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Putting the World Back Together - Recovering Faithful Citizenship in a Postmodern Age

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PUTTING THE WORLD BACK TOGETHER? RECOVERING FAITHFUL CITIZENSHIP IN A POSTMODERN AGE ©

Harry G. Hutchison¹

REVIEW ESSAY:

RENDER UNTO CAESAR: SERVING THE NATION BY LIVING
OUR CATHOLIC BELIEFS IN POLITICAL LIFE

BY CHARLES J. CHAPUT, O.F.M. CAP.

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I. INTRODUCTION

Archbishop Chaput’s book, *Render Unto Caesar*, signifies the continuation of an impressive and persistent debate about what it means to be Catholic and how Catholics should live out the teachings of the Church in political life in our pluralistic society.² This query, much like H.L.A. Hart’s investigation—what is law³—sparks a perplexing set of questions. Probing such questions, the Roman Catholic Church teaches the incomparable

1. Professor of Law, George Mason University School of Law. For helpful comments on earlier drafts, I am grateful to Elizabeth McKay, and Lucia Silecchia. The usual disclaimer applies. Research support was provided by the Law and Economics Center at George Mason University School of Law. © Harry G. Hutchison.

2. See, e.g., *RECOVERING SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES ON AMERICAN LAW* (Michael A. Scaperlanda & Teresa Stanton Collett eds., 2007) [hereinafter *RECOVERING SELF-EVIDENT TRUTHS*] and *RICHARD JOHN NEUHAUS, CATHOLIC MATTERS: CONFUSION, CONTROVERSY, AND THE SPLENDOR OF TRUTH* (2006).

3. H.L.A. HART, *THE CONCEPT OF LAW* 1 (1994).

worth of the human person and the inestimable value of human life.⁴ At the same time, new threats surface in the form of legislation and judicial interpretations permitting choices that were once considered criminal to be accepted.⁵ This trend has been accompanied, if not facilitated, by judicial hubris⁶ in the form of United States Supreme Court decisions that have contributed greatly to the privatization of religion⁷ and the promotion of novel conceptions of individual singularity.⁸ In light of such threats and trends, and given the likelihood that some Catholics, guided by an ongoing process of assimilation, have failed to contest these developments, Archbishop Chaput offers a reply to Aristotle and Professors Scaperlanda and Collett's dense interrogation: how ought we to live together.⁹ Implicitly, this query summons the reader to examine Pope Benedict XVI's recent encyclical, *Spe Salvi*, stating that "every generation has the task of engaging anew in the arduous search for the right way to order human affairs."¹⁰ Equally important, such questions and the debate from which they spring are not unique to the United States.¹¹

This sweltering conversation ensues against a background wherein religion and religious belief can be seen as an interruption of, and a menace to, contemporary society's commitment to radical autonomy and its corollary, self-amusement. For many, self-amusement may be a partial solution to a pervasive sense of purposelessness that affirms the Hobbesian view that mankind is called to achieve no supreme good, and hence, a good life consists not in possessing any final good but in simply satisfying our restless desires as they spring up.¹² For others, as writer David Foster Wallace suggests, the most significant issue is the urgent search for reasons to live to the age of thirty without wanting to shoot oneself in the head.¹³ Whether

4. Pope John Paul II, Encyclical Letter, *Evangelium Vitae* (1995) ¶ 2, available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html.

5. *Id.* at ¶ ¶ 3-4.

6. See, e.g., Nelson Lund, *Montesquieu, Judicial Degeneracy, and the United States Supreme Court*, George Mason Law & Economics Research Paper No. 09-12, 1-49 (2009), available at http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=1344487.

7. Richard Myers, *The Privatization of Religion and Catholic Justices*, 47 J. OF CATHOLIC L. STUDIES 157, 158 (2008).

8. Lund, *supra* note 6, at 4-5 (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992)).

9. MICHAEL A. SCAPERLANDA & TERESA STANTON COLLETT, *Introduction to RECOVERING SELF-EVIDENT TRUTHS*, *supra* note 2, at 1, 2.

10. Pope Benedict XVI, Encyclical Letter, *Spe Salvi* ¶ 25 (2008), available at http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20071130_spe-salvi_en.html.

11. See, e.g., Cardinal Murphy-O'Connor Criticizes Secular intolerance of Catholic Beliefs, CATHOLIC NEWS AGENCY, (Dec. 9, 2008), available at <http://www.catholicnewsagency.com/new.php?n=14558> (discussing intolerance in Britain). See also JOSEPH RATZINGER & MARCELLO PERA, WITHOUT ROOTS: THE WEST, RELATIVISM, CHRISTIANITY, ISLAM (Michael F. Moore trans.) (2006) [hereinafter WITHOUT ROOTS].

12. JOHN GRAY, POST-LIBERALISM: STUDIES IN POLITICAL THOUGHT 4-5 (1996).

13. See, e.g., *David Foster Wallace on Life and Work*, WALL ST. J., Sept. 19, 2008, at W14, available at <http://online.wsj.com/article/SB122178211966454607.html#printMode> (adapted from a speech given by David Foster Wallace to the 2005 graduating class at Kenyon College).

one is drawn to Hobbes, writing at the start of the modern age¹⁴ or Wallace, lecturing in this contemporary moment, either approach makes it difficult for individuals and society to focus coherently on neuralgic issues.

The acceleration of trends favoring individual singularity in our own age signals that many humans prefer and perhaps ought to prefer to distance themselves from a community and a tradition representing shared values. Instead of accepting the real world of human history, they see themselves as an abstract instance of the human species,¹⁵ an autonomous being that remains at the absolute center of the universe.¹⁶ Against this inclination, and venturing to engage a nation that is exemplified by a diversity of incommensurable values and world-views,¹⁷ Charles Chaput stresses the special responsibility of Catholic public officials in sorting out the good and calls upon all Catholics to refrain from self-censorship regarding issues that ought to concern them.¹⁸ This emphasis gives rise to questions whether Catholic teaching is offered as an imperative or merely as a request. Such questions are important because, after all, an open debate has broken out among faithful Catholics about theological issues¹⁹ despite Avery Cardinal Dulles' contention that the Constitution of the Church maintains that the judgments of the pope and of individual bishops, even when not infallible, are to be accepted with religious submission of mind.²⁰ This quandary, tied to the issue of authority, is not fully articulated in *Render Unto Caesar*.

Defensibly, Archbishop Chaput discards the temptation to engage in a form of moral equivalence that makes no ethical distinction between different kinds of issues involving human life and dignity.²¹ Instead, Archbishop Chaput, like other Catholic bishops, is taken with the opinion that nations are not machines or equations but are like ecosystems wherein "[a] people's habits, beliefs, values and institutions intertwine like a root system."²² Poisoning one part through bad laws and bad court decisions will eventually poison all and produce degraded political thought and behavior.²³

Questionably, Archbishop Chaput fails to adequately link the book's purpose to the difficulties associated with the fragmentation of the philosophical and cultural history of the West and the resulting secularization of

14. GRAY, *supra* note 12, at 3.

15. *Id.* at 254.

16. David Foster Wallace on *Life and Work*, *supra* note 13, at W14.

17. GRAY, *supra* note 12, at 253 (specifying the characteristics of cultural pluralism).

18. CHARLES CHAPUT, *RENDER UNTO CAESAR: SERVING THE NATION BY LIVING OUR CATHOLIC BELIEFS IN POLITICAL LIFE* 2-4 (2008).

19. Avery Cardinal Dulles, *The Freedom of Theology*, *FIRST THINGS*, May 2008, 19, 19-23, available at <http://www.firstthings.com/article/2008/04/001-the-freedom-of-theology-11> [hereinafter Cardinal Dulles, *The Freedom of Theology*].

20. *Id.* at 19.

21. Michael Simons, *Catholic Teaching, Catholic Values, and Catholic Voters: Reflections on Forming Consciences for Faithful Citizenship*, (St. John's Univ. Legal Research Papers Series, Paper No. 08-0147), available at <http://ssrn.com/abstract=1273621>.

22. *Living the Gospel of Life*, Pastoral Statement of the U.S. Catholic Bishops (1998) ¶ 9, available at <http://www.usccb.org/prolife/gospel.shtml>.

23. *Id.*

public discourse.²⁴ Such a linkage would place the problems, threats and issues that he has uncovered in a clearer context enabling the book to be seen properly as a response to centuries-long developments that culminate in the common wisdom of our time.²⁵ These developments involve the consequence of the Enlightenment, the elevation of reason as an abstraction followed by a subsequent flight from reason that simultaneously struck theology from the branch of knowledge.²⁶ This last maneuver is premised, at least in part, on the questionable epistemological distinction between faith and reason.²⁷ Additionally, Archbishop Chaput does not consider the possibility that an increasing scale of government will invite conflict with religious people and communities. This process occludes religious expression in the public square.

On a parallel plane, Professor Richard Pildes confirms that authoritarianism is an inherent structural tendency of democratic regimes.²⁸ John Gray intuitively offers a complementary view, illustrating that the “lesson of Hobbesian theory for us is that the modern state is weak because it aims too high and has grown too large. Worse, the modern state has failed in its task of delivering us from a condition of universal predation or war of all against all into the peace of civil society.”²⁹ Thus, “[i]n its weakness the modern state has recreated in a political form that very state of nature from which it is the task of the state to deliver us.”³⁰ This state of nature, augmented by further accretions in the size and scale of government, is likely to vitiate institutions of civil society, including the church.

Troublingly, Archbishop Chaput fails to grapple with the possibility that some members of the church hierarchy itself—by embracing American

24. For two such efforts, see ALASDAIR MCINTYRE, *AFTER VIRTUE*, (2d ed.1984) [hereinafter MCINTYRE, *AFTER VIRTUE*] and CHRISTOPHER SHANNON, *CONSPICUOUS CRITICISM: TRADITION, THE INDIVIDUAL, AND CULTURE IN MODERN AMERICAN SOCIAL THOUGHT* (2006). See also Stanley Hauerwas, *The Virtues of Alasdair MacIntyre*, *FIRST THINGS*, October, 2007, at 35, 36, available at <http://www.firstthings.com/article/2007/09/004-the-virtues-of-alasdair-macintyre-6> (McIntyre shows that during certain key episodes in history, philosophy fragmented and largely transformed morality).

25. For discussion of linkage between secularization and common wisdom of our time, see Harry G. Hutchison, *Shaming Kindergarteners? Channeling Dred Scott? Freedom of Expression Rights in Public Schools*, 56 CATH. UNIV. L. REV., 361, 363-64 (2007) [hereinafter Hutchison, *Shaming Kindergarteners?*] (citing LARRY ALEXANDER, *IS THERE A RIGHT OF FREEDOM OF EXPRESSION?* 152 (2005) (the secularized public square: (A) mirrors the prior secularization of the university grounded in the deduction that pedagogy has stripped theology from the branch of knowledge and mandates that it and religion to be understood as an elaboration of subjective belief and (B) the public square reflects the conclusion that there are objective moral truths that reason can disclose without appeals to faith and revelation)).

26. James R. Stoner, Jr., *Theology as Knowledge*, *FIRST THINGS*, May 2006, at 21, available at <http://www.firstthings.com/article/2007/01/theology-as-knowledge-33>.

27. ALEXANDER, *supra* note 25, at 152.

28. See, e.g., RICHARD H. PILDES, *The Inherent Authoritarianism in Democratic Regimes*, in *OUT OF AND INTO AUTHORITARIANISM* 125-151 (Andras Sajó ed., 2002) [hereinafter PILDES, *Inherent Authoritarianism*].

29. GRAY, *supra* note 12, at 4.

30. *Id.*

Progressivism from which today's liberalism descended³¹—have contributed indirectly but no less inevitably to the expansion of government and to the growth of authoritarianism, and have helped to spawn economic and social nationalism (statism) linked in part to the residue of the French revolution.³² Taken together, the fragmentation of philosophical discourse, the rise in the size and power of the state, and the elevation of progressive thought that undergirds the nation's authoritarian impulse, prompt a consequent reduction in space for authentic Catholic voices to be heard in the public square. In fairness to *Render Unto Caesar*, Archbishop Chaput does not claim to offer an academic study or provide any grand theory,³³ and accordingly, his omissions are understandable.

That said, Archbishop Chaput maintains that recovery is necessary in order to propel the church to its proper place in the lives of Catholics while simultaneously allowing the church and its people to develop an appropriate relation with and attitude toward public policy. This potentially potent progression is vital in elevating the common good and achieving faithful citizenship. Archbishop Chaput's centripetal focus—the necessity of recovery—recalls Robert Louis Wilken's luminous claim that “[m]emory is an integral part of Christian faith but unattached to things it is infinitely malleable, even evanescent, like a story whose veracity is diluted as its particulars are forgotten. Without tangible links to the past mediated through communities tethered to the earth, something precious is lost.”³⁴ Equally true, a linkage to the past mediated by communities signifies that human life consists of something more than a random bundle of preferences cabined solely by subjectivism.³⁵

Though it is doubtful that all Americans, but particularly subjectivists, will see the need to rediscover what has been lost, Archbishop Chaput accepts the claim that American Catholics should be vigorous participants in the struggle to recover the nation's identity and future.³⁶ This project rotates on two planes: an internal focus aimed at recapturing Catholics themselves and an external focus directed toward igniting faithful Catholics to

31. JONAH GOLDBERG, *LIBERAL FASCISM: THE SECRET HISTORY OF THE AMERICAN LEFT FROM MUSSOLINI TO THE POLITICS OF MEANING* 15, 140 (2007) (Father Coughlin, an influential advocate of economic nationalism, was lionized by the progressive bloc of Congress. In 1933, the FDR administration was under considerable pressure to include Father Coughlin in the U.S. delegation to a major economic conference in London. This move included a petition from ten senators and seventy-five congressmen declaring that Coughlin had the confidence of millions of Americans.) [hereinafter GOLDBERG, *LIBERAL FASCISM*]; see also Harry G. Hutchison, Book Review, *Work The Social Question, Progress and the Common Good?* 48 J. OF CATHOLIC LEGAL STUDIES, 111-14 (forthcoming 2009) [hereinafter Hutchison, *Work, The Social Question*] (discussing Father Ryan's contribution the New Deal).

32. Revolutionaries ever since Rousseau have always sought to diminish the influence of the church. See GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 38-43 (describing efforts to diminish the influence of the church in France, Italy, Poland and Germany).

