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## Catholicism, Constitutionalism, and the Separation of Church and State

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Catholicism & the Disciplines Course Proposal  
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The apex of development is the exercise of the right and duty to seek God, to know him and to live in accordance with that knowledge. In the totalitarian and authoritarian regimes, the principle that force predominates over reason was carried to the extreme. Man was compelled to submit to a conception of reality imposed on him by coercion, and not reached by virtue of his own reason and the exercise of his own freedom. This principle must be overturned and total recognition must be given to *the rights of the human conscience*, which is bound only to the truth, both natural and revealed. The recognition of these rights represents the primary foundation of every authentically free political order.

- Pope John Paul II
- *Centesimus Annus* (1991)

In my proposed Catholicism and the Disciplines course, I hope to help students examine Catholic and secular approaches to liberal constitutionalism. The Catholic intellectual tradition has a history of rich engagement with and participation within the discipline of political science and constitutionalism more generally. This class will explore some of those Catholic contributions by a study Catholic, non-Catholic, and secular approaches to constitutional government with a focus on the separation of church and state.

I intend the class to help students think more deeply and clearly about fundamental questions of political justice, such as: What are the proper ends or goals of politics? What does and does not belong to the political common good? What is religious liberty and what are the various philosophical and theological arguments made to justify it? How do Catholic arguments for religious freedom and the separation of church and state compare to secular arguments and accounts developed by other faith traditions? Does Catholicism support sound constitutionalism in general, and religious freedom in particular?

The class will begin with philosophical and theological arguments and then apply the various and competing principles discussed to real life cases. By discussing leading Supreme Court cases—with an emphasis on cases involving the Catholic church or issues of particular relevance to Catholicism, e.g. the constitutionality of funding religious schools—students will attempt to apply theory into practice. They will ask and attempt to answer questions such as: Does a Catholic approach to the First Amendment or a Catholic approach to jurisprudence exist? Has the Supreme Court treated Catholics fairly in its church-state jurisprudence? What is the proper separation of church and state and has the American Supreme Court achieved it? Is it proper for a liberal state to support religion or to aid religious institutions such as Catholic schools? Should religious citizens be exempt from generally burdensome laws?

The class will also address leading contemporary issues involving religion and liberal constitutionalism, including the free market and non-discrimination law. The class will conclude with an examination and discussion of leading Catholic thinkers' reflections on liberal democracy.

The class aims to be philosophical and theological, but also concrete and particular. By using easily accessible legal questions—May government fund Catholic schools? May government compel religious objectors to pledge allegiance to the flag?—the readings will give students an opportunity to discuss and debate how philosophical theories “play out” in the real world. The class will also challenge students to develop their political principles. By the end of the class, students should be equipped not only to discuss competing theories of political authority and religious freedom, but also to champion a philosophy of religious freedom (or not) or even develop a philosophy of church-state separation that they find normatively persuasive.

## **LEARNING GOALS**

- Find or develop a political philosophy that you believe offers a normatively superior approach to politics
- Develop your own jurisprudential approach to church-state constitutional questions
- Compare, contrast, and evaluate Catholic and secular arguments for religious freedom and the separation of church and state
- Compare, contrast, and evaluate competing Catholic arguments about the proper ends and limits of government
- Compare, contrast, and evaluate Jewish, Catholic, Islamic, and Protestant views about the role of the state
- Explore the relationship between faith and reason as it manifests itself in questions pertaining to law and politics
- Understand the philosophical principles of American constitutionalism and evaluate to what degree they are compatible with various Catholic intellectual traditions
- Deepen your knowledge of American political and constitutional history and consider to what extent Catholicism supports or does not support American liberal democracy
- Explore, argue, and debate the proper role of the judiciary in America's constitutional republic and whether there exists a “Catholic approach” to American constitutional law

- Understand and evaluate leading Supreme Court church-state cases, especially those involving the Catholic Church
- Engage your classmates in civil conversation about religion and politics, religious freedom, and Catholicism and constitutionalism

## **DETAILED CLASS DESCRIPTION AND POTENTIAL READINGS**

The class will be divided into three main sections. Each section is described below with proposed readings and assignments.

