

Journal of Catholic Legal Studies

Volume 57 | Number 1

Article 3

June 2019

Ironies in the City: Reflections on Steven Smith's Pagans and Christians in the City

Perry Dane

Follow this and additional works at: <https://scholarship.law.stjohns.edu/jcls>

Recommended Citation

Perry Dane (2019) "Ironies in the City: Reflections on Steven Smith's Pagans and Christians in the City," *Journal of Catholic Legal Studies*: Vol. 57 : No. 1 , Article 3.

Available at: <https://scholarship.law.stjohns.edu/jcls/vol57/iss1/3>

This Symposium is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Journal of Catholic Legal Studies by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

IRONIES IN THE CITY: REFLECTIONS ON STEVEN SMITH'S *PAGANS AND CHRISTIANS IN THE CITY*

PERRY DANE[†]

INTRODUCTION

Much of Steven Smith's new book, *Pagans and Christians in the City*¹, is compelling, even lyrical. His account of the religious sensibility² is powerful and convincing. Smith's book is also more nuanced and hedged-about in its historical and theoretical claims than one would suppose from a headline account that would focus only on his two chapters near the end³ that drill down on contemporary issues in the so-called culture wars.

As a religious believer,⁴ I share some of Smith's concerns with the most arrogant expressions of contemporary secularism, though I also happen to be a strict separationist in the American constitutional context.⁵ And as a believer in fundamental human rights, I worry about how long a godless world would be able to sustain a set of commitments ultimately rooted in the sheer fact that human beings were created in the image of God.⁶

Nevertheless, some deep ironies and puzzles run through the text of *Pagans and Christians*. Smith is too careful and subtle to ignore these undercurrents entirely. But it will be worth bringing them to the surface, not only for their own sake but because they might help suggest an alternative to Smith's most rough-edged claims. My aim in this essay is not merely to nit-pick. Any work as magisterial as Smith's book will generalize and elide along the way. But I do hope by the accumulation of details to suggest a fundamental worry that goes to the most

[†] Professor of Law, Rutgers Law School.

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

² See generally *id.* at ch. 2.

³ See generally *id.* at ch. 10–11.

⁴ See Perry Dane, *Judaism, Pluralism, and Constitutional Glare*, 16 *RUTGERS J. L. & RELIGION* 282 (2015).

⁵ See Perry Dane, *Establishment and Encounter*, in *RESEARCH HANDBOOK ON LAW AND RELIGION* 125–53 (2018).

⁶ See NICHOLAS WOLTERSTORFF, *JUSTICE: RIGHTS AND WRONGS* (2008).

charged words and phrases at the heart of the book's title—"pagans" and "culture wars."

I. TRANSCENDENT PAGANS, IMMANENT CHRISTIANS, . . . AND JEWS

The first irony is theological. Smith relies for much of his argument on the sharp distinction he wants to draw between paganism—in both its classical Roman and modern secularist forms—and Christianity. To be sure, these three phenomena are radically different from each other. But Smith's recurring focus on pagan "immanence" and Christian "transcendence" does not adequately capture those differences.

A. *Divinity*

"Transcendence" means at least three things for Smith. For one, he argues that while the pagan Gods were beings in the world, the Christian God is ultimately beyond the world. This sharp dichotomy does not do justice to the important philosophical expressions of Greek and Roman religious thought, not the least of which was Aristotle's conception—deeply influential on later Jewish and Christian thought—of God as prime cause and unmoved mover. More to the point, perhaps, some later Roman thinkers in that Hellenistic tradition understood the various gods of the pantheon, and the gods of other pantheons, as expressing in cognizable terms the deeper, infinite and ineffable reality of the transcendent God. The Roman author Sallust, for example, argued that the ultimate God was unchanging, eternal, incorporeal, and incomprehensible. That highest God, or first cause, was transcendence itself—"essentially distinct . . . from the multitude of gods which he ineffably comprehends."⁷

Conversely, Smith's account minimizes the central claim of Christian faith—the incarnation of the third person of the Trinity as Jesus Christ, who was wholly God and wholly man. As Rowan Williams, the retired Archbishop of Canterbury has put it, Christians are "enabled to speak of God as God is (not merely as God is not, as the inaccessible Other) because of what is made actual in the fleshly reality of Jesus, the divine act which establishes the community of thanksgiving and service speaking

⁷ SALLUST, ON THE GODS AND THE WORLD 7 (1793)

God's praise and addressing God as *Abba*.⁸ The incarnational dimension of Christianity is not a mere add-on to a more purely transcendent faith; it goes "all the way down."⁹

Ironically, traditional Jewish thought long treated Christianity as akin to paganism because of its core incarnational and Trinitarian commitments. That charge was unfair, but not entirely silly. In any event, Judaism in its own way has also always emphasized the important tension between the transcendent and immanent faces of God—the Godhead the loving Father, the ultimate reality and the spirit of the Shekinah that goes into exile with her people. Indeed, if one were to look for a truly absolute, uncompromised, account of the transcendent God, it would have to be in the more recent deist notion of a God who sets creation in motion and leaves it at that. By the measure of such entirely abstracted notions of God, paganism, Judaism, Christianity all seem more alike than different from each other.

