While the ongoing confrontation between the American state and the Catholic Church and other traditionally minded religious believers over the Obama administration’s HHS mandate requiring that all employers provide insurance coverage for sterilization, abortion-inducing drugs, and contraception can be profitably analyzed through a number of lenses, I would like first to situate it in the context of America’s historic engagement with the problem of religious pluralism.

It is a commonplace, of course, that one of America’s most notable historical achievements has been the forging of a new and largely successful solution to the problem of religious pluralism. Although our political history has hardly been devoid of religiocultural conflicts, it is widely agreed that the American experience demonstrates that religious pluralism need not be politically debilitating, that it need not threaten the unity of the body politic. Despite our religious pluralism, as John Courtney Murray pointed out in his classic reflections on the subject, “there have never been ‘two Americas,’ in the sense in which there have been ‘two Frances.’…Politically speaking, America has always been one.” America has no history of bristling division into militantly secularist and devoutly Christian blocs contesting the fundamental terms of the social compact.

The HHS mandate and resultant controversy must be seen as the latest front in a protracted culture war raging within the American polity. By a culture war I mean a struggle to specify our defining commitments as a society, to determine our common understanding of the nature and destiny of the human person, the nature of the human good, and the proper structure of human relations (including the role of the state in the overall economy of human life) that will inform America’s public life. As James Davison Hunter persuasively argues, while America has experienced previous culture conflicts, today’s culture war differs from those of the past by virtue of the fundamental
nature of the issues at stake, the depth of the divisions it inspires, and its intractable character. “Arguably,” Hunter notes, “our national identity... has not been more a source of contention since the Civil War.”

The mandate and ensuing confrontation not only inaugurates a new phase in this war, which I will designate *Kulturkampf*, but is symptomatic of the breakdown of our traditional solution to the problem of religious pluralism. Indeed, the mandate marks the crossing of a political Rubicon inaugurating a new phase in America’s engagement with this ancient problem in which our traditional “articles of peace”—and the understandings that informed them—are no longer operative, a new phase with disconcerting implications for the American polity.\(^3\)

The reasons why religious pluralism can be said to be a political problem are not mysterious. On the one hand, as James Madison famously noted in *Federalist* No. 10, like countless other differences among human beings (e.g., race, ethnicity, culture, class, and occupation), religious differences can and often do become a source of political division and social conflict. On the other hand, the divergent understandings of the human person and the human good embodied in different religious traditions can be a powerful barrier to civic unity. How are groups holding conflicting understandings of the nature and destiny of man to agree on the political and moral principles that are to superintend public life?

Confronted with the complications introduced by religious pluralism, one possible response—indeed, the most common response historically—is what might be called *Kulturkampf*. While my use of this term is intended to evoke memories of the struggle launched by Bismarck’s Prussia against the Catholic Church,\(^4\) I use the term to designate a broader phenomenon: namely, the use of law and public policy to eliminate the problems caused by religious pluralism by eliminating religious pluralism, the use of law and public policy to reduce plurality to uniformity, to transform a pluralistic public square into a monistic one. *Kulturkampf* is not so much a solution to the problem of religious pluralism as it is the denial that a solution is possible. Implicit in this strategy is the conviction that religious pluralism constitutes an *insoluble* obstacle to political unity, and so that pluralism must be eliminated.

While America at times had flirted with the idea of *Kulturkampf*, we ultimately chose a different course. The far-reaching religious pluralism that was the native condition of our country made policies designed to eradicate this pluralism simply impractical. Moreover, the commitment to limited government that was one of the defining principles of American political culture denied the state the sort of powers it would need to mount a serious program to eradicate pluralism. *Kulturkampf* required a far more powerful state than Americans were willing to accept. Americans were thus compelled to live with the stubborn reality of religious pluralism, and to devise some means to accommodate it.

To grasp the nature of the American solution to this problem, as Murray pointed out in his classic analysis, it is first necessary to grasp that the problem is essentially two-fold and revolves around the poles of civic unity and religious integrity. To begin with, it involves the establishment of civic unity, of a stable and unified body politic in the face of irreducible disagreements regarding “religious questions—those ultimate questions that concern the nature and destiny of man within a universe standing under the reign of God” (xiii). Securing this unity involves forging a consensus, a consensus
about human nature, the human good, and the goals of government that will inform public life. Such a consensus simultaneously supplies a society its “purposes” (26) as “a collectivity organized for action in history,” “furnishes the standards according to which judgment is to be passed” on matters of public policy, and establishes “a common universe of discourse in which public issues can be intelligibly stated and intelligently argued” (88).

