The "Christian Element" in Identitarian Public Law
Law and Religion Perspectives

Draft Report for the PRIN-PNRR project "Identitarian Public Law: Dynamics of Illiberal Exclusion and Democratic Inclusion

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Introduction

This report is the outcome of an eighteen-month postdoctoral fellowship at the Law and Religion research unit led by Professor Marco Ventura at the Department of Social, Political and Cognitive Sciences (DISPOC - University of Siena) and forms part of the 2022 PRIN-PNRR project *Identitarian Public Law: Dynamics of Illiberal Exclusion and Democratic Inclusion*.

Within this broader research initiative, four scientific units - based at the University of Bologna, Foggia, Siena and at the Scuola Superiore Sant'Anna in Pisa[1] - joined forces to explore how, in the hands of authoritarian state leaders, public laws are being mobilised as part of narratives opposing the Western liberal order on questions of national identity, democracy and public morality. Positioning themselves in the midst of a culture war against socially progressive actors, Western and Western-like 'illiberal democracies'[2] - in the project's terms - are reprogramming and reshaping the law against their perceived enemies through three key arguments. These include: (1) moral-axiological, (2) historical; and (3) religious arguments - the basic ingredients of what the 2022 PRIN-PNRR project dubbed "identitarian public law" and which set out to investigate within five selected case studies - Brazil, France, Hungary, Israel, and Russia.

For the Siena research unit, looking at religious arguments has primarily meant looking at identitarian public law from the perspective of Christian (and, particularly, Catholic) churches. This has consisted in focusing on how internal movements and developments within the Roman Catholic Church can contribute to an understanding of identitarian public law as both a reaction to - and a secularised product of - Western liberal culture and the erosion of a once commonly-shared Catholic legal culture. It is therefore in terms of method and perspective that the Siena research unit has approached and mapped the variable "Christian element" to investigate

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[1] This unit led the 2022 PRIN–PNRR project, with Giacomo Delledonne serving as principal investigator.

[2] For a more a detailed account of this category see *Section I* of this report.

what triggers identitarian public law, how it is constructed, how it functions and, relatedly, how it is operated by its users.

Scholarly work by and on Harold J. Berman,[3] interactions with Olivier Roy in Foggia and Certosa di Pontignano, a closed door workshop on religion and innovation in Siena co-hosted by Marco Ventura and Brandon Vaidyanathan,[4] as well as exchanges with Luca Diotallevi, Franco Garelli and Elena López Ruz in Siena, have deepened our understanding over potential correlations between the crisis of Western Catholic tradition and the emergence of identity politics and laws. Identifying the Protestant Reformation as the internal ecclesial rupture after which the West could no longer be described as univocally Catholic[5] first helped to clarify how today's divergent ways to live and experience the faith imply equally divergent perceptions of Christian identity.[6] The resulting 'primacy of (Protestant - *editor's note*) subjectivity'[7] - as Garelli would call it - fostered, in turn, broader freedom of conscience and, relatedly, broader flexibility in deploying Christianity either in support[8] or in opposition to the very liberal order to which Protestant thought had itself contributed.

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[3] As part of this project, Marco Ventura has translated into Italian Harold J. Berman, *The Interaction of Law and Religion* (Abingdon Press, 1974). See: Harold J. Berman, *L'Interazione tra Diritto e Religione* (Marco Ventura tr, Leo S. Olschki, 2024).

[4] Following up on the project on religion and innovation led by Marco Ventura at Fondazione Bruno Kessler (Trento) from 2016 and 2021, the workshop on "Innovation in Religions: Towards a Conceptual Framework" took place at Certosa di Pontignano, Siena, on 6 December 2024.

[5] In this sense: Olivier Roy, *Is Europe Christian?* (Oxford University Press, 2019) 11-12.

[6] See: Francis Fukuyama, *Identity. The Demands of Dignity and the Politics of Resentment* (Farrar Straus & Giroux, 2018) 32 (arguing that the very idea of identity 'was born, in a sense, during the Protestant Reformation). Particularly insightful in this regard are also Luca Diotallevi's observations concerning the existence of 'variations of Christianity', which compel reference to Christianity in plural rather than singular terms. These reflections formed part of Diotallevi's lecture "Cristianesimo e Diritti Fondamentali" delivered on 20 May 2025 in Siena at the Department of Social, Political and Cognitive Sciences (DISPOC - University of Siena) as an intermediary step in the preparation of this workshop.

[7] This expression could be traced back to Franco Garelli's lecture "Religione ed Economia. Lo Spartiacque della Globalizzazione" delivered on 26 November 2024 as part of Professor Marco Ventura's course on "Religion and Communication" at the Department of Social, Political and Cognitive Sciences (DISPOC - University of Siena).

[8] The Siena research unit is particularly grateful for Elena López Ruf's account of Pope Francis's engagement with social justice issues, especially as interpreted through his reading of the parable of the *Good Samaritan*. These reflections formed part of López Ruf's lecture "Il Rapporto tra Società, Diritto e Religione nel Mondo Globale. Uno Sguardo Argentino" delivered on 10 April 2025 in Siena at the Department of Social, Political and Cognitive Sciences (DISPOC - University of Siena).

Against this background, reflections from colleagues met in Oxford[9] and Siena on the limitations of liberalism as the current basis of the Western legal order have further illuminated how Christianity's increasing adaptability to individual preferences might bring it into closer alignment with the logics of identitarian public law. We have gained valuable insights from voices concerned with Christian (Lukas Opacic, Luca Vanoni, Michael Quinlan), Jewish (Fishel Slzajen) and Muslim (Sadia Abbas, Dicky Sofjan) contemporary perceptions of liberalism as degenerating into a patronising and dissolute ideology (read: "wokeism"), increasingly seen as incapable of effectuating genuine equal justice.[10] Taken at their extreme, it is these very critiques that have become central arrows in identitarian public law's quiver, revealing an elective affinity between illiberal religious arguments and the rhetoric and strategies of identitarian public laws and leaders.

To bring all these preliminary materials into a more robust cohesive whole, this report has been divided into five sections. *Section I* briefly synthesises materials from previous workshops of the 2022 PRIN-PNRR project to clarify the place of this report within the scope of the broad research initiative. *Section II* moves on to explore in greater detail how the crisis of Western Catholic culture has been historically triggered by internal Christian infightings carrying within them the germs of contemporary identity politics and identitarian public law. *Section III* continues by examining how identitarian public law has turned into an external factor of religious crisis that is now inflicting damage upon liberal churches from the outside of ecclesiastical premises. Resorting to law and religion as a field exploring the interaction between legal and religious ideas, politics and institutions, this section identifies how *external* state actors misappropriate Catholic identities and laws to advance constitutional projects of illiberal exclusion opposing modernity, multiculturalism, and migrations.

The focus here will be on the emergence of a brand new form of illiberal Catholicism in US law and politics, leaving to five selected rapporteurs the task of complementing this report with insights from Brazil, France, Hungary, Israel and Russia. To come full circle, *Section IV* explores how identitarian public law, as an external factor of religious crisis, is also

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[9] The author had the opportunity to meet these colleagues while participating in the Young Scholars Fellowship on Religion and the Rule of Law, a programme funded and organised by Brigham Young University – J. Reuben Clark Law School, and held at Christ Church, Oxford, from 15 July to 2 August 2024. He gratefully acknowledges Professor Brett Scharffs, Amy Andrus, and Holly Lesan for making this valuable experience possible.

[10] In addition to informal conversations with all these colleagues, the Siena Unit is particularly grateful to Sadia Abbas for her reflections from a postcolonial perspective on Muslim women as a 'terrain of contestation', in which both anti-discrimination and anti-veil policies are perceived as equally patronising and stereotypical Western representations of Muslim femininity. These observations were part of Abbas lecture "Trajectories of Global Islam" delivered on 3 June 2024 as part of Professor Marco Ventura's initiative on "Religious Diplomacy" at the Department of Social, Political and Cognitive Sciences (DISPOC - University of Siena). We are also grateful to Dicky Sofjan and Michael Quinlan for their joint-lecture "The New Religious Diplomacy of Islam. Lessons From Indonesia" delivered on 29 May 2025 in Siena, also as part of the "Religious Diplomacy" initiative. Their lecture provided an insightful example of two cosmopolitan scholars balancing their Western-trained expertise with life and professional engagement in a local, non-Western context.

exacerbating internal divisions among Catholic leaders and authorities over the status and role of churches in contemporary societies.

