5-30-2019

Pagans, Christians, and Student Protesters

Stanley Fish

Follow this and additional works at: https://digital.sandiego.edu/sdlr

Part of the Law Commons

Recommended Citation
Stanley Fish, Pagans, Christians, and Student Protesters, 56 San Diego L. Rev. 283 (2019).
Available at: https://digital.sandiego.edu/sdlr/vol56/iss2/4

This Article is brought to you for free and open access by the Law School Journals at Digital USD. It has been accepted for inclusion in San Diego Law Review by an authorized editor of Digital USD. For more information, please contact digital@sandiego.edu.
Pagans, Christians, and Student Protesters

STANLEY FISH*

I.

In this brief Article, I will try to do two things: (1) flesh out Steven Smith’s thesis with the help of some literary examples, and (2) extend the thesis—perhaps beyond its proper limits—into a commentary on the current campus scene. I’m not sure that these two strains of explication cohere, but I thought I’d give it a shot for, after all, I’m among friends.

Much of Smith’s book is an elaboration of a distinction, both ancient and modern, between a way of regarding and interacting with the world that one might call “pagan” and a way of regarding and interacting with the world that is associated with the theistic religions of the west. In the pagan account of things, the world—as we experience it on our senses—is all there is. Value and meaning are to be found, if they are to be found, within its spaces: “For pagans . . . this world . . . is the only home we have. This life, and the good things of this life, are the only ones we need concern ourselves with.”

For those committed to a transcendent religiosity—a religiosity that bids us look beyond the material world to a source of authority that transcends it and is not contained within it—value and meaning are to be located (but never quite found by earth-bound mortals) “outside the

* © 2019 Stanley Fish. Professor of Law, Florida International University; Visiting Professor, Benjamin N. Cardozo School of Law.

2. Id. at 114.
world—‘beyond time and space.’” For pagans, nature is an “object of ultimate adoration”; for Christians—the version of transcendence Smith focuses on—the world is a temptation insofar as we might be led to lose ourselves (a phrase that should be taken literally) in its pleasures, and forget that they have their source in a creator to whom all the glory should be given. It is not that the world’s goods are unworthy of our affection; it is just that one must not regard them as “ultimate,” for so regarded “they would, paradoxically, lose their goodness and turn into evils.”

John Milton’s Satan can be taken as a model of this mistake, whose name is “idolatry.” In Book IV of Paradise Lost, Satan bounded over Eden’s walls and perched himself on the highest tree in sight so that he could have a better view of the place he intended to corrupt. That tree happens to be the tree of life—eternal life, not mortal, bounded life—but the archfiend is unaware of the tree’s true value and employs it strategically as any advance scout might do. Milton’s narrator comments:

```
Thence up he flew, and on the Tree of Life,
The middle tree and highest there that grew,
Sat like a cormorant; yet not true life
Thereby regained, but sat devising death
To them who lived; nor on the virtue thought
Of that life-giving plant, but only used
For prospect, what well used had been the pledge
Of immortality. So little knows
Any, but God alone, to value right
The good before him, but perverts best things
To worst abuse, or to their meanest use.
```

Satan’s fatal error—using the tree of life as a mere instrument in the execution of a partisan plan—is not one that he could have corrected because in order to see the true value of the tree, he would have to have something within him that corresponded to that value. He would have to not be Satan. “[M]eanest use” marks the limit of his perception because he is, himself, mean—that is, low in his thoughts. His inner perversion is such that to him even the best of things is bathed in the corruption he

---

3. Id. at 111–12 (emphasis omitted) (quoting JAN ASSMANN, THE PRICE OF MONOTHEISM 39 (Robert Savage trans., 2010)).
4. Id. at 114, 116 (quoting ABRAHAM JOSHUA HESCHEL, GOD IN SEARCH OF MAN: A PHILOSOPHY OF JUDAISM 90 (1966)).
5. Id. at 119.
7. SMITH, supra note 1, at 116.
8. See MILTON, supra note 6.
9. See id. bk. iv, ll. 194–204, at 95.
10. Id.
11. Id. bk. iv, l. 204, at 95.
spreads simply by looking; his look, as Milton says elsewhere, is always “askance,” off target, crooked.12 Satan can’t see anything straight on as it really is because such true seeing would require a perception grounded in reality—the reality of God’s creative and sustaining power—and that is precisely the grounding he has renounced and cut himself off from in the act of rebellion.13 Thus he can never “value right [t]he good before him.”14

The case is even clearer with one of Satan’s lieutenants, Mammon,15 who counsels that, rather than attempting to escape the Hell into which they’ve been thrown, the rebels should make the best of it and do a little in-house renovation:

As he our darkness, cannot we his light
Imitate when we please? This desert soil
Wants not her hidden lustre, gems and gold;
Nor want we skill or art, from whence to raise
Magnificence; and what can Heaven show more?16

He really means it. He sees no difference between the sparkling minerals that might lie beneath Hell’s surface and the gold that paves Heaven’s streets. It’s all just for “show,”17 and with a little ingenuity the rebels seek to match its “lustre.”17 For Mammon, Heaven’s light is something mechanically produced and, therefore, can be reproduced or even bettered if the fallen angels just get bulbs with a higher wattage.18 It does not occur to him—because it could not occur to him—that Heaven’s light is cast not by superior electricity but by the spirit that emanates from the creator. (God’s gaze gives life to what he sees, just as Satan’s gives death.) What heaven can show is the truth of what is not shown, the truth that can only be apprehended by one who carries some spark of it within him.19 The master

