

Prophecy, Public Theology, and Questions of Justice: Some Modest Reflections

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I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Council-er or the Ku Klux Klanner, but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice . . . Lukewarm acceptance is much more bewildering than outright rejection.¹

[T]he Church has always had the duty of scrutinizing the signs of the times and of interpreting them in the light of the Gospel. Thus, in language intelligible to each generation, she can respond to the perennial questions which men ask about this present life and the life to come, and about the relationship of the one to the other. We must therefore recognize and understand the world in which we live, its explanations, its longings, and its often dramatic characteristics.²

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1. Martin Luther King, Jr., *Letter from Birmingham Jail*, MARTIN LUTHER KING, JR., RES. & EDUC. INST. (Apr. 16, 1963), http://okra.stanford.edu/transcription/document_images/undecided/630416-019.pdf.

2. Pope Paul VI, *Gaudium et Spes*: Pastoral Constitution on the Church in the Modern World

INTRODUCTION	46
I. THE CATHOLIC DEMOCRATIC TRADITION	49
II. CHANGE AND THE CATHOLIC EXPERIENCE	57
III. THE QUESTION OF RACE: LESSONS FROM SAINT LOUIS UNIVERSITY	69
CONCLUSION.....	73

INTRODUCTION

In this Introduction, I will say a few words about Robin Lovin’s interesting conference paper³ on the work of John Courtney Murray⁴ and then preview three points of my own, which are aimed at putting Murray’s work in context and at amplifying several matters touched on by Professor Lovin.

At the beginning of his conference paper, Professor Lovin observes that Murray was occupied by “two related tasks” from the late 1940s through the time of the Vatican Council. Professor Lovin elaborates:

One [task] was theological and ecclesiastical: making a case for religious freedom as a Catholic doctrine essential to the Catholic understanding of human dignity. The other was political and social: explaining that Catholic doctrine in relation to an American constitutional system that enacted freedom of religion primarily through the institutional separation of church and state and setting the terms for a dialogue that would establish the practical meaning of religious freedom under the concrete conditions of a pluralistic democracy.⁵

Professor Lovin’s paper focuses mainly on current issues related to a particular aspect of the second of these two tasks, that is, on setting the

para. 4 (Dec. 7, 1965), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html.

3. The present article originated as a response to the paper that Professor Lovin presented at the conference held at Loyola on March 13, 2018. A revised version of Professor Lovin’s conference paper, to which this author did not have access at the time he prepared the present article, appears in this issue of the *Loyola University Chicago Law Journal*. See generally Robin W. Lovin, *Religious Freedom and the Public Argument: John Courtney Murray on “The American Proposition,”* 50 *LOY. U. L.J.* 25 (2018). Since the present article is a response to Professor Lovin’s conference paper, rather than to the revised version, this article will refer only to the conference paper, and any quotation to Professor Lovin’s work should be understood as a quotation to the conference paper. A copy of the conference paper is on file with the editors of the *Loyola University Chicago Law Journal* and will be referred to in this article as “Conference Paper.”

4. See JOHN COURTNEY MURRAY, *WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION* (1960) (containing a series of Murray’s essays regarding the America’s religious pluralism).

5. Conference Paper, *supra* note 3, at 1.

terms for dialogue in the concrete conditions of a pluralistic democracy, namely, that of the United States. At the same time, Professor Lovin necessarily suggests the depth of the essential connection between these separate tasks when he observes that Murray “was still trying [in 1960] to convince Protestants like my pastors and parents that Catholics could be good Americans, too.”⁶ Without Murray’s successful completion of the first task (making the case to his coreligionists as an ecclesiastical or theological matter), the second task (engaging in dialogue with those of other religions) would have been impossible.

Professor Lovin makes a second important point, namely, that the world dramatically changed in numerous ways almost as soon as Murray published his book. Professor Lovin writes:

Remember that when *We Hold These Truths* was published, the Second Vatican Council had only just been called. The mass movement that would change civil rights laws, race relations, and, arguably, the relationship between religion and society in the United States was just beginning. In 1960, neither Robert Bellah’s essay on “Civil Religion in America” nor John Rawls’ *A Theory of Justice* had been published. The ground shifted dramatically in American public life, American political thought, and American religion almost as soon as Murray’s most important work on public theology appeared. Murray was responsive to these changes. Indeed, he devoted the last years of his life to the racial justice work of the John LaFarge Institute, and his work on the relationship between human dignity and religious freedom during the Second Vatican Council has had global implications for the life of the church.⁷

Interestingly, the most that Professor Lovin can say is that Murray “was responsive to these changes.” Murray was not necessarily a thought leader in those years.

Professor Lovin makes two additional observations that also warrant some discussion. The first is that Murray thought that “[t]he point of the public argument is not just to be heard. The point is to shape policy and legislation. Murray was clear about that. But argument also involves a prudent discernment of what the limits of policy are, and what cannot be legislated.”⁸ The second is that, for Murray, the purpose of this mode of encounter is winning the argument. Professor Lovin observes that, for Murray, “the work of the public theologian is to bring the resources and convictions of the Christian tradition to bear on the public argument, in order to shape the public choices. This is not a matter of imposing a

6. *Id.*

7. *Id.* at 1–2.

8. *Id.* at 3.

religious authority, *but it is about winning the argument.*"⁹

Taking these observations as a starting point, I will make three points. First, I would like to float a somewhat contrarian idea: Murray was both an important contributor to the work of the Council and an important figure in the history of American public theology, but perhaps we tend to overstate his contribution to Catholic thought on the subject of democracy, human rights, and freedom of religion. In part, that is because many of us are conditioned to indulge a false assumption that Catholic thought is monolithic in nature, and that the official pronouncements of popes and councils are the only relevant sources of Catholic belief and practice. Ironically, that is an assumption that has been encouraged both by the Catholic hierarchy and by the Church's external critics,¹⁰ but it overlooks a long tradition of a highly diverse field of Catholic democratic thought and practice among the clergy and the laity. In other words, Murray's work played an important role at the Council, but much work already had been done.

Second, as Professor Lovin correctly notes, the world did change in many ways shortly after Murray published his book, but I would like to suggest that the world had also changed in numerous and important ways before the book was published. The place of Catholics in American society had changed a great deal, for example, while racism continued to be a central feature of "the American proposition."¹¹ For that reason, it is difficult today to read Murray's work without being struck by the virtual absence of any discussion of racial segregation, racial prejudice, or the practical exclusion of African Americans from meaningful participation in the political life of the country. Indeed, Murray's only mention of the issue is a brief aside in a chapter focused on the injustice of denying state aid to parochial schools.¹² It is unclear, of course, whether this omission

9. *Id.* at 4.

10. In a sense, it was that kind of thinking that was responsible for the charge leveled during the 1960 presidential campaign that John Kennedy would be incapable of independent action as president and would simply follow the pope's instructions. *See, e.g.,* Beryl F. McClerren, *Southern Baptists and the Religious Issue During the Presidential Campaigns of 1928 and 1960*, 18 *CENT. STS. SPEECH J.* 104, 105 (1967) (discussing Kennedy's September 12, 1960 speech to the Greater Houston Ministerial Association). More recently, some members of the American Catholic hierarchy have given credence to that suspicion by seeking to punish Catholic laymen and women, who have taken positions as government officials that were not consistent with Church teaching, by excluding them from the Eucharist. *See, e.g.,* Laurie Goodstein, *Communion Issue Creates Split Among U.S. Bishops*, *N.Y. TIMES* (June 6, 2004), <https://www.nytimes.com/2004/06/06/us/communion-issue-creates-split-among-us-bishops.html>.

11. *See* MURRAY, *supra* note 4, at 145, 175–83 (discussing the question of Christianity and human values).

12. *Id.*; *see also id.* at 143–54 (examining the relationship between religious school and public authority and law).

is due to inadvertence, a lack of empathy, or a tactical recognition that mentioning the issue might be counterproductive in terms of reaching the audience he wished to persuade.

Finally, the apparent certainty with which Murray held his views, the legalistic form of argument with which he was comfortable, and his emphasis on “winning” seem somewhat quaint today. It is as if the changes for which he was at least partially responsible have made his way of thinking seem foreign to us, if not obsolete.¹³

I. THE CATHOLIC DEMOCRATIC TRADITION

Murray clearly had an important effect on the development of Catholic social and political thought.¹⁴ Nonetheless, there may be a tendency to inflate the importance of Murray’s achievement by ignoring or downplaying the work of other Catholic actors and thinkers who were his spiritual antecedents or contemporaries.¹⁵ This is done in part by

13. See, e.g., JOHN W. O’MALLEY, *WHAT HAPPENED AT VATICAN II* 46 (2008) (“Vatican II . . . moved from the dialectic of winning an argument to the dialogue of finding common ground. It moved from abstract metaphysics to interpersonal ‘how to be.’ It moved from grand conceptual schemes or *summae* with hundreds of logically interconnected parts to the humble acceptance of mystery. In so doing it largely abandoned the Scholastic framework that had dominated Catholic theology since the thirteenth century.”).

14. In addition, it is difficult for us to imagine the degree to which church officials punished Murray for his views. See generally ROBERT NUGENT, *SILENCE SPEAKS: TEILHARD DE CHARDIN, YVES CONGAR, JOHN COURTNEY MURRAY, AND THOMAS MERTON* (2011); Joseph A. Komonchak, *The Silencing of John Courtney Murray*, in *CRISTIANESIMO NELLA STORIA: SAGGI IN ONORE DI GIUSEPPE ALBERIGO* (A. Melloni, D. Menozzi, G. Ruggieri & M. Toschi eds., 1997); DONALD E. PELOTTE, *JOHN COURTNEY MURRAY: THEOLOGIAN IN CONFLICT* (1976).

15. See, e.g., Robert W. McElroy, *He Held These Truths*, *AMERICA* (Feb. 7, 2005), <https://www.americamagazine.org/issue/517/article/he-held-these-truths> (“John Courtney Murray is the most significant Catholic theologian the church in the United States has ever produced.”); BARRY HUDOCK, *STRUGGLE, CONDEMNATION, VINDICATION: JOHN COURTNEY MURRAY’S JOURNEY TOWARD VATICAN II* 169 (2015) (“Murray prompted a historic rethinking of Catholic doctrine that came to be expressed in a historic conciliar document.”). Murray’s impact on the work of the Council should not be underestimated. Nonetheless, it seems fair to say that what was accomplished at the Council was made possible by the work of many individuals and was the culmination of certain long-term historical developments. See, e.g., JAY P. CORRIN, *CATHOLIC INTELLECTUALS AND THE CHALLENGE OF DEMOCRACY* 2 (2002) (“Although it was indeed a challenge for the Catholic masses and tradition-bound clerics to embrace John XXIII’s call for change in a single decade, a Catholic liberal, democratic tradition had already been in place for over two hundred years.”); JAMES CHAPPEL, *CATHOLIC MODERN: THE CHALLENGE OF TOTALITARIANISM AND THE REMAKING OF THE CHURCH* 61 (2018) (“Even conservative Church leaders came to speak this new language [of human rights, human dignity, religious freedom, and antitotalitarianism] fluently. In the 1930s and during World War II, Pope Pius XI and Pope Pius XII [together with certain bishops] began to emphasize modern themes, which had been almost entirely absent from Church leadership discourse in the 1920s.”); O’MALLEY, *supra* note 13, at 83 (“Pius XII . . . devoted the first part [of his 1944 Christmas Eve address] to a commendation of democracy as a form of government appropriate for the times: ‘Taught by bitter experience, people today . . . want a system of government more compatible with the dignity and the liberty due to

assuming, quite incorrectly, that religious freedom, human dignity, and democracy had no place in the theory or practice of the Roman Catholic faith prior to Murray's arrival on the scene. We would find some support for that view, of course, if we looked only to official papal pronouncements. As Barry Hudock notes in the introduction to his recent book about Murray,¹⁶ Gregory XVI pronounced on the "absurd[ity]" of religious freedom in *Mirari Vos* in 1832,¹⁷ and Gregory's problem was not limited to religious freedom; he was also opposed to freedom of speech and the press and to democracy itself.¹⁸ Gregory sided with the Russian Tsar in opposition to the democratic aspirations of Catholic Poland,¹⁹ and he famously compared supporters of democratic rule in the Papal States to "bilge water in a ship's hold, a congealed mass of all filth."²⁰ *The Syllabus of Errors* of 1864 likewise denounced as error the

citizens.' He speculated that 'the future belongs to democracy.'"); EMILE PERREAU-SAUSSINE, *CATHOLICISM AND DEMOCRACY: AN ESSAY IN THE HISTORY OF POLITICAL THOUGHT* 116 (Richard Rex trans., 2012) ("In the nineteenth century, the air rang with thunderous condemnations of rationalism and individualism. Yet at Vatican II the Catholic Church officially recognized religious freedom and came to terms with some of the key features of liberal democracy. How come? It was in fact the totalitarian moment that proved decisive. Totalitarianism was the dead-end destination of all French antiliberalisms . . ."). In addition, the work of many twentieth-century theologians provided the intellectual framework for the shifts that marked the Council's work. See generally JÜRGEN METTEPENNINGEN, *NOUVELLE THÉOLOGIE—NEW THEOLOGY: INHERITOR OF MODERNISM, PRECURSOR OF VATICAN II* (2010); NUGENT, *supra* note 14; FINDING GOD IN ALL THINGS: CELEBRATING BERNARD LONERGAN, JOHN COURTNEY MURRAY, AND KARL RAHNER (Mark Bosco & David Stagaman eds., 2007).

