

1-1-1991

# Peyote, Multiculturalism, and the Caricature of the West

Robert G. Natelson

*University of Montana School of Law*

Follow this and additional works at: [http://scholarship.law.umt.edu/faculty\\_lawreviews](http://scholarship.law.umt.edu/faculty_lawreviews)

 Part of the [Legal History, Theory and Process Commons](#)

---

## Recommended Citation

Robert G. Natelson, *Peyote, Multiculturalism, and the Caricature of the West*, 52 Mont. L. Rev. 453 (1991),  
Available at: [http://scholarship.law.umt.edu/faculty\\_lawreviews/22](http://scholarship.law.umt.edu/faculty_lawreviews/22)

This Article is brought to you for free and open access by the Faculty Publications at The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Faculty Law Review Articles by an authorized administrator of The Scholarly Forum @ Montana Law.

# PEYOTE, "MULTICULTURALISM," AND THE CARICATURE OF THE WEST

Robert G. Natelson\*

## I. THE SPECTRE OF RADICAL MULTICULTURALISM

A spectre is haunting academia. Its conjurers call it "diversity" or "multiculturalism," but those are pseudonyms merely. This spectre is but the resurrection of the old New Left, the same grinning demon that challenged once, and now challenges again, the heritage and institutions that make possible a pluralistic and tolerant America.

The methods of the radical multiculturalists<sup>1</sup> are now clear: Like their "critical" allies, they seek to marginalize the Western tradition into just another point of view. As teachers, they minimize student exposure to the history of Western civilization. Instead, they offer caricature—a caricature of Western thought as the one-dimensional, racist, sexist, homophobic effluence of Dead White European Males. As their proffered alternatives, they infuse into the curriculum what they purport to be the heritage of other cultures,<sup>2</sup> but all too often is but propaganda<sup>3</sup> designed to promote

---

\* Professor of Law, University of Montana.

1. I employ the term "radical multiculturalists" to distinguish the bearers of the current academic fad from those of us who for years have urged greater resort to foreign sources in our teaching and research. For an example of my own work, written before multiculturalism became a fad, see Natelson, *Comments on the Historiography of Condominium: The Myth of Roman Origin*, 12 OKLA. CITY U.L. REV. 17 (1987) (relying heavily on Hispanic sources).

2. As far as I can ascertain, the so-called multiculturalists have not fostered true exposure to the best that is in foreign cultures. There has been little increase in the study of foreign languages or the reading of Confucius, the *Koran*, the *Ramayana*, or Lady Murasaki's *Tale of Genji*. The focus, rather, is often on marginal but "politically correct" writers, especially those of a socialist and/or radical feminist cast. For a similar observation, see D'Souza, *Multiculturalism 101: Great Books of the Non-Western World*, 56 POL'Y REV. 22 (1991):

As currently offered, multicultural curricula in American universities produce puzzlement, if not disbelief, among many educated citizens of Asia, Africa, Latin America, and the Middle East. The materials presented to students bear virtually no resemblance to the ideas most deeply cherished in their cultures. Instead, American students receive a selective polemical interpretation of non-Western societies, revealing less about those societies than about the ideological prejudices of those who manage multicultural education.

*Id.*

3. Much of the curriculum of the "Afrocentric" movement, for example, is based on teaching guides filled with distortions and inaccuracies. These guides assert such nonsense as: Egypt was a black nation (news to connoisseurs of Egyptian wall paintings!), Cleopatra was black (her Greek ancestry is well attested); Euclid probably was black; and the Ten Commandments were Egyptian and, therefore, of black origin. See Putka, *These Teaching*

a sort of Luddite collectivism—the real ideology of the radical multiculturalists.<sup>4</sup>

## II. A “MULTICULTURALIST” CARICATURE OF THE WEST

When our best and most promising students become unwitting vehicles for the caricature of Western thought, we know that the situation in academia has become very bad. John Rhodes, a recent graduate of the Harvard Law School, has provided an example of such caricature in the *Montana Law Review* in the form of his article, *An American Tradition: The Religious Persecution of Native Americans*.<sup>5</sup> We shall see the nature of his caricature in a moment. Initially, however, I wish to make clear that I do not blame Mr. Rhodes. I do not even know for a fact that he is a multiculturalist. But it is clear that he, like many other law students and new graduates, is the victim of “educators” who have not done their

*Guides Credit Blacks For Math, Science and the Pyramids*, Wall St. J., Jul. 1, 1991, at A4, col. 1.

