



UNIVERSITY OF
NOTRE DAME

College of Arts and Letters

DEPARTMENT OF POLITICAL SCIENCE

VINCENT PHILLIP MUÑOZ *TOCQUEVILLE ASSOCIATE PROFESSOR OF POLITICAL SCIENCE*

2040 NANOVIC HALL | NOTRE DAME, INDIANA, 46556 | *tel* (574) 631-0489 | *fax* (574) 631-4405 | VMUNOZ@ND.EDU

Church, State, and American Constitutionalism

POLS 30662

Fall 2017

Vincent Phillip Muñoz

Theresa Smart

“The conviction that there is a Creator God is what gave rise to the idea of human rights, the idea of the equality of all people before the law, the recognition of the inviolability of human dignity in every single person and the awareness of people’s responsibility for their actions. Our cultural memory is shaped by these rational insights. To ignore it or dismiss it as a thing of the past would be to dismember our culture totally and to rob it of its completeness.”

- Pope Benedict XVI (2011)

“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”

- James Madison, Letter to W. T. Barry (1822)

“Every government degenerates when trusted to the rulers of the people alone. The people themselves, therefore, are its only safe depositories. And to render them safe, their minds must be improved to a certain degree.”

- Thomas Jefferson, *Notes on the State of Virginia* (1782)

"If a nation expects to be ignorant & free, in a state of civilisation, it expects what never was & never will be."

- Thomas Jefferson, Letter to Charles Yancey (1816)

Our class will examine philosophical, constitutional, and political questions pertaining to matters of church, state, and American constitutionalism, including: Do individuals and institutions have a right to religious liberty? If so, what are its philosophical foundations? How does the American Constitution protect and limit religious freedom? Is religion necessary, good, or bad for liberal democracy? What is the proper relationship between church and state?

Readings include selections from classical, medieval, and modern political philosophy, leading cases of American constitutional law, and contemporary Catholic, legal, and political thinkers. Class participants will also receive special invitations to and be encouraged to participate in events sponsored by Notre Dame’s Tocqueville and Constitutional Studies Programs.

Even though our class is relatively large, we will attempt to conduct class as seminar that emphasizes class discussion. You should come to every class prepared to participate in and contribute to a conversation. The class aims to help you think more clearly and deeply about the right of religious liberty and how the United States Supreme Court has (or has not) protected it. It is also designed to help you reflect about the purposes and limits of political authority, to participate more thoughtfully and effectively in the democratic political process, to better understand competing visions of church-state constitutional norms and ideals, and to more thoroughly develop your own political ideals while also exploring ideals and viewpoints that are different from your own. More specifically, the course is designed to enable you to:

- Understand and evaluate the philosophical principles of the American founding
- Understand, analyze, and evaluate philosophical arguments for the right (or non-right) to religious liberty
- Deepen your knowledge of American political and constitutional history
- Explore, argue, and debate the proper role of the judiciary in America's constitutional republic
- Explore, argue, and debate methods of constitutional interpretation
- Classify and evaluate church-state Supreme Court opinions
- Explain and appraise arguments about the role of religion in a liberal democracy
- Explore classic and contemporary Catholic political thought about church and state
- Better understand and appreciate the "first freedom" of American citizenship
- Engage your classmates in civil conversation about religion and politics

Class: Tuesday & Thursday 12:30-1:45PM, DeBartolo Hall 125

Office: Nanovic Hall 2040C

Office Phone: 574-631-0489

Email: vmunoz@nd.edu

Office Hours: Wednesday, 8:15-9:15am and 2:45-4:45pm and at all hours by appointment. I am frequently in my office. You are welcome to drop by anytime, and I will meet with you if my schedule allows.

Teaching Theresa Smart

Assistant tsmart@nd.edu

Texts to be Purchased Immediately

Religious Liberty and the American Supreme Court: The Essential Cases & Documents, ed. Vincent Phillip Muñoz (Rowman & Littlefield, 2015)

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

Course Requirements

Church & State will be a participatory lecture class conducted like a seminar. Some classes will include a lectures, but I anticipate much class time to be devoted to discussion. Lectures and discussion will be based on the assigned readings. When I do lecture, I encourage participation in the form of questions and comments. In order to participate effectively, you must read, take notes, and think about all assigned readings before class. I cannot overemphasize this point. You will learn more, enjoy class more, and be able to participate more because you have read the assigned materials before class. The success of our class will depend primarily on your preparation and participation. As a good and informed citizen, you should also read a daily newspaper. We will often begin class with a short discussion of current events, especially those that pertain to subjects discussed in class.

