

## Brian A. Smith's Hayekian Walker Percy

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Brian A. Smith submits that Walker Percy “placed great emphasis on the dangers of functional or utilitarian definitions of law” that deny personhood, or the quality of being human (p. 182).<sup>1</sup> I wish to examine Smith’s study of Percy in light of Friedrich Hayek’s anti-utilitarian jurisprudence, which champions political decentralization and the devolution of power to local authorities. Smith, not Percy, is therefore my principal subject, in particular his recent book, *Walker Percy and the Politics of the Wayfarer*. I do not analyze Percy’s novels or writings here, nor review Smith’s book on its merits. Rather, I consider Percy’s account of decentralization and localism, as presented by Smith, through a Hayekian lens. Hayek’s notion of *cosmos* (a legal order that is grown, evolutionary, endogenous, spontaneous, and complex, and that disperses power rather than centralizing it) complements Percy’s sense of place and community as naturally ordering forces. Smith channels Hayek by insisting that “the expert’s relentless pursuit of improvement erodes the layman individual’s capacity for choice, and thus, adds anxiety and displacement in an ever-changing world” (p. 36).

Smith also attends to the philosophical, theological, and political elements of Percy’s novels in the “themes of Western decadence and decline, the persistence of alienation, the allure of war, and the effects of science on human happiness” (p. xv). Focusing on the wayfarer, a traveling or wandering figure lacking any permanent home, Smith highlights the existential angst that Percy’s characters experience in the modern, secular West. “I demonstrate,” Smith says, “the ways that an approach to political philosophy incorporating literature can explore not just the broad social consequences of political ideas, but also the psychological and moral effects of different ways humans live and conceive of themselves” (p. xiii). Accordingly, Smith portrays a Percy for whom calculations of expediency and consequentialist reformism will not suffice fully to protect or even recognize under the law the dignity and bodily integrity of every human person. Unimaginative empiricism, in Smith’s account, does not cure a prevailing sense of alienation during times of hedonistic excess and technological disruption. A sense of place and rootedness, however, shared by members of a common community, engenders a tacitly known order and cultural stability that are antecedent to written law and articulated rules (Hayek 1973, pp. 64, 68, 70, 81, 83, 105). Social solidarity arises out of the unwritten norms that, over time, become written laws; such norms locate dislocated individuals, or prevent the dislocation of located individuals. Percy, in Smith’s words, “helps us understand the persistent

appeal of immersing oneself in a community—and the ideologies that so often accompany such unity” (p. xxiii). These so-called “ideologies” underpin the operative rules and normative standards by which interacting humans habitually and customarily abide, and around which they organize themselves into communities.

Walker Percy, a physician and a creative writer, may not have been a lawyer or a legal expert,<sup>2</sup> but he has been cited in at least 79 law reviews and journals as of this writing.<sup>3</sup> *Second Coming*, his penultimate novel, features the story of Will Barrett, a disenchanted lawyer. Percy’s father was a prominent attorney in Birmingham, Alabama, who had studied law at the University of Virginia (Samway 1997, p. 22) and worked as a trial lawyer in private practice (Samway 1997, pp. 22-23). William Alexander Percy, Walker Percy’s uncle and a graduate of Harvard Law School, was a “gentleman planter and lawyer” who influenced the young Walker Percy (Dewey 1974, p. 273). Billups Phinzy Percy, Walker Percy’s brother, was a law professor at Tulane University Law School. Walker Percy was, in short, raised by and among members of the legal profession and maintained close ties to lawyer friends and family. It is reasonable to assume that these relationships furnished his mind with ideas about the law.

Whereas the law should provide order and stability, the exiled, existential man of Percy’s fiction occupies “a state of extraordinary fragmentation as a result of living in a world that has lost its bearings and is disintegrating” (Sweeny 1987, p. 2). This existential man inhabits a small space in an extensive populace, unsure of his place among the masses. His society is so vast that neither he nor anyone in it can fully know or appreciate the particular facts that motivate others to act. The massive size and scope of his society—which is also, in many respects, *our* society—increases the probability of conflict and disagreement among and between its citizens and residents. “As the range of persons extends among whom some agreement is necessary to prevent conflict,” Hayek explained, “there will be necessarily less and less agreement on the particular ends to be achieved; agreement will increasingly be possible only on certain abstract aspects of the kind of society in which they wish to live” (Hayek 1976, pp. 12-13). People cannot agree on concrete particulars about which they know little or nothing; only on the level of generality is agreement about the desired goals and priorities of mass society possible.

Hayek added that, “the more extensive society becomes, the fewer will be the particular facts known to (or the particular interests shared by) all members of that society” (Hayek 1976, p. 13). People with disparate interests who share only partial knowledge of local facts are less likely to form felt bonds and to identify as members of a common community; they are more likely to clash and quarrel. Spontaneous order rather than central planning ensures that their differing needs and purposes channel constructively towards peaceful, prosperous ends, which is to say, towards the maximizing of liberty and the minimizing of coercion. A condition of bigness in mass society leads not only to the centralization of power in the hands of fewer people, but also to the kind of individual alienation Percy depicted insofar as the “absence of relational bonds and personal history in a place leaves one without the capacity to speak of oneself in terms of any locale” (p. 60).