This report's law and religion methodology will thus be enriched by insights from Roman Catholic canon law in order to examine how identitarian public is also connected to antagonistic perceptions of Pope Francis's vision of the Church in the world. As will be discussed, while some lauded the now-concluded pontificate as a vital bridge between progressive reforms in churches and states, others cautioned that such liberal theological experimentalism entails, as a counterweight, an illiberal model of church governance that risks enabling future popes to claim powers beyond the legislative limits of canon law, scripture and tradition.

1. Identitarian Public Law: A Summary of Previous Research

Constitutional and comparative public law scholars participating in this workshop have gone in a long way to describe how "identity" has become central to the strategies of populist[11] governments worldwide in their quest to appeal to electoral majorities and cement power. In this direction, their research has focused on the ebbs and flows of particular types of Western and Western-like 'illiberal democracies',[12] whose defining trait is opposition to liberalism as a doctrine that, in its most progressive configuration, stresses the emancipatory powers of individual freedoms against excessively intrusive state powers.[13]

Here, unfettered free markets, multiculturalism and civil rights to emancipate individuals from any unchosen and dictated constraint - whether by traditional families, culture and religions - are presented to the public eye as the root cause for spiralling moral and socio-economic decline in the

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[11] While the term is broad and encompasses a multifaceted range of political positions, for the purpose of this report it is important to highlight that a central feature of populist attitudes is the tendency to frame their stance in terms of "the pure people" versus "the corrupt elite." This emphasis follows research on populism conducted at the Department of Social, Political and Cognitive Sciences (DISPOC - University of Siena), and in particular: Pierangelo Isernia and others, 'Populist Attitudes and Foreign Policy Postures: A Comparative Analysis of four European countries' (2024) 1(1) *European Political Science Review* 1, 2.

[12] This formula was first introduced in: Fareed Zaharia, 'The Rise of Illiberal Democracy' (1997) 76(6) *Foreign Affairs*, 22-43. For a more practical application of this expression see: Viktor Orbán, *Full text of Viktor Orbán's speech at Băile Tuşnad (Tusnádfürdő) of 26 July 2014* 1, 7, < https://www.almendron.com/tribuna/wp-content/uploads/2016/01/discurso-viktor-orban.pdf> (accessed 23 March 2025) (employing the expression "illiberal state" to indicate that, while Hungary 'does not deny the foundational values of liberalism (…) it does not make this ideology a central element of state organization' either, instead applying 'a specific, national, particular approach' to fundamental rights and freedoms. For a legal discussion on Hungarian and Polish illiberalism see: Giacomo Delledonne, 'Ungheria e Polonia: Punte Avanzate del Dibattito Sulle Democrazie Illiberali all'Interno dell'Unione Europea' (2020) 44(3) DPCE Online 3999-4019.

[13] This definition of liberalism is borrowed from: Francis Fukuyama, *Liberalism and Its Discontents* (Profile Books, 2023) 7.

West.[14] Playing on traditional identities, collective victimhood, and national anxiety over an allegedly lost hegemonic status, illiberal democracies thus galvanise open challenges not to constitutional democracy as a form of government *per se*, but rather to the universalistic and liberal values that underpin it.

In a more subtle move, the target thereby shifts from opposition to constitutional democratic systems as a whole to opposition against liberal readings of those very systems, including progressive interpretations of laws, rights and constitutions.[15] From this vantage point, illiberal leaders often claim to be playing by the rules of constitutions while simultaneously pushing for exclusionary, identity-centred and anti-democratic reinterpretations of the constitutional game. Looking at how such "illiberal" and "identitarian" turn in public law is unfolding across five case-studies - Brazil, France, Hungary, Israel Russia - has been central to the 2022 PRIN-PNRR project *Identitarian Public Law: Dynamics of Illiberal Exclusion and Democratic Inclusion.* In it, all research clusters contributed insights from the unique perspective of their research fields and methodologies.

Through a constitutional law and constitutional theory approach, the research unit based in Pisa set the theoretical stage for the project, exploring different legal strategies and arguments to link "identity" in support of organicistic and exclusive narratives of "national unity", "democracy" and "the people". Without belabouring the nuances, this work provided useful background material to spot the distinctive sign of a slide towards illiberalism: the heavy reliance on a patchwork of historical, moral and religious arguments to re-mould (rather than directly reject) the entire constitutional system.[16]

In brief, it is by interpreting public legislations through a unidirectional and monocultural sense of history and tradition that illiberal democracies legally mobilise "identity" to counter perceived threats to national hegemonies - ranging from religious, ethnic and sexual minorities to the broader spread of "woke" liberalism in education and society. Testing these tactics was then the task of the Bologna research unit, which examined the unfurling of both widespread and more sporadic - yet virulent - episodes of illiberalism within the settings of the aforementioned case-studies

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[14] Book-length versions of this argument are spreading vivaciously in the US, with works from a cohort of self-defined "post-liberal" intellectuals such as: Rod Dreher, T*he Benedict Option: A Strategy for Christians in a Post-Christian Nation* (Sentinel, 2017); Sohrab Ahmari, *The Unbroken Thread: Discovering the Wisdom of Tradition in an Age of Chaos* (Convergent Books, 2021); Adrian Vermeule, *Common Good Constitutionalism* (Polity, 2022); Patrick J. Deneen, *Why Liberalism Failed* (Yale University Press, 2018).

[15] Through a comparative analysis between the US, Israel, Hungary and India, this nuance was recently well emphasised in: Zack Beauchamp, *The Reactionary Spirit: How America's Most Insidious Political Tradition Swept the World* (Public Affairs, 2024).

[16] For already-published work on this theme by scholars from the Pisa unit see in particular: Giuseppe Martinico, 'Identity Politics and the Militarisation of Constitutional Law' (2024) 4(1) Athena. Critical Inquiries in Law, Philosophy and Globalisation, 1-22.

through a comparative constitutional law perspective.[17] Finally, the Foggia unit, with its comparative law and religion expertise, dedicated special attention to the role of Catholic tropes in shaping identitarian public law and mobilising fundamental rights towards an anti-pluralist and anti-liberal direction.[18]

In one way or another, all these three clusters appeared to describe identitarian public law as the symptom of an increasing incapability - or, in the worst-case-scenario, unwillingness - of democratic systems to reconcile unity with diversity, homogeneity with pluralism.[19] Whether such a failure might in the long run escalate into a fully-fledged constitutional crisis - with illiberal leaders directly announcing that they will not obey the constitution rather than just rigging its fundamental components[20] - is a question better left to constitutional lawyers for future research. Instead, this report takes a different tack.

As already anticipated, the main goal is to introduce and defend the claim that, more than a pre-crisis stage within constitutional democracies, identitarian public law can be deciphered also as a symptom of a broader crisis within the Roman Catholic Church in its ability to foster a unanimous Catholic sense of history, law and tradition. The central premise to this thesis is straightforward: the progressive secularisation and privatisation of religion in the West have precipitated a corresponding decline in the influence of Catholicism over its cultural landscape and, by extension, its legal structures. With the deconstruction of a solid Western Catholic legal heritage, the law and its foundations are thus exposed to flexible reinterpretations that reduce Catholicism to just one interpretive possibility of reality - for further manipulation by its users out of a multiplicity of alternative "identitarian" narratives. The legal-historical factors

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[17] For already-published work on this theme by scholars from the Bologna unit, with a particular focus on the intersection between illiberalism and anti-genderism see: Susanna Mancini and Nausica Palazzo, 'The Body of the Nation. Illiberalism and Gender' in András Sajó and others (eds) *The Routledge Handbook of Illiberalism* (Routledge, 2022) 403-22.

[18] For already-published material on this theme by scholars from the Foggia Unit see in particular: Pasquale Annicchino, 'The Past is Never Dead: Christian Anti-Internationalism and Human Rights', In M. Koskenniemi, M. Garcia-Salmones, & P. Amorosa (eds), *International Law and Religion: Historical and Contemporary Perspectives* (Oxford University Press, 2017) 178-195.

[19] In this sense see also: Luca Pietro Vanoni and Benedetta Vimercati, 'Identity Politics and Constitutional Disagreement: The Rise of the "New" Populisms and Nationalisms in the Fragmented European Landscape' (2021) 2(1) Eurojus (examining how liberal constitutionalism's effort to establish common legal frameworks for the peaceful coexistence of diverse citizens represents a 'paradoxical issue' that has been consistently challenged by populist and nationalist movements) 44, 44.

