



Jason Morgan

## Common Good Constitutionalism vs. America’s Enlightenment Civil Religion

### Introduction

Harvard Law professor Adrian Vermeule thinks that American law has an identity problem. “American law suffers from a terrible amnesia,” he writes in his 2022 book *Common Good Constitutionalism*.<sup>1</sup> American law, according to Vermeule, has forgotten that it can trace its roots back to the “*ius commune*, the classical European synthesis of Roman law, canon law, and local civil law.”<sup>2</sup> Because of this “anne-

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<sup>1</sup> Adrian Vermeule, *Common Good Constitutionalism: Recovering the Classical Legal Tradition* (Cambridge, England: Polity Press, 2022), 1. See also “Myths of Common-Good Constitutionalism,” *Ius and Iustitium*, September 9, 2021; Conor Casey and Adrian Vermeule, “Myths of Common Good Constitutionalism,” *Harvard Journal of Law and Public Policy*, vol. 45 (2022); Adrian Vermeule, “Beyond Originalism,” *The Atlantic*, March 31, 2020, accessed November 19, 2022, <https://www.theatlantic.com/ideas/archive/2020/03/common-good-constitutionalism/609037/>; and Adrian Vermeule, “Supreme Court Justices Have Forgotten What the Law Is For,” *New York Times* (Online), February 3, 2022.

<sup>2</sup> Adrian Vermeule, *Common Good Constitutionalism*, 1.



sia,” Vermeule further argues, American law “oscillates restlessly and unhappily between two dominant approaches, progressivism and originalism, both of which distort the true nature of law and betray our own legal traditions.”<sup>3</sup>

The solution to this amnesiac unmooring of American law from the *ius commune*, Vermeule says, is to return to the understanding of law which prevailed in the United States until, according to Vermeule, sometime in the middle of the twentieth century.<sup>4</sup> If jurists and jurisprudential scholars could go back to seeing law “as a reasoned ordering to the common good, the ‘art of goodness and fairness’, as the Roman jurist Ulpian [(ca. 170–223/228) put it—an act of purposive and reasoned rulership that promotes the good of law’s subjects as members of the community of peoples and nations,” Vermeule finds, then the United States could achieve a better and more just society for all.<sup>5</sup> “As against the progressives and originalists, I suggest that the best overall interpretation [...] of our public law requires us to revive the principles of the classical law, looking backward so that we may go forward. It is a case of *reculer pour mieux sauter*.”<sup>6</sup> Common good constitutionalism, then, is simply a matter of going deep into the

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<sup>3</sup> Adrian Vermeule, *Common Good Constitutionalism*, 1. See also Josh Hammer, “Common Good Originalism: Our Tradition and Our Path Forward,” *Harvard Journal of Law and Public Policy*, vol. 4, no. 3 (2021).

<sup>4</sup> See Adrian Vermeule, “Reviving the Classical Legal Tradition: Common Good Constitutionalism,” Lecture at Toledo Law School, September 13, 2022, accessed November 19, 2022, <https://www.youtube.com/watch?v=FDCWPIFqyG0>

<sup>5</sup> Adrian Vermeule, *Common Good Constitutionalism*, 1.

<sup>6</sup> *Ibid.*, 5. For a general overview of the “common good” in more concrete matters, specifically property rights, see, e.g., Eric T. Freyfogle, “Eight Principles for Property Rights in the Anti-Sprawl Age,” *William and Mary Environmental Law and Policy Review*, vol. 23, issue 3, article 4 (1999): 787–796, and Gregory S. Alexander, Eduardo M. Peñalver, Joseph William Singer, and Laura S. Underkuffler, “A Statement of Progressive Property,” *Cornell Law Review*, vol. 94, no. 4 (2009): 743–744.

sources to rediscover the old, good trajectory of American jurisprudence and legal philosophy.

While Vermeule acknowledges, even hopes, that this project of recovering the nearly lost identity of American law will involve looking beyond the United States to the wider legal tradition of the West, I find this optimism to be premature.<sup>7</sup> What Vermeule seems not to have taken into account in advancing a new-old way of viewing American law is the dominance of civil religion in American life. It is not that it is impossible to effect the *ius commune* in a given society. Vermeule's problem, one which he does not acknowledge in any of the works I have read by him, is that the American politico-theological domain itself will stymie any attempt to overlay or interject a competing theological moral scheme. There can be no natural law effected inside a polity which is itself a denatured metaphysic, a religion in its own right. Unless there is a "great awakening" of sorts away from the American civil religion, then Vermeule's project seems bound to fail—or, worse, to help advance a further advance of the civil religion, masquerading under yet another corruption of a genuine religious ideal. In short, if Vermeule cannot articulate how common good constitutionalism, which for Vermeule is heavily informed by Catholic notions of social justice and the *bonum commune*, can overcome the Enlightenment civil religion of the United States, then any attempt at a competing re-sacralization of jurisprudence is bound to break on that civil religion's rocks.<sup>8</sup>

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<sup>7</sup> Adrian Vermeule, *Common Good Constitutionalism*, 5.

<sup>8</sup> For a caustic take on Vermeule's Catholic influences, see Bernard Keenan, "Baptizing the State: Vermeule's Common Good," *Critical Legal Thinking*, May 23 (2002), accessed November 19, 2022, <https://criticallegalthinking.com/2022/05/23/baptizing-the-state-vermeules-common-good>.

## What Is Civil Religion?

The word “Enlightenment” has come to connote the secularization of the commons and the privatization of whatever residual metaphysics lingers after communal life has been rendered a this-worldly political problem. However, as the Enlightenment philosopher Thomas Hobbes (1588–1679) understood, an atomized polity requires an absolute political strongman to keep order. In Hobbes’ reading, religion and the state are the same thing.<sup>9</sup> Turn to whichever Enlightenment thinker you please, the story will always be identical in essentials. Newtonian Deists, the Kantian “moral law,” the pseudo-Lockean “nature’s God,”<sup>10</sup> Moses Mendelssohn’s (1729–1786) Enlightenment Judaism,<sup>11</sup> Benjamin Franklin’s (1706–1790) “reasonable Christianity,”<sup>12</sup> Ernst Troeltsch’s (1865–1923) “absolute Christianity,”<sup>13</sup> William James’ (1842–1910) “ethical republic,”<sup>14</sup> and so on: the deracination of the

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<sup>9</sup> Heinrich A. Rommen, *The State in Catholic Thought: A Treatise on Political Philosophy* (Middletown, DE: Cluny Media, 2016), 381, and Stewart Duncan, “Review of Laurens van Appeldorn and Robin Douglass, eds., *Hobbes on Politics and Religion*, Oxford University Press 2018,” *Notre Dame Philosophical Reviews* (2019), accessed November 19, 2022, <https://ndpr.nd.edu/reviews/hobbes-on-politics-and-religion>.

<sup>10</sup> See Matthew Stewart, *Nature’s God: The Heretical Origins of the American Republic* (New York, NY: W.W. Norton, 2014); David Novak, “The Bottom Line,” *First Things*, May 2022, accessed November 19, 2022, <https://www.firstthings.com/article/2022/05/the-bottom-line>; and C. Bradley Thompson, “On Declaring the Laws and Rights of Nature,” *Social Philosophy and Policy*, vol. 29, no. 2 (2012).

<sup>11</sup> James Schmidt, “Liberalism and Enlightenment in Eighteenth-Century Germany,” *Critical Review*, vol. 13, nos. 1 & 2 (1999).

<sup>12</sup> Kevin Slack, “Benjamin Franklin and the Reasonableness of Christianity,” *Church History*, vol. 90, no. 1 (2021).

<sup>13</sup> Ernst Troeltsch, *The Absoluteness of Christianity and the History of Religions*. Translated by David Reid (Louisville, KY: Westminster John Knox Press, 2005).

<sup>14</sup> Trygve Throntveit, “William James’s Ethical Republic,” *Journal of the History of Ideas*, vol. 72, no. 2 (2011): 259.

Godhead and His demotion to political mantelpiece is the common Enlightenment cause.<sup>15</sup>

The idea of a civil religion is not strictly Enlightenment, however.<sup>16</sup> Some scholars see echoes of Niccolò Machiavelli (1469–1527) and even Plato (ca. 428/7 or 424/3–ca. 348/7) in Jean-Jacques Rousseau's (1712–1778) civic republicanism idea, and St. Augustine (354–440) lays out a devastating critique of civil religion in *City of God*.<sup>17</sup> Mixing politics and religion, and even conflating the two, is as old as humanity itself. But what is different about the Enlightenment civil religion is that it dispenses with even the hypocrisy of pretending to believe in any higher power or powers at all, reducing the metaphysical to the political while substituting the secular for the otherworldly. Politics, in particular its trappings and the emotions which political drama produces, becomes the religion of the realm. As political theory scholar Cary J. Nederman points out in his 2012 Arthur O. Lovejoy lecture on civil religion:

A widely propounded criticism of the conventional liberal position [i.e., that “the good (liberal) citizen must hold in check his or her confessional commitments for the sake of settled non-religious agreement

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<sup>15</sup> Russell Hittinger, “The Churches of Earthly Power,” *First Things*, June/July 2006, and James E. Bradley, “Review of David Sorkin, *The Religious Enlightenment: Protestants, Jews, and Catholics from London to Vienna*, Princeton University Press, 2008,” *Church History*, vol. 80, no. 2 (2011); but see also David Sorkin, *The Religious Enlightenment: Protestants, Jews, and Catholics from London to Vienna* (Princeton, NJ: Princeton University Press, 2008), 1–11.

<sup>16</sup> But see Ran Hirschl and Ayelet Shachar, “Competing Orders? The Challenge of Religion to Modern Constitutionalism,” *The University of Chicago Law Review*, vol. 85, issue 2 (2018): 8–14.

<sup>17</sup> Brent Edwin Cushner, “A Master of the Art of Persuasion: Rousseau's Platonic Teaching on the Virtuous Legislator,” in Geoffrey C. Kellow and Neven Leddy, eds., *On Civic Republicanism: Ancient Lessons for Global Politics* (Toronto: University of Toronto Press, 2016), 227.

on what constitutes justice and related public goods associated with constitutional democracy”], from both an empirical and a theoretical perspective, contends that some manner of ‘civil religion’ is a valuable, even necessary, tool for the promotion and perpetuation of public unity in modern societies. Citizens who do not share a common rite—whether the acceptance of a form of outward worship or of an internalized system of orthodox belief—are fated sooner or later to enter into sectarian strife. From this viewpoint, however, the truth or falsity of religion is ultimately less important than (or even irrelevant to) its utility as a resource for marshalling patriotism or manifestations of civic virtue. What counts is that religion is not relegated to the private sphere of individual conviction, but is continually employed as a symbolic expression of shared identification around which citizens rally. For proponents of the civil religion thesis, it is precisely the privatization of faith advocated by liberalism that engenders division and conflict among a nation’s populace.<sup>18</sup>

What went out by the front door thus comes back in through the back. Religion—that is, in the case of Europe, Christianity—was privatized and deracinated.<sup>19</sup> But the application of pure liberal indifference (often masquerading as “toleration”) did very little to form the political center which the Enlightenment ideologues desired.<sup>20</sup> So, a new kind of religion took the stage, one made up of politics itself.<sup>21</sup>

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<sup>18</sup> Cary J. Nederman, “2012 Arthur O. Lovejoy Lecture: Civil Religion—Metaphysical, Not Political: Nature, Faith, and Communal Order in European Thought, c. 1150–c. 1550,” *Journal of the History of Ideas*, vol 74, no. 1 (2013): 1–2.