33. CHAPUT, *supra* note 18, at 5-6.

34. Robert Louis Wilken, *Christianity Face to Face with Islam*, FIRST THINGS, January 2009, at 19, 23, available at <http://firstthings.com/article/2008/12/2001-christianity-face-to-face-with-islam-12>.

35. See NEHAUS, *CATHOLIC MATTERS*, *supra* note 2, at 145-46.

36. CHAPUT, *supra* note 18, at 2.

participate fully in a mission to reclaim the nation's religious voice in the face of hostile counterclaims. The success of this project might propel the nation to recapture its rightful identity and future. In order to attain the first objective—recapturing Catholics—Archbishop Chaput offers a serious conversation, which, coherently with Stephen Carter's scholarship, draws Catholics away from a simple-minded perspective wherein law and politics so trivialize religion that it, and God, can be seen as merely a hobby.³⁷

In order to achieve the second objective—enabling Catholics as faithful citizens to assist the nation in reclaiming its identity—Chaput returns to America's early history and founding documents. He reasons that faithful Catholics have obligations as believers and duties as citizens.³⁸ This prospective and conjoined obligation, he maintains, ought to impel Catholics to rediscover the purpose of our time in the world, the lessons of our history, the responsibilities of citizenship as well as the implications of the Christian faith for achieving the goals associated with faithful citizenship.³⁹

Part II of this Review examines Archbishop Chaput's argument, which is based on an understanding of the place of religion in the founding history of the United States, and the remarkable story of the Roman Catholic Church in America. He observes that the United States is riven with a struggle regarding its identity and future that is connected, in part, to an ongoing debate about the role of religion in public life and the nation's lawmaking. The consequences of this struggle show that the prevailing terms of debate disfavor faithful Catholics in living out their proper role in the nation's collective life. While America exhibits a willingness to listen selectively and occasionally to Catholic viewpoints,⁴⁰ the *zeitgeist* gives rise to evidence of an inadvertent or deliberate effort to eradicate all discomforting religious references from the public square.⁴¹ Coincident, or complicit with the forces of eradication, Catholic public officials and Catholic citizens willingly silence themselves in the face of assaults on human rights and human dignity.

Part III examines Archbishop Chaput's emphasis on the possibility of recapturing the conditions necessary for reclaiming what has been lost in the United States. The viability of the author's prescriptions, seen in the context of the subversive power of religion and the hegemonic power of modern liberalism,⁴² may be in doubt. Any effort, however skilled, directed toward enlarging the influence of Catholic teaching within the political sphere of an increasingly pluralistic nation must confront the power of postmodernism. Postmodern language and worldviews, while often at odds

37. STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION*, 23-43 (1993) [hereinafter CARTER, *THE CULTURE OF DISBELIEF*].

38. CHAPUT, *supra* note 18, at 12.

39. CHAPUT, *supra* note 18, at 12.

40. I am indebted to Professor Silecchia for this observation (email communication on file with the author, Mar. 30, 2009).

41. Hutchison, *Shaming Kindergarteners?*, *supra* note 25, at 361.

42. See, e.g., Harry G. Hutchison, *Liberal Hegemony? School Vouchers and the Future of the Race*, 68 MO. L. REV. 559 (2003) [hereinafter Hutchison, *Liberal Hegemony*].

with the church's enduring commitment to objective truth derived from its magnificent anthropology,⁴³ are instrumental in expanding the power of democratic states committed to modern liberalism. Properly appreciated, Archbishop Chaput's project is incompatible with modern liberalism.

Other problems surface as well because all attempts to put the world back together must confront a daunting predicate: rediscovery requires the reader to willingly accept the claim that something worth saving has been lost. For many Catholics, as Father Neuhaus' verifies, this may be a difficult proposition because "the important thing is that Catholics not be put in an awkward position, that they fit in, that, if others discover that we are, incidentally, Catholics, they that be reassured that we are just like everybody else."⁴⁴ Judged by daily life in America, and the countless everyday choices Americans make, it is not at all clear that people fueled by self-absorption, indifference, consumerist excess and overconfidence,⁴⁵ whether Catholic or secular, have lost something worth recovering.

As discussed in this Review, throughout *Render Unto Caesar*, Archbishop Chaput provides an interesting and generally well-argued narrative, which calls upon all Catholics to live lives of integrity by refusing to falsely divide the institutional church from the imaginary real church and to resist unreflective assimilation into American culture when such integration produces distortions in Catholic life.⁴⁶ Moreover, he rightly critiques the indifference, institutionalism and lack of courage among bishops that led to the 2002 national sex-abuse crises and that intensified an erosion of lay confidence in the church.⁴⁷ Thus, his claim that bishops must first seek holiness themselves and to then lead their people to that same holiness rings true.⁴⁸ This admonition is reinforced by his poignant call to bishops to get to know their people, truly love their people and speak the truth with clarity and courage.⁴⁹ Still, problems persist.

First, this Review shows that *Render Unto Caesar* fails to grapple with the probability that the values of democracy and pluralism in modern liberal democracies, including our own, conduce to a kind of shallowness that represents the metamorphosis of liberalism into cosmopolitanism.⁵⁰ As we shall see, this metamorphosis appears to be unavoidable and correlates with the authoritarian impulse inherent in liberal societies exemplified by America's New Deal and its progeny.⁵¹ Transformed by postmodern discourse, which rejects the truth discovered within a community that shares a

43. See, e.g., LORENZO ALBACETE, *A Theological Anthropology of the Human Person*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 2, at 39-51; Benedict M. Ashley, O. P., *A Philosophical Anthropology of the Human Person*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 2, at 52-65.

44. NEHAUS, *CATHOLIC MATTERS*, *supra* note 2, at 120.

45. *Living the Gospel of Life*, *supra* note 22, at ¶ 3.

46. CHAPUT, *supra* note 18, at 184.

47. *Id.* at 208.

48. CHAPUT, *supra* note 18, at 208.

49. *Id.*

50. ALEXANDER, *supra* note 27, at 165-69.

51. See, e.g., GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 158 (describing the New Deal as a form of progressivism, liberalism and fascism, which is nothing more than an ideology of power).

common tradition, shallowness often materializes as intolerance toward deep difference. Thus appreciated, the modern liberal state must produce the conditions necessary to constrain authentic difference including principled religious difference, particularly when such difference is grounded in the audacious claims of theological anthropology⁵² just as surely as it must constrain freedom of speech.⁵³ The tendency to constrict the expression of authentic difference is made viable by enlarging the size and power of government, which coincides with and creates the conditions necessary to facilitate a war of all against all. Efforts to constrain genuine difference may be enabled by moral pluralism, which provides a platform for elastic adjudication and statutory construction that discloses a flight from a precommitment to truthfulness as well as an isomorphic shift towards hypocrisy by the nation's elected and appointed ethnarchs.⁵⁴

Second, by framing his analysis in a conflict that is both internal and external to the Roman Catholic Church, Archbishop Chaput fails to notice that for many Catholics, the real issue is the modern problem of compartmentalization. This difficulty afflicts all citizens, religious and nonreligious, who participate in public life. Compartmentalization, as philosopher Alasdair MacIntyre rightly notes, lends itself to a separation between philosophical thought and everyday life.⁵⁵ This contemporary shift encourages the belief that engaging in philosophical thought and inquiry "are one thing, [but] the vicissitudes of everyday activity quite another and that any connections between them are incidental and accidental."⁵⁶

Finally, though much has been written about how the Catholic tradition condemns both socialism and unbridled capitalism,⁵⁷ this Review inspects the participation by some church leaders in the modern effort to expand the power of the state. While many church hierarchs may have been driven by good intentions, the pernicious consequences of their efforts hinder the witness of the church in the public square and in the lives of the faithful. These efforts can be tied to the progressive turn in church thinking best exemplified by Father Coughlin and Father Ryan's prominent

52. RECOVERING SELF-EVIDENT TRUTHS, *supra* note 2, at 42-44 (stating that theological anthropology ought to be distinguished from all other anthropologies because all other alternatives only provide partial views of the human person).

53. See *infra* Part III, C.

54. See, e.g., DAVID RUNCIMAN, POLITICAL HYPOCRISY: THE MASK OF POWER, FROM HOBBS TO ORWELL AND BEYOND 2-6 (2008).

55. ALASDAIR MACINTYRE, EDITH STEIN: A PHILOSOPHICAL PROLOGUE 1913-1922 5 (2006) [hereinafter MACINTYRE, EDITH STEIN].

56. *Id.*

57. See Lucia A. Silecchia, *Preferential Option for the Poor: An Opportunity and a Challenge for Environmental Decision-Making*, 5 UNIV. OF ST. THOMAS L. J. 87, 130 (2008) (Pope Pius XI, Encyclical Letter, *Quadragesimo Anno* (1931) ¶ 88, available at http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html; Pope John Paul II, Encyclical Letter, *Sollicitudo Rei Socialis* (1987) ¶ 21, available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis_en.html).

role during the New Deal. Moreover, since contemporary evidence⁵⁸ sustains the deduction that modern liberalism is firmly rooted in Catholic progressivism,⁵⁹ any serious effort aimed at putting the world back together and restoring Catholics to their role as faithful citizens must examine and confront the progressive turn.

II. ARCHBISHOP CHAPUT'S ARGUMENT

Archbishop Chaput contends that in order to become a faithful Catholic in American political life, Catholics must recapture the following four core values: (A) an accurate understanding of history,⁶⁰ (B) a vibrant faith including a proper understanding of Jesus Christ,⁶¹ (C) the ultimate priority of religious matters in the context of the practical autonomy of civil authority and religious authority⁶² as part of a system of limited government under God,⁶³ and (D) a healthy skepticism about both politics and democracy⁶⁴ grounded in the notion that the secular depends on virtues that it cannot generate from within itself.⁶⁵ Admitting that an excellent guide "to Catholic citizenship and public leadership already exists[.]" Chaput presses the debate by urging Catholic citizens to return to such documents as *Living the Gospel of Life*,⁶⁶ and *Evangelium Vitae*,⁶⁷ which taken together "provide a common architecture for humane political thought and boundaries for government action that cannot be crossed without brutalizing human dignity."⁶⁸ "No other document ever issued by the American bishops on political responsibility has the clarity, coherence and force of *Living the Gospel of Life*[" yet sadly "few Catholics seem to know about it."⁶⁹

Sensibly, Archbishop Chaput avoids: (A) nostalgia for a Catholic golden age,⁷⁰ (B) the endorsement of a particular political party because party loyalty is a lethal form of laziness⁷¹ and (C) emphasizing the often

58. See Thomas C. Berg, *Pro-Life Progressivism and the Fourth Option in American Public Life*, 2 UNIV. OF ST. THOMAS L. J. 235-245 (connecting the Catholic Church's social justice tradition, pro-life feminism, left-wing evangelical Protestants and left-wing Jewish, atheist, civil libertarians with the progressive turn in Church thinking including anti-poverty programs, governmental-protection measures, workers' rights, child-care, and peace in the name of promoting human dignity). Many of these causes can be linked to modern liberalism. See also Lew Daly, *In Search of the Common Good: The Catholic Roots of American Liberalism*, BOSTON REVIEW, May 2007, at 23, available at <http://bostonreview.net/BR32.3/daly.php>.

59. See Daly, *supra* note 58, at 23-27.

60. *Id.* at 62.

61. *Id.* at 64.

62. *Id.* at 70.

63. *Id.* at 71 (stating that government is limited because politics by nature is limited, just as life in this world is limited).

64. *Id.* at 71-72.

65. *Id.* at 72.

66. *Living the Gospel of Life*, Pastoral Statement of the U.S. Catholic Bishops, (1998), available at <http://www.usccb.org/profile/gospel.shtml>.

67. Pope John Paul II, *supra* note 4.

68. CHAPUT, *supra* note 18, at 2-3.

69. *Id.* at 3.

70. *Id.* at 4.

71. *Id.* at 4.

Catholic appeal to progressive politics as the solution to human ills.⁷² Rather than embracing the progressive politics of the liberal wing of the Catholic Church made tangible by Father Coughlin's⁷³ and Father Ryan's influential leadership during America's New Deal period,⁷⁴ Archbishop Chaput insists that politics—the pursuit of justice and the common good—is simply part of the history of salvation that attempts to include everyone.⁷⁵ Equally clear, the author maintains that the nation has retained a divided heart about religion over the last fifty years.⁷⁶ This contention applies principally to what has been called the thinking classes, who driven by their self-reliance and overconfidence, have seceded not just from the common world around them but from reality itself.⁷⁷ Asserting that the Catholic emphasis on the common good can never induce Catholics to silence themselves on foundational issues of faith and human dignity, Archbishop Chaput offers a departure from prevailing opinions by suggesting that tolerance cannot be allowed to reduce faith to a private idiosyncrasy.⁷⁸

As a prelude for his analysis, Archbishop Chaput surveys the menacing signs on the horizon. Many salient observations are driven by the evolution of Europe from a largely Christian continent to a contemporary venue, which has essentially excluded God.⁷⁹ Asserting that a public life that excludes God kills the human spirit instead of enriching it, Chaput considers the impending destination of America's democracy in the context of the European experience.⁸⁰ Consistent with Cardinal Philippe Barbarin's intuition, Archbishop Chaput insists that "democracy is only a means for pursuing justice; it isn't God, it isn't an end in itself, and it can sometimes lose its moral compass."⁸¹ While it is possible to show that democracy is simply the god that failed,⁸² Archbishop Chaput demonstrates that excessive dependence on democracy, coupled with the exclusion of Christian religion from public life, can lead to an identity crisis.⁸³ Instead of creating a secularist paradise, this process has led to a rise in crime,

72. For an exposition on the failure of progressive politics and its human costs, see Hutchison, *Work, The Social Question*, *supra* note 31, at 98-111.

73. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 137-145 (Showing Father Coughlin's push for an expansion in government power was so ferocious that he attacked centrist Democrat Al Smith, the first Catholic to win a major party's presidential nomination and a bitter foe of the New Deal. This led liberals and liberal Catholics to turn to Father John Ryan to provide a Catholic defense of FDR's policies).

74. Hutchison, *Work, The Social Question*, *supra* note 31, at 98-111 (describing how Father Ryan's unconstrained moral defense of state intervention succeeded in yielding servitude and human suffering).

75. CHAPUT, *supra* note 18, at 6.

76. *Id.* at 7.

77. *Id.* at 8.

78. *Id.* at 10.

79. *Id.* at 12.

80. *Id.* at 13-16.

81. *Id.* at 13.