4. This political agenda became clear during a Jan. 1990 debate in the House of Representatives of the Association of American Law Schools, at which I was present. The debate was over proposed A.A.L.S. Bylaw 6-4, which purportedly would improve legal education by rendering students and teaching personnel more “diverse.” The sponsors’ mechanism for making legal education more diverse was to impose a substantially uniform partial set of admissions, employment, and placement criteria on every A.A.L.S. law school in the United States! (I say “substantially uniform” because on the issue of sexual preference, the proposed bylaw provided a partial exception, since largely excised, for religiously connected schools.)

Most controversial was paragraph (c) of the proposal, which mandated that certain favored groups obtain preferential hiring and admissions treatment. One member of the House of Representatives, observing that if diversity was a value it ought to be pursued consistently, sought to amend the proposal to provide that a law school could consider all forms of ethnicity, not merely those listed in the original proposal. This member noted that eastern and southern Europeans, while not currently on this list, also traditionally had been underrepresented in legal education.

The sponsors of the Bylaw change opposed the amendment. In arguing against it, their principal spokesman, Yale’s Dean Calabresi, abandoned any pretense that the proposal was about diversity, and emphasized the need for “affirmative action.” He disregarded the point that other minorities needed affirmative action as much as did the groups mentioned in the principal proposal.

The apparent inconsistency of the sponsors is reconcilable only on the following basis: The groups their proposal was designed to assist—primarily blacks, Hispanics, and women (by implication, feminist women)—are perceived as to the left of the general population, while many ethnic groups not on their list, including eastern and southern Europeans tend to be conservative.

Bylaw 6-4 eventually was adopted, but does little or nothing to alleviate the two principal ways in which most legal faculties are non-diverse: their overwhelmingly left-of-center political cast and minimal relevant law practice experience.

5. Rhodes, *An American Tradition: The Religious Persecution of Native Americans*, 52 MONT. L. REV. 13 (1991).

job—or, more precisely, have done the wrong job.<sup>6</sup>

Mr. Rhodes' topic is a good one: *Employment Division, Department of Human Resources v. Smith*,<sup>7</sup> decided by the United States Supreme Court last year. In *Smith*, the Court held that the ceremonial ingestion of peyote at Native American religious ceremonies was not protected by the Free Exercise Clause of the U.S. Constitution. Moreover, Mr. Rhodes' heart is in the right place. Deeply sympathetic to Native American religion, he has concluded that the result in the case was erroneous.<sup>8</sup> But the problems with Mr. Rhodes' article lie not in his conclusion that the holding of *Smith* is erroneous, but in his views on judicial decisionmaking within the Western tradition.

Mr. Rhodes' central thesis is that American Indian religion has been persecuted because of judicial ethnocentrism resulting from judges' upbringing in Western culture.<sup>9</sup> In elaborating his point, he first turns to Indian religion, justifying a discussion in the aggregate because "the philosophy and core beliefs behind the various tribal religions traditionally were and today remain remarkably similar."<sup>10</sup> Mr. Rhodes deems it significant that Indians have no word for religion. According to him, this absence is a reflection of the fact that Native American religion is not a discrete part of life, but "permeates the lives of American Indians"<sup>11</sup>—that it cannot be separated from social, political, economic, and cultural areas of life. All of these aspects, he says, are part of an essential "oneness." Moreover, he adds that in the Indian *Weltanschauung*,

6. I am reminded of my recent conversation with a law student (not at the University of Montana) who, although a participant in a natural resources "forum," had never heard of the Roman Forum; and of two others who had never heard of Montesquieu.

7. 110 S. Ct. 1595, *reh'g denied*, 110 S. Ct. 2605 (1990).

8. My own (fractional) Native American heritage and libertarian instincts arouse a similar sympathy.

9. He states in part:

As a result, courts continue to deny the free exercise claims of American Indians

. . . .

Ethnocentrism is at the root of this denial, as it has been in the past. . . . Contemporary attitudes have changed little from the ethnocentrism that has historically influenced our treatment of American Indians. As a result, we continue in 1990 . . . to deny Native Americans the religious freedom that the Constitution guarantees.

