

# Religion, Meaning, Truth, Life

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In the last paper discussed at this conference, Steven Smith argues that “religion” is not just another personal interest but properly remains “constitutionally special.”<sup>1</sup> It is distinctive, he says, in that it creates the deep meaning without which humans cannot conceptualize themselves as persons.<sup>2</sup> This unique capacity of religion to create thick, powerful meaning, he maintains, is what justifies retaining religion as a category of constitutional doctrine.<sup>3</sup>

Religion creates the transcendent narratives—even meta-narratives, as Professor Smith writes, the “Meaning of meanings”—that give significance to human existence.<sup>4</sup>

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\* © 2014 Frederick Mark Gedicks. Guy Anderson Chair and Professor of Law, Brigham Young University Law School. I am grateful to Larry Alexander and Steven Smith for the opportunity to participate in the rich conversations that took place at this conference, to Ron Garet, Roger Hendrix, Chip Lupu, Bill Marshall, and Michael Perry for comments, criticisms, and encouragement on earlier drafts, to Galen Fletcher for his usual excellence in locating sources, to James Eagan for research assistance and insightful suggestions, and, for more than can be said, to Annie, Abby, Amanda, and Nicea.

1. *See generally* Steven D. Smith, *Why Religion is (Still) Constitutionally Special* (Aug. 23, 2014) (unpublished manuscript) (on file with author) (arguing that the view held by some that religion should not receive special treatment is the product of three significant problems: discrimination, justification, and definition). Professor Smith did not intend for this paper to be published as part of the conference proceedings but generously allowed it to be read and discussed because of its relevance to the conference theme.

2. *See id.* at 49.

3. *See id.* at 66.

4. The evocative heading of the subsection that makes the crucial argument of Professor Smith’s thesis is “From meaning to Meaning . . . and religion.” *Id.* at 28. Skepticism about such “Meanings,” by contrast, is a mark of postmodernity. *See* JEAN-

[B]elief in Meaning, or in a Story, is the sort of belief that typically elicits the description of “religion.” . . . On this understanding, “religion” refers to the attempt to discern and articulate a Meaning in life and the cosmos—or a Story—and to live in accordance with that Meaning or Story.<sup>5</sup>

From here Professor Smith builds to the conclusion that religion, alone among human endeavors, can explain why our lives are worth living.<sup>6</sup>

[I]t is only by virtue of being part of the play that any of the character[s] can be a *character at all*. Without a play, there would [be] no characters capable of assuming distinctive personal identities or personalities. In a similar way, *personal identity* follows and presupposes *personhood*: in order to be a particular person, one must be a person[.] So, in this account, an individual’s . . . very status as a person derives from her grounding in a larger Story.<sup>7</sup>

In short, to believe in a larger meta-narrative or “Big Story” that explains the meaning of life is not just to be religious but to be a person.<sup>8</sup> Everything else, he implies repeatedly, is just an interest, a preference, or evolutionary randomness:

The meaning-seeking rationale [for protecting the freedom of religion] advanc[es] claims that are *neither* about secular “interests” *nor* theological in nature. Rather, the claims are about *personhood*. More specifically, the rationale does not invoke “interests” (such as civil peace) that only contingently and indirectly implicate religion, but instead focuses on that component of personhood (namely, the search for and commitment to meaning) that correlates in an essential way with religion.<sup>9</sup>

Like all of Professor Smith’s work, it is carefully written and argued. I learned a great deal from reading it. In fact, I agree with much of it,<sup>10</sup> except the most important part—his principal thesis that religion is unique in its power to create deep meaning for human lives.<sup>11</sup> I do not think that is right at all, so that is where I will focus my remarks.

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FRANÇOIS LYOTARD, *THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE* xxiii-xxiv (Geoff Bennington & Brian Massumi trans., University of Minnesota 1984) (1979).

5. Smith, *supra* note 1, at 37–38; *accord id.* at 42–43.

6. *Id.* at 5, 26–27 (citing Susan Wolf, *Meaning in Life and Why It Matters* 2 (Nov. 2007) (unpublished manuscript) (on file with author)).