82. HANS-HERMANN HOPPE, *DEMOCRACY: THE GOD THAT FAILED: THE ECONOMICS AND POLITICS OF MONARCHY, DEMOCRACY, AND NATURAL ORDER* (2001).

83. CHAPUT, *supra* note 18, at 15.

racial hatred, economic grievances and immigrant violence.⁸⁴ Instead of achieving secularism, Europe's identity crisis led to a rise in Islam because "Islam is merely filling a hole in the chest of an ailing civilization. Europe has an illness of its own choosing: a hollowing out of its spirit through pride"⁸⁵ Archbishop Chaput's understanding of the continent mirrors Marcello Pera's meditation on the fracturing of Europe wherein he insists that the "thinking that currently prevails in the West regarding the universal features of the West is that none of them has universal value."⁸⁶ Instead of confirming that Christianity has been the greatest force in Western history, contemporary European commentators see the universality of Western institutions as an illusion because in reality they are only one particularity among many.⁸⁷ In the emerging world of ethnic conflict and civilizational clash, Western belief in the universality and defensibility of Western culture appears to suffer from three difficulties: it is false, it is immoral and it is dangerous.⁸⁸ While Pera shows that these assertions are inaccurate, such claims confirm that in these and other debates the neutral, middle ground has vanished.

Surveying the European world and its Enlightenment presumptions that have fallen apart, Archbishop Chaput strives to prevent America from mirroring Europe and to recapture freedom for religious voices in the public square. Though America may be a fractured enterprise with a hole in its heart, it is not Europe. Equally true, the author's analysis is not aimed at restoring the Enlightenment to its former prominence. Instead, Archbishop Chaput mines the history of Europe's religious divisions, the official mingling of church and state, and sketches the themes of the Enlightenment and Europe's growing intellectual ferment in order to place the early struggles of the Catholic Church in America in context.⁸⁹ Starting with the church's early statesman, Charles Carroll, a supporter of the Revolutionary War,⁹⁰ Archbishop Chaput describes how the early church encountered an uncertain consensus that was transmuted ultimately into the "'American experiment'" wherein "people of different faiths, cultures and backgrounds" determined to "govern themselves by common principles."⁹¹ As an illustration of this consensus, "[i]n the 1780s, when establishing an American Catholic hierarchy, the Holy See asked the American government its thoughts about the impending matter—and was astounded to receive the reply that the government had no view."⁹² Evidently, "[n]ever

84. *Id.*

85. *Id.*

86. WITHOUT ROOTS, *supra* note 11, at 3.

87. *Id.* at 2-3.

88. *Id.* at 3 (citing SAMUEL HUNTINGTON, THE CLASH OF CIVILIZATIONS AND THE REMAKING OF THE WORLD ORDER 310 (1998)).

89. CHAPUT, *supra* note 18, at 61-76.

90. *Id.* at 77-80.

91. *Id.* at 79-80.

92. *Id.* at 88.

before had any government conceded to the church full liberty of self-government.”⁹³ The author maintains that “[b]y the eve of the Revolution,” Americans “had learned to live together in relative peace”⁹⁴

Still, he admits that in 1876 when the Catholic Church “became the largest single Christian community” in the United States, this move was met by a ferocious wave of anti-Catholic bigotry.⁹⁵ Though Archbishop Chaput understates the extent of anti-Catholic hatred,⁹⁶ he acknowledges that “as new waves of immigrants arrived, tensions over the relationship between the church and American society also grew within the church herself.”⁹⁷ Tension within the church is signified by partition. By the 1890s, American bishops had divided into two camps: the Americanists and the more traditional bishops.⁹⁸ This fracture is instructive for current debates (both internal and external) over the proper role and the authority of the Catholic Church in the United States. The Americanists were convinced that Catholics “could. . . confidently embrace American democratic ideas”⁹⁹ whereas the traditionalists “were. . . wary of” such an embrace and “feared the consequences of assimilation.”¹⁰⁰ The traditionalists have a point because assimilation, as Archbishop Chaput grants, has a cost.¹⁰¹ Father Neuhaus verifies this claim:

A 1985 textbook still widely used, *The American Catholic Experience*, is the tale of a success story ending on the triumphant note that Catholics are now more or less like everybody else. They had at last escaped the much reviled Catholic “ghetto.” The shedding of Catholic distinctives, the liberation from what made Catholics different, the assimilation to a majority Protestant society—such dynamics help explain the dismantling and destabilizing of Catholic culture.¹⁰²

The process of shedding Catholic distinctiveness has been abetted by church hierarchs. Recent decades have seen the elimination of some holy days of obligation and the decision to make fasting on Fridays an option, which has led one observer to argue that Catholicism is committing ritual suicide with large consequences for communal identity and spiritual discipline.¹⁰³ This course of action, when combined with the assimilative turn

93. *Id.*

94. *Id.* at 82.

95. *Id.* at 91.

96. See, e.g., Hutchison, *Liberal Hegemony*, *supra* note 42, at 582-83, 597-99.

97. CHAPUT, *supra* note 18, at 91.

98. *Id.*

99. *Id.* at 92.

100. *Id.* at 93.

101. *Id.* at 92-93.

102. NEUHAUS, *CATHOLIC MATTERS*, *supra* note 2, at 121.

103. *Id.* at 119.

robustly imbibed by Catholics by virtue of the power and influence of modern liberal culture, may undermine Archbishop Chaput's project. The price paid for fully embracing American democratic ideas is the reduction of the role of church in the political and moral lives of the faithful and in the nation itself.

But things are even more complicated than that. John Courtney Murray's examination of the connection between the church and much of Europe indicated that the model of Catholic confessional states, "dominant in the Catholic world since the reformation"¹⁰⁴ was hardly superior to the Americanists' viewpoint.¹⁰⁵ After spending time in Europe during Adolf Hitler's ascendancy, Murray discovered that the continent was rapidly fleeing Christianity because it was beset by aggressive unbelief both in the brutal systems, dominated by either national socialism or communism, and in the rest of Europe.¹⁰⁶ Responding to this clash in his classic book, *We Hold These Truths: Catholic Reflections on the American Proposition*, "Murray argued that the Catholic faith and American democracy are not merely compatible but congenial."¹⁰⁷ This overly optimistic account gives rise to two claims: (1) the Christian faith provides "transcendent meaning" to a nation's public life," and (2) "religious pluralism is theologically" consistent with "the human condition[.]" and thus permits Catholics to give their allegiance to American democratic principles.¹⁰⁸ Disparate American groups, he argued, would communicate via "cooperative dialogue among Protestants, Catholics, Jews and secularists using the natural law as a common language through which to build the common good."¹⁰⁹ This capitulation to cooperation and engagement instead of separation, resistance and assertions of the uniqueness, if not the superiority of Catholic doctrine, led Murray to emphasize individual liberty despite his belief in the ultimate priority of religious matters.¹¹⁰ Individual liberty thus conceived is grounded, more or less, in the notion that the state operates as the guardian of civil association in which all citizens possess the same liberties under the rule of law and where none receive legal privilege.¹¹¹ This approach would preclude the state from "invad[ing] every nook and cranny of social life, penetrating and weakening even the family, perhaps the ultimate unit on which civil society stands."¹¹² Murray's conception of individual liberty, if sustainable, depends heavily on the preservation of a common language that ties the country to John Locke's and Pierre Bayle's teaching on the

104. CHAPUT, *supra* note 18, at 95.

105. *Id.*

106. *Id.* at 93-94.

107. *Id.* at 94.

108. *Id.* at 95.

109. *Id.*

110. *Id.* at 95-96

111. See GRAY, *supra* note 12, at 13-15.

112. *Id.* at 15.

necessity of freedom of conscience.¹¹³ Archbishop Chaput is drawn to Murray's viewpoint, premised on the assumption that while religious matters are paramount, space that is common to all can be created, permitting "mutually respectful autonomy of secular authority and sacred authority [to] coexist."¹¹⁴ It is unlikely that the latter part of the 20th century and the early days of the 21st have cooperated in proving John Courtney Murray's bargain possible.

Archbishop Chaput insists on taking comfort in the founders' intent and in the Constitution as a bulwark against "today's hostility to religion in public discourse."¹¹⁵ The success of that move depends crucially on whether the nation and its courts can find and sustain a commonly agreed upon language on which to interpret this document. Relying on George Washington's contention that political prosperity requires religion and morality as "'indispensable supports,'" Archbishop Chaput disputes the strict separationists' perspective on church and state and argues instead that the Establishment Clause of the First Amendment cannot mean that religious believers and communities ought to be silent in public affairs.¹¹⁶ He is swift to conclude that "unless [all citizens] solve their problems in a way consistent with the nation's founding beliefs and principles, [America] will become a very different nation."¹¹⁷ But even assuming the nation can reach an agreement on the meaning of the country's founding principles, the author must face the prospect that myriad Americans and at least some Catholics will respond to the possibility that the nation might become a different place by asserting that this is the logically necessary, even desirable, destination of democratic pluralism.

Finally, Archbishop Chaput reasons that the completion of the process of recovery, if accepted by the faithful and if permitted in the public square, would lead to powerful political acts by Catholics that include, but are not limited to, loving Jesus Christ, believing in His church and living her teachings not just in word but in all of their choices, decisions and actions—public and private.¹¹⁸ More than a political act, the process of recovering what has been discarded can operate as a powerful counterweight against modern unbelief, including its record of wars, repressions, and genocides¹¹⁹ that have led to a narrative that remains bloodier than anything in religious history.¹²⁰ The author's recovery project disputes the Enlightenment and post-Enlightenment views that run so strongly in America's leadership classes that have led to an assault on ideals of every

113. See, e.g., DAVID A.J. RICHARDS, *TOLERATION AND THE CONSTITUTION* 90 (1986) ("Locke and Bayle gave conscience a moral interpretation and weight associated with their conception of the proper respect due to the highest-order interest of persons in their freedom . . .").

114. CHAPUT, *supra* note 18, at 95-96.

115. *Id.* at 86.

116. *Id.* at 86-87.

117. *Id.* at 28.

118. *Id.* 73-74.

119. *Id.* at 74.

120. *Id.*

kind.¹²¹ This assault derives from despair and alienation that originate in “bitterness . . . toward a God who allows evil and suffering to flourish”¹²² Countering this gloom, the author asserts that belief does not ignore suffering but instead becomes a basis for redemptive action that joins our suffering with God’s in healing the evil and pain in the world.¹²³ Indeed, Chaput, arguing for an effective Catholic contribution that propels the nation toward the common good, declares that “the nature of the Gospel *forces* the church as a community and the individual Catholic as a believer to actively engage the world. That means all of it—including its social, economic, and political structures.”¹²⁴ Thus, Catholics have “obligations as believers” and “duties as citizens,” and accordingly they must “honor both, or honor neither.”¹²⁵

Honoring these obligations presents complications. “Since the entry of Catholics into the United States political mainstream, believers have struggled to balance their faith with the perceived demands of democratic pluralism.”¹²⁶ This conflict can be explained by identifying abortion as a particular challenge for Catholic elected officials. The U.S. Conference of Catholic Bishops has contested a particular argument adopted by many politicians. The bishops have long disputed the argument that politicians, while they “personally oppose evils like abortion,” they “cannot force their religious views on the wider society.”¹²⁷ Maintaining that democracy is not served by silence, the bishops argue that “[r]eal pluralism depends on people of conviction struggling vigorously to advance their beliefs by every ethical and legal means at their disposal.”¹²⁸ Stripped to its essential core, the bishops caution, that “[t]oday, Catholics risk cooperating in a false pluralism. Secular society will allow believers to have whatever moral convictions they please—as long as they keep them on the private preserves of their consciences, in their homes and churches, and out of the public arena.”¹²⁹ Against this move, the bishops favor an invasion of the public square that promotes the truth of the human person as a vehicle that can infuse democracy with the right values.¹³⁰ In order to achieve this objective, *Render Unto Caesar* must convince the nation’s Catholic and secular citizens of the benefits of a truly diverse conversation.

121. *Id.* at 74-75.

122. *Id.* at 75.

123. *Id.* at 47.

124. *Id.* at 75-76 (emphasis in original).

125. *Id.* at 12.

126. U.S. Catholic Conference, Inc., *Living the Gospel of Life: Challenge to American Catholics: A Statement by the Catholic Bishops of the United States*, (1998) ¶ 24, <http://www.usccb.org/profile/gospel.shtml> [hereinafter *Living the Gospel of Life*].

127. *Id.*

128. *Id.* (italics omitted).

129. *Id.* at ¶ 25.

130. *Id.*

III. CONFLICT AND RECOVERY: RECLAIMING THE NATION'S IDENTITY IN THE MIRROR OF MODERN LIBERALISM

A. *Modern Liberalism as the Basis of Conflict?*

Despite Pope Benedict XVI's "admiration for the active role that religion and faith play in American public life," it is clear that an intense debate has broken out concerning the role of religion¹³¹ and the public role of the faithful. This debate concerns more than the mystifying interpretations of the First Amendment's establishment and free exercise clauses,¹³² the vitality of the separation of church and state¹³³ and the possibility that the government may single out religious actors and entities for exclusion from its support programs.¹³⁴ This debate implicates perplexing questions regarding the founders' intent and whether the founders' intent matters for contemporary America despite the hopeful claim that ordered liberty and equality lie at the core of the nation's being and identity.¹³⁵

This description of the nation's core may be both paradoxical and impossible. First, ordered liberty may be a paradox because the competing claims of the individual and the collective (the nation, society and government) require a criterion of judgment¹³⁶ in order to avert the possibility that disordered liberty will surface. This leads to a series of questions. Can members of an increasingly disconnected society agree on a criterion for judgment? If not, can Catholics avoid the risks of participating in a false pluralism? Or is false pluralism the inevitable consequence of the dominance of our culture by elite opinion that manifests as liberal condescension?¹³⁷ Is ordered liberty possible when the government expands without limits? Does a principled understanding of ordered liberty require a limited government that avoids a political state of nature that engenders conflict among interest groups? Second, the notion of ordered liberty in a pluralistic society that treats all persons as equals must confront the probability that a principled understanding of liberty has been in conflict with equality and prevailing conceptions of pluralism for some time.¹³⁸ Resolving this conflict may be difficult because contemporary notions of

131. Michael A. Simons, *Catholic Teaching, Catholic Values, and Catholic Voters: Reflections on Forming Consciences for Faithful Citizenship*, 47 J. OF CATHOLIC LEGAL STUD. 205, 205-06 (2008).

