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Christians and Pagans in the Sacred Nation

CHRISTOPHER J. EBERLE*

I.

Steve Smith's *Pagans and Christians in the City*¹ is an unusual book: it relies on a heavy dose of ancient history as an aid to illuminating the present. His discussions of Roman religion, culture and politics, the place of Christianity therein, and the conflicts engendered thereby are fascinating in and of themselves—and the author clearly relishes discussing them. Smith's continued movement between conflicts in classical Rome and contemporary United States is suggestive and illuminating: *Pagans and Christians in the City* is, at the very least, a most fascinating read. But it incorporates a quite unusual mode of argument and so I think it is easy to misunderstand its central claims. So, my first goal will be to specify what I take to be the main aim, and to a considerable degree, the main achievement, of *Pagans and Christians in the City*.

II.

I understand Smith to be engaging in a species of cultural criticism and social analysis with the aim of helping the reader better understand what is really driving a variety of apparently disparate or loosely connected

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

conflicts in the United States today. We experience emotionally laden disagreements about the placement of crosses in public spaces, the punishment of bakers who refuse to provide specialty cakes for gay weddings, the justification of state policies by appeal to religious reasons, the conscription of nuns to provide insurance policies that cover contraception, and the like. I take Smith to be providing us with his favored way of understanding what these various cultural conflicts are *really* about—or what they are *also* really about.² Broadly put, Smith thinks that we are undergoing a religious conflict—one which has a very long, though often submerged, history—between those who privilege a transcendent sacred and those who privilege an immanent sacred.³ This religious conflict takes the specific form of “counterrevolution,” where modern pagans intend to overthrow the cultural, legal, and political hegemony that transcendent religions like Christianity and Judaism have long enjoyed in the United States and aspire to establish a competing hegemony that privileges the “immanent” sacred.⁴

Central to this counterrevolutionary religious conflict are a whole spread of symbolic battles. These symbolic battles have such a strong emotional resonance partly because they help define the political community to which we belong. As with any nation-state, the United States is an imagined community; we are bound together as a political community by the way in which we construe our communal bonds, and the way we construe those bonds is powerfully shaped by various symbolic, liturgical acts—pledging allegiance to “one nation under God,” kneeling during the national anthem, dipping the American flag to a cross, and waterboarding suspected terrorists.⁵ Acts of this sort communicate something about what unites us into one political community. These acts help to specify who does and does not count as ‘genuinely’ American, and thus they have an emotional salience that far outstrips the more mundane stuff of politics—reforming the tax system, establishing building codes, funding cancer research, and the like.

2. Disagreements of the sort on which Smith focuses are never really about only one thing, particularly because they involve many diversely committed people. Nor must the parties to those disagreements be aware of all their disagreements. Indeed, they might be unaware of the most important aspects of what divides them: one party might think the disagreement is about fair access to pizza, but the conflict might really be, or *also* really be, a theological dispute about divine authority over our lives. One of Smith’s goals, I take it, is to induce in us an awareness of the hidden religious dimensions of the disagreements that fall under the broad category of “the culture wars.” In this respect, Smith’s book is thoroughly, and unsurprisingly, Augustinian: we think we are striving for the glory of Rome, but we are really driven by the *libido dominandi*; we think we are worshipping the gods, but we are really enslaved to demons.

3. See SMITH, *supra* 1, at 13.

4. *Id.* at 344.

5. See SMITH, *supra* 1, at 265.

Most, if not all, of us have personally experienced conflicts of the symbolic sort on which Smith focuses. Marital life is replete with them. My wife says she is going to visit her sisters for the weekend. I explode with anger and insist she stay home—after all, she promised we would spend the weekend cataloguing our extensive collection of LPs. We scream and we curse. Accusations are levelled and feelings are hurt. We retreat to our corners and wonder how such an otherwise trivial matter could, again, generate such passion. And we know the answer: our conflict is not really about her sisters or our disorganized record collection. It is about something else. No doubt that “something else” has a long history and that history is evoked with the simple utterance, “I am planning to visit my sisters.” We both avail ourselves of an interpretive matrix that elevates what would otherwise be a trivial spat into a relationship-threatening crisis. If we are going to resolve the escalated conflict, we should better figure out what we are really fighting about. We probably need to revisit our history to be honest and forthright about the narrative into which we are integrating each other’s acts. We need to do for each other, perhaps with the help of a counselor or pastor, what Smith does in his book—to help us discern what is *also* really at stake in the many symbolic conflicts that divide us.⁶

Of course, this way of putting it might seem to imply that Smith only wants to facilitate mutual understanding. But of course, he is not, and does not pretend to be, a neutral party to the religious conflict he narrates: he concludes *Pagans and Christians in the City* with his assessment of the central conflict that drives his narrative.⁷ Nevertheless, much of Smith’s effort seems focused on diagnosis—showing we really are undergoing a conflict between immanent and transcendent religiosities—and so I will focus primarily on that diagnosis.⁸ Most particularly, I will assess whether Smith has adequately characterized that conflict—whether his distinction between transcendent and immanent religion is a helpful one, whether it helps us to understand the various more particular symbolic conflicts by which we are beset, and whether there is a more perspicuous and more plausible way to understand the two competitors. As with the marital correlate of this kind of assessment, there is not any uncontroversial, dispassionate way to uncover what we are really arguing about, much less

6. *See id.* at 7.

7. *See id.* at 379.

8. *See infra* Part VI.

how to resolve what turn out to be our real disagreements. We all have our cherished ways of understanding our conflicts, and we tend not to react well when some interloper tells us we do not really know what we have been fighting about. Sweet Reason is not going to adjudicate the religious conflict on which Smith focuses, though perhaps charity has a slight chance.

III.

I will begin by providing a short biographical preface to my assessment. My present context and recent history leads me to respond to Smith's book in ways that might well differ were I situated differently than I am. That is, I think I would assess Smith's book very differently were I to teach undergraduates at a liberal arts college rather than future officers at a military academy, as has been my lot in life since 2001. I hope assessing Smith's argument from that perspective will be illuminating.

The mission of the U.S. Naval Academy is to provide officers for the United States Navy and Marine Corps.⁹ In so doing, the Academy provides priests for the nation; it is a kind of National Seminary. As such, it is an exceedingly *religious* place. Of course, this is my description of what the Academy is up to, not the official version. For obvious reasons, no authorized representative of the Academy would describe what they do as in any way involving *religion*. It is an entirely *secular* affair. Except in reality, it is not. As a religious person myself, I think I am good at smoking religion out—at *feeling* intimations of the sacred even when it is unmentioned or when it is located *in, with, and under* what purport to be thoroughly secular practices. As I see it, the *secular sacred* is not an oxymoron but an apt description of much that happens at the Academy—and in the military more generally.

For example, the Academy is awash in the various *external* accoutrements of the religious life. The daily rhythm of life at the Academy is highly liturgical. Twice each day, at 8 AM and sunset, the community pauses—military officers stand at attention, civilians place their hand over their heart, everyone is supposed to face the flag, solemnly and silently waiting for the communal expression of loyalty to end. Sacred places pervade public space—the Crypt of John Paul Jones, always attended by aspiring officers; a cemetery containing a century-and-a-half of fallen graduates to which dignitaries, staff, faculty, and students often process through the Yard from the Academy Chapel—most recently, John McCain's funeral; a ceremonial core, a quad-shaped grassy space, familiar on many college campuses, but where jogging is impermissible, walking on the grass is forbidden, and no

9. See *About USNA*, U.S. NAVAL ACAD., <https://www.usna.edu/About> [<https://perma.cc/H88M-CUN3>].

one would even think of playing Frisbee. The Yard is replete with the iconography of sainthood—any number of statues dedicated to admired graduates, buildings named after great warriors such as Stockdale and Lawrence; Halsey, King, and Mitscher. Implements of war, hallowed by their role in either victory or defeat, dot the campus—torpedoes, cannons, and aircrafts of various sorts.

The Naval Academy also has *internal*, subjective aspirations often associated with the religious life. As with aspiring priests or pastors, Midshipmen (Mids) must become the right kind of person if they are to succeed in their vocation.¹⁰ Consequently, the aims of the Academy are deeply and pervasively formative—the various educative components of a Mids’ experience are designed to shape each’s deepest aspirations, emotions, and understanding of what matters in life. The Academy’s explicit mandate is to form Mids “morally, mentally and physically . . . to imbue them with the highest ideals of duty, honor and loyalty,” such that each enjoys the “mind and character to assume the highest responsibilities of command, citizenship and government.”¹¹ The aspiration of the Academy—sincerely even if defectively pursued—is to ensure that Mids end up having the character traits and normative commitments required for success as an officer in the U.S. military.¹² Over and over again, by means of explicit instruction, punishments administered, rituals observed at communal meals, admonitions before athletic events, Mids are induced to put *service over self*.¹³ Faith, family, and friends are perfectly acceptable objects of loyalty, but those loyalties must be properly ordered—a topic of persistent focus in a Mids’ formal and informal training. And what matters most—what should matter most, at least insofar as they are military officers—is their loyalty, not to the Commander-in-Chief, not to the Navy or Marine Corps, not to their family, and certainly not to their career, but to the United States itself. Mids aspire to become officers in the U.S. military and an officer is, first and foremost, a “servant of the Nation,” as a very popular formulation has it.¹⁴

10. See *Mission of USNA*, U.S. NAVAL ACAD., <https://www.usna.edu/About/mission.php> [<https://perma.cc/9SKS-UJBN>].

11. *Id.*

12. See *id.*

13. See *The Blue and Gold Book*, U.S. NAVAL ACAD., <https://www.usna.edu/BlueAndGoldBook> [<https://perma.cc/G653-26YJ>].