12. Id. bk. iv, l. 504, at 105.
13. See id. bk. iv, ll. 194–204, at 95.
15. See id. bk. ii, at 35 (introducing Mammon).
16. Id. bk. ii, ll. 269–73, at 37.
17. Id. bk. ii, l. 271, at 37.
18. The anachronism serves only to jovially substantiate the point.
19. MILTON, supra note 6, bk. ii, ll. 269–73, at 37. Compare this to Milton’s definition of the true poet:

[He who would not be frustrate of his hope to write well hereafter in laudable things ought himself to be a true poem; that is, a composition and pattern of the best and honourablest things; not presuming to sing high praises of heroic men . . . unless he in himself the experience and the practice of all that which is praiseworthy.

lesson is found in Hebrews: “[F]aith is the substance of things hoped for, the evidence of things not seen. . . . Through faith we understand that the worlds were framed by the word of God, so that things which are seen were not made of things which do appear.”20 The things that do appear are the only things Mammon can see, but he doesn’t really see them because he cannot see in them evidence of the God who remains hidden in his essence but is present as a trace in all his creations, at least for those who have eyes—inner eyes, the eyes of faith—to see. In liberal thought, physical or brute-data perception and moral perception are distinct: you can see something clearly and still employ it for bad ends.21 The phenomenal object is not tainted with the vice of the agent who misuses it.22 But in Milton’s version of Christianity, instruments of sins are corrupted by their appropriation for sinful purposes.23 This explains why in book ten of the poem, God condemns the snake whose form was appropriated by Satan even though he was merely the unwilling vessel of evil, not a co-conspirator: “Because thou hast done this, thou art accursed.”24

Now all this would be heard as nonsense by Mammon and Satan and by professional atheists like Richard Dawkins, Christopher Hitchens, and Sam Harris.25 One can hear them sneer: what kind of evidence is evidence that can’t be seen?26 What kind of substance is it that has not yet materialized and is only a hope? A hope based on what? Why not just celebrate what we have, what rationality, practical skills, and science can give us? And so there they are—the alternate modes of relating to the material world explored by Smith. As he puts it, “the pagan gazes up at the starry sky and exclaims. ‘How divine!’ The . . . Christian looks up and says, ‘What a sublime manifestation of the divine!’”27 For the pagan the word divine is just a compliment bestowed, not a proposition; for the Christian, the word divine is meant literally.28

20. Hebrews 11:1, 11:3 (King James).
22. See id.
23. See MILTON, supra note 6, bk. v, ll. 165–68, at 129.
24. Id. bk. x, l. 175, at 274.
26. See id. At one point, Satan denies that he has been created; he remembers no moment “when we were not as now” and concludes that he must have made himself: “self-begot, self-raised.” MILTON, supra note 6, bk. v, ll. 859–60, at 152.
27. SMITH, supra note 1, at 117.
28. See id.
II.

After presenting the difference between pagan and Christian perspectives on divinity, Smith asks, “how important is this difference?”29 One answer is given by a literary genre that was established under the dispensation of the pagan but was then transformed when it was appropriated by Christianity.30 That genre is the pastoral. Although pastoral poetry presents a rural landscape complete with shepherds, sheep, streams, and trees—under which rustics engage in singing contests—its origin is urban and sophisticated. The father of pastoral was Theocritus, a native of Syracuse probably living in third century BCE Alexandria, a center of Greek culture.31 His idylls set the pattern for all who followed him in the genre.32 In the first idyll, a shepherd named Thyris and a goatherd are sitting by a bank and the latter asks the former to sing a particular song, The Affliction of Daphnis.33 After being plied by flattery and the promise of gifts, Thyris complies and voices a lament that begins:

Where were ye, Nymphs, when Daphnis pined? ye
Nymphs, O where were ye?34

Daphne lies, dying for love, and is mourned by sympathetic animals, parts of nature, nymphs, and representatives of the gods—including Aphrodite who actually comes to taunt him for thinking that he could escape the darts of love.35 Yet even as she mocks him, Aphrodite wishes that she could restore him, but it cannot be. Death comes and is irreversible:

For the thread was spun and the days were done and Daphnis gone to the River,
And the Nymphs’ good friend and the Muses’ fere was whelmed i’ the whirl for ever.36

29. Id.
32. See Jan et al., supra note 31.
34. Id. at 11, 15.
35. See id. at 15–19.
36. Id. at 23.
In short, that’s it: once your time is up, nothing can save you, not nature, not your friends, not even the gods; once your thread has been cut by Atropos, the third of the fates, only oblivion follows.  

The same bleak view of mortal life is displayed in the work of Bion, the next in the line of pastoral elegists. His Lament for Adonis begins, “I cry woe for Adonis and say The beauteous Adonis is dead.” Cypris, Aphrodite again by another name, comes to kiss him but “that kiss dies upon” his dead lips “and is gone.” Awake, awake, she implores, but he cannot be revived. The poem ends with Cypris being told that the best she can hope for is to return next year and experience the same ineffectuality: “Give over thy wailing for to-day . . . and beat not now thy breast any more; thou needs wilt wail again and weep again, come another year.”

