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# MANY CITIES, ONE NATION: A RESPONSE TO STEVEN SMITH'S *PAGANS AND CHRISTIANS IN THE CITY*

BRUCE P. FROHNEN<sup>†</sup>

*Pagans and Christians in the City* is a brilliant, important book that sheds new light on contemporary society's angry malaise and bitter debates over public meaning. Through penetrating analysis of human nature and the inevitable quest for the sacred in history, Smith provides new insight into modern man's attempt to, in Eric Voegelin's phrase, "immanentiz[e] . . . the eschaton."<sup>1</sup> Those working to excise symbols of the transcendent from public life and to remove Christianity's "regulatory ideal"<sup>2</sup> claim to be liberating individuals from oppression. In reality, the modern pagan sacralization of this world chains people to political programs aimed at refashioning every aspect of our lives to suit current definitions of the good.

Modern paganism is not merely non-Christian but post-Christian, containing within itself attitudes and purposes developed through Christian culture and society. Consequently, it cannot escape Christianity's pursuit of a final resolution to life's trials. Instead it merely immanentizes this drive through pursuit of a historical culmination for terrestrial efforts in a kind of materialistic beatitude. Within contemporary liberalism this means ever-greater, ever-broader liberation, in which a redefined individual will control all aspects of its life, and even its own definition of life, but always in accordance with contemporary standards of material equality and social justice.<sup>3</sup> The inevitable conclusion, which Smith is too polite and prudent to make

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<sup>1</sup> ERIC VOEGELIN, *THE NEW SCIENCE OF POLITICS: AN INTRODUCTION* 166 (1952).

<sup>2</sup> STEVEN D. SMITH, *PAGANS AND CHRISTIANS IN THE CITY: CULTURE WARS FROM THE TIBER TO THE POTOMAC* 195 (2018) [hereinafter *PAGANS AND CHRISTIANS*].

<sup>3</sup> See generally BRUCE FROHNEN, *THE NEW COMMUNITARIANS AND THE CRISIS OF MODERN LIBERALISM* (1996).

explicit, is summed up by his muse, T.S. Eliot: “If you will not have God (and He is a jealous God) you should pay your respects to Hitler or Stalin.”<sup>4</sup> When daily life and the state both are not only valued but fully sacralized, there is no logical stopping point for political control; the result is stultifying conformity and may well include mass, murderous violence, whether in the name of racial dominance, material equality, or protecting individuals from the terrors of microaggressions.

Smith approaches modern paganism’s totalitarian impulses somewhat obliquely by noting that the realm of activity deemed suitable for regulation (in his phrase “the walls of the city”) has expanded so far into previously private (I would say social) life that no room is left for religion or any other form of conduct to escape political control and possible censure.<sup>5</sup> The result is not mere re-paganization. Today’s pagan state is far more effective and extensive than its predecessors. The Roman state, for example, was checked and limited by the (often unjust and even brutal) institution of the *paterfamilias*. The father was a tyrant in his own household and this often produced oppression for all those he ruled, but this tyranny checked and limited the tyranny of the state.<sup>6</sup> Today, the family itself has been made into a political tool, as Smith shows in his discussion of recent Supreme Court decisions regarding sexual conduct, especially *Obergefell v. Hodges* and its aftermath.<sup>7</sup>

In his treatment of contemporary legal issues and, more deeply, his analysis of the manner in which changing religious assumptions and goals shape the culture from which law naturally grows, Smith has provided both a strong critique of contemporary “secular” pieties and an explanation for the culture wars so often derided or minimized by those most determined to

<sup>4</sup> T.S. ELIOT, THE IDEA OF A CHRISTIAN SOCIETY 80–81 (1948).

<sup>5</sup> PAGANS AND CHRISTIANS, *supra* note 2, at 339–40.

<sup>6</sup> The following funeral inscription illustrates the importance of the station of *paterfamilias*:

By my good conduct I heaped virtues on the virtues of my clan; I begat a family and sought to equal the exploits of my father. I upheld the praise of my ancestors, so that they are glad that I was created of their line. My honors have ennobled my stock.

