

Jews, Not Pagans

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I. INTRODUCTION

It has become increasingly common in recent years for conservative Christian thinkers to describe cultural conflicts in terms of a battle between Christianity and what they call the “paganism” of secular liberals.¹ This way of framing things raises some troubling questions for Jewish readers, even if we are not necessarily the intended audience for such polemics.

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1. See, e.g., R.R. RENO, *RESURRECTING THE IDEA OF A CHRISTIAN SOCIETY* 3–7 (2016); Adrian Vermeule, *A Christian Strategy*, 277 *FIRST THINGS* 41 (2017); Charles J. Caput, *(Re)Building the Kingdom: Secularism, Christianity, and Cultural Renewal*, *PUB. DISCOURSE* (May 15, 2017), <https://www.thepublicdiscourse.com/2017/05/19326/> [<https://perma.cc/K96Y-TLET>] (reviewing RENO, *supra*).

We cannot help but ask questions like: What is the role of Jews and of other religious minorities in these conflicts? How do Jews fit into the relevant categories of Christianity and paganism? And how would Jews be treated in a society in which either Christianity or paganism prevails?

The idea that Western democratic societies face an existential choice between Christianity and paganism belongs initially to T. S. Eliot.² And Eliot had some answers to our questions. In his Page-Barbour Lectures, delivered at the University of Virginia in 1933, Eliot argued that Christianity in the West was under attack by what he called “Liberalism,” which elevated the values of individuality and originality over the traditional morality of the Church.³ He called for a return to religious orthodoxy in order to “re-establish a vital connexion between the individual and the race; the struggle, in a word, against Liberalism.”⁴ Pursuing that struggle, Eliot made clear that he associated Jews with the subversion of the cultural, racial, and religious conditions necessary for maintaining and developing a stable Christian society. In the fight between secular liberalism and Christianity, the Jews were a decidedly negative influence, to be marginalized and contained.⁵

In later work, Eliot continued his Christian attack on liberalism, while muting, though never renouncing, his anti-Semitism. In *The Idea of a Christian Society*, he claimed that Western democracies face a choice between accepting the “Idea of a Christian Society” or acquiescing in a culture of secular liberalism, or “modern paganism,” as he called it.⁶ Indeed, he asserted that England was steadily slouching toward such paganism, if it was not already there.⁷ Eliot then made the case for a Christian society, which might tolerate religious minorities or at least those that did not threaten its cultural and religious traditions.⁸

Eliot’s two primary claims—that the West faces a choice between Christianity and paganism and that it should choose Christianity—are now the subject of a most extensive, sophisticated, and sympathetic treatment in Steven Smith’s book, *Pagans and Christians in the City*.⁹ Smith develops and advances both of Eliot’s claims. He argues that our culture is riven by Christian and pagan forces. And over a wide range of social and political

2. T.S. ELIOT, *The Idea of a Christian Society*, in CHRISTIANITY AND CULTURE 1, 10 (1949).

3. See generally T.S. ELIOT, AFTER STRANGE GODS: A PRIMER ON MODERN HERESY (1934).

4. *Id.* at 48.

5. See *id.* at 19–20.

6. ELIOT, *supra* note 2, at 48.

7. See *id.* at 9–10.

8. See *id.* at 37–41.

9. See generally STEVEN D. SMITH, PAGANS AND CHRISTIANS IN THE CITY: CULTURE WARS FROM THE TIBER TO THE POTOMAC (2018).

controversies, he defends the view that a Christian society is normatively preferable to a pagan one.¹⁰

This claim should be disquieting to religious minorities, as well as to nondenominational believers and nonorthodox Christians in any given society. For Jews, in particular, the division of the world into Christian and pagan has particular historical resonance, leading us to ask: What are Jews supposed to make of all this? Although Smith recognizes his intellectual debt to Eliot, he does not discuss Eliot's anti-Semitism. And while Smith mentions various Jewish thinkers throughout his work, he does not take up the Jewish question directly: What is the place of the Jew in a Christian or, for that matter, a pagan city? Is the Jew a Christian or a pagan? Can the Jew be both or neither? And which kind of society should a Jew prefer, a Christian one or a pagan one?

Here we focus on the place of the Jews in Smith's schema in part because antiliberals throughout history have already done so. The "wandering" or "cosmopolitan" Jew has been attacked as a symbol of liberalism. We also emphasize the *category* of the Jew—which includes all those believers who do not fit in a world bifurcated between orthodox Christians and nonbelieving pagans—as a way to challenge the notion that society is faced with only two possible choices.

In what follows, we argue that Jews are neither Christians nor pagans. The contrast between these two categories is falsely presented. The Jew, or at least a certain conception of the Jew in the American experience, provides a powerful counter-example to the categories that Smith uses to construct his conception of a Christian society. But once the Jewish idea becomes clear, it is possible to reframe the choice posed by Eliot and by Smith. The choice of society is not binary: Christian or pagan? It is ternary: Christian or pagan or Jew?

II. ELIOT AND THE JEWS

For Jews, a message that we can be either Christians or pagans and that we have to choose is disconcerting, even if Smith defines "Christian" ecumenically in terms of those who believe in a "transcendent God."¹¹ Smith's concept of the two cities is borrowed from Eliot,¹² so perhaps we

10. *Id.* at 377–79.

11. *Id.* at 111–13, 126.

12. *Id.* at 12–16.

should start there, with Eliot's conception of the place of the Jews in an otherwise pitched battle between Christianity and paganism.

The view from Eliot is not reassuring. *The Idea of a Christian Society*, from which Smith derives his grand clash of civilizations, is a critique of creeping paganism and an account of a Christian state.¹³ Eliot explicitly calls for the "Christianisation of England" through the Anglican Church, which will have a "hierarchical organisation in direct and official relation to the State" and "an organisation, such as the parochial system, in direct contact with the smallest units of the community and their individual members."¹⁴ Eliot's Christian establishment is intended to reflect, support, and direct a Christian society. The alternative is to "merely sink into apathetic decline" or become a "totalitarian democracy."¹⁵ To those "repelled by[]" such a prospect, one can assert that the only possibility of control and balance is a religious control and balance; that the only hopeful course for a society which would thrive and continue its creative activity in the arts of civilisation, is to become Christian."¹⁶

Eliot's use of "Christian" is not ecumenical. He does admit at one point that "there will be room for a proportion of other persons professing other faiths than Christianity,"¹⁷ but only those who bring special talents required by the state. Although Eliot makes clear that he is not advocating "the forcible suppression, or the complete disappearance of dissident sects," he observes that a Christian society "can only be realised when the great majority of the sheep belong to one fold" and that "dissentients must remain marginal."¹⁸ A Christian commonwealth is not one in which everyone is necessarily a devout Christian, but it is "a religious-social community, a society with a political philosophy founded upon the Christian faith" and "[t]he national faith must have an official recognition by the State."¹⁹

What about the Jews? Eliot's views are by now well-known. He did not hide his anti-Semitism, either in his poetry or prose.²⁰ What is important

13. See ELIOT, *supra* note 2, at 20.

14. *Id.* at 37–38.

15. *Id.* at 18.

16. *Id.* at 18–19.

17. *Id.* at 29. Eliot makes this comment in the context of describing who can be part of the educational system in a Christian society, but as the remaining notes in the paragraph above make clear, he favored the marginalization and exclusion of non-Christians more generally.

18. *Id.* at 36–37.

19. *Id.* at 40–41.