16. See HUDOCK, *supra* note 15, at xix (discussing the Catholic Church's teaching on the topic of religious freedom at the start of Murray's ecclesial career).

17. See Pope Gregory XVI, *Mirari Vos*, On Liberalism and Religious Indifferentism para. 14, PAPAL ENCYCLICALS ONLINE (1832), <http://www.papalencyclicals.net/greg16/g16mirar.htm>. Ironically, 1832 was also the year of the First Reform Act in England. See, e.g., John A. Phillips & Charles Wetherell, *The Great Reform Act of 1832 and the Political Modernization of England*, 100 AM. HIST. REV. 411 (1995); see also Paul E. Sigmund, *The Catholic Tradition and Modern Democracy*, 49 REV. POL. 530, 536 (1987) (discussing Gregory XVI's encyclicals); MICHAEL J. SCHUCK, *THAT THEY BE ONE: THE SOCIAL TEACHING OF THE PAPAL ENCYCLICALS 1740–1989*, at 16–18, 24–28, 49–50, 60–63, 74–79 (1991) (analyzing evolution of Church teachings on democracy and human rights).

18. Pope Gregory XVI, *Mirari Vos*, *supra* note 17, paras. 14–16.

19. See Pope Gregory XVI, *Cum Primum*, On Civil Disobedience, PAPAL ENCYCLICALS ONLINE (1832), <http://www.papalencyclicals.net/Greg16/g16cumpr.htm> (writing to Poland stating that "since the emperor is appointed by God, it is necessary that he be loved and revered").

20. Pope Gregory XVI, *Mirari Vos*, *supra* note 17, para. 5. Significantly, Gregory XVI did call for an end to the trans-Atlantic slave trade. See Pope Gregory XVI, *In Supremo Apostolatus*, Condemning the Slave Trade, PAPAL ENCYCLICALS ONLINE (1839), <http://www.papalencyclicals.net/greg16/g16sup.htm>. The papal bull, which apparently was issued at the request of the English government, was particularly problematic for American Catholics living in the South, who already were distrusted for being papists and did not necessarily wish to be seen as abolitionists as well. See, e.g., MAX LONGLEY, *FOR THE UNION AND THE CATHOLIC CHURCH: FOUR CONVERTS IN THE CIVIL WAR* 51–57 (2015). Massimo Faggioli has recently written that "[i]t is worth remembering that the failure of Catholics to make the case for democracy, and their dream for a return to the

proposition that “[e]very man is free to embrace and profess that religion which, guided by the light of reason, he shall consider true,” as well as the proposition that “[t]he Church ought to be separated from the State, and the State from the Church.”²¹ While Leo XIII had argued in 1885 that “no one of the several forms of government is itself condemned,” and that, it was not “blameworthy in itself . . . for the people to have a share greater or less, in the government,”²² he also reaffirmed Gregory’s denunciations of freedom of worship, expression, and teaching.²³ In 1906, Pius X called the separation of church and state “eminently disastrous and reprehensible.”²⁴ The situation became more complex, as the Vatican first sought to achieve a *modus vivendi* with the fascist dictators in the 1920s and the 1930s,²⁵ and later, as World War II was drawing to a close, Pius XII stated that democracy was an appropriate form of government for the times.²⁶ But that was pretty much the state of play, as Hudock reminds us,²⁷ at least in the minds of the Roman hierarchy, when Murray came upon the scene. The question for them was not just about human rights or freedom of religion, but about the status and value of democracy itself.²⁸

I say “in the minds of the Roman hierarchy” because the church—that is, the whole “People of God,”²⁹ in the words of the Second Vatican

‘golden age’ of medieval Christendom, were key factors in the rise of authoritarian regimes in the twentieth century.” Massimo Faggioli, *Democracy is the Problem? The Return of Catholic Anti-Liberalism*, COMMONWEAL (Feb. 12, 2018), <https://www.commonwealmagazine.org/democracy-problem>.

21. See Pope BI. Pius IX, *The Syllabus of Errors* paras. 15, 55, PAPAL ENCYCLICALS ONLINE (1864), <http://www.papalencyclicals.net/pius09/p9syll.htm> (condemning errors in eighty schools of thought).

22. Pope Leo XIII, *Immortale Dei* para. 36 (1885), http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_01111885_immortale-dei.html.

23. Pope Leo XII, *Libertas* (1888), http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_20061888_libertas.html. A heightened conservatism took hold in the Vatican following the election of Pius X in 1903 and the formal separation of church and state in France in 1905. See Sigmund, *supra* note 17, at 538.

24. See Pope Pius X, *Vehementer Nos* para. 4 (1906), http://w2.vatican.va/content/pius-x/en/encyclicals/documents/hf_p-x_enc_11021906_vehementer-nos.html (examining the French Law of Separation).

25. See, e.g., Sigmund, *supra* note 17, at 538–39.

26. O’MALLEY, *supra* note 13, at 83.

27. HUDOCK, *supra* note 15, at xix.

28. Sigmund, *supra* note 17, at 540.

29. See Pope Paul VI, *Lumen Gentium*, Dogmatic Constitution on the Church para. 12 (Nov. 21, 1964), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.htm (“The holy people of God shares also in Christ’s prophetic office; it spreads abroad a living witness to Him, especially by means of a life of faith and charity and by offering to God a sacrifice of praise, the tribute of lips which give praise to His name. The entire body of the faithful, anointed as they are by the Holy One, cannot err in matters

Council—has never spoken with one voice on the subject of human rights and democracy.³⁰ Not all Catholics thought that freedom of conscience was an “absurd[ity]” in 1832; nor did all Catholics think that the separation of church and state was “reprehensible” in 1906. It is easy to overestimate the importance of official pronouncements and underestimate the importance of everything else, including the long tradition of democratic thought within the church.³¹ As James Chappel has recently observed:

The first problem for the student of Catholicism is a distressingly basic one. What is our object of analysis? What is the Church? . . . Historical studies of the Church have tended to focus on the leadership: bishops, the pope, and the dense network of personal ties and power struggles that crisscross the marbled halls of the Vatican. . . . [T]here has been, perhaps, an overemphasis on them. Popes and bishops provide convenient ciphers for the Church as a whole but do not necessarily provide the best means of understanding it, any more than presidents and senators provide the royal road to an understanding of American politics. The power of popes . . . evolves over time. And the power of popes . . . is seldom as great as it seems. Papal teachings often did not even reach the laity The clergy are not the key . . . either. To a surprising degree, and one that increased over the course of the twentieth century, lay Catholics . . . defined for themselves what it would mean to be Catholic—and, specifically, how the faith would translate into social and political life.³²

of belief.”); *see also* JOHN HENRY NEWMAN, ON CONSULTING THE FAITHFUL IN MATTERS OF DOCTRINE (John Coulson, ed. 1961) (discussing the expression of Church doctrine through *communis fidelium sensus*, the communal sense of the faith).

30. *See, e.g.*, CHAPPEL, *supra* note 15, at 41 (noting the influence of Félicité de Lamennais, an early nineteenth century French cleric who “was no defender of secular modernity,” but who also “did not think that the French Revolution could or should be undone”); Sigmund, *supra* note 17, at 536.

31. CORRIN, *supra* note 15, at 2. *See infra* notes 35–52 and accompanying text.

32. CHAPPEL, *supra* note 15, at 5–6. One example was the leadership that lay persons in the United States provided in developing moral arguments to support the struggle for interracial justice. *See, e.g.*, JOHN T. MCGREEVY, PARISH BOUNDARIES: THE CATHOLIC ENCOUNTER WITH RACE IN THE TWENTIETH-CENTURY URBAN NORTH 85–86 (1996) (“Concerns about racial change ushered in a new generation of Catholic liberals. Instead of the depression-era priest marching alongside a union organizer, the typical Catholic liberal of the 1950s was an ‘intergroup relations’ professional, often a layperson, and interested in a broad range of social and theological issues. Embarrassed by the reluctance of Church officials to initiate programs on racial matters, these liberals pressed for educational efforts, scholarship programs, and work in ‘changing’ neighborhoods. . . . These same Catholic liberals welcomed a noticeable increase in support for racial integration among clergy and the hierarchy.”). One recent study argues that, “Chicago’s interracial leaders superseded [such clerical figures as John] LaFarge on the national stage, and . . . their version of Catholic interracialism, which came to emphasize lay leadership, interfaith partnerships, and direct action, became the most prominent one.” KAREN J. JOHNSON, ONE IN CHRIST: CHICAGO CATHOLICS AND THE QUEST FOR INTERRACIAL JUSTICE 4 (2018). Johnson notes that her study “about Catholics,

In fact, as Jay Corrin has argued, the “conventional view” that “the Catholic Church has always been the servant of right-wing reaction, fervently resisting change by virtue of its authoritarian structures and traditionalist theology,” is valid only insofar as it applies “to the Vatican Curia, a good number of the Roman Catholic episcopacy, and conservative, even reactionary, Catholic intellectuals.”³³ Corrin continues, noting that, “a Catholic liberal, democratic tradition had already been in place for over two hundred years [at the time of the Council]. In fact, the corpus of such thought not only prepared the ground for *aggiornamento* but also made it possible to implement the changes recommended by Vatican Council II.”³⁴

That tradition finds its roots in the work of many, including Felicite de Lamennais, who traveled to Rome in November 1831 to “appeal[] directly to Pope Gregory XVI to support the reformist position.”³⁵ As Corrin notes, “Gregory’s response was swift and disappointing: his encyclical *Mirari vos* . . . condemned Catholic liberal attempts to compromise with the age.”³⁶ Cincinnati Bishop John Purcell is another who disagreed with Gregory’s condemnation of liberty of conscience.³⁷

race, and the civil rights movement . . . is less about the hierarchy’s pronouncements, and more about the day-to-day interactions of local people, sometimes in agreement, sometimes not, who nagged and prodded the hierarchy and laypeople to support the Catholic faith’s racial universality.” *Id.* The Vatican also approved of these efforts, as indicated by the support that Vatican officials gave to bishops, such as Archbishop Rummel of New Orleans, who sought to desegregate their dioceses. *See* MCGREEVY, *supra*, at 86–87. Indeed, as early as the mid-1940s, it was reported that the Apostolic delegate to the United States was “‘indignant’ over the situation of the Negro and our indifference to it.” *Id.* at 71. At the same, McGreevy notes, “few of the Catholic dioceses, busy with traditional school and parish programs, expressed interest in funding education programs on such controversial matters” as racial justice, and “priests nourished in the powerful clerical subculture of the era equated criticism with disloyalty.” *Id.* at 108. McGreevy also recounts numerous instances in which Catholic priests refused absolution to African American Catholics who tried to confess in “White parishes,” refused to enroll African American students in parochial schools, and led efforts to maintain segregation in local neighborhoods. *See id.* at 73, 93, 96–97, 101, 120–21, 135. Others, such as Monsignor John J. Egan of Chicago and Father John LaFarge, SJ, provided strong leadership in the area of interracial justice. *Id.* at 38–39, 50–52, 128–31.