The third founding father in this tradition is Moschus who writes—what else?—The Lament for Bion, a poem that establishes the conventions of the pastoral elegy. The refrain line is “A song of woe, of woe, Sicilian Muses”; the proximate, but not final, cause of woe is the death of Bion: “and with him dead is music, and gone with him . . . the Dorian poesy.” Bion now sings “the song of oblivion,” the song that no one hears, the song with no message and no meaning. Nature reacts to the loss of his song by casting fruit on the ground, causing flowers to wither, cows to give no milk, and beehives to have no honey. Various gods, goddesses, nymphs, and sirens parade before the slain singer, asking the same questions. Why did this happen? What do we do now? But there are no answers, not only to the mystery of this death, but to the mystery of all deaths each of which just happens and seems devoid of meaning:

38. See Bion, Poems and Fragments of Bion: The Lament for Adonis, in THE GREEK BUCOLIC POETS, supra note 33, at 387, 387.
39. Id.
40. Id.
41. Id. at 389, 391, 393.
42. Id. at 395.
43. See George Norlin, The Conventions of the Pastoral Elegy, 32 AM. J. PHILOLOGY 294, 295–96 (1911).
44. Moschus, The Poems of Moschus: The Lament for Bion, in THE GREEK BUCOLIC POETS, supra note 33, at 445, 445. The tradition of saying the death of a poet or singer means the virtual end of music is alive and well in Don McLean’s song American Pie. See DON MCLEAN, AMERICAN PIE (United Artists Records 1971).
45. See Moschus, supra note 44, at 447.
46. Id.
47. See id. at 447–49, 453.
Ay me! when the mallows and the fresh green parsley and the springing crumpled dill perish in the garden, they live yet again and grow another year; but we men that are so tall and strong and wise, soon as ever we be dead, unhearing there in a hole of the earth sleep we both sound and long a sleep that is without end or waking. 48

The disparity between nature’s annual renewals and the apparent finality of mortality is a key trope in the elegiac tradition: nature and man inhabit the same material world but are radically unrelated to one another despite the fiction of nature’s weeping when a particularly worthy man dies; this is called the pathetic fallacy. 49 Nature goes her merry way, secure in the rhythms of the season; man’s existence is relentlessly linear and short; for one, the cycle is self-replenishing: birth, flourishing, death, rebirth. For the other, there is no cycle but a one way, no return, journey: birth, flourishing, death, nothing. 50 Smith reminds us that it is the awareness of finitude in combination with the absence of any hope of a second act that prompts a crisis in the life of Tolstoy who asks: “[W]hat will come of what I do today or tomorrow? . . . Why do I wish for anything, or do anything? [I]s there any meaning in my life that will not be annihilated by the inevitability of death that awaits me?” 51 That is the question repeatedly asked and repeatedly left unanswered in the pastoral elegy.

The Roman poet Virgil attempts an answer in his fifth elegy. 52 It is Daphnis who once again has died and provoked an outpouring from the usual suspects: the nympha, shepherds, flowers, animals. 53 What are we to do now, they all cry. 54 But then Menalca, the young poet designated as Daphnis’s successor, has the bright idea to sing a song that gives Daphnis a life after death. 55 He will put him in heaven, set him “among the stars.” 56 And so he does: “Clothed in new glory, Daphnis stands at Heaven’s Gate . . . watching the clouds and stars below his feet.” 57 Once installed as a God, he can be

48. Id. at 453.
50. See generally Moschus, supra note 44.
51. SMITH, supra note 1, at 21–22, 30 (quoting LEO TOLSTOY, A Confession, in A CONFESSION AND OTHER RELIGIOUS WRITINGS 34, 34–35 (Jane Kentish trans., 1987)).
52. See generally VIRGIL, Eclogue V: Daphnis at Heaven’s Gate, in VIRGIL: THE PASTORAL POEMS 59 (E.V. Rieu trans., 1957) (n.d.).
53. See id.
54. See id.
55. See id. at 63.
56. Id. at 65.
57. Id.
prayed to: “Daphnis, be gracious to your friends and bring them luck.”

That is the most Menalcas can expect from his deified friend; he will give his earthbound comrades little gifts in exchange for the gifts they deposit at his shrine: “[W]e shall have merry-makings where the wine will flow, in winter by the hearth, or in the shade at harvest time.” Daphne’s apotheosis is just a poetic, one time trick; it doesn’t face the specter of death or respond to the anxieties evoked by its prospect. The poem concludes on a happy note as the two shepherds exchange gifts, an oaten pipe, and a shepherd’s crook. It’s not serious.

Seriousness comes in with a vengeance, however, when Christianity appropriates the genre for its own purposes. The change from the pagan to the Christian pastoral is marked by a change in landscape. The landscape of the classical pastoral is idealized and free of strife: it is a locus amoenus—a beautiful and protected rural scene where sheep seem to take care of themselves and shepherds spend their days beneath a tree singing plaintive songs about the women who disdain them. The life is one of otium: ease, quiet, peace, the antithesis of worry and care. Here is one glorious example from Edmund Spenser’s June Eclogue:

[F]riendly Faeries, met with many Graces,
And lightfoot Nymphs, can chase the ling’ring Night,
With heydegays, and trimly trodden traces,
While Sisters Nine, which dwell on Parnass height,
Do make them music, for their more delight;
And Pan himself to kiss their crystal faces
Will pipe and dance, when Phoebe shineth bright:
Such peerless pleasures have we in these places.