In a religiously pluralistic society, of course, the public consensus cannot encompass the full range of “theological truths that govern the total life and destiny of man.” Rather, what such a society must seek is a more limited consensus—a consensus “operative on the level of political life with regard to the rational truths and moral precepts that govern the structure of the constitutional state, specify the substance of the common weal, and determine the ends of public policy” (82). Even forging such a limited consensus is no simple matter.

At the same time, the fact of religious pluralism has profound implications for both the content of the public consensus and the character of the civic unity it establishes. On the one hand, the affirmations composing public consensus must be compatible with the religious convictions of the various groups that constitute the body politic. This consensus, in other words, must neither include principles inconsistent with the convictions of any of the religious groups nor exclude any affirmations thought by any of these groups to be essential to the legitimacy of the body politic. On the other hand, the unity it establishes must be “a unity of a limited order” that does not “hinder the various religious communities . . . in the maintenance of their own distinct identities.” The unity of the body politic, in short, “must permit to the differing communities the full integrity of their own religious convictions” (59).

Solving the problem of religious pluralism thus involves securing civic unity while respecting and safeguarding the integrity of various religious traditions embraced by the populace. “There is,” as Murray dryly notes, “no small political problem here” (xiv).

What then was the American solution to this problem? Despite its religious pluralism, America was able to forge a public consensus embodying both the procedural norms enshrined in the Constitution as well as a whole constellation of anthropological, political, moral, metaphysical, and theological principles. This consensus made possible an agreement not just on the structure of government but also on a body of moral and political principles regulating the structure of the state, determining the content of the common good, and supplying the ends of public policy.

An integral part of this public consensus was the “revolutionary” distinction between “the spiritual and temporal orders and their respective jurisdictions” that constituted “Christianity’s cardinal contribution to the Western political tradition” (75). The distinction between church and state as independent institutions with different roles in the overall economy of human social life made it possible for America to limit the scope of both the political order and the public consensus undergirding it. Their shared acceptance of the Christian distinction between church and state, in other words, made it possible for Americans to embrace the idea of restricting the scope of government to civil matters alone. Thus, “the unity asserted” by the American motto, e pluribus unum, writes Murray, was “a unity of a limited order” (59). America was not intended to be “a church, whether, high, low,
or broad,” but “simply a civil community whose unity is purely political” (67) and whose ends extend only to “the pursuit of certain enumerated secular purposes.” (“To say that the purposes are secular,” of course, “is not to deny that many of them are also moral” [77].) Insofar as America was not a church, its civic unity did not presuppose an agreement about the totality of theological truths governing human life.

This aspect of the American solution to the problem of religious pluralism found legal expression in the religious provisions of the First Amendment. Representing “a special embodiment, adapted to the peculiar genius of American government and to the concrete conditions of American society” (77), these provisions constitute a “self-denying” ordinance (79) through which “the American people exempted from their grant of power to government any power to establish religion or prohibit the free exercise thereof” (61). Excluding religious questions, on which Americans disagreed, from the jurisdiction of government, these provisions functioned as “articles of peace” (56).

Confronted with the religious pluralism that was America’s “native condition” and the consequent “necessity of creating an environment, protected by law, in which men of differing religious faiths might live together in peace” (69) and embracing the ideal of limited, secular government, the American people chose to limit sharply the powers of the state in religious matters, to deny it the ability to use law and policy to reduce the religious pluralism of American society to a uniformity. Indeed, rather than have the government represent one of the competing versions of “transcendental truth . . . current in American society,” government was limited to representing “the commonly shared moral values of the community” and “the supreme religious truth expressed in the motto on American coins, ‘In God we trust’ ” (83). In light of America’s religious pluralism, “any other course . . . would have been disruptive, imprudent, impractical, indeed impossible” (71). These articles of peace strengthened the American body politic by preventing religious differences from becoming occasions of political division and conflict.

