



From Silver to Gold: The Next 25 Years of Law and Religion

The Alonzo L. McDonald Lecture:

“Can We Imagine a Global Civil Religion?”

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Friday, October 26

I'm very happy that there are people left after this heavy couple of days and that stunning session that just preceded us. I want to express, in spite of redundancy, my profound gratitude to the Center for the Study of Law and Religion, and particularly for the global thrust. And what initially was primarily Judaism, Christianity and Islam has now stretched out to include all the great world religions.

And it seems to me that that's really what I want to talk about today, and what Professor Waldron, my immediate predecessor was talking about, the need for solidarity beyond a nation state. And that seems to me the work of the Center is very much moving in directions that will help build that solidarity.

But I want to start by commenting on my somewhat provocative title, and remembering that in my essay, *Civil Religion in America*, first published in *Daedalus* in 1967 exactly 40 years ago, which unfortunately quite a few people think is the only thing I ever wrote, I did discuss toward the end the possibility of what I called a “world civil religion.” Naïve though it may sound today, the idea of a world civil religion as expressing what I wrote at the time, “the attainment of some kind of viable and coherent world order,” was the imagined resolution of what I then called “America's third time of trial,” an idea later developed in my book, *The Broken Covenant*. The first time of trial was concerned with a question of independence, and the second with the issue of slavery, but the third, as I then put it, was concerned with America's place in the world, and indeed the kind of world it would have a place in. That “viable and coherent world order” for which I hoped would, I believe, require “a major new set of symbolic forms.” So far, I argued, “the flickering flame of the United Nations burns too low to be the focus of a cult, but the emergence of a genuine transnational sovereignty would certainly change this.” So much in '67—a genuinely transnational sovereignty? This utopian idea is something we'll have to think about later. But I did hold that, though the idea of a world civil religion would be in one sense the fulfillment of “the eschatological hope of American civil religion” (and for Jean Elshtain's sake, I can remind her that I centrally mentioned Lincoln in that article), nonetheless “it obviously would draw on religions traditions beyond the sphere of biblical religion alone.”

This extraordinary vision might make it seem that my essay of 40 years ago was hopelessly out of touch with reality. The resolution of the third time of trial being no closer today than it was then, perhaps even further away, unless one realizes that much of the actual text of that essay was a severe criticism of an America that had gone badly astray, and was not helping the world toward a viable and coherent world order at all. I included a long quotation from Senator J. William Fulbright about “the arrogance of power,” and I went on to recall Robinson Jeffers whose poetry, I said, “seems more apt now than when it was written.” Alas, today, those words are once again remarkably apt. Jeffers wrote,

Unhappy country, what wings you have! ...
Weep (it is frequent in human affairs), weep for
 the terrible magnificence of the means,
The ridiculous incompetence of the reasons, the
 bloody and shabby
Pathos of the result.

1967—2007—where are we? In my own life, do I have to go through this twice? I must admit on occasion to saying “Vietnam” when I mean “Iraq.” I envy those of you who have no actual memory of the Vietnam War since you will not have to go through the experience of seeing your country make the same catastrophic mistake twice in less than 50 years.

Still, we can hope—perhaps hope is all we have. Times of trial in human history have often been protracted, have lasted 100 years or more, and if ours seems to have no end in sight, we can still imagine the possibility, even the necessity, of a viable and coherent world order if our catastrophe—ecological, political, economic—is not to become total.

One thing I learned from the complex discussion of the 1967 essays is that for many, particularly religious believers, but also secularists, the idea of “a civil religion” was viewed as a threat, one religion competing with and threatening to displace other religions even as being established. And many of my critics quoted the kind of things that Jeremy Gunn cited at length in his talk, although that wasn’t what my original paper was about – it was the prophetic side of civil religion, but nonetheless, civil religion is certainly a vexed and complex tradition at best. All my Durkheimian arguments that any really existing social group necessarily has a religious dimension, never quelled the opposition, to the point, where, by about 1980, I stopped using the term civil religion and talked about the same issues using other language, language that did involve me in endless futile discussions of definition. And thank God, the term doesn’t appear in *Habits of the Heart*, so I never had to fight that battle again. So if American civil religion is a bad idea, a global civil religion can only be worse, and I can answer the question in my title, which as I said was meant to provoke as much as to describe in the negative: no, a global civil religion is not possible.