14. Suzanne Nielson, *The Army Officer as Servant*, MIL. REV., Jan.–Feb. 2003, at 15, 15.

Of course, there is plenty of formal religion at the Academy. A rather large and imposing chapel is located at the heart of the Academy, where Mids of all faiths and religious inclinations may find an extensive variety of religious services, should they so choose.¹⁵ There they have access to Protestant chaplains of various denominations, a number of Catholic chaplains, and a rabbi.¹⁶ Overwhelmingly, the formal religion on display at the Academy is some form of transcendent religion. In my judgment, however, it is often of a rather crimped, tame, or subordinated sort. For many of the military professionals with whom I have had the pleasure to work, transcendent religion is perfectly fine—indeed, it is terrific, but only when properly subordinate. There is great pressure to ensure Mids understand that any commitment they might have to the transcendent must be conducive to, or compatible with, their service to the military, their mission, and thus to the nation that the military and mission are supposed to serve. As servants of the nation, any allegiance Mids might have to the transcendent must be integrated into, and thus compatible with, that self-understanding.

I do not want to imply that there is anything like uniformity or consensus as to how military officers, aspiring or actual, are supposed to integrate their allegiance to the transcendent into their understanding of what makes for proper service to the nation. In my judgment, there is great pressure to subordinate the transcendent but also considerable resistance to doing so. As with any large population of human beings, military professionals disagree. Unsurprisingly, then, many instances of the kinds of symbolic conflict on which Smith focuses can be found in military settings. Consider in this regard an episode that occurred at the Academy during the 2007–2008 academic year.

The 11:00 AM Protestant service at the Academy Chapel is rather liturgical; it has a kind of vague Episcopalian feel. It incorporates lots of robes, candles, genuflections—all manner of formal acts with symbolic import. Since the mid-1960s, the procession at the beginning of the service has incorporated both the flag of the United States and the flag of the Brigade of Midshipmen.¹⁷ As each passes before the altar cross on the way to its eventual resting place, each is “dipped” to the cross.¹⁸ For some four decades, the practice appeared uncontroversial. But in 2007, Vice-

15. See *Spiritual Opportunities*, U.S. NAVAL ACAD., <http://usna.edu/Admissions/Student-Life/Spiritual-Opportunities.php> [<https://perma.cc/N65Y-2H3K>].

16. See *Chaplain's Center*, U.S. NAVAL ACAD., https://www.usna.edu/Chaplains/Contact_Us/index.php [<https://perma.cc/XW84-2JQ4>]; *Jewish Chapel Community at the United States Naval Academy*, U.S. NAVAL ACAD., <https://www.usna.edu/Chaplains/FaithCommunity/JewishCommunities.php> [<https://perma.cc/F4EH-UM4X>].

17. See Earl Kelly, *USNA's Flag-Dipping Under Fire*, CAPITAL (Annapolis, MD), Mar. 11, 2008, at A1.

18. See *id.*

Admiral Jeffrey Fowler, then Superintendent of the Naval Academy, objected; although he was apparently of the view that the Brigade's flag may be dipped to the cross, not so the flag of the United States of America.¹⁹ That was simply beyond the pale; he insisted the practice of dipping cease and desist.²⁰

Apparently, flag-dipping has great symbolic importance.²¹ The flag of the United States represents the United States itself.²² The flag is therefore due the honor and respect that we ought to accord to this great nation. Federal regulations specify in some detail what counts as due respect. One of those regulations is as follows: "No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing."²³ As with many rules, there are exceptions that reinforce the values protected by that rule. For example, the Navy allows its ships to lower their flags in response to a prior flag dipping salute from a ship from another nation, but only in response.²⁴ "They are dipping to us," insisted a retired Academy Superintendent, who was asked to comment on the controversy.²⁵ "We don't dip to anybody. We answer their salute."²⁶

The value expressed by the regulations governing flag dipping seems rather straightforward. Although members of other nations might be every bit as proud of their country as we are of ours, they dip to us and, only thereafter, we to them. And however important it might be to pious sailors or Marines to honor God, we do not dip even to the cross, because the United States has preeminent value. Members of the military may have many loyalties—to family, faith, friends, service, et cetera—but they must learn to prioritize those loyalties, such that, when they conflict, loyalty to nation must win out. Perceiving a liturgical practice that reflected disordered priorities, Vice-Admiral Fowler insisted the American flag no longer be

19. *Id.*

20. *Id.*

21. See David Wharton, *America's Refusal to Dip the Flag Has Complicated Olympic History*, L.A. TIMES (July 22, 2012), <http://articles.latimes.com/2012/jul/22/sports/la-sp-0723-oly-dropping-flag-20120723> [<https://perma.cc/VUE5-FGKY>]. Of course, flag dipping is not distinctive to the United States. See *id.* On the liturgical importance of national flags, see CARLTON J.H. HAYES, NATIONALISM: A RELIGION 151 (2017).

22. See 4 U.S.C. § 8(j) (2012) ("The flag represents a living country and is itself considered a living thing.").

23. *Id.* § 8.

24. See DEP'T OF THE NAVY, PCN 50100370000, UNITED STATES NAVY REGULATIONS § 1263 (1990).

25. Kelly, *supra* note 17.

26. *Id.*

dipped to the altar cross.²⁷ Thus, Mids were to understand what being a genuine servant of the Nation consists.

IV.

What bearing does any of this have on Smith's argument in *Pagans and Christians in the City*? Smith's culminating chapter provides an assessment of the comparative attractiveness of modern, immanent religion and its more traditional transcendent competitor.²⁸ Although ancient paganism was seriously morally defective—the vast immiserated throng of slaves, the ecstasy engendered by gladiatorial butchery, the exploitation of exposed infants as prostitutes—we might very well find modern paganism quite alluring given its commitment to the equal worth and dignity of all human beings, advances in medical technology, and hostility to “harassment, bullying and microaggressions.”²⁹ T.S. Eliot claimed that people would eventually repudiate modern paganism, but only after “contemplating—seriously contemplating—what . . . ‘modern paganism’ would actually entail.”³⁰ So, Smith concludes his book by assessing that claim: “we may as well finish by considering his suggestion—by reflecting on what a city framed by modern paganism would entail, and by pondering whether that is in reality the sort of city we would want to adopt as home.”³¹

Of course, whether “we would want to adopt” a polity that is “framed by modern paganism”³² depends both on what such a framing actually involves and by what we want. Smith takes as a given that we properly “yearn for community.”³³ We are social creatures; we cannot flourish absent meaningful relationships with at least some other human beings, and once

27. *Id.*

28. *See generally* SMITH, *supra* note 1, at ch. 12.

29. *Id.* at 345.

30. *Id.* at 346 (quoting T.S. ELLIOT, *THE IDEA OF A CHRISTIAN SOCIETY* 61 (1939)).

31. *Id.*

32. *Id.*

33. *Id.* at 356. I am not entirely sure just what kind of yearning Smith has in mind here. I wish that he specified more clearly than he does just what it takes to satisfy that yearning. So, for example, Smith seems to run together two very different conditions: a kind of metaphysical homelessness engendered by the “‘disenchantment’ of the world” and a loss of community that leads to a sense of individual isolation. *Id.* at 346–48 (quoting MAX WEBER, *Science as a Vocation*, in *FROM MAX WEBER: ESSAYS IN SOCIOLOGY* 129, 155 (H.H. Gerth & C. Wright Mills eds. & trans., 1948)). Although metaphysical homelessness might be related in interesting ways to increasing individualism, they are distinct and can come apart. For example, although it could be that the “disenchantment of the world” might leave “human beings isolated strangers stranded in a purposeless world,” it seems that the same process of disenchantment might just as well leave human beings a beleaguered band in a purposeless world. *Id.* at 347. Lack of metaphysical purpose is compatible with either isolation or community.

we enter into such relationships, we need some shared terms of agreement, some broadly shared communal self-understanding. As a consequence, Smith begins his assessment of modern paganism by attempting to determine whether it can “support community.”³⁴ Ancient pagans were confident that “citizens and subjects could be counted on to give whatever civic allegiance they felt to the city, unqualified by loyalties to some other, foreign or transcendent sovereign.”³⁵ Christians were loyal to the city, to be sure, but their allegiance to any and every polity was supposed to be divided, and not just divided, but subordinate to their allegiance to a transcendent Sovereign.³⁶ So, ancient paganism fosters civic unity, transcendent—Christian—religion divides, and the question is whether modern paganism has the resources to “recover . . . the civic solidarity of antiquity.”³⁷

34. *Id.* at 352 (emphasis omitted).

35. *Id.* at 348 (emphasis omitted).

36. This kind of divided loyalty was multiply exemplified during early Christian history. Smith discusses many cases. Here is another—the response of the “blessed martyrs of Thebes” to the Emperor Maximian’s demand that they aid in the extirpation of Gallic Christianity:

“We are your soldiers, emperor,” they said, “but as we freely confess, we are nevertheless God’s slaves. To you we owe military service, to him we owe innocence. From you we take the wages of labor, from him we have received the beginning of life. We cannot follow the emperor in these matters so as to deny God, our creator. If we are not by some deadly cause compelled to offend, we will still obey you as we have done until now, but otherwise we will obey him rather than you. We offer our hands against any enemy, but we think it wicked to stain them with the blood of innocents. Our right hands know how to fight against the wicked and against enemies, but not to butcher good men and fellow citizens. . . . We have always fought for justice, goodness, and the safety of the innocent. These things were until now our reward for the dangers. We have fought faithfully. How may we keep faith with you if we do not show faith to God? We swore first allegiance to God, and thence we swore allegiance to the king.”

WILLIAM OF OCKHAM, A SHORT DISCOURSE ON THE TYRANNICAL GOVERNMENT 83–84 (Arthur Stephen McGrade ed., John Kilcullen trans., 2001). Perhaps the response is apocryphal. See ADOLPH HARNACK, MILITIA CHRISTI: THE CHRISTIAN RELIGION AND THE MILITARY IN THE FIRST THREE CENTURIES 96 (David McInnes Gracie trans., 1981). *But see generally* Donald F. O’Reilly, *The Theban Legion of St. Maurice*, 32 VIGILIAE CHRISTIANAE 195 (1978). For what it is worth, I often use this passage as a way to introduce Mids on how to reflect on the appropriate role of religious convictions in the military profession. *See generally* Christopher J. Eberle & Rick Rubel, *Religious Conviction in the Profession of Arms*, 11 J. MIL. ETHICS 171 (2012) (providing a more extended reflection on the role of religious conviction in the military).