America’s decision to limit the powers of government in religious matters meant neither “that government is hostile or even indifferent to the things of God” (146) nor that religion was something to be relegated to the private sphere. On the contrary, the consensus that informed the American polity embraced “the sovereignty of God” as “the first article” of our “political faith” (44); and the articles of peace it established sought “to protect, not to injure the interests of religion in American society.” The American solution to the problem of religious pluralism not only afforded a broad scope to religious liberty but also involved an understanding that government must look with favor on religious life. Government was compelled to respect, in the words of the Supreme Court, “the religious nature of the people” and accommodate “the public service to their spiritual needs” (145–46).

The effect of the sharp limitations America placed on the powers of government was to create a public order in which the institutions of civil society, rather than the state, became the center of social gravity and in which religious groups were afforded the legal space they needed to live out their distinctive commitments. Limited government thus made possible the creation of a public order that could command “the full and free, unreserved and unembarrassed” allegiance of the diverse faith communities composing our religiously divided society (55).

Of course, this solution was not always followed with strict faithfulness. One thinks of
the recurring efforts of the dominant Protestant groups for a good part of our history to use public education as a vehicle for inculcating their distinctive beliefs and values, and to exclude, in various ways, non-Protestants from full participation in public life. Furthermore, insofar as the moral judgments that are inescapable in the making of law and public policy on occasion collided with the moral norms professed by particular religious communities (e.g., the controversy surrounding Mormon polygamy), the demands of public morality and religious integrity did sometimes collide. Nevertheless, by and large, this solution enabled America successfully to reconcile the demands of civic unity and religious integrity.

While Murray’s analysis represents an extraordinarily useful starting point, it leaves in the background the preconditions on which the solution he celebrated depended. For example, the form of federalism that prevailed in America until the mid-twentieth century left responsibility for legislating on such sensitive subjects as church-state relations and public morality primarily in the hands of states and localities whose more homogeneous character greatly increased the chance of forging policies capable of securing broad-based support. Similarly, for most of American history the prevailing constitutional understandings at both the federal and state levels tended to give legislatures broad discretion to determine law and public policy in these areas, thereby giving government the flexibility both to create policies capable of commanding broad-based support and periodically to revise policies in light of changing circumstances.7

Likewise, constitutional provisions (e.g., separation of powers, checks and balances) and informal understandings (e.g., the filibuster)—the American “constitutional morality,” to borrow a phrase from Willmoore Kendall and George W. Carey—combined to foster government by consensus, to establish a political order in which decisions on sensitive subjects required more than simple majorities, and thus could be said to reflect the common conscience of the community. These provisions and understandings acted as impediments to laws and policies that might split the polity into “warring camps,” produce “pockets of irredentism,” and generated widespread defiance.8

Finally, one thinks in this context of the distinctly limited role played by government until the twentieth century. “In the 1780s and 1790s, and indeed for generations thereafter,” as Harold J. Berman reminds us, the role of government at all levels “in the regulation of family responsibilities, education, health care, poor relief, and other similar matters of social welfare, as distinct from political and economic concerns,” was “minimal” and had a largely “auxiliary” character.9 The effect of this was to reduce the occasions for religiously and morally grounded political conflict by confining state action primarily to areas of common material concern about which general agreement was relatively easily secured.

An even more important precondition for the success of the American solution, however, was the nature of the country’s religious scene. Since, as we have seen, the deeply rooted pluralism that defined American religious life since the beginning made it impractical for any group to employ successfully a strategy of Kulturkampf, each group therefore had a powerful incentive to arrive at a consensus that would simultaneously secure the unity of the body politic while safeguarding its freedom to live out its distinctive faith commitments.

The obvious question, however, is how it was possible for these groups to reach that
public consensus. If it did not extend to the full range of religious truths that govern the life and destiny of man, the consensus they forged was nevertheless far from merely procedural in nature. It encompassed a range of substantive anthropological, political, moral, metaphysical, and theological affirmations. America’s historic ability to create and sustain such a consensus points to the existence of a common cultural horizon, a common worldview. But how can the existence of such a common horizon be reconciled with the far-reaching religious pluralism characteristic of American society?

The answer is to be sought in the limited nature of the religious pluralism that traditionally prevailed in America. One thinks in this context of Alexis de Tocqueville’s observation that while in America the religious scene consisted of “an innumerable multitude of sects,” nevertheless all “belong[ed] to the great unity of Christendom.” American pluralism did change over the course of our history, evolving from a pluralism limited to the boundaries of Protestantism during the colonial period to a pluralism including large numbers of Catholics and Jews by the mid-twentieth century. Nevertheless, until quite recently, as Francis Canavan observed, “lush as the variety of creeds [in America] may have been,” the fact was that “all of the religions that had adherents numerous enough to matter shared a common Judeo-Christian tradition” and “held the Bible in common.”