But for the creation of a viable and coherent world order, a world civil society is surely an essential precondition, and dare I say it, any actual civil society will have a religious dimension, will need not only a legal and an ethical framework, but some notion that it conforms to the nature of ultimate reality. The biggest immediate problem is the strengthening of global civil society, and it is on that that I want to focus this afternoon, but I will have some hints and

suggestions that perhaps the religious communities of the world may have something to contribute to that global civil society, and indeed, that their participation may be essential for its success.

But first I think I have to raise a serious question, not one on the table in 1967, as to whether we don't already have a global civil religion. Harvey Cox raised this issue starkly in his essay, "Mammon and the Culture of the Market," a contribution to my *Festschrift* published in 2002. In his first paragraph, Cox says, "My thesis is that the emerging global market culture--despite those who do not, or choose not, to see it--is generating an identifiable, value-laden 'religious' world view. The market, Cox argues, is not seen as a human creation, but as a power beyond human control. In this view, the market is omnipotent, omniscient, and omnipresent. All we have to do, as individuals or nations, is to bow down to it. Its demands are beyond question.

Cox calls for a Christian theological critique of this God who is no God, and reminds us of Jesus' words, "You cannot serve God and Mammon," (Luke 16:13). The New Testament doesn't translate the Aramaic *mammon* into Greek, probably because it sounded like a pagan deity, which it is.

Although many are suffering under the rule of this deity, those who celebrate it can be found all over the world, in China and India as well as in the West, and, for the moment, they seem to be without serious opposition. But if the worship of Mammon is the new global religion, it is not one that can create a viable and coherent world order or a global civil society that might make that possible. On the contrary, it seems to make our grave problems, environmental catastrophe and the greatest inequality in human history, worse, not better. Can we understand what is happening and can we see any alternative?

I want to use some statements of Michael Walzer as a foil for my argument. I've learned much from him, have taught some of his books, so it was with some surprise that I sat down myself raising serious questions about his book, *Thick and Thin: Moral Argument at Home and Abroad*. I was amazed to learn from him that humanity, in effect, does not exist. He writes:

Societies are necessarily particular because they have members with memories, not only of their own, but of their common life. Humanity, by contrast, has members but no memory, and so it has no history, no culture, no customary practices, no familiar life-ways, no festivals, no shared understanding of social goods. It is human to have such things, but there is no singular way of having them.

And later in the book, he writes, "our common humanity will never make us members of a single universal tribe. The crucial commonality of the human race is particularism: we participate, all of us, in thick cultures that are our own." This is especially news to me since I have spent much of my life, particularly the last 10 years, writing the history of humanity in a book tentatively entitled, *Religion and Human Evolution*.

What I would question in Walzer's position is the idea that the global and the particular are mutually exclusive, that one lives in one and only one community, which, were it true, would truly make the idea of membership in "a single universal tribe" impossible. I would argue, on

the contrary, that humans have never lived in one and only one community, and that we almost always, and in modern times always, live in many overlapping communities, and, under the rule of Mammon, none of them are particularly thick. To affirm that humanity has no memory, no history, and no culture seems to be remarkable at a time when there is widespread popular interest in human origins, in human evolution, and, since the pioneering work of William McNeill in *World History*. And if the Olympic Games and, for much of the world, the World Cup, aren't global festivals, what are they? According to Wikipedia, 715 million people watched the 2006 World Cup.

Harold Berman has eloquently argued for the existence of world law, which necessarily implies at least the beginnings of world politics and world civil society. While we have no world state, and wouldn't want one, the beginning of world governance, which is not the same thing as a world state, we certainly have. A remarkable example is the fact that air traffic control and the rules for landing and taking off at airports are the same all over the world. Even more obviously, our global economy would be impossible were there not a plethora of rules, some legal, some customary, governing global trade and capital transfers. That world society doesn't exist and each of us is stuck in his or her particularistic tribe, as Walzer affirms, seems to be remarkably far from the truth.