20. See, e.g., ANTHONY JULIUS, T.S. ELIOT, ANTI-SEMITISM, AND LITERARY FORM 32–40 (Thames & Hudson Ltd. rev. ed. 2003) (1995); CHRISTOPHER RICKS, T.S. ELIOT AND PREJUDICE 28 (1988); Walter A. Strauss, *The Merchant of Venom? T.S. Eliot and Anti-Semitism*, 14 S. CENT. REV. 31, 32 (1997); Louis Menand, *Eliot and the Jews*, N.Y. REV. BOOKS (June 6, 1996), <https://www.nybooks.com/articles/1996/06/06/eliot-and-the-jews/> [<http://perma.cc/UGA5-AFV8>] (reviewing JULIUS, *supra*).

for our purposes is the relationship between Eliot's views on Jews and his attack on liberalism. For Eliot, paganism is Liberalism (with a capital "L").²¹ And in the anti-Semitic milieu in which Eliot wrote, liberalism was directly associated with the Jew.²²

Consider *After Strange Gods*,²³ which set the stage for *The Idea of a Christian Society*.²⁴ Presented to a segregated audience at the University of Virginia, the lectures were a paean to traditional Christian morality—a disquisition on the necessity of a common religious culture.²⁵ Eliot praised the Southern Agrarians,²⁶ a reactionary literary movement that defended the agrarian virtues and genteel traditions of the Old South, shrouding its racial brutality in the Lost Cause of the Confederacy.²⁷

Eliot felt welcome in Virginia, which could still recall some semblance of a "tradition" and was less affected by the "influx of foreign populations" that diluted and corrupted the Anglo-Saxon majority in the North.²⁸ "You are farther away from New York; you have been less industrialised and less invaded by foreign races; and you have more opulent soil."²⁹ Eliot embraced racial purity at the moment Hitler came to power and when the Jews of Europe were in most need of protection.³⁰ Oblivious to events unfolding across the Atlantic and comfortable in the midst of Jim Crow, he proceeded to explain the conditions for developing a Christian tradition:

The population should be homogeneous; where two or more cultures exist in the same place they are likely either to be fiercely self-conscious or both to become adulterate. What is still more important is unity of religious background; and reasons of race and religion combine to make any large number of free-thinking Jews undesirable.³¹

21. See ELIOT, *supra* note 2, at 11–13.

22. See Strauss, *supra* note 20, at 36.

23. ELIOT, *supra* note 3.

24. ELIOT, *supra* note 2.

25. See ELIOT, *supra* note 3, at 19–21.

26. See *id.* at 15–16.

27. See generally PAUL V. MURPHY, *THE REBUKE OF HISTORY: THE SOUTHERN AGRARIANS AND AMERICAN CONSERVATIVE THOUGHT* (2001); *THE MYTH OF THE LOST CAUSE AND CIVIL WAR HISTORY* (Gary W. Gallagher & Alan T. Nolan eds., 2000).

28. ELIOT, *supra* note 3, at 15.

29. *Id.* at 17.

30. See JULIUS, *supra* note 20, at 163.

31. ELIOT, *supra* note 3, at 20 (footnote omitted).

The reactionary sensibility in these sentences is expressed so compactly that it is possible to miss what is happening here. Eliot is arguing that a political community must be unified in terms of culture, race, and religion. The Jews are anathema to this form of unity because they introduce a foreign presence that is racially distinct and religiously heterodox. The implication is that where there are too many “free-thinking Jews,” it will not be possible to sustain a Christian society.³²

Eliot’s anti-Semitic comments in *After Strange Gods* were condemned by some of his contemporaries.³³ It is notable that Eliot did not allow the lectures to be republished, although he also never repudiated his statements.³⁴ Defenders of Eliot have asserted that “free-thinking Jews” should not be read as a condemnation of Jews, but rather as a criticism of “secular humanism,” or liberalism, or paganism—practiced by whatever religious or ethnic group.³⁵ In Eliot’s case, however, this saving construction is belied by his embrace of standard racialized images of the Jew elsewhere: “And the jew squats

32. See RICKS, *supra* note 20, at 50.

33. See JULIUS, *supra* note 20, at 150; Francis Phillips, *The Poet Who Confronted T S Eliot over His Anti-Semitism*, CATH. HERALD (Oct. 3, 2011), <http://catholicherald.co.uk/commentandblogs/2011/10/03/the-poet-who-confronted-t-s-eliot-over-his-anti-semitism/> [<https://perma.cc/V7T4-FN9K>].

34. See RICKS, *supra* note 20, at 47.

35. See, e.g., Russell Kirk, *T.S. Eliot on Literary Morals*, TOUCHSTONE (1991), <http://touchstonemag.com/archives/article.php?id=04-03-023-v> [<http://perma.cc/U9SY-WCLR>] (reviewing ELIOT, *supra* note 3). In private correspondence, Eliot purported to defend himself along these lines against the accusation of anti-Semitism. He wrote:

By free-thinking Jews I mean Jews who have given up the practice and belief of their own religion, without having become Christians or attached themselves to any other dogmatic religion. It should be obvious that I think a large number of free-thinkers of any race to be undesirable, and the free-thinking Jews are only a special case.

RICKS, *supra* note 20, at 44 (quoting Correspondence from T.S. Eliot to J.V. Healy (May 10, 1940) (on file with Harry Ranson Humanities Research Center, University of Texas at Austin)). Why a special case? Eliot continued:

The Jewish religion is unfortunately not a very portable one, and shorn of its traditional practices . . . it tends to become a mild and colourless form of Unitarianism. The free-thinking European, or American of European race, retains for the most part a good many of the moral habits and conventions of Christianity. . . . The Jew who is separated from his religious faith is much more deracinated thereby than the descendent of Christians, and it is this deracination that I think dangerous and tending to irresponsibility.

Id. (quoting Correspondence from T.S. Eliot to J.V. Healy, *supra*). Apparently, Eliot’s defense is that Judaism does not wander well, and that free-thinking Jews are even more threatening to Christian orthodoxy than their gentile counterparts. We agree with Ricks that Eliot’s response is “instinct with animus”—why single out the Jews as a special case? *Id.* at 46. But then perhaps Eliot was right about the danger posed by free-thinking Jews, not because, as Ricks observes, “the moral habits and conventions of Judaism are not retained by free-thinking Jews, but [because] they strongly and even disconcertingly are.” *Id.* at 45. We shall return to this point below in Part V.

on the window sill” in his poem *Gerontion*,³⁶ or the “jew is underneath the lot” of “rats” in *Burbank with a Baedeker: Bleistein with a Cigar*.³⁷ Other examples abound.³⁸

The effort to separate the Jew from his liberalism fails for another reason. As Anthony Julius has well-described, the trope of the free-thinking Jew, and the association of the Jew with liberalism, was dominant throughout the nineteenth and early twentieth centuries.³⁹ Liberalism meant the rejection of the religious state, recognition of rights of conscience, and, most of all, the political emancipation of the Jews. But for the dominant culture, the problem of the Jews was that they refused to recognize Christianity and therefore also the Christian foundations of society and the state. There was no way to bring Jews into the fold. As Isaiah Berlin observed in describing this line of thinking: “[T]o tolerate them as an organised religion is a concession to that liberalism and rationalism that constitutes a denial of what men are for, to serve the true God.”⁴⁰

The “free-thinking Jew” sometimes appears as a distinct problem, independent from the pious or “devout” Jew. There is always concern with the secret Jew—the assimilating Jew—appearing in European universities and government offices and asserting liberal nostrums. But as Julius notes, “Eliot cannot imagine Jews to be anything other than free-thinkers—liberals by another name.”⁴¹ Other writers made the relationship between Jews and liberalism more explicit. Consider such assertions that “liberalism is nothing but secularised Judaism,” or “[e]very Jew is a liberal. He is a liberal by nature.”⁴² To the Christian traditionalist, modern “Jews pose[d] a double challenge, both to the primary need of culture for religion, and to the subsidiary need for

36. T.S. ELIOT, *Gerontion*, in *THE COMPLETE POEMS AND PLAYS* 21, l. 8, at 21 (1950).

37. T.S. ELIOT, *Burbank with a Baedeker: Bleistein with a Cigar*, in *THE COMPLETE POEMS AND PLAYS*, *supra* note 36, at 23, ll. 22–23, at 24.

