Exodus* 20:2-3 (King James) ("I am the LORD thy God, which have brought thee out of the land of Egypt, out of the house of bondage. Thou shalt have no other gods before me.").

18. See Jenkins, *supra* n. 2, at 168 (regarding apostasy); *id.* at 180 (discussing, among other things, the *fatwa* issued against Salman Rushdie in 1989); Elizabeth Neuffer, *Iran Lifts a Disputed Death Sentence; Clerics, Students Clashed Over Case*, *The Boston Globe* A9 (Feb. 15, 2003) (noting that an Iranian academic had been "condemned to death for a speech ... in which he asked why only clerics could interpret Islam.").

19. Establishmentarianism is not exclusively a religious impulse, of course. Indeed, many of the most famous proponents of religious establishment have justified their positions in strictly civil terms. See generally Witte, *supra* n. 6, at 34-36 (discussing civic republican views in the United States during the founding era); *id.* at 35 ("According to Republican lore, society needs a fund of religious values and beliefs, a body of civic ideas and ideals, that are enforceable both through the common law and through communal suasion."); Edmund Burke, *Reflections on the Revolution in France* 189 (Conor Cruise O'Brien, ed., Penguin Books 1968):

Every sort of moral, every sort of civil, every sort of politic institution, aiding the rational and natural ties that connect the human understanding and affections to the divine, are not more than necessary, in order to build up that wonderful structure, Man; whose prerogative it is, to be in a great degree a creature of his own making.

20. It must be noted, however, that a religious establishment can — and often does — reflect a relatively benign form of illiberalism. Few people think of the United Kingdom as illiberal, yet it has an established church. As a leader in the Jewish community in the United Kingdom recently wrote, in defense of establishment:

[Imagine] entering a crowded room, knowing no one, and then discovering to your relief that there is a host who greets you, introduces you to others, and makes you feel at home. In a multifaith England, the Church of England is that host.

Jonathan Sacks, *Antidisestablishmentarianism — a Great Word and a Good Ideal*, *The Times* (London) 44 (July 20, 2002). Indeed, international agreements on religious liberty do not condemn religious establishments per se. See Witte, *supra* n. 6, at 227 ("[S]trict separationist logic is not reflected in international human rights instruments nor, indeed, widely shared by nation-states around the world.").

In addition, establishment does not necessarily work to the advantage of the established faith. Although leaders of the Church of England have a nominal role in civic affairs, English civil authorities have a similar role in fixing ecclesiastical doctrine. See James W. Torke, *The English Religious Establishment*, 12 *J. L. & Religion* 399, 412 (1995-96) ("Just as the Church is represented in Parliament, so also the ultimate power over all matters affecting the Church, from doctrine to liturgy to property, resides in Commons."). Civil officers also have a nominal role in appointing leaders of the Church. See *id.* at 415-16.

ble to our understanding ourselves as freely choosing, autonomous beings. Society is best arranged when it is governed by principles that do not suppose any particular conception of the good, for any other arrangement would fail to respect persons as beings capable of choice; it would treat them as objects rather than subjects, as means rather than ends in themselves.²¹

Religious establishment can have a variety of aspects. These include: (1) suppression of rival faiths; (2) appointment *ex officio* of leaders of the established church to positions of influence in the civil government; (3) requirements that people attend services of the established church; (4) requirements that people pay taxes or tithes to support the clergy or institutions of the established church; and (5) punishment of conduct that tends to undermine the authority or prestige of the established religion.²²

At various times and in various places, Christianity or specific forms of Christianity are or have been established in all of the foregoing ways. Perhaps most famously, Constantine and his successors through exhortations and edicts in the fourth century were successful in establishing Roman Catholicism as the official religion of the empire:

[T]here is one Godhead, Father, Son, and Holy Spirit, in an equal Majesty and Holy Trinity. We order that those who follow this doctrine to receive the title of Catholic Christians, but others we judge to be mad and raving and worthy of incurring the disgrace of heretical teaching, nor are their assemblies to receive the name of churches. They are to be punished not only by Divine retribution but also by our own measures.²³

In a much narrower vein, the monarch of the United Kingdom, even today, must be a Protestant Christian,²⁴ and many prelates of the Church of England hold political office by virtue of their ecclesiastical authority.²⁵ In colonial Virginia, a person was subject to imprisonment for preaching without a license, which was not freely

21. Michael J. Sandel, *Liberalism and the Limits of Justice* 9 (2d ed., Cambridge U. Press 1998). See also John Garvey, *What Are Freedoms For?* 5-6 (Harvard U. Press 1996).