37. SMITH, *supra* note 1, at 348.

Smith is skeptical that it can. “Ancient paganism . . . was predominantly public and communal in nature. It was manifest in spectacular temples and noisy processions, in public sacrifices and auguries. . . . Modern paganism, by contrast, lacks these communal elements.”³⁸ It is pervasively individualistic:

modern paganism, as reflected in Ronald Dworkin’s “religion without God,” is more a sort of philosophical sanctification of experiences, judgements, and commitments that individuals are free to have or not to have. . . . [I]t is thus predominantly personal in character.

. . . In short, present paganism, unlike its venerable predecessor, seems more conducive to a “bowling alone” type of religiosity than to a communal one.³⁹

I take it that one of Smith’s central complaints about modern paganism is that it lacks the resources to provide human beings with a kind of community for which we putatively yearn.⁴⁰

This characterization of the resources of modern paganism seems to be quite foreshortened. It leaves out what I regard as one of the most powerful and pervasive manifestations of immanent religiosity—one that has historically aspired to provide the very kind of civic or communal unity that Smith associates with ancient paganism. Most particularly, it leaves out the kind of paganism that would be, I think, most attractive to my students—were I able to induce them to think in Smith’s categories. For many Mids, their most sacred duty is to “support and defend” the United States.⁴¹ Although I do not think it would be accurate to say that they worship the United States, it is plausible to suppose that many regard the United States as sacred, as their most important normative commitment, and thus as the source of their most weighty normative obligations. And of course, as I noted, their lives are full of the paraphernalia of communal religiosity—processions and ceremonies, sacrifices and obeisance, feelings of awe and self-transcendence. I am confident that, at least for many Mids, immanent religion is not only alluring, but alluring precisely on account of its promise of membership in a prized community—one that is defined by its dedication to the defense of the sacred. And not only alluring, but profoundly meaningful: what could make for a more meaningful life than

38. *Id.* at 352–53.

39. *Id.* at 353 (footnotes omitted) (citing RONALD DWORKIN, RELIGION WITHOUT GOD (2013)).

40. *See id.* at 352–53.

41. *See generally* U.S. NAVAL ACAD., OATH OFFICE CEREMONY: CLASS OF 2017 (2013), https://www.usna.edu/PlebeSummer/_files/documents/2013/2013_OathofOfficeCeremonyProgra_m_061413web.pdf [<https://perma.cc/QRX7-A3VM>].

to follow generations of predecessors in dedicating yourself to the defense of what is most valuable?⁴²

Now you might grant that there is some comparatively small number of Americans who find military service in the United States to be a membership in a community that puts them in touch with a “this-worldly” sacred. But you might also think most of us are not privy to that community; Americans have fewer meaningful connections to the military with each successive generation. So, despite some potential pockets of communal paganism that retain a vestigial existence in the United States, the only kind of immanent religiosity that is available to most of us is the individualist, bowling-alone type that cannot satisfy our deepest communal yearnings. Perhaps Smith hints at this in his brief dismissal of the remaining “vestiges of the old civil religion”—presidential inaugurations, Memorial Day parades, Thanksgiving.⁴³ And this might seem to be pretty thin religious gruel—at best a kind of Unitarian paganism, incapable of evoking religious-like awe or of satisfying our yearning for community. But I think that this response underestimates the attractiveness of the nation as a location for the sacred, as a source of communal unity, and as a source of meaning.

Consider two points in this regard. First, many advocates of nationalism have regarded transcendent religion as a primary competitor for loyalty.⁴⁴ Their self-understanding is that proper loyalty to the nation requires either the replacement of God by the nation or a rather straightened subordination of God to the nation.⁴⁵ This self-understanding has a very long history. So, for example, the early nationalist ideologue Moritz Arndt advocated a kind of Holy War against Napoleon: “I hate all the French without exception in the name of God and my people. I teach my son this hatred. I will work to the end of my days to ensure that this deprecation and hatred strikes the deepest roots in German hearts.”⁴⁶ Arndt’s hatred was apparently grounded

42. See SMITH, *supra* note 1, at 367–72 (discussing modern paganism’s ability to connect humans to the sacred and give meaning to life). I take it that these two features—some emotion-inducing connection to the sacred and some life-orienting meaning—are the central elements of Smith’s conception of the religious.

43. *Id.* at 352–53.

44. See, e.g., Bruce Ashford, *The (Religious) Problem with Nationalism*, ETHICS & RELIGIOUS LIBERTY COMMISSION S. BAPTIST CONVENTION (Jan. 25, 2016), <https://erlc.com/resource-library/articles/the-religious-problem-with-nationalism> [<https://perma.cc/85D5-SM4W>].

45. See *id.*

46. MICHAEL BURLEIGH, *EARTHLY POWERS: THE CLASH OF RELIGION AND POLITICS IN EUROPE FROM THE FRENCH REVOLUTION TO THE GREAT WAR* 159 (2007) (citing R.R.

on a devotion to his nation that seems to have left no place for any serious, nation-transcendent allegiance:

To be a nation, to have one feeling for one cause, to come together with the bloody sword of revenge, is the religion of our times. Leave all the little religions behind and perform the great duty to the single highest, and unite yourself in it to one belief high above the Pope or Luther. That is the ultimate religion, to hold the Fatherland more dearly than lords and princes, than father and mother, than wives and children.⁴⁷

I think that it would be quite easy to arrange a very long and impressive sequence of nationalist luminaries who understood the loyalty to the nation to compete with allegiance to any transcendent God and who thus see in the nation an inner-worldly replacement for the transcendent.⁴⁸

Second, nationalism has often taken on many of the psychological, sociological, and political functions of religion.⁴⁹ I know of no better analysis of the “religiosity” of nationalism than Carleton Hayes’ *Nationalism: A Religion*.⁵⁰

Since its advent in western Europe, modern nationalism has partaken of the nature of a religion. . . .

. . . [L]ike any religion, [it] calls into play not simply the will but the intellect, the imagination, and the emotions. The intellect constructs a speculative theology or mythology of nationalism. The imagination builds an unseen world around the . . . past and . . . future. . . . The emotions arouse a joy and ecstasy in the contemplation of the national god who is all-good and all-protecting, a longing for his favors, a thankfulness for his benefits . . . and feelings of awe and reverence at the immensity of his power

. . . .

. . . Nowadays the individual is born into the national state, and the secular registration of birth is the national rite of baptism. Thenceforth the state solicitously follows him through life, tutoring him in a national catechism, teaching him by pious schooling and precept the beauties of national holiness, fitting him for a life of service (no matter how exalted or how menial) to the state If he has been a crusader in behalf of nationalism, his place of entombment is marked with the ensign of his service. The funerals of national heroes and potentates are celebrated with magnificent pomp and circumstance, while, since World War I, a most sacred

PALMER, TWELVE WHO RULED: THE YEAR OF THE TERROR IN THE FRENCH REVOLUTION 118–19 (1941)).

47. *Id.* at 159–60; *see also* DAVID A. BELL, THE FIRST TOTAL WAR 294–98 (2007) (discussing Bell’s reflections on Arndt’s nationalism).

48. *See* BURLEIGH, *supra* note 46, at 1–14 (discussing nationalism and allegiance to God through a history of the battles over religion in modern Europe).

49. *See, e.g.*, Barbara-Ann J. Rieffer, *Religion and Nationalism: Understanding the Consequences of a Complex Relationship*, 3 ETHNICITIES 215, 215–24 (2003).

50. CARLETON J.H. HAYES, NATIONALISM: A RELIGION (1960).

shrine in a nation's capital is the "Tomb of the Unknown Soldier." Here shine perpetual lights. Here floral offerings ever repose.⁵¹

And so on . . . flags, anthems, pilgrimages, temples, saints—all putatively secular, but the *mélange* of which manifests and maintains a religious or quasi-religious sensibility.

Now you might think nationalism might have functioned as an alternative religion in other times or states, but not in the United States—that we Americans are too attached to individualism and solitary bowling to be card-carrying nationalists of anything like the Arndtian sort. Perhaps so. And so perhaps the United States cannot form the sacred core of an imminent paganism that provides for the communal unity fostered by ancient paganism. But I wonder. Religious commitment waxes and wanes; it can lie dormant, unnoticed, and quiescent for extended periods and then spring to life in utterly unpredictable ways. For adherents of transcendent religion, personal trauma often has this effect; excruciating suffering is often the genesis of a recovery of faith, not, as many of its critics might think appropriate, its extinction. And for those who locate the immanent sacred in the nation, a different kind of trauma often serves that invigorating function. As Stanley Hauerwas has argued, "war remains for Americans our most determinative moral reality."⁵² It "is a mighty practice," both ennobling and destructive.⁵³

51. *Id.* at 164–65; *see also* NIGEL ASTON, RELIGION AND REVOLUTION IN FRANCE, 1780–1804, at 188 (2000) (explaining that in some cases, nationalism is self-consciously and intentionally adopted as a religion, one intended to replace a more traditional, and less cooperative, competitor). Recall the various attempts during the French Revolution to replace the public endorsement of Catholicism with a "cult of the nation" that valorized core liberal values—reason, liberty, and equality—crosses in towns and villages were to be replaced with statues to "Liberty and . . . Equality"; the state could not celebrate the Triumph of Christ but could celebrate the Triumph of Reason. ASTON, *supra*. There would be, in the words of the Bishop Gobel on the occasion of his resignation from the see of Paris, "no more public and national worship but that of Liberty and Holy Equality." *Id.*; *see also* JOHN McMANNERS, THE FRENCH REVOLUTION AND THE CHURCH 68–76 (1st Harper Torchbook ed. 1970) (explaining that the idea that nationalism can be adopted, whether consciously or not, as a replacement for religion naturally raises a question about the meaning of the so-called non-establishment clause: can state practices that further the "worship of the state" violate the non-establishment clause?; Is it possible for affirmation of core liberal values—those that define the normative core of a liberal patriotism—to violate the Non-Establishment Clause?; What understanding of that clause would allow for that verdict, given that all manifestations of a liberalism nationalism might be resolutely 'secular' in content?).