B. Goods

"Transcendence" for Smith also refers to a concern for transcendent goods, including eternal life, in contrast to paganism's efforts to sacralize the goods of this world.¹⁰ Here, interestingly, though, it is Judaism that immediately looks more "pagan" by Smith's lights. Consider only Rabbi Joseph B.

⁸ ROWAN WILLIAMS, *CHRIST THE HEART OF CREATION: THE TENSION AND METAPHYSICS OF THEOLOGY* 241–42 (2018). Elsewhere in the same book, commenting on an essay by Erich Przywara, Archbishop Williams argues that:

Consciously echoing Augustine, Przywara insists that union with the immaterial and transcendent God can only occur in union with the suffering, struggling, compromised body/Body on earth, living out God's descent into the depths.⁴⁵ Thus what he has to say about method in metaphysics is paralleled by a prescription for theology: authentic theology shows itself, in self-forgetting and self-dispossessing practice. The theology that we write and discuss has no substance independently of this formal content, this knowledge of how to 'enact Christ' in the world.

Id. at 248. See also STANLEY HAUERWAS, *WORKING WITH WORDS: ON LEARNING TO SPEAK CHRISTIAN* 175 (2011) ("For Christians, immanence first and foremost names that God became man that we might participate in the very life of God. So nothing can be more immanent than God with us. Transcendence, moreover, is . . . the other side of God's immanence.").

⁹ Perry Dane, *Paths and Wrong Turns in the Jewish-Christian Encounter*, (unpublished paper) presented at "Fulfilling the Promise of a New Relationship: An Academic Roundtable on Christian-Jewish Relations," (January 7, 2019) (on file with the author).

¹⁰ PAGANS AND CHRISTIANS, *supra* note 1, at 211.

Soloveitchik's brilliant account in *Halakhic Man*,¹¹ in which he emphasizes the central Jewish commitment to discovering the legally precise sacred meaning in everything that is quotidian—food, drink, the sunrise, the seasons, walls and parapets, torts, and contracts. Nor should we overlook Christianity's own materiality, expressed not only through sacramental theology but most vividly in the obsession in the middle ages—that most Christian of eras—with relics and pilgrimages.¹² More centrally, though, Smith pays too little attention to early Christianity's defining decision to reject both the Marcionite claim that the Creator God of the Hebrew Bible was a mere evil demiurge and Gnostic efforts to treat the material world as irreparably vile in its materiality.

C. *Truth*

Finally, Smith suggests that Christianity is “transcendent” in its commitment to absolute, objective, truth. Concededly, Christianity has almost from its start focused on credal commitments in contrast to the “pagan” interest in correct practice. Again, though, Judaism is the test case that undoes this simple dichotomy. Judaism, like Smith's paganism, is concerned with practice more than creed. It also has a complicated view of propositional commitments, as the famous story of the Oven of Akhnai demonstrates, with its account of God rejoicing in the rabbinic elevation of human majority rule over heavenly DECLARATION of the Truth.¹³ And ask even a very traditional Jew whether he or she “believes” the Midrash and Aggadah, and one is likely to get an answer that suspiciously resembles some “pagan” responses to whether they “believe” in the gods. The same might be said, for that matter, of Hindu responses to whether they “believe” in their own multiplicity of divinities. The point is not that these traditions reject the search for Truth, but rather that they deeply appreciate the prismatic complexity of Truth.

The Christian story, understood in all its breadth, actually shares that same appreciation. For underneath the admitted commitment to propositional, credal, articulation, there have always been profound contrary traces, from the Emperor

¹¹ JOSEPH B. SOLOVEITCHIK, *HALAKHIC MAN* (1984).

¹² See JONATHAN SUMPTION, *THE AGE OF PILGRIMAGE: THE MEDIEVAL JOURNEY TO GOD* (1975).

¹³ B. Talmud, Bava Metzia 59a-b.