22. For a general discussion of the characteristics of religious establishments, see Michael W. McConnell, John H. Garvey & Thomas C. Berg, *Religion and the Constitution* 21-24 (Aspen L. & Bus. 2002).

23. See Witte, *supra* n. 6, at 10. See also Thomas Bokenkotter, *A Concise History of the Catholic Church* 57 (rev. ed., Image Books 1990).

24. See Torke, *supra* n. 20, at 411 (citing various acts of Parliament) (footnote omitted) ("The members of the present royal line, in order to reign, must be in communion with the Church of England, and the monarch's spouse may not be a 'papist.'").

25. See *id.* at 412:

[T]he House of Lords includes as Lords Spiritual the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and the twenty-one most senior bishops of the established Church. [W]ith twenty-six seats in [this body], the Church retains a prestigious and prominent platform from which to comment upon public affairs.

available to Baptists.²⁶ Several of the colonies required people to attend religious services.²⁷ Mandatory tithes were familiar to the colonials as well,²⁸ as were laws punishing blasphemy.²⁹ Indeed, the Commonwealth of Massachusetts maintained a modest, “multiple” religious establishment, in which people had relative freedom to choose a religious tradition to support, until well into the nineteenth century.³⁰

According to Pipes, advocates of an Islamic establishment in the United States have proposed the following measures: (1) promotion of Islamic rituals and customs in the public square; (2) privileges for Islam; and (3) restrictions on conduct offensive to or inconsistent with Islam.³¹ If accurate, these proposals are not inconsistent with forms of Christian establishmentarianism set forth above.

As a generic matter, the United States is obviously capable of accommodating religious illiberalism, because all religions are illiberal to some degree, because the population of the United States tends to go to church,³² and because the nation has endured over 200 years. The question, then, is whether the United States can accommodate the forms of illiberalism ascribed to Islam, assuming for the sake of discussion that they exist, and retain its primarily liberal character. I believe that it can, and I believe the United States’ experience in integrating its Roman Catholic population proves instructive in this regard.

Like some — and perhaps many — forms of Islam, Roman Catholicism at one time was overtly establishmentarian. This policy was articulated in the so-called “Catholic Thesis,” according to which the Church merited preferred legal status by virtue of two facts: (1) it was the exclusive, visible church of Christ; and (2) all matters of concern to Christ’s flock were of concern to the Church.³³ Demographic

26. See Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* 3 (2d rev. ed., U. N.C. Press 1994) (“To protect the established religion, the Virginia courts regarded certain Baptist conduct as criminal. Preaching in unlicensed houses and preaching without Episcopal ordination were common crimes.”); *id.* at 3-4 (quoting James Madison) (brackets and bracketed language inserted by Levy) (“There are at this [time] in the adjacent country not less than five or six well-meaning men in close Gaol [jail] for publishing their religious Sentiments which in the main are very orthodox.”).

27. See *e.g. id.* at 3 (noting that some Baptists were indicted in colonial Virginia “for not attending the services of the established [Anglican] church.”).

28. See *id.* at 2 (discussing the imprisonment of Baptists in Northampton, Massachusetts, in 1774 for “the crime of refusing to pay taxes in support of the town’s Congregational minister”).

29. See *e.g. The People v. Ruggles*, 8 Johns. 290 (N.Y. 1811) (upholding a conviction for blasphemy). See generally Leonard W. Levy, *Blasphemy: Verbal Offense Against the Sacred, From Moses to Salman Rushdie* (Alfred A. Knopf 1993).