The absence of relational bonds and personal history within a populace also causes disputation and anxieties about belonging: Am I a member of this community? How do I become a member? Should I become a member? What are the prerequisites and conditions of membership? What defines membership? Who decides the rules of membership or the criteria for admission? If I become a member, will I enjoy the freedom to renounce my membership, to leave the community? Are the operative values and rules of the community attractive to me? And so on. Smith explains that “[t]he situation for modern people in relation to community is difficult because these anxieties about belonging exist alongside what Percy saw as actually happening to many American communities: the tendency to standardize” (p. 67). Standardization of the kind Smith describes inheres in the form of order known as *taxis*, which is neither grown nor evolutionary but, rather, made, constructionist, exogenous, planned, designed, simple, and concrete (rather than abstract) (Hayek 1973, pp. 35-54). *Taxis* is predicated on the synoptic delusion, i.e., “the fiction that all the relevant facts are known to some one mind, and that it is possible to construct from this knowledge of the particulars a desirable social order” (Hayek 1973, p. 14). The mass society in Percy’s fiction that causes his

characters to suffer angst and alienation captures the effects of the synoptic delusion. In a decentralized arrangement, by contrast, the complex processes of spontaneous order integrate competing interests as a workable, durable, and stable legal system held together by the mutual adjustments of innumerable individuals responding to changed circumstances (Hayek 1973, pp. 46-47, 113, 119. Power in the decentralized model is diffused and dispersed so that local communities may govern themselves according to their distinct norms and priorities, and so that individuals may freely experience a sense of community and belonging.

Smith suggests that Percy embraces decentralization as an element of sound politics. He claims that, “for Percy, any decent politics requires a respect for local distinctness and history, and a healthy political respect for federalism, localism, and subsidiarity” (p. 182). Moreover, he says, “local distinctiveness makes it possible for people to not see their communities as interchangeable, and for them to develop deep ties of responsibility toward their neighbors” (Ibid). Hayek made a similar point in the following way: “If we can agree that the economic problem of society is mainly one of rapid adaptation to changes in the particular circumstances of time and place, it would seem to follow that the ultimate decisions must be left to the people who are familiar with these circumstances, who know directly of the relevant changes and of the resources immediately available to meet them” (Hayek 1945, p. 524). Hayek, then, whose focus was economic activity, commended decentralization as the optimal solution to the so-called “knowledge problem.” He claimed, “We cannot expect that this problem will be solved by first communicating all this knowledge to a central board which, after integrating *all* knowledge, issues its orders. We must solve it by some form of decentralization” (Ibid). Individuals involved in decision-making on the local level directly feel the consequences of their actions in their communities and are thus better equipped than faraway bureaucrats or officials, who cannot feel the consequences of their decisions on local communities, to understand the immediate needs and wants of their neighbors.

Hayek castigated the synoptic delusion that one person or group of people acting in a governing capacity may design a universally applicable system of order with clear rules that constructively regulate complex human behavior and activities. Rather, the operative rules in different communities develop situationally and contextually; local norms, customs, and practices shape the character and content of those rules. Therefore, rules are not one-size-fits-all or universally acknowledged and understood across time and space. “[T]he rule one ought to follow in a given society and in particular circumstances in order to produce the best consequences,” Hayek stated, “may not be the best rule in another society where the system of generally adopted rules is different” (Hayek 1976, p. 26). As if recognizing this point, “Percy dramatized many ways that without a concrete, relational awareness of what people need, legal and social scientific experts can very easily destroy the basis for local communities to flourish” (p. 183).

Against the synoptic delusion with its reductive approach to community and its tendency to alienate individuals, Hayek celebrated “knowledge of people, of local conditions, and special circumstances”—knowledge that he dubbed a “valuable” asset (Hayek 1945, p. 26). Smith sees in Percy a comparable commitment, summarizing the themes of Percy’s essays about “Southernness” and “the South” as follows: “By making policy around abstract assumptions about the human person with little or no regard for how people actually live, it is very easy for experts to erode folkways and economies around which small towns thrive” (p. 183). Percy’s stories seize on this theme of decentralization: “The conclusions to Percy’s stories vary in their details, but one consistent element in each of these stories is an emphasis on a decentralized scale and scope to human ambition, particularly in politics” (Ibid.). Smith claims, moreover, that these themes are most pronounced in *Love in the Ruins* and *The Thanatos Syndrome*, “where large-scale government designs collapse, and the characters find themselves returning to the necessity of engaging in politics on a very small scale” (Ibid.).