7. *Id.* at 41.

8. *Id.* at 48–49.

9. *Id.* at 67; *accord id.* at 46–48, 58, 60–61.

10. I once held a position close to Professor Smith’s. *See generally* Frederick Mark Gedicks, *Toward a Constitutional Jurisprudence of Religious Group Rights*, 1989 WIS. L. REV. 99, 169 (“The individual autonomy and freedom that are at the heart of liberalism would be well served by strong constitutional protection of religious group autonomy in membership decisions.”).

11. This is not a new argument, though Professor Smith presents it with uncharacteristic clarity and depth. Other efforts have generally explored the purportedly unique character of religion in descriptive or functional, rather than ontological, terms. *See, e.g.*, JOHN WITTE JR., *GOD’S JOUST, GOD’S JUSTICE: LAW AND RELIGION IN THE*

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Professor Smith's paper is shot through with the conventional Western metaphysic of what we might call the "inside" and the "outside." The metaphysic starts with the assumption that "we," each of us, are "in here," inside of ourselves, in our subjective minds, so to speak, while "out there" is "Reality," the objectively real world. The task—one that has preoccupied philosophers for centuries—is to build a bridge from the merely subjective in-here to the objective solidity of the out-there. The stakes of this project are thought to be the discovery of life's meaning; its failure is the failure of that meaning.

So it is that Professor Smith refers to "subjectivity" and "objectivity,"<sup>12</sup> quoting various authorities who maintain that meaning is not "invented by ourselves, but rather detected,"<sup>13</sup> that there is "*the meaning of life*,"<sup>14</sup>—as if there were only one—and that a "cosmic"<sup>15</sup> authority exists "beyond ourselves and our *merely human devices and desires*."<sup>16</sup> We are all, Professor Smith maintains, in the grip of the question, "What is the meaning of life?" (or, rather, the "Meaning" of life).<sup>17</sup> As I have related, he ultimately concludes that only religion can answer this question because only religion supplies a meta-narrative—a Cosmic Meaning or Big Story—that tells us who we are.<sup>18</sup>

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WESTERN TRADITION 99–102 (2006); Thomas C. Berg, "*Secular Purpose*," *Accommodations, and Why Religion Is Special (Enough)*, 80 U. CHI. L. REV. DIALOGUE 24, 36–39 (2013), [https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/Dialogue/Berg\\_Dialogue.pdf](https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/Dialogue/Berg_Dialogue.pdf); Michael W. McConnell, *The Problem of Singling Out Religion*, 50 DEPAUL L. REV. 1, 42 (2000); Wilfred McClay, *Honoring Faith in the Public Square*, CHRISTIANITY TODAY, Nov. 2012, at 24, 29; *Why Religion Matters: The Longing Within*, CHURCH JESUS CHRIST LATTER-DAY SAINTS NEWSROOM (Feb. 10, 2014), <http://www.mormonnewsroom.org/article/why-religion-matters-longing-within>.

12. Smith, *supra* note 1, at 24–25.

13. *Id.* at 25 (citing VIKTOR E. FRANKL, *MAN'S SEARCH FOR MEANING: AN INTRODUCTION TO LOGOTHERAPY* 101 (Ilse Lasch trans., Beacon Press rev. ed. 1962) (1946)).

14. *Id.* at 28.

15. *Id.* at 29.

16. *Id.* at 36 (emphasis added) (citing JONATHAN SACKS, *THE GREAT PARTNERSHIP: SCIENCE, RELIGION, AND THE SEARCH FOR MEANING* 196 (2011)).

17. *Id.* at 28.