38. See JULIUS, *supra* note 20, at 75–143; RICKS, *supra* note 20, at 25–76.

39. See JULIUS, *supra* note 20, at 157–59.

40. *Id.* at 159 (quoting ISAIAH BERLIN, *THE MAGUS OF THE NORTH: J.G. HAMANN AND THE ORIGINS OF MODERN IRRATIONALISM* 126 (Henry Hardy ed., 1993)).

41. *Id.* at 157.

42. *Id.* at 158 (first quoting HUGO VALENTIN, *ANTISEMITISM: HISTORICALLY AND CRITICALLY EXAMINED* 62 (A.G. Chater trans., Books for Libraries Press 1971) (1937); then quoting ERNST NOLTE, *THREE FACES OF FASCISM: ACTION FRANÇAISE, ITALIAN FASCISM, NATIONAL SOCIALISM* 70 (Leila Vennewitz trans., Mentor Publ'g Co. 1969) (1963)).

unity of religious background.”⁴³ That is because modern Jews are “agents both of secularism and heterodoxy.”⁴⁴

For Eliot, this makes the Jew particularly dangerous. “[T]he scattering of the Jews amongst peoples holding the Christian Faith,” Eliot writes in *Notes Towards the Definition of Culture*,

may have been unfortunate both for these peoples and for the Jews themselves, that the culture-contact between them has had to be within those neutral zones of culture in which religion could be ignored: and the effect may have been to strengthen the illusion that there can be culture without religion.⁴⁵

The idea that there can be cultural contact, and perhaps commonality, outside of religion is a falsehood of liberalism. There is no such possibility. For Eliot, there is a binary choice between Christianity and Jewish liberalism; there can be only one or the other—Christian or pagan—in either case, a religious choice has to be made.

But whatever their choice, the Jews cannot win. Despised for being outside and apart from Christianity, but also attacked for seeking equal recognition through assimilation, Jews are incompatible with a society grounded in a common faith and culture. Eliot’s Jews are *all* problematic. In his Christian society, free-thinking Jews must be limited and marginalized, while “devout” Jews might have “culture-contact” with orthodox Christians, if only to reinforce their religious separateness and thus their cultural and political ghettoization.⁴⁶

43. *Id.* at 165.

44. *Id.* (“Jews appear to contribute to a culture without sharing that culture’s religion; they also have their own culture without benefit of adherence to Judaism. Free-thinking, they are attached neither to the religion of their birth nor to any other religion.”).

45. T.S. ELIOT, *Notes Towards the Definition of Culture*, in CHRISTIANITY AND CULTURE, *supra* note 2, at 79, 144 n.2.

46. The passage from Eliot’s *Notes* quoted in the preceding paragraph, at *id.*, appeared in a footnote to the original edition published in 1948. In 1962, Eliot revised this footnote to read:

It seems to me highly desirable that there should be close culture-contact between devout and practicing Christians and devout and practising Jews. Much culture-contact in the past has been within those neutral zones of culture in which religion can be ignored, and between Jews and Gentiles both more or less emancipated from their religious traditions. The effect may have been to strengthen the illusion that there can be culture without religion.

JULIUS, *supra* note 20, at 166–67 (quoting T.S. ELIOT, NOTES TOWARDS THE DEFINITION OF CULTURE 70 n.1 (2d ed. 1963) (1948)). For detailed comparisons of the original footnote with the revised version, see *id.* at 165–67. Julius argues that Eliot’s revision is “cryptically phrased” but does nothing to ultimately “advance at all on the exasperated anti-Semitism of *After Strange Gods*.” *Id.* at 166–67. We agree and would add only that Eliot’s apparent concession to “devout and practising” Jews is illusory. For Eliot, cultural contact between orthodox Jews and Christians could only reveal their radical theological, cultural, and political differences, reinforcing their separateness, except perhaps on the need to condemn their free-thinking counterparts. After all, Eliot did not revise his statements that

III. SMITH AND THE JEWS

We are not suggesting that anti-Semitism is necessarily part of a religious, cultural, or political theory that assumes only two choices: Christian or pagan. Steven Smith is clear that his use of the term “Christians” includes devout and practicing believers of all forms of transcendent religion and that his use of the term “pagan” includes all secularized persons regardless of their formal religious affiliation.⁴⁷ And, of course, Smith does not partake of Eliot’s racialized imagery.

We nevertheless want to make several points about the role that Jews seem to play—or not to play—in Smith’s argument. Unlike Eliot, who condemned the Jews, Smith’s stark binary between Christians and pagans instead erases Jews as having any distinct identity. There are Christian Jews, who affirm transcendent religiosity, and pagan Jews, who accept immanent conceptions of value. Jews have no independent status; like everyone else, they are either Christians or pagans or on the way to becoming one or the other.

Although Smith does not put things in this way, his theory describes two types of Jews: Good Jews and Bad Jews. The Good Jews are the “devout,” the pious; resisters of paganism. Smith cites a series of Jewish thinkers—Abraham Joshua Heschel, Victor Frankl, and Jonathan Sacks—who seem to share his anti-pagan ethos.⁴⁸ They emphasize God’s transcendence as the source of moral and ethical value and divine consecration as giving meaning and purpose to human life and to the natural world. By contrast, the Bad Jews have been “emancipated from their religious traditions,”⁴⁹ to borrow Eliot’s phrase. They are the assimilated, secularized, and paganized Jews. Notably, Smith’s main examples of pagan thinkers—Ronald Dworkin and Anthony Kronman—are or were assimilated, secular, and liberal or progressive Jews.⁵⁰ (Smith also cites Barbara Ehrenreich, who came from a Scots-Irish, atheist family but married a secular Jew.)⁵¹ They reject

“dissentients must remain marginal, tending to make only marginal contributions,” and that a Christian society “can only be realised when the great majority of the sheep belong to one fold.” ELIOT, *supra* note 2, at 36–37.

47. See SMITH, *supra* note 9, at 218, 248.

48. See generally *id.* ch. 2.

49. JULIUS, *supra* note 20, at 166 (quoting ELIOT, *supra* note 46, at 70 n.1).

50. See SMITH, *supra* note 9, at 232–56.

51. See *id.* at 240–41; Barbara Ehrenreich, *HERS; Cultural Baggage*, N.Y. TIMES MAG. (Apr. 5, 1992), <https://www.nytimes.com/1992/04/05/magazine/hers-cultural-baggage.html>

transcendent religion, including biblical ethical morals, in favor of non-natural but immanent conceptions of the good.⁵² Their understandings of sacred value are either subjectively given or perhaps objective but without any independent, nonmoral foundation.

For all of these thinkers, however, their Jewish backgrounds or affiliations are irrelevant for Smith's purposes. All that matters is that they line up on one side of his Christian-pagan divide or the other. This erasure of Jewish identity allows Smith to conscript these Jewish thinkers into his larger conception of our culture wars, which focuses mainly on issues of sexual and religious freedom.⁵³

In this story, which Smith acknowledges is familiar from James Davison Hunter,⁵⁴ "Christians" are traditional, conservative, or orthodox believers, who hold a certain constellation of normative views about sex and religious liberty.⁵⁵ Generally speaking, they believe that sexual relationships should take place within marriage or not at all, and they believe the state should generally support transcendent religion, at least in noncoercive ways, and should accommodate traditional believers except when there are extremely weighty reasons to limit their freedom.⁵⁶ These Christian views are opposed by pagans, whose skepticism about transcendent religion leads to rejection of traditional sexual mores and to opposition to state support for religion, including legal exemptions for religious believers.⁵⁷

Smith's theory of the culture wars is admittedly not entirely novel, and indeed some Jewish thinkers have made similar arguments. For example, more than two decades ago, Milton Himmelfarb wrote, "The trouble is not that religion in general has too small a role in American public life. The trouble is that a particular religion has too great a role—paganism, the *de facto* established religion."⁵⁸ Himmelfarb then went on to attack liberalism:

[<https://perma.cc/VF6Y-MJF2>] (providing a brief autobiographical description of her ethnic background and life history).