<sup>4</sup> E.H. WARMINGTON, REMAINS OF OLD LATIN 2–9 (1940), in 1 ROMAN CIVILIZATION 524 (Naphtali Lewis and Meyer Reinhold eds., 3d ed., 1990). Justinian also emphasized male control over his immediate family and his wards. JUSTINIAN, INSTITUTES, i, ix, in 2 ROMAN CIVILIZATION 341 (Naphtali Lewis and Meyer Reinhold eds., 3d ed., 1990).

<sup>7</sup> PAGANS AND CHRISTIANS, *supra* note 2, at 274.

deconstruct traditional culture. Still, I would argue that Smith's wide-ranging, radical rethinking of contemporary social disorder does not go far enough. As Smith's discussion of contemporary judicial treatment of social structure makes clear, today's legal elites are at heart totalitarian in their concern to reshape all of society and all of human nature and belief. Theirs is a concern with the very nature of our character as humans. As such they are operating, often overtly, as lawgivers; they seek to re-found the social order in accordance with their own conception of the good and their own regulatory means and ends. Lawgiving at heart is not a legal but a political act in that it seeks to make a people through law, rather than make particular laws to suit a given people. In practical terms, it requires the concentration of power in the hands of some one or few persons claiming the right and wisdom to determine the proper character of the people and how to achieve it.<sup>8</sup>

Such projects for centuries have been associated with the early modern political theorist Niccolo Machiavelli—in some ways the founder of modern political science. In particular, Machiavelli was convinced that political rulers, whether princes or republican leaders, must stamp out various forms of “corruption,” by which he meant loyalties standing in the way of state power and influence.<sup>9</sup> Machiavelli's self-conscious

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<sup>8</sup> It should come as no surprise that the god-like role of the lawgiver has ancient roots, going back to ancient conceptions of the king as creator of literal as well as legal order out of chaos. See BRIAN BIX, *JURISPRUDENCE: THEORY AND CONTEXT* ch. 1 (7th ed., 2015). Plato also seems to harbor an aversion to the rule of law as an obstacle to “wise rule,” wherein the ruler with “expertise” commands without mediation:

And whether they [i.e. the ruler(s)] purge the city for its benefit by putting some people to death or else by exiling them, or whether again they make it smaller by sending out colonies somewhere like swarms of bees, or build it up by introducing people from somewhere outside and making them citizens—so long as they act to preserve it on the basis of expert knowledge and what is just, making it better than it was so far as they can, *this* is the constitution which alone we must say is correct, under these conditions and in accordance with criteria of this sort.

PLATO, *STATESMAN* 293d-e (C.J. Rowe trans.), in *PLATO: COMPLETE WORKS* 337 (John M. Cooper ed., 1997).

<sup>9</sup> J.G.A. Pocock discusses, as an example, the threat to the state Machiavelli perceived in the castle-holding lords outside of cities. See J.G.A. POCOCK, *THE MACHIAVELLIAN MOMENT* 209–11. In a similar way, Machiavelli, as well as his intellectual descendants, distrust [Catholic] Christianity, because “it taught men to give themselves to ends other than the city's and to love their own souls more than the fatherland.” *Id.* at 202.

resuscitation of ancient notions of virtue also was a rejection of the idea that subjects and citizens might be loyal to associations other than the city without becoming enemies of the state.<sup>10</sup>

My concern is that Smith's analysis remains wedded to the prejudices of this early modern political science, most especially its monistic conception of political society and its sovereignty. In its very title, "Pagans and Christians in *the City*" this book furthers the modern error of assuming societies, and indeed civilizations, can be summed up in terms of a single unit. In so doing, and despite some bows toward individual conscience and religious community, Smith fails to question in any full sense the modern view that there must be some center of power and authority, some single, particular common source of authority and definition of the common good. Along this line, Smith defends the vision of "a city or a political community that respects and is open to transcendence" and laments repudiation of "the generically, implicitly Christian city that Americans have inherited."<sup>11</sup> But societies—in contemporary terms nations—are not cities, and to equate a city with a political community today is to perpetuate that longstanding, mistaken view that political structures, and especially the nation-state, are the sole proper locus of affection and loyalty; that the nation is a community rather than a collection of smaller, more natural and fundamental associations.