18. See WITTE, *supra* note 11, at 102 ("Religion is a unique source of individual and personal identity and activity, involving 'duties that we owe to our Creator, and the manner of discharging them' . . . ." (quoting JAMES MADISON, *Memorial and Remonstrance Against Religious Assessments*, in 8 THE PAPERS OF JAMES MADISON 299 (Robert A. Rutland et. al. eds., University of Chicago Press 1973))); McConnell, *supra* note 11, at 42 (including religion's revelation of "ultimate reality" and its "connection to the

Despite its deep entrenchment in Western thinking, the conventional metaphysic is an odd premise from which to derive an ontology. There is never a time when human beings are separate from the world in which they live and experience the very existence that makes them human. As philosopher Robert Solomon once observed, “The idea of a world known by us which is distinct from the one in which we act . . . is unintelligible.”<sup>19</sup> It is not for nothing that the conceptualization of the world as objectively present before us, like a movie or a play, is called the “God’s-eye view.”<sup>20</sup> As Heidegger and others have shown, there is literally no time in which each of us is not in the world alongside other beings and things that constitute it and us.<sup>21</sup> If we want to know what is true and real about the

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transcendent” among the characteristics that together make it unique); cf. Berg, *supra* note 11, at 36–38 (emphasizing the ultimacy and comprehensiveness of religion, though conceding that nontheistic and some nonreligious belief systems include these characteristics).

19. ROBERT C. SOLOMON, *CONTINENTAL PHILOSOPHY SINCE 1750: THE RISE AND FALL OF THE SELF* 162 (1988).

20. See, e.g., HILARY PUTNAM, *REASON, TRUTH AND HISTORY* 49–50 (1981) (discussing the “God’s Eye point of view” as one where truth is “independent of observers altogether”).

21. See MARTIN HEIDEGGER, *BEING AND TIME* 154–56 (John Macquarrie & Edward Robinson trans., Harper & Row Publishers, Inc. 1962); Brian Leiter, *Heidegger and the Theory of Adjudication*, 106 *YALE L.J.* 253, 262–71 (1996) (summarizing similar views of other philosophers).

*Being and Time* defies summary, but its basic (and revolutionary) move was to reject Western philosophy’s traditional separation of human “subject” from worldly “object” in favor of their being together at every moment. See HEIDEGGER, *supra*, ¶¶ 18B–19, at 122–25, ¶ 32, at 189–95. In the language of philosophy, Heidegger abandoned the Cartesian *cogito* and its hyper-detached “Archimedean” point of view for a vastly more intuitive human “Being-in-the-world.” See *id.* ¶ 6, at 41–49, ¶ 28, at 169–72. Human being, in other words, is not first an independent and internally composed ego that reaches out to give meaning to the external world objectively present before it. See *id.* ¶¶ 19–21, at 123–34. Human being, rather, is always already in the world and alongside other entities, including other human beings. See *id.* ¶ 9, at 67–71, ¶ 12, at 82. This human Being-in-the-world presupposes “a world that is not so much there ‘for us’ as one from which we cannot distinguish ourselves.” SOLOMON, *supra* note 19, at 162. The “being” that humans have, therefore, the existence that makes us human, is necessarily a Being-in-the-world; there is never, and cannot ever be, a point in time when human being is prior to or separate from its Being-in-the-world. See HEIDEGGER, *supra*, ¶ 13, at 89, ¶ 25, at 152. Human being, in other words, always finds itself embedded in circumstances that are both given and concrete. See *id.* ¶ 12, at 82. As Professor Leiter succinctly puts it, “We exist practically absorbed in a world ‘already constituted,’ constituted precisely by the practical involvements we have with the things and people in it.” Leiter, *supra*, at 271. *Being and Time* works out an ontology premised on Being-in-the-world rather than with the traditional subject-object division. See, e.g., JOSEF BLEICHER, *CONTEMPORARY HERMENEUTICS: HERMENEUTICS AS METHOD, PHILOSOPHY AND CRITIQUE* 99–101 (1980); WILLIAM J. RICHARDSON, *HEIDEGGER: THROUGH PHENOMENOLOGY TO THOUGHT* 27–47, 58–70 (3d ed. 1974); SOLOMON, *supra* note 19, at 153–67; David Bentley Hart, *A Philosopher in the Twilight*, *FIRST THINGS*, Feb. 2011, at

world, we have to start with the fact that we are always involved *in* the world, not watching it from the outside.