Constantine's complaints about, as Smith puts it, "intricate theological disputations"¹⁴ to the Eastern Orthodox emphasis on non-propositional mysteries¹⁵ to Meister Eckhart's mystical recognition of the "nothingness of God"¹⁶ to contemporary Christians' focus, in both evangelical circles and the attitude of the current Pope, on the centrality of an existential encounter with Jesus over and above any formulaic abstractions.

Meanwhile, confidence in transcendent truth often appears in full force on the other side of the dichotomies that Smith wants to construct. Classical Greek and Roman thought—not all of it, but enough—was as committed to Truth as any credal Christian. Just think of Plato or Aristotle or Seneca. And while our contemporary age is plagued by an overabundance of cheap, unreflective, skepticism and relativism, many of the most thoughtful articulators of secular thought are fully committed to the search for Truth. Secular moral philosophers, for example, continue to debate the claims of moral realism,¹⁷ but most come down in favor, happily committing themselves to that and other immaterial truths even in what might be a godless world. Smith himself discusses at some length the legacy of Ronald Dworkin. He does not find Dworkin's account of godless moral realism convincing, but that is not really to the point. These questions are hard, and the religious effort to combine a belief in absolute moral truths with belief in a God who commands is at least equally difficult to sustain, as Plato most famously recognized in the *Euthyphro*.¹⁸

D. Frames

So why does Smith, for all his subtlety and nuance, still stick to his sharp distinction between the "transcendent" world of Christians and the "immanent" world of both ancient and modern pagans? One reason is surely polemical. Hard lines make for severer critiques. In this connection, it is telling that Smith

¹⁴ PAGANS AND CHRISTIANS, *supra* note 1, at 167.

¹⁵ See KALLISTOS WARE, *THE ORTHODOX WAY* (rev. ed., St. Vladimir's Seminary Press 1995) (1979).

¹⁶ See Bernard McGinn, *Hidden God and Hidden Self: the emergence of apophatic anthropology in Christian mysticism*, in *HISTORIES OF THE HIDDEN GOD: CONCEALMENT AND REVELATION IN GNOSTIC, ESOTERIC, AND MYSTICAL TRADITIONS* 87, 96–98 (April D. DeConick & Grant Adamson, eds., Routledge 2014) (2013).

¹⁷ See GILBERT HARMAN & JUDITH JARVIS THOMSON, *MORAL RELATIVISM AND MORAL OBJECTIVITY* (1996).

¹⁸ PLATO, *EUTHYPHRO* (Benjamin Jowett, trans., 1871).

refers often to the work of Jan Assmann, who employed the immanent-transcendent distinction to serve even more polemical ends, though Assmann (ironically enough?) argued that Western religion had turned violent and oppressive precisely because it took up a “transcendent” view of God and truth.¹⁹

A more interesting possibility is that Smith’s thesis reveals his own embeddedness in the metaphysical assumptions of modernity. Charles Taylor has famously argued that we the denizens of modernity (defined in terms of the past several hundred years) understand reality through an “immanent frame.”²⁰ The physical world of that immanent frame is disenchanted, material, and explainable by science. Similarly, our social world is marked by the passage of secular time and the valorization of instrumental rationality. This modern immanent frame does not exclude the possibility of religion and religious faith, though it does render such faith eminently contestable. More to the current point, even religious believers in modernity understand the world by way of the immanent frame so that if a divine reality does exist, it must create the world and impinge on its affairs from the outside, to so speak. The everyday world defined by the immanent frame “constitutes a ‘natural’ order, to be contrasted with a supernatural one, an ‘immanent’ world over against a possible ‘transcendent’ one.”²¹ To put it another way, Smith’s singular focus (and ours) on the polarity of “immanence” and “transcendence” might be at least in part an artifact of his (and our) distinctly modern experience of both.

To see this point more clearly, imagine for a moment a metaphysic defined by a “transcendent frame.” From within that radically different frame, “immanence is saturated with transcendence.”²² The fundamental question is not how God could exist in the face of a causally self-sufficient material world,

¹⁹ See, e.g., JAN ASSMANN, *THE PRICE OF MONOTHEISM* (Robert Savage, trans., Stanford University Press 2009) (2003). To be sure, it is entirely consistent for Smith to borrow from Assmann’s picture of a fundamental distinction between immanent and transcendent religions while disagreeing with Assmann’s critique of transcendent religions. But it is still awkward.

²⁰ CHARLES TAYLOR, *A SECULAR AGE* 542 (2007). For a helpful and illuminating introduction to Taylor’s thesis and its implications, see JAMES K. A. SMITH, *HOW (NOT) TO BE SECULAR: READING CHARLES TAYLOR* (2014).

²¹ TAYLOR, *supra* note 20, at 542.