World culture can be traced all the way back. The bow and arrow, for example, has been adopted by every place on Earth except Australia, long before history. Stith Thompson traced motifs in folklore that can be found in every continent. I have news for you—there are many stories in the Bible that are shared by people all over the world. You may not know that, but if you study, you will find that there is more sharing going on through history than we ever dreamed. Even the nation state is a cultural form that has been transmitted with remarkable fidelity over the entire world since the 19th century, as the work of John Meyer and his associates have abundantly shown. Global culture, which I would insist is a deep feature of human history, is not the same thing as global civil society or global governance. Civil society is a relatively late idea, only emerging for the first time in the West in the 18th century.

It is worth noting that world trade, often the carrier of world culture, can be traced back into the deepest recesses of human history, but was growing in importance since classical times when China and India were linked in a variety of ways with the Middle East and Europe. After the European discovery of the New World, trade truly became global. A principled independence of the market from state and guild monopolies was a feature of the early modern period, pioneered in Britain, but rapidly defusing to other societies and making possible the emergence of modern capitalism.

Developing only slightly later, but overlapping the disembedding of the economy, was the emergence of civil society, or the public sphere, a realm of thought, argument and association independent of the state, but leading to the formation of what came to be called public opinion, which politicians could ignore at their peril. I will use civil society as virtually synonymous with public sphere – I know there's a lot of argument about terminology, but for the sake of this talk—in a way that has become common in recent writings, to refer to forms of communication and association that have been disembedded from the state and are not directly controlled by the market. In the 18th century, the main problem was to achieve independence from the state, and

the institutionalization of human rights was the essential precondition for the independence of civil society. The First Amendment to the American Constitution guaranteeing freedom of religion, speech and assembly is the legal basis that makes civil society possible in our country, and similar developments have followed, not without much struggle and backsliding, elsewhere ever since, even where such rights are included in constitutions, are consistently violated in practice. This again suggests that culture and even law have spread where institutions and practices have not yet fully developed.

Civil society, though oriented to the discussion and advocacy of political issues, lacks the capacity to make binding decisions. However, it is closely related to another 18th century idea, the sovereignty of the people. It was Robespierre who first gave the idea of democracy a positive meaning after centuries during which it was usually a pejorative term. Democracy is a way of exercising the sovereignty of the people, gave civil society the right, not to make political decisions, but to elect those who would. This idea has now achieved global legitimacy, even where it is often honored in the breach.

Most writing about civil society has taken the nation state as a basic frame of reference, though of late there has been quite a bit of discussion of global civil society. Alejandro Colas has made the useful point that civil society was international virtually from the beginning. Though it may have originated in Britain in the 18th century, it was already disseminated to the American colonists, whose actions in turn were widely influential on the continent, as were British practices. In fact, all the great modern ideologies—liberalism, nationalism, socialism, in our time feminism, environmentalism—have been international and involved not only cross-national communication of a variety of sorts, but many international associations. We may think of nationalism as antithetical to globalism, but nationalism has always been an international phenomenon. Colas cites the interesting example of Giuseppe Mazzini, the most important theorist of Italian nationalism in the 19th century, who established in 1847 the People's International League whose objectives he defined as:

to disseminate the principles of national freedom and progress; to embody and manifest an efficient public opinion in favor of the right of every people to self government and the maintenance of their own nationality; to promote a good understanding between the peoples of every country.

I'm not saying that much of the subsequent nationalism would ever have appealed to Mazzini, who was a liberal, a democrat, a profoundly humane person. Once the cat got out of the box, we know horrible things happened. But the original idea was itself humane, and it was certainly international.

Mass communications, but particularly the Internet, have made possible the organization of global public opinion to a degree unimaginable only a few years ago. Adam Lupel has described a remarkable event:

On 15 February 2003 across North America, Europe, the Middle East, Asia and Australia as many as 30 million people took to the city streets to express opposition to the planned invasion of Iraq. It seemed an extraordinary moment for global civil society, perhaps for the first time

living up to its name. The antiwar movement appeared to accomplish in a day what four years of transnational activism against neo-liberal globalization could not. It brought together constituencies from East and West, North and South, into a broad-based movement with a common, clear objective: stop the US-led drive to war. The next week saw what was perhaps a Pyrrhic victory for global civil society. The protests no doubt contributed to the Bush administration's defeat in the U.N. Security Council. But in the end they also contributed to the heightened sense that the United Nations and global civil society were impotent next to the hegemonic power of the United States....