30. See John Witte, Jr., “A Most Mild and Equitable Establishment of Religion”: *John Adams and the Massachusetts Experiment*, 41 *Church & State* 213 (1999) (discussing Massachusetts’ establishment, which lasted until 1833). Germany today maintains a multiple establishment of sorts. See Martin Heckel, *Religious Human Rights in the World Today: A Report on the 1994 Atlanta Conference: Legal Perspectives on Religious Human Rights: Religious Human Rights in Germany*, 10 *Emory Intl. L. Rev.* 107, 108 (1996) (“Germany has developed a system of separation of church and state which is moderate and pro-religious.”).

31. See Pipes, *supra* n. 4, at 22-23.

32. See Stark, *supra* n.10, at 257 (“The proportion of Americans who actually belong to a specific church congregation (as opposed to naming a religious preference when asked) has hovered around 65 percent for many decades — showing no tendency to respond even to major economic cycles.”). But this percentage has not held constant throughout the history of the United States. Indeed, research indicates that the population only became “churched” over time. See Finke, *supra* n. 12, at 15 (“On the eve of the Revolution only about 17 percent of Americans were churched.”).

33. See Leslie Griffin, *Good Catholics Should Be Rawlsian Liberals*, 5 *S. Cal. Interdis. L.J.* 297, 333 (1997) (summarizing the Catholic Thesis):

reality, however, later gave rise to the “hypothesis” of a non-Catholic state, in which faithful Catholics could live in full communion with the Church until by their numbers they were able to establish Catholicism.³⁴

Until the Second Vatican Council, the Church adhered fairly strictly to the thesis and hypothesis, associating the pluralist religious state (in its estimation) with denigration of the commitment to Christ, to the values He espoused, and to the institution He founded. Indeed, the Church’s fundamental difficulty lay in finding a way to deny the possibility of error yet to interact with people who did not fully affirm the Church’s views.³⁵ Thus, when Pius IX issued the *Syllabus of Errors* on December 8, 1864, his objection to the principle of non-establishment was only one of many objections to the threats posed by modernity to the essentially Thomist philosophy that had guided the Church for some time.³⁶ Under this philosophy, the Church affirmed the existence of right and wrong answers to difficult moral questions, independent of empirical justification.³⁷ Among the errors Pius IX identified in the *Syllabus* were the following:

All the truths of religion proceed from the innate strength of human reason; hence reason is the ultimate standard by which man can and ought to arrive at the knowledge of all truths of every kind.³⁸

The method and principles by which the old scholastic doctors cultivated theology are no longer suitable to the demands of our times and to the progress of the sciences.³⁹

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 the other forms of worship.⁴⁰

Because Catholicism is the one true religion, it should be the established religion of the state. Establishment is necessary because the church is never concerned only with the spiritual or the supernatural. The state is to establish the one true church and to govern in accordance with Catholic principles.

Id.

34. See *id.* at 334.

35. See *id.* at 325-27 (discussing the perceived dangers of “intercredal cooperation” and “indifferentism” — the error of becoming indifferent to the truth of Catholicism in the face of alternate teachings).

36. See generally Bokenkotter, *supra* n. 23, at 278-79 (describing the Catholic Church’s “neo-Scholastic” renaissance of the mid-eighteenth century).

37. See John T. McGreevy, *Thinking on One’s Own: Catholicism in the American Intellectual Imagination, 1928-1960*, *J. Am. Hist.* 97, 102 (June 1997) (“The central Thomist claims conspicuously challenged modernist conceptions of knowledge. Truth existed independent of particular investigators.”).

38. Pius IX, *Syllabus of Errors* ¶ 4 (1864) (citing *Allocution Maxima Quidem* (1862); *Encyclical Qui Pluribus* (1846)) <http://www.catholic-pages.com/documents/pius_9/syllabus.htm> (last modified June 21, 1998).

39. *Id.* (citing *Letter to the Archbishop of Munich*, “Taus Libenter” (1863)).

40. *Id.* ¶ 77 (citing *Allocution Nemo Vestrum* (1855)).