33. CORRIN, *supra* note 15, at 2.

34. *Id.*

35. *Id.* at 12.

36. *Id.* at 12–13.

37. *See* JOHN T. MCGREEVY, *CATHOLICISM AND AMERICAN FREEDOM: A HISTORY* 84 (2003). Bishop Purcell was also an early opponent of slavery and called for its immediate abolition in 1862. *See id.* at 78–88 (describing the support for the Union cause among liberal American Catholics and the Vatican’s opposition to Lincoln). Ireland also presented an exceptional situation. *See* LAWRENCE J. MCCAFFREY, *DANIEL O’CONNELL AND THE REPEAL YEAR 156* (1966) (“Ireland indeed presented a unique situation in the Age of Metternich—a revolutionary Catholic hierarchy and clergy encouraging agitations threatening existing political institutions and traditional property rights.”). *See also id.* at 92 (noting Daniel O’Connell’s call for abolition of the tithe and separation of church and state).

Following the publication of *Testem Benevolentiae Nostrae*,³⁸ the encyclical in which Leo XIII condemned the “Americanist” heresy, the American bishops adhered more strictly to the party line.³⁹ As Paul Sigmund notes, however, the revival of Thomism encouraged by Leo XIII led scholars like John A. Ryan and Jacques Maritain “to return to the sources in St. Thomas, Suarez, and Bellarmine to find the doctrine of the popular origin of political authority and to apply it to argue that government must be based on the explicit or implicit consent of the people.”⁴⁰ Maritain’s contribution was particularly important, as Paul Sigmund further explains:

Maritain was responsible for a new development in Catholic political thought that had been anticipated but never articulated in terms of the Catholic tradition by earlier French and Italian writers—the argument that democracy was not simply one of several forms of government, all of which were acceptable provided that they promoted “the common good,” but was the one form that was most in keeping with the nature of man, and with Christian values. The traditional concern with justice had been expanded to give a religious justification for freedom, and the Christian belief in equality before God was now interpreted to include political and juridical equality as well.⁴¹

While many Catholic intellectuals actively or tacitly supported fascist dictatorships in the 1920s and the 1930s,⁴² Maritain and others actively

38. See Pope Leo XIII, *Testem Benevolentiae Nostrae*, Concerning New Opinions, Virtue, Nature and Grace, with Regard to Americanism, PAPAL ENCYCLICALS ONLINE (1899), <http://www.papalencyclicals.net/leo13/113teste.htm>.

39. See, e.g., CHARLES E. CURRAN, THE SOCIAL MISSION OF THE U.S. CATHOLIC CHURCH: A THEOLOGICAL PERSPECTIVE 5–6 (2011) (explaining the “Americanist heresy”); JOHN TRACY ELLIS, AMERICAN CATHOLICISM 119–23 (1969) (same).

40. Sigmund, *supra* note 17, at 539.

41. *Id.* at 540.

42. See CORRIN, *supra* note 15, at 5–6 (“The failure of Catholics in the 1920s and 1930s to speak out with a united voice on the evils of fascism and the procrustean definition of the Spanish Civil War as a holy crusade have contributed significantly to the judgment that Catholicism is an agent of reaction, highly suspicious of democracy, liberalism, and state-directed social reform. . . . It is therefore important to realize that during the era of the twentieth-century dictators a distinct Catholic tradition of pluralist political thought also existed, which championed radical social and economic reform and which, if given more institutional support during the interwar years, might have altered the one-dimensional, simplistic picture of Catholicism as socially conservative and inherently authoritarian.”); see also PERREAU-SAUSSINE, *supra* note 15, at 149–50 (“The church was in principle hostile to religious liberty, because it saw no particular merit in the fact that a heretic could march freely to his own damnation or in the fact that states could foster indifference to truth and a damaging relativism through standing aloof from religious questions. . . . In the great quarrel of the twentieth century, the church initially sided with reactionary regimes against liberal ones. But the church came to realize that no regime could remain reactionary in the face of the leveling tendencies of egalitarianism. . . . Totalitarianism showed that the real danger came not from freedom of religion but from political religions that aimed to take the place of Christianity. Freedom of religion provided the most effective bulwark against political religions.”).

opposed the dictators.⁴³ Catholics created a democratic constitution in Ireland in 1937 and specifically sought to guarantee human dignity.⁴⁴ During the Second World War, even the Vatican's position began to soften with official papal statements that "began to draw direct links between freedom, democracy, and the Christian message."⁴⁵ Following the war, Jacques Maritain and other Catholics greatly influenced the drafting of postwar national constitutions, as well as the European Convention on Human Rights and the Universal Declaration of Human Rights.⁴⁶ Although the Constitution of the United States contains no explicit reference to human dignity, it was a Catholic justice, Frank Murphy, who first included a reference to the concept of dignity in a Supreme Court opinion,⁴⁷ and another Catholic justice, William J.

43. See CORRIN, *supra* note 15, at 220–71, 331–94 (discussing "early Catholic critics of Fascism" and "Catholic critics of Franco"). James Chappel writes that,

In the 1930s, mainstream Catholic intellectuals and leaders made their peace with the secular nation-state like never before. Viewing it as the only antidote to Communism, they were willing to grant immense authoritarian power to the state apparatus, so long as the state signaled its commitment to protect religious liberty and the family while joining the cultural and legal community of "the West." To Maritain and other antifascist Catholics, this gave up too much that was distinctive about the Catholic tradition—namely, its persistent suspicion of the state, and its desire to imagine a social order defined by civil society organizations free of state domination. . . .

. . . . Maritain pursued what he called a "pluralist" or "fraternal" politics—in explicit contrast to the "paternal" vision that, in his opinion, salvaged the least Catholic elements of the Middle Ages. For Maritain, the central elements to be retained were antistatism and federalism, not the zeal for authority and hierarchy.

CHAPPEL, *supra* note 15, at 132–33.

44. See, e.g., Samuel Moyn, *The Secret History of Constitutional Dignity*, 17 YALE HUM. RTS. & DEV. L.J. 39 (2014); Gerard Hogan, *De Valera, the Constitution and the Historians*, 40 IRISH JURIST 293 (2005).

45. Sigmund, *supra* note 17, at 541.

46. See, e.g., CHAPPEL, *supra* note 15, at 170–73; SAMUEL MOYN, HUMAN RIGHTS AND THE USES OF HISTORY 28–29 (2014); MARY ANN GLENDON, A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 51, 77–78 (2001); see also Barry Sullivan, *Access to Information: Citizenship, Representative Democracy, and Catholic Social Thought*, in DEMOCRACY, CULTURE, CATHOLICISM: VOICES FROM FOUR CONTINENTS 272 (Michael J. Schuck & John Crowley Buck eds., 2016) (discussing Maritain's contributions to the formulation of the Universal Declaration of Human Rights and the manifestation of his influence on the documents of the Second Vatican Council).

47. See *In re Yamashita*, 327 U.S. 1, 29 (1946) (Murphy, J., dissenting). In *In re Yamashita*, the Court upheld the trial and conviction by a military tribunal of a Japanese military commander for war crimes committed by his troops during the Second World War. See *id.* at 9–16 (majority opinion); see also Leslie Meltzer Henry, *The Jurisprudence of Dignity*, 160 U. PA. L. REV. 169, 172 (2011) (noting that few concepts not actually mentioned in the Constitution have dominated modern constitutional jurisprudence more than dignity). It was, of course, the first Catholic justice, Roger B. Taney, who, in *Dred Scott v. Sandford*, 60 U.S. 393, 403 (1857), gave a negative response to the question,

Can a negro, whose ancestors were imported into this country, and sold as slaves,

Brennan, Jr., who placed the concept at the center of American constitutional interpretation.⁴⁸ In the 1950s, Archbishop Joseph Rummel of New Orleans took a courageous and unpopular stand against racial segregation in his archdiocese.⁴⁹ In 1958, the American Bishops eventually issued a pastoral letter on the subject of segregation, declaring that, “the heart of the race question is moral and religious.”⁵⁰ Finally, in *Pacem in Terris*, John XXIII stated that every human being “has rights and duties, which together flow as a direct consequence from his nature.”⁵¹ Among those rights, according to John XXIII, was “the right to worship God according to one’s conscience . . . both in private and in public.”⁵²

If one looks beyond the realm of papal pronouncements, one cannot

become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen?

48. For example, in a speech at Georgetown University, Justice Brennan stated [T]he amended Constitution . . . entrenches the Bill of Rights and the Civil War amendments, and draws sustenance from the bedrock principles of another great text, the Magna Carta. So fashioned, the Constitution embodies the aspiration to social justice, brotherhood, and human dignity that brought this nation into being. The Declaration of Independence, the Constitution and the Bill of Rights solemnly committed the United States to be a country where the dignity and rights of all persons were equal before all authority. . . .

. . . .
 . . . [The] text [of the Constitution] is a sparkling vision of the supremacy of the human dignity of every individual. . . . It is a vision that has guided us as a people throughout our history, although the precise rules by which we have protected fundamental human dignity have been transformed over time in response to both transformations of social condition and evolution of our concepts of human dignity.

William J. Brennan, Jr., Address at Georgetown University Teaching Symposium: Constitutional Interpretation (Oct. 12, 1985), <http://teachingamericanhistory.org/library/document/constitutional-interpretation/>. More recently, the concept of human dignity has formed the cornerstone of the jurisprudence on another Catholic justice, Anthony Kennedy. See, e.g., *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (Kennedy, J.) (invoking the concept of “dignity” nine times).

49. See MCGREEVY, *supra* note 32, at 209–10; see also MCGREEVY, *infra* notes 50 and 91, and accompanying text (discussing Archbishop Rummel’s excommunication of several segregationists in Louisiana); see also FRANCIS J. LALLY, *THE CATHOLIC CHURCH IN A CHANGING AMERICA* 115 (1962). Even earlier, in September 1947, Archbishop Joseph Ritter of St. Louis faced similar opposition when he called for the desegregation of the parochial schools in that archdiocese. See ELLIS, *supra* note 39, at 148.

50. See MCGREEVY, *supra* note 32, at 90. The pastoral letter, as well as Archbishop Rummel’s excommunications of several segregationist leaders in Louisiana, “received wide, favorable publicity from such disparate observers as Reinhold Niebuhr and psychologist Kenneth Clark.” *Id.* at 133.

51. Pope John XXIII, *Pacem in Terris*, On Establishing Universal Peace in Truth, Justice, Charity, and Liberty para. 9 (Apr. 11, 1963), http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html.

52. *Id.* para. 14.

help but perceive a strong tradition of Catholic thought and action supportive of human rights and democracy that dates back virtually to the time of the first democratic revolutions. Murray is a key figure in the ratification of that tradition at the Council, and it should not diminish his achievement to acknowledge that there were important Catholic voices in the move to reconcile democracy and Catholicism long before he was writing in the 1950s.

II. CHANGE AND THE CATHOLIC EXPERIENCE

My second point builds upon two of Professor Lovin's observations, namely, that the world changed dramatically almost as soon as Murray published his book, and that part of Murray's project was to try and "convince Protestants like my pastors and my parents that Catholics could be good Americans, too."⁵³ It is clearly true that the world changed dramatically after Murray's book was published, but it is also important to recognize that the world had changed—and was continuing to change—in significant ways before and during the years that Murray was writing the essays collected in *We Hold These Truths*. After all, Murray was writing in the aftermath of the Second World War—a war that profoundly affected many aspects of American life, not the least of which were those connected with the United States' emergence as a world power.⁵⁴ In many respects, it was a time of national optimism and self-confidence, but it was also a time of national conformity and fear, as the first flush of victory gave way to the Korean Conflict, McCarthyism, and the Cold War.⁵⁵ For many, it was a time of great (and unrealistic) faith in the strength of American institutions, in American expertise and American know-how, and in American destiny.⁵⁶ It was also a time of great deference to claims of expertise and authority.⁵⁷ But for some, as

53. Conference Paper, *supra* note 3, at 1.

54. See, e.g., DAVID BRINKLEY, *WASHINGTON GOES TO WAR* xiv (1988) ("The war transformed not just the government. It transformed Washington itself. A languid Southern town with a pace so slow that much of it simply closed down for the summer grew almost overnight into a crowded, harried, almost frantic metropolis struggling desperately to assume the mantle of global power, moving haltingly and haphazardly and only partially successfully to change itself into the capital of the free world."); see also *id.* at 281–82. ("The city had come out of the war as the capital of the only major country in the world on the winning side, or any side, to survive without a scratch. But those looking for a return to the quiet, easy Washington life they had known in peacetime would not find it. That world was gone. It was replaced by a world that demanded American military power to occupy Japan and to save what was left of western Europe.").