²² Alexander J. B. Hampton, *Transcendence and Immanence: Deciphering Their Relation through the Transcendentals in Aquinas and Kant*, 34 *TORONTO J. THEOLOGY* 187 (2018) reproduced in Advance Online version on Project MUSE, at 8, muse.jhu.edu/article/707948. See also *id.* at 7.

but instead how the material world—the world of creation—could exist in the shadow of an infinite, all-encompassing, divine reality that might seem to exclude anything else.

Thomas Aquinas and other Western medieval philosophers tackled this problem by positing notions of transcendence and immanence, and the relationship between the two, deeply at odds with the modern mindset. As one scholar has put it:

Aquinas maintains that “*deus est omnia ut causa omnium*” (“God is everything as the cause of everything”). Consequently, God cannot be understood as something transcendent over and against immanent creation. Rather, as the cause of everything, God is radically transcendent, distinguished from everything as the First Being (*primum ens*) and not dependent upon any prior cause for existence as “Being itself” (*ipsum esse per se subsistens*). At the same time, also as the cause of everything, God is also immanent, since all creatures participate in God, who determines their natures. It is through this immanence that we come to know transcendence²³

Or consider a different example of a “transcendent frame.” For the Jewish Kabbalists who developed Lurianic mysticism and its offshoots, the response to the puzzle of creation in the face of divine infinitude was a form of *kenosis*—the idea that the God who filled the entire span of reality engaged in a voluntary act of contraction known as *tzimtzum* to establish a space within which the world could exist.²⁴ God in this vision does not create the world or act on it from an external perch, so to speak, but rather transforms a piece of the divine into the immanent world. That transformation is always partial and provisional, however, leading to an exquisite array of gradations, and linkages and influences running in both directions, between the immanent world and the transcendent Godhead. Moreover, in some interpretations of this mystical and mysterious vision, the *tzimtzum* was not an act of contraction at all, but rather of

²³ *Id.* at 7. Note that the notion of “cause” at work here is not the sort of mechanical cause posited both by modern science and by contemporary religious supporters of notions such as “intelligent design,” but a metaphysical cause that sustains the very possibility of material existence from moment to moment. See EDWARD FESER, *FIVE PROOFS FOR THE EXISTENCE OF GOD* (2017).

For a very different account of the centrality of immanence in any faith that looks to the self-emptying of both God and human beings, see ALEX DUBILER, *THE SELF-EMPTYING SUBJECT: KENOSIS AND IMMANENCE, MEDIEVAL TO MODERN* (2018).

²⁴ See JOSEPH DAN, *GERSHOM SCHOLEM AND THE MYSTICAL DIMENSION OF JEWISH HISTORY* 260–68 (1987); NORMAN LAMM, *THE RELIGIOUS THOUGHT OF HASIDISM: TEXT AND COMMENTARY* 6–7, 40–49 (1999).

concealment.²⁵ It is only from our limited perspective that we imagine a distinction between the immanent world and the transcendent God in the first place; from the divine perspective, which is truth itself, all such categories dissolve.²⁶

All this is admittedly knotty. But the larger takeaways from this excursion are more straightforward.

To begin with, in aligning certain modern trends with Roman paganism, Smith elides—even on his own terms—the vast difference between an ancient belief in immanent *gods* and a modern belief in an immanent *world*. More to the point, in the larger sweep of history, the most relevant distinction might not be between “pagans” (both ancient and modern) inhabiting an impoverished “immanent,” world and Christians committed to a transcendent God. Instead, following Taylor, the really profound distinction might be between all pre-modern people (Christians, Jews, and pagans alike) who saw the divine and the world through a common transcendent frame and all of us moderns (Christians, Jews, secularists, and all the rest) who see reality through an immanent frame—a frame so powerful that we can at most only bracket it temporarily through an exercise of sympathetic imagination.

II. PAGAN CHRISTIANS AND CHRISTIAN PAGANS

The first major irony in *Pagans and Christians*, then, is that Smith, very much a modern thinker, draws too sharp a distinction between transcendent and immanent world-views in their pre-modern forms. The second irony follows from the first, though it can also be stated independently. In Smith’s grand historical narrative, Christianity overcame paganism, but elements of paganism now threaten to reassert themselves in the guise of contemporary popular culture and legal mischief. Smith concedes that elements of paganism have always been with us, even at the height of the Christian dispensation. But he still sees the two world-views as essentially dichotomous. The irony, though, is that Christianity did not merely overcome paganism, it also drew heavily on some of its core intellectual and spiritual structures, and then Christianity in some sense returned the

²⁵ See RACHEL ELIOR, *THE PARADOXICAL ASCENT TO GOD: THE KABBALISTIC THEOSOPHY OF HABAD HASIDISM* 88–90 (Jeffrey M. Green, trans., 1993); LAMM, *supra* note 24, at 45 n.138. See also DAN COHN-SHERBOK, *FIFTY KEY JEWISH THINKERS* 35 (1997).