52. STANLEY HAUERWAS, WAR AND THE AMERICAN DIFFERENCE: THEOLOGICAL REFLECTIONS ON VIOLENCE AND NATIONAL IDENTITY 34 (2011).

53. *Id.* at 69.

It generates the sense that the nation is sacred and it manifests that sense as well.⁵⁴ After all, war requires that we sacrifice great goods: our children, our friends, and our compatriots—even if not our own life. We sacrifice those goods in the service of something else, but we do not sacrifice them for trivial ends.⁵⁵ We do so to achieve goods that make that sacrifice intelligible, sensible, and justifiable. For many Americans, the good that renders the sacrifice of our children, friends, and compatriots worthwhile is not merely a nation-state. It is a nation-state that instantiates very great moral goods—freedom, autonomy, human rights, democracy. This understanding of what makes waging war worthwhile pervades American

54. See HARRY S. STOUT, *UPON THE ALTAR OF THE NATION: A MORAL HISTORY OF THE CIVIL WAR*, at xvii–xxi (2006) (explaining that the American Civil War played a crucial role in consecrating the United States for many Americans).

55. See HAUERWAS, *supra* note 52, at 68–69. Hauerwas seems to be presupposing here an idea that I have heard expressed in various formulations, often by pacifists, which is the idea that we can determine what we really regard as sacred—not merely what we say is sacred—by the sacrifices we are willing to make. So, for example, Michael Budde states, “Let me provide a suggestion, a sort of pragmatic and functional understanding of the idolatry of the nation state. The state is an object of ultimate allegiance . . . to the extent that people are willing to kill for it, die for it, and pay for it.” Michael L. Budde, *Liberal Democracy: An Alternative to the Idolatry of the National State?*, in *THEOLOGY AND PUBLIC PHILOSOPHY: FOUR CONVERSATIONS* 130 (Kenneth L. Grasso & Cecilia Rodriguez Castillo eds., 2012). More expansively, Carolyn Martin and David Ingle explain:

In the religiously plural society of the United States, sectarian faith is optional for citizens, as everyone knows. Americans have rarely bled, sacrificed or died for Christianity or any other sectarian faith. Americans have often bled, sacrificed and died for their country. This fact is an important clue to its religious power. . . . What is really true in any society is what is worth killing for, and what citizens can be compelled to sacrifice their lives for.

HAUERWAS, *supra* note 52, at 67–68 (quoting CAROLYN MARVIN & DAVID W. INGLE, *BLOOD SACRIFICE AND THE NATION: TOTEM RITUALS AND THE AMERICAN FLAG* 9 (1999)). Furthermore, William Cavanaugh states:

[T]he late Chief Justice William Rehnquist acknowledged, in supporting a proposed amendment against “desecration” of the flag, that the flag is regarded by Americans “with an almost mystical reverence.”

Here the word “almost” is crucial, for American civil religion can never acknowledge that it is in fact religion: to do so would be to invite charges of idolatry. Here liturgical gesture is central, because gesture allows the flag to be treated as a sacred object, while language denies that that is the case. Everyone acknowledges verbally that the nation and the flag are not *really* gods, but the crucial test is what people do with their bodies, both in liturgy and in war. It is clear that, among those who identify themselves as Christians in the United States and other countries, there are very few who would be willing to kill in the name of the Christian God, whereas the willingness, under certain circumstances, to kill and die for the nation in war is generally taken for granted.

WILLIAM T. CAVANAUGH, *MIGRATIONS OF THE HOLY: GOD, STATE, AND THE POLITICAL MEANING OF THE CHURCH* 119 (2011) (footnote omitted) (quoting MARVIN & INGLE, *supra*, at 30).

history.⁵⁶ And it binds us together: war integrates “the many into one: we must all stand together when faced with an enemy.”⁵⁷ Just recall our collective experience after 9/11—war is a community-producing project.⁵⁸ It evokes in many Americans what seems to be the kind of communal bonding absent from the individualistic, immanent paganism on which Smith focuses. And so perhaps there is a version of modern paganism—one that locates the sacred in a nation-state dedicated to freedom, autonomy, and democracy—that *is* capable of sustaining the kind of communal bonds that were present in ancient paganism but fractured by Christianity.

For what it is worth, I think that I know a number of American Christians who are really modern pagans—who regard the United States as their highest loyalty and for whom their commitment to the transcendent matters far less to them by comparison. And the idea that many, or even most, American Christians are actually pagans seems to be compatible with Smith’s understanding of what makes for paganism.⁵⁹ Although I take him to define immanent religion in significant part by its doctrinal specification of the sacred—he “locates” the sacred in some this-worldly aspect of reality, and this kind of doctrinal commitment does not seem necessary. After all, if I sincerely believe, as a matter of fact, that the traditional transcendent God of Christianity exists, yet I care far more about my country than I do about God, then it seems that I am actually a pagan.⁶⁰ This is one reason why it is so hard to tell how many Americans adhere to either transcendent or immanent religion: if my status as a pagan depends not so much on the content of my beliefs about the sacred as on which of my beliefs matter most to me, then the way we normally figure

56. See generally JONATHAN H. EBEL, *FAITH IN THE FIGHT: RELIGION AND THE AMERICAN SOLDIER IN THE GREAT WAR* (2010); RICHARD M. GAMBLE, *THE WAR FOR RIGHTEOUSNESS: PROGRESSIVE CHRISTIANITY, THE GREAT WAR, AND THE RISE OF THE MESSIANIC NATION* (2003); STOUT, *supra* note 54.

57. CAVANAUGH, *supra* note 55, at 68.

58. See Jeff Guo, *Researchers Have Found that War Has a Remarkable and Miraculous Effect*, WASH. POST (June 28, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/06/28/researchers-have-found-that-war-has-a-remarkable-and-miraculous-effect/?utm_term=.b35306e66e0a [<https://perma.cc/V93F-JJ4Q>].

59. See SMITH, *supra* note 1, at 346–48.

60. There is an interesting vignette about this point related in David Bellavia’s memoir of the Iraq War that I discuss in my book, *Justice and the Just War Tradition*; though, I did not construe him as a pagan, not having read Smith’s book at the time I wrote that book. See CHRISTOPHER J. EBERLE, *JUSTICE AND THE JUST WAR TRADITION: HUMAN WORTH, MORAL FORMATION, AND ARMED CONFLICT* 32–33 (2016) (quoting DAVID BELLAVIA, *HOUSE TO HOUSE: A SOLDIER’S MEMOIR* 44 (1st Free Press Trade paperback ed. 2008)).

out what our compatriots believe—some pollster asking very simple questions over the phone or online—is not a particularly reliable way to determine their religious status. Pollsters are not very good at getting at what *really* matters to us. They certainly seem to be incapable of providing us with reliable information as to whether Americans care more about the “god of Americanism” than the Triune God.⁶¹

What does this mean for Smith’s argument? His concluding chapter queries whether modern, immanent paganism has the resources to provide for the communal unity that human beings desire, need, or crave.⁶² He is skeptical that it can, at least partly by virtue of the fact that modern paganism seems irremediably individualistic, thin, and undemanding.⁶³ But there are many different kinds of immanent religion, many different places at which to locate the this-worldly sacred. One prominent possibility is that we identify the sacred with individual human beings, their rights, their rationality, their autonomy, or some assemblage thereof.⁶⁴ That is a conception of the sacred prominently on offer in many American contexts—perhaps most notably in liberal arts colleges and shopping malls. And perhaps that individualistic conception of the sacred is largely at work in the symbolic conflicts on which Smith focuses. But there are other possible locations of the immanent sacred—not only individual human beings but also the moral communities that produce those human beings, that inculcate belief in their equal dignity, and that realize their rights. It is not only the dignified individual who is sacred but also the cultural, historical, and political collectivity that produces and protects the dignified individual.⁶⁵ Perhaps

61. JAMES K.A. SMITH, *Chapter 19: The God of Americanism: On Mitt Romney’s “Faith in America,”* in *THE DEVIL READS DERRIDA* 102, 102–04 (2009).

62. See SMITH, *supra* note 1, at 346–47.

63. This is Smith’s eventual verdict:

Humans are also active and embodied beings, living in the world; so religions both ancient and modern have provided their adherents with precepts and commandments—with things to *do*, ways to *live*. These have included both the rituals and libations and sacrifices of ancient paganism and Judaism and the moral instructions and liturgies of Judaism and Christianity.

By contrast, modern philosophical paganism (at least of the Dworkinian variety) offers none of these things. It sponsors no ceremonies, prescribes no rituals. It does not attempt to explain why the world exists, why we suffer, or whether there is anything for us after death. In this respect, once again, modern paganism is minimalist in comparison either to its ancient predecessor or its more modern transcendent competitors. One wonders whether modern paganism is simply too intellectually, morally, and ceremonially or liturgically thin to provide what religions are supposed to provide.

Id. at 371.