55. See, e.g., GEORGE M. MARSDEN, *THE TWILIGHT OF THE AMERICAN ENLIGHTENMENT: THE 1950S AND THE CRISIS OF LIBERAL BELIEF* x, xii (2014).

56. See, e.g., ARTHUR M. SCHLESINGER, JR., *THE POLITICS OF HOPE AND THE BITTER HERITAGE: AMERICAN LIBERALISM IN THE 1960S* 6–7, 95 (2008).

57. See, e.g., MARSDEN, *supra* note 55, at 69–70, 110. For many, confidence in expertise and

we know, it was also a time of quiet desperation, unfulfilled expectations, and an experience of injustice that were rooted in prejudice and intolerance, whether based on race, religion, ideology, political commitments, gender, sexual orientation, or other markers of difference or otherness.⁵⁸ Perhaps most important for purposes of this commentary, it was a time of transition for Roman Catholics in American public life.⁵⁹

As with most stories of the 1950s, the story of Roman Catholic transition is a bit more complicated than that which is often told. Anti-Catholicism had certainly not disappeared,⁶⁰ but it had lessened in many

authority was shaken by official duplicity during the Vietnam War and Watergate. *See generally* H. R. McMASTER, DERELICTION OF DUTY: LYNDON JOHNSON, ROBERT McNAMARA, THE JOINT CHIEFS OF STAFF, AND THE LIES THAT LED TO VIETNAM (1997); STANLEY I. KUTLER, THE WARS OF WATERGATE: THE LAST CRISIS OF RICHARD NIXON (1990); BOB WOODWARD & CARL BERNSTEIN, THE FINAL DAYS (1976); CARL BERNSTEIN & BOB WOODWARD, ALL THE PRESIDENT'S MEN (1974); DAVID HALBERSTAM, THE BEST AND THE BRIGHTEST (1972). Skepticism concerning expertise has only increased in recent years, as Tom Nichols has recently shown. *See* TOM NICHOLS, THE DEATH OF EXPERTISE: THE CAMPAIGN AGAINST ESTABLISHED KNOWLEDGE AND WHY IT MATTERS 1–39 (2017) (concerning the conflation of genuine expertise with credentials). A similar erosion of confidence in ecclesiastical authority followed Pope Paul VI's 1968 encyclical *Humanae Vitae* and intensified with disclosures concerning the hierarchy's role in covering up clerical sexual abuse. *See* JAMES M. O'TOOLE, THE FAITHFUL: A HISTORY OF CATHOLICS IN AMERICA 241–43, 266–84 (2008) (discussing the declining confidence of American parishioners in the Catholic Church in the late 1960s and 1970s). *See generally* THE INVESTIGATIVE STAFF OF THE BOSTON GLOBE, BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH (2002) (detailing the sex abuse scandal in the Archdiocese of Boston); NICHOLAS P. CAFARDI, BEFORE DALLAS: THE U.S. BISHOPS' RESPONSE TO CLERGY SEXUAL ABUSE (2008) (discussing the history of the scandal and the lessons to be learned from it).

58. *See, e.g.*, TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954–63, at 138–39 (1988); DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE 83–84 (1986); MARTIN LUTHER KING, JR., WHY WE CAN'T WAIT 18 (1964).

59. Archbishop Rembert G. Weakland of Milwaukee noted in a 1992 interview that Catholics had been “insiders” at the beginning of the American republic, but had become “outsiders” because of “the large immigrant movements [that] were not totally assimilated into the American political and cultural scene.” *Articulating the Vision: An Interview with Rembert G. Weakland*, 46 THE CRITIC 2, 11 (1992). According to Weakland, the “outsider” period

lasted down to the first decades after World War II. At that point we began to move very clearly from being outsiders to being insiders again. The problem we face today is that we must continue to try to reach our people as insiders and not think we can fall back on the older pastoral practices that were meant for that immigrant Church which saw itself as outsiders.

Id. The earlier history of anti-Catholicism in the United States has been well documented. *See, e.g.*, MAURA JANE FARRELLY, ANTI-CATHOLICISM IN AMERICA, 1620–1860 (2018); ELIZABETH FENTON, RELIGIOUS LIBERTIES: ANTI-CATHOLICISM AND LIBERAL DEMOCRACY IN NINETEENTH CENTURY U.S. LITERATURE AND CULTURE (2011).

60. *See, e.g.*, MCGREEVY, *supra* note 37, at 166–67 (“The most unusual best-seller of 1949 and 1950 . . . was Paul Blanshard’s *American Freedom and Catholic Power*. . . . Blanshard claimed that ‘the Catholic problem is still with us.’ . . . Blanshard correctly assessed the intellectual mood. Already Lewis Mumford had warned that ‘the Catholic Church by acting as a bloc’ might destroy ‘the separation of powers established in the Constitution of the United States,’ and Reinhold

areas of life and in many parts of the country.⁶¹ Although Murray clearly thought that a substantial part of his task was to convince the Protestant man on the street “that Catholics could be good Americans, too,”⁶² that was certainly less true than had previously been the case. Catholics had made great strides in many areas, and especially so in politics and government.⁶³ Indeed, one need only recall the immense following that Senator Joseph McCarthy, a Wisconsin Catholic, developed in the early part of the decade and the immense power that he wielded because of that

Niebuhr had lamented the chasm ‘between the presuppositions of a free society and the inflexible authoritarianism of the Catholic religion.’ . . . [John] Dewey praised Blanshard’s ‘exemplary scholarship, good judgment, and tact.’ Albert Einstein and Bertrand Russell commented favorably, and Harvard’s McGeorge Bundy termed the book’s publication ‘a very useful thing.’”

61. Jay Dolan has noted, “Looking back over the 1920–60 era, two major trends stand out. One was a spirit of confidence and optimism, Catholic boosterism if you wish, which permeated the entire white Catholic Anglo community.” JAY P. DOLAN, *THE AMERICAN CATHOLIC EXPERIENCE: A HISTORY FROM COLONIAL TIMES TO THE PRESENT* 361–62 (1985). James O’Toole has asked the question, “What did other Americans, those who went to different churches or to none, think of their Catholic neighbors?” O’TOOLE, *supra* note 57, at 8. His answer is insightful:

From the Catholic side of the street, this story has often been told as one of persistent hostility, and there have been enough examples of anti-Catholic bigotry to support that view. . . . To highlight only such episodes, however, is to misread the enduring tolerance of non-Catholic Americans toward the Roman Church. In novels, movies, and other media, the public perceptions of Catholicism have been mostly benign. Any society in which Father Chuck O’Malley (Bing Crosby’s handsome singing priest in *Going My Way*) is a cultural hero cannot be understood solely in terms of anti-Catholic bigotry.

Id. O’Toole also points out that, notwithstanding the existence of anti-Catholic propaganda in the postwar years, “[m]ost Americans had difficulty picturing those nice Catholics who lived next door, whose kids played with theirs, as crafty fifth columnists, intent on helping the pope conquer America.” *Id.* at 195.

62. Conference Paper, *supra* note 3, at 1.

63. In a 1962 book, Monsignor Francis J. Lally SJ, the editor of Boston’s archdiocesan newspaper (and simultaneously chairman of the Boston Redevelopment Authority), noted that Catholic activism had been largely limited to labor issues in the early part of the twentieth century, but that changed in the Depression and New Deal years.

The Depression and the Roosevelt years . . . were a providential opportunity for Catholics, now for the most part second or third generation descendants of immigrants, to make their voices heard in changing the nation’s social situation. . . . It was not until these years that we can speak in realistic terms of a widespread Catholic social consciousness and with it a willingness not simply to adapt to the community life but also to work to transform it. This move . . . changed the mood of American Catholics and provided them with a new assurance in public affairs which . . . had been nearly nonexistent.

See LALLY, *supra* note 49, at 48. As Martin Marty has pointed out, President Franklin D. Roosevelt made Catholics an important part of his coalition. *See* MARTIN E. MARTY, *MODERN AMERICAN RELIGION, VOLUME 2: THE NOISE OF CONFLICT 1919–1941*, at 362–65 (1991). During the postwar years, the number of Catholics in elective and appointive office continued to increase. By 1965, for example, 94 of the 435 members of the House and 14 Senators were Catholic. *See* Norman J. Ornstein et al., *Vital Statistics on Congress*, BROOKINGS (Apr. 23, 2014), <https://www.brookings.edu/wp-content/uploads/2016/07/Vital-Statistics-Full-Data-Set.pdf> (documenting the religious affiliations of representatives and senators).

following. McCarthy's success was the product of his rabid (and highly irresponsible) anti-Communism—an area where the public theology of his church was entirely consistent with the sense of the country and the spirit of the times.⁶⁴ In addition, Americans would soon elect a Catholic president—the only important public office that remained to be won.⁶⁵ That is not to say, of course, that religion was not an issue in the 1960 election. John F. Kennedy's religion was a source of concern for many, particularly for prominent American Protestant clergy, some of whom met secretly in Switzerland to plan Kennedy's defeat.⁶⁶

But the country—and the place of Catholics in it—had changed. In 1960, for example, the Great Depression and the Second World War were still fresh in people's minds. Kennedy's successful political career, like that of many others, was due in part to his record of wartime military service.⁶⁷ Catholics, Protestants, and Jews had been thrown together during the war as never before,⁶⁸ and Catholic chaplains repeatedly

64. See, e.g., O'TOOLE, *supra* note 57, at 195 (“On the political stage, a Catholic senator from Wisconsin, Joseph McCarthy, led the fight against supposed communist infiltration. Early in his career, McCarthy had recognized the mileage he could get from making himself the country’s most relentless adversary of the ‘red menace.’ Before reaction set in against his steadily wilder charges and irresponsible methods, McCarthy was a hero to many, regardless of their faith.”). See also MCGREEVY, *supra* note 32, at 64–66, 105–06, 228 (discussing Catholic anticommunism and its relationship to racism); STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* 35–37, 139–40, 156 (2018) (discussing McCarthy’s negative effect on American constitutional government).

65. Only twenty-two years before, Alfred E. Smith, the first Catholic to be nominated by a major political party, had been easily defeated, due in no insignificant part to virulent anti-Catholicism. See, e.g., WILLIAM E. LEUCHTENBURG, *THE PERILS OF PROSPERITY 1914–32*, at 225–40 (1958).

66. See, e.g., Peter Steinfels, *Beliefs*, N.Y. TIMES (Oct. 31, 1992) (describing a meeting in Montreux, Switzerland, in August 1960, of leading US Protestant clergy, including Billy Graham and Norman Vincent Peale, called for the purpose of blocking Kennedy’s election and a subsequent meeting in September 1960 in Washington, DC, called for the same purpose); CAROL V. R. GEORGE, *GOD’S SALESMAN: NORMAN VINCENT PEALE & THE POWER OF POSITIVE THINKING* 192, 195–98 (1993); DOLAN, *supra* note 61, at 421–22 (“For Kennedy, the Roman Catholic, his greatest liability [as a candidate] was his religion. . . . His victory in November was by the slimmest of margins; undoubtedly, anti-Catholic prejudice cost him votes. At the same time, many people voted for Kennedy *because* he was Catholic. . . . The Kennedy style, ‘his poise, sophistication, the modernity worn as casually as his London-tailored clothes, suggested more than any proclamation could that Catholics at long last were comfortably integrated into American society.’”).