I've stated this criticism much too baldly. Smith's repetition of the "Whig" version of history, in which religion and community are shucked off over time to make way for a liberated individualism, clearly is told in part as a means of elucidating the origins of today's atavistic atomism. Still, some of these assumptions underly his discussion of debates over religious freedom in America and so are worth questioning. In particular, as we confront modern paganism's totalitarian impulses, it is good to remember the limits of Christian political claims. For example, Augustine, and later Thomas Aquinas, advised against too vigorous a pursuit of the good in this life, for example by sanctioning practices like prostitution, because he recognized the inevitability of sin, the limits of law, and the damage done to

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<sup>10</sup> See, e.g., *id.* at 202, 210–11.

<sup>11</sup> PAGANS AND CHRISTIANS, *supra* note 2, at 303.

society through political overreaching.<sup>12</sup> Through the process of re-paganization, then, we are not merely exchanging one totalist vision of society for another, but replacing a more limited, hence intrinsically more tolerant, notion for one that, perhaps ironically, lacks the will or ability to tolerate multiple loyalties or deep dissent over the long term.

The absolutist strain of politics mis-identified with Medieval Europe is an early modern invention based on a mis-reading of ancient examples and aimed at solidifying the nation-state. It undermines that multiplicity of authorities, including legal jurisdictions, at the heart of ordered liberty, including, of course, religious liberty.<sup>13</sup> Aristotle argued that the *polis*—today mistranslated as “city-state” but actually meaning “city-community”—requires a kind of friendship dependent on commonality. Aristotle’s city-communities—Athens, Sparta, and so on—were tight-knit, tribal groupings fighting for survival and dominance in a pitiless world. They were total communities in which freedom, slavery, and structures of life down to whether the people would eat in their homes or at common messes, were considered issues of crucial public importance.<sup>14</sup> Many good things came from the *polis* but limited government, ordered liberty, and the rule of law were not among them. As to the modern rebirth of the *polis*, that way lies the revolutionary terror of the guillotine.<sup>15</sup>

Less oddly than might seem, the alternative to the all-encompassing *polis* is the nation. Aristotle described the nation as the alternative to the city-community; his nation was of a particular sort, however, in that he described the nation in terms and in reference to ancient empires—that is, as an alliance made up of smaller, more natural associations.<sup>16</sup> Rome attempted to maintain the nature of a city while running an empire. Over the long run this attempt failed to work for the republic or,

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<sup>12</sup> ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, pt. II-II, Q. 10, art. 11 (English Dominican Friars eds., The Aquinas Institute for the Study of Sacred Doctrine, 2012).

<sup>13</sup> See generally BERTRAND DE JOUVENEL, *SOVEREIGNTY: AN INQUIRY INTO THE POLITICAL GOOD* (J.F. Huntington, trans., 1997) (1957).

<sup>14</sup> 1 GIOVANNI SARTORI, *THE THEORY OF DEMOCRACY REVISITED* 278–81 (1987).

<sup>15</sup> For the excesses of the leaders of Revolutionary France against individuals and entire cities viewed harmful to the *patrie*, see SIMON SCHAMA, *CITIZENS: A CHRONICLE OF THE FRENCH REVOLUTION* 783–86, 789–92 (1989).

<sup>16</sup> ARISTOTLE, *POLITICS*, 1276a 26–31. Aristotle, *Politics* 64 (Stephen Everson ed., B. Jowett trans., 1996) (noting the difference between a Greek *polis* as a single city-state and the comparatively immense Babylon).

eventually, the empire itself. That said, it is worth remembering that the Roman Empire lasted as long as it did by providing maximum autonomy to local peoples' associations and institutions. Formerly independent kingdoms might retain the bulk of their previous way of life by surrendering control over their foreign policy to Rome and, of course, paying tribute.<sup>17</sup>