132. See *infra* Part III, C (discussing contemporary manifestations of confusion on this issue).

133. Simons, *supra* note 131, at 206.

134. See, e.g., Nelson Tebbe, *Excluding Religion*, 156 U. PA. L. REV. 1263, 1267 (2008) (answering the question in the affirmative). But see Thomas C. Berg, *Religious Choice and Exclusions of Religion*, 157 U. PA. L. REV. PENNUMBRA 100 (2008) [hereinafter Berg, *Religious Choice*]; Steven D. Smith, *Playing around with Religion's Constitutional Joins*, 157 U. PA. L. REV. PENNUMBRA 123 (2008) [hereinafter Smith, *Playing around with Religion's Constitutional Joins*].

135. RECOVERING SELF-EVIDENT TRUTHS, *supra* note 2, at 4.

136. *Id.*

137. See, e.g., WILLIAM VOEGELI, *The Roots of Liberal Condescension*, CLAREMONT REV. OF BOOKS, Winter 2008-2009, at 6 (recounting one Democratic Party leader's contention that the Republican vice-presidential nominee's sole qualification for high office was that she had never had an abortion).

138. Hutchison, *Work, The Social Question*, *supra* note 31, at 65.

equality in nations where modern liberalism predominates imply that society ought to be reluctant to judge certain forms of human identity and human behavior, in particular, behavior that reifies independent human choice while simultaneously suppressing opponents of such behavior.¹³⁹ This process insinuates that certain actors' behavior, predicated on the notion of enduring truth, can be judged rather harshly because the only acceptably-stable criterion of judgment must favor liberal ideas that emphasize individual singularity. Thus, we should not be surprised that the United States Supreme Court declined to review a California State Supreme Court decision that held that the Catholic Charities of Sacramento cannot refuse to provide reproductive services, including contraceptives, to its employees.¹⁴⁰ In other cases, the government tolerates religious schools "but only in the sense of a grudging concession to a practice of which one disapproves. But these schools cannot be regarded as equal players in the public task of education."¹⁴¹ Taken together, these cases imply that America's understanding of modern liberalism mandates that its conception of equality and human identity ought to trump religious liberty. This development is consistent with the claim that the nation has engaged in a "ruinous inflation of the rhetoric of rights, whereby every moral and political dispute and debate[,] . . . cast in the legalistic idiom of rights discourse," leaves little room for difference.¹⁴²

Equality represents a continuing problem because human identity as a component of equality, at least "in dominant forms of Western liberalism," tends to "turn on the philosophical fiction of abstract individuality"¹⁴³ as a form of self-creation. This move "hinges on the neglect of cultural tradition as the matrix of human individuality and issues forth in the absurd proposal that autonomy ought to be theorized (and practised) independently of tradition rather than as a variant of a particular tradition."¹⁴⁴ At the same time, in modern liberal societies, equality is shorn of meaning because it has been ripped from its cultural context and turned into a construct that supplies political power. This development owes much of its force to John Stuart Mill. From a skeptical vantage point, however, "we can glean a devastating criticism of the liberalism of J.S. Mill's *On Liberty*, where . . . flawed conceptions of autonomy and individuality combine with an obsessional enmity to tradition and convention to yield a liberalism in

139. See, e.g., ROBERT H. DIERKER JR., *THE TYRANNY OF TOLERANCE: A SITTING JUDGE BREAKS THE CODE OF SILENCE TO EXPOSE THE LIBERAL JUDICIAL ASSAULT* 144-45 (2006) (stating the proposition that proponents of abortion are protected while opponents of abortion are censored through federal and state restrictions).

140. See *Catholic Charities of Sacramento v. Cal.*, 85 P.3d 67 (Cal. 2004), *cert denied*, 543 U.S. 816 (2004); Press Release, ACLU of N. Cal., Supreme Court Denies Review of California Law Requiring Employers that Provide Prescription Drug Benefits to Include Contraceptive Coverage (Oct. 4, 2004), http://www.aclunc.org/news/press_releases/supreme_court_denies_review_of_california_law_requiring_employers_that_provide_prescription_drug_benefits_to_include_contracepti.shtml.

141. Myers, *supra* note 7, at 160.

142. GRAY, *supra* note 12, at 14.

143. *Id.* at 258-59.

144. *Id.* at 260.

which rationalist hubris, antinomian individualism and a sentimental religion of humanity reinforce and strengthen each other.”¹⁴⁵

Disputing the Thomistic perspective, which at every stage exemplifies the “rationality of tradition,”¹⁴⁶ the modern view presupposes the power of abstract rationality to discover truth that allows a rational, scientific worldview to replace the perceived irrationality and acrimony of religion.¹⁴⁷ Coherent with this narrative, Western society transformed itself by exchanging theism for deism (the belief in a creator without revelation, providence or incarnation); then society eviscerated theism, which naturally led to naturalism wherein God went from being once removed to being absent entirely.¹⁴⁸ Pope Leo XIII argues that society’s acceptance of naturalism and rationalism leads to moral relativism—an effort to solve a social conundrum: how to build a secular society in which there is legitimate room for individual moral stances and positions.¹⁴⁹ America’s effort to solve this conundrum is likely to be seen as a failure because a country cannot deal with the social chaos that arises in a morally-relativistic society.¹⁵⁰ In order to eliminate social chaos, the nation must surrender to the impulsive claim that the notion of enduring truth derived from revelation is a form of mythology.¹⁵¹ This surrender has been facilitated by the postmodern obliteration of the classical distinctions between the human mind, beliefs and reality and prompts a “reject[ion] [of] the correspondence view of truth as a modernist fiction.”¹⁵² As thus conceived, truth, in contemporary America, may be seen as nothing more than a modern fiction that cannot be established outside of the mind or the culture that shapes belief.¹⁵³ The effort to discount the notion of truth threatens both the viability and equality of treatment of religion and religious expression in modern liberal states.

While many Americans remain committed to the modernist project, which incorporates the ideals of abstract rationality, unconstrained liberty, equality and varying conceptions of pluralism, other Americans await clarity realized by the manifestation of MacIntyre’s hope for the return of another St. Benedict.¹⁵⁴ Given this difference, it is worth noting that the

145. *Id.*

146. Michael C. Jordan, *Preface*, in 9:4 LOGOS: A JOURNAL OF CATHOLIC THOUGHT AND CULTURE, 8-9 (2006) (citing Romanus Cessario, OP.).

147. DOUGLAS GROOTHUIS, TRUTH DECAY: DEFENDING CHRISTIANITY AGAINST THE CHALLENGES OF POSTMODERNISM 35 (2000).

148. *Id.*

149. BERNARD D. GREEN, *Moral Relativism*, in ENCYCLOPEDIA OF CATHOLIC SOCIAL THOUGHT, SOCIAL SCIENCE, AND SOCIAL POLICY 715-16 (Michael L. Coulter et al. eds., 2007).

150. *Id.*

151. GROOTHUIS, *supra* note 147, at 36 (citing Derrida).

152. *Id.* at 93.

153. *Id.*

154. Wilken, *supra* note 34, at 23; see also, ROBERT E. WEBBER, THE DIVINE EMBRACE: RECOVERING THE PASSIONATE SPIRITUAL LIFE, 199-217 (2006) (discussing St. Benedict and the Benedictine rule that includes three vows, three disciplines and three means or ways to encounter Christ in all aspects of life).

United States is a remarkable nation that has become increasingly fractured by conflict. This conflict will not necessarily favor religious voices, any principled search for truth or a single criterion of judgment. On the contrary, it reflects an absence of a shared consensus about fundamental values and principles and gives birth to the inference that “not only intellectuals but our popular culture has largely abandoned an understanding of moral truth and virtue, with the result that we are all dog-paddling in the murky sea of ‘modern emotivism.’”¹⁵⁵ Even pluralism is in doubt because “the [f]orm of society celebrated by Millian liberalism—the liberalism from which all the dominant liberalisms of the present day are derived—is not, in truth, any sort of pluralist society.”¹⁵⁶ Rather than being guided by pluralism, America’s democracy, just like other liberal democracies, is “ruled by an elite of opinion-formers—Mill’s secular version of Coleridge’s clerisy—which relentlessly propagate a narrow, partisan ideal of rationalistic individualism and progressivism.”¹⁵⁷ Thus, the nation’s “liberalism is a force for cultural homogeneity and against actual diversity” and liberty of conscience.¹⁵⁸ Against this backdrop, Archbishop Chaput elevates two quintessential and connected conflicts for consideration: (1) the contest for the Catholic soul within a society characterized by a cornucopia of viewpoints and disparate understandings of ordered liberty and pluralism, and (2) the contest for the proper place for Catholic thought and social teaching within an increasingly pluralistic society.

B. *The Contest for the Catholic Soul*

Consider the first conflict: the contest for the Catholic soul. The depth of this conflict can be illustrated by considering the 2008 presidential election campaign, wherein one Catholic claimant, Professor Douglas Kmiec asserted that then Senator Obama was the real pro-life candidate countered by Archbishop Chaput, who replied that such claims originate in a “peculiar kind of self-hypnosis or moral confusion.”¹⁵⁹ The conflict for the Catholic soul exists because there appears to be an inherent contradiction between the demands of individual autonomy attached to abstract rationalism and the limits of authority tied to revelation. This conflict is amplified by efforts to reclaim a dynamic American Catholic subculture.¹⁶⁰ This conflict is made more real because evidence mounts of increasing Catholic indifference to the magisterium of the Church. Indifference to the Church may manifest itself in postmodern equivocation as a form of self-deception.

155. NEUHAUS, *CATHOLIC MATTERS*, *supra* note 2, at 145-46.

156. GRAY, *supra* note 12, at 260.

157. *Id.*

158. *Id.*; see also STEPHEN CARTER, *Liberal Hegemony, Religious Resistance*, in *CHRISTIAN PERSPECTIVE ON LEGAL THOUGHT* 25, 25 (Michael W. McConnell et al, eds., 2001) [hereinafter CARTER, *Liberal Hegemony*].

159. See Kmiec vs. Chaput: *Law Professor Spars with Archbishop over “Proportionate Reasons,”* CALIFORNIA CATHOLIC DAILY, Nov. 3, 2008, <http://www.calcatholic.com/news/newsArticle.aspx?id=2d790c08-a277-4c3e-9067-65dd5db6ad49>.

160. See RUSSELL SHAW, *Afterward: Catholics and the Two Cultures*, in *RECOVERING SELF-EVIDENT TRUTHS*, *supra* note 2, at 340.

1. Finding Bases of Conflict

There is a history to the nation's ongoing debate between proponents of individual singularity established by the exercise of autonomous human choice and advocates of universality tied to a tradition and the notion of original meaning. On one hand, it is possible to agree with St. Augustine's statement, "I would not have believed the gospel had not the authority of the Church moved me."¹⁶¹ Following this account, Father Neuhaus states, "Whether in matters of religion, science, politics, or the living of everyday life, we all believe on the basis of authority more than most of us like to think."¹⁶² On the other hand, we can all profit from a clear-eyed understanding of the French Revolution as the original challenger to the authority of tradition and the church itself. The French Revolution, which is often mistaken as the "wellspring of rationalism" was actually "a romantic spiritual revolt, an attempt to replace the Christian God with a Jacobin one."¹⁶³ Philosopher Alain Finkielkraut examines the currents that gave rise to the French Revolution and notes that from the time of Plato to that of Voltaire, human diversity was judged in the court of fixed values. Then came Herder who turned things around and condemned abstract universal values in the court of diversity.¹⁶⁴ One need not agree with Herder or other German romantics to notice that the idea of universal reason or ideal law has historically been pushed back by various conceptions of collective culture.¹⁶⁵ The success of the romantics prepared the way for the development of modern and postmodern revolutionaries (the intellectual heirs of the French Revolution) who had no intention of trying to create a collective and culturally cohesive identity for people who had lost their way.¹⁶⁶ On the contrary, by setting them free from all definitive ties to the past, revolutionaries radically affirmed the people's autonomy¹⁶⁷ from the past, grounded in the logic that "'there are only two parties in France: the people and its enemies.'"¹⁶⁸ While it is difficult to identify the fugleman of this development, this Jacobin idea thoroughly undermined prior notions of cultural cohesiveness grounded in shared values. In part, this occurrence reflects and then culminates in Hegel's claim that man "'produces' himself through thought."¹⁶⁹ This vatic claim gives evidence of the power and limits of Enlightenment rationalism as transformed by the romantics, but philosopher Hannah Arendt joins this debate by contending that "nothing is more obvious than that man, whether as a member of the species or as an

161. NEUHAUS, *CATHOLIC MATTERS*, *supra* note 2, at 125 (quoting St. Augustine).

162. *Id.* at 125.

163. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 41.

164. ALAIN FINKIELKRAUT, *THE DEFEAT OF THE MIND* 9 (Judith Friedlander, trans., Columbia Univ. Press 1995) (1987).

165. *Id.* at 10.

166. *See* FINKIELKRAUT, *supra* note 164, at 11-12.

167. *Id.* at 12 (quoting Maximilien Robespierre as quoted in J.M. THOMPSON, *ROBESPIERRE* 247 (1936)).

168. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 12.

169. HANNAH ARENDT, *ON VIOLENCE* 12 (1970).

individual, does not owe his existence to himself.”¹⁷⁰ Resisting Arendt’s analysis, today’s modern liberals, as inheritors of past dogma, whether in the United States or other parts of the West, believe that power and authority in the new republic no longer come from on high but from below.¹⁷¹ The nation, accordingly, no longer reflects pre-existing social distinctions and moral conventions.¹⁷² Instead, it reflects the free and voluntary association of “free” peoples.¹⁷³ Thus freed, the people are encouraged to eviscerate their religious convictions in order to serve the state.

If this description is accurate, it becomes likely that many contemporary American Catholics impelled by the process of assimilation, see themselves as free people who ought to embrace a variety of elite norms. These norms frequently mandate some form of radical autonomy, however fictional, that ought to separate them from the past as well as the magisterium of the church. They are encouraged to welcome the burden of abstract human choice as an ideal grounded in the normative view that they are free to accept anything, so long as it is a liberal thing.¹⁷⁴ While it could be argued that a liberal democratic state should be different than fascism or other forms of government because of its supposed neutrality among competing conceptions of the good, instead the state fundamentally believes that everyone, Catholic or secular, should believe the same basic things.¹⁷⁵ Modern democratic states favor liberalism, but not any liberalism will do. Instead, a renegade form of liberalism becomes the rule, one that is shorn of its dependence on dialogue and the power of reason to move others to action.¹⁷⁶ This “impoverished philosophy” conduces toward “either a simple-minded majoritarianism, in which preferences are aggregated formally” or a variant of Leninism.¹⁷⁷ This illustrates Neuhaus’s great claim that the history of liberal freedom and its accompanying search for progress are the undoing of freedom’s achievement.¹⁷⁸ It follows that *all* mediating institutions, including the church, are likely to be classified as enemies of state uniformity.¹⁷⁹

It is possible that many American Catholics have accepted this understanding of liberalism, which is simply ruthless majoritarianism led by elites who are not necessarily receptive to religious voices. Presumably bought

170. ARENDT, *supra* note 169, at 13.

171. FINKIELKRAUT, *supra* note 164, at 12.

172. *Id.* at 13.