The stand the Church appeared to take against both non-establishment and modernity in pronouncements like the *Syllabus of Errors* was understandably troubling to many in the United States. Added to this were other aspects of Catholic doctrine and polity that exposed it to the charge that it was incompatible with liberalism. As a matter of organization, for example, the Church was, and remains, hierarchical and in some ways authoritarian. Only the clergy may preside at certain rites⁴¹; priests are ordained and appointed to parishes by bishops⁴²; bishops are consecrated with the substantial concurrence of the Pope⁴³; and the Pope is empowered to speak infallibly on matters of faith and morals (although he rarely does so).⁴⁴

Anxiety about hierarchicalism and authoritarianism within the Roman Catholic tradition may have been enough on its own to provoke intellectual anti-Catholicism in the United States in the mid-twentieth century. But events of that period powerfully contributed to this sentiment. As the historian Edward Purcell has demonstrated, the challenges presented by Catholic doctrine and polity in the mid-twentieth century were not merely abstract. Instead, they became part of an almost desperate tug-of-war between those devoted to various forms of scientific naturalism and those devoted to Thomist philosophy. On the one hand, with the rise of Bolshevism and fascism and the onset of the Depression, democracies everywhere were in peril, and the prospect of a world governed by substantially totalitarian regimes was real.⁴⁵ On the other hand, modern philosophy and science had tended to rule out one of the simplest responses to totalitarianism, specifically the response that human beings have innate dignity, never subject to the empirical needs of the state.⁴⁶ In the middle of this was conventional Catholic philosophy, which denied

41. See e.g. *Catechism of the Catholic Church* ¶ 1411 (2d ed., Libreria Editrice Vaticana 1994) (regarding transubstantiation) (“Only validly ordained priests can preside at the Eucharist and consecrate the bread and the wine so that they become the Body and Blood of the Lord.”).

42. See *id.* ¶ 1576 (ordination); *Code of Canon Law* ¶ 523 (1983) <http://www.intratext.com/IXT/ENG0017/_PIT.htm> (copyright 2003) (appointment).

43. See *Catechism of the Catholic Church*, *supra* n. 41, ¶ 1559 (“In our day, the lawful ordination of a bishop requires a special intervention of the Bishop of Rome, because he is the supreme visible bond of the communion of the particular Churches in the one Church and the guarantor of their freedom.”).

44. See *id.* ¶ 891 (quoting *The Dogmatic Constitution on the Church Lumen Gentium* ¶ 25 <http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html> (Nov. 21, 1964) (“The Roman Pontiff, head of the college of bishops, enjoys this infallibility in virtue of his office, when, as supreme pastor and teacher of all the faithful ... he proclaims by a definitive act a doctrine pertaining to faith or morals.”)).

45. See Edward A. Purcell, Jr., *The Crisis in Democratic Theory: Scientific Naturalism & the Problem of Value* 125 (U. Press of Ky. 1973) (noting the many European nations that welcomed or endured dictators in the period preceding the Second World War, including Portugal, Spain, Italy, Greece, Turkey, Russia, Poland, Czechoslovakia, Belgium, Austria, Germany, Hungary, and Yugoslavia); *id.* at 125-26 (noting discomfort with representative government in England and France during this period) (“The situation was indeed perilous, if even the two oldest and strongest European democracies were in grave trouble.”); *id.* at 127 (noting similar developments in the United States) (“As the crisis of the depression deepened, some Americans called openly for the reorganization of the government, even to the point of giving dictatorial powers to the president or some special board.”).

46. See *id.* at 156-58 (quotation marks omitted) (discussing and quoting the argument, made by Robert Hutchins, President of the University of Chicago, that Americans “were not prepared to defend [the principles underlying democracy], nor presumably democracy itself, ... since for forty years and more our intellectual leaders have been telling us they are not true”).

the validity of scientific naturalism because of its Thomistic underpinnings,⁴⁷ but which was also readily associated with authoritarian regimes because of its absolutism.⁴⁸ Given the stakes, this was no ordinary academic squabble. Writing in the *American Bar Association Journal*, for example, one Roman Catholic scholar compared Oliver Wendell Holmes to Adolf Hitler:

[Justice Holmes'] basic principles lead straight to the abasement of man before the absolutist state and the enthronement of a legal autocrat ... who may perhaps be as genial as Holmes, benevolently paternalistic, perhaps grim and brutal as any Nazi or Japanese totalitarian, but none the less an autocrat in the lineal succession from Caesar Augustus and Nero through Hobbes and Austin and Mr. Justice Holmes.⁴⁹

And, in a manner of speaking, the accusation was returned. A professor of law at the University of Chicago suggested that the Catholic Church had "probably the best claim to the invention of fascism because it gave Mussolini all his ideas and made and protected Franco."⁵⁰

Similar tensions arose in the mainstream press,⁵¹ in the political arena,⁵² and in the courts.⁵³ Fear of Catholic power and authoritarianism in the United States was real, and was widely distributed in the nation's population, including the well-educated.⁵⁴ Indeed, the following philippic appeared in the *Christian Century*, a mainline Protestant periodical:

The leaders of the Catholic Church in America have for the first time begun to plan and function *as a unit* on questions which affect the status of the church in our national life. In this period they have developed an organizational structure which enables them to

47. See *id.* at 169:

[T]he Catholics never faced the crisis of democratic theory in the same way that other American intellectuals did. Because of the close union between their religious faith and their philosophical training, they had a ready justification for democracy, just as they had a ready justification for an entire system of morality, based on theology, philosophy, and simple religious faith.

48. See *id.* at 203.

49. See Ben W. Palmer, *Holmes, Hobbes and Hitler*, 31 ABA J. 569, 573 (1945).

50. Purcell, *supra* n. 45, at 203 (quoting Malcolm Sharp, *Positive Positivist*, Daily Maroon (Nov. 14, 1940)).

51. See *infra* n. 55 and accompanying text.

52. See Lerond Curry, *Protestant-Catholic Relations in America: World War I through Vatican II* 37-40 (U. Press of Ky. 1972) (discussing President Roosevelt's designation of Myron C. Taylor to serve as his "personal representative" to the Vatican); *id.* at 47-49 (discussing President Truman's appointment of General Mark W. Clark to serve as ambassador to the Vatican).

53. See generally John C. Jeffries & James E. Ryan, *A Political History of the Establishment Clause*, 100 Mich. L. Rev. 279, 280 (2001); Thomas C. Berg, *Anti-Catholicism and Modern Church-State Relations*, 33 Loy. U. Chi. L.J. 121, 123 (2001); Ira C. Lupu, *The Increasingly Anachronistic Case Against School Vouchers*, 13 Notre Dame J.L., Ethics & Pub. Policy 375, 385-86 (1999).

54. See generally McGreevy, *supra* n. 37.

do this systematically, thoroughly, and without intermission. They have cast off the inferiority complex which naturally characterizes an alien minority and have begun boldly and aggressively to assert their power.

It is only within this generation that the Roman Catholic Church has come to feel at home in the United States. Now that it speaks the “American” language and has raised up native leaders who are loyally followed by millions, it is for the first time in a position to make history — American history.⁵⁵

One can find somewhat similar language about the threat of Islam in the United States, although not nearly as ominous. Daniel Pipes, for example, has written that:

It hardly needs pointing out that [the vision of an Islamic United States] is, to say the least, farfetched, or that Islamists are deluding themselves if they think that today’s newborns will be attending college in an Iranian-style United States. But neither is their effort altogether quixotic: their devotion, energy, and skill are not to be questioned, and the larger Muslim-American community for which they claim to speak is assuredly in a position, especially as its numbers grow, to affect our public life in decisive ways.⁵⁶

Needless to say, the worst fears regarding Roman Catholicism in the mid-twentieth century did not prove prescient. For one thing, it is difficult to know how willing Catholics in the United States ever were to submit to ecclesiastical authority.⁵⁷ Indeed, it is quite possible that they affected the Church more than it affected them, perhaps most significantly by convincing leaders of the Church to abandon establishmentarianism.⁵⁸ Moreover, the Second Vatican Council significantly transformed the Church in a number of respects. These included, as noted earlier, the formal rejection of establishmentarianism,⁵⁹ as well as the (relative) demotion

55. Harold E. Fey, *Can Catholicism Win America?* *Christian Cent.* 1378 (Nov. 29, 1944) *reprinted in* Curry, *supra* n. 52, at 43.