52. See generally RONALD DWORKIN, *RELIGION WITHOUT GOD* (2013); BARBARA EHRENREICH, *LIVING WITH A WILD GOD: A NONBELIEVER'S SEARCH FOR THE TRUTH ABOUT EVERYTHING* (2014); ANTHONY T. KRONMAN, *CONFESSIONS OF A BORN-AGAIN PAGAN* (2016).

53. See SMITH, *supra* note 9, ch. 10–11.

54. See generally JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* (1991).

55. SMITH, *supra* note 9, at 263–66.

56. *Id.* at 282–84 (discussing sexual morality), 310–15 (discussing religious accommodations).

57. See *id.* at 286–89 (discussing opposition to traditional sexual morality), 315–18 (discussing opposition to religious accommodations).

58. Milton Himmelfarb, in *AMERICAN JEWS AND THE SEPARATIONIST FAITH: THE NEW DEBATE ON RELIGION IN PUBLIC LIFE* 65, 65 (David G. Dalin ed., 1993).

The Enlightenment's project was liberal—to liberate us for the pursuit of our happiness. But much of what began as liberal has turned libertine, and libertinism has brought not liberation and happiness so much as enslavement and misery: AIDS, kids who have kids, the absent father. First the French Revolution devoured its children, then the Bolshevik Revolution, and now the sexual revolution.⁵⁹

Smith's critique is notably similar to Himmelfarb's, even if more elegantly stated. First, like Himmelfarb, Smith is preoccupied with pagan sexual mores. Smith gives considerable attention to the sexual proclivities of ancient and modern pagans,⁶⁰ presumably to make the larger point that Himmelfarb also makes—that sexual freedom is the product of a religious orientation and, more specifically, a degenerate one. Religion, and the culture it produces, does all the work of explaining social practices. Transcendent religion serves to develop and reinforce traditional social mores; immanent religion produces the opposite. There are no other causes. Little credit is given to women's economic and social liberation. Little blame is placed on an economic system that generates shocking levels of material inequality.⁶¹ Paganism encompasses everything: AIDS, abortion, sex, drugs, and, most recently, same-sex marriage.⁶²

Second, like Himmelfarb, Smith is waging a culture war, though Smith follows Eliot in framing his argument partly in diagnostic terms, as an effort to explain how we have arrived at the current cultural and political stand-off.⁶³ But what is the purpose of giving the social controversies of the late twentieth and early twenty-first centuries the heft of an ancient struggle between paganism and Christianity? As he has done before, Smith seeks to present the historical arc of Western cultural and political development as a struggle for religious domination. He argues that modern liberalism is a "religion," pursued with as much religious fervor as paganism was in ancient Rome.⁶⁴ Clearly this rhetorical trope has never gone out of fashion. Eliot invokes it at mid-century; Himmelfarb, in the early 1990s. Religious conservatives in every era bemoan cultural decline, and they regularly place

59. *Id.* at 66.

60. SMITH, *supra* note 9, at 71–78.

61. Although, here, contemporary conservatives may part ways with Eliot, who took a dimmer view of capitalist, industrial economies. *See* ELIOT, *supra* note 2, at 48–49.

62. *See* SMITH, *supra* note 9, at 282 (“[T]he struggle [is] over a variety of issues connected in various ways with sexuality: contraception, pornography, abortion, homosexuality, same-sex marriage.”).

63. *See id.* at 8–11.

64. *Id.* at 344.

such decline at the feet of an irreligious culture, presumably aided and abetted by a too-emphatic constitutional emphasis on church-state separation.

It takes a certain chutzpah to suggest that the Supreme Court's modern religious freedom jurisprudence, which is only about seventy-five years old, is really an instantiation of a millennial battle for the soul of Western civilization. But Smith has been dogged in his efforts to reorient the origins of modern religious freedom to someplace other than the Enlightenment. Most recently, he has argued that the foundations of religious freedom lie in the medieval doctrine of the freedom of the church, which established a principle of deference to church sovereignty.⁶⁵ In this book, he goes back further still to ancient Rome.⁶⁶

In both these eras, the Jews are erased from the story—they have no presence. Smith mentions Christian persecution of Jews in passing⁶⁷ but devotes little time to the depredations of the Inquisition, the Crusades, the long history of forced conversions and expulsions, pogroms in every age, or the Holocaust.⁶⁸ It would appear from his narration that the Christians were more often persecuted than persecutors. Yet the history of Western civilization is soaked with the blood of Jews, a tiny minority, and yet one of the most despised on earth. Smith's account of the battle between transcendent and immanent forms of religion cannot account for this hatred or its history. Jews had nothing at all to do with paganism in ancient Rome or medieval Europe. It is only the Enlightenment and the rise of liberalism that brings the Jews some relief, and that relief is frankly short-lived.

So, too, in both ancient Rome and medieval Europe the existence of a state religion was taken for granted, as was the absence of anything approaching a moral or political principle of religious liberty. The medieval principle of freedom of the church was not a principle of religious liberty, but rather one of jurisdictional sovereignty.⁶⁹ The Catholic Church did not embrace religious free exercise until the twentieth century.⁷⁰ And why would it?

65. See Steven D. Smith, *Freedom of Religion or Freedom of the Church?*, in LEGAL RESPONSES TO RELIGIOUS PRACTICES IN THE UNITED STATES: ACCOMMODATION AND ITS LIMITS 249, 266–69 (Austin Sarat ed., 2012) [hereinafter Smith, *Freedom of Religion*]; Steven D. Smith, *The Jurisdictional Conception of Church Autonomy*, in THE RISE OF CORPORATE RELIGIOUS LIBERTY 19, 29–31 (Micah Schwartzman, Chad Flanders & Zoë Robinson eds., 2016) [hereinafter Smith, *Jurisdictional Conception*].

66. See SMITH, *supra* note 9, at 56–57.

67. *Id.* at 206, 214–15.

68. See Samuel C. Rickless, *Paganism is Dead, Long Live Secularism*, 56 SAN DIEGO L. REV. 451, app. at 482–84 (2019).

69. Smith, *Jurisdictional Conception*, *supra* note 65, at 19.

70. For a helpful overview of the Church's position on religious freedom in the half-century or so leading up to Vatican II, see Anna Su, *Catholic Constitutionalism from the Americanist Controversy to Dignitatis Humanae*, 91 NOTRE DAME L. REV. 1445, 1445–57 (2016).

Either one's religion is true or it isn't—and if it is true, then there is good reason to impose it even on an unwilling populace.⁷¹ As Smith explains, the Romans thought this too, even if they sometimes tolerated minority religions.⁷² Their state religion was pagan first, and then it was Christian.⁷³ Jews, historically, watched as state religions came and went. For them, and despite Smith's story, all too often the specifics of the regime could not have mattered less. Religious control of the state was never a possibility for the Jews; indeed, it only brought misery and sorrow. As *The Who* sang, "Meet the new boss. Same as the old boss."⁷⁴

Smith's advocacy of a Christian society, however, raises the obvious question of whether he ought, like Eliot, to favor a Christian state. In the battle of religious regimes—transcendent versus immanent—the former is clearly superior to the latter. The pagans cannot account for life's meaning.⁷⁵ Pagan existence is desiccated, sad, and impoverished. Christianity, in the broad, ecumenical sense, is necessary to give life meaning and purpose, and acting on that purpose is presumably necessary for leading a good life. And so, at the very least, pagans should allow Christians free exercise of religion. More profoundly, perhaps, we should all become Christians, and following Eliot, we should all prefer to live in a Christian society.⁷⁶

Unlike Eliot, however, Smith does not endorse a Christian state,⁷⁷ even if that seems like a natural extension of his argument. After all, why wouldn't we favor a Christian commonwealth if it supports the moral and spiritual goods that are so valuable to meaningful human existence? And why wouldn't we reject the various forms of paganism—and then why not also liberal Protestant or Enlightenment beliefs that slouch toward paganism—that undermine those goods and, if possible, enlist the state's power in support of our efforts?