173. *Id.*

174. CARTER, *Liberal Hegemony*, *supra* note 158, at 34; *see also* RICHARD JOHN NEUHAUS, AMERICAN BABYLON: NOTES OF A CHRISTIAN EXILE 235 (2009) [hereinafter NEUHAUS, AMERICAN BABYLON] (suggesting that liberalism represents the exhilarating idea of “beginning anew”).

175. CARTER, *Liberal Hegemony*, *supra* note 158, at 34.

176. Stephen L. Carter, *Evolutionism, Creationism, and Treating Religion as a Hobby*, 1987 DUKE L. J. 977, 988 [hereinafter Carter, *Evolution*].

177. *Id.* at 988.

178. NEUHAUS, AMERICAN BABYLON, *supra* note 174, at 235.

179. JOHN H. GARVEY, WHAT ARE FREEDOMS FOR? 153 (1996) (citing ROBERT A. NISBET, THE QUEST FOR COMMUNITY: A STUDY IN THE ETHICS OF ORDER AND FREEDOM 202 (1953)).

off by the good life of excessive consumerism and technological distractions,¹⁸⁰ resistance is unlikely to rank as an important objective. Hence, it is far from clear that Catholics are prepared to accept an essential predicate to Archbishop Chaput's enterprise: that something worth saving has been lost. Instead they are likely to reject the United States Conference of Catholic Bishops' admonition that every believer shares in the obligation to proclaim by word, action and example the "[g]ood [n]ews of human dignity redeemed through the cross."¹⁸¹ Indeed, any attempt to restore religious influence and religious expression to their once prominent place in American discourse, public policy and in the lives of the faithful, may, paradoxically, confirm and accelerate an ongoing process of cultural separation and division.¹⁸²

2. An Inevitable Conflict Reinforced by Indifference?

Neither the nation's fracturing impulse nor society's embrace of pluralism and modern liberalism have left Catholic discourse unhindered despite the claim that the *Compendium of the Social Doctrine of the Church* holds that "Catholic social teaching reflects the fact that the way of living is not simply limited to the proper ordering of personal moral life."¹⁸³ Catholic teaching "has a social dimension, not least because social life presents man with dilemmas to which he must respond by acting in ways that, like all freely willed acts, meet the gospel's demands."¹⁸⁴ The United States Conference of Catholic Bishops continues to encourage individuals and groups that are in either complete or incomplete communion with the Church to fulfill their political responsibility by becoming faithful citizens who live out the precepts of the Church.¹⁸⁵ Though this perspective may be helpful in putting the world back together, the positive impact of the bishops' spotlight may be impaired by the diminishing role of religious institutions in the lives and values of increasingly compartmentalized religious people.

Rather than playing a robust role in the spiritual, philosophical and moral development of the lives of the faithful, Catholic institutions must confront the prospect that many Catholics, just like many other Americans, have been seduced by an idealized conception of human autonomy and

180. CHAPUT, *supra* note 18, at 32.

181. *Living the Gospel of Life*, *supra* note 126, at ¶ 7.

182. See Stoner, *supra* note 27, at 21.

183. Samuel Gregg, *A Lost Opportunity: The Compendium of the Social Doctrine of the Church—A Review Essay*, 9 J. MARKETS & MORALITY 262 (2006), available at <http://www/acton.org/publicat/mm/new/print.php>.

184. Gregg, *supra* note 183, at 262.

185. Simons, *supra* note 21, at 206. Evidently, the United States bishops have attempted to provide Catholics with a foundation that will enable them to better evaluate policy positions, party platforms and candidates in the light of the Gospel and the moral and social teaching of the Church in an effort to improve the world). The bishops have identified seven key themes: (1) right to life and the dignity of the human person; (2) call to family, community and participation; (3) rights and responsibilities; (4) option for the poor and vulnerable; (5) dignity of work and the rights of workers; (6) solidarity; and (7) caring for God's creation. Simons, *supra* note 21, at 208.

choice without the tempering force of community, consistent with the notion that human life consists of a bundle of preferences.¹⁸⁶ Americans live in an era that has witnessed novel perspectives on human liberty and autonomy, which appear to correspond with “[t]he bourgeois attempt to construct a rational alternative to tradition.”¹⁸⁷ In part, this change reflects a deliberate, centralizing calculus that is attached firmly to modern liberalism. This process starts with the nation’s children. Bruce Ackerman, who defends neutrality among competing visions of the good life, illustrates liberalism’s centralizing tendency. He states that “[w]e have no right to look upon future citizens as if we were master gardeners [Hence, a] system of liberal education provides children with a sense of the very different lives that could be theirs, so that, as they approach maturity, they have the cultural materials available to build lives equal to their evolving conceptions of the good.”¹⁸⁸ This immodest liberal-liturgy materializes as an improvisational variation on self-worship that is incompatible with principled forms of diversity and pluralism. Rather, this theory contains an explicit, commitment to one conception (both procedurally and substantively) of the good.¹⁸⁹ Unpersuaded by Professor Carter’s meditation on the elements of true diversity,¹⁹⁰ the leaders of the new republic are repelled by the notion that the state should allow believers sufficient space to translate different meanings of life into different ways of living. Instead, believers are pressured to surrender to the pull of the world;¹⁹¹ to do otherwise amounts to an insubordinate challenge to the state.¹⁹² Complementing this perspective, MacIntyre verifies the impossibility of attaining desirable forms of social and moral progress as a purely autonomous abstraction. He insists that society can only move toward a shared understanding of justice and the common good within the context of a tradition and in a community whose primary bond is a shared understanding of the good for man and for community, where individuals identify their primary interest with reference to those goods.¹⁹³ Bruce Ackerman’s argument carries the day, then democratic pluralists empowered by government will contest and must ultimately defeat MacIntyre and Carter’s insubordinate insights.

186. For a discussion of the components of this move, see Helen Alvaré, *Saying “Yes” Before Saying “I Do”: Premarital Sex and Cohabitation as a Piece of the Divorce Puzzle*, 18 NOTRE DAME J. L. ETHICS & PUB. POL’Y 7, 10-31 (2004).

187. SHANNON, *supra* note 24, at 203.

188. BRUCE A. ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* 139 (1980).

189. HUTCHISON, *Liberal Hegemony*, *supra* note 42, at 578.

190. CARTER, *Liberal Hegemony*, *supra* note 158, at 35 (proposing that diversity is found when people and faith traditions are allowed to be different).

191. HUTCHISON, *Liberal Hegemony*, *supra* note 42, at 578.

192. HUTCHISON, *Liberal Hegemony*, *supra* note 42, at 618.

193. ALASDAIR MACINTYRE, *AFTER VIRTUE: A STORY IN MORAL THEORY* 250 (2d ed.); see also Harry G. Hutchison, *Reclaiming the First Amendment through Union Dues Restrictions?* 10 U. PA., J. BUS. & EMP. L. 663, 675 (2008).

Because American society constantly proliferates into new divisions and differentiations like a blastula of cells undergoing mitosis, unprecedented forms of social and cultural life come into view.¹⁹⁴ This postmodern epiphenomenon signals the end of metanarratives as satisfactory vehicles on which to ground social cohesion. Having refashioned metanarratives into self-referential micronarratives, postmodernists proceed to sever these stories from objective truth, while distracting society from pressing issues.¹⁹⁵ The content, authority and the constitutive components of a distinctive Catholic anthropology¹⁹⁶ as a guide to Catholic behavior are placed at issue by such trends. The church's commitment to objective truth must conflict with a pluralistic model that declines to concede that right behavior and rights themselves have a moral footing rooted in truth. While Francis Cardinal George states that Catholic anthropology elicits values, "which should equip Catholic legal thought for a dialogue with secular disciplines and secular culture by opening up a space of truth in what is common to all,"¹⁹⁷ this insight is made problematic by virtue of the likelihood that Catholics may be united in indifference to the teaching of the church. Russell Shaw hints at the depth of such problems by suggesting that a "fundamental reorientation of American law" and by extension, political life, has come not just from secular culture but from "culturally assimilated Catholics."¹⁹⁸ Partially consistent with this viewpoint, Michael Walzer argues that if ethnic and religious groups are to sustain themselves [in immigrant societies, such as in the United States], they must do so now as purely-voluntary associations,¹⁹⁹ meaning that they are more at risk from the indifference of their own members than from the intolerance of others.²⁰⁰ Catholics, by and large, have succeeded in abandoning their distinctives in favor of assimilating within American culture.²⁰¹

Assimilation gives rise to casualties. Among these casualties that have an adverse impact on Catholic political life, natural law stands out as a particularly compelling case. Pope John Paul II intuits that even in the midst of "uncertain[ies], every person who is sincerely open to truth and goodness can, by the light of reason and the hidden action of grace, come to recognize the natural law written in the heart."²⁰² Catholic scholar Jacques Maritain maintains that a "'natural right' is the moral power claimed

194. PETER H. SCHUCK, *DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE* 3 (2003).

195. GROOTHUIS, *supra* note 147, at 135-36.

196. Catholic anthropology offers a basis for conversing with the wider world and concentrates on four values: "freedom, solidarity, subsidiarity and the common good." FRANCIS CARDINAL GEORGE, *Foreword to RECOVERING SELF-EVIDENT TRUTHS*, *supra* note 2, at xi, xii.

197. GEORGE, *supra* note 196, at xii.

198. RUSSELL SHAW, *Afterword: Catholics and the Two Cultures*, in *RECOVERING SELF-EVIDENT TRUTHS*, *supra* note 2, at 340.

199. MICHAEL WALZER, *ON TOLERATION* 31 (1997).

200. WALZER, *supra* note 199, at 31.

201. See NEUHAUS, *AMERICAN BABYLON*, *supra* note 174, at 116-22.

202. Pope John Paul II, *supra* note 4, ¶ 2.

by an individual or by a community in light of the natural law.”²⁰³ For instance, natural law undergirds the church’s teaching about abortion. No special Catholic religious doctrine is required to state “abortion is wrong because it violates the universal natural law by abusing the inherent human rights of the unborn child.”²⁰⁴ As thus exemplified, natural law serves as a foundation for Catholic engagement in political life, but as Russell Shaw shows, “[m]any educated Catholics today know next to nothing about natural law and [those that do could] care less.”²⁰⁵ Thus, “the first task for people seeking to apply Catholic perspectives to American law or anything else is to open the eyes of Catholics to those perspectives.”²⁰⁶ The completion of this task is an essential element of any program that attempts to educate Catholics for faithful citizenship. Given widespread Catholic indifference toward natural law and the teachings of the church, and given the allure of both postmodernism and John Dewey’s concept of culture,²⁰⁷ it is doubtful that all Catholics will embrace Archbishop Chaput’s counsel on how living out their Catholic beliefs will serve the nation.

Instead it is plausible that many Catholics will be impelled to reject both the Catholic teachings and the advisability of allowing religion and faith to play a visible role²⁰⁸ in either the public life of the nation or their own lives. Others may countenance natural law and the church’s anthropology while permitting them to have only an incidental impact on their daily life. Jacques Maritain supplies background on such difficulties. Initially, he asserts that it might be feasible to come to some consensus about central principles of political philosophy *without* metaphysics or a moral theory in the background.²⁰⁹ This view could be understood consistently with Francis Cardinal George’s peroration on Catholic anthropology as a vehicle that creates political space for all. For instance, despite the widespread cultural, ideological, and religious differences that existed in the world, the post-World War II epoch saw the recognition of a set of rights enshrined in the United Nations Universal Declaration of Human Rights.²¹⁰ Still, Maritain adds that such rights were not authoritative or legitimate simply because they were the product of an agreement or consensus,²¹¹ but because such rights have a foundation.²¹² This gives rise to a question: whether “[foundational] moral principles are not only right for

203. WILLIAM SWEET, *Introduction, Jacques Maritain: Life and Thought*, in JACQUES MARITAIN, *NATURAL LAW: REFLECTIONS ON THEORY & PRACTICE* 1, 10 (William Sweet ed., 2001). *But see* MACINTYRE, *AFTER VIRTUE* *supra* note 193, at 70 (suggesting that “natural or human rights are fictions with highly specific properties.”).

204. CHAPUT, *supra* note 18, at 83.

205. SHAW, *supra* note 198, at 340.

206. *Id.*

207. SHANNON, *supra* note 25, at 62 (describing John Dewey’s place in the new individualism pantheon wherein the concept of culture is transformed from a tool of analysis into a resource for unconstrained individual liberation and singularity).

208. Simons, *supra* note 21, at 206.

209. SWEET, *supra* note 203.

210. *Id.*

211. *Id.*

212. *Id.* (suggesting rights have a foundation in natural law).

all, but at some level known to all?”²¹³ If an affirmative answer is given, then it is possible to write that the foundational moral principles are the same for all and should govern righteous actions.²¹⁴ But history shows that one can be a moral philosopher or merely an individual who concedes the force of foundational moral principles and yet not be a virtuous man.²¹⁵

Today, even if we live in a world where it is possible to know the foundational elements of the common good, it is equally possible to give intellectual assent to such tenets and ignore them. Consistent with this maneuver, one has only to look around the world to find countless countries and groups that raise their voice in favor of the Universal Declaration of Human Rights but only honor such rights in the breach.²¹⁶ This evidence provides ground to contest the claim that we can sustain some consensus about central principles of political philosophy without adherence to metaphysics or a moral theory in the background because they provide what is necessary—a common language—for purposes of political judgment. The precise question under review is whether Catholics themselves have embraced a distinctly Catholic metaphysic and moral theory that commands their thinking rather than permitting themselves to be converted by modern democratic liberalism, which represents the metamorphosis of their Americanists inheritance. If Catholics fail to accept and espouse a distinctively Catholic anthropology, Archbishop Chaput’s project becomes a doubtful proposition.