<sup>19</sup> See Russell Hittinger, “The Churches of Earthly Power.”

<sup>20</sup> Jeffrey R. Collins, “Redeeming the Enlightenment: New Histories of Religious Toleration,” *The Journal of Modern History*, vol. 81, no. 3 (2009).

<sup>21</sup> It should be noted that Nederman wishes to complicate this dichotomy in his essay, which deserves to be read in full to appreciate the nuances he raises about so-called civil religion before the rise of what is understood as such today.

There is a great irony in this. Many times, Enlightenment thinkers couched their anti-religious crusades in a desire to end the “wars of religion” which the Protestant Revolt brought to Europe.<sup>22</sup> However, while Enlightenment philosophers have often envisioned utopias of political harmony to follow once the contentious element of revealed religion has been reined in and, it was hoped, eventually eliminated, the reality which broke in on those daydreams made the Enlightenment philosophers’ reveries seem more like hallucinations. For this reason, among others, civil religion was put to plenary use during the French Revolution, when the Enlightenment drive to replace God with human symbols and inventions was in full swing.<sup>23</sup> As the Enlightenment shock troops who took over the French government in the late eighteenth century intuited, something beyond the mere collapse of Christendom into Cartesianism was required.<sup>24</sup> This was to be a “civil religion.” Jean-Jacques Rousseau, who is often credited with the idea, called it “civic republicanism.”<sup>25</sup> But to exalt the republic is to engage in civil religion, so while the naming is different the effect is the same.

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<sup>22</sup> See Patrick Maume, “‘Great Angels’ in Antrim: Hugh Shearman, Theosophist Perceptions, and Ulster Unionist Public Relations,” *Irish Historical Studies*, vol. 45, issue 167 (2021): 68.

<sup>23</sup> See Duncan Kennedy, “American Constitutionalism as Civil Religion: Notes of an Atheist,” *Nova Law Review*, vol. 19, issue 3 (1995): 909. See also Hugh McLeod, “Journeys in Church History: Chalk and Cheese: Moving between Historical Cultures,” *The Catholic Historical Review*, vol. 108, no. 3 (2022): 454–455, and Jean Bethke Elshtain, *Sovereignty: God, State and Self* (New York, NY: Basic Books, 2008), cited in D. Etienne de Villiers, “Do Christian and Secular Moralities Exclude One Another?” *Verbum et Ecclesia*, vol. 42, no. 2 (2021): pp. 2–3.

<sup>24</sup> See John Carroll, *The Wreck of Western Culture: Humanism Revisited* (Wilmington, DE: ISI Books, 2008), 135–152.

<sup>25</sup> Brent Edwin Cushner, “A Master of the Art of Persuasion: Rousseau’s Platonic Teaching on the Virtuous Legislator,” in Geoffrey C. Kellow and Neven Leddy, eds., *On Civic Republicanism: Ancient Lessons for Global Politics* (Toronto: University of Toronto Press, 2016).

The needfulness and versatility of civil religion are shown by the spectacular growth of the genre after the French Revolution. Under the influence of the ideas of Auguste Comte (1798–1857), for instance, governments initiated massive ideological campaigns to inculcate “order and progress,” themselves sub-dogmas of the state’s new and burgeoning religious panoply. The eventual fetishization of political theater and the worship of the state as transcendent power reached new extremes in the twentieth century with the garish displays of Mussolinism in Italy, Hitlerism in Germany, Ceausescuism in Romania, and the evergreen Kimism in North Korea. All of these, and many more, are examples of Enlightenment civil religion reaching its (un)natural culmination in the deification of mortals and the worship of government.<sup>26</sup>

However, while the abovementioned instantiations of civil religion are certainly to be noted, the ongoing example of the United States of America as an Enlightenment civil religion is too often overlooked. As American political strife has become highly salient in recent decades, and as civil war talk has come to the fore, many commentators and scholars have, with very good reason, focused on the deep divides in political outlook in the United States.<sup>27</sup> However, a different reading is that these political divides almost exclusively unfold within the American civil religion itself. It is not that America is a divided nation

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<sup>26</sup> See, e.g., Flavio A. Geisshuesler, “Civil Religion (1929–1335[sic]): The Return to Something New as Modernist Alternative to Mircea Eliade’s Politics of Nostalgia” and “The Crisis of the Presence (1936–1941): The Antifascist Sacralization of Politics and the Rise of Magical Thinking during WWII,” in Flavio A. Geisshuesler, *The Life and Work of Ernesto de Martino: Italian Perspectives on Apocalypse and Rebirth in the Modern Study of Religion* (Leiden: Brill, 2021), and Eric Voegelin, ed. Manfred Henningsen, *The Collected Works of Eric Voegelin*, vol. 5. *Modernity without Restraint: The Political Religions, The New Science of Politics, and Science, Politics and Gnosticism* (Columbia, MO: University of Missouri Press, 2000).

<sup>27</sup> Irene Taviss Thomson, “Respect for Religion but Uncertainty about Its Role,” in Irene Taviss Thomson, *Culture Wars and Enduring American Dilemmas* (Ann Arbor, MI: University of Michigan Press, 2010); Jason Morgan, “The Pernicious Myth of ‘Two



so much as that the American civil religion is now being contested by its radical and slightly less radical wings. The concept of civil religion handed down to America from the Enlightenment is not at all waning. It is ascendant, a power to behold. If Adrian Vermeule's common good constitutionalism is to stand a chance of succeeding in America, it must overcome perhaps the most powerful religion on earth, the most weaponized and this-worldly potent religion in human history: the United States of America as a civil religion.

### **“America” as Enlightenment Civil Religion Par Excellence**

In a well-known 1967 essay, American scholar of sociology and religion Robert N. Bellah (1927–2013) noted:

While some have argued that Christianity is the national faith [of the United States], and others that church and synagogue celebrate only the generalized religion of ‘the American Way of Life’, few have realized that there actually exists alongside of and rather clearly differentiated from the churches an elaborate and well-institutionalized civil religion in America.<sup>28</sup>

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Americas’,” *Chronicles*, October 2017, accessed November 19, 2022, <https://chronicles-magazine.org/view/the-pernicious-myth-of-two-americas/>; Brian Gabriel, “A ‘Crisis of Americanism’: Newspaper Coverage of John Brown’s Raid at Harper’s Ferry and a Question of Loyalty,” *Journalism History*, vol. 34, no. 2 (2008); John Gray, “The Left’s Last Utopia,” *National Review*, vol. 45, no. 14 (July 19, 1993): 33–34; and Peter Turchin, *Ages of Discord: A Structural-Demographic Analysis of American History* (Chaplin, CT: Beresta Books, 2016).

<sup>28</sup> Robert Bellah, “Civil Religion in America,” *Daedalus*, vol. 134, no. 4 (2005/1967): 40; see also Robert Bellah, “Religion and the Legitimation of the American Republic,” in Robert N. Bellah and Phillip E. Hammond, *Varieties of Civil Religion* (San Francisco, CA: Harper & Row, 1980).

Bellah focuses at the outset of his essay on the January 20, 1961 inaugural address of President John F. Kennedy (1917–1963), and in particular on how Kennedy used references to the word “God” to mean, not “Jesus Christ, or [...] Moses, or [...] the Christian Church[, or ...] the Catholic Church,” but God as a “concept,” God as “a word which almost all Americans can accept but which means so many different things to so many different people that it is almost an empty sign.”<sup>29</sup>

The ambiguity of the new American president’s references to “God” troubles Bellah. This, in turn, leads Bellah to open up a larger line of questions about what religion means in America, and how civil religion has largely taken the place of specific creed. Is Kennedy’s God-talk in his inaugural address “not just another indication,” Bellah asks, “that in America religion is considered vaguely to be a good thing, but that people care so little about it that it has lost any content whatsoever?”<sup>30</sup> “Isn’t [President Dwight D.] Eisenhower [(1890–1969)] reported to have said,” Bellah continues, “‘Our government makes no sense unless it is founded in a deeply felt religious faith—and I don’t care what it is’, and isn’t that a complete negation of any real religion?”<sup>31</sup>

Bellah tracks this strangely diplomatic deployment of references to the Godhead back to the civil religion of Rousseau.<sup>32</sup> However, one

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<sup>29</sup> Robert Bellah, “Civil Religion in America,” 41–42.

<sup>30</sup> *Ibid.*, 42.

<sup>31</sup> *Ibid.* See also Lorraine Smith Pangle and Thomas L. Pangle, *The Learning of Liberty: The Educational Ideas of the American Founders* (Lawrence, KS: University Press of Kansas, 2021), 188; Ryan Staude, “‘The Center of Our Union’: George Washington’s Political Philosophy and the Creation of American National Identity in the 1790s,” PhD Dissertation, State University of New York–Albany (2013): 286; and Andrew Polk, “‘Unnecessary and Artificial Divisions’: Franklin Roosevelt’s Quest for Religious and National Unity Leading Up to the Second World War,” *Church History*, vol. 82, no. 3 (2013).

<sup>32</sup> Robert Bellah, “Civil Religion in America,” 43.

also finds the American civil religion expressed in writings and speeches by Benjamin Franklin, George Washington (1732–1799), Thomas Jefferson (1743–1826), John Adams (1735–1826), James Monroe (1758–1821), James Madison (1751–1836), Abraham Lincoln (1809–1868), Lyndon Baines Johnson (1908–1973), and that astute French observer of American ways, Alexis de Tocqueville (1805–1859).<sup>33</sup> Look upon virtually any American statesman or thinker (or foreign observer of America) and you will look also upon an American civil religionist. The United States shapes divinity to suit its purposes. It ritualizes political processes (cf. “our sacred democracy” and “the sacred duty of voting”), solemnizes sacrifice for the political ideal (cf. the Tomb of the Unknown Soldier at Arlington National Cemetery and the Gettysburg Address), and invokes higher powers almost willy-nilly in furtherance of whatever strategy Washington, DC, is enamored of at a given historical moment (God is somehow always on Washington, DC’s side). America and religion are not enemies—they are twins.<sup>34</sup>

So thorough is the penetration of the American civil religion in the United States—so neatly do the two things match—that one finds it difficult to counter Bellah’s argument or even to find counterexamples problematizing his approach. The civil religion of America, in fact, would appear to be America itself.<sup>35</sup> The national anthem, for instance, sung before sporting events (which are themselves highly ritualized,

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<sup>33</sup> *Ibid.*, 43–51. See also Aaron L. Herold, “Tocqueville on Religion, the Enlightenment, and the Democratic Soul,” *The American Political Science Review*, vol. 109, no. 3 (2015).

<sup>34</sup> See Obbie Tyler Todd, “From Puritans to Patriots: The Republicanization of American Theology, 1750–1835,” *Journal of the Evangelical Theological Society*, vol. 64, no. 2 (2021): 341–342.