[20] In this sense, according to constitutional law scholar Jack M. Balkin, declaring an all-out "constitutional crisis" first requires verifying several elements that indicate a government' s outspoken refusal to abide by constitutional principles. For Balkin, situations where this condition is absent, but where the risk of a serious degradation of constitutional norms is however looming - such as in the case of identitarian illiberalism - should be better described in terms of "constitutional rot". See: Jack. M. Balkin, 'Constitutional Crisis and Constitutional Rot' in Mark A. Graber and others (eds), *Constitutional Democracy in Crisis?* (Oxford University Press, 2018) 13-28.

underpinning this current state of affairs are discussed in greater detail in what follows.

2. The Crisis of Western Christian Legal Culture

For Harvard and Emory law professor Harold J. Berman the crisis of Western law is most of all a religious crisis. 'The primary cause of the crisis of the Western legal tradition is, I believe, the disintegration of its religious foundations'[21] - the legal historian trenchantly argued in 1975. Put differently, in Berman's eyes contemporary Western law has forgotten over time its Christian - and specifically Catholic - sense of culture, justice and community, gradually becoming a secularised enterprise at the service of short-term and ephemeral individual needs.[22]

All in all, the book - length version of this argument had appeared one year earlier, with Berman's 1974 edition of *The Interaction of Law and Religion*.[23] While some might discern in it elements supporting a case for defending nostalgic Catholic values through muscular state laws and powers, it would be nevertheless misleading to mistake Berman for an advocate of authoritarian - let alone identitarian - visions of the law.[24] Donning the hat of the historian, what Berman appeared more intent on doing, instead, was to survey - rather than mobilise - Christian legal principles to inquire into their somewhat paradoxical contributions to the bureaucratisation and secularisation of Western law.

To underscore this point, Berman traced genealogical explanation for such developments back to a specific moment of church history - one that fell between the Middle Ages and the birth of the modern nation-state: the Protestant Reformation (1517-1648). To this theme is dedicated Chapter II of his *The Interaction of Law and Religion.*[25] In it, Berman explored at length how Protestant rejection of the Roman Church's dogmas - and its related emphasis on individual self-determination over church mediation on matters of faith - begun to fracture the Catholic moral framework that had shaped Western legal culture up to that point. No longer was Roman Catholic canon law the inspiring source and model for secular civil laws, Berman recalls, as had been established in 1075 by Pope Gregory VII's

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[21] Harold J. Berman, 'The Religious Foundations of Western Law' (1975) 24(3) Catholic University Law Review 490, 500.

[22] See Harold J. Berman (n 3).

[23] *ibid.*

[24] *Ibid.,* 40 (arguing that 'it is not suggested that the way to overcome our integrity crisis is to prop up the legitimacy of the old legal system with various religious devices plus a return to the Puritan ethic.')

[25] Later, Berman would dedicate a full, book-length study to this theme in: Harold J. Berman, *Law and Revolution II: The Impact of the Protestant Reformation on the Western Legal Tradition* (Belknap Press, 2003).

'revolutionary'[26] proclamation of the supreme legal authority of the Catholic Church over kings and emperors. Protestant culture thus offered a very first religious incubator for an alternative and 'positivist'[27] legal theory of Western law grounded on the primacy of the individual, the separation of law and morals, as well as the privatisation of religion from public life 'in exchange'[28] for freedom of religion and belief for all.

This time in the words of political scientist Francis Fukuyama, such a Protestant emphasis on individual free will, in turn, 'laid the groundwork for (…) what we today call identity politics, in which groups seek public recognition of identities that they believe to be undervalued or otherwise marginalized'.[29] By establishing a direct correlation between the birth of identity politics and the crisis of Western Christian culture, Fukuyama provides at this point a useful lens for examining the linkage between identitarian public law and the "Christian element" - particularly in relation to the apparent elective affinity between illiberal laws and reactionary[30] forms of Catholicism.

To begin with, and following the author's correlation, historian Brad Gregory noted how the Reformation contributed to an overwhelming sense of identity anxiety concerning what it means to live a genuine Catholic life amid competing Protestant and secular understandings of the good (and the law).[31] While certain factions within the Catholic leadership have historically engaged with ideological alternatives to Catholicism in

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[26] In this sense see: Harold J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition* (Harvard University, 1983).

[27] In this sense: Berman (n 3) 64.

[28] In this sense: Brad S. Gregory, T*he Unintended Reformation. How a Religious Revolution Secularised Society* (Belknap Press, 2012) 35.

[29] See: Francis Fukuyama, 'Political Consequences of the Protestant Reformation, Part II. Matin Luther and the Origins of Identity Politics' (*The American Interest*, 2 November 2017) < https://www.the-american-interest.com/2017/11/02/political-consequences-protestant-reformation-part-ii/> accessed 1 April 2025.

[30] In this report, the adjective "reactionary" is employed to describe the attitude of those Catholic fringes who do not only decry modernity and liberalism but actively oppose them by appealing to traditional, pre-Vatican II church doctrine. Seen it this way, this term appears to overlap with what Massimo Faggioli describes as Catholic 'intransigentism' as 'the belief that any concession to, or accommodation with, the modern world endangers the faith'. 'Unlike mere conservatism, which values elements of the past and seeks to preserve them in the modern world, the author continues, intransigentism thus 'rejects the modern outright and pre-emptively'. See: Massimo Faggioli, 'A Church Within the Church. Behind the New Integralism Is The Old Intransigentism' (*La Croix International*, 9 January 2019) < https://johnmenadue.com/post/2019/01/massimo-faggioli-a-church-with-the-church-behind-the-new-integralism-is-the-old-intransigentism/> accessed 9 April 2025.

[31] Brad S. Gregory (n 28) 12 (describing how the Protestant Reformation rendered impossible any consensus about what Christians 'were to believe and do', beginning to disagree 'about what the fruits of a Christian life were') 99. On this theme, and with a specific focus on Europe see: Olivier Roy, *Is Europe Christian?* (n 5) (arguing that after the Reformation 'it makes little sense to speak of Christian Europe; it is more appropriate to refer instead to Protestant Europe or Catholic Europe.')

constructive terms,[32] others instead have entrenched more radical positions, opposing Protestant-infused liberalism as the root cause for the impending religious pluralism and atheism that, in their view, was wrecking Western societies. From nineteenth-century critiques of Protestantism and liberalism as modern 'errors'[33] to ecclesiological opposition to Pope Francis' progressivism,[34] illiberal readings of church laws and politics consequently developed as a stress response to the perceived excesses of liberal freedoms - of religion, thought, movement and sexual orientation - as will be further discussed in this workshop.

Viewed this way, a focus on identity politics *vis-á-vis* the crisis of Christian Western culture reveals that one way to investigate the issue of identitarian public law is by looking at convergences of arguments and actions between reactionary church factions and the so-called illiberal states introduced in the introduction ti this report. Shared convictions over the moral collapse of Western societies - and the perceived urge to "re-normatise" them along anti-liberal, traditional identity lines - thus form a key uniting factor entrenching illiberal politics, laws and religion. This, in turn, sheds light on why the "Christian element" emerges today as such a strategic arrow in the quiver of identitarian public law.

More precisely, in societies where Catholicism can be assumed as a reference for common self-identification, such illiberal convergences tend to coalesce around polarising identity politics - ranging from debates on abortion and migrations to same-sex rights - upon which relationships of strategic interdependence are built. Gathered around the objective of reshaping - rather than directly rejecting - Western constitutionalism, on the one hand, illiberal civil actors mobilise 'the illiberal potential of religion' as a reservoir for anti-liberal reinterpretations of the law. While on the other, illiberal religious actors and churches mobilise 'the illiberal potential of

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[32] See in particular the declaration on religious freedom *Dignitatis Humanae* (1965) promulgated and adopted after the Second Vatican Council (1962-1965) < https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html> accessed 1 April 2025.

[33] Emblematic in this sense is Pope Pious IX's condemnation of the idea that Catholicism should reconcile with liberalism, progress and modern civilisation, as articulated in the 1864 index document which would later set the course for the First Vatican Council (1869-70): Pope Pious IX, *The Syllabus of Errors* < https://www.papalencyclicals.net/pius09/p9syll.htm> accessed 29 March 2025. The Vatican First's 1870 Dogmatic Constitution *Dei Filius* would then point an 'accusing finger' at Protestantism and its rejection of Catholic doctrine as the root for the many modern errors that had sprung up since the Reformation, as discussed in: John W. O' Malley, *Vatican I. The Council and the Making of the Ultramontane Church* (Belknap Press, 2018) 168.