Indeed, this project is already the subject of equivocation. The current social and cultural disposition of American Catholics reflects a nation that has not fully embraced the antique echoes of the American experiment or its implicit fiction that liberalism, transmuted from its classical roots into modern liberalism, is capable of supplying a neutral umbrella based on some consensus independent of a metaphysical foundation. Rather than creating ground for religious, illiberal- resisting persons, associations and communities to actively enter into the public square, it appears that America has instead accepted liberalism as cosmopolitanism.²¹⁷

Cosmopolitanism, either reflecting the liberalism of “elites” or “globalists” is often superficial.²¹⁸ “It stimulates. It possesses entertainment value. At least while the novelty lasts, it excites and unsettles the . . .

213. J. BUDZISZEWSKI, *WHAT WE CAN’T NOT KNOW: A GUIDE*, 15 (2003).

214. *Id.* at 3 (quoting Thomas Aquinas).

215. JACQUES MARITAIN, *NATURAL LAW: REFLECTIONS ON THEORY & PRACTICE* 15 (William Sweet, ed., 2001).

216. See, e.g., Randall H. Nunn, *Is the United Nations Going the Way of the League of Nations?*, OpinionEditorials.com, Mar. 17, 2003, http://www.opinioneditorials.com/freedomwriters/nunn_20030317.html (stating that, at one point in time, Saddam Hussein’s Iraq headed the United Nations Conference on Disarmament and Libya became head of the United Nations Human Rights Commission).

217. See ALEXANDER, *supra* note 27, at 165-70.

218. I am indebted to David Gregory for this observation. David Gregory’s comments are on file with the author.

monochromatic surfaces of modern life.”²¹⁹ But it is not neutral. Consistent with John Gray’s intuition and Larry Alexander’s critique, modern liberalism, in this conception, is not the above-the-fray values of a neutral umpire that remains open to people who are compelled to live according to the tenets of a distinctive religious faith.²²⁰ Rather, liberalism is a particular way of life, namely that of the cosmopolitan.²²¹ Cosmopolitanism homogenizes the various and particular ways of life.²²² Shallowing out often excludes various kinds of speech, particularly authentic religious dialogue from the public square because if there are many paths to truth or salvation, then little is at stake in finding a path.²²³ Failing to resist this homogenizing impulse, the process of assimilation, thus energized, inevitably incapacitates a truly-Catholic voice by rendering Catholic voices quiescent. Self-censorship is one way of dealing with this process of exclusion.

Archbishop Chaput’s effort to undermine today’s Catholic indifference confirms that the Catholic soul has become infected by pluralism and secularist views that suggest that Catholic anthropology may be negotiable. In an era that reifies human choice as a primary good, Catholics find it difficult to assent to the authority of the church. Rather than accepting the observation that faithful assent means thinking *with* the church,²²⁴ they are just as likely to see assent as a form of illegitimate subordination tied to an anachronism. Father Neuhaus shows that thinking for oneself is useful so that one can think with the church, the prior assumption being that the church possesses a teaching charism and authority that warrants one’s assent.²²⁵ He intuits that a Catholic person thinks not to come up with one’s own teaching but to make the church’s teaching one’s own.²²⁶ The rejection of this perspective reinforced by the acceptance of the norms of modern liberalism implies that the Catholic soul, the Catholic vote²²⁷ and what it means to be a Catholic in American political life are up for grabs for the foreseeable future. If this outline is accurate, it is doubtful that Archbishop Chaput’s recovery project can play its anticipated role in restoring a vibrant religious voice to the contested public square unless modern liberal norms are contested.

C. *Resolving the Role of Religion in the Public Square*

Turning to the second basis for conflict—the difficulty of resolving the place of religion in America’s public life—two conclusions flow from the prior subsection. First, modern political liberalism is largely incapable of being squared with a principled understanding of Catholic social teaching.

219. SHUCK, *supra* note 194, at 15.

220. Alexander, *supra* note 27, at 168.

221. *Id.*

222. *Id.*

223. *Id.*

224. NEUHAUS, CATHOLIC MATTERS, *supra* note 2, at 13.

225. *Id.*

226. *Id.*

227. Simons, *supra* note 21, at 207.

Instead, it is often hostile to religious difference. Second, existing Catholic political leaders, educated both by the national public school system's conception of modern liberalism and its increasing hostility toward religion are unwilling to pay the price of exclusion. Rather, they have accepted a radical version of the Americanist bargain: a process of assimilation and homogenization that leads to a shallow form of belief characterized by equivocation.²²⁸ Whether discussing abortion or other central but controversial issues in the light of teachings of the church, successfully-assimilated Catholic politicians have a way of giving lip service to the church while freely disagreeing rather than be excluded by the voters. For example, rejecting many official pronouncements by the Roman Catholic Church that condemn abortion as a "grave evil that is harmful to women and has a degrading effect on society,"²²⁹ the current House Speaker, a practicing Catholic, has stated that there is in fact an ongoing debate among the doctors of the church about this issue.²³⁰ While this credulous claim amounts to a form of Sophism that succeeds in preventing her exclusion from the public square, it also verifies Archbishop Chaput's fear that the prevailing norms of tolerance reduce faith to a private idiosyncrasy.²³¹

Professor Richard Pildes shows that the:

most urgent problem in the design of democratic institutions . . . is how best to design such institutions in the midst of seemingly profound internal heterogeneity, conflict and group differences This problem is central, not only to newly-forming democracies over the last generation but also to more established democracies, as various groups more assertively press claims for political recognition, representation and influence.²³²

This problem can be made concrete by imagining the contest for control of United States Supreme Court as a metaphor for disputes within the nation. The contemporary skirmish over the Supreme Court is part of a "profound political struggle, going to the heart of the meaning of our existence as a free people,"²³³ but the nation's fracturing impulse, made tangible by postmodernism, has made it difficult to argue persuasively about religious freedom because the original meaning of the Constitution has

228. See, e.g., Jacqueline L. Salmon, *Archbishop Disputes Pelosi's Statement*, WASH. POST, Aug. 27, 2008, at A3, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/26/AR2008082603215.html>.

229. JAMES HOSTELER & MICHAEL L. COULTER, *Abortion*, in ENCYCLOPEDIA OF CATHOLIC SOCIAL THOUGHT, SOCIAL SCIENCE, AND SOCIAL POLICY, *supra* note 149, at 1.

230. See Salmon, *supra* note 228, at A3.

231. See CHAPUT, *supra* note 18, at 10.

232. RICHARD H. PILDES, *Ethnic Identity and Democratic Institutions: A Dynamic Perspective*, in CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTEGRATION OR ACCOMMODATION? 173, 173 (Sujit Choudry ed., 2008) [hereinafter PILDES, *Ethnic identity*].

233. Harry V. Jaffa, *Original Intent and the American Soul*, CLAREMONT REV. OF BOOKS, Winter 2006, at 36-37, available at http://www.claremont.org/publications/crb/id/1241/article_detail.asp.

been lost.²³⁴ The intensity of this dilemma is reinforced by the notion that pluralism ought to be combined with the idea that governments are essentially compacts among diverse peoples, holding diverse views of the good, making the attainment of a uniform view of government and an individual's place in society impossible.²³⁵ For many, this struggle conduces to pessimism about the capacity of diverse nations to achieve the common good on terms that all will concede as just. Accentuating this perspective, Professor Gedicks observes that contemporary attempts to overcome post-Enlightenment gloom reflect the postmodern conclusion that "our world has fallen apart" and that we live at the end of the neoclassical age as society struggles through the "'aftermath of confusion and helplessness'" wherein the "'real' world lacks reality."²³⁶ As things fall apart, courts, politicians, philosophers and clerics try to put the world back together. Despite their efforts, liberalism, not unexpectedly, affirmed by elite opinion and backed by the power of the state, is the winner. Therefore, it is no surprise that the role of religious institutions and the influence of religious views have been subject to escalating challenges.

The strength of external challenges facing religious communities can be made concrete by showing that many municipal bodies have attempted to curtail the religious use of their facilities either out of a fear of litigation or in the purported belief that such uses would be divisive or would violate legal principles calling for the separation of church and state.²³⁷ Emblematic of this view, the Baldwinsville school district censored a poster signed in crayon by a six-year-old child that displayed a religious figure.²³⁸ The school district thought that permitting the display of this poster, along with approximately eighty other purely-secular drawings, would have caused viewers to believe that the school district promotes and approves one particular religion over another.²³⁹ Other governmental bodies appear willing to exclude nativity scenes because such displays are deemed religious while concurrently maintaining a policy that includes Muslim symbols during Ramadan or the menorah during Chanukah because such displays are deemed secular.²⁴⁰ This credulous policy is consistent with the assertion that the meaning of tolerance, inclusion and religious liberty are major issues in a society that cannot convincingly distinguish between the endorsement and nonendorsement of religious viewpoints.

234. See Smith, *Playing around with Religion's Constitutional Joins*, *supra* note 134, at 123.

235. See, e.g., WILLIAM A. EDMUNDSON, *AN INTRODUCTION TO RIGHTS* 20 (2004).

236. Fredrick Mark Gedicks, *Spirituality, Fundamentalism, Liberty: Religion at the End of Modernity*, 54 DEPAUL L. REV. 1197, 1197 (2005) (citations omitted).

237. Richard M. Esenberg, *Of Speeches and Sermons: Worship in Limited Purpose Public Forum*, 78 MISS. L. J. 453, 460 (2009).

238. Hutchison, *Shaming Kindergarteners?*, *supra* note 25, at 120.

239. See *Peck v. Baldwinsville Cent. Sch. Dist.*, No. 99-CV-1847, 2000 U.S. Dist. LEXIS 13362, at *7-9 (N.D.N.Y. Feb. 15, 2000), *vacated*, 7 Fed. Appx. 74 (2d Cir. 2001); see also, Hutchison, *Shaming Kindergarteners?*, *supra* note 25, at 374-78.

240. Michael Gaynor, *SCOTUS let New York City's Anti-crèche/pro—menorah Policy Stand* (Dec. 1, 2006), <http://www.renewamerica.us/columns/gaynor/061201>.

The absence of a commonly agreed-upon language and the presence of conflicting conceptions of liberty and tolerance add force to MacIntyre's somber intuition. He argues that

[i]t is not just that we live too much by a variety and multiplicity of fragmented concepts; it is that these are used at one and the same time to express rival and incompatible social ideals and policies *and* to furnish us with a pluralist political rhetoric whose function is to conceal the depth of our conflicts.²⁴¹

The language of pluralism, democracy and equality masks the magnitude of disagreement within American society²⁴² and fortifies majoritarian efforts to exclude religion or at least some forms of religion from the public square unless they are compliant with and subordinated to the tenets of modern liberalism. This move reflects a cultural imperative demanding religious groups and individuals to privatize the expression of their beliefs. This imperative is catalyzed by a religious-secular divide that reflects a clash of orthodoxies in which the terms of the public debate render religious conviction without the defensive cover supplied by rationality that is achieved through contestation.²⁴³ This peculiarly American form of *dhimmitude*, often reinforced by individuals with the greatest access to the locomotive of public opinion, gives rise to a swirling current that sucks the oxygen out of religious communities and forces them to turn inward.²⁴⁴ Questions remain whether an inward focus can yield a defensible and intelligible core if the faithful give their allegiance to and seek the approval of democratic pluralists empowered by the encroaching size and scale of the regulatory state.

Even a vibrant inward focus may not be adequate to sustain a minimal public role for the faithful: (1) because there is an absence of clarity among Catholics about Catholic ways of living and thinking that might propel Catholic perspectives "to alter lives in a meaningful way and win the war for America's soul,"²⁴⁵ and (2) because Americans, secular or Catholic, live in a "contemporary moment [that] is marked by profound cultural division,"²⁴⁶ which produces proliferating forms of intolerance. Intolerance multiplies because many citizens have accepted the bracing notion that

241. MacIntyre, *AFTER VIRTUE*, *supra* note 24, at 253.

242. *See, e.g., id.*

243. *See* Stanley Hauerwas, *Theology as Knowledge*, *FIRST THINGS*, May 2006, at 23, available at <http://www.firstthings.com/article/2007/01/theology-as-knowledge-33>.

244. For a discussion of this process in the Middle East, *see* Wilken, *supra* note 34, at 24.

245. RANDY LEE, *Epilogue*, in *RECOVERING SELF-EVIDENT TRUTHS*, *supra* note 2, at 341, 346. For a contemporary manifestation of the absence of clarity, *see Catholic Democrats Chide Pope*, Catholic League for Religious and Civil Rights, Feb. 2, 2009, <http://www.catholicleague.org/release.php?id=1548> (discussing the willingness of Catholic politicians to chide the Pope over his decision to lift the excommunication of a group to which Bishop Richard Williamson belongs while such politicians fail to speak with clarity about the Church's teaching on abortion).

246. Andy Crouch, *The Phone Book Test*, *CHRISTIANITY TODAY*, June 2006, at 44, available at <http://www.christianitytoday.com/et/2006/june/32.44.html> (interviewing Robert P. George).

their fellow citizens, if infected with a religious meme, are unlikely to live consistently with the tenets of liberalism and individual singularity.²⁴⁷ This perspective gives rise to the intuition that religious expression is a mark of degradation,²⁴⁸ which has adverse implications for the Catholic Church because it follows that those individuals and groups afflicted with a serious religious perspective ought to be excluded from public discourse.²⁴⁹

In the clash between religious belief and the modern liberal state, the terms of the debate imply that the proponents of expanding the religious voice within the public square ought to arrive at this venue as mute participants. Carter contends that religious freedom, as an essential component of liberty, requires more than the superficial shelter provided by cosmopolitanism. He explains "that religious freedom is nothing if it is not the freedom to be different. The different meanings of life that religions at their best translate into different ways of living—in short, into diversity—if the state allows believers sufficient space."²⁵⁰ Those "faith traditions" that exercise "the power of resistance" and "insist on teaching different meanings from those imposed by the state, even in the face of public disapproval,"²⁵¹ constitute a subversive challenge to the state, which the state is impelled to squash. Free speech provides an apt allegory for the future of religious expression in the United States. Larry Alexander, borrowing from Stanley Fish explains:

In liberal societies, free speech is important because it is believed to produce valuable consequences such as more truth, better democratic politics, and more individual self-development. But this means that any freedom of speech principle carries with it a commitment to constrain speech that destroys these things. Alternatively put, a commitment to free speech necessarily carries within it a commitment to censorship.²⁵²

If Stanley Fish is correct, then surely his analysis applies with equal force to the ongoing battle to sustain freedom of religion in the United States. This clash is, after all, about two contrary conceptions of truth. Since the government has been captured by modern liberalism, it is not difficult to pick a victor. And this is particularly correct if America accepts Michel Foucault's view that truth or what is defined as truth is a function not of verifiable evidence or sound logic but of power-relationships that masquerade as neutral means of enforcing order.²⁵³ Democratic pluralism, with its purported neutrality and respect for all points of view, and with its

247. Hutchison, *Shaming Kindergarteners?*, *supra* note 25, at 362.

248. *Id.*

249. *Id.*

250. Carter, *Liberal Hegemony*, *supra* note 158, at 35.

251. *Id.*

252. CHAPUT, *supra* note 18, at 208.

253. GROOTHUIS, *supra* note 147, at 30 (critiquing Foucault and his followers).

difficulty drawing boundaries that favor dissent, provides new and different possibilities for society including the probability that religious freedom must be subordinated to the liberal state's power. This possibility arises despite the fact the history and origins of America can be properly tied to religious freedom.²⁵⁴

D. *The Catholic Roots of American Liberalism?*

While much Catholic scholarship concentrates on how secular ideology marginalizes both the rule of law and Catholic contributions to law and society,²⁵⁵ the history of the church's involvement in Progressivism²⁵⁶ from which today's liberalism descended,²⁵⁷ has largely escaped attention. The progressive turn in American political life has provoked a massive increase in the size and scale of government, which predictably disfavors Archbishop Chaput's restoration project. Some background may be helpful.