<sup>35</sup> See Rustin E. Brian, “Beyond Syncretism: On the Competing Liturgies of US Civil Religion and the Church,” in William Curtis Holzen and Matthew Nelson Hill, eds., *In Spirit and Truth: Reflections on Liturgy and Worship* (Claremont, CA: Claremont School of Theology Press, 2016), 168.

even religious, in nature), is an homage less to the nation-state than to the idea of America which seems ever to buoy it above the travails of the hour, the setbacks of the day.<sup>36</sup> When fighter jets scream over a stadium at the anthem's difficult-to-sing crescendo, it is as though angels of the apocalypse, chained to Washington's tether, had come screeching out of the sky to remind the masses of the awesome might of the distant, myth-wrapped capital. The flag, Old Glory, is elevated to a beacon proclaiming the civil religion's central themes: liberty, justice, rule of law, constitutional order, equality, and the promise of a better tomorrow (the latter routinely vulgarized and repackaged as access to multi-decade mortgages toward the purchase of real estate—"the American dream"). The same flag also wraps the coffins of the dead whom the state counts as good and faithful servants. The expanse of the North American continent is made an object of fervent devotion, America's "good" lauded as having been "crowned with brotherhood from sea to shining sea." "With the approach of a presidential election," writes Lewis H. Lapham, "the cadences of American political speech and writing become indistinguishable from those of the Puritan sermon."<sup>37</sup> In more bellicose refrains from the American civil religion hymnal, the conquering might of the Union army as it burned its way through the South is unabashedly equated with "the glory of the coming of the Lord," the power of the Union to liberate (Union war crimes tastefully elided) equated with the power of Christ to cleanse from sin. "As He died to make men holy," sing the American civil religionists, "let us die to make men free."<sup>38</sup>

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<sup>36</sup> Randall Balmer, *Passion Plays: How Religion Shaped Sports in North America* (Chapel Hill, NC: University of North Carolina Press, 2022) and Rebecca T. Alpert, *Religion and Sports: An Introduction and Case Studies* (New York, NY: Columbia University Press, 2015).

<sup>37</sup> Lewis H. Lapham, *Money and Class in America: Notes and Observations on Our Civil Religion* (New York, NY: Weidenfeld & Nicolson, 1998), 128.

<sup>38</sup> Terrance Klein, "Howe's 'Battle Hymn' and the Paradox of Freedom," *America*, May 28, 2016; Richard M. Gamble, *A Fiery Gospel: The Battle Hymn of the Republic*

As in the Civil War, so in the Revolutionary—His (is God meant here, or the president's?) truth goes marching on. In 1780, “before the Battle of King’s Mountain in South Carolina,” writes author and journalist Clifford Longley,

the local patriots, a mainly Presbyterian force ranged against the British, were rallied [...] with a sermon from the local minister which climaxed with the old Cromwellian battle cry, ‘The sword of the lord [sic] and of Gideon’, which the congregation shouted back in a frenzy.<sup>39</sup>

The Revolutionary War was a product, as John Adams confessed, of a revolutionary change in the ways in which Americans thought in the years leading up to the fighting.<sup>40</sup> The country became a kind of religion. Liberty became a dogma, and almost a sacrament.<sup>41</sup> Certainly a secular grace. And the founding texts of America, the ink remnants of the revolutionary fervor, have the quality, for many, of holy writ. Thomas Jefferson is famous for cutting up his New Testament so that the words of Jesus affirmed only the “reasonable” moral code which Jefferson held.<sup>42</sup> But Jefferson’s own words, for example in the

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*and the Road to Righteous War* (Ithaca, NY: Cornell University Press, 2019). See also Robert Bray, “Abraham Lincoln and the Two Peters,” *Journal of the Abraham Lincoln Association*, vol. 22, no. 2 (2001) 42–44, and Mitchell Haney Wilcoxon, *Abraham Lincoln’s Vow against the Catholic Church* (Milan, IL: Rail Splitter Press, 1928), 1–2, 6.

<sup>39</sup> Clifford Longley, “The Religious Roots of American Imperialism,” *Global Dialogue*, Winter–Spring 2003: 32.

<sup>40</sup> C. Bradley Thompson, “On Declaring the Laws and Rights of Nature,” *Social Philosophy and Policy*, vol. 29, no. 2 (2012): 104.

<sup>41</sup> See, however, Langston Hughes, “Let America Be America Again,” in Arnold Rampersad, ed., *The Collected Poems of Langston Hughes* (New York, NY: Vintage Classic, 1995).

<sup>42</sup> See John B. Boles, “Review of Peter Manseau, *The Jefferson Bible: A Biography* (Lives of Great Religious Books) (Princeton, NJ: Princeton University Press, 2020),” *Journal of Southern History*, vol. 87, no. 4 (2021).

Declaration of Independence, are kept under armed guard behind thick glass. No one may cut up the Declaration. Tourists—independent and otherwise—come duly to pay homage. Were any to genuflect before the parchment page I do not think it would seem at all out of place. One may burn a Bible in the street, but one may not so much as breathe on the immortal scribblings of Virginia planters. The entire American civil religion is just this, an unsubtle replacement of Christianity with its political and ideological clone.

Consider another text, and a bedrock of the American civil religion: the Constitution of the United States. The Constitution is of course also putatively the skeleton key of legal interpretation, the master code which solves all lesser legislative dilemmas. But one finds it difficult to ignore the civil religion which has built up around the document.<sup>43</sup> The framers and signers of the Constitution, those who staked their reputations on it in Philadelphia in 1789, largely saw their project as unfolding within Enlightenment parameters. The influence of John Locke on the Founders was profound, for instance. Many of the Constitutional Fathers were deists.<sup>44</sup> Some were Freemasons.<sup>45</sup> Black Founders, too, often couched their Americanism in Christian themes.<sup>46</sup> Historians sometimes speak of an “American Enlightenment,” while many more speak of the “Enlightenment in America” (often as a form of religion).<sup>47</sup> That American Enlightenment came into its own with

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<sup>43</sup> See, e.g., Nathan Pinkoski, “Postconstitutional America,” *First Things*, November 2020.

<sup>44</sup> See Obbie Tyler Todd, “From Puritans to Patriots”.

<sup>45</sup> Wayne E. Sirmon, “Review of Mark A. Tabbett, *A Deserving Brother: George Washington and Freemasonry* (Charlottesville, VA: University of Virginia Press, 2022),” *Alabama Review*, vol. 75, no. 4 (2022).

<sup>46</sup> See Richard S. Newman and Roy E. Finkenbine, “Black Founders in the New Republic: Introduction,” *The William and Mary Quarterly*, vol. 64, no. 1 (2007): 87.

<sup>47</sup> See, e.g., Henry F. May, *The Enlightenment in America* (New York, NY: Oxford University Press, 1976), cited at John M. Dixon, “Reviews of Books: Henry F. May and

the Constitution, a piece of paper to which men swear solemn oaths, and for which they are prepared to die—or, more accurately, endure martyrdom.

Perhaps the Enlightenment background and nature of the Constitution helps explain what has happened in the United States since the document was signed. Namely, the Constitution has become more central in direct proportion as Americans have become more ideologically unaligned. Over time, as Americans have moved ever farther apart on various levels and in various fields—morals, religion, basic social norms, views on the sanctity of human life, views on the irreconcilability of sin (sodomy, say, or pedophilia) with the common good—the Constitution has loomed ever larger in civic life. It may be fair to say that the Constitution is all that remains of shared civic life in the United States. Today, political debates in the United States rage around the Constitution, with some parties calling for it to be ripped to pieces and others for it to be restored to its proper place of respect. Either way, the Constitution—even when suffering calls for its destruction—is the arbiter of the American way of life. Mobs threaten to kill Supreme Court justices who do not interpret the Constitution to their liking, but Catholic bishops issue statements to collective shrugs and yawns. The American civil religion needs no charism of office. It looks for *sola scriptura*-like justification to the words of Masonic slaveowners with a fondness for liberty caps and “the Supreme Being.”

The *sola scriptura* centrality of the Constitution suggests another important facet of America's civil religion, one which makes it different from those of other times and places: America's civil religion is virtually indistinguishable from Protestant Christianity. (There's even a *Faith and Liberty Bible* for those who want the point driven home in

their daily religious reading.<sup>48</sup>) Martin Luther (1453–1546) ought to be grandfathered in as an honorary American citizen. (His American namesake has already been secularly sainted—and appears to have shared Luther’s darker proclivities as well.<sup>49</sup>) To be more precise, Protestant Christianity was Americanized, or at least Liberalized, more than America was made Christian.<sup>50</sup> And it is on the Protestant basis of the politico-theological American civil religion that *sola scriptura* can be used to justify any innovation. (Supreme Court justices are very good at finding rights in penumbras—one need only be suitably proficient in citing chapter and verse.)

To give just one example of how *sola scriptura* accompanies the American civil religion along its road of eternal revolution and liberation, consider a recent case from the transgender movement. The Supreme Court once recognized “the right of natural parents to direct the religious formation of their children.”<sup>51</sup> Those days have also been overrun by the religion of Americanism. In August of 2019, a software engineer named Ted Hudacko was informed by his soon-to-be-ex-wife that their son was “transgender.” Hudacko lost parental rights when the transgender activist judge overseeing the Hudackos’ custody hearings determined that Mr. Hudacko was insufficiently supportive of his son’s

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<sup>48</sup> American Bible Society, *Faith and Liberty Bible* (Philadelphia, PA: American Bible Society, 2021). But see also Mark David Hall, “The End(s) of American Civil Religion,” *Law and Liberty*, October 12, 2022.

<sup>49</sup> Pete Baklinski, “Martin Luther King Was a Sexual Predator, Newly-Released FBI Evidence Suggests,” *LifeSiteNews*, June 7, 2019.

<sup>50</sup> See generally J[ason]. M. Opal, “The Labors of Liberality: Christian Benevolence and National Prejudice in the American Founding,” *The Journal of American History*, vol. 94, no. 4 (2008). See also David Holland, “Review of Zachary McLeod Hutchins, *Inventing Eden: Primitivism, Millennialism, and the Making of New England* (Oxford University Press, 2014),” *Early American Literature*, vol. 51, no. 3 (2016).

<sup>51</sup> Francis J. Beckwith, “Separated at Baptism: What the Mortara Case Can Teach Us About the Rejection of Natural Justice by Integralists and Progressives,” *Brigham Young University Law Review*, vol 47, no. 4 (2022): 1102.



transgenderism.<sup>52</sup> That none of this bears the slightest resemblance to the Constitution matters zero. The spirit of liberty moves whither it listeth. In 2013, Benjamin Wiker said that liberalism is the “state religion” of America. In 2006, Ann Coulter spoke of the “church of liberalism.” It is *sola scriptura* which underpins that church and that religion.<sup>53</sup> If one can use the Bible to justify the ransacking of Christendom, as Luther did, then one can very easily use some Enlightenment phrasing from the eighteenth century to justify the mutilation of children. The American civil religion demands no less.

Nor can there be any dissent. It is greatly discomfiting for a country founded by dissenters, but from the time of Roger Williams (1603–1683), the indivisibility of the American civil religion was already plain. One may change the sky over one’s head, but the American civil religion is Americans’ very shadow. Americans are free to do anything but question the American civil religion. Everything in America appears to be liable to being integrated into the great national civil religion montage, and everyone in America, it seems, is bound to reckon with this phenomenon in some way.<sup>54</sup> The transformation of America into a religion has been so successful, in fact, that few seem to notice it any longer. Enlightenment glossolalia has become the political lingua franca. After the terrorist attacks of September 11, 2001, for

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<sup>52</sup> See Rod Dreher, “Ted Hudacko vs. Trans Totalitarianism,” *The American Conservative*, February 8, 2022, accessed November 19, 2022, <https://www.theamericanconservative.com/ted-hudacko-vs-transgender-totalitarianism>.

<sup>53</sup> Benjamin Wiker, *Worshipping the State: How Liberalism Became Our Religion* (Washington, DC: Regnery, 2013); Ann Coulter, *Godless: The Church of Liberalism* (New York, NY: Crown Forum, 2006); Kenneth Minogue, *The Liberal Mind* (Indianapolis, IN: Liberty Fund, 1999).