[34] For a discussion on this theme see: Massimo Faggioli, *The Liminal Papacy of Pope Francis: Moving Toward Global Catholicity* (Orbis Books, 2020). For an analysis particularly focused on criticism directed at Pope Francis within US ecclesiastical environments: Massimo Faggioli, *Da Dio a Trump. Crisi Cattolica e Politica Americana* (Scholè, 2025).

politics',[35] democracy and the law to defend values deemed as non-negotiable background community principles - from the sanctity of human life to support for traditional family ties.[36]

Against this background, *Section III* explores in more practical terms the first variable of the illiberal church-state interdependence equation introduced above, with a particular focus on the Unites Stated (US). Despite longstanding entanglements between Christian Evangelical conservatism and right-wing politics,[37] what is novel here is the political momentum that the second Trump administration is giving to 'a different faction of the religious right'.[38]

So-called 'post-liberal'[39] Catholics - gathered around lodestar thinkers such as Harvard legal scholar Adrian Vermeule and Notre Dame political scientist Patrick Deneen, to name a few - today represent a growing chorus of lay voices urging for a Catholic alternative to American cultural liberalism.[40] Interestingly, as they seek to elevate their critiques to American liberalism to the highest ranks of government and politics, many contemporary post-liberal intellectuals are increasingly identifying US Vice-President JD Vance as an emerging key institutional ally and interlocutor.[41] From this perspective, the next section offers initial insights into how Catholic post-liberalism has begun to fuel governmental illiberal postures that prioritise nationalism, protectionism, and, more broadly, communal over individual liberty - all accompanied with a flamboyant flirtation with Catholic theology in politics and law.

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[35] In this sense: Anja Hennig, 'Conclusion: Religion and Illiberal Politics: Patterns of an Ambivalent Relationship' in Anja Hennig and Mirjam Weiberg-Salzmann (eds), *Illiberal Politics and Religion in Europe and Beyond. Concepts, Actors, and Identity Narratives* (Campus Verlag, 2021) 538-40.

[36]At times, these strategic state-religion alliances might openly define themselves as "illiberal", as was the case, for instance, in Hungary with Viktor Orbán's explicit use of the term 'illiberalism' in public speeches. See: *Full text of Viktor Orbán's speech at Băile Tuşnad* (n 8). At other times, however, references to "illiberalism" might be omitted without altering the substance of the alliance, as in the case of the Roman Catholic Church and Italy, as discussed in: Marco Ventura, *Creduli e Credenti. Il Declino di Stato e Chiesa Come Questione di Fede* (Einaudi, 2014) 102-105.

[37] For recent journalistic work on this theme: Tim Alberta, *The Kingdom, The Power, The Glory. American Evangelicals in an Age of Extremism* (Harper, 2023).

[38] In this sense: Damon Linker, 'The Post-Liberal Catholics Find Their Man' (*The Atlantic*, 8 August 2024) < https://www.theatlantic.com/ideas/archive/2024/08/jd-vance-post-liberal-catholics-thiel/679388/> accessed 10 April 2025.

[39] For a leading online post-liberal blog see:<https://www.postliberalorder.com/> accessed 10 April 2025.

[40] On this point, a leading post-liberal text is already self-explanatory from its title: Patrick J. Deneen, *Regime Change. Towards a Postliberal Future* (Sentinel, 2023).

[41] JD Vance explicitly identified himself as member of the "post-liberal right" in occasion of a 2023 conference hosted by the Intercollegiate Studies Institute. A full video of the event is available at: <https://www.youtube.com/watch?v=2ZbsiKEhy-8&t=2943s> (see especially minute 49:04) accessed 10 April 2025.

Originating from within the Roman Catholic Church, the US thus offers a complementary case-study to investigate how identitarian public law might become an external factor of religious crisis inflicting harm and reputational damages upon modern, liberal churches from the outside of ecclesiastical premises.

3. The Identitarian Crisis of the "Christian Element":US External Factors

Among the earliest measures thus far undertaken by the second Trump administration, immigration and humanitarian aid restrictions emerge as key areas in which the influence of Catholic post-liberal thinking appears to be gaining initial traction. While in these early-stages of the new executive it might nevertheless be premature to find an explicit causal link over its impact on legal or judicial practice, recent developments however appear to lend tacit warrant to an unprecedented political-theological milieu in which US law is likely to be situated in the future. This is discussed below.

On 11th April 2025, the U.S. District Court for the District of Columbia declined to issue an injunction requested by twenty seven Christian and Jewish communities opposing a 2025 administrative policy that allows the arrest of migrants at sensitive locations - such as schools, hospitals and places of worship.[42] Issued on 20th January 2025 by the Department of Homeland Security (DHS)[43] - a federal executive agency responsible for the application of migration laws - the new policy rescinded earlier 2021 guidelines on enforcement operations.[44] These latter had established that actions such as inspections, seizures, migrants identification and apprehensions should not be taken 'in or near a location that would restrain people's access to essential services'.[45]

Contrary to the spirit and letter of these previous guidelines, the claimants thus argued that DHS's amended policy disavowed the well-established recognition of houses of worship as special spaces protected from immigration raids. As a result, because the policy deters migrants from worship attendance for fear of being exposed to potential enforcement

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[42] See: Case 1:25-cv-00403-DLF, *Mennonite Church USA, and others* v *U.S. Department of Homeland Security, and others* <https://www.courthousenews.com/wp-content/uploads/2025/04/dabney-friedrich-ice-raids-churches-injunction-denied.pdf> accessed 14 April 2025.

[43] The full text of the 2025 memorandum *Common Sense Enforcement Actions in or Near Protected Areas* issued is available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.dhs.gov/sites/default/files/2025-03/25_0120_S1_enforcement-actions-in-near-protected-areas.pdf> accessed 14 April 2025.

[44] See the Biden administration's 2021 *Guidelines for Enforcement Actions in or Near Protected Areas* memorandum available at: <https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf> accessed 14 April 2025.

[45] *Ibid.*

action, DHS' new protocols were likely not only to disrupt congregational church activities, but also to violate 'the social service outreach that is central to the religious expression and spiritual practice'[46] of the claimant-groups. Put differently, for the plaintiff-communities, the DHS amendment forced them to choose 'between withdrawing welcome to all immigrants or else making those immigrants "an easy target for enforcement action" in their places of worship'.[47] Enforced under the current administration, the policy thereby constituted a 'conscience injury'[48] - the claimants contended - in violation of their free exercise rights under the Religious Freedom Restoration Act (RFRA) and First Amendment to the US Constitution. Without belabouring the details, it suffices to note here that the Court dismissed the communities' RFRA and First Amendment claims on procedural grounds, emphasising their lack of standing to sue. The Court reasoned that this was due to the absence of compelling evidence that the 2025 DHS policy had either led to 'widespread congregant absences from religious services'[49] or constituted a 'concrete injury-in-fact',[50] as the claimants' fear of immigration raids was deemed purely speculative and hypothetical.

Having come this far, what is more pertinent for the purposes of this discussion is to consider how the Christian claimants, albeit unsuccessfully, sought to invoke biblical sources in support of their contention that welcoming the stranger constitutes a core tenet of their faith - one which they argued had been infringed upon in the present case. Among the scriptural references cited, particularly noteworthy is the Christian imperative to love one's neighbour under the *Parable of the Good Samaritan*[51] - a passage of scripture also recalled by Pope Francis in a letter addressed to the Bishops of the United States a few months prior this judgment, on 20th February 2025.[52]

Decrying the 'major crisis' triggered by 'the initiation of plans of mass deportation'[53] under the current administration, Pope Francis's letter

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[46] In this sense, see the complaint filed by the twenty eight faith-based groups: Case 1:25-cv-00403, *In The United States District Court for the District of Columbia. Complaint* <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2025/02/Mennonite-Church-USA-v.-U.S.-Department-of-Homeland-Security-Complaint.pdf> 8, accessed 14 April 2025.

[47] *Mennonite Church USA* (n 42) 15.

[48] *Ibid.*

[49] *Ibid.,* 12.

[50] *Ibid.*

[51] See: *Complaint (*n 46) 37 (quoting Luke 10:25-28).