For Jews and other religious minorities these questions are disconcerting, even if we are ostensibly included in a capacious "Christian" or, in the supercessionist phrase, "Judeo-Christian" society. Jews have for centuries been the targets of Christian reformist zeal. And when that has failed, we

71. See Larry Alexander, *Good God, Garvey! The Inevitability and Impossibility of a Religious Justification of Free Exercise Exemptions*, 47 *DRAKE L. REV.* 35, 41 (1998).

72. See SMITH, *supra* note 9, at 154–55.

73. See *id.* at 158–59.

74. PETE TOWNSHEND, *We Won't Get Fooled Again*, on WHO'S NEXT (Olympic Studios 1971).

75. See SMITH, *supra* note 9, at 370–77.

76. See *id.* at 379 (quoting ELIOT, *supra* note 2, at 18–19).

77. See *id.* at 378–79.

have been persecuted, ostracized, ghettoized, terrorized, and slaughtered.⁷⁸ And so Jews, especially in America, often adopt a different historical narrative, not one in which pagans square off against Christians—as there is nothing novel to Jews about murderous pagans, whether Roman or otherwise⁷⁹—but one in which religion ceases to define our standing in the political community. The Jews’ quest for emancipation and eventually for social and political equality emerges as a commitment to what Eliot recognized as “political Liberalism.”⁸⁰ Jews embrace liberalism not because they are pagans but because, unlike any Christian politics they have known, it has guaranteed their free and equal citizenship.

IV. JEWS, EQUALITY, AND RELIGIOUS FREEDOM

There is a third Jew, neither Christian nor pagan. Remember that for Smith, the distinction between Christian and pagan is mainly creedal or doxastic. Christians—in Smith’s ecumenical sense—believe in transcendent religion, with all the spiritual, moral, and political commitments that follow from that orientation to the world. If we focus on matters of religious freedom, Christians favor public recognition of belief in God and Christianity (or the “Judeo-Christian” tradition), the inclusion of religious reasons as a basis for political decision-making, government religious speech in the form of passive symbols and school prayer, and public funding of religious institutions.⁸¹ They also support religious accommodations out of deference to transcendent authority, which may impose duties that take priority over those imposed by the state.⁸²

According to Smith’s story, pagans repudiate all of these commitments. They reject transcendent authority in favor of an immanent religion, in which

78. The literature documenting the history of anti-Judaism and anti-Semitism is depressingly vast. *See, e.g.*, JAMES CARROLL, *CONSTANTINE’S SWORD: THE CHURCH AND THE JEWS: A HISTORY* (2001); WALTER LAQUEUR, *THE CHANGING FACE OF ANTISEMITISM: FROM ANCIENT TIMES TO THE PRESENT DAY* (2006); ROBERT S. WISTRICH, *A LETHAL OBSESSION: ANTI-SEMITISM FROM ANTIQUITY TO THE GLOBAL JIHAD* (2010).

79. Nor must Jews rely on Christian morals to condemn pagan or Christian atrocities. For the idea that modern critics of Christianity rely implicitly on Christian values, see SMITH, *supra* note 9, at 214–15. This claim seems to rest on a narrower conception of Christianity, rather than the broad ecumenical one that embraces all transcendent religion. But either way, Jewish values, including ideas about justice, were and remain perfectly sufficient for purposes of condemning pagan and Christian atrocities.

80. ELIOT, *supra* note 2, at 13.

81. *See* SMITH, *supra* note 9, at 267–75 (discussing religious symbols); *see also* Steven D. Smith, *Constitutional Divide: The Transformative Significance of the School Prayer Decisions*, 38 PEPP. L. REV. 945, 947 (2011).

82. *See* SMITH, *supra* note 9, at 304–15.

the sources of normativity exist within this world, rather than beyond it.⁸³ And given their immanent orientation toward the world, they favor the de-Christianization of the public sphere. They oppose civic religion in its Christian forms.⁸⁴ They reject reliance on religion as justifications for state policy.⁸⁵ They oppose state-sponsored religious symbols and school prayer.⁸⁶ They take a skeptical view toward state funding of religious institutions, especially schools, and they tend to oppose religious accommodations.⁸⁷

The difficulty for Smith is that the Jew does not fall easily within either of these categories. Jews are not pagans because they believe in a transcendent religious power. Smith recognizes this fact about the Jews, although usually his discussion is limited to “devout” Jews.⁸⁸ We are not entirely clear on what “devout” means here, but the suggestion seems to be that politically conservative, Orthodox Jews believe in transcendent religion, while politically liberal, Reform Jews are partly (or mostly?) pagan. But this claim is unsubstantiated and, even if Smith means to assert it, almost certainly false.⁸⁹ Even if many liberal Jews have assimilated and become secular,

83. *Id.* at 111–12 (“Pagan religion locates the sacred *within* this world. . . . [I]t is religiosity relative to an *immanent* sacred. Judaism and Christianity, by contrast, reflect a *transcendent* religiosity; they placed the sacred, ultimately, *outside* the world. . . .”), 211 (“[T]he pagan orientation . . . beatifies and sacralizes the goods of this world—that holds that ‘the sacred’ exists, and that it exists in *this* world and *this* life.”).

84. *See id.* at 367.

85. *See id.* at 334–39.

86. *See id.* at 267–82.

87. *See id.* at 316–28.

88. *Id.* at 13, 248, 276.

89. Indeed, many Reform Jews might be surprised and offended at the suggestion that they are not “devout” in the sense that they do not accept belief in a transcendent God. The Reform Jewish movement has always affirmed monotheism as a central tenet of belief. This is clear from successive platforms adopted by the movement since the nineteenth century. *See* MICHAEL A. MEYER & W. GUNTHER PLAUT, *THE REFORM JUDAISM READER: NORTH AMERICAN DOCUMENTS 195–212* (2001); *see also* SYLVAN D. SCHWARTZMAN, *REFORM JUDAISM IN THE MAKING 3–11* (Emanuel Gamoran ed., 2d ed. 1959) (1955) (discussing Reform platforms from the nineteenth through the mid-twentieth century). According to the 1937 statement, “The heart of Judaism and its chief contribution to religion is the doctrine of the One, living God, who rules the world through law and love.” MEYER & PLAUT, *supra*, at 200. The 1976 platform, the first since the Holocaust, declared that “[t]he affirmation of God has always been essential to our people’s will to survive.” *Id.* at 205. And the movement’s most recent statement “affirms the central tenets of Judaism—God, Torah, and Israel—even as it acknowledges the diversity of Reform Jewish beliefs and practices.” *Id.* at 208. With respect to belief in God, the 1999 platform proclaims “the reality and oneness of God, even as we may differ in our understanding of the Divine presence”

or pagan in Smith's terms, many have and continue to affirm belief in God.⁹⁰

If Jews are not pagans, nor are they Christians in Smith's sense, at least not in the context of debates about religious freedom. For much of the past century, most American Jews—and here we are talking about millions of worshipping monotheists—have favored a separationist approach to church and state.⁹¹ They have sought precisely the de-Christianization of the “public square” that Smith, and Eliot before him, decries.⁹² American Jews generally have opposed state support of Christian symbols and prayer in public schools.⁹³ They have been vocal opponents of state funding for religious schools.⁹⁴ And they have argued public policy ought to be conducted mainly in terms of public reasons.⁹⁵ At the same time, while working to roll back state support for Christianity, Jews have supported religious

and affirms “that the Jewish people is bound to God by an eternal . . . covenant, as reflected in our varied understandings of Creation, Revelation and Redemption.” *Id.* at 209.

