

A REACTION TO “LEGAL PUNISHMENT AS CIVIL RITUAL: MAKING CULTURAL SENSE OF HARSH PUNISHMENT”

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In his famous essay “The Devil in Mr. Jones,” Jonathan Z. Smith chastises his fellow religious studies scholars for not addressing current events that involve religion and instead disproportionately focusing on ancient and medieval religions.¹ Specifically, Smith refers to the 1978 mass suicide at Jonestown, where he laments the lack of religious studies scholars participating in the public debate and discussion of Jonestown.² Smith’s criticism remains relevant today, as religious studies scholars remain conspicuously absent from public debate and discourse on pressing socio-legal issues that implicate religion in the public sphere.

SpearIt’s provocative essay, *Legal Punishment as Civil Ritual: Making Cultural Sense of Harsh Punishment*, not only takes up Smith’s enduring challenge, but also expands its outer limits.³ SpearIt argues that not only is there a religious component to legal punishment in the United States, but also that a religious studies framework is critical to understanding the multifaceted dimensions of mass incarceration. Through his compelling argument that legal punishment should be understood as civil ritual, SpearIt issues his own challenge to scholars of law and religion alike.

In his discussion of legal punishment and mass incarceration, SpearIt astutely highlights the language of American civil religion, which manifests as public Protestantism and dramatically shapes Anglo-American law. Just as critical race

¹ JONATHAN Z. SMITH, *IMAGINING RELIGION: FROM BABYLON TO JONESTOWN* (1982).

² *Id.*

³ SpearIt, *Legal Punishment as Civil Ritual: Making Cultural Sense of Harsh Punishment*, 82 *MISS. L.J.* 1 (2013).

studies scholars have uncovered a baseline of “whiteness” that courts implicitly adopt in their interpretation of the law, SpearIt reveals a pervasive Christian baseline that implicates judicial decisions and juridical policies. The Christian baseline inherent in the American legal system not only impacts the Free Exercise and Establishment clauses of the First Amendment, but also the due process and equal protection dimensions of the penal system. Through his thoughtful and nuanced discussion of purity and pollution, slavery and lynching, and biblical jurisprudence, SpearIt provides a captivating new explanation of why we incarcerate.

However, this article faces both quantitative and qualitative challenges in establishing that legal punishment is a type of civil ritual. Given that law and society scholarship relies heavily on measurable data points, the question remains as to how the process of civil ritual can be quantified. Furthermore, given the ubiquitous nature of ritual in public life, how do scholars understand the ritual of punishment when ritual shapes and defines so many aspects of law and society? How do scholars articulate the causal relationship between ritual and punishment, and how do ritual and punishment impact each other?

Despite these challenges, this essay remains an important and timely contribution to the critical study of legal punishment and mass incarceration. SpearIt provides scholars with a rich vocabulary and powerful imagery necessary to further explore the intersections of ritual and punishment. Indeed, his creative use of the double entendre “incense” explicitly connects the legal and the religious, citing prisoners as “the incense of incensed Americans”⁴—while theorizing ritual and punishment. For all these reasons, this essay should be required reading for scholars of both punishment and ritual, regardless of their disciplinary affiliations.

⁴ *Id.* at 40.