64. See H. Butterfield, *Reflections on Religion and Modern Individualism*, 22 *J. HIST. IDEAS* 41–42 (1961).

65. In contrast to the individualistic, bowling-alone kind of modern paganism on which Smith seems mostly to have in his evaluative sights, collective, nationalist manifestations

this conception of the sacred is involved in a whole range of symbolic conflicts as well—not only those on which Smith focuses but also many others including those about immigration, torture, kneeling during the national anthem, and so on.⁶⁶ It seems to me that Smith’s assessment of modern paganism would be much improved, even if made more complex, were he to address more communal forms of paganism such as those that privilege the nation-state, and, even more, those versions of modern paganism that privilege nation-states that instantiate liberal values.⁶⁷

I think that more complicated discussion would provide an ideal opportunity to address one of the signal ways in which transcendent religion can help us to resist one of the besetting temptations of nationalism. Human beings are powerfully tempted to *make a god* of their nation and when they do so, that god “begins to be a demon.”⁶⁸ Human beings are tribal creatures who tend vastly to overestimate the worth of their nation-state—by which they are pervasively socialized—and when they do so, they are also

of modern paganism can be extremely demanding—and might very well be preferable to many Americans on just that count. See SMITH, *supra* note 1, at 347. For example, many of my students attend the Academy precisely because they think it will involve both demanding and meaningful service to the nation.

66. This provides one of many reasons to be skeptical of Mark Tushnet’s assertion that “[t]he culture wars are over.” SMITH, *supra* note 1, at 344 (emphasis omitted) (quoting Mark Tushnet, *Abandoning Defensive Crouch Liberal Constitutionalism*, BALKINIZATION (May 6, 2016), <https://balkin.blogspot.com/2016/05/abandoning-defensive-crouch-liberal.html> [<https://perma.cc/D4RP-YXDA>]). The culture wars are never over. They began before the United States came into existence; they have persisted throughout; and there is no good reason to think they will end in the lifetime of anyone who reads this paper. See Michael Kazin, *America’s Never-Ending Culture War*, N.Y. TIMES (Aug. 24, 2018), <https://www.nytimes.com/2018/08/24/opinion/sunday/chicago-protests-1968-culture-war.html> [<https://perma.cc/Q53B-9XTM>]). The flashpoints change from the delivery of the mail on Sundays to the delivery of healthcare. And they can incorporate new or revived or significantly altered actors. Who knows, perhaps we will experience culture wars between competing pagan sects—those that privilege the individualistic immanent and those that privilege the communal or national sacred. After all, there is no reason to believe “modern paganism,” as Smith conceives it, is any less fissiparous than your garden variety Protestant denomination. SMITH, *supra* note 1, at 347–48. In any case, “the culture wars” are not going away anytime soon, which might provide at least pragmatic reason to moderate Tushnet’s triumphalist declaration. *Id.* at 344 (emphasis omitted).

67. Particularly interesting in this regard is a report by the Committee on National Attitudes, drafted by Carleton Hayes and published in 1937, on how Catholics should think about patriotism, nationalism, and universal Christian norms. See generally CARLTON J.H. HAYES, COMM. ON NAT’L ATTITUDES, PATRIOTISM, NATIONALISM AND THE BROTHERHOOD OF MAN (1937).

68. C.S. LEWIS, THE FOUR LOVES 6–8 (1988) (discussing what makes for healthy love of country).

powerfully tempted to do all sorts of horrible things in its service.⁶⁹ Transcendent religion provides one important moral resource for resisting this kind of apotheosis-induced atrocity: any and all nations, however excellent, are *under God*, each nation is therefore accountable to God, and thus each member of each nation must be prepared to resist the temptation to protect it at all costs.⁷⁰ To return to the flag-dipping story I mentioned earlier,⁷¹ the importance of refusing to impute any sacred quality to the nation seems to have been one of the main reasons why many of the parishioners at the Academy fought so hard against the Superintendent's order that they cease and desist dipping the flag before the Chapel altar. Here I speculate that many knew from personal experience the moral danger posed by according sacred status to the nation, believed that it was crucially important to the formation of Mids that they be apprised of that danger, and so availed themselves of a liturgical practice to do so, at least for those Mids who chose to attend chapel services. "I think the ceremony is fully representative of the highest traditions of our country," said Bob Morrison. "It basically says that our country is one nation under God and the nation-state is not the highest authority in the world."⁷²

69. I discuss one such case in the next Part: Michael Walzer's communitarian rationale for the so-called supreme emergency exemption. *See infra* pp. 270–71; *see also* MICHAEL WALZER, ARGUING ABOUT WAR 33–35 (2004).

70. Here is Carleton Hayes's perspective on the tension between transcendent religion and the immanent religion of nationalism:

The religion of nationalism, if we may use the phrase, superficially resembles real religion: it has dogmas; it has a cult, with holydays and ceremonial observances; it appropriates religious, even Christian, phrases and formulas; and it instills in its worshipers a strong sense of obligation and devotion. In essential respects, however, it is different from Christianity, and quite antithetical to it. It is this-worldly, rather than other-worldly; its kingdom is of this world. It takes no account of the supernatural, ignoring if not openly denying it, but bases itself on what it accepts as the natural order and what it interprets as "realistic"; it exalts not the Bible or the Christian Fathers, but the positivism of Auguste Comte, the politics of Machiavelli, the romanticism of literary men of modern times, or the racialism of pseudo-scientists of the late nineteenth century. It is exclusive rather than comprehensive, being concerned with a particular people rather than with all peoples. It flatly contradicts the Catholic principle expressed by St. Paul: "There is neither Jew nor Gentile, there is neither Greek nor Barbarian, there is neither bond nor free: for you are all one in Christ Jesus."

HAYES, *supra* note 67, at 18.

71. *See supra* Part III.

72. Neela Banerjee, *Clashing over Church Ritual and Flag Protocol at the Naval Academy Chapel*, N.Y. TIMES (Mar. 8, 2008), <https://www.nytimes.com/2008/03/08/us/08chapel.html> [<https://perma.cc/E9EU-XYUH>]. Bob Morrison is a long-time attendant of the Protestant Service at the Naval Academy. *See id.*

V.

It might seem that I am not being entirely fair to Smith. He seems to me to conceive of modern, immanent paganism in pretty thoroughly individualistic terms. The primary location of the sacred for modern pagans seems to be in “the human person.”⁷³ But he also considers two theorists who try to rescue some aspects of the communal for modern paganism. John Rawls is one of those theorists, and although he is often construed as a resolutely individualistic thinker, Smith emphasizes the communitarian aspirations that have long characterized Rawls’s work.⁷⁴ If Smith is correct, Rawls “exhibited a desire to overcome the divisions introduced by Christianity and to recover, in modern form, the civic solidarity of antiquity.”⁷⁵ Crucial to that recovery project is Rawls’s ideal of public reason—that ideal includes at least some understanding of what makes for “shared reasons,” specifies constraints on the justificatory role of “non-shared” reasons in political decision-making and public deliberation, and thereby indicates how a diversely committed population can prevent the transcendent from performing its familiar divisive role.⁷⁶ It is worth citing a longer passage in which Smith articulates this understanding of Rawls:

The ancient city was able to maintain the kind of unity Rawls sought because the various pagan or polytheistic cults were already inclined to take a relaxed attitude toward truth, as historians have emphasized, and to cheerfully suppose that their superficially diverse deities were probably just the same set of gods going under different names, or at least were members of a common pantheon. . . .

In the modern Christian or post-Christian world, by contrast, that kind of natural unity is no longer available. So how is the genuine community to be achieved? . . .

Rawls’s answer (and that of other like-minded liberal theorists) was, basically, to distance the political community from divisive Truth by constructing a civic sphere from which transcendent religion and other potentially disruptive “comprehensive doctrines” would be excluded. Citizens might retain their religious or philosophical convictions for private purposes, but upon entering the civic sphere they would put aside these rival “comprehensive doctrines” and would deliberate with mutual

73. David Bentley Hart, *Human Dignity Was a Rarity Before Christianity*, CHURCH LIFE J. (Oct. 26, 2017), <https://churchlife.nd.edu/2017/10/26/human-dignity-rarity-before-christianity/> [<https://perma.cc/YRX8-SJSC>].

74. See SMITH, *supra* note 1, at 348–50. Some public reason liberals embrace the accusation that they are really after a kind of “poor man’s communitarianism.” Andrew Lister, *The Public Justification of What? Coercion VS. Decision as Competing Frames for the Basic Principle of Justificatory Liberalism*, 25 PUB. AFF. Q. 349, 363 (2011).

75. SMITH, *supra* note 1, at 348.

76. Jonathan Quong, *Public Reason*, STAN. ENCYCLOPEDIA PHIL. (Jan. 11, 2018), <https://plato.stanford.edu/entries/public-reason/> [<https://perma.cc/83EF-77T5>].

respect under the canopy of a shared “public reason.” In this way, the unity and community that came naturally to the ancient pagan city would be reconstructed artificially, so to speak—by constructing walls around a core civic sphere and keeping Christianity and other strong faiths and philosophies outside those walls.⁷⁷

This is a fairly abstract description of Rawls. To provide a somewhat more concrete sense of how Rawls might be thought to rescue *community* in contemporary liberal polities, I would like to discuss one of Rawls’s most extensive, most fascinating, yet least discussed assessments of the justificatory role of religious reasons—his assessment of religious objections to the British area bombing campaign during the Second World War. It might seem to exemplify in a most bracing manner Rawls’s contribution to modern paganism: the construction of a wall “around a core civic sphere” that excludes “Christianity and other strong faiths.”⁷⁸

As it happens, Rawls articulates his assessment of the British area bombing campaign and its religious critics as he lays out his understanding of the just war tradition.⁷⁹ Three elements of his treatment of that tradition are particularly relevant to my discussion. First, Rawls affirms the claim that most polities have a right to self-defense: if he is correct, “any society that is nonaggressive and that honors human rights” enjoys such a right.⁸⁰ Second, Rawls affirms familiar “*in bello*” constraints, most particularly the principle of civilian immunity.⁸¹ States victimized by a wrongful attack must carefully distinguish between the aggressor’s leaders and its general population.⁸² The former “are responsible; they willed the war; and for doing that, they are criminals,” so they may be directly targeted with necessary and proportionate military violence.⁸³ Not so the civilian population, which is “often kept in ignorance and swayed by state propaganda.”⁸⁴ Given that they lack responsibility for initiating the unjust attack that provides a just cause for war, civilians ought not be targeted by military violence during the prosecution of the ensuing war. Third, Rawls adopts one very significant exception to the principle of civilian immunity. That is, he affirms a version of Michael Walzer’s so-called supreme emergency exemption, which “allows us to set aside—in certain special circumstances—the strict status of civilians

77. SMITH, *supra* note 1, at 349–50 (footnotes omitted).

78. *Id.* at 350.