Over time, Christendom replaced Rome as an empire of empires—a complex network of overlapping and even competing legal and political jurisdictions rooted in local ties. Through most of its history the United States fit, in broad terms, this imperial pattern and thereby allowed for religious, spiritual, and political liberty of a kind not found in Rome or any ancient city. That imperial pattern of nationhood sometimes goes by the name “federalism,” but only federalism of the kind practiced during the early republic—that is, one that in contemporary terms would be deemed a strict, locality-centered sort.<sup>18</sup> One prominent, indicative example is provided by that strict constructionist, Thomas Jefferson. In a letter to James Madison, Jefferson predicted a successful expansion of the American union in any conflict with European power; with such an eventuality, “we should have such an empire for liberty as [the world] has never surveyed since the creation: & I am persuaded no constitution was ever before so well calculated as ours for extensive empire & self government.”<sup>19</sup> The loosely-structured American republic, precisely because of its loose structure, was capable of fostering self-government over a wide geographic expanse—of becoming an extensive “empire for liberty.”

The paradigm within which Smith operates is of “one nation under God”—in which “the determination of what the transcendent authority demands will be left to individuals.”<sup>20</sup> Smith himself criticizes what little discipline exists in Supreme Court treatment of individual claims of conscience on the

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<sup>17</sup> The trial of Jesus furnishes an example of the Roman Empire's respect for the law of the peoples over which it “ruled.” See *Luke* 23:6-11 (Douay-Rheims) (Wherein Pilate realizes that Jesus belongs to the jurisdiction of Herod and sends Jesus to him).

<sup>18</sup> Note that even the supposedly “pro-federalism” argument of the Supreme Court in *United States v. Lopez*, 514 U.S. 549 (1995) accepts that Congress has the power to regulate activities that are not themselves interstate commerce but merely affect it.

<sup>19</sup> Letter from Thomas Jefferson to James Madison, (Apr. 27, 1809), in 1 THE PAPERS OF THOMAS JEFFERSON: RETIREMENT SERIES 4 MARCH 1809 TO 15 NOVEMBER 1809, 169 (J. Jefferson Looney ed., 2004).

<sup>20</sup> PAGANS AND CHRISTIANS, *supra* note 2, at 326.

grounds that it establishes a “sovereign community” in the zone of religious freedom, denying religious accommodation on political grounds.<sup>21</sup> This is to misread the nature of religion and constitutionalism in the United States from before the founding through the nineteenth century and, in much of the country, to this day.

The word “religion” derives from a root meaning “to bind,” and, as adopted by the medieval, it referred in particular to religious and liturgical life.<sup>22</sup> It is a social and communal as much as an individual and theological institution and practice. This fact was recognized at the founding when Massachusetts, Connecticut, and New Hampshire all implemented a plan of religious assessments (legislatively enacted but not implemented in Maryland and Georgia, rejected after vigorous debate in Virginia) that taxed all citizens for the support of religion. The result was not established churches as generally understood, but rather support for religious communities as each citizen directed his tax monies to the church of his choice.<sup>23</sup> The battle over local “establishments” was long and contested, involving as it did hatred of Catholics, frontier reliance on limited clerical resources, and the rise of a nationalizing civil religion.<sup>24</sup> It was not definitively “won” by nationalist secularizers until incorporation of the religion clause by the Supreme Court beginning with its decision in *Everson v. Board of Education*.<sup>25</sup>

Smith certainly is not ignorant of the necessity of limitations on power for ordered liberty, or of the development of religious freedom in part, at least, through the maintenance of multiple foci of power. He rightly points out how the so-called papal revolution of the early Middle Ages, separating religious and secular jurisdictions, fostered growth of the rule of law. But I wish he had taken more seriously the importance of overlapping and competing jurisdictions for the development of constitutionalism as shown by Harold Berman and Kenneth

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<sup>21</sup> *Id.* at 327.

<sup>22</sup> William T. Cavanaugh, “A Fire Strong Enough to Consume the House”: *The Wars of Religion and the Rise of the State*, 11 *MOD. THEOLOGY* 397, 404 (1995).