[52] See: *Letter of the Holy Father Francis to the Bishops of the United States of America* <https://www.vatican.va/content/francesco/en/letters/2025/documents/20250210-lettera-vescovi-usa.html> accessed 17 April 2025.

[53] *Ibid.*

represents an 'unprecedented (…) Vatican-White House exchange'[54] directing particular criticism at novel appropriations of Catholic theology to justify governmental policy - especially in support of immigration crackdowns. More specifically, Pope Francis concerns centred on correcting the exclusionary reading of a medieval Catholic concept - known in Latin as *ordo amoris* - that Vice President JD Vance had invoked in support of anti-immigration stances during a *Fox News* interview conducted a few months prior to the DHS judicial dispute.

Rooted in the thought of fourth-century theologian St. Augustine of Hippo, and systematised almost a millennium later by St. Thomas Aquinas in his *Summa Theologica* (1265-1273), *ordo amoris* is, in essence, a moral construct that conceives Christian love as an ordered hierarchy of affections. According to Aquinas, this order ought to begin with love for God, followed by love of self (insofar as one' s actions are oriented towards the divine good) and for those in close proximity, before ultimately extending outward to embrace more distant individuals.[55]

Interpreting this scale of love statically, Vance maintained that *ordo amoris* exemplifies how Christian care for one's own community should take absolute precedence over obligations to remote others. In his telling: 'you love your family, and then your community, and then you love your fellow citizens in your country and then, after that, you can focus on prioritise the rest of the world'.[56] Not everyone should be loved the same, nor should they be. This, it seems, is the essence of Vance's application of *ordo amoris* to the current US immigration agenda.

The papacy however saw in this reading of St. Aquinas an overly-generic veneer for misguided policy. 'The true *ordo amoris* that must be promoted is that which we discover by meditating constantly on the parable of the "Good Samaritan" (cf. Lk 10:25-37), that is, by meditating on the love that builds a fraternity open to all, without exception.' Thus remarked Pope Francis, indirectly alluding to St. Augustine clarification of how proximity love, when properly ordered, includes the duty to 'succor a stranger, in extreme necessity, rather than one's own father, if he is not in such urgent need.'[57] The Holy Father then reminded: 'Christians know very well that it

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[54] In this sense: Christopher White, 'JD Vance vs. the Vatican: Inside Pope Francis' Fight For Catholic Identity' (*National Catholic Reporter*,12 February 2025) <https://www.ncronline.org/vatican/view-vatican/jd-vance-vs-vatican-inside-pope-francis-fight-catholic-identity> accessed 19 April 2025.

[55] See: St. Thomas Aquinas, *Summa Theologica* (Fathers of the English Dominican Province tr, Benziger Bros, 1947) (see in particular: Second Part of the second part, question 31(3) 'Whether we ought to be more beneficent to those who are more closely united to us?'. Available at: <http://abv.hristianski.net/plib/CCEL/A/AQUINAS/SUMMA/SS/SS031.HTM#SSQ31A3THEP1> accessed 20 April 2025.

[56] The interview is available at: < https://www.youtube.com/watch?v=o98Po0lWZxE&t=274s> (timestamp: 4:38 - 4:54).

[57] *Summa Theologica* (n 55).

is only by affirming the infinite dignity of all that our own *identity* as persons and as communities reaches its maturity.'[58]

At this juncture, the emphasis on the word "identity" in Pope Francis' last remark proves particularly instructive to underscore how at stake in this recent Vatican-White House exchange are stark contrasts between different iterations of what it means to be a Catholic - and how that identity ought to be expressed in law and politics. On the one hand stands the inclusive, pro-immigration Catholic identity championed under Pope Francis emphasising how, as noted in the aforementioned letter, the 'decisive value possessed by the human person surpasses and sustains every other juridical consideration that can be made to regulate life in society.'[59] While, on the other, stands an exceptional type of US-branded Catholicism that blends early-church teaching with an exclusivist (or arguably nativist, in light of Vance's latest statements) America-first identity.

Celebrating entrepreneurial and technological hyper-progress as deeply ingrained components of a stereotyped American dream (and identity), what is remarkable for church historian Massimo Faggioli is how this configuration of US Catholicism does not even correspond to a mainline "conservative" movement. Rather, it constitutes an 'ultra-modern'[60] amalgam of libertarianism, technocracy and nationalism that revives nostalgia for the glories of an ancient world, all while fetishising futurism, technology and bio-politics.

What is even more peculiar about this idiosyncratic blend between unfettered economic liberalism and anti-liberal cultural policies[61] is its efforts to resuscitate, reappropriate and apply to contemporary societies old strands of thinking going back to St. Aquinas. All this is apparently carried out in a manner consistent with a Catholic tradition often referred to as Neo-Thomism.[62] As explained by historian John T. McGreevy, this term came to denote a nineteen-century revival movement that became official Catholic doctrine until the Second Vatican Council and which was mostly

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[58] See: *Letter of the Holy Father* (n 52) para. 6 (emphasis added).

[59] *Ibid.*, para 3.

[60] Massimo Faggioli, 'U.S. Catholicism and the American Dream Under Trump' (*La Croix International*, 30 January 2025) <https://international.la-croix.com/opinions/us-catholicism-and-the-american-dream-under-trump> accessed 20 April 2025.

[61] For a post-liberal perspective on the reconcilability between economic liberalism and political illiberalism see: Patrick J. Deneen, C.C. Pecknold and Gladden Pappin, 'Why DOGE and MAGA Aren't Matter and Antimatter' *(Postliberal Order*, 24 March 2025) < https://www.postliberalorder.com/p/why-doge-and-maga-arent-matter-and> accessed 22 April 2025.

[62] For an introduction to Neo-Thomism see: Thomas Joseph White, 'Reassourcement Thomism' in Micheal Allen (eds), *The New Cambridge Companion to Christian Doctrine* (Cambridge University Press, 2022) 352-370. Vice-President JD Vance himself referenced to Thomism as an inspiring source in his interview in: JD Vance, 'How I Joined the Resistance' (*The Lamp,* 1 April 2020) < https://thelampmagazine.com/blog/how-i-joined-the-resistance> accessed 29 April 2025.

characterised by its emphasis on 'community over individual rights and justice or social order over free expression and religious freedom'.[63]

Starting from this latter, it was precisely this very Neo-Thomistic emphasis on "community" and Catholic-ordered societies that appeared to animate JD Vance illiberal understanding of human rights, as set out in a subsequent address delivered at the International Religious Freedom Summit of 5th February 2025. The very notion of religious freedom as is understood today - namely, the freedom to act according to one's own conscience - Vance cautioned, 'is not simply about legal safeguards', but also a matter of 'culture', serving as a tool 'to build nations grounded in moral principle.'[64] Under this communal and culturally-inflected narrative, for the Vice President 'protecting the rights of the faithful' justifies going as far as to suspend governmental fundings for NGOs that are dedicated to spreading atheism all over the globe.'[65]

Interestingly, the speech was promptly followed by an executive order issued the next day, on 6th February, establishing a 'Task Force to Eradicate Anti-Christian Bias' in federal laws and governmental action.[66] It remains however unclear how this decree squares with a previous spending freeze order signed on 20th January[67] targeting social aid programmes carried out, among others, by Catholic organisations that regard humanitarian work as a practical manifestation of their religious freedom rights.[68]

All in all, while Vance's Catholic post-liberalism appears to be making waves in politics at the expenses of progressive churches, questions remain in these early-stages of the Trump administration as to whether this stream of thought will manifest explicitly in lawmaking and judicial practice

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[63] John. T. McGreevy, *Catholicism. A Global History from The French Revolution to Pope Francis* (W.W. Norton & Company, 2022) 135.

[64] Vance's speech is available at: < https://www.youtube.com/watch?v=MbK9NHUycis> accessed 22 Aprile 2025 (timestamp: 5:02-5:010; 1:10-1:13).

[65] *Ibid.,* (timestamp: 9:58-10:02).

[66] See: The White House, 'Eradicating Anti-Christian Bias' available at: <https://www.whitehouse.gov/presidential-actions/2025/02/eradicating-anti-christian-bias/> accessed 22 April 2025.