The courts do not understand the nature of Indian religious beliefs because most judges are confined intellectually by Judeo-Christian notions of what constitutes a religion. . . . [This is] because these [constitutional] doctrines are framed in Western concepts of religiosity, they are prejudicial to the non-Western religions of Native Americans.

Rhodes, *supra* note 5, at 16-17.

10. *Id.* at 17.

11. *Id.* at 18.

humans comprise but a single spiritual species in a universe containing many spiritual species. These species—not limited to animal life or even to life—form an interdependent whole. Thus, man must be the steward and caretaker of the earth rather than its exploiter, especially of the lands sacred to one's tribe. Humankind must listen to the voices of other animals, and of the grass, the ground, and water, and the trees.<sup>12</sup>

The foregoing may or may not be an accurate depiction of Indian religion; I have not the expertise to determine that. But Mr. Rhodes' understanding of the Western religious tradition is certainly in error. He believes that the Western view "isolates religion as a discrete aspect of social and individual life" and "goes to great lengths to separate the sacred from the profane."<sup>13</sup> It is this Western separation of religion and secular life, Mr. Rhodes maintains, which fuels the ethnocentrism resulting in judicial insensitivity to Indian claims. In a footnote he notes the irony of Christians persecuting Indians when Romans persecuted Christians.<sup>14</sup>

### III. THE CARICATURE BREAKS DOWN

One who examines Mr. Rhodes' article carefully does not have to know much about the Western tradition to be assailed by doubts. One is troubled at once by his amalgamation of Jewish views and Christian views into "Judeo-Christian notions," and the further amalgamation of "Judeo-Christian notions" with the rest of Western thought. One is tempted to ask: *Which* Western thought: Plato or Aristotle? James I or Edward Coke? Rousseau or Locke? Henry David Thoreau or Herbert Spencer? And which Christians (Hus or Aquinas?) and which Jews (Maimonides or Marx)?

Mr. Rhodes' thesis is undermined further by some of the cases he cites. A good example is *Reynolds v. United States*.<sup>15</sup> In *Reynolds*, the Supreme Court denied constitutional protection to a central religious practice of the Mormons. Now the Mormons are not of some obscure oriental sect; as the name of their church suggests,<sup>16</sup> they are Christians. Their religion is native to nineteenth century America and their foremost prophet was a white man from upstate New York. Indeed, the reader with even a smattering of American history might recall that Mormons, not Indians or

---

12. *Id.* at 18-21.

13. *Id.* at 18.

14. *Id.* at 16 n.7. This (inaccurate) footnote is discussed below.

15. 98 U.S. 145 (1878).

16. The Church of Jesus Christ of Latter-Day Saints.

orientals, have been the victims of the most severe purely religious persecution in American history.

Another problem surfaces after a moment of reflection: If Mr. Rhodes is correct, why do thousands of American Buddhists, Hindus, Muslims, and other adherents of non-Western sects live in almost perfect religious liberty? Why have not ethnocentric Western prosecutors and judges attacked them?

The point is that one need not know much about Western culture to realize that the thesis does not hang together. The reason it does not hang together is that it is grounded in a caricature of Western thought. The distinctive feature of the caricature is the assertion that the Western World "isolates religion as a discrete aspect of social and individual life" and "goes to great lengths to separate the sacred from the profane."<sup>17</sup>

This, of course, is utter nonsense. For millions of Americans there is no separation between religion and other aspects of life. Probably a majority of Utah Mormons, Orthodox Jews, and Fundamentalist Christians obtain their principal social and economic sustenance from church connections.<sup>18</sup> It may be that Mr. Rhodes was thinking primarily of the *legal* separation of church from state in America. But this is a recent innovation, neither traditionally nor at present a central feature of Western society. The church was not separate from the state in classical Greece; nor in pagan or Christian Rome; nor in the Christian Byzantine Empire; nor in Christian Medieval Europe. Several American colonies were founded as theocracies. Even at the time our Constitution was written, some American states had, or recently had maintained, official churches. It is probable that the Establishment Clause of the First Amendment was designed largely to protect those official state churches from federal interference.<sup>19</sup>

Church and state continue to be linked in important Western nations today: Anglican England and Jewish Israel are two examples. Nor is the legal separation of sacred from profane complete in our own country, as one can confirm by a glance at the face of any American coin.