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It may be that only religion can answer the question Professor Smith asks, but of course, what he asks might well be the wrong question—I will argue that it is. The better question, I submit, is not, “What is the meaning of life?” but rather, “What is the meaning of *my* life?” Professor Smith, along with many others, no doubt thinks these are the same question, but I hope to persuade that they are not or, at least, that one cannot easily assume that they are.

I will do so by relating a deeply personal narrative. Such narratives are difficult to criticize because criticism seems necessarily to be a rejection of the person telling and interpreting his own story. But that is a risk that any storyteller must assume, and we are, in any event, not always the most reliable interpreters of our own lives. So, I have granted dispensation, so to speak, to all those who wish to criticize, or even reject, my understanding of the very personal experience I am about to tell.

Nicea and I have four children. Seventeen years ago, we lost our oldest child and only son, Alex. He was attending college in North Carolina and died suddenly, in less than a day, from a rare and virulent bacterial infection.

Alex and I had a complicated relationship, as fathers and sons sometimes do. But we both liked baseball. My last and most vivid living memory of him was during a visit to see him shortly before he died, sitting with him in my hotel room eating hamburgers and rooting hard for the Indians against the Marlins in game seven of the 1997 World Series, even as Indians reliever José Mesa was melting down in the effort to save the game for Cleveland in the ninth inning.

Alex was a baseball traditionalist—even more than I am—so we rarely rooted for American League teams—they have the designated hitter, after

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44, 45, 50, available at <http://www.firstthings.com/article/2011/02/a-philosopher-in-the-twilight>.

Heidegger engaged in a notorious collaboration with the Nazi regime during 1933 and 1934, for which he never publicly apologized or expressed regret. Some have urged that this irretrievably taints some or all of his philosophy. Cf. Leiter, *supra*, at 262 n.35 (“The fact that [Heidegger] was a Nazi, who later lied about his involvement with Nazism . . . make[s] him an unattractive figure.”). This unforgivable personal failing should not obscure the intuitive plausibility and analytic power of *Being and Time*’s insight that ontology must be premised on human Being-in-the-world. See, e.g., Hart, *supra*, at 45.

all, and that is just wrong (I allow myself to root for the Red Sox because my grandparents lived so much of their lives in Boston, but Alex would have none of that.) But the Marlins, though a National League team, were also a wild card team, meaning that they had a chance to win the World Series *when they had not even won their own division!* For us, this was even more wrong than the DH, so we were rooting for Cleveland. I think we both had this quixotic notion that maybe a wild card team would never win the Series, thus preserving some purity in the baseball playoffs. But alas, Mesa could not save the game for the Indians; it went to extra innings, and the Marlins won. Less than three weeks later, Alex was gone.

We are not alone in our family in having experienced profound loss, and so we are hardly unique in this or, frankly, most other respects. I remember telling my mother in the hours after Alex's death that there is nothing special about our family that should make us immune to tragedy and loss. If one is a believer, though, one's faith tradition almost certainly has a spiritual meta-narrative of the type Professor Smith describes in his paper—a transcendent explanation of death that softens or even eliminates its blow. Mormonism has one of these, an actually quite beautiful idea of eternal family togetherness after death. But it did not comfort me. "Isn't the Gospel wonderful!" people would exclaim, and I would think to myself, "Well . . ." What I wanted in the wake of Alex's death was to watch another baseball game with him, but he is gone, and he and I will never again watch a game together and root against the wild card team or the American League, and no hope of eternal afterlife togetherness is going to change that.

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What is real is supposed to be what is out there, objectively present before us in the world, if not literally and physically, then at least metaphorically and conceptually as a universal principal or a metaphysical reality beyond the dimensions of Cartesian space. My trouble was, and is, that what is most real to me is entirely in here—in my memories of Alex, and of Alex and me together. There are not enough of them, and this is entirely my fault.