<u>Assignments</u>		<u>Grading Scale</u>			
In-Class Participation	100 points	A	1000-930	C	779-730
Discussion Board Participation	100 points	A-	929-900	C-	729-700
Pre-Class Writing Assignments	100 points	B+	899-880	D+	699-680
Initial Paper	25 points	B	879-830	D	679-630
Second Paper	175 points	B-	829-800	D-	629-600
Midterm Exam	200 points	C+	799-780	F	599-000
Final Exam	300 points				

<u>Grade</u>	<u>Description</u>	<u>Explanatory Comments</u>
A	Truly Exceptional	<i>All</i> work meets or exceeds the highest expectations for the course
A-	Outstanding	Superior work in <i>all</i> areas of the course
B+	Very Good	Superior work in <i>most</i> areas of the course
B	Good	Solid work across the board
B-	More than Acceptable	More than acceptable, but falls short of solid work
C+	Acceptable	Meets <i>all</i> the basic requirements and standards for the course
C	Acceptable	Meets <i>most</i> of the basic requirements and standards in several areas
C-	Acceptable	Work falls short of meeting basic standards in several areas
D	Minimally Passing	Work just over the threshold of acceptability
F	Failing	Unacceptable performance

No Extra Credit will be given. No exceptions.

No Incomplete Grades will be granted without remarkable circumstances.

Class Attendance is expected. No hats in class, unless for religious or health-related reasons.

In-Class Participation will be based both on the quality and quantity of your class participation. Good questions count for class participation. If you don't understand something, find something confusing, want more clarification on a point, or just want to talk about something more in class, speak up and voice your concern.

Discussion Board Participation: A Sakai online discussion board will be employed throughout the semester to carry on discussion beyond the classroom. Students will be credited for both the quantity and quality of their posts.

Pre-Class Writing Assignments will be assigned and are due by 8:00am the morning of class and submitted to the online Sakai discussion board. Students will be assigned at least three (and perhaps more) assignments.

Classroom Decorum: Our class will cover contentious subjects that can evoke passionate feelings. I expect all in-class comments to be expressed in a civil manner. You are certainly allowed and encouraged to disagree with the professor and your classmates, but you are expected to disagree in an agreeable manner.

Laptop Computers, Tablets, Phones and Recording Devices are not to be used in the classroom without prior approval of the professor.

Academic Integrity: Academic dishonesty will not be tolerated. I shall follow and enforce strictly the university's policies regarding academic integrity.

Students with Disabilities will be accommodated as extensively as possible. Please talk directly with the instructor regarding any necessary arrangements.

Honor Code: Class members are expected to understand the principles and procedures set forth in the University of Notre Dame Academic Code of Honor (<http://www.nd.edu/~hnr/code/>) and abide by its pledge: **“As a member of the Notre Dame community, I will not participate in or tolerate academic dishonesty.”**

Please Note. If you cannot make class for an important medical or family reason, please let me know ahead of time. Likewise, if you are having difficulties with an assignment, please come talk to me or the teaching assistant.

Tentative Schedule/Reading Assignments

This schedule will change. Final assignments will be given in class.

* = available on Sakai

INTRODUCTION

Why Religious Freedom? What is the Proper Relationship Between Church and State? (Aug. 22, 24)

C. Stanley Lowell, “If the U.S. Became 51% Catholic,” *Christianity Today*, October 27, 1958*

“Bigotry or Smear?” *Christianity Today*, February 1, 1960*

John F. Kennedy, [Address to the Greater Houston Ministerial Association](#), September 12, 1960*

Mitt Romney, “Faith in America,” December 6, 2007*

Mitt Romney, “Religion and Freedom,” May 8, 2008*

August 29 – Initial Paper Due (No additional Reading)

- What is religious liberty? What/where are its limits?
- Why should we embrace religious liberty? Or should we? Is religious exercise different or distinctive from “conscience” or other personal liberties? Why?
- What is the relationship between liberal democracy and religion?