Mr. Rhodes' exposition of Indian religion, far from identifying

---

17. Rhodes, *supra* note 5, at 18.

18. I have personal experience with this. While in practice in Colorado, I consulted for a professedly Christian law firm. Coming to admire the partners, I applied for a more formal ("of counsel") connection, but was rejected because I am not a Christian. Although disappointed, I accepted the partners' point of view as honorable and continued to work with them on an informal basis.

19. Thomas Jefferson's ideal of a wall of separation between church and state, cited by Mr. Rhodes (*supra* note 5, at 18 n.12), was uncharacteristic of his time.

precepts foreign to the West, describes almost perfectly any number of past Western religions and religious movements. Indeed, for many years this sort of world-view *dominated* Western religion: it is almost identical to Roman animism<sup>20</sup> and akin to Medieval religiosity. These facts are, I suspect, well known to the typical federal judge—including federal judges who decide Indian rights cases.

#### IV. ALTERNATIVES: THE STRENGTH OF THE WESTERN TRADITION

If the Western tradition were no more than what has been outlined above, we still would be animists or Medieval religionists, living in a close and pre-scientific world. Westerners, however, were among the first to evolve beyond that world. They did so because the Western heritage offered alternatives to purely pantheist and collectivist ideas. If there were many more *poleis* like Sparta than Athens, at least in the West there had been an Athens. If the Roman Empire ultimately became a synonym for absolute power, Westerners could never forget that there once had been a Roman Republic. If ignorance dominated Europe for millennia, the light of inquiry flashed again and again: at Alexandria, at Aix-la-Chapelle, at Padua. And if the West was dominated by the ideal of universal faith, certainly there was courageous heresy as well. The magnificence of the Western heritage lies not in the way most Westerners have lived most of the time, but in those flashes of brilliance recurring in the West only at odd moments—but *in most cultures never*.

The complexity of their heritage gave Westerners a sense of choice about the way they shaped their culture. In banishing slavery from England for all time, Lord Mansfield could shame the slaveholders with Virgil's denunciation of racial prejudice because every educated English slaveholder had read those lines in school.<sup>21</sup> No cultural imperative drove Hugo Grotius to rationalize

---

20. *Animism* is "[t]he belief that all objects possess a natural life or vitality or are endowed with indwelling souls [or] . . . [b]elief in ascribing conscious life to all natural objects, to nature in general, without assuming the existence of separable souls." WEBSTER'S NEW INTERNATIONAL DICTIONARY 106 (2d ed. 1955).

21. The case was *Somerset v. Stewart*, 98 Eng. Rep. 499 (K.B. 1772), more commonly known as *Somerset's Case*. (See the transcript set forth in 2 J. CAMPBELL, *THE LIVES OF THE CHIEF JUSTICES OF ENGLAND* 419 (1849).) The line quoted was from *Eclogues* 2.15-18: *Quamvis ille niger, quamvis tu candidus esses*. Virgil's entire passage is as follows:

. . . nonne Menalcan,  
*Quamvis ille niger quamvis tu candidus esses?*  
*O formose puer nimium ne crede colori:*  
*Alba ligustra cadunt, vaccinia nigra leguntur.*

*Id.*

Translation is impossible because the precise identity of *ligustrum* is uncertain, and the

the law of nations, but he could choose to do so because the Roman *jus gentium* was available as an inspiration and a model.<sup>22</sup>

To the inhabitants of young America, given the chance to begin the world over again, the best of the Western tradition offered more than a sense of choice: it gave a real power. The direction of America was not the result of ethnocentrism or cultural determinism; it was the fruit of conscious decisions, informed and made possible by the lessons of history.<sup>23</sup> Given the complex tapestry of the West, Americans shunned the coarse yarn of collectivism and plucked at the golden threads of individualism and freedom of thought. From Biblical, Roman, and English sources Americans pieced together their theory of natural rights. From Athens, they borrowed the ideal of democracy operating within a context of law.<sup>24</sup> Inspired by historical example, they proceeded further than any people ever had in drawing lines between the coercive power of government and the institutions of private life. In the years of the founding and subsequently, Americans erected legal boundaries between state and religion; state and economy; state and purely private conduct. Although some of these lines (especially between state and economy) have blurred, others have grown sharper. Americans even drew lines within government, separating the executive, legislative, and judicial powers and dividing legislative responsibilities between the states and the central government.<sup>25</sup> To

*vaccinium*, or blueberry, is seen by Virgil and his readers as black. The gist of the passage is, "Menalcan, my handsome boy, so what if he's black and you're white? Don't put too much stake in color—the white [privet?] berries fall to the ground while the black [blue]berries are gathered up."