²⁶ See ELIOR, *supra* note 25, at 88–90; LAMM, *supra* note 24, at 45 n.138.

favor by nurturing the fundamental ideas out of which modernity, including the phenomena that Smith identifies as pagan, was eventually born.

As the historian Paula Fredriksen emphasizes, in the early years when the Jesus movement that would eventually become Christianity was in its infancy, Jews and pagans mixed much more easily, socially and otherwise, than we might think. Pagans visited synagogues and Jews donated to pagan institutions. She argues that it was precisely that milieu of casual contact that allowed and encouraged the Apostle Paul to begin his outreach to the gentiles, an outreach that eventually led to the decisive break between Jews and Christians.²⁷ Later, during the long period when many Jews lived as a subject minority under Christian rule, they often referred to the Christian world as Edom (Esau), the same label that they had attached to pagan Imperial Rome. Even putting such polemics aside, it is undeniable that the fundamental Christian separation from Judaism did not merely rest on the Christian absorption into the structures of the Roman political world or on the Christian religious commitment to the divinity of Jesus, but most vitally on its absorption of classical Greek and Roman conceptual categories and intellectual methodologies as the frame within which it articulated and understood that commitment. That synthesis—which includes the credal, propositional, approach to faith that Smith (in an irony all its own) identifies as distinctly anti-pagan, has remained in place, though under increasing challenge, ever since. Indeed, Pope Benedict XVI staked his theology, and his arguments about a central difference between Christianity and Islam, on what he argued was the indispensable “synthesis between the Greek spirit and the Christian spirit.”²⁸

Further along the Western cultural journey, what we now know as modernity did not spring forth *ex nihilo*, nor did it merely represent a resurgence of paganism. To the contrary, although many secularists would be embarrassed to admit it, the modern world, including the conditions that allowed the loss of faith among many moderns, was birthed, or at the least

²⁷ See PAULA FREDRIKSEN, *WHEN CHRISTIANS WERE JEWS: THE FIRST GENERATION* (2018).

²⁸ Pope Benedict XVI, *Faith, Reason and the University: Memories and Reflections*, Lecture at the University of Regensburg (Sept. 12, 2006), http://w2.vatican.va/content/benedict-xvi/en/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg.html.

midwifed, by Christian ideals. It is by now a historical truism, for example, that the origins of modern science had a good deal to do with Jewish and Christian assumptions about the potential decipherability of a universe brought into being by orderly creator God.²⁹ Similarly, modern liberalism, with its assumptions about human nature and human equality, traces back to the decisive moral revolution that Christians, inspired by Jews, brought to the West.³⁰ Even the idea of the “secular,” largely unknown to pagans, was a Christian insight. And more complex patterns of causation are apparent if we look specifically at the influence of the Protestant Reformation or for that matter, if some so-called Radical Orthodox thinkers are to be believed, the influential but dangerous turn of Duns Scotus in the thirteenth century to a univocal theology of the relation between God and the world.³¹

The larger point here is simple: Smith is very good at identifying binaries and polarities. But he seems much less interested in recognizing dialectics and internal tensions.

III. THE LONG IN-BETWEEN

A third irony, which comes closer to the headline piece of Smith’s more extended argument: Although Smith devotes proportionally fewer pages to the long period of Christendom between the conversion of Constantine and the rise of secular liberal states, one might get the impression that he views that period, even with all its faults (absolutism, Crusades, wars, persecution of Jews, heretics, and dissidents, and so on) as in some respects at least a blessed age, free of the worst influences of the pagan temptation. Yet many serious, devout, Christians have long considered the Constantinian turn to be Christianity’s gravest historical error and the release from the official grip of Christendom to be Christianity’s best hope for the future.³² (Note that the end of Christendom, though related in complicated ways

²⁹ See, e.g., REIJER HOOYKAAS, *RELIGION AND THE RISE OF MODERN SCIENCE* (1972); JOHN HEDLEY BROOKE, *SCIENCE AND RELIGION: SOME HISTORICAL PERSPECTIVES* (1991).

³⁰ See, e.g., LARRY SIEDENTOP, *INVENTING THE INDIVIDUAL: THE ORIGINS OF WESTERN LIBERALISM* (2014).