[67] See: The White House, 'Revaluating and Realigning US Foreign Aid' <https://www.whitehouse.gov/presidential-actions/2025/01/reevaluating-and-realigning-united-states-foreign-aid/> accessed 22 April 2025. The impact of these funding cuts appears profound, affecting both small and large charities alike - including Catholic Relief Services (CRS), the international aid agency of the United States Conference of Catholic Bishops, established in 1943, as reported in: Brian Roewe, 'Exclusive: Catholic Relief Services Lays Off Staff, Cuts Programs After USAID Shakeup' (*National Catholic Reporter*, 5 February 2024) <https://www.ncronline.org/news/exclusive-catholic-relief-services-lays-staff-cuts-programs-after-usaid-shakeup> accessed 22 April 2025.

[68] See in this sense: Cardinal Blaise J. Cupich, 'USAID Freeze 'Could Actually Cause Death' (Vatican News, 19 February 2025) <https://www.vaticannews.va/en/church/news/2025-02/cardinal-cupich-us-executive-order-freeze-usaid-programmes.html> accessed 22 April 2025 (discussing Catholic humanitarianism as an expression of the Christian call to serve and love the neighbour).

- and, if so, what forms it might take. An emerging American theory of constitutional interpretation seems to offer some preliminary insights, pointing to what some describe as an integralist church-state legal relationship that, this time, carries the potential to unsettle the Catholic Church from within. Proposing a vision of the Constitution that centres on well-ordered societies rather individual liberty - and the enforcement of Catholic morality through robust executive powers to achieve it[69] - as will be shown, for some, this theory 'relies upon premises that often clash with the Church's basic theological and philosophical precepts'.[70]

To make the case for robust centralised powers in constitutional law, the following section explores how 'common good constitutionalism'[71] also apparently flirts with a hyper-centralised understanding of papal authority that not only is attracting new criticism from Catholic quarters, but also better illuminates internal divisions surrounding the now-ended pontificate of Francis.

4. The Identitarian Crisis of the "Christian Element": Internal Factors

According to the *New York Times*, on 9th February 2025 Vice President JD Vance reposted on social media a tweet by Harvard law professor Adrian Vermeule that read: '[J]udicial interference with legitimate acts of state, especially the internal functioning of a co-equal branch, is a violation of the separation of powers.'[72]

Fiddling with the idea of strong executive authority, Vance appeared to publicly endorse a central tenet of an emerging American theory of constitutional interpretation that today is being increasingly popularised under the banner of "common good constitutionalism". First introduced by

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[69] The role of Church teachings within this approach to constitutional interpretation was explicitly emphasised for the first time by its chief proponent, Harvard law professor Adrian Vermeule, in a brief blog entry published in 2016. Addressing the more specific context of US healthcare policy, Vermeule argued: '[t]he Church's role in complex policy domains is to act as a guardian of memory - a kind of conservator of original and ultimate purposes, acting to remind policymakers that the ultimate aim of the health care system is to promote the common good of human flourishing.' See: Adrian Vermeule, 'The Guardian of Memory' (*Mirror of Justice*, 15 December 2016) <https://mirrorofjustice.blogs.com/mirrorofjustice/2016/12/the-guardian-of-memory.html> accessed 29 April 2025.

[70] In this sense: Jason Blakely, 'The Integralism of Adrian Vermeule. Not Catholic Enough' (*Commonweal,* 5 October 2020) <https://www.commonwealmagazine.org/not-catholic-enough> accessed 29 April 2025.

[71] This formula could be traced back to: Adrian Vermeule, *Common Good Constitutionalism* (Polity Press, 2022).

[72] Charlie Savage and Minho Kim, 'Vance Says 'Judges Aren't Allowed to Control' Trump's 'Legitimate Power'' *(The New York Times*, 9 February 2025) <https://www.nytimes.com/2025/02/09/us/politics/vance-trump-federal-courts-executive-order.html> accessed 5 May 2025.

Adrian Vermeule in a 2020 essay published in *The Atlantic*[73] and subsequently elaborated in a 2023 monograph,[74] this theory's methodological premise is that the law should be understood - as 'in Aquinas's famous definition'[75] - as 'an ordinance of reason for the common good'.[76] Constitutional law, on this view, ought to be 'promulgated by a public authority who has charge of the community'[77] and which should be empowered to direct courts towards interpreting human rights not as mere aggregates of individual preferences, but rather as tools to promote the whole good of societies.[78]

Despite their common theological repository and repeated invocations of St. Aquinas, neither Vermeule in his academic work nor Vice President JD Vance in his public statements however adequately explain what is meant by the "common good". In particular, throughout his book, Vermeule consistently refrains from giving the concept any specific content, referring to it it merely in general terms as 'well-ordered peace, justice and abundance in the political community'.[79] This minimalist approach appears deliberate.

In fact, the author continues, it is public authorities, with 'broad delegations to the executive'[80] and presidential powers, that ought to be tasked with determining the content and scope of the common good. Moreover, and interestingly enough, Vermeule clarifies that such determinations by executive activity should rely on sources rooted in the classical legal tradition - what the author characterises as an 'European synthesis of Roman law, canon law, and local civil law'.[81]

For Vermeule, central to this "classical legal tradition" is, as anticipated, the Thomist idea of law as 'an ordinance of reason'[82]: an expression that St. Aquinas employed in his *Summa Theologica* to describe how positive laws ought to accord with God's ultimate purpose - and thus

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[73] See Adrian Vermeule, 'Beyond Originalism' (*The Atlantic*, 31 March 2020) <https://www.theatlantic.com/ideas/archive/2020/03/common-good-constitutionalism/609037/> accessed 12 May 2025.

[74] Vermeule (n 71).

[75] *Ibid.,* 14 (quoting: St. Thomas Aquinas (n 55) First part of the Second Part, question 90, art. 4.

[76] Vermeule (n 71) 14.

[77] *Ibid.*

[78] *Ibid.,* 17-18 (Rejecting liberal theories of rights as individual 'trumps over collective interests' and arguing that the power of public authorities to determine or specify the content of positive law implies that judges 'are duty-bound to follow a kind of textualism'.)

[79] *Ibid.,* 24.

[80] *Ibid.,* 23.

[81] *Ibid.,* 12.

[82] *Ibid.,* 14.

with divine reason, rather than the will of the human legislator alone. In his book, however, Vermeule did not explicitly state the intended meaning behind Aquinas's notion of "ordinance of reason", nor did he directly appeal to divine commands or principles of Catholic morality to define and promote the common good. Still, such reliance appears more overt in other writings of the author. For instance, foreshadowing his later thoughts in a 2016 blogpost discussing US healthcare laws, Vermeule clearly acknowledged 'the Church's role in complex policy domains (…) as a guardian of memory (…) acting to remind policy makers that the ultimate aim of the health care system is to promote the common good of human flourishing.'[83]

All things considered, Vermeule's politics of the common good - alongside his case for expanded presidential powers and subtle allusions to church laws informing governmental action - have earned him shares of critics even within the conservative Catholic camp. Some among them have gone as far as to pejoratively describe him as an 'integralist'.[84] That is to say, according to Father Edmund Waldstein's definition, an adherent to a tradition of thought conceiving temporal, political authority as ordered to eternal ends and, therefore, subject to the spiritual authority of the Church.[85] In this connection, mention should be made also to fellow post-liberal Catholic Rod Dreher, who advanced a notably ingenious and interrelated critique of Vermeule.

In particular, Dreher argued that Vermeule's *a priori* valorisation of centralised authority in constitutional law carries with it, as a corollary, an uncritical deference to the pope and Petrine powers conceived as standing above the canon law of the Church. Hence the paradox, Dreher continues, of a post-liberal Catholic whose blind obedience to papal authority - regardless of who is holding the Petrine Office - may result in accommodating stances towards liberal popes and those very magisterial teachings that are provoking unease among post-liberal quarters.[86] As Dreher's criticism was indirectly alluding to Pope Francis, one can assume that, with his identitarian (or integralist) vision of public law, Vermeule has seemingly touched upon neuralgic internal ecclesiological and legal issues that came to

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[83] Adrian Vermeule, *The Guardian of Memory* (n 69).

[84] For a discussion on Vermeule's integralism within the conservative legal movement: Aaron J. Walayat, 'Vermeule's Society and Its Enemies' (*Canopy Forum*, 18 August 2021) < https://canopyforum.org/2021/08/18/vermeules-society-and-its-enemies/> accessed 13 May 2025. Despite his detractors, Vermeule himself has explicitly advocated for integralism, arguing that '[t]he only intellectual movement on the American scene that is genuinely political, is so-called integralism or, as I think a more accurate term, political Catholicism.' See: Adrian Vermeule, 'Liberalism's Good and Faithful Servants' (*Compact Magazine*, 28 February 2023) <https://www.compactmag.com/article/liberalism-s-good-and-faithful-servants/> accessed 13 May 2025.