Professor Smith talks about the "drama of Time," and in this he is precisely correct.<sup>22</sup> We are beings moving through time, and its passage

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22. Smith, *supra* note 1, at 34 (quoting John Wisdom, *The Meanings of the Questions of Life*, in *THE MEANING OF LIFE: A READER* 220, 222 (E.D. Klemke & Steven M. Cahn eds., 3d ed. 2008)).

is truly dramatic.<sup>23</sup> When we are young, life is full of possibilities; we can, almost literally, become anything. But as we move through life, these unnumbered possibilities drop away; they become fewer and fewer, until we meet death and all possibilities of being vanish forever, at least in this life.<sup>24</sup>

The loss of my son filled me with deep and painful regret, not just for what might have been and now will never be but also for the memories I do not now have and all the opportunities I missed—that I chose to miss—to share things like José-Mesa-wild-card-World-Series-meltdown. We both skied a lot, but I only went skiing with him twice. A few weeks before he went away to college we went on a run together up in the hills above Provo Canyon. I loved to run, but it was only the second time we ran together, and the last. I was hard on him when I did not need to be, I was cheap when I could have been generous, and we disagreed and fought. But most of all, I regret the memories of me with him that I could have made but did not because I was off doing other things.

I have three daughters, besides Alex, and I did not want to make that mistake with them. The screenplay version would be that in a moment of clarity occasioned by Alex's death, I made a conscious decision to spend the time with them that I did not with Alex. But the reality is that it was a series of small decisions, some barely conscious and many prompted by Nicea, that one day grew into a big decision, almost before I realized it, that I would spend the time with my daughters that I did not spend with Alex. I began to make different choices, we spent money we did not have, time I did not have; we were impractical to be with them.

My daughters are grown now, with families of their own. The closest one lives 700 miles away in southern California, another is in the East, and the third now lives in Europe. It has become a habit for Nicea and me to make time to see them; I always visit them whenever I travel anywhere near them on law school business (and, sometimes, even when I am not traveling anywhere near them). I have a great relationship with

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23. Because human being is always at every moment in the world, it is structured temporally, as Heidegger implies in the title and proposes at the outset of *Being and Time*. See HEIDEGGER, *supra* note 21, ¶ 5, at 38–39; see also *id.* ¶ 65, at 370–77. All of the involvements of human Being-in-the-world are a paradoxical combination of belatedness, presence, and anticipation—past, present, and future. See *id.* ¶ 32, at 188–95, ¶ 41, at 235–41.

24. See HEIDEGGER, *supra* note 21, ¶¶ 49–51, at 291–99. For a powerful and poetic account of this “Being-towards-death,” see Ronald R. Garet, *Dancing to Music: An Interpretation of Mutuality*, 80 KY. L.J. 893, 929–31 (1992).

them, fed by memories of the many things we have done together. I still love my job too much, and still make decisions I regret, but these are many fewer.

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Let me conclude by linking this narrative to constitutional doctrine and the theme of this conference. Some time ago, my oldest daughter moved to Washington D.C. from Utah and needed my help to drive a rental van across the country to her new place (“Adventures in Moving!”). This is the same daughter who has hiked about 600 miles of the Appalachian Trail with me. We could have figured something else out, someone else who could have driven with her, but I knew it was important for me to do this. So I did what I would never have done before Alex’s death: I cancelled multiple classes and scheduled inconvenient make-ups so that I could do this for her, and with her.

I am fortunate to have a job that is flexible enough to enable decisions like this. But what if I did not? If I were to tell my employer that I had to have a day off because it is my Sabbath, a high holy day, or my child’s baptism, the employer will immediately understand the importance of the request and may even feel a moral obligation, if not a legal one, to accommodate it. This would probably hold true even if I needed an entire week to, say, fulfill a special church calling.