Holding the Ten Commandments in common, “in most respects”—particularly regarding “matters of public concern”—the diverse religions of America “taught substantially the same moral code.”

Thus, the type of pluralism that traditionally prevailed in America was a pluralism of a multitude of religious branches that sprang from a common stem, a pluralism that existed in the overarching context of a shared adherence to what Hunter terms “biblical theism.” While America’s religious pluralism was certainly a source of disagreement and cultural conflict, this disagreement and conflict was always more theological than moral, and it unfolded within the horizon of a common biblical culture. Providing both a common ground and a common language, the limited character of this religious pluralism made possible a broad, overlapping consensus on the nature of man, the character of human good, and the structure of social relations that should inform human life. Thus, as Os Guinness argues, America’s traditional articles of peace are rooted, at least in part, in shared “articles of faith.”

American political culture, moreover, was shaped not only by the religious heritage of Western civilization but by its philosophic tradition as well; and this common cultural horizon was also made possible by our shared commitment to a particular version of the natural law tradition. On the one hand, American culture historically reflected a commitment to what Thomas A. Spragens terms “moral cognitivism,” a commitment to the idea that reason can discern a body of substantive moral truths embedded in the structure of reality. As one influential revolutionary-era sermon put it, “a special revelation from heaven” was not needed to “teach us” the basic principles of moral and political order, because “the plain dictates of that reason and common sense with which the common parent of men has informed the human bosom” will suffice. This moral cognitivism received classic expression in the Declaration of Independence’s ringing affirmation of the accessibility to reason of a body of “self-evident” moral “truths,” of what it calls “the Laws of Nature and Nature’s God.”

At the same time, while the tradition of natural law is a house with many man-
sions, the type of natural law thinking that informed early American political culture saw the moral truths embodied in the natural law as largely congruent with traditional Judeo-Christian morality. One cannot but think here of Jefferson’s affirmation that the “system of morality” espoused by Jesus “was the most benevolent and sublime...ever taught.” Indeed, as Canavan remarks, while early America’s proponents of Deism rejected “revelation as superstition” and championed a morality “based on reason alone,” the moral code they upheld “did not differ dramatically from biblical morality on matters of public concern” and “was in fact a secularized version of traditional Christian morality.”

In the face of America’s far-reaching religious pluralism, this natural law tradition was a powerful source of moral—and, insofar as it involved a natural theology, religious—unity. It not only created a large measure of moral common ground among the overwhelming majority who embraced one form or another of biblical theism and the small minority who rejected it; it also established an ecumenical and interreligious language—a common universe of discourse—making communication between the adherents of America’s differing religious traditions possible.

The American solution to the problem of religious pluralism thus unfolded against the backdrop of a common cultural horizon decisively shaped by biblical theism and a version of the Western natural law tradition whose moral content was congruent with biblical morality. This horizon made the meaning of such key concepts as “religion,” “church,” “state,” “secular,” and “sacred” largely unproblematic. At the same time, it made it possible both to distinguish between public morality and “sectarian” doctrine and to forge a public philosophy reflecting a broad, overlapping consensus on the nature of man, the human good, and the ends of public life. And by affording access to the distinction between church and state and the conception of the limited and secular character of government in the overall economy of social life, this horizon made possible the construction of a public order within which each religious community could maintain its own distinctive identity and way of life.

The past century has witnessed the erosion of these preconditions for the American settlement with respect to religious pluralism. At the political level, we have seen a massive expansion in the size and scope of government at all levels and a transformation of our political system so far-reaching that thoughtful observers now routinely speak of the emergence of a new American political system, a new constitutional order, or even a “new regime.” The defining features of this new regime include the nationalization, constitutionalization, and judicialization of public policy in the areas of church-state relations and public morality, and the replacement of the older constitutional morality designed to foster consensual decision making with a new and very different one. More important, there has been a sweeping transformation of our cultural landscape. As James Davison Hunter has shown, a striking change in the character of America’s religious pluralism has occurred. Over the past half century, the number of adherents of non-Western religions like Islam and Hinduism has increased significantly. Even more important in the present context has been the dramatic increase in the numbers of those whom social scientists label “secularists,” those professing “no particular religion or religious affiliation.” In the course of the past fifty years, the number of secularists has grown by more than 500 percent, and by the mid-1990s these constituted more than
a tenth of the populace, making them the fastest growing segment of the American religious landscape. (Indeed, more recent studies find “nones” to comprise roughly 20 percent of the population.)