56. Pipes, *supra* n. 4, at 24.

57. See McGreevy, *supra* n. 37, at 102 & n. 18.

58. See Bokenkotter, *supra* n. 23, at 397-98 (discussing the work of the American Jesuit John Courtney Murray in persuading the leaders of the Church to abandon the idea that “error has no rights” and to recognize the role of conscience in the discovery of truth). See generally *id.* at 338-39 (discussing European and papal reaction to so-called “Americanism”).

59. *Second Vatican Council, Declaration on Religious Freedom Dignitatis Humanae on the Right of the Person and of Communities to Social and Civil Freedom in Religious Matters* ¶ 1 <http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html> (Dec. 7, 1965) (footnote omitted):

A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men

of Thomist thought.⁶⁰ In the latter regard, the Church restated its position on the immutability of important philosophical principles, not by denying their immutability, but instead by emphasizing the capacity of fallible human beings to grow in their understanding of such principles:

Just as it is in the world's interest to acknowledge the Church as an historical reality, and to recognize her good influence, so the Church herself knows how richly she has profited by the history and development of humanity. The experience of past ages, the progress of the sciences, and the treasures hidden in the various forms of human culture, by all of which the nature of man himself is more clearly revealed and new roads to truth are opened, these profit the Church, too. For, from the beginning of her history she has learned to express the message of Christ with the help of the ideas and terminology of various philosophers, and has tried to clarify it with their wisdom, too. Her purpose has been to adapt the Gospel to the grasp of all as well as to the needs of the learned, insofar as such was appropriate.⁶¹

Thus, the Church demonstrated a willingness to engage in dialogue with various philosophical communities.

The last issue to be addressed in this essay is whether Islam will interact with the political culture of the United States in much the same manner as Roman Catholicism. There is reason to hope in the affirmative. Although Islam has been said to display establishmentarian impulses in the United States, Roman Catholicism did as well, and the leaders of the latter Church, influenced in no small way by our political culture, came to reject such impulses in favor of a voluntaristic approach to religious growth. Thus, the experience of Catholicism in the United States appears to have contributed to the transformation of that tradition in a profound, and perhaps lasting, way. Perhaps this transformation would have taken place without benefit of the American experience, but the historical record indicates that the influence of that experience on the transformative process was critical.

In addition, we should always bear in mind that the interaction of religious and political systems is a two-way street. Although the Roman Catholic Church has ameliorated the rough rhetorical edges of its Thomist philosophy, it has not abandoned that philosophy. Moreover, the positions it takes in accordance with that basic philosophy, such as its positions on a consistent ethic of life, play a signifi-

should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty.

60. See *Second Vatican Council, Pastoral Constitution on the Church in the Modern World Gaudium et Spes* ¶ 44 (1965) <http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vatii_cons_196512-07_gaudium-et-spes_en.html> (Dec. 7, 1965).

61. *Id.*

cant, although perhaps indirect, role in the American political process.⁶² In other words, although the Catholic Church has moved beyond establishmentarianism, it has not abandoned its desire to bear witness to the principles of the faith to which it is consecrated. With this in mind, we might similarly imagine that, were Islam to re-evaluate some of its more potentially illiberal policies in the crucible of the American political experiment, it too might continue to emphasize certain principles within the context of that experiment, indeed with the renewed vigor that arises from an integrationist frame of mind.

62. See John Paul II, *Encyclical Letter Evangelium Vitae* ¶ 56 <http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp_ii_enc_25031995_evangelium-vitae_en.html> (Mar. 25, 1995) (citing the *Catechism of the Catholic Church* ¶ 2267 (Eng. trans. 1994)) (opposing capital punishment in many, although not all, contexts):

If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority must limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person.

See also *id.* ¶ 58 (defining “procured abortion” as an “unspeakable crime”); *id.* ¶ 65 (confirming that “euthanasia is a grave violation of the law of God, since it is the deliberate and morally unacceptable killing of a human person”); *id.* ¶ 66 (“[S]uicide, when viewed objectively, is a gravely immoral act.”).