Peerless indeed! There is nothing like it in the world, which is the point: the world, here represented by the word night, has been chased away, if only be an act of imagination; time has been defeated and the piping and dancing go on forever. Of course, the shadow of the night that has been banished hangs over the locus amoenus. This is the pathos of the pastoral: it is an idealization—a form of wish-fulfillment that pushes away everything that declares its fragility and fictionality. Above all, it pushes away death,

58. Id.
59. Id.
60. See id. at 67.
61. See generally id.
which is nevertheless waiting around every corner.\textsuperscript{63} I, Death, am even in Arcadia, you can’t escape me.\textsuperscript{64}

Christianity provides the path to escape, although it is a decidedly rugged path. The landscape of the Christian pastoral does not pretend life is idyllic; the harshness of real life is acknowledged, even heightened. The landscape of winter is reflected in the icy landscape of the singer’s heart:

\begin{quote}
My timely buds with wailing all are wasted; 
The blossom which my branch of youth did bear, 
With breathed sighs is blown away and blasted; 
And from mine eyes the drizzling tears descend, 
As on your boughs the icicles depend.\textsuperscript{65}
\end{quote}

Wolves are everywhere; the flocks are hungry and wan; it is a life full of care, bordering on despair.\textsuperscript{66} So there’s the unhappy choice offered by the classical pastoral: either the fiction of the \textit{locus amoenus}—where spring is eternal and carefree days go on forever—or the grim reality of a world of woe marked by contingency, disaster, and a succession of unhappy moments unredeemed by hope or meaning.

It is this world bereft of value and significance that occupies the first 164 lines of Milton’s \textit{Lycidas}.\textsuperscript{67} \textit{Lycidas} opens with three small words: “Yet once more.”\textsuperscript{68} A novice reader of the poem would not take away anything specific from these three words, but a reader steeped in the tradition of the pastoral elegy will know what’s coming from the title and from the headnote identifying the poem as a monody, bewailing the death of a friend, will know that the poem’s speaker will try—vainly—to understand and come to terms with the sudden death of a promising young man.\textsuperscript{69} “Yet once more” means: here I am, the latest in a line of singers forced by fate

\textsuperscript{63} This feeling of dread is best exemplified by the famous \textit{Et in Arcadia Ego} by Nicolas Poussin. While the painting shows bright skies and calm, well-kept shepherds, shadows linger and the featured folk poke, prod, and marvel at a stone casket: a clear symbol of death and vehicle of the dead.

\textsuperscript{64} \textsc{Monroe Spears}, \textit{Variations Sérieuses, in A WORD IN YOUR EAR} 55, 55 (2001).

\textsuperscript{65} \textsc{Spenser}, \textit{supra} note 62, ll. 38–42, at 222.

\textsuperscript{66} \textit{See generally id.}

\textsuperscript{67} \textit{See John Milton, Lycidas} ll. 1–164, at 1 (John Phelps Fruit ed., Boston, Ginn & Co. 1897) (1637).

\textsuperscript{68} \textit{Id.} l. 1, at 1.

\textsuperscript{69} \textit{See id.} l. 8, at 3; Michael Lieb, “Yet Once More”: The Formulaic Opening of \textit{Lycidas}, 12 \textsc{Milton Q.} 23, 23–24 (1978).
and other uncontrollable forces to confront the fact of the premature death of a worthy cut down before he can flourish.

For Lycidas is dead, dead ere his prime,
Young Lycidas, and hath not left his peer. 70

The speaker recalls the halcyon days when he and his friend

drove a-field and both together heard
What time the gray-fly winds her sultry horn,
Batt’ning our flocks with the fresh dews of night . . . .

. . .

But O the heavy change, now thou art gone,
Now thou art gone and, and never must return?71

Never; that’s it, no more. Nature—“[t]he willows and the hazel copses green”—will remain and complete her cycles; 72 but for Lycidas the thread of life is cut:

Comes the blind fury with the abhorred shears,
And slits the thin-spun life.73

The only thing to be done is summon the usual mourners and put to them the futile question: “Where were ye?”74 But no one was there. No one knows anything. No one knows even where the body is.75 (Lycidas drowned at sea). Everyone thinks it’s a shame.

The speaker’s response to this parade of ineffectual and befuddled mourners is the age-old asking what’s the point? What’s the meaning?

Alas! what boots it with uncessant care
To tend the homely, slighted, shepherd’s trade,
And strictly meditate the thankless Muse?76
Why bother? Why not just have a good time?:
Were it not better done as others use,
To sport with Amaryllis in the shade,
Or with the tangles of Neaera’s hair?77

As a last resort in the face of a debilitating inadequacy, the speaker solaces himself with the image of flowers strewing Lycidas’s “laureate hearse”; but then he remembers that there is no hearse because there is no body.78

70. MILTON, supra note 67, ll. 8–9, at 3.
71. Id. ll. 27–29, at 7, ll. 37–38, at 8.
72. Id. l. 42, at 8.
73. Id. ll. 75–76, at 12.
74. Id. l. 50, at 9.
75. Id.
76. Id. ll. 64–66, at 11.
77. Id. ll. 67–69, at 11.
78. Id. ll. 139–55, at 19–20.
All he can do was wonder where in the vast sea Lycidas’ body parts are tossed about by surging waves:

Ay me! whilst thee the shores and sounding seas
Wash far away, where ere thy bones are hurl’d;
Whether beyond the stormy Hebrides,
Where thou perhaps, under the whelming tide,
Visit’st the bottom of the monstrous world . . .
And, O ye Dolphins, waft the hapless youth.79

In these lines, haplessness becomes associated with the letter W: whilst, wash, where, whether, where, whelming, world, waft. W is also the first letter of the first word in line 165: “Weep.”80 Weep seems right; it is what has been going on all the while. But then the next two words turn everything upside down: “Weep no more”; and the next two lines make an assertion that is as startling as it is unprepared for:

Weep no more, woful shepherds, weep no more,
For Lycidas your sorrow is not dead . . . .81

This is a poetic mimesis of a leap of faith, a leap we experience as readers when the transition from one emotional state—hopelessness—to its opposite—joy—is not marked or even announced. The sublunary landscape to which we have been confined for all these lines offers no hope at all; the evidence marshalled in the dispiriting post-mortem inquiry—where were you; what happened?—points only in the direction of meaninglessness and despair.

What then produces the change? That’s the wrong question because it implies a process impelled by visible and measurable labors. This change is instantaneous and occurs, without sequence, when the speaker without any preparation invokes and affirms a power that transforms darkness into light, death into life:

Lycidas sunk low, but mounted high,
Through the dear might of Him that walk’d
the waves,
Where, other groves and other streams along,
With nectar pure his oozy locks he laves,
And hears the unexpressive nuptial song . . . . 82

79. Id. ll. 154–58, 164, at 20–21.
80. Id. l. 165, at 21.
81. Id. ll. 165–66, at 21 (emphasis added).
82. Id. ll. 172–76, at 22.
“Other groves and other streams.” Other than what? Other than the fictional groves and steams that are the pale simulacra of a blessedness they can neither contain nor convey. The beauty of pastoral descriptions, like the beauty of the flowers that do not in fact cover Lycidas’ hearse, is a poor stand-in for the real thing. But here, in the pastoral to end all pastorals, the real thing—not the imitation drenched in nostalgia—is finally present in the vision of a God who truly saves:

There entertain him all the saints above,
In solemn troops and sweet societies,
That sing, and singing in their glory move,
And wipe the tears forever from his eyes.83

These tears are tears of joy and they wash away the tears shed by men previously without faith: “Now Lycidas, the shepherds weep no more.”84 Weeping has been redeemed, along with the letter W. The speaker-poet then makes Lycidas “the Genius of the shore” and predicts that he shall be “good [t]o all that wander in that perilous flood.”85 This is, of course, an allusion to Virgil’s tellurifying of Daphnis in his fifth eclogue,86 but Milton wants us to understand that the Roman poet’s fiction is the type (mere instance) of an antitype (the genuine article) that is at once now revealed and has been revealed forever.87

That’s what Christianity’s vision—its substance of things hoped for—does. At a stroke, it reverses everything, transforming death into the portal of a better life. It does not argue with paganism, but just sweeps it away, conquering merely by appearing. In Milton’s Ode on the Morning of Christ’s Nativity, there is no contest between the old gods and the new God; there is no epic confrontation.88 The infant Jesus conquers, but he doesn’t do anything nor does he say anything—Latin infant means “without speech”—he merely falls asleep; and as he does the pagan deities, knowing that the jig is up, just fade away:

83. Id. ll. 178–81, at 23. I submit that one cannot read these lines without participating in the spirit they breathe.
84. Id. l. 182, at 23.
85. Id. ll. 183–85, at 23.
86. See generally VIRGIL, supra note 52.
87. For centuries, Virgil’s fourth eclogue about the birth of a marvelous boy was read as a foretelling—not by Virgil but by the holy spirit working within him without his knowledge—of the birth of Christ. See Ella Bourne, The Messianic Prophecy in Vergil’s Fourth Eclogue, 11 CLASSICAL J. 390, 392–93 (1916). See generally VIRGIL, Eclogue IV: The Golden Age Returns, in THE ECLOGUES OF VIRGIL, supra note 52, at 50. Eternity is always there, occasionally glimpsed in its fleeting, temporal traces.
The lars, and lemurs moan with midnight plaint,
In urns, and altars round,
A drear and dying sound
Affrights the flamens at their service quaint,
And the chill marble seems to sweat,
While each peculiar power forgoes his wonted seat.89

Forgoes, that is, just gives up the ghost in the face of an invincible and irresistible power:

Our babe to show his Godhead true,
Can in his swaddling bands control the damned crew.90

Not one more God to add to the pantheon, not one more shrine at which you might leave a few sheaves of wheat, but the true God, the only God, the God whose commands countermand all others.

III.