[85] See: Edmund Waldstein, 'Integralism in Three Sentences' (*The Josias*, 16 October 2017) <https://thejosias.com/2016/10/17/integralism-in-three-sentences/> accessed 12 May 2025.

[86] See: Rod Dreher, 'Adrian Vermeule's Ivy League *Papstprinzip*' (*The American Conservative*, 22 October 2018) <https://www.theamericanconservative.com/adrian-vermeule-ivy-league-papstprinzip-roman-catholicism/> accessed 13 May 2025.

the fore under the Holy Father's now-ended pontificate. In particular, Vermeule appears to intensify debates over what is arguably one of the most contested dilemmas facing the Church during and after Francis. Namely, the question over the proper relationship between papal primacy and episcopacy, and, more specifically, over the 'breadth'[87] of Petrine authority *vis-à-vis* the legislative limits prescribed by the deposits of faith, subsidiarity and canon law.[88]

As will be seen, these are issues that remain actually and acutely felt by so-called "traditionalist Catholics" - an expression conventionally used to describe opposition to the theological liberalism of the Second Vatican Council that Francis sought to implement and expand.[89] For such critics, Francis' reception of Vatican II has meant transitioning into a new stage of the Church where all matters of governance, liturgy, and tradition have been centralised under the absolute authority of the Roman Pontiff and his progressive agenda. According to these traditionalist voices, such centralisation of power was a defining feature of the now-ended pontificate, reflecting attempts to impose top-down, modernist reforms that - so they argue - have reduced the Church to little more than a 'mere agency'[90] of Western liberal and secular elites.

Pointing in particular to Francis' vision of the Church as a 'field hospital'[91] - more concerned with supporting the marginalised than, as Francis put it, becoming entangled in a 'web of obsessions and procedures'[92] - canon lawyers have also voiced criticism. Within the Italian canonistic debate especially, Andrea Zanotti has observed that the recently

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[87] In this sense see: Phillip Campbell, 'The Hyperpapalist Claims of Pope St. Gregory VII' in Peter A. Kwasniewski (eds), *Ultramontanism and Tradition. The Role of Papal Authority in the Catholic Faith* (OS Just Press, 2024) 42 (arguing that: 'In light of the unprecedented centralization of authority under the Francis pontificate (…) what is in question is not so much the pope's doctrinal authority as the breadth of his disciplinary power').

[88] For an introductory discussion on the principle of legality in canon law see: Giuseppe Sciacca, *Nodi di Giustizia. Problem Aperti del Diritto Canonico* (Il Mulino, 2022) 29-51.

[89] In this sense see: Massimo Faggioli (n 34) 22-23.

[90] Stuart Chessman, 'The Synthesis of Ultramontanism and Progressivism' in Peter A. Kwasniewski (n 87), 387.

[91] This expression could be traced back to a 2013 interview with Pope Francis published in: Antonio Spadaro, 'A Big Heart Open to God: An Interview with Pope Francis' (*America. The Jesuit Review*, 30 September 2013) <https://www.americamagazine.org/faith/2013/09/30/big-heart-open-god-interview-pope-francis> accessed 23 May 2025.

[92] See: 'Apostolic Exhortation E*vangelii Gaudium* of the Holy Father to the Bishops, Clergy, Consecrated Persons and the Lay Faithful on the Proclamation of the Gospel in Today's World' < https://www.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html> accessed 23 May 2025.

concluded pontificate's prioritisation of mediation and mercy[93] over justice and the rule of law has contributed to relegating canon law to a 'peripheral'[94] - and therefore marginal - tool in the life of the Church. Agreeing with this assessment, Geraldina Boni concurred that this should be taken to mean, in essence, that Francis' ecclesiology has substantially and d*e facto* 'diminished'[95] the relevance of canon law in church management. Legislating by *motu proprio* - that is, through decrees personally issued by the Pope and without the counsel of cardinals or the canon law expertise of other consultive bodies[96] - had been, for instance, a prominent characteristic of the Francis pontificate, as noted by the two scholars.[97]

In this connection, a source of particular contention among traditionalist circles has been Francis's *motu proprio* apostolic letter *Traditionis Custode*s (2021), whose abolition of the received and approved rites of the Catholic Church since the Council of Trent (1545-63) is perceived as an explicit display of absolute papal power 'seeking in effect to legislate into existence a new liturgical rite'.[98]

All in all, at the heart of all these considerations lies a concern about a centralised papal legislative action that - harking back to critics of Vermeule (and Pope Francis) - Dreher perceives as taking shape through a revival of the language and techniques associated with an ecclesial current of thought known as "ultramontanism." As controversial historian Roberto

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[93] On mercy as an inspirational criteria for canon law and its objectives see in particular Pope Francis's address to the *Consociatio Internationalis Studio Iuris Canonici Promuovendo* on the occasion of its 50th anniversary available at: <https://www.vatican.va/content/francesco/en/messages/pont-messages/2023/documents/20231201-messaggio-studio-iuris-canonici-promovendo.html> accessed on 24 May 2025.

[94] See: Andrea Zanotti, 'A Proposito di un Diritto Canonico Periferico: Ovvero il Rischio della Perifericità del Diritto Canonico' (2017) 2(1) *Stato, Chiese & Pluralismo Confessionale. Rivista Telematica* 2, 14. This article was published in response to Italian canon lawyer Pierluigi Consorti's working definition of 'peripheral canon law,' itself prompted by canon lawyer Geraldina Boni's earlier reflections on the study of canon law in Italian universities. See, respectively: Pierluigi Consorti, 'Per Un Diritto Canonico Periferico'(2016) 2(1) *Quaderni di Diritto e Politica Ecclesiastica* 385-405 (discussing how Pope Francis's ecclesiology and magisterial teachings on the 'peripheries' and the most vulnerable could constructively inform canon law and its interpretation of the Church's primary mission towards the *salus animarum).* Geraldina Boni, 'Una Disciplina in Significativo Sviluppo. Un Giro d'Orizzonte sulle Monografie Canonistiche Pubblicate dal 2012' (2015) 2(1) *Quaderni di Diritto e Politica Ecclesiastica* 253-274.

[95] In this sense see: Geraldina Boni, *La Recente Attività Normativa Ecclesiale: Finis Terrae er lo Ius Canonicum? Per Una Valorizzazione del Ruolo del Pontificio Consiglio per i Testi Legislativi e della Scienza Giuridica nella Chiesa* (Mucchi Editore, 2021) 46.

[96] For a discussion on the marginalisation of the Dicastery for Legislative Texts - a Curial office entrusted with assisting in the correct interpretations of the canon laws of both the Latin and Eastern Churches - under the Francis Pontificate see: *ibid.,* 49 and 265.

[97] See: Andrea Zanotti, 'Il Diritto Canonico a Quarant'anni dalla Promulgazione del Codice Giovanneo-Paolino' (2024) (2)1 *Quaderni di Diritto e Politica Ecclesiastica* 521, 529.

[98] In this sense: Thomas Pink, 'Is *Traditionis Custodes* Lawful?' (*The Lamp*, 1 August 2023) <https://thelampmagazine.com/issues/issue-18/is-traditionis-custodes-lawful> accessed 24 May 2025.

De Mattei explains, since the late nineteenth century this expression has been conventionally used to design been 'the faithful attitude of Catholics "beyond the Alps" to the doctrines and institutions of the papacy'.[99] Solemnly defined at the First Vatican Council (1869-1870) under Pope Pius IX and his 'pyramidal-hierarchical vision of the Church'[100] - with the Pope at its apex - in more practical terms ultramontanism is, as Josè Antonio Ureta explains, a system of church governance grounded on two principal dogmas of faith regarding the papal office. Namely, 'a) the pope's full, supreme immediate and universal jurisdiction (papal supremacy) and b) his infallibility.'[101]

Originally conceived as a 'defensive strategy'[102] against liberal modernity and secular authority, contemporary traditional scholars sympathetic to the ultramontane movement have nevertheless warned that today this concept could lend itself too easily to manipulation and abuse. The problem, as summarised by Eric Sammons, is that the pope, under exasperated ultramontane rhetoric, could cross the line from 'from being the *center* of Church unity to the *source* of Church teaching'.[103]

The implication of such an overreach, Cardinal Raymond Burke explains, is a clear violation of canonical legislation - particularly in the form of can. 331 of the 1983 Code of Canon law. For Burke - a leading figure in the opposition to Pope Francis - this provision in fact explicitly recognises the pope's plenitude of powers solely by virtue of his office as head of the college of bishops, and therefore not when acting alone, as a 'private person or simple member of the faithful.'[104] Disregarding the fact that full and supreme authority in the Church is, as the cardinal noted, collegial rather than a personal power, Burke ultimately admonished that such an oversight would set precedents for arbitrary misappropriations of canonical legislation for private ends contravening the papal primary duty to 'promote the unity of faith, worship and practice'.[105]

If Burke's concerns over legislative hyper-papalism appear as an indirect critique to the Francis pontificate, it remains to be seen whether the newly elected Pope Leo XIV - publicly announced as a potential 'bridge-

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[99] Roberto De Mattei, 'Papolatry and Ultramontanism Are Not the Same' in Peter A. Kwasniewski (n 87) *ibid*., 398.