But if the request were not a religious one—if it were that I needed a day off to watch a daughter at a cheerleading or dance competition, or a week to go hiking with her or to move her across the country—what then? An employer will certainly comprehend the request, but there would be no legal obligation for the employer to make any accommodation, and I doubt there would be the same felt moral or ethical obligation to accommodate. It would be difficult—impossible, I think—to plausibly convey the painful truth of these situations as it manifested itself in my life: It is as meaningful and important for me to do these ordinarily unreligious things as it is to do any of the unambiguously religious things I am committed to do as a believing Mormon, if not more so. So, when a conference participant declared that a “purely personal decision” is not a religious commandment and thus was not deserving of legal recognition and protection, I think he was wrong—although the better way to say this is, “That has not been my experience.”<sup>25</sup>

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25. Professors Berg and McConnell have made comparably broad assertions. See Berg, *supra* note 11, at 36; Michael W. McConnell, *Is Religion Special?*, DESERET NEWS (Nov. 20, 2011, 1:16 AM), <http://www.deseretnews.com/article/700199256/Is-religion-special.html?pg=all>. Some go so far as to dismiss unbelieving or nontranscendent life



I am a believer, yet I will also say that it is simply not correct that only religion can offer deep meaning to life, and I can say this out of my own experience. Ordinary activities can be crucial to the meaning of one's life, whether or not they are experienced or defined as "religious."<sup>26</sup> Though not all such activities are as morally serious as religious belief and practice, some are, and they are surely not "nihilistic" or "nothing" because they lack the character of transcendent religious truth.<sup>27</sup>

The meaning of my life is that I lost my son and all that went with that, and in the years that followed, I grew into the resolution that I would not lose the same things with my daughters. This is a powerful narrative, but it is not transcendent. It is not a Big Story, but a little one; my story written for me, by me. It is not The Meaning of Life, but the meaning of

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meanings as hedonism unworthy of respect and deserving of eradication. See Kevin J. Hasson, *Defending Religious Liberty for All*, HERITAGE FOUND. (Lecture 1209, July 2, 2012), <http://www.heritage.org/research/lecture/2012/07/defending-religious-liberty-for-all>. Hasson argues that

... [N]ever before have we had a situation where the fight is not between [religiously] principled people fighting over their [religious] principles. The fight is now between people who believe in something and people who believe in precisely nothing. They are nihilists, and this is a threat that is simply unprecedented.

It is a fight not only over who God is, not only over *if* God is, but at the very fundamental level, it is about who we are: whether we are a people who are born with our eyes focused on the far horizon and who seek to reach out and grasp eternal truths, or whether we are accidental organisms adrift in a cold and lonely universe where the only thing to do is try to wring whatever drops of pleasure we can out of an inherently absurd existence before we all lapse into nothingness. . . .

That is the fight that we are in the middle of—repelling an assault by people who believe in nothing against the very idea of believing in anything.

*Id.* Hasson is the founder and former president of the Becket Fund for Religious Liberty, which has grown into a major social conservative ally in the contemporary culture wars. See Amelia Thomson-DeVeaux, *The Spirit and the Law: How the Becket Fund Became the Leading Advocate for Corporations' Religious Rights*, AM. PROSPECT (July 1, 2014), <http://prospect.org/article/little-known-force-behind-hobby-lobby-contraception-case>.

26. One might, of course, include the narrative I have related within an expansive definition of religion, though I did not experience it as religious myself. The important point is that the *religious potential* of ordinary activities does not preclude them from having deep meaning, even if they are not connected to a religious meta-narrative. (I owe this insight to James Egan.)

27. Cf. Hasson, *supra* note 25. For a careful argument that religious belief is only one of many possible components of one's moral identity and thus not deserving of protection distinct from that afforded other such components, see generally JOCELYN MACLURE & CHARLES TAYLOR, *SECULARISM AND FREEDOM OF CONSCIENCE* (Jane Marie Todd trans., 2011).

my life. But for all that, it is more meaningful to me than the meta-narratives taught by my church in which I still have belief and hope,<sup>28</sup> and no less deserving of protection and respect.

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28. See Frederick Mark Gedicks, *Irony and Grace*, 40 *BYU STUDIES* 213 (2001).