This totalizing claim is what makes Christianity—at least Christianity taken seriously—such a poor fit with a liberalism that distrusts strong commitment, because commitment is inherently exclusionary, and installs at its center the virtue of tolerance. The one thing an ethic of tolerance cannot tolerate is intolerance.91 As Smith puts it: “[C]ontemporary progressive tolerance is happy to respect any number of different religious views—so long . . . as they do not actually proclaim their own truth and hence, expressly or by implication, the error of contrary views” and, “ironically, a commitment to tolerance can supply a justification for the massive marginalization or sanctioning of people whose beliefs . . . disagree with those of ‘tolerant’ elites.”92

Such beliefs are a rebuke to persons more relaxed in their convictions who respond, Smith tells us, not merely by asking that those beliefs be confined to a private place—liberalism’s key strategy—but by asking that they be expurgated even from the heart because they are beliefs no one should hold.93 Today those beliefs, Smith explains, include any disapproval of

89. Id. II. 191–96, at 9.
90. Id. II. 226–27, at 10.
92. SMITH, supra note 1, at 358–60.
93. Id. at 359–60.
or skepticism about same-sex sex and same-sex marriage.\textsuperscript{94} Increasingly, the argument is made that the injury suffered by a gay couple turned away by a county clerk or refused service by a photographer is a dignity harm; the mere fact that there are persons who wish to distance themselves from you not because of what you do but because of what you are is itself intolerable.\textsuperscript{95} "[I]t is not merely the overt expression of the offending view that inflicts injury, but rather the fact that someone holds the offending view and is known to hold it."\textsuperscript{96} Smith offers a comparison between the second and third centuries when the truth-oriented faith of Christianity was disruptive and divisive with the present moment when "devout Christians do not accept the city’s terms of cooperation—terms that require citizens to check their religious beliefs at the door before entering the civic sphere."\textsuperscript{97} Indeed, says Smith, the "open presence of Christian ideals in the public space [is] more troublesome and threatening than those ideals might have been in first, second, and third centuries" because "their presence is . . . an insult to the kind of community to which modern progressive pagans aspire."\textsuperscript{98} In that community, people will just naturally have the right ideas and recoil instinctively when they hear the wrong ones; for it is not only discriminatory acts that are reprehensible—having discriminatory thoughts is reprehensible too—so much so that those who have them are in danger of being told, by laws and by elite cultural organs, not simply that they are in error, but that they are morally defective for thinking as they do.\textsuperscript{99}

In effect, Smith argues, antidiscrimination laws of the kind that criminalize some religiously inspired acts have expanded the public sphere so that those whose private commitments lead them to say uncomfortable things like, "what you are doing is wrong and I refuse to facilitate it in any way," are expelled from the public square or allowed to stay only if they agree to keep their abhorrent views to themselves.\textsuperscript{100} In the abstract, the religious person "is free to practice her faith in the private sphere . . . [b]ut the city walls have been expanded significantly, and the private sphere has shrunk accordingly."\textsuperscript{101} Smith speculates that persons whose declared views are considered anathema and even sinful by the current guardians of public morality may find themselves barred by what they believe and take to be true from engaging in any number of professions: "Public annexation of the marketplace [of ideas] under nondiscrimination [norms] may mean
that she will be inhibited from being a marriage counsellor, a doctor in general practice, perhaps a pharmacist. Teaching may be problematic; at least she may be required to keep some of her Christian convictions to herself.”¹⁰²

Smith knows that these hypotheticals are not hypothetical; persons of faith who refuse to leave that faith at home have had their credentials challenged in all of these fields and especially in the field of teaching where one finds the older ethic of advancing the truth by engaging in reasoned deliberation replaced by the ethic of displaying virtue and refusing to tolerate what is considered to be its opposite.¹⁰³ Both the political left and the political right participate in this self-righteous moral flag-waving and the shaming strategy that comes along with it.¹⁰⁴ In 2014, the University of Illinois at Champagne Urbana withdrew an offer of tenure—made after a nationwide search—to cultural studies scholar Steven Salaita because in the spring and summer before he arrived at Illinois he had tweeted repeatedly about the Israeli treatment of Palestinians, saying, among other things, that the actions of the state of Israel were giving anti-Semitism a good name.¹⁰⁵

Less than three weeks before he was scheduled to meet his first scheduled class, Salaita was informed by Chancellor Phyllis Wise that she would not be forwarding his dossier to the board of Trustees and cited fears that some students would feel uncomfortable sitting in Salaita’s classroom knowing of his views.¹⁰⁶ University President Robert Easter—almost as ironic a name as Wise—offered the same justification: “Professor Salaita’s approach indicates that he would be incapable of fostering a classroom environment where conflicting opinions would be given equal consideration.”¹⁰⁷

There is so much wrong with this that it’s hard to know where to begin, but for starters one might ask: “Salaita’s approach to what?” The question is never asked but the answer must be his approach to the Israeli-Palestinian conflict. But why should Salaita’s approach to a Middle-eastern conflict

¹⁰². Id. at 341–42 (footnotes omitted).
¹⁰³. See id. at 342–43.
¹⁰⁴. See, e.g., infra text accompanying notes 105–21.
¹⁰⁷. Mike Helenthal, U. of I. Board of Trustees Vote To Not Appoint Salaita, ILL. NEWS BUREAU (Sept. 18, 2014, 9:00 AM), https://news.illinois.edu/view/6367/208548 [https://perma.cc/4ET2-T7J4].
be of interest to the University of Illinois at all? Here the answer is in fact given by the Chancellor and the President: someone with a political position like his cannot be counted on to run a responsible professional classroom. But this is wrong both as a theoretical matter and as a matter of fact in this case. There is no necessary relationship between a teacher’s partisan stances and academic performance, and, moreover, there was massive evidence that Salaita has always been an eminently fair and even-handed instructor praised by students of every political persuasion.