[100] In this sense see: Agostino Montan, *Il Ministero Episcopale nella Comunione Ecclesiale. Aspetti Teologici e Canonici. Sussidio ad Uso degli Studenti* (Pontificia Università Lateranense, 2016) 11.

[101] Josè A. Ureta, 'Understanding True Ultramontanism', in Peter A. Kwasniewski (n 87) 304.

[102] Stuart Chessman, 'Ultramontanism: Its Life and Death', in *ibid.,* 334.

[103] Eric Sammons, 'The Hyperinflation of the Papacy' in *ibid.,* 562.

[104] See: Raymond Leo Cardinal Burke, 'The Plenitude Potentates of the Roman Pontiff in Service of the Unity of the Church' in *ibid.*, 33.

[105] *ibid.,* 25.

builder'[106] between conservatives and progressives in America and beyond - could ultimately allay these anxieties. For the time being, the US thus represents a pivotal testing-ground for regional, context-specific discussions on identitarian public law and their potential to illuminate an internal ongoing Catholic debate that is bound to resonate across the whole universal Church over the next years to come.

5. Conclusion

Through the materials assembled for this report, the "Christian element" functioned as a visual angle to explore the phenomenology of Western identitarian public law - and thus its manifestation and operation not merely as a set of technical rules, but as a complex system situated in a specific cultural context (or, as discussed, amid a crisis of Christian, and specifically Catholic legal culture). Central to this premise has been the endeavour to historically correlate the emergence of identitarian public law with the erosion of a commonly-shared sense of Catholic tradition, life and identity both within and beyond the Roman Catholic Church (*Section I* and *II*). With the "Christian element" becoming increasingly adaptable to polarised interpretations of religious doctrine and socio-legal reality, *Section III* turned to consider how Christian arguments - so flexibly conceived - have been employed within states to advance critical readings of Western liberal democracy and human rights through the law. In this connection, the United States (US) offered a revealing testing-ground, where emerging forms of post-liberal Catholicism are now capturing decontextualised expressions of traditional religion to resist liberal democracies, multiculturalism, and migrations in ways that also inflict collateral damage on progressive churches operating in the country.

Seen it this way, while the US cannot exclusively or exhaustively address the entire debate on identitarian public law, its focus has nonetheless enabled a clearer understanding of how Catholic illiberalism operates essentially on a double front. On the one side lies the Catholic critique against the liberal premises underpinning the Western order and the human rights framework; on the other is the critique of the Catholic Church's liberal vocation and ecclesiology (read: identity)[107] prominently revived under the now-ended Francis pontificate. Functioning as an intellectual bridge, the US has thus facilitated connections between state-level debates on identitarian public law and an internal Catholic debate concerning the role of the Church in modern society and, relatedly, the appropriate relationship between the papacy and the episcopacy in carrying out its

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[106] In this sense: Robert A. Sirico, 'Pope Leo XIV, Builder of Bridges' (*First Things*, 10 May 2025) <https://firstthings.com/pope-leo-xiv-builder-of-bridges/> accessed 26 May 2025.

[107] In this sense see: Cardinal Stanisław Ryłko, 'Introduzione. Un 'Laicato' in Uscita…' < http://www.laici.va/content/dam/laici/documenti/rylko/italiano/Giornata di studio Apostolicam actuositatem 10 novembre 2015 Introduzione.pdf> 1, 1 accessed 3 June 2025 (discussing how the preparations for the Second Vatican Council were intimately linked to the deeply existential (and identitarian) question: "*Ecclesia, quid dicis de te ipsa?"*).

mission. It is to these internal themes that *Section IV* of this report has been dedicated.

With debates fiercely unfolding in America, Catholic traditionalists perceiving Pope Francis's liberal agenda and governing style as dismissively authoritarian have also served as a reminder that the nature of illiberalism is multifaceted and cannot always be confined to right-wing politics. Hence, if - depending on the viewer's perspective - illiberalism may also assume left-leaning configurations, possible alliances between identitarian public law, the "Christian element", and the 'illiberal left'[108] - whether secular or religious - offer valuable avenues for complementary future research. In this connection, while this report has focused on US post-liberal Catholicism due to its ability to smoothly illuminate identitarian public law's core mechanisms, the possibility to broaden further the discussion by including other actors and levels of analysis should not be ignored.

For instance, the emergence of post-liberal Catholicism raises questions about its involvement in 'ecumenical'[109] alliances between the US Christian right, prosperity gospel movements, and evangelical fundamentalists aiming at controlling politics and the law in the country. On an interrelated geo-political and geo-theological level, further questions arise concerning its potential alignment with transnational conservative networks lobbying internationally over the legal regulation of areas such as sex, gender, family, education, bioethics and religious freedom, with ties stretching as far as the Russian Orthodox Church.[110] This time on an internal, religious law level, recognising the specificity of canon law in the life and governance of the Catholic Church would necessitate broadening the horizon to also include the ecclesiastical laws of Protestant and Orthodox churches - as well as considering the ways in which identitarian public law affects their associated internal debates. Taken together, all these materials could offer substantial and complementary input for further research aligned with the present report, which has, at this stage, limited itself to providing a genealogical account and mapping of the Christian element in identitarian public law.

In this regard, the distinctive perspective of the Roman Catholic Church has made it possible to conceptualise this phenomenon as an essentially circular process. Originating from within the Roman Catholic Church, identity politics and laws have in fact progressively moved beyond ecclesiastical settings, propelled *outward* by state actors manipulating the

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[108] See in this sense: 'The Threat From the Illiberal Left (*The Economist*, 4 September 2021) <The threat from the illiberal left> accessed 1 June 2025.

[109] In this sense see: Antonio Spadaro, 'Evangelical Fundamentalism and Catholic Integralism: A Surprising Ecumenism' (*La Civiltà Cattolica*, 15 July 2017) <https://www.laciviltacattolica.it/articolo/evangelical-fundamentalism-and-catholic-integralism-in-the-usa-a-surprising-ecumenism/> accessed 3 June 2025.

[110] For well-documented research on Russia-US transnational conservative alliances see: Kristina Stoeckl and Dmitry Uzlaner, *The Moralist International: Russia in the Global Culture Wars* (Fordham University Press, 2022).

Christian element for (external) political gain. Such external appropriations of religion have, in turn, reverberated *inwards* within Catholic Church contexts, further deepening internal divisions along ecclesiological, pastoral, and canonical lines.

It is along these outward - inward coordinates that identitarian public law appears as a circle spinning in a loop-like fashion, interweaving two major threads along its perimeter.[111] On the one hand lie the civil laws of states and their exposure to concepts and ideas borrowed from flexible Catholic identities and canonical legislation. On the other are the divine laws of Catholic churches and the pressure exerted upon them to update according to secular modern times, identities and rights. Seen in this light, the abstract circularity of identitarian public law also entails a practical circulation of ideas, doctrines and concepts between civil and Roman Catholic canon law - two formally distinct legal fields that nevertheless cross-fertilise and mutually influence each other as theoretical reservoirs of 'legal science and knowledge'.[112]

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[111] The author is grateful to Professors Marco Ventura, Dicky Sofjan and Michael Quinlan for all the insightful input provided in rendering this circular image of identitarian public law.

[112] In this sense: Marco Ventura, 'Diritto Ecclesiastico' in Alberto Melloni (eds) *Dizionario del Sapere Storico-Religioso del Novecento* (Il Mulino, 2010) 718, 718.