### **I. Catholic, Non-Catholic, and Secular Arguments For and Against Religious Freedom**

The class will begin by investigating Catholic arguments for and against the separation of church and state. Readings will then be assigned that will encourage students to compare, contrast, and evaluate Catholic and secular arguments for religious freedom and the separation of church and state. Students will also explore the relationship between faith and reason as it manifests itself in arguments for religious freedom. Readings will also help students develop an understanding of the philosophical principles of American constitutionalism and evaluate to what degree those principles are compatible with various aspects of the Catholic intellectual tradition.

#### Christianity & Political Authority

Numa Denis Fustel de Coulanges, *The Ancient City* (Baltimore, Johns Hopkins University Press, 1980), pp. 178-90, 381-88\*

Rousseau, "Civil Religion" from *Social Contract* in *Jean Jacques Rousseau's Political Writings*, ed. Alan Ritter (New York: W.W. Norton Company, 1987), pp. 166-73\*

Pope Benedict XVI, "The Listening Heart: Reflections on the Foundations of Law," Sept 22, 2011\*

Oscar Cullmann, *The State in the New Testament* (New York: Charles Scribners Sons, 1956), pp. 3-49\*

#### Classical Arguments for State-Sanctioned Religious Authority

Saint Augustine, excerpts from *Augustine: Political Writings*, eds. Fortin and Kries (Indianapolis: Hackett Publishing Company, 1994), pp. 230-39, 245-47\*

- *On True Religion*, XVI.31

- Letter 93, to Vincentius

- Letter 133, to Marcellinus

St. Thomas Aquinas

- *On Kingship*: Chaps. 1-2, 12, 14, 15\*

- *Summa Theologica* II-II: Q10, A. 8, 10, 11 (Unbelief); Q11, A3 (Heresy); Q12, A: 1, 2 (Apostasy)\*; Q60. A.6, (Of Judgment); in *St. Thomas Aquinas: On Law Politics and Morality*, eds. Baumgarth and Regan (Indianapolis: Hackett Publishing Company, 1988), pp. 249-61\*

#### Natural Rights, Social Compact Theory, and Limited Government

The Declaration of Independence (1776)\*

The Essex Result (1778)\*

New Hampshire Declaration of Rights (1784)\*

Arguments for Religious Liberty I: The American Founders & Social Compact Theory

Thomas Jefferson, Virginia Statute for Religious Liberty (1777, 1786) in *RL&ASC*

James Madison, Memorial and Remonstrance Against Religious Assessments (1785) in *RL&ASC*

George Washington, Letter to the Catholics (1789)

George Washington, Letter to the Hebrew Congregation at Newport (1790)

Thomas Jefferson, Letter to the Danbury Baptist Association (1803)

Arguments for Religious Liberty II: Catholicism, Faith & Reason, and The Natural Law

*Dignitatis Humanae*

*Veritatis Splendor*, Chapter II (sections 31-64)

John Paul II, “On the Value and Content of Freedom of Conscience and of Religion,” (1980)

John Paul II, “Religious Freedom: Condition for Peace” (1988)

Avery Cardinal Dulles, S.J., “*Dignitatis Humanae* and the Development of Catholic Doctrine,” in *Catholicism and Religious Freedom*, eds. Grasso and Hunt (2006)

Joseph Cardinal Ratzinger, “That Which Holds the World Together: The Pre-political Moral Foundations of a Free State,” in *The Dialectics of Secularization: On Reason and Religion* (Ignatius Press, 2007), pp. 53-80

Joseph Cardinal Ratzinger, “Truth, Tolerance, Freedom,” in *Truth and Tolerance: Christian Belief and World Religions* (San Francisco: Ignatius Press, 2004), 210-58

Thomas Pink, “[Conscience and Coercion](#),” *First Things* (August 2012)

Jacques Maritain, “Church and State,” in *Man and the State* (Chicago: University of Chicago, 1951), pp. 147-87

Arguments for Religious Liberty III: Protestantism, Secularism, Freedom of Conscience

John Locke, Letter Concerning Toleration (1689)

Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience* (Cambridge: Harvard University Press, 2011)

**Writing Assignment #1:** On the second day of class, each student will be asked to write a short paper that articulates (1) his or her understanding of religious freedom, (2) the grounds for religious freedom, and (3) why religious freedom is or is not good.