What the Chancellor and the President were really saying is “we don’t want people around who think as he does: Salaita’s being innocent of any professional infractions is beside the point; he just shouldn’t have those deplorable views whether they inform his teaching or not, and because he has them we will send him away.” And so they did, rendering him effectively unemployable.

Easter is also off base when he describes the classroom as a place where “conflicting opinions would be given equal consideration.” Equal consideration is not an academic value; when opinions are offered in a classroom they receive the consideration, or the dismissal, they deserve, with desert being determined by the instructor. Easter may have in mind a democratic town meeting where equal consideration of opinions is the norm, but there is nothing democratic about the college classroom.

On the other end of the political spectrum, Bret Weinstein of Evergreen State College ran into trouble in 2017 not because he was too left but because he wasn’t left enough. He didn’t have his job taken away from

108. See O’Brien et al., supra note 106, at 22, 26; Helenthal, supra note 107.
110. See Fish, supra note 105.
112. Helenthal, supra note 107.
113. This is mostly true for tenured professors. Tenure-track and part-time professors are subject to review and dismissal for student dissatisfaction, so equality of consideration may see different rates between these two groups.
115. Of course, there are campuses where views encompassing the opposite of Salaita’s would be considered disqualifying and a reason for shunning.
him; he resigned—and will he now be unemployable too?—after students called for his firing and hurled invectives at him outside his classroom.117 His sins? There were two. He objected to a proposal that new faculty hires “would require ‘an equity/justification explanation,’” declaring that “[t]he most important thing is that the person in front of the room knows something about the subject.”118 Professor Weinstein also objected to the demand by some student groups and a college staffer supporting them that white people stay away from campus on a given day.119 In previous years, minority students had observed a Day of Absence and met off campus, and Weinstein did not object, but he insisted in a letter that there was a big difference between voluntarily staying away in order to make a point and being told that you are required to do so in obedience to someone else’s point.120 The president of Evergreen State declared that Weinstein had the right to say whatever he liked, but in the same breath, he mandated sensitivity training for all faculty and announced that henceforth campus cultural events would begin with an acknowledgement that the college stands on ground “stolen from Native Americans.”121 Presumably, in time, sensitivity will spread: community confessions of guilt will be multiplied, a few laggards will be put in the stocks, and on some fine bright day everyone at Evergreen will have only the right virtuous thoughts. (Also, the lion will lie down with the lamb.)

The virtue epidemic has spread to the University of San Diego, where Law Professor Larry Alexander has been vilified for co-authoring an opinion editorial with Law Professor Amy Wax. This op-ed suggested cultural-political health might be restored to this society if the bourgeois values of the fifties were revived and embraced.122 Here, I must confess that I am a

119. See Richardson, supra note 117.
120. Jaschik, supra note 118.
121. Id.
fifties person and believe the sixties were a bad thing—my wife thinks the opposite—even though I am aware of the decades’ sins. My affinity for fifties values and my nostalgic oversimplification of those years hurts no one and certainly has nothing to do with the way I teach John Milton or the First Amendment. To date, I have not publicly declared my heresy—oops!—so I have not been the object of outrage for that sentiment, as have Alexander and Wax, both of whom have heard calls that they be fired or silenced and have received grudging, barely lukewarm, support from deans quick to disassociate themselves from ideas considered beyond the pale by the enlightened. A piece on the website Above the Law supports demands that Wax and Alexander be removed from first year law courses lest their “retrograde beliefs” find their way into the tender ears of legal novices. Retrograde beliefs are beliefs that are backward looking, inferior and degenerate. We sure would not want any of those mucking up our campus; nor would we want anyone who traffics in them polluting our spaces. By this logic, it is perfectly alright to shout down speakers or demand that teachers whose beliefs one finds offensive be disciplined because in doing so you are performing a virtuous act. (Ain’t virtue wonderful!)

Recently, Adrian Vermeule has described this logic as the extension of an alternative theology. This would be the theology of “[l]ate-stage liberalism” which, says Vermeule, “has its own cruel sacraments—especially the shaming and, where possible, the legal punishment of the intolerant or illiberal.” This is the theology now embraced by students and by hapless and confused administrators, who no doubt would resist the idea that they have a theology at all.


123. These were chronicled at the time in the movies of Douglas Sirk and Nicholas Ray and are now being paraded before us again in the movies of Tod Haynes.