³¹ See JOHN MILBANK, *THEOLOGY AND SOCIAL THEORY BEYOND SECULAR REASON* xxiv–xxvi (2006); Catherine Pickstock, *Duns Scotus: His Historical and Contemporary Significance*, 21 *MOD. THEOLOGY* 543 (2005).

³² To my mind, the canonical work on this theme is STANLEY HAUERWAS, *AFTER CHRISTENDOM* (1991).

to the birth of Taylor's "secular age," is conceptually distinct from it.³³) This vision of an emancipated Christianity without Christendom was surely the hope, for example, of Roger Williams. Similarly, James Madison, in his famous *Remonstrance*, argued that "During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution."³⁴ Today, many thoughtful Christians celebrate not only the official end of Christian political establishment, but also the end of the historic era in which the culture valorized Christianity while Christianity served as a meek apologist for the culture's failure to live up to genuine Christian ideals.³⁵ These Christians do not renounce any effort to influence the larger culture. But they insist on maintaining a prophetic voice, critical distance, and a certain necessary alienation that was too often impossible during the long episode of Christian hegemony.³⁶

IV. GRAND NARRATIVES AND LEGAL CONUNDRUMS

Finally, there's an irony apparent in those headline two chapters in which Smith most directly sets his sights on what he considers to be the rise of a new paganism. The irony is simple: In coming near the end of his large-scale, even magisterial, survey of paganism and Christianity, with powerful asides on the texture of religious thought, Smith ends up focusing on a series of contemporary questions that seem profoundly small-bore by comparison and whose treatment in Smith's hands is often incomplete.

³³ For one thing, official Christendom persisted in some places even into modernity. For another, modern secularity has had deep cultural and religious consequences outside the historic strongholds of Latin Christendom. See MIRJAM KÜNKLER, JOHN MADELEY, & SHYLASHRI SHANKAR, *A SECULAR AGE BEYOND THE WEST: RELIGION, LAW, AND THE STATE IN ASIA, THE MIDDLE EAST, AND NORTH AFRICA* (2018).

³⁴ James Madison, *Memorial and Remonstrance Against Religious Assessments*, June 20, 1785, in *JAMES MADISON: WRITINGS* 29, 32 (Jack N. Rakove, ed., 1999).

³⁵ See, e.g., STANLEY HAUERWAS & WILLIAM H. WILLIMON, *RESIDENT ALIENS: LIFE IN THE CHRISTIAN COLONY* (1989).

³⁶ See also MIROSLAV VOLF, *PUBLIC FAITH: HOW FOLLOWERS OF CHRIST SHOULD SERVE THE COMMON GOOD* (2011). The demise of political Christendom is surely related to the birth of Taylor's "immanent frame," though I will not try here to begin to trace the subtleties of those connections.

What I'm calling the "small-bore" dimension of Smith's critique has several layers. First, Smith dates the rise of what he thinks is a new paganism, not to the past several hundred years of modernity or even the past hundred years, but to the latter part of the twentieth century.³⁷ Second, he zooms in on the United States even though the cultural developments he's describing should in principle be much more sweeping. Third, even within that ambit, Smith focuses on a set of questions that have been at or near the fore of the so-called American "culture wars" between left and right.

Some of this is understandable. Smith is a distinguished law professor, and despite the large-scale ambitions of the book, he might be forgiven for returning to a set of questions that have occupied American political and constitutional debate. But in doing so, he risks overlooking relevant comparisons and complexities. For example, if some of us were being asked to identify sites of resurgent "paganism" in the current historic age, we might point first of all to Nazi Germany,³⁸ other totalitarian states, and their offshoots in various white supremacist and other contemporary radical hate groups.³⁹ He also deploys himself on one side of what have become embarrassingly polarized controversies that sometimes seem to be as much about mustering political identities as staking principled positions, let alone seeking common ground.

To get more specific on a few of Smith's concerns in the last part of *Pagans and Christians*:

A. *The Public Square*

Smith warns about the elimination of public religious displays and a Christian-tinged civic religion in American public life. But he pays short shrift to the *religious* separationist impulse, to which I have alluded, that opposes such symbols precisely because they threaten to trivialize and even degrade

³⁷ PAGANS AND CHRISTIANS, *supra* note 1, at 259.

³⁸ Susannah Heschel has argued that Nazi ideology was more entangled with certain perverse expressions of Christianity than with modern neo-paganism, SUSANNAH HESCHEL, THE ARYAN JESUS: CHRISTIAN THEOLOGIANS AND THE BIBLE IN NAZI GERMANY 1–3, 195 (2008). But be that as it may, the form of that the Nazis espoused was by any description a paganized Christianity.