<sup>54</sup> See, e.g., M. Cooper Harriss, “One Blues Invisible: Civil Rights and Civil Religion in Ralph Ellison’s Second Novel,” *African American Review*, vol. 47, nos. 2 & 3 (2014) and Charles H. Long, “African American Religion in the United States of America: An Interpretative Essay,” *Nova Religio*, vol. 7, no. 1 (July 2003).

example, during a speech at West Point in June of the following year, then-president George W. Bush told cadets that “America will call evil by its name,” perhaps conflating the nation-state with the Creator.<sup>55</sup> In a debate with Barack Obama during the campaign season leading up to the 2008 president election, then-senator John McCain told the debate audience that “America is the greatest force for good in the world,” again perhaps forgetting the possible existence of greater good forces in the universe.<sup>56</sup> George Weigel, an American Vatican II Catholic, signed on to the Project for a New American Century, virtually an evangelical program run out of the Pentagon. Even those who buck the traditional-Christianity mode of the American civil religion end up repeating the same refrains. Tulsi Gabbard, Hindu practitioner and erstwhile congresswoman from Hawai’i, speaks even more eloquently in the American civil religion idiom than Bush, McCain, or Weigel ever did. Rebels, too, such as Students for a Democratic Society leader Tom Hayden (1939–2016), framed their protests in the language of freedom and democracy. As long as we are all American civil religionists, we really can all just get along.

It has ever been thus in Enlightenment America. St. Paul’s Chapel in Manhattan was built in 1766, in the midst of what John Adams saw as an era of revolutionary intellectual change in North America. The altarpiece of St. Paul’s Chapel, true to form, is dedicated “to the aims and values of the American Revolution.”<sup>57</sup> Those aims and values may or may not be consonant with Jesus of Nazareth’s, but that is neither

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<sup>55</sup> See Douglas Porpora, “The Tension between State and Religion in American Foreign Policy,” in Jack Barbalet, Adam Possamai, and Bryan S. Turner, eds., *Religion and the State: A Comparative Sociology* (London: Anthem Press, 2011): 143.

<sup>56</sup> Douglas Porpora, “The Tension between State and Religion in American Foreign Policy,” 144.

<sup>57</sup> Michael Paul Driskel, “By the Light of Providence: The Glory Altarpiece at St. Paul’s Chapel, New York City,” *The Art Bulletin*, vol. 89, no. 4 (2007): 715.

here nor there. From the beginning of America to today, it is very difficult to separate out what is politics and what is religion, the two having been joined, it seems, in the great American “melting pot” (if ever they were separate in America to begin with).<sup>58</sup> Effortlessly, religion becomes politics, politics becomes religion. It is America in full.

In a 2011–2012 essay, political scientists David E. Campbell and Robert D. Putnam proffered readers an explication of “America’s Grace,” explaining how “a tolerant nation bridges its religious divides.”<sup>59</sup> Note that the nation here supersedes religion. And this, perhaps, is as it should be, at least to the resolutely American mind. “For many Americans,” Campbell and Putnam write,

religion—or at least a belief in God—serves to bind the nation together. Embedded in the American psyche is an implicit article of patriotic faith that the nation owes its very existence, and survival, to a God in the heavens. References to deity thus abound during the solemn ceremonial moments of our public life, when the nation sense of unity is strongest.<sup>60</sup>

Here, too, it seems that the nation transcends the religious, even to the point that the nation uses God as an instrument, and not the other way around. American scholar of society and religion R.R. Reno has argued, following fellow American religion scholar Russell Hittinger’s

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<sup>58</sup> See René Koekoek, *The Citizenship Experiment: Contesting the Limits of Civic Equality and Participation in the Age of Revolutions* (Leiden: Brill, 2020), 171. Heike Paul, “E Pluribus Unum? The Myth of the Melting Pot.” in Heike Paul, *The Myths that Made America: An Introduction to American Studies* (Bielefeld, Germany: Transcript Verlag, 2014).

<sup>59</sup> David E. Campbell and Robert D. Putnam. “America’s Grace: How a Tolerant Nation Bridges Its Religious Divides,” *Political Science Quarterly*, vol. 126, no. 4 (2011–2012): 611.

<sup>60</sup> David E. Campbell and Robert D. Putnam. “America’s Grace,” 612.

views, that the French Revolution “exaggerated the importance of the political realm, deifying the modern nation-state.”<sup>61</sup> In the same essay, Reno adds, “with all due respect to our [meaning, Americans’] civil religion, which tends to see America as God’s chosen nation, America has no unique role” in the “theology of history” presented in the Bible.<sup>62</sup> “The United States of America,” Reno writes, “is not a church.”<sup>63</sup> I take Reno’s point, but I nevertheless disagree. America is not only a church, it is the first national religion of that church, pre-dating the French Revolution and arguably more destructive than that episode in France. The Enlightenment terrorists in Paris vandalized Notre Dame Cathedral in service of their apostasy. The Enlightenment terrorists on the eastern seaboard of North America rendered an entire continent, a hemisphere, eventually a globe the repository of the “American ideal.”

Even various strains of the American political experience have been apotheosized. Conservatism, liberalism, “rights,” free trade—all have been enshrined on some secular altar somewhere.<sup>64</sup> And it all hangs together within the American civil religion. Political commentator Mark Levin’s recent book *American Marxism* evinces little familiarity with the intellectual history of its subject, but in the place of analysis Levin offers an Americanist rejection of the Americanist interpretation of a foreign set of ideas.<sup>65</sup> *American Marxism* was a bestseller. In 2020, while churches across the United States remained closed due to the

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<sup>61</sup> R. R. Reno, “Twenty-First-Century Conservatism,” *First Things*, June 2017, accessed November 19, 2022, <https://www.firstthings.com/article/2017/06/twenty-first-century-conservatism>.

<sup>62</sup> R. R. Reno, “Twenty-First-Century Conservatism”.

<sup>63</sup> *Ibid.*

<sup>64</sup> See Jason Morgan, “Conservatism: The God that Failed,” *New Oxford Review*, December 2019.

<sup>65</sup> See Jason Morgan, “When the Secular Saints Go Marxing In: Revolution without End,” *New Oxford Review*, October 2022.

pandemic outbreak of a novel coronavirus, the American president, Donald J. Trump, insisted on pushing ahead with fireworks and festivities at Mount Rushmore, where the busts of four other American presidents are chiseled in towering relief, dynamited out of solid stone.<sup>66</sup> Christians turned out in droves for this ceremony which would have embarrassed even Nero and Caligula. A pagan statue of the goddess “Liberty” stands in New York Harbor, virtually unnoticed by American Catholics as anything out of the ordinary.<sup>67</sup> The statue is a gift from our Enlightenment brethren in France—our partners in remaking the world in Voltaire’s image. Christians, in defiance of the Roman civil religion, once refused to pay homage to Diana. Today’s American Christians, by contrast, spend money festooned with symbols of Freemasonry, and nothing seems amiss.

Renowned American historian Wilfred McClay, although hardly he alone, has embraced the notion of America as myth, writing for example in *A Student’s Guide to U.S. History* about the inescapability of the exceptional American narrative.<sup>68</sup>

The fact of the matter is that the very concept of “American” has always been heavily freighted with large meanings. It even had a place made ready for it in the European imagination long before Columbus’s actual discovery of a Western Hemisphere. From as early as the works of Homer and Hesiod, which located a blessed land

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<sup>66</sup> Heike Paul, “American Independence and the Myth of the Founding Fathers,” in Heike Paul, *The Myths that Made America*, 227–232.

<sup>67</sup> Pepe Karmel, “Art Review: Persistence of Pagan Myth in Modern Imagination,” *New York Times*, December 29, 1995: C26. Lady Liberty may perhaps be a vague rehashing of much older Western conceptions of the ideal—see, e.g., William Levine, “Collins, Thomson, and the Whig Progress of Liberty,” *Studies in English Literature, 1500–1900*, vol. 34, no. 3 (1994), for instantiations of Liberty odes prior to the American Revolution.

<sup>68</sup> See Wilfred McClay, *Land of Hope: An Invitation to the Great American Story* (New York, NY: Encounter, 2019).

beyond the setting sun, to Thomas More's (1478–1535) *Utopia*, to the fervent dreams of English Puritans seeking Zion in the Massachusetts Bay colony, to the Swedish prairie homesteaders and Scotch-Irish hardscabble farmers and frontiersmen, to the Polish and Italian peasants that made the transatlantic voyage west in search of freedom and material promise, to the Asian and Latin American immigrants that have thronged to American shores and borders in recent decades—the mythic sense of America as an asylum, a land of renewal, regeneration, and fresh possibility, has remained remarkably deep and persistent.

Let us put aside, for the moment, whether the nation has consistently lived up to that persistent promise, whether it has ever been exempted from history, or whether any of the other overblown claims attributed to American exceptionalism are empirically sustainable. Instead, we should concede that it is virtually impossible to talk about America for long without talking about the palpable effects of this mythic dimension. As the sociologists say, whatever is believed to be real, even if it is demonstrably false, is real in its social consequences; and it does one no good to deny the existence and influence of a mythic impulse that asserts itself everywhere.<sup>69</sup>

Many on the Left in the United States confirm McClay's vision of America as myth, even while seemingly attempting to discredit or destroy it. The "1619 Project," for example, is an attempt by a jour-

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<sup>69</sup> Wilfred McClay, "What Does America Mean?" *Intercollegiate Review* (excerpted from *A Student's Guide to U.S. History*) (2017), accessed November 19, 2022, <https://isi.org/intercollegiate-review/what-does-america-mean/>. I was surprised to find a commenter to the republication of the same McClay essay, posted at *The Imaginative Conservative*, identified as one "Dr Frank Fromherz" remark the following: "Thoughtful essay, thanks to its author and his sense of history. I would recommend a

nalist-activist named Nikole Hannah-Jones and others within the *New York Times* socialist ecosphere to re-found the history of America in the footsteps in the sand as the first trafficked Africans were hauled ashore near Point Comfort, Virginia.<sup>70</sup> In doing so, the “1619 Project” unwittingly shows the prominence of the American civil religion. The “1619 Project” does not attempt to debunk the history of 1620—the original mythos of the Union—with historical intervention. The “1619 Project” is not a work of history—as even Hannah-Jones admits—but of politico-theology. There is nothing revisionist about it. It is doctrinaire Americanism, outstripping virtually any jingoistic Enlightenment propaganda which Washington, DC, was able to produce before. What Hannah-Jones wants to do is to supplant the lodestar of the American civil religion, to switch out the Puritans for the slaves. The rest unfolds entirely within the American civil religion’s horizon. There was hardly ever anything so Enlightenment as the so-called Left and Right in America squabbling over which side gets to lay claim to a Masonic polity born in thoroughly modern revolution.<sup>71</sup>

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reading of Robert Bellah’s civil religion essay from 1967. It’s a reminder of a time when America had not only a shared narrative but also shared beliefs and shared rituals and shared memorials, public liturgical dimensions. Three main elements are crucial for the future of our nation: mimetic, mythic, and theoretic elements all must inform a shared sense of history and a shared sense of purpose.” Another commenter, however, identified only by the initials “JB,” added the view from outside the mythical realm: “What has made Americans ‘American’ is that they have very little in common.” See <https://theimaginativeconservative.org/2022/10/students-guide-us-history-american-myth-wilfred-mccclay.html>.