**Writing Assignment #2:** At the end of this section of the class, students will be asked to craft an argument for or against religious freedom that compare, contrast and evaluate the arguments for and against religious freedom we have considered thus far in the class. The paper prompt will direct students to take a stance on the subject—that is, to articulate what account of religious freedom discussed is most persuasive and to explain why or, alternatively, to develop their own account of religious freedom. Students will be invited to expand upon their initial writing assignment if they wish to do so.

## II. Church, State, and American Constitutionalism

The second section of the class will move from theory to practice. Having considered and debated Catholic, non-Catholic, and secular arguments for (and against) religious liberty, students will examine leading American church-state Supreme Court cases. In teaching these cases, my aim will not teach the students the law (though they will learn quite a bit about the law), but rather to ask students to apply the philosophical and theological principles covered in Section I to concrete cases. Attempting to move from theory to practice, I believe, will not only help students refine their views about religious freedom, it will help students see the complexities and challenges of developing a philosophically and theologically coherent account of religious liberty. Several of the cases involve Catholic litigants.

<i>Reynolds v. United States</i> (1879)	Do Mormons have a right to engage in polygamous marriages?
<i>Minersville v. Gobitis</i> (1940)	Must Jehovah's Witnesses school children say the Pledge of Allegiance and salute the flag?
<i>West Virginia v. Barnette</i> (1943)	Must Jehovah's Witnesses school children say the Pledge of Allegiance and salute the flag?
<i>Everson v. Bd. of Education</i> (1947)	May the state subsidize Catholic schools?
<i>McCullum v. Bd. of Ed.</i> (1948)	Religious instruction, including Catholic instruction, in public schools
<i>Zorach v. Clauson</i> (1952)	Religious instruction, including Catholic instruction, in public schools
<i>Braunfeld v. Brown</i> (1961)	Exemptions for Jewish merchants from Sunday closing laws
<i>Sherbert v. Verner</i> (1963)	Religious exemptions for welfare benefits
<i>Wisconsin v. Yoder</i> (1972)	Amish school children and compulsory school attendance laws
<i>Engel v. Vitale</i> (1962)	Prayer in public schools
<i>Abington v. Schempp</i> (1963)	Bible reading in public schools
<i>Lemon v. Kurtzman</i> (1971)	State funding of Catholic schools
<i>Marsh v. Chambers</i> (1983)	State legislative chaplains
<i>Wallace v. Jaffree</i> (1985)	Prayer in public schools
<i>Oregon v. Smith</i> (1990)	Native American peyote use
<i>Lukumi Babalu Aye v. Hialeah</i> (1993)	State prohibition of religious animal sacrifice
<i>Boerne v. Archbishop Flores</i> (1997)	State land use regulation and the building of a Catholic church
<i>Rosenberger v. UVA</i> (1995)	State funding of a religious university club newspaper
<i>Good News Club v. Milford</i> (2001)	Equal access for religious groups to use public schools after hours
<i>Locke v. Davey</i> (2004)	State funding of university theology students
<i>Zelman v. Simmons-Harris</i> (2002)	School vouchers / state funding of Catholic schools
<i>Elk Grove v. Newdow</i> (2004)	Public recitation of "under God" in the Pledge of
<i>Van Orden v. Perry</i> (2005)	Ten Commandments display on state property
<i>McCreary County v. ACLU</i> (2005)	Ten Commandments display on state property
<i>Hosanna-Tabor v. EEOC</i> (2012)	Religious minister exceptions to non-discrimination law
<i>Burwell v. Hobby Lobby</i> (2014)	Religious exemptions from the HHS Mandate
<i>Trinity Lutheran v. Comer</i> (2017)	Religious schools' participation in state funding programs

**Writing Assignment #3:** Students will be given a case and asked to compose a judicial opinion as if they are a member of the Supreme Court. Excellent papers, the students will be told, will employ the arguments discussed and debated in the class's first section.