90. According to recent polling by the Pew Research Center, approximately 76% of Reform Jews report that they believe in God, with 29% reporting such belief as “absolutely certain” and 47% reporting “belie[f], but less certain.” LUIS LUGO ET AL., PEW RESEARCH CTR., A PORTRAIT OF JEWISH AMERICANS: FINDINGS FROM A PEW RESEARCH CENTER SURVEY OF U.S. JEWS 74 (2013), <http://assets.pewresearch.org/wp-content/uploads/sites/11/2013/10/jewish-american-full-report-for-web.pdf> []; see also ROBERT P. JONES & DANIEL COX, PUB. RELIGION RESEARCH INST., CHOSEN FOR WHAT? JEWISH VALUES IN 2012: FINDINGS FROM THE 2012 JEWISH VALUES SURVEY 26 (2012), <https://www.prii.org/wp-content/uploads/2012/04/Jewish-Values-Report.compressed.pdf> [<https://perma.cc/Y5UH-Y3VL>].

91. See generally NAOMI W. COHEN, JEWS IN CHRISTIAN AMERICA: THE PURSUIT OF RELIGIOUS EQUALITY (1992); GREGG IVERS, TO BUILD A WALL: AMERICAN JEWS AND THE SEPARATION OF CHURCH AND STATE (1995). In the last half-century especially, there have been dissenting voices among Conservative and Orthodox Jews, who reject separationism. See David G. Dalin, *Jewish Critics of Strict Separationism*, in JEWS AND THE AMERICAN PUBLIC SQUARE: DEBATING RELIGION AND REPUBLIC 291, 291–309 (Alan Mittleman, Robert Licht & Jonathan D. Sarna eds., 2002). For discussion of the significance (or lack thereof) of these conflicting views, see *infra* text accompanying notes 110–14.

92. SMITH, *supra* note 9, at 275, 303 (“[Pagans] seek, in other words, to repudiate the generically, implicitly Christian city that Americans have inherited—the one the Supreme Court recognized when in 1892 it declared that ‘we are a Christian nation’ . . .” (quoting *Church of the Holy Trinity v. United States*, 143 U.S. 457, 470–71 (1892))).

93. See, e.g., *U.S. Jewish Groups Laud Supreme Court Ban on Prayers in Public Schools*, JEWISH TELEGRAPHIC AGENCY 1 (June 27, 1962), <https://www.jta.org/1962/06/27/archive/u-s-jewish-groups-laud-supreme-court-ban-on-prayers-in-public-schools> [<https://perma.cc/3KRC-J4W2>].

94. See, e.g., *American Jews and the Current Challenges of Church-State Separation*, PEW RES. CTR. (Oct. 19, 2004, 10:00 AM), <http://www.pewforum.org/2004/10/19/american-jews-and-the-current-challenges-of-church-state-separation/> [<https://perma.cc/HS7U-MMEX>].

95. See JONATHAN D. SARNA & DAVID G. DALIN, RELIGION AND STATE IN THE AMERICAN JEWISH EXPERIENCE 172–74 (1997) (discussing Jewish opposition to “religious legislation” in the late nineteenth century).

accommodations, especially from laws that reflect the preferences of Christian majorities, as with Sunday closing laws and prohibitions on religious dress.⁹⁶

The Jew, like many in American society, whether formally affiliated with a particular religion or not, is both a transcendent believer and a separationist, and thus represents a problem for Smith's diagnosis of the culture wars, especially with respect to religious freedom. Smith's claim is that the U.S. Constitution, including the First Amendment, is agnostic about religion. It does not favor Christianity over paganism or vice versa.⁹⁷ Instead, it provides a framework for politics within which Christians and pagans can compete for influence. Christians can argue for subconstitutional laws that reflect their religious commitments through public expression of religious values, prayer in school, state support of religious institutions, and religious accommodations. And pagans can resist these efforts. The Constitution does not take sides. But according to Smith, sometime starting in the 1950s and 1960s, liberals and progressives moved aggressively to work a revolution in the meaning of the Constitution, converting it from a common set of religiously agnostic principles into a partisan sword used to spread the pagan faith. As he writes, their "struggle has not been to transform a Christian element into a pagan one, but rather to capture what had previously been a more neutral framework . . . and turn it to the cause of secularism or immanent religion."⁹⁸ Of course, legal actors did not advance their views in the name of paganism or immanent religion. They argued on behalf of liberalism or secularism. But, Smith contends, courts went along and "implicitly embraced, wittingly or unwittingly, a conception of the political community formed in immanently religious terms."⁹⁹

The Jews inconveniently contradict this story of pagan constitutional capture. It is true that American Jews sought to diminish state support for Christianity, but their purpose was not to supplant Christianity with immanent religion. After all, those Jews who opposed Sunday closing laws, school prayer, and state support of religious schools were themselves believers in a transcendent God. Smith's diagnosis of the culture wars simply cannot account for why Jews—and for that matter, mainline Protestants, liberal

96. See generally Michael A. Helfand, *Jews and the Culture Wars: Consensus and Dissensus in Jewish Religious Liberty Advocacy*, 56 SAN DIEGO L. REV. 305 (2019) (surveying the history of various American Jewish organizations' positions on religious accommodation).

97. SMITH, *supra* note 9, at 266–67.

98. *Id.* at 267.

99. *Id.* at 278.

Catholics, or others¹⁰⁰—would object to living in a “Christian” society. His view cannot make sense of their purposes or why they believed that the Constitution warrants stronger protections for religious minorities. After all, if all religious believers are “Christians,” the only possible minorities are Christians or pagans. There is no space for the idea that some believers might reject a Christian society without accepting paganism.

That, however, is precisely what the Jews did. And they did it openly, publicly—without mystery, secrecy, or any ulterior motive—and for a straightforward reason, namely, to secure the legal conditions of their emancipation and equal citizenship. Consider, in this regard, the views of Leo Pfeffer, who was the son of an Orthodox rabbi, a practicing Jew, counsel for the American Jewish Congress for nearly three decades after World War II, and the most influential church-state litigator and scholar of his generation.¹⁰¹ Pfeffer described himself as an “absolutist” about the separation of church and state.¹⁰² He interpreted the First Amendment’s religion clauses as a unified guarantee of religious freedom, one that required “neutrality not only as among competing faiths, but between religion and non-religion.”¹⁰³ This principle of religious neutrality meant that the government could act only for secular purposes. Religious ends were not within the state’s jurisdiction; they were a matter for private choice and voluntary association.¹⁰⁴

100. See TED G. JELEN & CLYDE WILCOX, PUBLIC ATTITUDES TOWARD CHURCH AND STATE 94–95 (1995); John C. Jeffries, Jr. & James E. Ryan, *A Political History of the Establishment Clause*, 100 MICH. L. REV. 279, 282 (2001).

101. See Samuel Krislov, *Alternatives to Separation of Church and State in Countries Outside the United States*, in RELIGION AND THE STATE: ESSAYS IN HONOR OF LEO PFEFFER 421, 421 (James E. Wood, Jr. ed., 1985) (“No one comes to mind . . . to rival Pfeffer’s intellectual dominance over so vital an area of constitutional law for so extensive a period . . .”); Richard John Neuhaus, *The Pfefferian Inversion*, NAT’L REV., May 13, 1988, at 44, 44 (“Leo Pfeffer . . . has done more than anyone else to shape the law regarding religion and state in America.”); Smith, *supra* note 81, at 950 (describing Pfeffer as “the most learned and active separationist litigator-scholar of his time (and, arguably, ever)”). Pfeffer was counsel in numerous landmark cases involving the Religion Clauses, including *Meek v. Pittenger*, 421 U.S. 349 (1975); *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Tilton v. Richardson*, 403 U.S. 672 (1971); *Flast v. Cohen*, 392 U.S. 83 (1968); *Torcaso v. Watkins*, 367 U.S. 488 (1961); *Zorach v. Clausen*, 343 U.S. 306 (1952). For Pfeffer’s role in litigating these and other cases, see Leo Pfeffer, *An Autobiographical Sketch*, in RELIGION AND THE STATE: ESSAYS IN HONOR OF LEO PFEFFER, *supra*, at 487, 487–533. Pfeffer’s major scholarly works include: *CHURCH, STATE, AND FREEDOM* (1953); *GOD, CAESER, AND THE CONSTITUTION* (1975); and *RELIGION, STATE AND THE BURGER COURT* (1984).