<sup>70</sup> See Peter Wood, *1620: A Critical Response to the 1619 Project* (New York, NY: Encounter, 2020).

<sup>71</sup> See, e.g., James Hitchcock, “Abortion and the ‘Catholic Right’, Part II,” *Human Life Review*, vol. 34, no. 1 (2008) and Stephen Kantrowitz, “‘Intended for the Better Government of Man’: The Political History of African American Freemasonry in the Era of Emancipation,” *The Journal of American History*, vol. 96, no. 4 (2010).

From Protestant theocrat John Winthrop's (1597/8–1649) "Shining City Upon a Hill" misprision of the Gospel, to President Ronald Reagan's (1911–2004) misprision of the same, and from the Native American genocide, to the "war for righteousness" in Europe in the second decade of the twentieth century, to the crusade (with fellow messianic behemoth the Soviet Union) for Enlightenment ideals in Europe and the Pacific two decades later, to the Enlightenment carpet bombing of Laos, Cambodia, and Vietnam in between—and, now, through the "War on Terror" and President George W. Bush's second inaugural address, and the intervention (again for "righteousness") in the affairs of Ukraine (which features an LGBT-friendly "Unicorn Brigade" in true Enlightenment fashion)—the United States of America is a civil religion.<sup>72</sup> Whosoever questions it is branded a Russian spy.

In one way, contemporary debates among partisans all circling the sacred constitutional fire reinforce what Adrian Vermeule says about the current state of legal debate in America, namely that there are originalists on one side and progressives on the other, and that both are warring over how the Constitution should be interpreted (or revised). In the center, as traced from all points, is the Constitution. But in another, more important way, these debates point to an obstacle—insurmountable, I believe—for Vermeule's project of common good constitutionalism. The United States does not have a constitution so much as it has an object of idolatry within a civil religion. It is that civil religion, and not any one iteration or symbol of it, which is the wreck-

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<sup>72</sup> Richard M. Gamble, *The War for Righteousness: Progressive Christianity, the Great War, and the Rise of the Messianic Nation* (Wilmington, DE: ISI Books, 2003), Richard M. Gamble, *In Search of the City on a Hill: The Making of an American Myth* (London, UK: Continuum, 2012), Benjamin Madley, "Reexamining the American Genocide Debate: Meaning, Historiography, and New Methods," *The American Historical Review*, vol. 120, no. 1 (2015).



er of Vermeule's *ius commune* dreams. Vermeule can have the common good, or he can have the United States of America, but he cannot have both. They are matter and anti-matter.

### **American Catholics' Embrace of the American Civil Religion**

American Jesuit John Courtney Murray's (1904–1967) "Americanism" is not just religious heterodoxy. It is heresy, as defined by Pope Leo XIII (1810–1903).<sup>73</sup> This has not prevented Americanism from taking root in America. It is difficult to overstate the importance of Murray in the establishment of Americanism as the quasi-Catholic adjunct to the American civil religion. Through Murray, and others, the civil religion of America became incorporated into the Catholic Church (and vice versa). At a time when, as historian D.G. Hart points out, American Catholics were trying to weave their religion in with the warp and woof of the American way of life, Murray's theological ratiocinations helped to make the strange fabric lie smooth and neat.<sup>74</sup> As religion researcher Francesca Cadeddu writes:

Murray emerged precisely when American Catholicism was on the verge of applying the social, economic, and cultural power acquired during the New Deal into an expression of an intellectual elite. New educational programs, better synergies between universities and professionals, a wider range of donors, new Catholic journals—and the war—gave rise to this ambition. The cultural movement that emerged from

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<sup>73</sup> Leo XIII, Pope. "Testem Benevolentiae Nostrae." Papal Encyclical (1889). <https://www.papalencyclicals.net/Leo13/113teste.htm>.

<sup>74</sup> Casey Chalk, "Did the Church Reverse Course on Americanism?" *New Oxford Review*, October, 2021: 38.

this unprecedented context soon became part of the mainstream religious and secular intellectual environment. Murray was part of it: not only did he serve as editor for the periodicals *Theological Studies* and [the Jesuit magazine] *America*, but he also participated in non-Catholic debates about natural law, interfaith dialogue, the First Amendment, authority, democracy, and even principles of national defense. [...] Murray was a Catholic and an American intellectual. [...] He remained positive about the potential of the American historical experience but thought that it could only be possible through the definition of the only antidote to uncertainty: the truths held by the Americans since the Founding era.<sup>75</sup>

“Monsignor New Deal” Fr. John A. Ryan (1869–1945) went stumping in support of Franklin Delano Roosevelt’s (1882–1945) pet policies, foreign and domestic. But even Ryan could not best the Americanization of Catholicism carried out by Murray, who helped to make the overhaul of the American experiment palatable to the upper crust in the country. One of Murray’s best-known works reflects his ambition perfectly: it is titled *We Hold These Truths: Catholic Reflections on the American Proposition*.<sup>76</sup> For ghettoized Catholics eager to slough off the Old World and get with the modern juggernaut, Murray offered an acceptable apologia for the switch from outsider to mainstream.

Murray radically transformed the American landscape for Catholics, opening the door to Christian nationalism—the American civil religion—even for religionists once accused of harboring a secret

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<sup>75</sup> Francesca Cadeddu, “A Call to Action: John Courtney Murray, S.J., and the Renewal of American Democracy,” *The Catholic Historical Review*, vol. 101, no. 3 (2015): 533–534; emphasis in original.

<sup>76</sup> *Ibid.*, 531. For a similar dynamic, see Wilson D. Miscamble, *American Priest: The Ambitious Life and Conflicted Legacy of Notre Dame’s Father Ted Hesburgh* (New York, NY: Image, 2019).

preferential loyalty to Rome. Consider that in 2005, a Catholic priest (and erstwhile Lutheran pastor) named Richard John Neuhaus wrote that, on Judgment Day, “I expect to meet God as an American.”<sup>77</sup> Neuhaus cycles through the canonical thinkers on religion and America—and on America as religion—men such as G.K. Chesterton (1874–1936) (“America is a nation with the soul of a church”), James Hutson, Ralph Waldo Emerson (1803–1882) (“go alone; [...] refuse the good models, even those which are sacred in the imagination of men, and dare to love God without mediator or veil”), Reinhold Niebuhr (1892–1971), H. Richard Niebuhr (1894–1962), and Martin Luther King, Jr. (1929–1962).<sup>78</sup> With the possible exception of Chesterton, an Americophile Englishman, all of these arguably lived their spiritual lives deeper and deeper into the bosom of the “American experiment.”<sup>79</sup> “God is not indifferent to the American experiment,” Neuhaus closes his essay,

and therefore we who are called to think about God and His ways through time dare not be indifferent to the American experiment. America is not uniquely Babylon [i.e., a place of exile], but it is our time and place in Babylon. We seek its peace in which we find our peace as we yearn for and eucharistically anticipate the New Jerusalem that is our pilgrim goal.<sup>80</sup>

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<sup>77</sup> Richard John Neuhaus, “Our American Babylon,” *First Things*, December (2005): 23 (emphasis in original), accessed November 19, 2022, <https://www.first-things.com/article/2005/12/our-american-babylon>.

<sup>78</sup> Russ Castronovo, “Review of Anita Haya Patterson, *From Emerson to King: Democracy, Race, and the Politics of Protest*, Oxford University Press, 1997,” *Modern Language Quarterly*, vol. 60, no. 1 (1999), James H. Hutson, *Religion and the Founding of the American Republic* (Washington, DC: Library of Congress, 1998), Richard John Neuhaus, “Our American Babylon,” 25–27.

<sup>79</sup> Cf. Richard John Neuhaus, “Our American Babylon,” 23.

<sup>80</sup> *Ibid.*, 28.

Neuhaus ends with the following quote from St. Augustine:

It is beyond anything incredible that God should have willed the kingdoms of men, their dominations and their servitudes, to be outside the range of the laws of his providence.<sup>81</sup>

The Murray Americanist, perhaps, reads St. Augustine as having been well-disposed to the city of man. But those who have left the Americanist civil religion, or who have never been in its folds to begin with, may read the above passage as a warning against investing one's self in a political mimetic of the worship of God. Surely Fr. Neuhaus did not mean the latter. When he and former Richard Nixon (1913–1994) operative, and later Protestant crusader, Charles Colson (1931–2012) formed Evangelicals and Catholics Together in 1994 to discuss “the Christian mission in the third millennium,” there appeared finally to be a reprieve in the longstanding divide between Rome and the Protestants: shared Americanness. In 2021, the group reconvened, this time to “deliberate about the responsibility of Christian citizenship.”<sup>82</sup> For St. Augustine, Christian citizenship meant teaching Christians not to place one's hopes in earthly cities. For Fr. Neuhaus, and for Charles Courtney Murray, it meant something altogether different.

### **The Anti-Catholic American Civil Religion**

The American civil religion—the religiosity of the American way of life—can best be explicated by remembering the deeply anti-Catholic

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<sup>81</sup> Cf. Richard John Neuhaus, “Our American Babylon,” 23.

<sup>82</sup> First Things, “Evangelicals and Catholics Together,” *First Things*, 2022, accessed November 19, 2022, <https://www.firstthings.com/evangelicals-and-catholics-together>.

nature of American political development. America as a branch European polity was born anti-Catholic. The Puritan zealots who swarmed the Atlantic beaches in the seventeenth century were but the culmination of the anti-Catholic vanguard of the Church of England—an ongoing rebellion against authority which, unsurprisingly, authorities inside the Church of England (who themselves had rebelled against Rome) ultimately proved unable to control. The Puritans were in good company in North America. The mid-eighteenth-century war of the English against the Catholic French, and then the cultural genocide of the English against French Catholics in Quebec, typify the Anglophone North American experience. The colony of Maryland was founded “as a place of refuge for persecuted English Catholics.”<sup>83</sup> But even Marylander John Carroll (1735–1815), “America’s first Catholic bishop and archbishop,” historian Michael Breidenbach reminds us, “developed an American Catholic Church that was as jurisdictionally independent from Rome as possible.”<sup>84</sup> Carroll surely had no other choice. To assert one’s Catholicism too forcefully in America was to invite what the Acadians had suffered.

And yet, American Catholicism is not a monolith. Prior to at least several years after the close of the Second Vatican Council, Catholicism in the United States had often been a breed apart, an awkward reminder that many, if not most, American Christians worshipped at the church of America, and not of Christ.<sup>85</sup> But, almost inexorably, many other American Catholics from Bishop Carroll’s time to our own

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<sup>83</sup> Christopher Beiting, “Review of Maura Jane Farrelly, *Papist Patriots: The Making of an American Catholic Identity*, Oxford University Press,” *New Oxford Review*, June 2014: 46.

<sup>84</sup> Michael D. Breidenbach, “Conciliarism and the American Founding,” *The William and Mary Quarterly*, vol. 73, no. 3 (2016), p. 476.