22. Grotius' most important work, the foundation of modern international law, is *De Jure Belli et Pacis*.

23. The nonspecialist can get a sense of the Framers' (generally accurate) use of history by examining the *Federalist Papers*, which are packed with historical allusions, lessons, and parallels.

24. Particularly influential has been Pericles' *Funeral Oration*, appearing in Thucydides' account of the Peloponnesian War. A sample follows:

Let me say that our system of government does not copy the institutions of our neighbours. It is more the case of our being a model to others, than of our imitating anyone else. Our constitution is called a democracy because power is in the hands, not of a minority, but of the whole people. When it is a question of settling private disputes, everyone is equal before the law; when it is a question of putting one person before another in positions of public responsibility, what counts is not membership of a particular class, but the actual ability which the man possesses. . . . We are free and tolerant in our private lives; but in public affairs we keep to the law.

THUCYDIDES, THE PELOPONNESIAN WAR 145 (R. Warner trans. 1972).

25. It is revealing that the radical multiculturalists, while emphasizing "diversity" for their own purposes, have shown no interest in federalism, the principal safeguard of true diversity in the United States. On the contrary, they have tended to favor the imposition of uniform national rules, such as that imposed regarding abortion by *Roe v. Wade*, 410 U.S.

be sure, none of these lines is impermeable; Jefferson notwithstanding, these boundaries are not walls. But they serve as the restraints and reminders that render possible a pluralist, reasonably tolerant, and multicultural society.

Unexpectedly perhaps, the division of private life from the public power also created the framework for brilliant economic and technical advance. This is important to remember, for increasingly it is argued that the undeniable facts of human interdependence require us to adopt policies of coercive legal interdependence.<sup>26</sup> Yet it has been the policy of institutional *division*, not legal interdependence, which has proven most successful in responding to factual interdependence.

In sum, the Founders made the choices they did because they knew their history and were aware of the horrible human costs of living in a world without boundaries between public and private spheres. Today, most federal judges continue to make such choices for the same reasons—and not because they are the ethnocentric prisoners of a dualist culture.

#### V. ROME'S PERSECUTION OF THE CHRISTIANS: ENFORCING INTERDEPENDENCE THROUGH STATE POWER

In a footnote, Mr. Rhodes implies that he thinks it ironic that predominately Christian courts persecute Indian religion when Romans persecuted Christians.<sup>27</sup> Mr. Rhodes' appeal is to the First Amendment. But the First Amendment was drafted by men profoundly conscious of *two* lessons of religious power in the Roman Empire. The first lesson arose from the Roman persecution of the Christians. The second derived from religious interference with the normal exercise of civil government. Both lessons teach of the dangers that arise when believers in coercive interdependence seize power in a multicultural state.<sup>28</sup>

Roman persecution of Christians occurred, not in 30-35 A.D.,

113 (1973). For an example in the academic context of imposed uniformity in the name of diversity, see, *e.g.*, the discussion of Bylaw 6-4 of the Association of American Law Schools, *supra* note 4.

26. See, *e.g.*, Freyfogle, *Context and Accommodation in Modern Property Law*, 41 STAN. L. REV. 1529 (1989) (arguing that factual interdependence in the use of water justifies coercive reallocation policies).

27. His footnote 7 reads, "This mistake was made despite the historic example of the Romans persecuting another messianic religion in Palenstine [sic], circa 30 to 35 A.D." Rhodes, *supra* note 5, at 16 n.7.

28. Further examples could be drawn from the history of other state-sponsored religions, including Christianity and Islam. Whenever rulers of a multicultural state refuse to draw lines between state power and private activity (religious or otherwise), the result is persecution.

as Mr. Rhodes states, but intermittently from A.D. 64 (immediately following Nero's fire) until the end of the reign of Galerius (A.D. 311).<sup>29</sup> At various times the persecution had different precipitating motives, but its underlying cause appears to have been incompatibility of Christian practice with the legitimating theory of the Roman state.

The Christians, aside from a few zealots, had little quarrel with Rome. Most Christians recognized that, on balance, the early Empire was a good thing. Christians therefore sought to draw a line between private religious faith and public civic responsibility. Christians were willing to pay taxes, obey the law, and serve in the army if Imperial officials would respect their private religious observances.