I. HISTORICAL & PHILOSOPHICAL FOUNDATIONS of RELIGIOUS FREEDOM

Christianity & the Sources of Political Authority (Aug. 31)

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

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

Benedict XVI, “The Listening Heart: Reflections on the Foundations of Law,” Sept 22, 2011*

Recommended Readings:

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

Ernest L. Fortin, “The Regime of Separationism; Theoretical Considerations on the Separation of Church and State,” in *Human Rights, Virtue, and the Common Good* (Lanham, MD: Rowman & Littlefield, 1996), pp. 1-18

Sept. 1 Carter Snead Lecture, “Fighting for Charlie Gard: Ethics, Public Policy, and Pope Francis”
12:30pm – Nanovic Hall Forum (complimentary lunch served at noon)
Attendance Requested

Classical Arguments for State-Sanctioned Religious Authority (Sept. 5)

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

- *On True Religion*, XVI.31
- Letter 93, to Vincentius
- Letter 133, to Marcellinus

St. Thomas Aquinas

- *On Kingship*: Chaps. 1-2, 12, 14, 15*
- *Summa Theologica* II-II: Q10, A. 8, 10, 11 (Unbelief); Q11, A3 (Heresy); Q12, A: 1, 2 (Apostasy)*; Q60, A.6, (Of Judgment); in *St. Thomas Aquinas: On Law Politics and Morality*, eds. Baumgarth and Regan (Indianapolis: Hackett Publishing Company, 1988), pp. 249-61*

Natural Rights, Social Compact Theory, and Limited Government (Sept. 7)

The Declaration of Independence (1776)*

The Essex Result (1778)*

New Hampshire Declaration of Rights (1784)*

Sept. 7 “Debating Religious Liberty and Discrimination,” Ryan Anderson & John Corvino
7:00pm – Nanovic Hall Forum
Attendance Expected

Arguments for Religious Liberty I: The American Founders & Social Compact Theory (Sept. 12)

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

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

Arguments for Religious Liberty II: Faith & Reason, The Natural Law, *Dignitatis Humanae*, Pope John Paul II (Sept. 14)

*Dignitatis Humanae**

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

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

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

Recommended Readings:

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

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

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

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

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

Sept. 18 Sanford Levinson Constitution Day Lecture, “Flaws in the Constitution? What We Should be Learning About the Constitution Today”
12:30pm – Oak Room, SDH (complimentary lunch served at noon)
Attendance Encouraged

Arguments for Religious Liberty III: Secularism & Freedom of Conscience (Sept. 19, 21)

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

Recommended Readings:

Charles Taylor, "The Meaning of Secularism?" *The Hedgehog Review* (2010): 23-34

Sept. 21 Second Writing Assignment Due

Sept. 21 Mark Lilla Lecture, "Identity and Citizenship"
4:00pm – Oak Room, SDH
Attendance Expected

II. THE AMERICAN SUPREME COURT'S CHURCH-STATE JURISPRUDENCE (Sept. 26 – Nov. 7)
(numbers/letter refer to the chapter in *Religious Liberty and the American Supreme Court*)

1. *Reynolds v. United States* (1879)
5. *Minersville School District v. Gobitis* (1940)
8. *West Virginia State Board of Education v. Barnette* (1943)

10. *Everson v. Board of Education* (1947)
11. *Illinois ex rel. McCollum v. Board of Education* (1948)
12. *Zorach v. Clauson* (1952)

14. *Braunfeld v. Brown* (1961)
17. *Sherbert v. Verner* (1963)
25. *Wisconsin v. Yoder* (1972)
27. *McDaniel v. Paty* (1978)

15. *Engel v. Vitale* (1962)
16. *Abington School District v. Schempp* (1963)
23. *Lemon v. Kurtzman* (1971)
30. *Widmar v. Vincent* (1981)

34. *Marsh v. Chambers* (1983)
35. *Lynch v. Donnelly* (1984)
36. *Wallace v. Jaffree* (1985)

Methods of Constitutional Interpretation

Edwin Meese III, Federalist Society Speech Defending a Jurisprudence of Original Intent, Nov. 15, 1985*
William J. Brennan, Georgetown University Speech on Living Constitutionalism, October 12, 1985*

43. *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter* (1989)
46. *Lee v. Weisman* (1992)

Religion and the Founding

- A. Thomas Jefferson, Virginia Statute for Religious Liberty (1777, 1786)
- B. James Madison, Memorial and Remonstrance Against Religious Assessments (1785)
- C. Massachusetts Constitution of 1780 & *Barnes v. Falmouth* (1810)
- E. George Washington, Letter to the Quakers (1789)
- F. George Washington, Letter to the Hebrew Congregation at Newport (1790)
- G. Thomas Jefferson, Letter to the Danbury Baptist Association (1803)