67. See, e.g., ARTHUR M. SCHLESINGER, JR., *A THOUSAND DAYS: JOHN F. KENNEDY IN THE WHITE HOUSE* 85–94 (1965). See also *id.* at 89 (“Jack, like many young veterans, felt the need of doing something to help the world for which so many friends had died. Politics perhaps attracted him less as a means of saving this world than of keeping it from getting worse.”). The political careers of other politicians, including Richard M. Nixon and Joseph McCarthy, also benefitted from wartime service. See THOMAS BRUSCINO, *A NATION FORGED IN WAR: HOW WORLD WAR II TAUGHT AMERICANS TO GET ALONG* 167–75 (G. Kurt Piehler ed., 2010) (noting that by the late 1950s, veterans of the Second World War filled many public offices and made up half the membership of both Houses of Congress).

68. See BRUSCINO, *supra* note 67, at 70 (“By World War II, the army as an institution had a

proved their patriotism, while also providing many non-Catholics with a close-up look at Catholic clergy.⁶⁹ The Second World War did much to change the way in which Catholics were perceived by the Protestant man on the street,⁷⁰ and the process of religious integration continued in the postwar years, as Americans of different faiths and ethnic backgrounds moved to the suburbs, where they lived side by side.⁷¹ Popular culture doubtless also played a role, as mass audiences were exposed to attractive portrayals of Catholic priests in such movies as *Going My Way*, *The Bells of St. Mary's*, and, perhaps most notably, *On the Waterfront*.⁷²

long history of dealing with ethnic and religious diversity in the ranks. That history led to army personnel policies during the war that integrated almost all of the various white ethnic and religious groups of the United States on an equal basis, and a religious policy that consciously sought to encourage tolerance.”).

69. *Id.* at 63 (noting that the chief of chaplains was a Roman Catholic priest and that all chaplains were required to navigate multiple faith traditions).

70. The same phenomenon did not occur with respect to race because the armed forces remained segregated. *See, e.g.*, JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* 478 (8th ed. 2000) (“African Americans would be received into the army on the general basis of the proportion of the African-American population They were to be organized into separate units, however, and existing black units that were officered by whites would receive no African-American officers other than medical officers and chaplains.”). In a more personal vein, Professor Franklin has written that “[r]acism in the navy turned my effort to volunteer during World War II into a demeaning embarrassment, such that at a time when the United States was ostensibly fighting for the Four Freedoms I struggled to evade the draft.” JOHN HOPE FRANKLIN, *MIRROR TO AMERICA: THE AUTOBIOGRAPHY OF JOHN HOPE FRANKLIN* 4 (2005).

71. *See* O'TOOLE, *supra* note 57, at 194 (“Suburbanization had many effects on the entire population, and one of these was a muting of religious differences. Overt anti-Catholicism generally ceased to be respectable as people of all faiths mixed together as never before, living next door to one another, joining the same boy and girl scout troops or the Rotary Club.”). It was also true that the migration of many Catholics to the suburbs caused substantial decreases in the populations of inner city Catholic parishes. Moreover, as White Catholics moved to the suburbs, African Americans often moved into those neighborhoods. *See generally* MCGREEVY, *supra* note 32. Matthew Cressler has recently written with great insight about the experience of the Archdiocese of Chicago in this regard. *See* MATTHEW J. CRESSLER, *AUTHENTICALLY BLACK AND TRULY CATHOLIC: THE RISE OF BLACK CATHOLICISM IN THE GREAT MIGRATION* (2017). Among other things, Cressler notes:

Without diminishing the significance of Catholic interracial activism, we can safely say that missionaries dedicated to the conversion of African American migrants were more important to the making of Black Catholic Chicago and, by extension, Black Catholic America than the liberal interracialists who have so dominated the study of Catholics and race in the United States. . . .

. . . Scholars should not ignore interracialism, but we would be wise to restore it to its proper place: as a remarkable exception rather than the rule. When we shift our attention from liberal interracialists to convert-making missionaries, and more importantly to the tens of thousands of converts in relationship with them, we begin to see Black Catholic life for what it was rather than what we wish it would be.

Id. at 198–99.

72. *See, e.g.*, ANN C. PAIETTA, *SAINTS, CLERGY AND OTHER RELIGIOUS FIGURES ON FILM AND TELEVISION, 1895–2003*, at 17, 64, 112 (2005) (summarizing film plots). In addition, television

The presence of Catholics loomed large for other reasons as well. In the early 1950s, Archbishop Joseph Rummel of New Orleans gained national recognition for his opposition to segregation.⁷³ Other bishops—like Archbishop Richard J. Cushing of Boston—spoke out against religious intolerance and became beloved figures across denominational lines.⁷⁴ Similarly, Thomas Merton and Dorothy Day were widely admired.⁷⁵ Perhaps the most important development from this point of view, however, was the 1951 launch of Bishop Fulton Sheen’s Emmy award winning television program, *Life is Worth Living*. Bishop Sheen had long been a fixture on national radio, and he seamlessly moved into the new medium of television. With some 30 million viewers in a country of 170 million,⁷⁶ *Life is Worth Living* suddenly thrust a thoughtful,

stations, searching for inexpensive material, often ran prewar and wartime movies, such as *The Keys of the Kingdom* and *Boys’ Town*, during the 1950s. See *id.* at 22, 83 (same). Paietta notes:

The nature of Roman Catholic priesthood, with its vows and rules, offers many dramatic possibilities. Many plots have revolved around a priest learning a murderer’s identity or some other secret in the confessional and not being able to tell, even when their own life is threatened. Also, the vow of celibacy creates sexual conflict seen in many plots. Today more films deal with Roman Catholic priests and the sexual abuse of children.

Id. at 1–2.

73. See, e.g., MCGREEVY, *supra* note 37, at 210; ADAM FAIRCLOUGH, RACE & DEMOCRACY: THE CIVIL RIGHTS STRUGGLE IN LOUISIANA 1915–1972, at 171–78 (1995); STEPHEN J. OCHS, DESEGREGATING THE ALTAR: THE JOSEPHITES AND THE STRUGGLE FOR BLACK PRIESTS, 1871–1960, at 432–45 (1990).

74. See, e.g., James Carroll, *The American Heresy: When Should Religious Dogma Bow to Experience?*, BOS. GLOBE (Apr. 19, 2009), http://archive.boston.com/bostonglobe/ideas/articles/2009/04/19/the_american_heresy/ (discussing Cushing’s 1953 excommunication of Father Leonard Feeney, SJ, who preached anti-Semitism). Carroll writes:

That Cushing took in what [anti-Semitism] meant to his sister’s [Jewish] husband is suggested by the fact that he ordered Feeney to stop his preaching, no matter how consistent it was with established doctrine. The priest refused, and refused again.

Cushing excommunicated Feeney. A confident Feeney appealed to Rome. Then, to the astonishment of the whole Catholic world, the Vatican upheld the excommunication.

Feeney was out.

Id.; see also *Cardinal Cushing Dies in Boston at 75*, N.Y. TIMES (Nov. 3, 1970), <https://www.nytimes.com/1970/11/03/archives/cardinal-cushing-dies-in-boston-at-75-cushing-cardinal-in-boston.html> (“In many ways, the prelate was a Cardinal for all the people. Before such pursuits became standard, he worked tirelessly to build bridges of understanding between Catholics, Protestants and Jews. He preached in synagogues and Masonic temples and Protestant pulpits in what was once the stronghold of Puritanism.”); JAMES RUDIN, CUSHING, SPELLMAN, O’CONNOR: THE SURPRISING STORY OF HOW THREE AMERICAN CARDINALS TRANSFORMED CATHOLIC-JEWISH RELATIONS 64–66 (2012) (discussing Cushing’s relationship with his brother-in-law and his long and bitter dispute with Father Feeney).

75. See CHESTER GILLIS, ROMAN CATHOLICISM IN AMERICA 73–76 (1999) (summarizing Merton’s and Day’s ministries and legacies).

76. See Irvin D. S. Winsboro & Michael Epple, *Religion, Culture, and the Cold War: Bishop Fulton J. Sheen and America’s Anti-Communist Crusade of the 1950s*, 71 HISTORIAN 209, 217–18 (2009). An earlier Catholic radio personality was Father Charles Coughlin, whose “deep, round, and mellow” voice was perfect for radio. O’TOOLE, *supra* note 57, at 168. Coughlin, who had

charismatic Catholic cleric into millions of homes across the country. While a majority of his viewers were Catholic, it has been estimated that about a quarter of them were not.⁷⁷ Bishop Sheen's popularity was not unrelated, of course, to his fierce anti-Communism, which, like that of Senator Joseph McCarthy, was in step with the spirit of the times.⁷⁸

Another important development, for very different reasons, was the appointment of a few relatively unconventional bishops like Bishop Robert F. Joyce, who became Bishop of Burlington, Vermont, in 1956.⁷⁹ Bishop Joyce had not followed the customary path to a place in the American hierarchy. To start, he was a Phi Beta Kappa graduate of the University of Vermont and studied for the priesthood at Le Grand Seminaire, Montreal.⁸⁰ While still a parish priest in Rutland, Vermont, Bishop Joyce had served as a trustee of the University of Vermont, and,

millions of listeners, was also a virulent anti-Semite. See MCGREEVY, *supra* note 37, at 162, 173 (noting "Coughlin's turn to openly anti-Semitic appeals in the late 1930s"). Two political scientists have recently written:

Father Coughlin was openly antidemocratic, calling for the abolition of political parties and questioning the value of elections. His newspaper, *Social Justice*, adopted pro-fascist positions in the 1930s, naming Mussolini its "Man of the Week" and often defending the Nazi regime. . . . Father Coughlin was immensely popular. . . . Some contemporary observers called him the most influential figure in the United States after Roosevelt.

LEVITSKY & ZIBLATT, *supra* note 64, at 34–35.

77. See, e.g., CHRISTOPHER OWEN LYNCH, *SELLING CATHOLICISM: BISHOP SHEEN AND THE POWER OF TELEVISION* 8 (1998).

78. See, e.g., Winsboro & Epple, *supra* note 76, at 209. "In the 1950s, Fulton J. Sheen (1895–1979), Auxiliary Bishop of New York, best-selling author, and lifelong conservative, arose as the Catholic spokesman on the Cold War." *Id.* at 211–12. Winsboro and Epple credit Sheen with "almost singlehandedly mov[ing] religion out of the Sunday schools and amphitheaters into the living rooms of millions of Americans." *Id.* at 221. He "adroitly used this type of televised forum to draw those outside the Catholic faith to his crusade. He downplayed differences with other denominations and offered instead atheistic communism as a common enemy to all faiths and to all Americans." *Id.* However, "[w]ithout the Red hysteria and fear of Soviet espionage and global domination, it is unlikely that Sheen's message would have resonated so profoundly among his fellow Americans." *Id.* at 229. Bishop Sheen was also heard in Canada, at first only by listeners who lived along the border and could pick up American signals, but eventually by a nationwide audience through the CBC's rebroadcasts of his show. Mark McGowan, *Church of the Air: Roman Catholics, Religious Programming and Regulation in Canadian Broadcasting, 1918–2008*, in *VARIETIES OF RELIGIOUS ESTABLISHMENT* 131 (Winnifred Fallers Sullivan & Lori G. Beaman eds., 2013). Bishop Sheen's religious persona ("a Catholic bishop, in shimmering crimson, pacing a stage") made his appearance on state television controversial in Canada, but some of his supporters pointed to Sheen's anti-Communism as a reason for permitting his program to be broadcast. *Id.* at 142–43.

79. *A Brief History of the Diocese of Burlington*, ROMAN CATHOLIC DIOCESE OF BURLINGTON, <https://www.vermontcatholic.org/about/who-we-are/our-history/>. According to John McGreevy, "a cohort of bishops appointed in the late 1950s and early 1960s" also began to play a more aggressive role with respect to matters of interracial justice. See MCGREEVY, *supra* note 32, at 136.