Unfortunately, the Romans' religious outlook closely mirrored that of American Indians, at least as Mr. Rhodes has described the Indian outlook. As Mr. Rhodes asserts is so of the Indians,<sup>30</sup> the Romans had no word for religion.<sup>31</sup> Like the Indians, the Romans recognized no line between civic, religious, and other responsibilities.<sup>32</sup> And also like the Indians, the Romans believed each nation or tribe<sup>33</sup> had a *patria*, a homeland sacred to itself and its gods.<sup>34</sup>

Fortunately, during its early and middle periods the Roman Empire was essentially a federal state. Most government happened at the local level. This situation mitigated the potential for persecution, when the relevant minority had a *patria* and accepted at

29. In referring to the dates 30-35 A.D., Mr. Rhodes apparently has confused the crucifixion of Jesus (approximately 30 A.D.) with the persecution of the Christians by the Romans. At the time Mr. Rhodes mentions, the Christians were not identifiable as a distinct sect. Moreover, the crucifixion was initiated by certain elements in the local Jewish theocracy, not by the Romans (*Matthew* 26:59-27:26; *Mark* 14:43-15:15; *Luke* 22:63-23:25; *John* 18:3-40), and there was no general persecution at that time.

30. Given the number of Indian languages and unrelated language groups, this seems an impossible generalization, at least without much more support than Mr. Rhodes offers.

31. *Religio* meant reverence, sanctity, a consecrated object. Only in late Latin usage did it come to connote a system of religious belief. C. LEWIS, *A LATIN DICTIONARY* 1556-57 (1879).

32. "[P]atriotism and the state religion [were] indistinguishable." M. GRANT, *THE WORLD OF ROME* 177 (1960). See also *THE OXFORD HISTORY OF THE CLASSICAL WORLD* 396 (J. Boardman, J. Griffin & O. Murray ed. 1986) [hereinafter J. Boardman]. There are many works analyzing Roman-Christian relationships. One of the best treatments for the non-specialist is C. STARR, *CIVILIZATION AND THE CAESARS* 312-38 (1965).

33. Both nation and tribe are Latin derivatives, from *natio* and *tribus*, respectively.

34. Thus, in Latin an inhabitant is *incola*, one who worships in a place. A farmer is *agricola*, one who worships at his field. Cf. the English derivatives cult and cultivate. (It would have been unnecessary to explain this in an earlier era, when Western culture was properly taught; *incolunt* is the tenth word in Caesar's commentaries, and the implications of the base word *colere* were taught to all tenth graders.)

Similarly, the connection between the English words vote and devote is no accident; both derive from the Latin religious verbs *vovere* and *devovere*.

least the *existence* of the Roman gods. The Romans were willing for an Athenian, for example, to devote his primary loyalty to the gods of Athens. Loyalty to those gods and to *patria* ensured that Athenians would honor their treaty responsibilities to Rome. Thus it was that the classical Romans looked on most religions as equally true and equally useful.<sup>35</sup>

But as imperial governance became more centralized, direct loyalty to *Roma*<sup>36</sup> and to the emperor became more important. Such loyalty required explicit worship of the imperial godhead. In the ceremony of pledging allegiance to Rome, the subject offered libations at the altar of the Emperor.<sup>37</sup> No good Christian or Jew could commit such idolatry.<sup>38</sup> But in Roman eyes, rejection of the state gods implied treason to the secular power.

A Jew who paid the Jewish tax and retained links to his *patria* (Palestine) usually could avoid religious persecution. But Christians asserted they were not Jews, and refused to pay the Jewish tax. Moreover, after their separation from Judaism, Christians had no *patria*—no geographical roots. They proselytized everywhere and among all peoples, teaching that their God was universal and that all other gods were either nonexistent or lived only as demons. The fact that most Christians affirmed, as had Jesus, that their kingdom was not of this world,<sup>39</sup> and that there was no inherent inconsistency between loyalty to Rome and loyalty to God,<sup>40</sup> was not sufficient to appease the Romans. Because for the Romans religion and state were *interdependent*.

---

35. This is a paraphrase from 1 E. GIBBON, *THE DECLINE AND FALL OF THE ROMAN EMPIRE* 25-26 (Modern Library ed. 1932):

The various modes of worship, which prevailed in the Roman world, were all considered by the people, as equally true; by the philosopher, as equally false; and by the magistrate, as equally useful.