102. Leo Pfeffer, *The Establishment Clause: An Absolutist’s Defense*, 4 NOTRE DAME J.L. ETHICS & PUB. POL’Y 699, 700 (1990).

103. Leo Pfeffer, *State-Sponsored Prayer*, 76 COMMONWEAL 417, 417 (1962).

104. See Leo Pfeffer, *Freedom and Separation: America’s Contribution to Civilization*, 2 J. CHURCH & STATE 100, 106–11 (1960).

Notably, in remarks addressed to an audience at Princeton Theological Seminary, Pfeffer described his separationism as a “Jew’s approach” to church-state relations in the United States.¹⁰⁵ Pfeffer claimed that “American Judaism is perhaps the most vigorous, articulate, and unyielding champion of that principle of separation of church and state and religious freedom.”¹⁰⁶ In explaining why Jews are so attached to separationism, Pfeffer pointed to their experience of freedom and equality in America. He noted that although “nothing in ancient Jewish tradition . . . would indicate a sympathy either with separation of church and state or with religious freedom,” American Jews “would be less than human, and we are not[,] . . . if we did not feel a great debt of gratitude towards a system which, after almost two thousand years of persecution, has given us a real haven and a real equality.”¹⁰⁷

Following Pfeffer, we can say that a Jew’s approach to matters of religious freedom is motivated by the historical consciousness and long experience of social and political exclusion. The initial acceptance of a principle of religious freedom may be instrumental, in service of attempts to gain social recognition and political equality. But over time, as successive generations of Jews have grown up under governmental institutions that treat them with equal respect, they have developed a moral commitment to the constitutional principles that structure those institutions.

This is a story about why the Jews—or at least the majority of American Jews—have been strong supporters of the separation of church and state. (It is not exclusively their story, of course. In the Founding generation, Baptists and other Christian minorities spearheaded disestablishment.¹⁰⁸) Jews are not pagans who have captured the Constitution or “weaponized” it in order to spread their immanent religious beliefs. Instead, they are a small religious minority that has benefited tremendously from the rise of a secular state, one in which religious status does not determine rights of citizenship or, more generally, a person’s life chances.

As Pfeffer put it, “American Jewry has finally achieved a position of equality.”¹⁰⁹ For those with a sense of history, that fact is a source of some amazement, perhaps a measure of pride, but also of understandable anxiety.

105. Leo Pfeffer, *Church and State*, 53 *PRINCETON SEMINARY BULL.* 37, 38–39 (1959).

106. *Id.* at 39.

107. *Id.*

108. See, e.g., THOMAS J. CURRY, *THE FIRST FREEDOMS: CHURCH AND STATE IN AMERICA TO THE PASSAGE OF THE FIRST AMENDMENT* 13 (1986); LEONARD W. LEVY, *THE ESTABLISHMENT CLAUSE: RELIGION AND THE FIRST AMENDMENT* 58, 60–61 (1986).

109. Pfeffer, *supra* note 105, at 48.

As Jews have learned painfully over the last two millennia, the conditions of emancipation and political equality can be reversed. There are many threats. Pagan assimilation may be one, as it may lull Jews into a false sense of security; romanticism for the resurrection of a Christian society may be another, as it invites anti-Semitism and the exclusion of non-Christian minorities.

There is, of course, disagreement among Jews about how to deal with these threats.¹¹⁰ Many American Jews continue to favor separationism. They see the risks of assimilation as less dangerous than the risks posed by a state that supports the majority religion, which is invariably Christianity—not Smith’s ecumenical version, but a rather more sectarian, if not full-throated, conception. The result of greater state involvement with religion is, in Suzanna Sherry’s memorable phrase, “Jews lose.”¹¹¹ A minority of American Jews, however, take a different view.¹¹² They favor state support of religion, in part because they share Smith’s fear of a secular or pagan society more than they do social and political exclusion within a Christian one. Himmelfarb’s is an extreme expression of this view, but it has more learned and thoughtful supporters.¹¹³

It should be clear, however, that the existence of Jewish opposition to separationism does not undermine our claim, which is that most American Jews are neither pagans nor Christians. To sustain our argument, what matters is that the disagreement within American Jewry is taking place among religious believers. There are Jews with transcendent commitments on both sides of the culture wars.¹¹⁴ They have different understandings of the demands of Judaism, the political and cultural threats it faces, and how best to respond socially and politically. But those are mainly matters of concern for Jews, rather than for Christians or pagans.

110. See Jonathan D. Sarna, *Church-State Dilemmas of American Jews*, in *Jews AND THE AMERICAN PUBLIC SQUARE: DEBATING RELIGION AND REPUBLIC*, *supra* note 91, at 47, 47–68; Noah Pickus, “*Before I Built a Wall*”—*Jews, Religion and American Public Life*, 15 *THIS WORLD* 28, 31 (1986); see also *AMERICAN JEWS AND THE SEPARATIONIST FAITH: THE NEW DEBATE ON RELIGION IN PUBLIC LIFE*, *supra* note 58 (collecting Jewish perspectives on separation of church and state).

111. Suzanna Sherry, *Religion and the Public Square: Making Democracy Safe for Religious Minorities*, 47 *DEPAUL L. REV.* 499, 503 (1998).

112. See Dalin, *supra* note 91, at 294–96; Jack Wertheimer, *The Jewish Debate over State Aid to Religious Schools*, in *Jews AND THE AMERICAN PUBLIC SQUARE: DEBATING RELIGION AND REPUBLIC*, *supra* note 91, at 217, 223–28.

113. See, e.g., DAVID NOVAK, *THE JEWISH SOCIAL CONTRACT: AN ESSAY IN POLITICAL THEOLOGY* chs. 7–8 (2005).

114. The same is true, of course, for many other religious denominations. See HUNTER, *supra* note 54, at 120–24.

V. THE IDEA OF A JEWISH SOCIETY

Smith begins his book by asking a question that is familiar to Jews: Why do they hate us so much? The question, for Smith, is about why pagans persecute Christians, and the answer is that they have competing moral values, born of conflicting conceptions of normative authority.¹¹⁵ And so Smith, following Eliot, argues that modern democratic societies face a choice between incompatible moral traditions. They can either renew, or perhaps recover, their Christianity, or they can continue the process of sliding into modern paganism. Smith's preference is clear: a Christian society is better than a pagan one, and, like Eliot, he hopes to persuade those with transcendent religious beliefs by drawing out the contrasts between the two types of societies.

Up to this point, we have followed Smith's practice of generalizing and simplifying grand concepts like Christianity and paganism. Here we allow ourselves one more such conceptual indulgence, despite our reservations and ambivalence about the use of such categories. For Smith, a pagan society is one that recognizes and promotes immanent religious values. A Christian society, by contrast, is culturally aligned with transcendent religion. But it should be clear that these are not the only alternatives. We can imagine a third type of society, one in which the public culture does not demand that the state promote either immanent or transcendent religion. In this society, citizens with a wide diversity of religious views, both immanent and transcendent, acknowledge the fact of their religious differences and, to the extent possible, refrain from seeking state support for one religious conception over the other. In such a society, a person's religious identity, whether Christian or pagan, is irrelevant to that person's rights as a citizen, which are secured in virtue of a set of political and legal institutions that do not presuppose a particular religious view.