80. See *Tribute to the Most Reverend Robert F. Joyce*, 136 CONG. REC. 25214 (1990) (Senator Patrick Leahy remarking on the enduring legacy of Robert F. Joyce); *Tribute to Bishop Robert F. Joyce*, 132 CONG. REC. E33649 (1986) (remarks of Representative James M. Jeffords).

in that capacity, had stood alone against the Governor of Vermont in opposing the termination of a university professor suspected of communist sympathies.⁸¹ Unlike Bishop Sheen, Bishop Joyce was not a television star and did not cast a long shadow on the national scene. He was simply the pastorally-minded leader of a relatively insignificant, largely rural diocese, much loved across denominational lines. But a clue to his importance may be found on the copyright page of Murray's book. It was Bishop Joyce who gave his imprimatur to *We Hold These Truths*—and to many other “progressive” theological works of the period.⁸² As others may have been responsible for changing the image of the church in the world, some like Bishop Joyce also opened the church itself to greater dialogue and to new ideas.

But there were important areas of American life in which the perception of Catholics—or, more precisely, the perception of the Catholic Church as an institution—had not changed. Although the 1940s and the 1950s saw an increased acceptance of Catholics in the larger

81. Editorial, *Bishop Joyce*, RUTLAND HERALD 14 (Sept. 5, 1990) (“An honors graduate of the university, Joyce wondered whether he had been named a member and chairman of the [ad hoc] committee [to investigate Professor Novikoff’s political views] because of the widely-recognized anti-Communist stand of the Catholic Church and the likelihood that he would have little sympathy for a suspected Communist. If so, the position of the church and his affiliation with it proved to have no influence on his conduct of the Novikoff case.”). According to the Burlington Free Press, “[o]ne of [Bishop Joyce’s] major contributions was the merging of two Burlington hospitals [one of them being the Catholic DeGoesbriand Hospital] into the Medical Center Hospital of Vermont in the mid 1960s.” Paul Teetor & Mike Donoghue, *Retired Catholic Leader Rev. Robert F. Joyce Dies*, BURLINGTON FREE PRESS, Sept. 4, 1990, at 1, 4A. He also attended all of the sessions of the Second Vatican Council and expressed support for the ordination of women. See *The Most Reverend Robert F. Joyce, D.D. (obituary)*, BURLINGTON FREE PRESS, Sept. 4, 1990, at 2B (“[Reverend Joyce] attended all the sessions of the Second Vatican Council in Rome during the years 1962–65.”); “*Women Would be Good Priests*,” NAT’L CATH. REP., Dec. 10, 1971, at 20. (quoting Bishop Joyce as remarking that, “Women would make good priests and I’d vote in favor of ordaining them tomorrow if the question came up.”). In 1979, the University of Vermont created the Bishop Robert F. Joyce Distinguished Professorship in Gerontology in his honor. See *Obituary, The Most Reverend Robert F. Joyce, D.D.*, BURLINGTON FREE PRESS, Sept. 4, 1990, at 2B (chronicling Bishop Joyce’s accolades and achievements).

82. See *Roman Catholics: End of the Imprimatur*, TIME (Dec. 29, 1967), <http://content.time.com/time/magazine/article/0,9171,844318,00.html> (“One way that the Roman Catholic Church has traditionally tried to prevent the spread of error and heresy is by the use of the imprimatur. . . . Playing the imprimatur game can be as delicate as finding a publisher for a first novel. A classic case involved *The Layman in the Church*, a collection of essays from *Commonweal* magazine that was published by Herder and Herder in 1962. Although the articles had caused no great stir when printed in magazine form, the late Francis Cardinal Spellman of New York refused to give his imprimatur; because Spellman said no, Herder and Herder was turned down by three other bishops. . . . Since then, Herder has followed the lead of . . . Sheed & Ward, in having its books printed in Vermont—for the sole reason that it can usually count on clearing them with open-minded Bishop Robert Joyce of Burlington.”). Among the many European scholars who received the imprimatur from Bishop Joyce were Hans Urs von Balthasar, Yves Congar, and Karl Rahner. The Americans included Charles A. Curran, Andrew M. Greeley, and Eugene C. Kennedy.

society, one notable exception was the continued negative assessment of the Catholic Church by the Protestant elite, including clergy and public theologians.⁸³ One tangible—and quite dramatic—manifestation of that attitude was the previously mentioned meeting that a prominent group of American Protestant clergy convened in Switzerland in 1960 for the express purpose of trying to prevent the election of a Catholic president.⁸⁴ But the attitude went well beyond Protestant clergy and public theologians. Take the case of Phi Beta Kappa, for example. Until 1962, there were only two Phi Beta Kappa chapters at Catholic universities, and only four more were added during the 1960s.⁸⁵ It was thought that the doctrines of the Catholic Church were antithetical to the notion of free inquiry and the search for truth.⁸⁶

83. See MCGREEVY, *supra* note 32, at 83 where McGreevy explains

Integration of the various nationality groups within the Church mirrored the integration of Catholics into the broader society. By the end of the 1940s, the anti-Catholicism that once helped fuel the Ku Klux Klan had largely disappeared from public view. . . . Intellectuals still warned of “Catholic Power” but ordinary Catholics rarely encountered hostility. Public images were largely favorable—the Pope giving daily blessings to American troops during the war, Bishop Sheen preaching on television, Bing Crosby in *The Bells of Saint Mary’s*.

84. See Steinfelds, *supra* note 66 (discussing a private meeting of twenty-five leaders in Montreux, Switzerland on August 18, 1960, to block the election of John F. Kennedy).

85. The first two chapters were at the College of Saint Catherine (1938) and Catholic University of America (1941); the four that were added during the 1960s were Fordham, Georgetown, Saint Louis University, and Notre Dame. THE PHI BETA KAPPA SOCIETY, HANDBOOK FOR NEW MEMBERS 2015–2018 (ref. ed. 2015) (compiling the dates on which Phi Beta Kappa granted charters to US colleges and universities).

86. The story of St. Catherine’s Phi Beta Kappa chapter pretty well sums it up. According to the college history, the point person for securing the charter was Sister Jeanne Marie Bonnett, a Phi Beta Kappa graduate of the University of Minnesota who also earned a doctoral degree in psychology at the University of Louvain. LIBERATING SANCTUARY: 100 YEARS OF WOMEN’S EDUCATION AT THE COLLEGE OF ST. CATHERINE 34, 48 (Jane Lamm Carroll et al. eds., 2012). Sister Jeanne Marie jumped through many hoops to secure the charter, and, once it was granted, she found that she had to jump through many additional hoops to keep it, as other Phi Beta Kappa chapters registered their objections to granting a charter to a Catholic college. *Id.* at 48–49. Because of those objections, the General Secretary of Phi Beta Kappa asked St. Catherine’s to respond to the proposition that, “following the Pope and the Church [is] ‘antagonistic’ to the religious, philosophical, and political principles of the United States and Phi Beta Kappa.” *Id.* at 48. St. Catherine’s eventually kept its chapter, but part of Sister Jeanne Marie’s acerbic response to the General Secretary’s request is worth reading:

At first thought, one might wonder why anyone would raise the question of Church affiliation when a purely academic matter is under consideration. But on second thought, one realizes that, of course the persons entrusted with the academic distinction are also persons who live according to the precepts of their churches. Would that we could dissolve prejudice with truth more whole seen, and allay fear by more frequent good example. Perhaps in admitting Catholics to membership in their Society, Phi Beta Kappa will increase its burden somewhat, but if we are not already all the present members think we should be, even academically, ought they not be willing to regard us as brothers and be our keepers, lifting us to their level, so that we may do our work better in this

In the 1950s, the mainline Protestant churches still had great (perhaps inordinate) influence in governmental affairs, and the views of Protestant public theologians, such as Reinhold Niebuhr, greatly influenced the nation's political leaders—many of whom belonged to the same organizations and networks.⁸⁷ In other words, the Protestant public theologians and intellectuals sat at the “high table” from which Catholics had long been excluded, and a substantial part of Murray's project was necessarily focused on securing a place at that table for representatives of the Catholic Church. It was not so much that the Protestant man on the street still needed to be persuaded that Catholics “could be good Americans;”⁸⁸ that case had largely (if not entirely) been made and won.⁸⁹ It was more the case that those who could speak for the Catholic Church needed to be included in the deliberations dominated by the Protestant establishment. In many ways, *We Hold These Truths* was a brief for including representatives of the Catholic Church at the “high table.”

Professor Lovin notes that the world changed dramatically almost immediately after the publication of *We Hold These Truths*.⁹⁰ As we have seen, however, the world already had changed substantially while Murray was writing the essays collected in his book. Moreover, there were important aspects of the world in which Murray lived that he either did not grasp or was not willing to write about.⁹¹ Thus, while Murray's book

nation of ours?

Id. As late as 1960, according to John McGreevy, Phi Beta Kappa denied Notre Dame's request for a chapter “in part because required philosophy ‘courses are rather too wholly and specifically Thomistic.’” MCGREEVY, *supra* note 37, at 141. In 1967, representatives of several American Catholic universities, under the leadership of Notre Dame President Father Theodore Hesburgh, issued a Statement on the Nature of the Contemporary Catholic University (the so-called Land O'Lakes Statement), which, among other things, stated that a Catholic university “must be a university in the full modern sense of the word, with a strong commitment to and concern for academic excellence” and “a true autonomy and academic freedom in the face of authority of whatever kind, lay or clerical, external to the academic community itself.” *Statement on the Nature of the Contemporary Catholic University*, UNIV. OF NOTRE DAME ARCHIVES (July 23, 1967), <http://archives.nd.edu/episodes/visitors/lol/idea.htm>. See also John I. Jenkins, *The Document that Changed Catholic Education Forever*, AMERICA (July 11, 2017), <https://www.americamagazine.org/faith/2017/07/11/document-changed-catholic-education-forever#> (fiftieth anniversary retrospective analysis of the Land O'Lakes Statement and its current significance by current Notre Dame president).

87. See, e.g., WILLIAM INBODEN, RELIGION AND AMERICAN FOREIGN POLICY, 1945–1960: THE SOUL OF CONTAINMENT 49–53 (2008); Hans J. Morgenthau, *The Influence of Reinhold Niebuhr in American Political Life and Thought*, in REINHOLD NIEBUHR: A PROPHETIC VOICE IN OUR TIME 97 (Harold R. Landon ed., 1962).

88. Conference Paper, *supra* note 3, at 1.

89. See, e.g., O'TOOLE, *supra* note 57, at 8.

90. Conference Paper, *supra* note 3, at 2.

91. The omission is interesting because, according to John McGreevy, Murray did not

is meant to be a set of Catholic reflections on “the American Proposition,” it contains only the briefest and most indirect allusion to what has continued to be the deepest moral stain on that “proposition,” namely, racial prejudice and the social, political, and legal subordination of African Americans.⁹² Although the stain of racial prejudice increasingly was being recognized for the evil that it is during the 1940s and the 1950s, Murray’s only real discussion of any kind of prejudice concerns the prejudice faced by Catholics.⁹³ Indeed, Murray’s book is virtually silent on the question of racial justice, apart from one somewhat half-hearted endorsement of the Court’s decision in *Brown v. Board of Education*,⁹⁴ and that is simply an aside in an argument about the injustice of denying aid to parochial schools. Murray writes:

The Supreme Court has ruled that the doctrine of “separate but equal” educational facilities for Negroes is incompatible with the present-day American constitutional concept of civic equality within the unity of the body politic. The decision is a good example of the way in which sociological alterations sharpen moral judgment and thus lead to legal changes.

From the moral point of view, the “separate but equal” doctrine was always unjust; racial discrimination cannot be defended on moral grounds. Nonetheless, the doctrine could once have been defended from a sociological point of view as necessary in the circumstances—in view of the unenlightened state of the public conscience, the temporarily

disapprove of Archbishop Rummel’s actions in 1956, but noted in personal correspondence with one of Rummel’s critics, that “[t]he moral sinfulness of segregation [is] entirely clear.” MCGREEVY, *supra* note 32, at 86.