Utilitarianism, in Smith’s study, is the chief target of Percy’s philosophical labors. Hayek, too, rejected utilitarianism. Hayek contended that Jeremy Bentham’s calculus for measuring pleasure and pain as the principal guide to human conduct does not—and cannot—account for the indeterminate effects of individual decisions on unknown people and places (Hayek 1976, p. 19). The Benthamite calculus is thus a poor

method for ordering society. It can only succeed if the calculating agent is omniscient, which of course no one is (Hayek 1976, p. 20). Working systems of laws in functional societies emerge not out of some wide-spread factoring of utility but from the humble recognition that the material consequences of any one decision cannot be entirely known to the acting agent (Ibid.). “Man has developed rules of conduct,” Hayek explained, “not because he knows but because he does not know what all the consequences of a particular action will be” (Hayek 1976, pp. 20-21). Therefore, Hayek concludes, “the most characteristic feature of morals and law as we know them is ... that they consist of rules to be obeyed irrespective of the known effects of the particular action” (Hayek 1976, p. 21). Presupposing knowledge of the pleasurable or painful effects of particular actions on unidentified individuals in distant communities has dehumanizing tendencies, erasing from the calculus the innumerable adaptations and adjustments of countless people to their unique circumstances. Hence utilitarianism may lead to alienation insofar as the top-down rules it institutes to govern society presuppose a mastery of cultural specificities. Those who find themselves at odds with the controlling rules in mass society—perhaps for moral reasons, perhaps for other reasons—may feel powerless and disoriented when their governing institutions do not represent their needs, wants, or desires.

Percy saw radical decentralization, right down to the level of the neighbor, as an antidote to the alienating symptoms of rationalism or utilitarianism. “Percy suggested throughout his work,” Smith claims, “that only face-to-face confrontations with one’s neighbors can overcome the looming sense of alienation that politics so often brings at the abstract level of party platforms and ideologies” (p. 183). How, exactly, to organize a decentralized system whereby neighborly contact overcomes the demoralizing presence of alienation in mass society is not a question Percy definitively answers. He does not outline a mode of jurisprudence or pronounce a systematically coherent school of political economy. Doing so, in fact, would fly in the face of his commitment to the local, cultural specificities that enable individuals within close-knit communities to flourish and, free from coercion, to realize their possibility as human agents exercising free choice within boundaries established by themselves and their neighbors. Percy adopts an anti-ideological stance towards politics, emphasizing the primacy of the human person rather than of governmental systems and structures (Ibid.). His politics has less to do with government structures, political parties, and abstract ideologies and more to do with family, faith, and community (p. 184). He does not wish for humans to be wayfarers. He rejects “isms” (pp. 183-184).

What does it mean if, in Smith’s words, “we cannot make the world fully our home,” if “all politics can do is keep the peace and pursue what limited forms of justice mankind’s flaws allow”? (Ibid.). It means, perhaps, that the best solutions to the problems created by mass society in this imperfect world involve devolution of power to local levels where personal relationships and reputation mean more than ideology, where the human capacity for mischief is at its least threatening, and where inevitable conflict does the least harm. Devolution undermines unlimited democracy, which, according to Hayek, centralizes and grows power at the expense of regional and local authority (Hayek 1979, p. 145). Percy may not have liked Hayek’s conception of regional and local authorities taking the form of commercial corporations (Hayek 1979, p. 146), but he probably would have agreed with Hayek’s reasons for favoring that form of authority, namely the recovery of a lost sense of place and rootedness. “To re-entrust the management of most service activities,” Hayek said on this score, “to smaller units would probably lead to the revival of a communal spirit which has been largely suffocated by centralization” (Ibid.).

Smith links Percy and Hayek only in passing (e.g., p. 42), but his argument substantiates Hayek’s proposition that, “[t]o the ordinary individual it is much more important to take part in the direction of his local affairs that are now taken largely out of the hands of men he knows and can learn to trust, and transferred to a remoter bureaucracy which to him is an inhuman machine” (Hayek 1979, pp. 146-147). Hayek recognizes here a profound state of alienation and angst occasioned not only by the individual’s disassociation from the decision-making processes that guide his workaday experiences, but also by the deprivation of his agency (or choice) regarding the organization of his quotidian affairs. The charge that economics is dehumanizing should, in his mind, be redirected at political centralization, for which he blames the “inhumanity of modern society.”<sup>24</sup> Smith demonstrates that Percy’s corpus—not just his fiction, but his essays as well—

supports Hayek's thinking about decentralization and local communities. He shows that literary texts can inform and improve our thinking about jurisprudence and the laws and institutions that govern our everyday lives. He might just inspire scholars to consider Percy for insights into the law and jurisprudence, and to analyze the probable and underappreciated connections between Percy and Hayek. In that he will have done a great service.

## NOTES

- 1 All page references are to Smith unless specified otherwise.
- 2 "Although Percy was by no means an authority on constitutionalism, he did have an eye for the logical consequences of this devaluation. He argued that the logical problems American and European societies now face concerning how to draw limitations on euthanasia and abortion would creep in the moment we accepted the first premise that life only holds contingent value." (p. 182).
- 3 This figure is based upon a Westlaw search on January 7, 2019.
- 4 *Ibid.*, p. 146. It is worth quoting Hayek's full point here: "The widely felt inhumanity of the modern society is not so much the result of the impersonal character of the economic process, in which modern man of necessity works largely for aims of which he is ignorant, but of the fact that political centralization has largely deprived him of the chance to have a say in shaping the environment which he knows."

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