³⁹ See MATTIAS GARDELL, GODS OF THE BLOOD: THE PAGAN REVIVAL AND WHITE SEPARATISM (2003).

religion.⁴⁰ He also never quite makes the case that the battle over religious symbols is part of a genuinely consequential war between Christianity and a resurgent paganism. For one thing, countries that have kept their public religious symbols and practices, including Britain with its English religious establishment, are in most respects more secular, and even more “pagan,” than the United States. And for another, it is precisely with respect to the increasingly tiresome fights over crosses, creches, and the like that the American battlefield often seems to involve (sometimes on both sides) a purely tribal politics with little of substance undergirding it.

B. Sex

Smith also points to battles over sex and a resurgent “pagan” sensibility of untrammelled sexual gratification. Sex is significant, as is its relationship to broader forces in human history and culture. There is also something to regret in our contemporary morality of sex. But there was also a good deal to regret in the sexual morality of other periods, including during the heyday of Christendom.⁴¹ It is simply hard for any culture to get sex right, and I’m not sure that any culture has.

Smith also overplays the idea that contemporary sexual excesses reflect a quintessentially “pagan” view. For one thing, Roman paganism did not lack a sexual morality of its own and on its own terms.⁴² For another, it is hard to sustain the thesis that a loosening of sexual norms stems directly from an immanent or “pagan” metaphysics in the face of the tendency of the most “godless” totalitarian regimes of recent times to also be deeply traditional, even puritanical, in their effort to control the sexual practices of their citizens.⁴³ Moreover, there is at least one vital respect in which the modern sexual culture that Smith describes wears its Christian influences in a way that might entirely confound Roman pagans, and that is its affirmation—in principle if not necessarily in practice—that the same basic sexual norms

⁴⁰ See Perry Dane, *Prayer is Serious Business: Reflections on Town of Greece*, 15 RUTGERS J. L. & RELIGION 611 (2014); Perry Dane, *Separation Anxiety*, 22 J. L. & RELIGION 545 (2007) (reviewing NOAH FELDMAN, *DIVIDED BY GOD: AMERICA’S CHURCH-STATE PROBLEM—AND WHAT WE SHOULD DO ABOUT IT* (2005)).

⁴¹ A more complete discussion would also need to consider the complex history and theology of Jewish sexual norms.

⁴² See REBECCA LANGLANDS, *SEXUAL MORALITY IN ANCIENT ROME* (2002).

⁴³ See, e.g., DAVID L. HOFFMANN, *STALINIST VALUES: THE CULTURAL NORMS OF SOVIET MODERNITY 1917-1941*, 88–117 (2003).

should apply equally to men and women. Smith treats this difference between ancient and modern sex-positivity as a mere detail,⁴⁴ but one might just as easily treat it as a primary variable rooted in a decidedly post-pagan account of our common human dignity. Finally, it merits some notice that the “culture war” over sex, as a practical matter, has ended up turning on the question of same-sex marriage, whose supporters, far from representing the extreme of modern secular sexual liberation, were actually engaged in a decidedly “conservative” campaign (recognized as such by critics to their left⁴⁵) to extend the benefits of “traditional” marriage to persons to whom it could not otherwise, if they were true to themselves, be available.⁴⁶

C. *Religious Liberty*

Smith also worries about new challenges to “religious liberty,” especially as dissenters from the new consensus about same-sex marriage, abortion, and other practices seek to insulate themselves from laws that they believe would require them to be complicit in those expressions of the new “paganism.” The question here, though, which I have discussed elsewhere,⁴⁷ is why admittedly important but relatively conventional disputes over the proper balance to be struck between religious rights and the urgent interests of the wider society (as well as the potential rights of third parties) have been transformed (often by both sides) into apocalyptic battles in which each side accuses the other of “weaponizing” legal rights for the sake of prevailing in the larger war for America’s soul. As with the debate over same-sex marriage, to which it has lately been tightly tethered, genuine complexities and complications get too easily lost if we too quickly deploy labels such as “Christian” and “pagan” or resort to the metaphor of “culture wars.”

⁴⁴ PAGANS AND CHRISTIANS, *supra* note 1, at 286 (“Modern sexual norms run parallel in important respects to ancient pagan attitudes and practices—except that these attitudes and practices have been extended to include women as well as men.”).

⁴⁵ See MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* (1999).

⁴⁶ See Perry Dane, *Natural Law, Equality, and Same-Sex Marriage*, 62 *BUFF. L. REV.* 291 (2014).