At the same time, we have seen the polarization of Catholicism, Judaism, and the various Protestant denominations into “orthodox” and “progressive” camps. What divides these camps, Hunter argues, “are two distinct conceptions of moral authority,” two distinct conceptions of “the basis…which people [should use to] determine whether something is good or bad, right or wrong, acceptable and unacceptable.” Thus, although they might disagree about the “specific media” through which it is communicated, the orthodox are united by a “commitment…to an external, definable, and transcendent” source of moral authority. Believing that moral truth is not created by human beings but discovered by them, the orthodox are committed to objective, unchanging, and universally obligatory moral norms emanating from a transcendent authority.21

In sharp contrast to the proponents of orthodoxy, progressivists deny the existence of any external and transcendent source of moral authority. On the contrary, they insist that “moral truth is perpetually unfolding; that moral truth is a human construction and, therefore, is both conditional and relative; and that moral truths should reflect ethical principles that have the human good as their highest end.” Culturally, this view of moral truth as something humanly created rather than discovered is linked with a celebration of individual “autonomy,” or the “right” of each individual to choose his or her own values and way of life. In this view, “the liberated individual…becomes the final arbiter of moral judgment.”22

Whereas in the past the politically consequential fault lines on the American religious scene ran between the various competing expressions of biblical theism, today they run between the adherents of orthodoxy and the proponents of progressivism. Indeed, today “progressively oriented Protestants, Catholic, Jews, and secularists” find that they “share more in common…culturally and politically than they do with the orthodox members of their own faith tradition (and vice versa).”23

These developments have fundamentally changed the character of American religious pluralism. Their effect has been to replace a real but limited religious pluralism, all of whose constituent parts were united by a common allegiance to an orthodox understanding of the nature of moral truth and a substantive vision of man, society, and the human good rooted in one form or other of biblical theism, with a far deeper, far more radical pluralism.

Not only has the broadening and deepening of American religious pluralism over the past half century undermined our shared cultural allegiance to biblical theism, but, insofar as the version of the natural law tradition that had once helped unite the American polity embodied an orthodox understanding of the nature of moral authority, the ascendancy of progressivism has effectively undermined our shared cultural allegiances there as well. The upshot has been nothing less than the collapse of the common cultural horizon on which our traditional solution to the problem of religious pluralism traded. We now no longer, as Canavan observes, “agree even in basic respects on what man should be and how he should live. In consequence, much to the distress of politicians and political commentators, moral issues are being injected into law and politics.”24

The result is the culture war that today wracks the American polity—a culture war that finds its most vivid expression in the ongoing conflicts over abortion, gay
marriage, and religion’s place in public life—pitting the proponents of the traditional forms of biblical theism and natural law thinking against the proponents of progressivism.

This conflict differs from most of America’s past cultural conflicts by virtue of both its depth and intractable character. Previous American cultural conflicts unfolded in the context of a common biblical culture—and thus in the context of a shared understanding of the nature of moral truth and a broad substantive agreement on matters of right and wrong. These older conflicts concerned which version of biblical theism would inform America’s self-understanding. In contrast, what is at issue in today’s culture war is nothing less than which of two “fundamentally different understandings of being and purpose,” which of two dramatically “differing worldviews,” which of two different understandings not only of the substantive moral principles that should govern human life but the very nature and foundations of morality itself will inform America’s public culture.25

And, if this conflict has an “interminable” character, this is not merely because of the intensity of the partisans on each side or the fact that both command the support of sizable segments of the population. Rather, it is because the radical difference between the moral, intellectual, and spiritual universes inhabited by the combatants deprives them of a common language in which to discuss their differences and a common moral ground upon which to resolve them. Under such conditions, dialogue, much less resolution through compromise, becomes “a virtual impossibility.”26

If the origins of orthodoxy lie deep within the Western tradition—in the great religious traditions of the West and the tradition of natural law philosophy whose beginnings go back to Greek and Roman thought—the origins of progressivism are to be found in the radical Enlightenment. In early America, the Enlightenment almost always took conservative forms, embracing an orthodox understanding of the nature of moral truth and avoiding the overtly anti-Christian, militantly secularist, and even nihilistic forms the Enlightenment often took on the European continent. As we have seen, in early America the Enlightenment championed a secularized version of traditional Christian morality.