79. See John Rawls, *50 Years After Hiroshima*, DISSENT MAG., Summer 1995, at 323, 323. This comports with Rawls’s self-understanding that the morality of war “does not . . . depart from [Walzer’s treatment in *Just and Unjust Wars*] in any significant respect.” JOHN RAWLS, *THE LAW OF PEOPLES*, 95 n.8 (1999).

80. RAWLS, *supra* note 79, at 92.

81. *Id.* at 94.

82. *Id.* at 94–95.

83. *Id.* at 95.

84. *Id.*

that normally prevents their being directly attacked in war.”⁸⁵ Rawls illustrates that exemption by reference to Great Britain’s circumstances relatively early in the Second World War—after the fall of France and before it was clear that the British would be able to withstand the Nazi assault.⁸⁶ According to Rawls, “Nazism portended incalculable moral and political evil for civilized life everywhere. . . . [T]he nature and history of constitutional democracy and its place in European history were at stake,” and the British “had no other means to break Germany’s superior power.”⁸⁷ In those dire circumstances, the British were “justifie[d] [in] invoking the supreme emergency exemption.”⁸⁸

When Rawls adopts the supreme emergency exemption, he adopts a moral principle that can help to legitimize exceptionally brutal military violence. After all, what it means for the strict status of civilians to be “set aside” is that states with modern militaries may deliberately deploy their vast resources to kill, maim, and terrorize nuns, babies, patients in hospitals, children at play, and many other kinds of innocent and harmless human beings.⁸⁹ The details are depressing. So, for example, the bombing of Hamburg, suitably designated “Operation Gomorrah,” was vast in scale and horrific in effect.⁹⁰ In late July of 1943, the Royal Air Force (RAF) dropped over 9000 tons of bombs in 3000 sorties during four separate raids on Hamburg—selected for its relative proximity to Great Britain, the paucity of intervening air defenses, and various military targets therein.⁹¹ Most of the bombs dropped were incendiaries: some contained benzol, others rags soaked in benzene or heavy oil, and still others gelled petroleum inextinguishable with water.⁹² Some were time-delayed, exploding several hours after being dropped, to deter fire crews and medical units from dealing with the continuing effects of earlier bombs.⁹³ The resulting firestorm—

85. *Id.* at 98.

86. *See id.*

87. *Id.* at 98–99.

88. *Id.* at 99.

89. *Id.* at 98, 100.

90. A.C. GRAYLING, *AMONG THE DEAD CITIES: THE HISTORY AND MORAL LEGACY OF THE WWII BOMBING OF CIVILIANS IN GERMANY AND JAPAN* 16 (2006).

91. *Id.* at 19.

92. *Id.* at 88–89. Bomber Command well appreciated the “anti-morale” effect of fires that flare again as soon as the water was turned off. MARTIN MIDDLEBROOK, *THE BATTLE OF HAMBURG: ALLIED BOMBER FORCES AGAINST A GERMAN CITY IN 1943*, at 119 (1981).

93. *See* GRAYLING, *supra* note 90, at 89.

the war's first—created temperatures of 800 degrees centigrade and winds at hurricane speeds, snatching bodies into the air or turning them into human torches.⁹⁴ Its glow could be seen up to 120 miles away.⁹⁵ “No-one knows exactly how many died, but at least 45,000 corpses lay among the smoking ruins, with many more injured and traumatized.”⁹⁶ The effects of the bombing reverberated throughout Germany, as a stream of over one million refugees exited the remains of the city, which included one deranged mother who was discovered in Bavaria carrying in her luggage the charred corpse of her child, “a relic of a past that was still intact a few days [earlier].”⁹⁷

Rawls no doubt knew of all this and affirmed the supreme emergency exemption nonetheless.⁹⁸ Indeed, he not only asserts that the direct targeting of a vast number of innocents was justifiable, but he also strongly implies that statesmen—“great leaders of peoples” who see “deeper and further than most others and grasp what needs to be done”—are duty bound to target innocents when they find themselves in a supreme emergency.⁹⁹ This is an exceptionally contentious claim. Indeed, Rawls notes that this understanding

94. *Id.* at 83–84 (quoting MIDDLEBROOK, *supra* note 92, at 224–25).

95. RICHARD OVERY, *WHY THE ALLIES WON* 120 (1995).

96. GRAYLING, *supra* note 90, at 20.

97. *Id.* at 20, 84–85 (quoting W.G. SEBALD, *ON THE NATURAL HISTORY OF DESTRUCTION* 29 (Anthea Bell trans., 1st U.S. ed. 2003)). “What the effect was may be inferred from the ejaculations of one German radio commentator (Dr. Carl Hofman): ‘Terror . . . terror . . . terror. [P]ure, naked, bloody terror.’” John C. Ford, *The Morality of Obliteration Bombing*, 5 *THEOLOGICAL STUD.* 261, 293 (1944) (quoting J.M. SPAIGHT, *BOMBING VINDICATED: A SURVEY OF RECENT DEVELOPMENTS BY THIS LEADING AUTHORITY ON AIR WARFARE* 89 (1944)).

98. Rawls did not explicitly endorse the bombing of Hamburg, but he implied that it might have been morally permissible when he said “the bombing of German cities was arguably justifiable” until such a time as Great Britain was able to fend off the German attack. RAWLS, *supra* note 79, at 98–99. Even some fifty years after the termination of the Second World War, Rawls seemed uncertain as to when the latter condition was met. He seemed confident that Great Britain was permitted intentionally to target German cities early on in the war: “This period extended, at the least, from the fall of France in June 1940 until Russia had clearly beaten off the first German assault in the summer and fall of 1941.” *Id.* at 98. But he also granted that “it could be argued” that Great Britain was justified in targeting German cities “until the summer and fall of 1942 or even through the Battle of Stalingrad (which ended with German surrender in February 1943).” *Id.* at 99. So, Operation Gomorrah might have occurred a couple months too late: July 1943. GRAYLING, *supra* note 90, at 89. That said, if Rawls were willing to grant the possible legitimacy of a three years long open season on German cities, it could surely be argued as well—and was argued—that the permissible bombing of German cities included the firebombing of Hamburg. See RAWLS, *supra* note 79, at 98.

99. RAWLS, *supra* note 79, at 97, 99. According to Rawls, “the statesman” is a moral ideal that applies to those who occupy certain political roles. *Id.* at 97. So, for example, a President, Prime Minister, or legislator should adhere to the norms required of a statesman. *Id.* at 97, 99.

of the duties of statesmen conflicts with the moral and theological self-understanding of certain religious believers: “Political liberalism allows the supreme emergency exemption; the Catholic doctrine [of double effect] rejects it, saying that we must have faith and adhere to God’s command.”¹⁰⁰ Rawls has in mind here a powerful essay in which Elizabeth Anscombe argues that Christian teaching includes a number of absolute prohibitions.¹⁰¹ One of those prohibitions precludes “the deliberate killing of the innocent, whether for its own sake or as a means to some further end.”¹⁰² Anscombe suggests “[i]t is nonsense to pretend” that the deliberate obliteration of a city might not involve the deliberate killing of the innocent inhabitants of that city,¹⁰³ and therefore a bombing campaign of the sort carried out by the RAF against German cities is incompatible with core Christian moral teachings.¹⁰⁴

100. *Id.* at 105. I should note that here Rawls uses the language of permission, but he also uses the language of obligation. Perhaps this ambiguity indicates a—morally admirable—queasiness on Rawls’s part.

101. See generally 3 G.E.M. ANSCOMBE, *War and Murder*, in ETHICS, RELIGION AND POLITICS 51 (1981).

Christianity forbids a number of things as being bad in themselves. . . . These absolute prohibitions of Christianity by no means exhaust its ethic; there is a large area where what is just is determined partly by a prudent weighing up of consequences. But the prohibitions are bedrock, and without them the Christian ethic goes to pieces.

Id. at 58; see also 3 G.E.M. ANSCOMBE, *Modern Moral Philosophy*, in ETHICS, RELIGION AND POLITICS, *supra* note 101, at 26, 34.

102. ANSCOMBE, *supra* note 101, at 53–54.

103. *Id.* at 59; see also Ford, *supra* note 97, at 291.

104. See ANSCOMBE, *supra* note 101, at 59. So, for example, the Jesuit theologian John Ford, in his justly famous assessment of what he called the Allied “obliteration bombing” campaign, wrote in 1944:

It is fundamental in the Catholic view that to take the life of an innocent person is always intrinsically wrong, that is, forbidden absolutely by natural law. Neither the state nor any private individual can thus dispose of the lives of the innocent. The killing of enemy soldiers in warfare was justified by older writers on the theory that they were not innocent but guilty. They were guilty of unjust aggression, or of a violation of rights which could be forcibly vindicated. The individual enemy soldiers might be only materially guilty, but it was this guilt, and their immediate cooperation in violent unjust acts that made them legitimate objects of direct killing. As far as I know, this distinction between the innocent and guilty has never been abandoned by Catholic theologians. They still maintain that it is always intrinsically wrong to kill directly the innocent civilians of the enemy country.

Ford, *supra* note 97, at 272.

Although, Rawls says, this doctrine is “intelligible,” adhering to it is “contrary to the duties of the statesman in political liberalism.”¹⁰⁵ Here, Rawls appeals to a familiar distinction between the political and the personal: “The statesman must look to the political world, and must, in extreme cases, be able to distinguish between the interests of the well-ordered regime he or she serves and the dictates of the religious, philosophical, or moral doctrine that he or she personally lives by.”¹⁰⁶ The statesman’s public duties are one thing, her personal religious qualms are another, and she must not allow the latter to prevent her from satisfying the former.