### III. Catholicism and Constitutional Democracy

The final section of the class will ask to what extent Catholicism supports liberal democracy. To address this question, the section will examine two much-discussed aspects of modern democratic practice, the free market and non-discrimination law. We will also read and discuss reflections by leading Catholic political theorists of democracy, including Tocqueville, and contemporary Catholic intellectuals and their critics. The class will conclude with a discussion of speeches by Catholic political figures, including several important speeches given at the University of Notre Dame.

#### Religion and the Marketplace: Is Capitalism Moral? Is Capitalism Compatible with Catholicism?

G.A. Cohen, *Why Not Socialism?* (2009)

Michael Sandel, *What Money Can't Buy* (2012), Introduction

Peter Singer, *The Life You Can Save*, (2009), Preface, Ch. 1-2

*Centesimus Annus* (1991)

David Bentley Hart, "[Mammon Ascendant: Why Global Christianity is Inimical to Christianity](#)," *First Things* (June, 2016)\*

Samuel Gregg, "[Global Capitalism versus Christianity? A Response to David Bentley Hart](#)," *Public Discourse*, May 17, 2016\*

#### Same-Sex Marriage, Non-Discrimination & Religious Freedom

Ross Douthat, "[Defining Religious Liberty Down](#)," *The New York Times*, July 28, 2012\*

Tim Cook, "[Pro-discrimination 'Religious Freedom' Laws are Dangerous](#)," *The Washington Post*, March 29, 2015\*

Ross Douthat, "[Questions for Indiana's Critics](#)," *The New York Times*, March 30, 2015\*

Frank Bruni, "[Bigotry, the Bible and the Lessons of Indiana](#)," *The New York Times*, April 3, 2015\*

Ross Douthat, "[Interview with a Christian](#)," *The New York Times*, April 4, 2015\*

Richard Samuelson, "[Who's Afraid of Religious Liberty?](#)" *Mosaic*, August 1, 2016\*

#### Is Religion Good or Necessary for Democratic Government?

Tocqueville, *Democracy in America*, I.II. 9: "Principal Causes that Tend to Maintain the Democratic Republic in the United States"

- "Religion Considered as a Political Institution and How It Powerfully Contributes to the Maintenance of a Democratic Republic Among the Americans"
- "Indirect Influence of Religious Beliefs upon Political Society in the United States"
- "The Principal Causes That Make Religion Powerful in America"

Tocqueville, *Democracy in America*, II.I. 1,2,5:

- "The Philosophic Method of the Americans"
- "The Principal Sources of Beliefs among Democratic Peoples"
- "How, in the United States, Religion is Able to Make Use of Its Democratic Instincts"

Robert Kraynak, "Why Modern Liberal Democracy Needs God," Chapter 1 in *Christian Faith and Modern Democracy: God and Politics in the Fallen World* (Notre Dame, IN: University of Notre Dame Press, 2001), pp. 9-44

Christopher Hitchens, "Religion Kills," Chapter 2 in *God is Not Great* (2007), 15-36

Christopher Hitchens, "Does Religion Make People Behave Better?" Chapter 13 in *God is Not Great*, 173-93.

#### Catholicism, Politics, and Liberal Democracy

John F. Kennedy, [Address to the Greater Houston Ministerial Association](#), September 12, 1960  
Rev. Theodore M Hesburgh, C.S.C., Address at the Bicentennial Conference on Religious Liberty, April 29, 1976

Mario Cuomo, "Religious Belief and Public Morality: A Catholic Governor's Perspective," September 13, 1984 – Delivered at the University of Notre Dame

Henry Hyde, "Keeping God in the Closet - Some thoughts on the Exorcism of Religious Values from Public Life" – Delivered at the University of Notre Dame, September 24, 1984

Mary Ann Glendon, "Religion and a Democratic Society," Delivered at the University of Notre Dame, 1996

Antonin Scalia, "God's Justice and Ours," Speech at the University of Chicago, September 25, 2002

Barack Obama, Notre Dame Commencement Address, May 17, 2009

**Writing Assignment #4:** The final writing assignment will require students to write on the themes of Catholicism, constitutionalism, and liberal democracy. Paper topics will be chosen by the students in consultation with the professor.