36. The reference here is to the goddess *Roma*, personification of the capital city.

37. In the Western provinces, the altar technically was that of the Emperor's tutelary spirit. On the relationship between Emperor and religion during the imperial period, see J. Boardman, *supra* note 32, at 543-45.

38. One of the best ways the modern reader can get a sense for the conflict between Romans and Christians is to read the famous Trajan-Pliny correspondence on the subject, which was written from the Roman point of view. The correspondence, part of a much larger collection of epistles, consists of two letters: an inquiry by an imperial governor to the emperor as to how to deal with Christian intransigence, and the emperor Trajan's (comparatively) mild reply. *Pl. Epp.* 10.96-97. There are many translations of the letters into English, of which Betty Radice's Penguin edition is perhaps the most accessible. *THE LETTERS OF THE YOUNGER PLINY* (B. Radice trans. 1969). For Westerners, Pliny's letters bear this similarity with the *Bible* and the works of Cicero: They have been so influential in our culture that no Westerner who has not read a fair sampling of them can consider himself liberally educated.

39. *John* 18:36.

40. Hence, "Render therefore to Caesar the things that are Caesar's, and to God the things that are God's." *Matthew* 22:21 (Rev. Stand. Ver.). *Cf. Mark* 12:17; *Luke* 20:25.

Rome's eventual adherence to Christianity was almost as much a Christian adherence to Rome. Christianity became the state religion. Within a few decades of Constantine's deathbed baptism, the Roman Empire began persecuting pagans, heretics—indeed everyone who did not subscribe to imperial orthodoxy.<sup>41</sup> Confined by the notion of coercive interdependence, the ancients—and later the Medievals—purchased tolerance for Christians at the price of tolerance for everyone else.

In defining the structure of American government-religious relations, the Framers were conscious of the history of the Roman persecution. The history of the Roman persecution continues to be influential among educated people today. It is one reason the United States does not require professions of religious belief from her citizens. Most Americans acknowledge that anyone who believes in basic human rights can be a good citizen, irrespective of religious preference. Rejection of the ideology of coercive interdependence is crucial to such tolerance.

Another lesson from church-state relationships in the ancient world also has proven important to American judges and policymakers. Greek and Roman priests had the *constitutional* power to influence public policy on real or assumed religious grounds. By manipulating the official auguries, they altered the results of elections, delayed or provoked wars, and vetoed legislation.<sup>42</sup> In crafting and enforcing the First Amendment, our policymakers and judges understandably have been reluctant to grant similar constitutional power to religious groups in the United States. This, not mindless ethnocentrism or Western cultural determinism, is the germ of the Court's holding in *Smith*.

## VI. RESURGENT GHOSTS IN THE ARMY OF THE NEW LEFT

At the beginning of this essay, I stated that radical multiculturalism is really the resurgent ghost of the New Left. To be more precise, it is a brigade in an army of resurrected corpses, clad in fresh uniforms, and renewing an old assault. Other units in the same army, clad in different uniforms, are the "critical" legal and literary schools, whose mission is to justify state coercion by "deconstructing" freedom of choice; the radical feminists, who seek to separate women from the Western tradition by pretending that the tradition is exclusively male; the racialists, whose goal is to perform the same office with ethnic minorities; and the radical en-

---

41. C. STARR, *supra* note 32, at 371-77.

42. A. GREENRIDGE, *ROMAN PUBLIC LIFE* 166 (1901 & reprint 1970).

vironmentalists, whose message is that private property is unclean. The goal of the radical multiculturalists, as previously noted, is to stereotype the Western tradition, as apparently they have for Mr. Rhodes; to reduce the claim of that tradition on the curriculum; and to fill the gap with propaganda disguised as foreign culture.

The common ground of all these groups is that the factual interdependence of human relationships justifies structures of coercive legal interdependence. All act on the soulless view that life is but structures of power; one suspects that for many in this camp, the lust for power is all of life left within them. In their emphasis on coercive interdependence and their disdain for drawing lines between public and private life, one hears the echo of a New Left slogan, attributed to Ho Chi Minh, and so often asserted during Vietnam-era protests:

*If you are not part of the solution, you are part of the problem.*

We in the Western World have heard this sort of thing before, haven't we? Whenever tyrants have sought to justify the demands of absolutism.