I find Rawls’s assessment doubly perplexing. First, the supreme emergency exemption is arguably “the most controversial, and consequential, amendment to just war theory ever proposed.”¹⁰⁷ Consequently, it is most surprising that Rawls does very little to justify it. His treatment is remarkably sparse—he focuses primarily on delimiting the conditions in which a polity might be exempt from the principle of civilian immunity and hardly at all on justifying that exemption. But of course, what is most controversial is not the scope of the exemption; it is the exemption itself. About that, we are left to speculate. Second, even if Rawls were convinced by some personally compelling argument to adopt the supreme emergency exemption, why did he take its affirmation to be a duty of statesmanship? Rawls famously believed human beings are vulnerable to a number of epistemic burdens that lead even the most competent and conscientious to disagree about all manner of important moral, religious and philosophical doctrines.¹⁰⁸ Surely disagreement about what we must do in a supreme emergency is just one of the many reasonable differences of conviction that arise between reasonable people: if reasonable people intractably disagree about his “difference principle,” as Rawls avers,¹⁰⁹ then surely statesmen intractably disagree about whether we may deliberately target innocent human beings in a supreme emergency. But in that case, why not allow statesmen the moral latitude either to affirm or to deny the supreme emergency exemption?

The following is one speculative answer to that question—one that reads Rawls’s discussion of the supreme emergency exemption in the light of his understanding of public reason.¹¹⁰ When a rights-respecting polity

105. RAWLS, *supra* note 79, at 105.

106. *Id.*

107. BRIAN OREND, *THE MORALITY OF WAR* 141 (2006).

108. JOHN RAWLS, *POLITICAL LIBERALISM*, at xvi–xviii (1993).

109. JOHN RAWLS, *A THEORY OF JUSTICE* 75 (1971).

110. More particularly, I read Rawls’s treatment of the supreme emergency exemption in light of his treatment of “stand-offs” between competing public reasons:

[I]f, when stand-offs occur, citizens simply invoke grounding reasons of their comprehensive views, the principle of reciprocity is violated. From the point of

finds itself in a supreme emergency, it faces a conflict between two very weighty political commitments: the right of rights-respecting states to defend against an annihilative attack and the right of ordinary, unoffending civilians to be free from direct military attack.¹¹¹ Given that they conflict, these two political commitments must be balanced or weighed in some way. Although there are often reasonable disagreements as to how best to weigh competing political values, certain weightings are simply unreasonable.¹¹² Under the circumstances, the only reasonable way to balance the relevant values is to grant priority to right of rights-respecting states to defend against annihilative attacks. This is because, I speculate, we can reasonably demand that ordinary human beings sacrifice only so much.¹¹³ Of course, this weighting might not seem reasonable if we make that determination by relying on our religious convictions: God has the right to demand far more of us by way of sacrifice than it would otherwise be reasonable to demand.¹¹⁴ But public officials cannot allow such controversial religious beliefs to determine how best to balance the relevant conflicting political considerations.¹¹⁵ Absent appeal to extraneous religious convictions, then, the only reasonable balance of the relevant considerations is to affirm the permissibility of targeting civilian non-combatants in the strictly delimited circumstances of a supreme emergency.

view of public reason, citizens must vote for the ordering of political values they sincerely think the most reasonable. Otherwise, they fail to exercise political power in ways that satisfy the criterion of reciprocity.

RAWLS, *supra* note 79, at 168 (footnote omitted).

111. *See id.* at 94–99.

112. *See* RAWLS, *supra* note 108, at 49–50.

113. This is the key claim: it plays a decisive role in—what I speculate to be—Rawls’s argument for the supreme emergency exemption. Perhaps Rawls hints at this in the following passage: Although “in some circumstances a democratic people might better accept defeat if the terms of the peace offered by the adversary were reasonable and moderate, did not subject them to humiliation, and looked forward to a workable and decent political relationship,” Nazism posed a “peculiar evil.” JOHN RAWLS, *Fifty Years After Hiroshima*, in JOHN RAWLS: COLLECTED PAPERS 565, 569 (Samuel Freeman ed., 1999). Given that peculiar evil, “under no conditions could Germany be allowed to win the war.” *Id.* at 568. Ordinary human beings can reasonably be required to sacrifice only so much.

114. This for a number of reasons. For example, God might enable human beings to fulfill moral demands that they would otherwise be unable to satisfy. God might compensate human beings for their this-worldly sacrifices in the afterlife. It could be that friendship with God is the greatest good available to human beings such that to comply with God’s demands will always be conducive to a human being’s long-term flourishing. I am sure there are many other possibilities.

115. *See* RAWLS, *supra* note 79, at 166, 168.

Rawls's assessment of religious critics of the British area bombing campaign might seem to exemplify the way in which his understanding of political liberalism *excludes* the transcendent from public life and in so doing artificially constructs some vestigial sense of community.¹¹⁶ Consider in this regard the implications of his understanding of the duties of a statesman in political liberalism for a particular case. George Bell, the Bishop of Chichester, was arguably the "only indisputably eminent English person to [voice] out loud" principled opposition to the RAF's bombing campaign.¹¹⁷ Even though Bell was sincerely convinced that God Almighty, the Creator and Sustainer of the Cosmos, is the judge who holds accountable both nations and persons—even though that God forbids any human being under any circumstance intentionally to take the life of any innocent person, and even though Rawls was willing to grant that this doctrine was "intelligible"—Rawls also seems committed to the proposition that Bell ought not have allowed any such *personal* doctrine to prevent him from fulfilling "the duties of the statesmen" as understood by "political liberalism."¹¹⁸ And

116. *See id.* at 103–05.

117. Geoffrey Best, *The Bishop and the Bomber*, HIST. TODAY, Sept. 9, 1983, at 29, 31.

118. RAWLS, *supra* note 79, at 105. I think Rawls would have done better to focus on Bishop Bell's objection to the bombing campaign, rather than Anscombe's—if for no other reason than that Bell was actually a statesman. Bell was, and remains, a polarizing figure. Churchill loathed him for his opposition to the RAF's bombing campaign and returned the favor by scuttling his post-war elevation to Archbishop of Canterbury. Michael Burleigh construes him as vain, "in love with his self-image as a brave dissenter," and lacking in "common-sense realism." MICHAEL BURLEIGH, *MORAL COMBAT: GOOD AND EVIL IN WORLD WAR II 504–05* (1st U.S. ed. 2011). But Basil Liddell Hart, a prominent pre-war advocate of area bombing, regarded Bell as one of those "rare Churchmen in history who have combined spirituality and statesmanship, both in high degree." RONALD C.D. JASPER, *GEORGE BELL: BISHOP OF CHICHESTER 284–85* (1967). For Bishop Bell's address to the House of Lords on the area bombing campaign, see *Bombing Policy*, U.K. PARLIAMENT (Feb. 9, 1944), <https://api.parliament.uk/historic-hansard/lords/1944/feb/09/bombing-policy> [<http://perma.cc/BHK2-AFV8>]. Here is one formulation of Bell's objection to area bombing, articulated at the onset of the war and before the beginning of the RAF's campaign:

When war breaks out, there is always a great marshalling of the nation's resources. The Church, which stands within the nation, is expected to express solidarity with the nation. . . . What is the Church to do when there is a war?

We must insist on the distinction of functions. The Church has a specific task to perform at all times. It owes it to the nation, as well as to itself, to discharge that function to the best of its ability. If the Church has a function, war is not a time when it should be abandoned.

But we must interpret further. There is first of the question of right and wrong—the moral law. The Church, in the persons of its clergy, primarily represents the Gospel which brings forgiveness and salvation. But it witnesses also to eternal realities; and the moral law is both super-national and supernatural as the Gospel is. The Church then ought to declare both in peace-time and war-time, that there are certain basic principles which can and should be the standards of both international and social order and conduct. Such principles are the equal

this, it seems, because his *personal* doctrine would prevent him from endorsing a decision that, although murderous, was “reasonable in the light of [a constitutional regime’s] political values.”¹¹⁹ What could this be but to employ the conception of public reason as a basis for excluding Bell’s appeal to the transcendent? Rawls’s assessment of Bell seems to indicate that he is, if not a card-carrying member, then at least a functional ally, of modern paganism.

VI.

I doubt that it is helpful, illuminating, or accurate to espouse in recent debates about public reason and religion a manifestation of the counter-revolutionary war between immanent and transcendent religion that Smith hopes to reveal to us. Although I reject some of the core restrictions that Rawls—or many Rawlsians—hope to impose on religious citizens and statesmen, I do not believe that Rawls lines up on the side of modern paganism and against transcendent religion. Though it is objectionable on many counts, Rawlsian public reason liberalism is not objectionable by virtue of its privileging the immanent over the transcendent sacred. I would like to make three points in support of that judgment.

First, were he presented with Smith’s distinction between immanent and transcendent religion, I think it a near certitude that Rawls would deny any partiality in favor of either. So, for example, he explicitly asserts that “political liberalism is sharply different from and rejects Enlightenment Liberalism,”¹²⁰ at least one manifestation of which would include the kind of sacred-denying naturalism that plays a role, if a minor one, in Smith’s account of the conflict between immanent and transcendent religion. He also explicitly denies that public reasons are tantamount to secular reasons.¹²¹

dignity of all men, respect for human life, the acknowledgement of the solidarity for good and evil of all nations and races of the earth It must not hesitate, if occasion arises, to condemn the infliction of reprisals, or the bombing of civilian populations, by the military forces of its own nation. It should set itself against the propaganda of lies and hatred. It should be ready to encourage a resumption of friendly relations with the enemy nation. It should set its face against any war of extermination or enslavement, and any measure directly aimed at destroying the morale of a population.

G.K.A. BELL, *THE CHURCH AND HUMANITY* (1939–1946), at 26–27 (1946).

119. RAWLS, *supra* note 79, at 105.

120. *Id.* at 176.

121. *See id.* at 146–48.