⁴⁷ See Perry Dane, *Masterpiece Cakeshop and the Costs of Weaponization*, BERKLEY CENTER FOR RELIGION, PEACE & WORLD AFFAIRS, BERKLEY CTR. RELIGION, PEACE & WORLD AFFAIRS: BERKLEY F. (July 2, 2018), <https://berkeleycenter.georgetown.edu/responses/masterpiece-cakeshop-and-the-costs-of-weaponization>.

CONCLUSION: TOGETHER IN THE CITY

My various observations about the argument in Smith's *Pagans and Christians* end up following one from the other to form a single narrative. To begin with, Smith's single-minded focus on the distinction between pagan immanence and Christian transcendence does not sufficiently acknowledge the deep interdependence of transcendence and immanence in the religious imagination. It also neglects other equally important distinctions, especially between the transcendent frame that united ancient pagans, Jews, and Christians and the immanent frame in which all of us moderns—Christians, Jews, and secularists—live. And, by assimilating Jews to Christians and modern immanent folk to ancient pagans, it elides the various specific permutations of resemblance and difference among these various traditions (and others) that render close to impossible any effort to reduce our complex religious history to any overarching binary.

In the light of all that, it should not be surprising that the rise of modernity would provoke complex and even contradictory reactions even among the religiously-committed. After all, religious believers are both freer—physically and spiritually—than they were during the long era of Christendom, and—in the very exercise of that freedom—less at home in the increasingly secular world around them. And it should be even less surprising that many of the legal and social conflicts that animate the current culture wars should appear, on reflection, both significantly harder to adjudicate and in the broader sweep of history significantly less consequential than they might first appear.

In sum, as I suggested at the start, my effort here to focus on some of the ironies and gaps in Smith's account has sought to suggest, in various ways, that what might sometimes seem like dichotomies are often complex interweavings, and what might seem like spiritual wars are often the profound back-and-forth of human spiritual history. In the end, part of what I have tried to bring to these reflections is just a different sensibility. To my mind, culture wars are a sad distraction from the more promising path of genuine dialogue. I am not suggesting simple compromise, let alone surrender by one side or the other. Nor am I trying to promote what John Courtney Murray in a different

context called “bogus irenicism.”⁴⁸ But it should surely be possible to see in some of our current cultural, political, and legal conflicts as not merely “culture wars” but also opportunities for genuine engagement, mutual learning, and even dialectical transformation. It might be time to reframe our divisions and not merely lament them.

In that spirit, I look to Rabbi Abraham Isaac Kook, the first Ashkenazic Chief Rabbi in British Mandatory Palestine, who saw in secular, even atheist, Jews, a spark of spiritual energy often lacking in his fellow Orthodox Jews.⁴⁹ I look to Pope Francis, who affirmed that it is better to be an atheist than a bad Christian,⁵⁰ and who might feel the same way even about modern “pagans.” I look to Sarah Coakley, an Anglican theologian who articulates a vision of the Christian Trinity grounded in patristic sources but also takes seriously the implications of “divine desire” for a vision of human sexuality not beholden to the categories of “repression” and “libertinism.”⁵¹ I look to William Connolly, a secular thinker who explained why he is not a “secularist.”⁵² I look to Terry Eagleton, another secular thinker, who seeks to challenge theists and atheists alike with the genuinely radical vision that he finds in the Biblical text and religious sensibility.⁵³ All of us—Christians, “pagans” of all descriptions, Jews, and for that matter, Muslims, Hindus, Buddhists, and the rest—have something to teach each other. It might be time to put down the pitchforks and start.

⁴⁸ JOHN COURTNEY MURRAY, S.J., WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION 136 (1960), https://www.library.georgetown.edu/woodstock/murray/whtt_c5_1958e.

⁴⁹ See YEHUDAH MIRSKY, RAV KOOK: MYSTIC IN A TIME OF REVOLUTION (2014).

⁵⁰ See Julie Zauzmer, *Pope Francis suggests it's better to be an atheist than a hypocritical Catholic*, WASH. POST (Feb. 23, 2017), https://www.washingtonpost.com/news/acts-of-faith/wp/2017/02/23/pope-francis-praises-the-torah-and-suggests-its-better-to-be-an-atheist-than-a-bad-catholic/?noredirect=on&utm_term=.24650c3824f9.

⁵¹ SARAH COAKLEY, GOD, SEXUALITY, AND THE SELF: AN ESSAY ‘ON THE TRINITY’ (2013).

⁵² See WILLIAM E. CONNOLLY, WHY I AM NOT A SECULARIST (2000).

⁵³ See TERRY EAGLETON, REASON, FAITH, AND REVOLUTION: REFLECTIONS ON THE GOD DEBATE (2009).