With a little chutzpah of our own, let us call the society we are describing here a *Jewish society*, not because it supports Judaism but because the Jew represents a religious minority who seeks political equality and religious freedom on fair terms with other religious believers, immanent or transcendent. The *category* of the Jew, in this conceptualization, is contrasted with Eliot's and Smith's categories of the Christian and the pagan. Both Christians and pagans want society to embody their religious values, and they would prefer, if possible, for the state to reflect and support those values. In this

115. See SMITH, *supra* note 9, at 7–11.

way, as Eliot argued, society transforms a religious culture into politics and law.¹¹⁶ But, perhaps ironically, the Jew resists this ultimately theocratic political conception. After two millennia of living in exile, persecution, and ghettoization, Jews have discovered a novelty in democratic political life. Without any hope to dominate politically, and with an eye toward survival and an aspiration for political equality and social recognition, the Jews accept a moral ideal according to which the state is limited in its purposes to promote goods that do not rest on any particular religious doctrine, immanent or transcendent. Under this ideal, the exercise of political power is justified, not by the ambitions of a triumphal or resurgent religious doctrine, but by the reciprocal claims of citizens who conceive of themselves as free and equal members of a democratic society.

The “idea of a Jewish society” that we are describing is, of course, familiar as a form of political liberalism, which can be understood as extending principles of religious toleration, disestablishment, and emancipation.¹¹⁷ Our aim here is not to offer a defense of such a society,¹¹⁸ but rather to note its possibility and its historical appeal for Jews and perhaps other religious minorities.

We are aware of the irony of proposing the idea of a Jewish society in response to a schema that already offends by seeking to assimilate a vast array of believers and nonbelievers into two religious groups—pagan and Christian—that are, as a social and psychological matter, likely unrecognizable to most people. Moreover, we are aware that associating American Jewry with liberalism feeds into the criticism that Jews are agents of secularism or modern paganism.

We, of course, reject the identification of the Jew with “subversive” liberalism both because we reject the explicit anti-Semitism of that claim and because we reject the vilification of liberalism in any case. More importantly, we think the claim of Jewish paganism is doubly mistaken. First, as we have argued above, it assumes incorrectly that liberal Jews—or liberal Catholics, Protestants, Mormons, Muslims, Hindus, etc.—lack transcendent religious values, that they have no ethical or moral commitments independent of their liberal political morality. And second, it assumes, again incorrectly, that political liberalism is a form of paganism or immanent religion. Smith makes this mistake when he argues that political liberals who favor an ideal of public reason would not exclude reasons drawn from an immanent religious conception, such as Ronald Dworkin’s conception

116. See ELIOT, *supra* note 2, at 20–23.

117. See JOHN RAWLS, *POLITICAL LIBERALISM* 1, 5 (1993).

118. Though we are encouraged by the recent work of others. See generally CÉCILE LABORDE, *LIBERALISM’S RELIGION* (2017); JONATHAN QUONG, *LIBERALISM WITHOUT PERFECTION* (2011); NELSON TEBBE, *RELIGIOUS FREEDOM IN AN EGALITARIAN AGE* (2017).

of “sacred” or “impersonal” values.¹¹⁹ But this view rests on a misunderstanding of liberal public reason, which is committed to public justification based on reasons that are, in principle, acceptable to citizens solely in virtue of their status as free and equal members of a democratic society.¹²⁰ To the extent immanent religious values cannot serve as the basis for political agreement among citizens with a diversity of transcendent and immanent conceptions of the good, those values are not sufficient grounds for the public justification of state action.¹²¹

In a “Jewish society,” as we are conceiving it here, the state would be called upon to provide justifications for its treatment of citizens in terms that do not rest on any particular religious tradition or doctrine. In this way, the state would maintain a core principle of separation and thereby respect the equal citizenship of religious believers and nonbelievers, alike. A Jewish society would be one in which Christians and pagans (as Smith understands those categories) and Jews (as we understand that category) have equal standing as citizens, where the political culture and the state that is responsive to it are not conceived primarily in terms of religious conflict but rather as fostering a system of fair social cooperation among citizens with a diversity of religious views.

119. See SMITH, *supra* note 9, at 335. For Dworkin’s conception of “impersonal” values, which he argued could serve as the basis for justifying state action, see RONALD DWORKIN, *IS DEMOCRACY POSSIBLE HERE? PRINCIPLES FOR A NEW POLITICAL DEBATE* 70–71 (2006); DWORKIN, *supra* note 52, at 130–31.

120. For this idea of public reason, see generally JOHN RAWLS, *The Idea of Public Reason Revisited*, in JOHN RAWLS: COLLECTED PAPERS 573 (Samuel Freeman ed., 1999); Jonathan Quong, *On the Idea of Public Reason*, in *A COMPANION TO RAWLS* 265 (Jon Mandle & David A. Reidy eds., 2014); Micah Schwartzman, *The Sincerity of Public Reason*, 19 J. POL. PHIL. 375 (2011).

121. Dworkin also criticized the idea of public reason, but in a sense, his objection was the opposite of Smith’s. Dworkin’s concern was that public reason is too restrictive, that it would exclude some reasons that he thought ought to be permitted as grounds for public justification—reasons based on impersonal values. See DWORKIN, *supra* note 119, at 64–69. By contrast, Smith’s argument is, in part, that public reason is unfair because it would permit reasons based on immanent or “impersonal” values, while excluding reasons that appeal to transcendent sources. SMITH, *supra* note 9, at 334–35. In our view, both of these criticisms are mistaken. Dworkin was confused about the idea of public reason and should have accepted a version of it. See Micah Schwartzman, *Religion, Equality, and Public Reason*, 94 B.U. L. REV. 1321, 1333–36 (2014) (arguing that given his moral commitments, Dworkin was wrong to resist the idea of public reason). And Smith is mistaken for the reasons discussed above.

VI. CONCLUSION

The answer to Smith's question—why do they hate us?—is that they feel entitled to live in a society, and under the governance of a state, that represents their central religious commitments. And “we”—whether Christians, pagans, or Jews—pose a threat to the realization of that entitlement. And at least with respect to the Jews, the threat is real. As Eliot understood, if you have enough “free-thinking” Jews in a society, they will start to demand political recognition, civil rights, and eventually even equal treatment. They will argue that state power should be justified by public purposes, rather than the pursuit of religious ends. If they can build successful political coalitions, they will seek to secularize the state, to dismantle support for the majority or dominant religion, and to entrench the social and political emancipation and equality of religious minorities.

When Nazis and white supremacists marched through Charlottesville in August 2017, they shouted, “Jews will not replace us.”¹²² This anti-Semitic slogan expresses the anxiety of cultural displacement and a profound sense of religious entitlement. White Christianity is the natural order, and how dare the Jews subvert it. A Jew in Charlottesville might be forgiven for thinking of Eliot's admonition about the need for racial and religious homogeneity to sustain a traditional Christian society. It is a profoundly ugly vision, one that we do not impute to Smith's critique of modern paganism. But in erasing the concept of the Jew, in assimilating the Jew to Christianity or to paganism, Smith leaves us wondering about the place of Jews—and of all religious minorities, nonorthodox believers, and nonbelievers—in a Christian society.

The Jewish question is not why do they hate us—to which we know the answers—but what will they do with us? It is a question that Jews in this country have not had to ask for the last several generations, although others will certainly have asked it with respect to their own communities. Any proposal that raises the question anew, even one offered in good faith, is troubling and properly the subject of skepticism on the part of Jews and other religious minorities.

122. See Asher D. Biemann, “*Vae Victis!*”: *Antisemitism as Self-Victimization (and What Spinoza Knew About It)*, in *CHARLOTTESVILLE 2017: THE LEGACY OF RACE AND INEQUITY* 44, 52 (Louis P. Nelson & Claudrena N. Harold eds., 2018); Emma Green, *Why the Charlottesville Marchers Were Obsessed with Jews*, *ATLANTIC* (Aug. 15, 2017), <https://www.theatlantic.com/politics/archive/2017/08/nazis-racism-charlottesville/536928/> [https://perma.cc/DD98-CVEN].