Drawing on *Mater et Magistra* and *Pacem in Terris*, Basil Cole observes that these encyclicals: (1) outline a host of rights, which manifest needs, and (2) caution the faithful that social justice entails many creative challenges for government to make certain that its people have adequate health care, education and respect for human life both at its origins and conclusion.²⁵⁸ Cole explains that social justice requires above all a commitment to the common good, which entails the protection of the free expression of religion because reason alone cannot achieve the vision necessary to work for the needs of the less fortunate.²⁵⁹ While this observation is consistent with the view that Catholics ought to avoid separating their faith from their everyday life,²⁶⁰ it fails to resolve the brewing conflict between an expansive government tied to modern liberalism and the church's claim that an adequate conception of social justice entails the protection, even the fostering, of religious expression. Operating at two ends of the spectrum, this clash manifests itself in two possibilities: on one hand, greater freedom and consequent space for the church to operate freely within the public square, or, on the other hand, less freedom that accompanies an unconstrained expansion of government.

Effective support for the latter approach has some history within the Catholic Church because some of the church's leaders have become enthusiastic proponents of increased government intervention in society, and this

254. DANIEL O. CONCKLE, *CONSTITUTIONAL LAW: THE RELIGION CLAUSES* (2009) (explaining that the substantive idea of religious liberty was firmly planted in the founding period—in Virginia and elsewhere).

255. See, e.g., Charles I. Lugini, *The Ten Commandments and the Rejection of Divine Law in American Jurisprudence* 47 J. CATH. L. STUDIES 145, 145 (2008).

256. Hutchison, *Work, The Social Question*, *supra* note 31, at 101-11.

257. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 15.

258. BASIL COLE, *Social Justice*, in *ENCYCLOPEDIA OF CATHOLIC SOCIAL THOUGHT, SOCIAL SCIENCE, AND SOCIAL POLICY*, *supra* note 149, at 982.

259. *Id.*

260. U.S. Catholic Bishops, *Economic Justice for All*, A Pastoral Message ¶ 5 (1986), http://www.osjspm.org/economic_justice_for_all.aspx.

move can be tied, either intentionally or inadvertently, to American Progressivism, modern liberalism and Rousseau's *Social Contract*.²⁶¹ Rousseau, the intellectual godfather of the Jacobin Revolution, tells us that because "Christianity's distinction between God and Caesar 'men have never known whether they ought to obey the civil ruler or the priest.'"²⁶² Rousseau's divinization of the community under the direction of the state is not defined by ethnicity, geography or custom; rather, it is bound together by "what he called a 'civil religion' and enforced by the all-powerful God-state."²⁶³ This move resolves conflict between the state and religion by shrinking the influence of the church. Contrary to Catholic icon Dorothy Day's doubts about society's reliance on the great, impersonal mother, the state,²⁶⁴ as well as her keen support for the principle that charitable functions should be performed at the most feasible local level of society,²⁶⁵ it appears that Rousseau's statist ideas were instantiated during FDR's administration. Supported vigorously by Father Coughlin and particularly Father Ryan, this maneuver led to a massive expansion in the size and scale of government.²⁶⁶ Though Father Coughlin's anti-Semitism was a political and moral problem, his influence and public support for the New Deal policies, bolstered by some forty-million radio listeners, were countenanced until his left-wing sympathies for Mussolini and Hitler became an insuperable problem.²⁶⁷ Still, his leadership ensured the unreflective assimilation by many Catholic citizens of the tenets of modern liberalism.

Father Ryan's contributions to the New Deal, the enlargement of the secular state, and the progressive turn in church thinking have been documented elsewhere.²⁶⁸ Suffice it to say that Father Ryan catalyzed the radicalization of Catholic thought in the early decades of the 20th century, and in response, Catholic institutions mobilized a crusade for social justice.²⁶⁹ In harmony with this move, President Roosevelt asserted "that democracy cannot live without that true religion which gives a nation a sense of justice and moral purpose."²⁷⁰ "No president who preceded him in the 20th century had so religious a following, or anything close to it. And none had so

261. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 39.

262. *Id.*

263. *Id.* at 40.

264. Harry Murray, *The Welfare Workforce: Dorothy Day, Welfare Reform, and Personal Responsibility*, 73 ST. JOHN'S L. REV. 789, 789-90 (1999) (showing that Dorothy Day advocated personal responsibility rather than government programs as the way for Catholics to share their resources with poor neighbors).

265. *Id.* at 789.

266. Federal government spending was relatively stable for the first 150 years of American history but rose sharply over the last two-thirds of the 20th century. Government spending as a percent of gross nation product rose from less than five percent during most of its history to levels approaching thirty percent today. In part this move, consistent with John Gray's analysis about modern liberalism producing a war of all against all, can be explained by rent-seeking. See GORDON TULLOCK, *Government Spending*, in THE FORTUNE ENCYCLOPEDIA OF ECONOMICS 262-64 (David R. Henderson ed., 1993) [hereinafter TULLOCK, *Government Spending*].

267. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 136-45.

268. Hutchison, *Work, The Social Question*, *supra* note 31, at 98-111.

269. Daly, *supra* note 58, at 26.

270. *Id.* at 23.

much support from religious leaders and particularly from Catholic thinkers.”²⁷¹ Coherent with this claim, *Commonweal*, a Catholic magazine publication urged readers to recognize that President Roosevelt’s triumph in 1932 was “‘likewise the Catholic opportunity to make the teachings of Christ apply to the benefit of all.’”²⁷²

Scholar Lew Daly plainly describes the Catholic roots of American liberalism.²⁷³ But more important for present purposes is evidence that confirms that FDR’s version of the common good has led to a reduction in space for religious viewpoints within the public square. As an example, consider the Schechter brothers, Orthodox Jews in Brooklyn, who raised and sold kosher chickens. “They ran into trouble with New Deal codes that said, in the name of quality assurance, that vendors couldn’t let individual customers select their own chickens.”²⁷⁴ Apparently, appeals to tradition, never mind authentic religious tradition, were not merely unpersuasive to the New Deal’s crusading progressive, but also insults to the bureaucratic mind.²⁷⁵ The Schechters were harassed, fined and ultimately sentenced to jail all in the name of scientific progress.²⁷⁶ Central to this New Deal paradigm is the invention of a new kind of morality for the entire nation grounded in scientific progress, state power and FDR’s rather despotic conception of justice.²⁷⁷ A parallel effort, led the Jacobins to terror and their downfall because morality cannot be reinvented on the scale of a whole nation by reliance on the views of intellectual elites.²⁷⁸

This narrative produces skepticism about the possibility of progress and its postmodern capability of being endlessly transmuted into novel varieties. Nietzsche observes “[p]rogress is merely a modern idea—that is to say, a false idea.”²⁷⁹ Solzhenitsyn contends that the West has been seduced by the hypothesis that man has become the master of this world and “‘bears no evil within himself . . . So all of the defects of life’ are attributed [simply] to ‘wrong social systems.’”²⁸⁰ Whether the notion of progress is merely a false idea or not, it seems clear that Progressivism, coupled with its emphasis on human perfection that can be closely linked to centralized power and restructured social and economic systems, correlates with what

271. *Id.*

272. *Id.*

273. See generally Daly, *supra* note 58, at 23.

274. JONAH GOLDBERG, *The Raw Deal*, CLAREMONT REV. OF BOOKS, Winter 2008, at 17 (reviewing Amity Shlaes, *THE FORGOTTEN MAN: A NEW HISTORY OF THE GREAT DEPRESSION*), available at http://claremont.org/publications/crb/id.1502/article_detail.asp [hereinafter Goldberg, *The Raw Deal*].

275. *Id.*

276. *Id.*

277. Franklin Delano Roosevelt was only following a pathway first blazed by Woodrow Wilson who arrested and jailed more dissidents in his first few years in office than Mussolini did during the entire 1920s, earning President Wilson notoriety as the twentieth century’s first fascist dictator. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 80.

278. MACINTYRE, *AFTER VIRTUE*, *supra* note 24, at 238.

279. FRIEDRICH NIETZSCHE, *THE ANTICHRIST: A CRITICISM OF CHRISTIANITY* 4 (Anthony M. Ludovici trans., 2006) (quoting BENJAMIN DISRAELI, *TANCRED: OR THE NEW CRUSADE* (2007)).

280. CHARLES COLSON, *Jeremiah at Harvard*, in *CHRISTIANITY TODAY*, Aug., 2008, at 64 (quoting Solzhenitsyn’s Speech at Harvard).

is often forgotten: the progressive views of Margaret Sanger and the presumed advantages of selective breeding.²⁸¹ Apparently accepting the assertion that white supremacy was justified by the putatively-scientific observation that the various races were at different stages of the evolutionary process,²⁸² Sanger and others led the fight for reproductive freedom²⁸³ as part of an ongoing attempt to bring evolution under human control, and thereby subject the future to the captivity of present.²⁸⁴ A modern democratic state, whether liberal or conservative, that is captured by these ideals can and must extend such ideas throughout the nation's political root system, while dismissing: (1) Professor Breen's counter-claim that law, as a coercive force, cannot fully fashion change within the human person,²⁸⁵ and (2) Pope John Paul II's observation that structural transformation of society is secondary to moral renovation.²⁸⁶ Inconsistent with Breen's and Pope John Paul II's balanced approach, but deserving of closer scrutiny by society, is the link between progressives and left-wing Populists like Father Coughlin and a number of additional developments. These developments include the extirpation of individual rights contrary to the notion of ordered liberty²⁸⁷ in order to transform the nation through bureaucratic regulation, and the connection between modern liberalism and the increasingly-secularized public square occupied by postmodern discourse.

Unfortunately, some, but providentially not all Catholic leaders have participated either inadvertently or deliberately, in a project that nurtures the expansion of government, the reach of modern liberalism and secularism, and contributes to the war of all against all. Still this process of corrupting the nation's political ecosystem, partially hidden by its connection to the social justice tradition of the Catholic Church, has enjoyed political success that ignores inconvenient truths. While Father Ryan saw in Roosevelt's first major New Deal program, the National Industrial Recovery Act (NIRA), a partial embodiment of the corporative vision put forward by Pope Pius XI,²⁸⁸ others can see that FDR's policies redistributed employment and resources from blacks, the most destitute of Americans during the Depression, to whites and trade unions;²⁸⁹ catalyzed the creation

281. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 270-77.

282. *Id.* at 260.

283. *Id.* at 18.

284. NEUHAUS, *AMERICAN BABYLON*, *supra* note 174, at 236.

285. See, e.g., John M. Breen, *John Paul II: The Structures of Sin and the Limits of Law*, 52 ST. LOUIS L.J. 317, 332 (2008).

286. See Pope John Paul, Encyclical Letter, *Centesimus Annus*, ¶ 51 (May 1, 1991), http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus_annus_en.html.

287. See generally GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 86 (examining President Woodrow Wilson's description of the Declaration of the Independence as nonsense).

288. Daly, *supra* note 58, at 27.

289. Harry Hutchison, *Toward a Critical Race Reformist Conception of Minimum Wage Regimes: Exploding the Power of Myth, Fantasy, and Hierarchy*, 34 HARV. J. ON LEGIS. 93, 123-24 (1997) [hereinafter Hutchison, *Toward a Critical Race Reformist Conception of Minimum Wage Regimes*].

of virtual slavery;²⁹⁰ increased poverty; and empowered the state led by elites, who were members of the “Brain Trust.”²⁹¹ These disastrous policies,²⁹² far from delivering social justice, instantiated Archbishop Chaput’s worse fears: a brutal assault on human dignity.

Author Mark Stricherz, explaining why he is a Catholic Democrat argues that the basic test of any civilization is how it treats its least well-off citizens, and consequently, he concludes that the federal government is a better vehicle than business or the free market.²⁹³ But often forgotten Lyndon Johnson’s Great Society program, rather than correlating with better treatment for America’s marginalized citizens, correlates instead with a rise in crime, including a doubling of the murder rate, and a rise in out-of-wedlock births and accompanying pathologies.²⁹⁴ This development confirms that the United States is not free from a form of statism that unleashes the coercive power of the state to invade “every nook and cranny of social life, penetrating and weakening even the family”²⁹⁵ Perhaps unnoticed by progressives, “the biggest drop in black poverty rates took place during the two decades *before* the Great Society.”²⁹⁶ “In the 1970s, when the impact of Great Society programs was fully realized, the trend of black economic improvement stopped almost entirely.”²⁹⁷ Additionally the Great Society gave rise to Medicaid, currently the largest form of aid to the states from the federal government.²⁹⁸ Though Medicaid may have been tied to social justice objectives, such goals could not prevent the program from being transformed into a vehicle to encourage abortions,²⁹⁹ despite strong Catholic opposition.

Instead of originating in social justice, it is possible to adduce evidence showing that the American welfare state was in its very origins a eugenic racial project³⁰⁰ best exemplified in contemporary times by Nicholas Von

290. African Americans were induced by New Deal programs into virtual slavery as the Roosevelt administration learned to accommodate racial oppression as part of its “progressive” assistance program. RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 1-3, 85 (2007).