For this reason, in eighteenth-century America, Christianity—more specifically, Protestantism—and the Enlightenment tradition were, as George Marsden observes, “almost always seen not as contradictory but as complementary.”27 The heirs of the Reformation and the devotees of the Enlightenment made common cause in the launching of the American republic. As Mark Noll points out, during the revolutionary era and early republic, American Protestants “fully embraced” the particular “form” that the Enlightenment took in American culture, creating a “Protestant-Enlightenment synthesis” that endured into the early twentieth century.28

Ideas, however, have consequences. As the inner logic of the anthropocentrism and rationalism that lie at its heart gradually unfolded, Enlightenment thought moved in progressively more radical directions—away from an orthodox understanding of moral truth and the Judeo-Christian ethic and toward the progressivist vision of morality and the ethos of emotivism, individualism, and human autonomy in which it issues. Although it may have found its initial expression in such views as Locke’s moral cognitivism and Jefferson’s affirmation of a body of self-evident moral truths congruent with the teachings of Jesus, it is no accident that Enlightenment thought culminates in
the very different worldviews of figures like Rousseau, Nietzsche, Derrida, and Rorty. This is the direction in which the inner dynamism of the premises constitutive of the Enlightenment as a distinct intellectual tradition has propelled it from the beginning.

The upshot has been the dissolution of the cultural alliance between biblical theism and traditional natural law thought, on the one hand, and the Enlightenment, on the other—the alliance that launched the American experiment in self-government. The disintegration of the “Protestant-Enlightenment synthesis,” in turn, has led to the dissolution of the common cultural horizon on which our traditional solution to the problem of religious pluralism depended. Thus, as Hunter notes, in contrast to past eras of American history, the decisive cultural question now is not “where one stands vis-à-vis Jesus, Luther or Calvin,” but where one stands vis-à-vis the Enlightenment and “its philosophical aftermath.” When all is said and done, it is the radical Enlightenment that “inspires the divisions of public culture in the United States today.”

America’s historic ability to reconcile the demands of civic unity with those of religious integrity has depended on a fortunate coincidence of circumstances. In this, as in so many other respects, our long holiday from history appears to be ending. In present circumstances, it is difficult to see how we can succeed in simultaneously securing civic unity and safeguarding religious integrity. Indeed, contemporary realities might very well make it impossible to do either.

How, in the face of the new, more radical type of pluralism that exists today, for instance, can we forge the type of robust overlapping consensus about the moral and political principles upon which the unity of the body politic depends? How can we respect religious integrity under conditions in which the distinction between church and state, and the limits on government’s role in the overall economy of human social life toward which it points, is disappearing from our increasingly post-Christian cultural horizon? How can we simultaneously secure civic unity and safeguard religious integrity when the actualization of what one group of Americans sees as a fundamental human right requires what other Americans view as an intolerable violation of their right to the free exercise of religion?

The result of the collapse of our traditional articles of peace is the ongoing, bitter, and politically debilitating cultural conflict we now see. The hard truth is that there are today “two Americas” reminiscent of the way that there were once “two Frances”—an America loyal to the older Western heritage, to the legacy of biblical theism and the natural law tradition, and another America committed to the ideological secularism and ethic of human autonomy that issues from the radical Enlightenment.

If today’s culture war is symptomatic of the breakdown of our traditional solution to the problem of religious pluralism, the HHS mandate clearly marks a dramatic escalation of this conflict. It makes painfully clear that progressivists are playing for keeps and that they will not allow scruples about burdening the consciences of religious believers to interfere with their efforts to refashion American society along secularist lines. The gloves, as it were, have come off and we are now at a new phase of America’s culture war that I am designating Kulturkampf; in which progressivists attempt to employ state power to reduce plurality to uniformity, to transform our religiously pluralistic public square into a monistic one.