If he explicitly distances political liberalism from both Enlightenment Liberalism and secularism, then he would likely deny that political liberalism is tantamount to, correlated with, or a functional ally of, modern paganism. Of course, however, Rawls might be wrong about what his conception of political liberalism implies.

Second, it seems clear that Rawls's constraints on religious reasons, when applicable, extend to both the immanent and transcendent sacred.¹²² Return again to the supreme emergency exception. As I noted, Rawls is surprisingly unforthcoming as to any justification of that exception. In that respect, he differs from Michael Walzer, who has written extensively on just that topic. Walzer provides an explicitly communitarian rationale for the exemption.¹²³ If I understand him correctly, his conception of the supreme emergency exemption extends to all communities that face an existential threat from Nazi-like aggressors, and a crucial part of his rationale for according that exemption has to do with the overriding value to us of the communities that help to define our moral identities:

When our community is threatened, not just in its present territorial extension or governmental structure or prestige or honor, but in what we might think of as its *ongoingness*, then we face a loss that is greater than any we can imagine, except for the destruction of humanity itself. We face moral as well as physical extinction, the end of a way of life as well as of a set of particular lives, the disappearance of people like us. And it is then that we may be driven to break through the moral limits that people like us normally attend to and respect.¹²⁴

Two features of this argument seem important. First, it seems to me at least implicitly to justify the supreme emergency exemption by according sacred value to our community.¹²⁵ What is it to claim that a threat to our community is to “face a loss that is greater than any we can imagine”¹²⁶ other than to claim that our community is sacred? If I were to employ the concept without employing the word, that is pretty much what I would say. Second, Walzer's appeal to the value of our community can satisfy Rawls's strictures on public reason no better, and no worse, than a comparable appeal to some transcendent authority. Consider the following two propositions:

- (1) We must obliterate one German city after another because doing so is necessary to avoid “communal death,” and this is a loss greater than which none can be imagined.
- (2) We cannot obliterate one German city after another because

122. See *id.* at 173; Michael Baur, *On Actualizing Public Reason*, 72 *FORDHAM L. REV.* 2153, 2171 (2004).

123. See MICHAEL WALZER, *ARGUING ABOUT WAR* 45 (2004).

124. *Id.* at 43.

125. See *id.*

126. *Id.*

that would require us to violate God's authority, and this is a loss greater than which none can be imagined.

Surely Rawls's conception of public reason must apply to both if to either: if (2) is an inappropriate basis for balancing the political values that conflict in a supreme emergency, then so must (1). And so Rawls's constraints on nonpublic reasons apply to the immanent sacred: so long as the justification of the supreme emergency exemption decisively depends on an implicit appeal to the community as sacred, then that exemption lacks the required public justification. Perhaps Rawls implicitly recognized that. It seems significant that, although his conception of the just war tradition largely follows Walzer's treatment—and so he must have been aware of Walzer's communitarian argument for the supreme emergency exemption—he does not avail himself of Walzer's argument despite the fact that he does not offer any other, compensatory rationale. And that is the point: Rawls's conception of public reason disciplines reasons that decisively appeal to the immanent sacred no less than those that appeal to the transcendent sacred.¹²⁷ In short, debates about public reason and religion do not map cleanly onto the conflict between pagans and Christians.

Third, not only would Rawls reject any partiality towards modern paganism, and not only do his constraints on public reason apply to both the immanent and transcendent sacred, but also those constraints are far weaker than Smith seems to think. Smith's explication of Rawls repeatedly employs the language of “excluding,” “preclude” “inadmissible,” and “screening out.”¹²⁸ For example: “commitments and values deriving from transcendent religion, formerly deemed respectable and legitimate in public discourse, come to be excluded from the city's own political decision making.”¹²⁹ Again: “people whose deepest convictions (embodied in their ‘comprehensive doctrines’) have been declared inadmissible in public discourse will understandably feel excluded from public deliberations, and alienated from the city governed by such deliberations.”¹³⁰ And again: “Although screening out the doctrines associated with a transcendent faith like Christianity, however, ‘public reason’ would not preclude appeal to immanent

127. See RAWLS, *supra* note 79, at 173.

128. SMITH, *supra* note 1, at 334–35, 351, 353–54.

129. *Id.* at 334 (emphasis omitted).

130. *Id.* at 354.

values of the kind favored by Ronald Dworkin and supported by his ‘religion without God.’”¹³¹

There is much in John Rawls’s corpus that lends itself to this exclusionary interpretation. In his early understanding of political liberalism, Rawls claims that the religious views that citizens naturally draw on to answer fundamental political questions “should give way in public life” to principles and values that “all citizens can endorse,” that religious doctrines “are not, in general, to be introduced into political discussion of constitutional essential and basic questions of justice,” and the like.¹³² But I think this exclusionary understanding of Rawlsian public reason does not do it justice. In its most mature formulation, Rawls’s constraints on religion, whether immanent or transcendent, are quite mild. Perhaps too mild for many Rawlsians. Smith mentions—though he does not discuss in detail—Rawls’s so-called proviso—the idea that we may “introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support.”¹³³ At the very least, the proviso does not fit very well with Smith’s exclusionary interpretation of Rawls—that it renders appeal to the transcendent “inadmissible in public discourse.”¹³⁴ Much to the contrary, the proviso allows public discourse to be pervaded by justificatory appeals to the transcendent: in a polity as pervasively religious as the United States continues to be—despite some newspaper headlines here and there—we can expect citizens who are committed to full compliance with the proviso to avail themselves of its allowance that they may “introduce into political discussion at any time [their] comprehensive doctrine, religious or nonreligious.”¹³⁵ Moreover, citizens who appeal to their faith in public discourse may be far more powerfully motivated by their religious convictions than by any corroboratory public reason they might, or might not, have. The proviso also allows for the possibility that religious convictions, whether transcendent or immanent, are causally decisive in the enactment of public policy. After all, if the proviso allows citizens to be far more profoundly moved by their religious convictions than by any corroboratory public reason, then it could be the case that, as a matter of causal fact, the only way a certain policy is enacted is that a sufficient number of citizens and legislators were motivated by

131. *Id.* at 351.

132. RAWLS, *supra* note 108, at 10, 15–16. Rawls’s view is broader than this: not only religious but also moral and philosophical “comprehensive” views must give way. *Id.*

133. RAWLS, *supra* note 79, at 144.

134. SMITH, *supra* note 1, at 354.

135. RAWLS, *supra* note 79, at 144.

their religious reasons to support that policy. As I read it, the proviso is quite undemanding indeed.

It is true that the permission “to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious” is conditioned by the provision “that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support.”¹³⁶ This might seem somewhat constricting, but it seems to me to be quite a mild constraint indeed. Rawls explicitly refrains from specifying what he means by “in due course”; it could mean a very long time. Ancient Spartans would, I assume, have been utterly befuddled by a demand that they refrain from exposing infants with Down Syndrome on the basis that each human being has a dignity grounded on each’s being loved by God, but many modern Spartans would find that practice abhorrent on the basis that each human being has dignity, period. Sectarian religious doctrines can become common moral sense. I imagine this is what many who take advantage of the proviso’s conditional permission might think:

I support policy P on decisive religious grounds, and I have no idea how to provide a corroboratory public rationale, but the proviso allows me to support P anyway, so long as the corroboratory public rationale is eventually forthcoming, which I am confident will be the case, since I have a theologically grounded belief that eventually people will see the truth.¹³⁷

136. *Id.*

137. At least some contemporary theorists who sympathize with Rawls understand his proviso in so accommodating a manner that I cannot discern any serious, substantive, or principled problems that remain. Consider, for example, Martha Nussbaum’s explication of Rawls’s proviso:

In these revisions, Rawls has gone a very long way toward answering his religious critics. In particular, Eberle’s critique is well accommodated, for the reasonable citizen may now offer his or her religious reasons, continuing over time to pursue a search for public reasons. All that is required is that the citizens have a conscientious commitment to finding such reasons in due course and, perhaps, some degree of confidence that this will ultimately be possible.

Martha C. Nussbaum, *Introduction to RAWLS’S POLITICAL LIBERALISM* 1, 39 (Thom Brooks & Martha C. Nussbaum eds., 2015). I demur here only from Nussbaum’s “perhaps,” but the differences here seem so insignificant as to be barely worth mentioning. It should hardly be surprising that Nussbaum wonders whether some—I assume those sympathetic with Rawls’s version of public reason liberalism—“may feel that Rawls has gone too far, in that the plasticity of the proviso allows all sorts of religious appeals in politics, with no clear way of showing that civility has been violated.” *Id.*; see also ROBERT AUDI, *DEMOCRATIC AUTHORITY AND THE SEPARATION OF CHURCH AND STATE* 63–64 (2011). Understood as mildly as Nussbaum does, it seems to me that neither the transcendently nor immanently religious need to feel much excluded by Rawls’s proviso.

In short, Rawls's "in due course" provision seems to evacuate the proviso of any actual normative bite. So it seems Rawls's considered understanding of political liberalism provides little if any comfort to those who aspire to build community by way of excluding divisive appeals to religious truth in public political deliberation.

VII.

I have tried to cast doubt on just two subthemes of Smith's rendering of the religious conflict between the immanent and transcendent sacred. In both cases, I have indicated why Smith should revise his understanding of the immanent side of that conflict. Modern paganism has far greater resources for unifying a pluralistic population than Smith allows and public reason liberalism, at least as understood by its most prominent proponent, does not even implicitly or functionally take up the cudgel for immanent religion. Of course, this hardly renders modern paganism immune from criticism. Indeed, the incorporation of the communal into modern paganism might well render it more troubling than the individualistic variation on which Smith focuses. After all, a main way in which modern nation-states engender unity amongst their diversely committed population is by waging war against outsiders. Rawls's adoption of the supreme emergency exemption to legitimate the bludgeoning of German civilians during the Second World War exemplifies just how troubling an immanent paganism that valorizes the communal can be.