291. GOLDBERG, *The Raw Deal*, *supra* note 274, at 17-18.

292. See AMITY SHLAES, *THE FORGOTTEN MAN: A NEW HISTORY OF THE GREAT DEPRESSION* 3 (2007) (explaining that Rex Tugwell, a principal actor in Roosevelt’s New Deal, concluded that several years’ worth of sustained government planning had merely created a depression within a Depression).

293. Mark Stricherz, *Why I am a Catholic Democrat*, INSIDECATHOLIC.COM, Sept.12, 2007, http://insidecatholic.com/Joomla/index.php?option=com_content&task=view&id=280&Itemid=48.

294. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 269.

295. GRAY, *supra* note 12, at 15.

296. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 269.

297. *Id.*

298. The Hyde Amendment limits federal funds for abortions, but state funds remain available. See Public Funding for Abortion: Medicaid and the Hyde Amendment, National Abortion Federation, http://www.prochoice.org/about.abortion/facts/public_funding.html (last visited Nov. 8, 2009).

299. See Rebecca M. Blank, Christine C. George, & Rebecca A. London, *State Abortion Rates: The Impact of Policies, Providers, Politics, Demographics and Economic Environment*, (Nat’l Bureau of Econ. Research, Working Paper No. 4853, (1994), available at http://papers.ssrn.com/so13/papers.cfm?abstract_id=947795).

300. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 263 (quoting THOMAS SOWELL, *CIVIL RIGHTS: RHETORIC OR REALITY?* 84 (1984)).

Hoffman's argument that "[f]ree cheap abortion is a policy of social defense. To save ourselves from being murdered in our beds and raped on the streets, we should do everything possible to encourage pregnant women . . . to get rid of the thing before it turns into a monster"³⁰¹ This highly-leveraged form of reverse human engineering is a manifestly utilitarian project that poisons the nation's political root system. This scheme capitulates to the progressive idea that human life ought to be subordinated to the principle of cost-effectiveness despite Catholic Church teaching linking such projects to two intrinsic evils: racism and abortion.³⁰² Partially consistent with Von Hoffman's goal, Planned Parenthood, the nation's largest abortion business, receives approximately a third of its revenues from government sources.³⁰³ Evidently such revenue can be used to subsidize the practice of abortion,³⁰⁴ and evidence can be readily adduced showing that its clinics today appear more than willing to accept financial donations targeted specifically toward the destruction of unborn African American babies.³⁰⁵ As a historical matter, not all progressives supported all aspects of the welfare state on eugenic grounds; some were deeply skeptical of the welfare state because government assistance was often seen as dysgenic—that is, it increased the ranks of the 'unfit'—because it afforded the degenerate classes an opportunity to reproduce, whereas in a natural environment such rabble would die off."³⁰⁶ Thus understood, Planned Parenthood's contemporary efforts, whether eugenic or dysgenic, could be seen as an effort to return certain people and their unborn babies to a Hobbesian state of nature.

Taken together, the progressive project betrays Pope Pius XI's analysis showing that "there is an essential connection between the pursuit of the common good and the realization of social justice."³⁰⁷ Rather than delivering social justice to marginalized Americans and far from establishing the common good, evidence mounts showing that the progressive turn augmented human suffering and state power that is instantiated by large bureaucratic institutions that emphasize compulsion and preclude subsidiarity. Moreover, in spite of Lew Daly's claim that it was only the liberal agenda of the 1960s that transformed the idea of the common good

301. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 275 (quoting RAMESH PONNURU, *THE PARTY OF DEATH: THE DEMOCRATS, THE MEDIA, THE COURTS, AND THE DISREGARD FOR HUMAN LIFE* 65 (2006)).

302. Richard John Neuhaus, *A Response to Doug Kmiec*, NATIONAL CATHOLIC REGISTER, July 13, 2008, http://www.ncregister.com/site/print_article/15476/.

303. Steven Ertelt, *Planned Parenthood Abortion Business Makes \$1 Billion Income for the First Time*, LIFE NEWS.COM, Mar. 28, 2008, <http://www.lifenews.com/printpage.php>.

304. Ertelt, *supra* note 303.

305. Bob Unruh, *Planned Parenthood: Wanting Fewer Blacks 'Understandable'*, WORLDNETDAILY, Feb. 27, 2008, <http://www.wnd.com/index.php?fa=PAGE.printable&pageId=57526>.

306. GOLDBERG, *LIBERAL FASCISM*, *supra* note 31, at 265.

307. ROBERT JOHN ARAUJO, S. J., *The Constitution and the Common Good*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 2, at 104, 122 (citing Pope Pius XI, *Quadragesimo Anno* ¶58 (1931)).

into a focus on sexual freedom, extreme secularism and detached individualism as norms,³⁰⁸ a more accurate assessment shows the emphasis on reproductive and sexual freedom, and detached individualism were widely available within, and wholly consistent with, the currents of the modern liberalism of the 1930s. Properly appreciated, these norms were and are the inevitable destination of the progressive turn.

While proof of cause and effect may be difficult, and while *Evangelium Vitae* teaches the incomparable worth of the human person,³⁰⁹ new threats surface,³¹⁰ including substantial evidence drawn from the New Deal, the Great Society, and the welfare state that suggests the progressive turn failed to establish authentic social justice. Taken as a whole, it is likely that only postmodern discourse that shelters modern liberalism from evil³¹¹ can link the progressive turn to Catholic anthropology. Far from becoming an avenue for redemptive action that joins our suffering with God's in healing the evil and pain in the world,³¹² the unconstrained expansion of government under the aegis of modern liberal thought diminishes ordered liberty including religious liberty, disregards John Locke's contribution to the founding of the republic, and as a consequence calls into question our duty of obedience.³¹³ Given democracy's inherent structural tendency favoring authoritarianism, it predictably encroaches on the power, authority and witness of civil society. Rather than escaping the inherent structural tendency of democracies to become authoritarian,³¹⁴ as public choice analysis shows,³¹⁵ the United States has endured a mammoth increase in the size of the federal government. Government spending has risen from five percent of Gross Domestic Product during most of its history to thirty percent during the last two-thirds of the twentieth century.³¹⁶ This unpromising development has created and sustained a political state of nature that fashions a

308. Daly, *supra* note 58, at 27.

309. Pope John Paul II, Encyclical Letter, *Evangelium Vitae* ¶ 2 (Mar. 25, 1995), www.vatican.va/edocs/ENG0141/_INDEX.HTM.

310. Among the newest threats are healthcare proposals that would monitor patient treatments to make sure physicians are doing what the federal government deems appropriate and cost-effective. This approach would affect patients who are already covered by insurance, and the government would no longer focus on whether a procedure was safe and effective. Instead, bureaucrats would decide who gets life-saving treatment and who does not, thus mandating survival of the fittest in the name of progress. See Cal Thomas, *Killer Care*, *WORLD MAG.*, Mar. 14, 2009, at 6-7, available at <http://www.worldmag.com/articles/15079>.

311. On this possibility, see Terry Eagleton, *Awakening From Modernity*, *TIMES LITERARY SUPPLEMENT*, Feb. 20, 1987, at 195 (quoted in GROOTHUIS, *supra* note 147, at 129) (contending that Jean-Francois Lyotard's postmodernist rejection of metanarratives allows no standpoint from which to condemn social injustices, such as Nazism, as objectively evil).

312. See CHAPUT, *supra* note 18, at 47.

313. EDMUNDSON, *supra* note 235, at 30 (Locke asserts that a state that does not respect rights is acting beyond its proper power and imposes no duty of obedience).

314. PILDES, *Inherent Authoritarianism*, *supra* note 28, at 1.

315. See, e.g., JANE S. SHAW, *Public Choice Theory*, in *THE FORTUNE ENCYCLOPEDIA OF ECONOMICS*, *supra* note 266, at 150-53 (explaining that the incentives for good management that vindicates the public interest are weak, but in contrast, interest groups are organized by people who seek very strong gains from governmental action that encourages such groups to provide politicians with campaign funds and campaign workers in exchange for votes favoring interest groups).

316. TULLOCK, *supra* note 266, at 262-64.

legal and political war wherein rival interest groups compete with each other to seize government and use its power to redistribute political, economic, social and moral power among themselves, while leaving the institutions of civil society and the most marginalized among us progressively enfeebled.³¹⁷ John Gray supplements this dire description by concluding that the expansion of government has been accompanied by an incessant contestation that does not emphasize the rightful extension to individuals “of the liberties and immunities enjoyed by others in equal freedom under the rule of law”³¹⁸ Rather, he argues, this concerns the political self-assertion of collective identities made possible by a commitment to the idea that humans are, at least partially, self-defining creatures, and seeks privileges and entitlements that cannot in their nature be extended to all.³¹⁹ Gray further notes that

So far gone is the United States in this degradation of law—which is the capital on which civil society must draw for its daily support—that it is not hard to envisage the United States as heading for an [authoritarian future], in which economic weakness, over-extended government and doctrinal excess compound with each other to lay waste the [nation’s] inheritance of civility.³²⁰

The unconstrained expansion of government, whether tied to the welfare state, antinomian individualism, or the self-assertion of new forms of collective identity, fails to operate in harmony with the ideals expressed by the Declaration of Independence, calls into question the viability of the Americanists project, contributes to Rousseau’s objective of establishing the God-state and crowds out the search for truth that is consistent with the Catholic Church’s splendid anthropology.³²¹ This process, however, is coherent with the progressive vision wherein citizens are seen as instruments of state power. Professor Carter clarifies the conflict between religion and modern liberal theory by focusing his analysis on bureaucratic efforts to produce national homogeneity:

Liberal theory, of course, is a theory; it need not be psychologically accurate; it need not deal with people as they are; it

317. GRAY, *supra* note 12, at 4.

318. *Id.* at 15.

319. *Id.* at 15, 258.

320. *Id.* at 15.

321. Catholic anthropology provides a complete view of the human person premised on the difference between true and false religion that is indissolubly linked with the distinction between God and the world. Thus understood, the modern liberal project might be compatible with Egyptologist Jan Assmann’s attempt to return to polytheism or the return to the gods inasmuch as his approach rejects a God who stands over against the world but regards the gods merely as symbolical forms of expression for nature, which is divine. See JOSEPH CARDINAL RATZINGER, *TRUTH AND TOLERANCE: CHRISTIAN BELIEF AND WORLD RELIGIONS* 210-14 (Henry Taylor trans., Ignatius Press 2004) (2003).

can consider people as they should be. So when [commentators] . . . [suggest] that liberalism should set out to combat illiberal religions, we can take [them] quite seriously. [They are] uninterested in constructing the state for the benefit of the people. [They] would rather construct the people for the benefit of the state.³²²

The record shows that the liberal state, whether or not it invokes the imprimatur of progress and social justice, inevitably flattens the moral, social and theological voice of the faithful in America's public and political life and diminishes the possibility of recovering faithful citizenship and the nation's identity unless the faithful can recover and embrace the power of resistance that is infused with humility. In the interim, all of who are persuaded by Archbishop Chaput's forceful analysis, must join with MacIntyre and await the return of another St. Benedict.

IV. CONCLUSION

Rejecting the Ionian Enchantment with its dismissal of faith and revelation as an unenlightened way to satisfy religious hunger,³²³ but pursuing justice and the common good as part of the history of salvation, Archbishop Chaput declares that when individuals say they are Catholic but then reject Catholic teaching, they engage in dishonesty.³²⁴ He concludes that Catholics cannot fast from politics.³²⁵ Rather, they owe Caesar their authentic witness not simply as loyal citizens but also as faithful ones.³²⁶ But in a postmodern society, the inevitable effect of modern liberalism is that some will view religion as an edentulous eccentricity rather than as a central and formative element of the nation.³²⁷ This move confines the question of God to the private sphere and "constitutes what might be described as political atheism."³²⁸ Support for this maneuver is commonplace because giving religious voices space in the public square as a singularly important aspect of a believer's life locks in both society and individuality to the past from which modern liberalism seeks to deliver us. *Render Unto Caesar* provides a foundation that might enable Catholics to influence America's ongoing debate about public policy and the common good. Yet, given the insistent demands of modern liberalism and the likelihood that Catholics themselves have accepted as normative a process of equivocation

322. CARTER, *Liberal Hegemony*, *supra* note 158, at 50.

323. EDWARD O. WILSON, *Consilience: The Unity of Knowledge* 6 (1998).

324. CHAPUT, *supra* note 18, at 225.

325. My debt to Robert J. Delahunty should be obvious. See Robert J. Delahunty, *Changing Hearts, Changing Minds: A New Evangelical Politics?*, 47 J. CATH. L. STUDIES 271, 272 (2008) (quoting Charles Colson & Ann Morse, *The Wilberforce Strategy*, CHRISTIANITY TODAY, Feb. 2007).

326. CHAPUT, *supra* note 18, at 219.

327. See, e.g., Catholic News Agency, *Cardinal Murphy-O'Connor Criticizes Secular Intolerance of Catholic Beliefs*, (Dec. 9, 2008), <http://www.catholicnewsagency.com/new.php?n=14558>.

328. NEUHAUS, *AMERICAN BABYLON*, *supra* note 2, at 93.

and self-censorship, the probability that they will capitulate to Archbishop Chaput's analysis is remote.

Eschewing philippic declarations, Archbishop Chaput issues an invitation to Catholic public officials to faithfully exercise their special responsibility to act with a strong sense of what is right and wrong and to speak plainly and act clearly,³²⁹ which implies that Catholic citizens have an obligation to improve the lives of their neighbors as a form of social and moral progress. Nevertheless, Catholic social teaching must traverse a changing landscape that diminishes the efficacy of such teaching and deprives the nation's polity of a common language. Taken together, this prepares the conditions necessary for often compartmentalized Catholic believers to give surface assent to the authority of the Church while ensuring that its magisterium has only an incidental effect on their every day experiences and political life. Rejecting a common architecture for humane political thought with its tangible links to the past mediated through communities tethered to the earth, many Catholics are unwilling to participate forcefully in efforts directed toward restoring the nation's identity and ensuring a place for religious voices in the public square. Archbishop Chaput's gallant effort to put the world back together appears to founder in the face of indifference that implies that Christianity is simply one particularity among many for many Americans and many Catholics living in a postmodern age.

329. CHAPUT, *supra* note 18, at 2-3.