<sup>85</sup> See generally Thomas Hughson, S.J., “Public Catholicism: An American Prospect,” *Theological Studies*, vol. 62, no. 4 (2001).

have endeavored to show that they were Americans first, and Catholics second. “During the First World War,” writes historian Patrick Allitt, “[...] Catholics scrambled to demonstrate their one-hundred-percent Americanism. [...] The power of nationalism had won out over the theoretical claims of Catholic universalism.”<sup>86</sup> The National Catholic War Council, later the National Catholic Welfare Council (then the National Catholic Welfare Conference), was formed in August of 1917 to bolster American Catholic support for the Great War.<sup>87</sup> During World War I, writes historian Philip Gleason, American Catholics began to emphasize “the virtual identity of Scholastic and American principles.”<sup>88</sup> American author Gaillard Hunt’s (1862–1924) 1917 essay “The Virginia Declaration of Rights and Cardinal Bellarmine,” Gleason writes,

pointed out the similarity of language between the Declaration of Independence and certain writings of Robert Bellarmine, S.J. [(1542–1621)] (a prominent figure in the Counter-Reformation revival of Thomism). [...] Hunt argued that a passage from Bellarmine, which Jefferson might have read in Sir Robert Filmer’s [(1588–1653)] *Patriarcha*, provided a better short statement of the doctrines enunciated in the Declaration of Independence than any other work of political theory available to him.<sup>89</sup>

Hunt’s essay followed Lord Acton’s (1834–1902) *History of Freedom in Christianity*, Gleason notes, which brought St. Thomas

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<sup>86</sup> Patrick Allitt, “Looking Outward: The Americanization of the Jesuits, and Vice Versa,” *The Weekly Standard*, vol. 22, no. 13 (2016): 40.

<sup>87</sup> Philip Gleason, “How Catholic Is the Declaration of Independence? You’d Be Surprised,” *Commonweal*, vol. 123, no. 5 (1996): 11.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

Aquinas to the bar to argue in favor of “popular consent.”<sup>90</sup> English political scientist Ernest Barker (1874–1960), not content with even that much, said that St. Thomas “is a Whig” who “believes in [...] the general tenets of Locke.”<sup>91</sup> Moorhouse F.X. Millar, S.J. (1886–1956), along with the famous Fr. John A Ryan, took the Catholic message deeper into politics (and vice versa), with Millar virtually campaigning for Roman Catholic candidate (the first in American history) Al Smith (1873–1944) in 1928.<sup>92</sup> To be a Catholic in America was to be a democrat and a republican, regardless of whether one was a Democrat or a Republican. The American civil religion always prevailed.

This was the backdrop to much of the Catholic clergy’s intense activity on both sides, and also right down the middle, of the fault line between the Faith and the American civil religion. Catholic scholar James M. Patterson argues that the late Venerable Archbishop Fulton J. Sheen (1895–1979), who on an episode of his 1953 television program compared the United States of America to Simon of Cyrene, envisioned an “anti-nationalist patriotism” for American Catholics.<sup>93</sup> Archbishop Sheen was right to be guarded in his commitment, as a Catholic, to the “redeemer nation.”<sup>94</sup> As Sheen observed some fifteen years before the abovementioned television broadcast, “There are not over a hundred people in the United States who hate the Catholic

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<sup>90</sup> *Ibid.*, 12.

<sup>91</sup> *Ibid.*, 12. Contrast this with Andrew Willard Jones, “Let’s Fight,” *First Things*, June 2022, accessed November 19, 2022, <https://www.firstthings.com/article/2022/06/lets-fight>.

<sup>92</sup> Philip Gleason, “How Catholic Is the Declaration of Independence?” 12–13. See also John Augustine Ryan and Moorhouse F.X. Millar, *The State and the Church* (New York, NY: MacMillan, 1922).

<sup>93</sup> James M. Patterson, “The Anti-Nationalist Patriotism of Venerable Archbishop Fulton J. Sheen,” *Religions*, vol. 13, no. 9 (2022): 1–2.

<sup>94</sup> Cf. James M. Patterson, “The Anti-Nationalist Patriotism of Venerable Archbishop Fulton J. Sheen,” 1–2.

Church. There are millions, however, who hate what they wrongly believe to be the Catholic Church.”<sup>95</sup> Few other American Catholics have made such important distinctions between America as a place, and America as a civil religion. Had Sheen gone over to Americanism, he would now be rolling over in his grave—his television time slot has been filled by cartoons pushing homosexuality to kindergarteners, all with the blessing of the White House.

American essayist and public intellectual William F. Buckley (1925–2008), Catholic founder and editor of the American conservative magazine *National Review*, famously asserted “Mater si, magistra no” in response to the *Mater et Magistra* papal encyclical of 1961.<sup>96</sup> Conservatives called Dorothy Day (1897–1980), who as a Catholic rejected the American civil religion and embraced radical poverty and peace in America, “Moscow Mary” for her left-wing labor views and support for Communist dictatorships.<sup>97</sup> *Rerum Novarum*, the 1891 papal encyclical on the rights of the worker and a warning about the dangers of socialism, made very little sense in the American context. It is admittedly befuddling to read papal encyclicals about labor and socialism with the grain of developments in America surrounding, say, Eugene V. Debs (1855–1926), the Haymarket riots (1886), and the Pullman strike (1894). America is a cosmos of signs unto itself. Though one incline to the wisdom of the pontiffs, one often finds it

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<sup>95</sup> Luke Ritter, *Inventing America's First Immigration Crisis: Political Nativism in the Antebellum West* (New York, NY: Fordham University Press, 2021), 174.

<sup>96</sup> E. J. Dionne, “A Radical Pope,” *The American Prospect*, vol. 26, no. 2 (2015): 93.

<sup>97</sup> Lawrence S. Wittner, “Review of Charles Chatfield, *The American Peace Movement: Ideas and Activism*, and Patricia McNeal, *Harder than War: Catholic Peacemaking in Twentieth-Century America*,” *The Journal of American History*, vol. 80, no. 1 (1993): 264. See also Jack Downey, “Moscow Mary: Dorothy Day and the Catholic Surveillance Ecosystem,” *Political Theology*, March 4, 2022, accessed November 19, 2022, <https://politicaltheology.com/moscow-mary-dorothy-day-and-the-catholic-surveillance-ecosystem>.



impossible to translate that wisdom into the American idiom. Politics in America sets its own terms and crowds out interference from Rome.

Many who doubt the existence of America as a civil religion often point to the motto “One Nation Under God,” arguing that the motto is proof that America honors God and has not sought to usurp His authority. But recall that the motto was a compromise move to maintain the dominance of the American civil religion against all comers. “One Nation Under God” was to be acceptable to Jews, Catholics, Protestants, and Muslims, and therefore to assure, as Washington liberals girded for battle against the godless Soviet Union (the godlessness of which had not much bothered Washington liberals before), that the state, and no particular religious group, continued to hold the rhetorical levers of civil-religious power.<sup>98</sup> Stretch the mind’s eye farther back in time and see how what has been once has been before as well. When Samuel Adams (1722–1803) wrote in 1772, in a “manifesto” for the Boston Committee of Correspondence, that “Roman Catholicks [sic] and Papists” bring about “subversion in government,” with their “imperium in imperio leading directly to the worst anarchy and confusion, civil discord, war, and blood shed [sic],” he spoke, let us be honest, for more than just himself.<sup>99</sup> The “One Nation Under God” motto was as much an attempt to keep America from entertaining challenges to its status as civil religion as Adams’ imprecations were a warning that “subversion” of the “imperium in imperio” variety would be met with violent resistance.

From those two bookends take in the sweep of American history, and find that it is anti-Catholic from age to age. There’s the curious undertow of anti-Catholic abolitionism in the early nineteenth century, for example; anti-Catholic riots in Boston in the 1830s; the anti-Catholic “Bible riots” in Philadelphia (birthplace of the Constitution)

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<sup>98</sup> See Luke Ritter, *Inventing America's First Immigration Crisis*, 174–175.

<sup>99</sup> Michael D. Breidenbach, “Conciliarism and the American Founding,” 467.

in the 1840s; the rise of the explicitly anti-Catholic Know-Nothing Party in the 1850s; the popularity of the anti-Catholic Mugwump cartoonists in the satirical magazine *Puck* in the 1870s, 80s, and 90s; the anti-Catholic riots in San Francisco in the 1870s; the “reforg[ing]” of “a white republic, based on Christian Protestantism and American nationalism” by the end of the nineteenth century; the “surge[]” of “anti-Catholic and Black Legend propaganda [...] as the United States went to war with the Spanish Empire” in 1898; and the recrudescence of the virulently anti-Catholic (and, of course, anti-Black and anti-Jewish) Ku Klux Klan in the 1920s.<sup>100</sup> Speaking of the Klan, former United States Secretary of State and two-time presidential contender Hillary Rodham Clinton was the recipient of the Margaret Sanger Award in 2009. Margaret Sanger (1879–1966), who once spoke to a Ku Klux Klan ladies meeting in Silver Lake, New Jersey in 1926, was

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<sup>100</sup> Peter J. Thuesen, “The ‘African Enslavement of Anglo-Saxon Minds’: The Beechers as Critics of Augustine,” *Church History*, vol. 72, no. 3 (2003); Joshua Paddison, “Anti-Catholicism and Race in Post-Civil War San Francisco,” *Pacific Historical Review*, vol. 78, no. 4 (2009); Catherine B. Shannon, “‘With Good Will Doing Service’: The Charitable Irish Society of Boston (1737–1857),” *Historical Journal of Massachusetts*, vol. 43, no. 1 (2015); Kyle Edward Haden, OFM, “The City of Brotherly Love and the Most Violent Religious Riots in America: Anti-Catholicism and Religious Violence in Philadelphia, 1820–1858,” PhD Dissertation, Fordham University (2012); Luke Ritter, *Inventing America’s First Immigration Crisis*, 148–173; Samuel J. Thomas, “Mugwump Cartoonists, the Papacy, and Tammany Hall in America’s Gilded Age,” *Religion and American Culture*, vol. 14, no. 2 (2004); Margo Hammond, “Review of Edward J. Blum, *Reforging the White Republic: Race, Religion, and American Nationalism, 1865–1898*,” *Cross Currents*, vol. 57, no. 2 (2007): 304; Katherine D. Moran, “Catholicism and the Making of the U.S. Pacific,” *The Journal of the Gilded Age and Progressive Era*, vol. 12, no. 4 (2013): 436; Shawn Emily, “‘The Cause of Truth Demands It’: Elijah Lovejoy, Anti-Catholicism and Public Memory,” MA Thesis, Southern Illinois University Edwardsville (2022); and Catholic League, “The ‘Black Legend’: The Spanish Inquisition,” *Catholic League*, 2001, accessed November 19, 2022, <https://www.catholicleague.org/the-black-legend-the-spanish-inquisition>.

arguably even more virulently racist and anti-Catholic than many of the people in attendance.<sup>101</sup> Washington religionists receive accolades in the spirit of eugenicists and hardly anyone blinks.

The anti-Catholicism of American civic life, and of the American civil religion, seems fairly to swamp the American experiment in any age. Al Smith, the first Catholic ever nominated in the United States as a candidate for the presidency, met with a wall of bigoted skepticism as to his American bona fides.<sup>102</sup> Even in the late 1940s and early 1950s, as the Washington Enlightenment battalions lurched toward global war with the Soviets, two bestselling polemics by *The Nation* editor Paul Blanshard (1892–1980), titled *American Freedom and Catholic Power* and *Communism, Democracy, and Catholic Power* respectively, railed against “the Catholic problem” in America.<sup>103</sup> The latter volume “defined Catholicism and Soviet communism as parallel threats to American democracy.”<sup>104</sup> Blanshard’s broadsides were praised by American civil religion saint John Dewey (1859–1952), American civil religion proselytizer McGeorge Bundy (1919–1996) (who would go on to coordinate the genocide of the Vietnamese), and honorary American civil religion luminaries Albert Einstein (1879–

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<sup>101</sup> Paul Kengor, “Reflections on Roe: When Margaret Sanger Spoke to the KKK,” *Spectator*, January 22, 2015, accessed November 19, 2022, <https://spectator.org/reflections-on-roe-when-margaret-sanger-spoke-to-the-kkk/>. But see also Robert G. Weisbord, “Birth Control and the Black American: A Matter of Genocide?” *Demography*, vol. 10, no. 4 (1973).