<sup>23</sup> See Exhibition, *Religion and the Founding of the American Republic: Religion and the State Governments*, LIBRARY OF CONGRESS, <https://www.loc.gov/exhibits/religion/rel05.html> (last visited Jan. 24, 2019).

<sup>24</sup> See generally PHILIP HAMBURGER, *SEPARATION OF CHURCH AND STATE* (4th prt. 2004) (2002).

<sup>25</sup> 330 U.S. 1 (1947).

Pennington, among others.<sup>26</sup> As it is, he presents a simplified “two-swords” version that repeats the Whig fallacy of a march toward secular individualism; the notion of two separate but equal powers—the ecclesiastical and the secular—captures only part of the mesh of contending powers that was medieval Europe.<sup>27</sup> To begin, the two-swords theory ceded to secular authorities the power to make laws for religious as well as political institutions and persons.<sup>28</sup> The Church in early Christian Europe was dominated by secular authorities and purposes to the point that it could not be said to have wielded any separate power.<sup>29</sup> In continuity with pagan practice, kings were in essence tribal leaders, chief judges of their peoples, and sacred rulers superior to clerics of all ranks and types.<sup>30</sup> But the institutional separation achieved over time was neither clean nor along any strict, “sacred-secular” line; there were more than two jurisdictions of law, more than two levels and loci of political authority, even, showing how mistaken contemporary claims of the inevitability of modern sovereignty truly are.<sup>31</sup> Conflicts over the extent (and temporal length) of the right of sanctuary, definitions of the ecclesiastical sphere, and the reach of royal, merchant, and local laws all enhanced the ability of persons and communities to carve out room for self-government.<sup>32</sup>

The history of the Medieval Church is filled with evidence of the connections between liberty and the multiplicity of associations, each with important rights. Cathedral chapters competed with Bishops for power and funds; domestic houses, diocese, and even the Church as a whole all were treated at law as corporations with their own chartered as well as intrinsic rights, which often came in conflict and required adjudication.

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<sup>26</sup> See, e.g., KENNETH PENNINGTON, *THE PRINCE AND THE LAW* (1993); HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983).

<sup>27</sup> *PAGANS AND CHRISTIANS*, *supra* note 2, at 311–15.

<sup>28</sup> BERMAN, *supra* note 26, at 92.

<sup>29</sup> *Id.* at 88.

<sup>30</sup> *Id.* at 89.

<sup>31</sup> For the role of cities in this patchwork of jurisdictions, see *id.* at 395; for the development of institutional checks on monarchs through charters, see *id.* at 501–05. See also David J. Bederman, *Diversity and Permeability in Transnational Governance*, 57 EMORY L.J. 201, 213 (2007).

<sup>32</sup> See generally Bruce P. Frohnen, *The One and the Many: Individual Rights, Corporate Rights and the Diversity of Groups*, 107 W. VA. L. REV. 789 (2005).

And the corporation with a higher position within the supposedly unquestioned, absolute hierarchy was not always on the winning side of such litigation.<sup>33</sup>

In the American context as well, Smith repeats the monist fallacy. Focusing on Madison and Jefferson he presents a picture of religious liberty as a conflict between the individual and the (usually political) community.<sup>34</sup> The Jeffersonian vision, so sacred to today's elites, was aimed only at the "general" government, not intended to interfere with state and local practices.<sup>35</sup> Moreover, even as regards the federal government, Jefferson's vision was only one, extreme take on religious liberty.<sup>36</sup> It was not reflected, for example, in the abiding recognition of Christianity as part of the common law of American jurisdictions through the nineteenth century,<sup>37</sup> of American courts' insistence on upholding laws against blasphemy,<sup>38</sup> or of the decision in the case of *Reynolds v. United States*<sup>39</sup> (noted by Smith) upholding America's Christian cultural character and foundation in monogamous marriage. Smith's focus on the Jeffersonian vision in opposition to the mainstream of legal and constitutional practice privileges liberalism's individual/state binary, hiding the role of federalism in maintaining religious community and liberty in creative tension.