127. Id.
IV.

So how does this digression (if it is a digression) fit with the argument of Smith’s book? It does and it doesn’t. In Smith’s account, Christian ideals are an “embarrassment” and an irritant, both in Roman times and in ours, because at their center is the assertion of a single truth in relation to which other proffered truths are either subordinate or false.\(^{128}\) Those who are more relaxed about their beliefs or who are willing seriously to entertain the possibility that they are false or who are comfortable inhabiting alternate belief systems on Tuesdays and Thursdays, or who are pluralists and believe that any number of traditions bear traces of the truth, just don’t want insistent monists getting in their face.\(^{129}\) If citizens and academics ought to live and let live rather than know the truth and let it set them free, an insistence on hewing to a truth that admits no exceptions will seem boorish at best and dangerously fanatical at worst. Now if we import these distinctions into the current campus scene, the monists are the students and certain faculty who brandish a truth—they call it social justice—and are intolerant of any suggestion, whether proceeding from a teacher or an invited speaker, that a truth is contestable. Their impulse is to purge while the impulse of the Platonic Academy is to allow arguments of every kind into the academic space. In Smith’s terminology, then, the academy, dedicated as it is to investigating multiple paths in the search for truth, is pagan, and the student ideologues, who declare that there is only one true path and they are on it, are the Christians.\(^{130}\)

But, of course, they are not and that is why the homology doesn’t quite work. The truth professed by religious believers and the truth proclaimed by student protesters differ in an important respect: the former is a truth located outside the individual who is committed, by his faith, to living out its precepts;\(^{131}\) the latter is just a conclusion come to by a teenager or early-twenty-something who, after an encounter with watered-down postmodernism, has embraced an egalitarianism that levels all differences and renders any claim to precedence and tradition automatically suspicious.\(^{132}\) One truth

128. Smith, supra note 1, at 179–82.
129. See id. at 357–63. Although the measure by which that falsehood might be established is never identified, it would have to be another God.
130. See Smith, supra note 1, at 146–58.
131. See id. at 34–36.
commands its adherents to ally themselves with the will of God; the other demands that Shakespeare no longer be taught and that conservatories should not introduce students to classical music.\textsuperscript{133} What joins the two truth-regimes is intolerance: they are both committed to one set of beliefs and dismissive of those who believe something else. It is just that in one case, those beliefs issue from a profound conviction of dependence on a higher being, while in the other, the beliefs issue from nothing more noble than petulance: a self-generated self-righteousness and an adolescent will to power.

I am aware that the previous paragraph is infused with a self-righteousness and petulance of its own and ignores the decidedly noble impulses—the eradication of racism, sexism, and classicism; the inclusion in cultural and educational venues of those who have long been kept out; the obligation to submit the liberal bourgeois norms we unreflectively live by to rigorous scrutiny—that are often said to drive student activism.\textsuperscript{134} I hear that argument, but in the end I believe those admirable impulses have become the excuse and rhetorical cover for a simple and perennial desire to take over the playground, smash its furniture, and stick a thumb in the eye of the establishment. Of course by saying that I am perhaps only revealing myself to be the establishment-old-fart I surely am, someone who, in the last days of an already too-long career, just doesn’t want to let go of the franchise and cede any of its territory to the next generation. At any rate, I have taken this line of thought as far as it can go (perhaps too far) and so I will end by returning to the beginning of this Article and my attempt to illustrate Steve Smith’s thesis with literary examples.


This time the poem is a nineteenth century one, written by Robert Browning. It is in the form of a verse epistle or dramatic monologue and is called Cleon.135 Cleon is a Greek philosopher, painter, and poet who exchanges letters with his King and patron.136 They write to each other—excerpts from the King’s letters are quoted throughout the poem—about the difficulty of finding meaning in life.137 Cleon rehearses the old pastoral trope: nature flourishes while man just dies:

[T]he summers and the springs,
Follow each other with unwaning powers.138

When the King replies that Cleon should not worry because he will live on in his poems and paintings—“[t]hy life stays in the poems men shall sing”—the poet rejects the consolation and finds in it a new reason to despair.139 While his poems will have a kind of life “in men’s mouths,” meanwhile his “hairs fall more and more, [His] hand shakes, and the heavy years increase” all leading to the time when he will forever “[s]leep in [his] urn. It is so horrible.”140 He wishes Zeus might reveal “[s]ome future state . . . [u]nlimited in capability,” an afterlife in which we shall be “[f]reed by the throbbing impulse we call death [to] burst there as the worm into the fly.”141 But Zeus has not spoken and “[h]e must have done so, were it possible.”142 Therefore it is not possible, and there is nothing to look forward to.

And then, in a kind of afterthought—this is the climax of Lycidas as if it were reduced to a footnote—Cleon refers to a man named Paulus who is said to bear a message of salvation.143 The King apparently wants to send something he has written to this Hebrew prophet, but Cleon demurs:

136. Id. ll. 1–7, 19, at 185.
137. See generally id.
138. Id. II 127–28, at 188.
139. Id. I. 170, at 188.
140. Id. ll. 313–14, 318, 322, at 192.
142. Id. I. 335, at 192.
143. Id. ll. 339–41, at 192.
Thou canst not think a mere barbarian Jew
As Paulus proves to be, one circumcised,
Hath access to a secret shut from us?144

And besides, he concludes, I have heard from a bystander what he and Christ preach, and “[t]heir doctrine could be held by no sane man.”145 That’s the last line of the poem. Browning, a committed Christian, is imagining the moment when a terrible new truth is just emerging, a truth that will be precisely the revelation Zeus and all the other pagan Gods cannot provide, a truth that will sound strangely in the ears of those not ready to receive it and those who can only hear as crazy a doctrine that foreshadows the end of everything they have known.146 Cleon is trapped—in T.S. Eliot’s words—between the idea and the reality, and he asks the question W.B. Yeats will ask in the next century:

[W]hat rough beast, its hour come round at last,
Slouches toward Bethlehem to be born?147

144. Id. ll. 343–45, at 192.
145. Id. l. 353, at 192.
146. See id.