92. See, e.g., Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1 (1987).

93. Other Catholic clergy did speak about race during this period, including, most notably, John LaFarge, SJ. See, e.g., JOHN LAFARGE, *THE MANNER IS ORDINARY* 155–240, 272–74, 337–54 (1957). See also MCGREEVY, *supra* notes 32 and 64 and accompanying text. Indeed, LaFarge’s work on racism apparently came to the personal attention of Pius XI, who asked him to prepare a draft encyclical on the subject. Pius XI died shortly after the draft was completed, and the encyclical was never issued. See generally PETER EISNER, *THE POPE’S LAST CRUSADE: HOW AN AMERICAN JESUIT HELPED POPE PIUS XI’S CAMPAIGN TO STOP HITLER* (2013) (explaining Pope Pius XI’s request that LaFarge prepare a draft encyclical for him on the subject of racism, LaFarge’s efforts at drafting such an encyclical, and the failure of the project due to the intervention of his Jesuit superiors and the death of the pope); GEORGES PASSELECQ & BERNARD SUCHECKY, *THE HIDDEN ENCYCLICAL OF PIUS XI* (Stephen Rendall trans., 1997). As Passelecq and Suchecky have recently shown, two other scholars also worked on the draft and portions of it contain ideas that do not reflect LaFarge’s thinking. PASSELECQ & SUCHECKY, *supra*, at 165–67. More controversially, Claude Heithaus, SJ, a professor at Saint Louis University, called for an end to segregation at the university in the early 1940s—a call that resulted in his reassignment. See MCGREEVY, *supra* note 37, at 209. Murray prepared a response that did not support Heithaus and is discussed below. See *infra* notes 103–108 and accompanying text. In general, the Catholic Church was not a particularly welcoming place for African Americans during this period. See DOLAN, *supra* note 61, at 359–69.

94. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

inferior cultural status of the Negro, etc. However, circumstances have changed and the level of the public conscience has risen above ancient irrational prejudices. The sociological defense of the doctrine is no longer admissible. Therefore, the moral judgment must prevail. And the law should conform itself to this moral judgment. The doctrine of separate but equal facilities, which never had any status in morals, no longer has any status in law.⁹⁵

It may well be that Murray simply did not consider the position of African Americans as a subordinate caste to be a matter of pressing importance during the 1950s. On the other hand, Murray's failure to address the subject may have been a tactical concession in light of the interests of his intended audience. The injustice of racial subordination was not a central concern for many of the mainstream Protestant public intellectuals Murray wanted to persuade,⁹⁶ and raising the issue would not have strengthened his brief for Catholic inclusion—a brief that might already have seemed difficult enough to argue. To have raised questions about the morality of racial segregation and discrimination, and their radical incompatibility with constitutional and democratic principles, might well have frustrated the achievement of his main objective: the validation and naturalization of the Catholic point of view. Yet, how

95. MURRAY, *supra* note 4, at 145–46. Murray then returns to his discussion of the injustice of denying public aid to parochial schools. Based on his analysis of *Brown*, one must assume that Murray would not have been persuaded by Justice John Marshall Harlan's dissent in *Plessy v. Ferguson*, 163 U.S. 537, 552–64 (1896), and would have voted with the majority in that case, if he had been a member of the Supreme Court in 1896. Indeed, Murray's account seems more a justification for *Plessy*, and, by extension, for *Dred Scott v. Sandford*, 60 U.S. 393 (1857), than a celebration of *Brown*.

96. See JAMES H. CONE, *THE CROSS AND THE LYNCHING TREE* 159 (2011) (“Whites could claim a Christian identity without feeling the need to oppose slavery, segregation, and lynching as a contradiction of the gospel for America. Whether we speak of Jonathan Edwards, Walter Rauschenbusch, or Reinhold Niebuhr as America's greatest theologian, none of them made the rejection of white supremacy central to their understanding of the gospel. Reinhold Niebuhr could write and preach about the cross with profound theological imagination and say nothing of how the violence of white supremacy invalidated the faith of white churches.”). James Cone further notes that, “[b]ecause Niebuhr identified with white moderates in the South more than with their black victims, he could not really feel their suffering as his own.” *Id.* at 39. Lacking “the ‘heart to feel’ it as his own,” Niebuhr never viewed “the problem of race [as] one of his central theological or political concerns.” *Id.* at 41. According to Cone, Niebuhr

did not engage the race issue—the greatest moral problem in American history—in any practical way. During most of Niebuhr's life, lynching was the most brutal manifestation of white supremacy, and he said and did very little about it. Should we be surprised, then, that other white theologians, ministers, and churches followed suit?

Id. at 44–45. Interestingly, “Niebuhr wrote four books on American history but did not deal with racial issues in any substantive manner.” *Id.* at 51. Indeed, when Arthur Schlesinger, Jr., reviewed a manuscript of one of those books, he pointed out the need to say something in the book about “the relationship between our democratic and equalitarian pretensions and our treatment of the Negro,” but Niebuhr made no addition to the text. *Id.*

could one argue, as Murray did, about “the American proposition,” without acknowledging the enduring consequences of its fatal flaw, what William Lloyd Garrison long ago called “a covenant with death and an agreement with hell”?⁹⁷ Perhaps there is a message here, namely, that public theology may have more in common with politics than with prophecy, and that it is important for its practitioners to recognize that fact.⁹⁸

III. THE QUESTION OF RACE: LESSONS FROM SAINT LOUIS UNIVERSITY

No one who has even a passing familiarity with the struggle for racial equality in the United States during the period from the 1940s through the 1960s⁹⁹ could help but be surprised by the absence of any discussion of that issue in *We Hold These Truths*. The origin of that absence—whether it be inadvertence, a lack of vision, an absence of understanding or empathy, or a tactical judgment—we do not know.¹⁰⁰ It seems clear, however, from Murray’s comments on the Supreme Court’s decision in *Brown*, that he was not greatly troubled by the systematic injustice faced

97. WENDELL PHILLIPS GARRISON & FRANCIS JACKSON GARRISON, WILLIAM LLOYD GARRISON, 1805–1879: THE STORY OF HIS LIFE TOLD BY HIS CHILDREN 88 (1889).

98. See, e.g., Jonathan Wilson-Hartgrove, Opinion, *The Evangelical Case Against Judge Kavanaugh*, N.Y. TIMES (Sept. 3, 2018), <https://www.nytimes.com/2018/09/03/opinion/evangelical-brett-kavanaugh-civil-rights.html> (“Conservative evangelicals were at the White House last week for an event the Rev. Robert Jeffress describes as ‘a half state dinner and a half campaign rally.’ Evangelicals like Mr. Jeffress are ebullient as the Senate prepares to confirm Judge Brett Kavanaugh next week, praising President Trump as ‘the most pro-life, pro-religious liberty, pro-conservative judiciary president of any president in history.’ . . . As proponents of ‘Christian nationalism’ continue to be the most consistent base of support for President Trump, my evangelical faith compels me to challenge the way reactionary conservatives have hijacked our faith to serve their narrow interests. With Judge Kavanaugh on the Supreme Court, their 40-year effort to overturn expansions of Fourteenth Amendment protections by the Warren Court may be in reach. This will not necessarily save unborn children, but it will make life more difficult for minorities, workers, poor people and the L.G.B.T.Q. community. When Jesus said, ‘I have come that they might have life, and have it more abundantly’ in John 10:10, he wasn’t thinking about a victory for those who have used religion to fight back against the gains of the civil rights movement. Jesus was inviting all of us to work together for the vision at the heart of that movement—a beloved community where all people created in God’s image can thrive.”).

99. See, e.g., RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA’S STRUGGLE FOR EQUALITY (1975); TRUMAN K. GIBSON JR. & STEVE HUNTLEY, KNOCKING DOWN BARRIERS: MY FIGHT FOR BLACK AMERICA (2005).

100. See ESSAYS ON ARISTOTLE’S *RHETORIC 2* (Amélie Oksenberg Rorty ed., 1996) (According to Aristotle, “[i]n order to construct persuasive arguments, the skilled rhetorician must understand the beliefs and psychology of his audience.”); see also George Klosko, *Persuasion and Moral Reform in Plato and Aristotle*, 47 REVUE INTERNATIONALE DE PHILOSOPHIE 31, 31 (1993) (According to Plato’s PHAEDRUS, “[T]he successful rhetor must have specific knowledge of his subject matter, and of important principles of composition. In addition, he must know about the human soul, about different kinds of souls, and the kinds of arguments that are effective with each.”).

by African Americans.¹⁰¹ In his view, *Plessy v. Ferguson* was apparently right for its time, but “sociological alterations [had] sharpen[ed] moral judgments and thus [led] to legal changes.”¹⁰² This view is not inconsistent with a memorandum that he wrote in 1945 on the question of segregation at Saint Louis University—an issue that fractured the local Jesuit community. On that occasion, he wrote:

The initial question concerns the admission of colored students to our schools—have they a “right” to be admitted?

The answer is—no. For the simple reason that nobody, be he white or colored, has any such right. Our schools are private schools, not diocesan or State. And we have no *officium iuridicum* towards anybody at all in the matter of admission to them, in such wise that we would violate a right by refusing admission. Even if the colored student were refused admittance simply because of his color, I do not see that this would be unjust, a violation of a right.

Nor is the doctrine of the Mystical Body, or papal encyclicals immediately relevant in this connection. We are not juridically obligated to admit students to our schools simply because they are members of the Mystical Body. Whatever rights that high privilege creates (cf. *infra*), it certainly creates no rights as against the Society. It should be remembered that we have no juridical obligation to provide an education for anybody, white or colored; with us, education is a work of charity, not justice.¹⁰³

Murray continued, noting that the case was different with respect to the obligations of bishops. However, even in that case, where the bishops had an obligation to provide a Catholic education to Catholic children, regardless of race, there was no obligation to provide African American children with a nonsegregated education:

The case is otherwise as regards the bishops. They have a strict obligation to provide for the Catholic education of their flocks, white and colored. And the negro’s right to a Catholic education is valid as against the bishops.

I would add immediately that the negro’s right to a Catholic education does not immediately and *per se* create a right to get it in association with white boys and girls in the same school. I fail to see why his right would not be fully satisfied by episcopal provision of an education system for colored alone, i.e., on the principle of segregation. Whether the bishop should follow one policy or the other (mixed

101. MURRAY, *supra* note 4, at 145–46.

102. *Id.* at 145.

103. John Courtney Murray, *Memorandum*, WOODSTOCK THEOLOGICAL LIBR. AT GEO. UNIV. MURRAY ARCHIVES (Apr. 30, 1945), <https://www.library.georgetown.edu/woodstock/murray/1945d>.

schools or separate schools) will depend on other considerations than those of abstract commutative justice. However, in consequence of a failure to provide adequate educational facilities for the colored alone, the colored man's right to a Catholic education becomes operative against white schools, and he should in justice be admitted to them.¹⁰⁴

Murray then reiterated his view that the Jesuits had no duty to provide an education to African American students, based on considerations of "individual justice," but conceded that an argument for doing so might be made on other grounds:

As regards ourselves, . . . I do not think that a case can be made out, on grounds of individual justice, for the admission of colored boys to our schools.

But a case can be made out on other grounds: (1) those of social justice and social charity; and (2) those of supernatural charity.¹⁰⁵

In other words, while no individual has a right to equal treatment without regard to his or her race, an argument for granting admission might be made on grounds of "social justice and social charity" or "supernatural charity."¹⁰⁶ Murray ultimately concludes for that reason that "negro students [ideally should be admitted] to our schools;" at the same time he reiterates that no "individual negro" has any "right to a Catholic education."¹⁰⁷ Finally, Murray adds a caveat, namely, that prudence must be considered, even where, ideally, the "admission of colored students" might otherwise be required:

A note needs to be added. Obviously social justice obliges us to do only what is possible at the moment, at the same time that we keep the ideal in view. If, therefore, admission of colored students is not immediately possible in this school or that, there is no obligation to admit them. But there remains an obligation to prepare the way for their admission by sustained and serious and intelligent educative work, on parents and boys. (Notice that, since social justice obliges us to further a process, it always imposes some obligation—that of taking the step in the process that is immediately possible.)¹⁰⁸

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* This mode of reasoning is similar, of course, to that employed by Monsignor John Ryan, a leading Catholic liberal, who thought that African Americans could not show any moral entitlement to the franchise. *See* MCGREEVY, *supra* note 37, at 208 (according to Monsignor Ryan, "The only moral right possessed by the citizen in the political field is the right to have a government that promotes the common good," and that right "can be obtained without universal suffrage."). *Cf.* DAVID HOLLENBACH, CLAIMS IN CONFLICT: RETRIEVING AND RENEWING THE CATHOLIC HUMAN RIGHTS TRADITION 87 (1979) ("Respect for persons demands active participation in the process of social change and development. Such participation is the condition for the realization of all human potentialities. None of these potentialities can or will be realized as long as persons remain in a condition of extreme marginalization and powerlessness.").