<sup>102</sup> Casey Chalk, “Did the Church Reverse Course on Americanism?” 39.

<sup>103</sup> John T. McGreevy, “Thinking on One’s Own: Catholicism in the American Intellectual Imagination, 1928–1960,” *The Journal of American History*, vol. 84, no. 1 (1997): 97. See also Florence Kaczorowski, “‘The Heart and Soul of Patriotic America’: American Conservative Women Crusading for the ‘Bricker Amendment’ (1953–1957),” *European Journal of American Studies*, vol. 10, no. 1 (2015) and Kevin M. Schultz, “‘Favoritism Cannot Be Tolerated’: Challenging Protestantism in America’s Public Schools and Promoting the Neutral State,” *American Quarterly*, vol. 59, no. 3 (2007).

<sup>104</sup> John T. McGreevy, “Thinking on One’s Own,” 97.

–1955) and Bertrand Russell (1872–1970).<sup>105</sup> This anti-Catholic hysteria hardly came out of nowhere. As historian John T. McGreevy writes, “A survey of leading academics in 1926 was littered with fears that Thomistic philosophy served only as a pretext for an authoritarian institution to impose particular theological views.”<sup>106</sup> One gets to the end of this road and finds, both improbably and entirely predictably, “Evangelicals and Catholics Working Together.”

But even the above could not shake faith in the American civil religion, even among Catholics themselves. McGreevy continues: “Overt conflict [over Catholicism] before the 1930s was infrequent [...] since most intellectuals echoed George Santayana’s [(1863–1952)] belief that the American situation would act as a ‘solvent’ upon Catholic claims. [...] Walter Lippmann’s [(1889–1974)] argument that ‘of course [the Catholic Church] was hostile to democracy and to every force that tended to make people self-sufficient’ remained abstract because of his confidence that Catholic authority would weaken in the cauldron of American urban life.”<sup>107</sup>

Lippmann was right. When Catholic John F. Kennedy was campaigning for the presidency in the run-up to the 1960 election, he was opposed by Protestants wary of his Romish leanings, but managed nevertheless to downplay his Catholicism sufficiently to win the White House. In this, Kennedy was carrying on a long Catholic tradition in America of renouncing the Faith to serve better the religion of the new continent. (Bellah, as mentioned above, observed Kennedy’s strange presentation of a nondescript “God” in his inaugural address in 1961.) To accept the American republic, for instance, colonial Catholics found that “conciliarist principles,” which rejected a holistic papal suprema-

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<sup>105</sup> John T. McGreevy, “Thinking on One’s Own,” 97.

<sup>106</sup> *Ibid.*, 102.

<sup>107</sup> *Ibid.*, 102. But see also Carrie Tirado Bramen, “The Americanization of Theron Ware,” *Novel*, vol. 31, no. 1 (1997): 67–68.

cy, were not only expedient, but virtually required.<sup>108</sup> None of this was lost on Alexis de Tocqueville, who observed that “Americans had ‘escap[ed] from the authority of the Pope’.”<sup>109</sup> As to what de Tocqueville would have thought of Kennedy one can only guess, but it surely would not have seemed odd at all for the Frenchman to be transported into the future to find a mid-twentieth-century American presidential hopeful going among Protestant ministers in Houston to assure them that he would take no orders from any pontiff. (Another presidential hopeful, and another Catholic, Rick Santorum, repudiated Kennedy’s 1960 speech—and didn’t even get his party’s nomination for the election of 2012.<sup>110</sup>)

To press the point further, one finds in the “conservative-liberal” divide within the “Conciliar Church” in America, as well as outside of it, the debate over public religion to be often couched in American civil religion terms. Whether one turns to the neoconservative champion of the Iraq War George Weigel, to current Speaker of the House of Representatives Nancy Pelosi (also, like Weigel, a “Conciliar Catholic”), or to Vermeule’s colleague Sohrab Ahmari (a traditionalist Catholic convert), one finds the American national project taking up an extraordinary amount of bandwidth in putatively theological discourse.<sup>111</sup> A 2019 book

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<sup>108</sup> See, e.g., Michael D. Breidenbach, “Conciliarism and the American Founding,” 472.

<sup>109</sup> Michael D. Breidenbach, “Conciliarism and the American Founding,” 499.

<sup>110</sup> See J. R. Gonzales, “Santorum Calls Attention to Kennedy’s 1960 Visit to Houston,” *Houston Chronicle*, February 28, 2012, accessed November 19, 2022, <https://blog.chron.com/bayoucityhistory/2012/02/santorum-calls-attention-to-kennedys-1960-visit-to-houston>.

<sup>111</sup> See John F. Quinn, “Review of *Being Right: Conservative Catholics in America*, ed. Mary Jo Weaver and R. Scott Appleby, Bloomington, in: Indiana University Press,” *The Catholic Historical Review*, vol. 83, no. 3 (1997) and Emma Ayers, “The Ahmari-French Debate Was About Theology, Not Politics,” *The American Conservative*, September 9, 2019, accessed November 19, 2022, <https://www.theamericanconservative.com/the-ahmari-french-debate-was-about-theology-not-politics>.

by constitutional scholar Richard M. Reinsch II and government and political science scholar Peter Augustine Lawler (1951–2017) defends the Constitution of the United States by appealing in large part to American Catholic Orestes Brownson (1803–1876).<sup>112</sup> In 2005, as immigration scholar Luke Ritter relates,

bishop William Lori of Bridgeport, Connecticut, fired [a teacher at Kolbe Cathedral High School in Bridgeport] for refusing to hang an American flag in the classroom. [The teacher] objected thus: ‘My teaching can never take its legitimacy from any symbol except the Cross of Christ. To elevate any national emblem to that level would be for me to ignore the fundamental call of Jesus to compassion without boundaries.’ With the backing of Bishop Lori, the school’s superintendent nevertheless fired [the teacher] for ‘un-patriotism’. Bishop Lori became the archbishop of Baltimore in 2012 and thereafter led the American bishops’ campaign for religious freedom and liberty of conscience in the United States.<sup>113</sup>

We thus find a Catholic archbishop rallying the Catholic faithful in the United States around a central pillar of the anti-Catholic Enlightenment, and doing so while paying homage to the flag of the Masonic-Enlightenment, anti-Catholic American republic. (Arch-bishop Lori, it should be pointed out, has been the Supreme Chaplain since

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<sup>112</sup> Geoffrey M. Vaughan, “Review of Peter Augustine Lawler and Richard M. Reinsch II, *A Constitution in Full: Recovering the Unwritten Foundation of American Liberty*,” *Society*, vol. 57, issue 5 (2020): 590.

<sup>113</sup> Luke Ritter, *Inventing America’s First Immigration Crisis*, 178. See also Doug Healy, “Teachers Pay Price for Exercising Conscience,” *Peacework*, vol. 32, issue 361 (December 2005–January 2006): 22–23; Claire Schaeffer-Duffy, “Catholic Teacher Fired for Failing to Display Flag,” *National Catholic Reporter*, vol. 42, no. 3 (November 2005), 7.

for a flagship operation in the Americanization of the Catholic Faith, the Knights of Columbus.<sup>114</sup>)

America is not big enough for two religions. There is only one: America itself, the civil religion of America.<sup>115</sup> American civil religion kills all other religions, or else forces them underground.

### **Common Good Constitutionalism, or Americanism as the Eighth Sacrament?**

In *Common Good Constitutionalism*, Adrian Vermeule returns continually to his theme of memory, of the need for the American legal tradition to break through the false dichotomy of progressivism and originalism and return to the *ius*-like concern for the common good which prevailed under general natural law understandings until, Vermeule argues, the middle of the twentieth century.

However, even Vermeule may be more of an American civil religionist than he realizes, or at least more prone to participating in American civil religion than he may be able to admit. His God appears just as vague as Kennedy's, for Vermeule assumes the fruits of religion without any specific creed, and also praises the doctrine of "union," the same doctrine which brought some six hundred thousand deaths to the American continent in five years in the 1860s, as being virtually axiomatic.<sup>116</sup> Vermeule is also in favor of broad, almost churchlike,

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<sup>114</sup> See Heike Paul, "Christopher Columbus and the Myth of 'Discovery,'" in Heike Paul, *The Myths that Made America*.

<sup>115</sup> On the state of the Vatican II Church in the United States, for example, see Ross Douthat, "Catholic Ideas and Catholic Realities: On Populists, Integralists, Benedictines, and Tradinistas," *First Things*, August 2021, accessed November 19, 2022, <https://www.firstthings.com/article/2021/08/catholic-ideas-and-catholic-realities>.

<sup>116</sup> Adrian Vermeule, *Common Good Constitutionalism*, 86.

authority for the American administrative state, even to the point of enforcing vaccine mandates (presumably including for vaccines made from aborted fetal tissue), and with no reference to the corruption, widely known, in which the administrative state has often engaged without consequence.<sup>117</sup> If elites in Washington hold forth, the thinking seems to be, then, more likely than not, the people would do well to obey. This is pontifical, but in a Yankee Doodle Dandy periwig. It would appear to be the American civil religion with a ring for the citizenry to kiss.

Vermeule's initiative also represents a further development in the Americanization of Christianity, or, to put it more accurately, in the acceptance by American Catholics of the American civil religion. While much of this acceptance eschews liberalism, which may at first blush seem to put it beyond the pale of the American civil religion, such an analysis seriously underestimates the capacity of the American civil religion to adapt to theologico-political changes.<sup>118</sup> Catholic attor-

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<sup>117</sup> *Ibid.*, 42–43, 135. On vaccines and the use of aborted fetal tissue, see, e.g., Meredith Wadman, "Abortion Opponents Protest COVID-19 Vaccines' Use of Fetal Cells," *Science*, June 5, 2020, <https://www.science.org/content/article/abortion-opponents-protest-covid-19-vaccines-use-fetal-cells>, Timothy P. Carney, "Abortion, Ethics, and the Coronavirus Vaccines," *Washington Examiner*, December 30, 2020, <https://www.aei.org/op-eds/abortion-ethics-and-the-coronavirus-vaccines/>, and D. Gareth Jones, "Religious Concerns about COVID-19 Vaccines: From Abortion to Religious Freedom," *Journal of Religion and Health* (2022) 61, <https://doi.org/10.1007/s10943-022-01557-x>. On government corruption, see, e.g., "The IRS' Long History of Scandal," *The Week*, January 9, 2015, <https://theweek.com/articles/463448/irss-long-history-scandal>, Mike Rappaport, "The Corruption of the FBI," *Law and Liberty*, December 20, 2018, <https://lawliberty.org/the-corruption-of-the-fbi/>, and Leigh Ann Caldwell, "Fired Whistleblower Details Corruption at EPA," NBC News, April 13, 2018, <https://www.nbcnews.com/politics/congress/fired-whistleblower-details-corruption-epa-n865461>.