This development is far from surprising. Kulturkampf, after all, represents the most
common response by societies to religious pluralism; and as Bertrand de Jouvenel and Robert Nisbet (among others) have reminded us, a commitment to monism is one of the defining features of both the modern state and modern political thought. Indeed, given the disappearance of the conditions that had historically enabled us to reconcile the demands of civic unity with those of religious integrity, something of this kind was eventually inevitable. While the mandate may have been the opening salvo in an American Kulturkampf, in other words, it is not this Kulturkampf’s cause, any more than the attack of the South Carolina militia on Fort Sumpter “caused” the Civil War. The cause of today’s Kulturkampf is to be found in the collapse of the preconditions on which our long-standing articles of peace depended for their viability.

Even though in some sense inevitable, this Kulturkampf nevertheless marks a dramatic break with the American political tradition—a dramatic break with America’s historic commitment to an expansive understanding of religious freedom in favor of a narrower understanding that essentially reduces this freedom merely to freedom of worship; a dramatic break with our historic commitment to governmental respect for the pluralism of America’s civil society in favor of the use of state power to reduce this pluralism to uniformity; a dramatic break with our historic commitment to the freedom of the church from political control in favor of its subordination to the state; and a dramatic break with our historic commitment to the autonomy of civil society vis-à-vis government in favor of the reduction of civil society to an extension of an omnicompetent state.

At this point, there is no telling whether the HHS mandate survives the legal hurdles and political challenges it faces. If it does, however, its consequences would be clear. In
intensified our divisions and dramatically raised the stakes of American politics. By its palpable disregard for the demands of religious conscience and readiness to use large-scale state coercion to remake America’s civil society along secularist lines, the state’s effort to impose the mandate will have further eroded the mutual trust and sense of communal solidarity—the social capital, in the jargon of social science—on which the body politic depends for its vitality. Even if the mandate doesn’t prevail, the Kulturkampf whose opening salvo it promises to make American politics a whole lot nastier, and our polity even more dispirited, divided, and dysfunctional.

The HHS mandate thus marks a water-shed in American political history. Making plain that our traditional understandings of both the scope of religious liberty and the relationship of government to civil society can no longer be taken for granted—and are, in fact, rejected by a significant and highly influential body of opinion—the mandate commences a new phase in America’s engagement with religious pluralism in which the old rules no longer apply, the old certainties no longer hold, and our traditional articles of peace are no longer operative. What the mandate signifies, in other words, is that the collapse of our traditional solution to the problem of religious pluralism has transformed our politics into civil war carried on by other means.

1 John Courtney Murray, We Hold These Truths: Catholic Reflections on the American Proposition (New York: Sheed & Ward, 1960; reprint, Lanham, MD: Rowman and Littlefield, 2005), 47. Hereafter, citations of this work will be given parenthetically.
6 As Harold J Berman observes, in the founding era and for many generations afterward, the institutions of civil society—in particular, “religious associations” and “associations inspired by religious motivation”—played the “primary role” in areas such as education, health care, and poor relief, and various other aspects of social life “which were considered to have a significant moral dimension,” while government played “a relatively minor” and “auxiliary role” in these areas. Faith and Order (Atlanta, GA: Scholars Press, 1993), 224, 229.
7 For an insightful discussion of how legislative decision making differs from judicial decision making, see Charles S. Hyneman, The Supreme Court on Trial (New York: Atherton Press, 1963).
9 Berman, Faith and Order, 223, 224, 229.
12 Hunter, Culture Wars, 71.
17 Canavan, The Pluralist Game, 110.
19 Hunter, Culture Wars, 73, 75–76.
21 Hunter, Culture Wars, 42, 44, 120.
22 Ibid., 124–25, 76, 119–120.
Ibid., 131–32.

Canavan, The Pluralist Game, 65.

Hunter, Culture Wars, 128.

Ibid., 130, 129.

George M. Marsden, Religion and American Culture, 2d ed. (Fort Worth, TX: Harcourt, 2001), 43.


Hunter, Culture Wars, 132.

For a thoughtful discussion of the foundational role of this distinction in our church-state jurisprudence and the impact of its gradual disappearance from our cultural horizon, see Steven D. Smith The Disenchantment of Secular Discourse (Cambridge: Harvard University Press, 2010), 107–150.


“A Dhimmitude of Sorts,” First Thoughts, Firstthings.com, http://www.firstthings.com/blogs/firstthoughts/2013/02/05/a-dhimmitude-of-sorts/


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