108. Murray, *supra* note 103.

Murray then criticized the arguments in favor of desegregation on several grounds, including the following:

[Father Heithaus, who championed de-segregation] oversimplifies the problem; his rhetoric is exaggerate; in his attack on existing attitudes (which do indeed deserve attack) he is tendentious and unfair. Granted that he is on the side of toe [sic] angels, he is entirely too heavy-footed in a very delicate matter. And that sort of thing is likely to do more harm than good.

It seems to me that he succumbs to one common temptation. Viewing our past neglect and present inertia (both real enough, I think), one is tempted to make up for lost time, and do everything at once. In the face of others who move too slowly, there is an inclination to move too fast. And when one takes up a “cause,” such as that of interracial justice, there is a tendency to edge off into some manner of fanaticism.¹⁰⁹

As a legal matter, Murray was clearly correct. As a private institution, Saint Louis University was not constitutionally obliged to admit African American students.¹¹⁰ Indeed, even public universities had no recognized obligation to do so, as a general matter, in 1945.¹¹¹ But the logic-chopping, forensic quality of Murray’s argument is something that only

109. *Id.*; see also MCGREEVY, *supra* note 32, at 71 (discussing the reassignment of George Dunne, SJ, because of his advocacy of desegregation of Saint Louis University).

110. In *Virginia v. Rives*, 100 U.S. 313, 318 (1879), the Supreme Court declared that, “[t]he provisions of the Fourteenth Amendment . . . all have reference to State action exclusively, and not to any action of private individuals.” Four years later, the Court reiterated that conclusion in *The Civil Rights Cases*, 109 U.S. 3, 10–11 (1883), in which the Court, with only one justice dissenting, held that Congress had exceeded its constitutional authority by prohibiting private racial discrimination in public accommodations. Writing for the Court, Justice Bradley declared that the “Fourteenth Amendment . . . is prohibitory upon the States. . . . Individual invasion of individual rights is not the subject-matter of the amendment.” Justice Harlan dissented. See *id.* at 33–62. In a memorable dissent, he wrote that

It is . . . scarcely just to say that the colored race has been the special favorite of the laws. . . . What the nation, through congress, has sought to accomplish in reference to that race is—what had already been done in every state of the Union for the white race—to secure and protect rights belonging to them as freemen and citizens; nothing more. . . . The one underlying purpose of congressional legislation has been to enable the black race to take the rank of mere citizens.

Id. at 61.

111. In *Sweatt v. Painter*, 339 U.S. 629 (1950), the Supreme Court, for the first time, ordered a state university to admit a student of color, but it did so only on the ground that the separate law program offered for African American students was not in fact equal. In *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950), the Court held that, once admitted to a state university, students of color could not be segregated in classrooms, libraries, and cafeterias. It was not until 1954, however, that the Court held, in *Brown v. Board of Education*, 349 U.S. 294 (1955), that schools established by the state could not lawfully classify students based on race. See also Barry Sullivan, *The Power of Imagination: Diversity and the Education of Lawyers and Judges*, 51 U.C. DAVIS L. REV. 1105 (2018) (discussing subsequent public university admissions cases).

a lawyer could love. It distracts; it fails to elucidate; it diminishes our ability to appreciate the inherent evil of racism. That forensic or adversarial mode of argument is not one that appeals to most of us today,¹¹² but it does reflect the emphasis that Murray placed, as Professor Lovin puts it, on “winning the argument.”¹¹³ Ironically, one result of Murray’s work has been to free us from that earlier form of argument. We are more comfortable today thinking about encounter in terms of what I would call dialogue, in which the participants are open to persuasion based on what David Tracy calls “an openness to mutual transformation,”¹¹⁴ as opposed to Murray’s kind of adversarial contest in which there are winners and losers. Encounter cannot be authentic—and will only be window dressing—unless it sustains that possibility of mutual transformation. If we allow forensic argument to deaden us to realities such as the inherent evil of racism, we are more likely to be persuaded that prudence or moderation is the greatest virtue. But one must wonder at what point prudence becomes an excuse for a lack of moral courage. To what extent, in Dr. King’s words, does the “great stumbling block” become “the white moderate, who is more devoted to ‘order’ than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice”?¹¹⁵

CONCLUSION

Public theologians necessarily speak out of a particular faith tradition, and it seems essential for them to look inwardly to their tradition as well as outwardly to the public square, to challenge aspects of their own traditions when necessary, and to articulate alternative narratives. They

112. See ROBERT P. BURNS, *A THEORY OF THE TRIAL* 206–07 (1999) (“[E]ven intellectual work depends on our immediate access to a transparent set of coping skills that always resist full formalization: ‘[T]he accumulation, the pondering and reconsideration of various subject matters in terms of the symbols designating them—is . . . a tacit, a-critical process. *It is a performance.* . . .’ We have seen that we impose extremely modest burdens of explicit reason giving on decision-makers at the trial level. This recognizes the prominence of the dimensions of decision making that cannot be assimilated to the construction of mental representations. . . . [As in science, what] occurs is ‘*not a deduction but an integration.*’”). The legal process, when conceived as a contest between winners and losers, in which the winner takes all, may not provide an appropriate tool for addressing polycentric problems of public policy. See Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353, 394–404 (1978).

113. Conference Paper, *supra* note 3, at 4.

114. DAVID TRACY, *PLURALITY AND AMBIGUITY: HERMENEUTICS, RELIGION, HOPE* 93 (1987). See also Winnifred Fallers Sullivan, *Indifferentism Redux: Reflections on Catholic Lobbying in the Supreme Court of the United States*, 76 NOTRE DAME L. REV. 993, 998 (2001) (The Council “documents emphasized that truth was to be found in other religious traditions and that the appropriate attitude towards other religious traditions should be one of respect and openness to dialogue.”).

115. King, *supra* note 1.

should be alert to the signs of the times and be willing to speak prophetically within their faith communities. As Professor Lovin has noted,¹¹⁶ that was one of the two tasks that Murray set for himself, with respect to the Catholic Church's official teaching on religious freedom.

That inward-directed aspect of public theology seems at least as important now as it was in Murray's time. In recent years, we have seen the American Catholic bishops form alliances and fight battles over questions that most often relate in one way or another to matters of sex.¹¹⁷ In the 2016 general election, some bishops went so far as to tell Catholics that they should withhold their vote from "any candidate" who did not oppose abortion, thereby implicitly directing Catholics to vote for Donald Trump, the Republican candidate, simply because of his stance on that issue, and without regard to any other issue.¹¹⁸ Sometimes it seems that this is the only message that some of the bishops are able to find in the Gospels, and the only thing that they want to talk about. At the same time, many bishops have been notably absent (one actually absconded to Rome)¹¹⁹ when it comes to taking responsibility for the clergy abuse scandal. That disconnect has not gone unnoticed by survivors, as Robert Orsi notes in a recent essay.¹²⁰ Professor Orsi quotes one survivor who

116. Conference Paper, *supra* note 3, at 1.

117. One notable exception has been the bishops' commendable stand on the rights of immigrants, a matter on which they have parted company with some of the political forces with which they typically have chosen to make common cause. See U.S. CONFERENCE OF CATHOLIC BISHOPS, WELCOMING THE STRANGER AMONG US: UNITY IN DIVERSITY (2001) (describing the Conference's approach to promoting an integrative approach to diversity).

118. See Bart Jones, *Bishop: Support for Abortion Should "Disqualify" Candidates*, NEWSDAY (Oct. 30, 2016, 10:04 PM), <https://www.newsday.com/long-island/bishop-support-for-abortion-should-disqualify-candidates-1.12529158> ("Bishop William Murphy, head of the Diocese of Rockville Centre, said in a letter read at Masses on Sunday that support for abortion 'should disqualify any and every such candidate from receiving our vote.' . . . [M]ore than a dozen other bishops across the country have written similar letters this year."). Compare Cathleen Kaveny, *The Single-Issue Trap: What the Bishops' Voting Guide Overlooks*, COMMONWEAL (Sept. 13, 2012), <https://www.commonwealmagazine.org/single-issue-trap> ("Voters cannot blind themselves and focus single-mindedly on one issue in the abstract, even if the issue is abortion. They must select among candidates, not among issues—and they are morally required to do so in light of the concrete challenges and possibilities for the common good posed by a specific election at a specific time. This, and not a litmus test of issues, is what forming consciences for faithful citizenship is really all about."). Other efforts were made to deliver Catholic voters to the Republican party candidate in the 2016 election, including false reports about an alleged papal endorsement and other dirty tricks. See DAVID FRUM, TRUMPOCRACY: THE CORRUPTION OF THE AMERICAN REPUBLIC 21–25 (2018).

119. See Stephanie Kirchgaessner, *Cardinal Bernard Law, Central Figure in Boston Sexual Abuse Scandal, Dies at 86*, GUARDIAN (Dec. 20, 2017, 3:44 AM), <https://www.theguardian.com/world/2017/dec/20/cardinal-bernard-law-boston-sex-abuse-scandal-dies> (describing Cardinal Bernard Law's flight to Rome following the reporting of his "failure to stop" clerical sexual abuse of children in the Archdiocese of Boston).

120. Robert A. Orsi, *What is Catholic About the Clergy Sex Abuse Crisis?*, in THE

asks how the church can tell her that “it [is] a sin to live with her boyfriend while the priests who raped her continue[] their ministry.”¹²¹

In a church that can and cannot change, to use John Noonan’s phrase,¹²² what are the values the church should champion, and what is their foundation? In a recent book, for example, the Catholic philosopher Dennis O’Brien has argued that at least some of what now passes for orthodoxy, even in the areas of abortion and contraception, is based on relatively recent doctrinal innovations.¹²³ That is the kind of historical-theological inquiry that Murray built upon, as Cardinal Newman did before him. But, as Massimo Faggioli pointed out in a recent *Commonweal* column, the emancipation of Catholic theology from ecclesial control also seems to have emancipated the church hierarchy from academic theology.¹²⁴ The bishops’ estrangement from academic theology makes success in such a project seem unlikely.

I would close with the simple observation that, in forming our own responses to this age of almost overwhelming moral complexity, we might profitably reflect on the way in which Pope Francis has affected the entire world during the past five years by *showing us*, rather than *telling us*, how we should live our lives. That is the difference, as my good friend Bishop Walter Sullivan¹²⁵ was fond of saying, between the love of law and the law of love.

ANTHROPOLOGY OF CATHOLICISM (Kristin Norget et al. eds., 2017).

121. *Id.* at 290.

122. *See generally* JOHN T. NOONAN, JR., *A CHURCH THAT CAN AND CANNOT CHANGE: THE DEVELOPMENT OF CATHOLIC MORAL TEACHING* (2005) (demonstrating that the moral teaching of the Catholic Church has changed and continues to change without abandoning its commitment to the Gospel of Jesus).

123. *See generally* GEORGE DENNIS O’BRIEN, *THE CHURCH AND ABORTION: A CATHOLIC DISSENT* (2010) (examining the issue of abortion within the Catholic Church).

124. Massimo Faggioli, *A Wake-Up Call to Liberal Theologians: Academic Theology Needs the Church*, *COMMONWEAL* (May 16, 2018), <https://www.commonwealmagazine.org/wake-call-liberal-theologians>.

125. *See generally* PHYLLIS THEROUX, *THE GOOD BISHOP: THE LIFE OF WALTER F. SULLIVAN* (2013).