44. *Employment Division, Department of Human Resources of Oregon v. Smith* (1990)
48. *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993)

53. *City of Boerne v. Flores, Archbishop of San Antonio* (1997)
51. *Rosenberger v. Rector and Visitors of the University of Virginia* (1995)
56. *Good News Club v. Milford Central School* (2001)
58. *Locke v. Davey* (2004)
57. *Zelman v. Simmons-Harris* (2002)
59. *Elk Grove Unified School District v. Newdow* (2004)
60. *Van Orden v. Perry* (2005)
61. *McCreary County, Kentucky v. American Civil Liberties Union of Kentucky* (2005)
64. *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* (2012)
66. *Burwell v. Hobby Lobby* (2014)*
Trinity Lutheran of Columbia, Inc. v. Comer (2017)*

Oct. 28 Rod Dreher Lecture, “The Benedict Option”
 7:00pm – Nanovic Hall Forum
 Attendance Expected

Nov. 9 **Midterm Examination** (date is tentative and subject to change)

III. RELIGION and AMERICAN DEMOCRACY

Religion and the Marketplace: Is Capitalism Moral? Is Capitalism Compatible with Catholicism? (Nov. 14, 16)
 G.A. Cohen, *Why Not Socialism?* (2009)*
 Michael Sandel, *What Money Can't Buy* (2012), Introduction*
 Peter Singer, *The Life You Can Save*, (2009), Preface, Ch. 1-2*
Centesimus Annus, #30-43 (1991)*
 David Bentley Hart, “[Mammon Ascendant: Why Global Christianity is Inimical to Christianity](#),” *First Things* (June, 2016)*
 Samuel Gregg, “[Global Capitalism versus Christianity? A Response to David Bentley Hart](#),” *Public Discourse*, May 17, 2016*

Nov. 17 James Otteson Lecture, “Is Capitalism Moral?”
 12:30 pm – Nanovic Forum (complimentary lunch served at noon)
 Attendance Expected

Same-Sex Marriage, Non-Discrimination & Religious Freedom (Nov. 21, 28)
 Ross Douthat, “[Defining Religious Liberty Down](#),” *The New York Times*, July 28, 2012*
 Tim Cook, “[Pro-discrimination ‘Religious Freedom’ Laws are Dangerous](#),” *The Washington Post*, March 29, 2015*
 Ross Douthat, “[Questions for Indiana’s Critics](#),” *The New York Times*, March 30, 2015*
 Frank Bruni, “[Bigotry, the Bible and the Lessons of Indiana](#),” *The New York Times*, April 3, 2015*
 Ross Douthat, “[Interview with a Christian](#),” *The New York Times*, April 4, 2015*
 Jay Michaelson, “[Redefining Religious Liberty: The Covert Campaign Against Civil Liberties](#),” (2013)*
 Bryan McGraw, “[Why Toleration is Never Enough and Why Moral Conservatives and Free Speech Liberals Will Keep on Losing](#),” *Civitas Peregrine*, June 5, 2015*
 David Azerrad, “[Justice Kennedy and the Lonely Promethean Man of Liberalism](#),” *The Public Discourse*, July 8, 2015*
 Richard Samuelson, “[Who’s Afraid of Religious Liberty?](#),” *Mosaic*, August 1, 2016*

The Challenges and Opportunities of Pluralism and Diversity (Nov. 30)

Jonathan Inazu, Professor of Law and Religion, Washington University, Guest Lecture

“Confident Pluralism and the University: Surviving and Thriving Through Deep Difference”

Class will meet in Nanovic Hall 1030

Is Religion Good or Necessary for Democratic Government? (Dec. 5, 7)

Tocqueville, *Democracy in America*, I.II. 9: “Principal Causes that Tend to Maintain the Democratic Republic in the United States”* pp. 129-42

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

Tocqueville, *Democracy in America*, II.I. 1,2,5: pp. 170-86

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

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

John Stuart Mill, “The Utility of Religion,” *The Collected Works of John Stuart Mill, Volume X - Essays on Ethics, Religion, and Society*, eds. Robson, Priestley, Dryer (Toronto: University of Toronto Press, London: Routledge and Kegan Paul, 1969), p. 402-28*

Christopher Hitchens, “Religion Kills,” Chapter 2 in *God is Not Great* (New York: Twelve, 2007), 15-36*

Recommended Reading:

Christopher Hitchens, “Does Religion Make People Behave Better?” Chapter 13 in *God is Not Great*, 173-193.

Final Examination/Paper