The connections among a diversity of authorities, the consequent political liberty, and religious liberty are both deep and close. It was not federalism as a merely structural entity that allowed for associational and especially religious liberty in the United States. Administrative decentralization in the United States, like that in Medieval Europe, encouraged a diversity of faiths and institutions at the local level along with a more

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<sup>33</sup> See Rights and the Cathedral Chapter, in CHARLES REID, RIGHTS IN THIRTEENTH-CENTURY CANON LAW: AN HISTORICAL INVESTIGATION (May 1995) (unpublished Ph.D. Dissertation, Cornell University) (on file with author). For a discussion of how this corporate understanding related to secular law and rights as well, see Brian Tierney, *Religion and Rights: A Medieval Perspective*, 5 J.L. & RELIGION 163, 170 (1987).

<sup>34</sup> PAGANS AND CHRISTIANS, *supra* note 2, at 326–27.

<sup>35</sup> See, e.g., Jefferson's Second Inaugural Address and Letter to Reverend Samuel Miller, in THE SACRED RIGHTS OF CONSCIENCE 530–31 (Daniel L. Dreisbach & Mark David Hall eds., 2010) [hereinafter THE SACRED RIGHTS OF CONSCIENCE].

<sup>36</sup> See *id.* at ch. 13

<sup>37</sup> See, e.g., Joseph Story, *Christianity a Part of the Common Law*, in THE SACRED RIGHTS OF CONSCIENCE, *supra* note 35, at 551–52.

<sup>38</sup> See, e.g., *People v. Ruggles*, 8 Johns. 290 (N.Y. 1811).

<sup>39</sup> 98 U.S. 145 (1878).

general spirit of local self-government. As Alexis de Tocqueville pointed out, liberty is lived at a level more local than either the federal or the state. It is participation in political life that gives people the capacity and the desire to both protect self-government and to make it work. What this meant in the American context was a streak of independence rooted in practical life within family, church, and a variety of local associations, fostering a “science of association.”<sup>40</sup> It was this science which allowed Americans to put into practice the Puritan combination of the spirit of religion and the spirit of liberty.<sup>41</sup> The spirit of religion was necessary for the spirit of liberty because it maintained a moral order within each person’s soul and within the community as a whole, in large measure by recognizing each person’s natural propensity to form associations.<sup>42</sup>

The bulk of Smith’s discussion of religion understandably concerns post-Civil War developments. Unfortunately, he accepts the cultural and political presumptions underlying contemporary readings of the Fourteenth Amendment. One need hold no brief for racism to recognize the limits of the Fourteenth Amendment’s intended reach, or to recognize the radical implications of the revisionist history thereof.<sup>43</sup> Smith’s largely individualist response to the problems of religion clause jurisprudence rests on acceptance of incorporation—the foundation of the nationalized church of secularism and individual conscience. It may be necessary for a practicing lawyer to accept the reality of incorporation, but to understand the roots of today’s angry malaise requires recognition that the destruction of federalism was central to this development.

It is in the area of civil religion that Smith’s analysis becomes most troubling. He relies on Robert Bellah’s definition of civil religion as a set of rituals and norms binding Americans together as a nation.<sup>44</sup> Bellah’s goal was a national community—a self-evidently contradictory concept—on the basis of beliefs that on even cursory inspection are simply political. He demanded

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<sup>40</sup> ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 492 (Harvey C. Mansfield & Delba Winthrop trans. and eds., 2000).

<sup>41</sup> *Id.* at 43.

<sup>42</sup> *Id.* at 89–90.

<sup>43</sup> The classic response to such revisionism remains *RAOUL BERGER, GOVERNMENT BY JUDICIARY: THE TRANSFORMATION OF THE FOURTEENTH AMENDMENT* (2d ed., 1997) (1977).

<sup>44</sup> *PAGANS AND CHRISTIANS*, *supra* note 2, at 295.

socialism as the true message of his version of Christianity. In brief, Bellah sought to immanentize the eschaton in an all-encompassing national edifice held together by political and legal forces. Smith's choice of Bellah as an exemplar of a lost vision of the Christian city is deeply unfortunate.