Global public opinion, as best it could be determined, was overwhelmingly opposed to the war, and yet by most accounts war seemed inevitable from the very start. For all the advances in international communications and the spread of international law in the 20th century, there remains no institutional mechanism to effectively channel the transnational communicative power of an emerging global civil society.

Using this example in both its positive and negative aspects as a starting point, we can ask, where are we? Granted that there is a global economy, global culture, global law, global civil society, even global festivals, why are global institutions both so promising and so weak? I will turn to Jürgen Habermas, Europe's leading social philosopher, for help, particularly in his remarkable essay of 1998, "The Postnational Constellation and the Future of Democracy." Habermas organizes his discussion around attention between two central facts in our present situation: 1) The nation state is the largest form of society that has been able to create a sense of common membership powerful enough to convince the majority of the citizens that they have a responsibility for all, including the least advantaged, thus giving rise to significant redistribution in what we have come to call the welfare state; and 2) the rise of the global neoliberal market ideology and practice has everywhere threatened the capacity of nation states to carry out the responsibilities inherent in the notion of common membership.

What Habermas is describing is a double disparity between economics and politics: economics is seen as the realm of the natural, not the social, whereas politics is the sphere of intentional social choice. But when nations are the sole locations of effective politics and the economy has become global, then the disparity and power between global economy and even the strongest state means that it is the economy that will determine outcomes in the end. In this situation Habermas asks whether "we can have a politics that can catch up with global markets" in order to avert the "natural" disaster that an uninhibited market economy seems to entail—that we know from history has always entailed. Another way he puts it is to stress the need of "a world domestic policy," because we are now living in a world, not in nation states alone, and the world market requires such a policy.

As a practical example, though one with implications for even larger forms of political cooperation, he takes the European Union and the difficulties it has faced in becoming more effective than simply a currency union. Habermas uses the example of what he calls the modern state as a constitutional republic, no longer a nation in the sense of a particular ethnic group, but including people of various ethnic, religious, and linguistic backgrounds, yet united in what he calls an abstract constitutional patriotism such that its members can still identify with each other and even sacrifice some of their own advantages for the common welfare. He points out that an

effective European Union would require that “Swedes and Portuguese are willing to take responsibility for one another.” To the degree that the EU has given special advantage to its poorer members, this has actually begun to happen, with apparent public support, though not without some opposition. But he points out that the neoliberal economy not only pressures all nations to lower wages and decrease benefits, but also to lower taxes to the point where the state no longer has the resources to carry out social programs. A really effective EU would be able to stop or reverse this tendency by setting minimum wages and higher taxes across the Union. Ultimately, of course, a global union would be necessary to reverse the neoliberal drive to the bottom.

The most fundamental question that Habermas is raising is whether a global civil society and some forms of global governance are possible, a civil society and governance that would not replace nation states but would place some limits on their autonomy, as the global economy already does. And here there is a question of what kind of people we are. Could we as Americans accept the notion of common global membership such that we would be willing to give up something of ours for the sake of Somalians or Vietnamese? It is at this point that I think we have to ask what are the cultural resources for thinking of global citizenship that would go along with global economics and moderate its excesses? Is abstract constitutional patriotism enough? It is here that we have to consider philosophical and religious resources for thinking about membership in global civil society, membership that would entail at least short-term sacrifice.

Since we actually have since the United Nations Universal Declaration of Human Rights and its subsequent elaborations something that can be called a global ethic, sometimes referred to as the human rights regime, we can ask how much help we can derive from this consensus, one that is not simply an ideal, but that has significant legal weight, though by far not enforceable everywhere, not even in the original home of the legal human rights, the United States. And we can ask whether the questions raised by non-Western and non-Christian thinkers about the adequacy of an exclusive emphasis on human rights can be answered, as well as the question whether an exclusive focus on human rights may not be part of the problem, however much in the end it is surely part of the solution.

Since human rights, emancipation, and enlightenment are part of the modern project, ethically construed, they are shared by significant actors all over the world. They are not the concerns of Westerners as opposed to non-Westerners (indeed, they have Western as well as non-Western opponents) nor are they limited to the modern scene as a finite and completed period in human history, as the postmodernists argue.