<sup>118</sup> On liberalism and American Catholics, see, e.g., Casey Chalk, "The Post-Liberal Project and the American Polis," *New Oxford Review*, September, 2022 and Patrick Deneen, *Why Liberalism Failed* (New Haven, CT: Yale University Press, 2018). See



ney Patrick J. Moran, in rejecting Vermeule's constitutional philosophy, argues that originalism—Vermeule's bugbear—is already “a Catholic constitutionalism,” that is, “a Catholic way to read the Constitution.”<sup>119</sup> Read uncharitably, perhaps, but in no way illogically, common good constitutionalism, as Vermeule lays it out, would thus seem to be one strain of American civil religion competing against another, originalism. The merry-go-round continues to spin. Vermeule wants to get off, but he alights into the fever swamps of the American civil religion unbound.

Nevertheless, Vermeule appears to be pushing ahead with his attempt to win over Americanism (as I read it, at least) with common good constitutionalism. To be fair, many agree with Vermeule, and while he has his detractors his circle of influence appears to be growing.<sup>120</sup> Will it all be enough, though, to convert the American federal

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also Kenneth L. Townsend, “Why Liberalism Persists: The Neglected Life of the Law in the Story of Liberalism's Decline,” *St. John's Law Review*, vol. 94, no. 2 (2021): 464–465.

<sup>119</sup> Patrick J. Moran, “Originalism: A Catholic Constitutionalism,” *Crisis Magazine*, October 4, 2022, accessed November 19, 2022, <https://www.crisismagazine.com/2022/originalism-a-catholic-constitutionalism>.

<sup>120</sup> For detractors, see, e.g., Mark Pulliam, “Leviathan's Apologists,” *The American Conservative*, January/February 2021, accessed November 19, 2022, <https://www.theamericanconservative.com/cass-sunstein-and-adrian-vermeule-leviathans-apologists/>; Micah Schwartzman and Richard Schragger, “What Common Good?” *Prospect*, April 2022, accessed November 19, 2022, <https://prospect.org/culture/books/what-common-good-vermeule-review/>; Margaret Talbot, “Amy Coney Barrett's Long Game,” *The New Yorker*, vol. 98, issue 1, February 14 and 21, 2022, accessed November 19, 2022, <https://www.newyorker.com/magazine/2022/02/14/amy-coney-barretts-long-game>. For supporters, see, e.g., J. Colin Bradley, “Achieving Commonness: The Common Good and Its Alternatives,” *The Point Magazine*, October 6, 2022, accessed November 19, 2022, <https://thepointmag.com/politics/achieving-commonness/>; Aaron J. Walayat, “Vermeule's Society and Its Enemies,” *Canopy Forum*, August 18, 2021, accessed November 19, 2022, <https://canopyforum.org/2021/08/18/vermeules-society->

machine to a proponent of the common good? As mentioned above, Vermeule is a strong proponent of the administrative state, even going so far as to call it “the living voice of the law,” thus granting it essentially prophetic powers to divine and transmit the “common good.”<sup>121</sup> In this vein, Vermeule is also dismissive of the majority ruling in the 1905 Supreme Court case *Lochner v. New York*, finding contra the *Lochner* court that the state has a “police power” which it developed “in the 1930s and 1940s” alongside “the basic principle of *McCulloch v. Maryland* [(1819)].”<sup>122</sup> And Vermeule does not like the Supreme Court’s rulings in *Bostock v. Clayton County* (2020) and *Obergefell v. Hodges* (2015), both of which celebrate the sacred libertine liberalism of the American civil religion.<sup>123</sup> The rest of the federal governmental apparatus has heretofore proven unable to contain the administrative state which Vermeule would use as vicar of the common good.<sup>124</sup> But perhaps, by some miracle, Vermeule’s *ius commune* ideas will someday be able to make progress against the federal government’s religious progressivism.

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and-its-enemies/; R.H. Helms, “Marching Orders,” *First Things*, May 2022, accessed November 19, 2022, <https://www.firstthings.com/article/2022/05/marching-orders>; Max Longley, “Allowing a Little More Room for Subsidiarity,” *Front Porch Republic*, March 11, 2022; James Matthew Wilson, “First to the Camps’: An Interpretation of Adrian Vermeule,” *The American Mind*, May 6, 2020, accessed November 19, 2022, <https://americanmind.org/features/waiting-for-charlemagne/first-to-the-camps-an-interpretation-of-adrian-vermeule>.

<sup>121</sup> Adrian Vermeule, *Common Good Constitutionalism*, 136–154.

<sup>122</sup> *Ibid.*, 33, 60–66.

<sup>123</sup> See *ibid.*, 105–108, 118–120. See also Stéphane Sérafin, Kerry Sun, and Xavier Focroulle Ménard, “The Common Good and Legal Interpretation: A Response to Leonid Sirota and Mark Mancini,” *Constitutional Forum constitutionnel*, vol. 30, no. 1 (2021): 39–40.

<sup>124</sup> Ethan Yang, “The Danger of the Administrative State,” *American Institute for Economic Research*, February 27, 2021, accessed November 19, 2022, <https://www.aier.org/article/the-danger-of-the-administrative-state>.

Whether this miracle will entail overcoming Americanism, though, is an entirely different question. I think a miracle may be Vermeule's only hope. The deeper Vermeule's common good constitutionalism burrows into the American theologico-political field, the more it risks turning Vermeule's Catholic statism into an eighth sacrament.<sup>125</sup> It is not just that Vermeule, in my view, fails to explain how "common good constitutionalism" is conceptually or practically different from mob rule. (For how is convention or majority to be overruled, in a putatively democratic system, by moral reformers?<sup>126</sup> Or does Vermeule tacitly admit that we are no different than the Optimates and the Gracchi Brothers?) Beyond this and other theoretical problems with Vermeule's book, there is the great wall of separation, ironically enough, between religions on the one side, and America as a religion on the other. There would appear to be little, if any, chance that Vermeule's common good constitutionalism will go beyond America as a civil religion. The old Enlightenment enterprise of substituting the state for the Church and the nation for the Catechism will go on as before, and may even be amplified when those of a religious bent of mind take in Vermeule's new theses and find themselves reconciled to the altar of Declaration, Constitution, and Masonic Lodge.

## Conclusion

In June of 2022, the United States Supreme Court issued a majority ruling on *Dobbs v. Bolton*, a landmark case on the fate of children in American wombs. The majority overturned the 1973 *Roe v. Wade* deci-

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<sup>125</sup> But see Adrian Vermeule, "Sacramental Liberalism and *Ragion di Stato*," Lecture at Princeton University, May 8, 2019, accessed November 19, 2022, <https://www.youtube.com/watch?v=QRBKn55gGIA>.

<sup>126</sup> See David Novak, "The Bottom Line".

sion which opened the door to abortion on demand in America. At first blush, it seemed to be a victory, not just for the preborn, but for the common good. However, on closer inspection, one finds that the 2022 Court majority did not argue that abortion was morally wrong, only that “unenumerated rights and liberties ‘must be deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty’.”<sup>127</sup> Five of the six justices who joined the majority are Catholics. (One in dissent is also Catholic.) In the biggest test for “common good constitutionalism” since Vermeule debuted his ideas, the notion of the *ius commune* failed utterly. The question of abortion was simply remanded to the states, some of which rushed to strengthen protections for abortion rights while others attempted to restrict such so-called rights (with varying degrees of success).<sup>128</sup> While common good constitutionalism scholars frame this setback as a failure of originalism, and not common good constitutionalism, the bigger import is that the religion of America, America itself, appears to be invincible.<sup>129</sup> Federalism trumped common good constitutionalism in even the biggest upset for federal progressivism in a generation. The American civil religion goes from strength to strength.

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<sup>127</sup> Jacob Neu, “The Short History and Checkered Tradition of ‘History and Tradition,’” *Ius & Iustitium*, July 8, 2022, accessed November 19, 2022, <https://iusetiustitium.com/the-short-history-and-checkered-tradition-of-history-and-tradition>

<sup>128</sup> Rachel Rebouche, “Abortion Rights Referendums Are Winning, With State-By-State Battles Over Rights Replacing National Debate,” *Yahoo! News*, Friday, November 18, 2022, accessed November 19, 2022, <https://news.yahoo.com/abortion-rights-referendums-winning-state-133200631.html>.

<sup>129</sup> See, e.g., Jacob Neu, “The Short History and Checkered Tradition of ‘History and Tradition,’” Bradford Littlejohn, “Reimagining a Christian America,” *American Reformer*, December 22, 2021, accessed November 19, 2022, <https://americanreformer.org/2021/12/reimagining-a-christian-america/>; Eric Liu, “Sacred Civics,” *Humanities.org*, 2021, accessed November 19, 2022, <https://www.humanities.org/blog/eric-liu-america-civics-elections/>. But see also Michael P. Foran, “Reorienting Constitutional Theory,” *Ius & Iustitium*, July 26, 2022, accessed November 19, 2022, <https://iusetiustitium.com/reorienting-constitutional-theory>.

The religion of America—America—shows little sign of retreating. If anything, there would seem to be a great awakening afoot instead. An October 2022 newspaper article, for example, highlights a “Christian nationalism” “roadshow” at which people are baptized “patriots to Christ.”<sup>130</sup> The notion of “separation of church and state” seemingly precludes American presidents from interfering in traditionally religious affairs. But this doctrine does little, if anything, to prevent presidents from celebrating the civil religion of America—America—and may even encourage presidents to cultivate the American cult in compensation for the creedal poverty of the realm. Americanism seems even to have birthed a second new religion: the oddly indefinable “Judeo-Christianity.”<sup>131</sup> One might even add Q-Anon to the list, making for an odd triumvirate. And there are many, many more denominations under this tricornered banner.

Can Adrian Vermeule’s common good constitutionalism defeat the American civil religion and restore the *ius commune* to America? Can Washington be baptized? Or will it take another American revolution finally to set things right?

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<sup>130</sup> Shawn Johnson, “Rightwing Roadshow Promotes Christian Nationalism before the Midterms,” *Business News*, October 23, 2022, accessed November 19, 2022, <https://biz.crastr.net/right-wing-roadshow-promotes-christian-nationalism-before-the-midterms/>. See also Andrew L. Whitehead and Samuel L. Perry, “Is Christian Nationalism Growing or Declining? Both,” *Washington Post*, October 25, 2022, accessed November 19, 2022, <https://www.msn.com/en-us/news/us/is-christian-nationalism-growing-or-declining-both/ar-AA131CWH>.

<sup>131</sup> See Robert O. Smith, “Disintegrating the Hyphen: The ‘Judeo-Christian Tradition’ and the Christian Colonization of Judaism,” *ReOrient*, vol. 5, no. 1 (2019).



## Common Good Constitutionalism vs. America's Enlightenment Civil Religion

### SUMMARY

In his 2022 volume *Common Good Constitutionalism*, and in a series of essays and other works prior to the book's release, Harvard Law School professor Adrian Vermeule advances a new vision for the American republic. Against the two dominant strains of constitutional interpretation in the United States, namely originalism and progressivism ("living constitutionalism"), Vermeule argues for common good constitutionalism, a return to the *ius commune* pursuit of that which is good for all in accordance with the natural law. While Vermeule's work is ambitious and his intervention into originalist-progressivist debates welcome, a question remains: will common good constitutionalism be able to overcome America's Enlightenment civil religion? In this paper, I consider the challenges which America's Enlightenment civil religion poses to common good constitutionalism (and any other attempt to think past the Constitution from within a constitutional framework), concluding that common good constitutionalism, insofar as it is predicated on the pre-existing Constitution and deployed within the American politico-theological domain, cannot overcome America's Enlightenment civil religion to effect the common good.

**Keywords:** common good constitutionalism, civil religion, Enlightenment, *ius commune*

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