Again, my criticism no doubt appears more harsh than I intend. There is much in Smith's narrative to show that he is presenting the rise of a problematic individualism and that this rise is in opposition to something deeper and more communitarian.<sup>45</sup> Still, Smith's references to his *The Agnostic Constitution* show a troubling lack of concern with the role of federalism and local communalism in understanding religion's role in American public life.<sup>46</sup> It is true that religion increasingly has come to mean simple individual "conscience" to the exclusion of transcendent standards of belief and conduct.<sup>47</sup> At least as important, however, has been the undermining of constitutional religious "agnosticism" through the destruction of meaningful federalism, splintering not just the constitutional structure, but the cultural reality it was intended to protect.

The "agnostic constitution" was agnostic only because and to the extent that the mechanisms of the national government were set upon and intended primarily to protect the more natural, local, and specifically religion-based societies existing within the states and their localities. When the many cities in our states came to be seen as interlopers competing for attention and affection belonging to one, sacred nation, their religions also came to be seen as enemies of a single, common, and overwhelmingly political culture. This was the point at which religious practice was brought under federal control so that it might be contained, shaped, and eventually forced out of the public mind. From a variety of accommodations we were pushed into a situation where lawyers were called upon to define a precise divide between religious and secular life to the detriment of both, as the one was forced out of public space and the other sought with increasing desperation to make beatitude achievable within history.

Whether in Christendom or within the cities of the American states, genuine religious community, rooted in transcendent standards and beliefs, brought conflict as well as cooperation.

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<sup>45</sup> *Id.* at 312.

<sup>46</sup> *Id.* at 295–96.

<sup>47</sup> *Id.* at 330.

But this conflict bred freedom and self-government because it limited the reach and effectiveness of any centralized authority. It also bred genuine religious belief and conduct because that belief mattered to public as well as private life and was treated as foundational and a worthy subject of strong debate. The “dissidence of dissent”<sup>48</sup> that brought about the American Revolution fostered a society of overlapping and competing cultures, jurisdictions, and beliefs. It ruled out certain practices—most prominently polygamy. It allowed for a wide variety of beliefs and ways of life. When it was stifled by nationalizing forces and laws the religious spirit was stifled as well.<sup>49</sup>

In brief, I wish Steve Smith in what in many ways is a masterful work had integrated into it the understanding that centralization itself is the enemy of liberty, including religious liberty, and that modern political religion, with its commitment to fundamental transformation, does not merely sacralize daily life, it stakes a claim to the sacred nature of its own political program, degrading the status, importance, and safety of religious (and other) associations. Centralized power by nature is a danger to freedom and responsibility because it establishes tyranny in the old sense of a political leader’s ability to act according to will rather than law.<sup>50</sup>

The danger of centralization is real within religious as well as political associations. Here I would reference in particular current scandals within the Catholic church, which many have traced to errors they believe made their way into canon law and church administration following on Vatican I. Whatever one makes of the necessity and wisdom of some of these changes, it is important to note that the church before that time was significantly decentralized and that laymen actually had more influence on and ability to check ecclesiastical power before the revised canon law of 1917 put the clergy and the hierarchy in particular beyond the reach of most counter-influences within and among the associations making up that church.<sup>51</sup>

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<sup>48</sup> EDMUND BURKE, SPEECH ON CONCILIATION WITH AMERICA 22 (Hammond Lamont ed., 1897).

<sup>49</sup> See generally ROBERT NISBET, THE QUEST FOR COMMUNITY (Intercollegiate Studies Institute 2010) (1953).

<sup>50</sup> THE FEDERALIST NO. 47 (James Madison).

<sup>51</sup> See generally Bronwen McShea, *Bishops Unbound: The History Behind Today’s Crisis of Church Leadership*, FIRST THINGS, Jan. 2019, at 33.

It may (or may not) be the case that “we can’t turn back the clock” toward a more decentralized understanding of both church and state. But it seems wise to remember, as we face ever-increasing demands for greater centralization of power in the name of social justice that the justice of free self-government was borne of decentralization.