To the extent that human rights, as we understand them, have significant Christian historical roots, something many supporters of human rights may not be aware of or care to be aware of, it is also worth remembering that Christianity is now a global phenomenon. Webb Keane in his powerful new book *Christian Moderns* has pointed out that at the beginning of the 21st century, one-third of the world is now Christian and that one-third of those Christians live in former colonies. I used to think that the *Christian Century*, for which Marty writes and which I read faithfully, was foolishly named at the end of the 19th century. The 20th century was the Christian century? Oh, tell me about it! Oh, as Keane points out, many of the leaders of non-

Western countries, including formerly leaders of independence movements, were educated in missionary schools even though they were not converts. And one could add that reform movements in Buddhism, Hinduism, and Islam have been to more than a small degree a response to Christian, particularly Protestant, examples. So if there is a relation between Christianity, modernity, and human rights, it has for some time been global and can no longer be dismissed as Western.

I wonder if Habermas' abstract constitutional patriotism will ever be enough. It is one thing to believe in abstract principles. It is another to mobilize the motivation to put those principles into institutional practice. Hans Joas has recently pointed out, following the pioneering work of Georg Jellinek, that Max Weber picked up, that though ideas about human rights go way back in Western history and include classical Catholic, Lutheran, and Calvinist thinking, it was only when the American sectarian protestants in the 18th century, mainly the Baptists and Quakers, were willing to fight for them that they got included in the American Constitution. Religious fervor is always problematic because it has so often been used for evil as well as good purposes, but it may be that only such a powerful motivation could make human rights genuinely practical. And though Christianity has a big contribution to make, it is surely not alone. Confucians hold on the basis of the Analects of Confucius that "all within the four seas are brothers." Buddhists identify not only with all human beings but with all beings in the universe, natural as well as human. For millennia these deep commitments have been held but never effectively institutionalized. Can the world's religions now mobilize their commitments so that they can at last have genuine institutional force?

What the world requires now must go on at many levels, religious, ideological, political on the global, national, and local levels. But one thing Habermas' scenario requires is very evident; however difficult to achieve. We must now turn the idea of being citizens of the world into a practical citizenship, willing to be responsible for the world of which we are citizens. And here, Jeremy Waldron's point that human beings, which in different ways all the great religions hold, have, warrant an ultimate reality for their being are not limited to any nation state. And if we respect them and hope that the respect for them will be institutionalized, such institutions must transcend the nation state. I truly believe that there are millions of citizens of the world today in every country willing to make the necessary commitments. When I see what the Scandinavian countries spend on aide to the poorest of the poor, percentage of GNP many, many, many times higher than our own, I wonder if those countries are not already a majority citizens of the world. Whether they are in the majority or not, the problem is politicians will continue to pander to short-term interests until their constituents force them to do otherwise. What we need is to turn a growing minority into an effective majority.

For those of us in the United States, a classical example might be instructive. As far as I know, the first usage of the idea of being citizens of the world originated with the Stoic philosophers in the ancient Mediterranean. They thought of themselves as *kosmou politai*, literally, citizens of the world. But for us it is worth remembering that even the Roman stoics who tended to write in Greek, actually—Marcus Aurelius' meditations are in Greek, if you don't remember—there is no Latin translation. Sheldon Pollock speculates, following Ovid, that this was because the Romans thought that their task was "to transform the *kosmos* into their *polis*, or rather to transform to use their own language, the *orbis* into their *urbs*, the vast world into their own city." If one looks at

George Bush's *National Security Strategy* of September 2002 one can see that he claims the oversight of the entire world for the United States, which might explain why Americans have been hesitant to become citizens of the world.

Because I see neoliberalism as the source of our deepest global problems it might be thought that I'm opposed to it altogether. That would be as foolish at this point in history as to be opposed to capitalism altogether. What I worry about is the destructive consequences of the naturalization of neoliberalism so that it has no effective challenge. I agree with Habermas that world politics needs to catch up with the world economy so that an effective structure of regulation can be created that will protect the environment and the vulnerable of the earth who are paying the price while only a few are reaping the benefits. If this is a political challenge, it is also a religious challenge. I am convinced that religious motivation is a necessary factor if we are to transform the growing moral consensus and the significant beginnings of world law into an effective form of global solidarity and global governance. Thank you.